

NSW Budget Submission 2021-22

COMMUNITY LEGAL CENTRES NSW – 12 FEBRUARY 2021

This funding submission includes recommendations for the expansion of the NSW Community Legal Centre Program as well as specialised funding requests for particular areas of legal need.

Overall, we recommend that the NSW Government invest an additional \$11.68 million per year over the next four years into the community legal centre sector in NSW, including:

- \$8.77 million increased general funding for community legal centres to address unmet legal need (Recommendations 1 - 5)
- \$2.91 million to improve access to justice for people experiencing domestic and family violence (Recommendation 6).

We note that state government funding for community legal centres in NSW is secured until 30 June 2022. We look forward to making further detailed submissions about future funding needs to ensure community legal centres can continue to deliver access to justice to the people of NSW over the life of the current National Legal Assistance Partnership.

We also recommend **the NSW Government invest in measures to address the over-incarceration of Aboriginal and Torres Strait Islander people, including:**

- Commit \$19.3 million over five years to establish the Walama Court
- Fund the full implementation of all 125 recommendations from the Independent Review of Aboriginal and Torres Strait Islander Children in Out-of-Home Care in NSW.

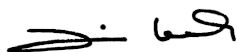
Community legal centres are independent, not-for-profit organisations that offer free legal assistance to people who need it most, particularly those facing financial hardship, disadvantage, discrimination and domestic and family violence.

There are 40 community legal centres in NSW. Some provide general assistance to people within a geographic area, spread across metropolitan, rural, regional and remote NSW. Others provide specialist services on specific issues (welfare, tenancy, immigration, or finance), or to specific groups (women, people with a disability, or Aboriginal and Torres Strait Islander people).

As the community legal centre sector's peak body, Community Legal Centres NSW advocates to ensure our members have access to adequate and sustainable funding for general and specialist services and programs. Detailed information about our sector, including the role of Community Legal Centres NSW is available on our website: www.clcnsw.org.au.

We welcome the opportunity to discuss any aspect of this submission in further detail. For more information, please contact our Policy & Advocacy Manager Emily Hamilton, via emily.hamilton@clcnsw.org.au or on 0432 668 851.

Warm regards,



Tim Leach

Executive Director

Community Legal Centres NSW

1. WHY COMMUNITY LEGAL CENTRES?

Early legal assistance is an essential service, helping people navigate the challenges they face day-to-day. Without it, people's problems can spiral out of control, pushing them into poverty, homelessness, debt, and danger. This leads to more people interacting with public hospitals, police, courts, prisons, and the out-of-home care system.

Community legal centres provide effective, early assistance with a range of legal problems, mostly in the areas of civil and family law, including:

- family and domestic violence, child abuse and sexual assault
- other family issues like parenting arrangements and child protection
- housing insecurity arising from tenancy problems and homelessness
- financial problems like fines and debts, welfare payments and consumer complaints.

Getting legal help shouldn't be determined by your bank balance. Everyone in NSW should be able to access independent and affordable legal advice. However, many people experiencing disadvantage and discrimination can't access appropriate legal supports where and when they need them.

Community legal centres make a little go a long way. **We are well-recognised as effective and efficient service providers.** In the **2019-20 financial year, community legal centres in NSW supported at least 53,757 people.** Almost 75% were experiencing financial hardship and 21% had experienced domestic and family violence.

Community legal centres are trusted members of their communities and can respond flexibly and innovatively to emerging areas of need, particularly for people who have had past negative experiences with government agencies and public service providers.

Community legal centres champion collaboration with other legal assistance providers, like the Aboriginal Legal Service NSW/ACT, Family Violence Prevention Legal Services, Women's Domestic Violence Courts Advocacy Services, Tenancy Advice and Advocacy Services, and the Legal Aid Commission of NSW.

In addition to free, easily accessible and independent advice, representation, and casework, **community legal centres provide a range of services and supports that increase legal literacy in the community, highlight access to justice issues, and contribute to positive law reform.** These include:

- information, self-help resources and referrals to other service providers
- community education, training and community development
- outreach services
- systemic advocacy and law reform informed by service delivery.

