

COMMUNITY LEGAL CENTRES TASMANIA

11 June 2014

Commissioners Warren Mundy and Angela MacRae
Access to Justice
Productivity Commission
GPO Box 1428
Canberra City, ACT 2601

And via email: access.justice@pc.gov.au

Dear Commissioners,

Re: Consultation into Access to Justice Arrangements

Community Legal Centres Tasmania (CLC Tas) appreciates the opportunity to respond to the Productivity Commission's Issues Paper on Access to Justice Arrangements.

CLC Tas is the peak body representing the interests of eight community legal centres (CLCs) located throughout Tasmania. We are a member based, independent, not-for-profit and incorporated organisation that advocates for law reform on a range of public interest matters aimed at improving access to justice, reducing discrimination and protecting and promoting human rights.

In Tasmania, CLCs work collaboratively with other legal assistance services including the Legal Aid Commission of Tasmania and the Aboriginal Legal Service.¹ We have both generalist and specialist centres and offer a range of legal and related services including:

- Information and referral;
- Advice on legal matters;
- Legal casework and representation in targeted areas of law;
- One-off assistance with documents or correspondence, and assistance to people representing themselves;
- Community legal education;
- Law reform and public policy development and advocacy

A complete list of Tasmania's CLCs is provided at Appendix A.

¹ In Tasmania the Aboriginal Legal Service retains the legal services of Beeton and Mansell.

The Necessity of CLCs

There are a number of studies demonstrating the importance of CLCs and the significant work they carry out. An independent study commissioned by NACLC in 2012 confirmed the high economic return on public investment in CLCs.² The study, which was undertaken by Judith Stubbs and Associates, used an economic cost-benefit analysis to understand the economic benefit of CLCs' direct service delivery in Australia.

The report illustrates the wide range of economic benefits associated with the work done by CLCs. These benefits include those arising from:

- a more efficient operation of the legal system;
- the avoidance of domestic violence; and
- the protection of legal rights.

The study found that on average, CLCs have a cost-benefit ratio of 1:18; that is, for every dollar spent by government on funding CLCs, these services return a benefit to society that is 18 times that cost. To express this in dollar terms, if the average held constant for CLCs across Australia, the \$47 million spent on the program nationally in 2009/10 would yield around \$846 million of benefit to Australia. It should also be noted that these are conservative figures with only advice and casework being assessed. If continuing legal education, policy and law reform activities were included it is likely that the cost benefit would be even greater.

Similar findings have been made in England and Wales where analysis of data from the 2007 English and Welsh Civil and Social Justice Survey estimated that:³

- for every £1 of legal aid expenditure on housing advice, the state potentially saves £2.34
- for every £1 of legal aid expenditure on debt advice, the state potentially saves £2.98
- for every £1 of legal aid expenditure on benefits advice, the state potentially saves £8.80, and
- for every £1 of legal aid expenditure on employment advice, the state potentially saves £7.13.

The risk in failing to adequately resource CLCs and other legal assistance services is that legal problems will only become more significant. As the recently released Legal Australia-Wide Survey ('LAW Survey') highlighted, legal problems often have considerable adverse impacts on a broad range of life circumstances, including health, financial and social circumstances. In Tasmania just over half of the respondents with legal problems (48 per cent) had a 'substantial' legal

² Judith Stubbs and Associates, Economic Cost Benefit Analysis of Community Legal Centres (June 2012). As found at http://www.naclc.org.au/resources/Cost_Benefit_Analysis_Report.pdf (accessed on 20 January 2014).

