

The Hon. Mark Speakman MP
Attorney General of NSW

Via: communications@justice.nsw.gov.au
CC: PPF Trustees

12 February 2018

Dear Attorney,

Submission in relation to the Report on the NSW Public Purpose Fund

Thank you for the opportunity to provide comments on the [Report of the Steering Committee on the NSW Public Purpose Fund](#).

Community Legal Centres NSW (CLCNSW) is the peak representative body for almost 40 community legal centres (CLCs) in NSW. These independent non-government organisations (NGOs) provide free legal assistance to people and communities across NSW, at times when that help is needed most, particularly to people facing economic hardship. CLCs work predominantly in the areas of civil and family law.

Drawing from our knowledge and experience in providing direct services to individuals, we also work to improve the legal system, laws and policies which disadvantage large groups of people or particular communities.

CLCNSW's role is to support CLCs to deliver services, improve the efficiency and quality of CLC service delivery, advocate on key law reform and policy issues, represent the views of CLCs to the government and broader community, advocate for improved funding to CLCs and legal assistance services more generally, and increase access to justice for all people in NSW.

General comments

CLCNSW warmly welcomes the Report's commitment to maintaining the PPF; increasing funds available to it; having clearer principles and guidelines for discretionary payments; introducing longer funding cycles; and improving governance of the PPF.

We welcome the opportunity for further engagement with the Trustees and the NSW Government on the actual substance of principles and guidelines for discretionary payments, and/or any legislative changes.

CLCNSW is concerned that time is ticking for CLCs that are funded through the PPF and NSW Government 2017-18 one-off grants. Last year, CLCs and CLCNSW were only advised by Legal Aid NSW of our funding allocations for the financial year 2017-18 in the last week of June, which made it extremely difficult for organisations to plan service delivery.

We strongly encourage the NSW Government and PPF Trustees to make any announcements **by 31 March 2018** in relation to CLC funding and whether existing PPF grants will continue into 2018-19.

As it is unlikely that the full Review of guidelines and principles would have been completed by this time, or that the new PPF Board would be recruited, then we urge the PPF to consider extending existing grants for yet another 12 months for 2018-2019.

Recommendations 1 and 2: Increasing revenue

CLCNSW has no substantive comments to make in relation to the Steering Committee's recommendations on ways to broaden sources of funding and appropriately manage investments.

We are of course very keen to see an increase in funding made available generally for legal assistance services, legal research, and access to justice, so if these recommendations do increase the discretionary funding available, we are heartily in support.

Recommendation 3: Relevance of current beneficiaries, any required changes, and the allocation of funding

The Report recommends:

"The NSW Government and/or the Trustees should give wider consideration to those purposes for which discretionary payments can be disbursed, and whether they still represent the best way in which to improve access to justice outcomes for disadvantaged individuals and groups. Any such review may need to consider the impact of section 55 of the Act. In addition, guidelines need to be established to determine the overall level of discretionary payments payable from the PPF."

CLCNSW supports this recommendation, and we look forward to engagement by the NSW Government and/or Trustees with CLCNSW as the sector peak body, and with the broad CLC sector more generally, on the details of new principles and guidelines.

Current use of PPF funds to augment Government appropriations for legal services

CLCNSW welcomes the Report's caution (p 18 para 3) against any overall reduction in funding for "mainstream" legal assistance services, which we take to mean CLCs, Legal Aid NSW and Law Access.

The reason why legal services sought and received funding from the PPF for legal service delivery in the mid-2000s was because the NSW and Federal Governments were simply not providing adequate funding to the legal assistance sector.

CLCNSW has always been of the view that it is primarily the responsibility of government to fund legal assistance services for people who cannot afford to pay for lawyers. It is only when our budget submissions to governments were continually falling on deaf ears, during the 2000s, that CLCNSW instead sought funding from the PPF for the broader CLC sector, and for CLCNSW as the peak body resourcing CLCs. In 2006-07, Trustees of the PPF supported funding being provided to CLCs (in addition to the historical funding that had always been provided to the EDO and PIAC), as follows:

- Funding to 15 of the lowest-funded CLCs in NSW for a range of service delivery programs that sought to increase access to justice for particular client groups;
- Funding for an Aboriginal Legal Access Program (ALAP) to be coordinated centrally by CLCNSW;
- Funding for a Sector Development Program also to be operated by CLCNSW; and
- Funding for the Children's Court Assistance Scheme, a program largely auspiced by CLCs.

