

The background image shows two women in a professional office environment. One woman with dark hair is looking towards the other woman with blonde hair, who is pointing at a laptop screen. The scene is brightly lit, suggesting a window in the background.

URBIS

**REVIEW OF
THE NATIONAL
PARTNERSHIP
AGREEMENT ON
LEGAL ASSISTANCE
SERVICES 2015-2020
FINAL REPORT**

PREPARED FOR 
**THE AUSTRALIAN GOVERNMENT
ATTORNEY-GENERAL'S DEPARTMENT**

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ACRONYMS

Acronym	Meaning
ACT	Australian Capital Territory
AGD	Australian Government Attorney-General's Department
ALS	Aboriginal Legal Service
ALS NSW/ACT	Aboriginal Legal Services NSW/ACT
ALSWA	Aboriginal Legal Service of Western Australia Limited
ATSILS	Aboriginal and Torres Strait Islander Legal Service
CALD	Culturally and Linguistically Diverse
CCLSWA	Consumer Credit Legal Service Western Australia
CIR	Cox Inall Ridgeway
CLASS	Community Legal Assistance Services System
CLC	Community Legal Centre
CLC NSW	Community Legal Centres NSW
CLCA WA	Community Legal Centres Association WA
CLCQ	Community Legal Centres Queensland
CLE	Community legal education
CLSD	Cooperative Legal Service Delivery Program
CLSIS	Community Legal Service Information System
CLSP	Community Legal Services Program
COAG	Council of Australian Governments
CSP	Collaborative Service Planning
CSPG WA	Collaborative Services Planning Group of WA
DJAG	Department of Justice and Attorney-General
DoJ	Department of Justice
DJCS	Department of Justice and Community Safety
DSM	Data Standards Manual
ELA	Extended Legal Assistance
ERO	Equal Remuneration Order

Acronym	Meaning
FAM	Funding Allocation Model
FASS	Family Advocacy and Support Service
FVPLS	Family Violence Prevention Legal Service
IGAFFR	Intergovernmental Agreement on Federal Financial Relations
ILAP	Indigenous Legal Assistance Program
LAACT	Legal Aid Australian Capital Territory
LAC	Legal Aid Commission
LAQ	Legal Aid Queensland
LCT WA	Legal Contributions Trust WA
LJFNSW	Law and Justice Foundation of New South Wales
NAAJA	North Australian Aboriginal Justice Agency
NACLC	National Association of Community Legal Centres
NATSILS	National Aboriginal and Torres Strait Islander Legal Services
NLAF	National Legal Assistance Forum
NLAS	Need for Legal Assistance Services
NPA	National Partnership Agreement
NSW	New South Wales
NT	Northern Territory
PIAC	Public Interest Advocacy Centre
PPF	Public Purpose Fund
QLAF	Queensland Legal Assistance Forum
QLD	Queensland
RLAF	Regional Legal Assistance Forum
RRR	Rural, Regional and Remote
SA	South Australia
SACS	Social and Community Services
TAS	Tasmania
TOR	Terms of Reference

Acronym	Meaning
VCOSS	Victorian Council of Social Services
VIC	Victoria
VLA	Victoria Legal Aid
WA	Western Australia

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EXECUTIVE SUMMARY

This is the final report of the review of the *National Partnership Agreement on Legal Assistance Services 2015-2020* (the NPA). Urbis was engaged by the Australian Government Attorney-General's Department in May 2018 to undertake the review, in accordance with Terms of Reference (TOR) established by the Attorney-General of Australia and all state and territory Attorneys-General.

THE NATIONAL PARTNERSHIP AGREEMENT ON LEGAL ASSISTANCE SERVICES 2015-2020

The NPA represents a key part of a second 'wave' of reforms to the legal assistance sector. It follows earlier reforms commencing with the *Intergovernmental Agreement on Federal Financial Relations* in 2009 and the first *National Partnership Agreement on Legal Assistance Services* (2010-2015) (Council of Australian Governments, 2009a, 2010). In broad terms, the reform directions are focused on supporting a legal assistance sector that is efficient, effective and equitable, and which operates in a collaborative and coordinated way.

Within the NPA, these directions are echoed within the objective of the agreement:

...a national legal assistance sector that is integrated, efficient and effective, focused on improving access to justice for disadvantaged people and maximising service delivery within available resources. (Council of Australian Governments, 2015 cl 8)

The NPA is also intended to facilitate five key outcomes (Council of Australian Governments, 2015 cl 9):

- legal assistance services are targeted to priority clients with the greatest legal need
- legal assistance service providers collaborate with each other, governments, the private legal profession and other services, to provide joined-up services to address people's legal and related problems
- legal assistance services are appropriate, proportionate and tailored to people's legal needs and levels of capability
- legal assistance services help people to identify their legal problems and facilitate the resolution of those problems in a timely manner before they escalate, and
- legal assistance services help empower people to understand and assert their legal rights and responsibilities and to address, or prevent, legal problems.

The primary mechanisms to achieve these outcomes within the NPA include (Council of Australian Governments, 2015 cl 10-16):

- establishing priorities and eligibility principles to guide effective targeting of services to those most in need
- funding of legal aid commissions (LACs) and community legal centres (CLCs) to deliver legal assistance services, including provision of defined funding from 2017-18 for family law services and family violence related services
- distribution of Commonwealth supplementation funding to CLCs impacted by Fair Work Australia's 2012 Equal Remuneration Order (ERO), in accordance with the National Partnership Agreement on Pay Equity for the Social and Community Services Sector (Council of Australian Governments, 2013)
- Collaborative service planning (CSP) to improve the coordination between services in the planning and delivery of services

Community legal centres previously received Australian Government funding directly from the Attorney-General's Department; the NPA transitioned CLC funding into the agreement to be administered by states and territories. This brought CLC funding into alignment with Australian Government funding for LACs, which had flowed through an NPA structure since 2010.

Implementation of the NPA is supported by the establishment of performance indicators and benchmarks, and associated monitoring and reporting processes (Council of Australian Governments, 2015 cl 17-18). The parties to the NPA also agreed to completion of a review of the NPA to conclude approximately 18 months prior to the agreement's expiry (Council of Australian Governments, 2015 cl 41-43). The review being undertaken by Urbis and which is the subject of this report is in fulfilment of this agreement.

TERMS OF REFERENCE

The purpose of this review is to “assess the effectiveness, efficiency and appropriateness of the NPA as a mechanism for achieving its objective and outcomes within available resources and identify best practice and opportunities for improvement” (Attorneys-General, 2018, p.2). The TOR (abridged) specify that the review will have regard to (Attorneys-General, 2018, pp.2-3):

1. the impact that the NPA has had on the delivery of efficient and effective legal assistance services
2. the implementation of collaborative service planning by the Parties, and the extent to which it is contributing to the objective and outcomes of the NPA
3. the effectiveness, efficiency and appropriateness of current funding arrangements in meeting the objective and outcomes of the NPA
4. the utility of the performance monitoring and reporting arrangements, including the collection of consistent and comparable service data in measuring the progress towards achieving the objective and outcomes of the NPA
5. the extent to which the Commonwealth and the states and territories have fulfilled their agreed roles and responsibilities and how the Parties to the NPA and the legal assistance sector have worked together to support a holistic approach to addressing legal need, and
6. areas for improvement and opportunities to enhance current and future arrangements.

The review team was tasked with providing a final report and recommendations in December 2018.

REVIEW APPROACH

Urbis was supported in the conduct of the review by a Steering Committee comprising representatives of the Australian Government Attorney-General's Department and all state and territory Departments of Attorneys-General or Justice. An Advisory Group was also established to provide guidance to the review team, comprising representatives of the legal assistance sector.

Both groups met on a monthly basis over the course of the review. They provided advice on the TOR, the coordination of stakeholder consultations, and on the discussion paper distributed to stakeholders to guide written submissions to the review. Each group also provided input to the iterative analysis of findings, through comment on an initial report outline, a presentation on preliminary findings, and a full draft report.

The review has been informed by analysis of three key sources of data and information:

1. desktop analysis of documentation and data supplied to or identified by Urbis, including state and territory NPA progress reports, prior reviews, and commentary on the legal assistance sector
2. 54 written submissions made in response to the release to the legal assistance sector of a discussion paper focused on the review's TOR, and
3. interviews or group consultations with 247 people, conducted in all states and territories, and representing 120 different organisations spanning government, LACs, CLCs, Aboriginal and Torres Strait Islander Legal Services (ATSILSs), Family Violence Prevention Legal Services (FVPLSs), peak bodies and associations, and others with an interest in the legal assistance sector.

In addition, as the review took place in parallel with the review of the Indigenous Legal Assistance Program (ILAP), we worked closely with Cox Inall Ridgeway (CIR), who were appointed to review the ILAP. Both review teams sought to minimise duplicative consultation and sector engagement by sharing interview transcripts and submissions (where consent to do so was obtained). This approach enabled the Urbis review

to benefit from CIR's engagement with the ATSILS sector, and for both teams to share emerging insights as they arose during the fieldwork and analysis phases of the reviews.

This final report draws on these sources, and the feedback and insights offered by the Steering Committee and Advisory Group over the course of the review.

KEY FINDINGS

The following findings are based on the consultations, written submissions, data and document review.

The aspirations, objectives and principles within the NPA remain appropriate

The previous *National Partnership Agreement on Legal Assistance Services 2010-2015* sought to support a “holistic approach to the reform of the delivery of legal assistance services by legal aid commissions, community legal centres, Aboriginal and Torres Strait Islander Legal Services and family violence prevention legal services” (NPA 2010-15 cl3). The agreement espoused whole-of-sector aspirations of efficiency, cost-effectiveness, and targeting disadvantaged Australians in “accordance with access to justice principles of accessibility, appropriateness, equity, efficiency and effectiveness” (NPA 2010-15 cl15).

The current NPA has retained similar emphasis in its objectives and outcomes (set out earlier), and has introduced strengthened mechanisms to support service targeting, planning and coordination alongside integration of CLC funding into the agreement. Sector support for the aspirations of the longer-term reforms of this NPA is high, providing an enabling foundation upon which future arrangements can build. However, transitional and implementation challenges have limited the directly identifiable improvements to sector effectiveness and efficiency in the short term – most particularly for the CLC sector.

A broad range of factors shape demand for legal assistance services

There is a consistent narrative among sector stakeholders that growing demand for legal assistance services coupled with increasing costs of delivery are placing significant external pressure on services, and that this significantly compromises the achievement of the NPA's aspirations. Some of the demand drivers relate to socio-demographic and economic factors, but others stem from the introduction of policy reforms, legislation and regulation – the impact of which is not consistently assessed for use as an input to sector planning. In rural, regional and remote Australia, delivery of legal assistance services is challenged by higher operational costs, workforce challenges and higher levels of disadvantage.

While strategic advocacy and law reform can be an efficient use of limited resources, constraints on using Commonwealth funding for lobbying and public campaigning within the NPA is perceived by CLCs to limit their contributions in this area.

The experience and implementation of the NPA varies between jurisdictions and sub-sectors

States and territories have adopted different approaches to implementation of the NPA. The implementation context in each jurisdiction also varies in terms of the pre-existing systemic infrastructure, including the extent to which relationships and platforms for collaborative services planning were already in place.

Legal aid commissions have experienced a relatively smooth transition to the NPA, which maintained similar funding processes while streamlining reporting arrangements and increasing flexibility in service design (compared to the prior 2010 – 2015 agreement). However, CLCs have had a markedly different experience due to four key factors. These have included the transition to a new funder relationship; the impacts of anticipated funding cuts in 2017 (although subsequently reversed); a challenging transition to a new reporting system (CLASS); and the implementation of new sector wide data standards.

The NPA enables, but is not driving innovation in legal assistance service delivery

Legal aid commissions consistently observe that innovative approaches are enabled by the focus within the NPA on well-targeted services, provision of greater flexibility in how funding is used, and explicit encouragement of collaborative working. In several jurisdictions, the development, expansion or exploration of socio-legal supports for legal aid clients has been enabled by the more flexible scope afforded to LACs under the NPA.

Community legal centres have historically sought to develop novel ways of reaching disadvantaged clients, offer or partner with integrated socio-legal services. These innovative practices continue in the context of the NPA although are generally not attributed by CLCs to the NPA (in several cases specific innovations are enabled by Community Legal Services Program (CLSP) grants or Indigenous Advancement Strategy grants).

While there are many examples of innovation in the sector, there are few mechanisms within the NPA to drive innovative practices, and the evaluation of innovation success and scalability.

The NPA has not yet impacted system efficiencies, largely due to transitional and implementation costs

At the *service* level, a high level of pre-existing operational efficiency is consistently reported by LAC and CLC stakeholders. Legal assistance services operate efficiently on the whole, and work hard to 'stretch the dollar' as far as they are able - this view receives qualified support from prior reviews of the sector. At the *system* level, prior reviews have identified efficiency opportunities associated with economies of scale for smaller CLCs.

However, the introduction of the NPA has had a negative impact (albeit small and transitional) on the internal efficiency of many of the services that make up the legal assistance sector. Many within the CLC sector reported the loss of staff and corporate knowledge as a direct result of the anticipated funding reductions in 2017. The proposed funding cuts created significant costs as a result of uncertainty in the sector leading to losing and then having to recruit and train new staff.

More generally, in jurisdictions where funding agreements remain short term, there is very little incentive (or capacity) to incur the upfront costs of investment in infrastructure and systems that could enhance efficiency in the medium to long term. This includes, for example, investments in technology platforms that speed up administrative processes or help staff work more efficiently.

The slow delivery of the Community Legal Assistance Services System (CLASS) system (the new national CLC database) has created operational inefficiencies (particularly functional limitations requiring workarounds) at CLC level. The introduction of the Data Standards Manual (DSM) to support collection of consistent and comparable data has also required significant investment in systems and training for both CLCs and LACs, and this is very likely to have had a negative transitional impact on service efficiency.

This review does not make findings on the extent to which sector resources are currently efficiently distributed. It is noted that at the sector level, with the exception of South Australia, there have been no substantial reconfigurations or recalibrations of services. This may indicate that there are relatively few underlying distributive inefficiencies that would give rise to a need for reconfiguration; alternatively, if these inefficiencies do exist they have not yet been addressed through the mechanisms of the NPA.

At present, there appears to be little formalised information sharing across jurisdictions, resulting in missed opportunities to share information, resources and good practices (for example, around approaches to CSP).

The sector continues to deliver value for money under the NPA

Diverse funding streams (in addition to the NPA), difference in cost-factors across geographies and sub-sectors, variability in how 'effort' and service quality are measured, and the difficulty measuring outcomes mean that the quantification of value for money created by the legal assistance sector has not been possible within the scope of this review. The paucity of data to support value for money assessment has also been noted in prior sector reviews.

However, a range of factors support a finding that the sector delivers good value for money. Legal assistance services under the NPA have a strong focus on targeting financially disadvantaged clients, and other priority groups who are otherwise unlikely to secure legal advice or representation. This underpins a core value proposition for the sector, with legal assistance services contributing to efficient resolution of legal problems, as parties operating without advice or representation add time and cost to legal processes and to the courts. Clients who are subject to legal orders may also be more likely to breach those orders if they do not understand them or the consequences of breach. More generally, legal advice or representation assists in securing better outcomes for clients.

The NPA also supports early intervention through required reporting on community legal education (CLE), legal task assistance and pre-court resolutions. The integration of legal and non-legal services (for example, financial counselling in CLCs, family support workers in some LACs) also create a better service experience

for clients, allow lawyers to efficiently focus on core legal work, and are enabling of better legal outcomes. Together, these practices are likely to reduce downstream costs and deliver value to the community.

A further marker of value for money lies in the ability of LACs and CLCs to leverage low cost legal support services outside their organisations, through grants of legal aid at rates below private market cost and coordination, the facilitation of significant pro bono support from legal professionals, and utilisation of law students and paralegals.

The intent of collaborative service planning is well supported, although there is significant variability in implementation

The NPA introduced formal CSP, building on the Legal Assistance Forums established under the 2010-2015 agreement, with emphasis on two core elements. These are the use of evidence and data to identify priority clients and geographies to target services, and the conduct of CSP meetings at least twice annually to discuss strategies for streamlining services and reducing duplication (Schedule A). Collaborative service planning processes are in place within all jurisdictions, and the core principles of area-based, evidence-informed planning continue to enjoy support from the sector.

In all jurisdictions LACs, CLCs and ATSILSs participate in formal CSP forums, as required under the NPA and ILAP arrangements, while other sector stakeholders are variably involved. In some, but not all jurisdictions, this includes FVPLS. There is considerable variation in the participating stakeholders in CSP cross jurisdictions and the role of non-NPA funded services in the process is unclear.

Approaches taken to CSP vary considerably, and practices are at different stages of development across jurisdictions. This reflects in part the different starting points in terms of pre-existing platforms on which CSP could build, and the scale, structure and context of the legal assistance services in each jurisdiction. The variations observed include differences in intent, focus, scope, and geographic scale, as well as process differences relating to who 'drives' the CSP process, who participates, and what data informs discussions.

Collaborative service planning also varies in focus – in some contexts this is on strengthening *communication* by participants to support services to plan their work in a coordinated way. At the other end of the spectrum, there are examples of active *collaboration* through the initiation of joint projects or services involving multiple providers.

Collaborative service planning is perceived by stakeholders to be more effective where there is clarity of purpose, where it is supported by strong sector relationships, and where resources are committed to support the effective participation by key contributors to CSP processes.

There is considerable scope for more effective implementation of collaborative service planning

Clarity of purpose within CSP sustains its focus and direction. At present, the approaches adopted are inconsistent at the national level, in part emerging from a lack of clarity within the NPA itself. The scope of CSP as can be read into the NPA is diverse, and includes:

- collaborative working and partnership-driven service delivery to deliver joined-up services
- better coordination of existing services to maximise reach and minimise system gaps
- efficient distribution and allocation of resources – with the implication being that this applies to internal allocations within LACs (and ATSILS), and between CLCs
- driving system efficiency and effectiveness.

Factors that have hindered CSP include competitive tensions (related to the funding environment), perceptions of conflicted interests among some participants, and perceived power imbalances associated with the relative scale and influence of different sector actors. Some stakeholders also expressed cynicism about the process resulting in 'gap shifting' in the context of a resource constrained environment.

While CSP embraces a focus on the whole of the legal assistance sector, engagement by parties other than government and LACs generally requires resourcing trade offs where participation is unfunded. In smaller organisations, the proportional impact of this is higher, and as a result, the level of participation varies. This is more evident in, although not exclusive to smaller jurisdictions.

The promise of CSP is more likely to be fully realised with more attention to strengthening the enabling factors and addressing those that hinder its effectiveness. This includes providing clearer, national guidance on purpose and process, developing and sharing of resources and data, and implementing strategies to strengthen information sharing between jurisdictions. Useful practices in some jurisdictions include ‘tiered’ approaches to CSP, which allow for both jurisdiction-wide conversations to occur, complemented by more localised/regional approaches.

Funding has been consolidated, but there are further opportunities for streamlining

Prior to 2010, Australian Government funding for LACs was negotiated directly with each LAC. The first NPA (2010-15) brought into one agreement Australian Government funding to states and territories for the provision of legal aid services in Commonwealth law matters (with some important exceptions), with funding administered by states and territories. Funding for the other key components of the legal assistance sector (CLCs, ATSILS and FVPLS) was administered separately by the Australian Government.

The current NPA (2015-2020) continues the trajectory of earlier reforms in seeking to devolve allocative decision-making to states and territories.

The Australian Government determines distribution of NPA funding to states and territories through Funding Allocation Models (FAMs) developed for LAC and CLC funding. The models determine allocations by accounting for differences in establishment costs, population, legal need indicators and cost factors across states and territories (Attorney-General’s Department, 2015).

The specific FAMs were not available to the review team. However, some stakeholders have reservations about whether the model appropriately weights factors that contribute to the cost and complexity of service delivery in their jurisdictions. Others observe that the model produces distributions that differ significantly to those of models used for other NPAs. There were consistent calls for greater transparency in how funding allocations are determined at the national level.

Funding for CLCs was ‘locked in’ for the first two years of the NPA. From 2017-2018, states and territories have determined NPA funding allocation to CLCs. To date, individual CLCs have generally continued to receive close to historical funding levels, with some exceptions.

The introduction of new FAMs saw a re-distribution of the total pool of Australian Government Funding, and some states and territories experiencing significant changes in their funding allocations (Table 1). South Australian and Tasmania experiencing overall decrease in funding of approximately seven percent in the first year of the agreement compared to the prior year, and the Northern Territory receiving a largest proportional increase of 27.5 per cent, followed by Western Australia with 10.7 per cent (all other jurisdictions received a net increase in dollar terms). Allocations also changed significantly within the LAC and CLC pool for some states and territories.

Table 1 – Australian Government funding distributions by state and territory 2014-15 to 2015-16 (\$m)

	NSW	Victoria	Queensland	WA	SA	Tasmania	ACT	NT
2014-15 (\$m)	73.62	55.01	48.88	26.22	20.84	7.85	5.48	5.56
2015-16 (\$m)	74.65	57.58	50.06	29.02	19.48	7.27	5.79	7.09
Change (%)	1.39%	4.68%	2.42%	10.67%	-6.50%	-7.29%	5.66%	27.52%

Source: Australian Government Attorney-General’s Department data

The extent that the NPA as an instrument is able to influence sector coordination, collaboration and efficiency is partly limited by the leverage it is able to bring to bear. This is largely (but not solely) a function of the underlying funding that is integrated into the agreement. The existence of other funding streams into the sector and administered outside the agreement reduces the breadth of influence exercised by the NPA. A second impact of external funding streams lies in the reporting burdens associated with inconsistent data and reporting requirements attached to multiple agreements.

Contextual factors influence the appropriateness of integrating any specific funding stream into the NPA, including consideration of program alignment with NPA goals, and whether efficiencies will be leveraged for funders, administrators or recipients. For Indigenous-specific programs, broader factors also include Australian Government's national leadership role within Indigenous affairs, any impacts on self-determination, and the underlying drivers of disadvantage and engagement with the legal system by Indigenous people.

Short term funding cycles and the residual effects of proposed funding cuts in 2017 (subsequently reversed) impact negatively on CLCs

Community legal centres report significant impacts from the anticipated reductions in Australian Government funding, which were due to take effect in 2017. While the reduced funding was ultimately offset by the distribution of defined funding, there were a range of negative impacts, some of which are still being felt within the CLC sector. The impacts were lessened in jurisdictions where state governments increased funding or provided funding assurances.

The anticipation of significantly reduced funding and uncertainty about how a smaller 'pool' would be distributed created an environment of increased competitive tension between CLCs. In some jurisdictions, this was characterised by what was described as an erosion of trust within the sector that is taking time to restore. Increased competitive tension has also impacted on the willingness of some in the CLC sector to fully engage in CSP.

Operational impacts were also significant, with CLCs reporting impacts on staff morale and loss of staff due to uncertainty of tenure as CLCs prepared to scale back services, and costs attached to having to rebuild their workforce following the announcement of defined funding.

More broadly, the continuation of short term funding cycles (1-2 years) in some jurisdictions coupled with the impacts of the 2017 funding changes undermined the capacity of CLCs to secure their workforce. This is exacerbated by CLCs struggling to compete with other legal services in terms of remuneration (for lawyers), security of employment and employment conditions.

Reporting under the NPA is a relatively low burden

The NPA introduced new reporting arrangements incorporating performance indicators in five key areas, aggregated at state-wide level. The indicators address the proportion of representation services reaching priority clients, quality of service measured through client surveys, the quantum of facilitated resolution processes and proportion of conferences achieving full or partial settlement (LACs only), the quantum of service delivered to clients experiencing or at risk of family violence (CLCs only), and the quantum of legal assistance services. Benchmarks (with financial abatements for underperformance) are attached to the proportion of representation services to financially disadvantaged clients.

Overall, reporting requirements are a relatively low burden, and the focus on service targeting and quality in addition to service volume is positively perceived, particularly by LACs. Perceptions of reporting requirements vary among CLCs, depending on the state-specific requirements associated with state and territory funding arrangements. Legal aid commissions and CLCs also observe the range of inconsistencies between NPA reporting and other program reporting (attached to both Australian Government and other funding streams), with greater alignment or integration of reporting arrangements of value to the sector.

Client surveys have been implemented for LACs in all jurisdictions and for CLCs in many, and their value to understanding client perspectives and experience of service is broadly appreciated by the sector. There are, however, significant methodological challenges associated with surveying vulnerable populations that place some limitations on how the data can be interpreted.

Data has not been routinely provided back to reporting organisations in a way that might support them to compare their own activity with peer organisations at the state and national levels. At the same time, the transition to the DSM and from the previous CLC database, the Community Legal Services Information System (CLCIS) to the CLASS system has led to significant concerns about data quality, and particularly comparability of CLC data. There has been ongoing refinement of CLASS and despite a challenging roll out, the database is now considered suitable for most CLC stakeholders.

The review also found some inconsistencies in how different LACs report their data which also inhibits comparability. These concerns are expected to abate over time, although there remains significant work to be done to support the sector to fully transition to the new data standards.

NPA indicators are limited in their representation of sector performance

There are several specific issues raised by LACs and CLCs in relation to the usefulness of the indicators associated with the NPA. While the LACs noted that the new indicators represent an improvement on the prior NPA, overall, sector stakeholders have observed three key limitations. These were that the current set of performance indicators:

- do not consistently capture the full range of outputs created by NPA-funded legal assistance services
- inadequately represent the variability, complexity and extent of input effort or work done to deliver each unit of output, and
- do not represent outcomes achieved by the sector.

The development of the National Strategic Framework for Legal Assistance provides a strong foundation for the future alignment of outcomes and performance monitoring for the sector with the potential introduction of indicators and evaluative guidance in future revisions.

The data standards continue to be ‘bedded down’ across the sector, but represent solid progress toward more uniform data at the national level

The National Legal Assistance Data Standards Manual (DSM) was developed to provide guidance to the sector on the collection of consistent and comparable data. The intent of the DSM is generally supported within the sector, and the value of improved data to the development of sector planning and performance monitoring are acknowledged.

The DSM itself acknowledges that the process of improving the collection and use of data is an iterative one, and this is borne out in the experiences of the sector over the course of its implementation. Both LACs and CLCs (through the National Association of Community Legal Centres (NACLC)) received funding to support the sector to transition to data systems that were compliant with the DSM and supported new reporting requirements under the NPA.

However, there have been ongoing issues associated with variability in how the DSM is interpreted, applied and reported at service level and between jurisdictions. For CLCs, challenges transitioning to the DSM have exacerbated (and been exacerbated by) transitional difficulties with implementation of the CLASS system.

Further work is required to ‘bed down’ the changes, continue the ongoing work of refinement and improvement to the definitions, and to support services in the collection of consistent and comparable data. This is a leadership role most appropriately located with the Australian Government, in partnership with state and territory governments and sector peaks.

Governments have largely fulfilled their formal roles and responsibilities under the NPA, but there are opportunities for more active policy leadership

The Australian Government’s responsibilities as defined under the NPA are broadly limited to provision of funding to states and territories, monitoring performance, specifying Australian Government priorities and eligibility principles, and providing guidance on CSP and a forum to facilitate information sharing. Overall, these responsibilities have been met, although minimally in the case of establishing an information sharing forum.

State and territory governments’ responsibilities include the administration and distribution of funding provided under the NPA (including SACS funding), undertaking CSP, facilitating client surveys, monitoring assessing and reporting on the delivery of services under the NPA. These responsibilities have been met, although as noted earlier, the maturity of CSP processes varies across and within jurisdictions.

The Australian Government has a narrowly defined role under this NPA. State and territory governments have had to recalibrate their approaches to allocative, administrative and policy functions of sector leadership in a number of different ways.

Future arrangements present an opportunity to better codify the individual and shared responsibilities of the Australian Government and the states and territories. There are specific opportunities for the Australian Government to take a leadership position on data development and information sharing at the national level.

SUMMARY OF RECOMMENDATIONS

Recommendation 1

To support the attainment of NPA objectives and outcomes (which are sound and widely supported), the next agreement should incorporate a wider range of mechanisms to strengthen implementation of initiatives addressing NPA goals grouped under:

- strategic and policy leadership
- provision and allocation of funding
- sector planning and development
- performance monitoring and evaluation
- research, innovation and evidence building.

Recommendation 2

To ensure the responsibilities of governments under the NPA are well defined and complementary, the NPA should explicitly set out the roles of the Australian Government and state and territory governments for the key areas defined within recommendation 1. This would encompass areas of sole and joint responsibility.

Recommendation 3

To support the rigour and improve the transparency of the funding formula to determine allocations to jurisdictions, the current FAMs should be reviewed (and if appropriate, updated) by an independent body to inform negotiations around Australian Government funding to states and territories under the NPA.

Recommendation 4

To ensure funding remains stable in real terms at state and territory level, the FAMs should incorporate provision for the indexation of supply-side costs and demand drivers as forecast at a jurisdictional level and applied over the duration of the agreement. This would include, for example, the use of labour cost indexation formulae that are specific to each state and territory, and updated socio-demographic forecasts drawing on the most current data available.

Recommendation 5

To capitalise on opportunities to streamline Australian Government funding programs to the legal assistance sector (including those administered outside of the Attorney-General's Department), the Australian Government should consider their potential integration into the NPA on a case-by-case basis. This would include consideration of:

- the extent to which NPA integration would support or detract from the purpose of the funding
- the extent to which NPA integration would simplify funding administration and reporting for funders and funded organisations
- the appropriate positioning of allocative decision-making, being either at Australian Government or state and territory level – informed by collaborative service planning.

Where appropriate, this might include provision for Australian Government 'own purpose' funding to be noted within the agreement (i.e. funding that continues to be directly administered by the Australian Government).

Recommendation 6

To enable greater flexibility within future funding arrangements, and to facilitate integration of new funding streams, the multi-lateral NPA could be supported by bi-lateral agreements to which schedules can be affixed on a jurisdiction-by-jurisdiction basis.

Recommendation 7

To provide certainty of base funding and to reduce inefficiencies associated with short-term funding cycles for CLCs, the NPA should encourage states and territories to administer longer term core funding cycles for CLCs of at least three and up to five years.

Recommendation 8

To enable states and territories flexibility to prioritise funding to respond to emerging trends or demand fluctuations, capitalise on innovation opportunities, and provide pathways for high-performing CLCs to access additional funding, a proportion of NPA funding should be able to be allocated on a flexible basis, in addition to base funding.

Recommendation 9

To ensure that distribution decisions are based on present legal needs and service capability, states and territories should give consideration to allocating NPA funding to CLCs that are currently not receiving funding under the agreement, but which are well placed to deliver the required services.

Recommendation 10

To strengthen the consistency and effectiveness of collaborative service planning, governments should:

- apply the principles of collaborative service planning across national, state and regional/local levels (the latter more applicable in larger jurisdictions)
- establish (or continue) periodical forums for government and legal assistance sector actors at each geographic 'tier' to consider the available evidence and data on legal need, develop strategies to address identified gaps or priorities, and to guide priority projects requiring a collaborative response
- over time, engage a wider range of stakeholders in collaborative service planning beyond the justice portfolio, in particular those whose services and clients bring them into regular contact with legal assistance services
- incorporate impact and outcomes reporting on collaborative service planning to encourage more structured and purposeful activities.

Recommendation 11

To provide greater clarity of the intent of collaborative service planning, the Australian Government should develop further, more specific, guidance on the underlying principles and expected outcomes of CSP. While focusing on the intended result of CSP, this guidance should continue to allow for flexible and adaptive implementation models suited to each jurisdiction's context.

Recommendation 12

To support the regular and effective contributions of LACs, CLCs, ATSILSs and FVPLSs to collaborative service planning processes, governments should ensure their participation is adequately resourced. This includes considering whether representative organisations (e.g. state-based peaks) require specific-purpose funding in order to fully participate in, and meaningfully contribute to CSP.

Recommendation 13

To support ongoing sector development and efficiency, the Australian Government should convene a legal assistance sector forum every two years. The forum would showcase demonstration projects and their outcomes in line with NPA goals; provide a platform for sharing resources, good practices and emerging learnings; and include key presentations on the "state of the sector" focussing on national trends and issues.

Recommendation 14

To improve the consistency of implementation of data standards, and to support the longer-term development of more robust, consistent and comparable data, the Australian Government should prioritise and fund delivery of further guidance and targeted training for the CLC sector, coordinated at the national level.

Recommendation 15

To better enable a planned and more efficient response to policy-driven demand for legal assistance services, the Australian Government and state and territory governments should consider the use of legal assistance impact statements when introducing new policies, regulation or legislation. This information will support more effective and proactive collaborative service planning.

Legal assistance impact statements should also be encouraged beyond justice portfolios (encompassing the courts, police, and corrective services, and criminal, family and many civil law matters). They should also be applied in other portfolios including child protection, immigration, homelessness and housing. The practice of assessing expected impacts on demand for legal assistance might also extend to major government inquiries resulting in reforms that have the potential to create significant additional (if sometimes temporary) demands on legal assistance services.

Recommendation 16

To enable the development of a longer term ‘performance story’ for the legal assistance sector, the National Strategic Framework for Legal Assistance should be updated to incorporate key indicators attached to each of its outcomes, and provide guidance on purposeful, cost-effective monitoring and reporting activity at the service and sector level.

Recommendation 17

To ensure reporting burden imposed by the NPA remains proportionate, future arrangements should retain emphasis on cost-effective reporting that balances collection burden with the value created for government and the sector. This should include increasing focus on feeding back insights emerging from reported data to those collecting and reporting the information.

Recommendation 18

To support more robust analyses of value for money and to inform future policy development in the sector, governments should establish a national legal assistance sector research and evaluation agenda. This could guide the development of a stronger evidence base in relation to the quality and appropriateness, efficiency, effectiveness and socio-economic return delivered by the legal assistance sector, and would complement existing analyses of legal need being undertaken in support of collaborative service planning.

Recommendation 19

To facilitate ongoing improvement to the reach, quality and efficiency of legal assistance services, the NPA should strengthen its support for innovation. It is recommended that the NPA should:

- maintain flexibility in how its funding is expended to encourage and enable service level innovation
- provide specific funding for innovative pilot initiatives designed to support NPA objectives
- support learnings capture across jurisdictions, including a stronger focus on evaluation and scalability-testing for successful innovations
- support collaborative problem-solving and sector/service innovation through collaborative service planning.

Recommendation 20

To strengthen information and evidence sharing within the sector and contribute to reduced duplication of research and development effort, the Australian Government should establish a national clearing house for innovative and/or effective service models in line with NPA goals; training and workforce development initiatives; evaluation and research reports; and CLE and other resources.

Recommendation 21

To address consistent perceptions in the CLC sector that the lobbying clause precludes or constrains law reform and advocacy work, the NPA should incorporate a clearer definition of lobbying and the specific activities towards which NPA funding cannot be applied.

1 INTRODUCTION

In May 2018, Urbis was engaged by the Australian Government Attorney-General's Department (the Department) to undertake a review of the *National Partnership Agreement for Legal Assistance Services 2015-2020* (the NPA) (Council of Australian Governments, 2015). This report contains the findings and recommendations of the review.

The review was commissioned and overseen by the NPA review Steering Committee, comprising representatives from each state and territory Department of Justice and/or Attorney-General's Department. The Steering Committee was supported by an Advisory Group which brought together representatives of key organisations and peak bodies from the legal assistance sector. The full membership of both the Steering Committee and the Advisory Group can be seen in Appendix E.

The review was scheduled to take place approximately 18 months prior to the expiry of the agreement (Council of Australian Governments, 2015 cl 41 – 43), and was undertaken between June and December 2018. The key aim of the review was to consider whether the NPA has been effective, efficient and appropriate in the context of the funding that is available, and whether the funding provided has enabled progress toward the objectives of the agreement.

The review comprised a detailed analysis of documentation and data on the NPA, extensive consultation with the legal assistance sector (including site visits to several locations in each state and territory) and a formal process for written submissions.

1.1 THE TERMS OF REFERENCE

The review was guided by six overarching areas of inquiry set out in the *Review of the National Partnership Agreement on Legal Assistance Services Terms of Reference* (TOR) (Attorneys-General, 2018). The TOR were established by the Attorney-General of Australia and all state and territory Attorneys-General as parties to the NPA. The TOR specified that the review consider (abridged):

1. the impact that the NPA has had on the delivery of efficient and effective legal assistance services
2. the implementation of collaborative service planning by the Parties [to the NPA], and the extent to which it is contributing to the objective and outcomes of the NPA
3. the effectiveness, efficiency and appropriateness of current funding arrangements in meeting the objective and outcomes of the NPA
4. the utility of the performance monitoring and reporting arrangements, including the collection of consistent and comparable service data in measuring the progress towards achieving the objective and outcomes of the NPA
5. the extent to which the Commonwealth and the states and territories have fulfilled their agreed roles and responsibilities and how the Parties to the NPA and the legal assistance sector have worked together to support a holistic approach to addressing legal need
6. areas for improvement and opportunities to enhance current and future arrangements (Attorneys-General, 2018 pp.2-3).

The TOR are provided in full at Appendix F.

1.2 REVIEW APPROACH

1.2.1 Data collection

National consultations

A series of national consultations were undertaken, involving group discussions and in-depth interviews with some 250 stakeholders. The review team visited 18 locations across the states and territories and attended the 2018 National Association of Community Legal Centres Conference in Sydney to meet and consult with a broad range of stakeholders. A full list of organisations consulted is included in Appendix C.

Locations for the sites visit were determined in consultation with the review Steering Committee and the Advisory Group. They included:

- metropolitan and regional centres or hubs
- a range of services delivery contexts
- culturally diverse communities.

Table 2 – Site visits

State	Capital city	Regional site/s
NSW	Sydney	Dubbo and Lismore
VIC	Melbourne	Bendigo
QLD	Brisbane	Townsville and Cairns
NT	Darwin	Alice Springs
ACT	Canberra	NA
TAS	Hobart	Launceston and Burnie
SA	Adelaide	NA
WA	Perth	Albany and South Hedland

Members of the Steering Committee and Advisory Group supported the development and management of the itineraries for the visits to each jurisdiction, including nominating the stakeholders to be consulted. All site visits followed a similar structure, and engaged with:

- **government stakeholders**, including representatives from Departments of Justice and/or the Attorney-General and other relevant personnel, such as those with portfolio responsibility for legal assistance services
- **legal assistance service providers and stakeholders**, including representatives from legal aid commissions (LACs), community legal centres (CLCs), Aboriginal and Torres Strait Islander Legal Services (ATSILS), Family Violence Prevention Legal Services (FVPLS), national, state and territory CLC peak bodies, and other stakeholders with specific insights into the NPA review.

All interviews and discussions were recorded and subsequently transcribed for analysis (except where consent was withheld by participants). Discussion guides for the stakeholder consultations were designed by the review team and approved by the Steering Committee, following feedback from the Advisory Group.

Written submissions

The review included a targeted written submissions process. This provided an additional opportunity for direct input to the review for those services or locations not visited in the consultation phase. To provide guidance to those wishing to make a written submission, a discussion paper was prepared which outlined the context of the review and the desired scope of stakeholder input.

The submission process opened on 1 August 2018 using an online portal where stakeholders could access relevant documentation about the review and upload their submission. Communications about the submissions process were managed by the Steering Committee and Advisory Group, who circulated the discussion paper, an information flyer and web address of the online portal to their networks. All stakeholders making a submission were required to specify the preferred level of confidentiality for their submission in relation to inclusion and citations in this report, and the sharing of submissions with the Steering Committee.

The submission process closed on 5 October 2018. In total, 54 submissions were received from national and jurisdictional peak bodies, individual LACs, CLCs, ATSILS and FVPLS, government representatives, and other key bodies, and some individuals. All organisations and individuals received a confirmation of their submission which detailed the process by which their data would be analysed.

Documents and data

The review team reviewed a range of documentation and data from the sector, including, but not limited to: six monthly NPA progress reports from each LAC to the Australian Government, relevant national and state government reports and reviews of the legal assistance sector; and additional LAC data to provide context for the current review.

The review team was also provided with access to the new national CLC database (CLASS). Following extensive consultation with sector stakeholders, the reviewers made a decision not to include CLASS data in this report. This is due to a high level of stakeholder concern about the accuracy and reliability of the CLASS data at this time, following a number of challenges relating to the implementation of CLASS and the introduction of the national Data Standards Manual (DSM) (see sections 3 and 4 for further details). It is anticipated that as the new system is bedded down, CLASS data will become increasingly accurate and reliable, but it would be unwise to include data for the last year or two as it would not accurately represent the work undertaken by CLCs.

1.2.2 Analysis and development of findings

Sector documents, reports and data

Relevant documents and reports were analysed to inform the development of the review methodology and this report. Collation and analysis was undertaken of data from the six monthly NPA progress reports by each jurisdiction to the Australian Government from 1 July 2015 to 30 December 2017. The data is primarily descriptive in nature and includes an analysis of NPA performance indicators.

Site visit transcripts and submissions

The content of transcripts from the site visits and submissions received was assessed using NVivo, a qualitative analysis software program, together with a coding frame. The coding frame was developed in consultation with the Steering Committee and the Advisory Group and set out the anticipated themes for the review. NVivo categorised the contents of transcripts and submissions in line with these themes, as well as any additional themes that emerged during the analysis.

Synthesis

At the completion of qualitative and quantitative data analysis, a synthesis workshop for all members of the review team was held. The team applied a structured approach to reviewing and synthesising the findings from each data source for the review (e.g. sector reports, interview transcripts, submissions) which involved aligning the data to the TOR and building consensus on what the individual data sources collectively reveal about each of the TOR. This process of synthesis ensured that all findings from the review were considered in relation to one another, to ensure a balanced perspective was achieved.

A draft report structure was provided to the Steering Committee and Advisory Group for comment.

Reporting

Following preliminary presentations of findings (and receipt of feedback) to the Steering Committee (on 15 October 2018) and to the Advisory Group (19 October 2018), a full draft report was prepared and circulated to both groups for comment.

The draft report was discussed at structured meetings convened for that purpose with each of the Steering Committee (on 21 November 2018) and Advisory Group (on 23 November 2018), with written feedback also solicited.

Detailed feedback was received and considered, and revised findings were shared with the Steering Committee on 10 December 2018, with minor comments noted at the final meeting of the Steering Committee attended by the review team on 14 December 2018. This final report has been prepared with consideration given to both verbal and written feedback provided by Steering Committee and Advisory Groups on the draft report.

1.2.3 Engagement with the Steering Committee and the Advisory Group

The role of the Steering Committee was to oversee the review, provide direction to the review team, and ultimately endorse key review documents. Urbis engaged the Steering Committee throughout the six months of the review for the following purposes:

- review of the draft review plan
- endorsement of the final review plan
- review and endorsement of consultation tools, including the submissions discussion paper and site visit schedule
- receive an update on the consultation phase
- receive an update on the completion of consultations
- review the proposed report structure
- review of the draft report
- review of the revised findings
- acceptance of the final report.

The role of the Advisory Group was to support the Steering Committee by providing advice to the review team, as well as feedback on key review documents. Urbis engaged the Advisory Group throughout the review for the following purposes:

- review of the draft review plan
- review of consultation tools, including the submissions discussion paper and site visit schedule
- receive an update on the consultation phase
- receive an update on the completions of consultations
- review the proposed report structure
- explore early observations and findings through a workshop facilitated by the review team
- review and comment on the draft report.

1.2.4 Parallel reviews

The NPA review has been conducted in parallel to four other Australian Government reviews, as follows:

- Review of the Indigenous Legal Assistance Program (ILAP)
- Evaluation of the pilot program of specialist domestic violence units and health justice partnerships
- Evaluation of the Family Advocacy and Support Service (FASS)
- Evaluation of the FVPLS

During the same period, the Australian Law Reform Commission was conducting a review of the family law system, with the report due to the Commonwealth Attorney-General on 31 March 2019 (Australian Government Attorney-General's Department, 2018b p.5).

The NPA review has worked in close partnership with the ILAP Review, delivered by Cox Inall Ridgeway. This involved the joint development of consultation tools, several joint consultations with stakeholders, and sharing of emerging findings and themes between the NPA and ILAP as the reviews progressed.

The NPA review has also exchanged early findings with the evaluation team for the FVPLS, although the report on that work was not available at the time of writing.

1.3 LIMITATIONS

There are several limitations and caveats which should be noted in relation to certain aspects of the review.

Data on community legal centres' performance

As noted above, no quantitative data regarding the activity or performance of CLCs drawing on CLASS has been used in the development of this report. This limitation means that the quantum of services delivered by CLCs nationally has not been assessed at this time and is not included in this report.

Legal aid commissions' data

To present a national picture of services provided by LACs, certain data requests were made of each LAC (through National Legal Aid) relating to volume of assistance, the cost of providing legal assistance and the proportion of matters assigned to the private legal profession. Although every effort was made to ensure consistency in definitions and data extraction methods across jurisdictions, there are a number of caveats in relation to the data that need to be noted which are clearly set out in the report (see Appendix H).

Value for money

The review TOR included a reference to the value for money delivered by the legal assistance sector under the NPA. As has been noted in prior reviews of legal assistance services, the lack of detailed data and evidence on sector performance makes a full assessment of value for money extremely challenging. Consequently, this review provides a qualitative assessment of value for money only, and makes recommendations about how improvements to value for money assessments might be achieved in future.

2 LEGAL ASSISTANCE SERVICES IN AUSTRALIA

2.1 THE LEGAL ASSISTANCE SECTOR

The four main providers of legal assistance services to disadvantaged people in Australia are LACs, CLCs, ATSILS and FVPLS. Legal assistance is also provided through online legal resources as well as not-for-profit organisations such as Justice Connect and JusticeNet, and by members of the private legal profession through pro-bono partnerships and contributions.

This section provides a brief overview of these services.

2.1.1 Legal aid commissions

Legal aid commissions are independent statutory authorities in each state and territory and are the major providers of legal aid in Australia. Legal aid commissions focus on providing services to people who are economically and/or socially disadvantaged (National Legal Aid, 2018 p.3, Productivity Commission, 2014 p.26).

Services provided by LACs include: information, legal task assistance services, non-legal task assistance services, family dispute resolution services, legal advice, legal representation in courts and tribunals. These are provided through salaried lawyers from LACs and by private legal practitioners on assignment. Most LACs also use paralegals to provide legal information and education.

Legal aid commissions also provide non-means tested legal assistance including: advice (both face-to-face and telephone advice services), advocacy and other litigation services, duty lawyer services (immediate advocacy services in local courts), mediation services and community legal education.

There is a LAC in each state and territory servicing approximately 76 locations in total, as well as providing outreach services (Australian Government Attorney-General's Department, 2018b p.9). The LACs nationally are as follows:

- Legal Aid Australian Capital Territory
- Legal Aid Commission of Tasmania
- Legal Aid New South Wales
- Legal Aid Queensland
- Legal Aid Western Australia
- Legal Services Commission of South Australia
- Northern Territory Legal Aid Commission
- Victoria Legal Aid.

