



1 June 2020

Committee Secretary  
Department of the Senate  
PO Box 6100  
Parliament House  
Canberra ACT 2600

***Uploaded online***

Dear Chair,

## **NSW Society of Labor Lawyers Submission Inquiry into the Australian Government's Response to the COVID-19 Pandemic**

The New South Wales Society of Labor Lawyers ('the Society') welcomes the opportunity to make a submission to the Select Committee's ('the Committee') inquiry into the Australian Government's response to the COVID-19 pandemic ('the Inquiry').

The Society, originally established in 1977, aims to promote changes in the substantive and procedural law, the administration of justice, the legal profession, legal services, legal aid and legal education to help bring about a more just and equitable society. The Society provides a meeting ground for people involved in the law who believe in Labor principles of fairness, social justice, equal opportunity, compassion and community.

The Society's membership and supporters include barristers, solicitors and trade union industrial officers working across the legal field. Importantly for this submission, our membership and supporters also include many people working in the community legal sector in NSW. We are therefore uniquely placed to opine on the issues facing many of those in this sector.

### **Scope of Submission**

The Society's submission will address the Australian Government's response to the COVID-19 pandemic by reference to legal aid and community legal sectors (henceforth referred to as the 'community legal sector'), in which NSW community legal centres ('CLCs') operate. In preparing this submission, the Society undertook consultation with its members, including by way of survey. Such consultations are confidential, but from time to time we draw upon the anecdotal experiences expressed in those responses to assist the submission. As the submission is based on anecdotal accounts from NSW CLCs, we do not profess to reflect the full views and experiences of the sector, and further views of the sector should be sought by the Committee before developing a response.

### **The funding environment in the community legal sector**

Recurring funding for the community legal sector is provided jointly by the Australian and NSW Governments, through the National Partnership Agreement on Legal Assistance Services ('National

Partnership Agreement').<sup>1</sup> Under the National Partnership Agreement, the Australian Government provides funding to the NSW Department of Communities and Justice, which has delegated responsibility for funding administration to Legal Aid NSW. Legal Aid NSW then allocates funding directly to CLCs. Relevantly, the NPA is due to expire on 30 June 2020<sup>2</sup>, providing an opportunity for the Australian Government, the states and territories to renegotiate terms to reflect some of the issues faced during the COVID-19 pandemic.

NSW CLCs are awarded around \$12 million from the Australian Government and \$14 million from the NSW Government each year, distributed pursuant to the NPA and service agreements with Legal Aid NSW.<sup>3</sup> Some CLCs also received additional funding from other State and Commonwealth departments. It is notorious that the funding set aside for CLCs is not capable of meeting the significant demand for legal services in the community. Indeed, the amounts allocated to CLCs in NSW equate to an estimated \$650,000 per year per CLC; but in reality, centres receive more or less allocations depending on the nature of their services and their legal demand.

Relevantly, CLCs are recognised as 'public benevolent institutions' for the purpose of taxation laws, allowing various tax concessions and salary packaging benefits for CLCs and their employees, which assist with the financial viability of the centres and staff retention.

Views expressed to the Society almost universally attributed the current challenges faced by CLCs during the COVID-19 pandemic to inherent underfunding in the community legal sector. Many were of the view that more capacity needs to be built into the sector over time so that the sector can better adapt to economic emergencies (such as that experienced during the pandemic). Responses noted that underfunding limited the ability of CLCs to adapt and absorb the increased demand for legal services. It also meant that staffing shortages and technological deficiencies at centres, present before the pandemic, were amplified following the sudden rise in demand and the government requirements to 'work from home'. This is in a context where recent bushfires across NSW have already placed significant strain on the community legal sector.

### **The Australian Government's financial assistance package**

On 6 May 2020, recognising the need to boost funding, the Attorney-General announced \$63.3 million in additional funding for the community legal sector, comprised of:

- \$20 million for domestic violence matters;
- \$29.8 million for COVID-19 related response such as tenancy disputes, insurance, debt related issues and workplace claims; and
- \$13.5 million to enable service providers to bolster IT capabilities.<sup>4</sup>

The funding would be disbursed to Legal Aid Commissions, Aboriginal and Torres Strait Islander Legal Services, CLCs and Family Violence Prevention Legal Services. The Society is not privy to how the funding to the community legal sector was ultimately allocated, and we are not aware of any other assistance provided by the Australian Government during the pandemic to the sector.

