

CHAPTER 7

The adequacy of funding and resource arrangements for community legal centres

7.1 This chapter discusses evidence received in submissions and at public hearings concerning term of reference (f). In general, submissions reiterated concerns from the 2003-04 inquiry, and in particular, that funding and resource arrangements for community legal centres is inadequate. The specific topics addressed in this chapter are:

- an overview of community legal centres;
- the Community Legal Services Program;
- the adequacy of funding; and
- recruitment and retention issues.

An overview of community legal centres

7.2 There are more than 200 Community Legal Centres (CLCs) throughout Australia in metropolitan, suburban, regional, rural and remote areas.¹ CLCs are independent, community-managed, non-profit services that provide a range of assistance with legal and related matters to people on low incomes and those with special needs, with a focus on early intervention and prevention.

7.3 Some CLCs offer specialist legal services (for example: child support; credit and debt; environmental law; welfare rights; mental health; disability discrimination; tenancy; immigration; employment; and the arts), and some provide targeted services (for example: to Aboriginal and Torres Strait Islander peoples; children and young people; women; older people; refugees; prisoners; the homeless; and other groups).

7.4 While CLCs assist individuals, they also 'work beyond the individual', undertaking community development, community legal education and law reform projects that are based on client need, that are preventative in outcome, and that strengthen the community they serve.²

7.5 In 2006-07, in addition to casework, CLCs provided: more than 222 000 individual legal advices; more than 123 000 information, support and referral services;

1 For a detailed list of state/territory community legal centres, see the directories at www.naalc.org.au (accessed 24 November 2009)

2 <http://www.naalc.org.au/topics/2000.html> (accessed 22 October 2009)

more than 2 000 community legal education projects; and finalised over 580 law reform projects.³

7.6 Volunteers are integral to the work of CLCs with thousands of volunteers across the country providing the commercial equivalent of \$23 million of legal assistance services in 2006. This contribution comprised some 300 000 hours, excluding pro bono support from the private legal profession (over 25 000 hours per annum).⁴

7.7 The high rate of volunteerism makes CLCs highly cost effective in the provision of legal services.⁵ Their peak body, the National Association of Community Legal Centres (NACLC) notes also their valuable role in limiting judicial system costs:

A study undertaken in 2006 by the Institute of Sustainable Futures on the Economic Value of Community Legal Centres concluded that every dollar spent on legal services at community legal centres (CLCs) can save at least \$100 in avoided costs.⁶

7.8 The committee commends the dedication and commitment of CLC volunteers throughout Australia. Without these efforts, a significant number of Australians would have little to no access to justice. Furthermore, the work of volunteers alleviates pressures elsewhere in the legal aid system, allowing other legal aid service providers to more strategically utilise their limited resources.

7.9 In early 2008, the Attorney-General's Department (department) released its first nationally-focussed review of the Community Legal Services Program (the CLSP Review), the program under which the Australian Government provides CLC funding. The CLSP Review sought to maximise legal outcomes for disadvantaged Australians by improving legal services, and more effectively and appropriately targeting community needs.⁷

7.10 The CLSP Review recognised many positive aspects of CLCs, including: their expertise in areas of law that other providers are not able or not willing to cover; their multi-dimensional approach to service delivery, facilitating assistance to people with

3 National Association of Community Legal Centres, 'Why Community Legal Services are Good Value', 2008, p. 1.

4 National Association of Community Legal Centres, 'Why Community Legal Services are Good Value', 2008, p. 6.

5 For example, see Employment Law Centre of WA (Inc.), *Submission 26*, pp 3 & 5.

6 National Association of Community Legal Centres, *The Economic Value and Social Benefit of Community Legal Centres – A Summary*, p. 1. Also, see Liberty Victoria, *Submission 25*, p. 2; National Association of Community Legal Centres, *Submission 1*, pp 3-4; and PILCH, *Submission 33*, p. 47.

7 www.ag.gov.au

complex needs and multiple disadvantaged; and a client base marked by low income, marginalisation, disadvantage and a lack of social inclusion.⁸

7.11 Submissions to this inquiry endorsed these positive comments. For example, the Family Court of Australia (FCA) and the Federal Magistrates Court (FMC), with whom the department agreed, submitted:

The national network of community legal centres is a vital adjunct to the services provided by legal aid commissions and private legal practitioners. They are a critical source of professional and impartial legal information and advice, particularly for people who are not eligible for legal aid.⁹

The Community Legal Services Program

7.12 At present, 127 CLCs receive Commonwealth funding under the Community Legal Services Program (CLSP); 20 CLCs receive state/territory funding only; and over 50 CLCs receive no funding whatsoever,¹⁰ meaning that approximately 36.5 per cent of CLCs are funded from sources other than the Australian Government.

7.13 Evidence suggests that whether a CLC is funded under the CLSP depends upon when that CLC first entered, or sought to enter, the program, and whether the CLSP Review identified the CLC in question as servicing a legal needs area.¹¹

Application-based grants

7.14 A significant difference between the CLSP and the Legal Aid Program (LAP) is the method of funding. Whereas the latter is distributed according to a funding model (the Rush-Walker model), the CLSP is an application-based grants program, with funding provided via three-year service agreements. The current agreements expire on 30 June 2010.¹²

8 Attorney-General's Department, *Review of the Commonwealth Community Legal Services Program*, March 2008, p. 6.

9 Family Court of Australia & Federal Magistrates Court, *Submission 31*, p. 16; and Attorney-General's Department, *Submission 54*, p. 3.

10 National Association of Community Legal Centres, *Submission 1*, p. 7; Care Inc. Financial Counselling Service and Consumer Law Centre of the ACT, *Submission 9*, p. 2; Australian Lawyers for Human Rights, *Submission 43*, p. 8; Ms Vasilyki Eliades, PILCH (Vic), *Committee Hansard*, Melbourne, 15 July 2009, p. 49.

11 Ms Sara Kane, Employment Law Centre of WA (Inc.), *Committee Hansard*, Perth, 13 July 2009, p. 11; Ms Julia Hall, NACLCL, *Committee Hansard*, Sydney, 11 September 2009, p. 27; and Mr Peter Arnaudo, Assistant Secretary, AGD, *Committee Hansard*, Canberra, 27 October 2009, p. 46.

12 Attorney-General's Department, Estimates Answer to Question on Notice No. 127 (27 May 2009); and Ms Julia Hall, NACLCL, *Committee Hansard*, Sydney, 11 September 2009, p. 26.

7.15 The CLSP service agreement defines the obligations of each party, and provides an accountability framework for the expenditure of public funds. It requires each CLC to comply with a range of conditions regarding the use of those funds, and submit various items for approval, including:

- a Community Legal Services Program Plan;
- an annual accrual budget;
- quarterly funding acquittals;
- progress reports against the Community Legal Services Program Plan;
- annual audited financial statements; and
- an annual report.¹³

7.16 These accountability requirements are aligned with those of other Australian programs, but notably, apply only to CLCs funded under the CLSP.

