# Community Legal Services Program Reform

## Discussion paper

May 2017

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# Glossary and abbreviations

CLASS Community Legal Assistance Services System – the database used by many funded CLCs as of April 2017

CLC Community Legal Centre

CLSIS Community Legal Services Information System – the database used by many funded CLCs until March 2017

CLSP Community Legal Services Program

DJR Department of Justice and Regulation (State Government)

NACLC National Association of CLCs

NPALAS National Partnership Agreement on Legal Assistance Services

VLA Victoria Legal Aid

# About this discussion paper

This discussion paper is part of a conversation between Victoria Legal Aid (VLA), community legal centres (CLCs) and other key stakeholders about creating a new reporting framework between VLA and CLCs in relation to VLA’s funding of CLCs.

This paper is part of Phase 1 of the Community Legal Services Program (CLSP) Reform Projectwhich will design and implement the new framework.

## About the CLSP Reform Project process

**Phase 1** of the project will engage the CLC sector, VLA and other stakeholders in a consultative process to:

* identify the strengths and weaknesses of the current framework
* listen to the experiences of CLCs using the framework
* generate ideas and options about alternative frameworks.

The project team[[1]](#footnote-1) will develop a proposal that will be presented to stakeholders for feedback before being finalised and presented to VLA’s Board for consideration before the end of 2017.

**Phase 2** of the project will act on the VLA Board’s direction to develop any new funding program for implementation on 1 July 2018.

### Methods

Data will be gathered during Phase 1 of the project through:

* responses to this discussion paper and its key questions
* online forums
* workshops to discuss the questions and issues raised in this discussion paper, and other issues considered relevant by workshop participants
* interviews with key stakeholders
* a presentation and feedback opportunities on the proposed new reporting framework, once developed.

### Out of scope

The project will not decide the amounts of funding for CLCs or to which organisations CLC funding should be directed. It will not assess the size, nature and location of legal need. This work is or is expected to be undertaken by other projects, completed, current or planned.

# Summary of discussion paper questions for consideration

The following questions will guide the Phase 1 consultation process. VLA is seeking feedback on any part of this discussion paper and these questions.

1. What should be the purposes of a CLC funding program?
2. What do you think are the strengths and weaknesses of the current CLSP?
3. What are your thoughts on the administrative burden of the current CLSP? How could that burden be reduced or improved?
4. What types and levels of accountability are needed?
5. Have we missed any desirable or necessary accountabilities?
6. How frequently should CLCs report on their finances to VLA as a funder? What information should be provided in what form? Can high-quality reporting be promoted and supported without consistency of format and content across all CLSP funded CLCs?
7. How could we make future arrangements more compatible with the needs/requirements of other funding programs?
8. In a situation where VLA is the minor funder of a CLC or CLC host agency, how could CLSP accountability be provided for in a more compatible and more administratively efficient manner?
9. What structure might be best for a service agreement or contractual document under a new funding framework?
10. How could a new reporting framework ensure that CLCs are meeting the requirements of the NPALAS and demonstrate that they do; in particular, that they target their services towards particular client groups or places, provide tailored and proportionate services, facilitate prevention and early resolution and carry out integrated planning and service delivery?
11. How could a new reporting framework support collaboration and co-operation on planning between CLCs and other contributors to the legal assistance sector (including VLA)?
12. How could a new framework establish more structured feedback mechanisms between CLCs and VLA and what could this feedback focus on?
13. How could a new reporting framework articulate standards regarding service and organisational quality?
14. How could a new reporting framework be robust enough to adapt to future changes in priorities and re‑examinations of funding allocations?
15. What are your views on whether CLC planning and accountability should be responsive to and/or compatible with government priorities?
16. What scope of years should a new funding program cover – one, three, four, five, other?

# How to provide feedback in Phase 1

Email

VLA is seeking your written feedback on the questions and issues raised in this discussion paper. Please submit responses to the project manager via email:

Roy Reekie

Manager, Community Legal Centres Funding and Development, VLA

roy.reekie@vla.vic.gov.au

You can provide feedback on all or any part of the discussion paper and its questions, between now and **COB Monday 5 June 2017**.

Workshops or in person

You can also provide your feedback verbally, either at workshops to be held on 19 May and 26 May, or in interviews with the project team to be arranged by the project team or by initiating contact with the project team yourself (email roy.reekie@vla.vic.gov.au).

Online

You can also make comments on the concepts and issues raised in this paper, or on concepts, issues and ideas you consider relevant to CLSP reform, by logging on to the CLSP Reform pages of VLA’s Yammer feed – CLSP Reform – Accountability, CLSP Reform – Supporting CLCs to do their work, CLSP Reform – Quality via [www.yammer.com](http://www.yammer.com).

# Context

## What is the CLSP?

The CLSP supports VLA and Commonwealth Government funding to Victoria’s community legal centres and has been in place for over 21 years. It includes guidelines, key documents (most notably, a service agreement) and reporting tools and requirements, including the CLC common database – CLSIS, shortly to be replaced by the Community Legal Assistance Services System (CLASS). The CLSP was created as a triennial funding program.

The CLSP has only been reviewed and renewed three times in its history. When it was last reviewed in 2009‑10, only minor changes were made to the 2005–08 CLSP. The 2010–13 CLSP lasted until 30 June 2015.

In July 2015, a new National Partnership Agreement on Legal Assistance Services (NPALAS) brought CLCs into national partnership and funding arrangements covering legal assistance services. The objective of the NPALAS is ‘to achieve a national legal assistance sector that is integrated, efficient and effective, and is focused on improving access to justice for disadvantaged people and maximising service delivery within available resources.’[[2]](#footnote-2) Details of the primary goals of the NPALAS are provided with this discussion paper at Appendix 1.

CLCs funded under the CLSP in previous years now have interim funding service agreements that principally mirror the old CLSP agreements but include elements and requirements of the NPALAS. To allow adequate time to complete this CLSP reform project, VLA will extend interim funding service agreements to 30 June 2018.

## Why is the CLSP being reviewed?

**Questions**

**~~1a: Do you agree that the CLSP is out-of-date and needs reform?~~ SUGGEST DELETING THIS QUESTION – IT DOESN’T CONTRIBUTE ANYTHING MATERIAL TO THE PROJECT**

**1b: Are there other relevant projects, studies or initiatives that are not in this list?**

**1c: Why are they relevant to this project to reform the CLSP?**

**~~1d: How might they help us do that?~~ SUGGEST DELETING THIS QUESTION – IT DOESN’T ADD ANYTHING TO PREVIOUS QN**

The current CLSP is out-of-date and is not fit-for-purpose, especially when assessed against current expectations regarding the planning and delivery of legal services and accountability for the use of public funds. Government expectations around accountability for the use of public funds have changed considerably. The Commonwealth Government’s expectations for CLC funding, and its role in the processes that administer and manage that funding, changed substantially under the NPALAS, with the Commonwealth largely withdrawing as an active party to funding agreements with CLCs. Responsibility for administering its funding for CLCs passed to the State Government.

However, the NPALAS expresses the Commonwealth Government’s expectations about how its funding should be used in general terms — notably, though co-ordinated, sector wide planning, evidence-based decisions about where funds should be directed, targeting of services to the most disadvantaged demographic groups and a focus on the areas of legal need that are most likely to be experienced by those groups.

These requirements have been informed by studies and reviews that have taken place over the past few years — the Legal Australia-Wide (LAW) survey on legal needs conducted by the NSW Law and Justice Foundation, the Commonwealth Attorney-General’s Department’s commissioned review of the old *National Partnership Agreement for Legal Assistance*, and a federal Productivity Commission review into legal assistance services[[3]](#footnote-3). These studies and reviews are summarised and discussed in more detail in Appendix 2.

Every major review and report into the legal assistance sector over the past five years has recommended that legal assistance service providers target their services towards those most in need, and tailor services to reflect specific legal needs and methods and places best able to provide targeted access to assistance.

While the NPALAS requires this targeted, evidence-based service planning and while the current CLSP service agreement refers to this as a general expectation, the CLSP and its accountability tools do not address this issue in any substantive, practical way. This means that the CLSP does not have any effective means by which a funded CLC can demonstrate how and why it targets its services towards particular client groups or places or why it uses particular methods of service delivery. As a result, CLCs that aren’t adequately targeting their services are not effectively required to do so. At the same time, the good work that many CLCs are doing to properly plan and target their services is not sufficiently visible to governments and funders.

The Victorian *Access to Justice Review* report[[4]](#footnote-4) (also referred to in Appendix 2) emphasised the need to continue the development of the legal assistance services sector towards a more integrated, co-ordinated, client-focused sector that retains its diversity, with CLCs as a key part of that diversity. The CLSP Reform Project is intended to deliver a funding framework for CLCs that can support this and that can provide an easy-to-use and accessible vehicle for CLCs to demonstrate the extent to which they do this.

The management environment in which CLCs operate has also changed over the past 20 years, with more robust governance responsibilities for governing bodies of community organisations and new technology and techniques for financial management, planning and service delivery.

In summary, the expectations of legal assistance sector members and funders have matured while the mechanism for managing the accountability of CLCs for the public funds they receive has not.

## Current relationship – VLA and CLCs

The current, CLSP-based relationship between VLA as a funder and funding program manager of CLCs and CLCs as legal assistance providers could be characterised as a granter/grantee relationship.

**Figure 1** outlines the current CLSP operational structure.

* The top layer in Figure 1 (above the grey dotted line) outlines the commitment of governing bodies to provide funding to CLCs, and is outside the scope of CLSP accountability processes and this CLSP Reform Project.
* The items below the grey dotted line outline the current CLSP administration of funding and accountability for funding processes and are in scope for this CLSP Reform Project.

**Figure 1 Current CLSP operational structure**



# Developing a new reporting framework

In developing a new reporting framework, or in reforming the existing CLSP framework, we need to consider key principles, the strengths and weaknesses of the existing CLSP framework, and specific things that need careful consideration and discussion.

## Key principles

The new funding program needs to meet the requirements of:

* legal assistance sector clients
* the public as a key stakeholder regarding the use of public funds for the provision of free legal services to disadvantaged people, groups and communities
* VLA and CLCs as provider of those services
* the Victorian State Government and the Commonwealth Government as funders of CLCs and
* VLA as a body responsible for managing funding to CLCs.

A new funding program for CLCs could allow for[[5]](#footnote-5):

* better integration and collaboration between CLCs and other providers of legal assistance to disadvantaged Victorians (including and especially VLA)
* targeted service delivery for the benefit of defined priority client groups
* outcomes measurement
* continuous quality assessment and improvement, and
* adequate, meaningful accountability for the use of public funds.

For planning and reporting, this means developing systems that can provide for:

* collaborative planning
* co-ordinated service delivery
* outcomes measurement
* efficient reporting that verifies the delivery of these activities
* reporting that satisfies the needs of all the key players.

Many of these principles reflect the guiding principles for CLC funding decisions adopted by VLA’s Board in 2012 and which are in Appendix 3 to this discussion paper.

Any new funding program should be robust enough to adapt to future shifts in funding circumstances and to support re-examinations of funding allocations based on evidence of demographic, geographic and thematic shifts and trends.

**Discussion question 1**:What should be the purposes of a CLC funding program?

# Strengths and weaknesses of the current funding and accountability arrangements

The following strengths and weaknesses of the CLSP have been identified from VLA’s experience of administering the current CLSP, feedback from CLSP-funded CLCs about their experience of the current CLSP and our observations of how CLSP funded CLCs experience the accountability requirements of the CLSP.

## Strengths

* **Expectation of sector-wide research and reporting** through participation in a common database or for compatible data collection.
* **Requirement for a workplan** that articulates both a funded centre’s strategic rationale and service commitments (locations, frequency, client type and legal issue type) with targets and outputs that indicate progress or success.
* **Ability to add new funding to the CLSP Service Agreement** –so that the new funding is covered by the terms of the core CLSP Service Agreement. This is administratively efficient and ensures that the terms of all funding are clear and understandable by both parties (VLA as funder and a CLC as a CLSP funding recipient).
* **CLSP budgets and funds reports that allow for specific accountability for revenue and spending associated with specifically funded parts of centres’ service programs** –for example, family violence at-court services or a specific project whether it is funded by VLA or another source.
* **Requirement for audited annual organisational financial statements** –so that VLA as funder has some vision of a funded organisation’s overall financial health.

## Weaknesses

### CLSP is based on outputs, rather than outcomes or quality.

### Targeting of services to the most disadvantaged is not actively supported.

### Consequently, the program is inconsistent with the terms and expectations of the NPALAS and a range of studies about legal need and the legal assistance sector.

### Inconsistent workplans that vary in format, clarity and quality. Some centres include some things in their CLSP plans, and therefore report on them in their progress reports, because they think that the funder requires them to include them.

### Quality and consistency of financial accountability reports – the quality and clarity of annual budgets and regular financial reports against those budgets also varies. We receive regular complaints that the format for these reports is at odds with Australian Accounting Standards.

### Inconsistency in data collection – over the years, the rationale for data collection using CLSIS has changed, at both a sector wide level and centre level. The understanding about why data is needed and what data is needed is more sophisticated now that when CLSIS began. However, this understanding is not universal in breadth or depth.

**Discussion question 2**: What do you think are the strengths and weaknesses of the current CLSP?

**Discussion question 3:** What are your thoughts on the administrative burden of the current CLSP? How could that burden be reduced or improved?

# Things to consider about the current CLSP and any new funding program

**Information and advice**

**Casework support**

**Represent’n**

**CLE**

**Community development**

**Law reform and research**

Yes?

No?

To what degree?

To whom?

Why them?

Yes?

No?

To what degree?

To whom?

Why them?

Why them?

Yes?

No?

To what degree?

To whom?

Yes?

No?

To what degree?

To whom?

Why them?

Yes?

No?

To what degree?

To whom?

Why them?

Yes?

No?

To what degree?

To whom?

Why them?

## What funded CLCs should be accountable for

In general terms, funded CLCs should be accountable for:

* services they provide with the CLSP funds they are given
* how they plan and why they have chosen to provide those services
* how those CLSP funded services relate to other services they provide using other funds
* how they spend the CLSP funds
* the quality of the services they provide.

They could also be accountable for:

* their overall financial health
* their governance and overall organisational health
* how they work with others.

The following sections examine specific aspects of some these accountabilities.

## Accountability reporting

### Current situation

CLSP funded centres are required to provide the following accountability reports:

**Table 1:** **Current CLSP accountability reports**

| **Report** | **Type of reporting** | **Frequency required** |
| --- | --- | --- |
| CLSIS data entry and upload | Data | Monthly |
| CLSP budget | Financial | Annually |
| Funds reports | Financial | Six monthly |
| CLSP Excess Surplus proposal | Financial | Annually (if required) |
| Audited Organisational Financial Statements | Financial | Annually |
| Organisation’s Annual Report | Organisational | Annually |
| Names of key officers – Chair, manager, principal lawyer | Organisational | As changes occur |
| CLSP Workplan | Performance | Once in each funding agreement period |
| Progress reports | Performance | Six monthly |
| Events that may constitute breaches of the service agreement or significant risk (e.g. legal action commenced or threatened against the organisation; major capital purchases planned; financial difficulties that place the organisation at risk of insolvency) | Risk | As these things occur |

The dual core of the current reporting framework is the CLSIS database and CLSP workplans.

There are other formal accountabilities required of CLCs providing legal services with CLSP funds. These are discussed in more detail in *Service and organisational quality* below, but are introduced here for completeness.

1. VLA quality standards and assurance processes for firms and practitioners registered on VLA’s panels to provide legal aid (for CLCs on VLA panels)
2. practice standards regulations overseen by the Legal Services Board + Commissioner
3. the Federation of CLCs-managed NACLC CLC Accreditation Scheme
4. the CLC sector-managed Professional Indemnity Insurance Scheme
5. accountabilities to the Registrar of Incorporated Associations, ASIC or similar regarding the organisation’s incorporated status and governance.

At present, there is no administrative link between these additional accountability processes and the current CLSP. Instead, the CLSP calls for evidence of funded centres’ incorporation status, adequate public and professional indemnity insurance and separate audits of funded centres to ensure that quality standards are being met, against Service Standards set by the CLSP (set out in Appendix 4).VLA as funder of CLCs does not have access to the outcomes of funded centres’ CLC Accreditation or Professional Indemnity Insurance annual accountabilities.

### Discussion

To summarise, CLSP funded CLCs are currently required – by VLA as the CLSP funder and by other organisations – to demonstrate that they comply with the following accountability measures:

1. CLASS data entry
2. CLSP budgeting
3. financial reports against the CLSP budget
4. CLSP Excess Surplus proposal
5. audited organisational financial statements
6. their organisation’s annual report
7. names and contact details of key personnel – executive officers, principal lawyer, chairperson
8. CLSP workplan
9. progress reports against that workplan
10. reports on significant risk events (as outlined in item 10, Table 1 above)
11. professional indemnity insurance (PII)
12. for those centres using the NACLC PII scheme, annual risk cross-checks
13. the NACLC CLC Accreditation process
14. service guidelines (advice and casework)
15. referral protocols and MOUs, and related policies and procedures
16. key partnership and relationship MOUs
17. VLA panel membership
18. requirements for lawyers (staff and volunteers) to hold current practising certificates.

It would be valuable to examine these (and any other accountability measures we may have missed) against three levels of compliance:

* just show that you have it
* provide the report in a form and to a standard that is reasonably acceptable and workable
* meet certain, specific standards.

### Questions

**Discussion question 4**: What types and levels of accountability are needed, for example:

* planning required in a set format
* progress or performance reporting in a set format
* funding budgets and funds reports
* specific data required (to be gathered and entered into a common database)
* reporting on staffing levels and staff structure
* contact details of chairperson and senior executive officer
* targets and outputs planning and reporting, goals and outcomes planning and reporting etc.?