To provide some context for the review, LACs provided data on the number of key services delivered in the last three financial years (2015-16 to 2017-18), the proportion of these delivered by LAC salaried lawyers (inhouse) and the proportion assigned out to private legal practitioners, and the cost of providing these services. The data have been collated to present a national profile which is presented below. It should be noted that these data were supplied by each LAC, hence a number of caveats need to be noted about data definitions, counting rules and interpretations (see Appendix H) It should be noted that LACs provide a range of other services and supports that may not be captured in this profile, but the profile includes the core services provide through grants of legal aid.

This national data profile shows that:

- LACs have provided over 600,000 duty lawyer, legal representation and facilitated resolution services in the 2016, 2017 and 2018 Financial Years
- There has been a steady growth in the total number of services delivered by LACs in these matters over the last few years, from 615,835 services in the 2016 Financial Year to 651,461 services in the 2018 Financial Year
- The overall growth in services was almost 6%, but the highest rate of growth over the last three years of the NPA has been in relation to civil law duty lawyer services (+ 46%), family law duty lawyer services (+29%) and in criminal law representation services (+12%).
- Criminal law matters comprise the majority of legal assistance services followed by family law and civil law matters.
- The private legal profession plays a critical role in the delivery of legal assistance services provided by LACs. While LAC salaried lawyers provided the bulk of duty lawyer services (69%) in Financial Year 2018, around 70% of legal representation services are conducted on assignment by private legal practitioners. This pattern has remained steady over the last three years for representation services, but the proportion of duty lawyer services conducted by inhouse lawyers has increased.

Figure 1 – Duty lawyer representation and facilitated resolutions by LACS 2016-18

DUTY LAWYER, REPRESENTATION AND FACILITATED RESOLUTIONS BY LACS 2016-18

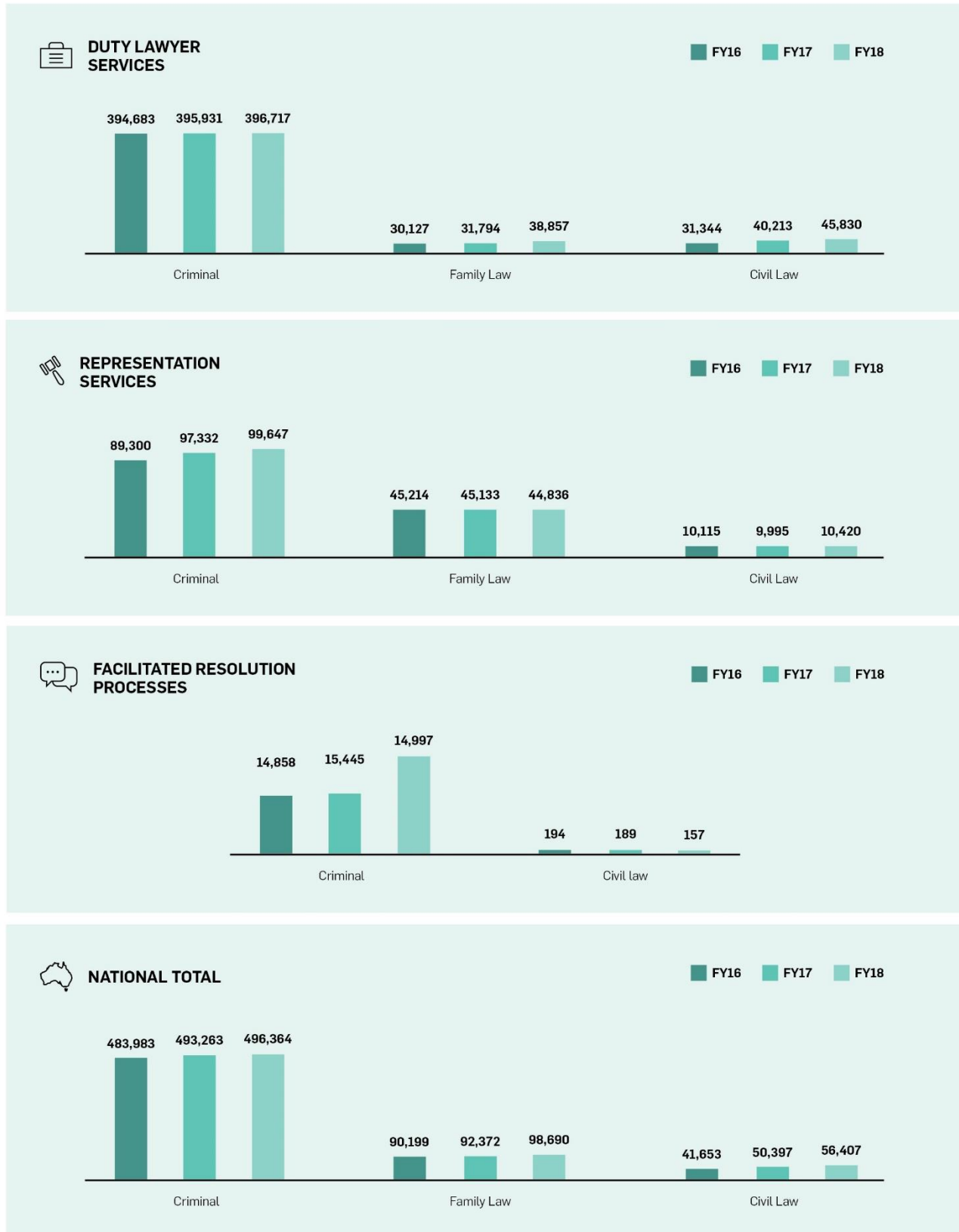


Please note: In accordance to the NPA Data Standards Manual (DSM), family law consists of Commonwealth matters only and criminal law and family law consists of Commonwealth and State matters combined. Family Law duty lawyer services also includes FASS duty lawyer data.

Source: FY2016 - 2018 Legal Aid Commission Data provided by National Legal Aid December 2018

Figure 2 – Duty lawyer, representation and facilitated resolutions by LACs 2016-18

DUTY LAWYER, REPRESENTATION AND FACILITATED RESOLUTIONS BY LACS 2016-18

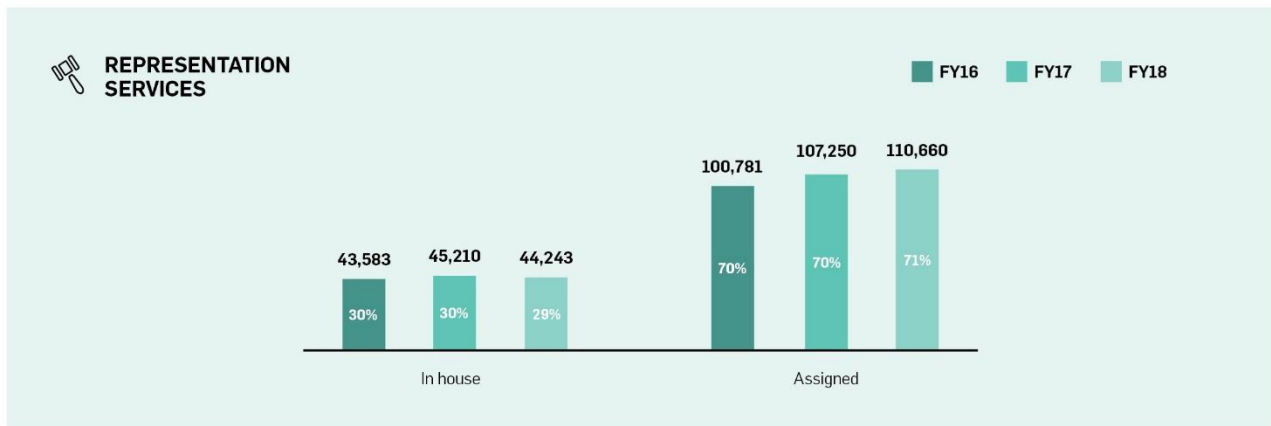
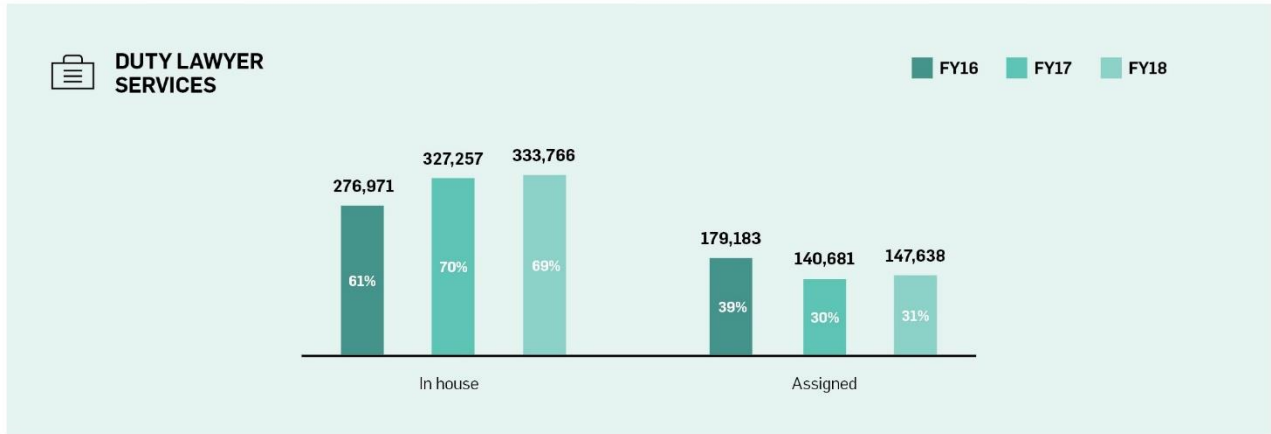


Please note: In accordance to the NPA Data Standards Manual (DSM), family law consists of Commonwealth matters only and criminal law and family law consists of Commonwealth and State matters combined. Family Law duty lawyer services also includes FASS duty lawyer data.

Source: FY2016 - 2018 Legal Aid Commission Data provided by National Legal Aid December 2018

Figure 3 – Duty lawyer and representation services delivered in house and assigned by LACs 2016-18

DUTY LAWYER AND REPRESENTATION SERVICES DELIVERED IN HOUSE AND ASSIGNED BY LACS 2016-18



	FY16	FY17	FY18
Assigned	179,183	140,681	147,638
In house	276,971	327,257	333,766

	FY16	FY17	FY18
Assigned	100,781	107,250	110,660
In house	43,583	45,210	44,243

Please note: In accordance to the NPA Data Standards Manual (DSM), family law consists of Commonwealth matters only and criminal law and family law consists of Commonwealth and State matters combined. Family Law duty lawyer services also includes FASS duty lawyer data.

Source: FY2016 - 2018 Legal Aid Commission Data provided by National Legal Aid December 2018

Figure 4 – Cost of duty lawyer and representation services delivered by LACs 2016-18

COST OF DUTY LAWYER AND REPRESENTATION SERVICES DELIVERED BY LACS 2016-18

 **DUTY LAWYER SERVICES**

	FY16	FY17	FY18
Criminal	\$10m	\$11m	\$11m
Family law	<\$1m	<\$1m	<\$1m
Civil law	\$2m	\$3m	\$4m

 **REPRESENTATION SERVICES**

	FY16	FY17	FY18
Criminal	\$117m	\$102m	\$107m
Family law	\$47m	\$40m	\$46m
Civil law	\$22m	\$22m	\$24m

DUTY LAWYER AND REPRESENTATION SERVICES TOTAL

	FY16	FY17	FY18
Criminal	\$127m	\$113m	\$118m
Family law	\$47m	\$40m	\$46m
Civil law	\$24m	\$25m	\$27m

Please note: Duty Lawyer cost of services for VIC was unable to be split for FY16 and FY17. FY18 duty lawyer cost of services excludes VIC for consistency. In accordance to the NPA Data Standards Manual (DSM), family law consists of Commonwealth matters only and criminal law and family law consists of Commonwealth and State matters combined. Family Law duty lawyer services also includes FASS duty lawyer data.

Source: FY2016 - 2018 Legal Aid Commission Data provided by National Legal Aid December 2018

Figure 5 – Cost of duty lawyer and representation services delivered by LACs 2016-18

COST OF DUTY LAWYER AND REPRESENTATION SERVICES DELIVERED BY LACS 2016-18



Please note: Duty Lawyer cost of services for VIC was unable to be split for FY16 and FY17. FY18 duty lawyer cost of services excludes VIC for consistency. Figures include professional fees plus disbursements. Figures rounded to nearest million. In accordance to the NPA Data Standards Manual (DSM), family law consists of Commonwealth matters only and criminal law and family law consists of Commonwealth and State matters combined. Family Law duty lawyer services also includes FASS duty lawyer data.

Source: FY2016 - 2018 Legal Aid Commission Data provided by National Legal Aid December 2018.

In presenting this national profile, it is important to note that wide range of factors impact on the demand for legal assistance services at any given time or in any given jurisdiction or region. These include:

- **Demographic shifts** not only in terms of our rapid population growth, but also in relation to trends in the composition of our population, including an ageing population overall; a higher percentage of our population from Culturally and Linguistically Diverse (CALD) backgrounds; a growing Aboriginal population, a large proportion of whom are young people; population declines in some rural locations and increases in others: and higher number of people in disadvantaged housing or experiencing housing distress. These changes speak not only to the level of demand but the nature of the legal assistance services required. (AECOM, 2017; Coumarelos, 2012; Victoria Legal Aid, 2018)
- **Policy and regulatory reforms** also drive demand for legal assistance services. These include changes to federal and state legislation; changes to police resourcing or practices, court procedures, sentencing guidelines, corrections and parole operations; changes to legal/administrative procedures and guidelines; and the introduction of significant new programs and initiatives. These can occur at both national and state/territory levels and across a wide range of social policy sectors.
- **Growth in complexity of legal cases** where there is increasing overlap in the priority groups who are supported through legal assistance services. They have multiple disadvantages and often complex and multifaceted legal needs. Meeting the legal needs of these vulnerable persons requires not only legal support but other wrap-around services provided inhouse or in partnership or collaboration with other agencies. Mental illness, disability, substance abuse, homelessness and family violence are common and increasingly it is being recognised that an integrated approach to supporting people experiencing multiple issues is likely to be the most effective way to address their legal problems. This approach requires time and resourcing.
- **Change in economic conditions** where economies go through boom and bust cycles and the demand for legal assistance services fluctuates accordingly. Regional areas are particularly susceptible to these cycles and in consultations, the recent downturn or closure of mines in Western Australia and Queensland has reportedly given rise to a significant increase in demand relating to industrial and employment law matters, as well as financial disadvantage, debt, welfare rights, housing and related issues.

Legal demand is thus dependent on a number of variables that are constantly changing and shifting. Some growth in legal demands can be predicted in advance, but others cannot. This poses challenges for an NPA and other funding mechanisms to develop a funding formula that can account for and has sufficient flexibility to respond to, these diverse drivers as they develop and as appropriate.

2.1.2 Community legal centres

Community legal centres are independent not-for-profit community organisations that provide legal and related services to the public, focusing on disadvantaged members of the community. There are approximately 190 CLCs nationally of which 137 receive funding under the NPA (National Association of Community Legal Centres 2018a p.5; NPA CLC Reports, 2018), as shown in Appendix D.

There are a range of different CLC service types, including:

- generalist centres which support people in a wide range of legal matters including family law, family violence, financial matters, consumer law, social security, migration, tenancy, discrimination, employment and child protection.
- specialist centres which support specific client groups and/or provide services in a specific area of law. Examples include (but are not limited to) specialist services for women, tenants, those experiencing consumer credit or welfare rights issues, refugees, older persons, children and young people, people with a disability, and others.
- centres with a national or cross-jurisdictional reach, including those with offices in multiple jurisdictions.

Community legal centres operate as stand-alone organisations or auspiced by a larger organisation. Some CLCs operate as part of a national network of centres whereby groups of centres focused on particular areas of law or client groups come together to share information, and conduct policy and advocacy work (National Association of Community Legal Centres, 2018a p.5).

Community legal centres provide both direct client work, as well as early intervention and prevention services. Direct client support services include legal information and advice, non-legal support, casework and representation services, duty lawyers and referrals. Early intervention and prevention services can include community legal education, community development, individual skill building as well as systemic advocacy and reform activities (National Association of Community Legal Centres, 2018a p.6).

2.1.3 Aboriginal and Torres Strait Islander Legal Services

Aboriginal and Torres Strait Islander Legal Services were established in every state and territory over 40 years ago to provide culturally appropriate legal assistance services to Aboriginal and Torres Strait Islander Australians needing services to overcome legal problems and fully exercise their legal rights. Aboriginal and Torres Strait Islander Legal Services are Aboriginal and Torres Strait Islander community controlled not-for-profit organisations and receive funding from the Australian Government Attorney-General's Department under the ILAP (National Aboriginal and Torres Strait Islander Legal Services, 2018a).

There are seven Indigenous organisations funded nationally to deliver legal assistance services at a number of permanent sites, court circuits and outreach locations in urban, rural and remotes areas, as detailed in Appendix F Table 11.

Aboriginal and Torres Strait Islander Legal Services provide a wide range of legal assistance services, including all those delivered by CLCs and LACs. In its submission to the ILAP review, NATSILS provide a useful summary of the areas of law and services delivered by ATSILS as follows:

- **criminal law** – duty work, advice, casework, dispute resolution and appeals for both children and adults. ATSILS also establish and run Aboriginal sentencing courts
- **civil law** – advice, dispute resolution and casework on a wide a range of legal issues (including but not limited to) tenancy, human rights and discrimination, and victims of crime and compensation
- **child protection/care and protection** – assistance with care applications, child removal, child protection orders and advice, contact orders, therapeutic orders and out-of-home care placement
- **family law** – specialist family law services in general family law matters which involve children, and also dispute resolution
- **Custody Notification Services and in custody visitor schemes** – 24/7 oncall service of support workers and lawyers who respond to notifications from police when an Aboriginal or Torres Strait Islander person is taken into custody by providing welfare checks and legal advice
- **youth legal services** – Indigenous youth worker in the North Australian Aboriginal Justice Agency and runs the Children in Care and Youth Detention Advice Service
- **deaths in custody inquests** – coronial work on death in custody cases, including providing information, support and legal representation to families
- **strategic litigation** – delivery of legal services to combat policies or laws which are contributing to the overrepresentation of, or breaching the human rights of Aboriginal and Torres Strait Islander people
- **community legal education** – community workshops across a broad range of topics, and law reform initiatives including submission writing, government relations, coalition work and sitting on committees
- **community support programs** – a range of community support programs such as Client Support Officers, Field Officers and Court Officers, Throughcare programs and other justice programs.

(National Aboriginal and Torres Strait Islander Legal Services, 2018b pp.11-12).

2.1.4 Family Violence Prevention Legal Services

Family Violence Prevention Legal Services provide culturally sensitive assistance to Indigenous victim-survivors of family violence and sexual assault. They work collaboratively with other service providers to deliver appropriate, accessible, equitable, efficient and effective legal assistance and related services to victim-survivors of family violence (Department of the Prime Minister and Cabinet, n.d.). The FVPLS can also provide a law reform and advocacy function, community legal education and early intervention and prevention activities (National Family Violence Prevention Legal Services Forum, 2018 pp. 3-4). Nationally, approximately 90 per cent of FVPLS clients are Aboriginal and Torres Strait Islander women and children (National Family Violence Prevention Legal Service, 2018 p.4).

There are 14 organisations who are service providers under the FVPLS program, with 35 offices located in rural and remote locations across Australia as shown in Appendix F Table 12.

2.1.5 Other providers

In every state and territory in Australia, there exist various pro bono referral schemes and organisations providing legal assistance services. Pro bono referral schemes and organisations assist individuals and not-for-profit organisations by referring legal matters to solicitors, law firms or barristers who are willing to take on matters pro bono i.e. free of charge or for a substantially reduced rate (Australian Pro Bono Centre, 2018).

These organisations carry out a range of roles within the legal assistance sector such as facilitating access to free legal advice and representation to people experiencing disadvantage through pro bono partnerships. Not-for-profit organisations such as Justice Connect and JusticeNet offer free legal assistance including referral to a pro bono lawyer, over-the-phone legal help, and the provision of self-help tools and resources.

In addition, individual members of the legal profession provide substantial support to CLCs through participating on CLC Boards and providing free legal advice at CLC legal clinics. Law students also play a role through the provision of paralegal and administrative support to CLCs.

2.2 DEVELOPMENT OF THE NATIONAL PARTNERSHIP AGREEMENT

2.2.1 The *Intergovernmental Agreement on Federal Financial Relations*

The Council of Australian Governments (COAG) introduced the *Intergovernmental Agreement on Federal Financial Relations* (IGAFFR) in 2009 with the aim of implementing a new framework for financial relations that provides collaboration on policy development and service delivery across all states and territories of Australia (Council of Australian Governments, 2009a). This framework was designed to facilitate economic and social reforms in areas of national importance, becoming a significant reform of the Commonwealth-state relationship. The framework came into effect on 1 January 2009 and was designed to improve the quality and effectiveness of government services to advance the achievement of outcomes, and provides the foundational basis for national partnership agreements between governments.

2.2.2 The first national partnership agreement

The first *National Partnership Agreement on Legal Assistance Services* was established in 2010 in compliance with the provisions of the IGAFFR, to support the development of a more holistic approach to the delivery of legal assistance services to people facing disadvantage (Council of Australian Governments, 2010).

The overarching aim of the agreement was the delivery of a national system of legal assistance that is integrated, efficient and cost-effective, and focused on providing services for disadvantaged Australians in accordance with access to justice principles of accessibility, appropriateness, equity, efficiency and effectiveness.

The NPA provided Australian Government funding for LACs through states and territories and aimed to deliver shared objectives and outcomes for four main providers of legal assistance (such as LACs, CLCs, ATSILS, FVPLS). The NPA also aimed to assist in closing the gap between non-Indigenous and Indigenous Australians, assist those who are most at risk of social exclusion, and contribute to the broader COAG reform agenda.

2.2.3 The Allen Consulting Group review

In 2013-14, The Allen Consulting Group was commissioned by the Australian Government Attorney-General's Department to review the contribution made by the Australian Government funded legal assistance services to the achievement of objectives and outcomes specified in the 2010-2015 NPA (The Allen Consulting Group, 2014). The review was designed to draw on existing information to understand the emerging challenges for legal assistance services.

The review suggested several short to medium term improvement options which related to meeting the needs of disadvantaged Australians and developing a more coordinated approach to research to strengthen the evidence base for early intervention and prevention activities.

The review also recommended significant reform options, including the development of a national approach to legal assistance service governance, policy and sector planning. It was suggested that this approach include state-based planning which was underpinned by a national strategic plan for legal assistance services, agreed to by all governments.

In addition, further investigation into cost-effective service delivery with a focus on a collaborative service planning approach was recommended, as was the development of a stronger link between sector planning and agreed priorities for services. The development of a national set of performance indicators with consistent data for use in informing policy and funding decisions was also recommended.

Key findings of the review were as follows.

- **There was significant demand for legal assistance services by some of the most disadvantaged members of the Australian population**, who often have complex, entrenched and overlapping legal and non-legal needs. For services to meet the complexity of these clients' needs, service gaps needed to be improved and client-centred care delivered.
- **Early intervention and preventative measures would enable more effective delivery of the services**, ensuring resources and expertise are facilitated according to the consumer. Further research was needed to strengthen the evidence for early interventions.
- **Funding did not support the delivery of the services as per the NPA objectives**. The cost of legal assistance services was affecting services' ability to meet demand. The sector was experiencing significant strain with issues regarding staffing, meeting the needs of the clients, and reaching clients within regional or rural communities.
- **Greater sharing of the sector's specialist skills** (such as those of ATSILSs) with other legal and non-legal assistance sector services was needed to equip non-specialist organisations with cultural competencies to help meet the diverse needs of the population.
- **State government policies were not adequately reflected in service delivery, impacting the provision of management within the sector**. Specifically, legal assistance services are designed to be accessible for the most disadvantaged Australians, but services were seeking greater direction from government about which clients and legal matters should receive priority services.
- **There was demand for collaboration between service providers** to facilitate and incorporate a person's legal and non-legal problems effectively to assist users of the service who have complex needs to see improved outcomes (The Allen Consulting Group, 2014).

2.2.4 The National Strategic Framework for Legal Assistance (2015-2020)

The *National Strategic Framework for Legal Assistance (2015–2020)* was developed by the Australian Government in cooperation with the state and territory governments, as well as with input from the legal assistance sector (Australian Government Attorney-General's Department, 2015e). It is endorsed by all jurisdictions, with the exception of Victoria.

The National Strategic Framework for Legal Assistance provides 'the guiding principles for the shared goal of a national, integrated system of legal assistance that is focused on improving access to justice and maximising service delivery within available resources' (Australian Government Attorney-General's Department, 2015e p.2).

The National Strategic Framework for Legal Assistance sets the overarching goals and direction for the all Australian and state and territory government funded legal assistance services through five principles, as follows:

1. Focus service delivery on people facing disadvantage: legal assistance services focus on, and are accessible to, people facing disadvantage
2. Appropriateness of service: legal assistance services are appropriate, proportionate and tailored to people's legal needs and capabilities
3. Collaboration: legal assistance services, government services and other services collaborate to provide joined-up services to address people's legal and other problems
4. Timely intervention: legal problems are identified and resolved in a timely manner before they escalate
5. Empowerment and resilience: people are empowered to understand and assert their legal rights and responsibilities and to address, or prevent, legal problems (Australian Government Attorney-General's Department, 2015e pp.4-8).

The National Strategic Framework for Legal Assistance provides an overarching context for the NPA 2015-2020, but does not direct or guide funding, nor involve any reporting from the sector.

2.2.5 Establishment of the *National Partnership Agreement on Legal Assistance Services 2015-2020*

The *National Partnership Agreement on Legal Assistance Services 2015-2020* builds upon the previous agreement and incorporates recommendations from the Allen review. As part of the new NPA, key elements of the program were revised, including the evidence-based funding allocation model, adjusted performance benchmarks and requirements for performance reporting, and the introduction of collaborative service planning (CSP) as a policy directive (Council of Australian Governments, 2015).

The current NPA provides Commonwealth funding for LACs and CLCs. It has five outcomes it aims to facilitate, with the overall outcome being an integrated national legal assistance sector that is efficient and effective. The five outcomes are as follows:

1. legal assistance services are targeted to priority clients with the greatest legal need
2. legal assistance service providers collaborate with each other, governments, the private legal profession and other services, to provide joined-up services to address people's legal and related problems
3. legal assistance services are appropriate, proportionate and tailored to people's legal needs and levels of capability
4. legal assistance services help people to identify their legal problems and facilitate the resolution of those problems in a timely manner before they escalate, and
5. legal assistance services help empower people to understand and assert their legal rights and responsibilities and to address, or prevent, legal problems.

As part of the current NPA, several measures were established with the intention to support the desired achievement of these outcomes.

Collaborative service planning (CSP) was given high priority to assist the Australian Government, states and territories, CLCs and other stakeholders to work collaboratively. The current NPA requires evidence and analysis of legal need to inform CSP, coupled with the establishment of CSP mechanisms. The evidence analysis is to be undertaken by states to identify priority clients and the geographic locations in which people have the highest levels of legal need. Developing this analysis allows states to establish evidence to identify demands for service and target legal assistance services within their jurisdiction accordingly. The CSP meetings provide a formal opportunity for jurisdictions to consider potential strategies including the efficient use of resources, different delivery approaches, the removal of any service duplication, the potential merging of administrative functions, as well as to review the efficiency and effectiveness of service delivery models.

A revised performance monitoring metric was introduced to which each state and territory must adhere. Six monthly reporting by each jurisdiction to the Australian Government includes performance against relevant milestones and benchmarks. These changes to the NPA reporting and monitoring aimed to reduce the administrative burden on service providers and allow for more consistent data collection across jurisdictions.

A new role for the Australian Government was defined under the current NPA which provides financial contribution, the monitoring and assessment of performance, national guidance and oversight, and the facilitation of priorities and eligibility principles for delivery of legal assistance services.

A new role for states and territories was to determine the methodology for distribution of Australian Government funding to CLCs to be informed by the outcomes of CSP and the evidence of legal need.

By facilitating these revised elements, the aim of the current NPA is to achieve the shared goal of a national, integrated system of legal assistance that is focused on improving access to justice, and maximising service delivery within available resources.

3 NPA IMPLEMENTATION

3.1 INTRODUCTION

The following section presents a brief profile of legal assistance services in each jurisdiction, implementation of the NPA and key themes. This includes the arrangements for allocating, distributing and managing state and Australian Government funding; data on the services provided by each LAC using Australian Government funding; the sources of funding to CLCs; and an overview of NPA implementation and key themes from consultations pertaining to each jurisdiction. In depth analysis of key themes arising in multiple jurisdictions is discussed in more detail in Section 4.

It should be noted that statistics on the services provided by CLCs have not been included in this report. On the basis of strong and consistent feedback from the majority of stakeholders consulted in the review, at this time the figures supplied through CLASS for the last year are considered unreliable and would not provide an accurate picture of the activity undertaken by CLCs.

3.2 AUSTRALIAN GOVERNMENT

The Australian Government Attorney-General's Department provides funding for legal assistance services delivered by LACs and CLCs across Australia. This funding is distributed by the Australian Government Attorney-General's Department to states and territories using a funding allocation model (FAM). The funding is then distributed by the states and territories to the LACs and CLCs. In some states and territories, administration of funding to CLCs has been delegated by the state or territory to the LAC.

The model uses a range of inputs to determine the total funding to be allocated to each state or territory, and the distribution of this funding between legal aid commissions and CLCs within each jurisdiction.

3.3 AUSTRALIAN CAPITAL TERRITORY

3.3.1 Legal assistance services in the Australian Capital Territory

ACT Justice and Community Safety Directorate

The ACT Justice and Community Safety (ACT JACS) Directorate holds responsibility for administering the Australian Government funding to Legal Aid ACT, and for administering and determining the distribution of available Australian Government funding across CLCs in the ACT.

Legal Aid ACT

Legal Aid ACT was established under the *Legal Aid Act 1977 (ACT)* and holds responsibility for delivering legal aid services across the ACT. Key areas of practice are family law and crime, with the number of civil matters currently growing. Legal Aid ACT also delivers a free legal helpline, a domestic violence and personal protection order unit, and the ACT Older Persons Legal Service. These services are delivered through in-house staff as well as by providing grants of legal aid to private practitioners.

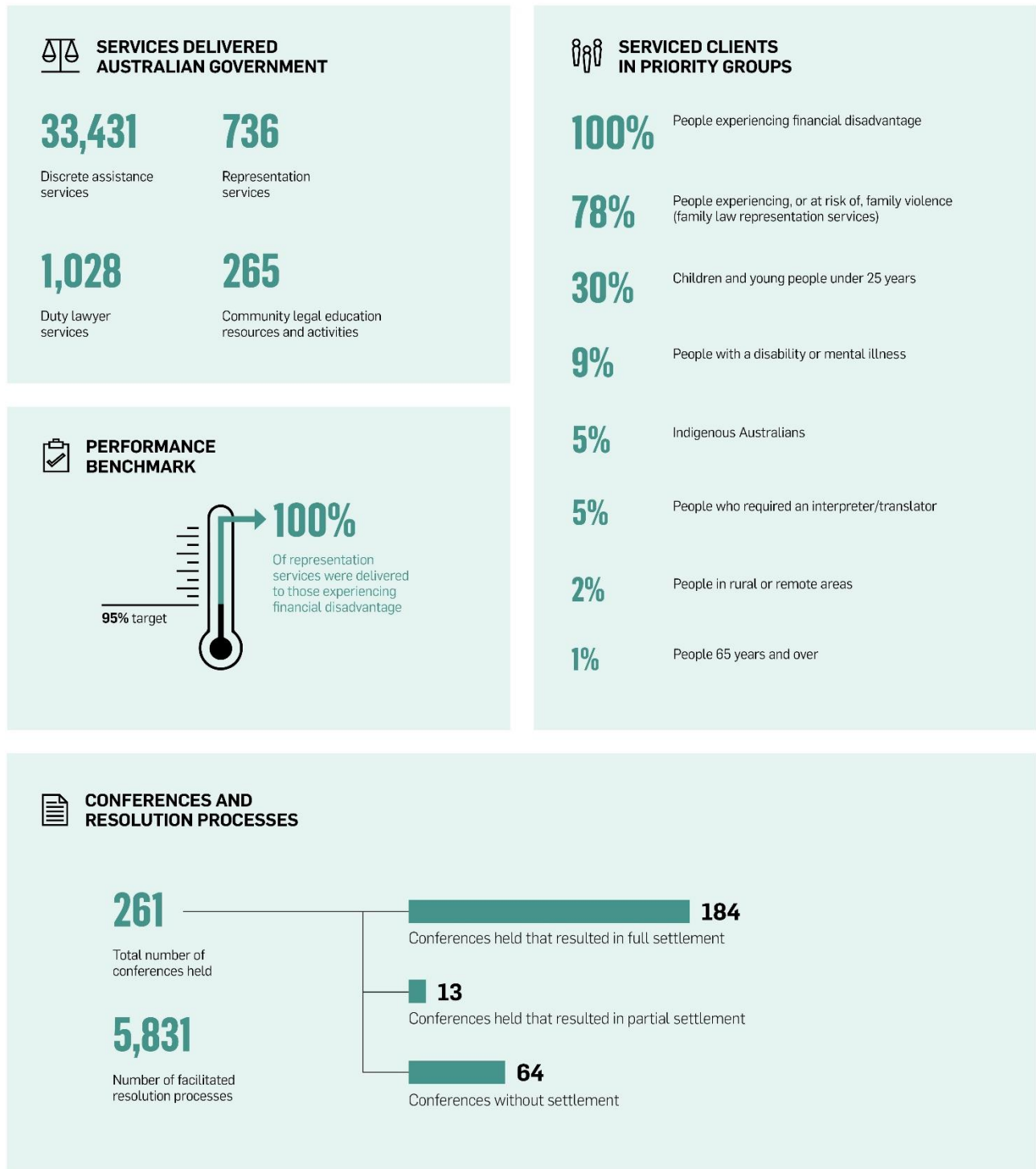
Legal Aid ACT supports other parts of the sector by providing staff for secondments to the Office of ACT Director of Public Prosecutions, the Women's Legal Service, and the ACT Tenants Union. It also provides business support services to Canberra Community Law.

Legal Aid ACT activity relating to Australian Government matters for the 2017 Financial Year is summarised in Figure 6.

In the 2017 Financial Year, Legal Aid ACT exceeded the NPA performance benchmark for the proportion of representation services delivered to those experiencing financial disadvantage, as shown in Figure 6 below.

Figure 6 – Legal Aid ACT Data for FY2017

LEGAL AID ACT FY2017



Source: NPA Reports

ACT CLCs

The NPA funds two CLCs in the ACT: Canberra Community Law and the Women’s Legal Centre. Canberra Community Law provides legal services to people experiencing financial or other disadvantage in its specialist areas of practice: public housing, social security and disability discrimination law. It also runs Street Law, a generalist legal outreach service for people experiencing or at risk of homelessness and a night time legal advice service with the support of the private legal sector. The Women’s Legal Centre delivers services to women in the areas of family law, domestic violence, victims of crime, employment and discrimination.

Other CLCs in the ACT not funded by the NPA include the Tenants Union ACT, the Consumer Law Centre and the Environmental Defenders Office (ACT Law Society website, 2018).

Based on NPA reporting ACT CLCs exceeded the NPA benchmark on the proportion of people receiving representation services that are experiencing financial disadvantage for financial year 2017 (benchmark 85 per cent; performance July – December 2016: 100 per cent, performance January – June 2017: 99 per cent).

Other service providers

Legal assistance services in the ACT are also provided by other organisations, including the Aboriginal Legal Service (NSW/ACT), as well as legal services for consumers, small business and people experiencing disability discrimination.

The sector is also supported by the private legal sector, which provides pro-bono community legal information nights for Canberra Community Law, as well as legal aid funded representation services.

3.3.2 Implementation of the NPA in the Australian Capital Territory

Australian Capital Territory stakeholders report that the current NPA is an improvement on the prior NPA and that its aims relating to CSP and jurisdictional planning are beneficial for the evolution of the sector. Certain challenges associated with planned funding cuts in 2017 meant that CLCs were focused on funding issues in the first few years of the current NPA. This resulted in reduced CLC focus on implementing the NPA during that period.

While the feedback about the NPA in ACT was largely positive, stakeholders reported only minimal changes as being directly attributable to the NPA, as follows.

Collaborative service planning was already in place, but now has a funding arrangement context

Collaborative service planning was already in place in the ACT after the sector came together following the 2003 Canberra bushfires. At that stage, the aim of collaboration was to provide linked up services for people in emergency situations. Collaborative service planning in the ACT has since evolved to a working group with participation from key service providers who meets four times per year, as well as the Australian Government Attorney-General's Department who attends biannually.

It was noted by ACT stakeholders that, at present, CSP is operating predominantly as an information-sharing forum rather than as a service planning mechanism. Stakeholders also reported challenges to CSP as there are only two CLCs and Legal Aid ACT currently funded under the NPA in the ACT, and the NPA funded CLCs were reported to be conscious of not making collaboration-related choices which may affect their future funding.

Strengthened focus and clarity on priority groups

The NPA has reportedly provided the ACT with greater clarity on which client groups to focus on, through identifying priority groups. This has provided services with greater certainty regarding client groups to prioritise, compared to the situation under the previous NPA.

Overall, stakeholders in the ACT report positive feedback about the NPA but note that it needs to be bedded down further in order to really capitalise on its aims and objectives.

3.3.3 Key themes

Increase guidance and clarity from the Australian Government Attorney-General's Department regarding CSP

Australian Capital Territory stakeholders would appreciate greater clarity regarding the role of the Australian Government in the NPA, particularly in relation to CSP. Stakeholders also reported they would like greater guidance from the Australian Government about its vision and expected outcomes from CSP. Guidance was also requested regarding operational factors of CSP, such as the expected number of meetings per year (assuming the requirements in the NPA are the minimum only).

Current data does not capture depth and breadth of CLC services

Stakeholders reported that current reporting requirements do not accurately capture all work undertaken by CLCs. NPA reporting is seen as transactional whereas much of the work undertaken by CLCs is longitudinal in nature and not necessarily suited to reporting of single-instance interactions or services. For example, CLCs reported that they deliver intensive case-management support for clients over a long period of time

where a single client and matter will require many instances of assistance, but this is not captured in the current reporting requirements.

Although CLCs provide case studies through the NPA reporting, there was a request that in future greater consideration be given to how data and performance monitoring requirements can better enable CLCs to demonstrate the depth and breadth of their work.

Importance of wrap-around services to be considered for future NPA

Australian Capital Territory stakeholders raised the importance of delivering holistic, wrap-around services in order to meet the needs of their clients. Often, a non-legal issue such as mental health needs to be addressed before (or in conjunction with) addressing a legal issue. It was suggested that consideration be given to how this approach to legal assistance services can be acknowledged within a future NPA.

3.4 NEW SOUTH WALES

3.4.1 Legal assistance services in New South Wales

New South Wales Department of Justice

The New South Wales Department of Justice holds responsibility for administering Australian Government NPA funding to Legal Aid NSW. The New South Wales Department of Justice has authorised Legal Aid NSW to administer and distribute Australian Government NPA funding to CLCs in New South Wales. Funding is delivered by Legal Aid NSW to CLCs through the Community Legal Centre Funding Program ('the CLC Funding Program'). The CLC Funding Program also comprises state funding and funding from the Public Purpose Fund (PPF).

Legal Aid NSW

Legal Aid NSW was established under the *Legal Aid Commission Act 1979 (NSW)*. It is the largest legal aid agency in Australia, serviced by a state-wide network of 24 offices and 221 regular outreach locations (Legal Aid NSW, 2017 p.b).

Legal Aid NSW holds responsibility for delivering legal aid services across New South Wales, including legal representation, duty services, mediation, and other legal supports including legal information and advice, and minor assistance (Legal Aid NSW, 2017 p.1).

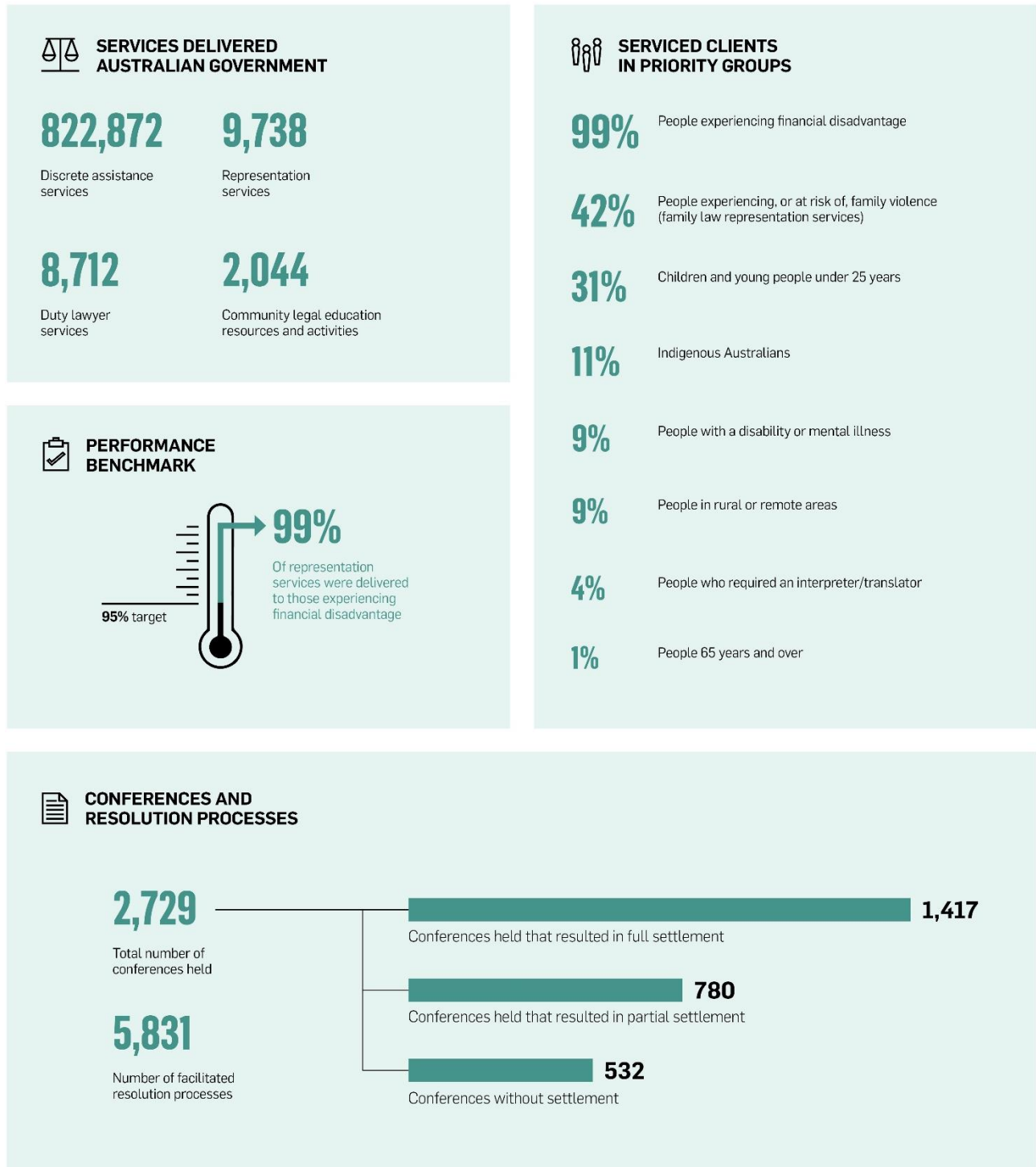
As noted above, Legal Aid NSW is also responsible for administering and distributing NPA funds to NSW CLCs. Funding is delivered through individual service agreements under the CLC Funding Program. As part of this role, Legal Aid NSW is also responsible for monitoring and reporting on the performance of CLCs to ensure compliance with service agreements.

Legal Aid NSW activity data for the Financial Year 2017 in relation to Australian Government funded services is summarised in Figure 7 (Source NPA Reports to Australian Government Attorney-General's Department).

In the 2017 Financial Year, Legal Aid NSW exceeded the NPA performance benchmark for the proportion of representation services delivered to those experiencing financial disadvantage, as shown in Figure 7 below.

Figure 7 – New South Wales Legal Aid Data for FY2017

NSW LEGAL AID FY2017



Source: NPA Reports

NSW CLCs

New South Wales CLCs hold responsibility for delivering community legal services across the state. The services comprise free generalist and/or specialist legal services delivered in metropolitan and regional locations. Outreach services to rural or remote locations are also delivered.

In 2016-17, the New South Wales CLC Funding Program supported 32 CLCs across New South Wales, as well as the peak CLC body, Community Legal Centres New South Wales (CLCNSW). The key role of CLCNSW is to “support, represent and advocate for its members, and the legal assistance sector more broadly, with the aim of increasing access to justice for people in New South Wales” (Community Legal Centres NSW, n.d.). During 2016-17, CLCNSW represented a network of 37 CLCs across the state (Community Legal Centres NSW, 2017 p.5).

Based on NPA reporting New South Wales CLCs exceeded the NPA benchmark on the proportion of people receiving representation services that are experiencing financial disadvantage for financial year 2017 (benchmark 85 per cent; performance July – December 2016: 98 per cent, performance January – June 2017: 94 per cent).

Other service providers

Legal assistance services in New South Wales are also delivered by other key organisations, including Aboriginal Legal Service (NSW/ACT), and four FVPLS services: Binaal Billa Family Violence Prevention Legal Service; Many Rivers Family Violence Prevention Legal Service; Thiyama-li Family Violence Service Inc.NSW; and Warra-Warra Family Violence Prevention Legal Service.

The private legal sector also contributes to legal assistance services through delivering legal aid representation services funded by legal aid grants and providing significant pro-bono legal and other services to, and on behalf of, CLCs.

3.4.2 Implementation of the NPA in New South Wales

There is broad support for the aspirations of the NPA in New South Wales, with stakeholders commonly reporting that these align with the existing aspirations of the legal assistance sector:

The NPA articulates outcomes that have always been at the centre of how legal assistance services operate: targeting those with the greatest legal need, working collaboratively, tailoring services to meet need, intervening early and empowering clients and the community. (Public Interest Advocacy Centre (PIAC), 2018 p.1)

There are several areas of practice within NSW where the implementation of various aspects of the NPA have been progressed.

Establishment of the New South Wales Legal Assistance Forum to support CSP

To support CSP under the NPA, the New South Wales Legal Assistance Forum (NLAF) Working Group was established in June 2018. The Working Group held its first meeting in August 2018, and includes representatives from the NSW Department of Justice, Legal Aid NSW, CLCNSW, the Aboriginal Legal Service, the Law and Justice Foundation of NSW (LJFNSW), and Law Access NSW.

