



**Queensland Public Interest Law Clearing House
Incorporated**

***Transparent public purpose funding
of Queensland legal services and
agencies***

Submission to the review of LPITAF

2 November 2012

CONTENTS

Recommendations **3**

Introduction **7**

PART A **7**

1. **Background** **7**

2. **Comparative funding from government/public purpose funds** **8**

3. **Some observations** **9**

4. **The legal assistance landscape in Queensland** **10**

PART B **11**

1. **Current allocation of LPITAF funding provided to LPITAF recipients** **11**

 Overall LPITAF distribution 11

 Efficiency and effectiveness of current services delivered through these funding arrangements 17

 The respective roles of the State and Commonwealth in funding LPITAF recipients 19

 The differing areas of law that fall within the respective jurisdictions 21

 Other sources of funding available to LPITAF recipients 24

 The suitability of the current service delivery models in responding to legal needs of Queenslanders 25

 The relative benefits of generalist and specialist services provided by LPITAF recipients and equitable access to these 29

 The existence of current service gaps and/or duplication of legal services provided by LPITAF recipients 29

2. **Recommendations for change to the funding system** **32**

 Overall use of LPITAF 32

 LPITAF funding principles 35

 Responsibility and coordination 37

 Accountability (including funding agreements and reporting requirements) 39

ATTACHMENT 1 **46**

ATTACHMENT 2 **48**

ATTACHMENT 3 **50**

Recommendations

Recommendation 1

In the context that:

- Queensland CLCs have been historically underfunded,
- CLCS have demonstrated that they are an essential and cost-effective part of the legal system and
- CLCs are responsible organisations that are fully accountable to members, community, government and other funders:

in 2013-14, a special allocation from consolidated revenue be made:

- to bring CLCs in Queensland up to acceptable funding levels, including NACLC recommended wage levels, and
- to ensure that they have the capacity to do the things expected of them as a result of this review.

Recommendation 2

General LPITAF principles

1. LPITAF funds should be reserved for public purpose legal needs as defined in an amended s289 Legal Profession Act 2007 (see recommendation 11 below).
2. Except for the funding of professional regulation and information services, funding should be reserved for the provision of legal services.
3. Recurrent services should not be funded from insecure sources.

Recommendation 3

All LPITAF recipients that received funds in 2012-13 should receive the same level of funding (with indexation) in 2013-14 as a transitional measure, except some specified QLS grants, which received some funding for non-public purposes, and some non-legal services.

Recommendation 4

Legal services currently receiving grants funding under LPITAF that have established their need, efficiency and effectiveness should be converted to LPITAF Recurrent funding from 2013-14.

Recommendation 5

From commencement of the implementation of the review's recommendations, the Department of Justice should assist current recipients, that do not meet the new guidelines for receipt of LPITAF, to obtain necessary funds from other sources. The Department of Communities for example is better placed to fund non-legal services.

Recommendation 6

From 2014-15, the recipients of LPITAF that are currently specified in the Act should receive in total up to 70% of the LPITAF distribution each year, and up to 30% of LPITAF funds should be reserved for use by CLCs for direct legal services and associated activities as recommended.

Recommendation 7

If the funds provided from LPITAF each year are below the accepted needs of a recipient determined from time to time by the Department of Justice, then the shortfall should be made up from another source, including potentially consolidated revenue.

Recommendation 8

Other funding sources (such as interest on the Appeals Costs Fund) should be investigated to see if they could fund court based legal services.

Recommendation 9

1. The grants process should be used to encourage best practice in legal service delivery.
2. Grants should be available for use to fund research, but only to develop and evaluate appropriate legal services in conjunction with a CLC.
3. Consideration of legal service policies, priorities and funding should:
 - Include appropriate representation by relevant stakeholders to ensure a meaningful dialogue.
 - Reduce the administrative burden of applying for and acquitting funds while maintaining full accountability.
 - Permit flexibility in the sector to respond to community legal needs as they arise.
 - Permit timely decision-making.
 - Fund adequate evaluation of services.

