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Justice & OLAB 2014  
Submission 001

The Research Director  
Legal Affairs and Community Safety Committee  
Parliament of Queensland

By email: [lasc@parliament.qld.gov.au](mailto:lasc@parliament.qld.gov.au)

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Dear Research Director

### ***Justice and Other Legislation Amendment Bill 2014 (Qld)***

Thank you for the opportunity to make a submission to the Legal Affairs and Community Safety Committee in relation to the *Justice and Other Legislation Amendment Bill 2014 (Qld)*, which has been referred to the Legal Affairs and Community Safety Committee for detailed consideration.

The National Association of Community Legal Centres Inc (NACLC) is the peak national body of Australia's community legal centres (CLCs). The Queensland Association of Independent Legal Services (QAILS) is a member of NACLC; QAILS represents 34 CLCs across Queensland.

CLCs are a vital part of the legal assistance sector. CLCs are independently operating 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.

NACLC outlines its concerns with respect to the Bill below.

### ***Clause 80 of Justice and Other Legislation Amendment Bill 2014 (Qld)***

NACLC is concerned about one aspect of the Bill in particular. Clause 80 of the Bill seeks to amend section 289(1)(h) of the *Legal Profession Act 2007 (Qld)* (the Act). The Act currently provides:

*Section 289 (1) The chief executive may make payments from the fund to or for any of the following—*

*...*

*(h) grants approved by the Minister for any of the following purposes—*

*(i) the advancement of law reform;*

*(ii) the collection, assessment and dissemination of information concerning legal education, the law, the legal system, law reform, the legal profession and legal services;*

*(iii) facilitating access to the legal system, legal information and education and legal services for members of the community, particularly economically or socially disadvantaged members of the community.*

The Bill proposes to amend the current sub-section (h) by removing sub-sections (h)(i) and (h)(ii) and retaining h(iii) only, so that it would read as follows:

*Section 289 (1) The chief executive may make payments from the fund to or for any of the following—*

...

*(h) facilitating access to the legal system, legal information and education and legal services for members of the community, particularly economically or socially disadvantaged members of the community.*

NACLC is concerned about the potential effect of clause 80 in precluding the grant of LPITAF funding to CLCs and other community organisations to undertake law reform or provide community legal education information. If enacted, this would effectively prevent or greatly reduce the capacity of each of the 36 legal assistance services funded with LIPITAF grants under the Community Legal Services Program,<sup>1</sup> to undertake this cost effective and critical work.

### **The Importance of Law Reform Work**

CLCs undertake a range of work, including legal advice, assistance, information and referral, individual casework, community legal education and law reform. These activities interrelate. Assisting individual clients through advice and casework enables CLC lawyers to not only assist the individual, but also to identify laws, policies and practices that inequitably adversely impact on disadvantaged people or vulnerable groups in the community. CLCs are in an excellent position to identify recurring causes of legal problems, such as unclear laws, or unlawful or unfair practices.

CLCs have been providing legal services to disadvantaged people in Australia for over 40 years. Based on their experience, CLCs know that in some cases the most efficient means of avoiding or resolving civil disputes, particularly those arising from an ineffective or unfair operation or application of a law, is to advocate for legislative, policy or practice reform. CLCs utilise a range of strategies, including for example, strategic litigation such as test cases to clarify the law; and providing detailed law reform submissions, including case studies that illustrate the issues needing to be resolved, and constructive recommendations for change.

CLCs have a long and successful history of advocating for systemic improvements through policy and law reform in Queensland, such as:

- establishment of the Residential Tenancies Authority and *Residential Tenancies and Rooming Accommodation Act 2008* (Qld)
- the introduction of the *Domestic Violence (Family Protection) Act 1989* (Qld)
- changes to the *Coroners Act 2003* (Qld), to allow Coroners to investigate systemic issues, including the requirement that any death in an institution be investigated, and
- ending mandatory use of long-term solitary confinement in prisons.

The work performed by CLCs benefits individual CLC clients, who include the most disadvantaged and vulnerable - the primary focus of CLCs' work. However, it is also important to recognise the broader benefit generated by law reform and advocacy work to other disadvantaged and vulnerable people who would, *but for* this advocacy, face the same legal problems. Further, all members of the community benefit from fairer and clearer laws, and from living in a fairer society.