2. MAINTAIN INCREASED FUNDING FOR COMMUNITY LEGAL CENTRES TO JUNE 2025

Recommendation 1: \$5.43 million per year into the NSW Community Legal Centre Program to enable the sector to meet increased demand for services arising from the COVID-19 pandemic and continue to develop innovative tech-based solutions to address legal need in their communities.

Community Legal Centres NSW welcomed the Commonwealth Government's injection of \$15.6 million into the NSW legal assistance sector in response to the COVID-19 pandemic. Of this, \$4.34 million was allocated to community legal centres (with the NSW Government prioritising allocation to centres providing supports to people experiencing domestic violence, tenancy and employment issues). A further \$1.09 million was allocated to helping community legal centres enhance their IT systems and effect a smooth transition to remote and online service delivery.

While extremely welcome, this injection was insufficient to enable centres to meet the increases in need resulting from COVID-19. Community Legal Centres NSW remains disappointed that NSW has not followed Victoria in matching the Commonwealth's contribution to the legal assistance sector in NSW. We are also concerned that a one-off injection of twelve months' funding is simply not enough to meet the legal need that will continue to be experienced by our communities for years to come.

The pandemic's social and economic impacts have thrown up many legal issues that disproportionately harm the people and communities that community legal centres support: those reliant on social security, living on low incomes or with insecure work, Aboriginal and Torres Strait Islander people, people with disabilities, renters, people experiencing homelessness, and people experiencing domestic violence.

Over the past 12 months, many community legal centres have reported increased demand for services, particularly those related to domestic violence, tenancy, employment and aged care. Many others anticipate a spike in demand when financial and other supports designed to minimise the pandemic's economic impacts (like JobSeeker and JobKeeper payments) are reduced or withdrawn from March 2021. Like many, we expect the pandemic's impacts to be felt well beyond 2021 and for those impacted hardest to take the longest to recover.

There is no shortage of legal need in NSW. Many community legal centres struggled to meet demand for services before COVID-19 struck. With need only likely to increase in NSW as the pandemic progresses and full recovery likely to take several years, we recommend the NSW Government invest an additional \$5.43 million per year into the community legal centre sector over the life of the current National Legal Assistance Partnership (due to expire on 30 June 2025), plus 3% annual indexation.¹ **This would enable centres to increase their service offerings, to design new, innovative and tech-based methods of service delivery and, ultimately, to increase access to justice in NSW.**

¹ In 2020, the NSW Council of Social Service recommended the NSW Government immediately pass on indexation of *at least 2%* to funded community services to enable them to meet both rising demand and the rising costs of service delivery: <https://www.ncoss.org.au/wp-content/uploads/2020/07/20200824-Factsheet-Indexation-ERO.pdf>.

Recommendation 2: \$1.5 million recurrent funding for community legal centres to respond to legal need in bushfire affected communities and prepare for future disasters.

The 2019-20 bushfires destroyed or damaged a staggering number of homes and properties and took a number of lives. They also caused significant and at times complex legal issues for people and communities in affected areas, including in relation to insurance and under-insurance, housing and tenancies, income and social security, credit and debt, family violence and family law, neighbour disputes and property matters, and destroyed documents.

Community legal centres across NSW were at the forefront of local responses to the state's bushfire emergency. We worked with specialist and generalist member centres, Legal Aid NSW and other legal assistance services to coordinate legal help for people in the worst affected areas, including Eden and Moruya to the south, Bathurst and Lithgow to the west, and Port Macquarie, Coffs Harbour and Lismore to the north.

Centres in fire-impacted zones responded immediately to community need. Staff returned early from Christmas leave and centres did their best to increase advice and support services for people with fire-related legal issues. Centres' willingness and capacity to return to work immediately after the fires demonstrated the benefits of getting emergency services into communities via local service providers. The effectiveness of local legal responses was recognised at all levels of government.