**Discussion question 5**: Have we missed any desirable or necessary accountabilities?

## Planning and reporting

### Current situation

Accountability for funded centres’ service planning is demonstrated by centres through their centre’s CLSP workplans.

The strengths of the current workplan template are its inclusion of:

* strategic statements
* a description of service area/catchment or focus
* a table showing the times and locations of services
* a staffing profile table.

Centres then report bi-annually against their workplans in CLSP progress reports.

### Discussion

Progress reports against approved workplans are useful because:

* they can demonstrate centres’ successes and achievements
* they can provide early warning of issues that may impact on service delivery capacity
* they provide centres with a stimulus and format for reflection on what they have done and what they need to do.

Progress reports currently do all this in a format that allows for comparison of performance across time and against an agreed set of commitments; i.e. the CLSP workplan.

### Currently, CLSP workplans are inconsistent — varying in format, clarity and quality. Often, the outputs reported in progress reports are different from CLSIS data against the same activities and timeframes. Some centres are unable to identify which CLSIS reports they have used to source the data given in response to specific items in their progress reports.

It could be useful to include the following elements in CLSP workplans:

* Key strategic statements – in global terms, what the centre is there to do and achieve; what change it is it trying to create or contribute to and its major strategic goals towards that change?
* Strategic statements for the planning period – the centre’s objectives for the planning period, towards that change.
* Priorities – a summary of target groups, target locations and services to be offered to those target groups and in those locations.
* Rationale – a summary of the rationale and evidence that underpins these goals, objectives and priorities.
* General and core services – a table of service types, locations and times with service targets for clients seen and advice or discrete assistance provided; a table of casework to be provided against types of law.
* Community legal education (CLE) – an outline of CLE activities planned, including target audience, topics and collaborations that will support these activities, and a statement of the relationship between the centre’s CLE program and the overall legal assistance sector’s strategy and priorities for CLE, prevention and early intervention.
* Special projects and programs – a more detailed, step-by-step outline of what is to be done and what is to be achieved in these projects and programs.
* Organisational development – at least two topics for organisational development, outlined using a program logic[[6]](#footnote-6) or other approach that is simple, clear and focussed.
* Partnership statements – a table outlining key partners and the activities that will be undertaken in partnership, why they are key partners and their relevance to the centre’s core services.
* Organisational governance – provision for both the workplan and the progress reports to be signed off by a representative of the organisation’s governing body and the organisation’s CEO or equivalent.

Many centres are reporting every six months on aspects of their CLSP workplans that rarely change and/or that are more easily measured and assessed by looking at the data in CLSIS. VLA is required to read each report and assess it. This amounts to triple-handling of information at best, and quadruple-handling at worst (i.e. service data is extracted from CLSIS by the centre, entered into the centre’s progress report by the centre, the progress report is then assessed by VLA and (if necessary) data is then extracted from CLSIS by VLA to verify or understand the data reports provided by the centre in their progress report). This is compounded if the initial sources of data (the CLSIS reports) or approaches to reading and understanding those reports and the data are different between the CLC and VLA. This can result in a prolonged investigation and negotiation process to identify the issues and agree what the actual result might have been.

It may be useful to:

* simplify the measures/data that are being assessed
* create a common understanding about why and how that data is meaningful
* agree the approaches to be taken by both sides to analysing and interpreting data.

#### Integrated and outcomes-based planning

The recent studies referred to in the *Context* section (at page 7 above) and in Appendix 2 have all advocated collaboration and co-operation on planning across the legal assistance sector, based on the same local demographic information and similar local knowledge. This collaborative focus and activity has been identified as essential for creating compatible service plans and integrated, co-ordinated service delivery, benefiting clients, communities, agencies that refer matters into a local legal assistance system and the key providers in that local legal assistance system.

Several CLCs have become well-versed in defining and measuring outcomes and using that perspective to plan and report on their work. They have developed their own approaches and tools for doing this,[[7]](#footnote-7) based on program logic or theory of change planning models.[[8]](#footnote-8).

The majority of CLCs’ workplans focus on outputs, the number of services provided, rather than outcomes — the change that has been effected by the provision of services. At the time of writing, it is not known to what degree the new CLASS database will go beyond this to allow outcomes-based data analysis.

In an outcomes-based client service process, service planning starts with identifying the change to be achieved for the client (the desired outcomes) and will use outputs (the things done/services provided to a client or group of clients) to measure progress towards those outcomes. An outputs-based service process commits to a certain number of services provided to a certain number of clients.

This outputs approach to planning and accountability is at odds with the expectations of funders and the public, as expressed in the studies referred to in the *Context* section and Appendix 2.

Outcomes-based planning and measurement requires four main things:

1. A clear perspective on the change or outcome you are seeking to achieve.
2. Clarity about the things that will show whether, or to what degree, you have achieved it.
3. Gathering and analysing the data on those things
4. Clear ‘permission’ or encouragement by funders to ‘allow’ or ‘authorise’ this approach and reduction in service numbers in favour of greater focus on achieving outcomes and on service quality.

The CLSP does little to mandate or support integrated planning of services. The CLSP’s planning and accountability tools do not encourage collaboration and co-ordination between like-minded agencies. There is little or no mention of outcomes in the CLSP. Its planning and accountability tools do not mention or provide for outcomes definition or measurement.

**Questions**

**14e: Do you agree that it is desirable that a new CLSP or replacement funding program incorporates expectations about service quality and tools to support and assess this? If yes, why? If no, why not?**

The Federation of Community Legal Centres (FCLC) is undertaking an outcomes-based planning and evaluation capacity building project within the sector, supported by VLA’s CLC Innovation and Transformation fund. The results of that project are likely to influence CLSP reform by highlighting expectations, requirements and tools that can help achieve the goals of a reformed CLSP.

#### Compatibility with government priorities

It is reasonable to assume that government or other funders may expect funded programs and services to consider government priorities when planning and delivering their services.

The NPALAS expresses Commonwealth government priorities for the use of Commonwealth public funds for legal assistance service provision, but does not provide any mechanism that compels funded CLCs to address these priorities in their planning or service delivery.[[9]](#footnote-9)

The *Access to Justice Review* recommended that VLA align its service delivery and priorities with government priorities and to report quarterly against them, but did not refer specifically to CLCs in this section of the report. At time of writing, the Government has not responded to the review.

In December 2012, VLA shared its guiding principles for CLC funding decisions with CLCs. These guidelines (included in this paper at Appendix 3) support VLA’s decisions about the allocation of new funds to CLCs, but do not – at present – support VLA’s approach to administering all funding to CLCs.

When the CLSP was originally created, the program guidelines were intended to support CLSP funded CLCs’ planning towards compatibility with the priorities of government, the legal assistance sector broadly and the CLC sector at a national level.

However, the guidelines are now out-of-date, and the current structure of the CLSP does little to provide CLCs with opportunities or obligations to demonstrate that they are planning and delivering services in ways that are consistent and compatible with government priorities. A reformed funding program could provide better opportunities for this. This could be done by reviewing and recasting the CLSP guidelines, in a way that ensures they are useful and up-to-date.

### Questions

**Discussion question 4**: What types and levels of accountability are needed, for example**:**

* planning required in a set format
* progress or performance reporting in a set format
* targets and outputs planning and reporting, goals and outcomes planning and reporting, etc.?

**Discussion question 10**: How could a new reporting framework ensure that CLCs are meeting the requirements of the NPALAS and demonstrate that they do; in particular, that they target their services towards particular client groups or places, provide tailored and proportionate services, facilitate prevention and early resolution and carry out integrated planning and service delivery?

**Discussion question 11**: How could a new reporting framework support collaboration and co-operation on planning between CLCs and other contributors to the legal assistance sector (including VLA), based on the same local demographic information and similar local knowledge?

**Discussion question 15**:What are your views on whether CLC planning and accountability should be responsive to and/or compatible with government priorities?

## Data collection and reporting

CLCs and VLA share responsibility for collecting detailed, clear, reliable data.

### Current situation

Current service delivery data collection methods across the legal assistance sector are:

* data entry into the CLC common database
* data entry into another database (for CLCs that don’t use the common database
* data entry into ATLAS – the VLA client service database – by VLA service staff and some CLCs and private practitioners who perform legally-aided work
* CLC CLE, community development and law reform project data – sometimes entered into CLSIS; sometimes entered into CLEAR (a CLC projects database); sometimes entered into paper or electronic project files and stored by the host CLC
* VLA CLE and law reform project data – sometimes entered into CLEMS (a community legal education database shared by some legal aid commissions); sometimes entered into paper or electronic project files and stored by the section of VLA that conducted the project.

CLC data entry into CLSIS was inconsistent, with differing interpretations of what data is to be gathered, when and how it is to be entered. In some centres, data is gathered and entered into CLSIS differently by different staff. Practices for data analysis and the running of reports also differs across and within centres.

### Discussion

It would be beneficial to have a common database, or at least databases that produce compatible and comparable data. This would increase and strengthen the available data, providing a more accurate picture of demand and service trends in the sector and more effective information and analysis to support submissions to government for more resources. This data could also be useful to influence policy settings that may enhance our service capacity and effectiveness as a legal assistance sector.

An efficient and reliable single source – or compatible sources – of client, legal need and service information would improve the early identification of legal needs trends — what works, for which types of clients, where and under what circumstances, and where there might be emerging or growing legal needs and opportunities to respond to them. This would help centres, and the legal assistance sector more broadly, plan more effectively.

Minimum data requirements to achieve this include:

* **Detailed data** – on the clients assisted, the services provided to them, where those services are provided, the legal issues addressed, the outcomes achieved etc. To support single centre service planning, local partnered planning and legal assistance sector planning.
* **Accurate data** – entered into a common data system (or multiple compatible databases) in a disciplined way to ensure compatibility and usefulness – crucial for mounting funding bids, whether by staff or units within CLCs proposing new projects, programs or approaches, individual CLCs seeking project funding or additional core funding from funding providers or the legal assistance sector seeking additional funding from government
* **Accessible and timely data** – access to up-to-date data, in a form that is easy to analyse and compatible with other legal assistance sector data. This is desirable because it will assist with the development of submissions and responses to questions, events or issues by the CLC sector and the legal assistance sector more broadly.

### Questions

**Discussion question 4**: What types and levels of accountability are needed, for example:

* specific data required (to be gathered and entered into a common database)

**Discussion question 14**: How could a new reporting framework program be robust enough to adapt to future changes to priorities and re-examinations of funding allocations?

## Financial reporting

### Current situation

CLCs provide financial reports four times each year:

* an annual CLSP budget
* two reports against that budget (one at half year; one for the full year)
* their audited organisational financial statements, inclusive of an auditor’s certificate.

The current CLSP Service Agreement (annexed to this paper as Appendix 5) also includes (at Schedule 6, Attachment B) an Internal Control Questionnaire designed to act as a checklist guide for funded centres to perform their basic organisational financial accountability and management.

### Discussion

#### Why financial reporting is useful?

Financial reporting ensures that there is accountability for the use of public funds.

Regular financial reporting enables VLA to identify risks and issues and intervene in a timely manner to assist funded CLCs that may be facing financial difficulties or having trouble managing and accounting for their income and expenditure.

Individual budgets and funds reports for specifically funded parts of a centre’s service program (for example, family violence at-court services or a specific project funded by VLA or another source) ensure that funds are being appropriately spent. They also allow for articulation and assessment of the true costs of running those programs, and can provide useful evidence for subsequent bids for continuing funding for those programs. On the other hand, individual reports may be an additional administrative burden beyond the ordinary financial accounting a CLC might use internally and can undermine flexibility in responding to legal need in the community.

#### Compatibility with Australian Accounting Standards

The quality and clarity of annual budgets and regular financial reports against those budgets varies. Some finance officers and book-keepers at CLCs express frustration with the format of current CLSP financial documents.

A review of the requirements for financial accountability should result in a common understanding about why it is necessary to adhere to them and the most suitable way of doing so. This should improve the quality, consistency and reliability of financial accountability.

This review needs to be conducted against the Australian Accounting Standards because aspects of the current CLSP financial reporting processes are reportedly contrary to these national standards.

The requirement for audited annual organisational financial statements, especially in regard to any annual surpluses of the CLSP funds, is both necessary and desirable. These statements can demonstrate the overall organisation’s relative financial health and show how CLSP funds are used and accounted for within the broader context of the organisation’s overall funding and financial situation. In some cases, it is also a governance requirement that arises from the centres’ incorporated organisation status.

**Questions**

**12a: Do you agree or disagree with the statements above about what works well? Why?**

**12b: Has anything been missed here? What works well from your perspective?**

Four main areas of concern about CLSP financial reports are:

1. The current requirements for audited annual financial statements have been criticised over the past five or more years for not being completely compatible with Australian Accounting Standards. Most notably this criticism has come from auditors.
2. The requirement for a separate balance sheet for CLSP funds.
3. The treatment of unspent CLSP funds (annual surpluses) as grants-in-advance.
4. The requirement for auditors to certify that:

(a) CLSP funds have been spent in accordance with the terms and conditions of the CLSP service agreement, and

(b) there is no conflict of interest in the relationship between the auditor and the organisation they are auditing.

CLC finance officers often provide feedback about how the budget and funds reports treat assets – their capital acquisition and capital expenditure (CAPEX) and depreciation attributions - as an expense. Some finance officers (particularly from multi-program agencies) complain that the CLSP/CLSIS means of accounting for assets and surpluses acquired using CLSP funds is contrary to the Australian Accounting Standards. It’s also important that assets acquired or surpluses created using CLSP funds are tracked, whether through financial statements or asset registers or both. It is timely to discuss how both needs could be met under reformed arrangements.

Currently, centres can retain up to 15 percent of their annual CLSP funds, but must provide a proposal for how they might spend any ‘excess’ surplus funds (i.e. any more than 15 percent that they accumulate). There are many reasons for funded centres returning surpluses, such as delays in recruiting staff or long periods of being without a staff member. However, the question of whether and why centres should be able to retain any surplus should be discussed.

#### Compatibility with centres’ internal accounting processes

Currently, centres are required to submit budgets for the CLSP funds they receive, and funds reports against those budgets, into CLSIS in a format that is not necessarily compatible with their own internal accounting systems or, in the case of some aspects of financial reports, Australian Accounting Standards.

It is now rare for CLSP funded CLCs to rely solely, on CLSP funding. CLCs are larger and more complex and are using more sophisticated financial management and accounting processes and software. Several CLCs are auspiced service programs within larger agencies which draw on multiple government sources (notably, DHHS, FACHSIA, CAV, DJR, etc.) for funding for a range of services. When the CLSP was created, there were no CLCs of this type.

### Questions

**Discussion question 4**: What types and levels of accountability are needed, for example:

* funding budgets and funds reports
* specific data required (to be gathered and entered into a common database)?

**Discussion question 6**: How frequently should CLCs report on their finances to VLA as a funder? What information should be provided in what form?Can high-quality reporting be promoted and supported without consistency of format and content across all CLSP funded CLCs; e.g. using their own financial management formats – MYOB, etc.?

## Accountability efficiencies where a CLC (or CLC host agency) receives funding from other sources

### Current situation

The CLSP has no formal links to any other funding program that might also fund CLSP funded CLCs, including programs like the State Government Department of Justice’s two direct funds that support CLCs, the Commonwealth Attorney-General’s Department’s Women’s Safety Package funding and the Legal Services Board project grants program.

There are only a few examples of VLA and another funder sharing accountability requirements – funding for Seniors Rights Victoria in conjunction with DHHS and funding for Consumer Action Legal Centre in conjunction with CAV.

The current CLSP does not contemplate the needs of other funders, or of organisations that run CLCs and receive CLSP funding to do so but also receive funding – for their CLC or for other programs – from other government and non-government sources.

The degree to which the CLSP reporting and accountability requirements are consistent or compatible with the needs and requirements of other funders is not known.

### Discussion

New funding arrangements need to ensure accountability mechanisms are compatible with the need and expectations of other funders. This will reduce reporting duplication or incompatibility across different funders.

The *Access to Justice Review* recommended that VLA takes a central, co-ordinating role over CLC funding. This could provide opportunities to co-ordinate reporting requirements between VLA and other funders of CLCs. This is consistent with VLA’s statutory obligations under the *Legal Aid Act 1978*, s7 which requires VLA to ‘ensure that legal aid is provided in the most effective, efficient and economic manner’.

When VLA and the CLSP is the minor funder, it could be more efficient for funded centres if, for example:

* a funded centre only reports to the major funder in the format required by the major funder and the major funder then provides a summary report to VLA
* a funded centre only reports to the major funder in a format that is agreed between the centre, the major funder and VLA and the major funder provides VLA’s part of the report to VLA
* a funded centre reports to both the major funder and VLA separately but using a single report that has been agreed between the centre, the major funder and VLA as meeting everyone’s accountability needs
* the major funder and VLA synchronise their reporting schedules and requirements (including data definitions) as much as they can; ideally, in consultation with the funded centre.

### Questions

**Discussion question 7**: How could we make future arrangements more compatible with the needs/requirements of other funding programs?

**Discussion question 8**: In a situation where VLA is the minor funder of a CLC or CLC host agency, how could CLSP accountability be provided for in a more compatible and more administratively efficient manner?

## Service agreements

### Current situation

One of the strengths of the current service agreement is its structure, where much of its practical detail lies in schedules that are supported by a common core service agreement. The schedules allow for customisation of agreements to match the purposes of specific funding being provided to specific centres, while preserving a ‘head’ agreement that is common to all funded centres. In this way, the schedules make the service agreements flexible and adaptable.

