



Review of the coordination and funding of financial counselling services across Australia

Submission to Department of Social Services

22 March 2019



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Introduction

National Legal Aid (NLA) welcomes the opportunity to contribute to the Review of the coordination and funding of financial counselling services across Australia (the Review).

As the Review is time constrained, the following submission is brief, however, we would welcome the opportunity to provide any further information of interest to the Review.

About National Legal Aid and Australia's legal aid commissions

National Legal Aid (NLA) represents the directors of the eight state and territory legal aid commissions (LACs) in Australia. The LACs are commonly known as "Legal Aid".

LACs are independent, statutory bodies established under respective state or territory legislation. They are funded by state or territory and Commonwealth governments to provide legal assistance services to the public, with a particular focus on the needs of people who are economically and/or socially disadvantaged.

NLA aims to ensure that the protection or assertion of the legal rights and interests of people are not prejudiced by reason of their inability to:

- obtain access to independent legal advice;
- afford the appropriate cost of legal representation;
- obtain access to the federal and state and territory legal systems; or
- obtain adequate information about access to the law and the legal system.

LACs work collaboratively and in partnership with other legal assistance and social support service providers, including financial counsellors whose services are greatly valued by us.

In 2017-18 LACs delivered in excess of 2.2 million services to people across the country. These services were delivered from LAC offices and by way of outreach including through Specialist Domestic Violence Units and health justice¹ and other partnerships.

LAC clients and timely intervention

LAC clients, particularly those to whom more intensive services are delivered, typically suffer multiple circumstances of disadvantage including e.g. debt, poverty, family violence, elder abuse, disability, poor mental health, and homelessness.

¹ Funding to Specialist Domestic Violence Units and Health Justice Partnerships is being continued pursuant to funding announced under the Women's Economic Security Statement 2018, and funding has been extended to include Financial Support Services <https://www.pmc.gov.au/office-women/economic-security>

Many of our clients have mental health and/or intellectual disability issues. Many clients are also functionally/illiterate. Many clients require interpreters.

LAC clients also consume a range of other government services. Some of the associated costs can be avoided or reduced if clients have access to legal assistance. When delivered in a timely and appropriate fashion (including at the early intervention stage), legal assistance can ensure that legal, and other, problems do not escalate at a further cost to government/s, both inside and outside the justice sector.

The nexus between financial counselling and LACs

Financial counsellors support LAC clients and solicitors in a number of ways;

- For many disadvantaged clients, social and financial disadvantage operate together to impact their legal rights. Many clients will have legal issues such as consumer law disputes, unpaid fines, driver licencing offences, housing law disputes whilst also experiencing financial hardship. Multi-disciplinary services, such as the Civil Law Service for Aboriginal Communities (CLSAC) at Legal Aid NSW, involve a team of lawyers working alongside an in house financial counsellor (and other allied professionals) to meet the needs of vulnerable clients in a holistic way. In practice, this means clients can concurrently get assistance with:
 - advice and education about money management
 - budgeting assistance
 - managing a range of debts that cannot otherwise be disputed legally eg. Payment plans, debt waivers
 - preparing financial positioning statements to support legal disputes
 - managing arrears on current accounts for essential services such as energy accounts, tenancy agreements etc.
- Providing financial documentation to support applications made by solicitors on behalf of their clients for hardship variations or debt waivers. While solicitors can assert that their client is in financial hardship, it is useful to have a Statement of Financial Position from a financial counsellor to demonstrate or provide evidence of the client's financial position. Some clients' financial situations are complicated, and financial counsellors can assist in presenting a complicated situation into a simple one page document. This assists solicitors in making arguments about financial hardship.
- Accepting referrals for clients that are in financial hardship but do not have a legal issue. Some clients present at legal services with several debts. They may have defences to some debts, but not all. It is beneficial to be able to make these referrals to financial counsellors, it both assists the client, and enables limited legal assistance resources to be appropriately targeted. Financial counsellors also play a vital role in helping to identify legal issues in relation to financial hardship and referring clients to a legal service where necessary. Case study below.

