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doing justice

Acting together to make a difference

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Table of contents

Foreword: The need for a new 'justice partnership'

The National Association of Community Legal Centres (NACLC) believes that all Australians want a fair and effective justice system in our country. The burning issue is how to turn this shared aspiration into a reality – how to move from 'talking justice' to 'doing justice'.

Again and again, this issue has been debated, inquired into, reported on and researched. In the 1990s alone, we saw:

1990 National Legal Aid Advisory Committee: *Legal Aid for the Australian Community: Programs and Strategies*

1992 Senate Standing Committee on Legal & Constitutional Affairs: *Legal Aid: For Richer and For Poor*

1993 Senate Standing Committee on Legal & Constitutional Affairs: *The Cost of Justice: Foundations for Reforms*

1994 Commonwealth Access to Justice Advisory Committee: *Access to Justice: an Action Plan*

1995 Commonwealth Attorney General: *The Justice Statement*

1996 Law Council of Australia: National Summit on Legal Aid Funding

1996 National Legal Aid: *Meeting Tomorrow's Needs on Yesterday's Budget: the Undercapacity of Legal Aid in Australia*

1997-98 Senate Standing Committee on Legal & Constitutional Affairs: *Inquiry into the Australian Legal Aid System* (3 reports)

1999 National Legal Aid & National Association of Community Legal Centres: *Towards 2010 – Legal Aid Forum*

Even as we write, other significant projects are underway. Later this year or early the next:

- The Victorian Attorney General will release a 10 year strategy for Justice in Victoria.
- The Law Council of Australia will release a report from its Erosion of Legal Representation' project.
- The Senate Standing Committee on Legal & Constitutional Affairs will conduct an Inquiry into Legal Aid and plans to report by March 2004.

There is clearly no shortage of energy or concern, but it has not yet been harnessed to maximum effect. The time seems ripe for all the key players to come together in a renewed national determination to build a better justice system.

With the release of this paper, NACLC signals our desire and willingness to be part of building a new partnership for justice aimed at delivering better outcomes for all Australians.

We hope others will join with us – so that together we can make a real difference.

1. The pledge of a just society

Australians pride ourselves on our innate sense of justice, embodied in our national attachment to a 'fair go'. We have not always practiced fairness and we have never achieved the ideal of 'the just society', but we have always revered the idea of both. This striving for justice goes to the heart of how we see and define ourselves as a nation.

In every domain – taxation, education, health, Indigenous affairs, aged care, the economy, the environment – people are grappling with the contemporary meaning of fairness, and struggling to construct more robust and sophisticated frameworks and systems to deliver it. The challenge is to develop policies and programs in such a way that people will recognise the final picture as one that is 'fair enough' and hence good enough to be supported. This is a particularly sharp challenge in the law and justice system.

The importance of achieving this outcome cannot be over-stated. Without it, the bonds that tie us together, both as individuals and as groups connected to the larger community, begin to weaken. With it, we can maintain and strengthen an inclusive and democratic nation that works for all Australians.

People involved with the law, in one way or another, have a critically important role to play in this national endeavour. Their special responsibility derives from the fact that the concept of justice lies at the very heart of the meaning of fairness – and the core business of law is justice.

1.1 A call for focused dialogue and action

The National Association of Community Legal Centres (NACLC) serves a network of around 207 free and (mostly) neighbourhood-based community legal centres (CLCs) located throughout Australia in urban, regional and remote locations. This means that we have daily contact with a wider range of people, service providers and organisations than any other part of the legal system.

We practice 'community law' that responds in a unique and effective way to community needs – whether that community is a geographical area or a group of people with similar needs and interests. As such, CLCs have developed an in-depth understanding of how the law and the legal system impact on specific communities within Australia but also on our society as a whole.

This paper sets out our views about some of the main fault lines in the contemporary justice system, and suggests some ways to move forward in tackling them more effectively. It quite deliberately maps out only broad directions for future change in a few key areas because we wish this paper to be a conversation-starter, not a debate-closer.

