

Submission to Australian Government
Federal Budget 2017-2018



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Overview

This submission is made by the National Association of Community Legal Centres (NACLC), which is the peak body for Community Legal Centres (CLCs) in Australia,¹ to inform Federal Government priorities and decisions with respect to the 2017-2018 Federal Budget.

This submission is brief and builds on the more detailed submission NACLC made in relation to the 2016-2017 Federal Budget that provides further detail on many of the key issues identified.²

On 1 July 2017, Commonwealth funding for CLCs across Australia under the National Partnership Agreement on Legal Assistance Services 2015-2020 (NPA) will reduce by \$12.1 million (equivalent to approximately 30% of total Commonwealth funding for CLCs) from its 2016-2017 level. This reduction will have a significant impact on the ability of the almost 190 CLCs around Australia to continue to provide vital frontline legal assistance to those who most need it.

This Federal Budget presents the final formal opportunity for the Federal Government to reverse the funding cliff and preserve crucial access to legal assistance across Australia for over 200,000 people each year and fund access for many more, including the over 160,000 additional people turned away by centres each year.

CLCs are efficient and innovative providers of free legal assistance to vulnerable and disadvantaged members of the community. Unresolved legal problems generate a range of flow-on effects, including multiple and related problems and significant costs to the government and broader community. Community legal centres, as part of the legal assistance sector, play a crucial and effective role in assisting people resolve their legal problems and in meeting rising demand for legal assistance.

The work of CLCs generates savings to governments and the community as a whole. As the Productivity Commission has noted, 'legal assistance services can prevent or reduce the escalation of legal problems, which in turn can mean reduced costs to the justice system and lower costs to other taxpayer funded services (in areas such as health, housing and social security payments).'³

While some additional Commonwealth funding for family violence-related services has been welcome, it does not offset the broader funding cliff from 1 July 2017. Indeed, some of the CLCs that received the specific funding are likely to receive funding cuts greater than the amount of family violence-specific funding they received, during the same period.

The Federal Government is not and should not be alone in funding or supporting CLCs. NACLC and its members are acutely aware of inconsistent funding of CLCs by State and Territory Governments and of the inadequacy of State and Territory funding in many jurisdictions. Similarly, the sector is working hard to ensure it continues to be efficient and innovative and at exploring ways to maximise available resources.

NACLC recognises the challenges that the current economic environment poses, however a relatively small investment (in Federal Budget terms) in CLCs and the legal assistance sector by the Federal Government will have significant direct benefits for people accessing legal help, and downstream benefits for the justice system and in a range of other areas of government spending.

¹ NACLC's members are the eight State and Territory Associations of Community Legal Centres.

² NACLC's submission to the 2016-2017 Federal Budget is available here:

http://www.naclc.org.au/resources/NACLC_Federal_Budget_Sub_2016_17_Final_PDF.pdf

³ Productivity Commission of Australia, Access to Justice Arrangements Inquiry Report No 72 (September 2014) 666.

Accordingly, in this submission NACLC makes a number of recommendations. In particular, NACLC recommends:

- reversal of the national funding cliff facing CLCs under the National Partnership Agreement on Legal Assistance amounting to \$34.83 million over the period 2017-18 to 2019-2020; and
- an immediate injection of \$120 million per year into the legal assistance sector, consistent with the recommendation made by the Productivity Commission, including at a minimum \$14.4 million per year to CLCs, which over the remaining period of the NPA, until 2019-2020, would equate to an additional \$43.2 million.

This equates to an additional Federal Government investment of \$78.03 million in CLCs nationally between 2017-2018 and 2019-2020.

Table of Proposed New Expenditure for Community Legal Centres

Proposed Budget Measure	2017-2018 Amount (\$ Million)	2018-2019 Amount (\$ Million)	2019-2020 Amount (\$ Million)	Total
Restoration of NPA Funding Reduction	\$12.1 m	\$11.6 m	\$11.13 m	\$34.83 m
PC Recommended Amount	\$14.4 m	\$14.4 m	\$14.4 m	\$43.2 m
Total	\$26.5 m	\$26 m	\$25.53 m	\$78.03 m

In addition, NACLC recommends development of an appropriate process for determining adequate and sustainable longer-term funding contributions to the legal assistance sector by both Federal and State and Territory Governments, in consultation with the sector as well as making a number of other recommendations.

NACLC also makes a number of recommendations in relation to Family Violence Prevention Legal Services and Aboriginal and Torres Strait Islander Legal Services, based on the 2017-2018 Federal Budget submissions made by National Family Violence Prevention Legal Services and National Aboriginal and Torres Strait Islander Legal Services, which NACLC endorses.

NACLC would welcome the opportunity to engage further with the Treasury in relation to these issues. The most appropriate contact person for this submission is:

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Recommendations

Community Legal Centres

Recommendation 1: Reverse the \$12.1 million reduction in funding to Community Legal Centres nationally in 2017-2018, the \$11.6 million cut in 2018-2019 and the \$11.13 million cut in 2019-2020 (amounting to a \$34.83 million cut over the period 2017-18 to 2019-2020) under the National Partnership Agreement on Legal Assistance Services.

Recommendation 2: Implement the Productivity Commission's recommendation from its Access to Justice Arrangements Inquiry and provide an immediate injection of \$120 million per year additional funding into the legal assistance sector, including at a minimum an additional \$14.4 million per year to Community Legal Centres, amounting to \$43.2 million over the life of the National Partnership Agreement on Legal Assistance Services.

Recommendation 3: Commit to implementing an appropriate process for determining adequate and sustainable longer-term funding contributions to the legal assistance sector by Federal, State and Territory Governments, in consultation with the sector.