Key objectives set by the group for the first 12 months of its operation are to:

- undertake a legal needs analysis across New South Wales
- achieve agreement on a framework to collect service data and map existing legal services
- achieve agreement on an approach to service planning under the framework
- develop a framework for regional planning committees (Legal Aid NSW, 2018b p.10)

While the NLAF has introduced a structure for collaborative service planning and represents progress towards the goals of the NPA, the Working Group has only recently been established and, as such, its potential is yet to be realised.

Stakeholders from across New South Wales identified a range of barriers to CSP implementation to date, most notably the planned reduction in CLC funding in 2017. This led to a period of significant uncertainty for the CLC sector, with many CLCs directing their resources to respond to the impending reduction in funds, loss of staff and expertise, and the need to reconfigure their services. It also diverted attention away from CLCs participating in NPA reforms at that time.

Other barriers identified included a lack of defined funding to support participation in CSP, and a need for greater direction and leadership from the Australian Government in guiding CSP activities. Stakeholders also identified opportunities for information sharing across jurisdictions, and the inclusion of non-legal support service providers in planning efforts.

It would be beneficial if future NPAs offered more direction, incentive and support for collaborative service planning. (Community Legal Centres NSW, 2018 p.9)

Centres and peak bodies must be funded appropriately to engage in collaborative service planning so that resources are not drawn from essential frontline and community services. (Kingsford Legal Centre (KLC), 2018 p.8)

While progress towards CSP under the NPA has been slow, the NLA builds on an existing focus and culture of collaborative practice in New South Wales. Some key examples are described at Section 3.4.3 below.

Establishment of new innovative practices

Various examples of innovative practice were identified in the review that have been enabled by the NPA. For example, Legal Aid NSW drew on NPA funding to establish the Domestic Violence Unit, a holistic service in which social workers and legal practitioners work together to support victims of domestic and family violence (Legal Aid NSW, 2018b p.1). The program has since been expanded using funds from the Women's Safety Package and the Third Action Plan Family Advocacy and Advice Services, with Legal Aid NSW observing that "the establishment of the Domestic Violence Unit is an example of the critical role of the NPA in guiding but not restricting approaches to innovation" (Legal Aid NSW, 2018b p.1).

Innovations were also identified at the operational level. Community Legal Centres New South Wales has, for example, recently introduced a financial service and IT project. Under these two programs, the peak body provides centralised operational support to a selection of CLCs in New South Wales including book-keeping and accounting services and IT expertise for website development and data management systems (Community Legal Centres NSW, 2018 p.14). These projects are contributing to increased efficiencies within the CLC sector.

3.4.3 Key themes

The following key themes emerged from stakeholder feedback, reported data and submissions from NSW.

The flexibility embedded in the NPA should be maintained

Legal Aid NSW reported that the NPA has driven greater emphasis on targeting priority clients than increasing the volume of service delivery. This is well aligned to a shift within the legal assistance services sector towards the delivery of more holistic services to priority clients, who often present with multiple and complex legal needs.

As one example, Legal Aid NSW has established a new representation service to better support priority clients and facilitate early resolution of their legal problems; namely, the extended legal assistance (ELA) service. The ELA allows practitioners in Legal Aid NSW's Civil Law Division to support clients in an "ongoing, representative capacity" (Legal Aid NSW, 2018c). Prior to this, "representation services" as defined under the NPA were only provided under a grant of legal aid" (Legal Aid NSW, 2018b p.6).

The emphasis of the current NPA has allowed us to refocus on our foundations as a public legal agency that targets priority client groups. (Legal Aid NSW, 2018b p.9)

While the NPA's focus on targeting those most in need was supported, Legal Aid NSW observed that the NPA's inclusion of priority groups should not become overly prescriptive. Rather, the agreement should retain some flexibility for service providers to support clients based on an "assessment of capability and urgency in addition to other demographics or disadvantage indicators" (Legal Aid NSW, 2018b p.9).

Community legal centres similarly suggested that the NPA should not become too prescriptive in identifying priority groups, noting that they have a long history of servicing those most in need.

NPA categories were not needed in order for CLCs to begin targeting services towards those most in need. This is at the core of what CLCs do. (Community Legal Centres NSW, 2018 p.13)

Additional priority groups were recommended for inclusion, including women, members of the LGBTIQ community, refugees and people impacted by climate change and other environmental disasters.

Collaborative service planning under the NPA has been slow, but builds on existing collaborative practice in New South Wales

New South Wales stakeholders noted that the NPA is building on an existing focus on collaborative practice in the state. This includes a shared recognition within the sector of the critical importance of collaborative service delivery and the roles different service providers play in supporting clients, including non-legal supports. Both Legal Aid NSW and CLCs highlighted examples of existing collaborative practices and programs across the state.

One example commonly cited was the Cooperative Legal Service Delivery (CLSD) Program, which comprises 12 justice partnerships in regional and remote areas of New South Wales. Under the program, a range of legal (e.g. Legal Aid NSW, CLCs, ALS, FVPLS) and non-legal partners (e.g. housing, domestic violence, youth, disability services) take part in a planning day every two years to set an Action Plan for outreach and operations in their region. The planning day is informed by detailed regional profiles that are developed using data from the Law and Justice Foundation and other available sources (e.g. crime, health, demographic datasets), as well as surveys completed by the program's partners.

The CLSD Unit within Legal Aid NSW also has funds available to support projects that emerge from this analysis and planning. In 2017-18, CLSD funds were provided to 70 programs across regional and remote New South Wales, over 30 per cent of which involved working with Aboriginal communities (Legal Aid NSW, 2018b p.10).

The planned reduction in CLC funding in 2017 impacted on early experiences of the NPA, particularly for CLCs

As noted above, the planned reduction in Australian Government CLC funding in 2017 led to a period of significant disruption in the legal assistance services sector, which negatively impacted on early experiences of the NPA in New South Wales.

The proposed funding cuts also led to policy changes at the state level, most notably the New South Wales Government committed an additional \$3 million per annum to support CLCs across the 2017-18 and 2018-19 financial years. It also launched a review of the CLC sector by Alan Cameron AO ('the Cameron Review') in order to inform future state allocations to the CLC sector. The specific aim of the review was to "ensure that legal assistance is directed to people most in need, improving CLC service provision and to assist the New South Wales Government in settling an approach to funding allocation" (New South Wales Government, 2018a p.1).

The findings of the Cameron Review have led to a range of changes to the way CLCs are funded. The New South Wales Government has confirmed it will maintain the increased funding allocation to CLCs, as well as provide an additional \$2.2 million per annum to "expand the reach of the sector and address critical service gaps" (New South Wales Government, 2018a p.1). This means that from 2019-20, New South Wales CLCs will receive an additional \$5.2 million per year for three years, on top of their existing state funding of \$6.7 million (New South Wales Government, 2018b p.1). As per a recommendation in the Cameron Review, a new application-based funding model will be applied from this time. (New South Wales Government, 2018a p.1).

Concerns that Legal Aid NSW's administrative role creates a conflict of interest that impedes collaborative service planning

Legal Aid NSW's role in determining and administering NPA funding to CLCs has been a barrier to collaborative service planning in New South Wales. This view is shared by representatives from both the CLC sector and Legal Aid NSW, who report that current funding arrangements create a conflict of interest – whether real or perceived – in which Legal Aid NSW is at once a funder and recipient of funding under the NPA. This dual role is seen to create a power imbalance between the two services, with Legal Aid NSW expected to work collaboratively with CLCs as "equal partners," while also determining CLC funding allocations and monitoring their performance (Legal Aid NSW, 2018b).

We see an inherent tension between our role in allocating funding to CLCs and monitoring their use of that funding and working with them in planning service delivery.
(Legal Aid NSW, 2018b p.13)

This underlying conflict of interest works against collaborative service planning, and indeed progress to collaborative service planning in NSW is less advanced than should be the case. (Community Legal Centres NSW, 2018 p.9)

There is strong support for implementing a model that is similar to that applied in Queensland, in which an independent evaluation panel coordinated by the NSW Department of Justice would determine the funding allocation between CLCs. Acknowledging Legal Aid NSW's experience and expertise managing the CLC Funding Program, CLCNSW emphasised that *"this does not mean that Legal Aid NSW should not play a role in administering or managing the funding once allocation has been determined"* (Community Legal Centres NSW, 2018 p.8), rather it should not hold responsibility for directly determining the allocation.

The use of an independent evaluation panel was also supported in the Cameron Review, which recommended that the panel comprise representatives from the New South Wales Department of Justice, the Department of Premier and Cabinet, Treasury, and potentially nominees from the Attorney-General (Cameron, 2017 pp.79-80). The New South Wales Government has chosen not to adopt this recommendation at this time, concluding that "Legal Aid NSW should continue to be responsible for determining funding allocations due to its expertise and experience in this area" (New South Wales Government, 2018a p.4).

Concerns regarding reliability and accuracy of CLC data reported to the NPA

Concerns were expressed in New South Wales regarding the reliability of CLC data reported under the NPA. These concerns were grounded in ongoing issues with the implementation of the new national CLC data system, CLASS, as well as the lack of a consistent approach to interpreting the DSM.

The ongoing problems with the CLASS functionality, rollout and transition have affected the reliability of data and capacity to submit reports against NPA criteria. The lack of reliable CLC data has impacted the quality and consistency of reporting by CLCs, and in turn NPA reporting to the Commonwealth. (Legal Aid NSW, 2018b p.18).

Within NSW, specific concerns were raised regarding how CLCs are to report against the NPA's defined funding for family violence and family violence related services. CLCs noted that unlike the Australia Government, Legal Aid NSW requires relevant work to be coded in CLASS directly against this funding stream. This approach was considered difficult given that clients often do not present with "a single legal issue that can be neatly coded against a particular funding stream" (Community Legal Centres NSW, 2018, p.11). This has meant that in New South Wales the defined funding "comes with new reporting requirements so that square pegs are now being rammed into round holes and centres are wasting time with unnecessary reporting" (Community Legal Centres NSW, 2018 p.11).

3.5 NORTHERN TERRITORY

3.5.1 Legal assistance services in the Northern Territory

Northern Territory Department of Justice and Attorney-General

The Northern Territory Government holds responsibility for allocating NPA funding to the Northern Territory (NT) Legal Aid Commission and CLCs.

Northern Territory Legal Aid Commission

The Northern Territory Legal Aid Commission was established under the *Legal Aid Act 1990 (NT)*. The NT Legal Aid Commission is responsible for delivering legal aid services across the NT and has offices in Darwin, Alice Springs, Katherine, Palmerston and Tennant Creek. It provides legal information and referral (55 per cent of their services in 2016-2017), legal advice, legal representation and duty lawyer services. The NT Legal Aid Commission runs duty lawyer services in Darwin, Alice Springs, Katherine and Tennant Creek criminal and child protection courts.

Northern Territory Legal Aid Commission also provides a duty lawyer service in the Darwin Local Court for defendants to applications for domestic violence orders and auspices the Domestic Violence Legal Service which provides advice and assistance to victims in Darwin and the greater Darwin region. Further duty lawyer services are provided under the *Mental Health and Related Services Act (2018)* in Darwin and Alice Springs. Under other Australian Government funding, the NT Legal Aid Commission also provides legal assistance services to assist people to review decisions by the National Disability Insurance Agency in relation to the National Disability Insurance Scheme in the Administrative Appeals Tribunal.

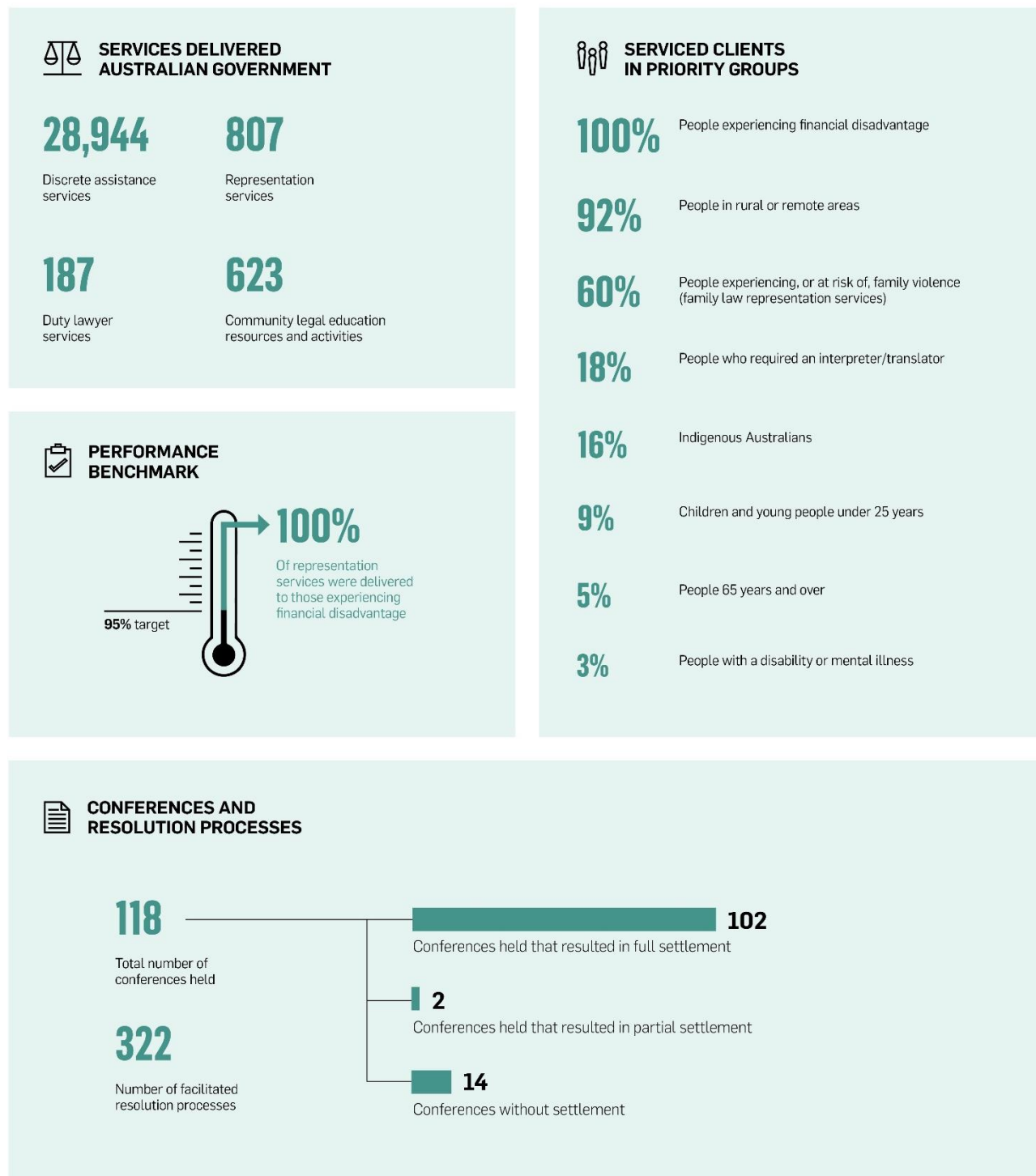
Northern Territory Legal Aid Commission delivers community legal education across the Northern Territory as well as Indigenous outreach services in remote communities including the Top End and Barkly region.

The NT Legal Aid Commission activity in relation to Australian Government matters for the 2017 Financial Year can be seen in Figure 8.

In the 2017 Financial Year, the NT Legal Aid Commission exceeded the NPA performance benchmark for the proportion of representation services delivered to those experiencing financial disadvantage, as shown in Figure 8 below.

Figure 8 – NT Legal Aid Commission Data for FY 2017

NT LEGAL AID COMMISSION FY2017



Source: NPA Reports

Northern Territory CLCs

There are four NPA-funded CLCs in the Northern Territory. All four CLCs cover large catchment areas and conduct outreach services. For example, Central Australian Women's Legal Service (CAWLS) has offices in Alice Springs and Tennant Creek and provides free confidential legal advice to all women in the Central Australia and Barkly regions, a significant proportion of whom are at risk or experiencing domestic violence. Volunteer lawyers play a vital role in service delivery at the Darwin Community Legal Service and the Top End Women's Legal Service, based in Darwin. However, a volunteer workforce is not available nor considered appropriate for service delivery in CLCs in Alice Springs and Katherine.

Based on NPA reporting Northern Territory CLCs exceeded the NPA benchmark on the proportion of people receiving representation services that are experiencing financial disadvantage for financial year 2017 (benchmark 85 per cent; performance July – December 2016: 100 per cent, performance January – June 2017: 93 per cent).

There is no CLC peak body in Northern Territory. CLCs have expressed their interest in a funded peak in the territory and envisage the benefits of coordination and standardisation in the sector.

Other service providers

Other key stakeholders in the Northern Territory are North Australian Aboriginal Justice Agency (NAAJA), Central Australian Aboriginal Family Legal Unit, North Australian Aboriginal Family Legal Service, Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council Domestic and Family Violence Service, the Environmental Defenders Office and pro-bono services.

3.5.2 Implementation of the NPA in the Northern Territory

There is broad support amongst Northern Territory stakeholders for the aspirations of the NPA, although implementation of goals to date has been mixed. Positive progress towards NPA goals has been aided by a sector committed to holistic legal practice and by pre-existing collaborative practices. Challenges have been faced in relation to clarity of roles and responsibilities across the sector.

The following examples illustrate the progress of NPA implementation in the Northern Territory.

Reinforced pre-existing collaborative planning practices

The legal assistance sector in the Northern Territory has a long history of collaboration and CSP has formalised existing processes. Biannual CSP meetings are held with NT Legal Aid Commission, Northern Territory CLCs, ATSILS, FVPLS, the NT Law Society, the Department of the Attorney-General and Justice NT, and the Australian Government Attorney-General's Department. Ahead of the biannual CSP meetings, an overview document is shared among relevant stakeholders (including non-NPA funded services such as NAAJA and the Northern Territory Law Society). This document contains updates on service delivery and capacity in the sector and forms the basis of the CSP meetings. CLCs note that a considerable amount of collaboration continues to take place at the local level outside the formalised CSP process.

Expansion of non-legal supports under NPA to meet client needs

Under the current NPA, the NT Legal Aid Commission received an additional \$1.5 million which has been used to fund non-legal support services (social workers) and re-establish the civil law practice. The NT Legal Aid Commission has employed five social support workers to provide non-legal support services who are based across the Darwin, Alice Springs and Katherine offices. The NT Legal Aid Commission reports these services to be of high value for both clients and lawyers. They enable direct legal service delivery to be more effective as the lawyer can focus on legal service delivery while the client's non-legal concerns are attended to by someone more appropriate. The civil law practice provides advice and legal task assistance promoting early resolution and is complemented by other funding sources outside the NPA.

Introduction of competitive tendering and funding arrangements

The planned reduction in CLC funding in 2017, and subsequent funding reinstatement of Australian Government funding, required the four NPA-funded CLCs in the Northern Territory to undertake a competitive tendering process for the first time and to confirm their domestic violence services in order to secure CLC funding. The competitive tendering had a negative impact on CSP during this period.

Furthermore, a proportion of CLC funding allocation was deducted by the Northern Territory Government to cover its contribution to the implementation of CLASS, which consequently reduced the quantum of CLC funding.

Responsibility for NPA funding administration

The Northern Territory Government has expressed its desire for the NT Legal Aid Commission to take over the management of NPA funding to CLCs. This suggestion is not supported by either CLCs or the NT Legal Aid Commission. The Board of the NT Legal Aid Commission has refused to take on this administrative responsibility citing the potential for this to create tensions in the sector and undermine CSP.

The NT Legal Aid Commission and CLCs would like the Northern Territory Government to commit to funding legal assistance services and to do so for a five-year period, using an evidence-based process for the allocation of funding. All Northern Territory stakeholders consulted are of the view that current level of funding for legal assistance services is demonstrably insufficient which is hampering the achievement of NPA goals.

3.5.3 Key themes

The following key themes were noted in stakeholder feedback, reported data and submissions from the Northern Territory.

Holistic, wraparound services best serve clients' interests

In the Northern Territory, as in other parts of Australia, vulnerable clients present with multiple problems that are both legal and non-legal, and often addressing non-legal issues is necessary prior to or in parallel with resolving legal issues. The NT Legal Aid Commission and CLCs confirm the benefits of holistic, wraparound responses to best serve the long-term interests of these clients and support the effective resolution of legal problems.

Investments in social supports are seen in the Northern Territory as a way to increase efficiency and promote the early resolution of legal needs. The NT Legal Aid Commission strongly values the role of social supports in their service delivery model, recognising that for many vulnerable clients their legal issue is only one of many issues they are having to deal with. Employing social workers to identify referral pathways and establish relationships with these services is seen to increase efficiencies and the overall support provided to clients.

Collaboration undermined by competition in a small CLC sector

Collaboration in a small jurisdiction presents additional hurdles. Community legal centres consider that CSP should recognise the wider scope of collaboration required to delivery holistic wraparound services to vulnerable clients. The NT Legal Aid Commission and CLCs express concerns that continued tender based funding would undermine collaboration in a small jurisdiction. The NT Legal Aid Commission and CLCs note that the 'parachuting' of funding from outside of the NPA without engagement with the sector can create tensions and undermines good collaborative service planning in the sector. Despite this, both NT Legal Aid Commission and CLCs undertake considerable local level collaboration outside of the formal CSP process.

Conflict of interest could hinder CSP

As noted above, the Northern Territory Government would like the NT Legal Aid Commission to take over responsibility for the management of CLC funding. As in some other jurisdictions where the LAC administers CLC funding, there are concerns in the Northern Territory that such an arrangement would lead to an actual or perceived conflict of interest that would impede CSP in a legal assistance sector with only four CLCs.

Remote service delivery is costly

The presence of the private legal profession is limited to Darwin and Alice Springs and there are high operating costs for delivering legal services in the Northern Territory. The remote locality also presents challenges in recruiting and retaining staff. The delivery of services to remote areas requires significant fuel and transport costs and often translation services to engage with high numbers of Aboriginal clients. Community legal centres and the NT Legal Aid Commission are often obliged to recruit from interstate which requires incentivisation, such as additional leave or the payment of relocation costs. Community legal centre stakeholders also reported further recruitment challenges in the Northern Territory as salaries are not competitive with NTLAC.

The NT Legal Aid Commission expressed concerns about the underfunding of NAAJA, citing cost-shifting from NAAJA referrals to Legal Aid. Current resources do not enable NAAJA to provide an effective service for conflicts and stakeholders reported that more costly cases are diverted to Legal Aid.

3.6 QUEENSLAND

3.6.1 Legal assistance services in Queensland

Queensland Department of Justice and Attorney-General

The Queensland Department of Justice and Attorney-General (DJAG) holds responsibility for allocating NPA and state funding to Legal Aid Queensland (QLD) and Queensland CLCs. DJAG makes decisions on funding allocation via an evaluation panel which consists of representatives from DJAG, Premier and Cabinet, and Treasury. The evaluation panel makes recommendations to the Queensland Attorney-General who makes final determinations on funding allocation.

Also involved in funding allocation and administration is the Legal Assistance Strategy and Funding unit, a unit within DJAG which provides secretarial support to the panel and oversees funding distribution and reporting within the sector. In addition, the unit promotes the delivery of legal assistance and legal professional regulation, and leads the operation of an evidence-based strategy and funding model, as well as CSP to co-design service responses to high priority areas.

The Legal Assistance Strategy and Funding unit is supported by Legal Aid QLD and has service agreements with each of the CLCs.

Legal Aid Queensland

Legal Aid QLD was established under the *Legal Aid Queensland Act 1997 (QLD)*. Legal Aid QLD is responsible for delivering a wide range of legal assistance services in Queensland. It has a head office in Brisbane and 13 regional offices located in Bundaberg, Caboolture, Cairns, Inala, Ipswich, Mackay, Maroochydore, Mount Isa, Rockhampton, Southport, Toowoomba, Townsville and Woodridge.

Legal Aid QLD provides community legal education, legal information, legal advice, legal task services, referral, lawyer assisted dispute resolution, representation services and duty lawyer services. Duty lawyer services are provided across criminal, family, domestic violence, child protection, anti-discrimination, employment and administrative law. The Criminal Law Duty Lawyer Service operates in 76 Queensland Magistrates and Children's Courts across the state. Legal Aid QLD also provides a duty lawyer service at the Brisbane Magistrate's Court for domestic and family violence matters via the Women's Domestic Violence Court Assistance Service.

Duty lawyer, representation and dispute resolution services are provided through in-house lawyers and preferred supplier law firms with around 80 per cent of legal representation work delivered via legal aid grants to private lawyers and barristers.

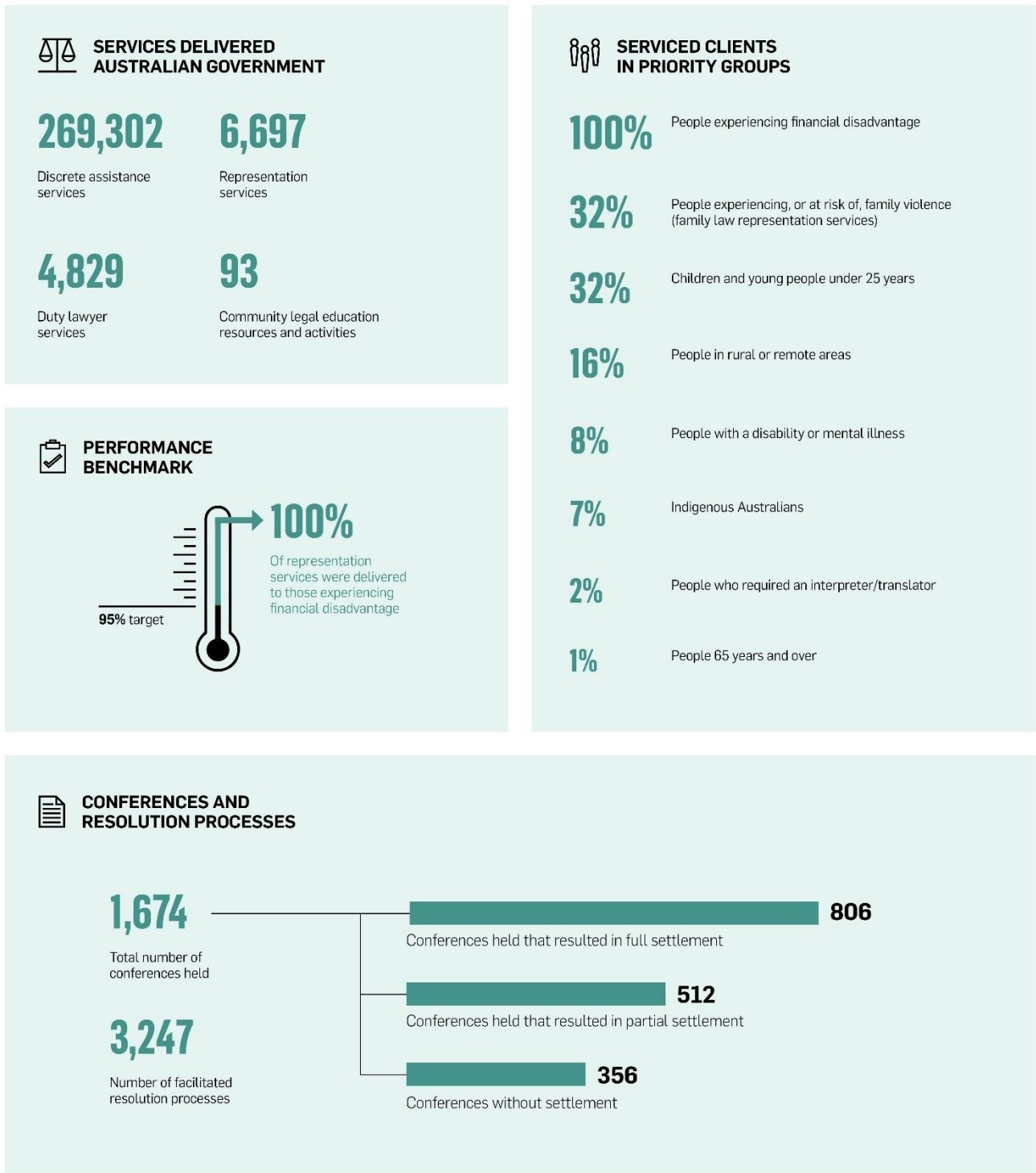
Legal Aid QLD also holds responsibility for administering NPA and state funding to the Queensland CLCs, as well as monitoring CLC performance under these funding sources. Legal Aid Queensland also coordinates the Queensland Legal Assistance Forum and Regional Legal Assistance Forums.

Legal Aid QLD activity relating to Australian Government matters for the 2017 Financial Year can be seen in Figure 9

In the 2017 Financial Year, Legal Aid QLD exceeded the NPA performance benchmark for the proportion of representation services delivered to those experiencing financial disadvantage, as shown in Figure 9 below.

Figure 9 – Legal Aid Queensland Data for FY2017

LEGAL AID QLD FY2017



Source: NPA Reports

Queensland CLCs

A total of 33 community organisations, mostly CLCs, are funded under the NPA in Queensland. These CLCs are located across the state delivering place-based and outreach legal assistance services. The Queensland CLCs have a strong focus on family law, civil law, domestic violence protection orders, housing, credit and debt issues.

Queensland has a strong state CLC peak body, Community Legal Centres Queensland (CLCQ), which is funded by DJAG. Community Legal Centres Queensland manages the required accreditation process of all CLCs for DJAG which entails certification under the National Accreditation Scheme or the Queensland Government Human Services Quality Standards. It also provides support and advocacy to 34 independent CLCs in Queensland and undertakes a range of coordination, information dissemination, training, capacity-building and standardisation functions in the Queensland CLC sector.

Based on NPA reporting Queensland CLCs exceeded the NPA benchmark on the proportion of people receiving representation services that are experiencing financial disadvantage for financial year 2017 (benchmark 85 per cent; performance July – December 2016: 97 per cent, performance January – June 2017: 94 per cent).

Other service providers

Other key stakeholders in the legal assistance services sector in the Queensland include Aboriginal and Torres Strait Islander Legal Services Queensland, Aboriginal Family Legal Service Southern Queensland, Queensland Indigenous Family Violence Legal Service, and other non-NPA funded organisations.

The private legal profession also plays a particularly prominent role in delivering legal assistance services through grants of legal aid. The great majority (80 per cent) of legal aid representation services are undertaken by private practitioners.

Legal pro bono and volunteer contribution to the legal assistance services sector is significant in Queensland. In 2016, almost 90 per cent of CLCs responding to the NACLIC census reported volunteers in their service and collectively they provided over 4,000 hours of time to 25 CLCs across Queensland.

3.6.2 Implementation of the NPA in Queensland

Implementation of the NPA in Queensland has been aided by a combination of pre-existing mechanisms including a state CLC peak body (CLCQ), the implementation of sector reforms following the 2012 review of the Legal Practitioner Interest on Trust Accounts Fund and supplementary funding by the Queensland Government to the sector to support the new competitive tendering process as well as interim funding to ensure core service delivery continued during the finalisation of the NPA.

The implementation of the NPA in Queensland has also been supported by the strong leadership role played by the Queensland Government as well as the strong working relationships between DJAG, CLCQ, Legal Aid QLD and ATSILS.

The implementation of the NPA has influenced the following activities in Queensland.

Reinforced existing and advanced collaborative service planning

The Queensland legal assistance sector has a long history of CSP and the NPA has reinforced existing collaboration structures. The Queensland Legal Assistance Forum (QLAF) started in 2006 and its purpose is “to consider opportunities to coordinate and maximise the reach of legal assistance services and to provide feedback to the Queensland Government and other relevant bodies on legal assistance strategies” (Queensland Legal Assistance Forum, 2018). Membership of QLAF includes Legal Aid Queensland, CLCQ, ATSILS, Bar Association of Queensland, Queensland Law Society, LawRight, Queensland Indigenous Family Violence Legal Service, Queensland Department of Justice and Attorney-General, Australian Government Department of Human Services and the Australian Government Attorney-General’s Department also attends biannually.

In Queensland, CSP is driven through the QLAF, five thematic forums and 12 Regional Legal Assistance Forums. The five thematic QLAF forums are: Community Legal Education Assistance Forum; Children and Families Legal Assistance Forum; Best Practice and Evidence Base Working Group; Aboriginal and Torres Strait Islander Service Planning Working Group; and, Mental Health Service Planning Working Group.

Collectively, there are around 60 CSP meetings each year in Queensland, including regional and specialist LAFs. Furthermore, in 2017 the Queensland Government provided \$200,000 in funding to pilot the development of CSP planning in four regional forums. There is a strong view amongst Queensland stakeholders that CSP requires dedicated resourcing that currently falls outside the scope of current NPA funding.

Competitive tendering for CLCs

The Queensland Department of Justice and Attorney-General introduced an evidence-based competitive tendering process for CLCs following a recommendation from the Legal Practitioner Interest on Trust

Accounts Fund review and has remained in place under the NPA. The procurement process was determined in consultation with the legal assistance sector and took six months to complete. NPA funding to CLCs is now allocated for a three-year period (2017-20).

The Queensland Department of Justice and Attorney-General provided \$120,000 additional funding to CLCQ in 2016 to support CLCs with the competitive tendering process. This funding was used to develop an application guide and supporting materials as well as to support the sector in the development of an evidence base on their work. The Queensland Department of Justice and Attorney-General considers this investment has led to a higher standard of funding applications and raised service outcomes.

While the development of the competitive tendering process may be viewed as a means of moving to evidence-based funding, CLCQ reports that its members found the competitive procurement process to undermine collaboration in the sector.

3.6.3 Key themes

The following key themes were noted in stakeholder feedback, reported data and submissions from Queensland.

Sector interest in a transparent NPA funding model

Both Legal Aid Queensland and CLCs seek greater transparency of the NPA funding allocation model. Legal Aid Queensland is of the view that the NPA funding allocation to Queensland is “incongruent with Queensland having the largest gaps between its percentage share of NPA funding and its percentage share of the national total of people within the NPA priority client groups of Indigenous Australians, people at risk of domestic violence, prisoners and people living in rural and remote locations.” (Legal Aid QLD, 2018 p.2).

There are concerns that the funding model used by the Australian Government does not sufficiently factor in the high costs of service delivery across a highly decentralised population spread across regional and remote areas.

Increased flexibility would make the NPA more inclusive

Queensland Government and CLC stakeholders report that funding streams outside of the NPA can challenge sector CSP and increase competition between services.

Community Legal Centre stakeholders report that the NPA does not, at present, offer flexibility to absorb additional funding streams and does not recognise that NPA funding is only one portion of funding for many services. For example, the Women’s Safety Package funding in 2018 was provided to a range of CLCs at short notice and without consultation with DJAG. As a result, in July 2018, many months of service mapping conducted under the NPA were undermined as a selection of services received targeted funding to deliver domestic violence related services. Without visibility of parallel and complementary funding to the sector that falls outside the NPA, all stakeholders - government, CLC and Legal Aid Queensland alike - noted that the effectiveness of CSP to meaningfully identify and respond to priority groups is undermined.

Need for greater funding certainty

Community legal centres emphasised the need for sustainable and funding certainty.

Community legal centres and DJAG report that the lack of funding certainty and last-minute funding decisions created insecurity for CLC staff and lead problems in retaining staff and in some cases to redundancies. When funding was re-secured, CLCs then had to expend considerable resources on recruiting, training and supporting new staff to fill positions that had become vacant. The delivery of legal assistance services to clients was compromised during this time due to these staffing issues as well as the time expended by CLCs advocating for continued funding and to managing administrative requirements such as securing leases.

Community legal centres also noted that low community sector wages undermine their ability to attract and retain quality workers (legal and non-legal) which is a challenge in regional, rural and remote areas. The pay disparity between lawyers with similar levels of experience working in CLCs and in Legal Aid Queensland is frequently reported to be around \$20,000.

3.7 SOUTH AUSTRALIA

3.7.1 Legal assistance services in South Australia

South Australian Department of Justice and Attorney-General

The South Australian Attorney-General's Department is responsible for allocating and administering Australian Government funding to the South Australian Legal Services Commission and to five CLCs.

South Australian Legal Services Commission

The South Australian (SA) Legal Services Commission was established under the *Legal Services Commission Act 1977 (SA)*. The organisation is responsible for delivering legal aid services across South Australia.

The SA Legal Services Commission provides legal information and referral, legal advice, legal representation duty lawyer services in the Magistrates Courts, the Family Law Courts and the Youth Court.

The SA Legal Services Commission provides free legal information and advice via telephone, in person at one of the six offices and online via Legal Chat, 24Legal or the Law Handbook. A range of other services are delivered outside of South Australian Legal Services Commission offices including the Murray Bridge outreach clinic and a family law prisoner advice service.

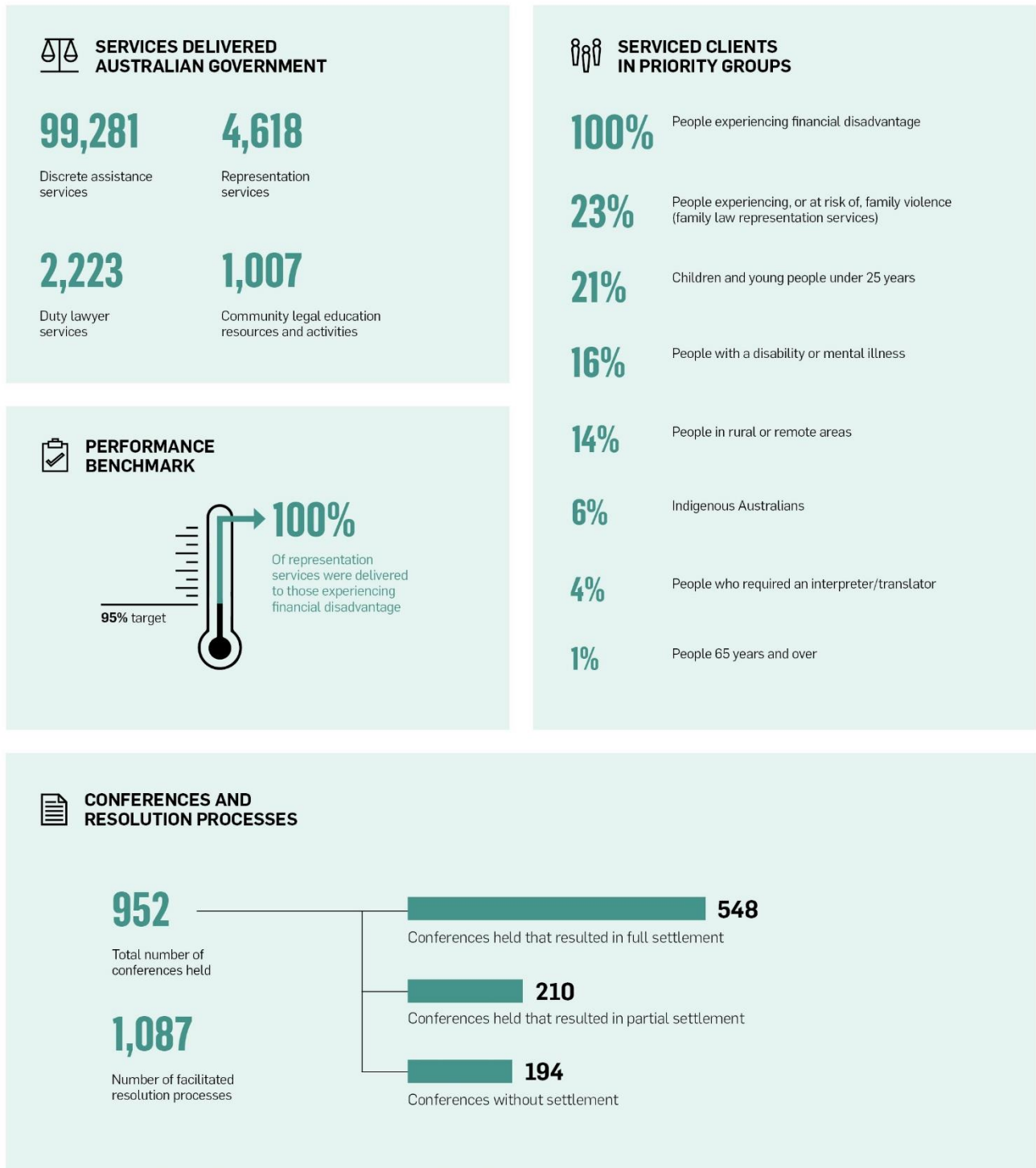
The SA Legal Services Commission also operates a 'front door' triage telephone line and referral model for its services and for the five NPA-funded CLCs. The model aims to filter all calls and provide information and advice over the phone and, where appropriate, provide warm referrals for advice and representation to the CLCs.

The SA Legal Services Commission activity in relation to Australian Government matters for the 2017 Financial Year can be seen in Figure 10.

In the 2017 Financial Year, the SA Legal Services Commission exceeded the NPA performance benchmark for the proportion of representation services delivered to those experiencing financial disadvantage, as shown in Figure 10 below.

Figure 10 – SA Legal Aid Data for FY2017

SA LEGAL SERVICES COMMISSION DATA FOR FY2017



Source: NPA Reports

South Australian CLCs

The five CLCs in South Australia provide community legal services across distinct geographical regions and thematic issues. All CLCs deliver their services using an outreach model with a metropolitan base in Adelaide. The CLCs provide legal advice, assistance and referral services to vulnerable South Australians in relation to minor criminal law, civil law, social security law, disability discrimination, neighbourhood disputes and family law.

Community legal centres also undertake community legal education activities across the state.

The South Australian Council of Community Legal Centres (SACCLS) is the peak body for all CLCs in South Australia.

Based on NPA reporting South Australian CLCs exceeded the NPA benchmark on the proportion of people receiving representation services that are experiencing financial disadvantage for the 2017 Financial Year (benchmark 85 per cent; performance July – December 2016: 97 per cent, performance January – June 2017: 97 per cent).

Other service providers

Other key stakeholders in the legal assistance services sector in South Australia are the Aboriginal Legal Rights Movement, the Family Violence Legal Service Aboriginal Corporation, and non-funded CLCs.

Volunteers and pro-bono lawyers play an important role in the South Australian legal assistance sector. For example, the Women's Legal Service of South Australia coordinates a pool of 20-30 volunteers who operate the telephone line which functions as an information and triage line for their service. Volunteers are the interface of the service with the community and in 2016-17 contributed 5,928 hours to the work of the Women's Legal Service, amounting to a financial contribution of \$186,732 (Women's Legal Service (SA), 2017, p.30).

3.7.2 Implementation of the NPA in South Australia

South Australian stakeholders value the NPA as a tool in focusing legal assistance services and consider the document is serving its purpose as a funding agreement. There have been several changes in South Australia which demonstrate how the NPA has been implemented to date, as follows.

Community legal centres sector review

In response to reduced Australian Government funding to South Australia under the current NPA, in early 2016, the South Australian Government commissioned Ernst and Young to conduct a review of the CLC sector (EY Review). EY was tasked to review the service delivery arrangements and consider new models and approaches to meet the legal needs of the most disadvantaged and vulnerable South Australians. This review coincided with the implementation of the NPA and was the first significant review of the South Australian CLC sector in 20 years.

The EY Review and the subsequent introduction of a competitive procurement process took one year to complete. This process and uncertainty damaged the relationship between South Australian CLCs and the South Australian Government and stakeholders report that it is taking time to rebuild trust. The EY Review proposed a future state model for community legal service which incorporated demand management, supply and response functions, as well as details of services to be delivered (Ernst and Young, 2016, p 4). This model has since been implemented by the South Australian Government.

The competitive tender process that followed the EY Review reduced the number of CLCs from eight to five and re-cut the geographical boundaries for service delivery.

Since the restructure, South Australian CLCs deliver their services using an outreach model and each CLC has a metropolitan base in Adelaide. The effectiveness of this model is yet to be determined as it is in the early stages of implementation.

'Front door' triage model

Following the EY Review, the SA Legal Services Commission was funded to deliver a new 'front door' triage model. Prior to this, CLCs and the SA Legal Services Commission made cross-referrals where appropriate. The new model is designed as a single-entry point to the legal assistance services sector. People who require legal information or assistance can call the SA Legal Services Commission telephone line and, where their needs are not best met by the LAC, they receive a 'warm' referral to the appropriate CLC. The impact of this new model has not yet been reviewed, although it is noted stakeholders provided mixed feedback about its effectiveness.

A slow start to CSP between South Australian Legal Services Commission and CLCs

In addition to these changes, South Australia has also made some progress with regards to implementing CSP. The legal assistance services sector in South Australia has historically collaborated through the South Australian Legal Assistance Forum, the membership of which includes non-NPA funded entities, and it continues to facilitate information sharing and collaboration in the sector. With the introduction of the NPA, South Australia also implemented the CSP Forum. Membership of CSP Forum includes the SA Legal Services Commission, South Australian CLCs, ATSILS, FVPLS, Law Society of South Australia, Attorney-General's Department South Australia and the Australian Government Attorney-General's Department.

The EY Review and the government procurement process delayed CSP activities because while the state EY Review was implemented, the sector and State government were meeting regularly but with a focus on the EY report, associated procurement processes to allocate funding, and implementation of the new model. This meant that implementation of CSP as envisaged within the NPA was delayed. The outcomes of the tender process were known in May 2017 and since this time, CSP has been progressing in South Australia. While CSP in South Australia is less developed than in other states, there has been recent progress in service mapping and all parties report this to be a positive experience.

3.7.3 Key themes

The following key themes were noted in stakeholder feedback, reported data and submissions from South Australia.

Community legal sector review disruptive to the sector

The EY Review process was disruptive to CLC service delivery for vulnerable clients and fragmented relationships within the sector. The review and subsequent closed competitive tender process was costly to CLCs in developing new services and CLCs had to absorb costs associated with establishing new services and premises. Financial uncertainty and subsequent cuts led to redundancies and a loss of skills and expertise. The sector appears to have recovered from the restructure and this is evident in the positive progress of CSP. It is too early to determine the overall effectiveness of the reforms on improving access to justice for disadvantaged South Australians.

Sector innovation falls outside scope of NPA funding

The South Australian legal assistance services sectors support innovation but do not consider the NPA has fostered new innovative efforts. The SA Legal Services Commission has developed an online information chat tool called Legal Chat where clients can ask legal advisers legal questions. It has also introduced 24Legal, a 24-hour online advice service that provides information via a digital decision-making tree whereby tailored information is provided to clients according to their responses to questions. The funding for both these initiatives is outside of the NPA.

Community Legal Centres South Australia report that it is difficult to innovate without dedicated funding.

Lack of funding certainty

The NPA has provided funding certainty in South Australia with its five-year duration, however the delivery of the EY Review at the commencement of this NPA, and the subsequent funding changes meant that funding uncertainty was experienced by CLCs during the early stages of the NPA. The rationale behind the reduction of Australian Government funding to South Australia is unclear and the South Australian Government and SA CLCs seek greater transparency of the funding allocation model. There is a preference for a bundling of funding sources to reduce the administrative and reporting burden for services.