³ Citizens Advice Bureau, Towards a business case for legal aid, Paper to the Legal Services Research Centre's eighth international research conference (July 2010). As found at www.citizensadvice.org.uk/towards_a_business_case_for_legal_aid.pdf (Accessed 23 May 2014).

problem that had a 'severe' or 'moderate' impact on everyday life, including income loss or financial strain (25 per cent), followed by stress-related illness (19 per cent) and physical ill health (18 per cent). Relationship breakdown (10 per cent) and moving home (6 per cent) were also evident.⁴

The Tasmanian Statistics

By national standards there is no dispute that Tasmania is socially and financially disadvantaged. A third of households are reliant on government pensions and allowances as their principal source of income⁵ and another 10-15 per cent are the 'working poor'.⁶ As well, the ABS Socio-economic Indexes for Areas (SEIFA) Index of Relative Socio-Economic Disadvantage (IRSD)⁷ reveals that Tasmania has the highest proportion (31.9 per cent) of the population living in areas that fell into the most disadvantaged socio-economic quintile after the Northern Territory (32.0 per cent).⁸ Whilst in 2011-12 a report by the ABS shows half of all Tasmanians aged 15 to 74 are functionally illiterate, and more than half are functionally innumerate.⁹

Compounding the social and financial disadvantage was the finding of the LAW Survey that many disadvantaged or socially excluded groups -including those with a disability, single parents, the unemployed, those living in public and community housing, and people living in regional areas- were particularly vulnerable to legal problems. These groups were not only more likely to experience legal problems overall, but also had increased vulnerability to substantial legal problems and multiple legal problems.¹⁰ In Tasmania, the LAW Survey found that 48 per cent or around 192,000 people aged 15 years or over experienced a legal problem and that 23 per cent or 93,000 people aged 15 years or over experienced a substantial legal problem within a one-year period.¹¹

⁴ C Coumarelos, D Macourt, J People, H MacDonald, Z Wei, R Iriana & S Ramsey, *Legal Australia-Wide Survey: legal need in Tasmania*, (Law and Justice Foundation of NSW, Sydney 2012) at xvi.

⁵ Feature Article published in the 2009-10 Household Expenditure Survey (cat. no. 6530.0): Government Pension and Allowance Recipients. 33.0% of households were dependent on government pensions and allowances, down from 34.1% in 2007-08. Nationally, this figure was 25.2%, up from 23.3%.

⁶ These are households with at least one member working usually part time with not enough income to make ends meet. For example, see the 'Cost of Living Strategy for Tasmania' (October 2011). As found at

http://www.dpac.tas.gov.au/_data/assets/pdf_file/0015/152070/A_Cost_of_Living_Strategy_for_Tasmania.pdf (Accessed 30 May 2014).

⁷ Australian Bureau of Statistics 2008, *Information Paper: An Introduction to Socio-Economic Indexes for Areas (SEIFA)*, 2006 (cat. no. 2039.0).

⁸ Nationally, 18.8% of the population lived in the most disadvantaged socio-economic quintile. Australian Bureau of Statistics 2008, *Census of Population and Housing: Socio-economic Indexes for Areas (SEIFA)*, Australia, 2006, *Index of Relative Socio-economic Disadvantage (IRSD): Census Collection Districts*, Data Cube (cat. no. 2033.0.55.001).

⁹ As reported on Radio National Background Briefing, *A literacy deficit*, Sunday 22nd September 2013. As found at <http://www.abc.net.au/radionational/programs/backgroundbriefing/2013-09-22/4962902> (Accessed 23 May 2013).

¹⁰ C Coumarelos, D Macourt, J People, H MacDonald, Z Wei, R Iriana & S Ramsey, *Legal Australia-Wide Survey: legal need in Australia*, (Law and Justice Foundation of NSW, Sydney 2012) at xiv.

¹¹ C Coumarelos, D Macourt, J People, H MacDonald, Z Wei, R Iriana & S Ramsey, *Legal Australia-Wide Survey: legal need in Tasmania*, (Law and Justice Foundation of NSW, Sydney 2012) at 57.

A more accurate method of assessing legal need for persons at risk of disadvantage or social exclusion is to utilise the most recent SEIFA IRSD data quantifying the two lowest quintiles of disadvantage in Local Government Areas (LGAs) throughout Tasmania. The statistics demonstrate that legal need for the disadvantaged in Tasmania is high.

