

Executive Summary

The National Association of Community Legal Centres (NACLC) welcomes the invitation from the Attorney General to make a Submission to the Review of the Commonwealth Community Legal Services Program (the Program). One of NACLC's organisational objectives is to advance the interests of Centres and their clients and communities. NACLC views this review as an opportunity to consider the exemplary quality and quantity of service delivery provided by community legal centres and their contribution to a fair and just society. That these services are provided from a shrinking resource and funding base, with no diminution in standards, is a tribute to the commitment of Centres and their support in their communities.

NACLC believes there can be benefits for Centres in the adoption of an outcomes based program model. Prior to this Review NACLC had undertaken research for its own purposes on results-based accountability and other outcome-based models. If the Program is to be reformed and if an outcomes-based model is adopted, NACLC is committed to working with the Department to ensure that a system is developed that meets the needs of all the CLSP stakeholders.

Throughout our response to this Review, NACLC makes the following points:

1. We will work with you to develop a funding model which benefits our Centres and their communities;
2. For changes to the Program to be effective it is critical that all stakeholders, including the state contributors to CLSP and the SPMs, must agree to the adoption of a new model and be involved in its development; a participatory approach must be taken; it cannot be driven from the top-down;
3. CLC service delivery model (as described in the recent Review of the NSW CLC Funding Program) report must be central to a successful model; and
4. Centres must be adequately resourced.

The structure of our response is as follows:

- An overview which discusses broad issues relating to the Review;
- An introduction which takes up the issues raised in the Attorney General's letter to NACLC and that were not specifically included in the terms of reference;
- Discussion of each of the terms of reference;
- A number of attachments which include a program logic map, state maps of Centre location with regard to measures of disadvantage, a number of recent research documents that NACLC has commissioned or produced, and academic papers on outcomes-based models.

NACLC notes that the states have only recently been included in this review process. We also note that they have been sent a list of detailed questions which Centres are best placed to answer. In this document, NACLC has not covered all of the areas that the SPMs were asked to comment on (although we note some questions are directed specifically towards the role of the SPM) and we would welcome an opportunity to do so.

NACLC is concerned to ensure that the Commonwealth does not determine a direction for the Program which does not suit the state programs. This will be a poor result for Centres. Any

benefits to be gained from reforms to the program will be lost if those reforms are not mutually beneficial and positively supported by all stakeholders.

To facilitate a collaborative and consultative process, NACLC requests that the Department release its Report on any new Program funding arrangements, and allow a reasonable time frame for responses.

Overview

NACLC understands that the Department is considering the implementation of a new outcomes-based model. In general terms, we understand outcomes-based funding to be a process of making funding decisions based on the ability of program service providers to produce and demonstrate results that contribute to solving community problems

NACLC welcomes the opportunity to explore the possibilities of applying an outcomes-based model to funding the Program. In this submission we have developed an initial iteration of such a model for the Program. NACLC is keen to work with the Department on further developing a framework for Centres - one that reflects the interests and preferred outcomes for all stakeholders.

1. Effectiveness and efficiency of CLCs

Work on an outcomes-based funding model, a performance framework, and/or other explorations of improvements to the management of the Commonwealth Community Legal Services Program must start with an understanding of what community legal centres bring to the Program.

Community legal centres are autonomous organisations, independent of governments, the majority of which provided quality and effective services to the community prior to receiving any funds from the Commonwealth government.

Community legal centres provide the Commonwealth with an opportunity to benefit from the many resources that Centres bring to the Program: The Commonwealth benefits from:

- The expertise available only at CLCs in areas of law that other providers have no interest in or no facility to serve;
- CLCs' expertise in effectively assisting people with complex needs and multiple disadvantages;
- CLCs' expertise in assessing and addressing client need;
- CLCs' established working relationships and collaboration with other organisations that deliver services to the disadvantaged members of the community;
- CLCs' volunteers and the pro bono relationships that have been harnessed by CLCs and that have been central to the work of CLCs since their establishment 35 years ago (It has been calculated that volunteers contribute the equivalent of a minimum of \$23m to the Program);
- The sharing of expertise and resources between Centres, and the cost savings resulting from their many collaborations;
- CLCs' expertise at achieving the maximum value out of each dollar received, that is, their expertise in efficient service delivery;
- Each dollar provided to a CLC producing, at minimum, \$100 in benefits to the community and savings to government¹; and
- The commitment and compassion of CLC staff and volunteers who work long and hard for their clients always striving for the best outcomes.

¹ See N Edgerton, E Patridge *The Economic Value of Community Legal Centres* (Institute for Sustainable Futures UTS 2006).discussed later in this Submission.

Over the last 30 years, the Commonwealth, together with State and Local governments and philanthropic organisations, has provided funds to community legal centres because CLCs work is an integral part of delivering Government policy objectives. Centre's work is focused and effective in assisting disadvantaged Australians. The value for money which Government receives from CLCs' work is astounding.

For 35 years CLCs have developed ways to deliver services that produce the desired results with minimal funding. Over that time CLCs have sought to expand services in response to the demand for those services. CLCs have analysed the unmet need and worked out ways to try to address it within their restricted resource base. CLCs have developed a service model that works because it is flexible and adaptable – it expands, contracts and shifts according to circumstances. The elements that don't work have been dropped along the way. The elements that are better served by larger organisations have been handed over. Those that work well have been developed and continue. As new issues are identified CLCs develop new approaches with their clients and communities to address need. It is effective, it is efficient and it has been developed with the sole purpose of meeting the needs of clients and communities. It is a robust service delivery model that produces results.

The Commonwealth Community Legal Services Program most recent Review of the Program in NSW, the *Review of the NSW Community Legal Centres Funding Program – Final Report* (hereafter the NSW Review Report) recommended a number of enhancements, but stated that the Program is

“sound, well conceived and well administered...[and] represents an effective use of public funds and should continue to be supported by government.”²

Countless reviews, inquiries, reports, and examinations of CLCs have provided further evidence of this. There may be room for improvement, provided more resources are forthcoming, but it is **CLCs themselves that are best placed to work out how to improve services and how to achieve better outcomes.**

CLCs are community based and community managed and have multiple accountabilities – the most important (and the most rigorous) being to the community that they serve.

We acknowledge the need for the Commonwealth to ensure that tax-payers funds are spent wisely. An outcomes-based funding model has the potential to provide better information that could assist with this assessment and with the management of the Program. NACLC believes such an approach may also provide useful information to Centres and would assist them in monitoring the impact of their activities and be a useful addition to the range of planning tools that CLCs use.

2. Performance and Outcomes Frameworks

We note with interest the evidence relating to alternative methods of provision. Any new system must provide the same, or better quality, access and value for money.³

² *Review of the NSW Community Legal Centres Funding Program – Final Report* (Legal Aid Commission of NSW, 2006) p 4. Hereafter referred to as the NSW Review Report.

³ *UK Justice Review 2004*

<http://www.publications.parliament.uk/pa/cm200304/cmselect/cmconst/391/391.pdf>

There has been a vast quantity of research, and implementation work already undertaken both locally and internationally on performance frameworks and outcomes. Some of these studies, and references thereto are annexed to this Submission.

NACLC will provide the Department with more information relevant to planning and implementing performance measurement frameworks.

The “program logic map” that NACLC has developed represents a good *initial* iteration of a new program framework. In its present form it represents Centres’ viewpoints and our best estimation of what other stakeholders may include.

NACLC can see benefits in adopting this kind of model and in the process of furthering its development in collaboration with other stakeholders including Attorneys-General and State Program Managers. NACLC notes that “public consultation on matters of public interest” is one of the Department’s Service Charter principles, which is expressed in the terms “wherever possible, we seek to get the views of interested parties when we are developing public policy”⁴ and the Department’s values include that “we work together and with others in an open and supportive way to achieve shared goals.”⁵ We expect that Centres will be involved in the process of any Program reforms.

As clearly stated in the recent joint publication of the Department of Prime Minister and Cabinet and Australian National Audit Office’s, *Implementation of Programme and Policy Initiatives - Best Practice Guide*, it is imperative that policy development and implementation be done not only early, but consultatively with stakeholders to ensure that the legitimate interests of a range of stakeholders are properly and appropriately considered. It also provides policy-makers with access to information and perspectives that might otherwise not be available, particularly about the likely compliance costs and otherwise overlooked risks of different options. It can thereby lessen the risk of unintended consequences from intervention or policy changes. The PMC/ANAO Report above notes that involving stakeholders is likely to improve practical knowledge of what may work on the ground⁶, and cautions that “the less stakeholders are involved, the higher the risk of failure during implementation.”⁷

3. A way forward – recommended process

NACLC and its constituent members are committed to working constructively with the Department on the Review and any Program changes that may flow from it. The best way forward is to work together to develop and implement a collaborative process with a timetable that will avoid the risk of losing support and acceptance from stakeholders and avoid unnecessarily wasting further resources.

This Submission is only the first stage in what we anticipate will become an ongoing collaboration with the Department and other stakeholders on the Program.

NACLC suggests that to ensure the success of the Program framework, further negotiations and actions on a revised funding model must:

- Include the CLC service delivery model as the basis;

⁴ Attorney-General’s Department Service Charter, at http://www.ag.gov.au/www/agd/agd.nsf/Page/About_the_DepartmentService_Charter

⁵ http://www.ag.gov.au/www/agd/agd.nsf/page/About_the_Department

⁶ Department of Prime Minister and Cabinet and Australian National Audit Office’s, *Implementation of Programme and Policy Initiatives Best Practice Guide (PMC/ANAO Best Practice Guide)* (2006) p 37.

⁷ *PMC/ANAO Best Practice Guide* p 37.

- Be adequately funded – that is, Centres are funded to a level sufficient to enable a properly remunerated staff mix to enable them to undertake the spectrum of service deliveries under the CLC service delivery model and to effectively produce the outcomes desired;
- Be developed collaboratively with the sector – a “top-down” approach will not work.

NACLC has undertaken consultations with CLCs across Australia in relation to this Review. During the course of discussions a number of significant issues emerged nationally as those that impact most on CLCs and their capacity to extend service delivery to disadvantaged clients. Any reforms must take account of these issues.

The issues that must be considered include:

- Overwhelming demand for Centres’ services;
- Increased complexity of the problems faced by clients and attendant intensity of time and resources used to assist these clients;
- Heightened impact on clients as a result of increased complexity in the laws and legal processes clients face;
- Increased evidence of client disability, in particular mental and intellectual disability;
- Increased difficulty recruiting and retaining trained staff, and maintaining Centre capacity, on comparatively poor salaries;
- Cost of travel in RRR areas effecting Centres’ ability to travel to clients and clients ability to travel to Centres;
- Availability and cost of interpreters particularly Auslan and indigenous language interpreters; and
- Chronic under-resourcing of Centres’ services to Aboriginal communities.

NACLC also recommends that the Department’s current performance reporting project should cease until there is a clear and agreed statement of what is to be measured, what is required to measure it and an understanding as to how it will work. This project may predate the Review but its output is directly relevant. We understand that it is still in its feasibility stage. NACLC suggests that it is feasible to develop performance reporting but not before a process has been undertaken which arrives at an agreed set of parameters to be measured.

Introduction

- Youth Advocacy Centre (YAC) in Brisbane was first contacted by “Tom” when he was 13 years old. Tom had been charged with relatively minor property offences. He was identified as having very complex needs, coming from a chaotic home background characterised by violence, abuse and a lack of financial resources. Given this background there were a number of agencies, both government and community-based that were involved in this young person’s life.

Tom continued to commit offences and YAC provided both direct legal assistance and representation and social welfare support to both the client and his family in the legal process. A number of times Tom was in jeopardy of being detained in a youth detention centre. Through developing a comprehensive understanding of the client and his behaviours the Centre was able to advocate for appropriate assessments and diversionary options.

Although Tom had very complex needs, he remained outside detention with the assistance of YAC’s case management strategy of coordinating and advocating with the various stakeholders that were involved in his life. These stakeholders included Department of Communities, alternative education programs, the courts, private psychologist, and other community agencies that were providing program support.

Whilst Tom at the age of 16 is still involved in the criminal justice system, YAC’s case management strategy ensured that his offending did not escalate to more serious offences, that he has engaged in education and is yet to enter detention.

The section discusses important issues that the Department should consider in this Review:

1. The paramount need to maintain and resource the CLC service delivery model;
2. Increased client complexity and increased demand on services;
3. The need to properly fund the Program;
4. CLCs’ work in the context of current research on social disadvantage;
5. CLCs’ work in the context of recent analysis of unmet legal needs; and
6. The need for CLCs to maintain their independence.

1. Critical issues in CLC service delivery

In preparation for this response, NACLC has consulted with Centres across Australia. This has given us further clear evidence of the needs of CLCs so that we may provide the Department with a range of views, projects and initiatives from Centres that are providing valuable and innovative legal services to their communities.

In the course of our consultations on the Terms of Reference, some important issues have been raised which go beyond those Terms. There is unanimous agreement that these issues are significant, and that the Review of the Program must take time to consider as they have a significant impact on CLCs’ service delivery capacity.

CLC service delivery model

Research into unmet legal needs, discussed in more detail below, concludes that meeting the legal needs of disadvantaged Australians requires a flexible, multi-dimensional and responsive approach. The CLC service delivery model is a sound and strong model that, **if properly resourced with sustained funding, has capacity to make an even greater impact on alleviating entrenched disadvantage.**⁸

A key strength of CLCs and the CLC service delivery model is its responsiveness, and ability to design and develop services strategically based on Centre's knowledge and experience of their client communities. The model is discussed in detail in **2: A new funding model**. Briefly, the CLC service delivery model includes an evidenced-based approach to identifying legal need, planning and developing service responses and delivering accessible and targeted services. CLCs adopt a consultative, client-centred approach with their local client communities to identify and address new, emerging and sometimes contentious areas of unmet legal need and determine the most efficient and effective ways to meet those needs.

The Program is in urgent need of an increase in funding. CLCs are already operating at capacity. A failure to significantly increase resources in the Program will have negative effects on services already constrained in their capacity to meet client need. Past State Reviews of the Program, and all Inquiries and Reports that touch on CLC service delivery unanimously report that the Program is under-resourced and underfunded.

Within this context, real benefits from the Review will only result if the current model of CLC service delivery is supported and better resourced, and the existing CLC services and infrastructure are protected and enhanced.

Under-resourcing of CLCs

Any new model flowing from this Review must include increased funding to address capacity restraints and enhance social capital.

With an 18% decrease in Commonwealth funding for Centres over the last 10 years, it is clear that CLCs are doing more for less, and are stretched beyond reasonable operating limits. Centres are experiencing extreme difficulties in meeting the demand for their services with the available funds.

Centres are also facing difficulties meeting administrative costs and are faced with deteriorating quality of working conditions and substantially low salaries. Recent analysis of CLC worker remuneration points to a 30% salary disparity between wages of CLC community sector workers and equivalent government positions and even greater disparity when compared to private sector workers.⁹ This salary disparity effectively contributes to a significant staffing crisis within CLCs¹⁰ – despite commitment to the work of CLCs, workers gradually leave their jobs, taking with them the expertise, local knowledge and community connections that constitutes the essential and unique part of CLCs' services. Consistent with stories from others in the human services sector, CLCs continue to lose valuable human capital to other sectors.

⁸ See NACLC 2007-2010 Budget Submission, forthcoming.

⁹ See Report by Mercer Consulting on Remuneration of CLC workers, to be sent to Department.

¹⁰ for instance in WA alone, Centres are currently seeking to replace 10 solicitors and 4 Centre managers.

Inevitably, inadequate funding has a consequential and direct impact on the availability of legal services for disadvantaged communities, with particular difficulties in rural, regional and remote areas. Inadequate funding compromises Centres' ability to provide services, and may mean Centres are forced to reduce service provision.

Long term, presumptive funding is required to achieve real outcomes

Much of Centres' work aims to provide sustained interventions in their local communities to address disadvantage. As is discussed below in this Submission, (see **Social Cohesion and addressing disadvantage**) there is now sufficient evidence of the need for long-term investment in programs to address disadvantage. Organisations need to be properly and appropriately funded to enable them to do their work.

In this submission, we advocate for a presumptive 10-year funding with 3 yearly allocation of funds and for sufficient funding to bring all existing Centres up to a viable level. While there may be a need to establish new services, new pilot, or short-term projects should not come at the expense of ensuring existing CLCs are brought up to levels to enable them to maintain and enhance service delivery. As noted in previous Review Reports and Inquiries, most Centres are overwhelmed by demand and cannot sustain their current levels of service. Centres must have sufficient and long-term funding assured to enable them to recruit and retain staff, and manage and plan resources to undertake the full range of service delivery models.

Risks of inadequate funding

Reports, Reviews and Inquiries into access to justice have recommended better funding of CLCs. Inadequate funding has a direct impact on service delivery to clients as well as flow on effects on other justice and social services sectors. Reductions in services also fundamentally undermine the community's confidence in government's ability to provide equitable access to justice.

As CLCs are forced to juggle limited funds and competing priorities there is a direct impact on service delivery for the socially and economically disadvantaged clients and communities that CLCs serve.

Evidence shows that lack of adequate core or maintenance funding for CLCs will result in:

- Reduced staff hours and advice work;
- Reduced capacity to provide extended representation, even though full representation is critical to fair and just client outcomes;
- Reduced operational hours;
- Closure of, or reduction in, outreach programs servicing high-need suburbs and rural areas;
- Reduced phone and face-to-face advice sessions;
- Reduced casework and representation;
- Reduced capacity and, in some cases, inability of Centres to undertake preventative programs through community legal education and community development work;
- Reduced capacity to leverage volunteers through reduced capacity to recruit, train, support and coordinate volunteers at Centres;
- Reduced ability to network with other Centres and organisations.

On a systemic and broader level, the consequences of diminishing services include:

- Loss, or compromised continuity of services available to socially and economically disadvantaged people;
- An increase in self represented litigants before courts without the benefit of any advice from a Centre;
- Increased pressure on other parts of the legal system such as the courts and transfer of costs to other under resourced parts of the justice system already struggling to meet demand (Legal Aid, ALS and pro bono assistance from the private profession);
- Transfer of costs to other social service providers as clients are forced to seek assistance from other agencies who are also unlikely to be able to assist clients with legal problems;¹¹
- Likely reduction in support from volunteers and pro bono lawyers who are sensitive to changes in government policy, and generally support CLCs' charters of independence;¹²
- A particular impact on clients in rural and remote areas as CLCs' outreach services risk becoming untenable on limited funds;
- Personal costs and hardship to the individuals unable to receive assistance;
- Reduced ability of Centres to work as effectively or efficiently on collaborations with other service providers in the justice sector; and
- Undermining of the community's confidence in the ability of the government to provide equitable access to the justice system generally.

The costs burden on Centres that struggle to meet high demands can also lead to:

- Staff burnout, high staff turnover and increased staff illness and workers compensation claims;
- Compromised credibility of Centres in their communities; and
- An erosion of the genuine community base of Centres.

Increased demand on services

Centres report an ever-increasing demand for their services, accompanied by a trend towards greater complexity of legal problems. There are grave difficulties and costs associated with meeting those demands. Struggling to address legal need in this complex environment, Centres are concerned that they are unable to "grow" their organisations. Working with other legal and non-legal service providers, CLCs are experiencing an increase in referrals to their Centres. In some places, Centres are experiencing a 600% increase in referrals in some areas of law.¹³

The Australian Council of Social Services (ACOSS) *Australian Community Sector Survey Report 2007* found that, along with services for housing assistance and disability supported accommodation, CLCs are amongst the service providers with the highest "turn away" rate for clients seeking assistance.¹⁴ The Survey found that services are reporting a tighter

¹¹ See, for example, research by the Australian Council on Social Services which points to a strong interrelationship between human services subsystems and the impact of reduced service provision in one area on others.

¹² see R Melville, *My Time is Not a Gift: An Exploratory Study of NSW Community Legal Centre Volunteers* (Institute of Social Change and Critical Inquiry, University of Wollongong, 2002), pp 45-50.

¹³ See Combined Community Legal Centres Group (NSW) *Budget Submission 2007-2008*.

¹⁴ Australian Council of Social Services *Australian Community Sector Survey Report 2007*, Table 1.4, p 10. It is also worth noting that many CLCs auspice and administer tenancy and housing services – thus the demand on CLCs is likely to be higher.

targeting of their services, and 72% of clients otherwise eligible for services are being turned because services are operating at capacity and have to ration access in some way.¹⁵

ACOSS has also undertaken an analysis of the capacity of not-for-profit community services providers to provide their services. Using an index based on data on demand for services (client turn-away rates and increasingly complex needs), workforce factors (high turnover of staff, underpaid employees) and the financial position of agencies, ACOSS found that CLCs were among those services that are comparatively under-resourced to deliver services compared to other community service providers.¹⁶

For CLCs, there has been both an increase in the amount and complexity of demand, and an inability to meet this demand that is directly connected to inadequate funding.

Increased client complexity and matter intensity

Unmet legal need is rising and the extensive evidence of increasing complexity of individual client problems must be regarded. In the course of our consultations with Centres for this Review, the feedback was of the increase in clients with mental or intellectual disabilities, and the attendant complexity in matters and increased time required to assist these clients. CLCs report that their clients require more time-consuming and resource-intensive advice and assistance rather than more simple information and referrals.

The ACOSS *Australian Community Sector Survey Report 2007* indicates that client complexity “is the real problem” facing community organisations.¹⁷

Research undertaken by the NSW Law and Justice Foundation (the LJF) as part of its comprehensive *Access to Justice and Legal Needs* research program has pointed to the special needs of clients with complex legal and non-legal issues.¹⁸

The LJF research concludes that a multi-dimensional approach is required to assist disadvantaged people with complex legal and non-legal needs. Research in the UK has also looked at social exclusion and the situation of vulnerable clients with entrenched legal and non-legal problems.¹⁹ The 2006 Report *A Trouble Shared – legal problems clusters in solicitors’ and advice* supports the view that “clients’ legal needs and social needs are complex and intersectional: their social and legal problems interrelate and amplify”.²⁰

A Trouble Shared notes:

*“the intersectionality of clients’ legal and social needs, sometimes in situations of extreme social exclusion, suggests that clients who are at particular risk or are particularly vulnerable need especially high levels of intervention and service”*²¹

¹⁵ Australian Council of Social Services *Australian Community Sector Survey Report 2007*, p 10..

¹⁶ See *Are you being served? Indicators for capacity building of community sector services* (ACOSS, December 2005) pp 24, 25.

¹⁷ Australian Council of Social Services *Australian Community Sector Survey Report 2007*, pp 3,13.

¹⁸ C Coumalos, Zhigang Wei, Albert Zhou *Justice Made to Measure: Access to Justice and Legal Needs Volume 3* (hereafter *Justice Made to Measure*) (LJF 2006).

¹⁹ Richard Moorhead and Margaret Robinson, and Matrix Consultancy, *A Trouble Shared – legal problems clusters in solicitors’ and advice agencies* Department for Constitutional Affairs & Government Social Research (DCA Research Series 8/06 November 2006) available at http://www.dca.gov.uk/research/2006/08_2006.htm (hereafter *A Trouble Shared*)

²⁰ *A Trouble Shared* p 91.

²¹ *A Trouble Shared* p 96.

In terms similar to the LJF research, this Report points to the need for more holistic service provision, and better coordination of responses to unmet and complex needs.²²

The research also pointed to elements a “holistic” service would be able to work for vulnerable clients with complex matters. These included:

“Understanding: Seeing a client’s legal problems in their wider social context, and addressing the legal problem within that context. For instance, this might include acknowledging the impact of a client’s mental health, disability of caring obligations on their ability to solve their ‘legal’ problems.

Diagnosing: Diagnosing and dealing with all of a client’s legal problems (i.e. going beyond the presenting problem or the problem that a particular adviser is geared up to deal with to see what other legal needs might be present).

Delivering or networking: Ensuring a client receives appropriate levels of advice on their legal problems through appropriate provision by the adviser themselves, or through referral/signposting to colleagues or other providers in the system

Broadening: Seeing a client’s non-legal problems as requiring some level of intervention if the client’s legal problems are to be addressed and delivering those interventions directly or through signposting/ referring the client to the relevant services and ensuring those services are carried out.

Taking some strategic initiative: Identifying and tackling the root cause of a client’s legal problems (to use a medical analogy, tackling causes not symptoms).”²³

The Report also points to a number of barriers militating against holistic provision – most notably lack of time, capacity and funding. It recognises the high level resources required to provide holistic services and undertake relevant interventions.

2. CLCs: addressing social disadvantage

CLCs alleviating disadvantage and fostering social cohesion

The Vinson Report on community adversity and resilience explored the distribution of social disadvantage in Victoria and NSW.²⁴ The report observed the important mediating role of social cohesion and the urgent need for public policy, including funding, to avoid the dramatic economic and social costs of social exclusion to the wider community. According to Professor Vinson, at the core of addressing socio-economic disadvantage is the need to build a sense of community and connectedness within communities, along with creating opportunities in education, training and employment.