Lisa recently left a relationship involving domestic violence. She escaped with her young son, and two personal loans that she could not pay. The loans were in her name, but they had been taken out under duress and the money had been used by her former partner. Lisa first saw a financial counsellor who was able to negotiate with one of the lenders to waive one of the loan's debt. The second lender refused. The financial counsellor referred Lisa to Legal Aid, and worked with the solicitor who lodged at External Dispute Resolution (EDR) submitting that the bank was on notice of the duress at the time of giving the loan. Throughout the matter, the Legal Aid solicitor needed financial records from the client in order to show that she had not received any benefit from the loan. The financial counsellor was able to assist the client by helping obtain documents from her bank, and collate the information in a meaningful way. The Legal Aid solicitor made hardship applications to the bank at the same time as running the matter in EDR. Ultimately the bank agreed to waive the debt before a final determination was made at EDR. It is unlikely the client would have approached a legal service on her own.

LAC support to financial counselling services

Whilst currently variable between states and territories and dependent on a range of relevant local conditions, including resourcing constraints, LAC and financial counselling clients benefit from excellent collaborative arrangements between LACs and financial counsellors. For example in Queensland all the financial counsellors have the direct phone numbers of the Legal Aid Queensland (LAQ) Consumer Protection Unit lawyers and are free to call those lawyers with questions or referrals. This system has operated successfully for a number of years. The types of inquiries received by the lawyers include:

- (a) Warm referrals of a client.
- (b) A quick legal question about a client's circumstances.
- (c) A more complex legal question about a client's circumstances.
- (d) An inquiry about whether a particular type of matter can be dealt with by Legal Aid. If the matter can't be dealt with an appropriate referral is made.

Over the years LAQ has provided regular professional training and development sessions for financial counsellors through face to face training and webinar training sessions.

The number of inquiries received by LAQ lawyers from financial counsellors, community workers and community legal centre (CLC) lawyers has increased steadily from 381 in 2014-15 to 564 in 2017-18.

Emerging need and ways forward

Attached please find some proposals which NLA considers would address some specific areas of need identified by our experience working across the country in responding to the legal and related needs of people experiencing financial hardship. These were provided to The Treasury in the NLA Pre-Budget 2019-20 submission.

As indicated above, when it comes to providing financial counselling services and legal services, our experience is that one size does not always fit all given the different population demographics, location, and service availability within the states and territories. As a result, it is suggested that it is appropriate to fund a multi-model mix of services that:

- (a) Has financial counsellors and Legal Aid and community lawyers working collaboratively at different services.
- (b) Has financial counsellors and Legal Aid lawyers working together at specialist services as outlined in our attached proposals.
- (c) Has financial counsellors and legal aid and community lawyers working together at generalist legal and financial counselling services.
- (d) Addresses issues of conflict. E.g. funding to the different legal assistance service providers, e.g. Legal Aid, CLCs, and the Aboriginal and Torres Strait Islander legal service organisations, is required to support expanded financial counselling services to address potential legal professional conflict issues between clients, e.g. husband and wife who have separated, and elderly parent/s providing a guarantee for a loan for a child when they did not understand the guarantee, and may have been subject to undue influence.

Conclusion

Thank you for the opportunity to provide this submission.

Should you require any further information from us please be in touch with the NLA Secretariat on 03 6236 3813 or nla@legalaid.tas.gov.au

Yours sincerely,



Brendan Thomas
Chair

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Proposals to support the Government's response to the findings and recommendations of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (the Royal Commission) and to support disadvantaged consumers in circumstances of vulnerability.

National Legal Aid represents the directors of the eight State and Territory legal aid commissions (LACs), commonly known as “Legal Aid”. The LACs are independent statutory authorities with mandates to deliver effective, efficient and economical legal assistance to disadvantaged people. Many of the witnesses who gave evidence to the Royal Commission were LAC clients.

LACs have established call centres and offices across Australia. Services are provided online and face to face including through outreach and health justice partnerships. LACs also provide and/or partner with allied services such as financial counselling, social work support, Cultural Liaison Officers, and Aboriginal Field Officers as part of a multi-disciplinary approach to solving people’s legal and financial problems, and their root causes. LACs work co-operatively with other legal assistance and social support services to extend service reach to the furthest extent possible, including through collaborative service planning pursuant to the National Partnership Agreement on Legal Assistance Services 2015-2020 (NPA).