Recommendation 4: Provide funding for a regular national survey of legal need, similar to the *Legal Australia-Wide (LAW) Survey* undertaken in 2008, to examine met and unmet legal need in Australia.

Recommendation 5: Provide funding for State and Territory focused sector coordination and support, in light of the increased role for State and Territory CLC Associations in assisting the Commonwealth, State and Territory Governments to determine and manage the appropriate funding and administration of CLCs under the National Partnership Agreement on Legal Assistance Services.

Other Legal Assistance Services

Recommendation 6: Reinstatement of the Family Violence Prevention Legal Services as a stand-alone national programme and provide it with a direct allocation of funding.

Recommendation 7: Provide additional funding to Family Violence Prevention Legal Services, including to achieve national coverage of Family Violence Prevention Legal Services commensurate to need (with a specific focus on meeting need in metropolitan and urban locations).

Recommendation 8: Provide the National Family Violence Prevention Legal Services Forum with additional funding and commit to long-term funding and support of the Forum.

Recommendation 9: Reverse the \$18 million reduction in Commonwealth funding to Aboriginal and Torres Strait Islander Legal Services between 2017-2018 and 2019-20.

Recommendation 10: Provide National Aboriginal and Torres Strait Islander Legal Services with additional funding and commit to long-term funding and support of National Aboriginal and Torres Strait Islander Legal Services.

Improving Access to Legal Assistance in Australia

What is the Problem?

People experiencing legal problems in Australia are increasingly unable to access legal assistance. A number of inquiries and reviews have made clear that there is significant unmet legal need in Australia.⁴ For example, the 2015 NACLC National Census showed that over 160,000 people were turned away from CLCs in 2014-2015 in part due to a lack of resources, which is a conservative number.

This is occurring against the backdrop of underfunding of the legal assistance sector (for example, Australia is one of the lower funding nations of legal assistance services on a per capita basis)⁵, and proposed further reductions to funding.

The effect of this is that people who are experiencing legal problems are unable to access legal assistance in many cases, and this crisis in legal assistance is worsening.

What Are Community Legal Centres and How Do They Help?

There are four publicly funded legal assistance providers in Australia—Community Legal Centres (CLCs), Legal Aid Commissions (LACs), Aboriginal and Torres Strait Islander Legal Services (ATSILS) and Family Violence Prevention Legal Services (FVPLS).

CLCs are independent, non-profit, community-based organisations that provide free and accessible legal and related services to disadvantaged members of the community, and to people with special needs or who are for other reasons vulnerable and at risk.

There are 189 CLCs nationally. The CLC sector includes generalist CLCs that provide legal assistance in a wide range of areas of law people in their local community, including in relation to family law and family violence, credit and debt, consumer law, social security, migration, tenancy, discrimination, employment and child protection.

There are also specialist CLCs which provide services to a particular target group and/or in a particular specialist area of law. For example, there are specialist services for women, tenants, consumer and credit, welfare rights, refugees, older persons, children and youth, and people with disability, among others.

Community legal centres provide legal advice, legal information and referrals and casework. CLCs also utilise a range of early intervention and preventative strategies such as community legal education and community development, individual skill building, systemic advocacy and law and policy reform activities. More broadly, CLCs also play a key role in community engagement, developing and facilitating partnerships between legal assistance providers and legal and non-legal services, and developing and maintaining referral networks and protocols.

The service delivery model of CLCs is a holistic one—in addition to employing lawyers and providing legal services, their work is both responsive, in providing legal services as needed, and proactive, in that they attempt wherever possible to assist people in resolving the causes of their legal problems.

⁴ See, eg, Productivity Commission of Australia, *Access to Justice Arrangements Inquiry Report No 72* (September 2014); Senate Legal and Constitutional Affairs Reference Committee, *Access to Justice* (2009); C Coumarelos et al, *Legal Australia-Wide Survey: Legal Need in Australia*, Law and Justice Foundation of NSW (2012); Indigenous Legal Needs Project; ACOSS, *Australian Community Sector Survey 2013: National Report*, ACOSS Paper 202 (2013).

⁵ See, eg, Productivity Commission of Australia, *Access to Justice Arrangements Inquiry Report No 72* (September 2014) 735.

In 2014-2015, the top 3 specialist areas or client groups for CLCs were:

1. Domestic/family violence
2. Homelessness
3. Family law.

CLCs are efficient and innovative. For example, CLCs:

- Coordinate significant **volunteer** involvement, increasing the capacity and expertise of centres. For example, volunteers contributed over 575,000 hours to CLCs in 2014-15
- Attract high levels of **pro bono** assistance from private law firms. For example, in 2014-15 over 51,896 hours were contributed by pro bono partners to CLCs across Australia
- leverage better outcomes through **collaborations** within the legal assistance service system and with other sectors through, for example, the establishment of Health Justice Partnerships
- undertake community legal education and other early intervention work, aimed at empowering vulnerable people to prevent and avoid the escalation of legal issues
- are focused on **continuous quality improvement**, driven through the industry-led National Accreditation Scheme under which all CLCs are required to demonstrate how they comply with key quality standards for service delivery.

The work of CLCs generates **savings for Government and the community**. The Productivity Commission has indicated that the 'positive spill-over or flow on effects to the wider community from providing legal assistance services'⁶ justify government involvement in, and funding of, legal assistance services. It has also highlighted that in many types of disputes, the avoided or flow-on costs are greater than the cost of providing funding to legal assistance services to provide the assistance.⁷

What Challenges Exist in Solving the Problem?

There are a number of challenges to ensuring that people who are experiencing legal problems are able to access legal assistance. In the context of the legal assistance sector, the key challenge is a lack of resources.

