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26 April 2009

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

Dear Sir/Madam,

**Parliament of Australia Senate Inquiry into Access to Justice
Submission to the Senate Legal and Constitutional Committee**

Please find enclosed a submission by the Hunter Community Legal Centre regarding the Parliament of Australia Inquiry into Access to Justice. The Hunter Community Legal Centre is an independent community organization providing free legal services to residents of Newcastle, the Hunter Valley, Great Lakes and Taree. The centre is committed to promoting human rights, and advocates for fair, just and non-discriminatory legal system through promoting access to legal services for all people in its funded area.

The submission makes particular reference to the ability of people to access legal representation and the adequacy of funding and resource arrangements for community legal centres, as established within the terms of reference contained in the inquiry by the Senate Standing Committee on Legal and Constitutional Affairs. The submission identifies key issues regarding funding and resource arrangements for community legal centres, with particular reference to the Hunter catchment area. It also proposes recommendations to aid the committee in achieving improved access to justice within Australia's legal and constitutional affairs.

Please note Margot McAlary, Acting Principal Legal Officer, and Kate Hamilton, Student Placement, propose to attend the Inquiry. They would be prepared to answer questions about their submission, and would appreciate comments from the committee or Senators.

Yours faithfully,
Hunter Community Legal Centre Inc.

Margot McAlary (
Acting Principal Legal Officer

**Hunter Community Legal Centre Inc.
(HCLC)**

**Parliament of Australia Senate Inquiry into Access
to Justice**

**Submission to the Senate Legal and Constitutional
Committee**

30 April 2009

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1. ACKNOWLEDGEMENTS

We at the Hunter Community Legal Centre Inc. would like to thank the following people for their assistance and support in drafting this submission:

- Kate Hamilton (University of Newcastle)
- Margot McAlary (Acting Principal Legal Officer).
- Julie Hughes (Solicitor employed at HCLC).
- John Miner Communication

2. INTRODUCTION

The Hunter Community Legal Centre (HCLC) is an independent, non-profit, community organisation that was established in March, 1992. The centre provides free legal information, advice and advocacy to all residents across the Newcastle and Hunter Region covering the following local government areas:

LGA	Area (sq Km)	Population Density	ATSI Population %	NESB Population %
Cessnock	1,966.40	24.48	3	2
Dungog	2,251.20	3.72	2	2
Gloucester	2,951.60	1.66	2	2
Great Lakes	3,375.80	10.13	3	3
Greater Taree	3,731.90	12.62	4	3
Lake Macquarie	643.50	294.01	2	4
Maitland	391.70	153.05	2	3
Muswellbrook	3,405.60	4.46	3	2
Newcastle	182.60	797.55	2	7
Port Stephens	857.70	72.81	2	4
Singleton	4,895.90	4.48	2	2
Upper Hunter	8,070.60	1.66	2	2

(A map is appended.)