Importantly, the 2014 Productivity Commission *Access to Justice Arrangements* Final Report concluded that: 'strategic advocacy and law reform that seeks to identify and

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<sup>1</sup> In 2014-15. This total includes one or two services that are not members of QAILS.

remedy systemic issues, and so reduce the need for frontline services, should be a core activity of LACs and CLCs'.<sup>2</sup> The Commission also expressed the view that 'there are strong grounds for the legal assistance sector to receive funding to undertake strategic advocacy, law reform and public interest litigation.'<sup>3</sup>

### **Review of the Allocation of Funds from the Legal Practitioner Interest on Trust Accounts Fund**

The Explanatory Notes for the Bill state that Clause 80 amends section 289 of the Act 'to facilitate the implementation of recommendations resulting from the *Review of the allocation of funds from the Legal Practitioner Interest on Trust Accounts Fund* [the Review]. Subclause (1) amends section 289(1)(h) to reflect that most payments are now made [sic] legal assistance providers.'

The Final Report of the Review outlined a number of factors that were considered in 'determining the purposes for which LPITAF funds should be allocated in future', including for example: 'LPITAF funds are prescribed to be used for public purposes and as such they should be used as efficiently, effectively, and cost effectively, as possible... legal assistance services funded by the Commonwealth Government... whether these funded organisations still require LPITAF funds to deliver those functions and services (for example, do they have another source of funding?); [and] the legal needs of Queenslanders'.<sup>4</sup> These factors are considered in turn below.

The Report also highlighted that the results of the Review 'overwhelmingly support LPITAF funding being directed to revitalising the delivery of frontline justice services for Queensland families'<sup>5</sup> and that the strategic objectives for the allocation of LPITAF funds should include frontline service delivery.

The Report concluded that LPITAF funding should continue to be provided to community organisations, including CLCs, to deliver complementary legal assistance services across Queensland.<sup>6</sup>

#### *Efficiency, Effectiveness and Cost Effectiveness*

While the contribution made by CLCs undertaking law reform and advocacy work can be difficult to quantify, the Productivity Commission in its 2014 Final Report was able to conclude without qualification that 'the Commission considers that in many cases, strategic advocacy and law reform can reduce demand for legal assistance services and so be an efficient use of limited resources.'<sup>7</sup> It went on to quote in agreement, Legal Aid NSW:

Law reform and strategic advocacy makes a significant contribution to reducing demand and consequently the costs on the justice system. (sub. DR189, p. 38)<sup>8</sup>

The Commission considered this issue to be so important that it made a specific recommendation:

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<sup>2</sup> Productivity Commission, *Access to Justice Arrangements*, Final Report (5 September 2014), 711.

<sup>3</sup> *Ibid*, 713.

<sup>4</sup> Queensland Department of Justice and Attorney-General, *Review of the Allocation of Funds from the Legal Practitioner Interest on Trust Accounts Fund*, Final Report (November 2012), 14.

<sup>5</sup> *Ibid*, 15.

<sup>6</sup> *Ibid*, 17.

<sup>7</sup> Productivity Commission, *Access to Justice Arrangements*, Final Report (5 September 2014), 709

<sup>8</sup> *Ibid*.

#### RECOMMENDATION 21.1

The Australian, State and Territory Governments should provide funding for strategic advocacy and law reform activities that seek to identify and remedy systemic issues and so reduce demand for frontline services.<sup>9</sup>

The Productivity Commission's consideration of the efficiency, effectiveness and cost effectiveness of the law reform and other strategic advocacy undertaken by CLCs and other legal assistance providers is detailed and included the following analysis and conclusions.

[strategic advocacy, law reform activities and public interest litigation] can benefit people directly affected by a particular issue, and, by clarifying or improving the law, they can also benefit the community more broadly and improve access to justice (through positive spill-overs. For example, addressing an underlying problem that has led to many disputes can free up the resources of affected parties, legal assistance providers, private lawyers, courts and governments.

Strategic advocacy, law reform and public interest litigation are areas where there are few incentives for private lawyers to act. Private lawyers are focused mainly on achieving outcomes for individual clients. They are less interested in achieving broad-based reforms that could result in positive outcomes for the wider community.... [private] lawyers are unlikely to be able to charge for work that benefits the entire community. Victoria Legal Aid summed up the situation:

The private market alone has neither the infrastructure nor the incentive to prevent legal problems (reducing need for its own services) or undertake important preventative work ... despite these being inexpensive and cost effective ways to reduce demand on justice services. (sub. 102, pp. 5-6)

Legal assistance lawyers, on the other hand, are uniquely placed to identify systemic issues, particularly those affecting disadvantaged Australians:

... the daily experience of legal aid lawyers assisting high volumes of disadvantaged clients is harnessed to identify systemic issues and provide input into law reform processes. (Legal Aid NSW, sub. 68, p. 95)

