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Mr Peter Hallahan
Committee Secretary
Senate Standing Committee on Legal and Constitutional Affairs
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

By email: legcon.sen@aph.gov.au and post

9 April 2009

Dear Sir

Submission to the Inquiry into Access to Justice

The National Association of Community Legal Centres (NACLC) thanks the Senate Standing Committee on Legal and Constitutional Affairs (the Committee) for the opportunity to make a submission to the 2009 Inquiry into Access to Justice (the 2009 Inquiry).

Some information on NACLC and community legal centres (CLCs) is included at annexure A to this letter.

Prefatory remarks

There have been a number of recent inquiries and reviews concerning access to justice and funding and the funding programs of legal aid, community legal centres and other community legal services providers; some with similar or overlapping terms of reference.

We refer in particular to the terms of reference and Report Recommendations of the Senate Legal and Constitutional Affairs Committee's *Inquiry into Access to Justice and Legal Aid* tabled on 8 June 2004; and the Joint Committee of Public Accounts and Audit's *Inquiry into Access of Indigenous Australians to Legal Services*, tabled in Parliament on 22 June 2005.

The former Inquiry considered, among other things, funding and other issues relating to legal aid, CLCs and Indigenous legal services. It produced a 278 page Final Report including 63 Recommendations: http://www.aph.gov.au/senate/Committee/legcon_ctte/completed_inquiries/2002-04/legalaidjustice/report/contents.htm. The Committee also presented an Interim Report in this Inquiry on 25 May 2004.

The Committee had previously conducted an inquiry into the legal aid system in Australia, presenting reports in March 1997 (the *First Report*), June 1997 (the *Second Report*) and June

1998 (the *Third Report*). These earlier Reports and the submissions made to the Committee are referred to frequently in the 2004 Inquiry's Final Report.

NACLC, a number of the State Associations of CLCs and many individual CLCs made extensive submissions to the 2004 Inquiry. Our views have not changed as the main issues have not changed, other than that the funding provided is even more inadequate as it has not kept pace with the increased costs of running existing services and the need for services has increased.

That Inquiry Report made many important Recommendations that still have not been implemented.

The *Inquiry into Access of Indigenous Australians to Legal Services* produced a 113 page Report making 17 Recommendations on the provision of legal services for Indigenous Australians: <http://www.aph.gov.au/house/committee/jpaa/atsis/report.htm>

NACLC and a number of individual CLCs and other community legal services including the specialist Indigenous services made submissions to that Inquiry. Our views have not changed. The need for additional specialist resources for Indigenous legal services is critical and should be one of the highest priorities for the Australian Government.

We also refer the Committee to the Australian Parliament's Standing Committee on Legal and Constitutional Affairs *Report of the Inquiry into Older People and the Law*. Having noted that "[T]he Committee considers CLCs to be well placed to provide information, advice, counselling, and advocacy to older people in one location", it made two relevant specific Recommendations (Nos. 38 & 39):

- The Committee recommends that the Australian Government increase funding to the Community Legal Services Program specifically for the expansion of services, including outreach services, to older people by Community Legal Centres. The Committee recommends that the Australian Government provide funding to Community Legal Centres to expand their community education role, with a specific focus on older people.

Source: Australian Parliament's Standing Committee on Legal and Constitutional Affairs, *Report of the Inquiry into Older People and the Law*, September 2007, <http://www.aph.gov.au/house/committee/laca/olderpeople/report.htm>

Our position in relation to the 2009 Inquiry

NACLC, the State and Territory Associations of CLCs and CLCs themselves are organisations with very limited resources. In view of recent similar inquiries and reports, the submissions we have made to them, and the fact that many of the two above Inquiries'

Recommendations remain unimplemented, we are of the opinion that we cannot justify dedicating significant resources to responding to all the terms of reference of the 2009 Inquiry when our position and most of the relevant information is already available.

