



Towards effective legal assistance

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

September 2018

The Victorian Council of Social Service is the peak body of the social and community sector in Victoria.

VCOSS members reflect the diversity of the sector and include large charities, peak organisations, small community services, advocacy groups and individuals interested in social policy.

In addition to supporting the sector, VCOSS represents the interests of Victorians experiencing poverty and disadvantage, and advocates for the development of a sustainable, fair and equitable society.



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VCOSS acknowledges the traditional owners of country and pays respect to past, present and emerging Elders.

This document was prepared on the lands of the Kulin Nation.



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Executive Summary

The Victorian Council of Social Service (VCOSS) welcomes the opportunity to provide input into the review of the National Partnership Agreement on Legal Services (NPA). Access to justice, including a fair hearing and adequate legal assistance, is fundamental to a fair and inclusive society. Inadequate human rights protection, poor legal services access and inequality before the law can have significant and far-reaching impacts for Victorians facing vulnerability.

Targeted legal assistance, delivered at the right time and the earliest possible opportunity, can help resolve problems that can otherwise escalate, leading to more problems, greater disadvantage and higher costs.

Too many Victorians are missing out on access to justice because they are unable to find affordable, timely, appropriate legal assistance. There is a growing justice gap between people who can identify and enforce their legal rights, and those who cannot. Changes to Victoria's sentencing laws, an increased focus on family violence and more child protection notifications have all contributed to the growing demand for legal assistance.¹

Around 500,000 people miss out on legal help every year in Australia,² and 72 per cent of community legal centres (CLCs) cannot meet demand.³ More than 169,000 people were turned away from community legal centres in 2015-16, a third of whom had no suitable alternative. Community legal sector funding has the largest effect on their capacity to help people.⁴

VCOSS supports making it easier for vulnerable people to seek help in resolving their legal problems, including providing enough funding. All levels of Government should prioritise matching funding to current legal need in a future NPA.

¹ Victorian Auditor-General's Office, *Access to Legal Aid*, 20 August 2014.

² The Australia Institute, *Justice for All*, March 2012.

³ Australian Council of Social Service, *Australian Community Sector Survey 2014*, 2014, p. 20.

⁴ National Association of Community Legal Centres, *National Census of Community Legal Centres; 2014 National Report*, May 2015.

Recommendations

Increase funding for legal assistance

- Increase funding for legal assistance services by \$120 million each year
- Fund for the full costs of quality legal services
- Fund the completion of the CLASS data management system

Avoid red tape

- Standardise legal assistance reporting requirements

Strengthen collaboration

- Ensure National Partnership Agreement funding allocations are transparent
- Provide better guidance for collaborative service planning processes
- Improve data collection and accessibility

Allow systemic advocacy

- Let community legal centres advocate for change

Foster innovative service delivery

- Encourage integrated service and early intervention delivery approaches

Increase funding for legal assistance

Provide necessary funds

RECOMMENDATION

- Increase funding for legal assistance services by \$120 million each year

CLCs provide free legal assistance to everyone, including members of the community facing vulnerability and disadvantage. They are embedded in local communities and work in multidisciplinary ways, through engaging with local community organisations to provide holistic support.

CLCs save money for governments and the whole community because they prevent or reduce legal problems escalating, in turn reducing justice system costs and lowering other service costs, such as in health, housing and social security payments.⁵

On average, CLCs have a cost benefit ratio of 1:18. That is, every dollar spent by government returns a benefit to society 18 times greater.⁶

Current government funding does not meet community legal need. More funding for legal assistance is an efficient use of Australian Government resources. More Australian Government investment in CLCs and legal assistance will have direct benefits for people accessing legal help, and downstream cost savings in the justice system and other government spending.

Compared to other countries, Australia ranks low in funding legal assistance services on a per capita basis.⁷ The National Association of Community Legal Centres has identified that an extra \$120 million from the Australian Government is needed each year⁸ for the legal assistance sector to:

- better align Legal Aid means tests
- maintain existing frontline services
- expand legal assistance in areas of law not previously funded.⁹

⁵ Productivity Commission of Australia, *Access to Justice Arrangements Inquiry Report No 72* (September 2014) 666.