7.17 The committee heard criticisms of the application-based grants program. The Suncoast Legal Community Legal Service Inc., for example, submitted that: there is a lack of transparency and equity in how funding is apportioned in the sector; and existing services should be funded to a sustainable level before more services are established:

That a region with the population of the Sunshine Coast which has had a community legal service in place from the mid-80's onwards only received funding to employ a principal solicitor and full-time coordinator as late as 2007 speaks volumes as to the lack of transparency and equity in how funding is apportioned in the sector...Where there is a functioning CLC in a town or region with a particular population, one would expect that it would be broadly funded to the same level of service as a CLC in another region or town of similar population, with some adjustment for particularly wealthy or particularly disadvantaged demographics. In Queensland and throughout Australia this is clearly not the reality. The tendency to encourage additional under-funded services in new communities rather than properly funding those services that are already running only adds to this problem.¹⁴

13 Attorney-General's Department, *Review of the Commonwealth Community Legal Services Program*, March 2008, pp 81-82.

14 Suncoast Community Legal Service Inc., *Submission 46*, p. 5.

7.18 The Suncoast Legal Community Legal Service Inc. also argued that the annual grant process is highly unpredictable, complicating the long-term future of CLC projects.¹⁵ Most CLC submissions reiterated these arguments in relation to one-off funding injections, additionally noting that the injections are for limited purposes only.¹⁶

7.19 By way of illustration, in South Australia the Women's Legal Service (SA) Inc. applied its one-off funding injection toward employing another solicitor for its Rural Women's Outreach Program, but warned that:

We are restricted by the lack of certainty surrounding one off funding grants, and the lack of funding for undertaking regular and consistent outreach to Coober Pedy, Oodnadatta, Nepabunna and other remote areas.¹⁷

7.20 The department is aware of criticisms regarding the application-based grants program, with the 2008 CLSP Review recommending that a funding model be adopted for the allocation of any *new* funding under the CLSP. The review set out a proposed funding model, which provided a mechanism for determining: which CLCs are located in areas of greatest demand; which CLCs are in the greatest need of funding; and the relative distribution of new funding based on four primary considerations.¹⁸

7.21 According to the department, consultations have commenced on some of the CLSP Review's recommendations, including a new CLSP funding model. At the time of writing, a model has not been agreed or implemented.¹⁹

7.22 The committee notes the on-going criticisms of the grants-based funding, and commends the department for considering, consulting and seeking to implement a new funding model. The committee endorses that process, urging the department to widely consult with interested stakeholders throughout the reform process. The committee considers that all CLCs should be captured by the new funding model to bring uniformity to the funding process.

15 Suncoast Community Legal Service Inc., *Submission 46*, p. 6.

16 National Association of Community Legal Centres, *Submission 32*, p. 8; and Combined Community Legal Centres' Group NSW (Inc), *Submission 44*, p. 8.

17 Women's Legal Service (SA) Inc., *Submission 59*, p. 19.

18 Attorney-General's Department, *Review of the Commonwealth Community Legal Services Program, March 2008*, pp 60-62.

19 Attorney-General's Department, Annual Report 2007-08, p. 87; and Attorney-General's Department, Estimates Answer to Question on Notice No. 126 (27 May 2009)

Recommendation 22

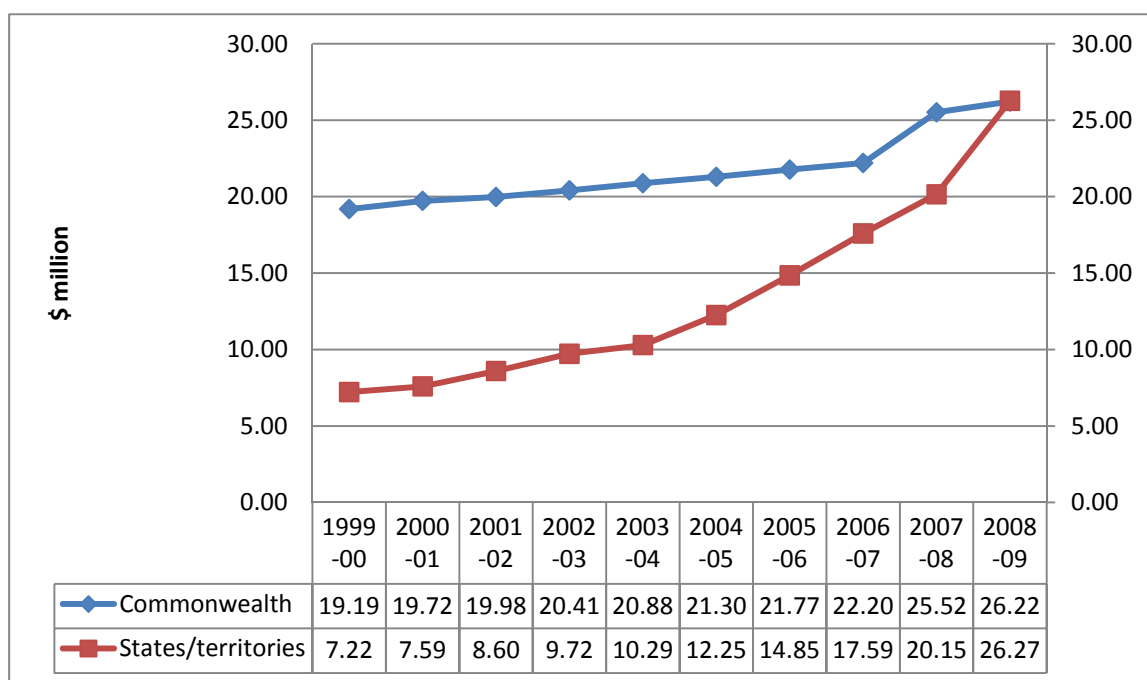
7.23 The committee recommends that the Attorney-General's Department, in consultation with interested stakeholders, expedite the development of a new funding model for the allocation of Australian Government funding to all community legal centres.

Core funding

7.24 Term of reference (f) is fundamentally directed toward the issue of whether CLCs have sufficient funds to effectively provide access to justice for disadvantaged Australians.

7.25 Figure 7.1 below shows the Australian Government funding levels for the CLSP for the period 1999-2009, compared with state/territory funding levels. Overall, contributions have increased. Commonwealth funding increased marginally each year, whereas state/territory contributions increased significantly to the point where they are now on par with the Australian Government funding levels.

Figure 7.1 – Commonwealth, state and territory funding for the Community Legal Services Program: 1999-2009