This additional funding was offered significantly later than other major developments in the Australian Government's response to COVID-19, including the following developments announced:

- On 12 March 2020, that significant business financial assistance would be provided, including changes to instant asset write off and wage subsidies for apprentices and trainees;

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<sup>1</sup> Council of Australian Governments, 'National Partnership Agreement on Legal Assistance Services'.

<sup>2</sup> National Partnership Agreement, cl 7.

<sup>3</sup> Community Legal Sectors NSW, 'Funding and Reporting' (online, 5 June 2019), <<https://www.clcsw.org.au/funding-and-reporting>>

<sup>4</sup> Media Release, Attorney-General for Australia and Minister for Industrial Relations, 'Funding boost to ensure struggling Australians can get legal assistance' (online, 6 May 2020).

- On 17 March 2020, that international travel would be banned;
- On 20 March 2020, that a JobSeeker supplement would come into effect;
- On 23 March 2020, that significant lockdowns would be instituted by states and territories; and
- On 30 March 2020, that a JobKeeper payment would come into effect.

We consider that the timing of the Australian Government’s additional funding to the community legal sector, announced almost two months after significant socio-economic reform that would, on the face of it, cause substantial economic disruption and a cascade of legal problems, was too late in the pandemic cycle to allow for the speedy allocation of funds to the sector. Indeed, at the time of writing, it is not clear when (or if at all) the funds announced on 6 May 2020 were received by individual CLCs.

The impacts of this delayed financial assistance are self-evident. CLCs (and in many cases, staff) had to quickly adapt to the new ‘work from home’ arrangements and were expected to absorb the increased demand for legal services, as well as the IT-related costs of equipping home offices, without any guarantee prior to 6 May 2020 of any additional support from the Australian Government. Further, even after 6 May 2020, there was no clarity on the date that support would be provided, which again restricted pandemic response planning.

### **Demand for legal assistance services during COVID-19**

During the pandemic, the community legal sector experienced (and, at the time of writing, continues to experience) an overall increase in demand for its legal services across most key areas of its practice, including: employment and industrial law, social security, fine enquiries, consumer disputes, domestic violence, tenancy and credit and debt disputes. This is a natural consequence of the significant shutdowns implemented by the Australian Government. In circumstances where people face economic insecurity, demand increases as people prioritise the resolution of their legal issues because:

- (a) they view their legal issues as being within their power to resolve, where broader issues in the economy such as their job security are outside of such power; and/or
- (b) they see resolution of the dispute as potentially creating greater economic security, in circumstances where those persons may be facing financial difficulty.

The clientele of the community legal sector, being some of the most vulnerable people in our society, have their poor economic conditions amplified in times of economic crisis. With health restrictions in place, leading to job losses and stand downs, people previously not considered part of this clientele also accessed services in the community legal sector. One respondent noted a 66% increase in April at their CLC on that month’s demand last year.

It is clear that the community legal sector experienced a particularly large volume increase in demand for employment and industrial law services during the COVID-19 pandemic. This was a natural consequence of reforms (however necessary) that caused substantial economic harm across Australian society. Based on anecdotal evidence provided to the Society, the demand for employment law and industrial law services followed a similar trajectory to the below:

<b>First Phase</b>	As the Australian Government announced a tightening of restrictions, including on international travel and social distancing, people sought advice from the community legal sector on redundancies, terminations, and workforce stand-downs.
<b>Second Phase</b>	Following the introduction of JobKeeper (by the <i>Coronavirus Economic Response Package Omnibus (Measures No. 2) Bill 2020</i> ) and the expansion of JobSeeker, people sought advice from the community legal sector on technical questions around the “one in all” rule, whether casuals

	would be eligible for the JobKeeper package, their rights under 'JobKeeper enabling directions' and the impact of the JobKeeper scheme on their accrual of leave entitlements.
<b>Third Phase</b>	As the COVID-19 restrictions were steadily released, people sought advice from the community legal sector on transitioning to work arrangements, including around workplace health and safety, ongoing parental responsibilities, and changed employment roles.
<b>Fourth Phase</b>	It is anticipated that a further wave of underpayment cases may eventuate, comprised of underpayment claims that were deferred in preference for more urgent cases (for example, unfair dismissals, which have a more burdensome time period for commencing a claim) and underpayment claims relating to stand downs that were not immediately pursued at the time of the stand down.

