

Community Legal Centres Association (WA) Inc



Submission to the Review of
the National Partnership
Agreement on Legal Assistance
Services 2015 - 2020

About Community Legal Centres Association WA

The Community Legal Centres Association (WA) is the peak organisation representing and supporting 28 Community Legal Centres (CLCs) operating in Western Australia. Located throughout the state, CLCs are independent, non-profit organisations which provide legal services to disadvantaged and vulnerable people or those on low incomes who are ineligible for legal aid.

The community legal sector supports Western Australians to access legal services in a number of areas in which unresolved legal problems commonly arise. These include:

- Family law
- Family and domestic violence
- Child protection
- Employment law
- Criminal injury compensation
- Consumer rights law
- Welfare law
- Housing and tenancy law
- Migration law
- Minor criminal law
- Fines and infringements.

As the former Western Australian Chief Justice Wayne Martin, QC observed at the National CLC Conference held in Fremantle in 2016;

“There is a central connection between these areas of law, and fundamental human wellbeing. They relate closely to activities and characteristics that enable social wellbeing including our familial relationships, employment, the capacity to reside in the country of our choice, the dwelling in which we live and the capacity to afford fundamental rights and services as basic as food.”

On behalf of our members, the CLCA (WA) is committed to the principles of human rights, social justice and equity, including the rights of Western Australians to equity in access to legal services. To do so, the Association also supports CLC’s working together and with other organisations within the community.

Our key messages to the Review are:

The CLC sector must be recognised and respected as a genuine partner alongside service users in the planning and delivery of sustainable community legal services to improve justice outcomes for our community.

Funding sufficiency, certainty, transparency and predictability are essential to effective service provision.

Funding must be evidence based.

Funding under the NPA currently insufficient to meet need and fails to comprehend WA size and population distribution.

Collaborative services planning cannot function properly without adequate funding, communication and support; and, should involve provision of adequate analysis tools, and of the best use of generalist and specialist services in the community.

Whilst Commonwealth and State Governments must share funding responsibilities, the Commonwealth has a particularly important lead role in ensuring equity of access to justice and consistent outcomes for all Australians.

Co-design and collaboration should underpin funding, be a tool for increasing efficiency and be properly resourced under the NPA.

CLC service delivery should include a preventative approach i.e. community legal education and law reform.

Peak bodies must be adequately funded in order to support the sector (capacity building and sustainability strategies) and to achieve the outcomes aspired to under the NPA.

Endorsement of submissions by other organisations:

The CLCA (WA) endorse the following submissions to the Review of the National Partnership Agreement on Legal Assistance Services (the Review):

- National Association of Community Legal Centres (NACLC);
- Collaborative Services Planning Group of Western Australia (CSPGWA);
- Women's legal Services Australia (WLSA); and,
- Consumer Credit Legal Service of WA.

In addition, we make the following observations in relation to the goals of the Review:

Review Goal 1: Efficient and effective legal assistance services

Assess the impact that the NPA has had on the delivery of efficient and effective legal assistance services, including consideration of:

- the appropriateness and utility of the objective and outcomes in supporting the delivery of legal assistance services
- whether the NPA promotes legal assistance services that are effective, efficient and appropriate and represent value for money
- whether the NPA has improved the targeting of legal assistance services to people facing disadvantage

In our view, the NPA has resulted even greater inconsistency across jurisdictions with respect to both funding and administration of the community legal sector. There is a failure to recognise the impact the size and remoteness of WA has on the cost of delivery of services.

CLCA (WA) supports the submission of the WA CSPG.

The NPA funding allocation fails to comprehend the vast size of Western Australia, the number of remote and regional towns, the high cost of delivering legal services and the number of Aboriginal persons residing in the State impact on legal need and the demand for legal assistance services.

As noted in the Overview of Legal Need in Western Australia Report. "Land and geography are a critical aspect of supply and demand in relation to legal need in Western Australia – requiring the sector to service almost 80% of the state population within Greater Perth, whilst also servicing 20% of the population across a land mass one third the size of Australia".

WA has the third highest population of Aboriginal People, with the highest percentage of Aboriginal People living in remote or very remote areas (excepting the Northern Territory). In 2006, 56% of Aboriginal people live in regional land remote areas, with almost half that number in 'very remote Australia'.¹

¹ Australian Bureau of Statistics: Population, Characteristics, Aboriginal and Torres Strait Islander Australians 2006

WA has the highest rate of incarceration of Aboriginal people², whilst the inequitable pattern of wealth produced by inconsistencies in findings of the existence of Native Title and availability of compensation further compounds problems for Aboriginal people in some of these areas.

