

**Community Legal Centres
Association (WA) Inc**



**Submission to the WA
Government: 10 Year Strategy
for Reducing Family and
Domestic Violence.**

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Contents

About Community Legal Centres Association WA.....	3
Access to Justice.....	5
Early access to legal assistance.....	6
FDV is rarely the only legal issue.....	7
How to identify legal problems.....	8
Adopt a Justice Approach	8
Courts.....	9
Healthcare.....	9
Putting People and Communities at the Centre of Decision-Making.....	10
Aboriginal and Torres Strait Islander Peoples, Organisations and Communities	10
Workforce Development	10
Measure and evaluate impact of policy decisions.....	11
Access to Legal Help and the Legal Assistance Sector	11
The need for long-term, sustainable and predictable funding for legal assistance services.....	12

About Community Legal Centres Association WA

The Community Legal Centres Association (WA) is the peak organisation representing and supporting 28 Community Legal Centres (CLCs) operating in Western Australia. Located throughout the state, CLCs are independent, non-profit organisations which provide legal services to disadvantaged and vulnerable people or those on low incomes who are ineligible for legal aid. There are existing CLCs that are Aboriginal Community controlled and managed (3); specialised for CALD communities and for people with disabilities.

A CLC is defined as an organisation that:

- Is *independent* from government, commercial and professional bodies.
- Is *not for profit, community based*, and has goals and priorities established in response to the needs of its community (geographic / specialist).
- *Provides client centred legal and/or related services* through a range of strategies.
- Develops effective ways of *informing community members* of their legal rights and responsibilities.
- *Provides disadvantaged members of the community*, and/or the public generally in public interest matters, with *access to legal and related information and/or services*.
- *Advocates* for the development of laws, administrative practices and a legal justice system which are fair, just and accessible to all.
- Develops and maintains *close links with its community* to ensure that areas of unmet legal need are detected, and appropriate services developed.
- Has developed and continues to develop management and operational structures which enable the *involvement of the community* or communities it serves.

Legal Assistance Services is a generic term used in this submission to encompass CLCs, Legal Aid WA (LAWA), Family Violence Prevention Legal Services (FVPLS) and the Aboriginal Legal Service of WA (ALSWA).

The community legal sector supports Western Australians to access legal assistance services in numerous areas in which unresolved legal problems commonly arise. These include:

- Family law
- Family and domestic violence
- Child protection
- Employment law
- Criminal injury compensation
- Consumer rights law
- Welfare law
- Housing and tenancy law
- Migration law
- Minor criminal law
- Fines and infringements.

As the former Chief Justice Wayne Martin observed when he spoke at the National CLC Conference held in Fremantle in 2016,

“there is a central connection between these areas of law, and fundamental human wellbeing. They relate closely to activities and characteristics that enable social wellbeing including our familial relationships, employment, the capacity to reside in the country of our choice, the dwelling in which we live and the capacity to afford fundamental rights and services as basic as food.”

Our new Chief Justice Peter Quinlan also observed the importance of Access to Justice during an interview with The West Australian Newspaper on 1 August 2018,

“There is a large, unserved middle in the justice system. The very wealthy have access to justice, and a small proportion of the very poor have access,” Mr Quinlan said. “There is a large group in the middle where access to justice is often theoretical rather than real.

“That will be the aim — enabling ordinary men and women to access the justice system to vindicate their rights or claims that they have, the same way the top end of town can.”

Access to Justice

CLCs provide essential legal services to thousands of everyday people, and people experiencing discrimination and disadvantage in WA each year. CLCs work with people and communities across WA.

The people we work with have legal and related issues across a wide range of areas of law. Inevitably the legal issues are interrelated and arise as a result of people's experiences of inequality, poverty, racism, and discrimination.



Clients that are female



People experiencing Financial Disadvantage



Families with dependent children



Identifying as Aboriginal and/or Torres Strait Islander



Culturally or Linguistically Diverse

Data from our CLCs about the people we help.

Source: CLCA WA Annual Report 2018

The National Census of CLCs shows almost two thirds of responding WA CLCs provide a specialist program targeted at people experiencing FDV

Source: National Census of Community Legal Centres 2017 National Report, NACLC.



% of centres providing a specialist program targeted at people experiencing domestic/family violence.