Government must recognise the important role CLCs play in fostering and encouraging social cohesion at a community level. CLCs are well-recognised for their innovative approach to service delivery. Adopting a community development approach, CLCs develop local, community-lead strategies with their clients and communities to identify local needs and opportunities for enhancing social inclusion and community participation.

There is now ample evidence that only long-term investment in interventions aimed at alleviating disadvantage will have real outcomes. Most recently, Tony Vinson has reported on the limited utility of short-term preventative and remedial interventions in making an impact on entrenched disadvantage. In his 2007 Report *Dropping off the Edge – the distribution of*

²² *A Trouble Shared* pp 90-99.

²³ *A Trouble Shared*, p 94.

²⁴ T Vinson *Community Adversity and Resilience* Ignatius Centre for social policy and research and Jesuit Social Services 2004 (the Vinson Report).

disadvantage in Australia Vinson cautions against the view that an inadequate single “dose” of assistance is better than no assistance at all.²⁵ Vinson notes that when (usually short-term) assistance is proffered, the let-down occasioned by the premature withdrawal of help can leave people feeling more hopeless than before the assistance began. Vinson refers to the need to “stay the distance” in order to “turn around” the prospects of success. While Vinson does not give an absolute time-limit for an intervention to reach outcomes, he states “*it will need to be nearer to seven or eight years than the standard two or three characteristic*” of government initiatives.²⁶

Vinson refers to overseas examples of the effectiveness of long-term investment in addressing disadvantage. In particular, Vinson refers to an evaluation of ‘Groundwork’, an UK initiative aimed a community renewal in areas of disadvantage. An evaluation of ‘Groundwork’ highlighted the importance of maximising community involvement and rebuilding, and that the processes and support required to reach outcomes can only be long term.²⁷

As Vinson notes, a community development approach in which support is sustained over a long term period is required to alleviate disadvantage. Vinson concludes

*“Australia’s commitment to the principle of a ‘fair go’ requires that community level interventions be sustained for the duration needed to genuinely enhance the life opportunities of all residents.”*²⁸

The symmetries with the community development framework used by CLCs are clear. CLCs have fostered a “connectedness” with their communities makes them ideally placed to use a community development approach to their work in alleviating disadvantage. As the NSW Review Report noted, unlike other justice sector service providers, CLCs have a number of distinctive features including:

- *A key focus on assessing and responding to the legal needs of their community;*
- *Independence and flexibility;*
- *Close connections to disadvantaged communities, particularly through their strong relationships with community organisations; and*
- *Specialised knowledge in particular areas of poverty law.*²⁹

The NSW Review Report also pointed to the benefits of CLCs’ community development work that aims to:

- Empower disadvantaged people to advocate for themselves, particularly about their legal rights, or to be able to contribute to the design and operation of legal and other services that affect them, and
- Assist communities to gain greater knowledge about the way the law can assist them of affect them, protect their rights and/or reduce unwelcome individual or community involvement in the justice system.³⁰

²⁵ Tony Vinson *Dropping off the Edge – the distribution of disadvantage in Australia* (Jesuit Social Services and Catholic Social Services Australia 2006) p 100.

²⁶ Tony Vinson *Dropping off the Edge – the distribution of disadvantage in Australia* (Jesuit Social Services and Catholic Social Services Australia 2006) pp 100 - 101.

²⁷ See Rowntree Foundation *The Groundwork Movement: Its role in neighbourhood renewal* (York Publishing Services 2002). See also press release at <https://www.jrf.org.uk/pressroom/releases/210102.asp>

²⁸ Tony Vinson *Dropping off the Edge – the distribution of disadvantage in Australia* (Jesuit Social Services and Catholic Social Services Australia 2006) p 101.

²⁹ NSW Review Report, p 2.

Similarly, the 2003 Joint Review of Community Legal Centres in Western Australia noted that community development strategies used by Centres have the potential to “promote resilience in disadvantaged or marginalised groups in the community”.

However, as Vinson notes above, to make this work meaningful, a long-term investment in these communities is essential. Quick fix projects and short-term funding will not achieve results.

NACLC’s request for 10 year presumptive funding with 3-year funding allocations is based on this research. Such a funding regime would maximise the benefits produced by CLC’s work and would ensure that Program outcomes are significant.

Indicators of social disadvantage - mapping CLC locations

NACLC has engaged Brian Adrien Cooper, Community Planning and Mapping Consultant, in conjunction with the Department of Social Work and Policy Studies, University of Sydney, to map the location of Centres according to the Vinson indicators of social disadvantage released on 26 February 2007. These maps are annexed to this Submission. Looking at CLC placement, it appears that Centres are generally well-placed to provide services to disadvantaged Australians.

However, funders should be cautious of using simplistic analyses of disadvantage to map and plan Centre location. There are many ways to map disadvantage and unmet need. As part of their service delivery model, Centres undertake their own legal needs analysis by working with their local communities to identify disadvantage and formulate appropriate service delivery responses. Centres’ experience is that there are always unmet legal needs, and they are making targeted interventions to meet the needs of the most disadvantaged. In all areas, legal need is overwhelming - there are no Centres that do not address social disadvantage in their communities.

That CLCs must retain independence and flexibility to do their own legal needs assessment. CLCs analysis and service planning is based on very pragmatic considerations. Broad, empirically reliable legal needs analyses are very time and resource-consuming, and lose currency rapidly. Using SEIFA data may not pick up particular indicators that are of greater relevance in different circumstances and communities. Demographic and cultural bases of different communities change at different times and rates. CLCs, because of their positions within their communities and their attendant ability to monitor emerging needs, are able to quickly respond to identified needs. There is no risk that Centres’ are not appropriately targeting their services, given the clear evidence of increasing incidence and complexity of unmet legal needs in their communities.

Reviews of CLCs have now been completed in Victoria, Queensland, South Australia, Western Australia and New South Wales. Some Reviews raised some concerns about the inadequacy of services in some regional, rural and remote areas. In the late 1990s the response was to set up new Centres in regional or rural areas (known as “Justice Statement” Centres) without consultation with the sector. These Centres were established without regard to the contribution made by local organisations championing their Centre and without an understanding of the impact that the absence of a local group has on the Centre’s long-term viability and effectiveness.

³⁰ NSW Review Report, p 72.

In all state reviews except South Australia, the geographical gaps in services have been addressed by building on the existing service structure either by funding new Centres or funding expansion and outreach of existing Centres³¹. Building on the existing infrastructure recognises the important work being done as well as the value of leveraging this expertise to meet emerging needs. More focused investment in existing Centres would also encourage cross-sector planning and delivery of outreach services, for example with legal aid bodies and Indigenous legal services.

The next section discusses how Centres identify need and plan responses in their communities *on a local and systemic basis*, and argues that Centres' approach to meeting needs is appropriate, efficient and effective.

3. CLCs: addressing unmet legal need

There is now an enormous body of knowledge about legal needs, how needs should be measured and analysed, and how service providers should respond to legal needs analyses. In this submission we present some recent analyses of unmet legal need, and will provide the Department with some examples of these and other studies.

Much time could be spent formulating methodologies to determine unmet legal need and frameworks to measure whether service providers are addressing those needs with an eye on value for expenditure. However, the daily experience of CLC workers points to overwhelming unmet legal need. CLCs' experience is that they can only ever meet a fraction of the high unmet legal needs of their clients and communities. CLCs' strategic plans may involve setting priorities for service delivery, the day-to-day reality of much of CLCs' work (and time and resources) will often involve addressing and assisting the most demanding and needy clients in crises. Looking at the demographics of CLC clients, it is clear that CLCs are appropriately targeting clients in need³².

Given the high, and in some cases entrenched, levels of disadvantage in the community coupled with evidence of the rising complexity of disadvantaged people's problems, CLCs can only ever make a limited impact on addressing and alleviating need and disadvantage. Addressing unmet legal need and related social disadvantage, as outlined above (see **CLCs: addressing social disadvantage**), is a complex task – and it is increasingly accepted that it ideally requires a “holistic” approach – looking at more long-term, intensive and coordinated legal as well as non-legal interventions.

In this regard, measuring CLCs' performance in terms of short-term quantitative outputs, or targets, must be avoided. The qualitative outcomes and value of CLCs' work - that is, those benefits that accrue to the individuals and broader society are an important factor in addressing and measuring how CLCs address legal needs³³. These benefits include CLCs' community development and community legal education work involving awareness-raising and empowerment of individuals, the economic and social 'value' in CLCs' preventative work and the consequential avoided costs in legal services and related welfare services. As is shown on an “economic value” approach, assisting a single mother ineligible for legal aid escape domestic violence and assert and protect her rights can save the government many

³¹ See discussion of outreach services *Report of Inquiry into Access to Justice and legal aid* pp 127-128, and recommendations therein.

³² For example, nationally on 2005/2006, based on CLSIS data, 81.5% of Centre clients are on low income or pensions and receiving benefits. CLCs also see a higher proportion than the population average of indigenous clients and CALD clients.

³³ See Institute for Sustainable Futures, *Economic Value of Community Legal Centres* (UTS 2006) discussed later in this Submission.

thousands of dollars (avoided health treatment costs, absenteeism from work, childcare and child protection costs, costs of accommodation, pain and suffering etc). Of course this does not take account of the value of the intrinsic social benefits to the client and others – including the value to the community in knowing that the legal system supports people to get through hardship.³⁴

It is clear that CLCs *are* making impacts. One of the key elements of CLC service delivery model is identifying need and planning service responses and interventions to address that need. CLCs service planning and delivery is evidence-based – service responses are based on evidence of client need.

Some of these interventions are localised, and may involve assisting clients that “walk through the door.” Other responses may involve a lesser focus on individual casework and a stronger focus on strategic litigation, or policy, law reform and advocacy work. Each Centre responds to legal needs in different ways, recognising the particular needs of their particular communities, choosing appropriate responses with regard to their limited budgets and competing priorities. CLCs also partner with other agencies (legal and non-legal) to work together, sharing resources and expertise to meet unmet needs. Many examples of these partnerships are described **in 1: Role of the Program**.

One of the benefits of the CLC’s flexible service delivery model is that Centre’s responses and interventions are determined according to a Centre’s consideration of long and short-term client outcomes, available resources, expertise and impact of an activity or approach on the Centre’s other priorities. Accordingly, in some circumstances a Centre may decide that rather than see individual clients with particular problems, it may choose alternatively (or simultaneously if within a Centre’s resource capacity) to adopt a strategic approach to resolving those needs – for example by using a law reform or community legal education model to more systemically address legal problems and redress injustices (tackling the root of the problem, rather than the symptom).

Benefits of CLCs’ flexible service delivery model which is responsive to emerging or immediate need are illustrated by the following examples.

- When community legal centres in North Queensland received calls for legal advice following Cyclone Larry, the CLCs made a strategic decision to respond to immediate need and temporarily divert its resources towards assisting distressed clients with information around insurance issues and crisis management. Their actions were based on their previous experience with individuals and families affected by catastrophic floods and the need to inform the community about its rights. This approach also appreciates that much of a community’s need for assistance only arises a considerable time after a natural disaster and getting accurate information about rights into the community is an effective first step in assisting many rather than a few.
- When there was concern about the temporary “move-on” powers given to law enforcers during the Olympic and Commonwealth Games, some CLCs temporarily directed resources into devising and holding community legal education seminars outlining the rights and responsibilities of itinerant people and the police, who were likely to be affected.

³⁴ See case-study in Institute for Sustainable Futures, *Economic Value of Community Legal Centres* (UTS 2006) at p 9, annexed to this submission.

- The Consumer Credit Legal Centre was concerned about business' poor practices in relation to debt collection. It made a strategic decision to take on every matter, analysed the cases and used the empirical information to inform, amongst other things, a policy report on debt collection practices. In collaboration with CCLS in Victoria, CCLC co-ordinated and co-authored a joint submission to ASIC and the ACCC – many of the recommendations were incorporated into their Debt Collection Guidelines. The ACCC also took action against a large debt collector which resulted in positive outcomes for consumers and systemic changes to debt collection practices.

CLCs are responsive to client need

One of the key elements of the CLC service delivery model is identifying and responding to need.

The Law & Justice Foundation of NSW (the LJF) is currently undertaking an extensive empirical research program. The LJF's *Access to Justice and Legal Needs* research program is a rigorous and ongoing assessment of the legal and access to justice needs of the NSW community - especially socially and economically disadvantaged people³⁵. While the LJF research is NSW-based the findings, conclusions and consequential policy implications on meeting unmet legal need can be translated to other areas of disadvantage across Australia.

In looking at program and policy implications of its research, the LJF has concluded that reactive, responsive, preventative and proactive strategies should play a critical role in access to justice for disadvantaged people. The LJF has suggested that these strategies should include:

- Providing general community legal information and education;
- Tailoring legal information, education, advice and assistance services to meet the specific needs of different groups and individuals;
- Improving the accessibility of legal services;
- Using non-legal professionals as gateways to legal services;
- Improving the coordination between different legal services; and
- Providing a more coordinated response from legal and non-legal services for people with multiple legal and non-legal needs.³⁶

Looking at CLC service delivery, there are clear symmetries with the LJF's conclusions as to effective strategies and the service delivery model used by CLCs to assist disadvantaged people access justice.

The table below outlines how CLCs' service delivery model assists disadvantaged people's access. It reflects the optimal models and approaches recommended by the LJF legal needs and access to justice research.

³⁵ See Law & Justice Foundation Access to Justice and Legal Needs Program at <http://www.lawfoundation.net.au/>

³⁶ C Coumalos, Zhigang Wei, Albert Zhou *Justice Made to Measure: Access to Justice and Legal Needs* Volume 3 (*Justice Made to Measure*) (Law & Justice Foundation of NSW 2006) p 200.

LJF optimal approach to service delivery	CLCs' service delivery model
<p><i>A multidimensional approach</i> The Law and Justice Foundation's (LJF) research on the legal needs of disadvantaged areas points to a high incidence of civil, criminal and family legal needs and the incidence of multiple and complex legal needs.³⁷ The LJF concludes that "a multidimensional rather than a single, broad-brush approach to accessing justice" is required in cases and areas of disadvantage³⁸ to maximise prevention and early intervention."³⁹</p>	<p>CLCs are not just legal service providers. CLCs work with their clients and client communities adopting a multi-level approach to service delivery which involves both a legal and human services assistance to their clients. CLCs are specialist at providing a holistic service – one which recognises the complexity of client's needs and tailors responses which may include legal and non-legal interventions.</p>
<p><i>Service delivery mix</i> The LJF suggests that strategies to promote justice would include more accessible legal services, general community legal information and education, tailored legal education, information, advice and assistance services to meet the specific needs of different groups and individuals.⁴⁰</p>	<p>CLCs' strategic service delivery model includes a mix of legal advice and information and referrals, community legal education, law reform and policy work. Services are delivered at legal centres, face to face, over the phone and by providing outreach services at other local and rural community-based locations.</p>
<p><i>A more coordinated response from legal and non-legal services</i> The LJF also points to the use of non-legal professionals as gateways to legal services, improved coordination between different legal services and a more coordinated response from legal and non-legal services for people with multiple legal and non-legal needs.⁴¹</p>	<p>CLCs work collaboratively, as a matter of course, with government, legal aid, the private legal profession as well as legal and non-legal community agencies to ensure the best outcomes for their clients and the system of justice in Australia.</p> <p>CLCs explore, develop, maintain and resource relationships and partnerships with local legal and non-legal agencies. They regularly participate in interagency workshops, training, community legal education and capacity building initiatives with those partners. In addition to local relationship-building, specialist CLCs develop strategic collaborations and partnerships with specialist peak bodies organisations, and regularly work on law reform and policy initiatives in collaboration with their partners. The aim of these interagency partnerships is to share information and resources to assist finding efficient and effective solutions to assist their clients' legal and non-legal unmet needs. CLCs may also adopt a community development approach which moves beyond interagency participation and encourages more sustained community participation in identifying problems that affect community members, and involving them in finding solutions. CLCs assist</p>

³⁷ *Justice Made to Measure* p 232.

³⁸ *Justice Made to Measure* p 232.

³⁹ *Justice Made to Measure* p 232.

⁴⁰ *Justice Made to Measure* pp 232-233.

⁴¹ *Justice Made to Measure* pp 232-233.

	by way of transferring skills and expertise to those community participants.
<p><i>Providing accessible services</i> The research also suggests that legal services can react quickly and effectively to legal problems by improving accessibility – such as additional staffing, extension of opening hours and additional legal services in rural and remote areas.⁴² The LJF concludes that a more ‘client-focused’ approach to assisting clients with multiple problems is required. Such an approach would see improved cooperation and coordination amongst legal and non-legal service providers to assist individuals with complex, multiple legal and non-legal problems.⁴³</p>	<p>Acknowledging that at any one time unmet legal need is huge, and the resources available to meet those needs are limited, Centres are strategic in the way they deliver their services. Thus they have developed innovative and flexible approaches to facilitating access to justice for disadvantaged clients and their communities. Where CLCs cannot provide assistance, they are informed and well-placed to play a crucial role in referring people to more appropriate legal and other human services agencies.</p>

Ultimately, the LJF concludes that the multidimensional approach required to address unmet legal need requires appropriate government funding,⁴⁴ and this accords with what CLCs have identified as the minimum base level funding to operate a strategic service delivery model.

CLCs effectively target need

It is also clear that CLCs effectively target need. The Law & Justice Foundation has found that in all the socio-economic groups examined in the course of its research, people with a chronic illness or disability stand out as being particularly vulnerable to a range of civil, criminal and family legal problems,⁴⁵ and suggested that meeting the legal needs of people with a chronic illness or disability should be a top priority.

It is axiomatic that servicing these client groups is resource and time intensive – but regrettably the funding base and output measurements do not take account of this.

What is clear is that legal needs affect many aspects of people’s lives, and relate not only to the promotion of justice, but to the enhancement of social and physical well-being⁴⁶. In other words, the legal issues faced by disadvantaged people and communities cannot be separated from other aspects of their lives – such as financial stress, social exclusion, security and safety, access to education and health services, assistance with children and family matters. The research shows that many people have multiple, complex needs, while some people are more resilient, and that people chose different ways of handling and resolving their legal problems.

The research concludes that a single, broad-brush or “one-size fits all” approach is ill-suited to addressing unmet need, and that:

“a multidimensional approach to legal service provision, which includes a range of reactive, preventative and proactive strategies, would enable legal services to be more effectively tailored to meet the diverse needs and experiences of different

⁴² *Justice Made to Measure* p 233.

⁴³ *Justice Made to Measure* pp 233-234.

⁴⁴ *Justice Made to Measure* p 233.

⁴⁵ *Justice Made to Measure* p 207.

⁴⁶ *Justice Made to Measure*, p 232.

individuals. Such an approach would require appropriate resourcing and quality assurance, and effective coordination by government”⁴⁷.

These findings provide stakeholders in the access to justice sector with clear evidence on unmet legal needs upon which to base future policy initiatives. CLCs are well-placed to respond to this policy: CLCs, under their unique service delivery model already employ a multi-dimensional approach to helping disadvantaged people. Examples of these approaches are outlined in this submission, see **1: Role of the Program** (in particular, “Centres work collaboratively”) and **3: Models of service delivery**.

Needs analyses: a critical part of Centres’ strategic planning

As noted earlier, determining indicators of disadvantage and unmet legal needs is a complicated process, and any number of indicators and data sources can be used. As also noted, on a practical level CLCs do not have difficulties determining the unmet legal needs of their communities: CLCs are community organisations guided by management committees representing local interests and are well-placed and trusted within their communities. CLCs gauge and assess trends based on the experiences and issues faced by clients that walk through the door as well as through their consultations within their communities and participation in interagency and cross-sector networks.

Some Centres have developed special legal needs assessment tools to determine unmet legal need and inform service responses⁴⁸. Most Centres incorporate legal needs assessment of varying degrees of formality in their strategic workplans. In some cases, organisations applying for start-up core CLSP funding have undertaken extensive legal needs assessment of their communities as basis for setting up Centres.⁴⁹ Others use CLSIS data to analyse trends in problem types while other Centres use more informal methods and networks as well as the commonsense barometer of the “clients walking through the door.”

The recent NSW Review suggested that while current funding agreements place considerable value on Centres’ strategic plans and reporting against them, Centres’ *needs identification, planning and other service development activities* are not measured or valued.⁵⁰ That is, as an integral part of service delivery, Centres expend time and resources in needs identification and service planning, but is not considered a “service activity” or output, nor is it costed. Legal needs identification is so important that it must be included and entrenched in the CLC service delivery model and a revised CLC funding framework.⁵¹ This approach is supported by NACLC and Centres across Australia.

Linking needs identification and assessment of legal needs and the design of appropriate responses and services is an essential part of Centre strategic planning. It is “the fundamental link between the exercise of independence and flexibility by Centres and their accountability to funding bodies and the communities they serve.”

Linking the CLC service delivery model (that is, the three elements of needs identification, planning and developing services and service delivery) to service funding and accountabilities are discussed in further detail in **2: A new Funding Model**.

⁴⁷ *Justice Made to Measure*, p 235.

⁴⁸ For example Central Coast Community Legal Centre (CCCLC) in NSW formulated its own legal needs assessment tool. CCCLC is a “Justice Centre” and has significant problems maintaining its service delivery due to poor funding and attendant staff retention issues.

⁴⁹ For an excellent example of this, see the Loddon Campaspe Legal Needs Assessment.

⁵⁰ *NSW Review Report*, p 95.

⁵¹ *NSW Review Report*, p 94, and Recommendation 12, at p 101.

Other material on legal needs

NACLC also draws the Department's attention to needs identification and equitable location as factors in a funding framework undertaken are discussed in NSW Review Report.⁵²

NACLC has also annexed to this Submission some information on legal needs assessment and analysis from Australia and overseas.

An interesting model is Ontario, Canada, where Legal Aid provides CLCs with broad socio-demographic data against which individual CLCs independently do their local needs analysis to plan local service delivery needs and priorities.

CLCs are also able to quickly "feel", monitor and respond to changing legal needs that are a response to external forces. CLCs are well-placed to identify emerging needs caused by legislative, policy or process changes. For example, CLCs have noticed the effects on clients of changes in social security laws and Centrelink practices. It is in recognition of CLCs' unique "on the ground" position that Centres are regularly asked to comment on legislative reforms and participate in Government committees, panels and working groups as consumer representatives.

4. Independence

In the course of consultations across the sector for this Review, the importance of CLCs' independence was raised as a critical issue.

Independence has a number of elements. Benefits of independence include:

- Via their community membership and community connectedness CLCs have a degree of independence from government and the legal profession which contributes to their capacity to advocate for the needs of disadvantaged groups;
- The independence of CLCs provides an opportunity to attract volunteers who share an interest in providing justice services; and
- Independence also contributes to the ability to seek funds from other bodies such as state and local government, trusts and businesses and/or in kind support.

CLCs' charters of independence from government have over the years led to a level of acceptance of CLCs in their communities that allows clients and communities to openly engage with CLC workers and have free input into the direction of Centres' outputs. This community acceptance is one of the distinguishing features of CLCs and must be preserved.

5. Conclusion

It is clear that there are huge levels of unmet legal needs in the community. CLCs work appropriately in their communities to address need on a local and individual level. Complementing their direct client work, CLCs also gain efficiencies by working on a systemic or strategic level to address systemic injustices. Efficiencies are also gained by Centres' collaborative work with other service providers to collectively address disadvantage. CLCs, as currently funded, will only ever make a small dent in meeting the overwhelming demand for legal services – but they are nonetheless undertaking valuable work that makes an enormous impact on the lives of their clients and the well-being of their communities.

⁵² NSW Review Report p 94, and Appendices M and N.

ToR 1. Examine the role of the Program, in conjunction with legal aid, pro bono and financial assistance

In this section we provide information to the Department on the framework within which CLCs work. CLCs are just one part of the justice sector and work collaboratively and effectively with other service providers. However, CLCs and their service delivery models are unique, and can be distinguished from other service providers.

This section discusses:

- the role of CLCs in providing access to justice for disadvantaged people.
- How CLCs address social exclusion and disadvantage.
- CLCs collaborative work with other service providers.
- Distinguishing CLCs from other service providers – a client-centred approach to service delivery
- Where CLCs sit with legal aid, pro bono and the impacts they have on each other.
- Improving collaboration between justice sector players.
- Risks associated with making changes to the CLC service delivery model.