Recommendation 10

Reorganisation of the funding process should entail:

1. Establishment of a “Legal Services Secretariat” (LSS), which would:
 - Administer State and Federal CLAP, CLSP and LPITAF funding together to better coordinate community justice funding.
 - Forge closer links between funders and grant recipients to improve responsiveness to service need and thus service delivery and encourage effective communication and consultation on funding applications.
 - Support a broader based committee called the “Legal Services Board” (LSB).
 - Undertake a two-stage grants process that identifies the current situation on the ground, facilitates partnerships in appropriate cases, acknowledges government priorities, and allows for extended funding in appropriate cases.
 - Work closely with the funding schemes of other relevant departments to ensure consistency of reporting and reduce ‘red tape’.
2. Establish a new advisory committee called the ‘Legal Services Board’ to include representatives of all stakeholders (including CLC and pro bono representatives) and chaired by a judge, to:
 - Ensure proportionality, accountability, consistency, transparency, and targeting.
 - Ensure greater consistency in funding while recognising regional variations, and be able to respond to emergencies and special needs to ensure service stability and continuity.
 - In conjunction with QLAF, LAQ, CLCs and the department, assess relevant statistical information to permit greater service targeting and planning.
 - Make recommendations to the Attorney on funding.
3. To enhance transparency and independence, these new entities could be created as a statutory board with secretariat support, or the LSS could remain a part of DJAG with input from the less formal board. Either way, it would be responsible to the Attorney and DJAG would be represented on the LSB.

Recommendation 11

The Act should be amended as follows:

289 Payments from fund

- (1) The chief executive may make payments from the fund to any of the following for any *public purpose*—
 - (a) Legal Aid Queensland;
 - (b) the fidelity fund;

- (c) the Supreme Court Library;
 - (d) the commissioner;
 - (e) a disciplinary body;
 - (f) the board;
 - (g) community legal centres and QAILS;
 - (h) the law society and bar association.
- (2) A *public purpose* includes—
- (a) professional regulation;
 - (b) information services;
 - (c) maintaining the fidelity fund;
 - (d) the collection, assessment and dissemination of, and facilitation of access to, information concerning legal education, the law, the legal system, law reform, the legal profession and legal services, particularly for the benefit of economically or socially disadvantaged people;
 - (e) administration of the use for which a grant is made, where approved;
 - (f) for community legal centres—
 - (i) legal services;
 - (ii) research and coordination to improve or develop legal services;
 - (iii) administration of the community legal centre and administration of QAILS;
 - (iv) law reform;
- (3) The chief executive must not make a payment under subsection (1) unless the Minister has decided the amount may be paid and has given written authority to the chief executive to pay the amount.

290 Minister to decide distribution

- (1) The Minister must decide—
- (a) whether a payment is to be made under section 289; and
 - (b) if the Minister decides a payment is to be made, the amount of the payment and any conditions applicable to the payment.
- (2) For subsection (1), the chief executive must make recommendations to the Minister on the basis of service priorities and funding guidelines approved by the Minister and published from time to time.
- (3) The amount used for each of the following must not be more than the amount prescribed for it under a regulation for this subsection—
- (a) the fidelity fund as mentioned in section 289(1)(b);
 - (b) grants approved by the Minister as mentioned in section 289(1).

Recommendation 12

State and Federal priorities should be developed in consultation between all relevant stakeholders and services should be given some discretion to respond to legal need as they see fit, so long as their actions are reported and accountable.

Recommendation 13

The government should facilitate and fund a technology development seminar that accesses experts in the field for greater use of technology to support client needs.

Recommendation 14

DJAG should compile an annual report of all payments from LPITAF (including to DJAG if any) alongside payments from CLSP, which shows in standard brief form what each recipient has received and for what purpose it has been expended. Each recipient should also provide detailed public expenditure reports in their annual report as usual.

Recommendation 15

The annual report is an important statement to an organisation's members and funders. It should be the principal document relied upon for accountability and planning purposes. In

the case of CLCs, this should be the only annual document required to be lodged with the fund manager (and other government agencies) to account for their past and plan their future activities.

Recommendation 16

In accordance with the LNP policy “A Fairer Queensland”, which recommends “a permanent Fairer Queensland Investment Fund, government could encourage the private sector to contribute to the work of community legal services by matching donations dollar for dollar to QPILCH’s *Civil Justice Fund* as another source of funds for innovative and responsive community civil law services.