Performance monitoring and reporting

The content of the NPA reporting requirements for CLCs and the LAC are regarded as unproblematic. However, both CLCs and the SA Legal Services Commission reported that the reporting infrastructure is problematic. South Australian CLCs share consistent concerns to other jurisdictions around the CLASS database and inconsistent interpretation of definitions under the DSM.

The CLASS system has placed a higher administrative burden on CLCs and has not met expectations, to date. Similarly, the SA Legal Services Commission reporting IT infrastructure, which operates separately to CLASS, has also experienced challenges with high modification costs. Data accuracy issues were also reported to have occurred.

3.8 TASMANIA

3.8.1 Legal assistance services in Tasmania

Tasmanian Department of Justice

The Tasmanian Department of Justice holds responsibility for administering the Australian Government funding to Legal Aid Commission of Tasmania (Legal Aid Commission TAS), and for administering and determining the distribution of available Commonwealth funding across Tasmanian CLCs.

Legal Aid Commission Tasmania

Legal Aid Commission TAS was established under the *Legal Aid Commission Act 1990 (TAS)*. The organisation holds responsibility for delivering a wide range of legal assistance services across Tasmania. It has four offices: in Hobart, Launceston, Devonport and Burnie. Legal Aid Commission TAS delivers preventative legal services through information on their website, and community legal education sessions. Early intervention services are delivered through a telephone advice line, consultations, duty lawyer services, legal task and mediation services. Legal Aid Commission TAS also delivers representation services through in-house and private lawyers (Legal Aid Commission Tasmania website, 2018).

Legal Aid Commission TAS activity for Australian Government matters in the 2017 Financial Year can be seen in Figure 11.

In the 2017 Financial Year, Legal Aid Commission TAS exceeded the NPA performance benchmark for the proportion of representation services delivered to those experiencing financial disadvantage, as shown in Figure 11 below.

Tasmanian CLCs

Tasmanian CLCs hold responsibility for delivering community legal services across Tasmania, with the services addressing issues such as a residential tenancy, restraint orders, minor crime, and family law matters. The services are delivered onsite as well as through outreach models to more regional communities. There are five CLCs funded under the NPA in Tasmania.

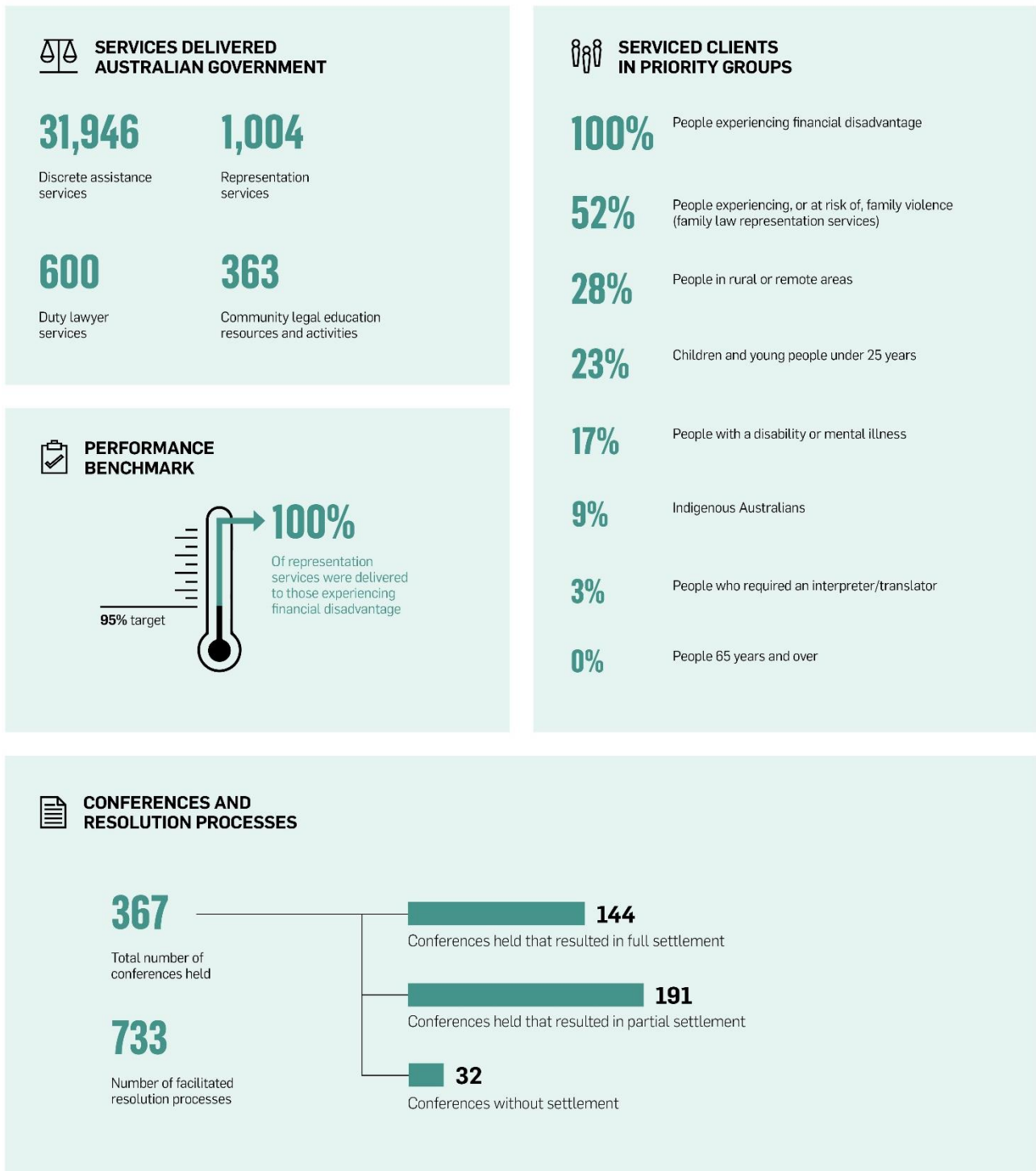
Based on NPA reporting Tasmanian CLCs exceeded the NPA benchmark on the proportion of people receiving representation services that are experiencing financial disadvantage for 2017 Financial Year (benchmark 85 per cent; performance July – December 2016: 100 per cent, performance January – June 2017: 100 per cent).

Other service providers

Legal assistance services in Tasmania are also provided by the Tasmanian Aboriginal Community Legal Service (TACLS). The private legal sector also supports delivery of legal assistance services, with private law firms providing legal aid representation services, as well as pro-bono legal information and advice services to, and on behalf of CLCs.

Figure 11 – Legal Aid Commission TAS Data for FY 2017

LEGAL AID COMMISSION TAS FY2017



Source: NPA Reports

3.8.2 Implementation of the NPA in Tasmania

There is mixed feedback about the implementation of the NPA in Tasmania due mainly to the impact of the planned reduction in CLC funding in 2017. However, stakeholders generally agree with the principles and aspirations of the NPA. The implementation of the NPA in Tasmania has influenced the following changes in the sector.

Transfer of Commonwealth CLC funding administration responsibilities

Prior to the NPA, the Legal Aid Commission TAS administered Commonwealth CLC funding on behalf of the Tasmanian Department of Justice. Since the NPA's implementation, this administration has been transferred back to the TAS Department of Justice. Stakeholders report that this change has not been disruptive and has not resulted in any major changes for CLCs or Legal Aid Commission TAS.

Establishment of CSP meetings

Key organisations in the Tasmanian legal assistance sector did meet regularly prior to the NPA to support CSP under the Tasmanian Legal Assistance Forum (TasLAF). TasLAF meetings are attended by the Legal Aid Commission TAS, CLCTas, Law Society of Tasmania, Tasmania Aboriginal Community Legal Service, Pro Bono Referral Service and the Commonwealth Department of Human Services. The TasLAF focusses on the structures which are in place to deliver services.

There is also a minimum of two meetings per year of the Tasmanian Legal Assistance Service Planning (TasLASP). These meetings are attended by all legal assistance service providers and focuses on mapping legal need and identifying ways to improve collaboration and reduce duplication. The Australian Government Attorney-General's Department attends both meetings.

Improved clarity of service delivery and priority groups

Although the NPA has not radically impacted clients serviced and services delivered by the sector, it has provided Legal Aid Commission TAS and CLCs with greater clarity about their focus areas. This has provided validation that they are servicing the right target populations and are offering appropriate services for their needs.

Overall despite some challenges faced during the early stages of the NPA, the Tasmanian legal assistance sector is making strong progress towards the goals of the NPA.

3.8.3 Key themes

The following key themes were noted in stakeholder feedback, reported data and submissions from Tasmania.

The planned reduction in CLC funding in 2017 hindered the implementation of the NPA

The planned reduction in CLC funding in 2017 was disruptive for the sector, particularly for CLCs. This had a direct impact on the implementation of the NPA, as CLCs focused primarily on organisational survival, rather than implementing changes or developing strategies to deliver the goals of the NPA. This slowed or delayed progress towards the goals of the NPA within the CLC sector, and diminished CLC sector trust in the Australian Government.

Possible establishment of a 'one-door' model for the sector

Prior to the NPA, the Legal Aid Commission TAS had put forward a proposal to the Tasmanian Department of Justice for all people seeking services from the legal assistance sector to be triaged by the Commission prior to being referred to either the Legal Aid Commission TAS or CLC services. This model has not been implemented. However, CLCs continue to have concerns that this model may be implemented as they see the model as a barrier to accessing their services. These concerns also directly impact the NPA, as they are seen to create a barrier to CSP in the sector.

Innovative practice is evident but pre-dates the NPA

There are a number of examples of innovative practice in Tasmania. These include the Legal Literacy service delivered by the Launceston CLC. Providing early intervention by offering free legal literacy training to help people identify legal needs, it is run entirely by volunteers. Another example is CLCs using video-conferencing to deliver outreach to clients living in rural or remote parts of the state. However, these examples pre-date the NPA and as such, cannot be attributed to the NPA although they are aligned with its goals and aspirations.

CLASS implementation has impacted efficiency for CLCs

As in other jurisdictions, CLC stakeholders reported that the implementation of CLASS has presented challenges for the sector, including issues with reliability and accuracy which directly reduce efficiencies for CLCs. In the short term, this has led to a considerable amount of administrative effort, resources and inefficiencies.

3.9 VICTORIA

3.9.1 Legal assistance services in Victoria

Victorian Department of Justice and Community Safety

The Victorian Department of Justice and Community Safety (DJCS) holds responsibility for administering the Commonwealth funding to Victoria Legal Aid and for determining the distribution of available Commonwealth funding across Victorian CLCs. The Victorian DJCS also provides state funding to both Victoria Legal Aid and to the CLCs in Victoria and holds responsibility for determining the distribution of this funding between Victoria Legal Aid and CLCs, and between individual CLCs. The Victorian DJCS has authorised Victoria Legal Aid to administer both Australian Government and some state funding to the CLCs.

Victoria Legal Aid

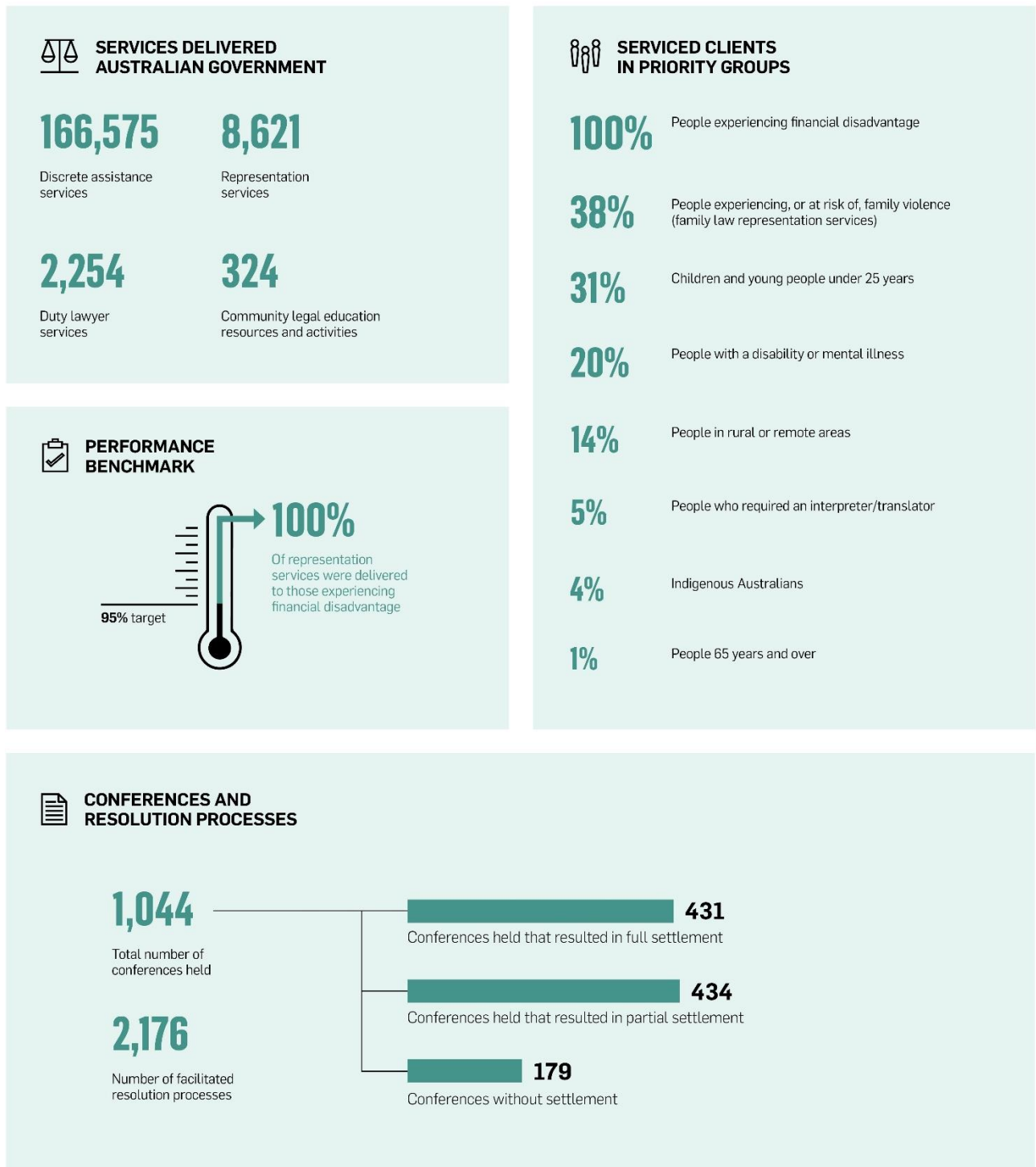
Victoria Legal Aid was established under the *Legal Aid Act 1978 (VIC)*. The organisation holds responsibility for delivering a wide range of legal assistance services across Victoria. In 2019, Victoria Legal Aid will commence undertaking strategic planning and coordination in relation to legal assistance in Victoria, which was a key recommendation from the Victorian Access to Justice Review (2015). (Victoria Legal Aid, 2018 p.1). This will involve input from and review by a Collaborative Planning Committee, with membership including the Federation of Community Legal Centres, Victorian Aboriginal Legal Service, Djirra and other groups in the legal assistance sector.

Victoria Legal Aid activity in relation to Commonwealth funded matters as reported in the 2017 Financial Year can be seen in Figure 12.

In the 2017 Financial Year, Victoria Legal Aid exceeded the NPA performance benchmark for the proportion of representation services delivered to those experiencing financial disadvantage, as shown in Figure 12 below.

Figure 12 – Victoria Legal Aid Data for FY2017

VIC LEGAL AID FY2017



Source: NPA Reports

Victorian CLCs

Victorian CLCs hold responsibility for delivering community legal services across Victoria, including (but not limited to) duty lawyer services, advice and case work. The services are both metropolitan and regionally based, with outreach services also delivered. Many CLCs work closely with non-legal community services and often co-locate with these services (Federation of Community Legal Centres (VIC), 2018 p.3)

There are 40 CLCs in Victoria funded under the NPA, which include generalist centres as well as Indigenous and other specialist centres. The Victorian Federation of CLCs, the state's peak body for CLCs, has 49 members including some CLCs not funded under the NPA.

Based on NPA reporting Victorian CLCs exceeded the NPA benchmark on the proportion of people receiving representation services that are experiencing financial disadvantage for 2017 Financial Year (benchmark 85 per cent; performance July – December 2016: 99 per cent, performance January – June 2017: 87 per cent).

Other service providers

The Victorian legal assistance services sector is also delivered by other key organisations, including the Victorian Aboriginal Legal Service Co-operative (VALS) and Djirra, a Family Violence Prevention Legal Service.

As in other jurisdictions, the private legal sector is also involved in the delivery of legal assistance services to disadvantaged groups with private legal practitioners providing legal aid representation services, as well as significant pro-bono legal information and advice services to and on behalf of CLCs.

3.9.2 Implementation of the NPA in Victoria

Most Victorian stakeholders support the aspirations and intentions of the NPA and have supported its implementation. There are some concerns that the NPA sets an ambitious agenda but does not provide sufficient funding for the additional work required to achieve NPA objective and outcomes. Key examples of this often reported by stakeholders are the additional resources required to conduct effective and meaningful CSP (particularly for smaller CLCs) and to establish and maintain integrated or joined up services.

The review found clear evidence of progression towards the NPA goals in Victoria, as demonstrated by the following examples.

Establishment of Collaborative Service Planning Working Group and CSP Implementation Plan

The Victorian Collaborative Service Planning Working Group has been established to implement CSP over three years in Victoria, encompassing more than NPA-funded services and accounting for key changes in the sector due to major state-level reforms. Membership of the Working Group includes Victoria Legal Aid, the Victorian Federation of Community Legal Centres, VALS, Djirra, the Victorian DJCS and the Victoria Law Foundation. The Australian Government Attorney-General's Department also attends two CSP meetings per year. The primary goal of the group is to build a state-wide evidence base, and a model which measures legal need and service provision in order to inform future service planning.

The Working Group has developed a CSP Implementation Plan which includes strategies to develop CSP practices across the state and build capacity so that the sector as a whole will be equipped to conduct and participate in CSP activities.

An important part of the CSP Implementation Plan has been the establishment of three place-based CSP pilots, led by Victoria Legal Aid. The pilots are based in Whittlesea, the South-East Regional Legal Assistance Network and Gippsland. Each pilot site has successfully identified priority clients and areas of highest legal need using an evidence base; completed a service mapping exercise; researched client journeys through the service system; and developed a five-year plan for their region (Victoria Legal Aid, 2018 p.8).

Stakeholders from Victoria Legal Aid and CLCs report positive feedback about the place-based CSP pilots and see the potential for this model to benefit the sector. Decisions have not yet been made as to how Victoria Legal Aid will use the findings from the pilots to implement CSP more widely across Victoria.

Increased prioritisation of clients and efficiency

Stakeholders report that the direction provided by the NPA has enabled improved prioritisation of clients. This has improved efficiency in the sector as services have had greater clarity of which client groups to focus on. Stakeholders also provided positive feedback about the targets for services in reaching financially disadvantaged clients, as this helps align the available services to those with the greatest need.

Demand impacts from state-level reforms

A number of major reviews and reforms have recently been undertaken in Victoria, including the implementation of recommendations of the Royal Commission into Family Violence (2016), the Coghlan Review of Bail (2017) and the Victorian Government Access to Justice Review (2016).

The implementation of the resultant recommendations has directly affected demand for legal assistance, the focus of service delivery, and relationships between parts of the sector. For example, the Royal Commission had a significant impact on CLCs as the centres experienced an increase in demand for specialist family violence services (Federation of Community Legal Centres (VIC), 2018 p.10). Victoria Legal Aid had experienced a similar major increase in demand for family violence related services. The Victorian Government has provided significant funding to the sector to enable both Victoria Legal Aid and CLCs to respond to these demands, in addition to funding provided under the NPA.

These reforms also drew some focus away from the implementation of the NPA, as they required considerable effort and resources from some legal services to participate in the review proceedings.

3.9.3. Key themes

The following key themes related to feedback about the NPA and experiences of it to date noted in stakeholder feedback, reported data and submissions from Victoria. It does not include suggested recommendations from stakeholders, as these have instead informed the development of Sections 4 and 5.

Service sustainability negatively affected by the planned 2017 reduction in CLC funding

The planned reduction in Australian Government CLC funding in 2017 was highly disruptive to the sector. The lack of funding certainty during this period meant CLCs' focus was primarily on organisational survival, rather than implementing changes or developing strategies to deliver the goals of the NPA. It is noted that this challenge was at mitigated by an increase in Victorian Government funding to the sector.

Importance of diverse roles for effective Collaborative Service Planning

Stakeholders raised the importance of CSP being community-led in order to be effective, and the value that a diversity of views and roles bring to the process. In particular, it was noted that ATSILs, specialist CLCs and cross-border CLCs play an important role in CSP. It was also recognised that CSP is enhanced when non-NPA funded CLCs are able to attend.

Potential for conflict of interest

As stated above, Victoria Legal Aid holds dual roles, as both a funding administrator and a service provider. This raises the potential for a conflict of interest between these two roles where Victoria Legal Aid could potentially complete research on legal needs for the purposes of procuring services from the sector, but then deliver services themselves. It is noted by some stakeholders that this potential conflict of interest may act as a barrier to CSP.

It is however recognised that government agencies always need to make decisions about whether to provide or procure services, and that stakeholders reported that no conflict of interest has actually been observed.

Interest in moving towards outcome measurement

Stakeholders reported a desire to move towards outcomes measures rather than output measures as are currently required for the NPA. It was recognised that this change would require time and investment across the sector, and that it may be some time before the sector is ready for this change. The key benefits from making this change were that the NPA data collection requirements would better reflect the depth and impact of legal assistance services and would also enable improvements to evidence-based decision making.

CLASS implementation has impacted efficiency and evidence base

A key issue raised by Victorian CLC stakeholders was the challenges faced during the introduction and implementation of CLASS. Considerable time and resources were required for CLCs to transition to CLASS. Problems relating to the accuracy and reliability of the data has created an additional administrative workload for many CLCs and detracted from their ability to focus on the implementation of the NPA. To facilitate this transition, the Victorian DJCS has funded a position at Federation of Community Legal Centres (VIC) to work with CLCs to build their capacity, to identify and resolve issues, and to work with NACLC on CLASS improvements.

These data integrity issues also impacted the calibre of the evidence base to support collaborative service planning and performance reporting. Stakeholders indicated strong support for CSP to be a data-driven process where evidence is used to inform service planning, however at present the available data from CLASS is not considered to be adequate for this purpose.

3.10 WESTERN AUSTRALIA

3.10.1 Legal assistance services in WA

Western Australian Department of Justice and Attorney-General

The Western Australian Department of Justice holds responsibility for administering Australian Government NPA funding to Legal Aid Western Australia (WA). The Western Australian Department of Justice has authorised Legal Aid WA to administer and distribute Australian Government NPA funding to CLCs in Western Australia. Funding is delivered by Legal Aid WA to CLCs through the WA Community Legal Centres Program ('CLC Program'), which also includes state funding contributions.

Legal Aid WA

Legal Aid WA was the first LAC in Australia. Established under the *Legal Aid Commission Act 1976 (WA)*, it is comprised of a state-wide network of ten offices and 57 outreach locations (Legal Aid WA, 2018 p.2). Legal Aid WA is responsible for delivering legal aid services in WA, including information and referrals, legal advice, representation, duty lawyer services, legal tasks and community legal education activities (Legal Aid WA, 2018).

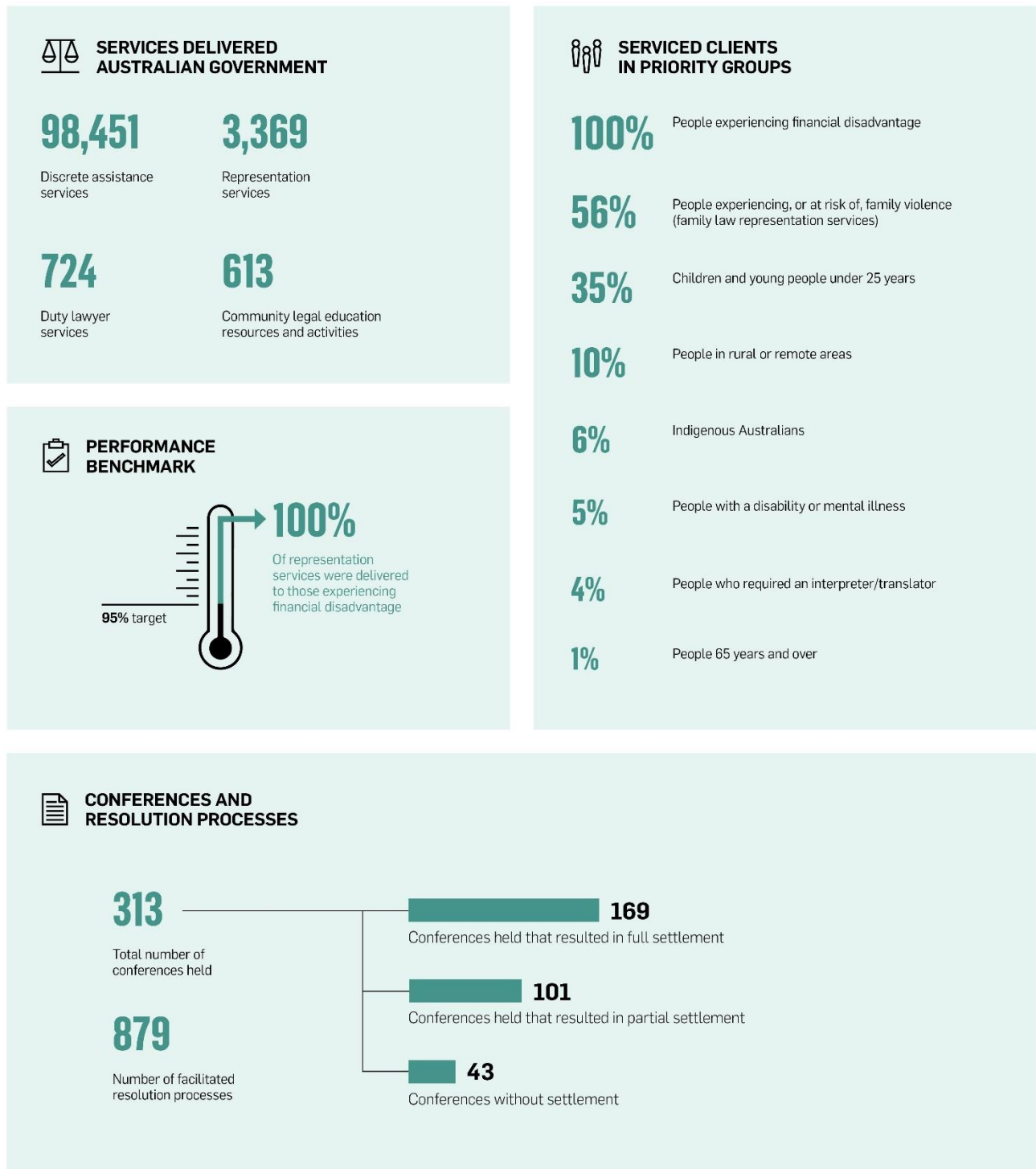
Legal Aid WA is also responsible for managing the allocation of NPA funding to the Western Australian CLC sector. This funding is delivered as part of the CLC Program, which includes contributions from the state government. In 2017-18 funding under the CLC Program was delivered to 24 CLCs across the state, as well as the peak body the Community Legal Centres Association (WA) (CLCA (WA)) (Legal Aid WA, 2018b p.24).

Legal Aid WA activity relating to Australian Government matters for the 2017 Financial Year can be seen in Figure 13.

In the 2017 Financial Year, Legal Aid WA exceeded the NPA performance benchmark for the proportion of representation services delivered to those experiencing financial disadvantage, as shown in Figure 13 below.

Figure 13 – Legal Aid WA Data for FY2017

LEGAL AID WA FY2017



Source: NPA Reports

Western Australian CLCs

There are 28 CLCs across Western Australia, represented and supported by the peak organisation, the Community Legal Centres Association of WA (CLCA WA) (The Community Legal Centres Association WA, 2017 p.3). The CLCs provide a range of pro-bono and low-bono legal supports to members of the community, including generalist and specialist services. These cover a “number of areas in which unresolved legal problems commonly arise” (The Community Legal Centres Association of WA, 2017 p.2), such as family law, child protection, employment law, consumer rights law and welfare law.

In total, 19 of the 28 CLCs in Western Australia receive funding under the NPA. The level of NPA funding provided, as well as the NPA's contribution to total annual funding, varies between each of the funded CLCs.

The primary responsibility of CLCA WA is to provide its members with "the support they need, to promote their value as providers of quality community legal services and to advocate for a fair and just legal system" (The Community Legal Centres Association of WA, 2017 p.3).

Based on NPA reporting Western Australian CLCs exceeded the NPA benchmark on the proportion of people receiving representation services that are experiencing financial disadvantage for the 2017 Financial Year (benchmark 85 per cent; performance July – December 2016: 99 per cent, performance January – June 2017: 95 per cent).

Other service providers

Other key stakeholders in Western Australia are the Aboriginal Legal Service of Western Australia, Aboriginal Family Law Service Western Australia, Marninwarnitkura Family Violence Prevention Unit Western Australia, and Family Violence Service Aboriginal Corporation.

Similar to other jurisdictions, the private legal sector also contributes to the sector, providing representation services funded by legal aid grants as well as significant pro-bono legal and other services to, and on behalf of, CLCs.

3.10.2 Implementation of the NPA in Western Australia

The NPA's aspirational principles have received wide support across Western Australia. However, the experience of its implementation to date has been mixed. There are several examples of changes within the Western Australian legal assistance sector that the NPA has influenced.

Implementation of Collaborative Service Planning (CSP)

The NPA's focus on CSP is generally supported by stakeholders in the Western Australian legal assistance sector, who recognise the value of 'joined up' services and holistic approaches to addressing client needs.

In Western Australia, the NPA led to the establishment of the Collaborative Services Planning Group of WA (CSPG WA), which held its first meeting in August 2015. The CSPG WA comprises representatives from CLCs, Legal Aid WA, ALS WA, IFVPLS, Law Access, the Australian Government Attorney-General, and the WA Department of Justice. Key outcomes achieved by the CSPG WA to date include the coordination of reports that map legal need in Western Australia which are based on detailed demographic and socio-economic analysis.

The CSPG has also established four working groups to examine "important areas of legal assistance collaboration in Western Australia" (Collaborative Service Planning Group WA, 2018 p.4). Specifically, the working groups are focused on: referral pathways, community legal education, domestic violence, and criminal law.

The NPA has enabled innovation and supported existing practices

Several examples of innovative practice were identified in Western Australia that were enabled and/or supported by the direction set by the NPA. Two example initiatives include the Blurred Borders project, which is led by Legal Aid WA, and the Older People's Peer Education Scheme, which is run by two NPA funded CLCs.

Blurred Borders is a collaborative, early-intervention program. The program was developed in response to "confusion around how laws work on each side of the border and a significant lack of understanding about general legal processes" (Collaborative Service Planning Group WA, 2018 p.22). To overcome these issues, a range of culturally appropriate legal resources have been developed for Aboriginal people using art, plain language and storytelling. The resources are designed to be used by a range of frontline service providers working closely with communities, including lawyers, paralegals, court staff, police officers and social workers (Collaborative Service Planning Group WA, 2018 p.22).

The Older People's Peer Education Scheme is a partnership between Northern Suburbs Community Legal Centre and SCALES Community Legal Centre. The program draws on volunteer peer educators, who have conversations with members of the community "with the aim of raising the profile and awareness of issues and signs of elder family abuse as a preventative measure" (Collaborative Service Planning Group WA, 2018 p.16). Where required, information and referrals are also provided to appropriate support services.

Several factors have impeded the progress of implementation in Western Australia. These include the impact of the planned reduction in CLC funding in 2017 (i.e. services going into 'survival mode', losing staff and the being required to compete for recurrent funding) and the resources required to accommodate the changes in NPA data collection requirements and tools.

3.10.3 Key themes

The following key themes were noted in stakeholder feedback, reported data and submissions from Western Australia.

CSP was an existing practice, and use of data to inform service delivery still in early stages

Stakeholders noted that CSP has been a focus of the sector in Western Australia for some time, with many pointing to examples that pre-date the NPA. Because of this, the focus on CSP under the NPA is seen to bring the NPA into alignment with the existing direction of the legal assistance sector, rather than being the major driver of reform.

Since the introduction of CSP under the NPA, Western Australian stakeholders report that the main outcomes achieved have been increased information sharing between service providers, and greater awareness of the role played by different service providers within the legal assistance services sector. The legal need mapping completed by the CSPG (noted above) has also been a key achievement towards CSP, although some stakeholders reported they have had limited time or capacity to analyse and use this data. For some, the value of that data collected has been limited by the fact that it was undertaken prior to the latest Census.

There was a shared recognition within the sector that progress towards CSP has been slowed by a range of barriers, most notably the lack of defined funding to support engagement in CSP, as well as the planned reduction in CLC funding in 2017 which led to significant disruption in the sector.

This significant forecast reduction in Commonwealth funding to centres generated widespread negative impacts caused by preparing for cuts such as high staff turnover, staff stress and a general focus on organisational survival. The climate that the 2017 planned funding cuts to CLC created was by no means optimal for either collaboration or service planning. (Collaborative Service Planning Group WA, 2018 p.5)

Lack of funding certainty

While the five-year timeframe of the NPA was intended to deliver greater certainty to LACs and CLCs, funding under the agreement has been delivered to CLCs by Legal Aid WA in annual contracts. Community legal centres report this has led to ongoing funding uncertainty, and undermines their ability to invest in systems, staff remuneration and professional development.

The NPA in WA has not provided certainty to the sector in that funding has resulted in a series of short-term contracts of a year in duration. (The Community Legal Centres Association (WA), 2018 p.9)

Significant costs incurred servicing communities across Western Australia

The complexity and costs of undertaking outreach legal services across regional and remote Western Australia was strongly emphasised in consultations. This included the considerable travel time and professional costs involved in visiting regional and remote communities, and servicing the large number of Aboriginal and Torres Strait Islander people residing in Western Australia. There are strong calls across the sector for a greater recognition of this in the NPA funding model, with appropriate weighting for servicing regional, remote and rural areas.

[T]he funding allocation model fails to adequately give weight to various factors affecting legal need and the cost of delivering legal assistance services in WA. (Collaborative Service Planning Group WA, 2018 p.7).

Linked to this, stakeholders expressed concerns regarding the distribution of NPA funding across the state; specifically, that some CLCs do not receive funding under the NPA, contributing to service gaps in key geographical areas (e.g. the outer northern and eastern suburbs of Perth and the Wheatbelt region).

Implementation of CLASS has impacted the reliability of CLC data

Stakeholders expressed concerns regarding the reliability of CLC data collected as part of the NPA as a result of ongoing issues with the implementation of CLASS. Many in the CLC sector report that they were not consulted in the development phase for CLASS and, as result, some of the functions are not regarded as fit for purpose. A lack of training is cited as a barrier to consistent data collection.

The difficulties and inadequacies of current data collection, together with the inconsistent recording of data that persist under the National Legal Assistance Data Standards Manual (DSM) has questioned the meaningful collection and evaluation of data on a state or national basis. (The Community Legal Centres Association (WA), 2018 p.11).

4 REVIEW FINDINGS

This section presents findings of the review, grouped around the TOR for the review. The sixth TOR sought the identification of potential enhancements within current and future arrangements; this is addressed in section 5, which incorporates the recommendations of the review.

4.1 IMPACT ON EFFICIENT AND EFFECTIVE DELIVERY OF LEGAL ASSISTANCE SERVICES

This section deals with the first TOR for the review, focused on:

The impact that the NPA has had on the delivery of efficient and effective legal assistance services, including consideration of:

1. the appropriateness and utility of the objective and outcomes in supporting the delivery of legal assistance services, including consideration of:
 - a. relevance to the current landscape of the legal assistance sector, and
 - b. existing research about legal need and service delivery
2. whether the NPA promotes legal assistance services that are effective, efficient and appropriate and represent value for money, including consideration of:
 - a. integrated legal and non-legal services
 - b. the broader role these services provide within communities
 - c. the use of different modes of service delivery, and
 - d. value for money¹ as consisting of a range of factors, including cost of service delivery, and qualitative factors relating to services, service location, client complexity, among others.
3. whether the NPA has improved the targeting of legal assistance services to people facing disadvantage, including priority clients, thereby improving access to justice for those who have the greatest legal need.²

1: Value for money will not involve service delivery comparisons between legal assistance providers

2: This assessment will use available analysis and bodies of research

4.1.1 Context

The objective of the NPA is an integrated, efficient and effective national legal assistance sector which is focused on improving access to justice for people living with disadvantage, and maximising service delivery within available resources. The outcomes from reaching this objective relate to the alignment of appropriate legal assistance services to greatest legal need, a collaborative sector and a focus on early intervention (Council of Australian Governments, 2015 p.3).

4.1.2 The aspirations, objectives and principles within the NPA remain appropriate

Key findings

- The objectives and outcomes set out in the NPA remain appropriate, enjoy broad support, and are consistent with the longer-term reform trajectory for the sector.
- While the NPA espouses sector-wide aspirations, as an instrument of reform it exerts greatest influence where it directly funds services

Stakeholders across the sector have reported on consultation and in their submissions broad support for these aspirations and have indicated that these goals align to the direction and focus of the legal assistance sector which was in place prior to the introduction of this NPA.

The objectives and outcomes of the NPA remain relevant to the legal assistance sector. Targeting support to clients where there is the greatest need, [and] facilitating collaboration between legal and other services to encourage a holistic approach to service delivery. (Immigration Advice and Rights Centre, 2018 p.3)

The NPA has been a positive step towards achieving a coordinated and effective legal assistance sector. (Law and Justice Foundation of New South Wales, 2018 p.1)

Consultation with stakeholders also revealed that while these goals are aligned to the existing practices of the sector, the NPA has brought clarity to the sector of which priorities should receive focused attention. This ongoing development of a 'whole of sector' viewpoint has been particularly aided by the incorporation of CLC funding within the current NPA. In this way, the NPA is supporting the sector progress toward greater collaboration and integration between service types (i.e. LACs, CLCs).

The scope of influence exercised by the NPA as a funding instrument

The NPA has appropriately broad aspirations for an efficient and effective legal assistance sector. However, its mechanisms for enabling sector reforms are constrained. As a funding instrument, its scope is limited to LACs and CLCs, and in those cases, represents only a (variable) proportion of organisational funding. In this regard, the NPA has sector-wide goals which encompass the actions and decisions of services which are not funded or fully funded by the NPA.

Family Violence Prevention Legal Services and ATSILS also contribute significantly to a diverse sector composition able to provide differentiated responses to clients with different needs – and particularly to Aboriginal and Torres Strait Islander people. However, these organisations are funded outside of the NPA, and their core areas of work at sector level are guided by the frameworks established through their separate funding mechanisms. With total funding allocations to each of the four sub-sectors 'locked in', capacity to redirect or reprioritised funding between agreements is limited.

The NATSILS has also observed that planning processes that are NPA-driven may also be less inclusive of organisations funded through other arrangements:

Too often resources do not flow to gaps identified during CSP under ILAP despite there being an evidence base for which to allocate funding. Instead, other legal services and pilot programs are gaining support to replicate ATSILS services and holistic service delivery models which are best placed with the ATSILS (i.e. Health Justice Partnerships for Aboriginal and Torres Strait Islander people). (National Aboriginal and Torres Strait Islander Legal Services, 2018a, p 9)

While the NPA does activate other influencing mechanisms outside of directly funding service delivery (including vision setting, collaborative service planning, and linkages with other agreements including the ILAP), the capacity of the NPA to influence the achievement of its goals is constrained by the reach of its funding. Where the NPA does not directly fund services, it is less influential.

Priority client definitions

The range of priority clients documented in the NPA was generally held to be appropriate, although some stakeholders made suggestions for changes. These included:

- including vulnerable migrants who have experienced trauma and violence, often have limited supports, low income and limited English language skills (Immigration Advice and Rights Centre, 2018)
- including people from the LGBTIQ+ community who experience high rates of discrimination and harassment and can partly as a result experience worse mental health and physical health outcomes and socio-economic disadvantage (LGBTI Legal Service, 2018)
- revision of the proxies used to identify CALD priority groups; CLCs Queensland noted that the proxies for determining CALD by the requirement for an interpreter or that the primary language at home is not English are too narrow, and that other funding programs identify CALD by country of birth (Community Legal Centres Queensland Inc., 2018).

4.1.3 A broad range of factors shape demand for legal assistance services

Key findings

- Long term demand for legal assistance services is driven by a broad range of intersecting factors, many of which are captured through the current data sources used to inform funding allocations and service planning.
- There are specific challenges associated with delivering services in rural, regional and remote Australia, characterized by higher levels of disadvantage and higher costs of service delivery.
- The impact on demand for legal assistance from policy, regulatory or legislative actions by government is not consistently assessed for use as an input to sector planning.
- The constraints on the use of Australian Government funding for lobbying and public campaigns documented in the NPA are perceived by CLCs to limit contributions through strategic advocacy and law reform.

Capacity to address unmet legal need is constrained by total funding

There is a consistent narrative within the sector that growing demand for legal assistance services coupled with the increasing costs of delivery are placing significant external pressure on the sector. This also compromises the achievement of the NPA's aspirations as services' resources are focused on striving to meet demand while facing increasing costs, rather than focussing on the aspirations of the NPA (The Federation of CLCs (Victoria) Inc., 2018 p.4; Victorian Legal Aid, 2018 p.4).

Many stakeholders reported that they were unable to meet levels of legal need with their existing resources. For example, Queensland respondents to the 2016 NACLC census identified insufficient resources as the main reason for client 'turnaways' in the 2015/2016 financial Year (76.2 per cent). In total, it was estimated that almost 55,000 people were unable to access legal support from a community legal centre, however, approximately 60 per cent were provided with an appropriate, accessible and affordable referral to another service/organisation (Community Legal Centres Queensland Inc., 2018 p.10).

Within review consultations and in submissions, stakeholders consistently observed that there is significant unmet legal need. This was generally characterised by legal assistance providers in three ways:

- an inability to provide service to disadvantaged clients due to insufficient resourcing
- logistical, resourcing and other challenges reaching clients in regional and remote areas
- a band of clients who do not meet the financial disadvantage tests, but for whom private services are unaffordable.

In-depth analysis of unmet need within the legal assistance sector is outside the scope of this review, and the review team has not independently verified these observations, nor confirmed whether they are applicable in all jurisdictions and service delivery contexts. Prior reviews have addressed these issues in more depth (Productivity Commission, 2014; Law Council of Australia, 2018).

Specific challenges in regional, rural and remote areas

As identified in the NPA, clients in regional, rural or remote areas are priority clients for NPA funded services (NPA 2015 - 2020, Schedule B). Levels of socio-economic disadvantage for clients in these areas is noted to generally increase with remoteness. Clients in these areas also often experience access to justice barriers such as distance, lack of public transport, and limited technology access (Law Council of Australia, 2018 p.32).

Compounding this context of disadvantage is a shortage of lawyers in regional, rural or remote areas. In 2016 it was reported that less than ten per cent of solicitors practiced in these areas across Australia (Law Council of Australia, 2018 p.32). In addition to limited availability of legal assistance services, this shortage also results in limited access to pro-bono services in these areas.

Aboriginal and Torres Strait Islander Legal Services also commonly provide services into regional and remote communities. In areas of thin service delivery, the importance of coordination between NPA-funded and other services is clear. Stakeholders reported examples of how the legal assistance sector seeks to overcome these barriers to support clients in regional, rural and remote areas. There are a number of outreach services delivered by Legal Aid and CLCs in Queensland to disadvantaged communities, the majority of which are Aboriginal and Torres Strait Islander communities.

[I]n the Gulf region, Legal Aid Queensland provides services at Normanton, Burketown, Mornington Island and Doomadgee. In the Cape York region and the Torres Strait, Legal Aid Queensland provides services to court circuits which include Thursday Island, Badu Island and more remote islands such as Boigu, Saibai, and Damley Islands. Legal Aid Queensland's Townsville office provides duty lawyer services to Palm Island. Transportation to the abovementioned locations involves airline flights, light plane flights, boat or bus, and in the case of the Torres Strait circuits, a combination of all four in the same day. (Legal Aid Queensland, 2018 p.3)

The financial disadvantage test and the 'missing middle'

Stakeholders also reported that there is a tier of the community who do not meet the financial disadvantage testing for legal assistance services and for whom private legal services are unaffordable. The Productivity Commission has estimated that 8 per cent of households would meet the financial tests for legal aid services. This means that a large number of low and middle-income households who do not meet these tests may not have the financial means for accommodating legal costs, and are thus unable to access needed services. (Productivity Commission 2014 p.20).

This cohort was often referred to by stakeholders as the 'missing middle'. While available legal assistance services necessarily go to those most in need in our communities, there remains an additional cohort who are not the *most* in need, but who also do not have the financial means to access private legal services (Law Council of Australia, 2018c p.6; Productivity Commission 2014 p.640).

It was reported by stakeholders that failing to provide legal assistance services to this cohort can result in the exacerbation of disadvantage to the extent that some will eventually meet the financial disadvantage test. Strategies to strengthen access to services for people within cohort who are at risk of spiralling disadvantage would be consistent with the ethos of early intervention and deliver downstream benefits to both clients and the system by way of avoided future system costs.

Policy, legislative and regulatory drivers

Demand for legal assistance services is shaped by a broad range of factors. In broad terms, these include socio-demographic and economic drivers incorporated within the Funding Allocation Models use by the Australian Government to determine proportionate distribution of funding under the NPA (i.e. establishment cost, population, legal need indicators, and cost factors).

However, many stakeholders observed that in addition to these contextual factors shaping long term demand, political, legislative and regulatory environments also impact significantly on the size and shape of demand, both over longer and shorter timeframes. At present, following fixed allocations of funding under the NPA, there is no consistent mechanism to anticipate and respond to these demand drivers, outside of the policy-specific initiatives that operate in parallel to the NPA.

Various examples of this were provided in the review. For example, in one jurisdiction, the introduction within the last couple of years of a new policing initiative resulted in a considerable increase in arrests and charges laid which in turn has led to an unprecedented increase in the number of applications for legal assistance in criminal law matters, creating a level of demand that is likely to continue into the future. In various jurisdictions, an increase in demand for legal assistance was identified in relation to people with disability and their carers in the context of their dealings with the operations of the National Disability Insurance Scheme: these cases can be both complex and time consuming. The introduction of other new national initiatives such as the National Partnership Agreement on Housing and Homelessness (Council of Australian Governments, 2018), while widely supported in the sector, are seen to have the potential to significantly increase the demand for legal assistance services, but this is perceived by stakeholders consulted to be unacknowledged and not planned for at a whole of government level.

