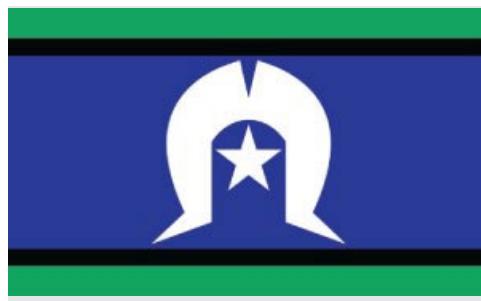


Submission to the consultation on portable long service leave for community services in NSW

Community Legal Centres Australia Community Legal Centres NSW

10 May 2024

Acknowledgement of Country



Community Legal Centres Australia acknowledges the traditional owners of the lands across Australia and particularly acknowledges the Gadigal people of the Eora Nation, traditional owners of the land on which the Community Legal Centres Australia office is situated. We pay deep respect to Elders past, present and emerging.

Community Legal Centres NSW pays our respects to Gadigal Elders, both past and present, on whose land we do most of our work. We recognise that the roots of our legal system stem from the legal fiction of *terra nullius* and the denial of Aboriginal sovereignty. We commit to challenging colonialism and supporting Aboriginal and Torres Strait Islander communities in their quest for self-determination and justice across all aspects of our work. Sovereignty was never ceded. Always was, always will be, Aboriginal land.

Introduction

About Community Legal Centres Australia

Community Legal Centres Australia is the national representative voice for the community legal sector. We are an independent, non-profit organisation set up to support community legal services to provide high-quality, free, and accessible legal, and related services to everyday people, especially people experiencing financial hardship, socio-economic disadvantage, discrimination, or domestic or family violence.

Our members are the eight state and territory community legal sector peak bodies. Together, we represent about 170 community legal centres, women's legal services, Family Violence Prevention Legal Services and Aboriginal and Torres Strait Islander Legal Services operating in metropolitan, regional, rural, remote, and very remote communities across Australia.

About Community Legal Centres NSW

Community Legal Centres NSW is the peak representative body for 41 community legal centres across New South Wales. Our small team based in Surry Hills supports, represents and advocates for our members and the legal assistance sector more broadly, with the aim of increasing access to justice for people in NSW.

Vision

Our movement's vision is for a fair and equitable society in which:

- Our legal systems and institutions are accessible to all, decolonised, and no longer criminalise poverty, disadvantage, or disability,
- All members of our community have access to the power, tools and means to live safe, secure, and meaningful lives, free from discrimination, violence, exploitation, and abuse,
- We respect and protect the rights of First Nations people and communities to land, language, culture, and self-determination,
- We respect and protect the natural environment for current and future generations.

Our expertise is grounded in the stories of the 180,000 people who engage our sector's services each year and who experience first-hand the barriers to accessing justice that exist in our legal systems. Our public advocacy ensures that their voices and experiences drive progressive systems reform.

Our perspective is also shaped by the experiences of the over 3,000 workers at community legal sector organisations across the country. Community Legal Centres Australia directly employs 16 staff and Community Legal Centres NSW employs 8 staff, including those employed on both a permanent and casual basis, and in full-time and part-time positions – the majority of whom work from our offices in Sydney CBD and Surry Hills.

About this submission

This submission expresses Community Legal Centres Australia's support for portable long service leave. Community Legal Centres Australia is the national peak, but our office is based in NSW and so our organisation and most of our staff would be impacted by these changes. There are also around 40 organisations within our membership based in NSW.

This submission outlines:

- The current state of the community legal sector, which is facing a funding and workforce crisis that is impacting people and communities' access to the crucial supports our sector provides.
- Some features of our sector that mean workers are disadvantaged when it comes to accessing long service leave.
- Why, despite our sector's funding crisis, we support workers in our sector being able to access long service leave.
- Governments' responsibility to provide sufficient funding to ensure fair pay and entitlements for community legal sector workers.
- Our responses to some, but not all, of the consultation questions.

Overall, we are broadly supportive of the proposed NSW scheme, though suggest several amendments.

Recommendations

The NSW Government should:

1. Introduce a portable long service leave scheme for community services workers in NSW.
2. Provide adequate funding to community sector organisations to enable them to provide their workers fair pay and entitlements, including portable long service leave.