Recommendation 17

A joint Commonwealth and State CLE funding pool be established for CLCs, LAQ and DJAG to access to prepare factsheets that fill a gap in CLE or CLE evaluation. It would be appropriate if this pool was managed independently or at least transparently, perhaps through the LPITAF process by the LSS or LAQ, but so that it did not necessarily have to be expended in full each year.

Recommendation 18

A stand alone specialist mental health legal service should be established in Queensland in collaboration with mental health support organisations.

Recommendation 19

A north Queensland pro bono coordinating office should be established to develop and conduct a range of services, including:

- managing the Townsville HPLC;
- starting and operating an SRS;
- assisting with mental health cases;
- assessing applications for referral;
- developing relations with the courts and other agencies; and
- increasing the North profession’s involvement in pro bono.

Introduction

“Access to justice policy must ... be broadly directed towards enabling all citizens to make effective use of the law and dispute resolution processes, so as to ensure that the framework of civil justice instituted in their name has legitimacy and meaning.” (Pascoe Pleasance)

Objective of the review

QPILCH welcomes the Government’s objective of this review “to establish a new model of transparent decision-making so that all [LPITAF] funding allocations are directed and applied in a manner that maximises service deliver to Queenslanders across the state, while ensuring the ongoing viability of LPITAF” (TOR).

QPILCH has made recommendations for the reform of LPITAF since 2006, having identified a number of shortcomings of the existing system.

This submission primarily comments on issues relating to community legal centres (**CLCs**) in general and QPILCH in particular and primarily in relation to civil law.

The paper is in two parts: **Part A** provides some background and general observations and **Part B** specifically addresses the terms of reference and responds to the questions in the discussion paper in two sections: section 1 describes current circumstances and section 2 makes recommendations for change.