Funding for Community Legal Centres

This section provides an overview of the recent Commonwealth funding landscape for CLCs and the funding cliff from 1 July 2017. Briefly, CLCs receive funding from a range of sources, including Commonwealth, State and Territory Governments, philanthropic grants, donations and fundraising, interest, and other activities. However the majority of CLC funding comes from Government.

Overview of the recent funding landscape

- **2013-2014 Federal Budget:** CLCs received additional funding of \$10.3 million over four years.
- **July 2013:** Additional \$33.5 million over four years for CLCs announced
- **Mid-Year Economic and Fiscal Outlook (MYEFO) 2013-2014:** Funding cut of \$43.1 million for legal assistance services over four years from 2013-14 announced, including a cut of \$19.61 million to CLCs, \$13.34 million to ATSILS, \$3.65 million to FVPLS and \$6.49 million to LACs
- **May 2014:** CLCs (other than a small number of CLCs) informed about the exact allocation of cuts to take effect in 2015-16 and 2016-17
- **June 2014:** One-off grants totalling \$1.55 million to 14 CLCs announced
- **2014-2015 Federal Budget:** Additional \$6 million funding cut to CLCs announced, as well as

⁶ Productivity Commission of Australia, Access to Justice Arrangements Inquiry Report No 72 (September 2014) 666.

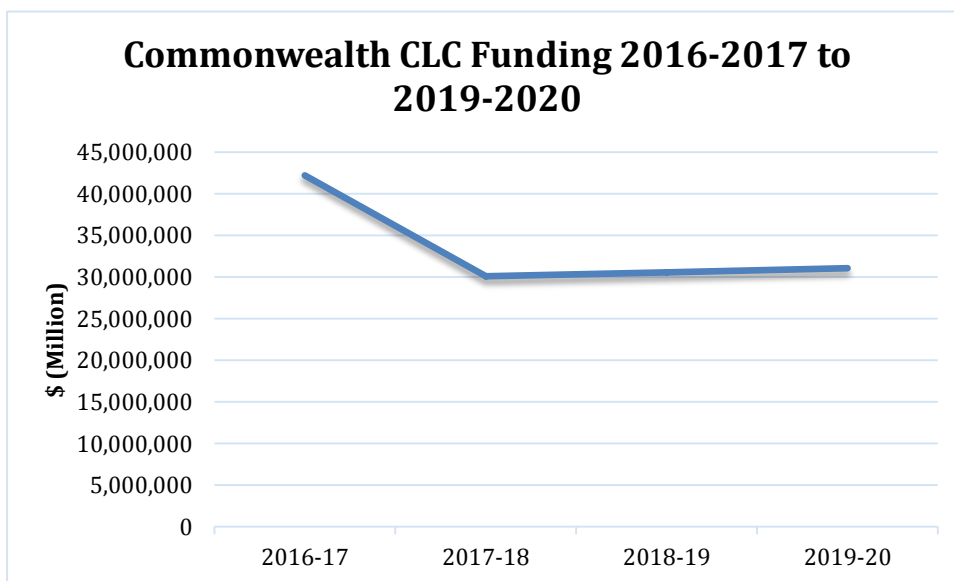
⁷ See, eg, Productivity Commission of Australia, Access to Justice Arrangements Inquiry Report No 72 (September 2014) Appendix K, 1054.

- cuts to specific programs
- **March 2015:** Reversal of some of 2013-2014 MYEFO cuts, reinstating \$25.5 million over two years for legal assistance services, including \$12 million for CLCs.
- **Mid-2015:** National Partnership Agreement on Legal Assistance Services 2015-2020 (NPA) agreed and commences
- **October 2015:** Announcement of \$15 million of the \$100 million Women’s Safety Package to be used to establish 12 new specialist domestic violence units and fund five health justice partnerships within existing legal assistance services located in domestic violence ‘hot spots’
- **October 2016:** Announcement of \$5 million (of the \$30 million funding for legal assistance under the Third Action Plan under the National Plan to Reduce Violence against Women and their Children) to extend Women’s Safety Package pilot projects by 1 year.

The national funding cliff

The National Partnership Agreement on Legal Assistance Services 2015-2020 (NPA) provides \$1 billion over 4 years for Legal Aid Commissions and CLCs. However CLCs only receive \$142.90 million of total NPA funding, and approximately 12% of overall Commonwealth funding for the legal assistance sector. A funding breakdown under the NPA is provided at Appendix 1.

Under the NPA, the 189 CLCs nationally are receiving \$42.2 million in 2016-2017, dropping to \$30.1 million in 2017-2018 and \$30.6 million in 2018-2019 and \$31.07 million in 2019-2020. The reduction in funding levels from 2016-2017 and the last three years of the NPA is \$12.1 million in 2017-2018, \$11.6 million in 2018-2019 and \$11.13 million in 2019-2020.



NACLC understands that the reduction in funding is as a result in part of the cessation of 4-year funding transfer from another program (the Family Relationships Program). Regardless of the origin of the funding cliff however, in practical terms it will result in less funding for CLCs. The Federal Government has the opportunity to address this issue and preserve access to legal assistance for people across Australia.

CLCs and Family Violence-Related Funding

CLCs are a vital part of the legal framework in responding to and addressing family violence. In recognition of this, some CLCs have received specific Commonwealth family violence-related funding in recent years.

Women's Safety Package

In October 2015, the Federal Government announced \$100 million as part of a Women's Safety Package for family violence-related measures. NACLC and the sector welcomed the Government's announcement that \$15 million of the Women's Safety Package would be used to establish 12 new specialist domestic violence units and fund five health justice partnerships within existing legal assistance services located in domestic violence 'hot spots'.