### Discussion

The current service agreement could be shorter and clearer, covering the basics needed to guide the relationship between VLA and the CLC, for example by including:

* a general statement about the purpose of the funding relationship
* basic breach provisions
* the power to audit and investigate
* grievance procedures
* no restraint on the organisation’s ability to advocate or criticise government, the law or the legal system
* annual funding allocations (current Schedule One)
* reports required (current Schedule Two)
* requirements via specific schedules (e.g. a schedule setting out expectations for the delivery of family violence duty lawyer services – current Schedule Eight[[10]](#footnote-10)).

A shorter agreement could also refer to policies or guidelines hosted on the VLA website. These guidelines could be reviewed or changed in consultation with the CLC sector, eliminating the need to have a lengthy service agreement or make changes to the agreement as regularly.

### Question

**Discussion question 9**: What structure might be best for a service agreement or contractual document under a new funding framework?

##

## VLA feedback to CLCs

### Current situation

Feedback mechanisms between CLCs and VLA are largely ad hoc.

VLA provides feedback to centres on their CLSP workplans, budgets, progress reports, funds reports and submissions for additional or occasional funding. This feedback focuses on the development needs of the centre, their capacity and relative compliance with reporting and accountability standards. It follows a deficit model, responding to aspects of reports that are inadequate or confusing. The feedback is often given verbally or by email and rarely in a consistent format.

Feedback is sometimes built into a formal process of investigating and responding to major, persistent concerns and breaches of the CLSP service agreement. This process is outlined in detail in Appendix 6 to this discussion paper.

The current CLSP provides no structure through which funded CLCs can provide feedback to VLA about the performance of its role as CLSP funding manager.

### Discussion

In the past, VLA has produced written guidelines to support centres to prepare their CLSP workplans, budgets, progress reports, funds reports and organisational financial reports. The goal of these guidelines is to improve reporting quality and compliance with the expectations of the CLSP funders. However, the terms of the CLSP and its Service Agreement have constrained VLA’s capacity to incentivise or compel centres to follows such guidelines. VLA also ran workshops for centres to build their understanding and capacity to produce better workplans. Participation by centres in these workshops was voluntary.

VLA, funded centres and funders alike have expressed desire for there to be a set, formal process that allows for feedback on what a funded centre is doing well, where and how it might improve and how a centre sits in relation to other centres. There are differing views on how this feedback might be provided.

### Questions

**Discussion question 12**: How could a new framework establish more regular feedback mechanisms between CLCs and VLA and what could this feedback focus on?

##

## Service and organisational quality

### Current situation

The CLSP does not articulate or enforce any standards regarding service and organisational quality. It has broad service standards (reflected in Schedule 4 to the CLSP Service Agreement – reproduced in Appendix 4 to this discussion paper) and some general references to quality in the body of the Service Agreement.

VLA has quality standards and assurance processes to support continuous improvement in the delivery of all of the services over which it has responsibility. These services include its internal staff-provided services and services provided under grants of aid or duty lawyer programs – by private practitioners and CLCs registered to provide legal aid. This quality assurance approach has been developed by VLA because VLA recognises that there can be variations in service quality and service offering consistency across the range of services it has responsibility for and that setting and implementing acceptable standards is therefore desirable to ensure best possible and equitable services to clients. At present, in so far as this quality standards and assurance process applies to CLCs, it only applies to CLCs that are members of VLA’s Legal Aid Panels and then only to their work under grants of legal aid, not their CLSP funded work or duty lawyer work.

The practice standards regulations overseen by the Legal Services Board + Commissioner provide some framework for the assessment of service quality, particularly by individual lawyers, but are also general and open to interpretation.

The CLC sector has its own sector standards processes – the Federation of CLCs-managed NACLC CLC Accreditation Scheme and sector-managed Professional Indemnity Insurance (PII) Scheme.

### Discussion

There is no administrative link between the two sector-managed accountability processes, the Legal Services Board + Commissioner accreditation and review processes, VLA’s internal quality and assurance processes and the current CLSP. Instead, the CLSP calls for evidence of funded centres holding adequate public and professional indemnity insurance and provides scope for separate audits of funded centres to ensure that quality standards are being met, against Service Standards set by the CLSP (set out in Appendix 4).

The Federation of CLCs-managed NACLC CLC Accreditation Scheme is more rigorous and comprehensive than the CLSP Service Standards, requiring more detailed policies that cover service standards and organisational stability and health.

The CLC sector also self-manages its Professional Indemnity Insurance scheme. Not all CLCs participate in the sector’s scheme, with some (especially those CLCs part of larger organisations that have other major sources of funding) making their own arrangements. Those that are part of the sector-managed Professional Indemnity Insurance scheme are involved in annual cross-checks of their service quality, conducted by other members of the scheme.

When cross-checks are conducted within the CLC sector-managed CLC Professional Indemnity Insurance scheme, reports are produced. These are used to inform the insurer as to risks, so that an insurance premium can be calculated each year. However, any significant risks or issues identified are not available to VLA as CLSP funding manager. Notice of these things to VLA would be useful because it may allow VLA opportunities to be aware of issues at centres and provide support to centres earlier.

#### Organisational quality assessment (including governance quality)

Over the past twenty years, the legal responsibilities of members of governing bodies have increased, as have the consequences of failing to meet modern governance responsibilities.

While overall CLCs are well-managed, a minority of centres have experienced management and governance difficulties that have negatively impacted on services to clients and the well-being of staff.[[11]](#footnote-11)

#### Compliance Certificate and annual reports

When the NPALAS came into operation, VLA dispensed with the requirement for an annual Certificate of Compliance because it was not considered necessary when there is a service agreement in place that is, in effect, a binding contract. VLA is interested to know the views of funded centres (and other stakeholders) about this.

Similarly, funded centres are currently required to provide a copy of their organisational annual report to VLA. Prior to the NPALAS, centres were required to include specific elements in their annual reports. Since the NPALAS, VLA dispensed with these requirements. Again, VLA is interested in stakeholders’ views on this issue. What is the purpose of requiring centres to have an organisational annual report? How should centre demonstrate their compliance with this accountability? What specific things might be required in an organisational annual report?

One requirement of the annual report was for sufficient detail of the source, amount and purpose of any income received from other bodies to be provided. This was useful because it allowed VLA to gain some knowledge of the breadth of other funding for the centres it funds. This allowed VLA to make assessments about the relative and likely financial stability and sustainability of funded CLCs, so that closer attention could be paid to centres that had narrow or unstable income bases with a view to intervening early with support if other funding sources withdrew or became less certain. VLA could then support centres to lobby for continuing funds from those other sources, or suggest alternatives to CLCs in that situation. Some consideration should be given in this project to how this information might still be available to VLA as CLSP funding manager and/or to the Federation of CLCs as Victorian CLCs’ peak body if not through required elements in an organisational annual report.

Although the current service agreement requires funded centres to acknowledge VLA as a funder, there are no requirements or guidelines in the CLSP about how, when, where or why this should take place.

#### Reviews, breaches, termination

The audit, investigation and breach provisions in the current service agreement are relatively detailed but are still broad and open to interpretation. This is partly because they have rarely been used, so the triggers for their use and how the provisions are to be applied are not well known to either VLA or CLCs.

The review and audit provisions in the agreement are found in sections 13 and 14 of the agreement. The breach (or default) and termination provisions are found in sections 23 and 25 of the agreement. These four sections are highlighted in the edited copy of the agreement appended to this discussion paper as Appendix 5.

*Clause 13.1.2* provides scope for VLA – at its discretion – to ‘conduct a review [of a funded CLC] with respect to … provision of services [and/or] … compliance with obligations under this agreement.’ ‘Obligations under the agreement’ can include a spectrum of responsibilities from the obligation to provide services, to the obligation to acknowledge VLA as a funder. *Clause 13.1.2* (and Section 13 generally) is silent on the circumstances that might precipitate a review.

Section 13 then goes on to outline how a review should be conducted, before concluding with *Clause 13.1.7* – ‘If a review identifies that the Organisation’s performance has not, in VLA’s opinion, been satisfactory, VLA will discuss with the Organisation and may agree on, or in the absence of agreement, may issue the Organisation with a Performance Improvement Plan that sets out actions for improvement and may require some or all of these actions to be taken in reasonable time’. Failure to ‘meet the requirements’ of the Performance Improvement Plan constitutes a breach of the agreement (*Clause 13.1.8*).

Section 14 on audits outlines a similarly structured process. Like Section 13, it does not specify the circumstances that might give rise to an audit.

The breach section (Section 23 - Default) gives VLA broad powers to allege and act on a perceived breach of the agreement. If VLA perceives that a breach has occurred, it can (*Clause 23.1.1*):

* require an explanation
* require remedial action
* suspend funding
* withhold funding
* appoint an administrator
* exercise its termination of agreement rights (under Clause 25.1.1).

*Clause 25.1.1* allows VLA to terminate an agreement immediately if a breach has occurred and VLA considers that the funded Organisation is incapable of remedying the breach *or* the Organisation has had 20 days’ written notice of the breach and hasn’t remedied it in that time.

*Clauses 25.2.1* and *25.2.3* combined allow either party to terminate the agreement – without cause – by giving six months’ notice.

These escalating provisions deal with situations where a breach of the agreement has – in VLA’s opinion – occurred. The agreement does not specifically address situations where VLA, as a funder, holds concerns about a funded CLC or can see that the CLC is experiencing difficulties (e.g. in retaining staff, in managing staff, in managing conflict within its governing body or membership) that may impact on the centre’s performance and service delivery and lead to a breach.

VLA has, for many years, had a process for approaching centres that need specific support to deal with difficulties. This has recently been articulated in a written protocol that has been distributed to CLCs – the *Policy Framework on Responding to Concerns about CLC Operations or Performance* (provided at Appendix 6 to this discussion paper). The framework outlines the process VLA uses to respond to concerns about CLC operations or performance that may arise from complaints from stakeholders or from VLA’s assessment of CLSP reports or general knowledge about funded centres.

It may be desirable to refer to these early intervention and support approaches in a formal agreement. This would be worthy of discussion within this CLSP Reform project.

#### Complaints process

VLA currently addresses formal complaints it receives about funded CLCs through its complaints process that is applied to all its services by VLA’s Complaints and Statutory Compliance (CaSC) team.

The first step in this process is to ensure that the complainant has raised their complaint with the CLC through the CLC’s own complaints handling processes. CLCs seeking accreditation under the NACLC CLC Accreditation Scheme must have a complaints handling process and policy. Those that are not seeking accreditation should have complaints processes and policies.

If a complainant has taken their complaint through the CLC’s complaints handling process and the complaint remains unresolved or the complainant is still dissatisfied, the complainant, or the CLC, can escalate the complaint to VLA, which will liaise with the CLC and the complainant to try and reach a fair and reasonable resolution. This is initially handled by VLA’s CLC Funding and Development team. If this first, investigative and conciliatory approach does not does not resolve the complaint, the complaint can be escalated to VLA’s specialist complaint-handling team, Complaints and Statutory Compliance (CaSC) for more formal investigation, assessment and resolution.

VLA’s process is to seek to reach a resolution that is fair and reasonable to both parties and to investigate complaints against the CLSP Service Agreement to assess whether a breach of the agreement has occurred. If a breach is apparent, we apply VLA’s *Framework to respond to concerns about CLCs operations or performance* to attempt to clarify and/or remedy the breach, ahead of using the breach provisions in the agreement.

If the complaint relates to a specific lawyer’s handling of a matter or to a practice related issue, VLA may advise the complainant they can complain the Legal Services Board + Commissioner (LSBC). In very serious matters, where a complaint may involve both a breach of legal practice standards and a breach of a centre’s CLSP agreement, VLA may refer the complaint (or part of it) to the LSBC whether or not the complainant client requests that.

### Questions

**Discussion question 13**: How could a new reporting framework articulate standards regarding service and organisational quality?

# Other considerations in the development of a new funding program

**Information and advice**

**Casework support**

**Represent’n**

**CLE**

**Community development**

**Law reform and research**

Yes?

No?

To what degree?

To whom?

Why them?

Yes?

No?

To what degree?

To whom?

Why them?

Why them?

Yes?

No?

To what degree?

To whom?

Yes?

No?

To what degree?

To whom?

Why them?

Yes?

No?

To what degree?

To whom?

Why them?

Yes?

No?

To what degree?

To whom?

Why them?

## Funding period

The *Access to Justice Review* recommends four-year funding for the legal assistance sector. VLA’s funding from the State Government is annual. The CLSP was, technically, triennial. The NPALAS is for five years.

The ideal length of a funding agreement is up for discussion.

**Discussion question 16**: What scope of years should a new funding program cover – one, three, four, five, other? Why?

# Next steps

**Questions**

**15y: Do CLCs tha take cases to court already use these methods?**

**15z: If yes, should they be required to articulate this in their service guidelines?**

We value your opinions and encourage you to contribute to this important project by consulting with your colleagues and staff (including volunteers) and then:

* responding to the questions listed in this paper via email to project manager Roy Reekie by **COB Monday 5 June 2017**: roy.reekie@vla.vic.gov.au
* developing ideas for options to address the issues outlined in this paper and sharing them via email with Roy, on the project’s Yammer pages: CLSP Reform – Accountability, CLSP Reform – Supporting CLCs to do their work, CLSP Reform – Quality.
* having your say by joining and helping to shape and progress discussions about CLSP Reform in the workshops on 19 May and 26 May.
* registering your interest to be involved in further consultation by emailing Roy as project manager
* providing informal feedback in your regular contact with VLA’s Community Legal Centres Funding and Development (CLCF&D) team – Roy, Annie Nash, Olga Williams and Tara Skinner
* talking to members of the CLSP Reform Project steering committee.

**CLSP Reform Project steering committee**

|  |  |
| --- | --- |
| **Committee member** | **Position** |
| Jon Cina | Project Sponsor and Chair, Steering CommitteeAssociate Director, Access and Equity, VLA |
| Dan Nicholson | Executive Sponsor and Executive Director, Civil Justice, Access and Equity, VLA  |
| Peter Noble | Executive Director, Services and Innovation, VLA |
| Nella Buccheri | Associate Director, Legal Practice, VLA |
| Serina McDuff | Chief Executive Officer, Federation of CLCs (Vic) |
| Ashwinny Krishna | Director of Sustainability, Federation of CLCs (Vic) |
| Nick Hudson | Executive Officer, Barwon Community Legal Service |
| Helene McNamara | Chairperson, Moonee Valley Legal Service |
| Jenni Smith | Executive Officer, Northern Community Legal Centre |
| Allegra Walsh | Director, Criminal Justice Operations, Department of Justice and Regulation |

# Further reading options

Victorian Access to Justice Review Report - [https://engage.vic.gov.au/accesstojustice - Chapters 1](https://engage.vic.gov.au/accesstojustice%20-%20Chapters%201), 2, 3 & 6

Productivity Commission 2014, *Access to Justice Arrangements*, Inquiry Report No.72, Canberra ­- <http://www.pc.gov.au/inquiries/completed/access-justice/report> - [Chapter 20 *The legal assistance landscape*](http://www.pc.gov.au/__data/assets/pdf_file/0020/145406/access-justice-volume2.pdf) (pp665-702) and [Chapter 21 *Reforming legal assistance services*](http://www.pc.gov.au/__data/assets/pdf_file/0020/145406/access-justice-volume2.pdf) (pp703-760); pp728-733 in particular.

[Reshaping legal assistance services: building on the evidence base; a discussion paper](http://www.lawfoundation.net.au/ljf/app/%26id%3DD76E53BB842CB7B1CA257D7B000D5173), Law and Justice Foundation of NSW, April 2014

[Lawyering for Change: seven principles of strategic legal practice; a VLF CLC Fellowship report](https://www.victorialawfoundation.org.au/sites/default/files/attachments/2015_web_CLCReport_final.pdf), Agata Wierzbowski, Victoria Law Foundation, November 2015

[Reclaiming community legal centres: maximising our potential so we can help our clients reach theirs](http://consumeraction.org.au/wp-content/uploads/2012/04/Reclaiming-community-legal-centres.pdf)*; VLF CLC Fellowship report*, Nicole Rich, Victoria Law Foundation, 2008

# Appendix 1 – Excerpt from the NPALAS – primary goals

# Part 2 — objective, outcomes and outputs

## Objective

1. The objective of this Agreement is to achieve a national legal assistance sector that is integrated, efficient and effective, and is focused on improving access to justice for disadvantaged people and maximising service delivery within available resources.

## Outcomes

1. This Agreement will facilitate achievement of the following outcomes:
2. legal assistance services are targeted to priority clients with the greatest legal need;
3. legal assistance service providers collaborate with each other, governments, the private legal profession and other services, to provide joined-up services to address people’s legal and related problems;
4. legal assistance services are appropriate, proportionate and tailored to people’s legal needs and levels of capability;
5. legal assistance services help people to identify their legal problems and facilitate the resolution of those problems in a timely manner before they escalate; and
6. legal assistance services help empower people to understand and assert their legal rights and responsibilities and to address, or prevent, legal problems.

# Appendix 2 – current drivers for legal assistance sector development

Over the last three years, several key reviews have provided insight into how a reformed CLC funding program could operate:

* the Shergold Review into community services in Victoria
* the review of the old National Partnership Agreement on Legal Assistance Services and the resulting (2015-2020) NPALAS
* the Commission of Audit review into legal assistance services funding
* the Productivity Commission enquiry into legal assistance services
* the Law and Justice Foundation of NSW’s submission to the Productivity Commission enquiry, and
* the Victorian Access to Justice Review.

This paper focuses on the latter three as many of the findings of the former three were echoed in the latter three reports.

### Productivity Commission enquiry into legal assistance services

The sections of the report most relevant to CLCs and CLC funding were Chapters 20 and 21 and Appendix I; most notably, pp 728-733.