The scheme should:

3. Include community sector peak bodies as services that fall in the definition of a community service for the purpose of the scheme.
4. Allow for workers to receive 6 weeks of paid leave after 5 years of employment.

What makes a community legal centre?

Community legal centres are unique within the legal assistance sector. We are independent organisations connected within a community legal sector movement. The first community legal centres were set up over 50 years ago by activists and advocates frustrated at the injustices faced by their communities, and a legal system that punished poverty and difference. The first community legal centres set about providing free legal assistance to people in need. Just as importantly, they used people's stories to advocate for legal system reform. Their aim was to ensure that everyone had equal access to justice, no matter their bank balance.

Community legal centres resist the idea that lawyers can solve all problems. We recognise that many people's legal issues are connected to other social and economic problems and that the best supports address these challenges together. Critically, we recognise the impacts of trauma and discrimination on people's ability to access justice. That's why workers in the community legal sector are not just lawyers but other equally valued and expert workers, including social workers, financial counsellors, tenant advocates and community development workers.

Trauma-informed holistic support, prevention, and systemic advocacy are central to the community legal sector's service models. In 2022–23, 72% of community legal centres¹ employed people in social and community services roles, including:

- social workers, case workers, or counsellors (42%)
- Aboriginal community engagement or support workers in identified positions (26%)
- community development/engagement workers (26%)
- financial counsellors (24%)
- other roles: disability justice liaison officers, industrial, tenant and disability advocates, mental health clinicians, and policy officers (24%).

The community legal sector is made up of a diverse range of over 3,000 hardworking, justice-oriented, expert workers nationally. Community legal centres assist hundreds of thousands of people across the country every year to manage everyday legal problems with their housing, employment, health, finances, and personal safety, and to better understand and exercise their legal rights. Community legal centres and the people who work at them help to keep people safe and prevent them from ending up in jails and hospitals, and on the streets.

¹ 72% of the 117 respondents to the 2022-23 State of the Sector survey

We support a portable long service leave scheme for NSW.

As a national community sector peak body, and employer in NSW, Community Legal Centres Australia supports portable long service leave.

Community Legal Centres Australia supports portable long service leave for NSW workers, for a range of reasons.

Firstly, we support our workers. All workers deserve fair pay, leave and other entitlements. Community sector workers are no exception. Our sector is currently facing a funding crisis. This funding crisis is not the responsibility of our sector's workers. It is the responsibility of governments. Workers should not bear the brunt of governments' failure to properly fund our sector through accepting lower pay, less security, and fewer entitlements.

Secondly, we know that entitlements like portable long service leave that improve workers' wellbeing ultimately benefit our sector, too. When workers can take breaks from work and return refreshed, they are better able to continue doing the crucial work our does to support people and communities. Investing in our people is an investment in the long-term wellbeing of our sector.

Thirdly, attracting, retaining, and supporting skilled, qualified, and competent workers is a high priority for Community Legal Centres Australia and the community legal sector. We know our sector is losing skilled and valued workers to the public and private sector, which offer better pay and more secure entitlements. Each time a worker leaves under these circumstances there is a cost to our sector through staff shortages, recruitment, on-boarding, and training – and a cost to the people and communities we serve. If our sector can offer reliable access to long service leave, this will help slow the pattern too many centres see of workers leaving the sector for far better pay and entitlements in the public and private sectors.

Finally, we don't want our workers in NSW to be left behind our colleagues in the ACT, Victoria, and Queensland who have already established a portable long service leave scheme for the sector. This is particularly important for community legal centres in locations close to state and territory borders.

Recommendation 1: Introduce a portable long service leave scheme for community services workers in NSW.

Governments must ensure community organisations are adequately funded to provide fair pay and entitlements to workers.

We recognise that some community sector employers may be apprehensive about this scheme due to concerns about additional cost pressures for organisations that are already chronically underfunded. In our view, this is not an argument that workers should not be entitled to long service leave. Rather, it highlights that in implementing the scheme, governments have a responsibility to provide adequate funding to ensure all community sector organisations can afford to support their workers to access it.

The current (2020-25) NLAP does not require state and territory governments to contribute additional funding to community legal centres. Some, including the NSW Government, do provide some additional funding to community legal centres. However, as noted below, community legal centres across the country are facing a funding and workforce crisis and many centres will struggle to meet the 1.7% levy on organisations proposed to fund the scheme.