The Program and the CLC service delivery model developed over 35 years must be maintained and strengthened to enable it to continue and optimise its capacity to work collaboratively with other service providers to address the legal needs of disadvantaged and marginalised Australians. As a significant player in the access to justice sector, and with a proven track record of providing unique, targeted and innovative expert assistance to disadvantaged Australians, CLCs need to be better resourced, and their position more firmly entrenched to enable them to continue to provide these services.

1. Role of CLCs in providing access to justice

Centres are diverse in the client groups they serve, the range and mode of delivery of services they provide, their management structures and the way they source funding. However, all CLCs have a common commitment to facilitating access to justice and share the following principles:

- Being accessible to clients – in terms of affordability, location, opening hours, language and atmosphere,
- Adopting a holistic approach to service provision, and providing an integrated range of services,
- Emphasising a preventative approach, including placing a high priority on community legal education,
- Involving clients and community groups in defining and resolving their legal problems,
- Transferring skills on an individual and group level, and building the capacity of the communities in which they work to effectively address their legal needs,
- Tackling the structural causes of legal needs and problems, rather than simply treating the symptoms, and

- Giving community members the opportunity to participate in the management of CLCs and implementing a variety of mechanisms to ensure they are accountable to their communities⁵³.

The 2004 Report of the Legal and Constitutional References Committee Inquiry into Legal Aid and Access to Justice expressed the view that

*“CLCs have a vital role to play in helping to achieve a fairer and more effective legal aid system that is available and accessible to all Australians.”*⁵⁴

The Department has acknowledged the benefits of service delivery provided by CLCs in its Draft Civil Justice Strategy:

*“Australian Government support for the community legal sector is driven by three underlying principles. First, that community service providers best meet the needs of their own communities. Second, that harnessing the contribution of volunteers provides community input to the provision of assistance (CLCs have a tradition of community involvement in their services). Third, that providing services early in a dispute helps keep people out of court. Volunteers, both professional and administrative, are a vital component of these services.”*⁵⁵

The Civil Justice Strategy also noted the important role of CLCs in the community - often the only source of assistance in some areas - and noted the detrimental impact that insufficient funding has on Centre’s ability to provide services and impact on the communities.

“A number of services have reduced the range of services delivered and hours of operation as a consequence of their financial difficulties. Reduction in services is often preferred by CLCs to closure. Accordingly, the number of closures is not indicative of the true financial difficulties being experienced in the sector.

*The loss or reduction in services provided by CLCs, particularly in regional and rural locations, may have a substantial impact on the people who are in need of those services. In many instances, the CLCs will be the only source of low cost legal services available in the area.”*⁵⁶

Ultimately, the Civil Justice Strategy recommended increasing the minimal level of core funding for Centres and bringing the least well-resourced Centres to the minimum base.⁵⁷ This recommendation was never implemented.

2. Centres work collaboratively

CLCs are one of a number of justice sector players providing services for disadvantaged people. Other providers include legal aid bodies, Aboriginal and Torres Strait Islander Legal Services, private solicitors acting on grants of legal aid and pro bono providers, and LawAccess in NSW.

⁵³ National Association of Community Legal Centre (NACLC), *Doing Justice: Acting Together to make a difference* (August 2003) pp 11-12.

⁵⁴ Senate Legal and Constitutional References Committee *Report Inquiry into Legal Aid and Access to Justice* (June 2004) p 217.

⁵⁵ Commonwealth Attorney-General’s Department, *Draft Civil Justice Strategy*, p 104.

⁵⁶ *Draft Civil Justice Strategy*, p 106.

⁵⁷ *Draft Civil Justice Strategy*, Recommendation 12, p 106.

As CLCs have exemplified over 35 years, better outcomes can be achieved through working with others. Collaboration not only stretches the dollar further, but delivers better results for clients and their communities. CLCs actively seek to collaborate with other legal and non-legal service providers to maximise efficiencies and achieve better outcomes for their clients.

Effective collaborative work will sometimes lead to deliberate decisions to overlap or double up on resources or services. Duplication should not, of itself, be viewed as something which should be avoided: legal service consumers are entitled to choose a service that best suits their (geographic, linguistic, cultural, financial, accessibility etc) needs. In many cases one service will better meet the needs of a client than another service. In these cases, collaborative partnerships are committed to work together, considering each providers' limited resources, their particular areas of expertise, the particular communities and localities they serve and the identification of these communities' needs, and appropriate ways of meeting those needs. In this regard, the active collaborative work of CLCs is exemplary.

CLCs work is collaborative, not only with other justice sector players, but through engagement with non-legal service providers. CLCs have well-grounded knowledge of their local communities and local services, including legal and non-legal services. This knowledge gives CLCs a significant "triage" function within their communities – effectively assisting people get off the "referral merry-go-round" by providing information on the right place to get the services (legal and non-legal) they require.

CLCs also work closely with Government and statutory agencies – Centres are often sought out to provide submissions, sit on panels, provide case-studies and run test case litigation.

The following section provides some examples and case-studies of Centres' collaborative work, both on a sector-wide and individual basis.

CLCs working with other CLCs

On a structural level, most states and territories have peak bodies that provide strategic policy and administrative support to CLCs within their jurisdiction and advocate for improved funding, management and procedures for the sector. As the national peak, NACLC provides that support on a national level. Some states organise and resource annual conferences for their constituents. NACLC organises and resources an annual conference for all CLCs across Australia. Some state peaks organise and resource sector meetings on a regular basis. Training and professional development sessions and seminars are a feature of CLC meetings and conferences. These meetings and conferences are part of the ways CLCs share ideas, resources and strategies to facilitate better outcomes for their clients. They are also critical to ensure Centres located in regional, rural and remote areas have input into CLCs' policy agendas and have access to training that would otherwise be difficult to access or attend.

Centres also participate at a local and national level in networks made up of CLCs that work in particular areas of expertise. These networks develop policy and positions regarding current issues faced by their clients, and participate in public debate on those issues. CLCs also exchange information and expertise, and share resources on their internal electronic Bulletin Board.

The important role of CLC peaks has been explicitly recognised CLC Reviews. The NSW Review noted that the NSW peak, the CCLCG should be resourced to take on the role of

providing ongoing support to its constituent members, including advice about appropriate planning processes, policies and procedures and advice and training on governance.⁵⁸

On a service provision level, CLCs regularly collaborate to share resources, plan and deliver services (direct client and CLE) and develop resources. Some examples are set out below.

- Kingsford Legal Centre and Elizabeth Evatt Legal Centre have collaborated to produce a Discrimination Toolkit – A guide to Making a Discrimination Complaint.
- Redfern, Inner City, Marrickville and Kingsford Legal Centres collaborated to produce an analysis of the legal needs of disadvantaged people living in the inner city areas.

CLCs working with other legal service providers to improve services and client outcomes

CLCs work collaboratively with other service providers. At the Federal and State level, CLCs have been instrumental in setting up cooperative networks of legal service providers to have a better role in coordinating and enhancing legal aid services – for example, the Australian Legal Assistance Forum (ALAF). ALAF's membership includes representatives of the directors of all legal aid commissions, the Law Council, Aboriginal and Torres Strait Islander Legal Services (ATSILS) and CLCs. ALAF's objects are to promote cooperation and communication between service providers, to enhance service delivery and response to client needs, and to develop and promote policies regarding access to justice issues. A NSW Legal Assistance Forum (NLAF) has also been established in NSW⁵⁹, Queensland (QLAF) and a regional NQLAF in Northern Queensland, and similar "LAFs" are being advocated and actively pursued in other states by CLCs.

CLCs also work on a sector service provider level with Aboriginal legal service providers and legal aid bodies. Some jurisdictions have entered into MOUs with each other to facilitate relationships – for example, the RRR network of CLCs has negotiated an MOU with the National Network of Indigenous Women's Legal Services.

The following section describes some of the collaborative projects that illustrate the many ways CLCs work with other service providers to improve service delivery. This section should be read in conjunction with CLCs' work with pro bono providers, as described in more detail below.

In NSW, the Law & Justice Foundation provides secretariat support for the Legal Information and Referral Forum (LIRF). LIRF was established in 2002 to bring together key service providers in NSW who provide referral to clients with legal problems. LIRF is an open forum, and regularly invites non-legal and quasi-legal service providers to attend or participate in LIRF working groups. A key strength of LIRF is the information sharing that provides participants with a better understanding of the access to justice sector and enhances service cooperation and coordination. CLCs' participation ensures that other service providers are aware of the particular needs of CLC clients and CLC initiatives.

Also in NSW, the Cooperative Legal Service Delivery Program (the CLSD) is a regionally based approach to service delivery that aims to improve outcomes for disadvantaged and marginalised people in NSW by building cooperative and strategic networks of key legal services and community organisations. CLCs play a crucial role in the CLSD. Information

⁵⁸ *NSW Review Report*, Recommendation 20, see also Recommendation 22 in relation to funding a Training, Resource and Infrastructure Program.

⁵⁹ see NLAF website at <http://www.nlaf.org.au/>

about the CLSD, including the extensive list of participants is available on the CLSD website.⁶⁰

In North Queensland, legal service providers have formed the North Queensland Legal Assistance Forum (NQLAF), a ‘third-tier’ network of co-operative arrangements (below ALAF and QLAF referred to above) to address localised issues around referral processes, collaborative projects, needs identification and service planning.

In the Northern Territory, the Katherine Legal Interagency Network is aiming to better coordinate legal service provision in the Katherine area. The Network consists of CLCs including Darwin Community Legal Service and other providers including the North Australian Aboriginal Justice Agency, Katherine Women’s Indigenous Legal Service, Katherine Family Violence Legal Unit and Northern Territory Legal Aid Commission (NTLAC). The network is currently running a pilot in Ngukur, a community outside Katherine, for civil law phone advice sessions. A NTLAC criminal solicitor visits Ngukur monthly and promotes the civil law service. Network members rotate in providing the phone advice.

The Albury-Wodonga Community Legal Service, in partnership with the Criminal Justice Support Network (CJSN), the Disability and Advocacy Information Service (DAIS), Albury Local Court, Department of Ageing, Disability and Home Care (DADHC), police, employment services and providers of services to the disabled such as Kirinari and the Murray Valley Centre, is in the process of setting up a volunteer support service for people with an intellectual disability when they are questioned by police. It is envisaged that an extension of this service will be also to provide support when a person with an intellectual disability is set to appear before the court. The CLC has also organised training for supporting people with disabilities and ‘vulnerable people’ who come into contact with the police and court system. With grant assistance from the NSW Legal Aid Commission the Centre will offer training to the volunteers willing to be on a register and to employ a volunteer project coordinator for 8 hours per week for a 6 month period to recruit and coordinate volunteers, engage and liaise with police and court staff, organise training, education, templates, policies and procedures and promotion. They are also currently assisting the Multicultural Interagency Network in Albury-Wodonga by offering a CLE on discrimination law in association with the Centre’s pro bono partner, Clayton Utz.

In NSW, the Legal Information Access Centre (LIAC) is a network of public libraries that develops and distributes information and resources about the law to public library users, and online. LIAC also produces plain English legal resources for students and others who want to understand a recent legal issue or change in the law. LIAC has recently commented that

“LIAC has its best relationships with CLCs in developing and producing its resources. This is because lawyers working in CLCs have a grounded understanding and expertise in relevant areas of law, practice plain English and have an in-built imperative that legal information be accessible to consumers.”

After experiencing problems with getting access to interpreters for their clients, CLCs and Legal Aid NSW have been working with the Community Relations Commission (CRC) through the NSW Legal Assistance Forum (NLAFF) to address the issue. As a result of this collaboration, CLCs in NSW and the CRC are working together to review and revise practices and procedures, including addressing interpreting needs of emerging language groups and domestic violence protocols.

⁶⁰ <http://www.legalaid.nsw.gov.au/data/portal/00000005/public/13145001170896479609.pdf>

CLCs often work with other legal service providers to produce, provide or distribute their community legal education resources to other legal, quasi-legal or non-legal service providers. For example:

- Consumer Credit Legal Centre NSW and the Arts Law Centre NSW are providing fact sheets and precedents to populate an interactive online credit & debt resource currently being developed by LawAccess NSW.
- Northern Rivers CLC NSW and a pro bono law firm have collaborated to produce credit & debt precedents for financial counsellors in the Northern Rivers district of NSW, under the Cooperative Legal Service Delivery Program.

Centres also work with other justice sector organisations, including the Courts and justice sector agencies to provide policy input and advice based on their experience and expertise. For example, Women's Legal Service Victoria

- Has provided staff "on loan" to the Victorian Department of Justice to contribute to the development of the Family Violence Courts model,
- Has been instrumental in the development of National Competencies and Qualifications for Family Counsellors, Family Dispute Resolution Practitioners and Children's Contact Service Workers and
- Was sought by the AGD to provide direct input in the development of Family Relationship Centres and Advice Line.

- A lady called and made an appointment with me some time ago. On the day of her appointment I received a phone call approximately one hour before the appointment time. The call was from a nurse at Spencer Clinic (Psychiatric ward of the North West Regional Hospital) in Tasmania. My client had attempted suicide and was in their care. Nevertheless she kept her appointment.

After speaking with the client it became clear to me that she suffered some serious and long term mental illnesses and that she had numerous issues including financial ones.

Between that discussion and the time we actually met shortly thereafter she attempted suicide another two times. However at our next meeting I was able to ascertain she had a legal issue where a car business was not honouring her warranty. I was able to communicate with them and this issue was resolved. Also she had a phone bill which she was unable to pay. I was able to communicate with Telstra and organise a payment plan which she stuck to religiously. There were 3 other issues involving money and/or legal matters that I was able to help her with. These issues had just become too much for her.

Despite her seeing numerous health care professionals to assist with her issues, none were able to pin point that the main stresses for her at this time were the financial/legal ones. When I spoke with her she made that clear and we solved those problems.

Since then we have arranged for her to join Aspire, a long-term mental health rehabilitation program. She is going really well and with all of her service providers working together, I believe we have achieved the outcome that this client deserved.

Working with other agencies and networks has been an important factor in effective service delivery to disadvantaged clients. CLCs have led participation in interagency networks. The

benefits of interagency collaboration includes increased workers' knowledge of the law, other agencies, more efficient use of resources and a greater ability to deliver services to clients, particularly in rural areas.⁶¹

Belonging to networks also brings greater efficiencies to service delivery because of the multiplicity of problems faced by some clients, and the difficulty of any one organisation in dealing with these. Participating in these networks means that the clients have the benefit of having their problems dealt with more efficiently by workers' enhanced knowledge of how to work together and make more effective referrals.

CLCs link with financial counsellors, social workers, counsellors and health services, welfare agencies, statutory authorities (Centrelink, housing etc) and so on, as well as other legal service providers. CLCs attend inter-agency meetings and generally resource these meetings in terms of legal issues. *Gateways to the Law* noted the following factors that assist building networks including:

- Commitment and resources at the individual and agency level;
- Adequate time to build relationships;
- Participation of all stakeholders;
- Regular face-to-face contact;
- Clear geographical or area of specialisation boundaries;
- Participation in each others' management committees; and
- Co-location of services.⁶²

Centres have actively responded to research on unmet legal need, and are working collaboratively with their local non-legal human service providers to more effectively target clients. This has led to many collaborations to improve access to services and service provision to disadvantaged and marginalised people. For example, CLCs in NSW participating in the CLSD (referred to above) are actively working with non-legal services providers including financial counsellors, disability advocates and multicultural community groups, but also collaborate as a matter of course with local non-legal service and social support providers as part of their day-to-day interagency networks.

This section provides some examples to illustrate a variety of cross-sector collaborations. These examples represent a small sample of the large number and diversity of collaborative projects and partnerships that CLCs develop and participate in.

Recognising the link between unmet legal needs and non-legal but health or disability related issues, CLCs often work collaboratively with **medical professions or mental health services** and related organisations. The following are examples of this:

- Using research on legal need, Armidale Community Legal Service is now working with General Practitioners to build a strategy to more effectively target unmet need.
- A number of CLCs in NSW are participating in a pilot with other key legal service providers including LawAccess NSW, Legal Aid and the Law Society of NSW. The aim of the pilot is to increase knowledge of and access to sources of legal help, particularly for people from socially and economically disadvantaged backgrounds by targeting General Practitioners. The pilot will be carried out in the Canterbury, Hunter, New England, North West Slopes, Riverina and Canterbury Divisions of

⁶¹ *Gateways to the Law*, p 87.

⁶² *Gateways to the Law*, pp 89-91.

General Practice. Local CLCs are attending General Practitioner expos in these areas to promote referrals of clients to legal services including LawAccess, CLCs and legal aid.

- Noting the increase in clients with mental illness issues, Elizabeth Evatt CLC is actively seeking working relationships with other organisations including the local mental health unit, the police and the courts, with a view to building a collaborative structure around these institutions/agencies. At the CLC, clients consulting a lawyer are often seen with a social worker (or social work student) present. The overall aim is to assist in the building of effective community support networks around people with a mental illness to reduce the risk of further legal problems.
- Heidelberg Community Legal Centre is co-located with a local public health service and has undertaken evidence-based research on the benefits of CLCs working holistically with health services to resolve people's legal problems.
- Many CLCs hold regular outreach legal information and advice services at community health centres – facilitating cross-sector referrals of matters. For example, Consumer Action Law Centre conducts regular outreach services in Victoria's west and to Indigenous Victorians in conjunction with its partners at the Victorian Aboriginal Health Service.

CLCs also work with other non-legal service providers including welfare organisations that provide housing and support services for homeless people. Often part of services known as Homeless Persons' Legal Clinics or Services, CLCs provide ongoing training and back-up on the phone support for private pro bono lawyers providing legal assistance to homeless people. CLCs also provide training to welfare workers at the support agencies on legal issues and referrals.

Many CLCs also work with, and may be co-located within, Universities. Some have extensive clinical legal education programs with the Universities, which not only provides services to local disadvantaged communities, but also trains and grounds young lawyers on their professional responsibility to provide access to justice for all. Information on clinical education being conducted with CLCs can be found in an Information Paper published by the National Pro Bono Resource Centre.⁶³

CLCs target disadvantage. Recognising the particular needs of people from culturally and linguistically diverse backgrounds, CLCs regular conduct community legal education seminars and training sessions in partnership with organisations assisting newly arrived immigrants. For example, Consumer Action Law Centre in Victoria conducts consumer awareness training sessions for new migrants through Centres such as Adult Multicultural Education Services (AMES). Many other CLCs also work with Migrant Resource Centres and other agencies that assist immigrants.

The following are more case-studies illustrating CLC's collaborative work.

- Geraldton Resource Centre (GRC) in Western Australia is an example of a CLC working collaboratively with many service providers. GRC services include the CLC, but also Nyarlu Miyarnumalgu - an outreach legal service for Aboriginal Women. It also houses the Rural Women's Outreach Lawyer, a Financial Counselling Service, a

63 See *Information Paper: pro bono and clinical legal education programs in Australia* (Aug 2004) at <http://www.nationalprobono.org.au>. It is likely that there are many more clinical legal education programs involving CLCs and Universities since this the release of this publication.

Supported Housing Assistance Program, a Tenancy Assistance Service, and a Home/Community Visitors Scheme (which involves volunteers meeting, spending time and creating friendships with older or disabled isolated members of the community who may wish to have a visitor occasionally). And in 2006, GRC was awarded the Prime Minister's Award for its innovative training program for paralegals and support workers in outreach locations.

- The Women's Domestic Violence Court Assistance Program (WDVCAP) was established by the Legal Aid Commission of NSW in 1996 and currently funds 33 Women's Domestic Violence Court Assistance Schemes servicing 55 local courts throughout NSW. The aim of WDVCAP is to assist women and children who are experiencing domestic violence to obtain legal protection through Apprehended Domestic Violence Orders (ADVOs) and access support services that can assist them with their other needs (for example, financial assistance and advice, housing, emotional support and counselling and family law issues). Assistance is provided through a cooperative system of legal representation (by CLC and pro bono lawyers), specialised support, advocacy, information and appropriate referrals to other services. Many of the WDVCAP schemes are auspiced or coordinated through CLCs in NSW, and are resulting in positive legal outcomes and holistic solutions for victims of domestic violence.
- Redfern Legal Centre employs a community development worker within its tenancy advice service to manage a community safety project. The aim of the project is to reduce fear of crime among older residents in high-rise public housing in the area who are from culturally and linguistically diverse backgrounds. The project has undertaken a range of strategies including distributing a newsletter, running falls prevention workshops and seminars on understanding mental illness. The project reports to the Community Safety Taskforce which consists of representatives of police, government agencies and local community members. As a result of this project, the Centre is contributing to community well-being and social cohesion within the community.
- Macquarie Legal Centre is running a series of crime prevention workshops for young people. The funding is available over two years. The project is a cooperative one, with the Legal Centre, playing the coordination role and involving local high schools, the Police Service, NSW Legal Aid Commission and the University of Western Sydney. The group involved represents a diverse range of services, which work with young people. The project follows on from a smaller but very successful project, 'Be Engaged Be Proud' where the Legal Centre, Police Service, local youth workers and local high schools, cooperated to provide legal information workshops at two high schools in 2005. The CLC is using a community development approach to the project: young people are being consulted on the content of the workshops through questionnaires and focus groups. In addition young people will be given the opportunity to develop their own legal resources, which could reinforce the learning from the workshops and be available to a wider audience. The University of Western Sydney has designed and assisted with the questionnaires and focus groups and will evaluate the data. Once the information is analysed the workshops will be developed. University of Western Sydney will undertake an evaluation of the project and assess its effectiveness in changing the attitudes of young people.

- The Loddon Campaspe CLC established the Older Persons Legal Program in May 2006. A two year pilot funded by philanthropic trusts, the OPLP has appointed a 0.8 solicitor to provide casework, community legal education and policy / law reform for older people. The program has focused on developing partnerships to provide services to older people in their communities. Outreaches have been established in partnership with Bendigo Community Health Service in Eaglehawk, Castlemaine & District Community Health Service in Castlemaine, and Bendigo Health Care Group at the Bendigo Base Hospital. A panel of pro bono private solicitors has been brought together to extend the capacity of the outreaches and engage the private profession in elder law issues. Community legal education workshops on issues affecting older people are being held throughout the region and specific information sheets developed. The program is also working with the Bendigo Division of General Practice to facilitate a seminar series for local health and legal professionals in early 2007 on end of life decision making and capacity. The program has partnered with LaTrobe University Bendigo Law School to undertake research into consumer credit issues for older people in rural Victoria with funding from the Victorian Consumer Credit Fund. The program is also establishing a dialogue with the Bendigo Bank to discuss policies & protocols in relation to financial abuse of older people.

CLCS working with statutory bodies & Government

CLCs are often sought out by Government and statutory bodies to provide submissions, advice on best practice and expertise on how policies, legislation and processes may affect disadvantaged people. As experts in how certain areas of law impact disproportionately on disadvantaged people, CLCs are often sought out to comment and provide a consumer's perspective on legislative reforms. Some specialist Centres report that they are consulted by government agencies on a weekly basis on areas of best practice and legislation.

The following are a few examples.

- Under the auspices of its Aboriginal Legal Access project, Hawkesbury Nepean Community Legal Centre (HNCLC) uses a public school classroom to hold an outreach for Aboriginal clients in the Windsor area on Monday mornings. The outreach involves Aboriginal workers from Centrelink, the Department of Housing, Department of Fair Trading, local District Area Health Services and HNCLC.
- Over a 2 year period South West Community Legal Centre in Victoria has developed a Violence Against Women (VAWIS) Partnership with police, courts, a domestic violence (DV) service, the Salvation Army, Lifeline and others. Under the service, a fax-back system has been put in place where both police and the courts will fax a formal referral to the service when a woman applies for an Intervention Order (IO) or reports domestic violence. The service has also made arrangements with police and local hotels so that women and children can stay in their homes and abusers have somewhere to stay. IO matters are then scheduled for a set day (in anticipation of a duty lawyer service) when DV support workers are present to support IO applicants with their IOs. Outcomes have included more women being able to stay in their homes, and a good working relationship with the police. The DV support service is also reporting that they are now assisting more applicants than previously.

3. Distinguishing CLCs from other service providers

- For the past 2 years Darwin Community Legal Service (DCLS) has attended St Vincent de Pauls every Monday morning to offer legal assistance to “long grassers” (the local term for homeless/itinerant people in and around Darwin) who gather at the agency for breakfast. On one occasion a young man came into the interview room and began talking about his many problems which lead to his homelessness. Over time and as the young man’s trust in the service developed it was revealed that he had been sexually assaulted as a teenager but he’d never reported it. It was clear that this incident had seriously impacted on all parts of his life – he found it difficult to form healthy relationships, hold down employment, he had become homeless and resorted to alcohol – it was clear he nursed a sense of rage and injustice. DCLS advised him that he could report the crime to the police, and informed him he could access services for victims of crime including compensation and counselling. He decided that he did not want to report the crime, but was relieved to know and find someone would be there to help him.