Third Action Plan Funding

In October 2016, the Attorney-General announced the allocation of the \$30 million family violence funding for legal assistance under the Third Action Plan under the National Plan to Reduce Violence against Women and their Children at the COAG National Family Violence Summit. The breakdown of the \$30 million over 3 years (\$10 million per year) includes:

- \$5 million to be shared by the 11 CLCs and 2 Legal Aid Commissions that received funding under the Women's Safety Package to extend it for 1 year
- more than \$18 million to Legal Aid Commissions for integrated duty lawyer and social support services in family law courts
- \$6.2 million for Family Relationship Centres to pilot family dispute resolution for vulnerable families, particularly indigenous and culturally and linguistically diverse families, and
- \$300,000 to the Commonwealth Attorney-General's Department for data analysis across the sector to enhance understanding of domestic, family and sexual violence.

Importantly however:

- this small amount of additional funding for CLCs does not offset the broader funding cliff from 1 July 2017. Indeed, some of the CLCs that received the funding outlined above are likely to receive funding cuts greater than the amount of family violence-specific funding they received, during the same period
- funding for the family violence work of CLCs alone is not sufficient
- the flow-on effects of family violence are clear in a range of the other work CLCs undertake, including for example credit and debt, tenancy, homelessness and access to social security, which means core funding for CLCs is an integral part of ensuring people experiencing family violence have access to the legal assistance they need.

Uncertainty and time spent undertaking funding-related activities

In addition to issues relating to the quantum of funding for the legal assistance sector, this funding has also been characterised by significant uncertainty. This uncertainty continues despite the 5-year NPA being in place, because across jurisdictions the length of service agreements vary, which makes decisions about service delivery, staffing, and office space very difficult. Accordingly, any Federal Government decision to reverse the funding cliff needs to be made as a matter of priority.

These funding issues and the ongoing need for CLCs to undertake funding-related activities including fundraising and applying for grants also reduces the ability of CLCs to dedicate resources to front-line service delivery, or explore innovative service delivery models. For example, the results of the 2015

NACLC Census indicate that CLCs spent over 1,500 hours per week during 2014-15 on funding-related activities.

Impact of the funding cliff

The impact of the funding cliff will differ significantly across jurisdictions. This is in part as a result of the distribution of Commonwealth funding between jurisdictions, and the process and evidence base used by State and Territory Governments to allocate funding and determine the impact of funding cuts.

In the context of a relatively small overall budget for CLCs, funding cuts of between \$11.13 million and \$12.1 million per year over the last three years of the NPA will have a significant impact on CLC service delivery, and therefore on the ability of people seeking legal help to receive they help they need.

At a national level, in responses to the 2015 National Census, CLCs from across Australia reported that the impact of the funding cliff may include:

- complete closure of centres
- reduction in frontline services
- reduction in outreach
- closure of branch offices
- reduction in opening hours or shut down of telephone advice lines
- loss of staff, including specialist positions, and
- increased turnaways, and
- increased waiting times for legal help.⁸

In addition to these centre specific impacts, NACLC suggest that the broader national impact of the funding cliff and reduction in centres and services will be:

- reduced access to legal assistance or justice for hundreds of thousands of people across Australia
- increased demand on already overstretched other legal assistance services and related community services
- increase in unrepresented parties before courts, and
- escalation and spiralling of legal problems, resulting in increased costs to the justice, health, social security and related systems.

As noted above, the capacity of CLCs to provide legal assistance to clients is extended significantly through volunteer and pro bono arrangements and partnerships. Reductions in Commonwealth funding for CLCs will have far reaching consequences for these significant sources of legal assistance. Supervision and training of volunteers and coordination with pro bono partners takes significant time and resources. In an environment where CLCs are facing funding cuts, their ability to continue this work is likely to be reduced, resulting in the loss of not only direct CLC staff assistance to clients but also the hundreds of thousands of hours of volunteer and pro bono time each year. By way of example, NACLC estimates that the total return on investment amount, (that is the monetary contribution of volunteer lawyers and law students in 2013-2014 with a deduction for time spent by CLC staff on induction, supervision and training) was \$8.47 million.

Finally, NACLC considers that the funding cliff and impact of CLC services will undermine Government policy in other areas, including for example in responding to and addressing family violence and elder abuse, key areas of CLC work.

⁸ NACLC, National Census of CLCs, 2015 National Report, available at: <http://www.naccl.org.au/resources/NACLC%20Census%20-%20National%20Report%202015%20-%20FINAL.pdf>

Examples of Impact of Funding Cuts in Specific Jurisdictions

South Australia: Commonwealth funding for CLCs will decrease by \$1.18 million on 1 July 2017 (a 32.8% cut). The results of a competitive tender for funding are due to be announced in March 2017. NACLIC is extremely concerned about the review of CLCs undertaken in 2016 and proposed reforms to the funding and administration of CLCs, including indications that the funding cuts will result in the closure of entire centres, limiting access to legal assistance for people in South Australia.

Western Australia: Commonwealth funding for CLCs will reduce by 32.2% on 1 July 2017. This is in addition to a 9.3% funding cut to WA CLCs upon commencement of the NPA in 2015. The impact of cuts to date and likely impact of the funding cliff includes:

- cessation of outreach services, including court work, with a particular impact on smaller regional centres and rural and remote communities
- inability to take on new casework for prolonged periods (for example one CLC was unable to take on new casework for 6 months)
- reduction in frontline services due to loss of staff
- reduced capacity to undertake early intervention and preventive activities such as Community Legal Education, and
- reduced capacity to leverage and supervise volunteers and pro bono support.

New South Wales: Commonwealth funding for CLCs will decrease by \$2.9 million on 1 July 2017. Proposed funding allocations to individual CLCs have been released by Legal Aid NSW and although they are the subject of ongoing discussions with Government, it appears that some CLCs will face significant funding cuts.