The Society received reports of other 'trends' in demand for legal matters, including:

- 1 In domestic violence matters, it was observed that during the lockdown there was a smaller increase in complaints than anticipated, but since the lockdown has been eased, the number of domestic violence complaints has grown exponentially. This trend has been attributed to complainants, previously required to be at home with violent partners, now being able to access legal assistance following the lifting of restrictions.
- 2 In immigration matters, it was observed that the number of these matters intensified due to thousands of migrants losing their jobs immediately following lockdowns, not meeting the criteria for JobKeeper benefits, losing their immigration status during the pandemic, and/or often being stranded in Australia due to the restrictions on international travel.

As is apparent from the above, the community legal sector experienced a sudden and dramatic increase in the demand for its legal services. The sector played a crucial role in informing the general public about the rights available to them under the Australian Government's new legislative measures, as well as resolving legal disputes caused by, or arising due to, the COVID-19 pandemic.

### **Volunteer staffing issues during COVID-19**

Another issue reported to the Society was that CLCs, which rely on volunteer labour both for legal and non-legal support, experienced an exodus of volunteers as a result of the lockdown requirements, principally due to student volunteers no longer attending CLCs due to travel restrictions and classes moving online, and other non-student volunteers being deterred by new travel restrictions and public health concerns. These volunteers usually offered the community legal sector administrative support such as answering phone calls, responding to emails, diary management and research. They are often the first point of contact between the general public and the sector. In their absence, the burden fell on solicitors to manage this administrative work, on top of providing their clients with regular advice and representation.

### **Recommendations for consideration**

The following observations can be made regarding the impact of COVID-19 on the community legal sector. *Firstly*, there lacked appropriate funding in place prior to the pandemic for the community legal sector to flexibly adjust to the growth in demand. *Secondly*, the Australian Government's financial assistance package was announced too late in the pandemic cycle for the funds to be quickly allocated to areas of need. *Thirdly*, given the large increase in demand (full quantification of which is not known to the Society, but is evident from anecdotal evidence), the amount of the Australian Government's

response allocated to substantive legal issues appears to us to be insufficient to meet the significant increase in demand. *Fourthly*, due to the particular circumstances of CLCs, being private organisations reliant on volunteers, public funding, and private fundraising, these centres were particularly exposed to changes to market dynamics during the pandemic, including the rapid increase in demand, cessation of volunteer labour and changed work arrangements. *Fifthly*, given that the pandemic was as much an economic crisis as it was a public health crisis, we consider that many of the trends experienced by the community legal sector would be paralleled in times of economic crisis with or without the influence of a public health emergency.

The Society therefore recommends that the Committee, and the Australian Government:

- 1 Work with the community legal sector to conduct an audit of legal services demand during the pandemic, to inform future long-term and emergency funding planning for the sector;
- 2 Prioritise the community legal sector in the Australian Government's future responses to pandemics and/or economic crises, such that any financial assistance is provided upfront along with other financial assistance measures (such as social security);
- 3 Amend the National Partnership Agreement to include new provisions in respect to emergency funding measures, such that when financial assistance is provided by the Australian Government to the community legal sector there is a process in place for the efficient distribution of funding;
- 4 Investigate means by which Australian Government assistance could facilitate the issuing of short-term paid employment contracts to trained volunteers to support retention of these staff during crises, so that trained solicitors can focus on the provision of legal services; and
- 5 Consider temporary changes to taxation arrangements to assist the community legal sector cope with the additional costs associated with the pandemic; for example, we recommend that for at least the 2019/20 and 2020/21 financial years employees working for public benevolent institutions such as CLCs not be required to include Reportable Fringe Benefit Amounts as reportable income for the purpose of FEE-HELP debt and welfare benefits.

### Further Submissions

The Society can provide further evidence, whether written or oral, on request. Please do not hesitate to contact the undersigned if the Committee requires further information.

Yours faithfully,

*NSW Labor Lawyers*

### NSW Society of Labor Lawyers

**President:** Lewis Hamilton **Vice President:** Blake Osmond **Treasurer:** Claire Pullen **Secretary:** David Pink **Ordinary Committee Members:** Tom Kelly, Kirk McKenzie, Janai Tabbernor, Nikhil Mishra, Jamila Gherjestani, Ellyse Harding and Joe Blackshield.

*The Society is not affiliated to the Australian Labor Party. The views expressed in this submission are not those of the Australian Labor Party, its members, or the Federal Parliamentary Labor Party.*