Remote locations are often poorly serviced by both legal assistance services and ‘wrap around’ support from non-legal services that assist CLC clients. Many services have been withdrawn from many RRR locations with significant impacts on local services (for example Commonwealth funding for remote area housing). Some remote places have no legal assistance services including many regional centres (and very few other services) e.g. the mid-west, NPY Lands, Eastern Wheatbelt and large tracts of the Goldfields.

One of our member CLCs, Regional Alliance West (RAW) with offices in Geraldton and Carnarvon, have one community lawyer for a land area of over 600,000 square kilometres (bigger than Victoria). While LAWA and ALSWA are also in the region they are almost exclusively providing criminal advice/representation.

The cost of CLC outreach services for regional and remote CLCs to their communities or for Specialist CLCs meeting their “state-wide service requirement” are high as a result of the need for transport and accommodation, often for many days at a time. Depending upon the length of the outreach visit and excluding staff wages, the additional cost of service delivery is approximately \$1000 per day.

Kimberley CLC provided their costings for one outreach visit to Balgo at around \$7000.

The Perth metropolitan area now spans some 150 kms from north to south and some 60 kms from west to east and expanding. Some areas with rapidly growing populations of people with high disadvantage and/or an ageing population have no CLC or other legal assistance services.

We do not believe that the NPA itself has made a significant impact on the delivery of services in WA, or practices (including innovation, collaboration and partnerships).

The community legal sector continues to pursue and drive more effective and efficient service delivery practices, both sector-wide and individually,³ and to leverage the maximum benefit from the resources available to them⁴, many projects have only identified limited areas for reductions or savings in the operating budgets of CLCs due to historical underinvestment in core services and systems and direction of funding to frontline services.

² Aboriginal People who make up the 3% of the population, 40% of adults and 75% children imprisoned are Aboriginal People.

³ For instance, the CLCA (WA) has undertaken a number of projects to explore the future sustainability of the sector which examines ‘efficiencies’ and savings.

⁴ These include pro bono, volunteers, fund raising, donations and the constant pursuit of project funding.

The level of Commonwealth funding under the NPA further impacted the work of the sector in a very negative manner, especially the “funding cliff” at the end of the 2016 financial year. This resulted in a loss of skill and leadership across the sector, and the devotion of a large portion of resources to change management and human resource issues.

CLCs are resilient but they are often adversely affected by Government decisions (either Commonwealth or State). For example, Translating and Interpreting Services (TIS) have advised CLCs that the TIS code can only be used for clients on permanent visas or who are citizens of Australia. One of our member CLCs, The Humanitarian Group (THG) see large numbers of clients on temporary visas and are now required to self-fund interpreters for that group. Last financial year, THG spent \$28000 on interpreters. This is in addition to their use of volunteer interpreters that is already a significant administrative load for the organisation. Over half of the \$28000 relates to clients accessing NPA funded services.

We also note that:

- Preventative measures such as Community Legal Education (**CLE**) and availability of enabling technology could assist with the remoteness issues – but there is no provision made for this under the NPA;
- Specialist state-wide CLC services, which can look after specific types of clients or those with specific legal problems are an important part of the adequate servicing of regional WA and need to be supported under the NPA accordingly.
- Due to a lack of funding for law and policy review under the NPA. There has been less public interest work i.e. law reform done. WA CLCs struggle to keep pace with law reform issues, including those that ensure consistencies between states and with Commonwealth legislation.

Review Goal 2: Collaborative Services Planning

Assess the implementation of collaborative service planning (CSP) by the Parties, and the extent to which it is contributing to the objective and outcomes of the NPA.

- How effective as collaborative services planning been in your area/region?
- What are the opportunities to improve collaborative services planning?
- What barriers, if any, prevent effective collaborative services planning?

Collaboration between legal assistance services as well as with other non-legal community organisations in relation to service delivery and planning has been occurring over many years both with each other and with external legal and non-legal organisations. CLC’s are highly innovative in this respect, and we draw the reviewer’s attention to the initiatives mentioned by NACLC.

We believe that any effective CSP has occurred in spite of the NPA rather than due to any processes under the NPA. The WA Collaborative Services Planning Working Group recently reviewed their work, noting that:

- A lack of commitment on the part of some Government participants, both Commonwealth and State, evident through the attendance of representatives unacquainted with the NPA and CSPG membership.
- A perceived disconnect with CSP, funding and outcomes, with no visible flow on to actual planning and decision-making.
- ALSWA and FVP services are required to participate when not covered by the NPA, yet the Department of Prime Minister and Cabinet as FVPLS funder is not required to participate.
- A perception in the sector that there is limited value on the ground from CSP under the NPA process for agencies that generally just get on with the job of collaboration.
- A questioning of whether National demographic tools apply well in the WA context of large geographic areas and sparse population.