LGAs with most disadvantage in Tasmania

Region of LGAs	1&2 Quintile of Disadvantage	Population	1&2 Population	1&2 Percentage
Launceston and North East	32.72%	137,526	45,002	29.2%
Devonport and North West	39.49%	109,138	43,099	27.6%
Hobart and South East	29.62%	247,548	73,334	43.2%

Community Legal Centres in Tasmania

Tasmania's CLCs provide assistance to a broad range of people but primarily assist persons who cannot afford a lawyer and are unable to access legal aid either because of the legal aid means test or because the matter falls outside legal aid guidelines. In short, our centres provide a safety net without which many people would be forced to self-represent. As the Commonwealth Attorney-General's Department noted in 2009:¹²

98 per cent of legal aid recipients [receive] an income that would be considered well below the poverty line. This leaves much of Australia unable to afford legal representation but nevertheless ineligible for legal aid.

However, we cannot meet all unmet need and have to prioritise to ensure best use of our funding. This was recently highlighted in the Australian Council of Social Services *Australian Community Sector Survey 2013*, which found that 63 per cent of CLCs in Australia were unable to meet demand¹³ and also reported the highest turn-away rate (20 per cent) of any other community service.¹⁴

Additionally, reduced funding of legal assistance services in some areas may result in flow-on effects for services in other areas. A good example of this occurred late last year when insufficient funding of the Legal Aid Commission in Tasmania resulted in more restrictive guidelines and consequently increased

¹² Attorney-General's Department, Strategic Framework for Access to Justice in the Federal Civil Justice System (2009) at 52.

¹³ Australian Council of Social Service, ACOSS Australian Community Sector Survey 2013, National Report, ACOSS Paper No 202 (2013) 34.

¹⁴ These rates do not take into account the large numbers of people who do not know about community legal centres, or those who for a range of reasons often associated with compounded disadvantage, do not seek legal help. The LAW Survey found only 36% of people surveyed knew about community legal centres: C Coumarelos, D Macourt, J People, H MacDonald, Z Wei, R Iriana & S Ramsey, Legal Australia-Wide Survey: legal need in Australia, (Law and Justice Foundation of NSW, Sydney 2012) Page xiv.

demand for CLC assistance.¹⁵

Despite the significant social and financial disadvantage encountered by many Tasmanians and their increased vulnerability to legal problems, CLCs in Tasmania continue to provide an excellent service.

- Generalist Centres

Our generalist CLCs have offices in the three major population centres of Hobart (south), Launceston (north) and Devonport (north-west). There are also offices in the Hobart satellite towns of Bridgewater and Sorell whilst outreach is provided in the north-east, north-west and west including Burnie, Smithton, Queenstown, Beaconsfield, Campbell Town, Deloraine, Fingal, Georgetown, Scottsdale and St Helens. The offices and outreach services provided by our generalist services ensure regular face-to-face servicing of many of Tasmania's most disadvantaged urban, regional and rural areas. By way of example, according to the most recent SEIFA IRSD data, more than one-third of Tasmanian Local Government Areas (LGAs) are in the two lowest quintiles of disadvantage in Australia: Break O'Day, Brighton, Burnie, Central Highlands, Derwent Valley, Devonport, Dorset, George Town, Glenorchy and West Coast.¹⁶ Significantly, the overwhelming majority of these LGAs have either a generalist CLC office located within the locality or receive regular servicing. The Hobart Community Legal Service has an office in Bridgewater, which is in the Brighton municipality and close to the Derwent and Central Highlands' municipalities, whilst the Sorell office of the HCLS is in Sorell, the gateway to the Tasman municipality. The Launceston Community Legal Centre regularly services the Break O'Day, Dorset and George Town LGAs (north-east and east) and the North West Community Legal Centre is located in Devonport and regularly services Burnie (in the north-west) and the West Coast.