... legal assistance service providers are often the best placed to provide valuable and early feedback in relation to policy and legislation, in order to increase the efficiency and effectiveness (and therefore savings) of the justice system ... (Women's Legal Services Australia, sub. DR207, p. 13)<sup>10</sup>

The Productivity Commission's finding supports the submissions of NACLC and many other legal assistance providers and peak bodies. NACLC's submission to the Productivity Commission Inquiry accords with its submission to this Inquiry, that CLCs' extensive experience over decades of practice in this area across Australia, shows that the delivery of face-to-face services alone is not always the most effective approach to addressing the legal needs of disadvantaged people. It is often more effective to apply an integrated model of service delivery that incorporates law reform and advocacy work, in addition to direct legal service delivery. The appropriateness or relevance of law reform

<sup>9</sup> Productivity Commission, *Access to Justice Arrangements*, Final Report (5 September 2014), 713

<sup>10</sup> *Ibid*, 708-9.

and advocacy work varies across legal areas, fact situations and time, but what is critical is a response model that is flexible and allows for this type of strategic response.

CLCs' law reform and advocacy work can prevent the occurrence of similar legal issues in the future, help to ensure that the law is current, fair and effective, and sets valuable precedents, all of which ultimately reduces demand for legal assistance services. It can also divert matters from the courts and prison system and produce savings and benefits in other areas of government, such as social security and health. By assisting individuals it also contributes positively to the wellbeing of society as a whole. As a result, it is a highly effective, efficient and appropriate use of limited resources.

NACLC notes that the Review Report also referred to the *Economic Cost Benefit Analysis of Community Legal Centres* that was commissioned by NACLC. The Review Report stated that the *Economic Cost Benefit Analysis* found that:

... for every dollar of funding provided to CLCs \$18 worth of benefits are provided to the community. The benefits include: minimising costs to parties and governments by resolving legal matters more simply or at an earlier stage (particularly where that avoids the need to go to court or a tribunal); and avoidance of domestic violence and child abuse. Some of the greatest economic benefits are achieved through holistic case management, which provides cost savings both inside and outside of the legal system. The report states that, considering the usual cost benefit ratio required to justify investment in physical infrastructure is around 1:2 or 1:3, the 1:18 ratio provides clear economic justification for funding CLCs'.<sup>11</sup>

NACLC suggests that the Committee also consider the recent report 'Adding Public Value' on the value of law reform activities undertaken by Community Legal Centres in NSW.<sup>12</sup> The study finds that policy and law reform activities undertaken by the Community Legal Centres studied, provide good value to society, are generally of high merit, and meet the social and economic objectives of government and the sector when assessed against key outcome measures.

#### *Availability of Other Funding*

The availability of other funding was another factor considered by the Review. Community legal centres derive funding from a range of sources, but most is received through the CLC funding program, the Community Legal Services Program (CLSP) (which administers both Commonwealth and State CLSP funding – centres may receive CLSP funding from one or both governments), other government funding, fundraising, philanthropic donations, and other sources.

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<sup>11</sup> Queensland Department of Justice and Attorney-General, *Review of the Allocation of Funds from the Legal Practitioner Interest on Trust Accounts Fund*, Final Report (November 2012), 17. See: Judith Stubbs and Associates, *Economic Cost Benefit Analysis of Community Legal Centres* (2012), prepared for the National Association of Community Legal Centres. The Report makes clear that this is a conservative ratio because in calculating the ratio, the consultants looked at economic benefits arising from only some but not all of the CLCs' services - but counted the total cost of the centre and all its operations.

<sup>12</sup> Judith Stubbs and Associates, *Adding Public Value The Integration of frontline services and law reform in the NSW Community Legal Sector* (4 August 2014), prepared for the Financial Rights Legal Centre and Community Legal Centres NSW available at [http://www.clcsw.org.au/cb\\_pages/adding\\_public\\_value.php](http://www.clcsw.org.au/cb_pages/adding_public_value.php)

Recently, there have been significant cuts to Commonwealth funding to CLCs and other legal assistance providers. In December 2013, as part of the Mid-Year Economic and Fiscal Outlook 2013-2014, the Commonwealth Government announced a funding cut of \$43.1 million for legal assistance services over four years from 2013-14, comprising a cut of \$19.61 million to CLCs, \$13.34 million to ATSILS, \$3.65 million to FVPLS and \$6.49 million to LACs. The \$19.61 million cut to CLCs' funding was spread over four years but heavily back-ended, so that from 2015-16 onwards, this will reduce CLSP funding by \$7.6m per annum.