We submit that the first priority for the 2009 Inquiry, and for the Government in this context, is to have regard to earlier submissions and to take steps to implement the outstanding Recommendations from the earlier Access to Justice Inquiry, and other consistent

Recommendations from other Inquiries and Reviews.

Support for other submissions and position statements

As a member of the Australian Legal Assistance Forum (ALAF), NACLC is involved with other ALAF members in the formulation of an ALAF submission to the Inquiry. It will be submitted to you shortly.

We also refer the Committee to the paper, *A New National Policy for Legal Aid in Australia*, National Legal Aid, 2007 http://www.nla.aust.net.au/res/File/PDFs/nla_policy-11-07.pdf. NACLC supports the policy position and practical proposals put forward by NLA in that document. This document refers to legal aid in a broad sense, including CLCs and other community legal service providers as well as government legal aid agencies.

Three critical points made in the NLA policy paper are the need for the Australian Government to change Commonwealth legal aid policy to end the current division of State and Commonwealth responsibilities in legal aid, the need to significantly increase funding for civil law legal aid and the need for the Commonwealth to increase its funding overall and return to a more equitable matching by the Commonwealth of its funding with State funding (see *A New National Policy for Legal Aid in Australia*, National Legal Aid, 2007, pp 10-11).

This last point has been made for some time by many but see, for example, the Victorian Government in their *Attorney-General's Justice Statement 2*:

The assistance available for civil justice matters was dramatically reduced in 1996 after the Commonwealth reduced its contribution to legal aid. Whereas the Commonwealth used to provide 55 per cent of legal aid funding, its portion has fallen to less than a third in recent years.

Source: Victorian Government, *Attorney-General's Justice Statement 2*, 2008, <http://www.justice.vic.gov.au/wps/wcm/connect/DOJ+Internet/Home/About+Us/Our+Vision/JUSTICE++Justice+Statement+2++interactive+and+PDE>, p 36.

Additional material in relation to TOR 6: the adequacy of funding and resource arrangements for CLCs

We do think that it is important to put before the Committee some additional recent material in relation to:

- the value of CLCs' work
- the (in)adequacy of funding for CLCs
- recent NACLC funding submissions, and
- external factors affecting CLCs and their funding/resource needs.

The value of CLCs' work

Recent reviews and CLCs' own research and analysis confirm that CLCs provide a valuable and highly cost effective service reaching their target groups, primarily the disadvantaged and

financially and socially vulnerable.

The review...confirmed that [CLCs are] providing services to clients who are significantly disadvantaged... 58% received some form of income support, 82% of clients earned less than \$26,000 per annum...

Source: Attorney-General's Department's Report, *Review of Commonwealth Community Legal Services Program*, March 2008, p 6

That Review Report highlighted, at page 6, many strengths of the CLC program including:

- Its flexibility which enables responsiveness to emerging client needs
- CLCs' expertise in areas of law that other providers are unwilling or unable to cover
- CLC's multi-dimensional approach to service delivery which is well-suited to assisting people with complex needs and multiple disadvantaged; and
- Sharing of expertise and resources between CLCs which, in turn, promotes cost savings.

This finding was in keeping with that of the Review of the NSW Community Legal Centres Funding Program, which said :

...The program is an effective use of public funds and should continue to be supported by government.

[A "key strength" of community legal centres is their] flexibility to design and develop their service delivery strategically on the basis of their knowledge and experience of target communities and their relationships with other legal, welfare and community service providers.

Source: *Review of the NSW Community Legal Centres Funding Program Final Report*, commissioned by the Commonwealth and NSW State Attorneys General, published by Legal Aid Commission of NSW, 2006, p 4

These conclusions (and the need for greater funding for legal aid) were endorsed by the Australian Government in April 2008, when it made an additional one-off funding allocation.

Community legal centres and legal aid provide valuable assistance to disadvantaged people...The Rudd Government recognises that without such support people can be prevented from fully participating in society, causing their problems to escalate and entrenching disadvantage.