Additionally, the establishment of national or state-based Royal or other commissions of inquiry have reportedly created increased demand for legal advice or assistance on a shorter term basis as have changes to administrative or policy guidelines (e.g. in relation to immigration matters where short timeframes for applications for certain visa classes were introduced).

While future arrangements could afford greater flexibility in the integration of new funding streams (discussed within section 4.3 in reference to funding arrangements below), the sector's capacity to anticipate, plan and respond to legislative and regulatory changes could be strengthened. One strategy to enabling this that has been recommended in multiple prior inquiries and reviews¹ would be to explore the introduction by the Australian and state and territory governments of legal assistance impact statements for legislative or regulatory changes that disproportionately affect disadvantaged populations. These statements would form useful inputs both to the legislative/regulatory refinement process, but also to collaborative service planning activity.

Contribution of strategic advocacy and law reform

The Productivity Commission has previously found 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" (Productivity Commission, 2014 p 709). Proactive involvement by the sector in the development of better policy and law in this context is a desirable activity for legal assistance providers:

...provision of efficient legal services would require those services being able to identify and champion opportunities for systemic change, rather than providing individual legal services to multiple individual clients (which is expensive, inefficient, inequitable and does nothing to prevent the same issue recurring elsewhere). (Liberty Victoria, 2018, p.2)

The NPA includes specific guidance that Australian Government funding:

should not be used to lobby governments or to engage in public campaigns. Lobbying does not include [CLE] or where a legal assistance provider makes a submission to a government or parliamentary body to provide factual information and/or advice with a focus on systemic issues affecting access to justice (Council of Australian Governments, 2015 cl B7).

Community legal centres and FVPLSs report a consistent perception that the restrictions on the application of NPA funding under clause B7 have the effect of constraining the advocacy and law reform work of the sector (National Association of Community Legal Centres, 2018b p.10; National Family Violence Prevention Legal Services Forum 2018 p.7; Women's Legal Services Australia, 2018 p.9, Consumer Action Law Centre, 2018). The limited nature of the definition provided within the NPA contributes to uncertainty about the scope of the clause, indicating that clarification of governments' intent is warranted.

¹ See for example, the Senate Legal and Constitutional References Committee report on *Legal aid and access to justice* (2004), and the final report Law Council of Australia's *The Justice Project* (2018a).

4.1.4 The experience and implementation of the NPA varies between jurisdictions and sub-sectors

Key findings

- The way in which the NPA reforms were implemented varies significantly between jurisdictions, particularly in relation to funding structures and collaborative service planning approaches.
- The transition to new arrangements under the NPA has been relatively smooth for legal aid commissions, and they have benefited from streamlined reporting and greater flexibility in scope of service delivery compared to the prior NPA.
- Community legal centres have had a less positive experience, largely (but not solely) driven by transitional issues including funding uncertainty and residual impacts of the 2017 funding changes, and difficulties associated with the implementation of the DSM and the CLASS system.
- While the NPA's key mechanisms (funding, CSP) remain consistent with its aims, realisation of reform benefits since 2015 has been hampered by transitional and implementation challenges, particularly within the CLC sector.

There are clear jurisdictional differences in how the NPA has been implemented (as outlined in Section 3), as well as in the progress of implementation.

Key factors influencing implementation at state and territory level

Although not falling within the scope of the NPA, the different levels of funding contributed by states and territories to the sector impacts on the implementation process. This is because funding creates leverage and influence, affects relationships, and influences total sector capacity and economies of scale that can be exercised in pursuit of NPA's objectives.

Each jurisdiction's pre-existing infrastructure for CSP has also influenced the implementation of this core element of the NPA. Jurisdictions with robust systems and processes for collaboration already in place before the NPA have been better able to implement the changes required (observed by stakeholders to include Queensland and New South Wales in particular, as outlined in Section 3).

Differences in the experiences of legal aid commissions and community legal centres

In addition to differences between jurisdictions, it is also clear that the experience of the NPA has differed between LACs and CLCs, with LACs having a generally more positive experience to date with the NPA than CLCs.

Legal aid commissions report an overall positive experience of the transitions to the NPA from the 2010-2015 iteration. They have observed the NPA aligned with and supported their existing activities and goals, and they have had adequate resources to make any changes required under the NPA, such as participating in CSP.

This positive experience has likely been driven by several key factors:

- the first is that LACs have previously been funded under the NPA 2010-2015, and the transition to the new funding arrangements was a smaller change than for CLCs
- the implementation of a number of improvements to the prior NPA (particularly around flexibility of service scope and streamlined and better focused reporting) has also been well received
- while the scale of change for LACs was relatively modest, they are also relatively large organisations with more resources to plan for, and execute change initiatives
- finally, as a result of the implementation of the NPA 2010-2015, LACs were more likely to have invested in and established relationships with their state and territory funding administrators.

In contrast, CLC stakeholders reported significantly greater levels of change and disruption for their services through the transition to funding under the NPA. At a high level, the key change stressors reported by CLCs that has coloured their experience of operating under the NPA to date relate to funding, funder relationships, and data/data systems.

The funding cuts anticipated in 2017 created a climate of uncertainty and anxiety for the sector as a whole, and significantly overshadowed the first two years of the NPA. The impacts of the anticipated funding cuts are addressed in some depth within section 4.3.

Prior to the current NPA, CLCs received funding from and reported directly to the Australian Government. CLCs now engage directly either with their state department, or as is the case in Victoria, New South Wales, Queensland and Western Australia, with their state's LAC in relation to their funding and reporting. The transition to new funding agreements and funder relationships has varied across jurisdictions, with jurisdictions with high levels of State and LAC engagement and understanding of CLCs experiencing less impacts than those where relationships with the State department or LAC are newer or less developed.

Some CLC stakeholders reported they had felt the loss of strong relationships with well-informed contract managers at the Australian Government Attorney-General's Department who understood their sector and their service.

Finally, NPA required CLCs to simultaneously adapt to the introduction of the Data Standards Manual (DSM) and transition data collection and reporting system from Community Legal Service Information System (CLSIS) to the Community Legal Assistance Sector System (CLASS). The transitional costs of these changes (discussed in section 4.4) have affected CLC's capacity to implement changes in response to the NPA. This change was not unique to CLCs, as LACs also needed to make significant changes to their data collection systems and processes to accommodate the NPA requirements.

The general experience of this change was reported by CLC stakeholders to be more problematic than was reported by LAC stakeholders. This is likely attributable to the complexities involved for CLCs in implementing a large-scale data change across more than 200 independent organisations or varying size and base technological capability compared to implementing change in the LAC structure of eight state-wide services with scaled business systems and support infrastructure.

The key challenges experienced by CLCs during NPA implementation relate primarily to transitional issues, many of which have abated over time. However, these negative experiences for many CLCs have influenced their overall perceptions of arrangements under the NPA.

4.1.5 The NPA enables, but is not driving innovation in legal assistance service delivery

Key findings

- Increased flexibility in service delivery afforded to legal aid commissions (in contrast to arrangements under the prior NPA), coupled with less 'volumetric' accountability requirements has enabled LACs to develop new and innovative approaches to socio-legal services.
- There are numerous reported examples of flexible and innovative service delivery by CLCs, but these are not attributable to the NPA. In some cases, these practices are the result of pre-existing local partnerships/relationships or are funded through other programs.
- Innovations occurring within the sector relate primarily to extending service reach, supporting early intervention/prevention of legal problems, and addressing socio-legal problems.
- There are many examples of innovation in the sector but few mechanisms within the NPA to drive the evaluation of innovation success and scalability.

The review found that the NPA has had limited impacts on driving for innovation in the legal assistance sector to date, although it has been enabling of innovation in specific cases. This is partly because the sector was already delivering innovative practices prior to the NPA, and because the NPA does not explicitly fund or reward services for innovative practices (Australian Government Attorney-General's Department, 2018b p.8).

Stakeholders described in consultation and through submissions a range of innovations that CLCs and LACs have undertaken to extend service reach, support early intervention or prevention of legal problems and address socio-legal problems. These include working with ATSILS in many cases - NACLC reports that 15 per cent of CLCs partner with ATSILS on legal service delivery (National Association of Community Legal Centres, 2018d p.8). Most examples highlighted by CLCs had either been in development or in place prior to the NPA or were specifically funded through other means. While in some cases enabled by NPA funding, they were not characterised as have resulted from the NPA.

Legal aid commissions also described a broad range of innovative practices and were more likely to attribute at least some of these to the NPA, particularly in contrast to prior arrangements. They consistently observed that innovative approaches are enabled by the NPA's focus on well-targeted services, provision of greater flexibility in how funding is used, and explicit encouragement of collaborative working. In several jurisdictions, the development, expansion or exploration of socio-legal supports for legal aid clients has been enabled by the more flexible scope afforded to LACs under the NPA.

Several of the examples provided to the review team were funded through the Indigenous Advancement Strategy (IAS) or the Community Legal Services Program (CLSP). These programs provide more flexible opportunities for CLCs (and others) to develop new or innovative projects and opportunities to improve their impact. The scope of the CLSP was amended in 2015 and incorporates three key priorities (Australian Government Attorney-General's Department, 2015c p.4), including projects that deliver and support national legal assistance activities and innovation focused projects. The program is administered separately to the NPA, but is closely aligned to and operates in support of the National Strategic Framework for Legal Assistance (Australian Government Attorney-General's Department, 2015e).

The strategic context within which legal assistance services are being delivered signals that actively pursuing and supporting innovation will be a key mechanism for the ongoing improvement of services. Significant pressures arising from rising demand for services, increasing complexity of client needs, growing supply-side costs and other operational challenges or constraints necessitate innovation in legal assistance, particularly in the context of a constrained funding environment. Providing a clearer framework and mechanisms to drive innovation through the NPA could support the sector to trial, evaluate and scale up successful innovations that enhance the reach, effectiveness or efficiency of legal assistance services.

The NPA review identified excellent examples of innovation involving LACs and CLCs from across Australia. Some examples include:

South Australian Legal Services Commission - 24Legal: a web based guided interface which provides tailored legal information through a question and answer format specific to particular topics and based on existing Commission fact sheets and brochures

Blurred Borders: This CLSP-funded project produced material for legal and community service providers working with Aboriginal people in the NT/WA cross-border region, using visual art and storytelling to convey and explain key legal concepts.

NT Legal Aid: Legal aid clients are able to access support from a dedicated family support worker and a youth justice worker. These roles are funded by the NPA, and in providing more holistic client support, reportedly enable lawyers to obtain better instructions, clients to feel better supported, and legal outcomes to be enhanced.

Legal Aid WA – Health Justice Partnership: Health justice partnership between Legal Aid WA, a Women’s Health Service and a community legal centre which provides women in family violence with a holistic “wrap-around” service, which also minimises “re-telling”/re-traumatising and identifies areas for potential community legal education work.

Launceston CLC – Legal Literacy Program: A program that trains volunteers to help others in their community work through issues before they require legal advice or intervention. The program aims to tackle poor literacy, identify legal need, make referrals to the appropriate free legal assistance provider and referrals to non-legal support service providers in their local area.

4.1.6 The NPA has not yet impacted system efficiencies, largely due to transitional and implementation costs

Key findings

- At the *service* level, a high level of pre-existing operational efficiency is consistently reported by LAC and CLC stakeholders, and this view receives qualified support from prior reviews of the sector.
- At the *system* level, prior reviews have identified efficiency opportunities associated with economies of scale for smaller CLCs. South Australia is the only jurisdiction where a substantial reconfiguration has occurred, with amalgamations also occurring in two other jurisdictions.
- The impacts of anticipated 2017 funding cuts, ongoing funding uncertainty where state and territory funding agreements remain short term, the introduction of the DSM, and CLASS implementation have adversely affected operational efficiency for many CLCs.
- The absence of effective platforms for information and resource sharing across the sector, particularly at the national level, contributes to stakeholder perceptions of effort being duplicated between states and territories and between legal assistance service providers.

Legal aid commissions efficiencies

The scope of this review has not extended to an in-depth analysis of the internal efficiency of LACs; however prior reviews have found that services are generally well targeted, and that the mixed model of in-house and outsourced delivery of services offers opportunity for efficiency gains (Productivity Commission, 2014 p.725).

Legal aid commissions make extensive use of the private legal sector through outsourcing delivery of services using legal aid grants, with an average of 33 per cent of duty lawyer services and an average of 70 per cent of representation services delivered by private lawyers between the 2016 to 2018 Financial Years (see Figure 3 – Duty lawyer and representation services delivered in house and assigned by LACs 2016-18). The sustainability of this mixed model of in-house and private lawyer delivery has been queried, due to the low rates paid for legal aid grants (Productivity Commission, 2014 p.703). The Productivity Commission also highlighted activity-based costing models which replicate private sector fee targets as an approach that supported efficiency (Productivity Commission, 2014 p.707). The report cites as examples work undertaken by Legal Aid Queensland and Legal Aid NSW.

Community legal service efficiencies

In broad terms, efficiencies for the CLC sector will arise from:

- generation of cost-savings within individual CLCs
- provision of operational tools (e.g. NACLCL provision of accreditation guidance and access to online legal resources, which might otherwise be duplicated by multiple CLCs)
- the bulk purchasing of specific product or services (e.g. the National Community Legal Sector Insurances Scheme), or
- the amalgamation of smaller organisations.

At the service delivery level, there is a high level of pre-existing efficiency reported by stakeholders. Prior reviews which considered efficiency have returned mixed findings. The Cameron Review found that at service level, “CLCs are extremely efficient, leveraging volunteer and pro bono support to maximise the total hours, dollar value and range of services they provide...” (Cameron, 2017 p.7). Reviews exploring administrative efficiencies conducted by CLC state associations in Queensland and Western Australia found that there were limited areas in which CLCs could secure cost savings at the service level (Community Legal Centres Queensland Inc., 2018 p.3). A number of cost-saving initiatives have nonetheless emerged, primarily focused on scaling up specific aspects of CLC operations and seeking to secure economies of scale – for example, through national insurance arrangements.

At the sector level, the Victorian Access to Justice Review found no “significant problems of duplication or inefficiency” within the sector – although noting that a lack of data made it difficult to demonstrate value for money (Victorian Government, 2016 p.290). In 2014, the Productivity Commission did identify the small size of many CLCs as contributing to higher levels of administrative overheads and specifically supported

amalgamations as a means of improving efficiencies of scale within the CLC sector (Productivity Commission, 2014 p.720).

However, to date, the only jurisdiction where there has been a substantial change in system configuration is in South Australia, which was informed by the findings from the SA Community Legal Centres Service Review by Ernst and Young (2016). This change involved area-based funding for community legal services being put forward under a competitive tender process, resulting in four CLC services receiving funding (previously eight CLCs were funded).

This review identified no other substantial reconfigurations of services at the jurisdictional level (other than one amalgamation in Victoria, and one in New South Wales). This may indicate that there are relatively few underlying allocative or distributive inefficiencies that would give rise to a need for reconfiguration; alternatively, if these inefficiencies do exist, they have not yet been addressed through the mechanisms enabled by the NPA.

Overall, there is limited evidence that the NPA has delivered positive impacts on efficiency at a service level to date for CLCs. On the other hand, the transition to new arrangements over the past few years has created some inefficiencies for CLCs, although these may be transitory. These include:

- the implementation of CLASS and the DSM. The additional resources required within services to accommodate these changes have placed a large administrative burden on services which has reduced their efficiency
- the anticipated 2017 funding reduction for CLCs resulted in loss of staff and turnover costs.

These issues have resulted in temporary negative impacts on the internal efficiencies of legal assistance sector services. In time, as the data changes are embedded and new staff acquire corporate knowledge, the impact on efficiency should be reduced or eliminated.

Information and resource sharing

Stakeholders from across the sector observed that there was very little formalised information sharing occurring across jurisdictions, and that this meant missed opportunities to exchange information, resources, and good practices (for example, around approaches to collaborative service planning). The perceived consequence is duplication of effort across jurisdictions, driving inefficiencies at the level of national sector development.

4.1.7 The sector continues to deliver strong value for money under the NPA

Key findings

- Variability in how data on system outcomes is collected and counted make the quantification of value difficult. Outcomes measurement at client level can be very difficult to capture due to the variance on what constitutes a 'good' outcome in each unique case.
- Notwithstanding the limitations in quantification of benefits, the legal assistance sector plays a vital role in supporting access to justice, and in doing so, delivers significant value to the community. Coupled with generally high levels of service efficiency, this indicates a sector that delivers good value for money.
- Provision of legal advice and representation to individuals who would otherwise be unrepresented due to financial or other disadvantage supports better compliance with legal orders, and better outcomes for clients, and may also deliver more efficient legal processes.
- The emphasis within the NPA on early intervention is sound, and to the extent that this averts or reduces downstream costs delivers significant value to the government and the community.
- There are consistent reports from the sector, supported in limited literature, that more holistic services create better and timelier legal and non-legal outcomes, avoiding escalation and delivering services valued by clients.
- LACs and CLCs leverage good value for government expenditure from sector partners. LACs report that grants of legal aid are generally set at below private market rates, while CLCs also coordinate a significant amount of support from members of the legal profession and law students.

Assessment of value for money

The diversity of input funding streams (in addition to the NPA), difference in cost-factors across geographies and sub-sectors, variability in how 'effort' and service quality are measured, and the difficulty measuring outcomes creation mean that the quantification of value for money created by the legal assistance sector has not been possible within the scope of this review. The paucity of data to support value for money assessment has also been noted in prior sector reviews (Victorian Government, 2016). There is limited data available from which to quantify impacts of legal assistance services and prior attempts to develop benefit to cost ratios (Judith Stubbs and Associates, 2012; PricewaterhouseCoopers, 2009) have been criticised for overclaiming calculated benefits (Productivity Commission, 2014, pp.1050-51).

The clear implication that can be drawn from the limitations of prior research and analysis in the context of efforts to assess value delivered by the legal assistance sector is that there is considerable further work to be done. Improvements to the depth of research and data on the effectiveness of services would strengthen the evidentiary basis on which policy decisions can be made.

The Productivity Commission (2014, p.1049) has provided some guidance on approaches to measuring the value created by legal assistance services, while noting that some less tangible benefits such as "enforcement of legal rights and the support of social norms" are difficult to capture and ascribe a quantified value to. The Commission suggests focusing on two key benefits often claimed, being the avoidance or reduction in:

- costs to individuals and the community that can arise from unresolved or escalated legal problems
- costs to the community from the inefficiencies caused by self-represented people using the legal system, especially the courts.

These avoided costs represent a narrow definition of the potential benefits of legal assistance services, but provide a potential starting point for the future development of more robust cost-effectiveness analyses.

The nature of value created by legal assistance services

Legal assistance services under the NPA have a strong focus on targeting financially disadvantaged clients, and other priority groups who are otherwise unlikely to secure legal advice or representation. This underpins a core value proposition made by the sector, with legal assistance services contributing to the more efficient resolution of legal problems, as parties operating without advice or representation are assumed to add time and cost to legal processes and to the courts.

The NPA also places emphasis on early intervention within its stated outcomes, and through required reporting on community legal education (CLE), legal task assistance and pre-court resolutions. The integration of legal and non-legal services (for example, financial counselling in CLCs, family support workers in some LACs) is intended to create a better service experience for clients, and were reported by LACs to allow lawyers to efficiently focus on core legal work, and enable achievement of better legal process and outcomes for clients. Together, these practices are likely to reduce downstream costs and deliver value to the community.

Stakeholders also reported that clients who are subject to legal orders may also be more likely to breach those orders if they do not understand them or the consequences of breach. More generally, legal representation assists in securing better outcomes for clients – the Productivity Commission’s review of the available evidence offered a qualified conclusion that “...it would appear that parties are more likely to obtain a successful legal outcome when they receive legal assistance” (2014, p.1053).

The NPA as an instrument contains a number of aspects which are enabling of higher-value services. These include the focus on early intervention (and hence avoidance of downstream costs), holistic service delivery (contributing to better quality outcomes) and the targeting of services (reaching those who need them most).

Pro bono, volunteer and below market contributions

The legal assistance sector leverages additional value from government investment in the sector through the significant role played by volunteers and pro bono services, and with private legal firms delivering representation services at legal aid payment rates (which are significantly lower than the private fees the firms could otherwise garner),² as well as pro-bono services and provision of legal information often delivered in community settings during the evenings, facilitated by CLCs. This reliance on volunteers and lower-cost private services is both a strength and a risk for the sector, as without this support the quantum of clients serviced could not be achieved with existing funding alone. The significant amount of resources required to train and manage volunteers also needs to be acknowledged:

Community organisations require significant resources to develop and maintain strong pro bono partnerships, structures and programs... The capacity to maintain administration support, access accommodation and facilities, and provide training and supervision for pro bono services is directly dependant on resources. (Queensland Department of Justice and Attorney-General (DJAG), 2018 p.6)

[P]ro bono resource of the private legal profession is a valuable and effective strategy for the legal assistance sector but is not a replacement for best practice legal services, nor can it be usefully achieved without significant investment by the legal assistance service. This investment should be recognised and resourced by funders. (LawRight 2018, p.2)

There is also clear concern within the sector that the rates paid for legal aid work to the private profession are unsustainable in the longer term, placing pressures on LACs to either lift rates at the cost of reduced service reach (Law Council of Australia, 2018b). This was a theme evident in multiple submissions to the review but also in consultations with LAC representatives nationally, and was noted by the Productivity Commission (2014).

Development of holistic models of service

Stakeholders reported on consultation and in submissions a strong focus in the sector on holistic service delivery, where the legal practitioner assesses and seeks to address the needs of a person as a whole, rather than focusing solely on their legal concerns. There is some evidence that more holistic services create better and timely legal and non-legal outcomes, avoiding escalation and delivering services valued by clients (Law and Justice Foundation of New South Wales, 2012, 2014; Northern Territory Community Legal Centres, 2018 p.6).

Stakeholders also reported other financial strategies such as community partnerships, co-location with other community services and shared services, funding diversification strategies and sharing resources with funded peaks (Community Legal Centres Queensland Inc., 2018 p.5).

² The gap between the private market rate and the rate paid by legal aid commissions varies. In some areas of law (e.g. family law) there is a strong and viable private market of clients with means to pay, making it more difficult for legal aid commissions to pay market-competitive rates. In contrast, criminal law clients have lower capacity to pay, and legal aid rates are more competitive with market rates.

Targeting the clients most in need

One driver for the emphasis within the NPA on better targeting those most in need was the Productivity Commission's findings in 2014 that there were opportunities to improve service targeting, particularly for CLCs (Commonwealth of Australia, 2014 p.720). However, sector stakeholders supported the identification of priority client groups in the NPA and reported on consultation and in submissions that the priority groups identified aligned very closely to the client groups which services had been supporting prior to this NPA. The Australian Government Attorney-General's Department stakeholders indicated on consultation that this level of alignment was expected and reflected positive alignment between the strategic goals of the sector and the 'on-the-ground' service delivery being provided.

In relation to efficiency, some stakeholders reported on consultation that the inclusion of the priority client groups in the NPA as well as the required reporting on this area has enabled their services to have greater clarity of which client groups should be prioritised. This level of focus has increased service delivery to those client groups included in the NPA for some services, which supports the NPA aspiration of aligning funding to the greatest legal need.

Legal aid commission data indicates that LACs have continued to focus services squarely on those experiencing financial disadvantage, with all jurisdictions reporting having met the performance benchmarks (requiring 95 percent of representative services to be targeted) over 2015-16 and 2016-17 (LAC data is summarised for 2017 in section 3). State and territory reporting also indicates that NPA-funded CLCs have similarly met the benchmark in the first two years of the agreement.

4.2 IMPLEMENTATION OF COLLABORATIVE SERVICE PLANNING

This section deals with the second term of reference for the review, focused on:

The implementation of collaborative service planning by the Parties, and the extent to which it is contributing to the objective and outcomes of the NPA.

4.2.1 Context

The NPA contains guidance on the elements of collaborative service planning (CSP) in Schedule A

A1 Under this Agreement, the Parties will work together with the legal assistance sector to coordinate and maximise the reach of services and to ensure that services are directed where they are most needed.

A2 The outcomes of collaborative service planning will inform the distribution of Commonwealth and State funding to community legal centres within each jurisdiction. This process will facilitate a holistic and objective approach to decision-making about the distribution of this funding.

The NPA does not provide prescriptive guidance on CSP and builds on the elements of the Legal Assistance Forums of the 2010-2015 NPA. The elements of CSP are 'evidence of analysis of legal need' and 'collaborative service planning meetings'. Analysis of legal need encompasses the identification of priority clients and geographic locations in which people have the highest levels of disadvantage. Disadvantage indicators are used as a proxy for determining legal need and to target services accordingly.

Minimum data for the purposes of legal need analysis is census and LJFNSW data. Suggested tools include community profiles, the Legal Needs Assessment Framework and Toolkit produced by NACLC. Collaborative service planning meetings are to be held at a minimum twice a year and serve to promote discussion of strategies for the delivery of services within their jurisdiction.

4.2.2 The intent of collaborative service planning is well supported, although there is significant variability in implementation

Key findings

- There is broad support for area-based, evidence driven planning across the sector, in the context of the complex drivers of demand and the diversity of legal assistance providers who contribute to a whole of sector response.
- All jurisdictions now have formal processes for CSP in place, and examples exist of initiatives driven by CSP that seek to better understand the nature and distribution of demand, strengthen the reach of the service system, and improve the efficiency with which providers coordinate their services.
- In all jurisdictions LACs, CLCs and ATSILS participate in formal CSP forums, as required under the NPA and ILAP arrangements, while other sector stakeholders are variably involved. In some, but not all jurisdictions, this includes FVPLS.
- Overall implementation of CSP has been slow, but with variation in the maturity of CSP across the jurisdictions. This is partly driven by the extent to which there were pre-existing processes upon which CSP could build, but also in some cases because 'baseline' reviews or demand analyses were undertaken as a preliminary activity in several jurisdictions.
- Collaborative service planning varies in sophistication of approach. In some contexts, the focus is on strengthening *communication* by participants to support services to plan their work in a coordinated way. At the other end of the spectrum, there are examples of active *collaboration* through the initiation of joint projects or services involving multiple providers.
- Variations in CSP processes exist in who leads/drives the work, who participates (and to what extent), and what data informs the process. Variation is also present in other aspects of CSP, including the intent, scope and geographic scale of collaborative work, and in how data is used to support the process.

Support for the goals of collaborative services planning

There is wide support for the notion of area-based, evidence-driven planning involving the key players in the legal assistance sector. All stakeholders supported the formalisation of CSP within the architecture of the NPA, and many stakeholders reported that the process is working well and delivering constructive outcomes in planning, information sharing and resourcing across the sector – particularly in jurisdictions with more established forums. There is also strong sector agreement that the aims of CSP are building on and offers potential to strengthen existing practices of collaborative working within the sector.

In all jurisdictions LACs, CLCs and ATSILSs participate in formal CSP forums, as required under the NPA and ILAP arrangements, while the involvement of other sector stakeholders varies. In some, but not all jurisdictions, this includes FVPLS – the fourth key service provider making up the legal assistance sector.

Collaborative processes existed in the legal assistance sector before the NPA. National Legal Aid observe that CSP has improved communication between service providers and Australian Government (National Legal Aid, 2018 p.4), and LACs generally have also reported an improvement in collaboration with the current NPA. The Chair of the Queensland Legal Assistance Forum (QLAF) commented on CLC engagement in CSP in Queensland as “clearly contributing to a more effective and efficient system of services, and better outcomes for the justice system and those Queenslanders that are affected by the justice system” (Community Legal Centres Queensland Inc., 2018 p.8).

There are, however, reservations expressed by some stakeholders about the extent to which CSP is able to deliver on its goals. The Law Council of Australia, for example, argues that in the context of a constrained funding environment, “[w]ithout increasing funding to the legal assistance sector, the NPA and mechanisms such as collaborative service planning essentially involve *moving* service gaps, rather than *filling* gaps” (Law Council of Australia, 2018c p.6). Similarly, the Public Interest Advocacy Centre noted that “data collection and planning can only have limited impact without additional resources given the efficiency with which the sector already operates and the vast extent of unmet legal need” (Public Interest Advocacy Centre (PIAC), 2018 p.3).

There is, overall, strong support for the intent of CSP, notwithstanding identified opportunities to strengthen implementation and reservations about efficacy in the context of perceived high levels of unmet need.

Collaborative services planning is now established in all state and territories

The implementation of CSP has built upon, and often reinforced existing relationships and practices in the legal assistance sector. The 2010-2015 NPA required each state and territory to establish a Forum to “improve coordination and targeting of services between legal assistance providers, as well as the linking of legal aid services with other service providers” (section 25). The current NPA has built on the function of these forums to reflect the inclusion of the CLC sector under the agreement.

Each state and territory is now implementing CSP to at least the minimum requirements set out within the NPA. This includes the consideration and use of evidence and analysing legal need, holding planning meetings at least twice per year attended by the state and territory government, the Australian Government, LACs, CLCs and ATSILS. In some, but not all jurisdictions, FVPLS are also directly involved in state-level CSP meetings.

Implementation progress is variable

Progress towards formally implementing CSP has been generally slow, and jurisdictions are at different stages of development. The pace of implementation has been affected by a different mix of factors in each jurisdiction, including the pre-existence of relationships and platforms, and the conduct of ‘baseline’ or preliminary reviews of the sector.

Collaborative service planning in many jurisdictions builds on or exists alongside parallel formal and informal collaborative processes. For example, the CLC Association of WA note that “[c]ollaboration between legal assistance services as well as with other non-legal community organisations in relation to service delivery and planning has been occurring over many years both with each other and with external legal and non-legal organisations” (CLC Association WA, 2018 p.6).

The most developed model for CSP is in Queensland, where pre-existing forums, and relationships within the sector together with additional financial contribution by the Queensland Government have supported the process. CSP takes place state-wide in addition to 12 regional forums and five specialist thematic forums. Formal regional service planning pilots have been conducted in four regions with the assistance of \$200,000 additional state funding managed by the state peak, CLC Queensland.

The extent to which NPA-driven processes were able to capitalise on pre-existing relationships and platforms for collaboration has influenced the investment of time necessary to establish operative CSP forums.

In some instances, jurisdictions have commissioned reviews or additional research work that has contributed to a slower start for CSP, where jurisdictions have waited (appropriately) for the outcomes to be finalised in order to inform policy development and planning processes. In South Australia, for example, a review was commissioned by the SA Government (EY, 2016), followed by a competitive tendering process. Reviews were also undertaken in Victoria (Victorian Government, 2016) and NSW (Cameron, 2017).

Process leadership

In some jurisdictions governments take a more active convening role, while in others, LACs have a stronger leadership function. For example, in Queensland a dedicated Legal Aid staff member is responsible for the secretarial support of the 12 regional assistance forums, the state-wide legal assistance forum as well as the five specialist legal assistance forums. In the last financial year this amounted to 33 regional LAFs and 26 specialist LAFs (Legal Aid Queensland, 2018).

The delegation of process leadership to LACs in many jurisdictions leads NACLC to suggest that the next NPA “increase the accountability of State and Territory Governments with respect to CSP to ensure real progress and outcomes as well as greater transparency in reporting around CSP” (National Association of Community Legal Centres, 2018a p.33).

Communication, coordination or collaboration?

The literature relating to effective partnership-based activity suggests that “different forms of collaboration are necessary to achieve different goals” (White & Winkworth, 2012 p 5). In broad terms, the complexity of the problem or issue that a group of stakeholders seeks to resolve correlates to the sophistication of the collaborative response required. Accordingly, collaborative services planning takes different forms and involve different mechanisms depending on intent, scope and scale of the work being undertaken.

The intent and purpose of collaborative service planning as implemented in the jurisdictions ranges from strengthening *communication* by participants to support services to plan their work in a coordinated way, through to examples of active *collaboration* through the initiation of joint projects or services involving multiple providers. There is significant scope for difference approaches within CSP, including variance in the:

- **intent and purpose of CSP** (for example, guiding efficient resource allocation and prioritisation, integrating service delivery models and approaches, and supporting partnership-based or collaboration-driven innovation)
- **scope and remit of CSP** (for example, a narrow focus on legal issues or broad focus on socio-legal matters; a focus on informing policy development, or program design, or service delivery), and
- **scale of CSP** (for example, jurisdiction-wide, regionally specific, or locally driven planning and collaboration effort).

Examples of approaches combining different variations on these key parameters exist across jurisdictions. The diversity of approaches employed reflects the broad flexibility afforded states and territories under the NPA.

The use of evidence and data

All jurisdictions use CSP as an opportunity to interrogate data in their respective state/territory. This has included adoption or integration of LLJFNSW data into legal needs analyses in most jurisdictions but also the further validation or extension of these data. In Western Australia and Queensland, for example, resources have been invested into research projects that inform the mapping of legal need in particular geographic regions. Similarly, Victoria Legal Aid has developed a data model based on NLAS indicators to determine legal need across Victoria. This data model has been used to determine a web portal to enable comparison of existing legal need data and actual service delivery across the state (Victoria Legal Aid, 2018 p.7).

While legal needs assessment data is being employed within CSP, CSP processes have not yet been used to directly inform state and territory allocation of NPA funding at state-wide level as envisaged within the NPA guidance. However, this may be a function of the relatively early stage of process development and the locked in funding allocations for CLCs within the first two years of the agreement.

To support NPA-driven planning processes, the LJFNSW developed the Need for Legal Assistance Services (NLAS) indicators which determine the number of people in a particular area who may be likely to require legal assistance (Law and Justice Foundation of New South Wales, 2017 p.4). The LJFNSW developed the *Collaborative Planning Resource* to support the NPA and which incorporates NLAS indicators, providing “a census-based count of the distribution of the potential need for not-for-profit legal assistance services” (Law and Justice Foundation of New South Wales, 2018b). The NLAS indicators are:

- capability (people aged 15 to 64 with a low level of personal income and educational attainment)
- Aboriginal and Torres Strait Islander people aged 15 and over with a low personal income
- culturally and linguistically diverse people aged over 15 where English is not their main language with a low personal income
- people aged over 65 with a low personal income and educational attainment
- people aged 15 to 64 with moderate personal income and low educational attainment (Law and Justice Foundation of New South Wales, 2018b p.1).

The LJFNSW observe that NLAS provide a useful starting point to service planning however are only one relevant source of information. Localised service planning requires taking into account the “features of the local environment that will have an impact on the extent and nature of demand for services, such as social housing, prisons, courts, police stations, hospitals, shopping centres, and educational institutions” (Law and Justice Foundation of New South Wales, 2017 p 9).

Specialist services

Specialist services play an important role in providing expert services to clients, community legal education, and in collaboration with or provision of secondary advice to generalist services. Specialist CLCs include those focused on tenancy and housing, environmental law, welfare rights, mental health, employment law, disability discrimination, credit and debt, immigration, children and young people, older people, and prisoners. Women's legal services featured prominently in review consultations, and provide a strong example of the place of specialised providers. Women's Legal Services Australia argue that:

[s]pecialist women's legal services and programs run by women for women are vital to ensure women can access support and legal advice in a safe space. Informed by feminist principles and domestic and family violence and trauma informed practice, staff of specialist women's legal services have a deep understanding of the nature and dynamics of violence and impact of trauma, the need for domestic and family violence screening and safety planning as well as ongoing risk assessment and use principles of empowerment and client centred approaches (Women's Legal Services Australia, 2018 p.11).

Submission from specialist CLCs observed that in some cases, collaborative service planning was focused on development of generalist services, and was not capitalising on the depth of expertise and capability offered by specialist services: "CSP does not currently allow the space to fully understand and value the role of specialist services and particularly state-wide specialist services" (Women's Legal Services Australia, 2018 p.11).

There are concerns evident in the specialist sector that funding distributions potentially disadvantage specialist CLCs, or fail to recognise the costs and challenges of providing state-wide and sometimes interstate services (Women's Legal Services Australia 2018; Women's Law Centre, 2018; Consumer Credit Legal Service (WA) Inc., 2018; Immigration Advice and Rights Centre 2018).

Services focused on environmental law – currently not funded under the NPA – have also observed that although their area work is not explicitly directed to priority clients as defined under the NPA, "because of the type of public interest work undertaken ... our work actually advances the interests of all of the priority [client] groups under the NPA" NSW Environmental Defenders Officer, 2018 p. 2).

Complexity of legal need analysis underlying collaborative service planning

The use of data in CSP is varied and some stakeholders are grappling with the complexity of data and how 'legal need' is best determined. Some CSP processes rely more on sector knowledge than on specific legal needs data. NACLCL note that "[t]here is a need to ensure that both quantitative and qualitative data is captured and considered as part of CSP so that it is a 'data informed' process rather than 'data driven' process" (National Association of Community Legal Centres, 2018b p.31). There are concerns that postcode analysis as a proxy for determining legal need via sociodemographic data, as this may

[fail] to appreciate the spectrum of complexity of legal matters clients present with and the need to have a mix of generalist and specialist services that are accessible and responsive to particular client groups and/or able to provide the depth or breadth of knowledge required to meet the needs in complex matters and/or with complex clients" (Women's Legal Services Australia, 2018 p.11).

The Victorian Federation of CLCs note that "CLCs and Aboriginal legal services do not determine need solely through an economic disadvantage lens, as measured through aggregating data on the financial and material circumstances of individuals" (The Federation of Community Legal Centres (Victoria) 2018 p.7). The Federation also note the important role played by CLCs and ATSIILS in "identifying the contextual needs of different communities and how they are defined and addressed must be recognised within the structure of the CSP model" (The Federation of Community Legal Centres (Victoria) 2018 p.7).

The complexities of describing, measuring and analysing legal need described by the sector will continue to feature in collaborative service planning discussions. This underlines the importance of planning process that are informed by a nuanced understanding of the insights offered by current legal needs analyses – but also its intrinsic limitations.

Case Study: Queensland Legal Assistance Forum

Overview: the Queensland Legal Assistance Forum (QLAF) is supported by 12 Regional Legal Assistance Forum (RLAFs). QLAF is a state-wide forum that aims to build partnerships across the sector to ensure a holistic approach to addressing people's legal and social needs.

Locations: QLAF – Queensland-wide. RLAFs: Bundaberg Region, Ipswich/Inala Region, Mount Isa Region, Toowoomba Region, Caboolture Region, Mackay Region, Rockhampton Region, Townsville Region, Cairns Region, Maroochydore Region, Southport Region, Woodridge Region

Participants: QLAF consists of a representative from each of the following organisations or constituent bodies: Legal Aid QLD; Bar Association of Queensland; Queensland Law Society; Aboriginal & Torres Strait Islander Legal Service (ATSILS) Queensland; CLCQ; LawRight, (a CLC); Queensland Indigenous Family Violence Legal Service; LASF, DJAG; Queensland Council of Social Service; and Australian Government Attorney-General's Department.

Process

- QLAF meets several times per year, RLAFs meet with varied regularity.
- Legal Aid Queensland provide secretarial support to the QLAF and to varying degrees each RLAF.

CLC Peak supports CLC regional service planning in Caboolture and Ipswich.

In 2017 Queensland DJAG allocated \$200,000 of funding to CLCQ to undertake regional service planning in four regions of Queensland over 12 months. Regional service planning took place in Caboolture and Ipswich with this funding.

This involved local services including CLCs, Legal Aid and Aboriginal and Torres Strait Islander Services identifying the community's legal needs, planning to enhance collaboration between services and identifying where new services are needed. The plans were provided to the QLAF to inform state-wide planning by government and legal assistance services.

Two Townsville examples that go to both addressing local legal need and the changes required as a result of the implementation of the NPA include:

- Local services undertook a collaborative audit of family law services to ensure a better integration of service delivery;
- Legal assistance services met for a workshop to discuss data in light of the change management challenges required as a result of the introduction of the Data Standards Manual under the NPA.

Source: (Community Legal Centres Queensland Inc., 2018)

Case Study: New South Wales

Cooperative Legal Service Delivery Program

Overview: the Cooperative Legal Service Delivery (CLSD) Program is run by Legal Aid NSW and supported by 12 regional justice partnerships in regional and remote New South Wales. The program aims to identify unmet legal needs and then devise and implement strategies to meet that need.

Locations: Moree, Northern Rivers, Kempsey, Nambucca, Forster, Taree, Hunter, Central Coast, South Coast, Wagga Wagga, Albury, Central Tablelands, Central West and Far West.

Participants: legal and non-legal services

Process

- Legal Aid New South Wales collates a range of data sources to identify legal need across the state (including Census, Socio-Economic Indexes for Areas, LawAccess NSW, Bureau of Crime Statistics and Research (BOCSAR) and State Debt Recovery Office (SDRO) data, along with LJFNSW research and locally identified legal needs research)
- Legal Aid provides this data to the CLSD Program Unit who develops Regional Profile using the data, and drawing on the expertise of the partners in the region.
- The CLSD Program Unit distributes the Regional Profile to each region
- Each region uses their Regional Profile data to develop an action plan at a regional planning meeting held every two years
- Each region also has a Regional Coordinator (employed by a partner) who supports local projects and facilitates four meetings each year.

Example of a joint outreach service between Legal Aid and CLCs that commenced in 2017-18:

A new family and civil law advice service has been established in Deniliquin in response to demand for the provision of further outreach services. This service is hosted by Intereach Deniliquin who also host a generalist legal advice service provided by the Hume Riverina Community Legal Service (HRCLS). The HRCLS were consulted throughout the planning for this service and have welcomed the addition of this outreach to help meet the demand in this area.

Source: (Legal Aid NSW, 2018b TAB A)

4.2.3 There is scope for more effective implementation of collaborative service planning

Key findings

- A key enabler of effective collaboration is clarity of purpose and scope; at present the outcomes to CSP are not as clearly defined within the NPA as they might be. Different elements of the agreement signifying a focus on informing funding allocations, improving sector efficiency, coordinating sector planning, driving joined-up service delivery. These goals are not in conflict, but may require different approaches to support their achievement.
- While CSP embraces a focus on the whole of the legal assistance sector, engagement by parties other than government and LACs generally requires resourcing trade offs where participation is unfunded. In smaller organisations, the proportional impact of this is higher, and as a result, the level of participation varies. This is more evident in, although not exclusive to smaller jurisdictions.
- Funding to the legal assistance sector is delivered through multiple streams, including many outside the NPA. The various input streams have their own allocative processes and influence sector practices, priorities and relationships, which can undermine the effectiveness of CSP as a 'whole of sector' planning process.
- A competitive funding environment can undermine collaborative activity, and this is evident in the reported experiences of stakeholders. For CLCs in particular, this was heightened by the anticipated funding reductions for CLCs in 2017, and uncertainty around funding allocations thereafter.
- Perceptions of conflicts of interest relating to the multiple system roles held by LACs, coupled with power differentials within stakeholders involved in CSP are reported by stakeholders. Whether or not these conflicts are real, the perception alone can have the effect of undermining collaboration.

Effective collaborative endeavour is dependent on three key drivers: commitment to collaboration, a common understanding of purpose, and capacity to sustain collaborative activity (White and Winkworth, 2012 p.5). There is commitment to collaboration evident among stakeholders. In most instances CSP is building on pre-existing forums and strong relationships between actors in the sector. However, the greatest progress on CSP was where there was reported greater clarity of focus and direction, pre-existing relationships within the sector and the commitment of additional resources.

Stakeholders during consultations identified a number of barriers to effective collaborative service planning in the legal assistance sector. Barriers included the limited number of sector players engaged in the process, specific purpose funding outside of the NPA, funding competition, perceived conflicts of interest between funding decision-makers and CSP participants and perceptions of gap shifting.

Clarity of purpose sustains focus and direction

The NPA includes as one of its five key outcomes "legal assistance service providers collaborate with each other, governments, the private legal profession and other services, to **provide joined-up services** to address people's legal and related problems" (Council of Australian Governments, 2015 cl 9(b)). This outcome is expressed as a sector wide goal for purposeful collaboration, but which at face value implies collaborative, potentially partnership-driven work at service-delivery level.

The NPA further defines the core purposes of CSP within its articulation of the roles and responsibilities of states and territories: "...to **improve coordination** between service providers in the planning and delivery of services" (Council of Australian Governments, 2015 cl 14(f)). This planning and coordination function does not necessarily imply collaborative or joint service delivery, but does point to coordination at the boundaries of service systems to minimise gaps.

In schedule A to the agreement, further guidance is provided on CSP. There is specific reference to an intent to "coordinate and **maximise the reach** of services and to ensure that services are **directed where they are most needed**" (Council of Australian Governments, 2015 cl A1). Schedule A also contains a clear statement that CSP is to directly **inform funding distribution to CLCs** (Council of Australian Governments, 2015 cl A2). These objectives signal a strong intention that CSP informs how funding is distributed to achieve the best possible reach through the sector's service network.

Finally, within the detail of Schedule A, further guidance is provided that CSP should develop strategies to “**streamline services and reduce any unnecessary duplication**” (Council of Australian Governments, 2015 cl A10).

The scope of CSP, as read into these various reference points in the NPA encompasses a broad range of purposes including:

- collaborative working and partnership-driven service delivery to deliver joined-up services
- better coordination of existing services to maximise reach and minimise system gaps
- efficient distribution and allocation of resources – with the implication being that this applies to internal allocations within LACs (and ATSIILS), and between CLCs
- driving system efficiency and effectiveness.

These objectives are reasonable and appropriate in the context of the challenges facing the legal assistance sector. However different objectives may require different approaches and may conflict or undermine each other where integrated into a single process. For example, building a forum that endeavours to foster collaborative working relationships between organisations, while at the same time using that forum to inform potentially involuntary re-allocations of funding creates conflicting relational dynamics between participants. Collaboration and partnership requires a level of openness, willingness on the part of organisations to relinquish some autonomy to the collective endeavour, and relationships of mutual trust. Conversely, establishing a forum that directly informs potential involuntary funding re-allocations between parties to the process is likely to create tensions and dynamics which can undermine collaboration.

In the CSP context, governments and government agencies/statutory bodies (i.e. LACs) with formal decision-making and allocative powers are engaging with independent sector services (CLCs, ATSIILS, FVLSPs). The dynamics can be complex and require clarity around what decisions are made through a collaborative process (and how this happens), which decisions are *informed by* collaborative input (and what considerations outside of CSP play a part), and which decisions are made independently of the process.

Some stakeholders reported that greater clarity around the purpose of CSP would support stronger outcomes. Several CLCs have noted that CSP could have a role to play in future funding allocation determinations in the event additional funding becomes available to the sector. The National Association of Community Legal Centres suggest that “CSP should only be used to inform decision-making with respect to new or additional funding, or in the context of a guaranteed base for existing services” (National Association of Community Legal Centres, 2018a p.32). This perspective reflects the inherent tension that exists where organisations are participating in a process that may place their own funding at risk.