As is clear from the above case studies, CLCs’ unique service delivery model, which includes forging links and working within their communities, and with other service providers and agencies that their clients may use or need, differentiates CLCs from other legal service providers.

CLCs actively embrace a **client-centred approach** to service delivery. This approach deals with a client’s legal issues in a way that takes account not only their legal issues, but the effects of any disabilities or disadvantages that are related to the legal issues the client is facing. It attempts to employ reparative and preventative strategies that address the individual and systemic factors (either causes or consequences) that are linked to the legal issue. As part of this approach, CLCs work collaboratively with other justice sector players – interagency and across sectors.

The NSW Review Report commented that while they form part of the overall matrix of legal service providers to disadvantaged people, CLCs have a number of distinctive features including

- A key focus on assessing and responding to the legal needs of their community;
- Independence and flexibility;
- Close connections to disadvantaged communities, particularly through their strong relationships with community organisations, and
- Specialised knowledge in particular areas of poverty law.⁶⁴

The above case study illustrates one of the defining signatures of CLCs’ work: it is unlikely this client’s legal issue would have been raised or identified without the CLC being at St Vinnies regularly, allowing the relationship of trust to develop, which in turn enabled the client to talk through his complex maze of issues. The Centre’s intervention has assisted this man to gain some control of his life. It also shows how unresolved legal issues can have detrimental impacts on individuals, and on the community at large.

CLCs also tailor **outreach models** of service delivery most suitable to respond to the way in which particular client groups access information and services. Like the “long grass” case

⁶⁴ *NSW Review Report*, p 2.

study above, these models seek to meet the target group where they already congregate and in places where they already have a level of comfort and trust.

This model of service delivery does not require a person to identify that they have a legal problem - simply chatting about other non-legal issues may then lead to identification. Having a lawyer who is highly accessible provides opportunities for people to enquire about an issue even if they are unsure of the legalities or to seek advice before taking action (eg. before signing a consumer contract). CLCs commonly employ outreach models in partnership with other community organisations. Outreach might be conducted on a regular basis – for example, in relation to services to older people, a CLC may conduct a Tuesday morning outreach at an over 50s Leisure Centre or a Senior Citizen’s Centre; or an activity basis, for example, providing a community legal education talk at a community health centre support group for older people who have experienced elder abuse.⁶⁵

In Queensland, the Seniors Legal Service run by Caxton Legal Centre has been so successful in combating elder abuse that the Queensland Government has provided \$1.9m to pilot the model at five locations across the State: Cairns, Townsville, Hervey Bay, Toowoomba and Brisbane. The Government determined that the CLC model of holistic service delivery was the obvious choice for these pilots and accordingly all pilots are being auspiced by existing CLCs – illustrating that successful programs often develop from innovative in-house CLC program models that target those in need of assistance.⁶⁶

In contrast to other service providers, CLCs:

- **Adopt a “whole of client” approach.** Have expertise and capacity to identify that clients’ needs are often not only legal. CLCs work with other service providers, including non-legal service providers to help clients navigate their problems and refer to other local agencies.
- **See clients that other service providers don’t or won’t see,** or don’t have the experience in dealing with – for example clients with mental illness, clients from culturally and linguistically diverse backgrounds, clients with complicated and chaotic lives. CLCs have expertise, predisposition and empathy to deal with complex clients, and untangle their legal and non-legal issues.
- **Are independent:** CLCs are independent of government and usually other non-government organisations. This means CLCs can freely advocate or assist in providing advocacy services to clients without any problems with conflicts of interest.
- **Work and develop expertise in areas of law** that are by definition not profitable - for example social security, credit & debt, housing – the stuff that private law firms and government won’t or can’t do. CLCs have developed expertise in these areas of law, and the trust of client communities they serve. This expertise is recognised and actively sought by Government, statutory agencies and others in their requests for submissions to inquiries or reviews, consultations on procedures and implementation of policy initiatives and participation in panels & advisory groups and the like.
- **Are available and accessible** to assist clients and conduct community legal education sessions in outreach locations that suit the target client group – for example, at community centres, drop-in centres, health centre and aged care facilities,

⁶⁵ See Federation of CLCs, Victoria, Submission to the House Standing Committee on Legal and Constitutional Affairs, Inquiry into Older People and the Law.

⁶⁶ see Minister’s Media Release at <http://www.cabinet.qld.gov.au/MMS/StatementDisplaySingle.aspx?id=48149>

shopping centres, hospitals and homeless people's hostels as well as in RRR locations throughout Australia.

- **Have an important “triage” role** – that gets people off the referral merry-go-round. CLCs are experienced at identifying the legal and non-legal issues their clients present with, and in assisting them to find the right agencies, and people within those agencies, for assistance. CLCs have knowledge of their local communities, and agencies that may be able to assist their clients. CLCs have an important role in making effective cross-referrals to other social service agencies.
 - **Take the time to build trust and forge relationships** and listen to their clients assisting them to unravel their problems.
 - **Are responsive to client need** – and can and do work flexibly and strategically to tackle needs - using a variety of service delivery models. CLCs plan services in response to client need – what “walks through the door” informs CLE, law reform and advocacy, strategic casework, trends in emerging communities, calls for assistance from other social services.
 - **Are often the first port of call** (a triage role) and last resort (when there is no legal aid, and no access to private lawyers) for disadvantaged and marginalised people
 - **Empower clients** to deal with their own problems –not only are people empowered to solve their legal problems, but this has flow-on effects to help people deal with the broader system – eg to deal with other services and statutory agencies. In this way, CLCs facilitates community “well-being” and social cohesion.
 - **Do preventative work** that not only helps clients directly, but the broader community. A client informed of their rights and responsibilities will have a positive impact on their community, and equipped with that information may avoid problems in the future that impact on others.
 - **Resource and capacity build others.** CLCs train others in areas of laws relevant to their clients, including pro bono lawyers, students, community workers, health workers, government agency employees and policy advisors. CLCs’ participation in many cross-sector forums, panels, working groups, statutory and industry advisory committees and Boards of management illustrate CLCs’ highly regarded expertise and the value they provide to the community on a systemic level. For example, many CLC workers are sought for appointments as consumer representatives on industry-based dispute resolution schemes boards for ASIC-mandated financial dispute resolution schemes, such as the Banking & Financial Services Ombudsman. Engagement with CLCs’ expertise recognises CLCs’ grounded understanding of disadvantaged consumers’ experience and CLCs’ understanding of non-adversarial dispute resolution.
 - **Enable the legal profession to be more responsive** to, and able to assist, disadvantaged people. This capacity building is not available from any other source: law school (apart from clinical legal education), private or government legal profession.
 - **Develop expertise** - CLCs train themselves in response to the emerging legal needs of their client communities or identified need.
- Darwin Community Legal Service (DCLS) provides the only specialist welfare rights legal assistance in the Northern Territory. Through this service, and its collaborations with other agencies, DCLS has found that a large number of Centrelink recipients in remote communities are unaware that they have appeal

rights if their benefits are cut off for any reason, including apparent breaches. These people often unnecessarily and unfairly go without any income for various periods of time, often relying on already financially stretched family members. DCLS' welfare rights service is providing information on appeal rights and how to use them.

4. Legal aid

As funding to legal aid decreases, legal aid bodies tighten their means & merits tests and restrict their guidelines to limit access to legal aid. It is clear that this is impacting on CLCs, who are being expected to pick up the tab.

“it increasingly appears that CLCs are expected to pick up the shortcomings in the legal aid system where, for example, people have reached their legal aid “cap”, where they have a legal matter for which legal aid is not available, or where they do not meet the means test despite being unable to afford a private solicitor.”⁶⁷

Regard should also be had to the numerous reports in Australia and internationally which point to a marked exodus from private lawyers working under grants of legal aid. NACLC points to the recently released report commissioned by the Department, *Study of the participation of private legal practitioners in the provision of legal aid services in Australia*.⁶⁸

The negative impact of changes to legal aid funding, and the trend of private lawyers moving away from legal aid work on CLC capacity is corroborated in course of our consultations with Centres. Centres note that their client demographic is expanding to include the “working poor” – and may include those who are not eligible for legal aid but who can't afford a private solicitor, and those who may be eligible for legal aid, but are unable to access a Legal Aid Office (this is particularly the case in rural areas). Given that Centres are already overwhelmed by demand for their services from people in crisis with increasingly complex and time-intensive problems facing extreme disadvantage, this impact on CLCs is further affecting their capacity to provide services.

Despite the negative impacts of changes to legal aid funding on increased demand for CLC services, Centres are increasingly working collaboratively with legal aid bodies, recognising the benefits of sharing resources and expertise. This is more apparent in some jurisdictions than others.

Additionally, the impact on CLCs is increased when combined with work arising out of the range of institutional and industry-based external dispute resolution schemes that are not cost-effective areas of work for private legal practitioners and beyond the scope of legal aid commissions. This non-traditional work is often taken up by CLCs. At a systemic level many of these schemes have been fine-tuned with input from a CLC about how consumer disputes might be managed in an informal, less adversarial way. Examples of these schemes include the Banking & Financial Services Ombudsman. Of note also, is that many of these schemes' Boards have CLC staff on their Boards, an indication of CLCs' expertise.

⁶⁷ Senate Legal and Constitutional References Committee *Report Inquiry into Legal Aid and Access to Justice* (June 2004) pp 209 -211 and references to submissions therein available at http://www.aph.gov.au/senate/committee/legcon_ctte/completed_inquiries/2002-04/legalaidjustice/report/contents.htm

⁶⁸ TNS Social Research, *Study of the participation of private legal practitioners in the provision of legal aid services in Australia* (2006).

5. Pro bono

Many CLCs have been able to attract and maintain significant volunteer support and pro bono legal assistance from the private legal profession. In the last year, volunteers made an in-kind contribution of over 350,000 hours. Of this, pro bono lawyers have provided around 67,000 hours of pro bono legal assistance to CLCs in the last year – but the actual figure is likely to be much higher. This does not include the significant pro bono support by way of secondments to CLCs, which is likely to be over 25,000 hours each year. In total, CLCs are probably leveraging a staggering \$23m worth of legal assistance each year.⁶⁹ This does not include the enormous non-legal pro bono assistance, which amounts to over 280,000 hours of free labour support.

However, this assistance cannot be taken for granted, and the National Pro Bono Resource Centre (the NPBRC) has pointed to pro bono lawyers' scepticism that increased reliance on pro bono will become a replacement for properly funded legal services, and points to research that shows that volunteers' commitment to CLCs is sensitive to the independence and philosophy CLCs. For more information on how CLCs work with pro bono lawyers, see the NPBRC's submission to the NSW Review.⁷⁰ Apart from direct advice and referral support, there are also many other ways pro bono support is leveraged. These are described in detail in some of the publications of the NPBRC.⁷¹

Many Centres have also benefited from the developing relationships and partnerships with law firms, and NACLC points to some of the relationships that have been brokered between city-based law firms and Centres in regional, rural and remote (RRR) areas. Some of these relationships are outlined in the NPBRC's paper on RRR pro bono.⁷² There are also many excellent examples of collaborations between CLCs, legal aid and pro bono firms that have been supported by government – see for example the Victorian Attorney-General's Community Law Partnerships Scheme in Victoria.⁷³

In 2004, the pro bono programs of 6 top-tier law firms provided a submission to the Department's *Civil Justice Strategy*. While acknowledging that each of the six firms have different programs and policies that guide and determine the type of matters they take on, all firms agreed that their pro bono schemes “rely on existing community legal structures and in particular, a network of legal referral centres within the established community legal sector.” The firms acknowledged CLCs as the primary source of their pro bono clients and that they rely on CLCs to identify matters of real need and to make informed referral decisions as to which clients are most appropriately in need of pro bono assistance.

According to these firms:

“without a well-funded and comprehensive network of Community Legal Centres and Legal Aid offices, our pro bono schemes would be less effective”⁷⁴

⁶⁹ Calculated from data collected annually by NACLC, and information from the National Pro Bono Resource Centre.

⁷⁰ <http://www.nationalprobono.org.au/publications/documents/FinalSubmission.pdf>.

⁷¹ in particular *Working Together: Multi-tiered relationships* at <http://www.nationalprobono.org.au/publications/other.html>

⁷² <http://www.nationalprobono.org.au/publications/documents/RRRpaper.pdf>.

⁷³ Victorian Attorney General's Community Law Partnerships Scheme – 2007 Report forthcoming.

⁷⁴ Joint Submissions by the pro bono programs of Allen Arthur Robinson, Baker & McKenzie, Blake Dawson Waldron, Clayton Utz, Gilbert + Tobin, Henry Davis York to the Federal Civil Justice System Strategy Paper, available at <http://www.nationalprobono.org.au/publications/other.html>

According to the NPBRC:

“Pro bono legal programs ideally aim to respond to the legal needs of disadvantaged people and communities. This is best done by developing strategies for identifying and sourcing pro bono work that goes some way to assist meeting unmet needs. The Centre believes that developing partnerships with community organisations is one of the most effective ways for lawyers and firms to ensure that their pro bono capacity is directed to areas of greatest need. In this regard, CLCs (and legal aid bodies) are best placed to identify and make informed pro bono referrals on matters of real need. Pro bono coordinators consistently report that the most successful programs are a result of close and ongoing working relationships with CLCs, and that without a well-resourced community (and legal aid) sector, pro bono programs would not be effective.”⁷⁵

The NPBRC points to the ongoing pro bono partnership arrangements between private sector pro bono providers and CLCs that reflect goodwill and a recognition of the mutual benefits of investing in these relationships. The NPBRC also suggests that greater government investment in community legal services is likely to leverage even greater willingness and support from the private profession to increase their commitment to pro bono, and would include longer term pro bono partnerships.⁷⁶

The NPBRC is currently surveying CLCs to ascertain the extent and variety of pro bono assistance CLCs get. The survey is not yet complete, but the interim findings are below.

- 65% of respondent CLCs currently receive pro bono assistance.
- Of those respondents who get pro bono assistance, about 65% were in metropolitan areas, 23% in regional/rural areas and 11% in remote areas.
- The highest form of assistance was by way of volunteer advice clinics.

Significantly, around 50% of respondents said that without pro bono assistance, some of their services to clients would not be delivered – these were mainly face-to-face and telephone advice clinics.

The survey also asks CLCs to describe some of the collaborative work/projects they do with pro bono lawyers, apart from direct client representation. The following are some of the examples.

- Providing CLE information sheet on workers’ compensation
- Access to free professional development and training by law firms
- Education to indigenous communities about the importance of wills and assistance in drafting wills for artists
- Providing Mandatory Continuing Legal Education (MCLE) training in regional centres
- Assistance with Temporary Protection Visa applications for asylum seeker clients
- Updating CLCs’ Practice Guide and CLCs’ internal documents
- Assistance preparing a booklet about legal rights for gay and lesbian people

⁷⁵ See National Pro Bono Resource Centre, Submission to the Joint NSW/Commonwealth Review of the Community Legal Service Program NSW, at <http://www.nationalprobono.org.au/publications/documents/FinalSubmission.pdf>

⁷⁶ See Senate Legal and Constitutional References Committee Report *Legal Aid and Access to Justice* (June 2004), at p169-170, and references to submissions therein.

- Mentoring support for CLC lawyers
- Assisting printing CLC business cards
- Reviewing and amending CLCs' constitutions etc
- Management Committee support
- Assistance, by way of co-counselling or other support running complex or strategic litigation.

NACLC would be pleased to provide the Department with more information on the NPBR's survey as it progresses.

6. Improving cross-sector collaboration

“Collaboration often produces better outcomes for the community when several agencies are involved in a service. However if it is not properly done, collaboration costs more, in time, resources and effort, than ‘going it alone’.”⁷⁷

There is a close relationship between access to justice service providers, and the effect of funding on one program directly affects the other. The Australian Law Reform Commission report *Managing Justice* recommended that legal aid commissions, CLCs and law societies develop a process for coordinating and exchanging information among legal (and appropriate non-legal) service providers.⁷⁸

CLCs do work collaboratively with legal aid and pro bono providers to plan service delivery and since the ALRC report there are some good examples of how formalised, funded programs and strategies have contributed to closer interagency collaborations to the benefit of disadvantaged clients. The establishment of Legal Assistance Forums (LAFs), ALAF at the Federal level, and NLAF in NSW and QLAF in Queensland, represent a positive step in this regard. CLCs are active participants in LAFs. In particular, NLAF participants and their clients are benefiting directly from positive outcomes that have resulted from the forums' activities.

Cooperative initiatives including LAFs, and the Cooperative Legal Service Delivery (CLSD) program, have some capacity to enhance coordination, which may lead to better service delivery efficiencies and client outcomes. However, success of these initiatives depends on the availability and capacity of participating agencies to provide the time and (staffing) resources to participate.

⁷⁷ NSW Premier's Department. Whole of Government Strategy Project, Phase 1: Report and Discussion Paper, 30 April 1998.

⁷⁸ ALRC Report No 89, *Managing Justice*, Recommendation 55 (ALRC 2000).

ToR 2. Develop a funding model for the distribution of Program funds

1. Introduction

This section discusses what we only have only recently been given to understand to be a fundamental part of the Department's intention to reform the Program.

This section begins with a discussion of how Centres have been funded historically.

We will then present and describe the first iteration of a new Program logic, based on an outcomes-based funding model which is built upon the CLCs' service delivery model. It is imperative that this model be based on an outcomes, and not an outputs basis. Centres submit that a new funding model must be viewed holistically as part of a performance framework, and one incorporates the unique way in which Centres identify need, develop and plan service responses and deliver services.

We will then discuss the basis upon which Centres must be funded: that a Centre's service delivery model is incorporated into the funding model. On an outcomes-based funding model, Centres must be funded to a viable level to enable them to maintain services, and a sustainable staffing level and staffing mix to facilitate CLCs' capacity to undertake the full range of service planning and delivery under the strategic service delivery model. In so doing, Government will enable Centres to effectively, efficiently and equitably deliver services to disadvantaged and marginalised Australians.

We will then outline the risks associated with a new model, and conditions that must be met to ensure that a new funding model, and the performance framework that informs it, must be developed and implemented collaboratively with all stakeholders to ensure acceptance.

2. How Centres have been funded

There has been a historical tendency that funding increases have been allocated to new initiatives, activities or services rather than directing adequate funding to support existing under-funded services. While the investment in new CLCs is important, if such funding comes at the cost of neglecting the service delivery capacity of existing services, on an aggregate level the investment appears indiscriminate and at worst, misguided. Funding of services must be allocated in a way that maximises government investment in existing CLCs and their communities.

Centres established without any on-the-ground planning or consultation have experienced serious viability concerns as they have not had the benefit of community consultation, planning support and investment which is part of the unique CLC service delivery model. Many of these have only received low core funding from the Commonwealth (most have been unable to attract State funding) and are characterised by unreasonable demand on services, serious staffing issues and periodic closures – clearly a poor outcome for clients. Centres that have been relocated or amalgamated have also suffered as a consequence of disruption to community ties. It is also likely that the communities in which short-term funding in CLCs was invested have also had poor outcomes.⁷⁹

⁷⁹ See discussion on social disadvantage in the Introduction to this submission; and Tony Vinson *Dropping off the Edge – the distribution of disadvantage in Australia* (Jesuit Social Services and Catholic Social Services Australia 2006) pp 100 – 101.

It is clear that new funding allocations have been largely ad hoc. Funders have moved away from increasing funding to Program generally, and are increasingly specifying what new funds should be used for - leading to a significant erosion in real funding levels. At the same time, average weekly earnings have risen. The limited funding and negligible funding increases to the Program has not increased the capacity of most Centres to undertake their core work. This discrepancy has led to a significant shortfall in the already low baseline staffing budgets of Centres⁸⁰.

3. A new outcomes-based funding model and program logic

NACLC welcomes the opportunity to explore the possibilities of an outcomes-based model and has taken this opportunity to develop an initial iteration of such a model for the Program in consultation with human services consultants. RPR Consulting have extensive experience in developing program frameworks, most recently including developing program models and performance management frameworks for various Commonwealth agencies including shared FACSIA and AGD program frameworks in relation to Family Relationship Services Program.

Our first-draft program logic is attached below. We see this forming a part of a new framework for measuring, monitoring and reporting on the operation of the Program. The Program Logic Map has been derived from our consultations with Centres. This is our first attempt at formulating a funding model and performance framework - the next step for the development of this model must involve further collaboration and consultation with Centres.

It is our understanding that an outcomes-based funding model may enable funders and Centres to make judgments about the best use and allocation of resources. It will provide clarity about criteria that will be used for assessment of funding allocations.

Central to the adoption of an outcomes-based funding model for centres is the incorporation of the CLC service delivery model into a funding model, and recognition of the values and processes that inform the model. However, to make the model work, it is critical that Centres retain their independence to deliver and tailor their services independently and flexibly under that model. It is also crucial that appraisal of the model not misguidedly fall into an assessment of outputs alone. The program must consider how outputs deliver the Program's desired outcomes. That is, to be truly effective the model must be aligned with what a CLCs is and what it does.

In order to assure that the Program remains outcomes focused, the funding model must be accompanied by an appropriate performance measurement framework accompanied by a suite of measurement tools and instruments. This is discussed in detail under **6: Performance Measurement**.

Centres are concerned, however, that the appropriate tools are used to assess and measure need, appropriate funding models and relevant and measurable outcomes. Any funding model, its implementation and performance measurement framework should take account of CLCs' unique service delivery model which is based on a "whole of client" and systemic approach to legal (and non-legal) outcomes, and is heavily predicated on preventative work. CLCs' holistic approach to service delivery provides providers, policy-makers, and indeed funders, with the opportunity to investigate opportunities for prevention, as well as promotion of community well-being, by way of education of rights and responsibilities. There are many

⁸⁰ see NACLC Budget Submission 2007-2010 *Community Legal Centres Across Australia – An investment worth protecting* – forthcoming.

examples of these more holistic kind of service planning and performance measurement frameworks in other portfolio areas such as health services and family relationships, and these should be considered carefully.

How does the Model work?

The draft Program Logic map shows in very broad terms the resources (inputs) that go into the Program, the activities involved and outputs produced, and the short-term to long-term outcomes that are expected as a result of the Program activities. The model illustrates the “cause and effect” relationships between each of the elements.

Our first iteration of the Program Logic includes “service provision qualities” and “processes”. The service provision qualities are, in effect, values that inform the way in which CLCs’ deliver services. The “processes” are the ways and methods by which activities are planned and undertaken. In determining outcomes – immediate, intermediate and ultimate or long-term – we must be mindful of the external factors that may and do influence outcomes.

As mentioned above, this first draft Program logic has been developed in consultation with Centres across Australia, and is an accurate reflection of how Centres operate, and how they deliver client and broader community outcomes. The foundation of the Program logic is the CLC service delivery model.

Under this initial draft, Program “inputs” include funding, CLC staff and infrastructure, volunteers and pro bono support, Program design, guidelines and the like, and importantly, community input.

The “service qualities” are values that inform service activities, and how services are delivered include elements such as innovative and responsive, accountable, flexible, accessible, client-focused, respectful, free, independent, culturally appropriate, and community connected.

The “processes” articulate the ways in which the CLC service activities are delivered. “Outputs” are based again on the CLC service delivery model – and defines the proven and effective multi-dimensional ways in which Centres across Australia strategically deliver services to disadvantaged and marginalised people.

The outcomes articulated in the Program Logic reflect the impacts of CLCs’ interventions within their communities. The immediate outcomes reflect the beneficial effect of CLCs’ activities on the rights, capacity and knowledge-base of individuals, communities and others who work with CLCs. The intermediate outcomes reflect the impact of CLCs’ activities on enhancing equity and social cohesion and preventing injustices. The long-term outcomes (or “ultimate impacts”) reflect how CLCs work contributes to a safer, sustainable, equitable and cohesive society in which disadvantaged people’s rights are protected and respected and in which Australians have confidence.

The outcomes-based Program logic, once developed more fully, will assist us to determine appropriate performance indicators to define what needs to be measured as part of the whole performance framework of the Program. These are discussed in more detail in **6: Performance measurement.**

As mentioned above, and discussed in more detail in “Risks” below, an outcomes-based model is organic, and must be developed collaboratively to fine-tune the details, and to

maximise the likelihood of broad acceptance of the performance measures developed from the Program logic.

4. Incorporating the CLC service delivery model into an Outcomes-based Model

As noted above, critical to a new funding model is the incorporation of the CLC service delivery model into the framework. NACLC and Centres across Australia endorse the definition of the CLC service delivery model⁸¹, most recently articulated in the NSW Review, which is set out below.