PART A

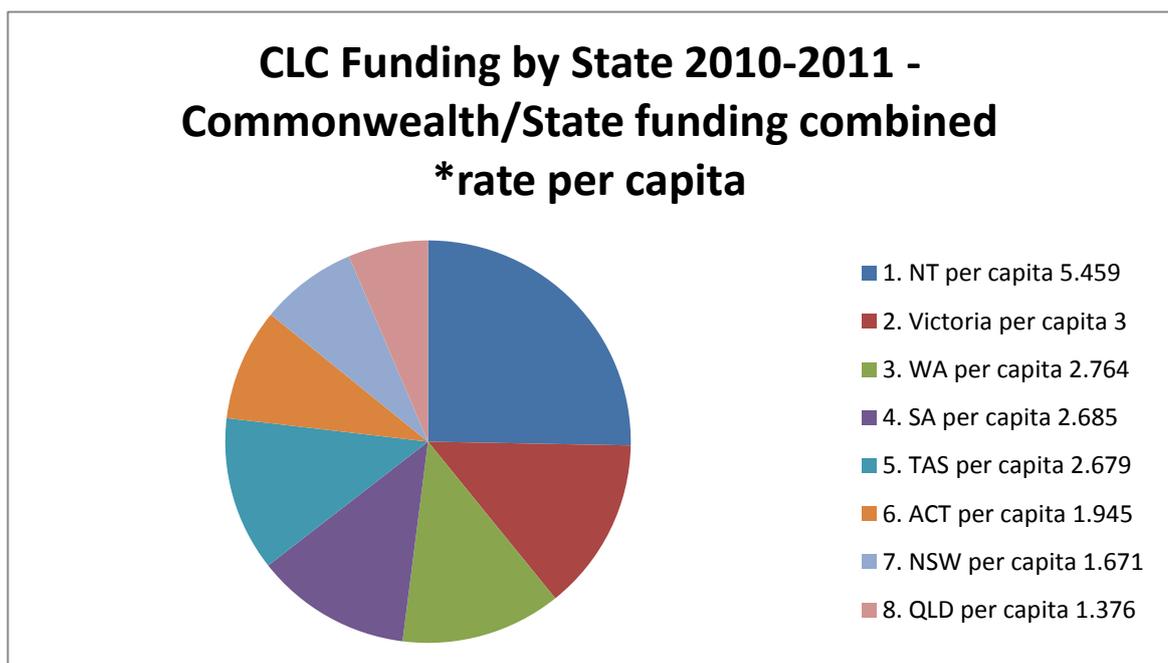
1. Background

- In 1930, the QLS established the Legal Practitioners’ Fidelity Guarantee Fund (the Guarantee Fund) to reimburse clients who were defrauded by unethical solicitors. This fund was financed by a levy on all solicitors. The money in trust accounts at this time did not earn interest.
- In 1965, the Queensland Government legislated to require solicitors to deposit two-thirds of clients’ trust account money into an account in the name of the QLS. The interest earned from this account was then used to finance the Guarantee Fund.
- Solicitors’ contribution to the Guarantee Fund through an annual levy remains to this day only a small proportion of the overall contribution from LPITAF.
- From the early 1980s, the QLS negotiated with the banks – beginning with Westpac – to receive an ex gratia payment representing the interest on the remaining one-third of clients’ trust account money.
- This fund came to be referred to when administered by the QLS as the Grants Fund to be allocated for ‘public purposes’. Other states call this same funding “public purpose funds” where they are still administered by the relevant law society or law foundation.
- \$1.2m of the Grants Fund was used by the QLS to purchase the land on Ann Street where Law Society House is located.
- For some considerable time, the QLS charged the Guarantee Fund an administration fee for its general administration costs. In the FY1990-91, this amounted to \$1.5 million or 50% of its overall administration costs.
- Between 1981-82 and 2003-04 (23 years), Queensland CLCs were granted by the QLS Grants Committee in total \$3.554m from the public purpose monies in the Grants Fund.
- From 2004-05 to the present (8 years), when the Grants Fund was transferred from administration by the QLS to the Attorney-General, \$21.4m has been granted to CLCs.

- From 2004-05 to 2009-10, DJAG used on average \$300,000 per year (over \$2m) from LPITAF for its administration of the funds.
- The discussion paper notes that the QLS has not made any claim on the Fidelity Fund in recent years.
- Today, more and more solicitors are depositing clients' money in interest bearing deposits instead of keeping it in the trust account. This is resulting in less interest and therefore a smaller pool for distribution for public purposes.
- From a high of around \$200m in the 1990s, the capital in LPITAF has dwindled in recent years to around \$70m.
- The purpose of reciting this brief history is only to show that CLCs have been historically underfunded and have only recently benefitted from this pool of 'public' funds.

2. Comparative funding from government/public purpose funds

- Since 1981-02 (31 years), the major funding of Queensland CLCs has come from:
 - The Commonwealth – \$53m.
 - State consolidated revenue – \$16.65m.
 - LPITAF (and Grants Fund) – \$25m.
 - a further amount of around \$1.5m has been set aside for CLC sustainability since 2010-11.
- The total contribution from all specific CLC sources has been around \$96m since 1981.
- However, Queensland funding, particularly from Queensland consolidated revenue, lags considerably behind other states and territories as shown by this chart:



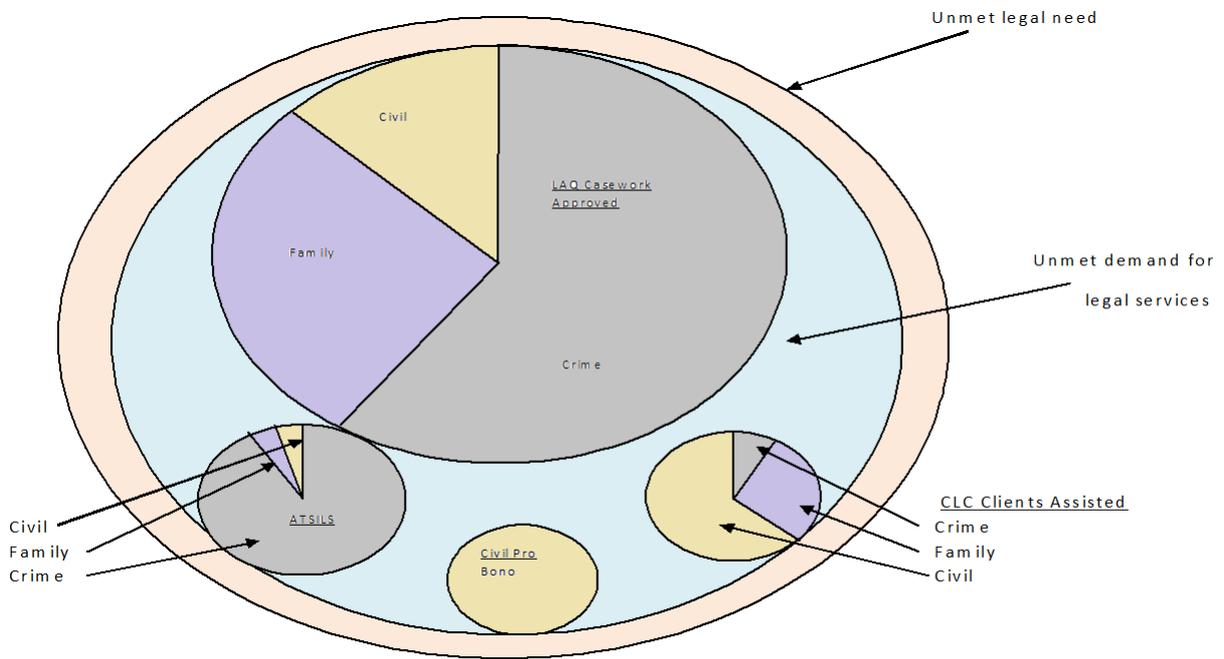
- Even though Queensland CLCs are more reliant on their 'public purpose funds' than the other eastern states as shown by fund allocations in the three states:
 - NSW – \$5.25M (2010-11)
 - Victoria – \$4.47M (2009-10 last available figures)
 - Queensland – \$6.3M (2010-11).
 only recently has this contribution improved our funding position as compared with NSW and Victoria. Nonetheless, it still lags considerably.