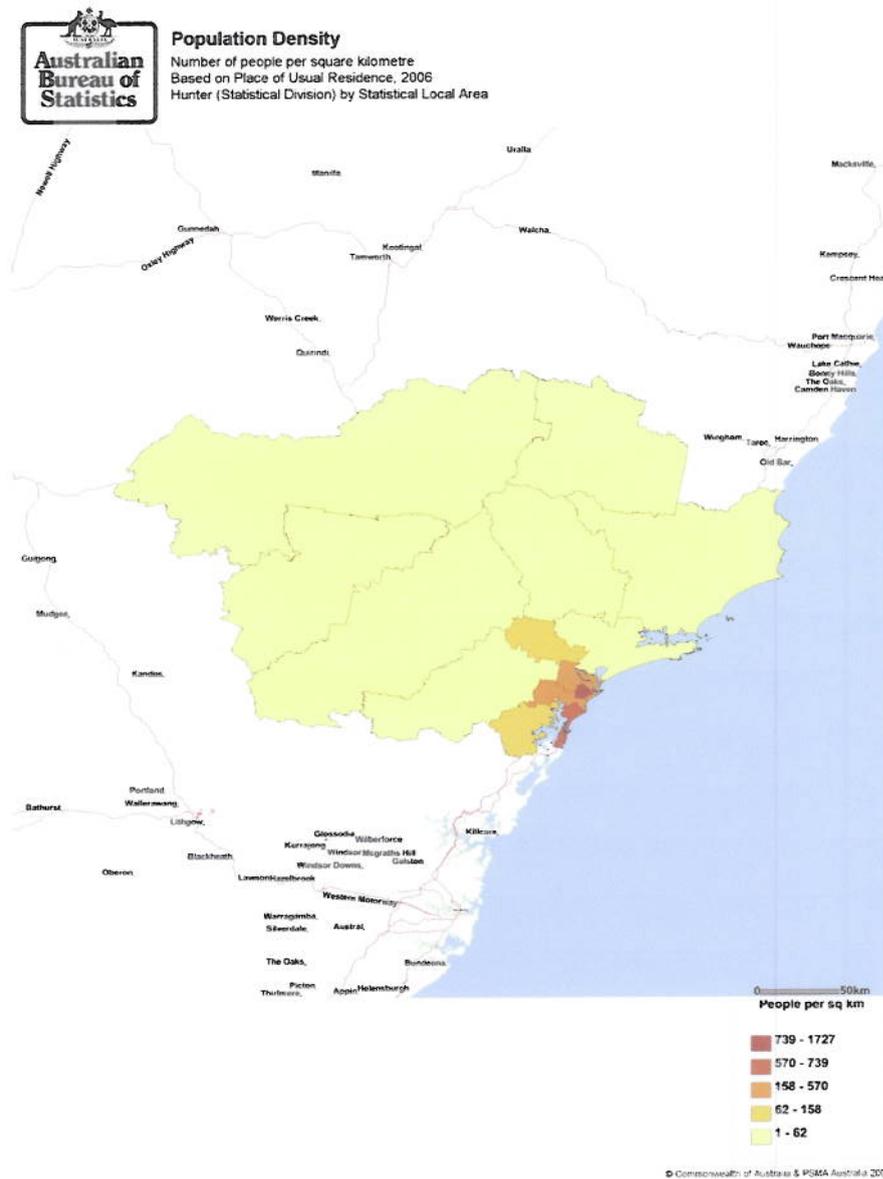
HCLC's vision is to ensure that socially and economically disadvantaged individuals have access to justice.

The centre's mission is to provide a legal safety net to disadvantaged residents of the areas listed above by offering free legal services, empowering clients, and advocating for law reform with a view to avoiding court action by early intervention.

As recognised by the National Association of Community Legal Centres (2005), legal centres, including the HCLC, join together in protecting and advancing the conditions of humanity by advocating for access to social justice within Australia.

This submission is in relation to the Senate Inquiry into Access to Justice and makes particular reference to the adequacy of funding and resource arrangements for community

legal centres, as established within the terms of reference of the inquiry (particularly reference *f*: the adequacy of funding and resource arrangements for community legal centres).



The area of the Hunter Statistical Region (shaded above) is 29,255 square kilometres.