⁶ J Stubbs and Associates for the National Association of Community Legal Centres Inc. *Economic Cost Benefit Analysis of Community Legal Centres*, June 2012, pg. 17.

⁷ Productivity Commission of Australia, *Access to Justice Arrangements Inquiry Report No 72*, September 2014. p. 735.

⁸ National Association of Community Legal Centres, *Submission to Australian Government Federal Budget 2018-19*, 2018. p. 9

⁹ Productivity Commission of Australia, *Access to Justice Arrangements Inquiry Report No 72*, September 2014. p. 30

CLCs are effective, efficient and innovative

- Volunteers contributed over 575,000 hours to CLCs in 2014-15
- In 2014-15, almost 52,000 hours were contributed by pro bono partners to CLCs across Australia
- CLCs leverage better outcomes through collaborations with other services
- CLCs undertake education and early intervention work empowering vulnerable people to prevent and avoid escalation of legal issues

Past NPAs have neglected providing sufficient funding, which remains stagnant or has declined in real terms. This has resulted in an extra \$360 million shortfall in legal sector funding since 2014 and thousands of people turned away from essential legal services.¹⁰

For every dollar spent by government, CLCs return a benefit to society of eighteen dollars

More funding is needed to meet the level of unmet legal need in Australia. VCOSS recommends providing an extra \$120 million each year to legal assistance in Australia.

Fund quality legal services

RECOMMENDATION

- Fund the full costs of quality legal services
- Fund the completion of the CLASS data management system

CLCs carry out many activities and ancillary services required to operate effectively or fulfil reporting obligations, on top of direct service provision. These include providing interpreter services, meeting administrative requirements such as collecting data, implementing national standards, undertaking collaborative service planning, supporting organisation sustainability and completing general administration. These include CLC obligations imposed by the NPA.

For example, in 2017, the Australian Government introduced a new information technology system. The Community Legal Assistance Service System (CLASS) was designed to collect and store data to fulfil NPA reporting requirements. The Australian Government funded the National Association of Community Legal Centres (NACLC) to develop the new system.

¹⁰ National Association of Community Legal Centres, *Submission to Australian Government Federal Budget 2018-19*, 2018. p. 9

However, the funding was insufficient for the task, and no additional funds were forthcoming. Instead, money has been diverted from frontline legal service delivery and CLCs have been forced to work with an IT system not fit-for-purpose.¹¹ Completing the CLASS data management system requires extra funds.

Delivering quality legal assistance services does not occur in isolation. Other ancillary services that are integral to quality services are under resourced, or not resourced at all. The NPA should ensure funding allows CLCs to deliver administrative, information technology and ancillary services necessary for quality frontline legal work, and maintain effective peak bodies to coordinate and support the sector.

¹¹ National Association of Community Legal Centres, *Review of the National Partnership Agreement on Legal Assistance Services 2015-2020: Preliminary Submission*. 2018, p.16

Reduce red tape

RECOMMENDATION

- Standardise legal assistance reporting requirements

CLCs are funded by different national, state and territory programs. Each program often has arbitrary and misaligned reporting requirements, creating unnecessary administrative burdens. The next NPA should anticipate the reporting needs of other funding programs, and create common compliance and reporting requirements for streamlined reporting.

From 2015, the Department of Social Services has provided funding to CLCs to reduce violence against women. This funding is not aligned with the NPA and has different reporting and monitoring requirements.

The National Housing and Homeless Agreement maintains funding and reporting associated with housing and homeless in Australia. The Agreement captures both Commonwealth and State funding streams, standardises reporting requirements and prioritises data improvement. The Agreement is an example of a mechanism that streamlines funding and reporting requirements.

The NPA framework provides an opportunity to consolidate multiple Commonwealth and State Government funding sources and deliver consistency in legal sector funding outcomes. All legal services funding provided by government should be integrated into the standard NPA reporting processes.

