

1 August 2018

THE REVIEW REPORT – A SUMMARY

Following is a summary of the Review and its recommendations. The review made twelve recommendations, ten of which have been accepted by the Government. This summary notes where recommendations have not been accepted, but otherwise the Review may be considered Government policy.

Our work is excellent

- We do good work. Past reviews of our work have reached positive conclusions regarding our work and these findings are confirmed by this Review.
- We provide invaluable service and are supported by strong governance structures.
- We are “extremely efficient” and deliver our services “at very low cost to government”. We are administratively lean.
- There is little, if any evidence of duplication. Legal assistance services overlap in some areas, but the extent of legal need means that clients are not over-serviced.
- CLCs have strong community ties.
- We are largely located in the right place.
- We cannot operate on less money: “Existing funding levels should be preserved”.

CLCs should generally continue to do what they do

- The Review recognises that CLCs generally do the kind of work that is required by constituents and that delivers benefits to the Government and the people of NSW.
- While the NSW Government should provide guidance on the areas of state law to be prioritised, this should not be prescriptive. CLCs should focus on civil law problems likely to have a significant impact if not resolved.
- CLCs should continue to provide the full range of legal services including information and advice, representation and community legal education (CLE), strategic advocacy and law reform. Service design and mix should be determined by need.
- The NPA definition of financial disadvantage is fit for purpose.
- The NPA list of priority groups is fit for purpose.

- There is further work to be done to improve access by generalist centres to the expertise of specialist centres. An example might be a hotline via which staff in generalist centres, especially those in rural and regional areas, can quickly reach experts in specialist services.
- We should consider co-location of legal and non-legal services to promote access to the supports needed by priority groups.
- Legal needs can vary according to location, so services need to be locally tailored.

Given current understandings of legal needs, the current network is appropriate

- CLCs in NSW are generally in appropriate locations. It is not a problem that the vast majority of specialist centres are located in inner Sydney. Outside of Sydney, generalist centres are in areas of high demand and in places that serve as regional hubs.
- Despite centres being generally located in the right places, there are some service gaps.
- The Law and Justice Foundation (L&JF) tool Need for Legal Assistance indicator (NLAS) is noted. The indicator uses Census data relating to population, income, educational attainment, Aboriginal and Torres Strait Islander people with low income, and people from culturally and linguistically diverse (CALD) backgrounds on low income. The Review observes that, despite the limitations associated with Census data (undercounting of people who do not fill out the census or omit data), the NLAS is regarded by the sector as the best available measure of need for legal assistance.
- L&JF has produced a Collaborative Planning resource to provide a more detailed understanding of legal need. This is useful but “community need for legal assistance services is complex and multi-dimensional” and “should not rely on maps and data alone”. An enhanced resource would be useful.
- Centres should regularly review community profiles to ensure their services are appropriate.

There are gaps in the servicing of legal needs

- The legal assistance sector is underfunded to meet need.
- The Review notes gaps in legal assistance servicing in NSW (not specific to CLCs). These gaps include capacity gaps, underserved geographical areas, areas of law where there is unmet need and priority groups missing out.
- Aboriginal and Torres Strait Islander people in particular were identified as experiencing unmet legal needs.

The funding system needs an overhaul

- Centres are largely funded according to historical practice (past funding decisions, flukes of history). Funding decisions therefore do not necessarily reflect current or relative need.

- The Review notes that in 2017-18 Legal Aid NSW introduced a needs-based funding methodology. This presumably refers only to the one-off funding for that year, but the Review does not make this clear.
- Funding should be based on understanding of legal needs and the capacity of CLCs to respond to legal need.

Funding is already stretched

- Funding for CLCs presently available is fully committed: "... the vast majority of CLCs would not be able to absorb a reduction in funding without compromising frontline service delivery".
- Additional centres should be funded only where extra resources are made available.
- National CLCs that provide services to NSW residents should not be excluded from receiving NSW Government funding. The review names the National Children's and Youth Law Centre and the Animal Defenders Office.
- The Review also notes a number of other NFP legal services operating in NSW that do not receive funding under the CLC program: Justice Connect, Murray Mallee Community Legal Service, Salvos Legal, Shopfront Legal Service, Toongabbie Legal Centre, University of Newcastle Legal Centre and Wesley Community Legal Service. "In principle, all of these services should be eligible to receive NSW Government funding, provided they meet relevant quality standards".
- Not all of these services submitted specific funding requests to the Review, but the combined request of those that did amounts to \$2.2 million. "However, existing NSW Government funding to CLCs is already fully committed. The NSW Government should therefore seek to identify these additional funds to ensure that these services be funded without resulting in funding reductions to existing services". The Review recommends that the Wesley Community Legal Service should be funded from the Responsible Gambling Fund.