Our goal is to begin the process of developing more vigorous partnerships based on shared understandings and joint action to build a fairer and more effective system of justice in Australia – one that is capable of delivering better outcomes for more people.

2. The pervasive importance of law and justice

It is critically important that the law and justice system operates fairly and well given that it permeates almost every aspect of individual and collective life.

2.1 The little things of everyday life

The law affects the little things of everyday life as well as the larger things. Often without our conscious awareness, laws and the legal system underlie or influence a myriad of matters that we take for granted such as:

- sending our children to school and protecting them from harm;
- dealing with our neighbours, and their overhanging trees and barking dogs; or
- getting a loan or a plumber.

Most people only really notice or think about the law and its personal impact on their current and future lives when more momentous events occur. Legal issues can encompass the most profoundly important or troubling aspects of a person's life – such as when they or someone close to them:

- dies;
- becomes mentally ill or physically incapacitated;
- seeks a divorce or separates from their family;
- has a small business collapse or cannot repay debts.

Despite the public emphasis on criminal law, most direct interactions with the legal system occur in these areas of family law, civil law and administrative law. Many, if not most, of the dealings that people have with the law occur across counters or in ordinary rooms, rather than in formal court settings. And, when matters do go to court, people overwhelmingly find themselves in the local court or the family court.

2.2 The big things of national life

The law operates on a much larger canvas too. In a very fundamental way, it establishes the shape of a society and its character.

The major operational assumption of our democracy – the checks and balances embodied in the separation of the powers of parliament, executive and judiciary – mostly goes unremarked and unchallenged in Australia. In recent years, however, debates around issues such as native title and asylum seekers, border protection and territorial law, and detention with or without trial, have highlighted the importance of this basic principle within Australian society.

Similarly there have been difficult public debates over criminal sentencing regimes and mandatory detention in the immigration jurisdiction. They have provided a powerful reminder of the high stakes involved for any democracy in the handling of these issues. They have also been a reminder of the balancing act that is central to the system of justice.

2.3 The need for a new policy approach

These debates have generated intense public interest but this has not translated into a similar level of public concern about all parts of the legal system charged with ensuring that 'justice is done'. Yet there are serious inadequacies in many areas that urgently require attention and that NACLC believes should be a strong focus of a new 'justice partnership'.

- There has been a failure on the part of all governments (State, Territory and Commonwealth) over successive periods of office to acknowledge the importance of legal citizenship in modern society. They have failed to produce the policies and resources required to facilitate fair and effective access for all citizens to the justice system.
- Since 1972 the legal system in Australia has expanded dramatically. There are now more laws governing the lives of citizens, and every day seems to bring a new demand for additional laws to be enacted in areas such as child or environmental protection. The need of ordinary people to understand the law, and the difficulties they face in using or following the law, has also grown substantially.
- At the same time as this growth in the legal system, citizens are increasingly required to expertly manage their own legal obligations, for example, to interpret and comply with taxation self-assessment, to estimate and declare their anticipated family income, and to enter into complex contractual obligations.
- The number of people who need assistance to meet these legal requirements tends to be seriously under-estimated. On the other side of the coin, people's capacity to self-finance their need for legal assistance tends to be seriously over-estimated. As a result, the public funds directed to legal aid and other free legal support services fall far short of what is required to guarantee equality before the law and equal justice for all.
- In this context of financial restraints, the more common non-criminal legal needs do not get their

fair share of resources (despite their high personal and social significance) because of the legitimate requirement to protect the rights of those accused of serious crimes.

- Community legal centres are also being placed under greater stress as a result of various changes in their operating environments including more complex management requirements, increased operating costs in areas such as rent and insurance, new industrial awards, and higher levels of community demand. CLCs desperately need relief .
- The Australian Law Reform Commission's 1994 report on *Equality Before the Law* identified Indigenous women as the single most legally disadvantaged group in our society. Some progress has been made since the mid-1990s in tackling this severe and unacceptable level of legal disadvantage. As often happens, this progress has only served to emphasise just how much further there is to go in terms of achieving equality.
- Australia's federal structure of government can create both gaps and overlaps in responsibilities between the Commonwealth and the States and Territories. In areas such as health and education, the resulting problems are being widely acknowledged and attempts made to address them. Unfortunately, the same attention has not been paid to these interface tensions in the legal system. Yet, if the 'jurisdictional divide' is not managed well, it increases the difficulties of responding in an effective and holistic way to people's real legal needs.