Greater clarity within CSP could be delivered by stratifying CSP within jurisdictions at different levels (state-wide, regional/local) with purposes, players and parameters for decision making appropriate to the scale and intended outcomes of collaboration. This might mean, for example focusing regional and local collaborations on service coordination, maximising reach and quality, and the delivery of co-design of joined-up services or innovation projects. State-wide forums might more appropriately focus on information sharing, identifying and responding to system-wide priorities, identifying scale-up opportunities for successful innovations, and sector development matters (e.g. relating to workforce or data). Where there is flexible project funding available (whether from the NPA or other sources), state-wide CSP forums might also advise on priority projects.

Within this approach, allocation of core service delivery funding would be formally and clearly separated from CSP processes, remaining a matter for governments and government agencies/statutory bodies who would take into consideration a range of factors. This would include outputs from CSP and legal needs analysis, but also jurisdictional procurement policies, any intersections with other funding streams, and the performance and risk profiles of different potential service providers.

Balancing direction and guidance with flexibility

The NPA includes an overarching description of the intention of CSP and outlines minimum expectations for the sector. The Australian Government Attorney-General’s Department notes that

[t]he department is not prescriptive about how collaborative service planning is undertaken in each jurisdiction and recognises there is no ‘one-size fits all’ approach to collaborative service planning. Collaborative service planning should be adapted to what works best in each jurisdiction (Australian Government Attorney-General’s Department, 2018b p.23).

While all stakeholders endorse the broad direction of CSP, there were mixed views on the need for more prescriptive guidance at the national level. Some stakeholders were of the view that the Australian Government could provide further direction to the sector, while others spoke positively about the flexibility that the current arrangements offered to jurisdictions.

There are benefits of both giving clear direction and maintaining flexibility and an inherent tension between the two. The Victorian Federation of CLCs note that, “[w]hile national coordination is important to ensure consistency, service design should occur locally, by those connected to the community” (The Federation of Community Legal Centres (Victoria) 2018 p.7). At the national level, greater information sharing of processes and best practice may go some way to satisfying stakeholders in striking a balance between guidance and flexibility.

Many stakeholders emphasised the value of information-sharing on service planning best practice, data collection and mapping tools and methodologies amongst the sector. The Australian Legal Assistance forum, consistent with many other stakeholders noted that “[T]here is limited information-sharing across jurisdictions, resulting in lost opportunities to identify best practice and the potential for duplication of work underlying CSP” (Australian Legal Assistance Forum (ALAF), 2018 p.7).

There was wide support from CLC and government stakeholders for funded CLC peaks to play an active role in coordination and standardisation processes across the sector. For example, Consumer Credit Legal Service WA believe that “an adequately funded peak body would allow for the enhancement and collaboration between all community legal centres in the State” (Consumer Credit Legal Service (WA) Inc., 2018 p.8). Similarly, NACLCL note the benefits of a funded CLC peak body in increasing collaboration and information sharing between CLCs “both within that state and across Australia, which avoids duplication and allows dissemination of good practice in service delivery” (National Association of Community Legal Centres, 2018a p.62)

The symposium hosted by Victorian Legal Aid in May 2018 to share information and resources regarding collaborative service planning was attended by representatives from the legal assistance sector from most jurisdictions (National Legal Aid, 2018 pp.8-9). National Legal Aid suggest that “the Commonwealth would be well placed to hold/resource such symposiums into the future” (National Legal Aid, 2018 pp.8-9). The National Association of Community Legal Centres made a similar observation, suggesting the establishment of

“[a] national inter-agency forum to oversee CSP nationally, hosted by the Australian Government Attorney-General’s Department. Such a forum would provide oversight over CSP nationally and should include representatives from each of the four key legal assistance providers, through their peak bodies, as well as representatives from the Commonwealth government and State and Territory Governments” (National Association of Community Legal Centres, 2018a, p.29).

Collaboration requires a commitment of resources

Collaborative service planning is expected within the scope of existing NPA funding. It was, however, widely acknowledged by the sector that planning processes requires commitment of time and resourcing from participants.

Collaboration is important, we’re committed to it, and funders demand it. That said, everyone needs to recognise that it takes time, relies on building relationships (between organisations, and individuals), and requires prioritisation and proper resourcing.
(Community Legal Centres Queensland Inc., 2018)

Many CLCs and LACs made observations about the resources required to undertake CSP. For example, the Victorian Federation of CLCs noted that “collaboration and partnership in service design takes time, effort and resources” and adequate funding is required to undertake these activities (The Federation of Community Legal Centres (Victoria) 2018 p.5). These sentiments were widely shared by LACs, for example, Victorian Legal Aid noted that “without additional funding directed to collaborative service planning, states and territories will likely default to historical approaches to addressing legal need” (Victoria Legal Aid, 2018 p.3).

Effective collaborative processes require that participants are appropriately resourced to prepare, participate and contribute. There are disparities evident within CSP arrangements in different jurisdictions in terms of the extent to which all legal assistance sector providers are represented and able to participate. Several CLCs emphasised the importance of funded state peaks (or a leading CLC) being able to engage in CSP without cost to service delivery. For example, Kingsford Legal Centre, a NSW CLC, noted “[c]entres and peak bodies must be funded appropriately to engage in collaborative service planning so that resources are

not drawn from essential frontline and community services” (2018, p.8). The WA Collaborative Services Planning Group adds that the delivery of CSP is reliant on the voluntary contribution of members or is undertaken in addition to existing workloads of members (2018 pp.4-5).

Aboriginal and Torres Strait Islander Legal Services are also required to participate in CSP, supported by ILAP funding, but noted that with no new funding attached to engagement in CSP and related forums and working groups they must necessarily deprioritise other work (National Aboriginal and Torres Strait Islander Legal Services, 2018a p.9).

While CSP does not require the participation of FVLPS, state and territory governments are expected to “work with the legal assistance sector” through CSP, which is defined to include FVPLSs (Council of Australian Governments, 2015 cl A1, cl 52(e)). The National FVPLS Forum report that their involvement varies between jurisdictions, both in terms of participation and whether that participation is funded (National FVPLS Forum, private correspondence).

Where additional resources have been committed to support CSP, such as in Queensland, it has strengthened the effectiveness of the process. In Queensland additional resourcing has been provided to advance CSP and this has supported regional service mapping in several regions. In 2017 DJAG/LASF provided \$200,000 of additional funding for a 12-month period to the Queensland CLC peak to undertake regional service planning. Four of the 12 regional legal assistance forums were engaged with the aims of “better understanding the existing and emerging legal needs in the community; understanding referral pathways; and consolidating referral relationships in each given region” (Queensland Department of Justice and Attorney-General (DJAG), 2018 p.8).

Limited participation by some key sector stakeholders

There is considerable variation in the participating stakeholders in CSP cross jurisdictions and the role of non-NPA funded services in the process is unclear. The CLC Association of WA also note that not all funders are present: “ALSWA and [FVPLS] services are required to participate when not covered by the NPA, yet the Department of the Prime Minister and Cabinet as the FVPLS funder is not required to participate” (The Community Legal Centres Association (WA), 2018 p.7). The mixed engagement of FVPLS in the context of the priority placed on family violence also drew the attention of other stakeholders:

funding for these services has not been reviewed to take account of growing service demands during the NPA to date. Collaborative service planning demands that all domestic and family violence legal services be considered when considering current and future need and service planning (confidential submission).

More broadly, the NPA “supports a holistic approach to addressing legal need through collaboration with, and coordinated service delivery between, legal and non-legal sectors” (Council of Australian Governments, 2015 cl 3). In this context there is scope for CSP to include a wider range of legal and non-legal sector stakeholders, potentially at state-wide or regional levels. For example, Law Access argues that the inclusion of the courts would lead to improved data collection, and a more developed evidence base as the courts collect data on litigants and their court outcomes that could be a valuable input to collaborative planning (Law Access Limited, 2018 p.7).

Legal assistance stakeholders also identified that there are opportunities to better engage parallel and adjacent sectors to deliver more holistic services to people experiencing legal problems:

Holistic service provision and a wider view on collaboration is required. People experiencing disadvantage are more likely to experience multiple legal and non-legal needs and therefore a holistic approach to service delivery is the reality in the Northern Territory. (Northern Territory Community Legal Centres, 2018 p.10)

The Law Council of Australia has also emphasised the value offered by non-legal professionals integrated with or supporting the provision of legal assistance services. For example, Aboriginal cultural liaison officers, disability advocates, youth engagement officers and community representatives can all help to build trust between a service provider and client and also effectively resolve parallel non-legal issues (Law Council of Australia, 2018a pp.30-31).

Notwithstanding the opportunities identified by the sector, non-legal stakeholders have been rarely engaged to date. The expansion of participants in CSP is consistent with the NPA which contemplates that CSP meetings could include representatives from legal or non-legal service providers or organisations (Council of Australian Governments, 2015 cl A8). The Australian Government Attorney-General’s Department have suggested strengthening CSP through the engagement of government representatives and service providers

outside the legal assistance sector, such as in housing or health “to ensure that services are being appropriately targeted to priority clients and to ensure a more holistic approach is being achieved” (Australian Government Attorney-General’s Department, 2018b p.20).

The expansion of stakeholders engaged through CSP processes would be consistent with parallel processes that engage with services outside the justice sector, such as health justice partnerships (Community Legal Centres Queensland Inc., 2018 p.8). Furthermore, CSP with a wider range of stakeholders is consistent with the holistic, wrap-around service delivery model that is existing practice in LACs and CLCs.

Multiple funding streams reinforce silos and reduce scope of planning

The intent of CSP (noting observations about potential for clarifications made earlier) is expressed in terms which reflect a whole of sector remit. However, the flow of funding into the sector through other processes and reflecting priorities established outside of CSP places limits on the influence exerted by NPA-driven CSP. Additional funding outside of the NPA influences sector practices, priorities and relationships, and can undermine the efforts of CSP:

[T]he occasional parachuting of funding into the jurisdiction [is] in apparent isolation of CSP. For example, the initial funding round under the Women’s Safety Package created tensions between service providers, as each are submitting tenders/requests in competition with each other. This undermines the objective and effectiveness of CSP (Confidential submission).

While the diversity of funding sources (driven by a range of policy priorities) for legal assistance services mean that it is unlikely that CSP can become a ‘catch all’ forum, there are potential opportunities to leverage the CSP as a platform for providing advice and guidance. This might be achieved through broadening the scope of participation by government funders (e.g. considering mechanisms to bring other departments or agencies to the table), by considering the integration of external streams of funding within the next NPA (where appropriate), and by extending the remit of CSP to include provision of advice to government on the evidence-informed design and allocation of new funding streams.

In the case of Australian Government funding, better alignment of funding might be enabled through the application of collaborative service planning principles through a national advisory or planning group with representation from Australian Government departments and agencies, state and territory governments and sector peaks.

Competition for funding creates tension that undermines collaboration between CLCs

In a context of sector anxiety regarding funding insecurity and where services are competing for funding, readiness to take part in collaborative activity is constrained. It was widely noted under the NPA, CLCs are expected to compete and collaborate simultaneously. A representative comment from one stakeholder is that “[c]ompetition for the opportunity to deliver services, and competition for limited funding, is not conducive to collaborative service planning” (Confidential submission).

Another stakeholder echoed these concerns, which they consider heightened in smaller jurisdictions with scarce resources, where a competitive environment drives a “justifiable level of self-protection among legal services, which is a disincentive to CSP (Confidential submission). The Victorian Legal Aid Commission further noted that, “[f]or collaboration to work well, there needs to be a relationship of trust and this can take time to build and maintain, particularly when legal assistance providers are operating in a competitive funding landscape” (Victoria Legal Aid, 2018 p.9).

The competitive dimension to the funding environment was heightened for CLCs by the anticipated funding reductions for CLCs in 2017, and uncertainty around funding allocations thereafter. This has been described as “potentially the worst possible scenario to commence real collaboration between legal assistance service providers under the NPA” (Collaborative Services Planning Group of Western Australia, 2018 p.5). Community legal centres consistently described their funding uncertainty as a major barrier to effective CSP, and there were consistent themes raised that a competitive funding arrangement undermines information sharing particularly in a context where it “might undermine any ‘advantage’ that a service provider has when entering a tender” (Community Legal Centres Queensland Inc., 2018 p.8).

Perceptions about power and conflict influence participation

In contexts where LACs receive Australian Government funding, determine allocations (to CLCs and to specific projects), administer and manage funding provided to CLCs, there are perceptions of conflicts of interest, potentially exacerbated by power imbalances related to organisation size and influence. Legal Aid NSW reports that their role in administering state and Commonwealth CLC funding contracts is a barrier to

collaborative service planning. Legal Aid NSW describe their role in allocating and monitoring compliance of CLCs while expected to work as “an equal partner” as an “inherent tension” (Legal Aid NSW, 2018b p.13). In NSW, Victoria and Western Australia, where LACs administer state funding, some sector stakeholders (representing both CLCs and LACs) have raised concerns about inherent tensions or perceptions of conflict of interests for LACs as both fund administrators and potential recipients through CSP-driven processes.

Stakeholders from the CLC sector also identified a power imbalance as a result of the scale of CSP and the proportionately low funding received by CLCs relative to LACs. Community legal centres raised concerns that their voices are drowned out by larger players in the sector such as LACs and (in some jurisdictions) ATSILs. To this end, some CLCs are of the view that this power balance is exacerbated when CSP is conducted remotely and stakeholders do not have an opportunity to meet face to face. For example, a number of CLC stakeholders in Northern Territory operating outside of Darwin emphasised the importance of meeting face-to-face to “allow services to interact meaningfully” (Northern Territory Community Legal Centres, 2018 p.10).

There are also other forms of competitive tensions evident between sub-sectors funded under the ILAP and those under the NPA. National Aboriginal and Torres Strait Islander Legal Services have argued, for example, that “there are also conflicts of interest from CSP participants when it comes to funding opportunities”, and that ATSILs are sometimes “being excluded from key funding conversations and decisions” (National Aboriginal and Torres Strait Islander Legal Services, 2018a p.9).

Whether the perceptions reported by sector stakeholders translate into actual conflicts is not something that the review team has been able to explore. However, the perception of conflict alone is a constraint on the CSP to the extent that this influences participants’ open engagement with and trust in the process.

Challenges facing cross border services

Stakeholders working in a cross-border context identified particular challenges to their participation in CSP. Cross-border services operate within different operating environments which complicate and add costs to their participation where there are significant variations in approach and process on each side of the border. These issues extend beyond collaborative service planning itself – the Federation of Community Legal Centres (Victoria) observes that these services need to contend with

different approaches to services planning and strategic approaches to service delivery. This manifests in duplication of reporting and client survey formats, requires significant resources to feed into multiple planning processes, and results in onerous compliance obligations with diverse reporting and training and development requirements. (2018 p.8).

4.3 FUNDING ARRANGEMENTS

This section deals with the third TOR for the review, focused on:

The effectiveness, efficiency and appropriateness of current funding arrangements in meeting the objective and outcomes of the NPA, including consideration of:

- the shared responsibility of the Parties in the operation of the NPA and the provision of legal assistance services
- if and how Commonwealth Social and Community Services (SACS) supplementation was distributed
- the drivers of demand for legal assistance services
- how and whether funding under the NPA supports the progress towards achieving its objective and outcomes
- the interaction between the NPA and other Australian Government funding arrangements for legal assistance services.

4.3.1 Context

Prior to the NPA 2015-2020, the Australian Government funded CLCs directly, and LAC funding was directed to state and territory governments for distribution. The NPA established a new funding arrangement for the allocation of Australian Government funds to the states and territories for both LACs and CLCs. The arrangement introduced several key changes. These included:

- incorporating the Australian Government CLC funding into the agreement for the first time
- introducing two new funding allocation models (FAMs) for determining the total quantum of funding between each state and territory for both LACs and CLCs
- delegating responsibility to the states and territories for administering NPA funding to LACs and CLCs
- providing for fixed amounts of funding to individual CLCs for the first two years of the agreement, moving to state and territory allocated funding from the third year.
- Introducing defined CLC funding for family law and family violence related services from the third year of the agreement, to be distributed by states and territories (Council of Australian Governments, 2015).

The total distribution of Australian Government funding under the NPA is summarised in Table 3, while Table 4 provides an illustration of the impacts of the FAMs by comparing the total funding provided to each jurisdiction in the first year of the NPA to the equivalent funding in the year prior.

Table 3 – Australian Government funding distribution under the NPA (\$m)

	2015-16	2016-17	2017-18	2018-19	2019-20	TOTAL
Legal Aid Commissions	207.950	211.277	214.240	217.243	219.941	1,070.651
Community Legal Centres*	42.992	45.867	47.274	48.637	50.071	234.841
All funding	250.942	257.144	261.514	265.880	270.012	1,305.492

* includes core funding, defined funding and SACS supplement

Source: Australian Government Attorney-General's Department, 2018b p.29.

Table 4 – Australian Government funding distributions by state and territory 2014-15 to 2015-16 (\$m)

	NSW	Victoria	Queensland	WA	SA	Tasmania	ACT	NT
2014-15 (\$m)	73.62	55.01	48.88	26.22	20.84	7.85	5.48	5.56
2015-16 (\$m)	74.65	57.58	50.06	29.02	19.48	7.27	5.79	7.09
Change (%)	1.39%	4.68%	2.42%	10.67%	-6.50%	-7.29%	5.66%	27.52%

Source: Australian Government Attorney-General's Department data

4.3.2 Funding has been consolidated, but there are further opportunities for streamlining

Key findings

- The NPA effectively integrated core Australian Government funding for LACs and CLCs into a single agreement, which allows for devolved planning and decision-making around the distribution of funding to state and territory level.
- States and territories and sector peaks express a clear desire for more transparency in how Funding Allocation Models are devised, in the context of concerns about the extent to which the FAMs appropriately weight different factors.
- Legal aid commissions and CLCs also receive funding from other sources, including from state and territory governments and from multiple Australian Government departments and agencies. This funding is allocated outside of the NPA planning processes, and to some extent undermine the intent of CSP.
- Contextual factors influence the appropriateness of integrating any specific funding stream into the NPA, including consideration of program alignment with NPA goals, and whether efficiencies will be leveraged for funders, administrators or recipients. For Indigenous-specific programs, broader factors also include Australian Government's national leadership role within Indigenous affairs, any impacts on self-determination, and the underlying drivers of disadvantage and engagement with the legal system by Indigenous people.

Integration of community legal centre funding in the NPA

The integration of CLC funding into the NPA was intended to support the policy objective of a sector that is efficient, effective and equitable, and which operates in a collaborative and coordinated way to address legal need. The devolvement of CLC sector planning to state and territory level, and bringing this into alignment with LAC planning processes through the mechanism of CSP supports the goals of better coordinated services planning.

The objectives relating to enabling an efficient sector reflect prior findings of the Productivity Commission, which observed that there had previously been “no systematic approach for allocating funds for CLCs” with the application-based grants largely being distributed based on historical allocations (2014 p.745). The Productivity Commission found that as a result “CLCs servicing similar communities and facing the same cost structures” did not necessarily receive the same levels of funding (2014 pp.745-746).

Additionally, while the Productivity Commission found that more recent funding decisions had “mostly attempted to take into account the incidence of unmet need, the legacy of past funding decisions mean[t] that there [was] a disconnect between legal need and funding” (2014 p.745). Around 20 per cent of CLCs at the time were found to be located in areas in the bottom three Socio-Economic Indexes for Areas deciles, while two thirds operated from within communities in the highest three deciles (Productivity Commission, 2014 p.746).

The subsequent Cameron Review similarly recommended “the use of a strengthened evidence base” to inform funding allocations to CLCs (Cameron, 2017 p.8), as funding under the CLC funding program had generally been based on historical levels and did “not necessarily reflect the extent of unmet legal need within communities” (Cameron, 2017 p.8). This was a key rationale for the Cameron Review’s proposed funding model, in which application-based grants are to be “supported by an authoritative evidence base developed as part of a collaborative service planning process” (Cameron, 2017 p.71).

The development of FAMs at the national level to distribute total CLC funding to jurisdictions was intended to support “similar access to services across Australia” (Council of Australian Governments, 2015). This was achieved through an evidence-based approach to distribution that is consistent with the Productivity Commission’s recommendation that Australian Government funding be allocated based on “the relative costs of service provision and indicators of need” (Productivity Commission, 2014 Rec 21.6).

Following application of the FAM, there were changes to the relative distribution of funding across the CLCs sector (on a state-by-state level) compared to prior allocations when funding was administered by the Australian Government (Table 5). For example, Western Australian CLCs, taken as a group, received 2.4 per cent less funding in the first year of the NPA (2015-16) than they did in the prior year. In this (and other) jurisdiction, the impacts of these changes were disproportionately felt by some CLCs, with the specification of funding for the first two years of the NPA effectively quarantining some of the centres from reductions (Collaborative Services Planning Group of Western Australia, 2018 p.5). The South Australian and Tasmanian CLC networks also experienced significant funding reductions (Table 5).

Table 5 – Change in year-on-year funding for CLCs at commencement of the NPA

	NSW	Victoria	Queensland	WA	SA	Tasmania	ACT	NT
2014-15 (\$m)	8.98	9.21	6.39	5.68	4.64	1.72	0.92	1.54
2015-16 (\$m)	11.44	9.67	8.37	5.54	3.78	1.53	1.12	1.54
Change (%)	27.37%	4.97%	30.89%	-2.38%	-18.50%	-11.32%	21.43%	0.46%

Source: Australian Government Attorney-General’s Department data

Table 5 (and Table 6 following) detail the 2014-15 and 2015-16 Commonwealth legal assistance funding provided through the National Partnership Agreement on Legal Assistance Services 2015-20, the National Partnership Agreement on Legal Assistance Services 2010-15 and direct funding agreements between the Commonwealth and community legal centres during 2014-15 only. These figures do not represent the total amount of Commonwealth funding received by legal assistance service providers during 2014-15 and 2015-16. For example, LACs were in receipt of additional Commonwealth funding under the Expensive Commonwealth Criminal Cases Fund (ECCCF) during the 2014-15 and 2015-16 which has not been detailed above and falls outside of the scope of this review.

At the state and territory level, funding to individual CLCs was fixed for the first two years of the NPA. State and territory governments assumed responsibility for determining allocations within jurisdictions from 2017-18. State and territory governments are tasked with examining the data on legal needs and costs within their jurisdictions and, informed by CSP, distributing funding to CLCs (Australian Government Attorney-General’s Department, 2018b cl14(c)).

The benefits of this approach include progress toward consolidation of decision making to support a ‘whole of sector’ approach to funding distribution, while noting that in practice there remain many other sources of funding that are determined separately. Consolidation of CLC funding allocation at the state level is also consistent with the principles of ‘subsidiarity’ – the notion that responsibilities and decision making should be exercised by the lowest appropriate level of government. As was noted by the Australian Government Attorney-General’s Department, the change in allocative decision making was motivated in large part by “the view that state and territory governments possessed a much more intimate knowledge of the legal assistance environment at a local level... [and, as such] could manage local stakeholders more effectively” (Australian Government Attorney-General’s Department, 2018b p.17).

Data on the distribution of funding to individual CLCs provided to the review team indicate that in several jurisdictions, the allocation of Australian Government funding did not change significantly between 2016-17 (in which funding amounts were specified in the NPA) and 2017-18 (where states and territories determined funding allocations). In jurisdictions where there was more movement of funding, this was in many cases offset by increased allocations of state funding. While this generally provides CLCs with stability of total funding, the associated areas of service-delivery focus would likely require some re-alignment to reflect the funding mix. Most jurisdictions have continued to fund those CLCs that have historically received Australian Government funding, which has left some CLCs ‘locked out’ of NPA funding.

Funding for legal aid commissions

As state-wide organisations, each LAC receives Australian Government funding at the levels specified in the NPA. The re-calculation of the distributive formula at the outset of the NPA resulted in some changes to total funding received, which impacted differently on individual LACs (Table 6) – with significant reductions in total funding felt in four jurisdictions. However, in operational terms, the NPA generally represents a continuation of prior funding arrangements for LACs. The new role for some LACs in administering CLC funding (in NSW, Victoria, WA and Queensland) represents a significant process impact of new funding arrangements on LACs in these jurisdictions.

Table 6 – Change in year-on-year funding for LACs at commencement of the NPA

	NSW	Victoria	Queensland	WA	SA	Tasmania	ACT	NT
2014-15 (\$m)	64.64	45.80	42.48	20.55	16.19	6.12	4.55	4.03
2015-16 (\$m)	63.21	47.91	41.69	23.48	15.70	5.75	4.67	5.55
Change (%)	-2.21%	4.62%	-1.86%	14.27%	-3.06%	-6.16%	2.46%	37.84%

Source: Australian Government Attorney-General’s Department data

Transparency of the funding allocation models

The current FAMs account for a broad range of factors associated with levels of demand and costs of supply in different jurisdictions. While the redistribution of funds has impacted the states and territories in different ways, all would like greater transparency around the allocation process, and many reported that a more nuanced model was required to appropriately weight factors contributing to the cost and complexity of service delivery within their jurisdiction:

The current funding model does not sufficiently reflect needs, geographic limitations or additional expense unique to Queensland. (Queensland Department of Justice and Attorney-General, 2018 p.10)

Demand and supply pressures commonly cited as not adequately weighted in the FAM include costs associated with outreach and servicing regional, rural and remote communities, levels of financial disadvantage, and the proportion of Aboriginal and Torres Strait Islander people residing in some jurisdictions.

Several stakeholders observed that the FAMs produce significantly different weightings to other Commonwealth distributive agreements, such as the National Partnership Agreement on Housing and Homelessness. For example, Legal Aid Queensland reported that its “main concern” was the NPA’s FAM, which resulted in a \$1.5 million reduction in funding in 2015-16, and “is incongruent with Queensland’s share of other Commonwealth payments” (Legal Aid Queensland, 2018 p1).

Although this review did not consider the quantum of funding available, some stakeholders also called for greater clarity and transparency around how the NPA’s total allocation is determined. As NACLCL observed,

There has been and continues to be no transparent, public or evidence-based assessment of what the overall quantum of funding for legal assistance should be in Australia to meet legal need (National Association of Community Legal Centres, 2018a p. 38).

SACS funding distribution

The Social and Community Services (SACS) supplementation was introduced as the Australian Government's contribution to the wage increases that resulted from Fair Work Australia's Equal Remuneration Order in February 2012. During consultations, stakeholders commonly reported that SACS was a notable and welcomed increase in funding to the sector.

Some CLCs have expressed concerns regarding a lack of implementation consistency across jurisdictions. Specifically, it was suggested that "there appears to have been a lack of understanding by many state and/or territory governments about how SACS supplementation is calculated or should be distributed or used" (National Association of Community Legal Centres, 2018a p.47).

While SACS has been included as a separate line item in the NPA to "provide visibility and transparency of the transitional supplementation to the base line funding" (Australian Government Attorney-General's Department, 2018b p.28), NACLC reports that in some instances it has been bundled with, and delivered to the sector as part of, core funding (The National Association of Community Legal Centres, 2018a p.47). This has contributed to a lack of clarity around how the SACS has been applied in each jurisdiction.

Community Legal Centres Queensland also observed that while the SACS supplementation is useful, "low community sector wages undermine our ability to attract and retain quality workers" (Community Legal Centres Queensland Inc., 2018 p.21). In response the organisation suggests that,

Rather than simply focusing on SACS supplementation payments (important as they are), governments and legal assistance service providers should work together to develop workforce strategies to attract, retain and develop quality people (Community Legal Centres Queensland Inc., 2018 p.22).

Indigenous-specific services

While LAC and CLC service planning and funding decisions are devolved under the NPA to states and territories, decision making on the allocation of funding for the other two key components of the legal assistance sector – ATSILSs and FVPLSs – remains with the Australian Government. However, the ILAP requires ATSILS to engage in collaborative service planning, to encourage joint effort around jurisdiction-level service planning (Australian Government Attorney-General's Department, 2015d).

The position of ATSILS as preferred providers of culturally appropriate and holistic services to Aboriginal and Torres Strait Islander people was widely acknowledged within submissions to the review (including by all sector peak bodies), and is supported by prior reviews (Law Council of Australia, 2018a). However, the distribution of funding between sub-sectors, and the need for a diversity in the sector (to enable client choice and conflict management among other benefits) mean that LACs and CLCs also provide a large number of services to Indigenous clients.

The interdependent nature of the legal assistance sector in many areas points to the need for close coordination of service planning, and this is also the case for Aboriginal and Torres Strait Islander services. Legal Aid NSW observed in their submission to the review that decisions made by the Aboriginal Legal Service NSW to scale down services to in some areas and to the State Parole Authority had had a significant impact on Legal Aid NSW, with cost implications "estimated at more than \$2 million per year" (Legal Aid NSW, 2018b p.15).

More generally, ATSILS have focused their efforts predominantly on criminal law, with 78 per cent of matters in 2016-17 relating to criminal law (Australian Government Attorney-General's Department, 2018c p.38). This focus is driven by very high levels of demand, and has been found within the concurrent ILAP review to be an appropriate application of the funding available, particularly in the context of the ongoing and significant overrepresentation of Indigenous people in the criminal justice system (Cox Inall Ridgeway, 2018).

As a consequence, the extent to which ATSILS are able to provide services to Aboriginal and Torres Strait Islander people in other areas of law is correspondingly limited. In Western Australia for example, family law services are provided by ALSWA out of Perth. This means that family law services to Aboriginal and Torres Strait Islander clients outside of Perth are more commonly provided by Legal Aid Western Australia or by community legal centres.

In its submission, the Australian Government Attorney-General's Department recognised the unique position that ATSILS hold within the legal assistance sector, and acknowledged the importance of safeguarding funding. However, it argues that state and territories "have a more intimate knowledge of the legal assistance environment [and are] better placed to understand and consider the key drivers of demand for Indigenous legal assistance services" (Australian Government Attorney-General's Department, 2018b p31), and proposes the inclusion of ATSILS funding within a future NPA for administration by states and territories.

However, the review heard clear views from the ATSILS sector that 'rolling in' ILAP funding under the NPA was not appropriate, and would undermine the principles of self-determination:

[a] separate ILAP with funding coming direct to ATSILS is the only way to guarantee a culturally safe, community-controlled service for Aboriginal and Torres Strait Islander people. A standalone ILAP is important for the self-determination of Aboriginal and Torres Strait Islander people as a means of self-determination as ATSILS and FVLPS are their preferred and in many cases only option for legal services, especially in remote and regional areas (National Aboriginal and Torres Strait Islander Legal Services, 2018a p.5).

The FVPLS forum expressed similar views, noting that:

[p]reservation and appropriate resourcing for separate programs and funding streams for Aboriginal service providers respect the unique and important role and expertise of our services in providing specialised, targeted services, and it is a key mechanism for Aboriginal and Torres Strait Islander self-determination and community control (National Family Violence Prevention Legal Services Forum, 2018 p.5).

These views received strong support from the Law Council of Australia, National Legal Aid, NACLC and from the Australian Legal Assistance Forum (Law Council of Australia 2018a; National Legal Aid, 2018; The National Association of Community Legal Centres, 2018b; Australian Legal Assistance Forum, 2018).

The appropriate future arrangements for the ILAP program are the subject of exploration within CIR's concurrent review. It is noted that contextual factors will influence the appropriateness of integrating any specific funding stream into the NPA. For Indigenous-specific programs, these factors include the Australian Government's national leadership role within Indigenous affairs, any impacts on self-determination, and the underlying drivers of Indigenous disadvantage and overrepresentation within the legal system.

Multiple streams of funding operating outside the NPA

The NPA represents 'one of many' funding contributions to the legal assistance sector, limiting its ability to drive sector-wide reform. Most service providers have a diversity of income streams, including multiple government funding arrangements at both the Australian Government and state and territory level. Other Australian Government funding sources for legal assistance services are typically introduced for defined purposes (e.g. the Women's Safety Package from the Australian Government Department of Social Services), as distinct from the NPA which primarily operates to distribute core funding. The one exception to this is the NPA's defined funding for family law and family violence related services (Council of Australian Governments, 2015 s52).

The NACLC provided data to the review that illustrates the broad range of funding sources flowing to CLCs (National Association of Community Legal Centres, 2018a, p.42). These included:

- Australian Government Attorney-General's Department - CLSP - Other
- Australian Government Attorney-General's Department - CLSP - Self-Representation Service
- Australian Government Attorney-General's Department – Family Advocacy and Support Service
- Australian Government Attorney-General's Department - Women's Safety Package (domestic violence units and/or health-justice partnerships)
- Department of Communications and the Arts
- Department of Immigration and Border Protection – Immigration Advice and Application Assistance Scheme
- Department of Social Services (DSS) - CALD Prevention
- DSS - Children's Contact Service

- DSS - Disability Advocacy, NDIS Appeals
- DSS - Financial Counselling, Problem Gambling
- DSS - Settlement Grant
- Fair Work Ombudsman - Community Grants Program
- The Prime Minister and Cabinet Indigenous Advancement Strategy - Indigenous Women's Program

While stakeholders welcome additional funding and recognised the critical importance of funding flexibility to meet emerging needs and priorities, LACs and CLCs both reported negative impacts related to the introduction of Australian Government funding outside the NPA, including from multiple departments:

...the Commonwealth has [provided] funding for new legal assistance services outside the NPA, for services including the Women's Safety Package, Family Advocacy and Support Services, and new elder abuse services. This has undermined the NPA as the key mechanism to support funding, policy and strategy for legal assistance services, and further complicated system design and delivery. (Community Legal Centres Queensland Inc., 2018 p 21)

Innovative projects which have been designed by the LACs since the implementation of the NPA are funded by the Commonwealth outside of the NPA, e.g. funding for the Family Advocacy and Support Services.... It would be beneficial where such services are to be funded into the future if the funding of them could be rolled into the main agreement. (National Legal Aid Commission, 2018 p.11)

Some of the issues that have arisen from the continuation of non-NPA Australian Government funding processes have included:

- reduced efficiencies within the sector by placing an increased administrative and reporting burden on LACs and CLCs,
- reduced transparency around the Australian Government's overall contribution to LACs and CLCs
- limitations on the NPA's ability to drive sector-wide changes, including influencing operational priorities and focus.

The potential benefits of integrating additional Australian Government funding streams into a future agreement have been flagged by state and territory governments, LACs and CLCs (The National Association of Community Legal Centres, 2018a). ATSILS and FVPLS have offered a more cautious view, particularly with respect to funding attached to Indigenous-specific programs (National Aboriginal and Torres Strait Islander Legal Services, 2018a; National Family Violence Prevention Legal Services Forum, 2018, and the prospect of integration of ILAP funding found no support among major sector peaks, as noted earlier.

This review has not extended to the analysis of the potential integration of existing streams of funding into the NPA. However, where there is alignment of purpose between funding external to the NPA, and where efficiencies are available to funders, administrators or recipients of funding through integration, there are likely to be benefits from doing so.

In terms of potential future funding streams, in its current form, any changes to the NPA must be renegotiated and agreed on by all parties. This constrains the ability of the NPA to efficiently respond to new legal priorities that emerge across the lifespan of the agreement (e.g. the recent policy focus on elder abuse). Moving forward, the Australian Government Attorney-General's Department has recommended that

[o]ngoing arrangements for funding under the NPA should be sufficiently flexible to ensure that priorities can be adapted to reflect emerging issues without a need to duplicate funding streams to achieve additional desirable outcomes. (Australian Government Attorney-General's Department, 2018b p.30)

One model proposed by the The Australian Government Attorney-General's Department is a multilateral agreement, supported by bilateral agreements between the Australian Government and each state and territory. This "could allow more flexibility for the specification of individualised measures without re-negotiation of the multilateral agreement with all Parties" (Australian Government Attorney-General's Department, 2018b p.31). The use of multi-lateral and bi-lateral arrangements in concert has been a feature of prior and present national agreements, including for example the National Partnership Agreement on

Indigenous Early Childhood Development (Council of Australian Governments, 2009b), and the National Housing and Homelessness Agreement (Council of Australian Governments, 2018).

Legal jurisdiction creates some inconsistencies within the sector

The allocation of funding based on legal jurisdiction was also reported in consultations to contribute to complexities in service delivery and cost shifting concerns. NPA funding for LACs is to be used for Commonwealth law matters only, except:

- where State law matters relating to the safety or welfare of a child are connected with family law proceedings;
- where State law matters relating to a person's safety are connected with family law proceedings; or
- in discrete assistance or community legal education, regardless of whether the matter relates to Commonwealth or State laws (Council of Australian Governments, 2015, cl 30).

Stakeholders noted that this limitation on how NPA funding is to be used presents issues when it comes to the legal needs of clients who fall within the agreement's priority groups. Specifically, stakeholders observed that clients often present with multiple legal problems that have application across jurisdictions (i.e. relate to both state and territory and Commonwealth matters).

Stakeholders noted that this creates some inconsistencies with ILAP, when it comes to LACs servicing Indigenous clients. Under the Australian Government's constitutional heads of power in respect of Aboriginal and Torres Strait Islander people, ILAP funding can be applied by ATSILSs for both Commonwealth and state law matters. However, CLCs and LACs working with the same (Indigenous) clients are limited applying NPA funding to Commonwealth matters, with the exception of the areas outlined above.

4.3.3 Short term funding cycles and the residual effects of proposed funding cuts in 2017 (subsequently reversed) impact negatively on CLCs

Key findings

- States and territories have adopted different approaches to funding arrangements, including continued use of short term (one to two year) contracts in some cases. This has meant that the NPA has not provided funding certainty to CLCs in many jurisdictions to date. Conversely, legal aid commissions do enjoy certainty of Australian Government funding for the duration of the agreement.
- The impact of the foreshadowed reductions in Australian Government funding to CLCs was significant. Although provision of defined funding in the 2017-18 budget effectively reversed the anticipated funding cuts, CLCs had already begun to scale back services and released staff, and incurred direct and indirect costs as a result.
- Increased uncertainty around funding in the first few years of the NPA also led to heightened levels of competition between CLCs, and has reportedly damaged relationships and trust within the sector. These outcomes directly undermined NPA objectives of increasing collaboration within the sector, at least in the short term.
- These impacts were lessened in states and territories where state governments increased their funding commitments to CLCs to fully or partly offset the anticipated reductions in Australian Government funding.

Transitioning to new funding administration arrangements

Community legal centres have had a markedly different experience of the transition to new funding arrangements, attributed in large part to the residual effects of the planned reduction in CLC funding in 2017. Although not implemented, the planned cuts resulted in significant disruption in the sector and dominated discussions with CLCs about funding under the NPA.

Community legal centres' experiences have also varied depending on each state and territory's approach to NPA implementation (e.g. the process adopted for administering funding), as well as broad a range of external factors (e.g. changes to the quantum of funding available from other sources at the state level). Sector reviews undertaken in some jurisdictions following the NPA have also influenced experiences of NPA implementation in different jurisdictions, most notable the EY Review in SA which led to a restructure of the legal assistance sector in that state (EY, 2016).

Funding uncertainty in the early years of the NPA

Funding certainty is a central concern of service providers, with nearly all stakeholders emphasising the importance of long-term, sustainable funding. The NPA was intended to provide greater certainty to the sector, with a five-year commitment of funding. State and territory LACs reported that the NPA had delivered on this intention, with the agreement allocation funding for their organisations across the full five-years of the agreement (see Table 2, Council of Australian Governments, 2015).

However, the planned reduction in CLC funding in 2017 heavily influenced the way many CLCs experienced the first years of the NPA. Specifically, CLCs had been facing a \$12.8 million per annum (approximately 30 per cent) scheduled reduction in funding, comprised of:

- a \$6 million per annum Mid-Year Economic and Fiscal Outlook savings measures announced in December 2013 and due to take place on 1 July 2017 (initially 1 July 2015), and
- the cessation of a one-off \$6.8 million per annum transfer of funding in 2013 (Australian Government Attorney-General's Department, 2018b).

Following negotiations with all parties to the NPA, in April 2017 additional defined funding was introduced under the agreement as part of the 2017-18 federal budget. This funding was allocated specifically for family law and family violence related service and is to be distributed by the states and territories in accordance with CSP practices (Australian Government Attorney-General's Department 2018b, p.29). The defined focus of the funding recognised the role CLCs play "in assisting people experiencing, or at risk of, family violence" and was a response in large part to the fact that "one of the primary concerns expressed by the sector in the period before the funding reductions were due to take place from 1 July 2017, was that cutting of funding to

CLCs would affect services for those experiencing family violence” (Australian Government Attorney-General’s Department, 2018 p.29).

In this context, CLCs consistently reported that the NPA has not delivered funding certainty and stability for their organisations. While the NPA specified guaranteed funding in 2015-16 and 2016-17 for specific CLCs (see: *Schedule C*, Council of Australian Governments, 2015), the allocation of core NPA funding to CLCs in the final years of the agreement, as well as distribution of the defined funding, is determined by the states and territories. Different approaches have been adopted in different jurisdictions, with some CLCs having their funding contracts renewed on an annual basis. The Consumer Credit Legal Service (WA) observed that

[t]he NPA was intended to alleviate the funding uncertainty faced by Community Legal Centres but... the administration of funding arrangements at state level has failed to achieve this goal (Consumer Credit Legal Service (WA), 2018 p.5).

The negative impacts of short-term contracts were highlighted throughout the consultations, submissions and in prior reviews (Victorian Government, 2016; Alan Cameron AO, 2017). These included difficulties recruiting and retaining staff, increased administrative burden, and underinvestment in capacity building initiatives and business operations that have medium and long term pay-offs. As noted in 4.1.6, these factors have imposed costs on CLCs that have negatively impacted their operational efficiency, at least in the short term.

Impacts on trust and relationships

While the provision of defined funding effectively negated the planned cuts (albeit with funding for a specific purpose), the proposed changes to CLC funding led to significant disruption in the sector. Many CLCs reported they were required to divert time and resources to ensuring their ‘organisational survival’ in the face of uncertainty regarding how funds would be distributed between CLCs by states and territories, including both core and defined funding.

Some CLCs also noted that this period was also damaging for relationships between different service providers, fostering an environment in which CLCs felt increased pressure to potentially ‘compete’ for any available funds.

The sector went through a long period of uncertainty that reduced its ability to meet legal need, turning away clients and winding down services as centres prepared to operate with even less resources. Substantial resources were diverted from community services into searching for alternative sources of funding, planning for the expected impact of the funding reduction and campaigning for a reversal of the funding reduction (Kingsford Legal Centre, 2018 p.8).

The impact of the planned funding reduction to CLCs varied across CLCs, depending on the NPA’s contribution to a CLCs total revenue, as well as the policy response of the jurisdictions in which they operate. Following the Cameron Review for example, the New South Wales Government committed an additional \$3 million per annum to the CLC sector in the 2017-18 and 2018-19 financial years. In Tasmania, significant additional funding was also made available by the state governments, ameliorating the impacts of reductions in overall Australian Government funding.

While actual impacts varied across jurisdictions and among CLCs, overall many stakeholders observed that the uncertainty experienced by the sector has tempered progress towards the aspirational objectives of the NPA and, particularly, CSP.

It was potentially the worst possible scenario to commence real collaboration between legal assistance service providers under the NPA (Collaborative Services Planning Group of Western Australia, 2018 p.5).

In the wake of the planned funding cuts, many CLCs have been focused on “rebuilding” their services following changes made to their services in anticipation for the cuts. During consultations many also noted that they have since been able to place a greater emphasis on strategic thinking and long-term planning in relation to NPA services, and an increased emphasis on collaborative practice.

Operational impacts of different contracting approaches

Jurisdictions have adopted different practices with respect to the timing of NPA payments, and in some cases this is reported to create operational pressures for CLCs. In the Northern Territory for example, NPA funding for CLCs is delivered annually, with payments ceasing in June and re-starting in October with a three-month payment in arrears. This effectively creates a gap in NPA funding during the busiest time of the

year for CLCs, directly impacting on the ability of CLCs to deliver services. As was described in the NT CLC joint submission,

To stop funding in June and effectively not provide funding until October means services can't plan, lose staff, must cross-subsidise from other buckets of money and must curtail operations in the busiest time of year in the middle of the dry/cool season (NT CLC joint submission, 2018 p.9).

In response to the gaps in funding that have been created in NT, CLCs in this jurisdiction emphasised the critical importance of rolling funding that is delivered across the length of the agreement. These CLCs also highlighted the need for any new funding arrangements to be negotiated early to improve funding certainty and support service planning.

The issue of surplus funding was also raised during consultations. Specifically, constraints on carrying over funds was seen to undermine investment in infrastructure, as well as present challenges for recruitment and service planning.

Community Legal Centres that accumulate an excess surplus have concerns that this surplus may be "clawed back". They are therefore put in the very difficult position where they are unable to recruit for a particular role as they are unable to attract quality candidates, but risk having to return any excess surplus that is not spent, and so may employ an unsuitable candidate just to avoid having a surplus (Consumer Credit Legal Service (WA), 2018 p.6).

4.3.4 Progress toward intended outcomes is influenced by levels of funding

This review does not address the sufficiency of funding under the NPA. However, it was consistently reported by LACs, CLCs and some government stakeholders that funding levels were a significant barrier to achieving the outcomes and objectives set out in the NPA. Stakeholders drew attention to recent reviews by the Productivity Commission and Law Council of Australia, which recommended that significant, additional funds were required if the sector is to address critical service gaps; specifically, an additional \$200 million and \$390 million per annum respectively (Productivity Commission, 2014 p.30; Law Council of Australia, 2018 p.17). The National Association of Community Legal Centres observed that:

It is clear that the overall funding provided to the sector is insufficient to meet current or rising legal need in Australia. However, given the narrow focus of the Review, we emphasise that the level of funding currently provided to the sector under the NPA is a key barrier to meeting its stated objectives and outcomes (The National Association of Community Legal Centres, 2018a p35).

As noted above, the NPA is 'one of many' contributions to the legal assistance sector. As such, while this review did not consider the quantum of funding required to meet legal need in Australia, any response to the concerns expressed by stakeholders would need to consider the total resourcing available to the sector. This includes an assessment of the funding commitments from both the Australia Government and state and territory governments, including supplementary funds (e.g. distributions of legal trust fund income).

4.4 PERFORMANCE MONITORING AND REPORTING

This section deals with the fourth term of reference for the review, focused on:

The utility of the performance monitoring and reporting arrangements, including the collection of consistent and comparable service data in measuring the progress towards achieving the objective and outcomes of the NPA, including consideration of:

- performance indicators (Clause 17)
- performance benchmarks (Clause 18)
- milestones (Clause 19)
- reporting arrangements (Clause 20), and
- support systems for data collection and reporting.