Nevertheless, legal need in Tasmania continues to remain high. Utilising the SEIFA IRSD data (noted above) it is clear that greater resourcing of generalist CLCs is required if they are to meet demand with the following graph demonstrating that CLCs in Tasmania have legal advocate/demand ratios of between 1:9,000 and 1:16,576.

¹⁵ For example, the amended guidelines provided that representation in family law matters would only receive legal aid assistance where a lawyer was representing the other party. As well, in 2013 the Legal Aid Commission lost a family lawyer on the North-West Coast and a criminal lawyer in Hobart: C Wahlquist, No money for legal aid cases, *The Examiner*, 19 September 2013 at 5. More recently, the federal government announced a \$444,000 cut to the Legal Aid Commission's budget in 2014/15 meaning reduced ability to provide independent children's lawyers, family dispute resolution and consumer credit advice: P Billings, Children will be hardest hit by cuts to legal aid funding, *The Examiner*, 16 May 2014 at 29.

¹⁶ Australian Bureau of Statistics, Census of Population and Housing: Socio-economic Indexes for Areas (SEIFA), Australia, 2011; Index of Relative Socio-economic Disadvantage (IRSD): Local Government Areas Data Cube (cat. no. 2033.0.55.001). There are 29 LGAs in Tasmania.

Generalist CLCs and Legal Need in Tasmania

Community Legal Centre	Staff providing legal assistance (FTEs)	ABS Statistical Area Level 4 (SA4)	No. of people in legal need	Ratio
Launceston Community Legal Centre	5	North	45,002	1:9,000
North West Community Legal Centre	2.6	North-West	43,099	1:16,576
Hobart Community Legal Service	7.1	South and South-East	73,334	1:10,328

- Specialist CLCs in Tasmania

As well as generalist CLCs, specialist CLCs including the Environmental Defender's Office, Tenants' Union of Tasmania, Women's Legal Service and Worker Assist provide free statewide telephone services, face-to-face advice and legal representation to all Tasmanians irrespective of their regional, rural or remote location.¹⁷

Although qualitative and quantitative data cannot be provided for specialist centres, the SEIFA IRSD data demonstrates that 32.66 per cent of Tasmanians are at risk of disadvantage or social exclusion and more likely to require legal assistance from specialist CLCs.

- Alternative Forms of Accessibility

Finally, our centres design their operations to ensure maximum accessibility. The Hobart Community Legal Service administers the *Tasmanian Law Handbook* a free teaching and learning resource available on their website¹⁸ whilst last year the Women's Legal Service launched the 'GirlsGottaKnow' Mobile App which provides general legal information to young women aged between 14-24 years old on issues ranging from employment, relationships and money.¹⁹

In the North of Tasmania the Launceston Community Legal Service administers the Legal Literacy Program, in which some fifty volunteer legal literacy advocates assist members of the community fill out complex forms, clarify official correspondence and act as a gate-way to other legal assistance and community services. The program is currently expanding statewide in partnership with the Legal Aid Commission of Tasmania. In addition, a request from the Launceston Centrelink office to host Legal Literacy Volunteers, has

¹⁷ The Refugee Legal Service was established this year, receives no State or Commonwealth funding and is currently staffed by volunteers, including pro bono lawyers and migration agents.

¹⁸ The Tasmanian Law Handbook. As found at <http://www.hobartlegal.org.au/tasmanian-law-handbook> (Accessed 29 May 2014).

¹⁹ The App can be found at <http://www.girlsgottaknow.com.au/> (Accessed 10 June 2014).