- In Sydney, Redfern Legal Centre faces a cut of around 30% and Kingsford Legal Centre around 20%.
- Across regional NSW, cuts of 20% are expected for Northern Rivers, Elizabeth Evatt (Blue Mountains area), and Illawarra Legal Centres.
- Specialist CLCs likely to face major cuts include the Public Interest Advocacy Centre (possibly 50%) and Women's Legal Service (up to \$300,000).

These cuts will have a devastating impact on centres and their clients. Some CLC outreaches in regional NSW will either close or be reduced from weekly to monthly, with waiting times for clients in some areas stretching from weeks to almost months CLCs.

Queensland: Commonwealth funding for CLCs will decrease by \$1.987 million on 1 July 2017. The results of a tender are due to be announced in March 2017, however the likely impact of the funding cliff includes:

- the number of family services provided by generalist community legal services in a north Queensland regional city could decrease by up to 50%, and
- a number of regional CLCs will need to reduce frontline services (for example one centre estimated it would reduce face-to-face appointments with lawyers by approximately 10-15 appointments per week) close outreach locations and cease a 'Regional Hotline'.

Tasmania: Commonwealth funding for the five CLCs that receive Commonwealth funding in Tasmania (in the south, north and north-west) will decrease by \$436,000 on 1 July 2017, a reduction in Commonwealth funding of 31.6%.

Victoria: Commonwealth funding for CLCs will decrease by \$2.9 million on 1 July 2017. CLCs have been provided a notional allocation of funding consistent with proportionate existing Commonwealth funding. On this basis, the impact of funding cuts in some centres includes:

- Darebin CLC-70.3% of their Commonwealth funding, meaning 150 women they would otherwise have been able to assist with family law and family violence matters will miss out on help
- Goulburn Valley CLC- all Commonwealth funding, which equates to one full-time lawyer providing family violence, family law and generalist legal help in Shepparton, a high needs area which is also home to the largest population of Aboriginal and Torres Strait Islander people in Victoria outside metropolitan Melbourne
- Westjustice (Western CLC)- \$170,000 which means it would have to close all youth law services including a clinic held at the Council Youth Centre in Wyndham and the loss of a staff member dedicated to working with newly arrived communities in an area with a high number of refugees and newly arrived persons.

Northern Territory: Commonwealth funding for CLCs will decrease by \$450,000 (a cut of 31.4%) on 1 July 2017, which is likely to result in cuts of between \$33,000-\$150,000 to the 4 Commonwealth funded centres. Many CLCs in the NT are relatively small and the cuts will have a significant impact on frontline service delivery. For example, one CLC has a team of four community lawyers and the loss of funding for one position will result in a reduction of at least 25% of frontline services. For another centre the cut equates to one full-time non legal position from a total of 3.5 positions, with a significant impact on people accessing legal assistance in the NT.

Australian Capital Territory: Commonwealth funding for the two Commonwealth funded CLCs in the ACT will decrease by \$287,000 (a cut of 29.4%) on 1 July 2017, or a \$350,000 cut from funding in 2015-2016. For Canberra Community Law, the funding cut will impact on its ability to provide specialist legal services in areas including social security and disability discrimination law as well as on its StreetLaw service. Women's Legal Centre ACT estimates that 300 low-paid women in Canberra would have to go through family and employment disputes without legal assistance as a result of the funding cut.

What Is Needed?

There are a range of Budgetary, administrative and policy steps the Commonwealth Government could take to address the crisis in legal assistance.

At the outset NACLC notes that the importance of the Government working cooperatively and collaboratively with the legal assistance sector to address these issues cannot be underestimated. Drawing on the significant experience and expertise of bodies such as NACLC, NFVPS, NATSILS and NLA in decision-making, including policy formulation, would assist the Government and result in better outcomes for vulnerable and disadvantaged people seeking legal assistance across Australia.

More specifically, NACLC outlines a number of key recommendations for reform relating not only to CLCs, but the legal assistance sector more broadly.

Community Legal Centres

There are three short-term funding measures NACLC recommends. There are a range of savings and revenue measures that could offset the cost of any additional funding to the legal assistance sector. For example, there are a number of large scale revenue measures Government could consider outlined by bodies such as ACOSS.

1. Reversal of funding cuts

In light of the significant impact of funding cuts nationally to CLCs from 2017-2018, NACLC recommends that the Government's first step in addressing the crisis in legal assistance should be to reverse the proposed cuts. The additional funding should be included under the NPA, and therefore subject to the FAM and decisions about allocation to individual service providers arising from jurisdictional service planning processes.

Recommendation: Reverse the \$12.1 million funding cut to Community Legal Centres nationally in 2017-2018, the \$11.6 million cut in 2018-2019 and the and \$11.13 million cut in 2019-2020 (amounting to a \$34.83 million cut over the period 2017-18 to 2019-2020) under the National Partnership Agreement on Legal Assistance Services.

2. Immediate injection of funding consistent with Productivity Commission recommendation

The Productivity Commission was clear—there is a need for an immediate injection of \$200 million per year into legal assistance, with 60% contributed by the Commonwealth Government and 40% contributed by State and Territory Governments. Accordingly, NACLC recommends that the Federal Government provide an immediate injection of \$120 million funding per year into the legal assistance sector.

The Productivity Commission did not recommend how that funding amount should be allocated between legal assistance providers. NACLC does not necessarily consider that the existing proportionate allocation of funding between legal assistance providers is appropriate or should be continued. This is something that should be considered as part of the process for determining an appropriate quantum as discussed below.