This is only a partial listing of problem areas in the legal system. The National Association of Community Legal Centres believes that there is an urgent need for a renewed commitment to the development of more appropriate policies and partnerships so that better justice outcomes can be delivered – both for individuals and our society as a whole.

We acknowledge that other stakeholders may hold different views as to priority areas, and believe these should all be aired and considered as part of the process of seeking broad-based agreement on areas for priority action. Together and through this process, we can develop the strategies required to ensure a fair and effective justice system that balances the needs of all the citizens of Australia and ensures justice for all.

At this point and as part of this process, community legal centres call on other stakeholders to consider our perspective – a perspective that derives from, and has been honed through, our daily work with individuals and communities all over Australia. The remainder of this paper sets out a few key areas that, we believe, require renewed focus and more concerted action.

3. Legal aid – the cornerstone of access to justice

The primary purpose of a legal aid system is to build a fairer system of justice that ensures equitable outcomes for all citizens. To be effective, a legal aid system needs to be:

nationally consistent – providing assistance to people in similar circumstances, regardless of where they live;

comprehensive in scope – covering the full spectrum of legal matters;

adequately funded – giving the requisite degree of assistance to ensure cases can be mounted properly; and

efficiently administered – so that public funds are spent wisely and well.

The Australian legal aid system currently falls short on all these benchmarks – largely, but not solely, due to a number of changes introduced by successive Commonwealth governments in the mid-1990s. As a result, increasing numbers of people who cannot afford a private solicitor:

- can no longer meet the unrealistically tight means and merits tests that Legal Aid Commissions are constrained to apply; or
- find that their matter is not one for which grants of aid are available; or
- have their grant restricted by a financial cap in family law matters, regardless of the individual features of their case.

3.1 Moving to a client-centred funding formula

The changes introduced to the national legal aid scheme during the 1990s, and particularly in 1997, ended the existing bilateral agreements between the Commonwealth and the States under which both parties contributed to the funding pool (mostly on a 55:45 ratio). The State Legal Aid Commissions (LACs) administered the unified system with the Commonwealth also represented.

These agreements had been painfully and progressively established to overcome the illogical situation which had existed previously when the States and the Commonwealth ran separate legal aid systems and which led to unnecessary expenditure on duplicated administrative costs and infrastructure.

One of the critical changes made in the mid 1990s was the Commonwealth's decision to mandate that its legal aid funds were only to be used for priority Commonwealth matters. The irony of this new funding philosophy and formula, with its rigid distinctions between jurisdictions and different types of legal matters, is that it runs counter to notions of 'good practice' in service delivery being pursued by other human service agencies – including other Commonwealth government departments.

In every field except legal aid, the research and evidence is leading administrators and service providers to focus on breaking down program barriers, both within and between departments, and on pooling their funds. The goal is to fit the funding and the service around the person being assisted, not require them to fit pre-set moulds. Other Commonwealth government departments are taking their eyes off jurisdictional boundaries and becoming 'client-centred', knowing that a seamless service delivers better outcomes for both the person and the system.

The efficacy of this client-centred and 'whole-of-government' approach has become much more apparent in recent years. People's legal needs cannot always be neatly compartmentalised into distinct jurisdictions, and do not sit well with a fractured funding system. NACLC believes that abandoning the Commonwealth/State funding divide, which imposes such unnecessary rigidity and inflexibility on how funds can be spent, is a pre-condition to improving the legal aid system in Australia.

If agreement in principle could be reached on this threshold issue, then a dialogue could begin about the appropriate apportionment of funding responsibility between the Commonwealth and the States. NACLC is keen to hear and consider the views of other key players on this issue.