State and territory governments have a responsibility to deliver access to justice for their constituents, and to ensure community legal services are adequately funded to meet legal need in their communities, and to provide fair pay and entitlements to workers. In NSW, community legal sector workers earn between 10% and 35% less than their counterparts in the public sector (across legal and allied professional roles). If this scheme is implemented, the NSW Government must ensure that it provides adequate additional funding to community service organisations, including community legal centres, to provide fair pay and entitlements to workers. This should include resources sufficient to meet the 1.7% levy on wages proposed to fund this scheme.

Recommendation 2: Provide adequate NSW Government funding to community sector organisations to enable them to provide their workers fair pay and entitlements, including portable long service leave.

Recommendations on the proposed scheme.

Overall, we support the scheme as proposed but recommend several amendments to strengthen it.

Eligibility and scope

Tell us what you think about the types of services we have proposed covering. Do you think that the services are clear, comprehensive, and appropriate?

None of the services proposed should be removed – we support inclusion of all of these. We also propose that ‘Advocacy services, including services provided by peak bodies’ should be expanded to include all services provided and work performed by community sector peak bodies.

In the community legal sector, peak bodies are embedded within the sector, and it is very common for workers transition between frontline centres and peaks. Further, most community legal sector peak bodies are small organisations in which every worker contributes to supporting the work of frontline service providers in our membership through, for example, capacity building, training, and ICT and data support. Setting up the scheme so that it covers some workers in peak bodies, and not others, may also result in unequal access to entitlements for workers, which could be detrimental to workplace culture.

In our view, it does not make sense to exclude peaks from the scheme.

Recommendation 3: Include community sector peak bodies as services that fall in the definition of a community service for the purpose of the scheme.

Long service leave

The Bill proposes that workers will receive 6.1 weeks of paid leave after 7 years of employment. Do you support this?

We support this as a minimum but would prefer to see this strengthened. At many community legal sector organisations, workers can access long service leave after five years. At many, the amount of leave is also greater: 12 weeks after ten years or 6 weeks after 5. We would support a scheme with these features.

Recommendation 4: Amend the scheme such that workers will receive 6 weeks of paid leave after 5 years of employment.

Levy and funding

Do you think that a levy rate of 1.7% will be a fair cost for the benefits that the scheme will provide for workers and the sector?

Community legal centres are already in funding crisis. We cannot come close to meeting existing need on current funding, and many centres are being forced to shed staff and close services and outreaches. We are aware other parts of the community sector face similar funding crises.

This does not mean workers in our sector should not be able to access portable long service leave, but it does mean that the NSW Government has a responsibility to ensure organisations are financially able to participate in the scheme. The NSW Government has a responsibility to provide additional funding to community sector organisations, of at least the levy rate amount, as part of introducing this scheme.

Background: State of the community legal sector: A sector in crisis

Community legal centres are chronically and acutely under-funded.

Underfunding of legal assistance services, including the community legal sector, is chronic and longstanding. A decade ago, the Productivity Commission recommended an immediate injection of \$200 million into the legal assistance sector to meet need for civil law assistance, with the Commonwealth contributing 60% and states and territories contributing 40%.² In 2018, the Law Council of Australia revised this figure upward to \$390 million per year, to be invested by all governments.³ More recently, the Law Council of Australia put the national funding shortfall for legal assistance services at \$500 million per year.

Over the same period, several independent, national and state-based surveys and studies have shown that unmet legal need is high and growing.⁴ While the last national survey of legal need was conducted in 2009, the data in the report (on increasing demand for services and numbers of people turned away each year) is consistent with past findings: legal need in the community is high and growing, and centres simply cannot meet it.

The current crisis has been made worse for the community legal sector because indexation on most Commonwealth funding delivered via the National Legal Assistance Partnership Agreement 2020-2025 (NLAP) service contracts (fixed at around 1.5% for each of the five years of the agreement) has not kept pace with inflation or the true cost of delivering services.

Inadequate indexation coupled with rising costs (including welcome mandatory increases to award wages and superannuation contributions for workers) means that, for most centres, funding has decreased in real terms year on year since 2020. With demand increasing, and budgets flatlining, centres have been forced into difficult decisions to limit access to services, close outreaches and turn away ever-increasing numbers of people who need help.