In 2014, the Australian Government Productivity Commission Inquiry into civil law Access to Justice Arrangements recommended a legal assistance funding increase of \$200M per annum to address the most pressing gaps in service delivery. \$57M of this was to relax LAC means tests to enable more people to be represented in civil law matters, with only about 8% of Australian households eligible for a grant of aid although around 14% of people in Australia live in poverty,¹ and \$124M to provide additional grants of aid in civil law matters, i.e. in those matter types not currently able to be funded. Many civil law matters are of the type raised at the Royal Commission.

Whilst struggling to meet demand, every day LACs provide large numbers of legal advice, dispute resolution, and legal representation services as well as community legal education and information services to people in circumstances of disadvantage and vulnerability.

¹ Productivity Commission, *Access to Justice Arrangements*, (Inquiry Report No 72, 2014), Appendix H 1021-2.

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Commissioner Hayne observed that “legal assistance is often of critical importance to the customer’s position”² and that “Often, the difference between the result the witness ultimately achieved and the situation that they initially faced before they received legal assistance was very large.”³

“The legal assistance sector and financial counselling services perform very valuable work. Their services, like financial services, are a necessity to the community. They add strength to customers who are otherwise disadvantaged in disputes with financial services entities. In that sense, their role in the financial services sector is complementary to the broader recommendations in this Report that are designed to hold entities to account. Reforms to the law, and to practices of regulators and entities, will not eliminate that need though they will properly aim to reduce it.”⁴

“The legal assistance sector and financial counselling services frequently struggle to meet demand, which is increasing. Some submissions identified areas where the present coverage of such services could be expanded, for example in the provision of consumer advocacy and representation for superannuation consumers.”⁵

“...the desirability of predictable and stable funding for the legal assistance sector and financial counselling services is clear and how this may best be delivered is worthy of careful consideration. Such consideration should look at all options that may be available to supplement existing funding.”⁶

The Royal Commission has made 76 recommendations across a wide range of areas in financial services, banking and insurance. The impact of the Royal Commission has been to enliven and promote community awareness of financial services rights. LACs across the country report increased enquiries from consumers regarding recommendations made by the Royal Commission.

Whilst NLA advocates that an overall increase in core funding would more broadly increase people’s access to the ability to protect their financial rights, please find following seven particular proposals for extending service delivery to disadvantaged consumers which, if implemented as described, would support the Commonwealth Government to deliver on the intent and associated commentary of the Royal Commission Final and Interim reports, and address the ‘asymmetry’ identified between vulnerable consumers and financial services entities. They would also help

² Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Final Report (2019)* vol 1, 490.

³ Ibid 491.

⁴ Ibid 491.

⁵ Ibid 492.

⁶ Ibid 493.

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to contain related costs to the community as a result of unresolved issues leading to demand on other community services if implemented.

We note that LACs have a demonstrated ability to design and implement national innovative legal assistance service delivery programs, and to establish these services swiftly, engaging other providers where appropriate. Costings and service delivery and staffing models provided are indicative but factor in that Australia is a country of diverse conditions and populations, i.e. the larger States and Territories will generally need greater resources except where services are already established to some degree, than the smaller jurisdictions will. As indicated above, LACs work co-operatively to extend service reach as far as possible. In this context, and depending on local conditions and existing service delivery arrangements, it is envisaged that LACs would retain flexibility to deliver the proposals via funding or sub-contracting arrangements with collaborative service delivery partners where appropriate.

We would welcome the opportunity to provide any further requested information.

1. Specialist Civil Law Service for Aboriginal communities

The Royal Commission highlighted the barriers Aboriginal and Torres Strait Islander peoples face in accessing mainstream banking, credit, insurance and superannuation services and the common flow-on effect of this in Aboriginal communities – financial exclusion, overreliance on fringe lenders and, in many cases, extreme financial hardship. Attention was also given to the predatory practices of particular funeral insurance companies and the devastating consequences for very vulnerable people who have paid for these products that are not fit for purpose.