Source: *Boost for social inclusion through better legal services*, Commonwealth Attorney-General's media release on Review of CLSP and new funding for CLCs, 18 April 2008
http://www.attorneygeneral.gov.au/www/ministers/RobertMc.nsf/Page/MediaReleases_2008_SecndQuarter_18April2008-Boostforsocialinclusionthroughbetterlegalservices

When considering value for funding dollar, the extraordinary effectiveness of CLCs in garnering additional resources should be taken into account.

CLCs leverage more than \$23 million worth of free legal assistance each year through volunteers and pro bono relationships. More than 2,200 private lawyers around Australia volunteer in CLCs. More than 1600 non-lawyers (law students, other professionals) volunteer in Australian CLCs.

Source: *Why Community Legal Centres are Good Value*, NACLC, 2008

The (in)adequacy of funding for CLCs

The Final Report of the Senate Legal and Constitutional Affairs Committee's 2004 Inquiry found that CLCs are a crucial part of providing access to justice for all Australians but noted that CLCs appeared to be facing a funding crisis (Final Report, *Legal Aid and Access to Justice*, p 218).

This statement is quoted without disagreement in the Attorney-General's Department's Report, *Review of Commonwealth Community Legal Services Program*, March 2008 <http://www.ag.gov.au/www/agd/agd.nsf/Page/RWP6DE98B3437EEB6FDCA25742D007B0738>, p 49.

That Review Report gives some useful history of Commonwealth funding for CLCs and the early 2008 position of the major funding program for CLCs, the Community Legal Services Program (CLSP).

The Commonwealth Community Legal Services Program has a long history commencing in 1978 with national funding of \$175,000. ...

Funding for the Commonwealth Community Legal Services Program in 2006–07 totalled \$24.7m, with \$22.1m allocated to 128 community legal centres and the balance used for program support activities. The State contributions totalled \$17.6m (including \$3.7m provided to State only funded community legal centres).

...In 2006–07 the level of Australian Government funding provided to community legal centres funded under the Commonwealth Community Legal Services Program ranged from \$2,741 (South West Brisbane Community Legal Service) to \$786,298 (Women's Legal Resource Centre, New South Wales), with the average being approximately \$173,000.

.... The last significant injection of funding into the Commonwealth Community Legal Services Program was \$3.6m in 1999–2000 to establish five new community legal centres in regional and remote areas (Kalgoorlie, Broken Hill, Gippsland, Mt Gambier and Riverland).

Source: Attorney-General's Department's Report, *Review of Commonwealth Community Legal Services Program*, March 2008, p 11 and Attachment A

It is important to note that apart from the additional one-off funding provided to CLCs in April last year by the Australian Government, there has been no significant injection of funding into the sector by the Commonwealth since the funding for these five new centres in 1999-2000. Some (but not many) new or newly government-funded centres, have been funded during that time by State Governments (in some areas at least, using term, not recurrent, Public Purpose funds).

In its funding submission sent to the Attorney-General in January 2008, NACLC said:

CLC funding has not kept pace with increased costs. CLCs have experienced an 18% reduction in funding over the last 10 years in real terms. This impacts on outcomes for clients, placing unsustainable stress on the organisations' ability to deliver service. CLCs have had to cut back on staff, service hours and other expenses that support innovation and growth of services.

NACLC, *Community Legal Centres Across Australia – An investment worth protecting, Funding Submission to the Commonwealth Government 2007-2010*, p 1 (attachment 2 to this submission)

The inadequacy of CLC funding and the detrimental effect on CLCs' ability to meet client demand has been noted in recent years by a variety of reputable sources, for example:

Along with services for housing assistance and disability supported accommodation, CLCs are amongst the service providers with the highest "turn away" rate for clients seeking assistance.

Source: Australian Council of Social Services, *Australian Community Sector Survey Report 2007*,
http://www.acoss.org.au/upload/news/2102_Community%20Sector%20Survey%202007.pdf

Some of the areas where people are being turned away, include those areas where the need is most acute, including...community legal centres – where 1 in every 5 people who are eligible are being turned away.