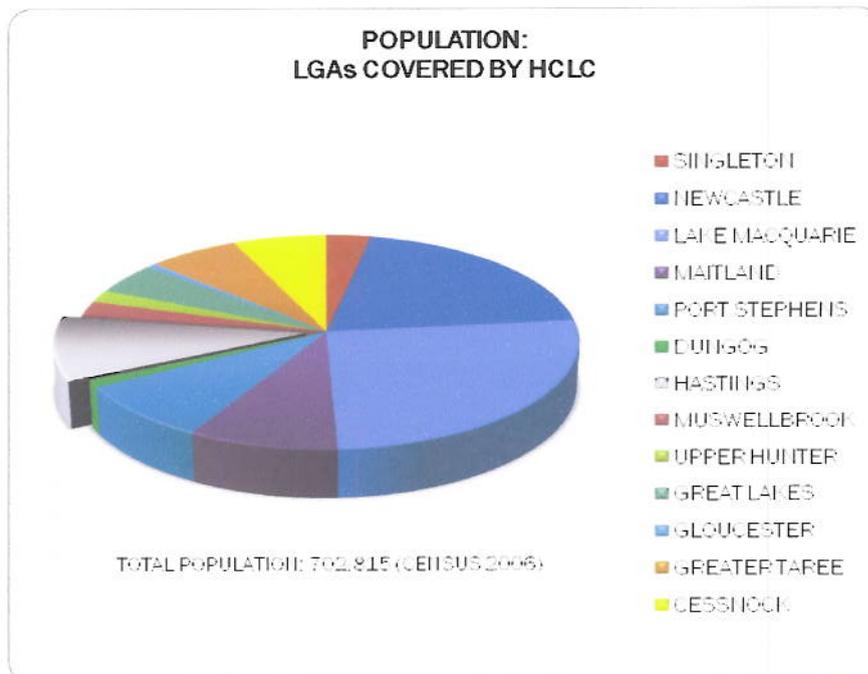
3. BACKGROUND

Access to justice is a significant public policy issue in Australia.

In 2002 the Law and Justice Foundation of New South Wales published a research article titled *Access to Justice Roundtable: Proceedings of a Workshop* which recognised that, although there is no exact definition of the phrase “access to justice,” the “notions of equality of access to legal services, and equality before the law regardless of race, ethnicity, gender or disability, affordability, efficiency, understandability, and effectiveness” have all been integral concepts in previous access to justice inquiries.

Newcastle is the most populous urban centre – and the most densely populated - in New South Wales after Sydney. It is the major city of the Hunter region, to which the HCLC provides legal support.

If Hastings Shire, with its health, education and administrative centres in Port Macquarie, is added to the LGAs mentioned above – and in the absence of any other CLC, HCLC does provide such services as it can to residents – the total population served by the HCLC would be more than 700,000 people.

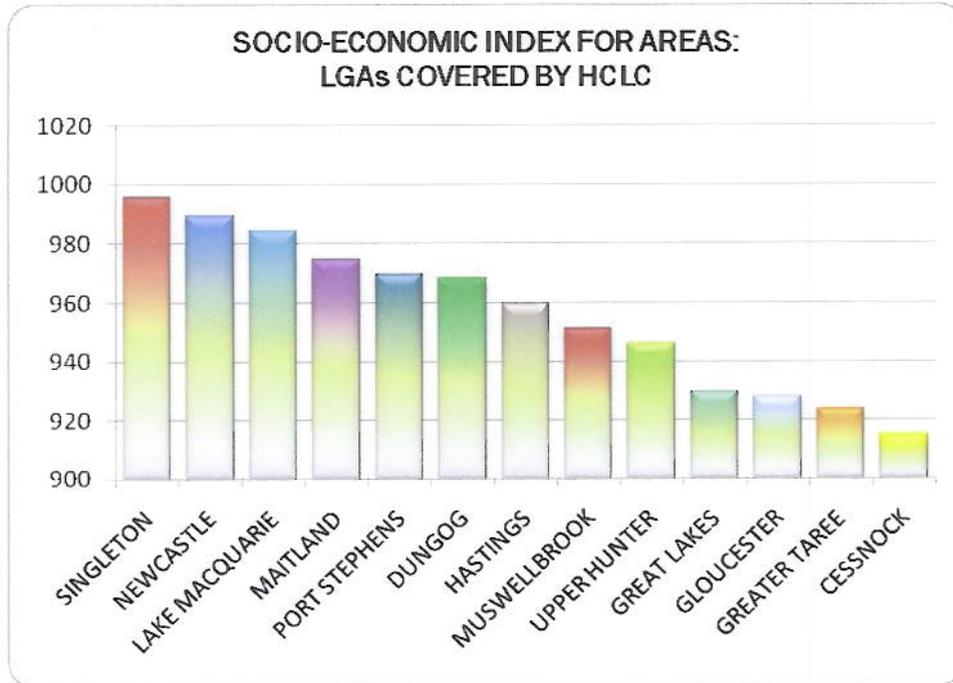


The need for adequate access to justice within Newcastle and the Hunter Region is evident from the report *Justice Made to Measure: NSW Legal Needs Survey in Disadvantaged Areas* (2006), where Newcastle is examined as one of six areas of disadvantage in New South Wales.