3. Some observations

- A sustainable funding system for community services cannot be achieved with an unsustainable and dwindling reserve such as LPITAF.
- Several independent studies confirm that CLCs are a cost-effective part of the justice system. However, Queensland CLCs have been run on a shoestring since they were established in the late 1970s, and so start from a low resource base. They should not be taken for granted as a cheap method of delivery and they could be more cost-effective if provided with comparable resources to other similar services, such as legal aid.
- The community legal sector plays a vital role in the infrastructure of justice in Queensland, although its nature, role and place in the structure have been misunderstood and underutilised for almost its entire history.
- The way the funding system has been operated in the past has encouraged competition between centres and with Legal Aid Queensland rather than cooperation and coordination.
- Governments have largely failed to engage with CLCs to develop a productive relationship.
- CLCs have the potential to be more cost-effective than bureaucracies, which are slow and cumbersome in reacting to legal needs. CLCs are flexible and nimble and use considerable volunteer support.
- A consistent and stable funding system could encourage innovation, best practice and cooperation and therefore capitalise on the capacity of CLCs to better serve the community.
- With positive and stable support, and a modest increase in funding, CLCs could accomplish much more.
- Attempts at legal service coordination are relatively recent and still largely undeveloped.
- For most of their history, CLCs have operated in an information 'black hole': CLCs have pumped huge volumes of data into the Community Legal Service Information System (CLSIS), but little analysis has been returned.
- Queensland governments have not lead, encouraged, facilitated or participated in undertaking research into legal need or best practice in service delivery.
- In this information vacuum, it is difficult if not impossible to fully answer the questions raised in this review of LPITAF.
- Tendering for legal services is not the approach needed to improve capacity or productivity and is counterproductive, because:
 - it further promotes competition rather than cooperation, which is essential in meeting legal service demand, and
 - it will reduce the profession's voluntary contribution to legal services for disadvantaged Queenslanders, which CLCs coordinate and facilitate.
- A new funding model is required for CLCs to enable them to reach their full potential.
- Many of the problems outlined in this paper cannot be rectified without the agreement of the Commonwealth Government, and so requires a positive and productive engagement at ministerial and departmental levels of government and with CLCs.
- In a growing economy, consolidated revenue should be making an increasing contribution to access to justice for our society's most marginalised citizens.

4. The legal assistance landscape in Queensland

The legal assistance landscape in recent years looks something like this:



This is a rough approximation of the respective size of the main entities involved in the provision of free legal services (crime, family and civil law) for disadvantaged Queenslanders.