10. A Strategic Service Delivery Model for Centres, with three key elements, be referred to the CCLCG and CLSP as a useful model for Centres to adopt for their service delivery as follows:

Element A. Identifying unmet legal needs through a variety of techniques including:

- *monitoring casework patterns and statistics,*
- *research, including consultation with and/or surveys of clients, legal and non-legal service providers and communities, conducted by Centres or other bodies (such as the Law and Justice Foundation),*
- *demographic data,*
- *socio-economic data and reports.*

Element B. Planning and developing service responses in accordance with good practice by:

- *adopting a strategic approach to planning,*
- *considering equity and consistency issues,*
- *identifying preventative, early intervention and capacity building approaches,*
- *using community development approaches,*
- *working cooperatively with other legal and/or community services providers,*
- *adjusting service delivery in response to changing circumstances.*

Element C. Delivering services—including the following activities or ‘modes’:

- *legal services to clients - information, referral, advice, primary dispute resolution, and casework services including negotiation, advocacy and court representation,*
- *community development activities,*
- *legal reform and legal policy advocacy,*
- *strategic litigation,*
- *community legal education,*
- *promoting community participation in the legal system,*
- *training and support to other service providers.*⁸²

⁸¹ Referred to as the “strategic” service delivery model, or “SSDM” in the *NSW Review Report*.

⁸² *NSW Review Report* pp 93-98.

The implications of the model are that:

- CLCs should be resourced at least to the baseline level of funding recommended enable them to operate efficiently, effectively and safely, and
- Establishment of a new CLC, or service within an existing Centre, should be based on evidence that the Centre or a geographic/special interest group has identified the need, that it has acted or intends to act to meet the need through the establishment of a CLC, and that this is a credible and appropriate way to meet the need.⁸³

Aligning funding of the Program by adoption of the CLC service delivery model will translate into positive outcomes for clients and their communities - the CLC service delivery model itself provides the link between client and community outcomes. That is, legal needs are identified and addressed, and services are delivered to meet client and community outcomes.⁸⁴

Entrenching the CLC service delivery model into the funding framework also entrenches accountability and facilitates performance appraisal.

As stated in the NSW Review:

*“While strategic planning [element B of the CLC service delivery model] is not the only activity which involves identification and assessment of legal needs and the design of appropriate services, it is the **fundamental link between the exercise of independence and flexibility by Centres and their accountability to funding bodies and the communities they serve.** A well developed strategic plan should guide all of a Centre’s future need identification and service development activities, and the benefits and characteristics of an effective planning process, as outlined below, should be promoted to ...*

*The plan focuses attention on **measuring the organisation’s effectiveness** in relation to its key activities, usually by including some performance indicators that are meaningful to key stakeholders and allow the results of the Centre’s work to be measured - (“Is anyone better off?”) as well as what was done (“How much did we do?” and “How well did we do it?”)”⁸⁵*

The new proposed funding framework based on the CLC service delivery model, and as supported by NACLC and Centres will:

“promote the most effective and efficient use of CLSP resources, so that Centres are able to sustain the current range and levels of services delivered under the Program, maximise their potential to address unmet and emerging legal needs, and achieve optimal outputs and outcomes for the communities they serve - both in terms of justice for individuals, and broader social justice outcomes.

It is critical that funding be allocated in a way that maximises the current CLSP investment in the community.”⁸⁶

Fundamental to this model of service delivery is that Centres should be free to determine the mix of services they offer to deal with unmet needs in their communities. NACLC and

⁸³ NSW Review Report p 94.

⁸⁴ NSW Review Report pp 95 and 169-170.

⁸⁵ NSW Review Report p 95.

⁸⁶ NSW Review Report p 166.

Centres support the principles to be adopted for the Program as a basis for its funding framework, as set out in the NSW CLC Review, and reproduced below.

“54. Five, broad principles be adopted for the CLSP as a basis for its funding framework:

- (i) Support for the unique nature of CLSP services: Commonwealth and State Governments should continue to share responsibility for the CLSP in NSW and work cooperatively to ensure that the Program has the capacity to meet its aims.*
- (ii) Quality and impact of service: CLSP funds should only be provided to Centres which meet the CLSP guidelines, which may include the Strategic Service Delivery Model proposed by the review.*
- (iii) Flexibility of services: The CLSP funding framework should be flexible so that Centres can respond to both existing and emerging legal needs.*
- (iv) Maximising community benefit: CLSP funding should be allocated in a way that maximises the current CLSP investment in the community.*
- (v) Sustainability of services: CLSP funding should be at a level which enables Centres to deliver high quality, professional services.”⁸⁷*

Adopting the principles outlined above, Centres should be funded to enable them to identify unmet legal need, plan and develop appropriate responses to that need, and delivery services (information, advice, casework, community legal education, law reform and policy work, community development etc). It is the CLC service delivery model that links service delivery with client outcomes.

The “entry point” to funding the Program is the CLC service delivery model.⁸⁸ Recommendation 55 of the NSW Review set out below articulates the funding framework.

“55. A new framework be adopted as the basis for CLSP funding of Centres and services which:

- provides a strategic, cohesive, sustainable approach to the provision of CLSP services to socially and economically disadvantaged people and communities in NSW;*
- is predicated on the understanding that funding affects the capacity of Centres to apply the Strategic Service Delivery Model, to engage in service delivery activities (outputs) and to create positive outcomes for disadvantaged people and communities;*
- adopts a common, funding baseline for Centres which allows for a basic level of services to be delivered in accordance with the SSDM;*
- recognises that increasing funding above and beyond the baseline is an efficient and productive investment in the CLSP⁸⁹.”*

⁸⁷ NSW Review Report, p 169.

⁸⁸ NSW Review Report, p 170.

⁸⁹ NSW Review Report, p 170.

At a strategic level, Centres propose that the CLC service delivery model be included in Program guidelines and that an overall aims and values statement be negotiated by CLCs with the funders.⁹⁰

To ensure its success, funding must be allocated in a way that maximises the Program's current investment in the community. Reviews, reports and inquiries have all noted that CLCs are critically under-funded. Centres must be funded, as a matter of priority, to a baseline level to enable them to deliver services under the CLC service delivery model. NACLC's Budget Submission sets Centres' position on baseline funding level.

NACLC draws the Department's attention to NSW Reviews recommendations for implementing a new funding framework, set out in Recommendations 58-60 below. NACLC endorses this approach to funding allocation. Reallocating funds between Centres, relocating or amalgamating Centres would risk disrupting service provision, compromise the extensive networking and collaborative work (see **3: Service delivery model** for examples of this component of CLC output) and possibly irreparably damage the considerable social capital that has accrued in CLCs' communities over time.

“58. As a first priority, any new funds allocated to the CLSP should be used to bring all currently funded Centres to at least baseline funding.

59. As a second priority, any new funds within CLSP over and above that which is required to fund existing Centres to baseline capacity, should be used to maximise the CLSP's investment by increasing funds to existing Centres.

60. When determining the appropriate allocation of new money, over and above that is required to fund existing Centres to baseline capacity, the funding distribution process should involve the steps set out below

i. An initial planning phase, during which funders review relevant socio-economic data and consult with a range of legal service providers, including Centres and community agencies, on current and emerging unmet needs and possible responses.

ii. A call for funding applications, from interested organisations.

iii. An application assessment process, that takes into account:

(a) the extent of need, based on:

- assessments by local and regional agencies,*
- reports of expressed need,*
- survey data,*
- social-economic data.*

(b) the most appropriate response to that need, based on:

- size of the population who are in need,*
- availability and appropriateness of other services to meet the need,*
- ability of the affected group to meet the need themselves,*
- impact on that affected group if their need continues to be unmet,*
- cost to the State of not meeting the need.*

(c) the applicant(s) capacity to meet the need, based on:

⁹⁰ Regard should be had to the recommendations of the NSW Review in this regard, in particular Recommendation 9, *NSW Review Report*, p 91.

- *proposed service delivery mode/s for addressing identified need, consistent with the SSDM,*
- *its relationship, and ability to work cooperatively, with other service providers,*
- *its capital and operational requirements to ensure equity of access for those who will require its services.*⁹¹

The effectiveness and efficiency of the CLC service delivery model is discussed in further detail under **3: Service delivery models**.

6. Risks: how to ensure success of the model?

Centres believe that a new funding model, developed professionally and consultatively and supported by an appropriate and workable performance measurement framework can mutually benefit funders and service providers and provide positive client outcomes.

In the short time NACLC has had available to prepare this submission we have identified a number of issues that may arise which need to be clarified and settled to ensure that a new model is accepted and successful implementation is optimised. As we work together to develop the model, no doubt more issues will arise that will require careful negotiation.

Increase funding for Centres that conform with the service delivery model to a baseline funding level.

Outcomes cannot be achieved unless Centres are resourced to a level to enable them to undertake a mix of activities under the CLC service delivery model with a mix of properly remunerated staff. Centres must retain their independence to determine the appropriate staffing mix and activities, in response to their service delivery planning (this is part of the service delivery model).

It must be developed consultatively and agreed upon by all stakeholders

The model must be developed consultatively and collaboratively. In attempting to make funding, service delivery, accountability and reporting more efficient and effective, the Department must be mindful of the impact on CLCs of different funding models, both in terms of adding to Centres' current burden of different accountability requirements.

It must account for Centres' client-focused approach to outcomes

The funding model must not simplify or over-estimate short-term or single measurable outputs and outcomes, nor only measure legal outputs and outcomes - recognising that CLC's employ multidimensional processes/activities to achieve client outcomes. Accordingly, legal outcomes should not be "silo-ed" from other outcomes such as community and client empowerment, alleviating stress and poverty, access to better services (health, education etc), community safety. In other words, the funding model and performance measurement must take account of CLCs client-centred approach to service delivery. This approach is solution focused - offering the client options, and trying to take account of the client's environment and the wider service and legislative framework which may or may not be of some relevance to the clients concerns.

Realistic funding

Funding must be realistic: to enable Centres to perform and meet outcomes, Centres must be funded to a baseline level.

⁹¹ NSW Review Report, pp179-180.

Funding must be long-term to assure sustainability

Refer to discussion of long-term funding in the Introduction to this Submission.

Must take account of increased evidence of client complexity

NACLC's consultations, supported by cross-sector reports on social service delivery, all point to a marked increase in the complexity of clients' issues (see discussion in the **Introduction** to this Submission). Centres also point to the increased complexity of laws affecting clients. The implications of this are more time, expertise and resources required to assist clients that naturally affects quantitative outputs. We also need better ways to measure and report on this, to enable informed funding decisions, as well as ways to assist Government determine where it should direct resources to make systemic changes. In this regard, the Department may wish to consider a funding allocation used by NSW Tenants' Advice and Advocacy Program – which considered case/client complexity based on key indicators of demand.⁹²

The new funding model must accommodate and appropriately fund all parts of the CLC service delivery model.

This includes processes including legal needs identification, as well as outputs including community development work.

The Department should note some limitations and potential problems associated with moving to an outcomes-based model, and measurements

Setting performance indicators and measurement tools for outcomes-based programs is not a simple process. There is a considerable body of research about effective implementation of outcomes measurement. Some "lessons learned" from this research include the following observations:⁹³

- Programs must identify their own outcomes, outcomes indicators and data collection procedures that are relevant and useful to their own efforts.
- To the extent that funders impose outcomes, measurements, or timetables that do not align with agencies' efforts, they impede successful implementation.
- Imposed Outcomes and indicators are unlikely to meet these criteria.
- Agencies should tap many perspectives when identifying program outcomes.
- Developing a sound outcome measurement takes time – to plan, to try out, to adjust, and to implement.
- Once implemented, the outcome measurement system must be monitored and improved continuously. Programs change and programs learn. The system must keep up.
- As funders add outcome data on a reporting requirement, they should "walk the talk" of a focus on outcomes and drop existing reporting requirements that do not match this focus.
- Agency policymakers and funders who want outcomes to guide funding decisions need to first recognise the potential for harm. Done badly, linking outcomes to funding can shift resources from service delivery to measurement with no offsetting

⁹² *Analysis of the Nature, Extent and Significance of Work Carried out by the NSW Tenants' Advice and Advocacy Program Network*, prepared by Judith Stubbs & Associates, in association with Brian Cooper WESTIR and Ben Eagleton, Tenants Union of NSW (2000).

⁹³ See *Outcomes Measurement: Showing Results in the Nonprofit Sector*, at <http://national.unitedway.org/outcomes/resources/What/ndpaper.cfm>. See also other resources on outcome measurement at <http://national.unitedway.org/outcomes/resources/>

benefit to programs, penalise prevention and development programs and others with harder-to-measure outcomes, promote “creaming” (selecting participants who are more likely to succeed), inhibit innovation, punish risk-taking and discourage inter-program cooperation.

- Comparing seemingly similar programs to reward those with the “best” outcomes may be tempting but misguided. Even “similar” programs have meaningful differences in mission, target audience, geographic location, staffing, service methodology, funding level and myriad other descriptors that must be considered in assessing effectiveness. Fund allocators can use data from other programs to ask questions and probe why the outcome levels are different, but not to determine which program is better.
- Some programs face special challenges in measuring outcomes. These include programs whose participants are anonymous, those that provide short-term assistance and those involved in prevention development, public education, advocacy and providing support to other agencies. These programs may need creative ideas for using existing records, third party reports, trained observers, research-based milestones and the like.

ToR 3. Examine existing service delivery models with a view to identifying the most efficient and effective models

“Increasingly, thinking on access to justice is moving away from uni-dimensional strategies that concentrate solely on the provision of easily accessible, high quality reactive legal services. More and more, the emphasis is shifting to multi-pronged approaches that include preventative and proactive strategies in addition to reactive strategies, in an effort to maximise both the appropriate utilisation of the legal system and the efficient targeting of limited resources.”⁹⁴

CLCs are *“a well-established, well-regarded and effective network of Centres providing strategic and cost-efficient legal services to socially and economically disadvantaged people”*.⁹⁵

1. Introduction

This part of our Submission discusses the CLC service delivery model, and how Centres see it ideally entrenched in the funding model, service guidelines and performance framework. How the outputs and outcomes of the service delivery model can be measured are discussed in **6: Performance Measurement**.

The CLC service delivery model is described in **2: Funding Model**. This section describes the principles that have informed the development of the service delivery model, and provides the Department with case-studies and examples that illustrate the model’s benefits in terms of effective and efficient service delivery. These examples should be read with **1: Role of the Program**, and in particular, referring to the examples of CLCs working collaboratively with other service providers.

2. CLCs service delivery model

For over 30 years CLCs have developed unique and innovative ways of working with their communities to identify and address new, emerging and sometimes contentious areas of unmet legal needs. CLCs have developed expertise in areas of law and service delivery models not readily available elsewhere in the legal system.

In delivering services, CLCs adopt a strategic service delivery model. The service delivery model is described in detail in **2. Funding Model**, and explained in detail in the NSW Review Report.⁹⁶ In brief, the service delivery model includes three elements:

- Identifying unmet legal need,
- Planning and developing service responses, and
- Delivering services (outputs).

The first two elements - identifying need and developing and planning service responses – are a fundamental part of the model. The third element - service delivery - may include a mix of information and advice provision, casework, court representation, outreach work, community development education and capacity building and law reform, policy work and systemic advocacy. As these services are delivered, CLCs structure and review their output

⁹⁴ Law & Justice Foundation of NSW *Justice Made to Measure* p 199.

⁹⁵ *NSW Review Report*, p 166.

⁹⁶ *NSW Review Report* pp 93-98.

ensuring a sound base for planning, development and adjustment of services, effective and efficient adherence to accountability requirements as well as promoting and resourcing management committees.

Part of the service mix involves partnerships with a range of legal and other human service providers to assist disadvantaged people to access justice, on both individual and systemic levels. Examples of partnerships and collaborations are described in **1: Role of the Program**. CLCs' ability to effectively form partnerships has enabled significant input from the private legal profession, universities and the community who volunteer their time and expertise to assist CLCs and their clients. In this respect funding of CLCs constitutes a significant cost-saving for government - CLCs have been able to leverage significant volunteer labour and pro bono legal support. However, these contributions are not guaranteed, as the profession illustrates increasing cynicism about an implicit expectation that it is becoming a replacement for properly funded public legal services.⁹⁷

3. CLC service delivery – effective and efficient

“a key strength of the CLSP is that Centres have the flexibility to design and develop their service delivery strategically based on their knowledge and experience of target communities and their relationships with other legal, welfare and other community service providers.”⁹⁸

It is clear that the CLC service delivery model is a good one – it is a widely accepted and praised model that has been developed over years and is continually refined to facilitate flexible and responsive service delivery. This is one of its key strengths.

The CLC service delivery model is a hybrid, organic, adaptive, responsive approach to service delivery – each mode of delivery is part of the whole model. Accordingly, there is no value or merit in ranking the most effective or efficient models. CLCs adapt their service delivery emphasis according to identified, or emerging need, as they work with their individual communities, or work collaboratively with other legal and non-legal service providers. There is not a “one-size-fits-all” model, but there are symmetries and resonances in the approach that CLCs develop and adopt in their service delivery processes.

The service delivery model is a proven and effective means of using limited resources to address legal need and respond to injustice. Centres are highly effective and efficient within the boundaries of their limited resources, noting that some Centres only achieve the outcomes they do through the willingness of staff to work at salaries significantly below those paid for equivalent in other sectors.⁹⁹ However, Centres' experience, confirmed in all Reviews and Inquiries that touch on access to justice and service delivery to disadvantaged Australians, is that Centres are being expected to do more with less.

The CLC service delivery model has in-built structural efficiencies which include, and are evidenced by:

- CLCs extensive networks - both internally and externally (see **1: Role of the Program**, and in particular, ‘CLCs working collaboratively’);
- CLCs outputs are good value for money - they are cost-effective and the preventative work accrues considerable avoided costs, as well as broader benefits to the

⁹⁷ See National Pro Bono Resource Centres submissions at <http://www.nationalprobono.org.au/Submissions.html>

⁹⁸ *Review of the Community Legal Centres Funding Program (NSW)*, Final Report June 2006 p 4.

⁹⁹ *NSW Review Report*, p 5.

community which has faith in the justice system, and others in community who may otherwise be affected by law-breakers etc;

- Efficiencies have been historically made in historically low comparative salaries.¹⁰⁰ However, these savings are having a detrimental impact on CLCs and service capacity. Improved staffing conditions including better remuneration will lead to better service delivery;
- CLCs' have unique capacity to leverage enormous, cost-saving volunteer support;
- CLCs' "triage" role: gets client off referral roundabout to right place efficiently; and
- CLCs resourcing other organisations and agencies including Courts, statutory agencies, other legal service providers, community workers - training, submissions, supporting best practice.

The best way to make Centres more effective and efficient is to better fund them. For every dollar invested in existing CLCs, an extra \$1.50 worth of extra outputs is created.

The most recent Review in NSW has stated that the CLSP is:

*"sound, well conceived and well administered...[that] represents an effective use of public funds and should continue to be supported by government"*¹⁰¹

However, the Review concluded that the Program

"is underfunded to meet the growing demand for services...[and that] almost all Centres are overwhelmed by demand for their services and cannot sustain their current level of service, nor meet emerging service gaps".¹⁰²

And noted, significantly, that

*"sustainable funding for Centres, while creating a front-end expense, would ultimately save money in other areas of the justice system, and other socio-economic costs to individuals and the community. If additional funding is not forthcoming, governments risk losing their existing investment in the CSLP, as Centres struggle to perform basic functions at the expense of service delivery"*¹⁰³

By investing in the early intervention and preventative work of CLCs, governments benefit from the avoided costs in providing services to the community to deal with legal and social implications of problems that, but for the diversionary intervention, could otherwise spiral out of control.

The Commonwealth's Civil Justice Strategy (CJS) noted that a major challenge for the civil justice system is to prevent disputes from escalating wherever possible, in an attempt to reduce the financial and other costs to both individual disputants and the civil justice system more broadly.¹⁰⁴ The CJS considered ways to proactively avoid the escalation of disputes and the need for there to be a broad range of dispute resolution methods to encourage the resolution of disputes at the lowest appropriate level, focusing on the use of alternative dispute resolution.

¹⁰⁰ See the Mercer Report on CLC remuneration.

¹⁰¹ NSW Review Report, p 4.

¹⁰² NSW Review Report, p 5.

¹⁰³ NSW Review Report, p 5.

¹⁰⁴ Draft Civil Justice Strategy (2003) p 128.

While accepting the fact that there are times when matters should be litigated, support for CLCs represents an effective and efficient means to support a strategy of resolving disputes at the lowest appropriate level. In 2006, NACLC and the Combined Community Legal Centres Groups (NSW) commissioned a report to examine the economic value of the work of CLCs. The resulting Report, *Economic Value of Community Legal Centres*,¹⁰⁵ noted that “the [economic] value of preventative work is far greater than the reactive costs that would be incurred in the absence of such services”. On an analysis of a typical CLC case, the Report found that the benefits and avoided costs accrued as a result of CLC intervention can range between \$10,000 and \$34,000.¹⁰⁶ The wider social benefit, difficult to quantify, would substantially increase this benefit. The study found that for every \$1 spent on CLCs, the government saves \$100 in avoided costs.

The service delivery matrix of CLC work prevents or avoids costs that would otherwise arise. This is apparent in the legal advice and representation work of CLCs, but also in the strategic policy, advocacy, community legal education and law reform work which has additional flow-on benefits beyond the individuals assisted. CLCs’ law reform and advocacy work contributes to a more just society and efficient economy. And importantly, individuals and communities accrue an intrinsic benefit: the value to citizens of knowing they live in a society in which they can access the legal services they need.¹⁰⁷

However this cost benefit should not mean that CLCs are cost-neutral or cheap to run. CLCs’ service delivery cannot be optimally sustained without more funding. Nor should CLCs’ client communities be subjected to diminished service outputs. CLCs need to be better resourced to enhance service delivery and client outcomes.

This analysis corroborates Reviews of CLCs. An upfront investment in CLCs by government is more cost effective than not investing in CLCs. Importantly, *Economic Value of Community Legal Centres* found that:

*“through collaboration with government, legal aid, the private legal profession and community partners, CLCs delivery beneficial outcomes for their clients and communities, contribute to an improved justice system and deliver significant benefits to society as a whole.”*¹⁰⁸

CLCs’ cost effectiveness is also illustrated by the significant pro bono support they are able to leverage. As discussed earlier, pro bono legal assistance to CLCs across Australia in the last year would come in at around \$23m worth of legal services.

4. Centres develop service activities (outputs) in direct response to client need

CLCs service activities are developed as responsive and flexible activities in response to identified client need. As client needs are always different, there is not one more effective or efficient way to do this. And a similar problem may evoke a different service activity, depending on the particular needs of that client. CLCs adopt a multi-dimensional approach to

¹⁰⁵ Institute for Sustainable Futures, *Economic Value of Community Legal Centres* (UTS 2006).

¹⁰⁶ N Edgerton, E Patridge *The Economic Value of Community Legal Centres* (Institute for Sustainable Futures UTS 2006) p 12.

¹⁰⁷ N Edgerton, E Patridge *The Economic Value of Community Legal Centres* (Institute for Sustainable Futures UTS 2006) p 3.

¹⁰⁸ Institute for Sustainable Futures, *Economic Value of Community Legal Centres* (UTS 2006).

service delivery. There is not a one-size-fits all activity, and therefore ranking effectiveness and efficiency doesn't arise, nor should it.

This flexible service delivery model is consistent with “best practice” strategies discussed in the Law & Justice Foundation of NSW’s research into access to justice. This research supports a shift towards “multi-pronged approaches that include preventative and proactive strategies in addition to reactive strategies, in an effort to maximise both the appropriate utilisation of the legal system and the efficient targeting of limited resources.”¹⁰⁹

These strategies include:

- Providing general community legal information and education.
- Tailoring legal information, education, advice and assistance services to meet the specific needs of different groups and individuals.
- Improving the accessibility of legal services.
- Using non-legal professionals as gateways to legal services.
- Improving the coordination between different legal services.
- Providing a more coordinated response from legal and non-legal services from people with multiple legal and non-legal needs.¹¹⁰

The next section discusses the “service delivery” activities of the CLC service delivery model, and how they individually and cumulatively constitute effective, efficient service delivery to disadvantaged Australians, consistent with the multi-dimensional strategies referred to above.

5. CLC service delivery model under the program logic

This part of the Submission provides an overview of the CLC model, and discusses and provide examples of CLC service delivery activities (or outputs) of model.

CLCs service delivery in the draft program logic, is based on service provision qualities that are and responsive, accountable, flexible, accessible, client-focused, respectful, culturally appropriate, connected with the community as well as free and independent.