Newcastle was selected because it had a relatively high risk score for cumulative socioeconomic disadvantage (Vinson 1999). Such disadvantage reinforces the imperative that access to justice be achieved as easily by all residents of the region as it can by residents of any regional or urban area.

Achieving this goal relies upon all of the terms of reference of the inquiry, including the adequacy of funding and resource arrangements for community legal centres such as the HCLC.

There are other areas and pockets of disadvantage in the region. The Socio-Economic Index For Areas (SEIFA) derived by the Australian Bureau of Statistics from the 2006 Census indicates wide variation, from Singleton Shire (in the top 20 per cent of LGAs for advantage) to the City of Greater Cessnock (in the bottom 40 per cent).



The Hunter includes many small populations, and smaller samples yield wider variations.

Disadvantage increases with distance from centres of social infrastructure.

In a population of 700,000 access to justice is certainly available. In an area of 30,000 square kilometres, the objective must be equity of access.

Most people in Canberra could not find Giants Creek on a map of Australia, but that is OK: neither could most people in Newcastle. Yet Newcastle is where residents of Giants Creek have to go to find free (and qualified) legal advice.

One person in Canberra who could find it is the Solicitor-General of the Commonwealth. He attended the Giants Creek public school, the school nearest Sandy Hollow where Mr Gageler grew up.

Remoteness is never an insurmountable disadvantage to the really able and determined. For the rest of us, it presents challenges.

While people in Sandy Hollow can be as able as Mr Gageler, their access to justice is simply not the same as it would be in Redfern or Kirribilli.

To achieve the equitable delivery of legal services, the HCLC must consider whether it should pursue funding to:

Cover the costs incurred by clients travelling to Newcastle for interviews (from beyond the five LGAs which comprise the Lower Hunter and are relatively near and well served by public transport);

Engage more legal staff to conduct interviews in towns remote from Newcastle; or

Enable the HCLC to pay practitioners in other towns an appropriate amount so that remote residents who qualify for HCLC's services can access legal advice through the lawyers nearest where they live.

4. THE ROLE OF COMMUNITY LEGAL CENTRES

Community Legal Centres aim at making the delivery of legal services more equitable and accessible within their funded area. To achieve this end, they perform a myriad of roles, including:

- Providing legal advice and information to residents.
- Conducting outreach and in-house programs of face-to-face advice sessions.
- Conducting ongoing casework including advice, assistance, representation and advocacy in special circumstances.
- Providing quality Community Legal Education (CLE) programs directed towards regional community workers, community groups, and members of the public.
- Identifying areas of law reform relevant to target groups and to the work of the CLC, and consequently undertake a minimum of four law reform projects annually.
- Providing effective court support services to residents in need and in particular, young people (aged 12-17) and their families attending Children's court.
- Facilitating pro-bono legal advice sessions by private practitioners.

The functions above only skim the surface of the responsibilities undertaken by community legal centres. Even such a short list, however, reinforces the significance and importance of community legal centres in providing access to justice within Australia.

5. THE ADEQUACY OF FUNDING AND RESOURCE ARRANGEMENTS FOR COMMUNITY LEGAL CENTRES

5.1 THE EFFECTS OF INCREASED CLIENTELE ON COMMUNITY LEGAL CENTRES

Current access to justice measures are having a significant effect on Community Legal Centres (CLCs) due to the increase of self-representation in courts and tribunals as a result of the tightened eligibility for legal aid.

The HCLC recognises that the current means test for legal aid (see appendix A) excludes all but the most severely disadvantaged individuals from assistance. In most circumstances, only individuals on very low incomes with minimal assets are eligible for a legal aid grant. This problem creates enormous restrictions to justice for the low-income earners who do not have the safety net of a legal aid grant, yet cannot afford to pay for private legal representation.