However, for the purposes of determining an appropriate allocation of the recommended \$120 million immediate funding injection, if existing proportionate allocations were retained under which CLCs receive 12% of total Commonwealth funding for legal assistance, this would equate to an additional \$14.4 million for CLCs per year. Over the remaining period of the NPA, until 2019-2020, this would equate to an additional \$43.2 million.

To avoid unnecessary administrative burden and ensure consistency in decision-making processes about funding, in the case of LACs and CLCs any additional funding should be provided through the NPA, rather than as a separate funding allocation with separate funding agreements, as was the case with the Women's Safety Package funding provided to CLCs.

Recommendation: Implement the Productivity Commission's recommendation from its Access to Justice Arrangements Inquiry and provide an immediate injection of \$120 million per year additional funding into the legal assistance sector, including at a minimum an additional \$14.4 million per year to Community Legal Centres, amounting to \$43.2 million over the life of the National Partnership Agreement on Legal Assistance Services.

3. Determine the appropriate quantum of funding

NACLC is supportive of one of the key intentions behind the Federal Government's legal assistance reforms, including the NPA- the introduction of a transparent and publicly accountable funding model that takes into account evidence-based research on legal needs (met and unmet) in making funding decisions.

However, there is a clear gap. There has been and continues to be no transparent, public or evidence-based assessment of what the overall quantum of funding for legal assistance should be in Australia to

meet legal need. As the Productivity Commission has suggested, ‘the total quantum of funds allocated is not sufficient to achieve governments’ stated priorities’⁹ and that ‘the global funding envelope provided to legal assistance providers by Australian governments should be broadly related to the costs associated with meeting these priorities’,¹⁰ which is not currently the case.

In addition, funding for CLCs and the legal assistance sector continues to be piecemeal, resulting in unnecessary administrative requirements, red tape and uncertainty.

As a result, NACLC suggests that to properly inform decisions about allocating funding between jurisdictions using the Funding Allocation Model or the right mix of services/clients/areas of law/locations,¹¹ it is necessary to re-examine how decisions are made about the quantum of funding for legal assistance, to quantify the existing extent of underfunding and to determine an appropriate and sustainable quantum of funding in the long-term in light of legal need.

Accordingly, NACLC recommends a cooperative approach between the Commonwealth, State and Territory Governments and the legal assistance sector to determine what the appropriate quantum of funding is for the sector, what the contribution of Commonwealth, State and Territory Governments should be to that quantum, and the appropriate allocation of the quantum to the four key legal assistance providers. Given the variety of Government sources from which CLCs receive funding, a whole-of-government approach to such a determination is vital.

Importantly, the assessment of legal need (both met and unmet) and the need for additional assessment at a national level¹² and existing research and modelling done by the Productivity Commission, must be key considerations in any such process. In particular, there is a need for funding of a regular national survey of legal need, similar to the *Legal Australia-Wide (LAW) Survey* undertaken in 2008, to examine met and unmet legal need in Australia. It is important that the legal need of particular groups, including Aboriginal and Torres Strait Islander people is considered as part of the survey.

Recommendation: Commit to implementing an appropriate process for determining adequate and sustainable longer-term funding contributions to the legal assistance sector by Federal, State and Territory Governments, in consultation with the sector.

Recommendation: Provide funding for a regular national survey of legal need, similar to the *Legal Australia-Wide (LAW) Survey* undertaken in 2008, to examine met and unmet legal need in Australia.

National and Jurisdictional Support and Coordination

Under the NPA, State and Territory Governments are now responsible for determining the allocation of Commonwealth funding to individual CLCs. However, approaches to the implementation of the NPA vary significantly between jurisdictions and NACLC and State and Territory CLC Associations are concerned about the way in which some State and Territory Governments have sought to make decisions about the allocation of Commonwealth CLC funding to individual centres.

⁹ Productivity Commission of Australia, Access to Justice Arrangements Inquiry Report No 72 (September 2014) 741.

¹⁰ Ibid 743.

¹¹ “In an environment of constrained resources, it is important to establish that legal assistance providers are providing the ‘right’ mix of services, to the ‘right’ clients, in the ‘right’ areas of law and in the ‘right’ locations” and “resources are deployed where legal needs are greatest and legal problems have the most significant consequences”: Productivity Commission of Australia, Access to Justice Arrangements Inquiry Report No 72 (September 2014) 704.

¹² See, eg, suggestion by the Productivity Commission that: “The *Legal Australia-Wide (LAW) Survey*, undertaken in 2008, examined legal need and responses to legal need. A more contained survey should be repeated on a regular basis’ and ‘Regular surveys should be undertaken to better measure unmet need of particular groups, including Aboriginal and Torres Strait Islander people’: Productivity Commission of Australia, Access to Justice Arrangements Inquiry Report No 72 (September 2014) Appendix J, Table J.1.

NACLC plays a key national coordination and support role in relation to the NPA, assisting State and Territory CLC Associations and centres across Australia in relation to funding and NPA implementation issues. NACLC also provides particular assistance to the CLC Association and centres in jurisdictions that do not have currently have a funded CLC Association.

The Federal Government is now reliant on States and Territories to allocate Commonwealth funding under the NPA. However, no additional Commonwealth funding was provided to CLCs or CLC Associations across jurisdictions to provide expert input and guidance as part of State and Territory collaborative service planning and processes around the allocation of Commonwealth funding.

Good practice, effective and evidence-based approaches to collaborative service planning and funding allocation should involve the relevant CLC Association in the jurisdiction and/or NACLC. Accordingly NACLC suggests that the Federal Government provide the following:

- funding for State and Territory CLC Associations to undertake Commonwealth funding-related work at a jurisdictional level, and
- funding for NACLC to support the ongoing operation of the National Accreditation Scheme and other sector support work, including in particular support to CLCs in jurisdictions without funded CLC Associations.