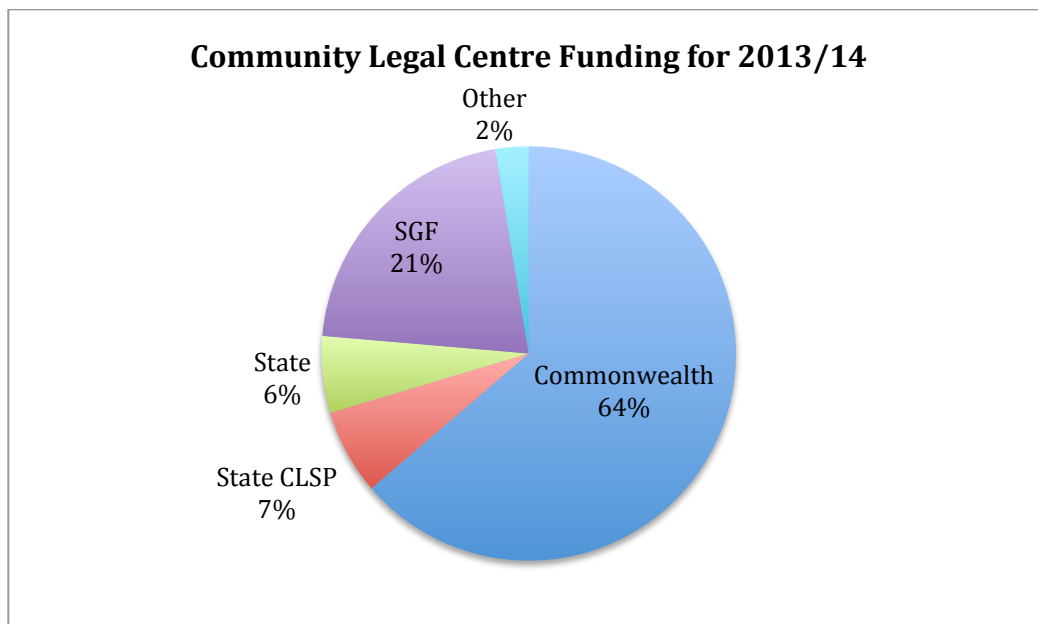
resulted in volunteers now operating out of the Launceston Centrelink office one day per week.

Whilst in the North-west the North West Community Legal Centre (NWCLC) has since March 2011 worked out of Centrelink one day per week as part of the 'Local Connections to Work' initiative. Whilst the program lost its funding as part of the 2014-2015 Federal Budget, the program brought Government and NGOs together in targeting longer term youth and unemployed persons and their efforts to access employment or education opportunities. Despite the loss of funding the NWCLC will continue to provide input informally and look to roll it out at the Devonport Centrelink office.

Finally, in November 2013 Community Legal Centres Tasmania launched a series of self-representation videos, freely available on the Community Legal Centres Tasmania website and via a link from the Magistrates Court of Tasmania website to assist self-represented litigants better understand court processes.²⁰

Funding of CLCs in Tasmania

Funding of CLCs in Tasmania is received from a number of sources including the Commonwealth and State Governments, the Solicitors' Guarantee Fund²¹ and a number of other sources including self-generated income and donations. In 2013/14 total funding received was **\$3,002,794**²² of which the majority was received from the Commonwealth through the Community Legal Services Program (CLSP):



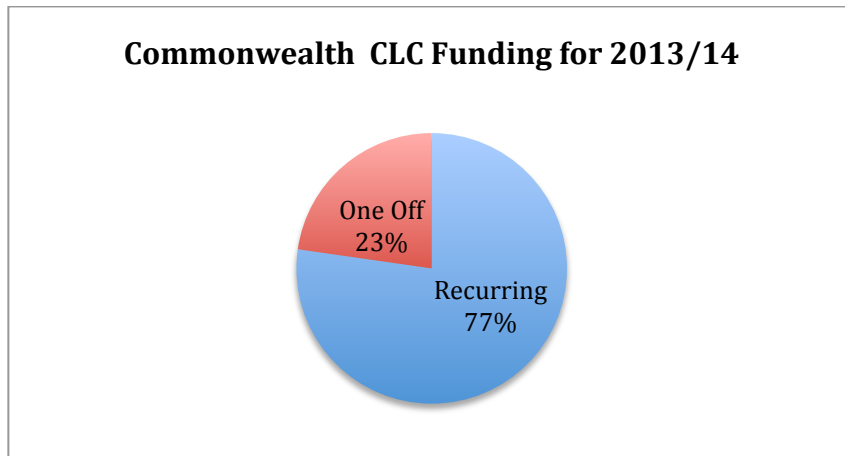
²⁰ The self-representation videos are available at <http://www.clctas.org.au/ho/get-help/> (Accessed 10 June 2014).

