



Combined Community Legal Centres' Group (NSW)

Submission to Senate Standing Committee on Legal and Constitutional Affairs

Inquiry into Access to Justice

To:
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Introduction

The Combined Community Legal Centres' Group (NSW) Inc. ('CCLCG') thanks the Senate Standing Committee on Legal and Constitutional Affairs ('the Committee') for the opportunity to make a submission to the 2009 Inquiry into Access to Justice ('the Inquiry').

CCLCG is an incorporated association consisting of, and representing, the network of 39 community legal centres ('CLCs') throughout NSW. Community legal centres provide a variety of free legal services to disadvantaged clients and communities across NSW including legal advice, casework, community legal education, law reform activities and referrals.

We understand that the Senate has withdrawn the terms of reference for the Legal and Constitutional Affairs Committee's former inquiry into the judicial system and access to justice and, in its stead, the Senate has referred two separate inquiries: one into Australia's judicial system and the role of judges; and the other into access to justice. We further understand that the terms of reference for the new inquiry into Access to justice require the committee to have particular reference to:

- a) the ability of people to access legal representation;
- b) the adequacy of legal aid;
- c) the cost of delivering justice;
- d) measures to reduce the length and complexity of litigation and improve efficiency;
- e) alternative means of delivering justice;
- f) the adequacy of funding and resource arrangements for community legal centres; and
- g) the ability of Indigenous people to access justice.

This submission specifically addresses clauses (f) and (g), that is:

- The adequacy of funding and resource arrangements for community legal centres; and
- The ability of Indigenous people to access justice.

Previous inquiries and reviews

Whilst we acknowledge and applaud the Commonwealth's commitment to addressing the issue of access to justice at this point in time, we question the need for this inquiry and, in particular, the need to consult with stakeholders on the two issues of funding for community legal centres and ability of Indigenous people to access justice. In the past 10 years, there have been a number of inquiries and reviews concerning access to justice, funding and the funding programs of CLCs, legal aid, and other community legal services providers; there have also been recent inquiries into access for justice for Indigenous people. Some of these inquiries and reviews have had complementary, similar or overlapping terms of reference.

The most recent such review is the Commonwealth Attorney-General's Department's Report, *Review of Commonwealth Community Legal Services Program*, released in March 2008 ('the 2008 review'). The process to produce this report was an extensive and comprehensive one, with a wide range of submissions and views expressed. The report provides a comprehensive set of recommendations to improve the delivery of the Community Legal Services Program ('CLSP').

In 2006, Legal Aid NSW published the *Review of the NSW Community Legal Centres Funding Program Final Report* ('the 2006 review'). This report was commissioned by both the Commonwealth and NSW State Attorneys General. Like the 2008 review, this was an extensive process, in which community legal centres across NSW invested a considerable amount of time and resources. Further, as with the 2008 review, it produced a set of detailed recommendations for the NSW CLC funding program. Since the production of the report of the 2006 review, CCLCG, along with individual community legal centres and other stakeholders, have implemented a number of the recommendations, such as the CCLCG Learning and Development and Aboriginal Legal Access programs. Whilst these programs have been well received, there still exist a large number of recommendations yet to be addressed or implemented.

Our views on the adequacy of funding for CLCs and access to justice for Indigenous people have not changed as the main issues addressed in the above two reviews have not changed, other than that the funding provided is now even more inadequate as not only has it not kept pace with the increased costs of running existing services, but also the need for services has increased.

Prior to the above two reviews, there have been a range of extensive inquiries and reviews. We refer in particular to the terms of reference and Report Recommendations of the Senate Legal and Constitutional Affairs Committee's *Inquiry into Access to Justice and Legal Aid* tabled on 8 June 2004; and the Joint Committee of Public Accounts and Audit's *Inquiry into Access of Indigenous Australians to Legal Services*, tabled in Parliament on 22 June 2005.

The former Inquiry considered, among other things, funding and other issues relating to legal aid, CLCs and Indigenous legal services. It produced a 278 page Final Report including 63 Recommendations.¹ The Committee also presented an Interim Report in this Inquiry on 25 May 2004.

The Committee had previously conducted an inquiry into the legal aid system in Australia, presenting reports in March 1997 (the *First Report*), June 1997 (the *Second Report*) and June 1998 (the *Third Report*). These earlier Reports and the submissions made to the Committee are referred to frequently in the 2004 Inquiry's Final Report.