Allocation of the funding to either NACLC or the State or Territory CLC Association should be decided following consultation with NACLC and the relevant State or Territory CLC Association.

Recommendation: Provide funding for State and Territory focused sector coordination and support, in light of the increased role for State and Territory CLC Associations in assisting the Commonwealth, State and Territory Governments to determine and manage the appropriate funding and administration of CLCs under the National Partnership Agreement on Legal Assistance Services.

Community-Controlled Services for Aboriginal and Torres Strait Islander Peoples

It is NACLC policy and firm belief that the most appropriate providers of legal services for Aboriginal and Torres Strait Islander peoples are the specifically dedicated ATSILS and FVPLS staffed and managed, as far as is possible, by Aboriginal and Torres Strait Islander people.

Aboriginal and Torres Strait Islander peoples have experienced, and continue, to experience, historical marginalisation from mainstream services, and generally prefer to and feel culturally secure in attending Aboriginal and Torres Strait Islander specific services. In some instances these providers may be unable to assist a client because of real or perceived conflict, lack of resources, or because it is a specialist area of law that is outside their practice expertise, in which case a CLC may offer assistance.

However given this, and the significant legal need of Aboriginal and Torres Strait Islander people, funding and support for the FVPLS and ATSILS should be a vital component of the Government's commitment to addressing the crisis in legal assistance.

Family Violence Prevention Legal Services

Family Violence Prevention Legal Services provide legal assistance, casework, counselling and court support to Aboriginal and Torres Strait Islander adults and children who are victims/survivors of family violence. FVPLS also undertake important community legal education and early intervention and prevention work. There are 14 FVPLS across Australia.

As outlined above, FVPLS are the portfolio responsibility of PM&C while three other legal assistance services, LACs, CLCs and ATSILS, all remain the portfolio responsibility of AGD. Under the *Indigenous Advancement Strategy* (IAS) the FVPLS were required to apply for funding alongside other services to Aboriginal and Torres Strait Islander people. All FVPLSs were successful in their application under the IAS and in light of the funding announcement made in October 2016 of an additional \$9 million for 9 of the 14 FVPLS, all are now funded until the end of June 2018.

However, the National FVPLS Program was effectively defunded and continues to have no direct allocation which, according to the NFVPLS 'means there is no transparency or guarantee of funding for the program into the future, nor national recognition of the value of this model'. Accordingly, NACLC supports the ongoing calls by the National FVPLS Forum, including in its 2017-2018 Federal Budget submission, for reinstatement of the programme; additional funding for FVPLS to meet existing and rising demand for FVPLS services; and for long-term funding agreements to ensure funding certainty.

Recommendation: Reinstate the Family Violence Prevention Legal Services as a stand-alone national programme and provide it with a direct allocation of funding.

Recommendation: Provide additional funding to Family Violence Prevention Legal Services, including to achieve national coverage of Family Violence Prevention Legal Services commensurate to need (with a specific focus on meeting need in metropolitan and urban locations).

Funding of a Forum/Secretariat

The National Family Violence Prevention Legal Services Forum (National FVPLS Forum) was established in May 2012. It provides a vital peak body for FVPLS and facilitates coordination and collaboration across FVPLS services and liaison with other peak bodies, including NACLC. NACLC supports NFVPLS Forum calls for ongoing funding and support of the Forum by the Federal Government.

Recommendation: Provide the National Family Violence Prevention Legal Services Forum with additional funding and commit to long-term funding and support of the Forum.

Aboriginal and Torres Strait Islander Legal Services

ATSILS are the main providers of legal services to Aboriginal and Torres Strait Islander people, providing approximately 200,000 legal assistances to Aboriginal and Torres Strait Islanders annually.

The ATSILS continue to be direct funded by AGD rather than being covered by the NPA and are primarily funded through the Indigenous Legal Assistance Program. Commonwealth funding for ATSILS will be cut by \$18 million over the next three years (\$6.062 million in 2017-18, \$6.169 million in 2018-19, and \$5.271 million in 2019-20).

According to NATSILS, the impending funding cuts will:

- significantly impact on the operation of ATSILS across Australia, already working within limited budgets
- result in a withdrawal of frontline services from specific courts, rural and remote regions resulting in Aboriginal and Torres Strait Islander people being unrepresented and unable to access culturally competent legal assistance
- have unintended flow-on costs for government and other sectors
- deny many Aboriginal and Torres Strait Islander people access to justice, and
- require the ATSILS to make their staff redundant and reduce staffing numbers.

Accordingly, consistent with the National Aboriginal and Torres Strait Islander Legal Services (NATSILS) 2017-2018 Federal Budget submission, NACLC recommends reversal of the funding cuts to ATSILS. In addition, NACLC suggests further increases to funding for ATSILS, consistent with the Productivity Commission's recommendations and the additional asks of NATSILS, including provision of indexation of 3% to ATSILS and Government commitment to 5-year funding agreements to ensure funding certainty.

Recommendation: Reverse the \$18 million reduction in Commonwealth funding to Aboriginal and Torres Strait Islander Legal Services between 2017-2018 and 2019-20.

Funding for NATSILS

NATSILS is the peak national body for ATSILS in Australia. It provides a vital voice for Aboriginal and Torres Strait Islander people in contact with the justice system and plays a key role in supporting its members across Australia in relation to organisational development and governance, and the sharing and implementation of best practice.

In May 2015, the Federal Government announced ongoing funding of \$295,000 for NATSILS. NACLC endorses the recommendation made in the NATSILS 2017-2018 Federal Budget submission, which highlights the inadequacy of this funding, to increase annual funding of NATSILS to \$750,000 and encourages ongoing commitment by the Government to adequately fund NATSILS to ensure it is able to continue its important work.

