

7 November 2023

Community Sector Public Consultation
Community Cohesion Branch, Department of Social Services
By email & website upload: CSAGSecretariat@dss.gov.au

Dear CSAG Secretariat

Re: Community Legal Centres Queensland Submission to the DSS Issues Paper: 'A stronger, more diverse and independent community sector' 2023

Thank you for the opportunity to provide feedback on this DSS Issues Paper on how the government can support a stronger, more diverse and independent community sector.

Community Legal Centres Queensland (CLCQ) is the peak body representing 32 funded and unfunded community legal centres (CLCs) across Queensland. Our vision is for a fair and just Queensland. Our mission is to be a voice for the sector, to lead and support Queensland CLCs to deliver quality and accessible services to people experiencing disadvantage and bring about change for individuals and communities.

CLCs are independently operated, not-for-profit, community-based organisations that provide free legal advice and social supports to Queenslanders experiencing disadvantage and vulnerability.

CLCQ is a community service and a not-for-profit incorporated association registered with the Office of Fair Trading Queensland and the ACNC, holding both DGR and PBI status. All CLCs are community organisations also registered with the ACNC. CLCQ and our member CLCs receiving the bulk of their funding from the Commonwealth Attorney-General's Department and Queensland Department of Justice and Attorney-General (DJAG) through the National Legal Assistance Partnership Agreement (NLAP), supplemented by other government and philanthropic grants, fundraising, membership fees and donations.

This submission predominantly to focus questions 2 and 3 in the Issues Paper, but does not seek to respond to all focus questions or sub-questions raised therein. CLCQ consents to this submission being published on the review website.

We would be happy to provide further clarification on any of our responses and look forward to reading the final report when it is made available.

Yours faithfully

 Director

Acknowledgement

CLCQ acknowledges Aboriginal and Torres Strait Islander peoples as the original inhabitants of Australia and the traditional custodians of the continent, whose cultures are among the oldest living cultures in the world. We recognise the role and accept the responsibility that CLCQ has in advancing and respecting the rights of Aboriginal and Torres Strait peoples by working collaboratively with First Nations peoples and communities.

Issues Paper Question 2: Providing grants that reflect the real cost of delivering quality services

Supporting effective, sustainable community services to meet identified legal needs

CLCs must be properly funded to deliver effective services and meet identified needs. Determining the total funding our sector requires to meet legal need in the community requires a realistic appraisal of the full range of functions CLCs need to deliver effective, outcomes-focused services.

A resilient community organisation includes adequate wages (on par with government agencies), learning and development pathways for staff, cultural safety, safety and wellbeing, corporate services and IT, data and reporting, robust governance structures, wrap around services, advocacy and communications, and volunteer programs.

Limited increases in service funding, coupled with rising social and economic inequity, has significantly hindered Queensland CLCs' capacity to respond sufficiently to the needs of their communities. CLCs must be responsive to changes in need, but the current climate does not support such determinations and adjustments.¹

CLCQ supports a regular comprehensive legal needs analysis to inform future service planning and legal assistance strategy. However, further resourcing is already needed to meet the current needs of Queensland CLC clients, particularly in relation to the changing demographics, population growth and the geography of Queensland.

Based on existing data and analysis, approximately 50 per cent of the Queensland population are likely to experience a legal problem each year, making population size an important consideration for CLC service delivery and funding allocation.²

¹ Principle 1, *National Strategic Framework for Legal Assistance* 2019

² NSW Law and Justice Foundation law survey;

<https://public.tableau.com/app/profile/law.and.justice.foundation.of.nsw/viz/NationalLegalNeedsdashboard/NEEDS-AGGSA>; [http://www.lawfoundation.net.au/ljf/site/templates/LAW_Qld/\\$file/LAW_Survey_Qld.pdf](http://www.lawfoundation.net.au/ljf/site/templates/LAW_Qld/$file/LAW_Survey_Qld.pdf)

Queensland has faced the largest population increase of any Australian state or territory with a growth rate of two per cent compared to the national average of just over one per cent.³ Recent figures reveal that the South-East will increase by almost 2.2 million to around 6 million by 2046.⁴ Funding for CLCs is not keeping pace with population growth.

Queensland CLCs help 51,000 Queenslanders every year, but assess the turnaway rate is almost double this amount due to a lack of resourcing. The demands arising due to population growth are further compounded for CLCs through changes in the complexity of the work. The recent CLCQ workforce surveys showed that over the past twelve months staff in Queensland CLCs felt their workloads to be more complex and challenging,⁵ Further, most staff believe there are insufficient resources to provide the required assistance to meet clients' needs, and not enough staff to meet client demand.⁶

Queensland geography and rural, regional and remote community services

Queensland is the second most decentralised State in Australia.⁷ While 70 per cent of Queenslanders reside in the South-East, the sheer size and vastness of the State creates significant barriers for access to justice in rural, regional and remote (RRR) areas. The vastness, and population growth of Queensland presents unique challenges for legal service delivery compared to the rest of Australia.