This section briefly discusses each service output and provides case-study examples to highlight the efficiencies and effectiveness of each service output. Each mode or activity can not be seen in isolation – CLC service delivery comprises a multi-dimensional approach to service delivery based on Centre’s analysis of and strategic response to, the kinds of matters that “walk through the door” for advice or information sessions. CLC activities may be tailored as a result of community consultation/community development work with an identified emerging community issue. Similarly, a Centre may undertake strategic litigation in a matter which it has identified as a systemic issue, the resolution of which has the potential to address and resolve the same issue faced by many other clients.

Legal needs identification & service planning

Legal needs identification and developing and planning service responses constitute the first and second elements of the CLC service delivery model. They are discussed in the earlier sections of this Submission. They constitute a fundamental link between meeting unmet needs and service delivery activities. Each service activity illustrated by the case-studies below is

¹⁰⁹ *Justice Made to Measure*, p 199.

¹¹⁰ *Justice Made to Measure*, pp 199-227.

based on a Centre's identification of, and planned response to, an identified and unmet legal need.

The following is one example. South West Brisbane CLC (SWBCLC) 'Child Protection Project' was developed in response to the identified unmet legal need for child protection advice for parents and kinship carers. Legal Aid only funds parents in applications for child protection in the Children's Court and usually only for initial applications. There is no funding for advice once orders are in place. There is no funding for advice or representation for kinship carers at all. This project has undertaken the following for this target group:

- Provided extensive assistance to parents and kinship carers including 776 legal advices and advocacy for clients and workers;
- Developed an Information Kit for parents which has been translated into Vietnamese, Spanish, Samoan and Mandarin, and distributed through Qld;
- Prepared draft information brochures for kinship carers;
- Prepared draft information kit for community workers; and
- Provided workshops for community workers throughout south east Queensland.

Information and referral, advice and casework

CLSIS data shows that the majority of "activities" undertaken by CLCs are information and referral, although as noted above, there has been an increase in casework (and CLE) in many places in part as a response to increasing client complexity which can not be addressed by simple information or referrals.

In the course of NACLC's consultations, a significant practical role of CLCs is their "triage" role in providing correct information, and effective referrals to clients in need of assistance – contributing to getting people off the "referral round-about".

CLCs determine the amount and type of casework according to their limited resources, and as determined by their own guidelines. CLCs may make strategic decisions about the amount of casework they undertake, or schedule their caseload according to staffing availability. For example, when setting up their pilot Northern Rivers outreach office, the Environmental Defender's Office made a strategic decision to resource an extensive CLE output for 6 months, in part to gauge and prioritise the level and diversity of legal needs and to raise awareness of the service's existence. After this period, the EDO commenced casework, based on its better understanding of local need and its capacity to take on casework.

Advice is also tailored to meet locally identified needs and delivered in culturally appropriate ways, sometimes in partnership with other organisations. For example, South West Brisbane CLC (SWBCLC) collaborates with Legal Aid Queensland (LAQ) and private Vietnamese-speaking lawyers in Inala to provide legal advice to members of the Vietnamese community in Inala and surrounding areas. Appointments are made through LAQ's Inala Office, Vietnamese speaking solicitors are provided by Nguyen Lawyers, and appointments are held at SWBCLC on Thursday evenings and at LAQ Inala on Friday mornings.

Representation

Some Centres regularly do representation in courts or tribunals. Others may choose to focus on different activities which may have a lesser impact on a Centre staffing and other resources. In many cases, a Centre's decision to litigate will inform other parts of its outputs – for example, form the basis of a law reform submission, or CLE activity. In some cases, Centres will make a strategic decision to undertake test-case representation in an attempt to

make a greater impact on a large number of people in similar situations. See also, “**Strategic litigation**” below.

Advocacy

The following are examples of effective CLC advocacy work, undertaken in response to expressed need, or where input from CLCs is solicited from statutory bodies.

South West Brisbane Community Legal Service developed its Youth Criminal Law Advocacy Project following concerns of youth workers in the Department of Communities and the Inala Youth and Family Support Service that young people in the Inala and surrounding areas were unable to access legal advice before appearing in Court on a variety of charges and were pleading guilty to "get it over with" - often unnecessarily. Legal aid funding via duty lawyers and legal aid “preferred suppliers” is not available for summary trials, representation at committals for less serious indictable offences and no capacity at all to make submissions to the prosecution for discontinuance or reduction of charges. As a result of this project advocacy assistance is now available to attend police records of interview and on-call Saturday morning advocacy assistance service at Richlands, Holland Park and Brisbane Magistrates Courts is now available.

Consumer Action Law Centre (CALC) in Victoria provides input into the process of regulatory development in the interest of consumers in relation to energy markets. In late 2006, the Ministerial Council of Energy (MCE) established the Retail Policy Working Group (RPWG), whose task is to develop recommendations for the national retail and distribution (non-economic) regulatory framework. CALC participating in the RPWG’s Stakeholder Reference Group and has provided three written submissions to the process. Of particular importance to consumers are the protections included in the regulation relating to standing offer and market contracts. These include consumer protections relating to contract cooling-off periods, access to supply and hardship arrangements, and dispute resolution.

Primary Dispute Resolution (PDR)

CLCs are actively engaged in PDR when it is likely to produce the best outcomes for clients. Many CLCs work in the areas where PDR and external dispute resolution schemes exist, for example, Banking & Financial Services Ombudsman (BFSO), Insurance Ombudsman Service and the like. Those areas are not cost-effective for private lawyers and their clients, and the work is generally outside the scope of legal aid commission work.

CLCs regularly participate in information-sharing forums with PDR schemes – for example, “Know your Rights” forums held in regional locations by Ombudsman schemes, and the “Combined Services – Do it Right” Project – an outreach in NSW of statutory bodies (Australian Taxation Office, WorkCover, Office of Fair Trading), industry bodies (BFSO, Telecommunications Industry Ombudsman) and legal service providers (Legal Aid, CLCs), providing information on PDR to Indigenous communities.

- Gosnells CLC in WA’s mediation service is almost one of a kind here in WA. While there are a number of places people can go for alternative dispute resolution (ADR) in relation to family law matters - only Citizens Advice Bureau in the city and Gosnells CLC provide access to ADR on other matters (for example tenancy or neighbourhood disputes). As such they are providing a service to their local community that is not available at the local level anywhere else.

Strategic litigation

It is generally accepted that CLCs undertake litigation in areas of law where very few, if any, private lawyers act under a grant of legal aid – at least in civil law.¹¹¹ Grants of aid are, in certain circumstances, available for CLCs to conduct strategic litigation but the number of applications is low and in some jurisdictions limited to disbursement-only grants for most litigation matters. But this kind of litigation isn't simply strategic – it is also the “bread and butter” work of CLCs, in areas like mental health, prisoner's rights (for example, a CLC is assisting a prisoner gain access to computers to research his own matter), residential tenancies (for example, a CLC recently ran a successful High Court case on the rights of a protected tenant), fines (for example, challenging a client's speeding fine on the basis of faulty speed-testing apparatus), consumer's rights in relation to lenders (for example, challenging a lenders' right to repossess a family home on the basis of unconscionable or predatory lending practices and policies) and the like.

NACLC's consultations with CLCs across Australia on this Review made it clear that most Centres' are already operating at capacity. While CLCs see strategic or test-case litigation as an attractive option which by definition has the potential to help a large number of clients in the medium to long term, most CLCs simply don't have the ability to undertake time and resource-intensive litigation when the immediate day-to-day demand on their services is already overwhelming.

The following observations in relation to NSW CLCs' strategic litigation are taken from the recently released NSW CLC Review. Apart from the direct benefit to clients of Centres undertaking litigation, if Centres decide to divert resources to running litigation in response to an emerging legal need, Centres may also benefit from building synergies between their specialist litigation, law reform and community legal education priorities, and expanding their knowledge base. Clearly this enhances a Centre's expertise and achieves efficiencies.¹¹² However, as noted above, when the day-to-day demand on services is so great, and the capacity of Centres to meet that need is compromised by a lack of resources, staff or volunteers, Centres are currently unable to leverage those efficiencies.

CLISIS currently has no capacity to accurately record strategic litigation.

Community Legal Education (CLE)

See also **Training** below.

CLE is a method used by Centres to respond to identified need. The CLSP data collection tool CLISIS defines CLE as the provision of information and education to members of the community on an individual or group basis about the law and legal processes and about the place of these in society. It is a process of raising awareness about the law and legal processes, and to assist client groups to understand their rights and empower them to assert, defend or protect their rights in appropriate ways and forums.

CLE may take the form of workshops or seminars, information sessions, pamphlets, fact sheets, DVDs, videos or tapes, posters, media interviews and theatre performances. Some resources are produced in ways or formats that appropriately target particular groups – based on past evaluations or consultations with community members. Some CLE products may be produced or translated into community languages where appropriate' and if budgets allow.

¹¹¹ *NSW Review Report*. p 55

¹¹² *NSW Review Report*. p 55

CLE resources produced by CLCs are distributed to other community or legal agencies as well as government agencies.

CLCs also publish *Law Handbooks* in most states. Updated regularly, and in some cases available online, Law Handbooks are an invaluable, practical plain English guide to the law. Law Handbooks are highly regarded publications that provide legal information on areas of law CLC clients frequently require information or advice about. They are often used by solicitors volunteering at CLC advice shifts, and are commonly available in public libraries. CLCs also contribute to expert journals and law reporters, such as the Social Security Reporter. In Western Australia, Gosnells CLC's *The Domestic Violence Manual* is a comprehensive, plain English publication that is used by almost every service dealing with domestic violence in WA (including both government and non-government organisations).

CLE may also take the form of training for other community or legal service organisations. In this way CLCs capacity-build those organisations to provide legal information to their clients.

Some CLE is developed to **educate communities about legislative amendments**. For example, in March 2007, TAS (WA) collaborated on the design and presentation of a community forum on proposed amendments to the Equal Opportunity Commission Act to strengthen racial vilification laws. Speakers from the Police Service, Equal Opportunity Commission, Consumer Protection, Centrecare and the Ethnic Communities Council addressed attendees and participated in the seminar and discussion. Shoalcoast CLC (NSW) has conducted information sessions for community workers, providing an overview of legislative changes in areas of family law, employment law and social security – these sessions enable the benefit of new knowledge to be passed on via community members to a wider audience than the Centre's clients alone.

Some CLE is **designed and targeted to particular socio-demographic groups**. For example, TAS (WA) secured funding from Department of Consumer Protection to develop a series of 3 booklets that deal with tenancy matters targeting Indigenous tenants. The development process involved a range of stakeholders having ongoing input through an editorial team. Stakeholders on editorial team include Department of Consumer Protection, Department of Housing and Works and TAS. In all, four of the editorial team members are indigenous and an indigenous language centre was also consulted. The content is presented in a story style and illustrations have been designed suit the target group.

CLE is often delivered in **outreach locations**, often remote. This work is invaluable, often delivered in locations where no legal help is otherwise available. Some examples are below.

- Cairns Community Legal Centre, incorporating a Disability Discrimination Legal service provides outreach CLE on disability discrimination to Mt Isa, a 10 hour drive from the CLC, and is planning other for Mackay, another 10 hours from the CLC. The CLE in Mt Isa lead to the CLC taking on a number of cases which were successfully resolved. It is unlikely that these matters would have been resolved had the CLC not undertaken the outreach CLE.
- The majority of clients at the SouthPort Community Legal Centre (South Melbourne) are older persons. Over time SouthPort CLC has developed an expertise in the area of older persons' law and in community education and service delivery for this community. SouthPort CLC offers a home based service for the frail elderly during the day and in the evening runs "road shows" through aged care facilities. They also visit public housing estates and offer a legal service in a safe setting. SouthPort CLCs CLE sessions cover topics such as discrimination, elder abuse, accommodation

and property issues, debt and financial issue, wills, power of attorney, funerals, organ donation and family law issues.

Working on the basis that teaching young people about their rights and responsibilities early will assist to prevent future problems, many CLCs deliver CLE to school or TAFE students. Some CLCs send letters to their local schools (and other organisations) offering their CLE services, and invite them to contact CLCs to discuss their legal education needs. This process promotes CLC services, helps CLCs make connections with their communities and to work collaboratively to develop appropriate resources. The examples below exemplify some of the school or TAFE based CLEs:

- Illawarra Legal Centre runs an award-winning¹¹³ CLE program *Start Out Right* targeted to young people about to leave school in the Illawarra region. The program includes practical information about rights and responsibilities arising out of legal obligations covering consumer issues such as debt and signing a contract. *Start out Right* has had joint support of the Department of Education and Training, Wollongong Youth Services, Legal Aid Commission and the University of Wollongong and has reached almost 2000 students with its interactive workshops.
- Cairns CLC delivers CLEs to schools. The CLC collects publications from the Queensland Office of Fair Trading and delivers face-to-face sessions to school students on credit & debt including buying a car, getting refunds, getting a credit card etc. The CLC notes that but for the popular CLE sessions, the students would have no exposure to the Government's publications or an understanding of the issues they are seeking to address. In this respect CLCs "add value" to government initiatives.
- RMIT Legal Service noticed a relatively low uptake of appointments by students in TAFE trade orientated courses. The CLC surveyed student about what they may want legal information about. A large proportion of respondents wanted information on the powers of bouncers at nightclubs – which also coincided with issues of violence in nightclubs arising in the Centre's casework. Using a community development approach by collaborating with a focus group of students to determine the appropriate and accessible resource, the Centre produced a pamphlet on legal rights and responsibilities, which was launched at a TAFE café by a comedians.
- Noticing an overwhelming number of international students with tenancy problems, Central Legal Service in SA has developed a booklet and delivers outreach CLE to students. This is done in partnership with an international students' agency that diverts the clients to the CLC.

As part of their commitment to CLE and as a way of raising their profiles in their local communities, Marrickville and Kingsford Legal Centres run a program of legal workshops for community workers. Subjects covered include victim's compensation, legal problem-solving and referrals, social security, anti-discrimination, tenancy, powers of attorney and enduring guardianships, family law, domestic violence and employment. These workshops recognise the need for relationship building between legal and non-legal service providers and of the latter's need for legal education in order to better assist their clients with their legal problems. This is also in recognition of the role CLCs play in getting clients off the "referral merry-go-round".

As noted in the examples above, CLE can lead to increase casework services. Other examples include:

¹¹³ winner of the NSW Consumer Protection Award.

- Illawarra Legal Centre Tenants' Advocates met with newly arrived migrants from African countries to discuss tenancy issues, as part of a round of workshops held with the CLC and the local migrant resource centre. This led to a significant number of participants approaching the CLC for assistance to pursue their rights.
- Arts Law Centre's Indigenous Service included CLE sessions about Indigenous artists' rights. Prior to doing the CLE, the number of Indigenous artists seeking legal assistance was negligible. Following the provision of CLE sessions, the number of indigenous clients assisted increased ten-fold.
- Illawarra Legal Centre also reports that after conducting some targeted CLE to local Muslim women who had been identified by the Centre as an emerging community with high unmet legal needs, the numbers of Muslim women approaching the Centre increased significantly.

CLE is a process of increasing individual and community's ability to participate in legal processes and empower them to advocate for themselves. It also has a significant "harm reduction" or preventative element in that the information may inform people of their rights and responsibilities and help people avoid problems or disputes in the first place.

Some CLE resources aimed at preventing legal problems are developed in community languages. For example, Consumer Credit Legal Centre in NSW has produced an award-winning series of radio/audio tapes around credit and debt issues in Arabic.

There are also economic efficiencies gained by using CLE: some of the legal resources available in the form of a kit, or precedents, are a cost-effective and efficient way of achieving outcomes for some clients (noting that clients with disabilities and clients less literate may not benefit from this kind of resource, and will require face-to-face assistance).

- Over a short period, a Centre provided individual advice to a number of clients who wanted to know how to set aside a local court judgment. The Centre did a calculation on the time and resources it took to deal with these clients. It then developed a self-help kit, which included sample forms and affidavits for people seeking to set-aside judgments.
- A Centre was noticing an increasing number of clients seeking information about their rights in relation to garnishee orders. In conjunction with a senior Court Registrar, the CLC has produced a plain-english guide for clients, as well as financial counsellors advising clients of their rights under garnishee orders

Some peak CLC bodies produce resources to assist CLCs plan and implement their core work. For example, the Federation of Community Legal Centres in Victoria publishes an on-line toolkit which includes a series of Information Sheets for CLCs to start up or expand their CLE work called "CLE Made Easy".¹¹⁴ The tool kit contains information for CLCs about collaborating with other organisations, undertaking needs analysis, evaluation and the like.

The NSW Review recommended that the Community Legal Education Workers network be supported to identify and act on ways to improve coordination of CLE activities, both between Centres and other CLE providers, particularly in regard to CLE resource development and delivery.¹¹⁵ The "support" referred to above was, in part, in the form of support for the NSW peak body to facilitate in better coordinating some of the CLCs' outputs to gain better efficiencies.

¹¹⁴ At <http://www.communitylaw.org.au/fedclc/pages/FederationToolKit/FederationToolKit/>

¹¹⁵ *NSW Review Report*. p 61

NACLC has independently commenced work on collecting CLCs' CLE outputs, including where that output is done in collaboration with other organisations and service providers. The Law & Justice Foundation of NSW (LJF) is also currently undertaking research on the effectiveness of CLE activity, based on its empirical research which points to building capacity through information and education.¹¹⁶

The LJF is also currently liaising the NSW Legal Aid Commission, LawAccess and CLCs about how the legal assistance sector could work more collaboratively to:

- Identify legal information and education needs/gaps;
- Know what people are currently doing/planning to do;
- Work together on projects;
- Identify the most effective ways to reach particular groups in relation to legal information and education, for example, people from culturally and linguistically diverse backgrounds; and
- Promote resources and programs.

Interestingly, the Law & Justice Foundation points to research that suggests generic information has limited usefulness when used as a strategy on its own and needs to be supplemented with more customised information or other forms of assistance to be most effective.¹¹⁷ It must be noted that the CLC service delivery model reflects a service mix that does not rely on one model of service delivery only. And as the examples above illustrate, CLCs' service mix of CLE, casework, law reform are inter-connected. In this regard, CLCs' CLE work probably represents best practice in service delivery.

Law reform and policy

Law reform is a key element of the CLC service delivery model. It is an effective and efficient way to address the systemic problems facing some clients, complementing the important face-to-face individual client work. Law reform work can delivery far-reaching outcomes for clients, resulting in improvements to laws, policies and practices.

CLCs are often sought out by the Legislature to make submissions on law reform agendas. CLCs' law reform and policy work gives government the opportunity to hear the views and stories of disadvantaged people who would otherwise remain invisible, and gives them way to participate in, and build faith in the legal system.

The NSW CLC review concluded that CLCs'

*“involvement in law reform... represents an effective use of resources, delivering benefits to far more clients than though information, advice and casework services alone.”*¹¹⁸

The example below comes from the ACT.

- Tenants' Union ACT, along with other CLCs including the Welfare Rights and Legal Centre, participated in the review of the ACT Residential Tenancies Act 1997 (RTA) as part of the formal stakeholders committee over a 3 year period. The CLCs provided additional direct input and feedback to the Department of

¹¹⁶ *Justice Made to Measure*, pp 200-205.

¹¹⁷ *Justice Made to Measure*, p 203 and the references therein, including Currie, Flowers, Giddings, MacDonald, Scott & Sage.

¹¹⁸ *NSW CLC Review*, p

Justice and Community Safety in relation to issues identified through advising ACT tenants, as well as meeting with other people renting through CLE and other general advocacy work. Joint submissions were prepared on a number of occasions. One particular area of concern for Centres was the lack of protection for people not defined as tenants. The Department worked closely with the CLCs in developing amendments to expand coverage of the RTA. The resulting amendments significantly extended coverage of the RTA to cover boarders and lodgers, people in student accommodation, crisis accommodation and supported accommodation. No other jurisdiction in Australia has such broad coverage for these kinds of tenants – this is a substantial bonus for tenants.

Community Development

Most CLCs adopt a community development approach to their work, but many also undertake targeted community development activities. These activities variously involves a cooperative effort between a Centre and members of its community or agencies to improve community life in some way, or CLCs fostering and supporting collective action or interest by community members to empower that community to understand, determine and implement their own actions.¹¹⁹

Despite a high proportion of Centres doing community development work, it is not one of the service activities recorded on CLSIS. Given the potential of community development strategies to “promote resilience in disadvantaged or marginalised groups in the community”,¹²⁰ community development work should be explicitly acknowledged in the service delivery model, and CLSIS.

Training

The significant community capacity-building work that CLCs do involves training other service providers in areas of law relevant to the services’ client base – for example CLCs regularly train community organisations and pro bono lawyers on areas of law relevant to homeless people as part of the Homeless Persons’ Legal Clinics in Melbourne, Sydney, Brisbane and Adelaide.

CLCs also share their expertise with each other – and often provide to other CLCs training updates in specialist areas of law such as social security. The following are just a few examples. There are many more.

Elizabeth Evatt Community Legal Centre has produced *Home is Where the Hurt is: a training and resource package on responding to older women experiencing family violence*. The resource is a training program, consisting of seven sessions, for community workers to provide women with support, advocacy and referrals to improve advocacy and service delivery for older women who experience domestic violence.

Gosnells CLC also runs a Paralegal Training which had a number of positive outcomes. It provided accredited training to a range of community representatives from a variety of cultural backgrounds. All the students have gone on to paid employment where they are utilising the skills they gained at the CLC to provide legal information and explain legal processes to the disadvantaged in their own communities.

¹¹⁹ see description and examples in *NSW Review Report* pp 71-75, *West Australia Review Report*, p 37.

¹²⁰ *West Australia Review Report* p 37. See also Tony Vinson, *Dropping off the Edge* (Jesuit Social Services and Catholic Social Services Australia 2007) pp 100-101.

Women's Legal Service in Victoria has provided training to Relationships Victoria on changes to the Family Law Act.

CLCs have been recognised and awarded for their high quality training capacities. For example, Geraldton Resource Centre was awarded the Prime Minister's award for training.

CLCs are also able to leverage training from other service providers – including accessing training for themselves and other community organisations from legal aid bodies and pro bono law firms.

6. Service delivery in regional, rural and remote (RRR) areas

Outreach

There is little doubt that people in RRR areas experience difficulty accessing legal services.¹²¹ CLCs address some of these issues using a number of strategies including outreach by specialist and generalist Centres, partnerships between Centres and local organisations, out-posted workers, pro bono partnerships, regional coalitions and partnerships (such as the Cooperative Legal Service Delivery Program in NSW) and the use of technological solutions (discussed below).

Advantages of outreach work include the ability to reach and assist communities and clients who would otherwise not be able to access their services, and a more effective, face-to-face service including access to documents etc. Outreach can place burdens on the Centre staff who must travel sometimes extensive distances, and the staff remaining at the Centre with less office support for local clients.

Outreach may be expensive. However, noting the success of outreach, and benefits to clients and communities who receive this assistance, many Centres are keen to undertake more outreach, but for the cost to them of doing this work. On a cost-benefit analysis, providing more funding to existing Centres to undertake more outreach work (including funding cooperative outreach services with other service providers) would be more effective and efficient than unilaterally placing new Centres in RRR locations.

Using technology to deliver legal services to disadvantaged people is not and should not be “sold” as a replacement for face-to-face legal assistance. The service delivery activities undertaken by CLCs which includes a strong component of preventative legal work, are not easily amenable, nor appropriate, to being undertaken by using technology.¹²²

¹²¹ See, for example, Senate Legal and Constitutional References Committee Report *Inquiry into Legal Aid and Access to Justice* (June 2004) pp 113-136 and references to submissions therein available at http://www.aph.gov.au/senate/committee/legcon_ctte/completed_inquiries/2002-04/legalaidjustice/report/contents.htm (viewed April 2006); see also Victorian Parliament Law Reform Committee *Review of Legal Services in Rural and Regional Victoria* (May 2001); see also Council of Social Services of New South Wales, *Counting the Cost: What Future for Human Services in NSW* (October 2004) available at http://www.ncoss.org.au/bookshelf/rural/submissions/counting_the_cost.pdf; see also submissions to the Joint Commonwealth/NSW Review of Community Legal Service Funding Program, and in particular submissions by the Council of Social Services of New South Wales (NCOSS) and the Regional Rural and Remote Network of the Combined Community Legal Centre Group (Inc) NSW.

¹²² See submission by Illawarra Community Legal Centre in Senate Legal and Constitutional References Committee Report, *Legal Aid and Access to Justice Report* June 2004, at 122-123.

There may be some scope for the use of technology in some areas, and for some clients who are more confident and less threatened by the use of technology.

CLCs in regional, rural or remote (RRR) areas are sceptical about the promotion online technology to deliver legal services to disadvantaged people. For example, one RRR CLC reported on an informal survey of its clients which found that 36% did not have regular access to a computer with internet access, and 63% did not know how to access information on the internet.¹²³ CLCs in the Northern Territory report that many people in remote areas don't have access to telephones, let alone computers. Public telephones, if available at all, are in public spaces raising serious privacy and confidentiality issues.