²¹ In the Productivity Commission's report, SGF-like bodies throughout Australia are referred to as 'public purpose funds'. That is, funds that receive interest earned on deposits in solicitors' trust accounts.

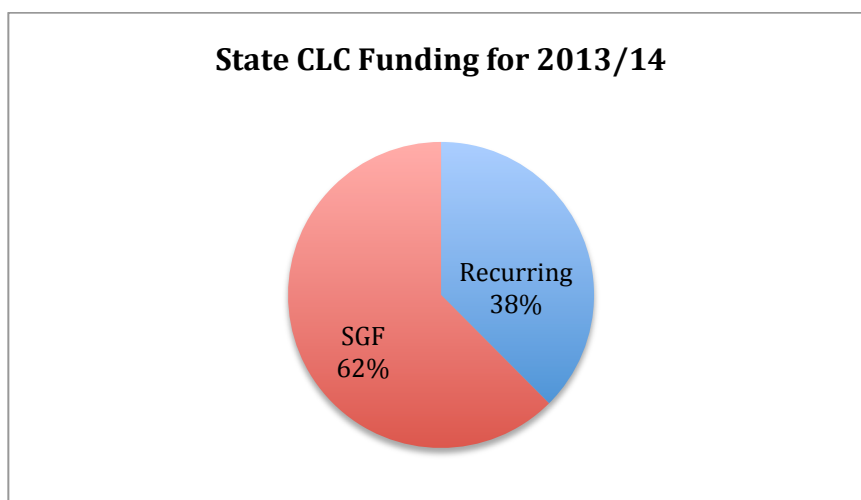
²² Worker Assist receives funding under a confidential agreement with WorkCover Tasmania. Funding details are therefore not publicly available and have been excluded.

With the funding provided, CLCs in Tasmania employed the equivalent of 34.7 Full Time Equivalent staff positions including 23.8 people (or 68.58 per cent) providing legal assistance.

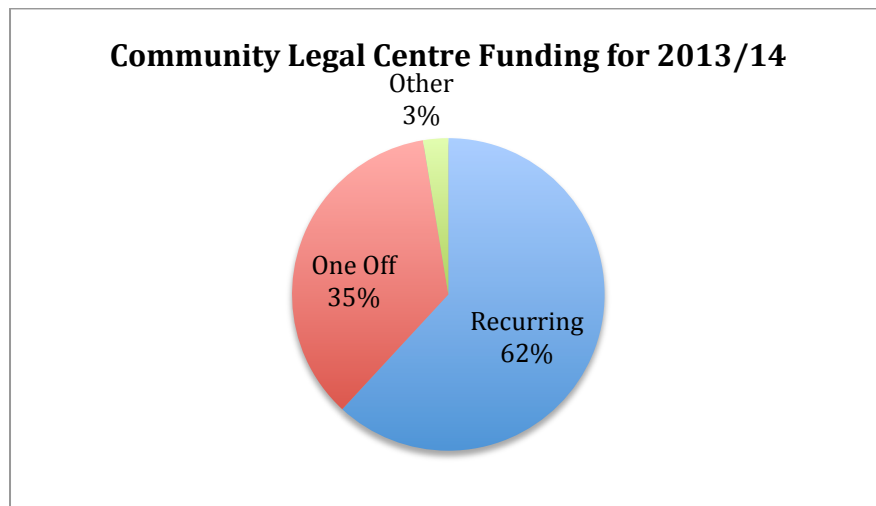
Of the **\$1,913,379** received in Commonwealth funding during the 2013/14 financial year the overwhelming majority was recurrent funding, providing security of employment for staff and continuity of service:



In Tasmania, the State Government provides recurrent funding of only \$200,000 in CLSP contributions. Although those CLCs that receive the funding have been, and are extremely grateful for the financial assistance, it is our view that the State Government should be providing greater financial assistance to all CLCs. Whilst individual departments of the State Government fund CLC programs, for example the Department of Health and Human Services provides recurrent funding to the Tenants' Union of Tasmania, it is separate to the CLSP. From the State Government CLCs received **\$1,011,312** in the 2013/14 financial year of which slightly more than 60 per cent was from the Solicitors' Guarantee Fund for one-off or project work.

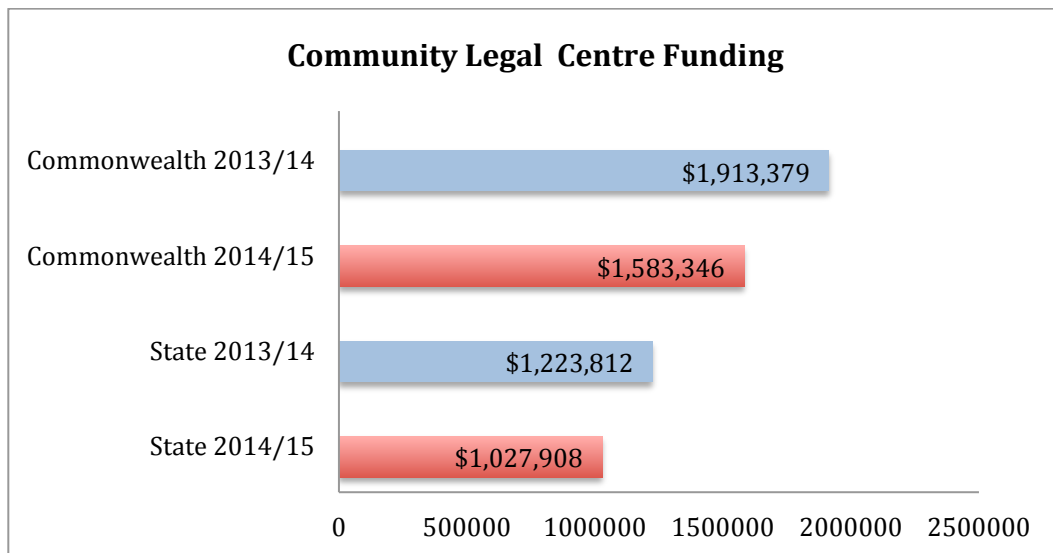


Historically, CLCs in Tasmania have not been invited to apply for Solicitors' Guarantee Fund grants, however in 2010 this policy was changed with CLCs being invited and successfully receiving funds over the last three funding rounds.²³ Whilst all CLCs are grateful that additional funding has been provided through the SGF, it cannot be relied on, as it remains discretionary, subject to market fluctuations and usually for one-off projects with no guarantee that the funding will be ongoing. As the following graph demonstrates, slightly more than one-third of all funding to CLCs in Tasmania is for one-off or project work:



Finally, it is of grave concern to all CLCs in Tasmania that there will be a 17 per cent reduction in Commonwealth funding over the 2014/15 financial year. The slashing of all funding to the Environmental Defender's Office is particularly egregious as it will provide individuals and community groups with the daunting prospect of facing off against well-resourced opponents without the assistance of the EDO and may result in inefficiencies as increased numbers of unrepresented persons muddle their way through the Tribunal and Court process. Whilst at this stage a 14 per cent drop in State Funding is projected, this figure is primarily due to Solicitors' Guarantee Funds for 2014/15 not yet having been distributed.