Some of CLCQ's regional members incur considerable financial and time cost in providing coverage in RRR locations. CLCs in RRR areas have struggled to keep up with demand on core services, relying more and more on volunteers to assist meet client legal need. This places the CLC sector in a precarious financial position. Core services should be sustainably funded and not reliant on standalone tenders or short-term project funding.

CLCQ recognises there are challenges and costs of providing services in RRR contexts and for funding models that support face-to-face services in RRR communities. CLCs in RRR contexts also face particular recruitment and retention challenges, which impacts on capacity to meet usual demand levels.

Advances in technology has increased the ability of legal services to provide assistance to people in need, however, reliance on phone or videocall appointments for legal services is not a sufficient solution to address the gaps created by Queensland's geography. This is particularly relevant when providing services to First Nations peoples in Queensland.

³ <https://www.qgso.qld.gov.au/issues/3071/population-growth-highlights-trends-qld-2023-edn.pdf#:~:text=Queensland%E2%80%99s%20annual%20growth%20rate%20increased%20to%202.0%25%20in,Queensland%E2%80%99s%20population%20grew%20by%206.2%25%20or%20311%2C556%20persons.>

⁴ 'South-East Queensland is growing' Media Statement, Deputy Premier Dr Steven Miles: <<https://statements.qld.gov.au/statements/98331>> 31 July 2023.

⁵ *CLCQ Working in Community Legal Centres in Queensland – Summary Report 2023.*

⁶ *CLCQ Working in Community Legal Centres in Queensland – Summary Report 2023.*

⁷ Queensland Government Statistician's Office, *Queensland compared with other jurisdictions, Census 2021* <<https://www.qgso.qld.gov.au/issues/11951/qld-compared-other-jurisdictions-census-2021.pdf>>

Providing effective legal support to Aboriginal and Torres Strait Islander peoples and communities requires workers and organisations to invest time and resources into building reciprocal relationships and genuine trust. This must be done in person. Aboriginal and Torres Strait Islander peoples are over-represented in the criminal justice and child protection systems – both key areas requiring critical legal assistance and advocacy.

Accessible in-person legal assistance for all persons, but particularly for First Nations peoples, is essential to ensuring access to justice. Until transport barriers are removed to enhance travel to regional hubs, legal support services must be adequately resourced to provide in-community assistance across the whole of Queensland.

Recommendation 1: Fund and undertake a needs analysis to inform CLC planning and strategy.

Recommendation 2: Increase funding allocation for regional, rural and remote CLCs in Queensland to reduce the impact geographic barriers have on access to legal assistance.

Funding allocations must be appropriately indexed

Government funding must include an adequate indexation clause to ensure that CLCs don't face funding cuts in real terms year on year. The current NLAP includes a provision for annual indexation of 1.5% per annum on Commonwealth legal assistance funding. This is well below the current rate of inflation, which is driving up the costs of service delivery.

Queensland CLCs are experiencing significant financial pressure due to the increasing cost of delivering services. Drivers of increased costs include:

- costs associated with the annual wage increase decision by the Fair Work Commission;
- the incremental increases to superannuation rates up to 12 per cent; and
- the increased costs associated with maintaining the physical infrastructure to deliver services in the community.

These increased costs are only compounded by the major workforce and remuneration issues, insufficient funding, the impacts of inadequate indexation and rising inflation.

The Queensland Government does apply indexation to the State component of funding. These amounts are set every year. In 2021-2022 this amount was set at 5.07 per cent and in 2022-2023 the amount has been set at 5.63 per cent, noting at the time of writing, that those additional funds were yet to be received by CLCs for the current financial year. Queensland CLCs funded through NLAP have been excluded from any Commonwealth indexation increases which has resulted in a regressive funding arrangement and detrimental workforce and client supports.

Early in 2023, CLCQ (in partnership with Queensland Council of Social Service and other peak body partners) commissioned the University of Western Australia Business School (UWA) to examine indexation arrangements in funding social services in Queensland.⁸

The examination of the expenditure of social service organisations, which included some CLCs, and the opaque calculation of indexation rates of government found that the increase in expenditure of organisations was between 6.73 per cent and 15.73 per cent. The UWA report notes that this places significant financial pressure on social service organisations, resulting in a risk to government that they are unable to contract an appropriate service mix for vulnerable individuals and communities.