Source: Australian Labor Party, *An Australian Social Inclusion Agenda*, 2007

The program in NSW "is underfunded to meet the growing demand for services" and "almost all centres are overwhelmed by demand for their services and cannot sustain their current levels of service, nor meet emerging service gaps.

Source: *Review of the NSW Community Legal Centres Funding Program Final Report*, commissioned by the Commonwealth and NSW State Attorneys General, published by Legal Aid Commission of NSW, 2006, p.5

The comparison of funding levels confirms that community legal centres are generally poorly funded.

Source: Attorney-General's Department's Report, *Review of Commonwealth Community Legal Services Program*, March 2008, p 45.

We ask the Committee to take particular regard of section 2.2, p 43 ff (including comparative data in Table 8 on p 45) and sources quoted therein in the Attorney-General's Department's Report, *Review of Commonwealth Community Legal Services Program*, March 2008, on this and related critical issues for CLCs and CLSP stakeholders, including clients.

One of the issues raised in that section is the comparative low remuneration available to CLC workers compared even to government employees undertaking similar work.

In 2006 NACLC engaged Mercer Human Resource Consulting to undertake a review of a selection of positions in CLCs. In summary Mercer found that on a comparison of award-based remuneration levels in CLCs against the equivalent salary scales in the Australian and NSW public sectors, CLC wages rates were 29-38% below the comparators, and thus “less than competitive with the markets referenced” in their report. See *Remuneration Recommendations: National Association of Community Legal Centres*, Mercer Human Resource Consulting, October 2006, Executive Summary, p 2, attachment 8 to this submission.

We understand that ALAF will soon be writing to the Commonwealth referring to salary parity and portability of leave for Legal Aid providers. They will refer to research showing that differences in salaries between the State Legal Aid Commissions and the ATSILS across the country were in the order of 25% on average and were in one state at least as high as 48%.

On the subject of salaries in CLCs, we also refer the Committee to a key finding of the *Review of the NSW Community Legal Centres Funding Program Final Report*:

Sometimes, Centres only achieve the outcomes they do through the willingness of staff to work at salaries significantly below those paid for equivalent work in other sectors – this is particularly so for solicitors.

Source: *Review of the NSW Community Legal Centres Funding Program Final Report*, commissioned by the Commonwealth and NSW State Attorneys General, published by Legal Aid Commission of NSW, 2006, p 5

In NACLC’s submission, it is not appropriate for the Australian or State Governments to rely on the self sacrifice of community sector workers to achieve the outcomes the Australian Government asserts are essential to its social inclusion program and a fair and just society. In any event, as these Reviews and Inquiries record, the degree of disparity in remuneration has become so severe in some areas that recruitment and retention have become impossible or very difficult, severely adversely affecting service delivery.

Recent NACLC funding submissions

Currently 127 CLCs receive funds under the Commonwealth Community Legal Services Program (CLSP). At the time of the Review of the CLSP, it was 128. As at September 2008, there were an additional 20 CLCs receiving State only funding under the CLSP.

It is important to remember that there are over 50 other CLCs that do not receive funding under the CLSP from either the Commonwealth or a State.

CLCS funded under the Commonwealth CLSP

On 11 January 2008 NACLC wrote to the Attorney-General providing a detailed funding submission on behalf of the Commonwealth funded centres. A copy of this letter and the submission, *Community Legal Centres Across Australia – An investment worth protecting, CLC Funding Submission to the Commonwealth Government 2007-2010*, and supplementary

material, a short summary addressing the economic value and social benefits of community legal centres, sent on 5 February 2008, are attachments 2 and 3 to this submission.

That funding submission requested \$10.3m to address the severe shortfalls created by the previous Government's neglect of funding for CLCs. It was explained that this amount was needed to catch up with cost rises and to invest in CLC infrastructure, enabling CLCs to harness additional voluntary, pro bono and other funding resources.

NACLC also sought, if necessary on a staggered introduction, additional itemised increases in funding to address certain priorities: one being services for regional and rural Australia.