Unsatisfactory processes in relation to appointment of representatives - with CSPG representatives from CLC's invited rather than being chosen from the membership – also contributed to dissatisfaction. Although this has been resolved, it demonstrates the lack of coordination and planning that has accompanied the process.

It is noteworthy that the CSPG agreed to support a Joint NPA Review Submission on WA specific issues.

In order for CSP to be effective, there must be sufficient resourcing. As it is, CLC's have relied on voluntary contributions (work and time), exacerbated by funding cuts. These have had a particularly negative impact on CSP, with the amount of time available and a requirement for community legal services to do more with less.

We note the observations of NACLIC in relation to the inconsistencies between CSP across Australia, and to the principles that should underlie CSP as stated on page 25 of their submissions. We suggest perhaps that in WA Commonwealth CPS principles should be made consistent with the WA Delivering Community Services in Partnership Policy (DCSP) https://www.finance.wa.gov.au/cms/Government_Procurement/Policies/Delivering_Community_Services_in_Partnership.aspx

This Policy was recently reviewed (led by Finance and Contracting Services) after 7 years of operation, resulting in recommended updates including:

- Improved partnership (State Government and WA Community Sector) principles and behaviours;
- Emphasis on planning in partnership;

- Engage and involve ‘service users’ in service planning and co-design;
- Consider cultural needs and preferences;
- Promote integrated services opportunities;
- Focus on sustainable service delivery;
- Streamlined preferred service provider process;
- Longer initial service agreement term; and,
- Notice period formalised (minimum three months).

Review Goal 3: Funding arrangements

Assess the effectiveness, efficiency and appropriateness of current funding arrangements in meeting the objective and outcomes of the NPA

- To what extent is progress towards the NPA desired outcomes facilitated the NPA funding model?
- To what extent has the NPA facilitated good geographic coverage between states and nationally of legal assistance and associated outcomes?

We agree with NACLC that in order to maximise the benefits of funding and allow organisations to appropriately and effectively plan for organisational sustainability and service provision, funding must be sufficient, predictable and consistent according to transparent, evidence-informed mechanisms or models. Effective planning should apply these facets to the needs of the jurisdiction considering evidence and analysis of met and unmet legal needs and barriers to access to justice.

Current levels of Commonwealth (as well as State and Territory Government) funding are insufficient to meet the objective and outcomes of the NPA throughout Australia, and there is a need to increase the overall quantum of funding to the legal assistance sector contributed by both Commonwealth as well as State and Territory Governments.

We are aware that the issue of the quantum of funding is not a specific factor for consideration under this review, but affirm our view that no successful review can ignore quantum as a relevant consideration. We also believe that the distribution of funds to the jurisdictions and process for allocation of funds within jurisdictions requires attention and greater consistency in approach.

There are a number of WA CLCs that are not currently funded under the NPA at all.⁵ Others have had significant funding cuts⁶ in services. To compound matters, allocations within WA have been dogged by uncertainty in terms of process, decision making and decision makers.

Furthermore, the NPA in WA has not provided certainty to the sector in that funding has resulted in a series of short term contracts of a year in duration. This, in addition to the real funding cuts and the proposed cliff, have had a significant impact on the sector, individual centres, clients and communities and caused considerable disruption as well as underinvestment in centre systems (IT experience), staff wages (compounded by the impact of the ERO increases) and professional development (especially the need for trauma informed practice and resilience training) which ultimately support quality services⁷.

The provision of additional and new funding outside the NPA (FDV hubs and soon Elder Abuse) has perpetuated lack of certain, predictable funding and increased the reporting burden on centres.

In the context of limited funding, CLC's in WA have been maintaining service provision numbers at great cost. Most CLCs are constantly chasing additional funding (from ever diminishing sources) for projects that help to bolster their core service funding. Unfortunately, this often means that the loss of one small source of funding can have a domino effect on the CLC.

We have lost many experienced staff and are beginning to experience great difficulty in attracting new staff with poor relative wages and limited or no job security.

There has been a trend towards limited up-front investment in sector-wide initiatives by Government, without adequate ongoing funding (for example, CLASS and the National Accreditation Scheme).

We also draw attention to the significant need for funding of peak CLC bodies, and the discrepancies between resources available between jurisdictions. Without a doubt, those jurisdictions with well-resourced peak bodies can achieve more in terms of leadership, CSP, service evaluation and effective representation of the sector. The NPA should direct significant resources in recognition of this fact.