Strengthen collaboration

Make decision-making more transparent

RECOMMENDATION

- Ensure NPA funding allocation decisions are transparent

Decisions about NPA funding allocations should be transparent. Current decisions are opaque. In Victoria, as Victoria Legal Aid (VLA) operates as both system manager and legal services provider, transparency in funding decisions helps build trust between Legal Aid and the CLCs it funds.

Funding and monitoring arrangements for reporting differ between jurisdictions. In Victoria, VLA administers NPA funds for the Victoria Government and directly provides legal services. This dual role causes tension in the sector. As one CLC Executive Officer said: “It’s hard to collaborate when you’re competing for crumbs”.

As funding administrator, VLA determines priority areas, sets guidelines for CLC operation and decides on individual CLC funding allocations. In some respects, VLA is well placed to identify system gaps and strategically target shortfalls in service delivery or focus attention on specific areas of need. Alternatively, as a legal services provider itself, Victoria Legal Aid occupies a somewhat incongruous role of “competitor” to CLCs.

It’s hard to collaborate when you’re competing for crumbs

Decisions about legal assistance services funding should be made by way of transparent, consistent and evidence-based models, taking into account data and analysis of met and unmet legal needs.

The justification for decisions made by funding administrators should be publically available, or at the very least, made available to stakeholders engaged in the collaborative service planning process.

Support collaborative service planning

RECOMMENDATION

- Provide better guidance for collaborative service planning

Collaborative service planning produces better system delivery design. It should be governed by clear structures, processes, plans and timetables and documented reasoning. The collaborative service planning process should be more clearly articulated in the next NPA.

The current NPA requires States and the legal assistance sector to plan services collaboratively to inform the distribution of NPA funding to CLCs. Collaborative service planning is currently ineffective, and does not contribute to the NPA's objective and outcomes.¹²

The NPA does not provide specifics on the continuity or regularity of collaborative service planning. It is important for collaborative service planning to occur on an ongoing basis between state governments, legal commissions, community legal services and other key stakeholders.

Federal and state governments should know expenditure on legal services is effective, efficient and appropriate and delivers against NPA objectives, outcomes and outputs. Prescribing top-down service delivery requirements must be balanced with local expertise.

Good collaboration requires developing trust, building relationships and negotiating in good faith. Governments can model collaboration, and create collaborative environments, in their own governance approaches to help support jurisdictional service planning.

Collaborative service planning should be used as the mechanism to consider all issues related to service planning, including establishing a shared 'vision' of the future of direct client service delivery, legal education and areas for systemic reform.

¹² National Association of Community Legal Centres, *Review of the National Partnership Agreement on Legal Assistance Services 2015-2020: Preliminary Submission*. 2018. p. 13

Improve data collection and accessibility

RECOMMENDATION

- Improve data collection and accessibility

Evidence-based service planning requires reliable data. Current data sources are scarce, unreliable or not publicly available. The next NPA should include stronger requirements to reliably collect and analyse legal assistance data. All NPA jurisdictional funding administrators should be required to share available data with legal services stakeholders as part of collaborative services planning.

Legal aid and community legal assistance service delivery data are not contained in the Productivity Commission's annual Report on Government Services. The Productivity Commission should publish jurisdictional data in its Report on Government Services. Governments should collaborate on these reforms.¹³

National data gathered via the NPA should be made publically available by the Commonwealth Government for jurisdictional comparison, and to demonstrate the value and efficacy of the sector. It may also prompt further exploration of the linkages and value created in other areas of service delivery that have not traditionally been associated with legal service delivery, such as health, housing and employment.

¹³ Productivity Commission of Australia, *Access to Justice Arrangements Inquiry Report No 72*, September 2014. p. 33

Promote systemic advocacy

RECOMMENDATION

- Let community legal centres advocate for change

Governments can change laws or policies to remove or diminish interactions with the legal system. Systemic advocacy helps build awareness and support for legislative and policy changes that prevent legal problems and reduces their severity. In many cases, strategic advocacy and law reform can reduce demand for legal assistance services and be an efficient use of limited resources.¹⁴

The NPA currently prohibits funding being used for “lobbying governments or to engage in public campaigns”.¹⁵ Community legal education and submissions to government or parliamentary bodies are excluded from this restriction.