On 18 April 2008, the Attorney-General on behalf of the Australian Government announced a one off allocation of 10 million dollars to support the operation of the CLSP for (Commonwealth funded) CLCs and to help CLCs meet the increasing needs for legal assistance of the most vulnerable members of our community. In his media release announcing the one off funding, the Attorney-General said

The [CLSP] review confirms the key role the Program plays in assisting members of the community with legal and related problems, and the expertise and innovative approach adopted by community legal centres in providing this assistance.

Source: "Boost for social inclusion through better legal services" Attorney-General's media release, 18 April 2008

http://www.attorneygeneral.gov.au/www/ministers/RobertMc.nsf/Page/MediaReleases_2008_SecndQuarter_18April2008-Boostforsocialinclusionthroughbetterlegalservices

While the CLC sector was grateful for this recognition and additional support, the use to which one off funding can be put is limited.

NACLC has since that time written to the Australian Government referring to our January 2008 funding submission, requesting that the \$10m be made recurrent funding and reiterating that we are continuing to press for the other amounts outlined in that submission. Copies of those further submissions, dated 30 September 2008 and 11 December 2008 respectively, are attachments 4 and 5 respectively.

CLCS funded under the State CLSP

In the context of this Inquiry, we make the point that in NACLC's view, State funded CLCS should also be funded to the minimum optimal level argued for in our submission to the Commonwealth.

CLSP funding for existing centres where criteria are satisfied

We also say that existing CLCs not presently funded under the CLSP should be considered for funding under that program and funded where they meet the criteria applied to other centres.

Funding for new centres where legal need is demonstrated

In our submission, the legal needs data presently being gathered in a number of contexts should be considered by the Australian Government and additional funding for new CLCs should be made available where the needs are demonstrated and an acceptable proposal satisfying agreed criteria is put forward.

External factors affecting CLCs and their funding/resource needs

Funding for CLCs cannot be properly addressed without consideration of the context in which the centres operate, and factors that affect their clients and their operations. One aspect of this is the inter-relationship with funding for legal aid (and other support services); another is the effect of other events, the current most significant one being the global financial crisis.

Funding and resourcing of other community services

Many CLC submissions and reviews in the past have documented the increasing demand on CLC services when legal aid is cut, in real or effective terms, and, for that matter, when legal aid policy or resource allocation is changed. The inadequacy of legal aid funding, especially the Australian Government's failure over the last decade or more to match State funding, has had a significantly deleterious effect not only on the legal aid bodies themselves, but on CLCs and, of course, on their clients and would be clients.

CLCs help the clients that other service providers do not, or cannot assist.

Increasing funding to CLCs to address the effective reduction in funding over the past decade or more will help CLCs to be able to meet the client demand of that time. But if other services in their areas are not available and/or are not properly resourced, then the CLC will experience much higher client demand and they will still be forced to turn away many people who should have access to legal assistance.

The global financial crisis

While funding for CLCs has been cut in real terms over a long period, demand has increased for a range of reasons. The most recent is the global financial crisis (GFC).

A significant economic downturn may affect all Australians but it first, and most adversely, affects people already suffering disadvantage.

CLCs all over Australia are reporting an increase in demand for certain types of legal assistance, particularly employment and credit/ debt.

The anecdotal evidence has been supported by our recent comparative analysis of national client service data (using records on the Community Legal Service Information System from 140 CLCs across Australia).

That data shows that compared with the same period in the previous financial year, there have been significant increases this year in CLC client services (information and referral, advice, or casework) in certain legal areas, the areas most likely to be impacted by a financial crisis.

Credit & debt services provided are up 10%. Employment services are up 22%. Tenancy services are up 25% and consumer & complaint services are up 16%.

These figures are against a backdrop of overall CLC services across all problem areas increasing less than 1% for the same period. Note these figure do not record demand, nor people turned away; they refer only to services actually delivered. That is, they show only what the CLCs, with their current funding and resources, were able to provide in that period.