Currently community legal centres receive no dedicated recurrent funding to contribute to disaster recovery efforts or to prepare for future disasters. During the height of the 2019-20 fires, centres were expected to continue providing regular services while meeting additional demand from fire affected communities.

In July 2020, Community Legal Centres NSW welcomed the NSW Government's announcement of \$1.5 million additional funding for three specialist and five generalist community legal centres working directly with bushfire affected communities.² However, one-off funding injections can make it difficult for centres to undertake long-term service and business continuity planning, engage and retain suitably qualified staff and respond quickly and flexibly to future disasters.

We recommend that the NSW Government continues to provide an additional \$1.5 million per year to community legal centres in NSW to respond to and prepare for disasters. This will enable community legal centres to:

- quickly mobilise resources to locations where they're most needed without compromising business as usual service delivery
- train first responders and other response and recovery agencies in how to identify legal problems
- deliver community legal education about the common legal problems disasters can cause
- prepare for the impacts of future disasters.

² The eight centres that received funding are Central Tablelands & Blue Mountains Community Legal Centre, Illawarra Community Legal Centre, Mid-North Coast Community Legal Centre, Northern Rivers Community Legal Centre, Shoalcoast Community Legal Centre, Financial Rights Legal Centre, Tenants Union of NSW and Welfare Rights Centre of NSW.

Recommendation 3: \$655,000 to include the NSW operations of four national community legal centres within the NSW Community Legal Centres Program.

The Cameron Review recommended national community legal centres that provide services to NSW residents be included in NSW Government funding. Critically, the Review recommended ‘the NSW Government should (seek to identify) additional funds to ensure that these services be funded without resulting in funding reductions to existing services.’

Four Community Legal Centres NSW members – the Animal Defenders Office, the Arts Law Centre of Australia, Justice Connect and Youth Law Australia – all made modest applications for funding to support their program and service delivery in NSW through the Cameron Review tender process in 2018. Unfortunately, none of these applications were funded.

To increase access to justice in NSW, we recommend the Government provides \$655,000 per year to these services as requested through their tender process applications. A summary of the programs funding would support is provided below. Funding amounts have been adjusted to allow for indexation of 3%.³

Centre	Rationale for funding	Amount p.a.
Animal Defenders Office	Deliver legal advice, representation and community legal education to people and communities experiencing financial and other forms of disadvantage in NSW with legal matters involving animals.	\$140,000
Arts Law Centre of Australia	A targeted program of legal advice clinics and educational workshops for Indigenous artists in NSW, focusing on regional and remote communities where artists have limited access to specialist legal services.	\$108,000
Justice Connect	Support service delivery to older people experiencing financial and elder abuse and workplace discrimination (including superannuation underpayments).	\$195,000
Youth Law Australia	Deliver a statewide community legal service for young people in NSW, via community outreach and technology-enabled service delivery.	\$212,000
		\$655,000

³ See footnote 1.

Recommendation 4: \$698,000 to cover geographic service gaps and ensure everyone in NSW has access to free community legal help.

The Cameron Review identified a number of ‘real and significant consequences’ of underfunding of the legal assistance sector in NSW. Key among these is the existence of major service gaps in ‘geographic areas where unmet legal need is particularly pronounced either because no legal assistance services operate or outreach is severely limited, particularly in rural, regional and remote areas’.⁴ To address this, the Review recommended existing levels of funding be preserved and the government commit additional funding to address these service gaps.

Community Legal Centres NSW welcomed the new funding announced as part of the 2018 tender process for Mid North Coast Community Legal Centre to extend its services northwards towards Coffs Harbour. However, two key geographic gaps in community legal centre service coverage remain in NSW: between Mid North Coast and Northern Rivers Community legal centres on the NSW north coast, and between Central Tablelands & Blue Mountain and Western NSW community legal centres in central NSW.

Community Legal Centres NSW recommends additional funding for Central Tablelands & Blue Mountains and Northern Rivers community legal centres to ensure that people in these areas have access to free community-based legal assistance.

