

22 October 2017

Cameron Review
Justice Strategy and Policy Division
Department of Justice
GPO Box 31
Sydney NSW 2001

By email: cameronreview@justice.nsw.gov.au

Dear Sir/Madam,

RE: UNSW LAW SOCIETY SUBMISSION TO THE NSW DEPARTMENT OF JUSTICE
COMMUNITY LEGAL CENTRES REVIEW

The University of New South Wales Law Society welcomes the opportunity to provide a submission to the NSW Department of Justice regarding community legal centres (CLCs).

The UNSW Law Society is the representative body for all students in the UNSW Faculty of Law. Nationally, we are one of the most respected student-run law organisations, attracting sponsorship from prominent national and international firms. Our primary objective is to develop UNSW Law students academically, professionally and personally.

The UNSW Law Society is proud to represent students from a diverse mix of cultures and backgrounds, many of whom may be from low socioeconomic backgrounds and benefit from CLCs. Our student body is one that is committed towards achieving social justice, equality and specifically equal access to the law for all Australians. Many of our students volunteer their time to work in CLCs in between their busy university studies and can attest to the value they provide to the community.

This submission argues that funding for CLCs should be significantly bolstered as they retain a critical role in facilitating access to justice by virtue of their operation as a 'safety net' for individuals with no other avenue to legal assistance. In terms of refining the existing funding model for CLCs, the following four key considerations are critical in ensuring that the NSW Government invests wisely in the future of justice:

1. Incrementally extending the minimum threshold of maintenance funding.
2. Injection of additional funds to satisfy 'unmet legal needs' as evidenced by the Productivity Commission's *Access to Justice Report* 2014.
3. Creating community based digital pathways that minimise human and economic cost through an approximate investment in technological advancement of \$2.2 million annually - as per the NSW Budget Submission 2017-18 made by Community Legal Centres NSW.
4. Expanding the Aboriginal Legal Access Program state-wide (NSW).

Consequently, the under-funding of CLCs has meant that although 13% of Australians are below the poverty line, only 8% are able to meet the threshold means test for current income and assets in order to obtain government legal aid. This gross underfunding neglects the normative (educative) function of CLCs in enriching the broader community through systemic advocacy on behalf of disadvantaged groups, self-help resources, outreach services and training of community workers. Applying the lens of stakeholder theory yields that CLC partnerships with organisations such as the Women's Legal Service NSW creates collaborative/productive methods regarding efficient service delivery that must be augmented through sufficient funding in order to augment the aforementioned positive systemic influence.

1. Maintenance Funding:

This submission posits that the Public Purpose Fund (PPF), administered by the Law Society of NSW as per s 55 of the *Uniform Legal Profession Act 2014*, is inappropriate as a *primary* mechanism for boosting the current margin of funds distributed to CLCs. As per the Law Society's caution in 2013 (in its submission to the Productivity Commission), the PPF has been operating in a capital deficit since 2009. This deficit is attributed to decreased investment returns due to a downturn of the global economy compounded with increased payments being made from the fund on a *discretionary basis*. As such, the struggling status of the PPF renders it of little utility in assisting CLCs that demand further extension of maintenance funding. Thus, the NSW Government must step up and provide direct funding from its consolidated revenue. Reiterating the view of CLC NSW, an approximate injection of \$2.9 million annually, over the next three years, is required to protect the legal assistance sector and insulate vulnerable clients from *immediate damage*.

2. Unmet Legal Needs:

Notably, the Productivity Commission has maintained the position that the growing rift between existing legal needs and the resource constraints affecting CLCs demands a baseline of \$200 million in state and federal funding over a trajectory of five-years. Drawing from research conducted by Geoff Mulherin (Law and Justice Foundation NSW) a mixed-model of funding should be founded upon the following three-tiered strategy: (1) service provider data, (2) quantitative surveys and (3) qualitative studies of particular needs. As such, Mulherin's study notes that a *pilot survey* titled 'Bega Valley' (published in 2006) conducted across six disadvantaged regions (including Campbelltown, Fairfield & South Sydney) indicates that barriers to obtaining legal help (from CLCs) included elements as *basic* as the following:

- Point of contact repeatedly being engaged (11% of survey population intimidated)
- Delay in getting a response (17%)
- Difficulty getting an appointment (11%)

Clearly, the market in which CLCs operate is not always governed by the need of the disadvantaged, rather it mimics the often distorted views regarding the behaviours and interests of those who work on the supply-side of the market. The UNSW Law Society maintains the view of the Productivity Commission that \$2.6 million, in addition to the maintenance funding discussed above, is necessary to

meet the growing disparity in legal needs and service provision vis-a-vis *typically* socio-economically disadvantaged groups (i.e. homeless, aged population, and Indigenous peoples).

3. CLCs and their critical place in the NSW Government's Civil Justice Strategy:

A comparative analysis conducted in lieu of the UK's 'Assisted Digital Support' strategy and drawing from the recommendations of the consultation paper *Justice for everyday problems: Civil Justice in NSW* evinces the growing *nexus* between CLCs and technology in cost-reduction/delivering legal services in a streamlined fashion. Automating administrative tasks conducted by CLCs and embracing technological advancement regarding moving educative material to online platforms merely represents a *partial solution*. The aforementioned consultation paper indicates that nearly 20% of disadvantaged individuals take no legal action as the experience of navigating technical procedures, without adequate assistance from CLCs, is too costly/stressful of an experience (*NB*: breathes life into fear of an emerging 'Rolls Royce' model of litigation). The UK experience with digitising legal services enunciates the notion that volunteers are still required to be physically present in order to guide individuals whilst they utilise online tools. Clearly, any potential funding should account for the growing role of technology, in tandem with the operation of CLCs, in diverting often self-represented litigants away from an expensive Court system (proactive approach).

4. Expanding the Aboriginal Legal Access Program:

Future funding should also aim to increase the number of Aboriginal staff in the NSW CLC sector in order to meet the '*best practise*' ALAP model. This model dictates that there are two full time employed ALAP workers (one female/one male) per CLC, which are idiosyncratically allocated (at-times) in order to have a distributive effect regarding the potential impact of Indigenous Outreach programs. The increase in Aboriginal staff in CLCs from 10 to 30 since 2011 is not sufficient enough to create culturally appropriate environments for fostering legal education. Greater investment in the ALAP program will aid in role-modelling employment pathways and equipping Indigenous populations with a greater voice in the legal assistance sector.

In conclusion, this submission drew heavily from CLCNSW NSW Govt. Budget Submission 2017-18 and the Productivity Commission's *Access to Justice Report* 2014 in advocating for increased funding across four key areas: (1) diverging away from the PPF, (2) closing the gap in unmet legal needs, (3) supporting technological advancement in minimising on-going costs and (4) expanding the ALAP.

Yours faithfully,



Johnson Man
Policy Submissions Director



Angad Randhawa
Policy Submissions Director