

Response to PAEC Questionnaire – dated 21 December 2015

Public Accounts & Estimates Committee's Inquiry into the Impact on Victorian Government service delivery of changes to National Partnership Agreements

Section (A) – Questions arising from the transcript of evidence dated 19 November 2015

Question 1: Could the Department please populate the table below to provide any details on the difference sources of funds being provided to Community Legal Centres

Community Legal Centres (CLCs) are independent community organisations which provide free legal services to the public. Across Victoria there are generalist CLCs, who provide services on a range of legal issues to people in their local geographic area. There are also specialist CLCs that focus on groups of people with particular needs or specific areas of law, for example, disability, consumer law and women.

CLCs receive funds and resources from a variety of sources, including state, federal and local government, philanthropic foundations, pro bono contributions and donations. Funding from the State and Commonwealth Governments for CLCs has been distributed via the Community Legal Services Program (CLSP) administered by Victoria Legal Aid (VLA).

Prior to the commencement of the new National Partnership Agreement on Legal Assistance Services 2015-20 (NPALAS), the Commonwealth Government provided funding to Victorian CLCs directly through CLSP. Under the new agreement however, Commonwealth funding is provided to the State and then the Victorian Government provides this, along with state funding through state appropriations to VLA to administer.

Therefore, as CLCs are non-government, not-for-profit organisations, the department does not have access to each CLC's financial information to be able to provide information on sources of funding beyond that which has been administered by the department and/or VLA.

The table below details the funding for CLCs where known:

Financial Year Period	Commonwealth Government Funding Received (\$)	Victorian Government Funding Received (\$)
2008-09	7,385,676	9,643,934
2009-10	7,071,070	9,986,864
2010-11	6,748,772	10,985,052
2011-12	7,166,057	11,785,988
2012-13	7,624,491	12,824,226
2013-14	8,759,445	13,441,917
2014-15	9,002,582	14,299,584

Source: Victoria Legal Aid's Annual Reports (2008-09 to 2014-15): Community Legal Centre Funding Program

Section (B) – Questions arising from the whole of government response (dated 6 November 2015) to the Committee questionnaire (dated 14 October 2015)

Question 2: As the service delivery practitioner that executes and implements the NPAs, does the Department engage/consult formally or informally with the respective Commonwealth portfolio counterparts to contribute the practitioner knowledge and experience on policy and programme design issues during the NPA drafting stage?

As noted in the Victorian Government's initial submission to the Inquiry, in early 2012, the Commonwealth Government advised all States and Territories it would be reviewing the first NPALAS which commenced in 2010.

As part of this review, States, Territories and the legal assistance sector participated in a range of studies to determine appropriate factors to underpin the disbursement of Commonwealth funding to jurisdictions. This work was undertaken via a consultancy (Allen Group – now ACIL Allen Consulting) with some states, including Victoria contributing funds to support the review.

During, and following the review, the department formally and regularly engaged with representatives from the Commonwealth Attorney-General's Department and other State and Territory departments to consider the findings from the review and share local knowledge and experience to inform the design of the new NPALAS.

Question 3: Could the Department please provide details of any evaluation/analysis being done to quantify and explain the full impact and extent of:

(a) Potential jeopardising of Victoria Legal Aid operations?

(b) The significant reduction and/or ceasing of CLC operations?

As noted in the information the department has previously provided to the Inquiry, the new NPALAS requires VLA and the CLC sector as a whole to achieve specified performance benchmarks in respect of representation services delivered to people experiencing financial disadvantage during any six month period.

For the purposes of the agreement, the following definitions apply:

- Financial disadvantage means a person who does not have the means to pay for their legal representation without incurring serious financial difficulty, including a person who:
 - i. Is in receipt of Centrelink benefits as their main source of income; or
 - ii. Satisfies a means test applied by a legal aid commission; or
 - iii. Is exempt from the legal aid means test, such as a person seeking a merits review of decisions about eligibility for Commonwealth military entitlements or military compensation payments and children; or
 - iv. Has an income equal to or below the Henderson Poverty line; or
 - v. Cannot access finances temporarily due to circumstances outside their control. For example, a person experiencing, or at risk of, family violence who cannot access finances without risk to their personal safety or the safety of others.
- Representation services are where a legal assistance provider has carriage of a matter in an ongoing, representative capacity and include dispute resolution, court/tribunal and other representation services.

During negotiations on the draft agreement, the department consulted closely with VLA and the Federation of Community Legal Centres to determine the likelihood of VLA, or the CLC sector as a whole failing to meet the benchmarks as they were proposed in the draft agreement. This consultation also included an assessment of the impact on VLA and CLCs if the benchmarks were not achieved.

In response to feedback from jurisdictions including Victoria on the draft agreement, the Commonwealth did make some policy concessions on the performance benchmarks including:

- Uncoupling the performance of VLA from CLCs, so that the potential underperformance of one would not penalise the other;
- Lowering the performance benchmark against which payments are tied from 95 per cent to 85 per cent (during 2015-16 and 2016-17) increasing to 90 per cent from 2017-18 onwards) for CLCs to deliver representation services; and
- Agreement that pro-rata payments can be made to the State, depending on the proportion of the performance benchmark achieved.

With the more favourable changes to performance benchmarks made by the Commonwealth Government in the final NPALAS and a broadening of the definition of 'financial disadvantage', the department considers the risk of VLA, or the CLC sector as a whole failing to meet the performance benchmark to be low.

For VLA, this assessment has been made on the basis of their previous performance, and that they have one of the most stringent means tests in Australia, along with comprehensive eligibility guidelines. In the event that VLA did not meet the benchmark as required under the agreement, and payment was withheld, or only a partial payment in line with the agreement was made, the VLA Board would need to take action to maintain financial viability. This could include changing eligibility guidelines or limiting the work VLA does on Commonwealth law matters. It would impact on vulnerable and disadvantaged members of the community. If VLA were to limit its involvement in Commonwealth law matters, this would particularly impact on victims of family violence seeking to resolve family law matters.

In respect of CLCs, again the likelihood of the sector as a whole not meeting the prescribed benchmark is low. This analysis took into consideration outcomes from historical reporting against service agreements CLCs had with the Commonwealth Government. For example, data from the Commonwealth Attorney-General's Department indicated that in 2013-14, in nearly 1,000 major cases where Victorian CLCs provided representation services, almost all clients (99.38 per cent) met the financial disadvantage/priority client threshold.

In the event however, that the CLC sector as a whole did not meet the performance benchmarks, the State would seek to meet with the Federation of Community Legal Centres, the VLA and the Commonwealth to determine how the situation could be addressed without creating significant service issues. Any reduction in services would impact on vulnerable and disadvantaged people who would be unable to access the legal assistance they need.

Overall, any reduction in legal assistance would lead to more unrepresented applications/respondents and defendants at court, leading to lengthier trials and greater delays in the court system.

The department will continue to monitor the performance of VLA and CLCs as whole against the requirements of the NPALAS.