This proposal for a national specialist civil law service for Aboriginal Communities is modelled on the Legal Aid NSW (LANSW) Civil Law Service for Aboriginal Communities (CLSAC). CLSAC delivers advice, casework and education services to remote and isolated Aboriginal communities across NSW through its Money Counts program. Lawyers in the CLSAC team assist Aboriginal people and communities with civil law problems originating from money worries including debts; renting or buying household goods and electronics; paying for funerals; superannuation and insurance. They also assist Aboriginal people with housing, Centrelink and human rights matters in addition to their consumer law problems. An Aboriginal financial counsellor is embedded in the team, working alongside lawyers on outreach to provide a holistic and ongoing service.

The CLSAC team currently has a solicitor working exclusively on funeral insurance. Funding for this role ends in June 2019. There has been a marked increase in demand for advice and assistance in relation to funeral insurance this financial year. Anecdotally, this is attributed to the Royal Commission and growing awareness

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about funeral insurance products generally. CLSAC is receiving referrals from communities where there is currently no outreach service and from partners such as the Aboriginal Legal Service. It is envisaged that the service would include the funding of a senior position to lead the complex funeral insurance litigation and case work and provide training, advice and assistance for other solicitors providing advice.

For LANSW, an additional casework solicitor with consumer law expertise would support the current team to address the increased demand for consumer law advice from across the State. A further casework solicitor would support the team to meet state-wide demand for telephone advice and assistance via the Money Counts legal assistance hotline which is available 9am – 5pm, Monday to Friday. An additional Financial Counsellor would work alongside solicitors to assist clients to alleviate financial hardship by, for example seeking debt waivers and setting up time to pay arrangements and preparing money plans to support these

Funding required to extend the service nationally on an average of 3 lawyers, one financial counsellor, one para-legal/field officer, administrative and corporate support, travel (including to remote communities) and accommodation, ICT needs, and on costs for each State and Territory is estimated to be \$10M per annum, with annual 4% inflator, plus \$1.2M set up costs.⁷

It is envisaged that this resource could assist between 14,400 and 20,800 people.

2. Specialist Superannuation Assistance Unit

This proposal is based on the NTLAC's experience of demand for assistance in relation to superannuation, including in remote communities. The NTLAC has had considerable success in obtaining life changing monies for clients. There are however capacity constraints, and most legal services in the NT no longer offer assistance in this area.

Commonly claims relate to financial hardship application for early access to superannuation and death benefits claims on the superannuation accounts of deceased family members. Death benefit claims can be complex and very time consuming. Clients require extensive identification documentation which often they do not have and requirements imposed by superannuation funds are sometimes experienced as being prohibitively rigid.

The Specialist Superannuation Assistance Unit would develop expertise in handling superannuation matters and ideally would have the capacity to work more closely with Superannuation Industry Bodies to achieve systemic improvements.

⁷ As indicated above, it is noted that in relation to all proposals, in some jurisdictions more than the average will be required, and in others less, with indicative costings allowing for this.

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Funding required to extend the service nationally on an average of 2 lawyers, one para-legal/field officer, one financial counsellor, administrative and corporate support, travel (including to remote communities) and accommodation, ICT needs, and on costs for each State and Territory is estimated to be \$7.5M per annum, with annual 4% inflator, plus \$1M set up costs.

It is envisaged that this resource could assist between 9,600 and 16,000 people.

3. Farm and Rural Debt Legal Service

The proposal for a national Farm and Rural Debt Legal Service is modelled on Legal Aid Queensland's (LAQ) Farm and Rural Legal Service (FRLS) established in the mid-1990s. The FRLS provides advice and assistance to rural producers and rural based businesses that have severe debt related problems or are in dispute with their lenders, or are otherwise facing financial hardship directly related to their business of primary production. The service is free of charge. No income or assets tests apply.

The Service works closely with rural financial counsellors and professional advisors, such as agribusiness consultants, accountants and private legal advisors and represents rural producers in farm debt mediations as well as other debt negotiations with their financiers. The FRLS does not provide representation in court proceedings.