Within chapters 20 and 21, the most relevant recommendations and observations made by the Commission were:

* **On the focus of publicly-funded legal assistance services**

Funded legal assistance services should:

* reflect legal need in their service planning, service priorities and service delivery, and
* demonstrate their efficiency and effectiveness. (Recommendation 21.7)

Their service planning should be based on “a comprehensive assessment of legal need (by both … law type and geographic area). The assessment should be forward looking, taking into account likely population and other demographic changes.” (p724)

This may involve identifying likely local ‘problem clusters’ in their service priorities.

The Commission recommended that service delivery targets, based on evidence-derived benchmarks, should be built into funding agreements. (Recommendation 21.8)

The Commission went further, recommending that governments should publicly report annually on ‘any failure to meet agreed legal need coverage and priorities. (Recommendation 21.5)

* **On a client focus**

The Commission reflected on the fact that the Legal Australia-Wide (LAW) national legal needs survey, conducted by the NSW Law and Justice Foundation, found that few community members who are likely to have a legal problem are aware that their problem might have a legal solution and, of those who do realise this, few know where to turn for assistance.

* **On working in partnerships**

**Questions**

The Commission called for funding agreements that reflect more collaborative and flexible contracting arrangements to allow for better integrated and co-ordinated service planning to deal with ‘wicked’[[12]](#footnote-12) problems, featuring:

* tailoring of agreements
* local ownership and responsibility (esp in service planning and priority identification)
* reflection on and compatibility with defined priorities at a national level but with flexibility in local responses to those priorities, and
* new partnerships, new types of partnerships and new, clearly-defined roles within those partnerships.
* **On advocacy and law reform activities**

The Commission noted the vital role that the legal assistance sector (and CLCs in particular) play in systemic advocacy and law reform work, and recommended that this role be protected and emphasised in funding arrangements. (Recommendation 21.1)

### Law and Justice Foundation of NSW: Reshaping Legal Assistance: building on the evidence-base

The NSW Law and Justice Foundation made an important, comprehensive submission to the Productivity Commission’s enquiry. It built on the evidence that the foundation had uncovered in the LAW Survey and work flowing from that survey. As such, this ‘Reshaping Legal Assistance’ discussion paper is a credible part of the Foundation’s impressive work on legal need and acts as a practice-based reflection on the evidence unearthed by its surveying work. The Productivity Commission leaned heavily on this submission and borrowed a number of concepts from it.

The conclusion of this reflective work is that funded legal assistance services need to be:

* targeted
* joined up
* timely (to minimise the impact of legal problems and to maximise the utility of legal assistance services), and
* appropriate (tailored to a client’s needs, capacity and circumstances).
* **On service targeting**

The Foundation recommended dual filters for service planning to target services and set priorities:

1. looking at demographic and service data (from a range of legal assistance and non-legal assistance agencies in an area) through a regional (defined area) lens, specifically to identify priority problem clusters (defined by legal issues and location) and, importantly, to identify ‘wicked’ problems that might exist in the area and for priority client groups. It defined ‘wicked’ problems as not necessarily the most frequent, widespread or obvious problems, but as complex problems, entrenched problems, those resistant to resolution; in effect, the most impactful problems, the ones that your service might have the most positive impact on if it applied itself to them, and
2. a client-first focus; always a client focus.
* **On joining services up**

The Foundation’s paper considered different types of/reasons for partnership work:

* networking
* co-ordination
* co-operation
* collaboration, and
* integration,

in a manner that suggests that there is a continuum of partnership work intensity.

* **On delivering services in a timely fashion**

The Foundation’s paper challenged the sector to think about and articulate how we triage to reflect the priorities that should be clarified through rigorous service planning.

It noted that ‘assessing the capability of the individual [potential client] to pursue and resolve [their] legal issue is [a] key aspect of triage’. (p113)

The paper also considered how ‘unbundled’ legal services[[13]](#footnote-13) might deliver better services in a more efficient and effective manner to clients according to their capabilities.

* **On delivering services that are appropriate**

The Foundation’s paper spent a lot of time looking at client legal capability and how it can/should be reflected in service planning, design and delivery, noting that consideration of client capability has been largely absent from legal needs analyses and service planning. ‘We note that while a broad range of methods have been developed to identify legal need, little attention has been paid to the development of methods to measure [client] capability beyond the financial.’ (p173)

The paper recommends consideration of:

* legal health checks and capability screening in triage (and at other stages of a client’s interaction with a service or the legal assistance system)
* a collaborative, educative approach – with the client – to addressing the client’s legal problems, and
* scheduled follow-ups with clients to assess outcomes, their sustainability and their transformative/restorative effects.
* **On what works**

Treading a fine line towards promoting self-interest, the Foundation advocated that sector-wide research and evaluation be left to ‘the experts’.

### Victorian Access to Justice Review report

This report covers a lot of the ground considered by the Productivity Commission and the Law and Justice Foundation of NSW; including:

* the importance of clearly identifying and articulating legal needs and service priorities
* barrier to accessing legal assistance and clustering of legal problems
* the importance of partnership work, outreach and co-ordinated referrals
* unbundling legal services
* legal health checks
* service quality assessment
* outcomes measurement
* more, and more certain, funding for the legal assistance sector.

# Appendix 3 –VLA’s guiding principles on CLC funding decisions

**VLA guiding principles for CLC funding decisions**

**Adopted by the VLA Board in December 2012**

* VLA will prioritise increases in funding to centres located in population growth areas and areas of relatively high unmet need and disadvantage
* VLA will not prioritise increased funding to small generalist centres (in their current form) located close to each other and in areas that are increasingly gentrified
* Funding will be prioritised to centres that show a willingness to implement a more efficient service-delivery model, including through shared staff or management of centres, or moves towards amalgamation of smaller centres
* Funding will be prioritised to centres that show they are more effectively targeting their services to need, including through:
	+ effective local legal needs assessment and planning
	+ co-location of services in health and other settings
	+ triage using clearly articulated service guidelines, giving priority to priority clients
	+ collaboration and coordination with other legal assistance services including VLA offices
	+ undertaking effective strategic advocacy and legal education work targeted to legal need in their community, rather than just advice services
* VLA will require centres to demonstrate how they develop, maintain and evaluate the quality of their service delivery and its outcomes.

# Appendix 4 –Schedules 3 & 4 to the current CLSP Service Agreement: ‘Commonwealth Priorities and Eligibility criteria’ and ‘CLSP Service Standards’

SCHEDULE 3 – Commonwealth Priorities and Eligibility criteria

The following is an excerpt from Schedule B of the National Partnership Agreement on Legal Assistance Services 2015-2020.

It describes the Commonwealth of Australia’s expectations as to how its funds are to be used.

**Commonwealth priorities and eligibility principles**

National Partnership Agreement on Legal assistance services

## *This schedule provides guidance on the prioritisation of legal assistance services delivered by legal aid commissions and community legal centres.*

# Priority Clients

B1 The legal assistance priority clients are people whose capability to resolve legal problems is compromised by circumstances of vulnerability and/or disadvantage. People who fall within the priority client groups are more likely to experience legal problems, are less likely to seek assistance and/or are less able to access services for a range of reasons.

B2 Legal assistance service providers should focus their services on people experiencing financial disadvantage.

B3 Where appropriate, legal assistance service providers should also plan and target their services to people who fall within one or more of the priority client groups listed below (in alphabetical order):

1. children and young people (up to 24 years);
2. Indigenous Australians;
3. older people (aged over 65 years);
4. people experiencing, or at risk of, family violence;
5. people experiencing, or at risk of, homelessness;
6. people in custody and prisoners;
7. people residing in rural or remote areas;
8. people who are culturally and linguistically diverse;
9. people with a disability or mental illness;
10. people with low education levels; and
11. single parents.

B4 The list of priority client groups is for guidance only and is not exhaustive. Service providers are not excluded from assisting clients that fall outside these groups.

# Commonwealth service priorities

B5 The use of Commonwealth funding provided under this Agreement by legal aid commissions and community legal centres should be broadly consistent with the principles and service priorities set out in this Schedule, where applicable.

## *General principles*

B6 Commonwealth funding should be directed to the delivery of front-line services and focused on meeting the legal needs of priority clients.

B7 Commonwealth funding should not be used to lobby governments or to engage in public campaigns. Lobbying does not include community legal education or where a legal assistance service provider makes a submission to a government or parliamentary body to provide factual information and/or advice with a focus on systemic issues affecting access to justice.

B8 Legal assistance service providers should deliver timely intervention services to resolve clients’ legal problems sooner, or prevent them from arising altogether.

B9 Family or civil law disputes should be resolved through alternative dispute resolution processes rather than through litigation, where appropriate.

B10 Legal assistance service providers should consider whether other services (legal as well as non‑legal) may be relevant to a client’s needs and make referrals to these services where appropriate. Suitable collaborative arrangements should be established for this purpose.

## *Family law priorities*

B11 Family law services should focus on:

1. matters involving allegations of family violence;
2. matters where the safety or welfare of children are at risk;
3. matters involving complex issues about the living arrangements, relationships and financial support of children; and
4. assisting people with property settlement matters if they are experiencing financial disadvantage or are at risk of homelessness.

B12 [deleted in this CLC-focussed schedule]

## *Civil law priorities*

B13 Legal assistance service providers should focus on assisting people with civil law problems that are likely to have a significant adverse impact if not resolved. For example, where there are implications for a person’s safety, health and wellbeing, access to government benefits and pensions, or homelessness status.

B14 Key Commonwealth civil law areas are listed below (in alphabetical order):

1. bankruptcy matters;
2. consumer law matters;
3. employment matters;
4. extradition matters;
5. human rights and anti-discrimination matters;
6. insurance law matters;
7. migration matters; and
8. social security law matters (including matters relating to military entitlements and military compensation claims).

B15 The list of Commonwealth civil law areas is for guidance only. Legal assistance service providers should consider how to best meet civil law need collectively (arising from Commonwealth or State laws), within available resources.

B16 Legal assistance service providers should respond collectively to emerging civil law issues identified through service planning, such as providing legal help for victims of natural disasters.

## *Commonwealth criminal law priorities*

B17 Commonwealth criminal law services should focus on:

1. matters where the defendant is a child;
2. matters where the defendant is being charged with a criminal offence for which a sentence of imprisonment is likely to apply should the defendant be found guilty; and
3. assisting persons being detained in custody.

# Commonwealth eligibility principles

B18 This section sets out the Commonwealth’s directions for assessing the financial eligibility of applicants for Commonwealth-funded representation services.

B19 Legal assistance service providers should consider the financial status of prospective clients when providing representation services to ensure that intensive services are provided to financially disadvantaged clients.

B20 Legal assistance service providers may seek client contributions to improve their financial sustainability and to fund additional front-line services.

B21 [deleted in this CLC-focussed schedule]

B22 [deleted in this CLC-focussed schedule]

## *Legal aid commission means tests*

Clauses B23 – B30 [deleted in this CLC-focussed schedule]

SCHEDULE 4 - CLSP Service Standards

The following expectations of legal assistance service providers (which include Community legal services) are taken from the National Partnership Agreement on Legal Assistance Services, and establish and determine the basis for service provision and represent the services standards expected of CLSP funded Community legal centres:

1. legal assistance services are targeted to priority clients with the greatest legal need;
2. legal assistance service providers collaborate with each other, governments, the private legal profession and other services, to provide joined-up services to address people’s legal and related problems;
3. legal assistance services are appropriate, proportionate and tailored to people’s legal needs and levels of capability;
4. legal assistance services help people to identify their legal problems and facilitate the resolution of those problems in a timely manner before they escalate; and
5. legal assistance services help empower people to understand and assert their legal rights and responsibilities and to address, or prevent, legal problems.

The organisation must comply with, and meet the following Service Standards which establish and determine the basis for legal service provision, through:

1. Service planning

Community legal services should be planned, in collaboration and/or consultation with other service providers in the legal assistance sector and other relevant local, non-legal agencies, through –

* assessment of evidence
* identification of legal need
* targeting of services to priority client groups, priority locations and on priority legal issues
* effective triage of clients and their matters, including assessment of relative legal needs and capability, and
* targeting and tailoring of services to those most in need and most disadvantaged.
1. Information and Referral
Community legal services offer information and/or referral to people where appropriate and on the basis of need.
2. Provision of Advice
Community legal services provide advice to people on legal and other issues that is
* within their area of competence
* clear and up to date
* adequate to establish all of the apparent, relevant legal options accompanied by any immediate, appropriate support, such as writing a letter or referral to other service providers
* provided in a way that avoids conflicts of interest.
1. **Casework**Community legal services provide casework services in accord with legal and other professional legislation and regulations applicable in each state and territory, which is
* adequate to establish all of the apparent, relevant legal options and limitation dates, and
* provided in a way that avoids actual or perceived conflicts of interest
1. **Community Legal Education**Community legal services provide high quality and accessible community legal education to meet the priority needs of the target groups and the communities with which they work.
2. **Law Reform and Legal Policy**Community legal service providers undertake law reform and legal policy in a planned and coordinated manner to meet the priority needs of the target groups and the communities with which they work.
3. **Accessibility**Community legal services are actively committed to promoting access, equity and non-discrimination.
4. **Organisational Management**Community legal service providers operate in a way that ensures community involvement in the effective and efficient management of all aspects of community legal service delivery.
5. **Management of Information and Data**Community legal service providers collect and use data to
* provide information to management committees
* assist in planning processes and governance
* meet the accountability requirements of funding agencies
* assist them in their applications for funds to undertake special projects and in their applications for additional funds

Data are collected by service providers in a way that ensures that the data is accurate, comprehensive and up to date. Data are maintained in a way that ensures safety from accidental loss or destruction.

**j. Assessing Client Satisfaction and Managing Complaints**Community legal service providers offer clients and people receiving services the opportunity to provide feedback on their experiences with the service, and manage complaints from clients and others in a prompt, fair and consistent way.

**Appendix 5 – Current CLSP Service Agreement (with provisions on review, audit, breach and termination highlighted)**

**A****GREEMENT**

**BETWEEN**

**VICTORIA LEGAL AID**

**AND**

**«CENTRE»**

**Relating to the provision of community legal services**

**1 July 2015 – 30 June 2017**

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1. **PARTIES**

This Agreement is made between

VICTORIA LEGAL AID ABN 42 335 622 126

and

«CENTRE» ABN «ABN» (the Organisation)

1. **DEFINITIONS**

ABN has the same meaning as in section 41 of the *A New Tax System (Australian Business Number) Act 1999.*

Agreement means this document and includes any schedules, annexures and documents attached or incorporated by reference, if any.

Allowable Surplus means up to 15% of Annual Funds which may, without seeking approval, be carried over to the next Financial Year. The calculation of the amount of the Allowable Surplus will exclude any one-off funds that may have been provided under this Agreement, unless any such funds have been substantially unspent over the majority of the Service Period.

Annual Budget means the financial report submitted via CLSIS for each Financial Year of the Service Period detailing the projected income and expenditure of funds provided under this Agreement, required by the CLSIS reporting template.

Funds means the combined Commonwealth and State funds as specified in Schedule 1.

Assets has the same meaning as given in the Australian Accounting Standards, but is limited to those acquired with funding provided under this Agreement or Service Generated Income.

Audited Financial

Statements means an Organisation’s financial statements for a Financial Year which have been prepared in accordance with the Australian Accounting Standards, and certified by a Registered Auditor and which include:

1. a Statement of Financial Position in respect of the Organisation for that Financial Year including required Notes to the Accounts
2. a Statement of Comprehensive Income (previously known as a Statement of Financial Performance) in respect of the Organisation that clearly identifies the Annual Funds for that Financial Year
3. a Cash Flow Statement in respect of the Organisation for that Financial Year.
(However if the Organisation is a non-reporting entity [as defined in the Australian Accounting Standards], and is not otherwise required to prepare a Cash Flow Statement, Special Purpose Financial Reports [as defined in the Australian Accounting Standards] will be accepted without a Cash Flow Statement), and

 for the purposes of this Agreement, Audited Financial Statements shall also include:

1. a cumulative and accruals-based CLSIS Funds Report (being the final, full year Funds Report required under this Agreement) in respect of all funds provided under this Agreement and Service Generated Income for all Funding Categories in that Financial Year
2. Surplus Funds clearly identified as a liability in the Organisation’s Statement of Financial Position
3. within a Statement of Financial Position, Cash Flow Statement or Notes to the Accounts, clearly identified changes to written down values of Community Legal Services Program (CLSP) Assets held, including totals of Asset purchases, disposals and depreciation; details of any legally enforceable commitments beyond the current financial year, and
4. where the Services are not the major business of the Organisation, a separate Statement of Financial Position covering the funds provided under this Agreement or Previous Agreement.

AustralianAccounting

Standards refers to the standards of that name maintained by Australian Accounting Standards Board, created by section 226 of the *Australian Securities and Investments Commission Act 2001*.

Business Day means, any day other than a Saturday or Sunday or a public holiday in the place where an action occurs.

CLSISmeansthe Community Legal Services Information System, the data collection and reporting system provided by the Commonwealth for the Community Legal Services Program.

CLSIS Data Dictionary means the document, produced by the Commonwealth Of Australia Attorney General’s Department in 2004 which describes the data reporting definitions and protocols for CLSIS.

CLSIS Financial Reporting

Guide means the guide providing information on how to complete the CLSIS Annual Budget and Funds Reports

CLSP Planmeans a plan which sets out the objectives of the Organisation in relation to the use of funding provided or held under this Agreement and Service Generated Income, its strategies and associated actions designed to meet these objectives

Core Service Activities means information, advice, casework, community legal education and law reform and legal policy activities undertaken by the Organisation in provision of the Services.

CLSP Service Standards means the standards appended to this Agreement as Schedule 4

Excess Surplus means any surplus in excess of the Allowable Surplus.

Existing Services Material means all Material produced in whole or in part by the Organisation through the investment or use of monies provided by the Funding Bodies under a Previous Agreement and in existence prior to the Commencement Date.

Financial disadvantage means being of no, low or medium income as defined in the CLSIS Data Dictionary.