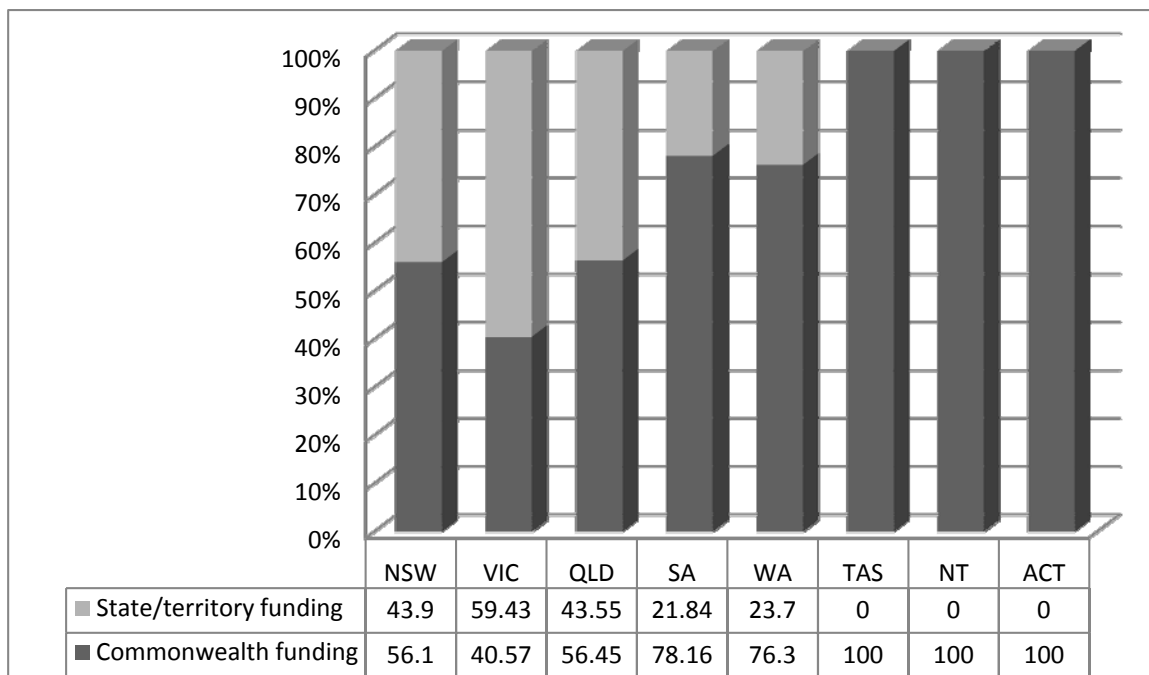


Source: Attorney-General's Department, *Review of the Commonwealth Community Legal Services Program*, March 2008, p. 109; and Attorney-General's Department, *Submission 54*, p. 6.

(Note: There is slight variation in the 2007-2009 figures as reported in Portfolio Budget Statements)²⁰

7.26 Figure 7.2 below describes Australian Government funding for CLCs in each state/territory, compared with state/territory government funding for the financial year ending 30 June 2007. In that period, the Australian Government solely funded CLCs in Tasmania and the territories, with significant contributions in South Australia and Western Australia.

Figure 7.2 – Commonwealth, state and territory funding for Community Legal Centres: 2006-07



Source: Attorney-General's Department, *Review of the Commonwealth Community Legal Services Program*, March 2008, p. 43.

(Note: The figures include NSW Public Purpose Fund monies, state/territory only funded CLCs and state/territory funding to state/territory based sector federations and associations.)

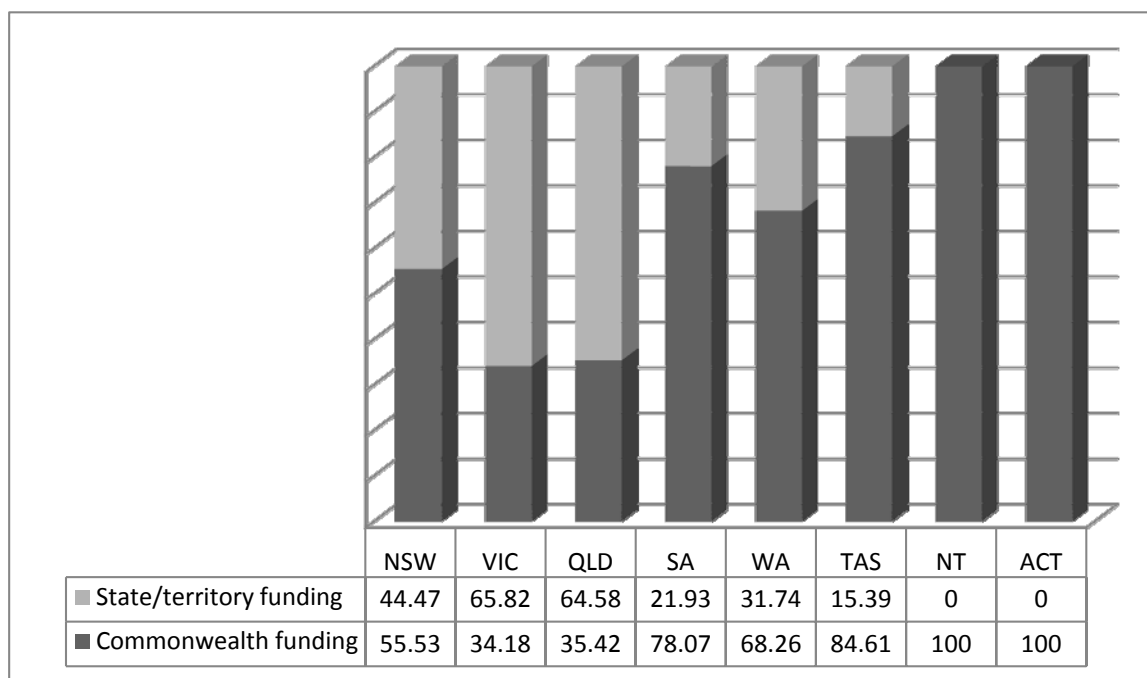
7.27 In the 2009-10 Budget, the Australian Government announced that its current year funding for CLCs would be \$26.085 million (a decrease of \$135 000), with a further \$81.091 million spread out over three years.²¹

20 Attorney-General's Portfolio, Portfolio Budget Statements 2007-09, Budget Related Paper No. 1.2, p. 53; Attorney-General's Portfolio, Portfolio Budget Statements 2008-09, Budget Related Paper No. 1.2, p. 29; and Attorney-General's Portfolio, Portfolio Budget Statements 2008-09, Budget Related Paper No. 1.2, p. 30.

21 Attorney-General's Portfolio, Portfolio Budget Statements 2008-09, Budget Related Paper No. 1.2, p. 30; Attorney-General's Department, *Submission 54*, p. 2; and Attorney-General's Department, Estimates Answer to Question on Notice No. 125 (27 May 2009) (which shows a discrepancy of -\$2.535 million)

7.28 The committee understands that the 2009-10 Australian Government funding will be distributed nationwide as shown in Figure 7.3 below. The statistics show fluctuations in the distribution of Australian Government funding for CLCs, as compared with its 2006-07 funding however the Commonwealth alone continues to fund CLCs in the territories.

Figure 7.3 – Commonwealth, state and territory funding for Community Legal Centres: 2009-10



Source: National Association of Community Legal Centres, Answer to Question on Notice (11 September 2009)

One-off funding injections

7.29 In addition to core funding, the Australian Government has in the past provided one-off funding injections to CLCs covered by the CLSP. From 1999-2009, four such injections were made:

- \$10 million in April 2008 to assist in the management of increased demand for services;²²
- \$5.8 million in August 2008 to improve access to justice for communities in rural, regional and remote (RRR) areas (as part of the Regional Innovations Program for Legal Services);²³

22 The Hon. Robert McClelland MP, Attorney-General, 'Boost for Social inclusion Through Better Legal Services', Media Release, 18 April 2008

23 The Hon. Robert McClelland MP, Attorney-General, 'Rudd Government Boosts Legal Services for Regional, Rural and Remote Communities', Media Release, 18 June 2008

- \$4 million in May 2009 to 47 CLCs, focussing on areas such as consumer protection, mortgage and tenancy issues, welfare rights, family, and homelessness issues;²⁴ and
- \$1.5 million in June 2009 to CLCs, focussing on older Australians, family law and family violence matters, the establishment of a trial legal clinic for homeless persons in the ACT and Victoria, and development of clinical legal education projects in the area of family law.²⁵

7.30 The CLSP Review immediately preceded the one-off funding injections, which submissions and evidence universally welcomed. However, both the CLSP Review and submissions stated that CLCs remain under-funded.