The service has two lawyers who travel throughout Queensland including to remote locations to give legal advice. The service assists rural producers on the farm, at a venue of the farmer's choice, at the local LAQ office or by telephone.

Please see attached link to LAQ webpage and FRLS factsheet:

<http://www.legalaid.qld.gov.au/Find-legal-information/Work-and-money/Farm-and-rural-legal-service?BestBetMatch=farm|33642ca2-1ee0-427b-938e-96024c6f8bda|0a4b0d77-1b6c-4201-871e-25d5b0944cb0|en-AU>

Funding required to extend the service nationally on an average of 2 lawyers, 2 financial counsellors, one para-legal/field officer, administrative and corporate support, travel (including to remote communities) and accommodation, ICT needs, and on costs for each State and Territory is estimated to be \$8M per annum, with annual 4% inflator, plus \$1.5M set up costs.

It is envisaged that this resource could assist between 9,600 and 22,400 people.

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4. Regional and Remote Debt Legal Service

The Royal Commission Background Paper 18, *Some features of financial services in regional and remote communities*,⁸ sets out the profile of regional and remote communities and outlines their interaction with financial service entities:

- As at 30 June 2017, around 6.9 million people, or around 28% of Australia's population of around 24.6 million, lived in regional or remote areas
- Access to a bank branch, other face-to-face service or ATM decreases as remoteness increases
- Social, cultural and economic factors can result in members of the Australian population, including those in regional and remote areas, suffering from a lack of access to banking and financial services, or financial exclusion
- As a result of financial exclusion, individuals may become more vulnerable to financial stress and can fall into a spiral of debt, hardship and poverty.
- Service delivery to regional and remote areas requires particular resourcing and specialised, localised responses.

The proposal for a Regional and Remote Debt Legal Service is based on the LANSW Civil Law Division Financial Hardship position which is based in the Hunter region and a Mortgage Hardship position based in the specialist consumer law team in Central Sydney. A funded national Regional and Remote Debt Legal Service would enable additional solicitors specialising in financial hardship to be located in more regional LAC offices across Australia including in NSW and ensure those experiencing financial stress have access to advice and assistance. The service would:

- assist people who are in danger of losing their homes because they can't pay their mortgage or because a guarantee is being enforced against them;
- request financial hardship assistance;
- raise claims where the lender has breached the law;
- commence external dispute resolution.

Mobile financial counsellors would work alongside the solicitors.

Funding required to extend the service nationally on an average of 6 lawyers, 2 financial counsellors, one para-legal/field officer, administrative and corporate support, travel (including to remote communities) and accommodation, ICT needs, and on costs for each State and Territory is estimated to be \$16.5M per annum, with annual 4% inflator, plus \$2M set up costs.

It is envisaged that this resource could assist between 28,800 and 41,600 people.

⁸ Released by the Royal Commission on 15 June 2018

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5. Disaster Recovery and Insurance Service

In its sixth round of hearings, the Commission examined the insurance industry with reference to case studies on a range of insurance products including life and general insurance and income protection insurance. The experience of natural disaster victims, including those affected by bushfires, cyclones and storm damage, when making insurance claims was also given significant attention. Again, predatory and problematic practices of insurers were highlighted. As a result, the Commission recommended a number of changes to the legislative framework around insurance claims handling.

This proposal for a national service is modelled on the LANSW Disaster Recovery Service (DRS) which is Australia's first specialist legal assistance service for communities impacted by natural disasters, and is delivered in partnership with the Insurance Law Service at Financial Rights Legal Centre. Legal services are provided in Disaster Recovery Centres run by Office of Emergency Management, NSW Department of Justice. The service includes civil law assistance with tenancy, credit, debt, employment and insurance disputes. The bulk of the work of the service is assisting with insurance disputes. With additional resources, the DRS at LANSW could also be expanded to provide a more comprehensive insurance law practice.

The following case study highlights the impact that legal advice and advocacy from this service can have in relation to insurance claims.