² Productivity Commission (2014). Access to justice arrangements – Inquiry report: <https://www.pc.gov.au/inquiries/completed/access-justice/report>

³ Law Council of Australia (2018). The Justice Project – Final report: <https://lawcouncil.au/justice-project/final-report>

⁴ Law and Justice Foundation of NSW (2012). Legal Australia Wide Survey: <https://www.nationallegalaid.org/resources/legalaustralia-wide-survey/>; Victoria Law Foundation (2023). The Public Understanding of Laws Survey (Vol 1) – Everyday problems and legal need: <https://victorialislawfoundation.org.au/research/puls>

A national report on the state of the community legal sector, *A sector in crisis*, launched in March 2024, exposes the extent of the crisis and its impact on people and communities. Some key findings include:

- Centres were forced to turn away 368,000 people seeking help in 2022-23.
- Nine out of ten centres experienced an increase in demand for their services in 2022-23 as compared to the previous year, while *none* reported a reduction in demand.

People across the country feel the crisis firsthand when they seek support from their local or specialist community legal centre, only to hear ‘sorry, we can’t help’ – which happens at least a thousand times daily. Local communities feel this crisis when their nearest community legal centre closes its local outreach or is forced to stop practicing particular areas of law because they don’t have the staff.

The community legal sector is in a workforce crisis.

Overwhelming demand and increasing numbers of people with complex needs seeking assistance is driving high rates of vicarious trauma and burnout in the community legal sector workforce. *A sector in crisis* found that, on average, centres need – and could reasonably absorb – an additional 12.0 Full-Time Equivalent workers to respond better to growing demand in their communities. The sector urgently needs to recruit 2,000 extra workers nationally. Centres report needing additional workers across all role types. Under-staffing is directly linked to staff being overworked and overwhelmed.

Despite this immense need for more workers, many centres report high vacancy rates and difficulty recruiting qualified staff to key positions. The top drivers of resignations from centres in 2022–23 were remuneration and a lack of career pathways. Where respondents offered ‘other’ reasons for resignations, these were often linked to remuneration and job security (for example, funding uncertainty). Centres identified remuneration and lack of career pathways as the most significant barriers to attracting and retaining qualified staff.

Social, Community, Health, Aged Care and Disability Services (SCHADS) Award wages are significantly lower than government and private sector wages. Even where centres pay above award rates, community lawyers and allied professionals working in community legal settings receive much lower wages than they would in the government and private sectors. In NSW, community lawyers earn between 10% and 35% less than Legal Aid NSW lawyers, and allied professionals earn between 10% and 20% less than those working in the same roles at Legal Aid NSW. This wage gap increases as workers gain experience and seniority. The wages gap is so significant that Community Legal Centres NSW estimates the NSW community legal sector would require an additional \$9 million to deliver wages parity between people working in community legal centres and at Legal Aid NSW, across legal and allied professional roles.⁵

Structurally, the wages gap also contributes to the gender pay gap, with women making up the majority of our sector’s workers. For example, Community Legal Centres QLD’s 2023 Report, *Working in Community Legal Centres in Queensland*, found that in 2022–23, 84.9% of workers in community legal centres in QLD were women.⁶ The Federation of Community Legal Centres (Vic.)’s 2022 report, *Working in Community Legal Centres in Victoria*, found that 77% of the community legal centre

⁵ Community Legal Centres Australia, 2024-25 Pre-Budget Submission, 22 January 2024: <https://clcs.org.au/law-reform-and-advocacy-submissions/>

⁶ Community Legal Centres Queensland (2023) *Working in Community Legal Centres in Queensland: Summary report*.

workforce are women, and that women dominate all roles in the sector.⁷ Similar findings are likely to be replicated nationally. For example, most respondents to the ACOSS Australian Community Sector Survey 2023 were women (69%), with this figure rising to 81% for respondents working in organisations focussed on financial, legal and emergency support services, and to 85% for services focussed on domestic and family violence and other services for families.⁸

Many centres, across the country, tell us the same story: the wages gap and lack of career pathways within our sector drive lawyers and allied professionals from community settings to seek jobs in the public or private sector. Workers in the community legal sector are overworked and underpaid. The workforce crisis compounds on itself: centres have roles vacant because they can't offer competitive enough wages to recruit or retain; this means remaining staff face higher workloads, vicarious trauma, and burnout, and may ultimately also leave the sector.