3.2 Increasing the funding pool

The following tables show the amount of funding provided for legal aid over the last 10 years by the Commonwealth (Table 1) and the States and Territories (Table 2). After reducing its contribution to legal aid by $20million in 1997/98 Budget, the Commonwealth has increased its grant each year since 2000/2001. The states are now contributing more to the funding pool than the Commonwealth and the amount contributed has increased by $75.15m, up 217%, with the Commonwealth contribution $2.16m greater than in 1993/94.

TABLE 1: Commonwealth funds for legal aid 1993–2003 ($million)

State/Territory	93/'94	'94/'95	'95/'96	'96/'97	'97/'98	'98/'99	'99/'00	'00/'01	'01/ '02	'02/'03
NSW[1]	38.65	38.35	38.56	41.09	31.31	31.32	31.27	33.89	36.61	39.36
VIC[2]	33.83	34.32	36.85	35.5	33.00	27.80	27.75	27.87	28.07	27.80
QLD	17.13	18.03	18.22	19.80	18.44	18.00	18.02	19.90	21.80	23.70
SA[3]	9.40	9.08	9.51	9.56	8.96	8.96	9.28	9.45	9.90	10.35
WA[4]	11.50	11.40	12.80	12.50	8.30	8.30	8.30	9.00	9.70	10.50
TAS	4.36	4.00	4.25	4.44	3.72	3.72	3.72	4.23	4.14	4.08
ACT[5]	2.42	TBA	2.69	2.71	3.12	3.00	3.00	3.17	3.07	3.92
NT[6]	2.39	2.23	2.28	2.59	2.01	2.01	2.01	2.11	2.42	2.13
Total[7]	**119.68**	**117.4+**	**125.16**	**128.19**	**108.86**	**103.11**	**103.35**	**109.62**	**115.71**	**121.84**

[1]All Figures exclude funding for CLCs except Victoria.
[2]Figures pre 96-97 include CLC funding, 96-97 exclusive of CLC funding.
[3]'93-'94 includes $417,000 for one off Commonwealth project.
'99–'00 includes $320,000 for Expensive Case, $300,000 refunded when case did not proceed.
[4]Figures excluding funding relating to Indian/Ocean Territories Services.
'00-'01 Figure excludes PDR funding of $176,000
'01-'02 Figure excludes PDR funding of $560,000, Expensive Case funding of $74,000 and LBT funding of $50,000.
'02-'03 Figure excludes PDR funding of $110,000, Expensive Case funding of $290,000 and LBT funding of $50,000.
[5]Total Commonwealth and State funding for '95-'96 = $4.6 million.
[6]'92-'93 & '96-'97 Figures include one off payments.
'01-'02 Figures include pre-payment of $201,800
'02-'03 Figures exclude pre-payment of $201, 800
[7]Figures for '02-'03 financial year still subject to audit for some Commissions as at 10/08/03.

TABLE 2: Direct State/Territory grants for legal aid 1993–2003 ($million)

State/Territory	93/'94	'94/'95	'95/'96	'96/'97	'97/'98	'98/'99	'99/'00	'00/'01	'01/ '02	'02/'03
NSW[8]	15.09	17.25	22.38	21.67	23.06	24.77	30.36	34.14	46.18	55.28
VIC[9]	23.94	23.94	24.05	24.22	24.36	24.15	28.14	28.08	31.46	32.56
QLD	9.78	8.69	9.73	10.77	14.14	15.26	17.89	18.22	20.43	20.69
SA	3.29	4.02	4.69	4.52	4.58	6.15	7.88	8.51	9.41	9.69
WA[10]	7.40	7.60	8.20	8.20	10.30	11.50	13.10	12.00	12.80	13.30
TAS	2.23	2.60	2.69	2.73	2.70	2.73	2.74	3.08	2.85	3.00
ACT[11]	1.54	TBA	2.54	1.68	1.76	1.79	1.76	1.89	2.01	2.42
NT	0.66	0.81	0.98	1.14	1.88	1.94	1.88	1.91	2.00	2.14
Totals[12]	**63.93**	**64.9+**	**75.26**	**74.93**	**82.78**	**88.29**	**103.75**	**107.83**	**127.14**	**139.08**

[8]All Figures exclude funding for CLCs, WDVCAP except Victoria.
[9]Figures including funding for CLCs.
[10]'00-'01 Figure excludes $644,000 for expensive cases
'01-'02 Figure excludes $407,000 for expensive cases & $336,000 for Finance Brokers Inquiry
'02-'03 Figure excludes $686, 000 for expensive cases, $291,000 for Finance Brokers Inquiry & $721, 000 for police Royal Commission.
[11]Total Commonwealth and State funding for '95-'96 = $4.6 million.
[12]Figures for '02-'03 financial year still subject to audit for some Commissions as at 10/08/03.