Real cost of services

In 2017, CLCQ undertook a project to find cost saving for Queensland. The project identified limited areas for cost savings for CLCs in their operating budget due to the under investment in expenditure not specifically related to the providing direct services. This underinvestment is consistent with benchmark research across the social community sector, including:

- Deloitte Access Economics 2016 report, “Forecasting the Future: Community Service Industry Alliance”⁹;
- Productivity Commission 2010 Research Report, “Contribution of the Not-for-Profit Sector”¹⁰; and
- Social Venture Australia and Centre for Social Impact 2023 report “Paying what it takes: Funding indirect cost to create long-term impact”¹¹.

The “Paying what it takes” report found that indirect costs such as IT, finance, and HR, comprise 33 per cent of the total cost of running a not-for profit enterprise. This far exceeds the amounts organisations are typically funded and is in no way an indicator of how efficient or effective a not-for-profit enterprise is in their impact in the community.

Over the course of the NLAP, there have also been changes in the regulatory environment that impacts CLC’s obligations as organisations and employers. A notable example of this is the changes to Work Health and Safety laws that require employers to manage psycho-social hazards. It has long been recognised by CLCs that looking after workers’ mental health is critical to providing services in the community. With a positive legal obligation, CLCs also bear additional costs in ensuring the proper supports are put in place. Queensland CLCs tell us that while Employee Assistance Programs (EAPs) are an important part of this, they often are not intensive enough for people experiencing vicarious trauma, so additional resources of intensive psychological support need to be found in an already stretched CLC budget.

⁸ <https://www.qcoss.org.au/publication/report-queenslands-cost-indexation-for-government-purchasing-of-human-services/>

⁹ <https://www.deloitte.com/au/en/services/economics/analysis/forecasting-future-community-services-queensland.html>

¹⁰ <https://www.pc.gov.au/inquiries/completed/not-for-profit/report>

¹¹ <https://www.csi.edu.au/research/paying-what-it-takes-funding-indirect-costs-to-create-long-term-impact/>

Recommendation 3: Indexation must be applied to CLC funding every financial year as standard practice for both Commonwealth and State funding.

Recommendation 4: In line with existing reports, funding for CLCs must encompass the entirety of high quality service provision including practical items of office space, IT, administration and HR.

Recommendation 5: Adequately fund CLCs to ensure they are able to meet their obligations to employees regarding wellbeing and managing workplace psycho-social hazards.

Issues Paper Question 3: Provide longer grant agreement terms

Funding stability and gaps

CLCQ praises the NLAP for providing five-year funding security for CLCs in Queensland. This benefited the collation of State and Commonwealth funds in the distribution and agreement administration processes, which streamlined funding applications and reporting processes. The strongest benefit was however the stability and certainty this funding period provided for CLCs in Queensland.

While the NLAP Agreement in Queensland has embedded longer-term funding agreements and collaborative work, some associated processes, and gaps in the NLAP have detrimentally impacted Queensland CLC service delivery.

The administration of the NLAP has not preserved State investment in Queensland CLCs despite State funding growing for other parts of the legal assistance sector. This has directly impacted the capacity of Queensland CLCs to provide core services to meet client demand that is increasing alongside Queensland's population growth.

Funding packages should be designed and implemented in consultation with CLCs to ensure the funding achieves the best possible outcomes. Programmatic funding has also contributed to a funding disparity amongst Queensland CLCs. There have been more opportunities for specialist CLCs, than generalist CLCs who provide place-based services, over the course of the NLAP to attract the additional Commonwealth funds.

While the five-year funding contract term has provided stability for CLCs, it does limit opportunities to adapt the service agreement and reporting to align with changes in demand. While the Queensland government has been open to CLCs adjusting output reporting over the course of a service agreement, this implies a change in effectiveness of services rather than outcomes.

Case study: Disadvantages caused by lack of government consultation

The Commonwealth government provided \$5 million for flood response support to Queensland CLCs following the March 2022 floods across Southeast Queensland. However, this was done without consultation with the CLC sector about what was needed, creating confusion and challenges for CLCs and clients.

Consequently, the funding scope was narrowly targeted to direct disaster recovery legal services only, excluding any work that would address disaster preparation, build community resilience, or broader adaptation efforts through legal work and community legal education, despite this being part of an appropriate long-term response.

This lack of funding flexibility was a missed opportunity in communities where individuals do not often present as ‘flood victims’, but as a result of the impact of the stress and strain of experiencing a climate disaster. Recognition in the funding parameters, through consultation with CLCs, of the complex and intertwined legal issues at the individual and collective level that arise from climate disasters would have enabled a more relevant, practical, and beneficial, funding package for vulnerable Queenslanders.