It is imperative to recognise that HCLC understands the complexity and reasoning behind the Legal Aid means test and does not criticise its motives. However unfortunately due to the

stringent guidelines of Legal Aid, the trickle-down effect places increased pressure on community legal centres to advise, inform, and represent in court the ever-increasing number of low-income earners who have slipped through the cracks of legal aid funding yet cannot afford legal representation.

Drawing specific reference to the Newcastle and Hunter region, this notion is reinforced by statistics from LawAccess NSW which documented that from August 2008-October 2008 3,664 information calls were made to LawAccess NSW from the Hunter region. Further, HCLC receives between 100-150 phone inquiries per month (as at March 2009). Such statistics illustrate that there is a definite legal need within the Newcastle and Hunter Region area as an indirect result of the stringent guidelines of the Legal Aid means test. Consequently, it has resulted in a large pocket of low-income earners being unable to have the support of a legal aid grant, yet also being unable afford to pay for private legal representation. It is also imperative to recognise that that this problem will most likely worsen due to the deteriorating economic climate and its impact upon all facets of society.

The problem recognised above is intensified, with respect, by the lack of funding and resource arrangements granted to legal centres such as HCLC. At present, HCLC receives a little under \$400,000 from the Federal and State governments. This funding supports all expenses within HCLC such as wages and salaries, insurance, rent, staff training, client disbursements and other premises costs. With the funding provided HCLC employs one coordinator, one administration secretary, almost one (0.8) Youth Court Support Worker (this means not even one full-time Youth Court Support Worker due to lack of funding) and almost three (2.8) solicitors.

With the increasing number of roles CLCs have to undertake, including outreach programs to areas which might be up to 2 hours away, court representations, telephone and face-to-face advice, and Community Legal Education at places such as schools and community centres, it is becoming increasingly more difficult for the centres to successfully offer the necessary legal services required to provide access to justice. This is because the current rate of funding, with respect, is slightly inadequate. There is a pending need for CLCs to provide more solicitors to give legal advice to members of the community, but with a budget of \$400,000 and under \$1500 left over after all expenses have been paid for, it is almost impossible to pay for another solicitor to come in once a week and give legal advice where necessary. Further, with legal centres such as HCLC lacking a social worker, educator and support staff, it makes it very difficult for the centres to cover all aspects of their roles and provide access to justice to their funded areas due to the lack of staff.

Compounding this problem it is envisaged the current economic climate will increase the demand for CLCs services by people seeking assistance in relation to financial matters, employment matters and resultant family law and criminal law issues.

Recommendation 1

Increase funding for Community Legal Centres to provide for extra staffing. (See appendix B – proposed by the National Association of Community Legal Centres)

Recommendation 2

Enable Community Legal Centres to charge contribution fees, as Legal Aid can, in accordance with their clients' financial capacity.

5.2 NEW COMMUNITY LEGAL CENTRES

It is to the credit of both the Federal and NSW Governments that funding for CLCs has been sustained.

There remains a need for services in regional and rural areas which have not been served by an easily accessed CLC.

HCLC notes particularly the growing demand for a CLC to be established in Port Macquarie (see appendix C), on the mid-North Coast of New South Wales, about four hours' drive north of Newcastle.

In the absence of an established centre at Port Macquarie, HCLC has provided assistance. This assistance has been limited; the allocation of staff to interview clients in a location that requires eight hours' travel, and accommodation, would be, relative to the demands of serving an extensive area already, a substantial burden.

HCLC has explored options such as on-line videoconferencing (in relation to serving the Taree area – a little more than two hours' drive from Newcastle) - but the expense is, in terms of a CLC, significant and requires establishment costs at both ends. HCLC has also accepted, reluctantly, that online video is not the easiest medium for establishing a rapport between client and solicitor.

Nevertheless, HCLC has continued to serve Port Macquarie to the extent of its resources. It has established contact with a wide range of social and other services in the area.