4.4.1 Context

The performance monitoring and reporting arrangements under the NPA incorporate:

- Performance Indicator reporting – raw data on the delivery of services to priority client groups and the number of legal services delivered by service type (referral, legal advice, representation etc)
- Performance Benchmark reporting – information on the percentage of representation services delivered to people experiencing financial disadvantage. These benchmarks are linked to periodic payments
- Collaborative service planning reporting – information outlining the progress of collaborative service planning
- CLC funding distribution reporting – information on the distribution of CLC funding
- Client survey reporting – information outlining the results of sector-based client surveys, and
- Case study reporting – detailed information of a service that has been delivered in a more effective, efficient or innovative way. (Council of Australian Governments, 2015)

The performance benchmarks require LACs deliver 95 per cent or more of representation services to people experiencing financial disadvantage; community legal centres deliver 85 per cent (rising to 90 per cent in year three) or more of representation services to people experiencing financial disadvantage.³

³ Council of Australian Governments, 2015. Cl 18. Noting that 90 per cent benchmark for CLCs is from 1 July 2017. Between 1 July 2015 and 30 June 2017, the benchmark was 85 per cent.

4.4.2 Reporting under the NPA is a relatively low burden

Key points

- The overall reporting burden imposed by the NPA is relatively low, and is perceived by most LACs to improve on the previous NPA. The burden of NPA reporting varies across CLCs depending on the level of reporting to other funding bodies and available administrative support. Many legal assistance sector providers have multiple, inconsistent reporting requirements outside of the NPA, and compliance with these adds cost and creates inefficiencies for providers.
- How data reported under the NPA is used is not transparent to those collecting and reporting information, and there is limited sharing of insights from reported data at the national level (e.g. aggregated national trends; case studies of innovation). Broadening the use of reported data, increasing data sharing and transparency and ‘closing the loop’ with organisations collecting data by feeding back insights would increase the value derived from reporting.
- Client surveys have been implemented for LACs in all jurisdictions and for CLCs in many, and their value to understanding client perspectives and experience of service is broadly appreciated by the sector. There are, however, significant methodological challenges associated with surveying vulnerable populations that place some limitations on how the data can be interpreted.
- The considerable difficulties associated with the introduction of the national CLC data collection infrastructure (CLASS) have now largely been resolved with respect to NPA-driven reporting, although other issues remain.
- There has been considerable investment in the transition to the new data collection infrastructure. As the sector has largely transitioned to new reporting requirements under the NPA including the adoption of new reporting capabilities, it is appropriate to bed these down rather than to ‘revamp’ within new arrangements.

The reporting burden associated with the NPA is low

Government and Legal Aid stakeholders reported that the performance reporting requirements under the current NPA were generally appropriate. LACs described the current reporting requirements as less onerous than the previous NPA and overall that they appropriately balanced accountability with administrative burden (see for example, National Legal Aid, 2018; Queensland Department of Justice and Attorney-General, 2018).

Legal Aid NSW observed that some complexities in generating reports do arise where there are differences between internal and NPA reporting criteria, or lack of clarity in the definition of particular measures:

...we count family representation services as a single service (based on family law grants), but these services are inflated in NPA reporting because the grant may fall into more than one category of court/tribunal/other or dispute resolution... [and are] required to count services that have not been classified or counted before, and which do not have a clear definition, for example ‘CLE resources’. In these cases we will develop a proxy logic based on our best understanding of the criteria and the available datasets... (Legal Aid NSW, 2018b, p.18)

The reporting burden is also higher for cross-border services such as the Hume Riverina Community Legal Service (HRCLS) located on the Victorian-New South Wales border town of Wodonga. The Hume Riverina Community Legal Service services clients in Victoria and New South Wales and has reporting requirements to Victoria Legal Aid and NSW Legal Aid which requires reporting against different criteria for each jurisdiction and a “significant amount of time is spent undertaking this exercise” (Hume Riverina Community Legal Service, 2018, p3).

While government and Legal Aid report an overall low reporting burden, CLCs held different views depending on the specific reporting requirements within their funding agreements at state and territory level. However, the contribution of the NPA reporting requirements and any perceived burden was also frequently conflated with the challenges associated with CLASS implementation and the introduction of the DSM, as discussed in the sections following. The experiences of cross-border services, and the observations from some LACs about differences in the interpretation of data elements required for NPA reporting indicate that there are opportunities to streamline reporting processes in these instances through the continued implementation of national data standards. The implementation of the DSM is discussed further in section 4.4.4.

Multiple reporting streams are cumbersome for CLCs and LACs

Reporting forms part of accountable service delivery with public money and strong reporting arrangements support performance management and can help articulate the achievements within the sector in addressing legal need. However, for many CLCs the NPA is one of many funding sources relied upon to operate their service. Consequently, there are multiple reporting obligations and NPA reporting is part of wider performance reporting obligations. The cumulative effect of multiple reporting requirements places a significant burden on CLCs and detracts from frontline services. The sector made consistent suggestions for greater alignment or integration of reporting arrangements to minimise the resources required to meet reporting obligations.

Outside of the NPA, there was considerable feedback from the sector about other reporting requirements and the burden they create for service providers.

[S]ervices that receive welcome Women's Safety Package funding from the Australian Government Attorney-General's Department have differing reporting obligations...from the rest of their funding from AGD under the NPA... [and with respect to state-funded programs] there is significant inconsistency in the requirements from State and Territory Governments across jurisdictions (The National Association of Community Legal Centres, 2018a p.49).

It can be onerous to comply with performance monitoring and reporting arrangements additional to, and inconsistent with, the NPA requirements... Each different funding source has its own conditions, criteria for assistance and reporting requirements. (Legal Aid NSW, 2018b p.20).

The performance monitoring burden created by the NPA specifically is low. However due to multiple funding streams from both the Commonwealth... and the states and territories there are multiple and often duplicated reporting requirements, which are not consistent from jurisdiction to jurisdiction (National Aboriginal and Torres Strait Islander Legal Services, 2018a p.12).

Consumer Credit Legal Service WA (CCLSWA) is required to complete 11 separate reports annually. Consumer Credit Legal Service WA reports that “the current levels of reporting detract from our centre’s ability to achieve effective and efficient service delivery due to the administrative burden that current funding agreements require” (Consumer Credit Legal Service (WA) Inc., 2018 p.9). Concerns around the burden of multiple funding sources was echoed by Legal Aid NSW: “Each different funding source has its own conditions, criteria for assistance and reporting requirements” (Legal Aid NSW, 2018b p.18).

The National Association of Community Legal Centres note that “[w]hile the NPA itself does not impose burdensome reporting, we remain concerned about ongoing duplication of reporting requirements for services which receive funding under the NPA, from State and Territory CLC funding programs, and other sources of funding” (The National Association of Community Legal Centres, 2018a p.49).

In this context, there is general support for efforts to reduce overlapping or inconsistent reporting arrangements across funding streams. Potential avenues for doing so may include integration of additional funding streams (and associated reporting) into the NPA, alignment of sector reporting to a broader sector ‘standard’ – for example, through amendment to the National Strategic Framework for Legal Assistance (Australian Government Attorney-General’s Department, 2015e). The latter approach could potentially involve development of consistent indicators for the 15 agreed outcome areas referenced in the document to form a consistent (although not exhaustive) basis of sector reporting.

The intended use of reported data is not clear to stakeholders

There is no specific obligation under the NPA requiring the Australian Government or state and territory governments to share reported data with the sector, and a significant number of stakeholders consulted observed that the use to which reported data is put by governments is not always clear. In addition, there are few avenues for sharing data and leveraging its potential of the collected data to inform sector and policy development.

there has been no national information sharing about the data or information provided by state and territory governments as part of reporting, which means this data has not been available to inform decision-making or policy development at a national level... State and Territory NPA Performance meetings had limited opportunities to reflect or have broader conversations about the information or data (The National Association of Community Legal Centres, 2018a p.48).

There was wide stakeholder support for information sharing about data trends as well as providing more transparency in how reported data informs planning and funding decisions (see for example, The Federation of Community Legal Centres (Victoria) 2018 p.14). Furthermore, in the recent *Justice Report*, the Law Council of Australia has identified the need for governments to “lead a coordinated effort to improve data collection about the justice system and to fill knowledge gaps, particularly with respect to disadvantaged groups” (Law Council of Australia, 2018a p.74).

The wider sharing of data could inform decision making and policy development and there is an opportunity to engage in broader discussions about the information and data reported to the Australian Government. The Victorian Council of Social Services consider publicly available national data could “demonstrate the value and efficacy of the sector” but also be used to explore linkages with other interrelated service delivery areas such as health, housing and employment (Victorian Council of Social Service, 2018, p12). Similarly, NACLC welcome broader conversations about the information and data and increased coordination across government (The National Association of Community Legal Centres, 2018a).

At present, NPA reporting is generally structured for the benefit of funders, providing a level of accountability for service implementation, financial abatements for underperformance on some key measures, and providing funders with information that may inform future planning and policy development. The reporting processes themselves are associated with biannual meetings between the Australian Government and states and territories, providing a potential forum for broader discussions about sector performance.

The NPA reporting requirements also includes collection of case studies, which have not been widely shared between governments and with the sector. These offer opportunities for more nuanced information on innovative, efficient or effective service approaches to be captured – but the benefits of sharing these case studies have not been fully realised.

These reporting structures do not provide return value to the sector, although there may be opportunities to make better and wider use of reported information. Extending the use of reported data, increasing data sharing and transparency and ‘closing the loop’ with organisations collecting data may also increase incentives for LACs and CLCs to engage in data enhancement processes, because there is a direct benefit to their own services. There are acknowledged limitations within the data currently reported, and the significant diversity of service models and operating contexts mean that direct comparisons of services are not always useful nor appropriate within a service *accountability* context. However, within a sector *development* framework, provision of data that allows services to see where and how they differ can stimulate reflection within services and useful conversations between them.

Client surveys are valuable but there are methodological limitations

Each state and territory government is responsible for facilitating two client surveys across their jurisdiction under the NPA and reporting the findings to the Australian Government. Client surveys across LACs took place across 2016-17 and involved six standardised questions. While some LACs expanded the scope of the surveys to canvas additional insights from their clients, Legal Aid NSW recommended that any future client surveys under the NPA should use the same mandatory questions to “use them to benchmark performance and compare results over time” (Legal Aid NSW, 2018b p19). Collectively the survey results provided a valuable national snapshot to the Australian Government.

The CLC sector client surveys started in 2017-18 and have not yet been completed across all jurisdictions. However, while many CLCs routinely undertake client surveys and have done so for decades, some CLCs reported issues around the challenges and at times inappropriateness of surveying particularly vulnerable clients. As with LACs, some jurisdictions have added additional questions to those mandated by the Commonwealth to deepen their understanding of the clients in their jurisdictions.

The cost of delivering the survey is not specifically addressed within the NPA and as such has largely been borne by state governments or drawn from NPA funding. The Victorian Federation of CLCs noted that CLCs were not sufficiently resourced to roll out the survey and that in Victoria the costs were absorbed by the government or philanthropic organisations (The Federation of Community Legal Centres (Victoria) 2018 p.11).

The Victorian, New South Wales and Queensland peak CLC bodies were integral in the survey coordination and roll out in their respective states. The Federation of Victorian CLCs engaged an independent market research firm to administer the survey and reports that without additional funding outside of the NPA “the CLC sector may not have been able to meet its obligations under the NPA” (The Federation of Community Legal Centres 2018, p14). In Queensland, the government engaged CLC Queensland to coordinate the survey which took place in May 2018 and surveyed 1,757 clients of Queensland CLCs (Community Legal Centres Queensland, 2018, p24).

When coupled with measures that focus on client outcomes and efficiency, client *experience* measures can support the development of a broader understanding of the quality and effectiveness of the service system. In this context, the client surveys required under the NPA can offer valuable insight into client experiences beyond legal outcomes. However, such surveys do have intrinsic limitations, and represent a complex design challenge, particularly in the context of ensuring key questions are exploring perceptions about legal outcome achieved, or the experience of service (Productivity Commission, 2014 p.885).

The conduct of client surveys with vulnerable populations presents specific issues that go to the reliability and validity of the results. Some of the issues that arise in the context of client satisfaction surveys include non-representative sampling, where the sample underrepresents those with low literacy or cognitive impairment, or people with other characteristics which may make it less likely they will complete a survey (e.g. homelessness, transience, or simply having dropped out of contact with the service).

Biases due to measurement errors are also likely to arise. For example, data will be less valid where respondents don't understand a question (e.g. due to poor literacy), interpret survey questions differently to the 'intent' of those question (e.g. applying a different cultural lens), or answer in a particular way because they feel there is a 'right' answer (e.g. wanting to please the people in positions of authority – for example, their lawyers).

While client surveys have defined core questions, the variations in survey approaches mean that there are likely significant limitations in their intrinsic reliability and validity that need to be taken into account. Ideally, design of the research method for client surveys would be undertaken by appropriately experienced researchers with an understanding of the critical biases that can arise when surveying vulnerable populations.

CLCs (and FVPLS) have transitioned to the CLASS system, but some concerns remain

The Australian Government Attorney-General's Department provided \$1.69 million to NACLCL to develop a new CLC client management and reporting database, the Community Legal Assistance Services System (CLASS), replacing the Community Legal Service Information System (CLSIS). The new database aims to streamline data collection practice across all jurisdictions. This transition has presented a wide range of challenges across the sector and consistent concerns have been raised about the accuracy of the reporting to date. Recognising the challenges of implementation, an additional \$30,000 was provided to NACLCL to assist with interpretation of the Data Standards Manual and data entry through national training (Australian Government Attorney-General's Department, 2018b p.36).

NACLCL, who were tasked with the rollout of CLASS note:

The transition to new data definitions and data collections tools with the introduction of the NPA, has been difficult. In essence there has been a 'perfect storm' relating to sector data with the introduction of the National Legal Assistance Data Standards Manual (DSM); inconsistent recording of data under the DSM; the roll-out of CLASS; and the use of CLASS data. (The National Association of Community Legal Centres, 2018a).

Community Legal Centres Queensland, who share consistent views with a wide contingent of the sector report the implementation of CLASS to have been "fraught with issues and delays, due to an extremely limited budget and unreasonable 12-month timeframe for transition of 30+ years of client data from CLSIS for 200+ community legal centres" (Community Legal Centres Queensland Inc., 2018, p23). A large number of CLC stakeholders described reporting into CLASS, which is a cloud-based system, as time-consuming and to be a slower process than under CLSIS.

Many CLCs reported an increased administrative burden associated with the transition to CLASS. For example, one CLC reported challenges such as the difficulty securing internal expertise in data entry, monitoring and reporting and ongoing training for volunteers using the system. Further complication and uncertainty was added due to confusion around the changed data definitions and criteria.

Community Legal Centres Queensland describe general satisfaction about data captured under CLASS however "don't think that aggregated or comparative data is useful for the purposes of the NPA review, or more broadly." (Community Legal Centres Queensland Inc., 2018 p12). Legal Aid NSW further report that the compromised data quality from CLASS has impacted the quality and consistency of reporting to the Commonwealth (Legal Aid NSW, 2018b p18).

A different perspective offered by FVPLS, who also use the CLASS system, and for whom key problems with the system reportedly persist:

...with respect to data for FVPLS, there are ongoing challenges around the reliability and consistency of data given the difference in service models across CLCs and FVPLSs, the types of work undertaken and complexity of issues our clients present with... (National Family Violence Prevention Legal Services Forum, 2018 p.8).

There has been ongoing refinement of CLASS and despite a challenging roll out, the database is now considered suitable for most CLC stakeholders. For example, the Victorian Federation of CLCs consider that “[t]he CLASS client management system shows promise as a measuring tool. However, an underinvestment in the transition to and implementation of CLASS, in relation to ongoing maintenance, training and management support, has impeded the CLC sector’s ability to collect and use quality data.” (The Federation of Community Legal Centres (Victoria) 2018, p15). The National Association of Community Legal Centres now consider CLASS “fit for purpose for the majority of CLCs” (The National Association of Community Legal Centres, 2018a).

While the difficulties of implementation have overshadowed the transition to CLASS, there is general recognition that it now fulfils its core purpose as a reporting tool for the NPA. To the extent that the sector has aspirations for the system that extend beyond these essential core functions, there is now an opportunity to build incrementally on the core platform.

4.4.3 NPA indicators are limited in their representation of sector performance

Key findings

- While imposing a low reporting burden, the current performance indicators included in the NPA have a number of key limitations. At present, they do not capture the full range of outputs delivered by sector providers, nor the variability and complexity of input effort required and provide little insight into outcomes achieved.
- The National Strategic Framework for Legal Assistance 2015-2020 provides an existing outcomes framework for the sector (albeit without associated indicators or measures), and there is considerable interest in further developing the sector's capacity and capability in the measurement of outcomes.

The performance indicators have some key limitations

As a key 'end-user' of NPA performance data, the Australian Government Attorney-General's Department's submission to the review recognises that data's present limitations. The Department's submission observes that it provides only a limited perspective on whether the objectives of the NPA are being met:

[d]ata the department currently receives only allows it to demonstrate that funding is targeted towards an agreed priority group who are financially disadvantaged. The department is unable to demonstrate if the objective [of the NPA] is being fully achieved.
(Australian Government Attorney-General's Department, 2018b p.33).

These observations are consistent with those made by many stakeholders consulted. While the indicators represent an improvement on the prior NPA, sector stakeholders have observed three key limitations. These were that the current set of performance indicators:

- do not consistently capture the **full range of outputs** created by NPA-funded legal assistance services
- inadequately represent the variability, complexity and extent of **input effort** or work done to deliver each unit of output, and
- do not represent **outcomes achieved** by the sector.

These critiques of current arrangements are generally accompanied by acknowledgement that significant enhancements or changes to the reporting requirements come at a cost, and might place at risk their 'low burden' status (discussed in 4.4.2). Within sector consultation, there is evident recognition that outcomes reporting, while desirable is not the 'be all and end all' of performance reporting, and that well defined and contextualised output data provides significant value.

There is a range of specific concerns regarding the adequacy of the performance indicators under the NPA to capture the work done by the sector, with the underrepresentation of effort being a key issue for CLCs. For example, Community Legal Centres NSW note that "our regional members often travel vast distances to deliver services to clients – many hours in some cases – and this effort is not properly captured in reporting" (Community Legal Centres NSW, 2018).

NPA performance indicators

"Progress towards the objective and outcomes of this Agreement will be informed with reference to the following performance indicators:"

- (a) the proportion of representation services delivered to priority clients. For reporting purposes, the States will report on a subset of priority clients comprising: children and young people (up to 24 years); people experiencing financial disadvantage; Indigenous Australians; older people (aged over 65 years); people experiencing, or at risk of, family violence; people residing in rural or remote areas; people who are culturally and linguistically diverse; and people with a disability or mental illness;
- (b) the proportion of clients receiving quality services that are delivered appropriately to match clients' legal needs and levels of capability, as measured through client surveys;
- (c) for legal aid commissions only, the number of facilitated resolution processes and the percentage of processes that result in a held conference reaching full or partial settlement of matters;
- (d) from 2017-18, for community legal centres, the number of services delivered to clients experiencing or at risk of family violence, including the number of representation services, legal advices, duty lawyer services, and legal tasks, and
- (e) the number of legal assistance services delivered (comprising: information and referral; legal advice; legal task; duty lawyer services; dispute resolution; court/litigation and other representation; and community legal education), disaggregated by service type and law type.

(Council of Australian Governments, 2015 cl17).

The high level of variability in the effort required to deliver the outputs counted under the NPA also limit the usefulness of the data in isolation from its context. National Legal Aid observed, for example that “comparability of data, particularly at a high level and for representation services is unlikely to ever be achieved because of the varied nature of the work undertaken, e.g. the count of [one] representation service could be a terrorism trial running over months or a tenancy hearing concluded within hours...” (2018 p.12).

Several stakeholders also reported issues around reporting only ‘representation’ services that are ‘closed’ in a six-month period. The Victorian Federation of CLCs note “the implication being that the reports exclude 70 per cent of ‘active’ representation services for the reporting period” (The Federation of Community Legal Centres (Victoria) 2018 p.15).

The importance of balancing the costs of data collection, analysis and reporting with the value created is well recognised. The Productivity Commission, writing more broadly about the sector, suggested that the “reporting of costs, outputs and outcomes” should be determined in negotiation with key providers (Productivity Commission, 2014 p.879). There is a strong view within the sector that future development of performance indicators should occur in close consultation with the sector. NACLCL argues that “any new national performance benchmarks and indicators be developed collaboratively across the legal assistance [sector].”

Stakeholder feedback would suggest that the performance indicators within the reporting requirements of the current NPA have not yet struck the right balance and that greater emphasis on outcomes would better reflect the work of the sector.

There is support for improved outcomes and performance monitoring

The National Strategic Framework for Legal Assistance 2015-2020 defines 15 key outcomes for the sector spanning five focus areas (Australian Government Attorney-General’s Department, 2015e), and provides a strong foundation for the development of sector monitoring and evaluation.

There have also been efforts undertaken at the jurisdictional level to develop or explore outcomes frameworks within the sector; some of which include:

- Victorian Federation of Community Legal Centres’ Legal Sector Outcomes Measurement Framework⁴
- Community Legal Centres Queensland’s toolkit for CLCs on measuring impact⁵
- Measuring the impact, quality and effectiveness of legal assistance services in the ACT (Curran & Crockett, 2016)
- Law and Justice Foundation of NSW review undertaken of effectiveness of public legal assistance services, NSW (Digiusto, 2012)

Given the significant interest within the sector in developing more effective ways of measuring outcomes and defining value, coupled with the work already done on national outcomes definition and data standards, there is an opportunity to consolidate prior efforts and build a more comprehensive framework for the sector.

Such a framework – potentially integrated within an updated National Strategic Framework for Legal Assistance – could guide the purposeful collection of both qualitative data (for example case studies, impact stories) and quantitative indicators. It would provide useful guidance to services, peak bodies, and government on the monitoring and evaluation of performance and in the development of more robust assessments of value delivered.

⁴ see [Federation of Community Legal Centres website](#).

⁵ <http://www.communitylegalimpact.org/>

4.4.4 The data standards continue to be ‘bedded down’ across the sector, but represent solid progress toward more uniform data at the national level

Key points

- The introduction of the DSM in 2015 is a key step toward more uniform approaches to the collection of consistent and comparable data. In the longer term, greater consistency of data on clients, services and outcomes will provide clearer intelligence on sector (and sub-sector) activity and performance.
- The implementation of the new data standards has presented some challenges for CLCs: there is significant variation in how the standards are being applied reflecting diversity in CLC size, infrastructure and capability.
- High rates of incomplete activity capture and variability in interpretation of the DSM within the CLC sector significantly reduce the value of CLASS data to assess sector performance over the ‘transition’ period from CLSIS. The concern regarding data quality and reliability of CLC data are such that no CLASS data has been used in this review.
- Following release of the DSM, there has been insufficient focus on continuing support, training and guidance to support timely transition to the new standards. For CLCs, this has exacerbated (and been exacerbated by) challenges associated with the CLASS implementation.

Implementation of the DSM is a ‘work in progress’

The National Legal Assistance Data Standards Manual (DSM) was developed to provide guidance to the sector on the collection of consistent and comparable data (Australian Government Attorney-General’s Department, 2015a). The intent of the DSM is generally supported within the sector, and the value of improved data to the development of sector planning and performance monitoring are consistently acknowledged.

However, data definitions under the DSM are not being consistently used across the sector and services have developed their own guidelines in isolation. The application of the DSM is also not consistent across or between jurisdictions.

Legal aid commissions have generally reported a smooth transition to the new arrangements, aided by specific funding provided by the Australian Government Attorney-General’s Department. This funding supported the internal development or adaptation to supporting systems required to collect and report data under the DSM.

The implementation of the new manual was more problematic for the CLC sector than LACs, and the new standards are less well embedded within CLCs. The Australian Government Attorney-General’s Department has observed that transitions of this nature do take time, noting that, “[g]iven the Manual has only been in existence for three years, the legal assistance sector has not yet had time to become familiar or utilise it effectively” (Australian Government Attorney-General’s Department, 2018b). However, there are consistent observations from the CLC sector in particular that the investment in sector change management, and particularly ongoing DSM development, workforce training and support has been inadequate.

The DSM coincided with the introduction of CLASS, a new database for CLCs and overall stakeholders reflected this change management process was not well supported. The Queensland DJAG note that as a result,

[I]t is taking time to train all CLC staff and volunteers in understanding and using the new system. Due to the inadequate provision of training, there is some variation and inconsistency between advice given by state and territory governments, state program managers, CLC peak bodies, CLCs, and internally between CLC staff regarding characterisation and counting rules (Queensland Department of Justice and Attorney-General (DJAG), 2018 p12).

The diverse nature of the sector and wide range of services offered present challenges to standardising definitions that capture the work of each CLC. The definitions, although designed in consultation with the sector, are not exhaustive and are intended to provide some flexibility. Community legal centres have invested at an organisational level to adapting their reporting to the new data definitions, in some case taking on additional resources to do so. Several CLCs reported concerns that despite greater familiarity with the definitions there remain issues around the content of the definitions as well as how they are counted. A few CLCs mentioned that they have developed locally-specific guidance to staff on how to interpret the DSM. Despite progress towards consistent use of the data definitions, many stakeholders consider this still a work in progress.

The significant concerns about the accuracy and consistency of CLC data collected during the transition period, coupled with CLASS implementation challenges mean that no CLC data has been sourced for analysis within this review. High rates of incomplete activity capture are reported, and there is variability in interpretation of the DSM that significantly reduces the value of CLASS data to assess sector performance over the 'transition' period from CLSIS. The continuing challenges associated with implementation of the DSM within the CLC sector signal a need for further investment and support to embed the standards and strengthen their consistent implementation.

4.5 FULFILMENT OF ROLES AND RESPONSIBILITIES

This section deals with the fifth term of reference for the review, focused on:

The extent to which the Commonwealth and the states and territories have fulfilled their agreed roles and responsibilities and how the Parties to the NPA and the legal assistance sector have worked together to support a holistic approach to addressing legal need.

4.5.1 Context

The NPA defines key responsibilities for the Australian Government as:

- Providing a financial contribution to the states for the delivery of legal assistance services by legal aid commissions and community legal centres.
- Monitoring and assessing performance in the delivery of legal assistance services under [the NPA] to ensure that outputs are delivered, and outcomes are achieved within the agreed timeframes.
- Providing national guidance, oversight and support for collaborative service planning.
- Specifying Australian Government priorities and eligibility principles for the delivery of legal assistance services under [the NPA].
- Providing a forum to facilitate information sharing with the States regarding best practice delivery of legal assistance services.

State and territory responsibilities include:

- Administering Commonwealth funding for the delivery of legal assistance services by legal aid commissions and community legal centres, in accordance with the Commonwealth priorities
- In 2015-16 and 2016-17, distributing Commonwealth funding for the delivery of legal assistance services by specific community legal centres listed in Schedule C, and from 2017-18, distributing defined funding to community legal centres for family law services and family violence related services.
- Determining the methodology for the distribution of Commonwealth funding for the delivery of legal assistance services by community legal centres (except for the funding referred to in clause 14(b)), informed by the outcomes of collaborative service planning.
- Ensuring that the Commonwealth supplementation for the SACS sector is distributed only to Eligible Service Providers, as defined in the National Partnership Agreement on Pay Equity for the SACS sector, through a clear and fair process that is consistent with the principles of procedural fairness set out in Schedule B of the SACS National Partnership Agreement.
- Undertaking collaborative service planning, including meetings with the legal assistance sector, to improve coordination between service providers in the planning and delivery of services
- Facilitating surveys of legal aid commission and community legal centre clients.
- Monitoring and assessing the delivery of legal assistance services under [the NPA]
- Reporting to the Commonwealth on the delivery of legal assistance services under this Agreement, as set out in Part 4 – Performance Monitoring and Reporting.

4.5.2 Governments have largely fulfilled their commitments under the NPA but there are opportunities for more active policy leadership

Key points

- State and territory governments have fulfilled their roles as defined under the NPA.
- Reporting obligations and performance benchmarks have been met by all jurisdictions to date.
- The Australian Government has largely fulfilled its roles as defined under the NPA.
- The Australian Government has minimally fulfilled its role with respect to establishment of an information sharing forum.
- The NPA reduced the Australian Government's overall role in relation to the legal assistance services sector: there is value in it playing a stronger role in leveraging its national vantage point to help achieve NPA objectives.
- In response to a reduced Australian Government role, state and territory governments have recalibrated their approaches to allocative, administrative and policy functions of sector leadership in a number of different ways.
- Differences in approach at the state and territory level have had a marked impact on the sector's experience of NPA implementation across jurisdictions.

The Australian Government and state and territory governments have largely fulfilled their roles as defined under the NPA. The Australian Government has:

- provided funding to states and territories in accordance with the schedules set out in the NPA, and guided its application to priority groups through the specifications in Schedule B of the NPA
- monitored and assessed the performance of the sector, through analysing the six-monthly reports provided by state governments and conducting performance review meetings with each state and territory (while noting in its submission that reported data has limitations in terms of its usefulness in assessing performance)
- supported the states in their application of CSP, including through attendance at CSP meetings – although the Australian Government has noted there is potential to re-define the oversight and national governance role of the Australian Government
- facilitated national information sharing regarding legal assistance service delivery best practice through providing Australian Government updates at legal assistance forums, and also by convening an NPA Stakeholder Liaison Meeting annually with state and territory government representatives. (Australian Government Attorney-General's Department, 2018b pp.38-40).

Similarly, as set out in section 3, states and territories have all formally fulfilled their commitments under the agreement by:

- administering Australian Government funding to LACs and CLCs, including the confirmed funding for specific CLCs in 2015-16 and 2016-17 and the defined funding for family law service and family violence related service from 2017-18
- supporting the sector to undertake CSP, albeit with limited influence to date on the use of the process outcomes to support funding allocations
- delivering the Australian Government's SACS supplementation to Eligible Service Providers, with some reservations about consistency and transparency as expressed by the sector in section 4.3
- facilitating and supporting the delivery of surveys of LACs and CLC clients, monitoring and assessing services delivered under the NPA, and providing regular reports to the Australian Government Attorney-General's Department.

Both levels of governments have also fulfilled their shared roles to provide and distribute the CLC funding for 2015-16 and 2016-17; participate in biannual jurisdictional forums; agree to a client survey methodology and a set of national survey questions; meet biannually to discuss the operation of the NPA and conduct evaluations and reviews of services and outputs (Council of Australian Governments, 2015).

The Australian Government's role

While the Australian Government has fulfilled its commitments as defined under the NPA, there is a consistent perception that the Australian Government has reduced its overall role, oversight and engagement with the legal assistance sector. This can be attributed in large part to the devolved structure of the NPA in which the states and territories are required to play a more active role in administering NPA funding to CLCs and LACs.

While its administrative role has reduced, there is strong support across the sector for the Australian Government providing greater policy leadership, playing a more active role in promoting national consistency in NPA implementation (e.g. in implementing CSP), supporting coordination across jurisdictions, and facilitating knowledge sharing nationally. This is acknowledged by the Australian Government Attorney-General's Department:

There is scope for improving clarity with respect to the role of the Commonwealth in collaborative service planning and potential to re-define the oversight and national guidance role of the Commonwealth. This includes defining the role of the Commonwealth as facilitating the promulgations of best practice and innovation in the legal assistance sector. (Australian Government Attorney-General's Department, 2018b p.40)

Similar observations were made by key peak bodies, and were consistent with those offered by state and territory governments consulted:

The Commonwealth Government has a particular leadership role to play in a number of key areas, including through increased guidance, information sharing and promotion of national consistency. (National Association of Community Legal Centres, 2018a p.57)

The Commonwealth is uniquely placed in relation to collaborative service planning, with representatives attending meetings in all jurisdictions and therefore having the 'helicopter' view into collaborative service planning. This unique position could be used to better inform planning, including by sharing of information between jurisdictions (National Legal Aid, 2018 p.8).

As was explored in section 3, notable variations exist in the way in that each of the states and territories have taken on their administrative role under the NPA. While stakeholders generally recognised the importance of "ensuring that the funding and administrative structures and processes are tailored to each individual jurisdiction" (National Association of Community Legal Centres, 2018a p.8), the differences that have emerged have had a marked impact on the sector's experience of NPA implementation.

The Commonwealth must play a role as a leader to ensure an appropriate level of consistency and coordination (Law and Justice Foundation of New South Wales, 2018 p.3).

Many stakeholders highlighted the critical role that both levels of government should play in supporting the sector. This not only includes a shared responsibility to provide funding, but also for the Australian Government to provide leadership in partnership with the states and territories on matters that are most effectively driven from a national vantage point. Key areas raised by stakeholders for increased government focus include strategic and policy leadership, research and evidence building, support with sector planning and development, and performance monitoring and evaluation.

Strengthening information sharing across and between jurisdictions

As noted above, the Australian Government has formally fulfilled its role of facilitating information sharing nationally through providing updates at legal assistance forums, and by convening the annual NPA Stakeholder Liaison Meeting (Australian Government Attorney-General's Department, 2018b p.40).

However, it was acknowledged by sector stakeholders and also the Australian Government Attorney-General's Department that there are opportunities for the Australian Government to play a greater role - particularly in terms of facilitating knowledge sharing across jurisdictions on good practice and approaches to implementing the NPA. Legal aid commissions, CLCs and state and territory governments identified potential benefits from increased information sharing, including the facilitation of efficiencies in the sector, avoidance of duplicated effort, and enabling best practice and sector learnings to be shared – and applied – across jurisdictional boundaries.

Benefits of cross-jurisdictional information sharing have already been noted by the sector, as a result of the Victorian LAC initiated CSP forum in 2018. This event brought together sector stakeholders nationally to share approaches to CSP and was well received by participants who took part.

The Australian Government could continue to build on this value by convening regular opportunities for sector stakeholders to engage with one another (not only state and territory government stakeholders as are currently included in the NPA Stakeholder Liaison Meeting), and by distributing available national data to provide the sector with a national viewpoint on trends in activity, clients and services delivered.

Differences in approaches taken by the states and territories

Notable variations exist in the way that each of the states and territories have taken on their administrative role under the NPA. While stakeholders generally recognised the importance of tailoring administrative approaches to meet the needs of individual jurisdictions, the differences that have emerged have had a marked impact on the sector's experience of NPA implementation, and in some instances, undermined the NPA's aim to achieve greater transparency around funding allocation.

Stakeholders from a range of jurisdictions commonly expressed concerns about any model where a service provider is responsible for administering NPA funding at a state and territory level. This is because it was seen to create a conflict of interest – whether real or perceived – and to reinforce the power imbalance between CLCs and LACs. By way of contrast, there was strong support for the model adopted in Queensland, in which an evaluation panel comprised of representatives from a range of Queensland Government Departments determines the funding allocation.

The level of engagement by state and territory governments has reportedly varied across Australia and contributed to different experiences of NPA implementation. Stakeholders noted that the states and territories had varying levels of capability to take on the roles and responsibilities outlined in the NPA, depending on their historical engagement with the sector. Progress towards the objectives of the NPA has also been influenced by pre-existing relationships and structures in each jurisdiction. For example, progress in Queensland towards CSP was attributed in large part to the existing practices and strong relationships between stakeholders.

In our view, the Queensland Government has done an admirable job implementing the NPA in this state. This built on existing relationship, structures and strategies, and was implemented in a collaborative and constructive way (Community Legal Centres Queensland Inc., 2018 p.27).

Improving the clarity and scope of roles

Overall, while roles have been fulfilled as strictly defined within the NPA, the present delineation of responsibilities does not 'cover the field' and leaves some room for gaps and inconsistencies to emerge. In this context, there are opportunities to improve the clarity of respective responsibilities within future arrangements. A framework of roles and responsibilities which addressed these key dimensions, and which specifically considered the intersections of responsibility across government would be foundational for the future development of the legal assistance sector.

5 RECOMMENDATIONS

This section sets out the recommendations of the NPA review.

5.1 SCOPE AND EXTENT OF RECOMMENDATIONS

The recommendations are framed around the NPA review's core objective:

To assess the effectiveness, efficiency and appropriateness of the NPA as a mechanism for achieving its objective and outcomes within available resources, and identify best practice and opportunities for improvement. The Review will focus on how the operation of the NPA has affected progress towards its objective and outcomes.

In this context, the recommendations below are directed towards potential actions to be taken by parties to the NPA (the Australian and state and territory governments) within the scope of a potential future inter-governmental agreement. Given the first key finding of the review is that the aspirations and objectives of the current NPA are appropriate, the following recommendations focus on strategies to strengthen progress toward these goals.

During consultations for this review, many stakeholders expressed strong views about the level of funding to the legal assistance sector, which was widely regarded by contributors to the review as inadequate in the face of increasing demand and rising costs. This feedback is in line with the evidence of recent reviews of the sector, most notably, the Productivity Commission report on *Access to Justice Arrangements* (2014 p.30) and the Law Council of Australia report, *The Justice Project* (2018a p.39). Formal findings and recommendations relating to the sufficiency of funding to the legal assistance sector are contained in these and other recent report but are outside the scope of the current NPA review.

5.2 IMPLICATIONS FOR NPA FUNDING

The recommendations that follow, and the model NPA set out in Figure 14 may require some reconfiguration of the total funding available under the NPA, under the assumed scenario of no increase in funding overall. This may require small reductions in the funding that is directed to service delivery to offset investment in sector development. However, appropriately targeted and effectively deployed investment in sector development will result in more effective, more efficient services in the longer term.

Alternatively, there may be other existing sources of funding which can be rolled into, or otherwise support the NPA where the scope of a new agreement encompasses the purpose of that funding. Examples include:

- funding delivered through the Community Legal Services Program which currently funds national projects, innovative service delivery, and program support and development (Australian Government Attorney-General's Department, 2015c p.4)
- grants from state and territory Public Purpose Funds that currently fund research into legal issues (among other uses).

In these cases, while funding might not be administered through the NPA, the agreement may provide guidance on how funds can be deployed to support the National Strategic Framework on Legal Assistance and the aspirations of the NPA.

5.3 A POTENTIAL FUTURE STATE

The key recommendations of this review are framed in the context of a model future NPA. This has been adapted from the current NPA and retains the current key aspirations and outcomes (Figure 14). The model articulates six key enablers for the achievement of these aspirations. The six enablers are:

- **a clear and agreed strategic vision for the legal assistance sector** encompassing priority outcomes and highlighting areas for sector development
- **effective platforms for planning and coordinating services** and facilitating purposeful collaboration at national, jurisdiction and regional levels
- **stable funding in real terms** committed over the duration of the agreement, supporting long-view service planning

- **efficient and equitable distribution of available funding** to those services best able to reach and provide appropriate services to priority clients
- **effective platforms for capturing, disseminating and translating evidence** into practice to drive continuous gains in sector effectiveness and efficiency
- **consistent and comparable data** to support analyses of demand and sector performance in support of planning and sector development.

The model framework suggests potential mechanisms that could be activated through a future NPA to support these enablers, and these form a framework to structure the recommendations. These are grouped into five domains, each representing a key area of focus under the NPA:

- strategic and policy leadership
- provision and allocation of funding
- sector planning and development
- performance monitoring and evaluation
- research, innovation and evidence building.

Recommendations associated with each of these key areas are set out in the sections following.

Figure 14 – Potential future state

A MODEL NATIONAL PARTNERSHIP AGREEMENT 2020-2025

ASPIRATION	A national legal assistance sector that is integrated, efficient and effective, focused on improving access to justice for disadvantaged people and maximising service delivery within available resources				
OUTCOMES	<p>1. Legal assistance services are targeted to priority clients with the greatest legal need</p> <p>2. Legal assistance service providers collaborate with each other, governments, the private legal profession and other services, to provide joined-up services to address people’s legal and related problems</p>	<p>3. Legal assistance services are appropriate, proportionate and tailored to people’s legal needs and levels of capability</p> <p>4. Legal assistance services help people to identify their legal problems and facilitate the resolution of those problems in a timely manner before they escalate</p>	<p>5. Legal assistance services help empower people to understand and assert their legal rights and responsibilities and to address, or prevent, legal problems</p>		
STRATEGIC ENABLERS	<p>A clear and agreed strategic vision for the legal assistance sector encompassing priority outcomes and highlighting areas for sector development</p> <p>Effective platforms for planning and coordinating services and facilitating purposeful collaboration at national, jurisdiction and regional levels</p>	<p>Stable funding in real terms committed over the duration of the agreement, supporting long-view service planning</p> <p>Efficient and equitable distribution of available funding to those services best able to reach and provide appropriate services to priority clients</p>	<p>Effective platforms for capturing, disseminating and translating evidence into practice to drive continuous incremental gains in sector effectiveness and efficiency</p> <p>Consistent and comparable data to support analyses of demand and sector performance in support of planning and sector development</p>		
POTENTIAL MECHANISMS WITHIN THE NPA	Strategic and policy leadership	Provision and allocation of funding	Sector planning and development	Performance monitoring and evaluation	Research, innovation and evidence building
	<p>Alignment of the purpose of the NPA with implementation of the National Strategic Framework for Legal Assistance</p> <p>Establishment of defined priority cohorts under the NPA to guide service targeting to those most in need</p> <p>Establishment of national guidance on the principles, intent and expected outcomes of collaborative services planning</p>	<p>Application of a funding allocation model for the equitable distribution of NPA funding between jurisdictions</p> <p>Efficient allocation by jurisdictions of available funding to those services able to reach and service priority clients</p> <p>Flexibility to incorporate additional funding streams through the architecture of the NPA</p>	<p>Commitment by governments to a national LAS forum every two years to showcase demonstration projects, publicise key resources and research, and present analysis on the state of the sector</p> <p>Commitment by governments to annual service and sector development planning that engages governments and LAS sector peaks</p> <p>Continue and strengthen purposeful, data-informed collaborative service planning at a jurisdictional level and where relevant regional levels</p> <p>Support the continued development of sector capability in the collection of consistent and comparable data</p> <p>Encourage the commissioning of legal assistance impact statements to capture the projected impact of policy-driven LAS demand as an input to collaborative service planning</p>	<p>Maintenance of low-burden administrative reporting requirements</p> <p>Commitment by governments to the development of indicators for key outcomes in the National Strategic Framework, coupled with guidance on evaluation of legal assistance services</p> <p>Commitment by governments to periodical review of funded services within jurisdictions</p> <p>Commitment by governments to timely review of the National Strategic Framework for Legal Assistance, and the NPA</p>	<p>Development of a research and evaluation agenda aligned to the National Strategic Framework</p> <p>Development of a platform to support innovation in the delivery of legal assistance through the NPA</p> <p>Establish a clearinghouse for innovation projects, workforce training and key resources</p>

5.4 STRATEGIC AND POLICY LEADERSHIP

The review found that the aspirations and objectives of the NPA are broadly supported, and remain appropriate to guide the ongoing development of the legal assistance sector. Critiques of the NPA offered by stakeholders focused more on aspects of implementation than direction, and in this context, it is considered that clarifying and strengthening the range of mechanisms activated by the NPA to be an appropriate evolution of the agreement.

As noted in the preceding section, five areas of work by government within a model NPA have been identified, all contributing to the overarching objectives. These areas incorporate – and in some cases extend – the scope of activity represented within the present NPA, but remain consistent with the objectives of the agreement. They include:

- **Strategic and policy leadership:** this includes the ongoing implementation of the National Strategic Framework for Legal Assistance. It also encompasses policy setting, guidance on key issues such as priority cohorts, funding and service delivery parameters, and collaborative service planning efforts.
- **Provision and allocation of funding:** this includes determining the total amount of Australian Government funding and its distribution across jurisdictions. This area of work also addresses allocation within jurisdictions to specific services, programs or projects, and the administration of funding arrangements.
- **Sector planning and development:** this includes a focus on how the sector is efficiently organised in response to legal need, including through collaborative service planning. The development aspect includes developing sector capability and supporting continuous improvement in the effectiveness of legal assistance services.
- **Performance monitoring and evaluation:** this area of work relates to the assessment of sector performance, periodical evaluation of impact (at project, service and sector levels), and the development and improvement of consistent and comparable data to support strategy, policy and planning.
- **Research, innovation and evidence building:** these activities focus on the development of evidence for 'what works' in legal assistance, trialing and evaluating innovation, and supporting the transfer of research and evaluation evidence into practice.

In the context of a partnership agreement between governments, the specific roles and responsibilities of the Australian Government and state and territory governments should also be clearly defined within each domain.

Recommendation 1

To support the attainment of NPA objectives and outcomes (which are sound and widely supported), the next agreement should incorporate a wider range of mechanisms to strengthen implementation of initiatives addressing NPA goals grouped under:

- strategic and policy leadership
- provision and allocation of funding
- sector planning and development
- performance monitoring and evaluation
- research, innovation and evidence building.

Recommendation 2

To ensure the responsibilities of governments under the NPA are well defined and complementary, the NPA should explicitly set out the roles of the Australian Government and state and territory governments for the key areas defined within recommendation 1. This would encompass areas of sole and joint responsibility.

5.5 PROVISION AND ALLOCATION OF FUNDING

5.5.1 Funding allocation models

The allocation of funding to states and territories is determined through the application of Funding Allocation Models (FAMs) which take into account a range of factors relating to both supply-side costs and the demand for legal assistance. There was feedback from a range of stakeholders about perceived anomalies in the distribution of funding (including the weighting used for regional and remote service delivery) and about the erosion of funding in real terms due to increasing service delivery costs. Stakeholder concerns were exacerbated by the lack of transparency in the detail of the models that are used to determine funding allocations. It needs to be noted that the current review did not include an assessment of the FAMs.

Recommendation 3

To support the rigour and improve the transparency of the funding formula to determine allocations to jurisdictions, the current FAMs should be reviewed (and if appropriate, updated) by an independent body to inform negotiations around Australian Government funding to states and territories under the NPA.

Recommendation 4

To ensure funding remains stable in real terms at state and territory level, the FAMs should incorporate provision for the indexation of supply-side costs and demand drivers as forecast at a jurisdictional level and applied over the duration of the agreement. This would include, for example, the use of labour cost indexation formulae that are specific to each state and territory, and updated socio-demographic forecasts drawing on the most current data available.

5.5.2 Integration of funding streams

A core function of the NPA is to operate as a mechanism for the distribution of Australian Government funding to the states and territories. Where there exist other avenues of federal funding to CLCs and to LACs that operate outside the NPA, the next agreement offers an opportunity to streamline these arrangements (provided doing so aligns with the purpose of the funding to be integrated and delivers efficiencies to funders and funded organisations).

In the case of CLCs operating nationally and which will continue to receive Australian Government funding, specific consideration could be given to notation of funding by the Australian Government within the NPA. The role and function of nationally operating CLCs could be explored as part of collaborative services planning at the national level (see 5.6.1 following).

The multi-lateral structure of the current NPA requires all governments to agree to any amendments. A multi-lateral head agreement supported by bi-lateral arrangements with each state and territory may provide greater flexibility for the Australian Government to direct new funding through the agreements should this become available during the life of the NPA.