CLCNSW has endeavoured to retain this funding since 2006, with mixed success. The PPF over time asked Legal Aid NSW to administer the funding for the 15 individual CLCs and for the ALAP, and the allocations have been reduced due to the cuts to all PPF beneficiaries after the GFC. In effect, however, those 15 CLCs have continued to provide these essential services through PPF funding since 2006.

CLCNSW does not want to see a reduction in service delivery by these CLCs. We therefore welcome the Review Report's commitment to prioritizing the augmentation of funding for Legal Aid and CLCs as opposed to spreading it more widely (p 18 para 4), although we suggest that other legal assistance services such as the ALS (NSW/ACT) could be included as a priority beneficiary.

CLCs are currently awaiting the outcome of the NSW Government's Cameron Review. We very much hope that the Review will lead to a NSW Government commitment of substantially increased state government funding for CLCs.

We note that it would be pointless to have the state government announce CLC funding increases, if the PPF Trustees then announced funding decreases for PIAC, EDONSW, or the amount provided to the Legal Aid CLC Program.

If this happens, it's just robbing Peter to pay for Paul, with a net reduction in access to justice.

Administration of PPF funding to CLCs

The Report notes (pp 17-18) that in 2015 the PPF Trustees requested that all PPF CLC funding, including that directly provided to EDO and PIAC, should go to Legal Aid NSW to be administered through the CLC Program. The Report then notes that due to concerns about the Legal Aid methodology for CLC allocations for 2017-18, the PPF maintained the existing funding to CLCs.

As the Report says, a new methodology for the 2018-19 financial year is currently being developed. The Report is not clear as to whether the PPF Trustees remain of the view that all CLC funding should be provided to Legal Aid NSW for allocation via a centralised methodology.

CLCNSW is unconvinced that it is in the PPF's interests to outsource decisions about allocations for CLC funding to another body. If the PPF sets some principles and guidelines for discretionary funding, and extends the funding agreements from annual to 3-5 years (discussed in relation to Recommendation 4 below), it should be easier for the PPF to continue direct funding relationships with individual recipients.

We appreciate that the PPF Trustees may not want to set goals or outcomes for beneficiaries that are inconsistent with those set for them by government, so this can in itself be one of the principles for guiding their discretionary funding (discussed further below).

However, in the event that the PPF wishes to continue allocating some funding as a lump sum to augment the general CLC Program, CLCNSW is of the view that it should be the Department of Justice, not Legal Aid NSW, that has responsibility for managing the PPF funding. It is CLCNSW's general position that funding for CLCs should be managed by the Department and not by a fellow service delivery agency.

New principles and guidelines

CLCNSW looks forward to working with the PPF Trustees on appropriate principles and guidelines for the discretionary payments. At this stage, there has not been sufficient time to consult with our membership in detail about what these principles and guidelines might include – we presume full consultation on these is still to come.

However, here are some early comments:

- The 2012 NSW Government Principles for Funding of Legal Assistance Services, set out in Appendix 3 of the Report, have to our knowledge rarely been used by either Legal Aid NSW, the Department of Justice, or the PPF since they were developed. We therefore suggest they be scrapped and rewritten in their entirety.
- As an independent fund, driven by improving access to justice but quarantined from the politics of the day, the PPF has the opportunity to play a unique role in NSW. It can do this not only by funding the delivery of direct legal services to disadvantaged people and communities (although arguably this is the core role of government), but by (also) funding organisations and programs that improve

access to justice by providing broader public benefit via systemic advocacy, law and policy reform, and test or class litigation in the public interest.