CLCA (WA) receives no Commonwealth funding, we receive approx. \$170,000 per year in funding from LAWA. This amount has not been substantially varied in the last 8 years.

⁵ For example, Midland Information Debt Legal and Advocacy Services (MIDLAS), the Environmental Defenders Office of WA and the Employment Law Centre of WA.

⁶ For example, The Humanitarian Group have lost migrant settlement services funding.

⁷ There is considerable wages pressure in the sector both as a result of insufficient ERO supplementation (none from the State Government) and no real funding growth. Low sector wages impact on the ability of centres to attract and retain quality staff.

The community legal sector is not a genuinely recognised and respected partner in the NPA Framework despite the increasing pressure and reliance on ongoing service delivery by CLCs (trying to maintain their service delivery levels) and their peak bodies with no, or limited resources to support them to meet the NPA objectives.

Review Goal 4: Monitoring and reporting

Assess the utility of the performance monitoring and reporting arrangements, including the collection of consistent and comparable service data in measuring the progress towards achieving the objective and outcomes of the NPA

- To what extent do the current NPA performance monitoring and reporting requirements appropriately balance the need for accountability versus the need to minimise the bureaucratic burden on administrators and legal assistance providers?
- To what extent does the National Legal Assistance Data Standards Manual support collection of inconsistent and comparable data?
- What barriers have impacted implementation of performance monitoring and reporting arrangements?
- What are the opportunities to improve performance monitoring and reporting arrangements?

We are of the view that there are a number of issues relating to current performance monitoring and reporting, including:

- a focus on outputs rather than outcomes;
- a lack of use of information provided (or data collected) as part of reporting to inform decision-making or policy development;
- limited opportunity to reflect or have broader conversations about these in CSP or planning meetings and limited national information sharing; and
- some duplication of reporting requirements, particularly given allocation of Commonwealth funding outside the NPA. When the whole range of funding to CLCs is considered there is an enormous amount of red tape and an administrative burden associated with multiple reporting requirements.

The NPA needs to define a lead role for the Australian Government in prescribing the use of information provided as part of reporting and greater coordination across levels of government and investing in sector capacity to undertake that work.

Increased transparency and greater recognition of investment in evaluation and outcomes measurement would provide for improved funding allocation, sector confidence and greater evidence based service delivery as well as the efficient use of funds and resources. There are a number of potentially applicable methodologies that have undergone development in recent times, for instance those that evaluate social return on investment.

We agree with NALC that the transition to new data definitions and data collections tools with the introduction of the NPA, has been difficult. The roll-out of CLASS and the use of CLASS data placed a further heavy burden on both the sector and individual centres, with challenges relating to the development and roll-out of CLASS including short timeframes for development, immediate decommissioning of CLSIS and insufficient budget for project of the size and complexity of CLASS. As with any new IT system, there have also been some system and reporting functionality issues.

The difficulties and inadequacies of current data collection, together with the inconsistent recording of data that persist under National Legal Assistance Data Standards Manual (DSM) has questioned the meaningful collection and evaluation of data on a state or national basis

This in turn raises questions as to the use of that data for future CSP or funds allocation, and reinforces the need for better resourcing to systems that supplement CLASS.

All of the above have been compounded in WA by the tyranny of distance and remoteness of some centres, some of which have ongoing technology and IT challenges in offices and highly inefficient resources or no resources in outreach locations. This is a reminder that requirements of centres as to the deployment of any additional evaluation tools needs adequate resourcing. This can, however, create a return on investment if effectively undertaken.

Review Goal 5: Roles and responsibilities

Assess the extent to which the Commonwealth and the states and territories have fulfilled their agreed roles and responsibilities and how the Parties to the NPA and the legal assistance sector have worked together to support a holistic approach to addressing legal need.

- To what extent have the roles of the Commonwealth, states and territories contributed to meeting the objectives of the NPA?
- To what extent have the Commonwealth, states and territories and legal assistance sector been effective in working together to address legal need:
- What are the opportunities to improve the roles of both the Commonwealth and the States and territories?

We note and agree with NACLC with regard to the leadership role that should be played by the Commonwealth in the legal assistance sector, the need for co-design and the missed opportunities that have occurred in relation to the NPA.

There is a need for greater collaboration and consultation with legal assistance providers through true and genuine partnership, including clear agreements and partnership principles that outline how government, system managers and the sector work together, the roles and expectations of each.

The role of the sector in working with governments and other legal assistance providers to address legal need and meet the objectives of the NPA would be facilitated by increased funding for sector engagement in administrative, funding and planning-related processes and mechanisms.