As a sector we see firsthand the impact of existing laws, policies and practices on people and communities. There is a need to ensure that justice is accessible for people experiencing discrimination and disadvantage and there are appropriate protections for vulnerable individuals and families. **This includes access to effective legal assistance services.**

Effective legal assistance services are:

- **Targeted** to reach those with the highest legal need and lowest capability;
- **Joined up** with other services to address complex life problems;
- **Timely** to minimise the impact of problems and maximise the utility of services, and
- **Appropriate** to the needs and capabilities of users.

Early access to legal assistance

Early legal assistance, especially information, usually results in an earlier resolution of issues.

A reasonable person given appropriate information regarding their rights, responsibilities and the pathway through the justice system is empowered to make informed decisions and take informed actions.

This is demonstrated in the limited circumstances at present where a perpetrator of FDV has access to a duty lawyer (or other legal assistance) who explains the nature and terms of a VRO; how issues like access to children, further family law proceedings will be/are to be conducted and information about support services.

Anecdotal evidence from CLCs who can offer such duty lawyer services is that early information and advice stage means fewer breaches of VROs, less court time, less confusion and anger experienced by clients/perpetrators and may provide earlier opportunities for mediation or dispute resolution.

Another example is where parents are referred to appropriate legal assistance services when their children first come to the attention of care and protection services. This provides the parents/family with information about their rights and responsibilities; as well as about the law and the care and protection services legal responsibilities/obligations and finally, an advocate (along with the necessary support services) who can assist them plan the roadmap to avoid their children being taken into care.

Both examples result in less Court time and resources.

In addition, as the submission from the Women's Legal Service WA demonstrates, the victim(s) of FDV are often equally in need of timely legal advice, particularly in cases where children or financial assets are involved. The Case Scenarios in their submission aptly demonstrates the different outcomes achieved for victims based on their ability to access effective legal assistance.

FDV is rarely the only legal issue

Although clients typically come to legal assistance services seeking assistance with one issue, research (and experience) has shown that most clients have a range of problems, some of which may have a legal solution and some which may not. A holistic mode of service delivery seeks to help clients access support across a range of issues.

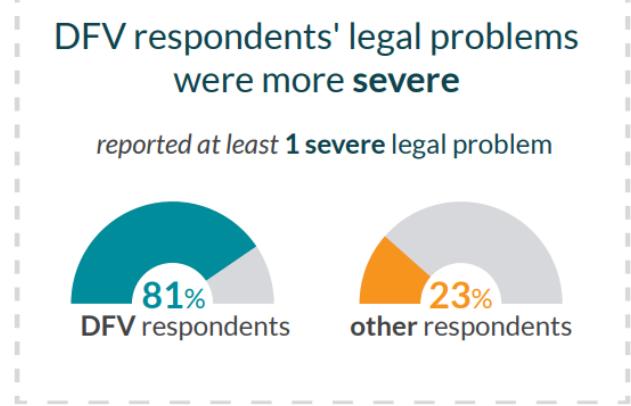
The Law and Justice Foundation of NSW has recently undertaken a significant assessment of FDV data from respondents to the Legal Australia-Wide (LAW) Survey. DFV respondents “were 10 times more likely than others to experience legal problems other than domestic violence, including a wide range of family, civil and crime problems.”



Infographic: Legal and broader needs of people experiencing Domestic and Family Violence.

Source: Coumarelos, C 2019, Quantifying the legal and broader life impacts of domestic and family violence, Justice issues paper 32, Law and Justice Foundation of NSW, Sydney.

[http://www.lawfoundation.net.au/ljf/site/templates/pdf/\\$file/LJF_DFV_infographic.pdf](http://www.lawfoundation.net.au/ljf/site/templates/pdf/$file/LJF_DFV_infographic.pdf)



Lawyers and health professionals such as social workers have professional and ethical obligations that protect the client, the privacy of the client and the information they disclose.

Early access to legal assistance (and social workers) allows for the client to provide **informed consent** to the sharing of information including “routine risk information” protecting the interests of all parties to FDV especially children.

A conflict check is incorporated into the triage (or initial intake process) to ensure that the client is not denied access to legal services at a later stage when a conflict of interest is discovered. The conflict check ensures that conflicts of interests do not exist between an organisation’s existing clients and a potential new client.