Financial Year means each period from 1 July to the following
30 June occurring during the Service Period.

Fraud means ‘dishonestly obtaining a benefit by deception or other means’. This definition includes, but is not limited to, the following types of fraud:

1. theft
2. obtaining property, a financial advantage or any other benefit by deception
3. providing false or misleading information to the Funding Bodies, or failing to provide information where there is an obligation to do so
4. causing a loss, or avoiding or creating a liability by deception
5. creating, using or possessing forged or falsified documents
6. bribery, corruption or abuse of office
7. unlawful use of equipment including interfering with or hacking into computers, misuse of vehicles, telephones, and other property or services
8. relevant bankruptcy offences
9. disclosure of sensitive or confidential information with the discloser obtaining some benefit; and
10. any offences of a like nature to those listed above

Funding Body Material means any Material provided by VLA for the purposes of this Agreement or which is copied or derived from Material so provided except for Services Material.

Funding Category means a sub-program of the Community Legal Services Program that is specified in Schedule 1 and for which funds are provided as specified in that Schedule.

Funds Reports means the financial reports submitted via CLSIS detailing year to date income and expenses in respect of Funds on an accrual basis, and other financial information specified in the CLSIS Financial Reporting Guide.

Guidelines means the Community Legal Services Program Guidelines issued by VLA as amended or updated from time to time, at VLA’s discretion.

Intellectual Property Rights includes all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions, plant varieties, trademarks (including service marks), designs and circuit layouts; and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, but does not include:

* + - 1. Moral Rights
			2. the non-proprietary rights of performers, or
			3. rights in relation to confidential information.

Management Committeemeans abody that governs, or is responsible for the management of, the Organisation.

Material includes documents, information and data stored by any means and all copies and extracts of the same, software (including licensed software), databases and website material, but does not include any information, held in any form, that is the subject of client legal privilege.

Moral Rights means the following non-proprietary rights of an author of copyright Material:

* + - 1. the right of attribution of authorship
			2. the right of integrity of authorship, and
			3. the right not to have authorship falsely attributed.

National Partnership

Agreement means the National Partnership Agreement for Legal Assistance Services 2015-20, negotiated and agreed to by the Commonwealth of Australia and the State of Victoria, in force at the time of signing this agreement, including its supporting documents:

* 1. the Strategic Framework for Legal Assistance
	2. the final Legal Assistance Reform issues paper towards the completion of the National Partnership Agreement
	3. the Data Standards Manual
	4. documents listing data reporting requirements and/or templates

Other Income means any income the Organisation receives from

1. any person or organisation (other than funding provided under this Agreement), and
2. membership fees, donations, bequests and any fundraising activities,

but excludes Service Generated Income.

Party means a Party to this Agreement.

Performance Improvement

Plan means the plan described in clause 13.1.9 that identifies:

1. areas for improvement in the Organisation’s performance, and
2. the actions that the Organisation needs to take to improve those areas.

Personal Information has the same meaning as in section 6 of the *Privacy Act 1988* (Cth), namely, information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

Previous Agreement means a previous written agreement between the Organisation and VLA, under which VLA provided funding to the Organisation for the purpose of the Community Legal Services Program (or another program with a substantially similar purpose).

Progress Reports means the progress reports against the CLSP Plan required to be provided by the Organisation to VLA, in a format required or approved by VLA, in accordance with the timetable set out in Schedule 2.

Records means all Material stored by any means and all copies and extracts of the same, including the Organisation’s financial accounts and related source data, such as bank records, receipts, invoices, cheque books, wages records and petty cash documents.

Registered Auditor means a person registered as an auditor under the *Corporations Act 2001.*

Reports means:

1. Funds Reports
2. Progress Reports
3. Audited Financial Statements
4. an Annual Report, and
5. an Annual Budget.

Representation services means major casework as defined in the CLSIS Data Dictionary

Service Generated Income means any income generated by the Organisation's investment of funding provided under this Agreement or by the provision of Services funded under this Agreement, including but not limited to bank interest, proceeds from the sale of Assets, client contributions, fees for Community Legal Education activities, costs recovered and retained.

Services means the provision of community legal services as described in the CLSP Plan, which include:

1. the Core Service Activities that aim to fulfil the objectives of the CLSP as provided in the Guidelines
2. the provision of Services Material, and
3. community and sector development activities.

Services Material means all Material (including Reports and Records) paid for in whole or in part with funding provided under this Agreement or a Previous Agreement or by Service Generated Income accrued during the Service Period and:

1. produced for the purpose of performing the Services
2. incorporated in, supplied or required to be supplied along with the Material referred to in paragraph a, or
3. copied or derived from Material referred to in paragraph b

but does not include Material that is properly the subject of client legal privilege.

Service Period means 1 July 2015 to 30 June 2017.

Surplus Funds means any amount of funds the Organisation has accumulated from funding provided under this Agreement and Service Generated Income received in the Service Period not used or committed during the Service Period, including funds received under a Previous Agreement with a CLSP Funding Body and, as at the Date of this Agreement, not used or committed.

Term of this Agreement means the period described inclause 7.1.1.

Termination Date means the date specified in a notice of termination on which the Agreement is terminated.

VLA means Victoria Legal Aid

1. **RECITALS**
	* 1. The Parties recognise that the provision of high quality community legal services for the disadvantaged in the Australian community is an important element in facilitating access to justice.
		2. The Commonwealth of Australia and the State of Victoria have negotiated and entered into a National Partnership Agreement to guide and direct the manner in which community legal services are delivered to disadvantaged members of the Australian community where public monies are used to deliver those services
		3. Under this National Partnership Agreement, the Commonwealth of Australia provides specific funds to the State of Victoria for the provision of the services described in 3.1.1 and as Services and Core Service Activities in the definitions section of this Agreement through community legal centres. These funds are administered by the State of Victoria via Victoria Legal Aid. VLA also contributes funds for community legal centres to provide these services. Together, VLA’s funds and the Commonwealth’s funds support the Victorian Community Legal Services Program (CLSP).
		4. This Agreement is intended to operate in a manner consistent with the objectives and outcomes of the National Partnership Agreement. The Principles and requirements of the National Partnership Agreement apply to both community legal centres funded with the funds referred to in 3.1.3 above and to VLA in its capacity as both a legal assistance provider and funder of other legal assistance services.
		5. Under this Agreement, Victoria Legal Aid agrees to provide funding to the Organisation for the provision of community legal services. These services are to be provided in accordance with this Agreement, the Guidelines and the CLSP Service Standards.
2. **INTERPRETATION**
	* 1. This Agreement records the entire agreement between the Parties in relation to its subject matter.
		2. In this Agreement, unless the contrary intention appears:
			1. all references to dollars are to Australian dollars
			2. reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth or State as amended or replaced from time to time
			3. words of inclusion are not words of limitation
			4. in the event of inconsistency between the following documents, the order of priority for the purpose of resolving any conflict shall be the order set out below, the documents higher in the list taking precedence over the documents lower in the list:

the terms and conditions of this Agreement

any part of a Schedule (and annexures and attachments if any), and

the Guidelines.

* + - 1. where any conflict arises between any part of a Schedule and any part of an annexure, the Schedule prevails and where any conflict arises between any part of an annexure and any part of an attachment, the annexure prevails, and
			2. reference to a Schedule (or an annexure or attachment) is a reference to a Schedule (or an annexure or attachment) to this Agreement, including as amended or replaced from time to time by agreement in writing between the Parties.
		1. A heading is for reference only and does not affect the meaning or interpretation of this Agreement.
		2. Any reading down or severance of a particular provision does not affect the other provisions of this Agreement.
1. **BASIS OF AGREEMENT**
	* 1. This Agreement deals with the expenditure of public monies from both the Commonwealth of Australia and the State of Victoria and is subject to the appropriation of those monies by their respective Parliaments.
		2. VLA intends reviewing the operation and structure of the Community Legal Services Program, including the structure, terms and requirements of this Agreement, in 2015-16. The Organisation will participate in and co-operate with this review as and when requested by VLA.
		3. The Organisation is only eligible to receive Annual Funds under this Agreement if it is an Australian company, an association incorporated under the legislation of the State or Territory in which it operates or an Aboriginal association incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act).
2. **COMMONWEALTH OF AUSTRALIA FUNDS ADMINISTERED UNDER THIS AGREEMENT**
	* 1. In addition to the appropriation provision at 5.1.1 above, payment of sums attributable to the Commonwealth of Australia under this Agreement are subject to six monthly payments of those funds by the Commonwealth of Australia to the State of Victoria under the terms of the National Partnership Agreement on Legal Assistance Services.
		2. If a CLC funding instalment payment due under that National Partnership Agreement is not paid by the Commonwealth of Australia to the State of Victoria, or is not passed on by the State of Victoria to VLA, in the full amount necessary to meet all Commonwealth funding committed to within those instalment payments VLA may not be able to make the full payments due under this Agreement and will not be required to do so, until all funds necessary to cover instalments for funded centres due to receive Commonwealth funds under the National Partnership Agreement have been received by VLA from the State of Victoria after the Commonwealth of Australia has paid them to the State.
	1. Commonwealth funding should be used to serve Commonwealth priority clients and meet Commonwealth service priorities as described in Schedule 3 to this Agreement.
	2. Commonwealth funding should not be used to lobby governments or to engage in public campaigns. Lobbying does not include community legal education or where a legal assistance service provider makes a submission to a government or parliamentary body to provide factual information and/or advice with a focus on systemic issues affecting access to justice.
		1. 6.4 At least 85% of representation services delivered using Commonwealth funds should be delivered to people experiencing financial disadvantage.
3. **TERM OF AGREEMENT AND SERVICE PERIOD**
	1. **Term and Commencement Date**
		1. The Term of this Agreement commences on the Commencement Date and ends on the Completion Date.
		2. The Commencement Date is the later of 1 July 2015, or the date written on the execution page of this Agreement, and if no date or more than one date is written there, then the date on which this Agreement is signed by the last Party to do so.
		3. The Completion Date is the day after the Organisation has done all that it is required to do under this Agreement to the satisfaction of VLA.
	2. **Service Period**
		1. The Service Period commences on 1 July 2015 and ends on 30 June 2017, unless terminated earlier, or extended under clause 7.3.1.
	3. **Extension of Service Period**
		1. The Service Period may be extended by written agreement of the Parties.
	4. **Replacement Agreement**
		1. The Parties may agree to terminate this Agreement and enter into a new Agreement at any time during the Term of this Agreement. The operation of this clause is not affected in any way by the provisions of clause 25.
4. **CONDUCT OF SERVICES & PAYMENT OF FUNDS**
	1. **Provision of Services**
		1. The Parties agree to use their best endeavours to collaborate and cooperate to enhance links and integrated service planning between relevant service providers, having regard to the National Partnership Agreement.
		2. The Organisation must:
			1. conduct the Services in accordance with the Guidelines, the CLSP Service Standards and the Organisation’s approved CLSP Plan,
			2. minimise unnecessary duplication of services in a local community or area of specialisation, and
			3. ensure that 85% of its representation services are delivered to people experiencing financial disadvantage.
	2. **CLSP Plan, Annual Budget and Activity Targets**
		1. The Organisation will submit to VLA for its consideration and approval CLSP Plans and Budgets according to the reporting timetable in Schedule 2.
		2. If the Organisation proposes to make any significant changes to the approved CLSP Plan or Budget, the organisation must submit the proposed changes to VLA for approval before implementing those changes.
		3. Where VLA provides the organisation with additional funding during a financial year, not noted in Schedule 1 at the commencement of each financial year covered by this Agreement, VLA may require an addendum to the approved CLSP Plan. Once approved by VLA, the addendum will then form part of the approved plan for reporting purposes.
		4. Reporting on special or additional funding covered by addenda to approved CLSP plans will be undertaken via the usual CLSP Plan reporting processes outlined in the reporting timetable in Schedule 2.
	3. **Payment of Annual Funds**
		1. Subject to parliamentary appropriation, and compliance by the Organisation with this Agreement, VLA agrees to provide the Organisation the monies specified in Schedule 1, for the purposes of, and by the instalments specified in Schedule 1.
		2. Without limiting its rights, VLA may suspend any payment in whole or in part until the Organisation has performed its obligations under this Agreement.
		3. Before any payments can be made to the Organisation:
			1. the Organisation must provide its valid ABN to VLA and, if requested by VLA, provide proof of its GST registration status, and
			2. a correctly rendered tax invoice must be produced by the Organisation or a Recipient Created Tax Invoice by VLA.
		4. Subject to clause 7.4.1 of this Agreement, VLA must use its best endeavours to ensure the following:
			1. the first quarterly instalment payable to the Organisation is paid by the 10th Business Day after the commencement of this Agreement, and
			2. each subsequent instalment payable by VLA is paid by the 10th Business Day within the period to which the instalment payment relates.
		5. VLA will not meet any expenditure incurred by the Organisation in excess of the Annual Funds provided under this Agreement.
		6. All taxes, duties and government charges imposed or levied in Australia or overseas in connection with this Agreement, if any, will be borne by the Organisation.
		7. Any additional one-off funding which may be provided to the Organisation by VLA will be covered by the terms and conditions of this Agreement. The Organisation may be required to provide an appendix to the CLSP Plan detailing the proposed use of this funding.
		8. Notification of changes in funding shall be made in writing by VLA. Any such notification will provide an updated Schedule 1 for the relevant Financial Year of this Agreement.
5. **USE OF FUNDS COVERED BY THIS AGREEMENT**
	1. **Use and Management of Funds**
		1. This clause 9 applies to all monies received by the Organisation that are covered by this Agreement (‘funds’).
		2. The Organisation will use the funds efficiently and effectively in accordance with the approved Annual Budget and CLSP Plan to provide the Services, and will report the use of these funds in accordance with the terms and conditions of this Agreement.
		3. The Organisation will:
			1. expend the funds only in connection with the provision of Services, or the acquisition or replacement of assets to enable the Organisation to provide those services, and the compilation of Reports, in accordance with Schedule 6 and the terms and conditions of this Agreement and for no other purpose
			2. ensure that the funds held as cash are held in an account in the Organisation’s name, and which the Organisation solely controls, with a deposit-taking institution authorised under the *Banking Act 1959* to carry on business in Australia
			3. keep proper accounts and records of the funds and their use in accordance with Australian Accounting Standards
			4. prudently manage the investment of any funds not needed for the immediate provision of the Services so that interest is recognised as revenue on these funds
			5. use the Commonwealth and State allocations for Social and Community Services Equal Remuneration Funding Adjustment (as specified in Schedule 1) for the sole purpose of meeting the wage increases awarded under the Social and Community Services (SACS) Equal Remuneration Order issued by the Full Bench of Fair Work Australia on 22 June 2012.
			6. not make a loan, gift or donation from the funds, and
			7. not use the funds or this Agreement or any of the obligations of VLA under this Agreement as any form of security for the purpose of borrowing money
		4. Any unused funds may be recovered by VLA following the conclusion of the Service Period or termination of this Agreement under clause 25. VLA may recover those funds:
			1. by requiring the Organisation to immediately repay them or
			2. if VLA decides to contract with the Organisation under a new agreement beyond the Service Period, by reducing the amount of funds payable under that new agreement by an amount equal to, or less than, at VLA’s sole discretion, the unused funds under this Agreement.
		5. The Organisation will be given reasonable advance notice of any recovery action to be undertaken pursuant to clause 9.1.4.
	2. **Surplus Funds**
		1. At the end of the Service Period, the Organisation may, without seeking approval, carry over an amount up to the Allowable Surplus amount to the next Financial Year.
		2. At the end of the Service Period, the Organisation may submit a proposal to VLA to carry over an amount in excess of the Allowable Surplus to the next Financial Year (Excess Surplus).
		3. Use of the Excess Surplus must be approved by VLA in accordance with the requirements and procedures set out in Schedule 7.
		4. Where VLA does not approve the carry-over of an Excess Surplus, those funds may be recovered from the Organisation under the terms of clause 9.1.4 above.
	3. **Use of Funds in Legal Proceedings**
		1. If any legal proceedings are commenced against the Organisation, VLA must be notified immediately of the other party or parties to the proceedings and the nature of the proceeding against the Organisation.
		2. Subject to clause 9.3.3, the Organisation may spend funds provided under this Agreement or Service Generated Income in any legal proceedings brought against it only in respect of proceedings that directly relate to the provision of Services.
		3. The Organisation must not, without prior written approval by VLA, spend in excess of 5% or $10,000 of Annual Funds (whichever is the lesser), to defend itself against any litigation in accordance with Schedule 5.
		4. Before giving approval under clause 9.3.3 the SPM may impose any conditions it considers appropriate, including requiring the Organisation to provide periodic updates on legal proceedings.
		5. Following the conclusion of the legal proceedings, the Organisation will provide VLA with a report noting the outcome of the proceedings and an itemised account of expenditure from funds provided under this Agreement or Service Generated Income.
		6. The requirements to provide notification, updates and reports in clauses 9.3.1, 9.3.3 and 9.3.5, shall be subject to the Organisation’s obligation to protect any client legal privilege in relation to matters the subject of the proceedings.
		7. Any expenditure under clause 9.3 must be specifically identified in the Organisation’s audited financial statements.
6. **REPORTING REQUIREMENTS**
	1. **Reports**
		1. The Organisation must provide the Reports, specified in Schedule 2, to VLA  electronically and in a format that complies with VLA requirements, by the dates specified in Schedule 2. This may be via CLSIS where CLSIS provides a facility for submitting the Reports.
	2. **Failure to provide Reports**
		1. If the Organisation does not provide the Reports by the due dates, VLA may exercise its rights under clause 23.1.
		2. The Organisation may, in advance of the due date, seek an extension of time from VLA to submit a Report.
	3. **Audit Requirements**
		1. The Organisation must maintain financial records that comply with the Australian Accounting Standards.
		2. Following the end of the Service Period, the Organisation must provide to VLA:
			1. a certificate from a Registered Auditor in the format set out at Attachment A to Schedule 6 stating that the funds covered by this Agreement have been used for the purpose of providing the Services in accordance with the terms and conditions of this Agreement, and
			2. the Organisation's Audited Financial Statements for the Service Period.