Aboriginal communities are less likely by a considerable margin to have any access to telephones, reliable internet connections or even computers.¹²⁴

There is some research which shows certain demographic groups are particularly less likely to obtain favourable outcomes using a telephone advice service,¹²⁵ leading to a recommendation that policymakers should evaluate whether hotlines are an appropriate method of delivering services to particular groups. Researchers have recommend that directing resources towards systemic advocacy and structural reform would be more effective than telephone advice services for these socio-economic groups.¹²⁶

7. Risks

Reviews have stated that CLCs' effectiveness and efficiency can be enhanced by better resourcing them.

As noted earlier, the CLC service delivery model is an integrated one – each service activity is related to the other – and all are based on Centres:

- Identifying needs in their community;
- Developing and planning responses to that need; and
- Delivering (a number of complementary) flexible and targeted services to best meet that need.

Taking any one activity/output out of the model risks undermining the model.

While there may be ways to optimise performance, NACLC notes the following:

- There are limits to what CLCs can do within existing funding; and
- NACLC supports entrenching the CLCs' service delivery model in guidelines – it gives a structure to identify need, plan responses and service models.

¹²³ See Blue Mountains Community Legal Centre submission to the NSW CLC Review.

¹²⁴ See references to the submission by the National Network of Womens' Legal Services in Senate Legal and Constitutional References Committee Report, *Legal Aid and Access to Justice Report* June 2004, at 122-123.

¹²⁵ See Jessica Pearson and Lanae Davis (with appendix by Bob Echols and Julia Gordon) *The Hotline Outcomes Assessment Study--Phase III. Final Report: Full Scale Telephone Survey* by at <http://www.clasp.org/publications.php?id=13&type=1>. The report found that clients who had the most favourable outcomes were likely to be white, English-speaking, relatively educated and have a marital status other than being separated from a spouse. Those clients who had the least favourable case outcomes were from non-English speaking background (generally Spanish), had low education levels, reported no income and were separated.

¹²⁶ See Robert Echols and Julia Gordon *Recommendations and Thoughts from the Managers of the Hotline Outcomes Assessment Study Project* at <http://www.clasp.org/publications.php?id=13&type=1>

- Strategies for enhancements in efficiencies and effectiveness can not be a “one-size-fits all.” Being community-based, Centres themselves are the best organisations to determine need and service responses (see **2: Funding Model**, and in particular “Risks” above);
- Tampering with the model may risk losing the valuable volunteer and pro bono support that Centres currently leverage; and
- Relocating, amalgamations or the funding of new Centres without proper consultation from communities risks those Centres struggling or failing.

NACLC suggests that optimising the effectiveness and efficiency of CLC activities (output) and achieving better outcomes could be gained by:

- Providing general training and infrastructure support to CLCs – for example, see the Training, Resource and Infrastructure Program (TRIP) as recommended in the NSW Review Report¹²⁷;
- Providing more support for CLC management communities. CLC governance is largely based on a voluntary community management structure that supports community engagement, commitment and control. This is a good model, but needs more support;
- Articulating the role, value and functions of CLCs in legislation – for example, Legal Aid Ontario, the funders of community legal clinics in Ontario have entrenched the role of clinics in their legislation, and explicitly recognising the role of clinics in providing access to justice¹²⁸;
- Working *with* CLCs to identify need – for example, in Ontario, Canada funders have provided clinics with current and relevant general socio-demographic data. Clinics then use this data to undertake their own local needs analysis, working locally with their clients and other stakeholders to independently determine priorities and appropriate service strategies for their communities; and
- Better core funding.

¹²⁷ NSW Review Report, pp 105-107.

¹²⁸ See *Legal Aid Services Act 1998*, Ontario at http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/98126_e.htm

ToR 4. Examine Options for bringing other funding models under the umbrella of the CLSP to rationalise compliance and accountability costs to funded Centres.

NACLC understands that this Term of Reference seeks to examine if there are benefits to be gained by Centres in standardising their multiple Commonwealth accountability requirements. A discussion of accountability, the requirements for CLSP and an outcomes-based model are discussed below.

At the state consultations held with Centres by NACLC to discuss this Review NACLC canvassed ideas in relation to this Term of Reference.

While there are benefits in an attempt to standardise reporting requirements across funding bodies, Centres suggest that an attempt to do so may increase the complexity of the requirements.

Centres believed the greatest efficiency would be gained by standardising data items across Commonwealth departments (and possibly State government). In particular, data items which ought to be the same regardless of program have different definitions and allowable values. *Age* is an example where Age Ranges vary with each program. Sex / Gender is another.

Movement towards standardised data items, definitions and data values would also have significant benefits for whole-of-Government approaches to service delivery. NACLC is aware some work has been done towards this and that there is currently a project working towards this end. NACLC will assist with any such projects if requested.

ToR 5. Review existing accountability requirements including CLSIS

1. Accountability

“The voluntary sector is valued for its independence and flexibility; because it is valued it becomes more central; because it is central it must become more accountable; but how is greater accountability to be achieved without damaging independence and flexibility?”¹²⁹

Not for profit organisations, such as CLCs, play an important role in civil society, providing a voice for those unable to speak for themselves, and often providing a voice in countering the views of more powerful groups.¹³⁰ Indeed the American Bar Association’s Standards for Providers of Civil Legal Services to the Poor has as its second underlying principle –

2. Zealous Representation of Client Interests.

All lawyers have an ethical responsibility to pursue their clients' interests zealously within the confines of the law and applicable standards of professional conduct.

This has particular implications for legal services providers which represent the poor. When effective resolution of individual clients' problems is circumscribed by existing laws and practices, or when existing laws and practices result in the same or similar problems for many indigent clients, representation of a client may call for a practitioner to reach beyond the individual problem to challenge the law, policy or practice. The fact that such advocacy may be complex, difficult, or controversial should not be a barrier to a practitioner pursuing it. Furthermore, the range of legal problems that confront a provider's clients and the generally limited resources available to it to respond may call for a provider and its practitioners to use a variety of representational modes and innovative lawyering on behalf of clients.

CLCs are subject to accountability regimes and reporting requirements by their various funders and by virtue of their reporting obligations to retain their charitable status. CLCs, as part of their reporting requirements, track their inputs and outputs. The CLSP requires CLCs report in a number of ways that include:

- Regular financial reporting;
- Data collection through CLSIS;
- Submission of strategic plans and six-monthly reports against planned activities;
- Report on client satisfaction surveys; and
- Participation in the Service Standards process.

Many CLCs may also have other reporting requirements beyond the CLSP from other program or project funders with additional and specific reporting requirements.

¹²⁹ D Leat, *Voluntary Organisations and Accountability*, Worcester UK, Policy Analysis Unit, National Council for Voluntary Organisations, 1998.

¹³⁰ Carol Ann Tilt, *Considering NGO Accountability: A Note of Caution*, Paper presented to the Australia and New Zealand Third Sector Research Eighth Biennial Conference, 26-28 November 2006, Adelaide, p 20; see also

CLCs are also accountable for their goals and missions – largely modelled by CLCs’ management committees and Boards by reference to the client communities they serve. Community participation is recognised as an important means of accountability for NGOs.¹³¹ This requires a different way of thinking about accountability to corporate-style accountability.

CLCs accept that they should be accountable to their funders – and accept that if they are to gain the trust of their communities they must be transparent in their activities. In this respect CLCs already engage in disclosure and reporting by engaging in community participation and performance self-assessment. CLCs also effectively engage in self-regulation – for example the National Risk Management Scheme, by developing and sharing standards, policies and procedures.¹³²

CLCs and accountability - tensions

CLCs, while generally similar in their missions and charters, do not fit within the “one size fits all” model of accountability.

It is now generally accepted that it is difficult to evaluate and measure what some NGOs do, particularly smaller organisations, given the very specific nature of their work.¹³³ Emphasis on traditional evaluations are often on short-term, measurable benefits which may overlook positive externalities, particularly those that will benefit future generations.¹³⁴

There are fundamental tensions in the role CLCs play and the imposition of more onerous accountability and performance monitoring regimes. One obvious tension is that CLCs’ linked casework and advocacy is typically with, or on behalf of, people unable or ill-equipped to advocate for themselves, and targeted towards the behaviour and practices of organisations or institutions more powerful than themselves.

Room for improvement

CLCs’ capacity for improving accountability could be enhanced through providing infrastructure support to CLCs and their management committees. Reviews and evaluations have pointed to the stresses on CLCs in recruiting, resourcing and training CLC workers and voluntary management committee members.¹³⁵ The NSW-based Management Support Unit (MSP), a 3-year project funded by the NSW Public Purpose Fund from 1994-1997, produced a range of resources and kits including a Planning Kit, an Evaluation Kit, and Practice Guide,

¹³¹ D Cronin and J O’Regan, *Accountability in Development Aid: Meeting Responsibilities, Measuring Performance – Summary Document*, A Research Report for Comhlamh, Comhloamh Aid Issues Group, 2002.

¹³² In fact it has been suggested that the more standards of governance, management and financial controls are developed internally, the less need there is for external regulation. See R Fries, “The Legal Environment of Civil Society”, in M Kaldor, H Anheier and M Glasius (eds), *Global Civil Society* (Oxford University Press 2003).

¹³³ M Marschall “Legitimacy and Effectiveness: Civil Society Organizations’ Role in Good Governance”, paper presented at the *Poverty Reduction Strategies Forum*, Baden, Austria, October 29-November 1, 2002.

¹³⁴ N Uphoff “Why NGOs are Not a Third Sector. A Sectorial Analysis with Some Thoughts on Accountability, Sustainability and Evaluation” in M Edwards and D Hulme (eds) *Beyond the Magic Bullet: NGO Performance and Accountability in the Post-Cold War World* (Kumarian Press, Connecticut 1996).

¹³⁵ Keys Young, NSW Management Support Project, *Evaluation of the Impact of the NSW Community Legal Centres Management Support Project*, May 1997; Michelle Jones, *Board of Directors and Management Committee Training Needs, Report for the Combined Community Legal Centres Group (NSW) Inc*, December 2003.

a Guide to Community Legal Education, a Volunteer Management Resource Kit and an Orientation Package for new Management Committee members. The MSP received a positive external evaluation, and the MSP resources were considered extremely useful. However, the project did not secure ongoing funding, and these resources are now out of date and of limited use. There have been no funds available to update these resources nor continue the positive capacity-building effect of the work of the MSP.

Most recently, the NSW CLC Review recommended a “Training Resource and Infrastructures Program” to assist NSW CLCs and their governance.¹³⁶

2. Accountability regimes

Management systems should include accountabilities in which the planning of services and the outputs and outcomes of funded services are evidence-based and transparent.

However, the “public management” paradigm of the purchaser/provider model of service delivery whereby government contracts out provision of services for citizens (including CLCs) too often incorporates private sector principles into public administration in an inappropriate manner. This often includes applying corporate-style planning methods and an emphasis on “value for money” and “doing more for less.” Using “business” models and tools for community services is not productive – after all statistics tell us that 80% of businesses go broke in their first year of operating!

CLCs’ service delivery model and local level responsiveness reflects a real and measurable accountability. Centres are accountable in the first instance to their Management Committees, their members and their community. Top-down approaches interfere with and can impede this. Any new accountability framework must take the CLC model into account, and work with CLCs to develop it.

The NSW Review carefully considered accountability requirements as part of their review. It recommended:

The review found that Centres are concerned about the current set of reporting and accountability requirements that they must meet, and the resources that must be devoted to responding to these requirements, at the expense of service delivery.

The review recommends that:

39. Centres, the CCLCG and NACLC work together to develop ways that Centres can report on key activities undertaken under the Strategic Service Delivery Model, that are not caught by CLSIS.

40. The funding bodies review reporting requirements under the CLSP program in consultation with CCLCG. The review should have regard to best practice in grants funding, the nature of the Strategic Service Delivery Model, the administrative resources of Centres, the relatively small amount of each Centres’ CLSP grants and the fact that most Centres are multi-funded. The review should consider whether:

*- each particular requirement is necessary for accountability or program reporting, and
- the requirements could be changed in a way that would lessen the burden on CLCs (perhaps the next time the Guidelines or CLSP are reviewed).*

41. The process for obtaining client feedback be made more flexible. Centres should still be required to assess client satisfaction on a regular basis; however they should be able to use alternative methods of doing so negotiated with the SPM. The existing

¹³⁶ *Final Report: Review of the NSW Community Legal Centres Funding Program* (June 2006), p 138.

method should continue as an acceptable default method in the absence of a Centre proposing an alternative.

42. Centres and funding bodies negotiate protocols for changes to reporting requirements including data collection requirements for the program. Those protocols should acknowledge that Centres are relatively small organisations, that they often receive funding from several sources and that the impact of reporting requirements on service delivery should be minimised.

NACLC has proposed 10 year presumptive funding with 3 yearly funding allocations – as discussed earlier in this submission. The accountability requirements suggested below are devised to account for the 10year / 3year cycle of funding with the following principles that Centres have articulated in mind:

Principles for accountability Requirements

- Simple
- Clear - Easy to understand, Easy to use
- Purpose of each requirement is clear
- Useful information for all stakeholders
- Set of requirements agreed to by all stakeholders
- Incorporates the logic of the Program Logic map

3. Reporting Requirements in an outcomes-based Model

“It looks at the effects/outcomes of an activity in relation to what was intended, assessing outcomes in relation to goals. It includes a concern with processes and explanations of why things have worked out as they have.”¹³⁷

1. Quality System –

A Quality Assurance system is a key accountability requirement in an outcomes-based system. It would be possible to maintain the current Service Standards which are basic however the system suggested in ToR6 offers several benefits over current system. Given that a good model is available to adapt for our purposes, updating our current quality system should not be too resource intensive.

There are 2 other considerations for a Quality system:

- (i) NACLC’s Risk Management scheme - is a robust peer assessment system already in place. Each Centre that participates in NACLC’s Professional Indemnity Insurance Scheme is assessed for compliance annually. Its focus is on casework and so work on a revised system could focus on the remaining areas that would be included in a Quality system; and
- (ii) NACLC Quality mark – NACLC logo is now trademarked and in use by Centres as a quality mark. In addition to this we are currently pursuing the registration of a CLC quality mark. Once implemented a Centre will only be able to use the CLC Quality Mark if it meets certain standards/level of quality. NACLC intends to develop a set of standards based on International Standards for Service Delivery and the American Bar Association Standards for Providers of Civil Legal Services to the Poor. Given NACLC’s ongoing work in the area NACLC recommends that Commonwealth accepts that a

¹³⁷ Russell, H *Tools and Techniques*. London 1996

Centre which has the quality mark meets the standards required of the Program's outcomes-based system rather than implement its own system.

2. Client Feedback –

There are 2 parts to a client feedback system. Together they form a better assessment of the service from the client's perspective than a system based solely on satisfaction. The parts are:

- (i) Client Survey – NACLC recommends that the idea discussed prior to the implementation of the SSPI system, but in the end dropped, be adopted. That is provide a number of questions or concepts that must be included in a survey but Centres develop their own survey. (Implications for CLSIS but more a training issue). The issues for a client survey remain that the areas surveyed must reflect the agreed Program outcomes, must be areas over which Centres have control and can change if there is a problem, must be able to be used by people with low literacy and poor English skills (NACLC has examples of more graphic client surveys which we would recommend but cannot be attached as they are currently being tested by another organisation); and
- (ii) Complaints mechanism – many organisations have found that effective client complaint mechanisms and monitoring of complaints-received are a better system for assessing client satisfaction than a survey. NACLC recommends this system be adopted as it sits better with an outcomes-based system and all Centres currently have a system in place. There are some excellent models available in use by Centres and these could be used to assist with the improvement of the complaint mechanism when required.

3. New Data Collection Concepts –

Case Intensity – some Centres capture this now with *number of contacts*.

Matter Complexity – a sheet added to advice or case sheet which is filled out at closing of matter. This could be a tick-box single page see example below.

DRAFT
MATTER COMPLEXITY INDEX

To what extent, if at all, did the following factors impact on the matter?

	Minor impact	Moderate impact	Major impact
Family/Individual Circumstances			
Blended/extended family involvement	0	0	0
Number of children involved	0	0	0
Child refusing parental contact	0	0	0
Parental relocation/distance	0	0	0
Transportation difficulties	0	0	0
Poverty/marginalisation	0	0	0
Homelessness/insecure housing	0	0	0
Acute financial issues/debt	0	0	0
Lack of social supports	0	0	0
Individual capacity			
Lack of English literacy	0	0	0
Poor social skills	0	0	0
Lack of impulse control	0	0	0
Poor reasoning/reflection skills	0	0	0
Chronic care/health needs	0	0	0
Mental health issues	0	0	0
Substance abuse	0	0	0
Gambling addiction	0	0	0
Unresolved issues (guilt, grief, anger etc)	0	0	0
Limited parenting skills/knowledge of — child development	0	0	0
Experience of torture/trauma	0	0	0
Refugee/settlement Issues	0	0	0
Family violence/abuse			
History of family violence/abuse	0	0	0
Child witness to violence	0	0	0
Current safety concerns (parent or child)	0	0	0
Current child protection involvement	0	0	0
Issues			
Cultural/religious conflict/issues	0	0	0
Power/control issues	0	0	0
Sexual/gender identity issues	0	0	0
Entrenched positions	0	0	0
Refusal to engage/participate in good faith	0	0	0
Conflicting client goals	0	0	0

4. **Outputs** –

CLISIS reports are quantity and not quality measures. They will serve to provide SPM with regular updates on Centre work. Data collection and entry of client, matter and activity data would be as is currently required with some revised items.

5. **Client Needs assessment** –

This is a critical part of the outcomes-based model. The Department could assist with this by following the Ontario model mentioned in Client Needs discussion and provide each Centre with some client demographic data for their area and Centres use this as an input into their own process.

6. **Planning** –

10 year long term framework document, with broad goals that reflect program Intermediate and Ultimate Outcomes, Includes a long-term client needs assessment.

3 year Strategic plan with goals that reflect immediate and intermediate outcomes and a 3 yearly client needs assessment.

Annual update of Plan based on a revised client needs assessment.

7. **Financial** -

10 year Budget which indicates resources required to produce outputs – can only be a general indication.

3 year budget - Based on 3 year plan and client needs analysis.

Audited financial statement at the conclusion of the 3-year funding allocation.

Annual Budget - Based on annual update to the 3 year plan and client needs analysis.

Annual Financial Reports - Balance Sheet, Profit & Loss Report, and audited financial statements.

8. **Yearly report** –

Quality information about services provided and information about the organization itself would be produced by a Yearly Report. It would have a standard format and Centres could be entered directly onto CLISIS. It would include much of the information required in the current annual report but would be different to a Centre's Annual Report (they could still provide their Annual Report in addition). The aim would be to provide standard information to SPMs and The Attorney General's Department that would be easier for them to collate and use. For Centres it would be an easier report to produce.

9. **Case studies** –

“It is not enough to perceive that change has happened: one has to understand why and how it happened, to ensure that experience is transferable to other situations and to ensure sustainability of change; this is why case study work, drawing on a range of perspectives and methods, is usually the most appropriate approach for evaluating community development.”¹³⁸

Quality information about HOW outcomes are achieved would be provided through case studies produced with client permission and due regard to legal professional ethics. Again there would be a standard format and Centres could enter them directly onto CLISIS, if modified to allow it. Centres would select up to 3 case studies (but 1 is minimum) that exemplify the way in which the services they provide (the work the

¹³⁸ Craig, Gary *Towards the Measurement of Empowerment: The Evaluation of Community Development* UK 2003

Centres do) assist in achieving the Program outcomes. Case Studies would form a fundamental part of reporting in an outcomes-based system.

All current 3 monthly and 6 monthly reporting requirements associated with the current Service Agreement would no longer be useful within this framework. There are some new requirements for Centres but they are balanced by less frequency of reporting. This regime is more thorough than current and provides standardised (and so usable for Program managers) quality information together with the Performance framework discussed in TOR 6.

- **Mental Health WA:** The use of client satisfaction as the basis for the measurement can be quite impractical, particularly in relation to a Centre as ours, namely the Mental Health Law Centre, which deals with mental health consumer clients who because of their mental disability cannot effectively participate in client satisfactions surveys..

In particular I gave as an example the fact that the Mental Health Law Centre does a large amount of casework representation for mental health consumer clients in reviews before the Mental Health Review Board, these being clients who are detained as involuntary in authorised mental hospitals, but who are seeking their discharge from involuntary status.

In 99 % of these cases the result of the review is that their involuntary status is maintained by the Board, which generally means dissatisfaction by client with the result.

The value of the service which the Mental Health Law Centre provides to these clients however far exceeds the value of the mere result of the review because by the representation which the Mental Health Law Centre gives to these clients before the Board the clients are given a voice before the Board and therefore the authorised hospitals and psychiatric staff are made accountable in the process for their manner of dealing with the clients. The use of a measurement based on client satisfaction would however produce a totally skewed indication of the valuable service and performance provided by the Mental Health Law Centre.

4. CLSIS

NACLC acknowledges the effort and resources that have been expended on this system especially to accommodate Centres' requirements of the system. Overall CLSIS is a robust and useful information system. It is well accepted by Centres even though some problems remain.

A critical ongoing problem with CLSIS is national consistency of data entry. This has to be addressed outside of the Review and will continue to be an issue.

There is general consensus amongst CLCs that CLSIS doesn't fully or effectively capture the work of CLCs, especially community legal education, community development work (as an output or framework), or advocacy. Nor does it include the considerable needs-identification and planning work CLCs do as part of their service delivery model.

Critically, the data collection tools and processes used by CLSP including CLSIS do not currently have the capacity to capture case complexity or intensity (that is, how much work is required to get an outcome) in a way that is useful for resource and funding purposes, or for mapping needs and planning current and long-term service delivery.

The issue of case CLSIS data, targets and increasing case complexity is illustrated by the experience of a Consumer Credit Legal Centre below. This shows that CLSIS data as it is currently collected and correlated with targets can reflect an individual Centre's variations in service delivery that may be interpreted negatively.

- Responding to concerns about debt collection practices, Consumer Credit Legal Centre (CCLC) NSW made a strategic decision one year to take on all matters which eventually informed its submission to ASIC and ACCC and was later incorporated into Debt Collection Guidelines. During this period CCLC opened many casework files and had no trouble meeting casework objectives measured solely in numbers of files. Debt collection work is by its very nature often legally simple and the work can be largely conducted via phone and mail-based negotiations. There is very little appearance work in courts and tribunals required.

In 2006/07 the focus of CCLC's concerns shifted to predatory lending in the home mortgage market. Disturbed by increasing foreclosures and a significant number of loans that appear should never have been made, CCLC has become involved in the Predatory Lending Project. This is a joint initiative with the Public Interest, NSW Legal Aid, the Public Interest Clearing House and several large law firms. Many of CCLC's clients are pensioners or very low income earners with large numbers of dependents. Usually they have been sold a loan they could clearly never afford, at a cost that far exceeds market rates, apparently with a view to simply stripping the equity from the family home. CCLC's involvement in this project and this issue has led to the Centre becoming increasingly involved in complicated Supreme Court litigation. The files are significantly larger, there are multiple court appearances involved, and the work cannot easily be conducted between advice calls. This is having a significant impact on the Centre's ability to meet casework targets and yet we believe the work is equally important and will prove ultimately effective at bringing about improved outcomes for vulnerable consumers.

As a result, movement to an outcomes-based model will require some changes to CLSIS. These changes reflect the recommendations discussed above in relation to reporting requirements. The changes that will be necessary to reflect an outcomes-based system are:

1. Inclusion of a Matter Complexity screen;
2. Case Intensity indicator (Currently *number of contacts* but only used by a few Centres);
3. New activity type to reflect the expansion of core activities as discussed in the Service Delivery Model such as CommunityDevelopment, Strategic Litigation rather than test case, planning, etc;
4. Remove the current Performance Indicator calculations and reports. This is discussed in ToR6;
5. Update / change Client survey;
6. Enhance non-casework section;
7. Develop a Screen for entering Case studies; and
8. Develop a screen for entering the Yearly report.

New reports will be required to reflect the new reporting requirements e.g. *matter complexity* - Counts of number of cases for each of the elements of complexity, counts of number of complex elements per case, measure of low, medium and highly complex cases and a count in each of those categories of cases.

ToR 6. Develop performance criteria for the Program.

“We seek to learn what we might do usefully rather than checking on how well we have travelled the road to a cost-effective performance”¹³⁹

1. Performance Frameworks

This section of NACLC’s submission discusses performance measurements and criteria. NACLC argues that before the Department determines the framework and technical how-to details of performance measurement, the Department should take account of the current research, thinking and debates about the concepts, practices and challenges of performance measurement in social service delivery. (We present excerpts from some of this material below.) For a performance framework to be effective in assisting with the management of the Program, the Department will need to negotiate with Centres to ensure that any performance criteria truly reflect the work of community legal Centres.