TABLE 3: Total State and Commonwealth grants for legal aid 1993–2003 ($million)

	93/'94	'94/'95	'95/'96	'96/'97	'97/'98	'98/'99	'99/'00	'00/'01	'01/ '02	'02/'03
Commonwealth	**119.68**	**117.4+**	**125.16**	**128.19**	**108.86**	**103.11**	**103.35**	**109.62**	**115.71**	**121.84**
States	**63.93**	**64.9+**	**75.26**	**74.93**	**82.78**	**88.29**	**103.75**	**107.83**	**127.14**	**139.08**

While there have been some increases to the legal aid funding pool in the last decade, the impact of years of inadequate funding is that Legal Aid Commissions are being forced to ration resources through the imposition of unrealistically stringent means and merits tests and reducing the range of legal matters for which grants are available.

In 1992, the Law Council of Australia estimated that an extra $50 million per annum was required simply to restore legal aid funding to a level that would provide assistance to all who were eligible in 1987-88. In 1996, National Legal Aid estimated that restoring funding to 1991 levels would require an additional $64.9 million per annum.

The situation now is that only the very poor and the very well-off can be confident of getting the legal assistance they need. Even the very poor will miss out if their legal problem does not qualify for assistance. Those who can still meet the means and merits tests find that they:

- will only get a grant of aid if their legal matter has been classified as a 'priority' by the Commonwealth or the State;
- will almost certainly have to make an up-front contribution to the cost of their matter if they have any income at all other than a government pension or benefit;
- may have their grant of aid 'capped', and have it run out before their matter is finalised.

In addition to causing grave personal hardships, this situation is also having adverse impacts on other parts of the legal system. The most visible consequence is the increasing number of unrepresented litigants and appellants appearing before courts and tribunals in family and administrative law matters. Forty percent of those appearing in the family court are unrepresented and there are similar levels in other courts

Hidden behind this undisputed fact, however, are untold numbers of people who do not pursue their legal interests or rights at all – simply because they cannot afford to do so. This situation would not be tolerated in other areas of public policy governing basic human services, such as health care or education. It should not be tolerated in the legal area.

The unavoidable conclusion is that the size of the legal aid funding pool must be increased. Without this step, large numbers of Australians will continue to face insurmountable barriers to justice.

Again, the quantum and speed of the funding increase should be a matter for discussion and negotiation, with the views of all key stakeholders being heard and considered.

4. Community Legal Centres – the experts in community law

Community legal centres (CLCs) play a vital and unique role in the national 'mixed model' of legal services delivery.

> *The report [of the implementation advisory group on the review of the community legal services program in Victoria] highlights the valuable contribution that community legal centres provide to the community. They should be supported in that work and encouraged to expand to areas of need.*
>
> – Media release: Attorney General, The Hon Daryl Williams, 1 June 2001

There are now around 207 CLCs Australia-wide, with 129 of them receiving funding under the Commonwealth Community Legal Services Program. The latter group has a nationally consistent data reporting system which records the nature and extent of their work. In the last 8 years, these 129 centres have provided services to more than 1.5 million people throughout Australia in urban, regional and remote areas, and provided over 2.5 million instances of legal advice, information and case assistance.

In the single year of 2002-03, the 129 centres provided services to a quarter of a million people. In addition to their community legal education, policy and law reform work, these centres alone recorded approximately 450,000 individual service interactions, including:

- 262,000 instances of giving legal advice;
- 119,000 instances of providing legal information;
- 33,000 new cases opened; and
- 36,000 cases finalised.