The adequacy of funding

Community legal centres face [challenges] in delivering services on current funding levels – the average amount of funding provided under the Commonwealth Community Legal Services Program in 2006-07 is approximately \$173,000.²⁶

7.31 This finding from the CLSP Review articulated what the NACLCL described as 'a funding crisis' affecting CLCs, and one which National Legal Aid (NLA) submitted has been developing for at least the past 10 years.²⁷

7.32 Submissions to the inquiry overwhelmingly supported the NACLCL and NLA's assertions and called for more adequate funding for the sector.²⁸ An illustration of how funding inadequacies affect CLCs' facilitation of access to justice was provided to the committee at its Perth (and other) hearings.

7.33 The Employment Law Centre of WA described its precarious position following the cessation of Australian Government funding in November 2006. Since then, the centre operates on short-term funding from the state government and the WA Public Purposes Trust Fund. The centre expressed concern for its 4000 odd clients and

24 The Hon. Robert McClelland MP, Attorney-General, 'Funding for Legal Assistance Services', Media Release, 9 May 2009

25 The Hon. Robert McClelland MP, Attorney-General, 'Additional \$6 million for Legal Assistance Services', Media Release, 30 June 2009

26 Attorney-General's Department, *Review of the Commonwealth Community Legal Services Program*, March 2008, pp 6 & 49.

27 National Legal Aid, *Submission 34*, p. 31; and Ms Julia Hall, NACLCL, *Committee Hansard*, Sydney, 11 September 2009, p. 22.

28 For example, Family Court of Australia & Federal Magistrates Court, *Submission 31*, p. 16; Suncoast Community Legal Service Inc., *Submission 46*, p. 6; Australian Lawyers Alliance, *Submission 27*, p. 21; Australian Environmental Defender's Office, *Submission 29*, p. 14; Combined Community Legal Centres' Group NSW (Inc.), *Submission 44*, p. 6; Australian Lawyers for Human Rights, *Submission 43*, p. 9; and Women's Legal Service (SA) Inc., *Submission 56*, p. 4; and PILCH, *Submission 33*, p. 49.

also the approximately 6000 prospective clients who the centre is not adequately resourced to assist:

For [those] people who are not able to access ELC's services they have no equivalent alternative to the ELC to turn to. These clients are then left with the unsatisfactory option of either abandoning their claim for lawful entitlements or pursuing their claim without assistance, often against their legally represented employers.²⁹

7.34 In response to questions, the Employment Law Centre of WA advised that it nonetheless tries to help prospective clients by 'arming' them to self-represent (one to five each week, equating to a couple hundred each year). Its success is not statistically measurable, but it believed this achieves better outcomes for both the individual and the judicial system.

7.35 Ultimately, the Employment Law Centre of WA maintained the need for additional CLC funding, a view supported by other submitters and witnesses to the inquiry, including the Hunter Community Centre Inc. who clarified that what CLCs really need is core funding:

One-off or ad hoc funding is welcomed but it is not the way to fund community legal centres on a long-term basis. At the moment we have a significant number of projects at our community legal centre which, as I have mentioned, are under threat of not being continued simply because they are one-off grants which enable us to do something for six months or 12 months. It is very difficult to employ people in that situation when you cannot guarantee them employment for longer than 12 months.³⁰

7.36 In evidence, the department acknowledged that one-off funding injections are not a long-term solution to the needs of CLCs (and other legal service providers). The department told the committee that 'the government is going to consider [the issue] in the context of the budget, developing budgets and future plans like that', but:

The attorney is definitely very conscious of the calls, particularly in the community and the Indigenous legal sector, not only in terms of the increasing demand for their services but also the particular challenges that some of those services face in the rural, regional and remote areas.³¹

29 Employment Law Centre of WA (Inc), *Submission 26*, pp 3-4.

30 Ms Liz Pinnock, Hunter Community Legal Centre Inc., *Committee Hansard*, Canberra, 27 October 2009, p. 8; Australian Environmental Defender's Office, *Submission 29*, pp 14-15; Refugee Advice + Casework Service, *Submission 64*, p. 1; West Heidelberg Community Legal Service, *Submission 37*, pp 3-4; Care Inc. Financial Counselling Services and Consumer Law Centre of the ACT, *Submission 9*, p. 4; and Mr Mathew Tinkler, PILCH (Vic), *Committee Hansard*, Melbourne, 15 July 2009, p. 53.

31 Mr Peter Arnaudo, Assistant Secretary, AGD, *Committee Hansard*, Canberra, 27 October 2009, p. 42.

7.37 Another proponent of this view was the NACLCLC, which regularly formulates and presents governments with updated position statements and funding proposals on behalf of the CLC sector.

Funding proposals

7.38 In January 2008, the NACLCLC published a funding proposal, which opened with the following statement:

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.³²

7.39 To remedy the problem, the NACLCLC submitted that it would be necessary to invest a further \$39.155 million in CLCs:

- \$10.3 million immediately (to account for inflation and increase baseline funding);
- \$13.7 million in the 2008-09 Budget (to provide specialist services and better support RRR areas); and
- \$15 million in the 2009-10 Budget (for allocation to CLCs which do not receive baseline funding).³³

7.40 The Law Council of Australia (Law Council) supported this proposal, stating that the extra funding would allow CLCs to continue to act as an essential tool of social inclusion.³⁴ SCALES Community Legal Centre agreed:

It is essential that CLCs be funded in a sustainable and reliable manner, allowing them to achieve their goals. One of the main strategies of CLCs is to provide people with information on the law and teach them through workshops and other programs to use that information for their own and their communities use in the future or to prevent them from falling into a position of disadvantage within the legal system. Through the use of these strategies, CLCs are combating social exclusion. They are promoting social inclusion for communities by providing them with information on the law and how to navigate themselves around the legal institutions. CLCs deliver more than the individual benefit but also a broader public benefit, every time CLCs prevent clients from interacting with the judicial system or

32 National Association of Community Legal Centres, *Community Legal Centres Across Australia – An Investment worth protecting, Funding Submission to the Commonwealth Government 2007-2010*, p. 1.

33 Letter National Association of Community Legal Centres to the Attorney-General, 11 January 2008, p. 2.

34 Law Council of Australia, *Submission 12*, p. 24.

having to resort to governmental institutions for their problems, costs for the government in those bodies were decreased.³⁵

Baseline funding

7.41 Each CLC has an effective baseline funding requirement. In September 2007, the NACLC estimated that amount at around \$500 000, a figure based on highly reduced legal rates (due to CLCs' high rates of volunteerism), and exclusive of costs specific to RRR area service delivery (for which, it argued, there should be a loading).³⁶

7.42 This estimate is now two years out of date, and in spite of the CLSP Review's acknowledged baseline funding (\$173 000), evidence to the committee suggests that the baseline funding amount has not been substantially increased.