PART B

1. Current allocation of LPITAF funding provided to LPITAF recipients

Overall LPITAF distribution

1.1 LPITAF is distributed in accordance with s289 of the *Legal Profession Act 2007*:

289 Payments from fund

(1) The chief executive may make payments from the fund to or for any of the following—

- (a) Legal Aid Queensland;
- (b) the fidelity fund;
- (c) the Supreme Court Library;
- (d) the commissioner;
- (e) a disciplinary body;
- (f) the board;
- (g) part of the cost of the regulatory functions of the law society or bar association, including costs associated with implementing a relevant law whether incurred before or after the commencement of this section;
- (h) grants approved by the Minister for any of the following purposes—
 - (i) the advancement of law reform;
 - (ii) the collection, assessment and dissemination of information concerning legal education, the law, the legal system, law reform, the legal profession and legal services;
 - (iii) facilitating access to the legal system, legal information and education and legal services for members of the community, particularly economically or socially disadvantaged members of the community;
- (i) the department for any of the following—
 - (i) the cost of administering this part;
 - (ii) liabilities of the department attributable to the costs and expenses relating to the fund before or after the commencement of this section;
 - (iii) expenses of the department associated with the replacement of the Solicitors Board, Barristers Board and Office of the Legal Ombudsman, whether the expenses were incurred before or after commencement of this section.

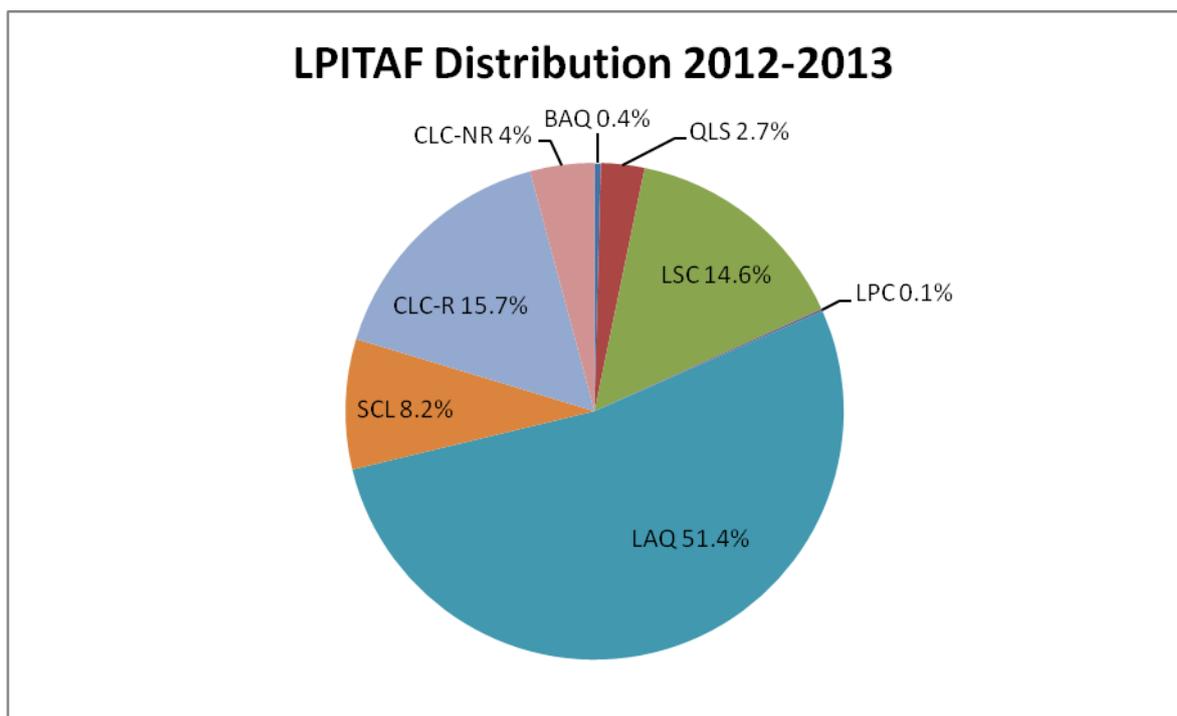
1.2 Section 289 (5) of the act provides that LPITAF funds are not public monies in accordance with the *Financial Administration and Audit Act*.