The current directory of legal services on the mid-North Coast refers potential clients to the HCLC. While HCLC is happy to test the limits of its resources in order to serve the community, it is reluctant to commit resources to an area for which it is not funded at the cost of reducing services to those areas for which it does receive funding from State and Commonwealth governments.

Recommendation 3

That the Commonwealth Attorney-General consider, in conjunction with his NSW counterpart, the establishment of a Mid-North Coast CLC at Port Macquarie.

Recommendation 3 b

Recognising the effects of current economic recession, the Attorney-General consider funding the HCLC to provide legal services through Port Macquarie until a new CLC can be responsibly funded to provide ongoing legal services to the community.

The Australian Council of Social Service (ACOSS) recognised in the 2003 Inquiry into Access to Justice and Legal Aid that:

“existing programs being provided by existing centres have received little additional funding. In fact, 54% of centres in the last five years have received 1% or less increase in funding”.

Compared to the increase of costs across most of the economy over the same period, a period of economic growth, this appears inadequate to provide equality of access to justice for those in lower socio-economic bands.

Allowing the HCLC to provide outreach services to the Port Macquarie area would be the most beneficial outcome. It would be the most economically viable strategy as it would save the Commonwealth government a substantial amount of money, and would also provide funding to an existing legal centre, that being the HCLC.

5.3 COMMUNITY LEGAL CENTRES AND THE FAMILY LAW

Family law gives rise to about 40 per cent of inquiries to the HCLC.

Legal Aid's Annual Report 2007-2008 states that family law is the second highest funded area of law after criminal law, with 31.6% of Legal Aid's total expenditure spent on that area.

Legal Aid limitations on both State and Commonwealth Family Law (Appendix e) have led to increased pressure on CLCs to provide legal advice, inform, and represent in court those individuals:

- a. who are ineligible for a Legal Aid grant but cannot afford private legal representation; or
- b. whose family law matter falls outside the scope of Legal Aid.

Recent changes to chamber registrar services in NSW, and to the Family Court's arrangements, have increased pressure on the same Centres.

Local Court staff can no longer help people seeking legal advice on forms to be lodged in the Court; and the chamber service can no longer give legal advice.

Similarly, the HCLC has noted an increase in the number of people in need of assistance with documents for the Family Court referred from the Family Court Registry.

Limited resources at CLCs can fail to ensure that legal staff have access to the latest developments in family law.

Logically, this becomes a problem for the client, when the Commonwealth's object is to assist the client.

Recommendation 4

The Commonwealth provide all Community Legal Centres with software that ensures equality of access to Family Law news and information online, and has continual updates of family law precedents.

Such software would effectively ensure that CLCs could provide family law advice of professional quality and currency.

The Family Court is a Commonwealth jurisdiction. HCLC's view is that the efficient functioning of the Court can only be enhanced by ensuring that people appearing are properly and professionally advised.

Recommendation 5

The Commonwealth require that parties seeking to bring a Family Law dispute to the Court seek legal advice from a qualified practitioner before their matter is placed on the Court list.

Because the Court has primacy in Australia's structure of governance and administration of the law, properly advising clients must have primacy in the structure of the family law. It follows that mediation and other services, such as those provided by Family Relationship Centres, must be regarded as ancillary – valuable ancillaries – to the efficient functioning of the Court.

The requirement that people bringing a dispute before the Court must first pursue mediation has not been matched by a requirement that the same disputants seek legal advice from a qualified legal practitioner.

Legal advisers and ancillary services share the objective, in common with the Commonwealth, of minimising ill-judged and hasty pursuit of matters which need not consume the resources of the Court, and which unnecessarily consume the time and funds of families. Community Legal Centres are well placed to provide a comprehensive Family Law Service consisting of both legal advice and mediation to complement the work of Family Relationship Centres.

Recommendation 6

The Commonwealth provide funding to Community Legal Centres to provide Family Law advice and mediation to match the level of funding the Commonwealth provides to Family Relationship Centres.