10.3.3 These Audited Financial Statements must be sufficiently detailed to clearly identify the receipt, use of, and surplus/deficit status of, the Funds, and how any surplus funds have been treated under accountancy principles and practices.

* 1. **Failure to provide Audited Financial Statements**

If the Organisation does not provide the Audited Financial Statements by the due date, VLA may exercise its rights under clause 23.1.

1. **NOTIFICATION TO VLA**
	* 1. The Organisation must provide VLA with contact details for the Chair of the Organisation that are separate to the Organisation’s address and telephone details.
		2. The Organisation must notify VLA within 5 Business Days of any:
			1. changes of addresses where Services are provided
			2. changes to contact details for the Organisation
			3. changes in the occupants of the positions of Coordinator (or equivalent positions such as Manager or Administrator),and Principal Solicitor including, cessations or appointments, and changes to their hours of employment
			4. changes to contact details for the Chair of the Management Committee of the Organisation, and
			5. changes to the Organisation’s constitution.
		3. The Organisation must notify VLA within 10 business days of any position funded under this Agreement that has been vacant for a period of 8 weeks.
		4. The Organisation must provide VLA with written notice of the Organisation's Annual General Meeting at least 10 Business Days prior to the meeting.
2. **DATA COLLECTION**
	1. **CLSIS**
		1. The Organisation must collect and record into CLSIS accurate, comprehensive and timely data on the provision of the Services across the Core Service Activities.
		2. Specific requirements for the collection and recording of data into CLSIS for representation services (excluding duty lawyer services) are noted in Schedule 5 to this Agreement. The Organisation will ensure that data noted in and required by Schedule 5 is accurately collected in applicable service matters wherever possible.
		3. The data specified in clauses 12.1.1 and 12.1.2 and Schedule 5 must be submitted to the National Processing Centre by the 21st of the month following the month in which provision of the Services occurred.
		4. VLA will have access to and the right to use and reproduce all data about the Organisation that is submitted to the National Processing Centre in accordance with clause 12.1.1, subject to the rules and access restrictions in the CLSIS Data Dictionary.
	2. **Client Surveying**
		1. Client surveying is required under the National Partnership Agreement, with the first annual client survey process due in 2016-17.
		2. During 2015-16, the Organisation will contribute to development of a legal assistance sector client survey process, as requested from time to time by VLA, the State Government of Victoria (represented by the Department of Justice and Regulation) or the Victorian CLC sector (represented by the Federation of Community Legal Centres (Vic.) as sector peak body) and will do so in a timely and co-operative manner.

12,3 **Future data reporting**

* + 1. The Organisation will contribute to sector discussions about data collection and data reporting needs, capacities, methods and systems, as requested from time to time by VLA, the State Government of Victoria (represented by the Department of Justice and Regulation) or the Victorian CLC sector (represented by the Federation of Community Legal Centres (Vic.) as sector peak body) and will do so in a timely and co-operative manner.
1. **ORGANISATION PERFORMANCE MONITORING**
	* 1. VLA may use information provided by the Organisation to monitor the performance of the Organisation in meeting its obligations under this Agreement.
		2. VLA may conduct a review of the Organisation with respect to:
			1. the Organisation's provision of Services, and/or
			2. the Organisation's compliance with its obligations under this Agreement.
		3. VLA will provide reasonable notice in writing to the Organisation about the form and scope of any review to be conducted pursuant to clause 13.1.4.
		4. When conducting a review of the Organisation in accordance with notice given under clause 13.1.5, VLA will:
			1. use its best endeavours to minimise interference to the Organisation’s employees and to any and all of the Organisation’s services, and
			2. not access or require the production or disclosure of any information or material that is subject to client legal privilege.
		5. A report on the results of any review undertaken pursuant to this clause will be made available to the Organisation within 30 Business Days of the completion of that report, and the Organisation will be provided with a reasonable opportunity to comment before VLA makes any decision on the report’s recommendations.
		6. A report made under clause 13.1.7 will:
2. identify any performance obligation/s that the review finds are not being met, and
3. the reasons why the review has found that an obligation is not being met and/or the manner in which it is not being met.
	* 1. If a review identifies that the Organisation’s performance has not, in VLA’s opinion, been satisfactory, VLA will discuss with the Organisation and may agree on, or, absent agreement, may issue the Organisation with, a Performance Improvement Plan that sets out actions for improvement and may require some or all of those actions to be taken in a reasonable time.
		2. Failure to meet the requirements set out in the Performance Improvement Plan will constitute a breach of this Agreement.
		3. Nothing in this clause 13 affects the rights VLA may have under clause 23.1.
4. **FINANCIAL AUDITS BY FUNDING BODIES**
	* 1. At its discretion, VLA may appoint an auditor to conduct financial audits of the Organisation in relation to this Agreement.
		2. VLA will provide reasonable prior notice in writing to the Organisation of any audit to be conducted (except where there is reasonable belief that there is an actual or apprehended breach of the law) and consult with the Organisation on arrangements for the conduct of the audit.
		3. The cost of any audit conducted under clause 14 will be met by VLA, unless the Organisation is found to be non-compliant with this Agreement, in which case the Organisation may be required to contribute to or meet the cost of the audit.
5. **ACCESS TO PREMISES AND RECORDS**
	1. **Financial Audit**
		1. For the purposes of any financial audit conducted pursuant to clause 14, the Organisation will give ‘those permitted’:
			1. access to premises at which Services Material is held or stored by the Organisation or at which work in relation to the provision of Services is undertaken by the Organisation, at all reasonable times
			2. permission to inspect and copy such Material, in the Organisation’s possession or control, and
			3. access to any Assets acquired with funds provided under this Agreement or previous Funding Agreements, wherever they may be located.
		2. For the purposes of clause 15.1.1, ‘those permitted’ are:
			1. an auditor appointed by VLA, or
			2. any person authorised in writing by VLA to represent them for purposes associated with a financial audit.
		3. The Organisation will provide all reasonable assistance requested by ‘those permitted’ when they exercise the rights under clause 15.1.1.
		4. The rights referred to in clause 15.1.1 are subject to:
			1. the provision of reasonable prior notice in writing by ‘those permitted’ (except where there is reasonable belief that there is an actual or apprehended breach of the law)
			2. protection of Personal Information in relation to the Organisation’s clients
			3. protection of information and/or material that is the subject of client legal privilege
			4. protection of information and/or material where the Organisation has a legal obligation of confidence, and
			5. the Organisation’s reasonable security procedures.
		5. When accessing the premises in accordance with notice given under clause 14.1.2, ‘those permitted’ will use their best endeavours to minimise interference to the Organisation’s employees and to any and all of the Organisation’s services.
	2. **Auditor-General**
		1. The Organisation agrees:
			1. to give the Commonwealth Auditor-General and State Auditor-General, or any persons authorised in writing by either of them, access to premises where obligations under this Agreement are being carried out, and
			2. to permit those persons to inspect and take copies of any Services Material relevant to this Agreement.
		2. The rights referred to in clause 15.2.1 are subject to:
			1. the auditor or authorised person providing reasonable prior notice
			2. protection of Personal Information in relation to the Organisation’s clients
			3. protection of information and/or material that is the subject of client legal privilege
			4. protection of information and/or material where the Organisation has a legal obligation of confidence
			5. the reasonable security procedures in place at the premises, and
			6. where appropriate, execution of a deed of confidentiality by the persons to whom access is given.
		3. This clause does not detract from the statutory powers of the Commonwealth Auditor-General or State Auditor-General or any other bodies with statutory powers.
6. **PROTECTION OF PERSONAL INFORMATION**
	1. **Interpretation**
		1. This clause 16 applies only to the extent that the Organisation deals with Personal Information in providing the Services.
	2. **Organisation's obligation in relation to Privacy**
		1. The Organisation shall be bound by the Information Privacy Principles as set out in the Information Privacy Act 2000 (Vic) (‘the State Act’) and any applicable Code of Practice with respect to any act done or practice engaged in by the Organisation for the purposes of this Agreement, in the same way and to the same extent as Victoria Legal Aid would have been bound by the Information Privacy Principles of the State Act and any applicable Code of Practice in respect of that act or practice had it been directly done or engaged in by Victoria Legal Aid.
		2. The provisions of this clause 16 will survive the termination or expiration of this Agreement.
7. **INTELLECTUAL PROPERTY RIGHTS**
	1. **Funding Body Material**
		1. Ownership of all Funding Body Material, including Intellectual Property Rights in that Material, remains vested at all times in VLA.
		2. VLA grants to the Organisation a licence to use, reproduce, adapt and exploit the Funding Body Material for the purposes of this Agreement.
	2. **Services Material**
		1. Intellectual Property Rights in the Services Material vests immediately in the Organisation.
		2. Clause 17.2.1 does not affect the ownership of Intellectual Property in any Material in existence on the date this Agreement is made.
		3. The Organisation grants to VLA a licence to use and reproduce, with appropriate attribution, the Services Material for the purposes of this Agreement.
		4. The Organisation warrants that it is entitled, or will be entitled at the relevant time, to deal with the Intellectual Property Rights in the Services Material in accordance with this clause.
8. **CONFIDENTIALITY**
	1. **Confidential Information**
		1. The Parties will not, without the prior written consent of the relevant Party, disclose to a third party any information or Material that a Party claims to be confidential (Confidential Information) except where the Confidential Information is:
			1. disclosed to the responsible Minister in response to a request or required by a House or a Committee of the Parliament of the Commonwealth of Australia or the State of Victoria
			2. authorised or required by law to be disclosed, or
			3. in the public domain otherwise than due to a breach of this clause 18.
	2. **Funding Body Information**
		1. Funding Body Informationmeans any information developed, received or collected by or on behalf of VLA to which the Organisation gains access under or in connection with this Agreement.
		2. The Organisation agrees to secure all Funding Body Information against loss and unauthorised access, use, modification or disclosure.
9. **NO POWER TO BIND**
	* 1. The Organisation will not represent itself, and will ensure that its employees, partners and agents do not represent themselves as being able to bind or represent VLA.
10. **SUBCONTRACT OR OTHER SERVICE PROVIDER**
	* 1. The Services to be provided by the Organisation under this Agreement may not be provided by any other entity whether under an agreement, subcontract or any other arrangement with the Organisation unless prior written approval is obtained from VLA.
11. **RECOGNITION OF FUNDING**
	* 1. The Organisation will acknowledge the financial and other support it has received from both the Commonwealth of Australia Attorney-General’s Department and VLA for the provision of Services by incorporating a statement acknowledging the funding:
			1. in the Organisation’s Annual Report
			2. in publications providing information relating to the Organisation and/or provision of Services, wherever practicable, and
			3. on the Organisation’s website.
12. **NOTIFIABLE EVENT**
	* 1. If, for any reason, the Organisation forms the opinion that it is unable to or will not continue to provide Services or cannot comply with any term of this Agreement, it must immediately notify VLA in writing.
		2. If the Organisation learns of or forms the opinion that Fraud has been committed against funds covered by this Agreement, it must immediately notify VLA in writing and undertake appropriate steps towards containing and investigating the situation.
13. **DEFAULT**
	1. **Default by Organisation**
		1. Where VLA considers that the Organisation has failed to fulfil or is in breach of any of its obligations under this Agreement, VLA may:
			1. require the Organisation to outline details of the omission or breach
			2. require the Organisation to provide further information or explanation from the Organisation about the activities causing the breach
			3. notify the Organisation, in writing, of the remedial action required to overcome the omission or breach
			4. advise the Organisation that if remedial action notified under clause 23.1.1.c is not implemented within 20 Business Days of receipt of the notice provided under clause 23.1.1.c, or such other time as agreed by the parties, VLA may exercise its rights under either clause 23.1.1.e, or clause 25.1.1
			5. either:
				1. suspend the payment of funding or
				2. withhold (in whole or in part) payment of funding,

until any deficiencies in the Organisation's performance have been rectified

* + - 1. use the failure to fulfil, or breach of, an obligation, to trigger a review, audit or investigation under clauses 13.1.2 or 14.
			2. appoint an administrator or
			3. exercise their discretion under clause 25.1 and 25.2.
1. **DISPUTE RESOLUTION**
	1. **Procedure for Dispute Resolution**
		1. Any dispute arising under this Agreement which cannot be resolved by informal discussions between the Parties will be dealt with as follows:
			1. the Party claiming there is a dispute will give written notice to the other Party setting out the nature of the dispute
			2. the Parties will try to resolve the dispute through direct negotiation
			3. if there is no resolution of the dispute within 20 Business Days or such other agreed time from the receipt of the notice, the parties will undertake a mediation or conciliation process. The appropriate process and a suitable and independent mediator or conciliator will be determined:
				1. by agreement of the parties in writing or
				2. failing agreement, by the President or Chapter Chair of the Institute of Arbitrators and Mediators, Australia.
		2. The parties will use their best endeavours to resolve any dispute within 40 Business Days of the notice. Despite the existence of a dispute, the Organisation will continue to perform its obligations under this Agreement unless requested in writing by VLA not to do so.
		3. This clause 24 does not apply, at VLA’s discretion, to the following circumstances:
			1. action by VLA to suspend or withhold payment under clause 23.1.1.e
			2. the exercise of rights under clause 15 or
			3. where notice of termination has been given by VLA under clause 25.1.1 except clause 25.1.1.b.
		4. This clause 24 does not preclude either Party from commencing legal proceedings for urgent interlocutory relief.
2. **TERMINATION OR EXPIRY OF AGREEMENT**
	1. **Termination at VLA’s discretion**
		1. In the case of either of the following events, VLA may give notice to the Organisation to terminate this Agreement:
			1. where the Organisation ceases to carry on business or exist, or
			2. where the Organisation is in breach of its obligations under this Agreement and:
				1. VLA considers the Organisation is not capable of remedying the breach, or
				2. the Organisation has been notified in writing by VLA of that breach and the breach has not been remedied within 20 Business Days or such other agreed time of receiving a notice in writing from VLA to do so.
	2. **Termination by any Party**
		1. Any Party may terminate this Agreement at any time during the Term of this Agreement or any extended Term of this Agreement by giving notice to the other Party.
		2. Any termination of this Agreement will be without prejudice to the rights, liabilities, or obligation of the Parties accruing prior to the date of receipt of the notice of termination.
		3. If notice of termination is given under clause 25.2.1, the termination will take effect:
			1. six months after receipt of the notice of termination by a Party, or
			2. such other time as agreed in writing by the Parties.
	3. **Organisation’s liabilities and obligations**
		1. On receipt of a notice of termination under clause 25.1.1 or regardless of which Party gives the notice, the Organisation will:
			1. if directed to do so by VLA, cease the performance of its obligations under this Agreement
			2. do everything possible to mitigate all losses, costs, and expenses arising from the termination, unless otherwise directed in writing by VLA, and
			3. return to VLA any funds provided under this Agreement and not legally committed, as directed by VLA.
		2. Clause 25.3.1.c will also apply where the Parties to this Agreement do not enter into a new agreement or do not extend the Service Period.
	4. **Funding Body’s liabilities and rights**
		1. Unless otherwise agreed in writing by the Parties, if this Agreement is terminated under clause 25.1 or 25.2 VLA will only be liable:
			1. to pay any amount of the Annual Funds for Services provided before the Termination Date, and
			2. for any reasonable costs incurred by the Organisation that are directly attributable to the termination of this Agreement and for which the Organisation has inadequate funds provided under this Agreement, including:
				1. payments to be made in relation to reassignment or retrenchment of the Organisation’s employees
				2. costs or penalties incurred in relation to the Organisation’s necessary accommodation changes, and
				3. any loss incurred on premature retirement of Assets acquired through this Agreement or any prior CLSP Agreement to which the Organisation (or its legal antecedents) was a Party and financial beneficiary.
		2. VLA’s liabilities under clause 25.4 are subject to the Organisation’s:
			1. compliance with clause 25.3, and
			2. satisfactory written substantiation of any amount claimed under clause 25.4.1.
		3. Unless otherwise agreed in writing by VLA, where this Agreement is terminated under clause 25.1, or the Parties to this Agreement do not enter into a new agreement or do not extend the Service Period under clause 7.3, VLA will be entitled to recover from the Organisation the net realisable value of CLSP Assets attributable to VLA or any Funding Body involved in prior CLSP Agreements to which the Organisation (or its legal antecedents) was a Party and financial beneficiary, regardless of any Organisation liabilities not related to the provision of Services. The amount to be recovered will be determined, as at the date specified in the notice of termination or the end of the Service Period, on the basis of audited financial statements prepared by an approved auditor.
	5. **Payment of monies owing**
		1. Any monies owing to VLA under this clause 25 will be paid to VLA within three months of the date of effect of the notice of termination or within three months of the end of the Service Period, or as otherwise agreed in writing by the Parties.
3. **COMPLIANCE WITH LAWS**
	* 1. The Organisation must, in carrying out its obligations under this Agreement, comply with the provisions of all relevant statutes, regulations, by-laws and requirements of the Commonwealth of Australia and the State of Victoria or local authority.
4. **VARIATION OF AGREEMENT AND NO WAIVER**
	1. **Variation**
		1. VLA may review the operation of this Agreement, and will consult the Organisation if it does so.
		2. The provisions of this Agreement may be varied from time to time, in writing, signed by the Parties.
	2. **No Waiver**
		1. Failure or omission by VLA at any time to enforce or require strict or timely compliance with any provision of this Agreement, will not affect or impair that provision in any way or the rights of VLA to avail itself of the remedies it may have in respect of any such provision.
5. **SEVERANCE AND SURVIVAL**
	1. **Severance**
		1. Any reading down or severance of a particular provision does not invalidate any other provision of this Agreement.
	2. **Survival**
		1. The operation of each of clauses 9, 10.2, 10.3, 10.4, 12.1.3, 12.1.4, 14, 15, 16, 18, 18, 25, and 31 survives the expiration or earlier termination of this Agreement.
6. **NOTICE**
	1. **Manner of Giving Notice**
		1. Any notices or other formal communications given under this Agreement or responses to notices or other formal communication will be:
			1. in writing
			2. directed to the recipient’s address in accordance with clause 29.3, and
			3. hand delivered or sent by registered post and transmitted by facsimile or email to the Organisation’s advised contact addresses.
	2. **Receipt of Notice**
		1. The recipient of a notice given under this Agreement is taken to have received the notice:
			1. if hand delivered, on delivery
			2. if sent by registered post, three Business Days after the date of posting
			3. if sent by facsimile transmission, on the Business Day following the time recorded on a transmission result report; or
			4. if sent by email to the address of the recipient, when the email is actually received by the recipient.
	3. **Addresses for Notices**
		1. The address of VLA is:

Victoria Legal Aid

350 Queen Street

MELBOURNE VIC 3000

Attention: [name]

Facsimile: (03) 9269 0605

Email:

* + 1. The address of the Organisation is:

«CENTRE»

«POSTAL\_ADDRESS»

«SUBURB» «PCODE»

Facsimile:

Email:

1. **CONFLICTS OF INTEREST**
	1. **Conflicts**
		1. The Organisation must ensure that it has appropriate and effective policies and procedures in place to identify and avoid potential conflicts of interest and that all staff, both paid and voluntary, and Management Committee members, are fully aware of the relevant policies and procedures.
		2. The Organisation warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Agreement no conflict of interest exists, or is likely to arise, in the performance of its obligations under this Agreement by itself or by any of its employees, volunteers, agents or sub-contractors.
		3. If, during the Term of this Agreement a conflict of interest arises, or appears likely to arise, that may affect the Organisation performing its obligations under the Agreement, the Organisation undertakes to notify VLA immediately in writing, make full disclosure of all relevant information relating to the conflict and to take such steps as VLA may reasonably require to resolve or otherwise deal with the conflict. If the Organisation fails to notify VLA or is unable or unwilling to resolve or deal with the conflict as required, VLA may terminate this Agreement in accordance with the provisions of clause 25.
		4. The Organisation must not (and must use its best endeavours to ensure that any member of the Management Committee, employee, volunteer, agent or subcontractor of the Organisation does not) engage in any activity or obtain any interest during the course of this Agreement that is likely to conflict with or restrict the Organisation in fulfilling its obligations to VLA under this Agreement, fairly and independently.
2. **INSURANCE**
	* 1. The Organisation will, for as long as any obligations remain in connection with this Agreement, maintain proper and adequate insurance including:
			1. workers compensation insurance as required by law
			2. public liability insurance to the value of $10 million per claim
			3. buildings and contents insurance as required by any lease entered into by the Organisation
			4. contents insurance over Assets for burglary, fire, storm damage or other accidental loss
			5. adequate insurance to cover directors and volunteers
			6. ‘run off’ insurance in the event of closure of the service, and
			7. professional indemnity insurance as required by law.
		2. If requested, the Organisation will provide VLA with evidence satisfactory to VLA that the Organisation has complied with the obligations to insure under clause 31.1.1.
3. **INDEMNITY**
	1. **General indemnity**
		1. The Organisation indemnifies (and agrees to keep indemnified) VLA against any:
			1. cost or liability incurred by VLA, or
			2. loss of or damage to property of VLA, or loss or expense incurred by VLA in dealing with any claim against it, including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used, or disbursements paid by VLA, arising from:

any act or omission by the Organisation or the Organisation's personnel, in connection with this Agreement, where there was fault on the part of the person whose conduct gave rise to that cost, liability, loss, damage, or expense

any breach by the Organisation of the Agreement, or

the use by the Organisation of the Services Material, including any claims by third parties about the ownership or right to use Intellectual Property Rights or Moral Rights in the Services Material.

* 1. **Reduction of scope**
		1. The Organisation's liability to indemnify VLA under this clause will be reduced proportionally to the extent that any act or omission involving fault on the part of VLA or its personnel contributed to the relevant cost, liability, loss, damage or expense.
	2. **Preservation of other rights**
		1. The right of VLA to be indemnified under this clause is in addition to, and not exclusive of, any other right, power or remedy provided by law, but VLA is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage or expense.

SIGNED for and on behalf of the )

**VICTORIA LEGAL AID** )

by ………………………………….. ) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

in the presence of )

 …………………………………... ) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SIGNED for and on behalf of the )

**«CENTRE»** )

by ………………………………….. ) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

in the presence of )

 ………………………………….. ) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SCHEDULE 1 - Payment Schedule**

**SCHEDULE 2 - Timetable for Reports**

***This Schedule is established in respect of the 2015-16 and 2016-17 Financial Years.***

The following Reports are due for submission as follows:

|  |  |  |
| --- | --- | --- |
| **Reports** | **2015-16 Financial Year**  | **2016-17 Financial Year**  |
| **Submission Date** | **Submission Date** |
| CLSP Plan for agreement period | Already submitted | 1 May 2016 |
| Annual Budget | 31 July 2015 | 31 July 2016 |
| Excess Surplus Spending Proposal | 30 November 2016 | 30 November 2017 |
| Progress Report 1 for 6 months | 31 January 2016 | 31 January 2017 |
| Funds Report 1 for 6 months | 31 January 2016 | 31 January 2017 |
| Progress Report 2 for 12 months | 31 July 2016 | 31 July 2017 |
| Funds Report 2 for 12 months | 31 July 2016 | 31 July 2017 |
| Organisational Annual Report (electronically where possible) | 30 November 2016 | 30 November 2017 |
| Audited Financial Statements including 12 months CLSP Funds Report  | 30 November 2016 | 30 November 2017 |
| Data submission – EVERY MONTH | by 21st of the following month | by 21st of the following month |

**[SCHEDULES 3&4 have been removed from this version of the agreement as they are provided in appendix 4 to this discussion paper]**

**[SCHEDULE 5 has been removed from this version of the agreement as it is long and not substantively relevant to this discussion paper]**

**SCHEDULE 6 - Use of Funds and Assets and Specific Financial Reporting Requirements**

**1. The Organisation must:**

1. ensure that a minimum of two signatories are required to operate any account in which the Organisation deposits funds pursuant to clause9.1.2.b;
2. maintain separate financial records in respect of the receipt and expenditure for each Funding Category of all funds covered by this Agreement;
3. compile and submit Funds Reports on an accrual basis;
4. where the Organisation wishes to have a deficit budget approved, satisfy VLA that there are unusual or special circumstances that necessitate the approval of a deficit budget and that there are strategies in place to make up this deficit, resulting in a balanced actual Funds Report in the last year of the Term of this Agreement;
5. where the Organisation receives Other Income, ensure that costs are apportioned appropriately across all funding sources;
6. where the Organisation receives Other Income and uses CLSIS to record activities funded from Other Income, disclose in its Reports the details of:
	1. the full amount, source and purpose of the Other Income (irrespective of the amount of Other Income received per annum)
	2. the Funding Category to which the Other Income applies, and
	3. the extent to which the activities resourced by the Other Income are recorded in CLSIS;
7. where the Organisation receives Other Income and does not use CLSIS to record activities relating to this income, disclose in its Reports the total amount of Other Income, relevant to the delivery of the Services, for each Financial Year of the Service Period. The total amount is irrespective of the number of different funding sources or Funding Categories to which the income might apply;
8. provide supporting documentation to VLA in sufficient detail to justify the charging of any management fee in excess of 10% of Annual Funds, and any other additional overhead or other costs proposed to be charged to the CLSP;
9. maintain an Assets Register and provide access to it to VLA on request;
10. manage and depreciate Assets according to Australian Accounting Standards;
11. retain an amount of cash equivalent to the annual amount of depreciation reported on CLSIS, to be used for the future replacement of Assets;
12. when a depreciable Asset is disposed of, ensure that any proceeds from the disposal in excess of the written down value of the Asset are accounted for as Service Generated Income;
13. following completion of an audit by a Registered Auditor, provide VLA with a certificate in the format at Attachment A, completed by the Organisation’s Registered Auditor;
14. if its Registered Auditor qualifies the Organisation’s accounts or financial reports with any irregularity or disclaimer, provide VLA with a full version of the Registered Auditor’s report within 5 Business Days of the report being provided to the Organisation; and
15. if the Organisation has received specific funding, including one-off funding under this Agreement to assist victims of family violence, set aside an appropriate amount to help clients meet the costs of disbursements, such as medical reports, associated with the lodging of victims’ compensation claims.
16. after fulfilling its obligation under clause 21.1.2, make full disclosure to VLA of all relevant information relating to the Fraud and take such steps as VLA may reasonably require to resolve or otherwise deal with the situation. If the Organisation fails to notify VLA or is unable or unwilling to resolve or deal with the situation as required, VLA may terminate this Agreement in accordance with the provisions of clause 24.
17. assess its operations against the Internal Control Questionnaire at Attachment B to this Schedule and immediately rectify any lack of internal controls identified during the assessment.

**2. The Organisation must not, without prior written approval of VLA:**

1. transfer funds between Funding Categories;
2. spend in excess of 5% or $10,000 of Annual Funds (whichever is the lesser), to defend itself against any litigation in accordance with clause 9.3;
3. spend in excess of 10% or $10,000 of Annual Funds (whichever is the lesser), on Assets in any Financial Year; or
4. sell, transfer or write-off any Asset after receiving a notice of termination of the Agreement.

**ATTACHMENT A**

***AUDITOR’S CERTIFICATION***

|  |  |
| --- | --- |
| **Name of Organisation:** | «CENTRE» |
|  |  |
| **Financial Year Period:** | ...... / …… / …….. to ...... / …… / …….. |

I hereby certify that:

a. I am not a principal, member, shareholder, officer, employee or accountant of the Organisation or of a related body corporate as defined in section 9 of the Corporations Act 2001

b. In my opinion, the attached financial statements which comprise a Statement of Financial Position, a Statement of Comprehensive Income (previously known as a Statement of Financial Performance) and Notes to the Financial Statements of the above-mentioned Organisation (‘the Organisation’), and, if general purpose reports are provided, a Statement of Cash Flows, for the stated Financial Year Period are:

1. based on proper accounts and present a true and fair view of the Organisation’s financial position and financial performance in accordance with applicable Accounting Standards and other mandatory professional reporting requirements in Australia, and
2. in accordance with the terms and conditions of the Agreement **[Insert Names of Parties and Date of Agreement],** a copy of which has been made available to me, in relation to the provision of community legal services.

c. The final, full year, CLSIS Funds Report, containing details of the Organisations transactions for the financial year, including audit adjustments, and the Organisation’s grant position at the beginning and end of the financial year is provided in respect of funds provided in accordance with the Terms and Conditions of the Agreement referred to in b.ii. above for all Funding Categories.

This is a qualified/unqualified audit report **[Deleted whichever is not applicable]. If the report is a qualified report, the qualified audit report must be attached.**

Unless written under separate cover, I hereby further certify that, in my opinion, there is no conflict of interest between myself and the Organisation or its Management Committee.

**AUDITOR DETAILS**

|  |  |
| --- | --- |
| **Full Name:** |  |
|  |  |
| **Name of Company (if applicable):** |  |
|  |  |
| **ACN or ABN Number:** |  |
|  |  |
| **Registered Auditor:**🗆 **Yes** 🗆 **No** | *If Yes:***Registration No.: ………………………….** |
|  |  |
|  |  |
| **Signature:** |  |
|  |  |
| **Date:** | ...... / …… / …….. |

**ATTACHMENT B**

**Internal Control Questionnaire**

| **NO** | **CONTROL**  | **YES** | **NO** | **IF NO, ANY COMPENSATING CONTROL?** |
| --- | --- | --- | --- | --- |
|  | **BANK ACCOUNTS AND INVESTMENTS** |  |  |  |
| 1 | Does the CLC require two signatories (Management Committee members) before opening, closing bank accounts or changing arrangements eg accounts, cheque signatories etc? |  |  |  |
| 2 | Is there a list of authorised cheque signatories? |  |  |  |
| 3 | Are they approved by the Committee of Management? |  |  |  |
| 4 | Are bank withdrawals signed by a member of the Management Committee? |  |  |  |
| 5 | Are cheque/EFT requisitions signed by a member of the Management Committee? |  |  |  |
| 6 | Are cheque requisitions batched and balanced to the bank withdrawal form? |  |  |  |
| 7 | Are cheques crossed and marked Not Negotiable? |  |  |  |
| 8 | Are there prohibitions against issuing cheques to cash or bearer? |  |  |  |
| 9 | Are all cancelled payments accounted for ie unused cheque register? |  |  |  |
| 10 | Are cancelled cheques mutilated to prevent re-use and kept in a file for inspection? |  |  |  |
| 11 | Are there periodic follow ups of old outstanding cheques and stop payment notices? |  |  |  |
| 12 | Are there two authorised signatories (Management Committee members) set up for approval of EFT payments, each holding a secure password? |  |  |  |
| 13 | Are EFT Payment Reports printed and presented to the authorised signatories prior to their payment approval?  |  |  |  |
| 14 | Are signed EFT Payment Reports filed? |  |  |  |
| 15 | Are EFT transaction receipts printed and filed? |  |  |  |
| 16 | Are Suppliers’ bank details requested in writing and kept on a confidential file? |  |  |  |
| 17 | Are any alterations to Suppliers’ bank details requested in writing and kept on a confidential file? |  |  |  |
| 18 | Is the bank account reconciled on a monthly basis? |  |  |  |
| 19 | Is the bank account reconciliation signed off by two persons, one of whom is a member of the Management Committee? |  |  |  |
| 20 | Does the person reconciling the bank account compare the bank statement and cashbook? |  |  |  |
| 21 | Does the reconciliation process include checking accounting entries not previously recorded i.e. direct debits, journals? |  |  |  |
| 22 | Are unusual transactions (eg high value, over $1,000 with an explaining note) investigated by the reconciliation officer? |  |  |  |
| 23 | Does a person who is not the reconciliation officer check on a sample basis that cheque/EFT requisition/s amounts are represented in the bank account? |  |  |  |
| 24 | Is there a policy of banking revenue on the day of receipt or the next day?  |  |  |  |
| 25 | Is the investment policy (covering deposits, withdrawals and rollovers) documented and approved by the Management Committee?  |  |  |  |
| 26 | Are all revenues promptly recorded and dated? |  |  |  |
|  | **PETTY CASH**  |  |  |  |
| 27 | Is cash kept in a locked box and does more than one person have a key? |  |  |  |
| 28 | Is there a complete set of back up keys that are held by a member of the Management Committee? |  |  |  |
| 29 | Are receipts required for petty cash expenditures? If no, is a written explanation required by the claimant? |  |  |  |
| 30 | If no, is a written explanation required by the claimant? |  |  |  |
| 31 | Are petty cash payments checked by the cheque requisition signatory, before signing, against receipts?  |  |  |  |
| 32 | Is there a dollar limit on petty cash payments? |  |  |  |
|  | **PROTECTION OF ASSETS & RECORDS** |  |  |  |
| 33 | Is there adequate security to prevent unauthorised access to Offices, eg office can be locked at night with good quality dead locks? |  |  |  |
| 34 | Are there policies in place to prevent removal of valuable fixed assets?  |  |  |  |
| 35 | Is there a register of furniture & equipment kept?  |  |  |  |
| 36 | Is there adequate security to prevent unauthorised access to manual accounting documents, eg lockable filing cabinet with key held by two persons?  |  |  |  |
| 37 | Are there passwords on the system to prevent unauthorised access to computer accounting documents? |  |  |  |
| 38 | Are passwords changed regularly? |  |  |  |
| 39 | Are regular backups of data made, i.e. daily, weekly? |  |  |  |
| 40 | Are backup copies stored off site and are they secure? |  |  |  |
| 41 | Is there adequate insurance regarding damage or loss to valuable assets? |  |  |  |
|  | **PURCHASES**  |  |  |  |
| 42 | Are pre-numbered purchase orders used and accounted for? |  |  |  |
| 43 | Are goods counted & compared with the purchase order upon delivery? |  |  |  |
| 44 | Does a member of the management committee sign/approve the purchase order?  |  |  |  |
|  | **PAYROLL**  |  |  |  |
| 45 | Are all hirings, both Casual and Permanent, authorised by the Management Committee? |  |  |  |
| 46 | Is the payroll authorised by a member of the Management Committee prior to payment, eg pay rates and amendments? |  |  |  |
| 47 | Are time sheets used and if so are they independently verified? |  |  |  |
| 48 | Is authorisation by a member of the Management Committee required to change pay rates? |  |  |  |
| 49 | Are all staff required to take leave at least once a year in a two week block?  |  |  |  |
| 50 | Are wage rates periodically compared with the award rates or employment agreements by a member of the Management Committee?  |  |  |  |
| 51 | Are detailed records kept of payroll on costs such as Long Service Leave, Annual Leave, Sick Leave and Superannuation contributions? |  |  |  |
| 52 | Are employee earnings & deduction records reconciled with Payment Summaries at year end and signed off by a member of the Management Committee? |  |  |  |
| 53 | Are Confidential records stored in locked cabinets to prevent unauthorised access and is access restricted to only authorised personnel? |  |  |  |
|  | **CORPORATE GOVERNANCE** |  |  |  |
| 54 | Do Management Committee minutes record attendees and do they record all decisions? |  |  |  |
| 55 | Are Management Committee minutes signed off by the Chairperson?  |  |  |  |

**SCHEDULE 7 - Proposal to Retain Excess Surplus**

Pursuant to clause 9.2 of this Agreement, the Organisation may submit a proposal to VLA to spend or retain its Excess Surplus in the Financial Year following that in which the Excess Surplus arose.