There should be no circumstances where client information is shared without the informed consent of the individual concerned.

How to identify legal problems



There are screening or triage tools available to assist support services (both in the community and at the Courts) identify a client's legal needs/legal issues where assistance is required. A useful tool is the Legal Health Check (www.legalhealthcheck.org.au/legalhealthcheck).

All staff in health, welfare or other support services should be trained in the use of such screening tools.

The Legal Health Check screening tool is routinely and successfully used in Health Justice Partnerships (HJPs). HJP is a cooperative approach by health, welfare and legal services that enable patients'/clients' problems to be managed more comprehensively. Services will partner in a co-located setting (often by outreach) with co-case management. In some HJPs this also includes cross referrals from lawyers who recognise that their client has a health or welfare problem that requires attention (e.g. a mental health issue that has become evident).

All staff in health, welfare or other support services assisting clients with FDV should be trained in the use of the Legal Health Check or similar screening tool.

Adopt a Justice Approach

A client-centred model is one where the client is seen in a holistic context and case-managed through a network of specialised services (including Court services) to support the diverse range of legal and social needs arising from the consequences of family and domestic violence.

The legal needs include tenancy, income security, family law, child protection, violence restraining orders, immigration, criminal, employment and many other matters. The case-management approach also seeks to engage and link with social support services that can provide "wrap-around care" to women and children addressing these needs. Being able to address their needs in a holistic manner supports recovery and assists in the prevention of further FDV situations. Such an approach is in line with the evidence of best-practice and confirmed by recent government inquiries and the Victorian Royal Commission into Family and Domestic Violence.

Such an approach also allows for the identification and targeting of vulnerable clients with particular needs that may not be currently met (such as women in prison, women from CaLD backgrounds and women with complex child protection matters).

There should be access to lawyers/legal assistance available wherever FDV victims, perpetrators or their children might go for support or assistance.

Courts

We need the enhancement of existing FDV services located near Family Violence Support Lists in the Magistrates' Court. Ideally, every location should have culturally appropriate support/social work services that work in conjunction with Duty Lawyers (for victims and perpetrators) from Legal Assistance Services including CLCs. This would ensure there are holistic case managed services in each location.

There is an urgent need to increase the number and availability of duty lawyer services at the Courts for both victims and perpetrators of FDV. There should be consistency in the availability of legal information and advice at this stressful time.

Healthcare

Every hospital and health centre should be a Health Justice Partnership (HJP). HJPs provide accessible, free legal assistance at a hospital or healthcare unit based legal clinic. Referrals to lawyers can be made by all health professionals.

Adopting a Justice Approach requires having lawyers/ legal assistance services available wherever FDV clients (perpetrators, victims and their children) present for advice, assistance or support. E.g. Hospitals, schools, housing services, police, Courts etc...

A partnership approach allows for frontline services to be delivered without creating significant additional administrative costs.

CLCs regularly work together to improve the services to our communities. Over the years, this approach has been acknowledged by funders as an effective way to reduce duplication of services and allow services to focus on providing direct client services while maintaining best practice service delivery.

The recent award-winning initiative by a coalition of specialist CLCs to address the intersection of domestic violence and homelessness "Safe as Houses" is a good example.

Specialist legal services are provided in partnership by Tenancy WA, Street Law Centre WA and Women's Law Service of WA. Each service brings their area of expertise into a coordinated case management plan developed for individual clients impacted by complex and inter-related legal and non-legal problems. The client is supported through this process by a social worker.

A key feature of this project is that the single-entry point for clients through the operation of a shared intake and assessment tool (i.e. screening or triage tool). Women and their children contacting any of the services who are identified as being eligible for assistance through this project will be offered the opportunity of referral into the program.



The social worker provides any non-legal support required by the clients. Clients identified as having complex and co-occurring legal issues are referred into a case management plan. The case management plan is a holistic and systemic approach in prioritising legal issues, the potential interaction between the resolution of those various legal issues and what non-legal services and support are required.

Putting People and Communities at the Centre of Decision-Making

People and communities must be involved in co-designing the laws, policies and services that affect their lives. Co-design means designing and delivering services in equal partnership between governments and funders, community organisations and service providers and the people and communities using services.