We are also noting significant rises in welfare rights assistance. For example, the Welfare Rights Centre in Sydney, which provides a state-wide service to NSW, reports a 44% increase in the number of advices given in 1-31 March 2009 from the same period in 2008. The Welfare Rights Centre in the ACT has noted a 10% increase in the same comparable periods.

Other service providers are noting similar increases, for example, the 2007-08 Annual Report on Operations of the Credit Ombudsman Service records that enquiries and complaints received from consumers relating to financial hardship and mortgage stress had more than doubled the number in the previous year, reaching 22% of all enquiries. They are expecting a continuing significant increase in 2009.

NACLC has recently written to the Australian Government that the global financial crisis is an additional reason for the Government to provide additional **ongoing** funds to community legal centres, at least in line with NACLC's 2008 funding submission (copy at attachment 5).

Other information

If the Committee has any particular questions about any aspect of this submission on CLCs, NACLC would be happy to respond. We have attached some documents we believe may be of assistance to the Inquiry, which are listed in annexed Index to attachments.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Liz O'Brien', followed by a horizontal line extending to the right.

Liz O'Brien
National Convenor
National Association of Community Legal Centres

Annexure A

What is NACLCLC?

NACLCLC is the peak national body representing the over 200 community legal centres (CLCs) located in urban, outer metropolitan, rural, regional and remote areas around Australia. NACLCLC's members are the State and Territory Associations of CLCS. The State and Territory Associations' members are the individual CLCs.

NACLCLC is established for the public charitable purposes of assisting disadvantaged and marginalised people in the Australian community to obtain access to legal services by, among other ways:

- supporting and assisting community legal centres to provide these services, including by providing a number of services direct to centres
- providing a national forum for community legal centres
- developing and coordinating national community legal centres policy, and
- advancing the interests of community legal centres within Australia.

What are CLCs?

CLCs are not-for-profit, community-based organisations with a particular focus on providing services to the disadvantaged and those with special needs, and the conduct of cases that have the potential to benefit many. CLCs have been a vital component of legal service provision in Australia for over 30 years.

CLCs have a cost effective service delivery model, utilising early intervention and preventative strategies targeted at their communities' legal needs. CLCs provide immediate services to address the legal crisis needs of clients and also undertake work preventative community education and law reform activities that avoid and/or mitigate the adverse financial, personal and social costs of legal problems to individuals and communities. Their work empowers individuals, strengthens the communities they serve and in so doing, provided savings to government and third sector service providers.

They have management structures and operations that encourage and facilitate the involvement of and open communication with their communities. Because of this they are able to assess and respond to the changing legal needs of their communities.

See the enclosed copy at attachment 1 of a recent NACLCLC publication, *Why CLCs are Good Value*. We draw your attention to the service delivery figures on page 2 and figures showing the value of the volunteer and pro bono hours garnered by CLCs on pages 5-6.

Index to attachments

1. *Why Community Legal Centres are Good Value*, NACLC, 2008 (also accessible at <http://www.naccl.org.au/news/2288.html>)
2. NACLC letter dated 11 January 2008 to the Attorney-General and enclosed funding submission, *Community Legal Centres Across Australia – An investment worth protecting, Funding Submission to the Commonwealth Government 2007-2010* and attachments
3. *The Economic Value and Social Benefit of Community Legal Centres: A Summary*, sent to the Attorney-General on 5 February 2008, as supplement to 11 January 2008 funding submission
4. Letter headed Community Legal Centres (CLCs) funding submission for Budget 2009-2010 dated 30 September 2008 from NACLC to the Attorney-General
5. Letter headed Submission for the 2009-2010 Budget dated 11 December 2008 from NACLC to the Budget Policy Division
6. *Revised Funding Formula for Community Legal Centres*, NACLC Submission to the Attorney-General's Department, October 2007
7. *The Economic Value of Community Legal Centres*, Institute for Sustainable Futures, UTS, 2006
8. *Remuneration Recommendations*, Mercer Human Resource Consulting, Review Report prepared for NACLC, October 2006