While the Commonwealth Attorney-General indicated that the MYEFO cuts to legal assistance services were directed at policy and law reform activity, that work is not that great a proportion of these providers' services, so these cuts have also impacted directly on capacity to undertake front-line service delivery.

The Productivity Commission came to the same conclusion:

Irrespective of the Australian Government's ultimate position on whether strategic advocacy and law reform should attract government funding, the Commission considers that some restoration of funding is appropriate. While the situation varies by provider, the quantum of the funding cuts exceeds the quantum of resources that had been dedicated to providing these services.<sup>13</sup>

Further funding cuts to legal assistance providers have been announced. For example, in the 2013 Budget it emerged that in 2017-18, the amount of funding available under the CLSP will reduce by a further \$6.8m a year due to the end of a four-year transfer from the Family Relationships Services Program. CLCs had not previously been informed that this funding was only a temporary 'transfer'.

NACLC highlights the funding cuts and uncertainty in relation to the Family Violence Prevention Legal Services, which will affect, among others, the Queensland Indigenous Family Violence Legal Service (QIFVLS) that has offices in Cairns, Townsville, Rockhampton, Mt Isa, and Brisbane, and the Aboriginal Family Legal Service Southern Queensland, based in Roma, which provides legal services across Southern Queensland including in the communities of Charleville, Cherbourg, Cunnamulla, Goondiwindi, Mitchell, Murgon, Quilpie, Roma and St George. The future of QIFVLS, AFLSSQ and other FVPLS is currently uncertain, as direct Commonwealth funding has ceased and those services were required to tender for funding – competing against a wide range of services aimed at Aboriginal and Torres Strait Islander peoples 'safety and wellbeing' - under the new Commonwealth Indigenous Advancement Strategy. Those services will not know until March 2015 whether they have any funding beyond 30 June 2015. Relevantly, under the Strategy \$534.4 million is to be cut from Indigenous Affairs over the next five years.

#### *Commonwealth Restrictions on Law Reform and Advocacy Work*

The importance of LPITAF funding for CLCs to undertake law reform work is also particularly important in light of recent Commonwealth actions affecting legal assistance providers undertaking this work. Following an amendment to their funding agreements, CLCs are no longer able to use Commonwealth funding for 'law reform and legal policy activities'. This was subsequently 'clarified' by the Australian Government Attorney-General's Department, who indicated that where a CLC makes a submission to a government or parliamentary body to 'provide factual information and/or advice with

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<sup>13</sup> Productivity Commission, *Access to Justice Arrangements*, Final Report (5 September 2014), 713

a focus on systemic issues affecting access to justice', it will not be considered an advocacy activity, but that the preparation of any such submissions is not to result in reduced service delivery.

In addition, the Commonwealth Government has defunded the National Aboriginal and Torres Strait Islander Legal Services and all Law Reform and Policy Officer positions with state and territory ATSILS.

In light of this, without LPITAF funding there will be a direct and significant effect on the ability of CLCs and other legal assistance providers to undertake law reform and policy work which is crucial in identifying and encouraging reform of laws, policies and practices that are inadequate in protecting or inequitably adversely impact on disadvantaged people and vulnerable groups within the Queensland community.

#### *Connection with Front Line Services*

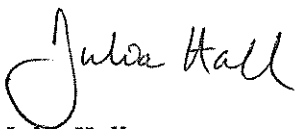
Finally, it is important to note that the law reform and advocacy work undertaken by CLCs is directly related to the legal problems and experiences of individual clients. In the course of undertaking individual advice or casework, CLC employees may become aware of a specific policy, practice or law that is disproportionately or unfairly affecting a particular group within the community, is not working efficiently, or is not operating as intended. CLCs are uniquely placed to translate these issues and the experiences of individual clients into positive outcomes more broadly. Such work is a vital component of CLC work, as individual casework alone does not address the discriminatory practices that cause individuals to seek assistance from CLCs and other legal assistance providers.

#### **Conclusion**

In light of the above, NACLC calls on the Committee to recommend that the Bill not be passed in its current form and that section 289 of the Act be retained.

NACLC is pleased to note that in addition to NACLC's submissions, QAILS also intends to make a submission to this Inquiry. NACLC would be pleased to participate in a consultation or provide any further information on the matters in this submission should the Committee consider that this may be of assistance.

Yours sincerely



**Julia Hall**

**Executive Director**

**National Association of Community Legal Centres**