Recommendation: Provide National Aboriginal and Torres Strait Islander Legal Services with additional funding and commit to long-term funding and support of National Aboriginal and Torres Strait Islander Legal Services.

Legal Aid Commissions

As emphasised in the Law Council of Australia Budget submission, the Commonwealth's contribution to LAC funding has reduced dramatically over the past twenty years.

Under the NPA, Legal Aid Commissions will receive a total of \$1.07 billion over five years and funding for LACs will increase over the life of the NPA. However, under the FAM developed by AGD for LACs, Commissions in a number of jurisdictions experienced funding cuts in 2015-2016 and figures prepared by PricewaterhouseCoopers in June 2015, and referred to in the Law Council of Australia's submission, project that there will be a decline in Commonwealth funding for LACs over the foreword estimates on a per capita basis.

Accordingly, the comments and recommendations NACLC makes above in relation to the need to re-examine how decisions are made about the quantum of funding for legal assistance, to quantify the existing extent of underfunding and to determine an appropriate and sustainable quantum of funding in the long-term in light of legal need, apply equally to all legal assistance providers, including LACs.

Appendix 1: Table of NPA Funding

Under the NPA, jurisdictions will receive the following funding for LACs and CLCs between 2015-2016 and 2019-2020:

(\$ million)	2015-16	2016-17	2017-18	2018-19	2019-20	Total
Estimated total budget	250.942	257.144	248.714	252.901	256.838	1266.539
New South Wales	74.648	76.625	74.486	75.492	76.419	377.670
Legal aid commissions	63.208	64.072	64.822	65.583	66.248	323.933
Community legal centres	6.865	7.853	9.016	9.137	9.269	42.139
Community legal centres (Schedule C)	4.204	4.204	-	-	-	8.409
SACS	0.371	0.496	0.648	0.772	0.902	3.189
Community legal centres total	11.44	12.553	9.664	9.909	10.171	53.737
Victoria	57.579	59.158	57.077	58.017	58.896	290.727
Legal aid commissions	47.912	48.642	49.287	49.939	50.518	246.298
Community legal centres	5.424	6.085	6.836	6.938	7.046	32.329
Community legal centres (Schedule C)	3.652	3.652	-	-	-	7.304
SACS	0.591	0.779	0.954	1.140	1.332	4.796
Community legal centres total	9.667	10.516	7.79	8.078	8.378	44.429
Queensland	50.060	51.401	50.106	51.027	51.900	254.494
Legal aid commissions	41.691	42.456	43.148	43.850	44.493	215.638
Community legal centres	4.869	5.331	5.712	5.812	5.919	27.644
Community legal centres (Schedule C)	2.512	2.512	-	-	-	5.023
SACS	0.988	1.102	1.246	1.365	1.488	6.189
Community legal centres total	8.369	8.945	6.958	7.177	7.407	38.856
Western Australia	29.021	29.851	28.801	29.543	30.260	147.476
Legal aid commissions	23.480	24.030	24.538	25.053	25.534	122.635
Community legal centres	2.329	2.478	3.523	3.600	3.680	15.611
Community legal centres (Schedule C)	2.718	2.718	-	-	-	5.435
SACS	0.494	0.625	0.740	0.890	1.046	3.795
Community legal centres total	5.541	5.821	4.263	4.49	4.726	24.841
South Australia	19.483	19.789	18.816	19.068	19.302	96.458
Legal aid commissions	15.699	15.879	16.034	16.191	16.326	80.129
Community legal centres	0.348	0.411	2.418	2.444	2.472	8.092
Community legal centres (Schedule C)	3.188	3.188	-	-	-	6.377
SACS	0.248	0.311	0.364	0.433	0.504	1.860
Community legal centres total	3.784	3.91	2.782	2.877	2.976	16.329
Tasmania	7.274	7.303	6.939	7.023	7.101	35.640
Legal aid commissions	5.747	5.804	5.853	5.903	5.945	29.252
Community legal centres	0.830	0.783	0.944	0.952	0.961	4.471
Community legal centres (Schedule C)	0.597	0.597	-	-	-	1.193

SACS	0.100	0.119	0.142	0.168	0.195	0.724
Community legal centres total	1.527	1.499	1.086	1.12	1.156	6.388

Australian Capital Territory	5.787	5.813	5.618	5.721	5.818	28.757
Legal aid commissions	4.665	4.741	4.811	4.881	4.946	24.044
Community legal centres	0.170	0.107	0.690	0.700	0.709	2.376
Community legal centres (Schedule C)	0.870	0.870	-	-	-	1.740
SACS	0.082	0.095	0.117	0.140	0.163	0.597
Community legal centres total	1.122	1.072	0.807	0.84	0.872	4.713
Northern Territory	7.090	7.204	6.871	7.010	7.142	35.317
Legal aid commissions	5.548	5.653	5.747	5.843	5.931	28.722
Community legal centres	0.386	0.374	0.983	0.999	1.015	3.757
Community legal centres (Schedule C)	1.059	1.059	-	-	-	2.118
SACS	0.097	0.118	0.141	0.168	0.196	0.720
Community legal centres total	1.542	1.551	1.124	1.167	1.211	6.595
Total Commonwealth contribution	250.942	257.144	248.714	252.901	256.838	1266.539

(Source: National Partnership Agreement on Legal Assistance Services 2015-2020, Table 2)

NACLC acknowledges the traditional owners of the lands across Australia and particularly the Gadigal people of the Eora Nation, traditional owners of the land on which the NACLC office is situated. We pay deep respect to Elders past and present.