CCLCG, along with the National Association of Community Legal Centres (NACLC), other State Associations of CLCs and many individual CLCs made extensive submissions to the 2004 Inquiry. As with the 2008 and 2006 reviews, our views still

¹ http://www.aph.gov.au/senate/Committee/legcon_ctte/completed_inquiries/2002-04/legalaidjustice/report/contents.htm

remain unchanged as the main issues have still not changed. The 2004 Inquiry Report made many important Recommendations that still have not been implemented.

The *Inquiry into Access of Indigenous Australians to Legal Services* produced a 113 page Report making 17 Recommendations on the provision of legal services for Indigenous Australians.²

A number of individual CLCs, NACLC and other community legal services including the specialist Indigenous services made submissions to that Inquiry. The views expressed in those submissions have once again, in our view, not changed. The need for additional specialist resources for Indigenous legal services is critical and should be one of the highest priorities for the Australian Government. CCLCG's Aboriginal Legal Access Program has addressed some of the issues, however it is still only in pilot form and needs the time to establish itself to effect long-term positive systemic change in this area. There are still fundamental and critical issues facing Indigenous people accessing justice.

We also refer the Committee to the Australian Parliament's Standing Committee on Legal and Constitutional Affairs *Report of the Inquiry into Older People and the Law*. Having noted that "[T]he Committee considers CLCs to be well placed to provide information, advice, counselling, and advocacy to older people in one location", it made two relevant specific Recommendations (Nos. 38 & 39):

- The Committee recommends that the Australian Government increase funding to the Community Legal Services Program specifically for the expansion of services, including outreach services, to older people by Community Legal Centres.
- The Committee recommends that the Australian Government provide funding to Community Legal Centres to expand their community education role, with a specific focus on upon older people.³

Our position in relation to the 2009 Inquiry

CCLCG and its member CLCs are organisations with extremely limited resources. In view of recent comprehensive similar inquiries and reports, the submissions we have made to them, the considerable amount of resources and time spent on the submissions and participating in the review processes, and the fact that many of the above Inquiries' Recommendations have not been implemented, we are of the opinion that we cannot justify dedicating significant resources to responding in detail to all the terms of reference of the 2009 Inquiry when our position and most of the relevant information is already available to the Commonwealth.

We submit that the first priority for the 2009 Inquiry, and for the Government in this context, is to have regard to earlier submissions and to take steps to implement the

² <http://www.aph.gov.au/house/committee/jpaa/atsis/report.htm>

³ Australian Parliament's Standing Committee on Legal and Constitutional Affairs, *Report of the Inquiry into Older People and the Law*, September 2007, <http://www.aph.gov.au/house/committee/laca/olderpeople/report.htm>

outstanding Recommendations from the earlier Access to Justice Inquiry, and other consistent Recommendations from other Inquiries and Reviews.

The contribution CLCs make to the Australian community

Time and time again, there has been clear recognition of the important and valuable role CLCs play in the community by providing access to justice.

The above recent reviews and CLCs' own research and analysis confirm that CLCs provide a valuable and highly cost effective service reaching their target groups, primarily the disadvantaged and financially and socially vulnerable. For example, the 2008 review:

...confirmed that [CLCs are] providing services to clients who are significantly disadvantaged... 58% received some form of income support, 82% of clients earned less than \$26,000 per annum...⁴

That Review Report highlighted many strengths of the CLC program including:

- Its flexibility which enables responsiveness to emerging client needs
- CLCs' expertise in areas of law that other providers are unwilling or unable to cover
- CLC's multi-dimensional approach to service delivery which is well-suited to assisting people with complex needs and multiple disadvantaged; and
- Sharing of expertise and resources between CLCs which, in turn, promotes cost savings.⁵

This finding was in keeping with that of the Review of the NSW Community Legal Centres Funding Program, which said:

...The program is an effective use of public funds and should continue to be supported by government.

A "key strength" of community legal centres is their "flexibility to design and develop their service delivery strategically on the basis of their knowledge and experience of target communities and their relationships with other legal, welfare and community service providers."⁶

These conclusions (and the need for greater funding for legal aid) were endorsed by the Australian Government in April 2008, when it made an additional one-off funding allocation.

Community legal centres and legal aid provide valuable assistance to disadvantaged people...The Rudd Government recognises that without such support people can be

⁴ Attorney-General's Department's Report, *Review of Commonwealth Community Legal Services Program*, March 2008, p 6

⁵ Ibid.

