

27 October 2017



Mr Alan Cameron AO
Cameron Review
Justice Strategy and Policy Division
Department of Justice
GPO Box 31
Sydney NSW 2001

By email: cameronreview@justice.nsw.gov.au

Re: Review of Community Legal Centre (CLC) Services

Dear Mr Cameron

Thank you for the opportunity to respond to the Review of Community Legal Centre Services.

The NSW Council of Social Service (ncoss) works with and for people experiencing poverty and disadvantage to see positive change in our communities. As the peak body for health and community services in NSW, we support the sector to deliver innovative services that meet the growing challenges of the service landscape.

ncoss recently travelled across regional and metropolitan NSW to hear from communities about the barriers they face, and the types of support they need to build a more equitable community free of poverty and disadvantage. In these consultations, access to legal assistance was consistently raised as an area of significant concern for communities, particularly those experiencing disadvantage.

Our submission draws on the feedback we received from these visits. To that end, our response is limited to the Terms of Reference that directly concern funding arrangements, service gaps and the impact this has on people experiencing disadvantage in NSW. If you require further information in relation to our review, please contact Ben Folino, Policy & Research Officer on 02 8960 7905 or ben@ncoss.org.au.

Yours sincerely

A handwritten signature in black ink that reads 'Tracy McLeod Howe'. The signature is written in a cursive style with a large initial 'T'.

Tracy McLeod Howe
Chief Executive Officer

TOR 1: The review will catalogue the type, scope and geographic spread of activities of CLCs in NSW

Community Legal Centres (CLCs) are independent, non-profit community organisations that provide free community legal education, information, advice, referrals and legal representation. They provide a wide range of legal assistance services to people and communities experiencing economic, social and cultural disadvantage and are a vital part of the community and legal sector.

CLCs provide more than legal advice; they develop evidence-based policy and law reform proposals to ensure services run efficiently and remain responsive to community needs. They also perform important outreach work ensuring disadvantaged groups are better able to access legal services.

CLCs also provide a safety net for clients who are ineligible for legal aid and who cannot afford a lawyer. They facilitate access to justice by delivering services that Legal Aid and private practitioners are simply unable to. The services provided by CLCs bridge service gaps and reduce pressure on Legal Aid. They are pivotal in harnessing the goodwill of private practitioners and facilitating pro bono legal clinics.

CLCs should be located wherever practicable, and where they can be most effective in meeting the legal need of their target group. We acknowledge that many CLCs are located where they are because of historical reasons, however most CLCs operate in these locations following extensive review of their operations and align their services to the profile and needs of their changing communities.

CLCs aim to be holistic in their service provision. It is therefore important that they are able to connect with other services to fully address the needs of their clients. It is important for CLCs to be serviced by public transport and in close proximity to medical, social and community support services, as well as the courts and police. Where possible, it is beneficial for CLCs to be near private practitioners, who are usually based in CBD and urban areas, so that they can tap into pro bono assistance.

It is important to note that consideration of socio-economic advantage and disadvantage measures like SEIFA (Socio-Economic Indexes for Area) or household income level do not always appropriately reflect the level of legal need in an area. Many areas have pockets of disadvantage despite having a higher average income level; for example, Redfern and Waterloo have a large proportion of public housing with a large demographic of people living with mental health issues on low incomes. Additionally, where a woman from an 'advantaged area' experiences family violence she may not have access to financial resources regardless of household income.

TOR 2 (b), (c), (e), (f): The review will provide recommendations on the type, scope and geographic spread of activities of CLCs that should be funded by the NSW government, having regard to matters including, but not limited to:

(b) The most significant legal needs experienced by disadvantaged people arising from the operation of State law

NCOSS completed a series of community consultations in metropolitan and regional areas with member and non-member community organisations who represent a diverse and large cross section of people living in disadvantaged communities. In our consultations, we heard that Aboriginal people, people with a disability and people with mental health issues are

particularly vulnerable to legal issues and face significant challenges accessing the right kind of help for their legal problems.

In our consultations, communities identified high levels of legal need in the areas of civil law, child protection, housing, consumer rights, credit and debt, discrimination, social security and employment law. We heard people with a disability or mental health issues face particular challenges around mental health legislation, guardianship, discrimination, housing and social security.

We heard that Aboriginal people face elevated legal need in areas of crime, discrimination, government services (e.g. driver licensing, social security), employment, housing (tenancy and overcrowding) and financial matters. They are also far more likely to have complex legal needs, experiencing multiple intersecting legal and non-legal issues. Communities told us that a significant number of Aboriginal women experience legal issues associated with family violence, which can involve legal issues in family law, criminal law, child protection.

Working with clients with complex needs has implications for service delivery as it takes additional time and resources to 'unpack' the complexity of issues. Many non-Aboriginal lawyers require additional care to ensure they understand all relevant social and cultural factors that impact on their Aboriginal clients. It is therefore important that CLC lawyers are supported to develop strong cultural awareness skills.

It is essential for people with complex needs to receive adequate and appropriate legal services. Without it, the unmet legal need can easily escalate to more significant legal problems and compound existing disadvantage, resulting in imprisonment, poverty, homelessness and unemployment.