Aboriginal and Torres Strait Islander Peoples, Organisations and Communities

We need to end the crisis of over-representation of Aboriginal and Torres Strait Islander People in prison and in child protection in WA.

WA has the highest level of over-representation of Aboriginal and Torres Strait Islander People in custody in the nation. Despite representing just 3% of the population, a legacy of inter-generational trauma, systemic discrimination, socioeconomic disadvantage, poverty, and inequality has resulted in the shocking situation where Aboriginal and Torres Strait Islander People make up nearly 80% of the children, over 50% of the women and approximately 40% of the men we send to prison. The recidivism rates for Aboriginal and Torres Strait Islander People are even more distressing (men at 70% and women at 55%).

Support and fund self-determination by Aboriginal and Torres Strait Islander organisations and peak bodies.

We support the inclusion of justice targets that include closing the gap in the over-imprisonment of Aboriginal and Torres Strait Islander people but also the rates of violence, particularly family violence, experienced by Aboriginal and Torres Strait Islander people. We need to identify, and work together to solve the social and economic causes of crime, rather than just reacting to criminal behaviour. Justice Reinvestment means a holistic and evidence-based approach to improving community safety, the wellbeing of families and individuals, and reducing the number of people we send to prison.

We need to support and fund Justice Reinvestment strategies in communities with high need; prioritising healthy families and involving the local community in the design of policies to identifying and prevent the causes of crime.

Maintain and support delivery of culturally safe legal services by Aboriginal and Torres Strait Islander community controlled legal services.

Workforce Development

A good practice service provider provides culturally safe, accessible, trauma-informed services appropriate for relevant client group/s.

Continuous professional development and training must be provided in the following areas.

- Screening tools / legal needs surveys;
- Cultural safety
- Dealing with trauma;
- Referral processes;
- Understanding the roles and responsibilities of service providers and practitioners;
- Privacy, other laws and ethical requirements
- Professional obligations and standards of the different professional disciplines involved (e.g. doctors, lawyers, psychologists, nurses, social workers, psychiatrists); and,
- Policies and procedures to manage conflicts.

Measure and evaluate impact of policy decisions

Justice sector spending is a material component of the State's general government spending, consistently around 10% of general government spending i.e. approximately 3.2 billion.

The Justice Pipeline Model (JPM) developed by the WA Government (2017-2018) seeks to capture the flow of activities and costs throughout the justice sector, and to simulate the downstream impact of any changes within the system. The core part of the JPM is a focus on demand and activity flows, i.e. the relationship between activities across the sector.

The JPM uses a social investment approach that seeks to improve social outcomes by applying rigorous and data-driven techniques to identify vulnerable populations, target interventions and assess the effectiveness of different policy interventions.

To date, the focus of the state government's JPM has been in the area of criminal law/justice and incarceration. The administration of justice in the areas of civil and family law that arise in FDV matters (including the inter-relationship with criminal matters) have major economic and social costs for our community that create significant demand pressures associated with how effectively the justice system operates.

The JPM should be further developed to include the areas of civil and family that arise in FDV matters. This would allow measurement and evaluation of current FDV funding and ensure that policy decisions are made with a better understanding of the impact.

Access to Legal Help and the Legal Assistance Sector

The CLC sector has experienced significant increases in demand for legal assistance services as a result of greater awareness of FDV and from policy initiatives like the VROs.

However, there has not been any matching increase in the investment in (or funding of) the legal assistance sector specially from the State Government. There has been some limited investment by the Commonwealth Government through the Womens' Safety Package and FAS funding.

Neither has there been matching investment in the Courts resulting in increases in the median time to trial; delays in trials/hearings; and, growth in the number of cases on hand.

Government agencies (including Legal Aid WA) have been set challenging fiscal efficiency targets despite awareness of the demand pressures. Demand and other pressures have flow through impact to funding pressures.

For example, in November 2017 as a result of funding pressure, LAWA was forced to put additional limits on their grants in aid in child protection matters restricting access for parents. This resulted in fewer parents being represented, advised or assisted in this area. It meant more children (disproportionally Aboriginal and Torres Strait Islander children) taken into care.

CLCs have had little or no real increase in government funding (both State and Commonwealth) to meet increasing demand. Funding agreements have not received real increases in government funding for 3-4 years.