We understand that despite some of the unique factors contributing to the community legal sector funding and workforce crisis, other segments of the community sector are currently facing similar struggles. Ultimately, the solution is genuine investment from governments in community services: this would support both the workers in our sectors, and the community through being able to access robust and reliable services.

Workers in our sector should be entitled to measures that can alleviate their risk for stress and burnout, including portable long service leave. Governments have a responsibility to ensure the funding required to provide this to our sector's workers.

The community legal sector is made up of a connected network of independent organisations between which workers often transfer.

Community legal centres are independent organisations that are connected as a community legal sector movement. The unity and connectedness of the centres that make up our movement ensures a network of services on which the community can rely on for place-based and specialist supports. The sum of our movement is greater than its individual parts. As a sector, we can work together to challenge systemic issues that other independent organisations that operate in silos can struggle to manage.

Our independent governance model means that community legal centres face fewer bureaucratic hurdles and can respond to community needs as they emerge. Legal needs can shift quickly—climate events, economic shocks, and changing government policies can have immediate impacts on what legal help people need most. Community legal centres can respond to these shifts quickly in ways that government agencies cannot. This inherent agility also enables creativity and innovation. Many of the best-practice models of legal assistance we see today—like health justice partnerships—had their origins in community legal centre innovation. We deeply value our sector's structure as independent, but deeply interconnected, organisations, for these benefits and more.

⁷ Jozica Kutin, Hugh M. McDonald, Nigel J. Balmer, Tenielle Hagland and Clare Kennedy (2022), Working in Community Legal Centres in Victoria: Results from the Community Legal Centres Workforce Project, Federation of Community Legal Centres VIC and the Victoria Law Foundation: https://assets-global.websitefiles.com/64e6d2582dd4319151be6a26/653b3bdc8690c39e6a94cf62_64ec1449ec1cda0a02ebdf1a_working_in_community_legal_centres_in_victoria_sustainable_workforce.pdf

⁸ ACOSS (2023) Australian Community Sector Survey 2023. At the precipice - Australia's Community Sector through the Cost of living Crisis: <https://www.acoss.org.au/acss-april-2023/>

However, our sector's structure as a network of independent but interconnected organisations also poses risks for the sector and workers in it. We discuss the implications of this for the sector's funding security in our 2024 federal budget submission. When it comes to workers, our sector's structure means it is extremely common for workers to shift between different community legal centres regularly – working many years in the sector but not remaining at a single organisation long enough to access long service leave. The community legal sector prioritises an integrated service delivery model, which means the vast majority of centres employ other non-lawyer specialist community services workers like social workers, financial counsellors, Aboriginal community engagement workers, and more, who often move between community legal centres and other community services organisations and back.

People are often drawn to community legal sector work out of a deep connection to the work and a desire to help people and communities in the ways that community legal centres do. Because of the many similarities between different centres and unity as a community legal centres movement, knowledge and experience are often extremely transferrable between different community legal centres. This makes it often relatively easy for a worker to shift between community legal centres without as much additional training as would generally be required when changing workplaces.

Extremely constrained and unreliable funding can mean jobs are only available on 1- or 2-year (or even 6-month) contracts, without guarantee of funding (or contract) extension. This can mean a very competent worker, who may wish to remain at a given community legal centre, will see their job simply vanish and they will be forced to seek a new job. Often, this job will be at another community legal centre (or other community sector organisation).

Unreliable funding settings and the fact that community legal centres centres and programs can be subjected to tendering processes can mean that a program run by one community legal centre is reallocated to a different centre. This can mean that the workers who staff that program are shifted to a new employing organisation, not of their own volition, and with little to no actual change to their day-to-day work.

Many community legal centres struggle to offer internal career advancement to workers – especially those that are extremely small. This means that workers who otherwise would want to remain within the organisation may see their only option for career progression within their chosen field as applying for more senior roles at other community legal centres.

All of these factors and more mean that a huge number of community legal sector workers – including those who may have been in the sector for decades – have never accrued enough time at one centre to be able to access long service leave. This undermines the wellbeing of our sector's workers.

Further information

Thank you for considering our submission. For more information, please contact Emily Hamilton, Advocacy & Communications Manager at Community Legal Centres Australia, on emily.hamilton@clcs.org.au.