7.43 Furthermore, the department conceded that neither the current consultations regarding a new funding model for the CLSP, nor the model itself, include productivity outcomes for funding at any specified amount. The department added that there is quite a large range in annual funding amounts, and what might be appropriate for some CLCs would not necessarily be appropriate for others.³⁷

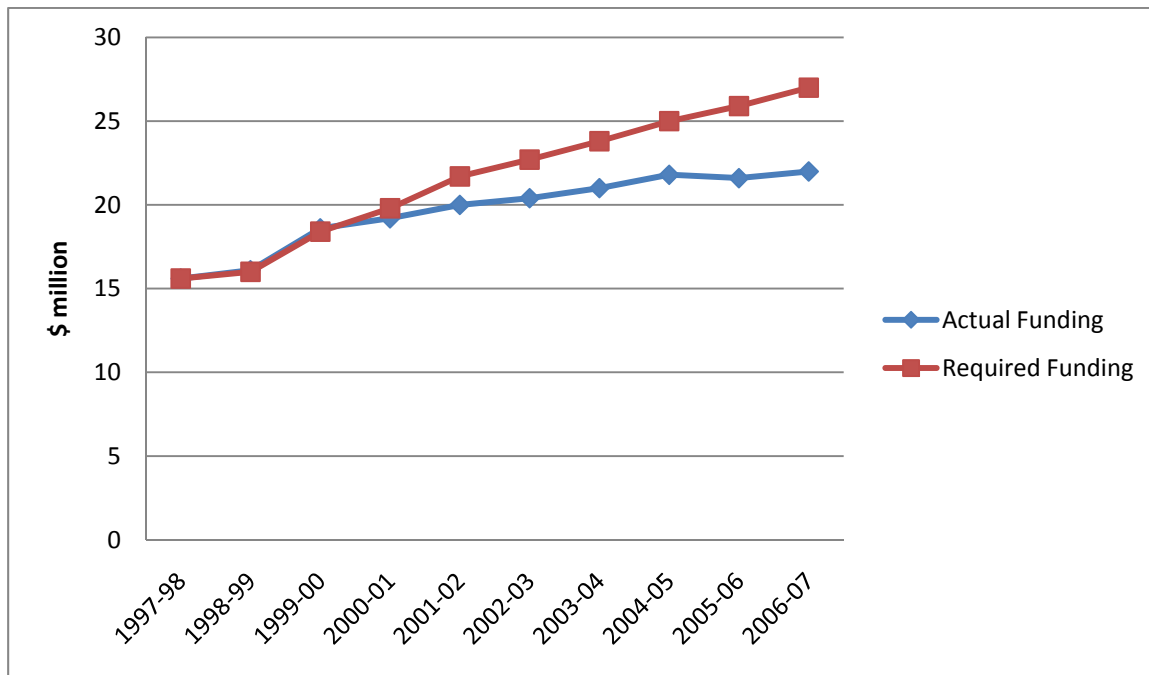
7.44 The discrepancy between actual funding and estimated effective, or required, funding is depicted by the NACLC for the period 1996 to 2007 as follows.

35 SCALES Community Legal Centre, *Submission 39*, pp 4-5.

36 Letter National Association of Community Legal Centres to the Attorney-General, 11 January 2008, p. 2; Mr Gregor Husper, PILCH (Vic), *Committee Hansard*, Melbourne, 15 July 2009, p. 44; and Ms Julia Hall, NACLC, *Committee Hansard*, Sydney, 11 September 2009, p. 24.

37 Attorney-General's Department, Estimates Answer to Question on Notice No. 126 (27 May 2009); and Mr Peter Arnaudo, Assistant Secretary, AGD, *Committee Hansard*, Canberra, 27 October 2009, pp 46-47.

Figure 7.4 – Actual and estimated community legal centre funding: 1996-2007



Source: National Association of Community Legal Centres, *Community Legal Centres across Australia – An investment worth protecting*, Attachment, p. 2.

Funding impacts on service delivery

7.45 Evidence from CLCs confirmed that their funding is not sufficient to enable them to comprehensively deliver legal assistance to their clients. In 2007, the Australian Council of Social Services estimated that up to 72 per cent of people seeking assistance from not-for-profit community and welfare services are turned away 'because services are operating at maximum capacity and have to ration access in some way.'³⁸ Submitters and witnesses agreed that inadequate funding is affecting both the quantity, or extent, of services, and their quality.

7.46 The Hunter Community Legal Centre Inc., for example, told the committee that, as with all CLCs, it does not have sufficient funding to purchase a precedent data base, which would enable its legal practitioners to: expedite service delivery; more easily provide service in a wide-range of legal matters; and achieve output consistency among CLCs.³⁹

38 Australian Council of Social Services Australian Community Sector, Survey Report 2007, p. 2.

39 Ms Liz Pinnock & Ms Margot McAlary, Hunter Community Legal Centre Inc., *Committee Hansard*, Canberra, 27 October 2009, pp 4-5.

7.47 Aside from legislation, regulations and case law, the Law Council noted that the current providers of set forms and draft documents are commercial operators, 'corporations who are generally legal publishers who are in this to make money':

The issue therefore of whether a licence could be obtained—because a lot of these services are online—by the national or state bodies for CLCs would be a matter that the Law Council would certainly support, no question about that. We would be happy to act in a liaison role, to see whether or not those publishers are prepared to provide those sorts of banks of precedents in a timely fashion and in a fashion where they can afford it.⁴⁰

7.48 Licensing in the public interest was not explored in the department's evidence. Instead, the department suggested that representative CLC bodies use their purchasing power to negotiate software licensing for CLCs. It was not keen to undertake that role, nor did it envisage any easy way to provide suitable software for the entire range of highly diverse CLCs under the CLSP.⁴¹

7.49 The Refugee Advice + Casework Service told the committee that it has an extraordinary impact on the lives of people fleeing from persecution, but it operates on an annual budget of less than \$500 000. The service estimated that it requires an additional \$100 000 per year to cover core expenditure and continue processing asylum claims.⁴²

7.50 Another example from the Suncoast Community Legal Service Inc. detailed a problem common to CLCs with large catchment areas:

Initially, the provision of community legal advice by the Service has been centralised in the business area of Maroochydore. Phone-out services were offered to those unable to attend in person for reasons of disability, child care or for those living in more remote areas. However, there are a number of recurrent criticisms of the phone out service including the effectiveness of the phone advice being given, accuracy and quality of advice given when lawyers are trying to assist with documents they do not have in front of them and professional indemnity insurance issues.⁴³

7.51 In response to these difficulties, the Suncoast Community Legal Service Inc. established an outreach service in the Noosa/Tewantin area using core funding. It hypothesised that the subsequent client increase comprised people using the local and readily accessible outreach service who would 'previously have foregone seeking legal

40 Mr Mark Woods, Law Council of Australia, *Committee Hansard*, Canberra, 27 October 2009, p. 27.

41 Mr Matt Minogue, Assistant Secretary, AGD, *Committee Hansard*, Canberra, 27 October 2009, p. 44.

42 Refugee Advice + Casework Service, *Submission 64*, p. 1.

43 Suncoast Community Legal Service Inc., *Submission 46*, p. 2.

advice, put off by the inconvenience of an hour round trip by car or more time if using public transport.⁴⁴

7.52 In spite of this success, and further expansion of the outreach service, the Suncoast Community Legal Service Inc. submitted that 'real' access to justice would require more funding for employed solicitors to provide outreach services equivalent to the Maroochydhore services (longer appointments and limited casework):

It seems terribly unfair that those in more remote regions who have private transport are able to access the Maroochydhore service yet those that can't afford transport or are at some other disadvantage, miss out on these services, when they are often the ones that need it most...