CLCs frequently work with marginalised community members who are not heard in public debate. Promoting systemic advocacy by CLCs raises public awareness and allows CLCs to present issues directly to Government.

Restricting systemic advocacy impedes the change community legal services can create. Systemic change produces long-term solutions, and resolves problems at their source, rather than dealing with individual instances on a case-by-case basis. Good systemic advocacy reduces legal assistance demand in the long term.

The objective of the NPA is a national legal assistance sector that is integrated, efficient and effective, focused on *improving access to justice* for disadvantaged people and maximising service delivery within available resources. Restricting systemic advocacy appears to contradict this goal.

Governments should be alerted to unjust, or poorly operating laws and systems. Systemic advocacy should be a ‘core activity’ of legal assistance services and government funding should be provided for this work.¹⁶

¹⁴ Productivity Commission, *Access to Justice Arrangements*, 2014, p709

¹⁵ Schedule B – Commonwealth Priorities and Eligibility Principles, National Partnership Agreement on Legal Services. 2015-2020.

¹⁶ Productivity Commission, *Access to Justice Arrangements*, 2014, p. 708

Foster innovative service delivery

RECOMMENDATIONS

- Encourage integrated service and early intervention delivery approaches

Legal problems are particularly prevalent among people who have a chronic health issue, disability, single parents, unemployed people and people experiencing homelessness or housing uncertainty.¹⁷

People most vulnerable to legal problems have less knowledge, skills or resources required to deal with legal problems without assistance. This means that help is often delayed and only sought at crisis-point.¹⁸

People's problems are often multi-faceted; legal and non-legal; and complex and interrelated and do not simply draw on narrow legal techniques for problem solving¹⁹. People likely to be excluded for multiple and complex reasons from seeking legal help may make connections with non-legal service providers e.g. homeless or health organisations at other points in the social service system. Legal assistance services should be embedded in places that people seek help.

Health justice partnerships can help people with legal issues identify and solve their problems quickly, often before a problem escalates in complexity and harm. While health justice partnerships are now more common, early intervention partnerships between legal assistance services and a range of other social service providers, including housing and homelessness services and specialist family violence services, can yield similar positive outcomes.²⁰

Jana's story

Jana's abusive partner made her stay in the family home unless she was attending medical appointments.

Her doctor was able to learn of Jana's abuse during a consultation and introduce her to the medical centre's in-house lawyer and family violence advocate, who were able to advise Jana about her options.

The doctor also provided Jana with a medical certificate to show her partner she had been at a medical appointment.²¹

¹⁷ C Coumarelos et al. *Legal Australia Wide Survey; legal need in Australia*, Law and Justice Foundation of NSW, 2012, p. xiv

¹⁸ C Coumarelos et al. *Legal Australia Wide Survey; legal need in Australia*, Law and Justice Foundation of NSW, 2012, p. xv

¹⁹ Moorhead, R., M. Robinson, et al. *A trouble shared - legal problems clusters in solicitors and advice agencies*. DCA Research Series 8/06. London, Department for Constitutional Affairs. 2006

²⁰ WEstJustice, *Restoring Financial Safety: collaborating on responses to economic abuse*, 2018. p.4

²¹ Health Justice Australia, *Partnerships for health and justice in Victoria; a briefing on health justice partnerships in Victoria*, January 2017

The benefits of integrated service delivery and early intervention approaches to legal service delivery are clear. Partnerships between organisations maximise the reach of legal assistance to the most vulnerable.

Where possible, as part of the collaborative service planning process, opportunities should be explored to leverage funding provided via the NPA against other social service funding streams to deliver better legal outcomes for people.

Integrated service and early intervention approaches should be identified within guiding principles for collaborative service planning approaches contained in any future NPA to improve access to justice for disadvantaged people.



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