In considering requests to carry-over an Excess Surplus, VLA will take into account a range of factors including: the merits of the proposal, both on an individual basisand against competing national priorities; whether the Organisation has demonstrated that the Allowable Surplus has been committed in an appropriate way to support continued service provision; and any exceptional circumstances identified in support of the proposal.

Any proposals to retain an Excess Surplus should be submitted to VLA by **30 November**, unless otherwise agreed. VLA recognises that this deadline is a tight one, particularly given the need for end-of-year financial reports to be audited. Where a full proposal cannot be submitted within the required timeframe, the Organisation should at least advise VLA of its intention to submit a proposal and provide an indication of the proposed use of the Excess Surplus. Where the Organisation has not provided this information by 30 November, or as otherwise agreed with VLA, VLA will be unlikely to approve the carry-over of those funds.

In submitting a proposal to VLA to retain Excess Surplus Funds, the Organisation must use the template provided by VLA and should address the following matters:

**1. Commitment of the Allowable Surplus**

Proposals should detail how the Allowable Surplus has been committed to demonstrate why this is not available to cover the costs of the proposed expenditure.

**2. Proposed Use of the Excess Surplus**

Proposals should provide details of how the Excess Surplus would be used including an explanation of any exceptional circumstances leading to the accumulation of the Excess Surplus, a breakdown of costs, the timeframe proposed for full utilisation of the Excess Surplus and anticipated outcomes.

**3. Implications of Non – Approval**

Proposals should clearly set out any implications that might arise from a decision not to approve carry-over of the Excess Surplus.

**SCHEDULE 8 - FAMILY VIOLENCE SERVICES**

The Organisation will receive special funding to enable it to provide a range of family violence-related legal services including:

* At-court duty lawyer services
* Advice and information services
* Casework services
* Community legal education and community development

**Note regarding service targets**: All targets assume at least one FTE lawyer is funded to each recipient centre (lower staffing establishment will equate to a pro rata target).

**1. Duty Lawyer services:**

The primary purpose of the special family violence funding is to provide at-court duty lawyer services to the Organisation’s local venue of the Magistrates’ Court. The duty lawyer service will primarily be focused on providing assistance to applicants for intervention orders, aggrieved family members in police initiated family violence intervention order matters and other persons who may have experienced family violence and require information, advice or casework services.

Duty lawyer services include advice regarding matters before the court on the same day, negotiation and appearances in court in uncontested matters such as consent order hearings, mentions and adjournments. It is not expected that Organisation lawyers will appear in contested hearings.

While the focus of the service will be on applicants for intervention orders, aggrieved family members and persons who may have experienced family violence, the service will also act for and assist respondents to applications for intervention orders and persons alleged to have perpetrated family violence in circumstances where such persons cannot utilise the duty lawyer service provided by Victoria Legal Aid (whether provided by in-house VLA staff or a VLA-funded private practitioner service) or it is otherwise in the applicant’s best interests for Victoria Legal Aid to represent them (e.g. where they have other aidable family law matters).

In agreeing to receive funding for family violence services, the Organisation agrees to work towards adoption of and compliance with the Family Violence Code of Practice developed by the Federation of Community Legal Services (Vic), and to work collaboratively with other service providers and agencies to provide effective and high quality family violence services.

**Service targets for duty lawyer services:** No numeric targets for this service category, as duty lawyer services are entirely demand driven. The performance requirement is attendance at court on days when FV list is sitting, and as required by the Court (i.e. for urgent matters that are listed outside of usual sitting days).

**2. Advice Services**

Advice services are services that are provided away from court – for example at the Organisation or at an outreach or other location.

Legal advice will be provided to aggrieved family members and defendants - parties to the complaint for an intervention order. As is the case for duty lawyer services, the Organisation will primarily respond to aggrieved family members (adult and children) and VLA will primarily respond to defendants (adult and children) but role swaps will occur if required. Legal advice must only be provided by legal practitioners qualified under the *Legal Profession* Act 2004.

Legal advice includes providing an opinion on individual legal rights and obligations regarding intervention orders, civil jurisdiction of the Magistrates’ Court, Victims of Crime Assistance Tribunal, criminal prosecutions, and opinion on cross-jurisdictional issues such as family law matters and child support agency matters.

**Service targets for advice services:** 210 per year

**3. Casework**

Casework includes additional tasks and follow up required for both contested and uncontested cases, and other legal matters such as assistance with family law, civil debt, VOCAT, and criminal matters where appropriate. Casework does not include duty lawyer services or advice – only services.

**Service targets for Casework services:** 70-90 per year (depending on duty lawyer demands), comprising a mixture of Minor, Medium and Major matters (as per CLSIS definitions).

**4. Community Legal Education, Community Development and Law Reform**

The Organisation is expected to provide these Core Service Activities, but with a focus on family violence and related issues.

**Service targets for Community Legal Education, Community Development and Law Reform services:** No numeric targets for this service category.

**Reporting requirements**:

To enable VLA to meet its reporting requirements with the Department of Justice, VLA requires that the Family Violence Services funding be maintained as a separate cost centre with the Funding Category of “State Project 1” and have Activities attributable to this funding recorded against that Funding Category in CLSIS.

To enable consistency with VLA data keeping, VLA requires two new fields to be created in CLSIS:

“**Type of Assistance**” - It is to be used for court based activities only and have the following variables:

* Advice Only
* Adjournment/Mention
* Negotiations/Draft terms of Settlement
* Hearing
* Not recorded

“**Outcomes**” - It is to be used for court based activities only and have the following variables:

* Bail
* Consent Orders
* Dismissed
* Final Order
* Interim Order
* Revocation
* Undertaking
* Variation
* Withdrawn
* Not Specified

If you require assistance with creating these fields please contact the CLSIS Help Desk.

Note that as data from centre created fields is not uploaded to the NPC, you will need to run a report on this field on a quarterly basis and provide the results to VLA by email.

# Appendix 6 – VLA’s Policy framework on responding to concerns about CLC operations or performance

**Victoria Legal Aid Policy Framework:**

**responding to concerns about CLC operations or performance**

**Context**

Under the *Legal Aid Act 1978*, Victoria Legal Aid (VLA) is obliged to ensure that legal assistance is provided in the most efficient and effective way, including where the Legal Aid fund is provided to community legal centres (CLCs).

VLA also has a responsibility to ensure that CLCs receiving VLA, Victorian Government and Commonwealth CLSP funds are meeting their obligations under their CLSP Service Agreements and providing appropriate services to their target communities.

The CLSP Service Agreement provides VLA with authority to: assess and approve workplans, audit and review CLCs, suspend or withhold funds, allege breaches and/or terminate agreements. The current service agreement provides limited detail in respect of the approach VLA ordinarily intends to take, where the quality of the services provided by a CLC is in issue or where there are other serious concerns about performance.

This policy framework sets out VLA’s intentions where it holds concerns about a centre’s performance or operation, and is intended to apply to instances in which VLA may seek to act in respect of a centre of concern.

It is important that VLA has confidence that funds being provided to CLCs are being efficiently and effectively spent and managed. It is also important that CLCs have confidence in the process VLA uses in reaching decisions about funding to CLCs and particularly in dealing with CLCs that are experiencing problems or may be in breach of their service agreement. Where this occurs, VLA will, where possible:

* notify the CLC promptly of concerns regarding performance and possible breaches of the service agreement, providing an outline of the basis for the concerns
* give the CLC opportunities and support to remedy or address these issues
* give the CLC reasonable notice of any proposed decision likely to have a significant detrimental impact on the CLC and the opportunity to respond before a final decision is made.

**What is a ‘centre of concern’?**

VLA monitors the performance of CLCs in a number of ways, These include through the review of plans, budgets and reports from CLCs under the service agreement, through visits and other meetings with CLC staff and boards / committees of management, through the receipt of feedback about CLC performance and the receipt of complaints about CLCs.

The following list provides examples of issues that may lead VLA to become concerned about a CLC:

* Repeated failure to lodge plans and reports due under the service agreement, on time and to a standard acceptable to VLA
* Failure to effectively target resources via evidence-based plans, casework guidelines, service delivery structures or other methods that have been informed by adequate planning and analysis of legal need
* Sustained poor client, case and other activity outputs or outcomes or failure to meet targets
* Poor financial management or reporting (including consistent overspending or underspending without reasonable explanation or poor financial risk management)
* Significant and sustained staff turn-over such that centre operations are seriously impacted
* Significant changes in Board or Committee of management membership
* Credible complaints about performance by service-users or stakeholders
* Other breaches of the service agreement, particularly sustained breaches
* Centres that are unable to demonstrate that funding is being used effectively taking into account the VLA Guiding Principles for CLC funding decisions (read as a whole).

This list is not exhaustive or exclusive. Depending on a centre’s circumstances, other issues may give rise to concern about it.

**Policy framework for addressing concerns about centres**

Where VLA has concerns about a centre such as those set out above VLA intends to apply an escalating set of interventions.

In the usual course of events VLA will undertake the following steps:

1. **Informal communication and support**
	1. **Informal communication of concern:** VLA will make contact with an appropriate contact at the centre (generally the CLC manager, or someone else appropriate depending on the circumstances giving rise to the concern), outlining the concerns and the basis for the concerns, and offering support or advice. This communication will generally take place informally via email and a phone call.
	2. **Support to the centre, including:**
* feedback on what the concerns or issues are (especially regarding the quality of reports)
* clarification of what is expected
* advice as to how the issues could be addressed and resolved.
1. **Formal communication of concerns to Chair of Board / Committee of management**
	1. **Communication to Chair:** If VLA continues to have concerns, either because the issues raised in stage 1 above are not rectified or because they recur within a short period of time, VLA will write to the CLC Chair, outlining the nature of the concerns and the basis for the concerns. Such correspondence will set out the process that VLA will follow either to investigate these concerns further or to seek a response or action from the centre. These steps may include a service standards audit, financial audit or management review of the organisation pursuant to the Service Agreement. The letter will provide an opportunity for the Committee to meet with VLA, and will include notice that VLA intends informing the Federation of Community Legal Centres (Vic) Inc (the Federation) that VLA holds concerns about the centre.
	2. **Opportunity to respond:** The Chair of a centre will be given reasonable time to respond to the formal notification, before any of the steps noted above in this clause are undertaken by VLA, and where possible will be consulted by VLA about what a reasonable time for such a response might be. The Chair will also be provided with an opportunity to object to the Federation being notified of the fact that there is a concern about their centre, with reasons for any objection. VLA will consider any objection but may nonetheless notify the Federation.
	3. **Notification of concern to the Federation of CLCs:** Subject to the above, VLA will also inform the Federation of the above correspondence to facilitate the Federation’s role in supporting CLCs to meet their funding or other obligations. VLA will not share detailed information with the Federation that has not been provided to the CLC or where the CLC has requested that detailed information not be provided.
	4. **Formal notification if VLA’s concerns are resolved or addressed through the centre’s response to the concerns:** VLA will inform the CLC Chair (and manager, if appropriate) in writing in the event the concerns have been addressed or resolved and will make clear what is likely to occur if the same or similar concerns arose in the future. If the Federation were informed about the fact that there were concerns about the centre, VLA will also notify them that the concerns have been addressed or resolved.
2. **Notification of breach of service agreement or of risk of loss of funding**
	1. **Communication to chair:** If the concerns are still not rectified to VLA’s satisfaction, or if further investigation by VLA indicates a breach of the service agreement, VLA will again write to the CLC Chair, notifying the centre that it considers that it is in breach of the service agreement or is otherwise at risk of having its funding reduced or terminated. VLA’s correspondence will include information about the nature of action contemplated by VLA. VLA will give the CLC a reasonable opportunity to respond to the breach of the service agreement, or possible loss of funding, before a final decision is made. This letter will include notice that VLA intends informing the Federation that VLA holds concerns about the centre and has issued notification of breach or risk of loss of funding. As at 2b above, the Centre may object to the provision of notice to the Federation.
	2. **Notification of breach or potential loss of funding to the Federation of CLCs and Commonwealth:** Subject to its consideration of any objection, VLA will inform the Federation of the above correspondence as soon as practicable after sending of this letter.
	3. **Notification if VLA’s concerns are resolved or addressed:** If the concerns have been addressed or resolved following the steps outlined in step 3a above, VLA will inform the CLC Chair in writing and will make clear what is likely to occur if the same or similar concerns arose in the future. If the Federation were informed about the fact that there were concerns about the centre, VLA will also notify them that the concerns have been addressed or resolved and about any conditions and arrangements for monitoring of continued improvement or arrangements to avoid similar issues in the future.
3. **Notification of action by VLA:**
	1. **Communication with Chair:** Following the opportunity to respond to the formal notification in step 3a above, VLA may make a determination under the service agreement that there has been a breach of the agreement and may exercise its rights under clauses 23.1.1 or 25.1. VLA may also make a decision to terminate an agreement under clause 25.2 of the Service Agreement, or determine to not renew a service agreement, or to reduce funding as part of its annual budgeting process. In ordinary circumstances, VLA will clearly articulate the reasons for the decision and any steps the organisation may take in response to the decision. In the event of a breach not giving rise to termination of the agreement, VLA will comply with clause 23.1 of the Service Agreement. VLA will provide formal written communication of its decision to the Chair of the affected centre as soon as possible after the decision is made.
	2. **Notification of decision to the Federation of CLCs:** As soon as practicable after sending of this letter, VLA will inform the Federation of the above correspondence.

**This policy framework is not exhaustive**

This policy framework sets out the usual process that VLA will adopt with centres of concern. However, it cannot exhaustively list the situations in which VLA takes action as a funder of CLCs and therefore this policy framework is not intended to cover all VLA funding decisions.

While VLA will try to operate in accordance with this policy framework wherever possible in good faith, there may be occasions when VLA is unable to apply some of the stated interventions. Such situations include (but are not limited to):

* Government reduction in funding for CLCs
* Significant changes in government policy for the application of CLC funding (where the corpus of that funding does not reduce but the focus must shift)
* Where VLA becomes aware of particularly serious or urgent concerns or breaches of the service agreement with a CLC.

The failure to complete one or more of the interventions set out in this policy framework does not give rise to any legally enforceable rights or expectations (noting that the entire agreement between VLA and CLCs is set out in the CLSP Agreement).

**Role of the Federation**

While this is a policy of Victoria Legal Aid, the Federation has indicated it will undertake the following process whenever the Federation receives notification of correspondence as part of the above process. This process is consistent with the Federation’s Membership Policy.

On each occasion where the Federation receives notification of correspondence between VLA and a CLC as described in 2b or 3c above, the Federation will contact the CLC Chair as soon as practicable to offer support.

Support offered will vary depending on a range of factors including the nature of the matter, the merits of the matter and the ability of the CLC to deal with the matter itself or to seek external assistance itself. Support offered may include:

* Meeting to clarify issues of concern
* Providing support and assistance including information, advice or referral to appropriate internal or external expertise
* Facilitating access to mentors and similar support from other CLCs
* Capacity building support including training, providing precedents, or other resources on on-site assistance with tasks
* Advocacy support, such as negotiation with VLA in support of, on behalf of and under the authorised instructions of the member CLC.

Given the Federation’s status as the peak body for Victorian community legal centres and a member-based organisation, the decision to accept support from the Federation and the details, scope and timeframe for support will be at the discretion of the CLC.

1. VLA’s Jon Cina as project sponsor, Roy Reekie as project manager, Annie Nash, Olga Williams and Tara Skinner as project contributors and the Project Steering Committee providing governance and guidance. [↑](#footnote-ref-1)
2. *National Partnership Agreement on Legal Assistance Service*, Commonwealth Government of Australia, 2015, p3. [↑](#footnote-ref-2)
3. <http://www.pc.gov.au/inquiries/completed/access-justice/report> [↑](#footnote-ref-3)
4. <https://engage.vic.gov.au/accesstojustice> [↑](#footnote-ref-4)
5. These principles have been synthesised from the recommendations of the Productivity Commission *Inquiry into Legal Assistance Services*, the Victorian *Access to Justice Review* into the legal assistance sector and the *National Partnership Agreement on Legal Assistance Services*. [↑](#footnote-ref-5)
6. <https://en.wikipedia.org/wiki/Logic_model> [↑](#footnote-ref-6)
7. Notably Homeless Law (Justice Connect), Women’s Legal Service [↑](#footnote-ref-7)
8. Most often based on program logic, project logic or Theory of Change/Monitoring and Evaluation models – <https://en.wikipedia.org/wiki/Logic_model> <https://en.wikipedia.org/wiki/Theory_of_change> <http://www.thehealthcompass.org/how-to-guides/how-develop-monitoring-and-evaluation-plan> <http://www.tools4dev.org/resources/me-framework-template/> [↑](#footnote-ref-8)
9. More information about the current requirements for alignment with Commonwealth government priorities and service standards (in the current CLSP Service Agreement) are provided at Appendix 4. [↑](#footnote-ref-9)
10. These three schedules are included in the copy of the current CLSP Service Agreement appended to this discussion paper as Appendix 5. Appendix 5 is commended to those who would like to consider this question of service agreement structure and content more closely. [↑](#footnote-ref-10)
11. Examples relate to staff retention and shortages, relationships within and between staff, management and governance groups & effectiveness of oversight by governing bodies and management of resources. [↑](#footnote-ref-11)
12. Pervasive, persistent, hard-to-resolve problems [↑](#footnote-ref-12)
13. Where responsibility for working on different stages or parts of a legal problem or case are taken on by different providers, including the client, in a co-ordinated process of case management. [↑](#footnote-ref-13)