The funding model will be changed

- Funding should be for three years.
- Funding should be allocated under an application-based funding model, as operates in Queensland. The model should consist of two parts:
 1. Collaborative service planning that relies on evidence and analysis of legal need and collaboration with other local legal assistance providers. There are two elements here:
 - a. The evidence base should be developed by CLCNSW in collaboration with the L&JF and should draw on the Queensland model. The Queensland model builds on the work of the L&JF and its Collaborative Planning Resource – Jurisdictional

Data, which combines data on the geographical distribution of the NPA's priority groups, the prevalence of legal problems for each priority group, the geographical distribution of those most likely to need legal assistance services for financial or other reasons (e.g. low education, Aboriginal and Torres Strait Islander identity or CALD background). Queensland has built on this work by supplementing the data with other relevant and available information (including location of services, court data and data from relevant government agencies) and legal needs gaps based on local consultations.

- b. Collaborative service planning involving Legal Aid NSW, CLCs, the Aboriginal Legal Service, Financial Counselling NSW and the Tenants Union (representing TAASs).
2. An application process involving mandatory evaluation criteria that reflects the outcomes of the NPA. The process should be evidence-based, consistent (in that the evidence used is the CLCNSW-L&JF assessment of legal need) and incorporate the principles of the NPA. The relevant criteria should be the five from the NPA plus two more:
 - a. Applications should be **targeted** to priority clients with greatest need
 - b. Applications should be **collaborative** and acknowledge other service providers
 - c. Applications should offer services that are **appropriate** to need
 - d. Proposals should emphasise **timely** intervention before problems escalate
 - e. Proposed work should be directed at **empowering** clients and building **resilience**
 - f. **Value for money** should be demonstrated
 - g. Proposals should indicate work that is **efficient** and **innovative**.
 - The review recommended that the process be independent of the legal assistance sector – this would mean it would not be conducted by Legal Aid NSW. The Government has not accepted this recommendation and has determined that the process should be conducted by Legal Aid NSW.
 - CLCS would need to demonstrate deliverables, noting the NPA representative services benchmark, and how, in the context of client needs and location, the model for delivering services would provide value for money.
 - Where centres have overlapping catchment areas they would need to demonstrate how they will rationalise service provision.
 - CLCNSW should produce an application resource guide to help centres apply for funds.

Allocation decisions and management of the CLC program

- The review recommends that Legal Aid NSW should not make allocation decisions but that it should continue to administer funding agreements. The Review suggest a panel involving the Departments of Justice, Premier and Cabinet and Treasury, with perhaps nominees of the Attorney General with knowledge of the legal assistance sector and priority clients. The panel would make recommendations to the AG. The government has not accepted this and has determined that Legal Aid NSW should both make allocation decisions and administer the program.
- Funding available to centres from other sources should not be ignored in considering allocations.
- There is a clear need to fund specialist services. The proposed application system should include them. The case of the EDO is considered, and the Review concludes that EDO should continue to be funded outside of the program but that it should still be required to apply and meet criteria.
- Funding allocations to RRR CLCs should make allowance for the costs associated with delivering outreach services.
- Public Purpose Fund (PPF) allocations are subject to the determination of PPF trustees and provided annually. PPF funds are often used to employ frontline staff or as core funding for centres. However, the unpredictability of the PPF makes it an inappropriate source of core funding. The NSW Government should take steps to improve the predictability of funding sources and amounts and the PPF is not a satisfactory source of core funding or funding of frontline services, while it continues to operate in its current way.
- The notion of a baseline level of core funding is not accepted.
- Reduction of duplication in reporting requirements should be pursued.
- The current funding framework does not reflect outcomes measurement. Instead there is a focus on activities or outputs. This needs to change, and the NSW Government should invest in the development of an outcomes measurement framework.

Civil Justice strategy

- CLCs should play a key role in the implementation of this strategy.