Centre	Rationale for funding	Amount p.a.
Central Tablelands & Blue Mountains Community Legal Centre	Expand generalist services to towns surrounding Cowra, Young and Grenfell, bridging the gap between its catchment area and that of Western NSW Community Legal Centre, with staff based at a central hub in Bathurst. Funding would employ two part-time solicitors, establish a shopfront in Bathurst, and cover related travel and operational expenses.	\$350,000
Northern Rivers Community Legal Centre	Expand generalist services, particularly for children and young people in out of home care south from its current catchment area to Woolgoolga, Woolli and the Clarence Valley region. Funding would employ two part-time solicitors to provide legal advice, casework and community legal education, a part-time Aboriginal Legal Information Officer, and related travel and operational expenses.	\$348,000
		\$698,000

⁴ NSW Department of Justice (2017), *Review of NSW Community Legal Services*, p. 7 and 61. <https://www.justice.nsw.gov.au/Documents/publications-research/Final-Report-CLC-Services.pdf>

Recommendation 5: \$490,000 to restore child protection services defunded by Legal Aid NSW in 2019.

In October 2019, Legal Aid NSW ended the Care Partners Program, which funded 12 community legal centres to deliver early legal supports to families engaged with the child protection system in NSW. Affected centres included:

Warringa Baiya Aboriginal Women's Legal Centre	Women's Legal Service NSW
Northern Rivers Community Legal Centre	Intellectual Disability Rights Service
Central Coast Community Legal Centre	Macarthur Legal Centre
Western Sydney Community Legal Centre	Shoalcoast Community Legal Centre
Hume Riverina Community Legal Service	Redfern Legal Centre
Central Tablelands & Blue Mountains Community Legal Centre	Western NSW Community Legal Centre

As a result, many of these centres have had to drastically reduce, or wind up, their child protection services. Others have chosen to divert resources from other practice areas to meet the need for child protection legal services in their communities. In both cases, the result has been a reduction in service delivery to people experiencing disadvantage and discrimination, including Aboriginal and Torres Strait Islander women and women experiencing domestic and family violence.

The decision came on top of a 50% reduction of total Program funding in 2016-17, which forced a number of other centres⁵ to reduce or cease their child protection services.

Community legal centres' child protection legal services are unique, community-based and unable to be replicated by other service providers. Their parent advocacy and legal services help reduce the number of children taken into out-of-home care by the NSW Government and ensure children are restored to their families after a period in out-of-home care wherever possible. Community legal centre child protection teams:

- Provide an independent advocate for families, many of whom have had a negative experience of government agencies, which helps to address the power imbalance between families and departmental child protection workers, out-of-home care providers, and court magistrates and other staff.
- Ensure parents understand the need to engage constructively and connect with services to ensure their children can remain safely at home or in the broader community.

The funding cut forced community legal centres to either stop delivering child protection or deprioritise other areas of need. This directly impacts children and families in NSW.

Community Legal Centres NSW recommends the NSW Government allocate an additional \$490,000 to the 12 community legal centres affected by the defunding of the Care Partners Program to ensure there is no reduction in community-based child protection services.

⁵ Centres affected by the initial funding cut included: Far West, Hunter and Mid North Coast community legal centres; Illawarra, Inner City, Marrickville, and South West Sydney legal centres and North & North West Community Legal Service.

3. FUND DOMESTIC AND FAMILY VIOLENCE LEGAL SERVICES

Recommendation 6: \$2.91 million to improve access to justice for people experiencing domestic, family and sexual violence.

One in five women in NSW will experience sexual violence and one in four will experience domestic and family violence during their lives.⁶ Unfortunately, due to the COVID-19 pandemic, these statistics are only likely to worsen. Women and children experiencing violence often have multiple and complex legal issues relating to Apprehended Violence Orders, family law, child protection, Victims Support, housing and tenancy, and debt.