²³ These funding rounds took place in 2011, 2012 and 2013. For more information about the SGF, see Part 3.5 of the *Legal Profession Act 2007* (Tas).



Despite the growth in the number of programs that CLCs have been able to provide following the grant of SGF funding, we are still struggling to meet demand. As the National Association of Community Legal Centres has pointed out, a better model would see the CLSP, as a joint program of the Commonwealth and States/Territories, “structured and resourced so that all CLCs receive funding to an effective base line or minimum service delivery model in order to deliver core services to the community”.²⁴

Competitive Tendering

We strongly disagree with the proposed introduction of competitive tendering as a means of improving access to justice. Whilst we accept that tendering for legal services of a commercial nature will promote competition, provide transparency and provide a level playing field, we would strongly submit that legal services providing a public good, namely CLCs and other legal assistance services, should not be subject to tendering as they provide an extremely competitive service in a ‘market’ already stretched to breaking point. This is demonstrated in the findings of the ACOSS study (above) that made clear that CLCs in both Tasmania and the rest of Australia are already failing to meet demand. Additionally, CLC staff earn comparatively low remuneration compared with comparable positions in the public and private sector.²⁵

Finally, there is a risk that a competitive tendering process for legal assistance to the socially and financially disadvantaged will lead to a loss of ties to the community, with relationships built up over decades being lost as new ‘cost

²⁴ National Association of Community Legal Centres, Access to Justice Arrangements, Submission to the Productivity Commission (November 2013) at 45. Also see the funding principles set out in Appendix 2 of the NACLCLC response.

²⁵ For example, in June 2011, NACLCLC commissioned Mercer Human Resource Consulting to compile a Salaries Benchmarking Review Report. The report compared pay rates for CLC staff with Australian Public Sector (APS) pay rates for equivalent positions. The report found that overall, remuneration levels for benchmarked positions within CLCs are positioned well below other Federal and State award remuneration levels. As found at Benchmarking remuneration report (Mercer, July 2012) http://www.naclclc.org.au/resources/Mercer%20Benchmarking%20Review_Final%20Report_20120717.pdf (accessed 21 May 2014).

effective' services are established and more time is placed on addressing competitive tender criteria rather than providing a service.

CLCs are able to quickly and flexibly respond to the changing needs of disadvantaged communities. Contact through telephone and online services, face-to-face advice and with other community organisations means that CLCs will often be the first to encounter difficulties with changing practices, policies and laws. The introduction of a competitive tendering process is likely to result in a slower response creating inefficiencies.

If you have any queries or would like to further discuss this submission, please do not hesitate to contact us.

Yours faithfully,

Benedict Bartl
Policy Officer
Community Legal Centres Tasmania

Appendix A

Tasmania's Community Legal Centres

Centre	Services	Service Area
Environmental Defenders Office	Advice and advocacy in relation to environmental and planning law issues	State wide
Hobart Community Legal Service	General advice and advocacy, including child support, welfare rights, consumer credit hotline, prisoner advice services and Magistrates Court Support.	South (including outreach offices in Bridgewater and Sorell)
Launceston Community Legal Centre	General advice and advocacy, including welfare rights, family law, disability discrimination, employment law and criminal matters not funded by Legal Aid	North and North East (including outreach services to various locations)
North West Community Legal Centre	General advice and advocacy, including welfare rights, family and child support	North West (including outreach services in Burnie, Smithton and Queenstown)
Refugee Legal Service Tasmania	Advice to refugees, asylum seekers and other humanitarian entrants who reside in Tasmania.	State wide
Tenants' Union of Tasmania	Advice and advocacy services to tenants	State wide
Women's Legal Service	General advice and advocacy services for women	State wide
Worker Assist	Information, assistance and advice for workers in relation to workers' compensation and asbestos claims.	State wide