Community legal centres provide an invaluable first point of contact for people who have little or no knowledge or experience of the legal system. While they have an open-door policy, providing basic advice and referrals to allcomers, they particularly serve the growing numbers of people who cannot afford private legal assistance and who do not qualify for legal aid.

4.1 A Unique Law Practice

However, community legal centres are much more than 'gap fillers'. In over 30 years of operation, they have developed specialised expertise and a unique mode of service delivery that is particularly well suited to meeting the complex legal needs of the diverse communities that form Australian society.

While community legal centres provide legal assistance in most areas of law, nationally, they most commonly provide assistance in the fields of family law, housing, credit and debt, neighbourhood disputes, motor vehicle matters, social security problems and other administrative law issues. The legal matters that are handled by CLCs in large numbers on an everyday basis fall into areas of law that are not always taught in law schools nor often practiced by the large legal firms (with the exception of some family law).

The needs of CLC clients do not fit well with legal training and the legal experience of most lawyers. They are most usually about the little but important things of everyday life.. This is 'Community Law' and community legal centres are the experts.

4.2 A Unique Partnership

In addition to providing this particular expertise in community law that is in short supply elsewhere in the legal system, CLCs are also centres of innovation in legal service delivery. Their numerous volunteer lawyers and paid staff work together to produce high quality outcomes for both individual clients and society as a whole.

> *The CLC method of service delivery is.... a unique and highly effective system. It is a sophisticated approach which acts in the long term to change individual legal problems into solutions which wider groups can access.*
>
> [Report of the] Review of Community Legal Centre Funding [Queensland], The Wright Consultancy, 1997.

While diverse in terms of their precise aims and character, all CLCs share a common commitment to:

- being accessible to their clients – in terms of affordability, location, opening hours, language and atmosphere;
- adopting a holistic approach in their service provision, and providing an integrated range of services;
- emphasising a preventative approach, including through 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;

- giving community members the opportunity to participate in the management of the centres, and implementing a variety of mechanisms to ensure they are accountable to their communities.

CLCs operate not only in partnership with their local community, but also in partnership with many private practitioners and legal aid lawyers who volunteer their time, expertise and energy to the work of the centres. Government funding of CLCs pays a dividend, in that centres actually leverage extra resources into the system through attracting and organising substantial volunteer labour. Beyond this cost-effectiveness of CLCs, it is in the interests of governments as well as the community for the independence of CLCs to be protected, for this valuable volunteer contribution will dry up rapidly if centres are forced to become 'little arms of the State'.

4.3 Time for a new deal

Community legal centres have provided over one and half million people with legal assistance in the last eight years alone. Given that CLCs resolve most people's problems without recourse to the courts, it is safe to assume that the financial savings to governments have been substantial. The savings in human terms, while incalculable, have been even higher.

Despite this enormous contribution to the public good, the Commonwealth CLC program has had only a modest increase in the total quantum of funds since the mid-1990s, and most of this has been directed towards the establishment of new centres in regional Australia. CLCs agree that there is a great need to improve access to legal services in rural and remote areas but do not believe there should be a trade-off between this need and the equally compelling need of existing services to be properly funded.

CLCs continuously suffer from staff recruitment problems due mostly to the poor wages that centres are able to pay. Centres are able to attract and retain staff because the work they do is both satisfying and worthwhile. But often commitment and a sense of purpose is not enough when trying to manage personal financial responsibilities and experienced staff are forced to move to better paid jobs. If these staff recruitment and retention problems are not addressed or worsen, they will jeopardise the effective and efficient delivery of essential services not provided elsewhere by the legal sector.

Centres are also being placed under greater stress as a result of various changes in their operating environments including more complex management requirements, increased operating costs in areas such as rent and insurance, new industrial awards, and higher levels of community demand). CLCs desperately need relief – and, given their track record, they have a right to expect it.

The primary responsibility for improving the funding situation of CLCs lies with the Commonwealth. The States and Territories should also contribute to the funding pool but their performance in relation to CLCs is very uneven. While States such as NSW, Victoria, Queensland and South Australia have always made significant funds available to supplement those provided by the Commonwealth, three (Tasmania, the ACT and the NT) have contributed nothing to the Community Legal Services Program and West Australia has contributed very little.