Different funding requirements in the legal assistance sector

Through the tender process for five-year funding agreements, Queensland CLCs were required to demonstrate in their applications how their services are collaborative with both government and other services. This included working with local service providers to develop and maintain collaborative services to address both legal and non-legal needs. However, no other legal assistance sector providers were required to demonstrate this to receive funding under the NLAP Agreement, placing additional requirements on CLCs. The use of competitive tendering as the main funding distribution method in Queensland undermines genuine collaboration opportunities and can inhibit innovation between CLC partners.

Management of funding agreements and acquittals

The current administration and management procedures of funding agreements under NLAP have created an inappropriate hierarchy amongst the Queensland legal assistance sector, where parts of the sector are required to report to others. This has created conflicts of interest, delays in funding rollouts, and a lack of cohesion across a sector that should be equitable and collaborative.

The difference in roles and responsibilities between legal assistance sector bodies impacts the efficiency and continuity of service delivery for Queensland CLC clients. This is compounded by the lack of strategic oversight by State or Commonwealth on service design or choice across the legal assistance system. CLC service models are heavy scrutinised through tender processes, whereas other parts of the legal assistance service system are not interrogated in the same way.

CLCQ works closely alongside Queensland CLCs to increase the accessibility, profile, and resourcing of the sector. Inefficient and confusing funding rollouts detrimentally impact each of these factors through delays and requires additional burdensome administrative processes for CLCs that is not required of other legal assistance services for the same funding.

CLCQ proposes that no part of the legal assistance sector should administer or manage another. To do so creates power imbalances across a legal assistance sector that should be commensurate in their knowledge, expertise, and authority.

In Queensland, the Department of Justice and Attorney-General are the NLAP reporting agency, however CLCs are required to provide their financial and performance reports to Legal Aid Queensland (LAQ), a fellow legal assistance sector body. LAQ then forwards the relevant NLAP reports to DJAG.

This has established both a superfluous administrative process when there are already limited administrative funds, and an unnecessary power imbalance across a legal assistance sector that should be commensurate in their knowledge, skill, and authority. Administration of one part of the legal assistance sector by another also raises conflict of interest concerns, particularly if there is competition for funding or program opportunities. It can also be a barrier to collaboration in the coordination of service delivery.

Bi-lateral agreement administration in Queensland

The timely allocation of funding through bi-lateral agreements under NLAP have been problematic in Queensland due to the over reliance on competitive tendering processes for programmatic funding. CLCQ calls on the Commonwealth to issue clearer guidelines to the States on funding allocations when delivering on Commonwealth Government priorities, including timeframes for allocation, specifically dates by which legal assistance providers should receive their funding.

Case study: Significant Delays to the 2021 Federal Budget Funding

The allocation of the 2021 Federal Budget funding took seventeen months in Queensland CLCs. The May 2021 Federal Budget announced funding for legal assistance, including for workplace sexual harassment and supporting persons with mental health conditions. In October 2021 the Queensland Attorney-General signed the bi-lateral agreement under NLAP for this new funding. This agreement provided funding over four years for Queensland CLCs to the amounts of \$4.351 million for workplace sexual harassment support and \$4.2million for supporting people with mental health conditions. In May 2022 twelve months after the funding was announced, the Queensland Department of Justice and Attorney-General called for tenders from CLCs for these funds. The tenders closed one month later in June 2022. The Queensland Attorney-General announced the successful tenderers for the sexual harassment funding in September, and the successful mental health support tenderers in October 2022. However, once successful tenderers were announced there were further delays due to service agreement variations, staff recruitment, and program roll-out.

LAQ faced no delays in receiving their allocation of the sexual harassment services funds. Consequently, LAQ benefited in recruiting experienced staff, including from CLCs.

The delays for CLCs were two-fold: there was a lack of clarity regarding the purposes of the Federal funding; and the State government refused to engage with CLCs for program co-design to best optimise the funding, so the allocation process was not clear like it was for LAQ. CLCQ advocated to the Queensland government to utilise a co-design process for the workplace sexual harassment funding to benefit from the specialist knowledge of the CLCs already providing services on that issue.

Efficiency

While the administration of NLAP in Queensland has provided efficiencies in reporting for CLCs i.e. fewer funding processes for distribution and rolling up State and Commonwealth reporting under one service agreement, there have been greater inefficiencies for reporting on funding via bilateral agreements.

CLCQ is itself experiencing reporting duplication at present, with monthly and quarterly reporting both required for a 12-month project. We have been advised that grantees are required to report more frequently to enable the state entity to on-report to the Commonwealth. This is an example of reporting inefficiency caused by dual State/Federal funding arrangements.