The LANSW service assisted a victim of the 2015 Hunter valley Storm, Ms Bernadette Heald, to give evidence at the Royal Commission about her experience of the claims process when her home was damaged. Ms Heald's matter started in May 2015 with an offer of a \$30,000 cash settlement, and finalised in January 2018 when the Financial Ombudsman's Service ordered the insurer to pay our client \$774,000. The Final Report noted Ms Heald's comment that she did not think she would have been able to deal with the claim without the assistance of a solicitor (p 448 report). The Commission recommended a number of changes to legislative framework around insurance claims handling.

Funding required to extend the service nationally on an average of 2 lawyers, 2 financial counsellors, administrative and corporate support, travel (including to remote communities) and accommodation, ICT needs, and on costs for each State and Territory is estimated to be \$7.5M per annum, with annual 4% inflator, and set up costs of \$1M.

It is envisaged that this resource could assist between 9,600 and 22,400 people.

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6. Guarantors Service

The Royal Commission focused attention on third party guarantors for business loans and highlighted the case of Carolyn Flanagan whose case study was referred to the Royal Commission by LANSW. Ms Flanagan, a disability pensioner who suffers from a range of medical problems including cancer and blindness, sought advice from LANSW after receiving court documents from a bank seeking possession of her home.

With LANSW's assistance, Ms Flanagan was able to resist eviction and stay in her home. The Royal Commission found that the conduct of the bank in enforcing the guarantee fell far below community standards.

The proposal for a national Guarantors Service is modelled on the advice and representation services offered by LANSW to older consumers who have used their home as security for loans primarily obtained for the benefit of a third party, usually a son or a daughter. Many of these consumers are elderly, who often seek LANSW advice at the point where the loan is in default and the bank is threatening to sell their home to satisfy the debt.

A national Guarantors Service would provide a strategic response to this issue, with requests for assistance by people in such circumstances also experienced by other LACs. The Service would provide advice and representation to guarantors in difficulty, targeted community legal education about the risks of 'going guarantor', and support for generalist civil law solicitors in regional offices to undertake this work. The Service would be well-placed to participate in law reform in this area and to contribute to Legal Aid's Ageing and Elder Abuse strategies.

In assisting elderly guarantors, the Service would work collaboratively with other services assisting seniors such as the NSW and other Seniors' Rights Services, and seniors' advocacy services, building on already strong local arrangements.

Funding required to extend the service nationally on an average of 2 lawyers, one para-legal/field officer, administrative and corporate support, travel and accommodation, ICT needs, and on costs for each State and Territory is estimated to be \$6M per annum, with annual 4% inflator, plus \$1M set up costs.

It is envisaged that this resource could assist around 9,600 people.

7. Consumer Protection Units at LACs

This proposal is modelled on the LAQ Consumer Protection Unit (CPU). LACs have been experiencing increased calls and contact from consumers following the report of the Royal Commission. It would assist if all LACs could have dedicated CPUs, and if

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LANSW and LAQ were further resourced to support the additional workloads being experienced.

The LAQ CPU lawyers have extensive experience providing specialist advice and representation to vulnerable clients in Insurance, Banking and finance, credit and debt and consumer law. The CPU provides advice to clients as well as lawyers and financial counsellors throughout Queensland in relation to insurance, mortgage stress, housing repossession, banking and financial issues, financial hardship, debt, contracts, loans, telecommunications and unsolicited consumer agreements.

One example of a particular and newly emerged issue in another jurisdiction is NTLAC's experience of the NT's remote communities where mobile telephone reception has only been available for a short time. NTLAC has experience of people being sold telecommunication packages which are evidently inappropriate for their needs, including multiple devices. NTLAC sees people accruing tens of thousands of dollars of debt quickly and often they are also no longer in possession of the devices. NTLAC sees low levels of consumer understanding and confidence in the communities and would like to be in a position to assist.

Funding required to extend CPUs nationally, including establishment costs where required, on an average of 4 lawyers, 2 financial counsellors, administrative and corporate support, travel (including to remote communities) and accommodation, ICT needs, and on costs for each State and Territory is estimated to be \$11M per annum, with annual 4% inflator, and set up costs of \$1M.

It is envisaged that this resource could assist between 19,200 and 32,000 people.

End.