- At the same time, CLCNSW agrees with the Report that any changes in principles or guidelines for PPF discretionary payments should not result in a net reduction in funding (across PPF, state and federal Government sources) to legal assistance services in NSW, including CLCs, Legal Aid NSW, and Law Access.
- The ALS (NSW/ACT) is another key legal assistance service provider that ought to have access to the PPF.
- CLCs strongly support the ground-breaking evidence-based work of the Law and Justice Foundation of NSW, and believe it is essential that this non-profit organisation be adequately funded without having to go cap-in-hand every year seeking annual funding.
- In its discretionary payments, the PPF should operate according to good practice philanthropic or government grant-making: having clear and transparent deadlines, publicly available guidelines, relevant beneficiary skillsets (discussed further in relation to Recommendation 5 below), good practice outcomes reporting, and easily accessible annual reports on all funded organisations or programs.
- In relation to this, the PPF's discretionary funding program could consist of at least three funding streams:
 1. **Funding to augment general legal service delivery of legal assistance services**, which could also include the ALS.
 2. **Core funding for the non-profit legal assistance organisations** whose *raison d'être* is systemic advocacy, public interest, legal research, and/or capacity building programs for legal assistance providers: that is, organisations that are not primarily focused on service delivery to disadvantaged people, but which work to increase access to justice through systemic change and capacity-building of organisations and communities. Examples of these types of organisation are CLCNSW, EDONSW and PIAC.
 3. **Program funding for legal assistance services in priority areas** – program priorities would be established by the PPF in broader consultation (and may change every five years depending on emerging evidence). Funding should be allocated to programs with a strong evidence-base as to “what works”, and should include sufficient funding to ensure the programs can be evaluated. Funding may want to focus on programs working with particular disadvantaged groups that face ongoing barriers to the legal system (e.g. Aboriginal and Torres Strait Islander people); in particular legal subject areas for which other funds are not available (e.g. employment law, consumer law); or in areas where governments are generally reluctant to provide funding (people seeking asylum and refugees).

Recommendation 4: Introduction of longer funding cycles

The greatest need that NGOs have is funding stability: it allows them to plan service delivery with certainty, to evaluate it over time, and to ensure their staff have some security of funding.

Longer funding cycles also reduce the regulatory burden on recipients and funding administrators alike.

CLCNSW therefore strongly supports the Report's recommendations for longer funding cycles, and submits that funding agreements be for a minimum of three years, although ideally they would be five years.

As s55(4) of the Legal Profession Uniform Law Application Act 2014 (NSW) sets a maximum of 3 years, moving to 5-year funding would require legislative change.

Recommendation 5: Operation and stewardship of the PPF and any necessary refinements

Make-up of the Trustee Board

CLCNSW supports the creation of a board-like structure of 5-7 people, and/or broadening of the skill set of the existing Trustees, to ensure that decisions are being made by a group with skills and experience relevant to improving access to justice as well as good grant-making more broadly.

The PPF is a large fund, and it should be overseen by strong corporate governance, including a stable, consistent, skilled set of trustees.

However, currently there is a constant turnover of trustees caused by the requirement that the current Law Society President and the previous Law Society President be ex-officio members. Unless the Law Society lengthens the terms of its presidency, and also requires presidents to have certain skills relevant to administering large trusts, this means that every year there is yet another trustee to skill up.

CLCNSW believes that appointments to the PPF board should through be a public process, similar to appointments to NSW Government committees. It should not be a "tap on the shoulder" process, nor should it consist of ex officio positions (e.g. automatically be the CEO of NCOSS).

While there are some representatives from organisations such as NCOSS, ACOSS, the NSW Ombudsman, Anti-Discrimination Board, or the Australian Human Rights Commission, who do have an understanding of the work of legal assistance services, this is because they have worked in the sector in the past (obvious examples being

Cassandra Goldie and Alastair McEwin). Representatives from these bodies do not necessarily have this knowledge simply by being in senior roles of those agencies.

A Board recruitment process would include applications against a list of desirable criteria, drafted in consultation with key stakeholders, but which could include:

- Past or current experience in working within the legal assistance sector.
- Experience in quantifying outcomes, particularly in terms of strategic change.
- Understanding of current trends in legal need research in Australia, as an academic or as otherwise.
- Experience as a consumer and/or as a worker with disadvantaged people within the broader community sector.

While we note the potential for conflicts of interest if a Board applicant is employed within one particular sector that is a current or future beneficiary of the PPF, this can be balanced by standard governance rules, and by ensuring there are others on the Board drawn from other sectors. For example, if one Board member has CLC-expertise, there might be another board member who has a long association with Legal Aid.

Annual reports

CLCNSW supports much greater transparency of the PPF including:

- Public annual reports made available online within 6 months of every financial year;
- A list of all recipients;
- Details about the principles, guidelines and criteria for decisions regarding allocations.

Conclusion

Once again, thank you for allowing CLCNSW to provide a submission on the Report.

For more information about our comments, please contact myself on (02) 9212 7333 or tim.leach@clcnsw.org.au.

Yours sincerely,



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