It is past time for a more serious and thoughtful approach – one that seeks broad agreement on the need for a progressive increase in the total pool of funds to ensure a well-functioning national network of centres.

The National Association of Community Legal Centres is in the process of producing data and costings to inform this task and will soon be distributing a second paper on the issue. At this point, we are seeking in-principle agreement from other key players that a new approach is needed and a commitment that they will give serious consideration to the specific proposals we will develop.

5. Indigenous Legal Need

Australia's 'First Peoples' still fall well behind the rest of the population on key indicators of economic and social well-being such as health, housing, employment, education and income. This situation, combined with the legacy of dispossession and the impact of discrimination and racism, means that Aboriginal and Torres Strait Islander people have higher levels of legal need than the rest of the community and face particular difficulties in their dealings with the legal system.

Indigenous women are the single most legally disadvantaged group in our society and the Indigenous Women's Legal Projects (IWLP) are a critical area of work within community legal centres. NACLC believes that one of the top priorities of a new partnership should be improving legal access and justice outcomes for Indigenous people and communities and in particular, for Indigenous women.

5.1 Aboriginal Legal Services

More legal casework for Indigenous people is conducted by Aboriginal Legal Services which are managed by Indigenous boards. Most provide a mix of services (advice, legal assistance, community education and policy development) and, in this respect, are similar to mainstream community legal centres. However, they are the primary provider of free legal services to their community, and so in this respect they are similar to Legal Aid Commissions. In most States, the ALS does 80 to 90% of all criminal law casework, and in some States it conducts more than 50% of all civil and family law casework.

Aboriginal Legal Services are extremely cost-efficient. Their current funding amounts to $38 million per annum. A recent evaluation by the Office of Evaluation and Audit (ATSIC) found that it would cost the public purse $25 million more if Legal Aid Commissions were to pay private solicitors to do the work. The report recommended funding increases and also concluded that tendering was not likely to be a successful strategy for improved effectiveness. The Commonwealth Government does not appear to have heeded this report.

There have been six years of uncertainty about whether Aboriginal Legal Services should be put out to competitive tender or their funding shifted to mainstream organisations. During this time, funding has fallen behind other legal aid providers despite the fact that the size of the Indigenous population is increasing much more quickly than the non indigenous population.

While community legal centres recently moved to triennial funding, ALSs were told in July 2003 that they would only receive six months funding. This is a move that will encourage existing staff to leave and deter new staff from joining. ALSs are essential to 'doing justice', but their capacity is being undermined by policy and financial neglect.

5.2 Indigenous women

The Australian Law Reform Commission's 1994 report on Equality Before the Law identified Indigenous women as the single most legally disadvantaged group in our society. The numerous and alarming indicators of the extreme disadvantage of Indigenous women are bound up with socio-economic deprivation, violence, and geographic location and isolation. Cultural factors also have an impact on the full use of legal services, especially in areas where traditional culture is strong and/or where there is a long history of social exclusion. Language barriers also exist for many women, particularly in rural and remote areas.

Some progress has been made since the mid-1990s in tackling this severe and unacceptable level of legal disadvantage. The Aboriginal and Torres Strait Islander Commission (ATSIC) has acknowledged the previous gender bias in the legal services it is responsible for funding, and has now developed and implemented guidelines to improve women's access of women to these standard services. In 1998, it also began establishing Family Violence Prevention Legal Units (FVPLUs) and there are now 14 of these units focusing on a particular town or region. The Commonwealth government too has taken some important steps, including funding 10 Indigenous Women's Legal Projects which are auspiced by existing community legal services. All of these initiatives have a strong preventative focus and adopt a community capacity building approach in addressing both immediate needs and the underlying structural causes.

As often happens, this progress has only served to emphasise just how much further there is to go in terms of achieving equality. There are, for example, no FVPLUs in either Tasmania or the ACT, and there are high-need areas in other States that ATSIC has not been able to service. There is a need for specific supplementation by the Commonwealth of ATSIC funds so it is able to extend this effective initiative.