Community Legal Centres NSW acknowledges and supports the decision to direct 40% of the Commonwealth Government’s COVID-19 legal assistance funding package to services supporting victim-survivors of domestic and family violence. However, there remains a significant level of unmet legal need, particularly for Aboriginal and culturally and linguistically diverse women, women in prison, women in regional and remote areas and LGBTIQ+ people.⁷

Specialist community legal centres, like Wirringa Baiya Aboriginal Women’s Legal Service (Wirringa Baiya), Women’s Legal Service NSW (WLS), the Immigration Advice and Rights Centre (IARC), and the Inner City Legal Centre, provide specialist culturally safe legal information, advice and casework to people experiencing sexual, domestic and family violence, including via outreach through women’s health centres, Aboriginal-controlled community organisations, women’s prisons and court support services.

We recommend increased funding for these specialist services and programs, to ensure more women and children experiencing violence receive the legal supports they need.

Organisation/s	Rationale for funding	Amount p.a.
IARC, Wirringa Baiya and WLS	Establish a state-wide Women at Risk Unit to provide culturally appropriate, trauma informed legal services to culturally and linguistically diverse women, and Aboriginal and Torres Strait Islander women who are at risk of domestic, family and sexual violence and have limited access to legal and support services.	\$988,000
WLS, Wirringa Baiya, Western Sydney Community Legal Centre	Fund additional legal and social work positions at the three centres that deliver the Legal Education and Advice Program (LEAP). LEAP provides civil, child protection and family law services to women in prison, many of whom have experienced violence.	\$1.85 million
Inner City Legal Centre	Provide secure, recurrent funding for the Safe Relationships Project, the only dedicated court support service in the state for LGBTIQ people experiencing domestic, family and sexual violence.	\$76,000

⁶ Our Watch, *Quick Facts*: <https://www.ourwatch.org.au/quick-facts/>.

⁷ Productivity Commission (2014), *Access to Justice Arrangements – Inquiry Report Volume 2*, pp. 107-8: <https://www.pc.gov.au/inquiries/completed/access-justice/report>.

4. FUND INITIATIVES TO REDUCE THE OVER-INCARCERATION OF ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLE

Recommendation 7: \$3.9 million to establish a trial of the Walama Court in the NSW District Court (at a total cost of \$19.3 million over 5 years).

Aboriginal and Torres Strait Islander people are imprisoned at the highest rate of any people in the world. Overall, they are 16 times more likely to be incarcerated than non-Indigenous people.⁸ Aboriginal and Torres Strait Islander children are 26 times more likely to be incarcerated than non-Indigenous children.⁹ In 2018, a quarter of people in full-time custody in NSW identified as Aboriginal,¹⁰ despite making up just 2.9% of the population.¹¹

To address these appalling statistics, we call on the NSW Government to honour its commitment to establish the Walama Court. The Court has widespread support among Aboriginal and Torres Strait Islander communities and across the NSW legal profession.

Located within the NSW District Court, it would operate as a dedicated, culturally appropriate court to deliver culturally safe, community-based sentencing for certain offences. The model would involve Aboriginal and Torres Strait Islander Elders in sentencing decisions, rehabilitation and monitoring, and would help to divert Aboriginal and Torres Strait Islander people from prison and reduce re-offending.¹²

The business case for establishment of the Walama Court recognises the multiple and complex drivers of over-incarceration of Aboriginal and Torres Strait Islander people, 'including intergenerational trauma, family violence and sexual abuse, social exclusion and racism, substance abuse, health, education, unemployment and child protection issues'.¹³

It would also deliver millions per year in savings to the NSW Government. Establishing and running the court would cost about \$3.9 million per year, and would generate potential savings of \$16.2 million over eight years on prison beds and \$5.6 million from lowered recidivism, as well as potential productivity gains.¹⁴

We recommend that the NSW Government immediately honour its commitment to establish the Walama Court at a cost of \$3.9 million in the first year and \$19.3 million over 5 years.

⁸ Thalia Anthony and Eileen Baldry, 'FactCheck Q&A: are Indigenous Australians the most incarcerated people on Earth?', *The Conversation*, 6 June 2017: <https://theconversation.com/factcheck-ganda-are-indigenous-australians-the-most-incarcerated-people-on-earth-78528>.