The demand for services going beyond mere advice and referral has become increasingly obvious. While many clients benefit from simply being told what to do next, there is a large group for whom writing a letter, drafting a document or making approaches to another party for example, are actions quite beyond their capacity. Provision of more intensive legal services such as these are generally beyond what can be expected of volunteer lawyers and realistically require attention from a solicitor employed by the Service...It is clear that in order to provide any substantial such service to people who fall into the gap between Legal Aid funding and the private profession, dedicated case-work lawyers and additional administrative support for those positions are required.⁴⁵

7.53 The 2003 Federal Justice System Strategy Paper acknowledged that:

A number of services have reduced the range of services delivered and hours of operation as a consequence of their financial difficulties. Reduction in services is often preferred by CLCs to closure. Accordingly, the number of closures is not indicative of the true financial difficulties being experienced in the sector. The loss or reduction in services provided by CLCs, particularly in regional and rural locations, may have a substantial impact on the people who are in need of those services. In many instances, the CLCs will be the only source of low cost legal services available in the area.⁴⁶

7.54 At that time, the department recommended giving consideration to increasing the minimum level for the core operating funding of CLCs and bringing the least well

44 Suncoast Community Legal Service Inc., *Submission 46*, pp 2-3; and Ms Liz Pinnock, Hunter Community Legal Centre Inc., *Committee Hansard*, Canberra, 27 October 2009, p. 6.

45 Suncoast Community Legal Service Inc., *Submission 46*, pp 4-5; National Pro Bono Resource Centre, *Submission 49*, p. 15; and Women's Legal Service (SA) Inc., *Submission 59*, p. 18.

46 Attorney-General's Department, 'Federal Civil Justice System Strategy Paper', December 2003, p. 106; and National Pro Bono Resource Centre, *Submission 49*, p. 15; SCALES Community Legal Centre, *Submission 39*, p. 8; and DLA Phillips Fox, *Submission 32*, pp 9-10.

resourced centres, mainly in regional areas, to the minimum base.⁴⁷ This recommendation does not appear to have been implemented.

7.55 On behalf of the sector, the NACLC summarised the general view that a lack of adequate funding (core or maintenance) curtails the efficient operation of CLCs and their ability to contribute to access to justice. It particularly identified the following adverse effects:

- loss, or compromised continuity of services available to socially and economically disadvantaged people;
- an increase in self-represented litigants before courts without the benefit of any advice;
- increased pressure on other parts of the legal system such as the courts and transfer of costs to other under resourced parts of the justice system already struggling to meet demand (Legal Aid, ALS and pro bono assistance from the private profession);
- transfer of costs to other social service providers as clients are forced to seek assistance from other agencies who are also unlikely to be able to assist clients with legal problems;
- likely reduction in support from volunteers and pro bono lawyers who are sensitive to changes in government policy, and generally support CLCs' charters of independence;
- a particular impact on clients in RRR areas as CLCs' outreach services risk becoming untenable on limited funds;
- personal costs and hardship to the individuals unable to receive assistance;
- reduced ability of CLCs to work as effectively or efficiently on collaborations with other service providers in the justice sector; and
- undermining of the community's confidence in the ability of the government to provide equitable access to the justice system generally.⁴⁸

7.56 In its 2004 Report, the committee recommended that the Australian, state and territory governments provide additional funding to enable CLCs to overcome existing operational difficulties, such as inadequate premises, facilities and resources, and enable them to better plan for such requirements in the future.⁴⁹

47 Attorney-General's Department, 'Federal Civil Justice System Strategy Paper', December 2003, Recommendation 12, p. 106

48 National Association of Community Legal Centres, *Response to the internal review of the CLSP by the Commonwealth Attorney-General*, March 2007, p. 13; and SCALES Community Legal Centre, *Submission 39*, p. 8.

49 Senate Legal and Constitutional References Committee, *Legal aid and access to justice*, June 2004, Recommendation 62, p. xxxii.

7.57 This recommendation was not accepted by the Australian Government on the basis that its contribution to CLCs is indexed each year and 'the Government does not expect them to operate at a level outside their funding.'⁵⁰

7.58 Evidence to the inquiry, together with evidence from the 2003-04 inquiry, overwhelmingly suggests however that CLCs need greater funding to provide minimum levels of access to justice.

7.59 The committee acknowledges this evidence, but notes that if CLCs are to receive increased funding, then their accountability and transparency requirements must be commensurately higher. The committee suggests, for example, that all publicly funded CLCs should report annually on measurable key performance indicators and benchmarks, and the department should investigate additional measures in its on-going consultation and review. Subject to this suggestion, the committee endorses Recommendation 62 of its 2004 Report (now labelled Recommendation 23).

Recommendation 23

7.60 Subject to increased accountability and transparency requirements, including measurable key performance indicators and benchmarks, the committee recommends that the federal, state and territory governments increase the level of funding for community legal centres with a view to sufficiently resourcing this sector of the legal aid system to meet the needs of the Australian people.

7.61 The committee also acknowledges recent funding proposals from the NALCLC, and its recent baseline funding calculations. The committee cannot say whether these estimates are reasonable given the lack of data regarding legal needs and the diverse range of CLCs throughout Australia.⁵¹

7.62 The committee accepts however that individual CLCs have particular resource needs. In view of Recommendations 2 and 3, the committee agrees in principle only with Recommendation 59 of its 2004 Report. The committee considers that, in its current consideration of a new CLSP funding model, the department should have regard to eligibility criteria, including the admission of CLCs not currently covered by the program and the exclusion of CLCs which are not politically neutral, for example, those Environmental Defender's Offices who engage in political activities.

Recommendation 24

7.63 In conjunction with Recommendation 22, the committee recommends that the Australian Government reconsider the eligibility criteria of the Community Legal Services Program with a view to allowing for the admission of suitable community legal centres throughout Australia.