NCOSS believes that meeting the legal needs of disadvantaged groups must be a key priority for the NSW Government given that a substantial proportion of the legal issues are encountered within these groups. We also believe that the most effective way to target unmet legal need is through a combination of direct services (advice and self-help) and strategic activity (education, advocacy and law reform), and is likely to include some of the following:

- More highly targeted services to allow for more intensive support for the most vulnerable clients;
- An expansion of civil law outreach programs to communities of high need especially in regional and remote locations;
- More funding and support for targeted community legal education to vulnerable people and communities.

(c) The most significant service gaps in legal assistance service provision to disadvantaged people

Our consultations identified significant gaps in the legal resources available and accessible to people facing disadvantage. We heard for instance, that many legal assistance services for Aboriginal people do not have the capacity to address the multitude of legal needs that present for this group. Legal services are overburdened in the areas of crime and child protection, amongst many other areas.

Currently, some services only have the resources and capacity to focus on criminal matters, leading to significant gaps in service provision for family and civil law. Service gaps are

particularly acute in rural and remote areas, despite a higher vulnerability to legal problems in these communities.

People with disability face several systemic and structural barriers to accessing justice, including physical inaccessibility (such as inaccessible legal offices or courts), lack of support, adjustments and aids (such as lack of Auslan interpreting or hearing augmentation) and lack of legal information and advice in accessible formats.

People with intellectual disability and people with a mental health issues also face specific barriers to accessing justice, including negative assumptions and stereotypes about the reliability of their evidence and their ability to participate in police interviews and court proceedings. There are several gaps in services necessary to deliver access to justice to people with disability. These include a lack of free legal assistance for those facing proceedings in guardianship, administration and mental health jurisdictions, insufficient court support services, and the unavailability of appropriate accommodation for people found unfit to stand trial due to mental impairment.

The implementation of the National Disability Insurance Scheme has increased demand for legal assistance services but there has been a failure to account for this additional legal need and allocate funding accordingly. Recent changes to social security policies, including the shift from Disability Support Pension to Newstart and Centrelink's new online compliance system for raising and recovering debts, has created additional legal need for people with disability and added complexity for those needing to navigate the social security system. The withdrawal of the NSW Government from funding disability advocacy services as a result of the NDIS is likely to result in greater demand for services from CLCs.

We also know that communities in rural, regional and remote areas face a range of geographical barriers when accessing the legal system. These include limited number of solicitors available and additional travelling. In these communities we heard that attracting qualified and experienced solicitors impacted significantly on meeting the needs of vulnerable people. It was noted that high living costs, limited suitable housing, and isolation made it hard to attract and keep legal professionals in these locations.

Communities proposed a range of measures to reduce barriers and improve access to the justice system for vulnerable people, including:

- Investing to enable and support community and Aboriginal legal services to increase access and provide effective culturally appropriate legal services to Aboriginal people;
- Developing community legal education programs to inform and educate Aboriginal people, particularly in remote communities, about their civil law rights;
- Providing financial assistance for Aboriginal people living in rural communities to travel to access legal services and attend court;
- Developing more plain language legal materials specifically in child protection, in consultation with advocates;
- Conducting a regular assessment of disadvantaged people's unmet legal needs.

(e) Whether government-funded services should be provided to a broader group of low income clients, and not just those considered to be at most disadvantage

NCOSS submits that government funded legal services should be broadened to include low income people, and not just the most disadvantaged. Expanding grants of legal aid to low income people is both smart social and economic policy. It would be an effective way of preventing small and manageable legal problems from compounding and escalating into more complex and costly matters. In most cases, early intervention removes the additional burden on the courts and the justice system generally.

(f) Whether funding should be allocated to centres which, because they provide national services in addition to services to NSW clients, are not currently funded as NSW CLCs

NCOSS submits that services such as the Aboriginal Legal Service (ALS), which are largely funded by the Commonwealth, should receive funding from the NSW Government to carry out the high volume of state-based legal work. In consultations, we heard ALS and similar specialist legal services are chronically underfunded and unable to provide a level of service that ensures equal access to justice for their Aboriginal clients. We heard they are constantly having to make cuts and prioritise services. Recently, they made the hard decision to withdraw frontline services from several local district courts and the State Parole Authority, further denying Aboriginal people access to justice.

TOR 3: The review will provide recommendations on funding levels required to enable CLCs to deliver the legal assistance services that the review considers should be provided by CLCs

NCOSS recommended in its [2018/19 Pre-Budget Submission](#) that the NSW Government invest \$24.4 million over 4 years to enable community legal centres and other legal service providers to employ extra solicitors and legal access workers specifically for Aboriginal clients.

To respond effectively and sustainably to the legal needs of their clients, CLCs need to be robust and well-resourced. To that end, NCOSS further recommends implementation of the Productivity Commission's recommendation which calls for an immediate injection of \$200 million by federal and state governments into the legal assistance sector including legal aid commissions, community legal centres and Aboriginal Legal services to maintain their frontline services. According to the Commission, this level of funding would make an additional 400,000 people eligible for civil legal aid grants and services. The amount to be invested in NSW from the figure recommended by the Commission would need to be proportionate to service delivery levels provided in NSW and the level of identified need.