6. CONCLUSION

The Hunter Community Legal Centre Inc. recognises that the need for access to justice within Australia is a multifaceted and complex area which cannot be instantaneously perfected. It is an ever-changing process which needs to be stringently regulated in order to equitably and fairly achieve access to justice.

Community Legal Centres are an integral rung in the ladder which reaches up towards the ultimate goal of access to justice. Initiated in 1991 by the then Federal Minister for Justice and Consumer Affairs, Senator Michael Tate, it is difficult to believe that approximately 200 legal centres now stand tall in the fight to achieve access to justice through providing free legal information, advice and advocacy to all residents across the nation.

It is imperative to recognise that the Hunter Community Legal Centre applauds the government for their efforts in continuing to enhance access to justice within Australia. It is the centres' hope that the submission put forward today aids in enhancing access to justice in the very near future.

APPENDIX A – CURRENT LEGAL AID MEANS TEST

LEGAL AID NSW

A NEW MEANS TEST

INFORMATION FOR PRIVATE PRACTITIONERS

Legal Aid NSW has adopted a new means test to apply from March 31 2009. The new means test merges the old Means Test A and Means Test B. It retains most of the features of the old Means Test A. For matters previously determined under Means Test B a modified form of the new means test applies.

Three sub-tests

The means test consists of three sub-tests: income test, assets test and ability to pay legal costs test. An applicant must satisfy all three sub-tests.

Income test

All applicants receiving a Centrelink income support payment at the maximum rate satisfy the income test. For all other applicants the income test is based on net assessable income, which is after tax weekly income (excluding Family Tax Benefit Part A and Part B and rent assistance) less deductions including housing costs (up to \$320) and a dependant allowance of \$100 per dependant. If net assessable income is less than the income eligibility limit of \$318, the applicant satisfies the income test. If it is over \$318 legal aid is only available in exceptional circumstances. A contribution is payable based on the level of net assessable income.

Assets test

The assets test is based on net assessable assets, which is all an applicant's assets, unless specifically excluded. Home equity over \$521,100 and car equity over \$15,100 are included. A contribution is payable based on the level of net assessable assets.

Total contribution

If the income contribution and assets contribution together exceed the amount allowed for the type of matter, the applicant does not satisfy the means test.

Discretions

There are discretions to grant legal aid to an applicant whose net assessable income exceeds the income eligibility limit, or who does not satisfy the means test because their contribution exceeds the allowed amount. There is also a discretion to reduce or waive the contribution.

Ability to pay legal costs test

Legal aid may be refused if the applicant's assets or lifestyle are such that Legal Aid believes he or she could afford legal representation.

Local Court criminal matters

For Local Court criminal matters a modified form of the means test applies. For more information see the information sheet: A new means test – information for Local Court criminal law practitioners.

Where can I find the means test?

The new means test can be found as [Chapter 7 of Policy Online](#).

For further information about the new means test contact Sally McAtee in the Legal Policy Branch by telephone on 9219 5034 or at sally.mcatee@legalaid.nsw.gov.au

APPENDIX B – FUNDING PROPOSAL BY THE NATIONAL ASSOCIATION OF COMMUNITY LEGAL CENTRES

Proposed approach

The second principle identified in section 2.1 identifies a need to develop a needs based funding formula. We highlight that there is an emerging evidence base of legal need and recommend that the revised funding formula being considered by the Attorney General's Department should be developed in line with the establishment of this evidence base. In addition, the NACLCLC plans to draw on the emerging evidence to inform the development of revised tools to inform local strategic service planning. This would mean that the funding formula and the service planning methodologies would draw on the same evidence base and both will be reflective of legal need.

The diagram on the next page sets out a proposed approach and timetable for the development of a needs based funding formula and a needs based service planning tool.