50 Government Response, *Senate Hansard*, 7 February 2006, p. 83.

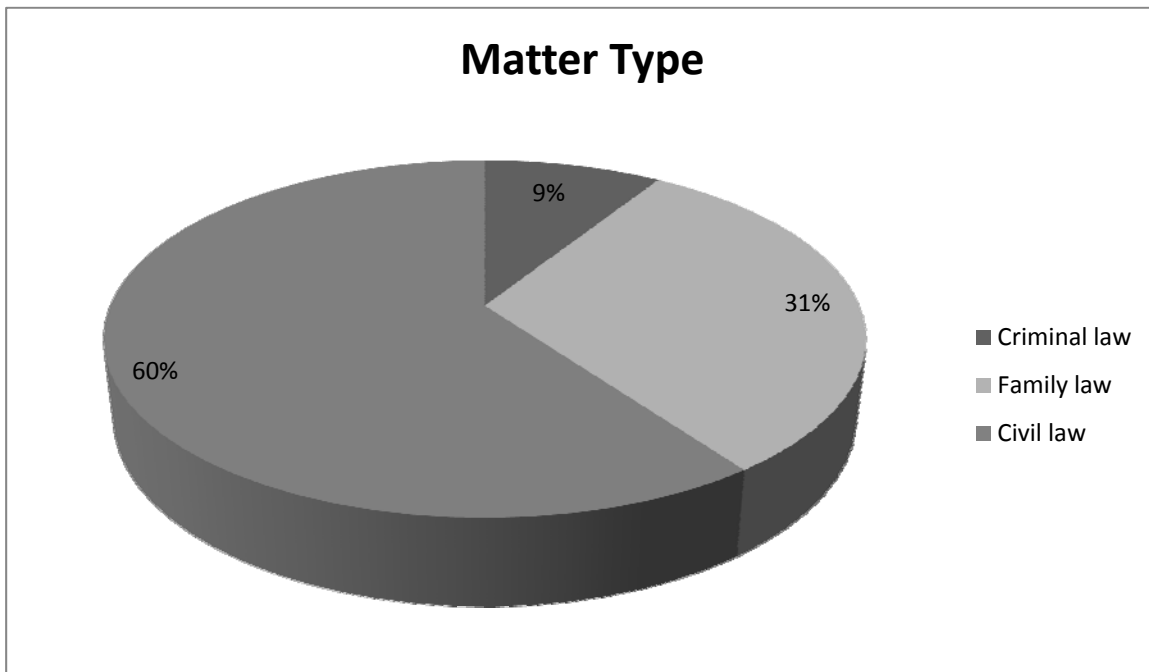
51 Mr Mathew Tinkler, Pilch (Vic), *Committee Hansard*, Melbourne, 15 July 2009, p. 38.

Civil law matters

7.64 In addition to general concerns, submissions and evidence highlighted the need for extra funding in particular areas (such as: community legal education; advocacy; and law reform projects).⁵² Civil law matters also elicited particular comment, with submissions and evidence calling for more funding in this high needs area not covered by Legal Aid Commissions (LACs).

7.65 Graphs 7.1 and 7.2 below show the proportionate areas of legal need experienced by CLC clients in 2007-08 and 2008-09, respectively. Allowing for minor fluctuations over this period, civil law matters comprise a significant proportion of the legal work undertaken by CLCs.

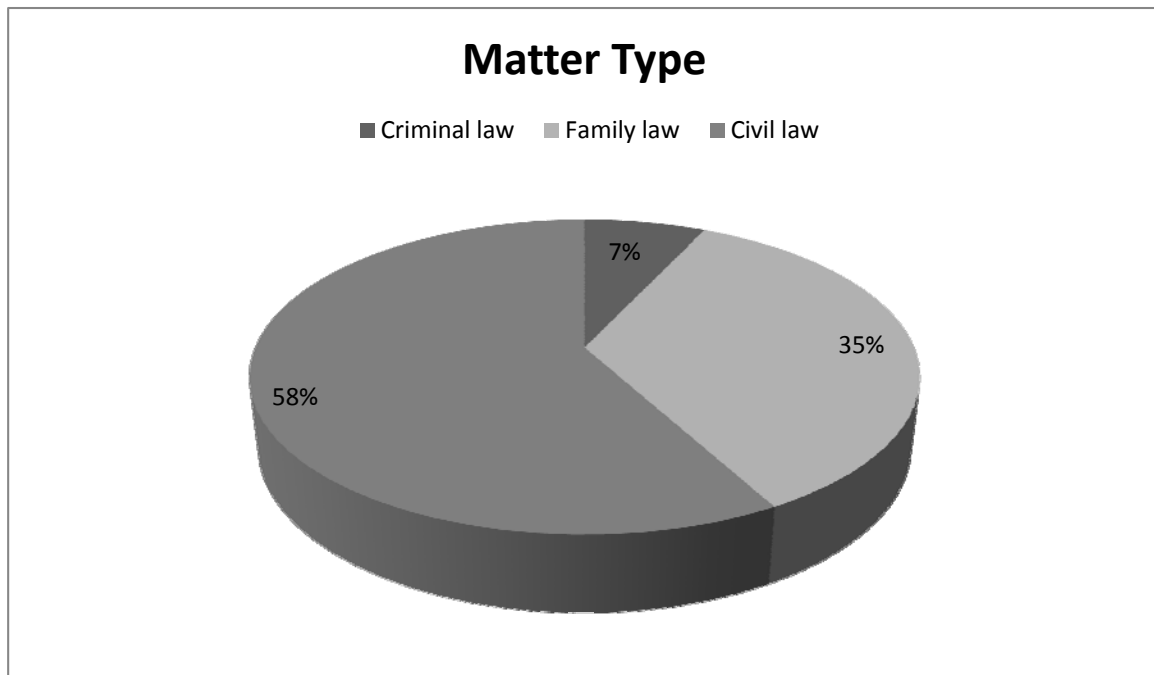
Graph 7.1 – Community legal centre legal needs: 2007-2008



Source: National Association of Community Legal Centres, Annual Report 2007-08, p. 11.

52 PILCH, *Submission 33*, p. 53; PIAC, *Submission 50*, p. 4; and Australian Lawyers for Human Rights, *Submission 43*, p. 9.

Graph 7.2 – Community legal centre client needs: 2008-2009



Source: National Association of Community Legal Centres, Answer to Question on Notice (11 September 2009)

7.66 The Public Interest Law Clearing House (PILCH) told the committee:

Civil law...constitutes the greatest area of unmet need in legal aid funding, and similarly CLC service delivery capacity. Inadequate support for civil law matters removes access to justice for many people facing issues as diverse as Mental Health Review Board meetings, personal injuries, tenancy, contract law, social security and motor vehicle accidents.⁵³

7.67 In 2003-04, the committee considered it important for CLCs to be properly funded, enabling them to provide services responsive to community need, and the committee continues to agree with this view. Civil law matters appear to be one such area of need however the committee questions whether CLCs are being adequately funded to meet this need, particularly in light of the global financial crisis and a lack of coverage by LACs.

7.68 In its 2004 Report, the committee warned:

It is imperative that the Commonwealth and state/territory governments acknowledge existing shortfalls in funding and accept that a continuing deterioration in circumstances will inevitably lead to a severe crisis for CLCs.⁵⁴

53 PILCH, *Submission 33*, p. 51.

54 Senate Legal and Constitutional References Committee, *Legal aid and access to justice*, June 2004, p. 217.

7.69 The committee made a number of targeted recommendations, including that:

The Commonwealth Government should take a lead role in recognising and overcoming the diminishing capacity of community legal centres by, for example, providing increased levels of funding to enable community legal centres to better perform their core functions, and establishing new community legal centres to ease some of the burden on existing community legal centres and to address unmet legal need.⁵⁵

7.70 This recommendation was not accepted by the Australian Government, which responded as it did to Recommendation 62 (CLC funding is annually indexed and CLCs are to operate within budget).⁵⁶ To some extent, Recommendations 60 and 62 of the 2004 Report overlap. For that reason, the committee does not reiterate the former recommendation, instead encouraging the Australian Government to take a lead role in recognising and meaningfully responding to the diminishing capacity of community legal centres to meet the needs of the Australian people.

7.71 Five years ago, the committee did not make any recommendations regarding a CLC civil law program. While evidence to the inquiry suggested a strong need for a national civil law program, the committee considers that providing such a program within the legal aid sector might account for this need in the CLC sector of the legal aid system. In view of Recommendation 8, the committee therefore declines to make any further recommendations in this regard.