Recommendation 5

To capitalise on opportunities to streamline Australian Government funding programs to the legal assistance sector (including those administered outside of the Attorney-General's Department), the Australian Government should consider their potential integration into the NPA on a case-by-case basis. This would include consideration of:

- the extent to which NPA integration would support or detract from the purpose of the funding
- the extent to which NPA integration would simplify funding administration and reporting for funders and funded organisations
- the appropriate positioning of allocative decision-making, being either at Australian Government or state and territory level – informed by collaborative service planning.

Where appropriate, this might include provision for Australian Government 'own purpose' funding to be noted within the agreement (i.e. funding that continues to be directly administered by the Australian Government).

Recommendation 6

To enable greater flexibility within future funding arrangements, and to facilitate integration of new funding streams, the multi-lateral NPA could be supported by bi-lateral agreements to which schedules can be affixed on a jurisdiction-by-jurisdiction basis.

5.5.3 Administration of NPA funding

One of the aims of the NPA, as understood by stakeholders consulted for this review, was to increase funding certainty for CLCs to address the significant inefficiencies repeated short term funding cycles create within these organisations. However, the reported experience of implementation has not delivered on this goal due to the persistence of short term funding arrangements in many circumstances, and the disruptive experience of the funding reductions anticipated (but not enacted) from 2017.

An approach to funding which combines longer term certainty of core funding with a pool of discretionary funding could be considered. It would provide stability for the CLCs with respect to the great majority of funding, whilst encouraging innovation (e.g. collaborative regional service delivery ventures by several CLCs) and rewarding high performing organisations. This might involve, for example, states and territories distributing 90-95 per cent of the available CLC funding pool as stable, 'base' funding over five-year terms, with the five to ten per cent balance distributed flexibly via annual or biannual grants processes.

Following the provision of fixed funding over the first two years of the agreement, most jurisdictions have continued to fund those CLCs that have historically received Australian Government funding. This leaves some CLCs 'locked out' of NPA funding. Within a new agreement, distributions by state and territory governments should be based on present need and service capability, bringing CLCs not currently funded by the NPA into consideration. This would be consistent with a continuing focus on ensuring administration of funding continues to deliver value for money.

Recommendation 7

To provide certainty of base funding and to reduce inefficiencies associated with short-term funding cycles for CLCs, the NPA should encourage states and territories to administer longer term core funding cycles for CLCs of at least three and up to five years.

Recommendation 8

To enable states and territories flexibility to prioritise funding to respond to emerging trends or demand fluctuations, capitalise on innovation opportunities, and provide pathways for high-performing CLCs to access additional funding, a proportion of NPA funding should be able to be allocated on a flexible basis, in addition to base funding.

Recommendation 9

To ensure that distribution decisions are based on present legal needs and service capability, states and territories should give consideration to allocating NPA funding to CLCs that are currently not receiving funding under the agreement, but which are well placed to deliver the required services.

5.6 SECTOR PLANNING AND DEVELOPMENT

5.6.1 Collaborative service planning

Collaborative service planning under the current NPA operates at jurisdictional level, with a minimum requirement of two meetings annually. In several jurisdictions, these state-wide forums have been supported by regional and local approaches, which have generally adopted a service-delivery focus (e.g. piloting local initiatives). The absence of a collaborative planning via a national forum was observed by some stakeholders to be a shortcoming of the present NPA.

Collaborative service planning practices between legal assistance providers and stakeholders vary widely and are at different stages of maturity across jurisdictions. The effective engagement of CLCs, ATSILSs and FVPLS has been constrained by the direct costs of participation, limiting their inclusion in whole of legal sector collaborative service planning.

Although the potential to engage with a broader set of stakeholders to tackle socio-legal issues is recognised within the NPA, this has not generally occurred. The value of including other relevant stakeholders such as family and community services, the courts and corrections should be acknowledged and encouraged as appropriate.

Collaborative service planning is still developing and evolving. Early reporting has focused on implementation in relation to actions taken, which is appropriate as processes and practices are established. Over time, reporting and information sharing around CSP will deliver greater value with a shift in focus from activities to impacts and outcomes.

Recommendation 10

To strengthen the consistency and effectiveness of collaborative service planning, governments should:

- apply the principles of CSP across national, state and regional/local levels (the latter more applicable in larger jurisdictions)
- establish (or continue) periodical forums for government and legal assistance sector actors at each geographic 'tier' to consider the available evidence and data on legal need, develop strategies to address identified gaps or priorities, and to guide priority projects requiring a collaborative response
- over time, engage a wider range of stakeholders in CSP beyond the justice portfolio, in particular those whose services and clients bring them into regular contact with legal assistance services
- incorporate impact and outcomes reporting on CSP to encourage more structured and purposeful activities.

Recommendation 11

To provide greater clarity of the intent of collaborative service planning, the Australian Government should develop further, more specific, guidance on the underlying principles and expected outcomes of CSP. While focusing on the intended result of CSP, this guidance should continue to allow for flexible and adaptive implementation models suited to each jurisdiction's context.

Recommendation 12

To support the regular and effective contributions of LACs, CLCs, ATSILSs and FVPLSs to collaborative service planning processes, governments should ensure their participation is adequately resourced. This includes considering whether representative organisations (e.g. state-based peaks) require specific-purpose funding in order to fully participate in, and meaningfully contribute to CSP.

5.6.2 Sector development

While the NPA and the National Strategic Framework for Legal Assistance establish the aspirations and expected outcomes for the sector, this review has identified opportunities to strengthen ways to feed back NPA and related data to the sector and share learnings from emerging evidence and practices. A biennial forum structured around the NPA goals would provide a platform for these sector development activities to take place.

Underpinning sector planning and development is the consistent collection of data – through the effective implementation of the DSM. While LACs have largely transitioned to new data collection arrangements, some three years post implementation, CLCs continue to report inconsistent approaches to the manual's application. In this context, further guidance and targeted training for the CLC sector is warranted as a short-term priority.

Recommendation 13

To support ongoing sector development and efficiency, the Australian Government should convene a legal assistance sector forum every two years. The forum would showcase demonstration projects and their outcomes in line with NPA goals; provide a platform for sharing resources, good practices and emerging learnings; and include key presentations on the "state of the sector" focussing on national trends and issues.

Recommendation 14

To improve the consistency of implementation of data standards, and to support the longer-term development of more robust, consistent and comparable data, the Australian Government should prioritise and fund delivery of further guidance and targeted training for the CLC sector, coordinated at the national level.

5.6.3 Legal assistance impact statements

Collaborative service planning practices are appropriately intended to be informed by evidence of legal need and demand for legal assistance services, which at present is largely (although not entirely) based on socio-demographic proxies. A gap in current legal needs analysis and forecasting arises in the context of change in demand that results from government policy. In line with recommendations made by prior reviews, addressing this information gap will enable collaborative service planning to adopt a more proactive approach in anticipation of policy-driven changes in demand.

Recommendation 15

To better enable a planned and more efficient response to policy-driven demand for legal assistance services, the Australian Government and state and territory governments should consider the use of legal assistance impact statements when introducing new policies, regulation or legislation. This information will support more effective and proactive collaborative service planning.

Legal assistance impact statements should also be encouraged beyond justice portfolios (encompassing the courts, police, and corrective services, and criminal, family and many civil law matters). They should also be applied in other portfolios including child protection, immigration, homelessness and housing. The practice of assessing expected impacts on demand for legal assistance might also extend to major government inquiries resulting in reforms that have the potential to create significant additional (if sometimes temporary) demands on legal assistance services.

5.7 PERFORMANCE MONITORING AND EVALUATION

The present NPA reporting requirements are broadly accepted to be relatively low burden by the sector, but the review has identified opportunities to strengthen the value that reporting processes deliver. In the longer term, this can be facilitated through development of indicators associated with each of the key outcomes identified within the National Strategic Framework for Legal Assistance. Recognising that measurement of outcomes can be complex, this approach should include practical, cost-effective *lead indicators* as well as more aspirational indicators, measures for which may develop over time.

In the shorter term, there are opportunities to increase the value returned to data collectors and reporters through the structured provision of insightful feedback on reported data.

Recommendation 16

To enable the development of a longer term 'performance story' for the legal assistance sector, the National Strategic Framework for Legal Assistance should be updated to incorporate key indicators attached to each of its outcomes, and provide guidance on purposeful, cost-effective monitoring and reporting activity at the service and sector level.

Recommendation 17

To ensure reporting burden imposed by the NPA remains proportionate, future arrangements should retain emphasis on cost-effective reporting that balances collection burden with the value created for government and the sector. This should include increasing focus on feeding back insights emerging from reported data to those collecting and reporting the information.

5.8 RESEARCH, INNOVATION AND EVIDENCE BUILDING

The NPA includes an appropriate focus on the use of data and evidence to drive decisions around the organisation of legal assistance services. Jurisdictions draw on a wide range of sources of evidence, with analysis of legal need and service distribution key inputs to collaborative service planning. In addition, there are many examples of pilot programs and innovations (not all driven by the NPA) which, where evaluated, can contribute to the evidence-base for what works in legal assistance.

A research and evaluation agenda established under the auspices of the NPA (and aligned to the National Strategic Framework for Legal Assistance) would encourage, guide and influence evidence building activity that captures insights into what policies, programs, partnerships and practices deliver best value for money. This might, for example, signal priorities in relation to remote service delivery, or health justice partnerships.

NPA-funded services operate within a complex environment in which existing service models are challenged by rising and evolving demand for legal assistance, compounded by operational challenges (e.g. remote service delivery) and other factors (e.g. competition for workforce/legal resources within the legal assistance sector and the private market). Innovation in legal assistance service delivery provides a part of the response to this complexity. The flexibility afforded under the NPA in this respect should be maintained and strengthened. Provision of funding for purposeful innovation, aligned to NPA objectives and which is evaluated contributes to the growth of the evidence base – particularly where local innovations have potential to be scalable.

The timely dissemination of emerging evidence to the sector through a national clearinghouse would also support the transfer of evidence into practice, and reduce the potential for duplicated effort where learnings are shared. In addition to holding evaluation and research reports, a clearing house could provide a searchable platform for other evidence-based resources (e.g. workforce training resources, CLE materials) to support efficient sector and service improvement at the local, regional and state-wide levels. It might also include a register of innovation projects allowing services addressing similar problems to search for and learn from planned, current or past initiatives.

Recommendation 18

To support more robust analyses of value for money and to inform future policy development in the sector, governments should establish a national legal assistance sector research and evaluation agenda. This could guide the development of a stronger evidence base in relation to the quality and appropriateness, efficiency, effectiveness and socio-economic return delivered by the legal assistance sector, and would complement existing analyses of legal need being undertaken in support of collaborative service planning.

Recommendation 19

To facilitate ongoing improvement to the reach, quality and efficiency of legal assistance services, the NPA should strengthen its support for innovation. It is recommended that the NPA should:

- maintain flexibility in how its funding is expended to encourage and enable service level innovation
- provide specific funding for innovative pilot initiatives designed to support NPA objectives
- support learnings capture across jurisdictions, including a stronger focus on evaluation and scalability-testing for successful innovations
- support collaborative problem-solving and sector/service innovation through collaborative service planning.

Recommendation 20

To strengthen information and evidence sharing within the sector and contribute to reduced duplication of research and development effort, **the Australian Government should establish a national clearing house for innovative and/or effective service models in line with NPA goals; training and workforce development initiatives; evaluation and research reports; and CLE and other resources.**

5.9 SUPPLEMENTARY RECOMMENDATION

The review heard consistent feedback from the CLC sector that the NPA provision on lobbying and public campaigning (cl B7) effectively impedes contributions to law reform and advocacy work. The Australian Government's advice to the review on this matter is that the CLC sector's interpretation of this clause is overly narrow and that the intention of the clause is not to constrain all law reform and advocacy activity. In this context, provision by the Australian Government of a more precise definition of what falls within the scope of the clause is warranted.

Recommendation 21

To address consistent perceptions in the CLC sector that the lobbying clause precludes or constrains law reform and advocacy work, the NPA should incorporate a clearer definition of lobbying and the specific activities towards which NPA funding cannot be applied.

DISCLAIMER

This report is dated 19 December 2018 and incorporates information and events up to that date only and excludes any information arising, or event occurring, after that date which may affect the validity of Urbis' opinion in this report. Urbis prepared this report on the instructions, and for the benefit only, of the Steering Committee for the Review of the National Partnership Agreement on Legal Assistance Services (Instructing Party) for the purpose of the Review of the National Partnership Agreement 2015-2020 (Purpose) and not for any other purpose or use. To the extent permitted by applicable law, Urbis expressly disclaims all liability, whether direct or indirect, to the Instructing Party which relies or purports to rely on this report for any purpose other than the Purpose, and to any other person which relies or purports to rely on this report for any purpose whatsoever (including the Purpose).

In preparing this report, Urbis was required to make judgements which may be affected by unforeseen future events, the likelihood and effects of which are not capable of precise assessment.

All recommendations contained in or associated with this report are made in good faith and on the basis of information supplied to Urbis at the date of this report, and upon which Urbis relied. Whilst Urbis has made all reasonable inquiries it believes necessary in preparing this report, it is not responsible for determining the completeness or accuracy of information provided to it. Urbis (including its officers and personnel) is not liable for any errors or omissions, including in information provided by the Instructing Party or another person or upon which Urbis relies, provided that such errors or omissions are not made by Urbis recklessly or in bad faith.

This report has been prepared with due care and diligence by Urbis and the statements and opinions given by Urbis in this report are given in good faith and in the reasonable belief that they are correct and not misleading, subject to the limitations above.

APPENDIX A: GLOSSARY

The glossary provides definitions for key terms used within the NPA Review.

DEFINITIONS OF KEY TERMS

Working definitions of key terms used in the NPA Review Terms of Reference and within this document are provided to assist stakeholders in the NPA Review.

The definitions for effectiveness, economy, efficiency and ethics are based on those defined under the framework of the Australian Government *Public Governance, Performance and Accountability Act 2013*. The definition for appropriateness is based on the Report on Government Services (Productivity Commission, 2017), while definitions for value for money, and legal need have been developed by Urbis with input from Steering Committee and Advisory Group members.

We note that these definitions are general in nature, and their application to different contexts produce different emphasis. To assist how each term is being used within this review, we have provided an example of how each definition (with the exception of legal need) might be framed for:

- the NPA as a coordination and funding mechanism (strategy level)
- the delivery of services funded by the NPA (service delivery level).

DEFINITIONS

Effectiveness

The extent to which a service or activity has attained its major relevant objectives. Effectiveness considerations must be balanced with whether the activity or service will also be efficient, economical and ethical.

- **Applied to the NPA:** the extent to which the NPA has attained its objective and specific outcomes.
- **Applied to the sector:** the extent to which the NPA funded legal assistance sector is contributing to the objective and outcomes of the NPA.

Efficiency

The extent to which a service's or activity's inputs are minimised for a given level of activity outputs, or the extent to which outputs are maximised for a given level of inputs. Efficiency considerations must be balanced with whether the activity or service will also be effective, economical and ethical.

- **Applied to the NPA:** the extent to which the NPA maximises progress toward its stated objective and outcomes in the context of the resources available.
- **Applied to the sector:** The extent to which the NPA funded legal assistance sector maximises its contribution toward the objective and outcomes of the NPA in the context of the resources provided.

Appropriateness

The extent to which a service or activity meets client needs, and minimises any under-servicing or over-servicing.

- **Applied to the NPA:** the extent to which the NPA is the most appropriate mechanism for advancing the objective and outcomes it contains.
- **Applied to the sector:** the extent to which the NPA funded legal assistance sector is delivering services that meet the holistic and diverse needs of clients.

Economy

The extent to which the service or activity avoids waste and sharpens the focus on the level of resources that government applies to deliver results. This generally relates to applying the best cost option to deliver the expected results. Economical considerations must be balanced with whether the activity or service will also be efficient, effective and ethical.

- **Applied to the NPA:** the extent to which funding delivered through the NPA is proportionate to the outcomes it aspires to achieve.
- **Applied to the sector:** the extent to which the NPA funded legal assistance sector's use of funding is proportionate to the outcomes associated with the funding.

Ethical

The extent to which the proposed use is consistent with the core beliefs and values of society. For the approval of proposed commitments of relevant money, an ethical use of resources involves managing conflicts of interests, and takes into account individual need and community values. Ethical considerations must be balanced with whether the use will also be efficient, effective and economical.

- **Applied to the NPA:** the extent to which the NPA has distributed funding on a justifiable basis, and the extent to which conflicts of interest have been effectively managed.
- **Applied to the sector:** the extent to which the NPA funded legal assistance sector's use of funding has been justifiable and the extent to which conflicts of interest have been effectively managed.

Value for money

The extent to which the use of funds is efficient in delivering outputs and outcomes which are aligned to the intended purpose of the funding, with consideration of the cost of service delivery as well as non-cost factors of sustainability, quality and appropriateness of service.

- **Applied to the NPA:** the extent to which the NPA has been efficient in enabling outputs and outcomes aligned to the objective of the NPA, with consideration of both cost and non-cost factors of sustainability, quality and appropriateness of service.
- **Applied to the sector:** the extent to which the NPA funded legal assistance sector has been efficient in delivering outputs and outcomes aligned to the objective of the NPA, with consideration of the cost of service delivery as well as non-cost factors of sustainability, quality and appropriateness of service.

Legal need

Legal need in the context of the NPA Review refers to a person experiencing a legal problem that requires legal assistance to resolve. Legal need can refer to both met and unmet legal need. In some contexts, legal problems can be assisted by complementary services (e.g. financial counselling). Legal need may not have been expressed by or acknowledged by the client.

APPENDIX B: SUBMISSIONS RECEIVED

This appendix sets out the submissions received where consent to be identified in the report has been provided.

Table 7 – Submissions received

	Organisation
1	Aboriginal and Torres Strait Islander Women's Legal Services NQ
2	Australian Legal Assistance Forum
3	Australian National University
4	Australian Pro Bono Centre
5	Collaborative Services Planning Group WA
6	Australian Government Attorney-General's Department
7	Community and Public Sector Union (State Public Services Federation)
8	Community Legal Centres Association of WA Inc.
9	Community Legal Centres Queensland
10	Consumer Action Law Centre
11	Consumer Credit Legal Service (WA) Inc
12	Department of Justice Tasmania
13	Federation of Community Legal Centres (Victoria) Inc
14	Health Justice Australia
15	Hume Riverina Community Legal Service
16	Immigration Advice and Rights Centre
17	Katherine Women's Information and Legal Service
18	Kingsford Legal Centre
19	Law Access Limited
20	Law and Justice Foundation of NSW
21	Law Council of Australia
22	LawRight
23	Legal Aid NSW
24	Legal Aid Queensland
25	Legal Assistance Strategy and Funding, Queensland Department of Justice and Attorney-General
26	Legal Services Commission of South Australia
27	LGBTI Legal Service
28	Liberty Victoria

	Organisation
29	National Aboriginal and Torres Strait Islander Legal Services
30	National Association of Community Legal Centres (NACLC)
31	National Legal Aid
32	National Social Security Rights Network
33	NT Legal Aid Commission
34	Public Interest Advocacy Centre
35	Shoalcoast Community Legal Centre
36	South Australian Council of Community Legal Services
37	Tasmanian Community Legal Centres
38	National Family Violence Prevention Legal Services Forum (National FVPLS Forum)
39	Victoria Legal Aid
40	Victorian Council of Social Service (VCOSS)
41	Victorian Department of Justice and Community Safety
42	Women's Legal Service NSW
43	Women's Legal Services Australia
44	Women's Law Centre of WA
45	Youth Law Australia

APPENDIX C: REFERENCES CITED

This appendix includes references cited within the report.

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APPENDIX D: STAKEHOLDERS CONSULTED

This appendix provides a list of all stakeholder organisations directly consulted as part of the NPA Review.

The following is a complete list of organisations consulted during fieldwork for the review of the *National Partnership Agreement on Legal Assistance Services 2015-2020*.

Table 8 – Organisations consulted

	State	Organisation
1	Australian Capital Territory	ACT Justice Department
2	Australian Capital Territory	Canberra CLC
3	Australian Capital Territory	Legal Aid ACT
4	Australian Capital Territory	Commonwealth Attorney-General's Department
5	Australian Capital Territory	Women's Legal Service Canberra
6	Northern Territory	Central Australian Womens Legal Service
7	Northern Territory	Darwin Community Legal Service
8	Northern Territory	Katherine Women's Information and Legal Service
9	Northern Territory	Law Society Northern Territory
10	Northern Territory	North Australian Aboriginal Justice Agency
11	Northern Territory	Department of the Attorney-General and Justice - Northern Territory
12	Northern Territory	Northern Territory Council of Social Service
13	Northern Territory	Northern Territory LAC
14	Northern Territory	Top End Women's Legal Service
15	New South Wales	Central Coast CLC
16	New South Wales	Cooperative Legal Service Delivery Program - Legal Aid NSW
17	New South Wales	Community Legal Centres NSW
18	New South Wales	Department of Premier and Cabinet, Social Policy Group
19	New South Wales	Financial Rights Legal Centre
20	New South Wales	HIV/AIDS Legal Centre
21	New South Wales	Hunter CLC
22	New South Wales	Justice Connect
23	New South Wales	Kingsford Legal Centre

	State	Organisation
24	New South Wales	Law Access NSW
25	New South Wales	Macarthur CLC
26	New South Wales	Northern Rivers CLC
27	New South Wales	Northern Rivers LAC
28	New South Wales	NSW Department of Education, Aboriginal Affairs Policy
29	New South Wales	NSW Department of Justice, Strategy and Policy Division
30	New South Wales	NSW Legal Aid
31	New South Wales	Office of the Legal Services Commissioner
32	New South Wales	Public Defenders Office
33	New South Wales	Public Interest Advocacy Centre
34	New South Wales	Tenants' Union
35	New South Wales	Welfare Rights Centre
36	New South Wales	Western NSW CLC
37	New South Wales	Western NSW LAC
38	New South Wales	Western Sydney CLC
39	New South Wales	Wirringa Baiya Aboriginal Women's Legal Centre
40	New South Wales	Women's Legal Service NSW
41	Queensland	NATSILS
42	Queensland	Aboriginal and Torres Strait Islander Women's Legal Service North Queensland
43	Queensland	Cairns CLC
44	Queensland	Community Legal Centres Queensland
45	Queensland	Queensland Department of Justice and Attorney-General
46	Queensland	Law Society Queensland
47	Queensland	LawRight
48	Queensland	LawRight Queensland
49	Queensland	Legal Aid Queensland
50	Queensland	National Association of CLCs
51	Queensland	North Queensland Women's Legal Service

	State	Organisation
52	Queensland	Nundah/Brisbane North CLS
53	Queensland	Pine Rivers CLS
54	Queensland	Queensland Council of Social Service
55	Queensland	Queensland Indigenous Family Violence Service
56	Queensland	Queensland Advocacy Inc
57	Queensland	Queensland Bar Association
58	Queensland	Robina CLS
59	Queensland	Townsville CLS
60	Queensland	YFS Legal
61	Queensland	Youth Advocacy Centre
62	South Australia	Family Violence Legal Service (Aboriginal Corporation)
63	South Australia	Legal Services Commission
64	South Australia	Northern Community Legal Service
65	South Australia	Attorney-General's Department, South Australia
66	South Australia	Department of Treasury and Finance, South Australia
67	South Australia	Southern Community Justice Centre
68	South Australia	Central CLC
69	South Australia	Westside
70	South Australia	Women's Legal Service South Australia
71	Tasmania	CLCTas / Tenants Union Tasmania
72	Tasmania	Environmental Defenders Office
73	Tasmania	Hobart CLC and Chair of CLCTas
74	Tasmania	Hobart Community Legal Service
75	Tasmania	Launceston CLC
76	Tasmania	Legal Aid Commission of Tasmania
77	Tasmania	North West CLC
78	Tasmania	Tasmanian Department of Justice
79	Tasmania	Women's Legal Service Tasmania

	State	Organisation
80	Victoria	ARC Justice
81	Victoria	Barwon CLC
82	Victoria	Victoria Legal Aid (Dandenong Office)
83	Victoria	Eastern CLC
84	Victoria	Federation of CLCs
85	Victoria	Fitzroy CLC
86	Victoria	Gippsland CLC
87	Victoria	GIRRA
88	Victoria	Goulburn Valley Legal Service (ARC Justice)
89	Victoria	Inner Melbourne CLC
90	Victoria	Moonee Valley Legal Service
91	Victoria	Murray Malley CLC
92	Victoria	Northern CLC
93	Victoria	Peninsular CLC
94	Victoria	Social Security Rights Victoria
95	Victoria	Springvale Monash Legal Service
96	Victoria	Victorian Department of Justice and Community Safety
97	Victoria	Victorian Legal Aid
98	Victoria	Women's Legal Service
99	Victoria	YouthLaw
100	Western Australia	Albany ALS
101	Western Australia	Albany CLC
102	Western Australia	Albany Legal Aid
103	Western Australia	CLC Association (WA) Women's Law Centre of WA
104	Western Australia	Consumer Credit Legal Service
105	Western Australia	Department of Justice, Office of the Director General
106	Western Australia	Gosnells CLC
107	Western Australia	Law Access Ltd

	State	Organisation
108	Western Australia	Legal Aid WA
109	Western Australia	Midland Information Debt & Legal Advocacy Service
110	Western Australia	Norther Suburbs CLC
111	Western Australia	Pilbara CLC
112	Western Australia	Pilbara Legal Aid
113	Western Australia	Regional Alliance West (Geraldton)
114	Western Australia	South Hedland ALS
115	Western Australia	South Hedland Courthouse
116	Western Australia	Sussex Street Community Legal Service
117	Western Australia	The Humanitarian Group
118	Western Australia	Aboriginal Legal Service Western Australia
119	Western Australia	WA CLC Association
120	Western Australia	Welfare Rights & Advocacy Service

APPENDIX E: NPA REVIEW COMMITTEE MEMBERSHIP

This appendix sets out the membership of each of the NPA Review Steering Committee and the NPA Review Advisory Group

Table 9 – NPA review committee membership

Steering Committee Members	Advisory Group Members
<ul style="list-style-type: none"> • Australian Government Attorney-General's Department • Department of Justice, New South Wales • Department of Justice and Regulation, Victoria • Department of Justice and Attorney-General, Queensland • Department of the Attorney-General, Western Australia • Attorney-General's Department, South Australia • Department of Justice, Tasmania • Justice and Community Safety Directorate, Australian Capital Territory • Department of the Attorney-General and Justice, Northern Territory 	<ul style="list-style-type: none"> • Australian Government Attorney-General's Department • Department of the Prime Minister and Cabinet • National Legal Aid • National Aboriginal and Torres Strait Islander Legal Services (NATSILS) • National Association of Community Legal Centres (NACLC) • National Family Violence Prevention Legal Service Forum (NFVPLSF) • Community Legal Centres NSW • Legal Aid NSW • Federation of Community Legal Centres (Victoria) Inc. • Victoria Legal Aid • Community Legal Centres Queensland • Legal Aid QLD • Community Legal Centres Association WA • Legal Aid WA • Southern and Limestone Coast Community Justice Centres (South Australia) • Legal Services Commission of SA • North West Community Legal Centre (Tasmania) • Legal Aid Commission of Tasmania • Canberra Community Law • Legal Aid ACT • Darwin Community Legal Service • Northern Territory Legal Aid Commission • Law and Justice Foundation of NSW • Law Council of Australia

APPENDIX F: LEGAL ASSISTANCE SERVICE LOCATIONS

This appendix sets out the service locations for legal assistance services

Table 10 – Community Legal Centres funded under the NPA, as of financial year 2018

ACT	
Canberra Community Law	The Women's Legal Centre
NSW	
Administrative Efficiencies Project Allocation	Mid North Coast CLC
Australian Centre For Disability Law	North & North West CLS
Central Coast CLC	Northern Rivers CLC
Court Support Scheme	Public Interest Advocacy Centre
Domestic Violence Advocacy Service (operated by Women's Legal Services)	Redfern Legal Centre
Elizabeth Evatt CLC	Seniors Rights Service
Far West CLC	Shoalcoast CLC
Financial Rights Legal Centre	South West Sydney LC
HIV/AIDS LC	Tenants' Union of NSW
Hume Riverina CLS	Welfare Rights Centre
Hunter CLC	Western NSW CLC
Illawarra LC	Western Sydney CLC - Parramatta
Immigration Advice & Rights Centre	Western Sydney CLC - Rooty Hill
Inner City LC	Western Sydney CLC - Windsor
Kingsford LC	Wirringa Baiya AWLC
Macarthur LC	Women's Legal Services
Marrickville LC	
NT	
Central Australian Women's Legal Service	Katherine Women's Information and Legal Service
Darwin Community Legal Centre	Top End Women's Legal Service
QLD	
Aboriginal and Torres Strait Islander Women's Legal Services NQ Inc	Moreton Bay Regional Community Legal Service Inc
Basic Rights Queensland Inc (formerly Welfare Rights Centre Inc)	North Queensland Women's Legal Service Inc
Bayside Community Legal Service Inc	Nundah Community Legal Service

Cairns Community Legal Centre Inc	Prisoners' Legal Service Inc
Care Goondiwindi Association Inc	Queensland Advocacy Incorporated
Carers Queensland Inc	Queensland Aged and Disability Advocacy In
Caxton Legal Centre Inc	Queensland Public Interest Law Clearing House Inc/LawRight
Centacare	Refugee and Immigration Legal Service Inc
Central Queensland Community Legal Centre Inc	South West Brisbane Community Legal Centre Inc
CLASS Maintenance	State Program Manager (Legal Aid Queensland)
Community legal education collaboration fund	Suncoast Community Legal Service Inc
Court Network Incorporated	Tenants' Queensland Inc
DVConnect Ltd	The Advocacy and Support Centre Inc/TASC National Ltd
Encircle Ltd	Townsville Community Legal Service In
Gladstone Community Legal Advice Program	Translating and Interpreting Service
Gold Coast Community Legal Centre and Advice Bureau Inc	Women's Legal Service Inc
Hervey Bay neighbourhood Centre Inc	YFS Legal
Legal Aid Queensland (Western Queensland Justice Network)	Youth Advocacy Centre Inc
Mackay Regional Community Legal Centre Inc	
SA	
Central Community Legal Service	Westside Community Lawyers
Northern Community Legal Service Inc	Women's Legal Service (SA) Inc
Southern Community Justice Centre	
TAS	
Hobart Community Legal Service Inc.	Tenants Union of Tasmania Inc.
Launceston Community Legal Service Inc.	Women's Legal Service Tasmania
North West Community Legal Centre	
VIC	
Barwon Community Legal Service	Moonee Valley Legal Service

Brimbank Melton Community Legal Centre	Murray Mallee Community Legal Service
Casey Cardinia Legal Service	Norther Community Legal Centre (Merger of Broadmeadows and Moreland CLC)
Central Highlands Community Legal Centre	Peninsula Community Legal Centre
Consumer Action Law Centre	Senior Rights Victoria, Council on the Ageing
Darebin Community Legal Centre	Social Security Rights Victoria
Disability Discrimination Legal Service	Springvale Community Aid and Advice Bureau
Eastern Community Legal Centre	Springvale Monash Legal Service
Fitzroy Legal Service	St Kilda Legal Service
Flemington and Kensington Community Legal Centre	Tenants Union of Victoria
Gippsland Community Legal Service, Anglicare Victoria	West Heidelberg Community Legal Service
Hume Riverina Community Legal Service, Upper Murray Family Care	Western Community Legal Centre [^]
Inner Melbourne Community Legal	Whittlesea Community Legal Service
Justice Connect, Homeless Law	Women's Legal Service Victoria
Loddon Campaspe Community Legal Centre (incl.Goulburn Valley CLC)	Youthlaw, Young People's Legal Rights Centre
Monash Oakleigh Legal Service	
WA	
Women's Legal Service (Tasmania) Inc.	Peel CLC
Albany CLS	Pilbara LS
Bunbury CLC	Provision for CLASS/TIS
CASE for Refugees	SCALES
Consumer Credit Legal Service	Street Law Centre WA Inc
Fremantle CLC	Sussex Street CLS
Geraldton RC	Tenancy WA Incorporated
Goldfields CLC	Wheatbelt CLC
Gosnells CLC	Women's Law Centre
Kimberley CLS	WRAS
Northern Suburbs CLC	Youth Legal Service WA

Table 11 – Aboriginal and Torres Strait Islander Legal Services

Organisation	State	Locations
Aboriginal and Torres Strait Islander Legal Services Qld Limited	Queensland, including Torres Strait	26 locations – Brisbane, Strathpine, Cleveland, Ipswich, Beenleigh, Southport, Maroochydore, Toowoomba, Murgon, Hervey Bay, Goondiwindi, Bundaberg, Roma, Gladstone, St George, Rockhampton, Charleville, Cunnamulla, Mackay, Townsville, Palm Island, Cairns, Mount Isa, Normanton, Bamaga, Thursday Island
Aboriginal Legal Rights Movement Incorporated	South Australia	3 locations – Adelaide, Port Augusta, Ceduna
Aboriginal Legal Service of Western Australia Incorporated	Western Australia	12 locations – Albany, Broome, Bunbury, Carnarvon, Derby, Geraldton, Halls Creek, Kalgoorlie, Kununurra, Northam, Perth, South Hedland
Aboriginal Legal Service (NSW/ACT) Limited	New South Wales and Australian Capital Territory	22 locations – Sydney, Canberra, Nowra, Parramatta, Redfern, Wollongong, Moruya, Armidale, Grafton, Kempsey, Lismore, Moree, Newcastle, Tamworth, Bathurst, Bourke, Broken Hill, Dubbo, Griffith, Wagga Wagga, Walgett, St Marys
North Australian Aboriginal Justice Agency Limited	Northern Territory north and south zone	5 locations – Darwin, Palmerston, Katherine, Alice Springs, Tennant Creek
Tasmanian Aboriginal Community Legal Service	Tasmania	2 locations – Launceston, Hobart
Victorian Aboriginal Legal Service Co-operative Limited	Victoria	9 locations – Geelong, Ballarat, Bairnsdale, Mildura, Heywood, Shepparton, Morwell, Swan Hill, Melbourne

Table 12 – Family Violence Prevention Legal Services

Organisation	State	Locations
Djirra	Victoria	Melbourne, Mildura, Gippsland, Barwon South West
Aboriginal Family Law Service Western Australia	Western Australia	Perth, Broome, Carnarvon, Kununnura, Geraldton, Kalgoorlie, Port Hedland
Aboriginal Family Legal Service Southern Queensland	Queensland	Roma
Binaal Billa Family Violence Prevention Legal Service	New South Wales	Forbes
Central Australian Aboriginal Family Legal Unit	Northern Territory	Alice Springs, Tennant Creek
Family Violence Legal Service Aboriginal Corporation	South Australia	Port Augusta, Ceduna, Pt Lincoln
Many Rivers Family Violence Prevention Legal Service	New South Wales	Kempsey
Marninwarnitkura Family Violence Prevention Unit WA	Western Australia	Fitzroy Crossing
North Australian Aboriginal Family Legal Service	Northern Territory	Darwin, Katherine, Top End
Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council Domestic and Family Violence Service	Northern Territory	Alice Springs, NPY Tri-state Region
Queensland Indigenous Family Violence Legal Service	Queensland	Cairns, Townsville, Rockhampton, Mount Isa, Brisbane
Southern Aboriginal Corporation Family Violence Prevention Legal Service	Western Australia	Albany
Thiyama-li Family Violence Service Inc. NSW	New South Wales	Moree , Bourke, Walgett
Warra-Warra Family Violence Prevention Legal Service	New South Wales	Broken Hill

APPENDIX G: TERMS OF REFERENCE

This appendix sets out the terms of reference for the NPA Review in full.

Review of the National Partnership Agreement on Legal Assistance Services

TERMS OF REFERENCE

The Parties to the *National Partnership Agreement on Legal Assistance Services 2015-20* (the NPA), being:

- the Commonwealth of Australia and
- the states and territories, consisting of:
 - New South Wales
 - Victoria
 - Queensland
 - Western Australia
 - South Australia
 - Tasmania
 - the Australian Capital Territory
 - the Northern Territory,

hereby agree to the terms of reference for the Review of the NPA, as set out below.

Background

As per Clause 2, in entering into the NPA, the Commonwealth and the states and territories:

- (a) recognise that they have a mutual interest in working together to improve access to justice and resolve legal problems for the most disadvantaged people in Australia and maximise service delivery through the effective and efficient use of available resources, and
- (b) are committed to progressing the issues that affect the legal assistance sector and support the principles of the *National Strategic Framework for Legal Assistance 2015-2020* (Strategic Framework).

Aligned with the Strategic Framework, the objective of the NPA (Clause 8) is:

'a national legal assistance sector that is integrated, efficient and effective, focused on improving access to justice for disadvantaged people and maximising service delivery within available resources'.

The NPA will facilitate the achievement of the following outcomes (Clause 9):

- a. legal assistance services are targeted to priority clients with the greatest legal need
- b. legal assistance service providers collaborate with each other, governments, the private legal profession and other services, to provide joined-up services to address people's legal and related problems
- c. legal assistance services are appropriate, proportionate and tailored to people's legal needs and levels of capability
- d. legal assistance services help people to identify their legal problems and facilitate the resolution of those problems in a timely manner before they escalate
- e. legal assistance services help empower people to understand and assert their legal rights and responsibilities and to address, or prevent, legal problems.

According to Clause 41 of the NPA, a review must be scheduled to be completed approximately 18 months prior to its expiry on 30 June 2020. This will provide an opportunity to measure the effectiveness of the NPA and identify opportunities to improve future arrangements.

In reviewing the NPA, Clause 42 requires the Parties to consider:

- (a) the States' progress towards achieving the objective, outcomes and outputs
- (b) whether legal assistance services are effective, efficient and appropriate, including whether the services represent value for money, which will be informed by the cost of service delivery, among other things
- (c) the appropriateness of the objective, outcomes, outputs, performance indicators, performance benchmarks, milestones and reporting arrangements, and
- (d) the outcomes of the Reform of the Federation White Paper.

On 1 April 2016, the Council of Australian Governments agreed that the Reform of the Federation will be progressed by the Council on Federal Financial Relations and Commonwealth and State and Territory Treasuries. As such, the Review of the NPA will not consider Clause 42(d).

The Review of the NPA will be an independent assessment conducted in parallel to a number of other reviews and evaluations being conducted by the Commonwealth between 2017 and 2019, including:

- the Review of the Indigenous Legal Assistance Program
- the Evaluation of the pilot program of specialist domestic violence units and health justice partnerships
- the Evaluation of the Family Advocacy and Support Services, and
- the Evaluation of the Family Violence Prevention Legal Services Programme.

The programs and policy initiatives which are the subjects of these reviews were developed to complement and support the aspirational principles of Strategic Framework. As far as possible, the Review of the NPA will align its consultation processes, data collection and analysis with these other reviews.

Collectively these reviews will inform advice to government on the future arrangements for legal assistance services from 1 July 2020.

Scope of the Review of the NPA

The purpose of the Review is to assess the effectiveness, efficiency and appropriateness of the NPA as a mechanism for achieving its objective and outcomes within available resources, and identify best practice and opportunities for improvement. The Review will focus on how the operation of the NPA has affected progress towards its objective and outcomes. The outcomes of the Review of the NPA will help inform future funding arrangements for legal assistance services from 1 July 2020.

The Review of the NPA will not conduct new research or in-depth analysis of the broader issues, including the level of legal need in Australia and/or whether existing funding is sufficient to meet that need.

To assess the effectiveness, efficiency and appropriateness of the NPA and its progress towards meeting its objective and outcomes, the Review of the NPA will have regard to:

1. the impact that the NPA has had on the delivery of efficient and effective legal assistance services, including consideration of:
 - a. the appropriateness and utility of the objective and outcomes in supporting the delivery of legal assistance services, including consideration of:
 - i. relevance to the current landscape of the legal assistance sector, and
 - ii. existing research about legal need and service delivery
 - b. whether the NPA promotes legal assistance services that are effective, efficient and appropriate and represent value for money, including consideration of:
 - i. integrated legal and non-legal services
 - ii. the broader role these services provide within communities
 - iii. the use of different modes of service delivery, and

- iv. value for money¹ as consisting of a range of factors, including cost of service delivery, and qualitative factors relating to services, service location, client complexity, among others.
 - c. whether the NPA has improved the targeting of legal assistance services to people facing disadvantage, including priority clients (Schedule B), thereby improving access to justice for those who have the greatest legal need².
2. the implementation of collaborative service planning by the Parties, and the extent to which it is contributing to the objective and outcomes of the NPA.
 3. the effectiveness, efficiency and appropriateness of current funding arrangements in meeting the objective and outcomes of the NPA, including consideration of:
 - a. the shared responsibility of the Parties in the operation of the NPA and the provision of legal assistance services
 - b. if and how Commonwealth Social and Community Services (SACS) supplementation was distributed
 - c. the drivers of demand for legal assistance services
 - d. how and whether funding under the NPA supports the progress towards achieving its objective and outcomes
 - e. the interaction between the NPA and other Commonwealth funding arrangements for legal assistance services
 4. the utility of the performance monitoring and reporting arrangements, including the collection of consistent and comparable service data in measuring the progress towards achieving the objective and outcomes of the NPA, including consideration of:
 - a. performance indicators (Clause 17)
 - b. performance benchmarks (Clause 18)
 - c. milestones (Clause 19)
 - d. reporting arrangements (Clause 20), and
 - e. support systems for data collection and reporting.
 5. the extent to which the Commonwealth and the states and territories have fulfilled their agreed roles and responsibilities and how the Parties to the NPA and the legal assistance sector have worked together to support a holistic approach to addressing legal need.
 6. identify areas for improvement and opportunities to enhance current and future arrangements.

Consultation

The Review of the NPA should consult with relevant stakeholders, including but not limited to: the Commonwealth; state and territory governments; legal assistance providers, including legal aid commissions, community legal centres, Aboriginal and Torres Strait Islander Legal Services, and other providers; peak legal assistance sector bodies; and relevant legal assistance research/industry bodies.

Other considerations

The Review of the NPA should consider existing research and analysis on legal assistance services, service delivery and legal need.

¹ value for money will not involve service delivery comparisons between legal assistance providers

² This assessment will use available analysis and bodies of research.

The Parties have confirmed their agreement to the terms of reference as follows:

**Signed for and on behalf of the Commonwealth
of Australia by**



The Honourable Christian Porter MP
Attorney-General for Australia

2 April 2018

**Signed for and on behalf of the
State of New South Wales by**

The Honourable Mark Speakman SC MP
Attorney General

[Day] [Month] [Year]

**Signed for and on behalf of the
State of Queensland by**

The Honourable Yvette D'Ath MP
Attorney-General and Minister for Justice

[Day] [Month] [Year]

**Signed for and on behalf of the
State of South Australia by**

The Honourable Vickie Chapman MP
Deputy Premier
Attorney-General

[Day] [Month] [Year]

**Signed for and on behalf of the Australian
Capital Territory by**

Mr Gordon Ramsay MLA
Attorney-General
[Day] [Month] [Year]

**Signed for and on behalf of the
State of Victoria by**

The Honourable Martin Pakula MP
Attorney-General

[Day] [Month] [Year]

**Signed for and on behalf of the
State of Western Australia by**

The Honourable John Quigley MLA
Attorney General

[Day] [Month] [Year]

**Signed for and on behalf of the
State of Tasmania by**

The Honourable Elise Archer MP
Attorney-General and Minister for Justice

[Day] [Month] [Year]

**Signed for and on behalf of the Northern
Territory by**

The Honourable Natasha Fyles MLA
Attorney General and Minister for Justice
[Day] [Month] [Year]

APPENDIX H: CAVEATS FOR LEGAL AID INFOGRAPHICS

This appendix sets out the caveats for the Legal Aid infographics, as advised to Urbis by LACs.

NOTES TO LAC DATA PROVIDED BY NATIONAL LEGAL AID 2016-18

Legal Representation Services

Number of Legal Representation services

- LANSW - provider type (inhouse/assigned) is derived from Last Approved Extension for each file granted. Each file is counted only once based on the year the application for aid was first granted.
- LAWA - will count transferred files only once (count of 1). While a second file is created, the first file is closed with a reason of transferred, and that file is not counted - but any expenditure on it is included in total cost of files.
- LAACT - if file has been moved from in-house to assigned or vice versa, the count is 1. The count is based on the date the report was run i.e. If in 2015-2016 file was allocated to in-house but in 2018-2019 the same file was transferred to assigned and the report was run in 2018-2019 the count for the same file would be 1 Assigned for 2015-2016.

Costs of Legal Representation Services

- Victoria Legal Aid - costs are those that have been certified and finalised in the given year. They may not relate to the representation services listed in the representation tables ie, tables 1-3. We have assigned the costs of child protection and family violence (managed in our Family division) to Civil.
- LANSW - costs (criminal and civil law) are those that have been certified during the year for finalised files. They may not relate to the representation services listed in the representation tables ie, tables 1-3. Costs (family law) are those that have been certified during the year for finalised files which meet the NPA definition of family law representation services. These files may not relate to the representation services listed in the representation tables ie, tables 1-3
- LAWA - total cost of finalised files in the given year (i.e. cost over the life of the file). Costs billed to the file i.e. doesn't include assessing cost or other admin overheads. Professional fees are primarily Solicitor fees. Barristers fees usually get entered in Disbursements. Disbursements include other non-legal professional fees e.g. psychologist fees
- LAACT - costs of assigned files finalised in financial years irrespective of what financial years the costs were incurred.

DUTY LAWYER SERVICES

Costs of Duty Lawyer Services

- Victoria Legal Aid is unable to split the duty lawyer service expenditure by law type for FY16 and FY17 therefore we can only provide the total spend for these two years. For FY2018, we have assigned the costs of child protection and family violence (managed in our Family division) to Civil. This data was not included in the analysis for consistency purposes.
- LANSW - all Commonwealth family law duty services were provided inhouse during this period. The minimal assigned cost of Commonwealth family law duty service was certified in 2015/16 but may relate to services provided in an earlier period.
- LAWA - the assigned duty lawyer service covers the cost of Duty Lawyer vouchers and relief duty lawyers. LAWA is unable to split the assigned duty lawyer service by law type. Therefore, we cannot remove the State Family component, which should be insignificant. To provide data to match the data requested, we have assigned the regional based cost to Criminal matter, and the Family Division costs to Civil (our Child Protection and Family Violence Restraining Orders are managed in our Family Division). Note these are approximations, and until recently we have not been recording the count of Assigned Duty Lawyer services consistently, so an average cost of service should not be derived from these figures. The cost of Assigned Duty Lawyer services is not material when compared to the total cost of delivering duty lawyer services.

FACILITATED RESOLUTION PROCESSES

Number of Facilitated Resolution processes

- LANSW - no data has been provided for FRPs for civil and criminal law. The logic for calculating FRPs from our systems means that it works for family law only and it is unknown what would be the equivalent in civil and criminal law. Current NPA method of calculating FRPs = count of conferences without a listing date + total number of conferences that have been held in family law + count of s60i(a) and (b) certificates in family law.