⁶ *Review of the NSW Community Legal Centres Funding Program Final Report*, commissioned by the Commonwealth and NSW State Attorneys General, published by Legal Aid Commission of NSW, 2006, p 4

prevented from fully participating in society, causing their problems to escalate and entrenching disadvantage.⁷

When considering value for funding dollar, the extraordinary effectiveness of CLCs in garnering additional resources should be taken into account:

CLCs leverage more than \$23 million worth of free legal assistance each year through volunteers and pro bono relationships. More than 2,200 private lawyers around Australia volunteer in CLCs. More than 1600 non-lawyers (law students, other professionals) volunteer in Australian CLCs.⁸

The inadequacy of funding for CLCs

As with recognition of the contribution of CLCs, there has also been clear recognition and acknowledgement of the sheer inadequacy of funding for CLCs to provide access to justice for disadvantaged individuals and communities.

The Final Report of the Senate Legal and Constitutional Affairs Committee's 2004 Inquiry found that CLCs are a crucial part of providing access to justice for all Australians but noted that CLCs appeared to be facing a funding crisis.⁹ This statement is quoted without disagreement in the 2008 review report.¹⁰ That review report gives some useful history of Commonwealth funding for CLCs and the early 2008 position of the major funding program for CLCs, the Community Legal Services Program (CLSP):

The Commonwealth Community Legal Services Program has a long history commencing in 1978 with national funding of \$175,000. ...

Funding for the Commonwealth Community Legal Services Program in 2006–07 totalled \$24.7m, with \$22.1m allocated to 128 community legal centres and the balance used for program support activities. The State contributions totalled \$17.6m (including \$3.7m provided to State only funded community legal centres).

...In 2006–07 the level of Australian Government funding provided to community legal centres funded under the Commonwealth Community Legal Services Program ranged from \$2,741 (South West Brisbane Community Legal Service) to \$786,298 (Women's Legal Resource Centre, New South Wales), with the average being approximately \$173,000.

... The last significant injection of funding into the Commonwealth Community Legal Services Program was \$3.6m in 1999–2000 to establish five new community legal centres in regional and remote areas (Kalgoorlie, Broken Hill, Gippsland, Mt Gambier and Riverland).¹¹

⁷ *Boost for social inclusion through better legal services*, Commonwealth Attorney-General's media release on Review of CLSP and new funding for CLCs, 18 April 2008
http://www.attorneygeneral.gov.au/www/ministers/RobertMc.nsf/Page/MediaReleases_2008_SecondQuarter_18April2008-Boostforsocialinclusionthroughbetterlegalservices

⁸ *Why Community Legal Centres are Good Value*, NACLC, 2008

⁹ Final Report, *Legal Aid and Access to Justice*, p 218

¹⁰ <http://www.ag.gov.au/www/agd/agd.nsf/Page/RWP6DE98B3437EEB6FDCA25742D007B0738>, p 49

¹¹ Attorney-General's Department's Report, *Review of Commonwealth Community Legal Services Program*, March 2008, p 11

It is important to note that apart from the additional one-off funding provided to CLCs in April 2008 by the Australian Government, there has been no significant injection of funding into the sector by the Commonwealth since the funding for the five new centres in 1999-2000. Some (but not many) new or newly government-funded centres have been funded during that time by State Governments (in some areas at least, using fixed term, not recurrent, Public Purpose funds).

In its funding submission sent to the Attorney-General in January 2008, NACLC said:

CLC funding has not kept pace with increased costs. CLCs have experienced an 18% reduction in funding over the last 10 years in real terms. This impacts on outcomes for clients, placing unsustainable stress on the organisations' ability to deliver service. CLCs have had to cut back on staff, service hours and other expenses that support innovation and growth of services.¹²

The inadequacy of CLC funding and the detrimental effect on CLCs' ability to meet client demand has been noted in recent years by a variety of community and welfare peak representative organisations, such as the Australian Council of Social Services (ACOSS):

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.¹³

The Commonwealth's own political party has recognised the funding issues affecting CLCs:

Some of the areas where people are being turned away, include those areas where the need is most acute, including...community legal centres – where 1 in every 5 people who are eligible are being turned away.¹⁴

A significant issue arising from inadequate funding is the disparate and relatively low level of salaries paid in CLCs, particularly for Principal Solicitors and other solicitors. For example, a key finding of the *Review of the NSW Community Legal Centres Funding Program Final Report* was:

Sometimes, Centres only achieve the outcomes they do through the willingness of staff to work at salaries significantly below those paid for equivalent work in other sectors – this is particularly so for solicitors.¹⁵

In CCLCG's view, it is completely inappropriate for the Commonwealth or State Governments to rely on the self sacrifice of community sector workers to achieve the outcomes the Australian Government asserts are essential to its social inclusion program and a fair and just society. In any event, as these Reviews and Inquiries

¹² NACLC, *Community Legal Centres Across Australia – An investment worth protecting, Funding Submission to the Commonwealth Government 2007-2010*, p 1

¹³ Australian Council of Social Services, *Australian Community Sector Survey Report 2007*, http://www.acoss.org.au/upload/news/2102_Community%20Sector%20Survey%202007.pdf

¹⁴ Australian Labor Party, *An Australian Social Inclusion Agenda*, 2007

¹⁵ *Review of the NSW Community Legal Centres Funding Program Final Report*, commissioned by the Commonwealth and NSW State Attorneys General, published by Legal Aid Commission of NSW, 2006, p 5

record, the degree of disparity in remuneration has become so severe in some areas, particularly regional, rural and remote areas, that recruitment and retention have become impossible or very difficult, severely adversely affecting service delivery and the broader aims of social inclusion.

On 18 April 2008, the Attorney-General on behalf of the Australian Government announced a one off allocation of 10 million dollars to support the operation of the CLSP for (Commonwealth funded) CLCs and to help CLCs meet the increasing needs for legal assistance of the most vulnerable members of our community. In his media release announcing the one off funding, the Attorney-General said:

The [CLSP] review confirms the key role the Program plays in assisting members of the community with legal and related problems, and the expertise and innovative approach adopted by community legal centres in providing this assistance.¹⁶

While the CLC sector was grateful for this recognition and additional support, the use to which one off funding can be put is limited. As it is not recurrent, it severely limits the ability of CLCs to, for example, implement long-term projects that develop sustainable and positive relationships with the communities to which the projects are targeted.

Inter-relationship between CLCs and other legal aid funding

Funding for CLCs cannot be properly addressed without consideration of the context in which the centres operate, and factors that affect their clients and their operations. One aspect of this is the inter-relationship with funding for legal aid (and other support services). There is a real need to ensure that there is a whole of sector approach to funding for resources for access to justice.

Many CLC submissions and reviews in the past have documented the increasing demand on CLC services when legal aid is cut, in real or effective terms, and, for that matter, when legal aid policy or resource allocation is changed. The inadequacy of legal aid funding, especially the Australian Government's failure over the last decade or more to match State funding, has had a significantly deleterious effect not only on the legal aid bodies themselves, but on CLCs and, of course, on their clients and potential clients. CLCs help the clients that other service providers do not, or cannot assist.

Increasing funding to CLCs to address the effective reduction in funding over the past decade or more will help CLCs to be able to meet the client demand of that time. However, if other services in their areas are not available and/or are not adequately resourced, then the CLC will experience much higher client demand and they will still be forced to turn away many people who should have access to legal assistance. Already, CCLCG has received anecdotal evidence that the Global Financial Crisis has resulted in increased demand for CLC services, particularly in the areas of employment, credit/debt and housing.

¹⁶ "Boost for social inclusion through better legal services" Attorney-General's media release, 18 April 2008

http://www.attorneygeneral.gov.au/www/ministers/RobertMc.nsf/Page/MediaReleases_2008_SecondQuarter_18April2008-Boostforsocialinclusionthroughbetterlegalservices

Conclusion

In making recommendations arising from this current inquiry, we urge the Committee to have regard to the following:

- There have been a considerable number of extensive and comprehensive reviews and inquiries into CLC funding programs, particularly in the last 10 years, and a lack of response to recommendations made by these reviews and inquiries. Due to this lack of response, CCLCG's views as expressed in these previous reviews and inquiries remain unchanged.
- The consistent and repeated acknowledgement of the immense contribution to, and value of, CLCs in their communities in providing access to justice, including Indigenous people.
- The clear recognition of inadequate funding and resources currently provided to CLCs, as identified by the numerous reviews and inquiries.
- The impact on CLC service delivery of reduced funding to other legal aid providers, particularly Legal Aid bodies. There needs to be a whole of sector approach to funding that enables CLCs to be effective partners in the delivery of access to justice services.