⁹ Australian Institute of Health and Welfare, *Youth detention population in Australia 2018*, Bulletin 145, December 2018: <https://www.aihw.gov.au/getmedia/55f8ff82-9091-420d-a75e-37799af96943/aihw-juv-128-youth-detention-population-in-Australia-2018-bulletin-145-dec-2018.pdf.aspx?inline=true>.

¹⁰ Corrective Services NSW, *NSW Inmate Census 2018*.

¹¹ Australian Bureau of Statistics, *2016 Census Quickstats*: https://quickstats.censusdata.abs.gov.au/census_services/getproduct/census/2016/quickstat/1.

¹² Aboriginal Legal Service, *Media release: ALS welcomes pledge to establish Walama Court*, March 2019: https://www.alsnswact.org.au/alsnews_walama_court.

¹³ Michaela Whitbourn, 'Indigenous Walama Court would deliver millions in savings, costings show', *The Sydney Morning Herald*, June 24, 2020: <https://www.smh.com.au/national/indigenous-walama-court-would-deliver-millions-in-savings-costings-show-20200622-p554yy.html>.

¹⁴ *Ibid*.

Recommendation 8: Cost and fully fund implementation of all 125 recommendations from the ‘Family Is Culture’ Independent Review of Aboriginal children and young people in out-of-home care in NSW.

Community legal centres stand in solidarity with Aboriginal and Torres Strait Islander people, families and communities. We condemn the ongoing removal of Aboriginal and Torres Strait Islander children from their families, cultures and Countries and their continued over-representation in out-of-home care in NSW.

Despite repeated attempts at reform and countless government and independent inquiries, the child protection system in NSW remains broken. Aboriginal and Torres Strait Islander children remain grossly over-represented: as of 30 June 2019, they made up 40% of children in out-of-home care.¹⁵ Parents who were removed as children continue to have their children removed at disproportionate rates. The ‘care-criminalisation’ cycle continues unabated.¹⁶

The Family Is Culture Review was unprecedented. Commissioned as a result of sustained community advocacy and conducted over nearly three years by a largely Aboriginal team, the final report reflects the lived experiences of Aboriginal people, families and communities forced into contact with the child protection system in NSW. Its 125 recommendations present a clear and comprehensive blueprint for further structural, legislative, policy and practice reforms to reduce the over-representation of Aboriginal children in the system – with a central focus on self-determination, transparency and early intervention.

At just six pages long, the NSW Government’s response¹⁷ did not adequately engage with the Review’s detailed findings or specifically address any of its extensive recommendations. The measures announced – the appointment of a Deputy Children’s Guardian as an identified position, the formation of an advisory group appointed by the Minister, and an internal Departmental ‘Aboriginal Outcomes Taskforce’ to work with Aboriginal organisations and communities to implement reforms – do not clearly or directly link to specific recommendations. In some cases, the response fails to make clear whether announced measures are new or simply an exercise in rebranding or repurposing existing structures and processes.

Community Legal Centres NSW is deeply concerned the government has not supported or prioritised key reforms. Perhaps most crucially, neither the government’s response nor its 2020-21 Budget, identified whether or how much funding it intends to allocate to implementing the Review’s recommendations in 2020-21 or future years.

We recommend the NSW Government allocate sufficient funding in the 2021-22 budget and over the forward estimates to fully implement the Review’s 125 recommendations, including additional funding for the Aboriginal Legal Service NSW/ACT to significantly expand its child protection and family law practice.

¹⁵ Independent Review of Aboriginal Children & Young People in Out-of-Home-Care, *Media Release*, 20 June 2020: <https://www.familyisculture.nsw.gov.au/media/independent-review-OOHC>.

¹⁶ Davis, M (2019), *Family Is Culture Review Report*, pp. 235-244: <https://www.familyisculture.nsw.gov.au/>.

¹⁷ Department of Communities & Justice (2020), *NSW Response to Family Is Culture Review*, 7 July 2020: <https://www.facs.nsw.gov.au/families/out-of-home-care/nsw-response-to-the-family-is-culture-review/nsw-response-to-the-family-is-culture-review>.