Recommendation 6: Programmatic funding packages targeting specific legal needs must be developed in consultation with CLCs or their representatives.

Recommendation 7: There must be a national mechanism which requires State government funding to CLCs and establishes benchmarks for State government funding contributions to the legal assistance sector and CLCs.

Recommendation 8: No part of the legal assistance sector should administer or manage another.

Recommendation 9: Guidelines must be developed regarding timeframes for funding allocations to ensure that tendering processes do not unnecessarily disadvantage CLCs in delivering vital legal services to vulnerable communities.

Recommendation 10: There should be minimum reporting to meet baseline accountability requirements, reducing duplication and red tape.

Workforce issues

CLCQ emphasises the importance of considering current workforce issues, particularly for RRR CLCs. Workforce gaps and need for workforce support are critical issues that significantly impact the delivery of specialised and consistent services to communities. Queensland CLC service levels are at risk of being reduced due to ongoing shortages of appropriately experienced lawyers and other client support professionals.

Work undertaken by CLCQ across the Queensland CLC sector indicate a number of critical factors requiring urgent attention and resourcing to ensure CLCs can continue to provide essential services to vulnerable and marginalised Queenslanders.

In September 2023, CLCQ undertook a comprehensive workforce survey of Queensland CLCs. Two surveys were administered: an organisational survey provided to managers to collect data on the whole organisation; and an individual worker survey regarding experiences of working in CLCs.

The key themes from both surveys were:

- Current service levels are at risk of being reduced due to workforce shortages of lawyers and other allied professionals;
- The factors leading to workforce leaving CLCs are uncompetitive salaries and limited career paths due to funding levels and insecure funding;
- Frequent staff turnover and the inability to recruit experienced staff leads to increased costs for CLCs;
- The psycho-social toll of the work is not sustainable for the CLC workforce or recognised through remuneration; and
- CLCs are inclusive, accessible, and diverse workplaces which create a welcoming service for vulnerable and marginalised client and community groups, but often lack sufficient resources to make CLCs universally accessible, particularly for CLC staff.

The Queensland CLC workforce is more diverse than other parts of the legal assistance sector. The CLCQ workforce survey also indicated the intersectionality of workers in the sector, highlighting the need for CLCs to be prioritising an inclusive, respectful, safe, and accessible environment for their staff as well as their clients. Approximately eight per cent of the CLC workforce identified as First Nations.

This is a possible positive indication of the shared values, respect, and safety offered across the sector, however, also indicates a need for appropriate supports and resourcing for First Nations employees: sector turn-over, workload demands, and the over-reliance on cultural expertise of First Nations staff (with or without cultural loading) risks employee wellbeing and retention.

The recruitment of CLC workforces is particularly challenging in RRR areas of Queensland. For example, a member in North Queensland has had ten staff vacancies in their service since April 2022 and have only been able to fill three of those roles. Attracting and retaining suitably qualified staff to regional Queensland is compounded by the cost of and lack of housing options across the State.

Impact of changes to employment law

Amendments to the *Fair Work Act 2009* (Cth) (FWA) will also impact the stability of the Queensland CLC workforce due to concerns about how they will impact contracts and contract periods in an industry often relying on programmatic funding to employ staff. These amendments come into effect in December 2023.

Due to the nature of CLC funding, either for five years or for a limited program period, CLCs have often employed staff on contracts in line with funding timeframes, which are then renewed if funding is extended. However, the FWA amendments prohibit successive fixed-term employment contracts, requiring employers to make their employees permanent. While there is an exception for when government funding is likely to end, CLCQ has received advice that indicates that CLCs will not fall within that exception. Consequently, if CLCs do not have ongoing funding certainty by early 2025 when the next service agreement is due to be negotiated, then services may cease prior to the end of the financial year to accommodate redundancy periods for staff.

This tenuous funding and contracting position is further complicated by the upcoming Queensland State election in October 2024. If new national funding arrangements are not agreed by August 2024, when the Queensland government will go into caretaker mode, State-based funding distribution timeframes are likely to be pushed out beyond March 2025, resulting in less than three months' notice of any changes to service funding.

This may trigger the potential cessation of some CLCs services due to an inability to contract or employ staff in line with the FWA requirements. Commonwealth and State funding for Queensland CLCs must be confirmed by mid-2024, so that the State election does not detrimentally impact the capacity of CLCs to sufficiently staff their organisations.

Recommendation 11: Funding for CLCs should be increased to maintain and grow its workforce, to ensure continuity of service and care in the community.