Prevailing frameworks for performance measurement do not necessarily emphasise the quality of the services provided nor the relationships between providers and clients. The emphasis, and criteria underscoring this bias, is that resources (funding) are converted into inputs economically, inputs are converted into outputs efficiently and outputs converted into outcomes effectively.¹⁴⁰

The production paradigm for funding social services is generally accepted but what it lacks for organisations like CLCs is how to ‘account for’ those elements that truly value-add (to use another business metaphor). What is it that is unique about the work of CLCs that would lead governments to request their assistance with the provision of services to its citizens? What is that particular quality acknowledged in all previous reviews and inquiries that have examined CLCs’ work?

How can Centres commitment to ‘community, compassion, justice’ be reflected in accountability regimes and performance frameworks because it is this commitment that is at the heart of CLC’s ability to make a difference to their lives of those who have been turned away or forgotten by others?

Does the government simply need hardcopy reports to prove that CLCs are cheap? Is it not enough to know that CLC staff work for 30% less than their public service colleagues and that our use of volunteers adds another \$23m to the program funds? Is there talk about results and outcomes because that is a method to control which cheap services are provided to the disadvantaged and vulnerable members of our communities? Or is there truly a commitment to providing the best service that is possible for all Australia’s citizens?

Assuming that the point of this Review is the latter, NACLC’s discussion and the recommendations following, attempt to assist in the development of performance criteria that can begin to reflect how it is that Centres achieve results. The following discussion will also help to better describe what those results / outcomes are.

¹³⁹ Miller, M *Evaluation as lesson-drawing* Dublin 1988

¹⁴⁰ Dr Gabrielle Meagher, *Making Care Visible: Feminism, Social Services and the Challenge of Performance Management*, UnitingCare Burnside Discussion Paper Number 2.

Conventional performance measurement frameworks

“The key issue about performance measurement is in reality not a technical one but a conceptual one, that is “not how to measure effectiveness or productivity but what to measure”¹⁴¹

Public sector management, and the increased emphasis of professionalism, service standards and best practice have led to an emphasis on the need to measure the performance of organisations providing social services. Conventional performance measures for government-purchased services are efficiency, effectiveness and economy.

Typically, public sector evaluations and reviews focus on inputs and outputs which are usually within an organisation’s control and more readily quantifiable, rather than outcomes which are usually beyond the immediate control of an organisation and more difficult to measure.

Output measures do not necessarily provide useful information about how effectively an organisation’s outputs contribute to public welfare. That is, an emphasis on quantifiable indicators may risk skewing an organisation’s goals towards outcomes that are readily measurable rather than those that are socially useful or valuable. Outcomes-based measures may be better geared towards more intangible long-term impacts, and are not suitable to short-term reporting cycles.

“many limitations of performance measurement as widely understood: it is generally “top-down” (and therefore particularly inappropriate for community development), emphasizes quantifiable measures, ignores broader impacts and questions of equity, are problematic in the context of multi-agency interventions, and provide little understanding of why change happens – one of the most important problems facing community organizers”¹⁴²

While efficiency, effectiveness and cost-effectiveness seem obvious performance criteria and are used widely, they are not necessarily the most appropriate criteria for CLCs. Formulae can be devised that purport to tell you about say efficiency but NACLC questions whether the formula does measure what is assumed.

“The key issue facing evaluation now is best expressed thus: to make the important measurable, rather than (as is too often the case with the focus on performance indicators) to make the measurable important.”¹⁴³

The next section discusses how to find out what are the most appropriate performance criteria for CLCs and how to avoid putting a measure in place because you know how.

2. How should performance criteria be developed and what do they look like?

We are submitting to the Review the evidence (lit review/studies) that points to

- Importance of involving CLCs in process of developing criteria;

¹⁴¹ Craig, Gary *op cit*

¹⁴² Craig, Gary *op cit*

¹⁴³ Craig, Gary *op cit*

- Difficulties in measuring performance in areas like CLE and community development. These are not impossible to evaluate– but need to ensure they are appropriately evaluated using appropriate criteria and time-frames;
- Need to look at how CLC services are delivered. Some have immediate results (casework, advice, info etc). Some other work, such as preventative work (CLE, community development, law reform and policy) is not amenable to instant results. Need capacity to measure medium-term (some casework, CD etc) and long-term activities (eg community capacity building work).

A performance management framework should include:

- a well-articulated program logic describing the nature and structure of the program, and how planned outputs are expected to deliver the program’s desired outcomes;
- a description of what aspects of performance are to be measured and how, and what constitutes acceptable performance
- a system (data collection) to provide the necessary information on which performance may be measured
- a documented overview of the framework to ensure transparency and a shared understanding by all stakeholders—this should include a statement of who is responsible for data collection, system maintenance, reporting and assessment.¹⁴⁴

It should be developed with the following guiding principles:

- | | |
|-----------------------------|---|
| Accountability | <ul style="list-style-type: none">• clarifies performance expectations (are providers doing what they have been funded to do? are the funders assisting compliance?);• are public monies being managed appropriately?;• is the provider/programme achieving the intended outcomes?; |
| Outcomes-focused | <ul style="list-style-type: none">• reflects the purpose of each programme• includes opportunities for young people and families to have input into the process• captures the range of impacts the programmes are making |
| Two-way process | <ul style="list-style-type: none">• developed and implemented within a partnership relationship based on trust and respect• gives benefits to services as well as the Department |
| Dynamic | <ul style="list-style-type: none">• regularly reviewed and will develop in response to changes on the ground• will have capacity for flexibility |
| Useful and simple | <ul style="list-style-type: none">• purposeful and informative• linked to the core work of both parties• easy to implement and balances effort of collection with outcome of information |
| Reflect diversity | <ul style="list-style-type: none">• takes account of the diversity of services and their circumstances, both in terms of what is measured and how |
| Common understanding | <ul style="list-style-type: none">• understood by those implementing it• logical• transparent¹⁴⁵ |

¹⁴⁴ Deb Michaels and Roseangela Merlo *How to implement an integrated performance management framework* Sept 2006

Conventional types of performance measures include:

- *Input measures* – quantifying the resources an organisation allocates to its activities, and may be expressed in terms of funding, staff, time, resources etc;
- *Output measures* – the “work done” in pursuing the organisation’s activities such as clients served, education sessions presented, publications produced etc
- *Outcome measures* – which unlike the above measures indicate the processes inside an organisation, outcome measures focus on external conditions and seek to gauge the broader impact of the organisation’s activities.

3. Performance criteria for CLCs

There is little doubt that having clarity about what CLCs do and the results it is trying to achieve is fundamental to planning service delivery and can assist CLCs to:

- Link planned results to individual services;
- Identify service measures and result indicators;
- Identify key risks to achieving organisational goals;
- Identify areas of inter-agency collaboration; and
- Communicate performance and performance expectations to stakeholders.

NACLC argues that performance indicators should point to (indicate) areas for further discussion or action. Numbers or formulae often confuse. They do not clarify nor raise further points for discussion beyond arguments the interpretation of the indicator itself. Which SPM can explain how the formulae of the current performance indicators in CLSIS work and or argue with certainty what the result means?

NACLC submits that CLSP performance criteria should be:

- *Valid and reliable – represent accurate measurement*
- *Meaningful and understandable – linked to the program logic and the significance of the indicator is understood by the people who will be using the information*
- *Balanced and comprehensive – that is, that they are not too heavily focused on any one aspect of measurement, and provide the full picture*
- *Timely and actionable – that is that they are available within the necessary timeframes for decision making and are within the sphere of influence of the program*
- *Cost-sensitive – the effort and costs of collection does not outweigh the benefit of the information*
- *Resistant to goal displacement – they don’t encourage people to work towards achieving the indicator, rather than the desired program outcome*
- *Clear regarding preferred direction of movement – clarity about whether an increase or decrease is the preferred outcome of measurement.*¹⁴⁶

NACLC will not provide a draft set of performance criteria but will indicate the types and style of performance criteria that we believe would work for Centres and funders alike. NACLC recommends the following 2 areas as being appropriate for further discussion with Centres as performance criteria for the CCLSP.

¹⁴⁵ Deb Michaels and Roseangela Merlo *Op cit*

¹⁴⁶ Deb Michaels and Roseangela Merlo *Op cit*

- Output** *Output indicators track the direct products of a program and are most often measured in terms of the amount of work performed or the number of cases dealt with by a program. For example, the number of advices, the number of clients who receive advices are measures of program output. Most performance measurement systems will report several output measures as they are generally the easiest category of indicator to measure.*
- Effectiveness** *Measures of effectiveness are often called outcome measures. They are probably **the most important category of performance measure because they tell us the extent to which our program has been successful in achieving its goals.***¹⁴⁷

NACLC recommends against the inclusion of efficiency or cost-effectiveness in a new set of criteria. This recommendation is based on the last 5 years' experience with difficulty in interpreting results of these 2 indicators as they are currently formulated. When the SSPI system was in its design phase there were many discussions about the complexity of Centres' funding arrangements and the allocation of CLSP proportion of funds to activities. The problems identified initially have deepened with greater understanding of performance frameworks. Furthermore, the NSW Review analysed funding data and discovered that \$1 provided to an established Centre with other sources of funding produces \$1.50 worth of outputs through the ability to benefit from the infrastructure in place at the Centre etc. This means that even breaking funds down to dollar units does not provide a reliable measure of costs and therefore makes measures of efficiency and/or cost effectiveness unreliable.

Governments are rightly concerned about 'value for money' in programs that they fund. However, performance measures are not the sole means for providing evidence of this. Regardless of the means of obtaining evidence of value for money, stakeholders should first arrive at a mutual understanding of what constitutes 'value for money'. Only then can the best source of evidence be found. It could be that the report *The Economic Benefit of CLCs* is sufficient to determine 'value' in this case.

NACLC has suggested that Output and Effectiveness may be the most performance appropriate indicators for CLCs. Output has been put forward because Output is an accepted and well-developed reporting requirement in the current set of CCLSP accountabilities. Once the Program Logic has been agreed, it could be that there may be additional items to be included in an Output indicator or other data items that are no longer useful. New reports may also need to be developed for CLSIS. Nevertheless, the concept of an Output indicator is not only understood by all but the information produced in relation to outputs is used widely which is also points to its of its validity as a potential Performance criterion.

There is an important caveat though to the use of CLSIS data as the tool for measuring Output and it has been referred to elsewhere in this Submission. That is, there are major variations in the understanding of the core CLSIS data items at Centre level and so there are still significant differences in data collection practices which produces skewed results. However, CLSIS data is still useful as an 'Indicator' as opposed to a 'measure'.

Effectiveness is directly linked to results. It is the key criterion in an outcomes-based system and the indicator that NACLC recommends be focused on. Effectiveness is another indicator that can be readily understood and that all stakeholders have an interest in. Did the intervention work? If so, how did it work and well did it work? Information (and not a

¹⁴⁷ Deb Michaels and Roseangela Merlo *Op cit*

numeric result from a formula) produced by an Effectiveness indicator will be useful to Centres and funders alike.

Like all performance indicators, a common understanding of an Effectiveness indicator will have to be arrived at, based on the Program logic, before it can be determined what should be included in this indicator. It is likely that there will be several aspects to it and that it may be different according to the type of service or centre.

How will the performance criteria be used?

*Positive not punitive Performance measurement systems should be positive, not punitive. The most successful systems are not "gotcha" systems, but learning systems that help identify what works and what doesn't so as to continue with or improve on what's working and repair or replace what's not.*¹⁴⁸

Once the performance criteria have been derived from the Program logic, which has been developed through a collaborative process, it is necessary to agree on how they will be measured and to describe what constitutes acceptable performance. Following the development of a well-articulated and mutually agreed description of acceptable performance it is necessary to determine a process for assisting a Centre that may not meet the criteria. NACLC recommends that for a Centre that may not meet the criteria, assistance be provided to help them to improve their performance. NACLC notes that this is how the Department operates with Centres that are not fully compliant under the requirements of the current Service Agreement.

4. A Performance Indicator model

NACLC recommends the Legal Services Corporation (USA) Performance Criteria¹⁴⁹ as a model that could be used as a starting point for the CCLSP.

The LSC Model is simple, consistent, easily understood, is useful as an evaluation tool and also has potential for use as a quality framework. It does not pretend to provide the answer or single result by way of a formula but produces information that can be used as evidence of the effectiveness of services provided.

The LSC model is based on the American Bar Association Standards for Providers of Civil Legal Services to the Poor.¹⁵⁰ These standards were first developed in 1961. In 1985 the standards were revised by the whole sector that delivers services to poor - representatives of bar associations, law schools, legal services programs, the Legal Services Corporation and ABA sections and committees. The Standards have been revised at regular intervals since then with the most recent revision done in 2002.

Following are some extracts from Legal Services Corporation Performance Criteria as an illustration of the style and relevance to CLCs.

Background to the purpose of the Performance criteria:

¹⁴⁸ Deb Michaels and Roseangela Merlo *Op cit*

¹⁴⁹ Legal Services Corporation Performance Criteria 2006 Edition

¹⁵⁰ ABA Standards for Providers of civil legal services to the Poor at <http://www.abanet.org/legalservices/downloads/sclaid/civilstandards.pdf>

The LSC has statutory responsibility to ensure the provision of economical and effective delivery of legal assistance by Legal Services programs to eligible persons in all parts of the country, including U.S. territories. Consistent with that obligation, the Criteria are designed to guide the examination of Legal Services programs that provide comprehensive legal assistance to low income persons in a geographical service area, including limited and full representation and other forms of legal services. In addition, the Criteria are designed to provide the basis for evaluation of Legal Services programs that, through a state planning process are designated as providers primarily of limited assistance, such as intake or hotline operations in connection with a comprehensive delivery system that provides a full range of services, including full representation

The LSC intends that the Criteria will continue to be a useful framework for internal program self-evaluations, planning and program development as well as external peer reviews and expert assessments by other funding sources, such as IOLTA programs and government agencies

Description of the design principles of the Performance Criteria:

These Criteria should be utilized with several perspectives in mind:

- (1) The Criteria are designed to be used in program evaluations, self-assessments and external reviews, by peers or other experts.

Ongoing self-assessment and periodic external evaluation by individuals outside of the program with relevant experience and expertise, “peers” or other experts, are important ways for programs to gain perspectives and ideas that can make them more effective. The Criteria provide a framework for evaluation of Legal Services programs, to improve program performance and accountability. Within this framework, peers and other experts can offer judgments about program effectiveness. The Criteria do not themselves present quantitative standards. The vision behind the original Criteria remains applicable: by **providing a single framework for structured evaluations by peers or other experts, the Criteria support a consistent national system for measuring program performance.**

To promote utility as a measurement device, in each performance area the Criteria express three levels of increasing detail: (1) the individual *criteria* themselves, which describe in broad terms the desired effectiveness for that area; (2) the *indicators*, a set of specific markers or factors, which are suggestive of whether the criteria are being met; and (3) the *areas of inquiry*, a third level of detail, which provide specific guidance to reviewers in terms of questions to be asked and topics to be examined. Both the indicators and the areas of inquiry are intended to be illustrative of factors to be considered for each criterion. It is not required that all aspects of indicators and areas of inquiry be examined, nor should reviewers be limited to them. **At the heart of the idea of review by experienced peers is the conviction that such experts are able to supply additional factors on their own and make appropriate judgments about areas to pursue based on circumstances of the particular program.**

- (2) The Criteria are designed to take account of the reality that Legal Services programs do not have sufficient resources to provide comprehensive services that fully meet all of the major civil legal needs of low-income people in an entire service area.

Nationally, funding limitations prevent Legal Services programs from meeting more than a fraction of the need for their services. As a consequence, such programs continually must make difficult choices among very important needs and possible activities, and constantly face tradeoffs in which an increased commitment in one performance area may mean a lessening of emphasis in another. The Criteria are constructed with the awareness that at current resource levels programs may not be able to achieve the maximum theoretically possible in each of the major performance areas. In conducting assessments under the Criteria, reviewers must keep in mind that programs are compelled to balance competing needs: to assist as many as possible; to have maximum

effectiveness for those who are clients; to have the broadest beneficial impact on the communities they serve; and to excel in each of the four performance areas.

The combination of limited resources and comprehensive responsibility for an entire service area creates a duty to focus on the most pressing civil legal needs. This concept of focusing on *most pressing civil legal needs* is central to the Criteria as a way of addressing the choice and triage compelled by less than full funding.

(3) The Criteria focus particularly on results and outcomes.

The Criteria emphasize looking at (a) the outcomes and results of program activity for clients and the low-income population, (b) processes and systems, and (c) other “input” factors such as staff experience, equipment, office space, research capabilities, and many more. **While results and outcomes for clients are central, examination of systems, processes, and inputs is also important, since their presence makes it more likely that successful outcomes can be replicated consistently over time.**

(4) The Criteria embody a *dynamic* vision of program work, related to the specific needs, resources and situations in each particular community.

Perhaps most importantly, the Criteria are driven by a vision that a highly effective program is, within the limits of its resources, continually engaged in a dynamic process involving planning, delineating objectives, working to achieve those objectives, assessing results, and incorporating the resultant experience and learning into plans for future work. The most effective programs are constantly in processes of motion and change and are innovative and experimental. They continually adjust their approaches and strategies in response to new circumstances and ongoing judgments about which legal needs are most critical, which avenues do and do not work, what resources are available, what to do about changed laws or court precedent, and many other factors. The most effective programs constantly engage in informal assessment, and periodically incorporate more formal evaluative processes. To capture this dynamism in the evaluation framework, the Criteria begin with an examination of the effectiveness of the program’s assessments of legal needs, and follow a logical flow: identification of the most pressing problems; setting goals, priorities and objectives; developing delivery and advocacy strategies; targeting resources based upon the most pressing legal needs; implementing the objectives and working toward the desired, expressed outcomes; and then assessing and evaluating the effectiveness of the efforts before making a new determination of need and going through the entire process again.

The Criteria contemplate an assessment process that **takes full account of the different situations in each program and community. They make no effort to predetermine which legal needs or types of cases are most important, what kinds or levels of service should be provided, or how specific cases should be pursued. Such categorical and quantitative absolutes are not possible or helpful, given the enormous variety in circumstances from community to community.** Similarly, there is no strict checklist of specific processes, systems or factors, the presence or absence of which define whether or not a program is effective. These Criteria, however, collectively reflect LSC’s sense of current best practices that promote delivery of high quality legal services.

The structure of the Performance Criteria is that at the highest level there are Performance Areas. Within each Performance Area there are a set of Criteria. Each Criterion has a set of Indicators. Each Indicator is descriptive and it is assessed by means of a list of questions titled Areas of Inquiry. Following are the Performance Areas:

Performance Area One. Effectiveness in identifying the most pressing civil legal needs of low-income people in the service area and targeting resources to address those needs

Performance Area Two. Effectiveness in engaging and serving the low-income population throughout the service area

Performance Area Three. Effectiveness of legal representation and other program activities intended to benefit the low-income population in its service area

Performance Area Four. Effectiveness of governance, leadership and administration

Performance Area Two follows which illustrates the criteria, the Indicators and the Areas of Inquiry.

PERFORMANCE AREA TWO. Effectiveness in engaging and serving the low-income population throughout the service area.

A program must have effective relations with its clients, on both an individual and service area-wide basis. Performance Area Two sets forth the core values and tenets for creating and maintaining effective relations with clients.

Criteria

Criterion 1. Dignity and sensitivity. The program conducts its work in a way that affirms and reinforces the dignity of clients, is sensitive to clients' individual circumstances, is responsive to each client's legal problems, and is culturally and linguistically competent.

Criterion 2. Engagement with the low-income population. The program is engaged effectively with the population eligible for its services, including major and distinct segments of that population and, where appropriate and feasible, incorporates perspectives from that population and its major segments in its work and operations.

Criterion 3. Access and utilization by the low-income population. Consistent with its goals, objectives and strategies, a program should, within the limits of its resources, be accessible to and facilitate effective utilization by the low-income population in its service area, including all major segments of that population, and all categories of people who traditionally have had difficulties in getting access to or utilizing civil legal assistance.

Criterion 1. Dignity and sensitivity. The program conducts its work in a way that affirms and reinforces the dignity of clients, is sensitive to clients' individual circumstances, is responsive to each client's legal problems, and is culturally and linguistically competent.

Indicators

Consistent with the applicable rules of professional conduct and funding requirements, and within the limits of the legal assistance that the program has agreed to provide a particular client, the program identifies and attempts to achieve each client's objective.

Program operations are carried out in ways that affirm client dignity and are sensitive to client circumstances.

The program has effective methods to assess clients' reactions to its services, and addresses problems identified through such assessments.

Legal Services programs in a state, and to the extent feasible other legal assistance providers in that state, collaborate so that clients do not experience multiple referrals before they reach the provider that will offer the maximum level of service.

Program services, communications and activities are conducted in a culturally and linguistically competent fashion, and reach the significant low-income population segments, given the program's explicit goals and objectives and available resources.

The program places primary importance on establishing a relationship of trust and confidence with each client, ensuring that each client understands the scope of representation, adhering to the client's objectives, and informing and consulting with the client about all significant developments in the matter.

Areas of Inquiry

Does the intake policy and procedure reflect a concern for the client's needs? Are office hours convenient, including for those who work, such as being available during lunch or in the evening? How long are clients required to wait for an eligibility determination? For an initial substantive interview? For a determination of case acceptance? Are clients required to return more than once for such determinations? What is done for those for whom access is limited by geography, disability, limited English proficiency, or other factors?

Is telephone intake conducted so as to minimize waiting time and the possibility of lost calls, such as by offering callback or other alternatives? How long are clients kept in queue? Are they offered information during the time in queue?

If representation is limited or denied, how are clients informed? Is there notification of a grievance procedure? Is there referral of clients who are denied service or given limited assistance?

How well does the program keep clients informed of developments in their case? Are clients consulted if a significant change in case strategy is contemplated?

What is the reputation of the program among client and community groups? What do they say about telephone and in-person reception and intake? About the courtesy extended to clients by program staff? How does the program gauge client satisfaction?

From observations of facilities: Are waiting rooms clean and comfortable? Are educational materials available in the waiting rooms? Is privacy provided for interviews, intake (by telephone or in-person), and for client meetings?

Do the Legal Services providers in the state articulate and follow a policy of minimizing the number of times a client is referred from one provider to another? Is this followed by non-LSC funded legal assistance providers as well? Do potential clients experience a seamless and efficient referral from their first point of contact to the eventual provider of service, without unnecessary delay?

Does the program provide cultural competency training for staff? Are the staff reasonably diverse? Do they reflect the diversity of the community served? Does the staff demonstrate cultural sensitivity in their work?

5. What Next?

As much research on Performance Frameworks and outcomes-based models indicates, for an outcomes-based model to produce the information required of it, for it to be an effective tool for governments to monitor and assess their spending, for service providers to get feedback that is meaningful and that contributes to the quality of their service delivery a top-down development strategy should be avoided. There must be agreement to and common understanding of the program logic. It provides clear and useful information for all stakeholders. There is an agreed and articulated expectation of performance. There is an agreed strategy for assisting Centres where full compliance has not been met.

If a collaborative approach is taken to the development of a true outcomes-based system that follows best practice for social service delivery, NACLC believes there will be benefits for all stakeholders in the adoption of an Outcomes-based model. But for an outcomes-based model to work effectively it must incorporate the CLC service delivery model as described throughout this submission and Centres must be resourced adequately.

The next step in this process is to provide to all stakeholders in the CCLSP the internal report that is being produced as part of this Review once completed. If any reforms are recommended and are to be implemented, a working party comprised or representatives of each of the Stakeholders should be formed. The working party should be charged with developing the project to implement the reforms. The same working party should be charged with revising the Service Agreement to reflect any changes.

CLC worker after 30 years of service to community legal centres and their clients -

- It was quite a gift being given the opportunity to work in CLCs, and later, to be paid for it. Our work is stimulating and demanding, just what you want in your work.

These workplaces house good people, who are kind and thoughtful not just about those they work for, but those around them. Our CLC people try to live their own private lives fairly, and generally avoid deliberately harming others. You don't find too many frauds around CLCs. (I exclude my casework from that i.e. those Centrelink fraud cases.) Plastic people don't last in CLCs.

Bullshit artists, yes, we bullshit artists thrive on this. I find it incredibly heartwarming to think that very different people share common goals, and are based all over Australia. I think about people like ... for example. To be thought of in the same sentence as people like ... is quite an honour. None of us truly knows how long he or she will be around, and it feels good to have got the hands dirty, stuffed up a few things, but given it a go.