Baseline funding

- The CLC service delivery model has been developed over 30 years to meet the needs of clients with complex needs and multi-dimensional problems.
- The essence of the service delivery model is that it is multi-disciplined in approach, works effectively with disadvantaged communities, targets services to emerging need, is flexible and responsive.
- The first phase in the strategic service delivery model is a legal needs assessment of the community which the CLC serves. Along with the needs assessment, the centre surveys other legal service providers and community organisations about the services they provide and the gaps in service delivery. This process informs the Strategic plan and directs the targeting of services.
- For the strategic service delivery model to be most effective, a centre needs to be able to employ a multi-skilled team. (Whether a social worker or financial counsellor or community worker is employed will depend on the mix required by the particular community and other services available locally.)
- Refer to the figure below for the costing of this model. Based on this costing the baseline funding for each CLC to most effectively implement the strategic service delivery model is around \$500,000.

STRATEGIC SERVICE DELIVERY MODEL COSTINGS

Calculated on 13.8% of gross

Based on 30% of total position

Inclusive of \$8,000 interpreter allowance based upon 100 interviews per annum

Position	Salary	Oncosts	Total Salary Costs	Operating Expenses	Total Position Cost
Coordinator	65,687	9,066	74,763	32,042	106,805
Principal Solicitor	62,866	8,675	71,541	38,661	110,202
Admin Worker	50,402	6,955	57,357	24,582	81,939
Solicitor	58,622	8,089	66,711	36,591	103,302
Community Workers	58,622	8,089	66,711	28,591	95,302
Total					497,550

Funding Submission for Community Legal Centres, courtesy of the National Association of Community Legal Centres. View entire submission at:

<http://www.naclc.org.au/news/2177.html>

APPENDIX C – MID-NORTH COAST COMMUNITY LEGAL CENTRE PROPOSAL

Community Legal Needs Survey for Local Residents Monday, 27 October 2008

Port Macquarie-Hastings Council, in conjunction with Disability Advocacy NSW, are conducting a community survey of residents who need to access free community legal advice.

The Mid-North Coast is the only region in NSW that does not have a Community Legal Centre, which means that people have to travel to either Newcastle or Lismore to receive assistance with legal matters.

Council's Community Development officer, Maya Spannari said, "It is important that we receive input from the community about the legal needs of the Port Macquarie-Hastings which will be used in lobbying for the establishment of a local Community Legal Centre."

"Community Legal Centres provide free legal help for disadvantaged communities as well as providing a variety of services including legal information fact-sheets, community education sessions as well as legal advice from a central legal office," Mrs Spannari said.

If you have ever had an issue with housing and accommodation, family law, family violence, intervention orders, child protection, criminal law, police, debt and credit, consumer services, personal injury, discrimination, employment, immigration, Centrelink, Freedom of Information, disability/mental health, Wills and Power of Attorney, Traffic offences, neighbour disputes, commercial disputes or education, then this survey will interest you. There is also a survey for service providers whose clients require this assistance.

Courtesy of the Mid-North Coast Regional Council for Social Development Inc:

http://www.mnrcrsd.com.au/display.php?subaction=showfull&id=1226704432&archive=&start_from=&ucat=17&

APPENDIX D – LEGAL AID LIMITATIONS IN THE AREA OF FAMILY LAW

Policies in brief

1. LEGAL AID JURISDICTION TEST

Looks at the type of case and the area of law of the matter for which aid is sought. Legal aid is available in the following areas of law:

Area of Law	State	Commonwealth
Family Law	<ul style="list-style-type: none"> • Proceedings under the <i>Property (Relationships) Act 1984</i> • Adoption proceedings • Domestic violence proceedings as set out in the criminal law policies 	<p>Matters arising under the <i>Family Law Act 1975</i>, the <i>Child Support (Assessment) Act 1989</i> and the <i>Child Support (Registration And Collection) Act 1988</i> limited to:</p> <ul style="list-style-type: none"> • Separate representation of children • Other orders relating to children, including parenting orders, location and recovery orders • Parenting plans • Injunctions relating to family violence • Child support and child maintenance • Spousal maintenance • Dissolution and nullity of marriage • Property proceedings • Enforcement proceedings, or • Contempt and breach of court orders proceedings

Courtesy of Legal Aid: <http://www.legalaid.nsw.gov.au/asp/index.asp?pgid=659#meanstest>

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