CLCs do not benefit from the Delivering Community Services in Partnership Policy (DCSP) as LAWA (as an independent statutory authority) chooses not to apply the DCSP.

The need for long-term, sustainable and predictable funding for legal assistance services.

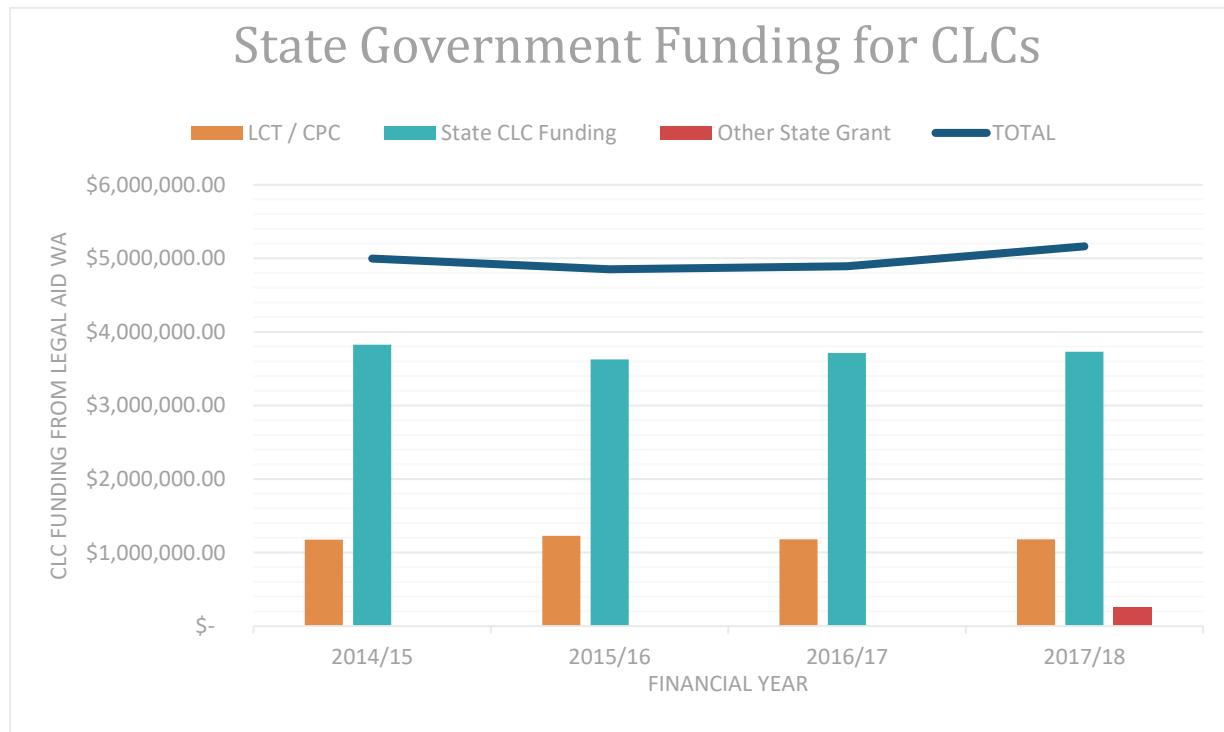
There is a need for a significant increase in funding to the sector especially by the state government. WA is the lowest per capita provider of legal assistance services in the nation. The amount of funding provided to the sector is not enough to ensure people can get the legal help they need.

CLCS and other legal assistance providers need funding certainty to plan and provide effective services. The people and communities we help across Australia need to know we will be there to help them when they need it most.

Our organisational partners and supporters need to know it is worth investing in relationships, partnerships and collaborations that increase the provision of effective and joined-up services and referrals.

Funding must be adequate to ensure that providing a holistic case managed service to clients is available. This includes funding for legal assistance, income support and appropriate housing; as well as funding to meet the needs of particular groups (such as young people in violent situations, recently arrived immigrants or those with mental health issues).

Funding needs to also be allocated to support existing legal assistance services in regional areas to enhance their ability to support victims of family and domestic violence. Such funding not only needs to be based on the evidence of legal needs but the varying costs in delivering outreach services across the regions.



Despite an increased demand for services, State Government funding for CLCs has barely increased since 2014

Source: Data extracted from Legal Aid WA Annual Reports, detailing the State Funding program for CLCs.