The same need for extra resources exists in relation to the Indigenous Women's Legal Projects. There is still

no IWLP in Victoria or the ACT, and the funds provided to both Tasmania and West Australia are particularly unrealistic. Given the widely-recognised importance of Indigenous self-determination and the improved outcomes that flow from adopting this approach in human services, ear-marked funds are also required to allow these projects to explore options and avenues to become independent self-managing organisations. This could best be achieved by formally recognising the existence of the National Network of Indigenous Women's Legal Services through funds that support its service development and coordination role.

6. Pro Bono Legal Assistance

6.1 A major contributor to improving access

Australian Bureau of Statistics research in 2001 found that Australian lawyers in private practice reported doing around one million hours of pro bono work annually. This figure needs to be treated with some caution due to the research sample size and methodology, and the fact that not all of this reported free legal work is performed for clients who could reasonably be classified as disadvantaged. Nevertheless, pro bono legal services clearly make a considerable contribution to the legal needs of disadvantaged people.

Pro bono services can be provided in many different ways by both law firms and individual lawyers. They can involve providing direct assistance to individuals – through taking on cases within the law firm, volunteering at community legal services, seconding staff to community legal organisations, or participating in multi-firm pro bono projects such as the Homeless Person's Legal Clinics established by the Public Interest Law Clearing Houses. Alternatively, firms can support the efforts of legal and other community organisations through undertaking legal work for the organisation, mentoring and co-counsel arrangements, training and community legal education, and provision of financial and other resources. Finally, there is increasing interest in marshalling pro bono legal services to provide strategic assistance with law reform and community development projects.

In recent years, various initiatives by major firms, community legal centres and the Commonwealth and Victorian governments have increased the availability and effectiveness of pro bono services. The National Pro Bono Resource Centre, established by the Commonwealth, is currently undertaking a project to 'map' the provision of pro bono legal services nation-wide. Of particular note is the growing number of programs that combine the skills, knowledge and resources of community legal centres with those of law firms and barristers willing to undertake pro bono work. A number of these initiatives are documented in a paper produced by the Centre: Working Together: multi-tiered pro bono relationships between law firms and community legal organisations (available at www.nationalprobono.org.au).

If we are to successfully build on the willingness of the private legal profession to contribute their expertise on a pro bono basis, a number of barriers need to be overcome. These include tackling the apparent mis-match between the areas of law with the highest incidence of unmet legal needs, and those where the private profession is most likely to be expert. Centres and firms have developed some innovative responses to this dilemma and the National Centre has targeted it for further work. Another concern is the lack of clarity about which matters are properly the responsibility of government and which are properly addressed through pro bono services. While this question is unlikely to be resolved definitively, a stronger commitment by government at all levels to funding legal aid and community legal services would pay-off in less cynicism in the profession and elsewhere and a likely greater commitment to pro bono. In other words, government investment in legal aid is very likely to leverage a further significant contribution from the profession.

7. The way forward

The National Association of Community Legal Centres believes there is a growing national imperative to address the issues that have been outlined briefly in this paper. Our sense of urgency is fuelled by our daily contact with ordinary people and communities in every corner of Australia. Our coal-face position means we are continually coming up against the hard cold facts that others can choose to ignore.

Every day in our working lives, we confront:

- the hardships facing people who have been denied legal aid even though they have no hope of affording a private lawyer;
- the problems caused by a legal aid umbrella that is no longer covering many types of legal matters that have great personal significance;
- the sense of social exclusion that comes from people feeling that they cannot 'get justice' and that the system is stacked against them; and
- the inadequacy of our own resources to tackle these problems alone.

We can no longer confront these realities alone – and we certainly cannot change them alone.

The time has come to ask others who share a concern and a responsibility for our system of law and justice – the various arms of government at both federal and state levels, the different parts of the legal profession, peak bodies and service providers in related disciples and sectors, and other interested community groups –to join with us in a new partnership to build a fairer and more effective system that can deliver justice for all.