Recruitment and retention issues

7.72 Chapter 2 identified access to legal representation as a problem affecting disadvantaged people with legal needs, particularly those people living in RRR areas. For the 44 CLCs located in RRR areas, recruitment and retention of legal practitioners hinders their ability to facilitate access to justice, a situation experienced by all legal service providers in such areas.

7.73 Submissions and evidence to the inquiry expounded on CLCs' recruitment and retention difficulties, with most explaining the difficulty and its consequent solution as a funding issue.

7.74 DLA Phillips Fox explained that almost all CLC funding is used to employ staff, and funding reductions therefore affect either staffing levels or salary levels. In practice, management committees almost universally sacrifice salary levels to maintain services.⁵⁷

55 Senate Legal and Constitutional References Committee, *Legal aid and access to justice*, June 2004, Recommendation 60, p. xxxi.

56 Government Response, *Senate Hansard*, 7 February 2009, p. 83.

57 DLA Phillips Fox, *Submission 32*, p. 11.

7.75 According to Gilbert & Tobin, the result of this sacrifice is that:

Community Legal Centres' salaries have not kept pace with salary growth within the Legal Aid Commission or the private legal sector. While there are notable exceptions of dedicated and experienced legal centre staff who have worked in the sector long term, generally there is high turnover and difficulty in attracting new staff and retaining that staff on the salaries offered.⁵⁸

7.76 The Women's Legal Service (SA) Inc. agreed with this assessment:

Many CLCs such as WLSSA are unable to pay remuneration that is commensurate with Legal Aid practitioners, ATSILS practitioners, or government legal officers. In the 2004 to 2007 period the average wage for CLC employed principal solicitors with more than five years experience was less than \$50,000.00.⁵⁹

7.77 The Refugee Advice + Casework Service testified that its:

...small team of dedicated caseworkers/lawyers receive very low wages given their qualifications, even for the already low-paid CLC sector. Working with clients who have often experienced trauma is stressful enough, yet RACS employees must take on very high (and unsustainable) case loads to fund core operating costs. The result is more pressure on low-paid and over-worked employees.⁶⁰

7.78 The committee heard that one-off funding injections have been used to alleviate the problem, but note that this is a short-term solution only. The Women's Legal Centre (ACT and Region) Inc. provided the following illustration:

For the 2008-2009 financial year, the Centre was able to offer staff bonus monthly payments, so that their overall remuneration packages were level with salaries paid by the ACT Government...The reason that the Centre was able to (in effect) raise staff salaries (by way of a fortnightly bonus payment over the course of the 2008-2009 financial year) was because of to [sic] the Federal Government's one off funding payment to Community Legal Centres made in April 2008. Unless appropriate ongoing funding is forthcoming, the Centre will have to revert to its existing base salaries for staff. These salaries are becoming increasingly unworkable and unfair.⁶¹

7.79 As with pro bono legal assistance, submissions evinced strong disapproval for the long-term maintenance of survival strategies which rely on legal practitioners' goodwill, and governments' apparent unwillingness to provide adequate CLC funding.

58 Gilbert & Tobin, *Submission 45*, p. 8.

59 Women's Legal Service (SA) Inc., *Submission 59*, p. 18.

60 Refugee Advice + Casework Service, *Submission 64*, p. 1.

61 Women's Legal Centre (ACT and Region), *Submission 51*, p. 14; and Ms Liz Pinnock, Hunter Community Legal Centre Inc., *Committee Hansard*, Canberra, 27 October 2009, p. 8.

7.80 The NACLC, for example, submitted:

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...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.⁶²

7.81 Taking up this theme, DLA Phillips Fox elaborated on how low salary levels directly impact on staff turnover, and in turn, impact on CLCs and their ability to achieve and maintain service levels:

The calibre of staff that legal centres can attract is perhaps the most obvious risk associated with the payment of low salaries. With salary levels for legal staff slipping to 70% of equivalent APS salaries, it is impossible to ignore the impact of low salaries on the ongoing ability of the sector to attract and retain qualified, experienced staff.

With the salaries of Principal Solicitors and Managers at CLCs at about 50% of salaries paid at the equivalent level in comparable positions, the Community Legal Sector's ongoing ability to recruit capable, competent individuals to effectively manage CLCs must also be seriously compromised.⁶³

7.82 Similarly, Gilbert & Tobin submitted:

Centres with high staff turnover are forced to dedicate increased time to recruitment, file handover and staff training on induction at the cost of service delivery. "Organisational knowledge" is lost and so are client relationships. As a consequence staff can be limited in their capacity to run cases particularly test and public interest cases.⁶⁴

7.83 PILCH submitted that, in addition to remuneration, CLC employment conditions lag behind those of their public and private counterparts, 'deficiencies' which fail to reward the service offered by CLC staff and which are a structural risk to the sector:

62 National Association of Community Legal Centres, *Submission 1*, p. 7; Combined Community Legal Centres' Group NSW (Inc), *Submission 44*, pp 7-8; DLA Phillips Fox, *Submission 32*, p. 12; and National Pro Bono Resource Centre, *Submission 49*, p. 15.

63 DLA Phillips Fox, *Submission 32*, pp 11-12.

64 Gilbert & Tobin, *Submission 45*, p. 6.

PILCH recommends an independent review of the salaries and conditions for CLC workers, with a comparative study of those in comparable international regimes, and looking at retention rates, career paths, flexible secondment arrangements across government, the private legal sector and CLCs.⁶⁵

7.84 In 2006, Mercer Human Resource Consulting reviewed a selection of CLC positions on behalf of the NACLC (Mercer Report). The Mercer Report found that CLC award-based remuneration levels did not compare favourably with equivalent salary scales in the federal and NSW public sectors (being 29-38 per cent lower). It considered competitive a range of plus or minus 15 per cent around the target marker.⁶⁶

7.85 Two years earlier, the committee had considered the issue of CLC remuneration, recommending that:

The Commonwealth Government and state/territory governments should provide additional funding to enable community legal centres to recruit, train and retain staff, through adequate remuneration, skill development programs and improved employment conditions.⁶⁷

7.86 The committee notes that this recommendation is supported by the evidence received during this inquiry. However, it overlaps with Recommendation 23, and accordingly, while the committee agrees in principle with Recommendation 61, there is no need for its reiteration.

7.87 As noted in Chapter 2, and mentioned above, CLCs' recruitment and retention difficulties are partially due also to RRR issues. The Federation of Community Legal Centres advised the committee that it proposes to create a CLC graduate program whereby law graduates are temporarily sponsored to practise in RRR areas.⁶⁸ The committee considers such a program to be a valuable extension of the clinical legal education programs discussed in Chapter 6, and a program which could encourage law graduates to more favourably view practise in non-urban areas.

Recommendation 25

7.88 The committee recommends that the Australian Government provide the Federation of Community Legal Centres with some funding support for its proposed Community Legal Centre Graduate program and that future Community Legal Centre graduate schemes be similarly supported.

65 PILCH, *Submission 33*, p. 50; and Also, see Australian Network of Environmental Defender's Offices, *Submission 29*, p. 14.

66 National Association of Community Legal Centres, *Submission 1*, p. 7 and Attachment 8, p. 14.

67 Senate Legal and Constitutional References Committee, *Legal aid and access to justice*, June 2004, Recommendation 61, p. xxxi-xxxii.

68 Federation of Community Legal Centres, Additional Information, 21 August 2009, p. 1.