1.3 Approximately \$37m is distributed annually to all recipients as follows:

LPITAF Distribution 2012-13

Recipient	Amount	%	% 2011-12
Bar Association of Queensland	147,332	0.40	0.40
Queensland Law Society	1,007,186	2.73	2.71
Legal Services Commission	5,381,463	14.61	12.83
Legal Practice Committee	49,231	0.13	0.09
Legal Aid Queensland	19,991,600	51.41	54.48
Supreme Court Library	3,041,999	8.26	8.18
Community Legal Centres - Recurrent	5,780,893	15.69	16.26
Community Legal Centres - Non-Recurrent	1,491,724	4.05	5.05
Sustainability/emergency grants	1,000,000	2.72	nk
TOTAL ALLOCATIONS	\$ 36,695,986	100.00	100.00

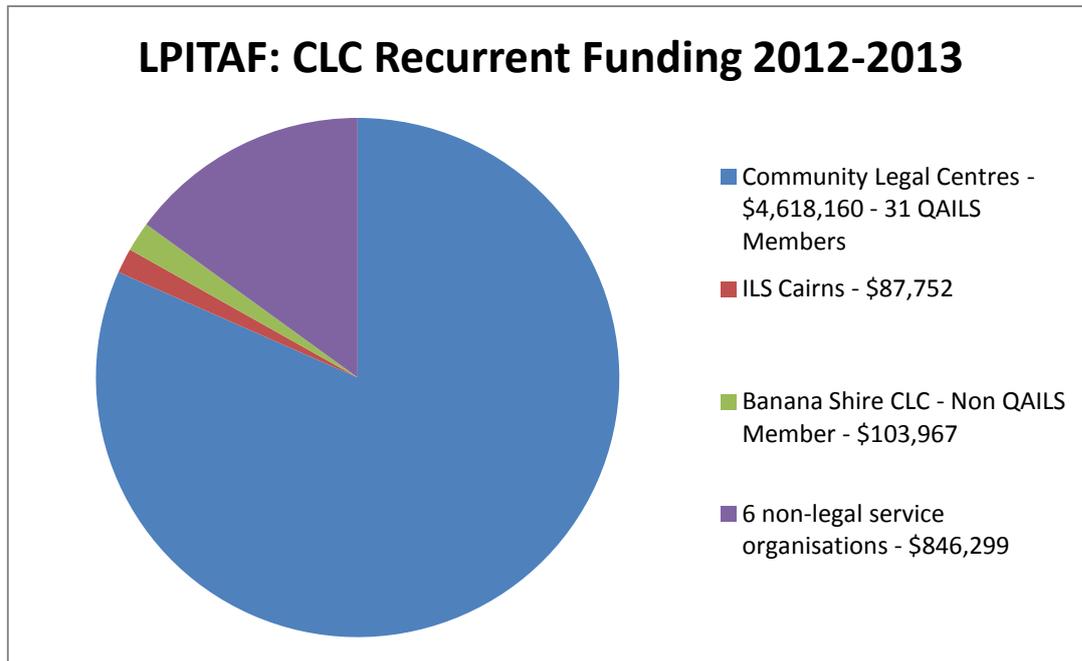
- 1.4 CLCs are not specifically included in the list of recipients under the Act. Grants specifically for CLCs are only referred to as a possible purpose in s289(1)(h) for law reform, information, access and 'legal services'.
- 1.5 There are two LPITAF funding programs for CLCs: a recurrent program (which forms part of the Community Legal Services Program (CLSP)) and a grants program (to provide non-recurrent project funding).
- 1.6 As can be seen from the above table, the only recipients whose funding was reduced from 2011-12 to 2012-13 were CLCs (both recurrent and grants funding).
- 1.7 While LAQ's LPITAF funding was also reduced, it obtained considerable extra funding from consolidated revenue to compensate.
- 1.8 This allocation of funding can be represented in the following chart:



- 1.9 This submission will focus primarily on the recurrent and non-recurrent grants provided to CLCs.
- 1.10 QPILCH strongly supports the funding provided by LPITAF to the other major recipients. However, later in this submission, we comment on some purposes that we believe should be funded from sources other than LPITAF.
- 1.11 As noted above, it should be recognised that some of the major recipients have over the last 30-40 years received a considerably greater slice of the interest on solicitors' trust funds, which has enabled them to secure a capital base that has not been available to most CLCs. Unlike CLCs, these organisations provide their staff appropriate and fair employment conditions. We believe past underfunding and the effect on present-day resources should be acknowledged in how LPITAF is distributed in the future.

CLC recurrent funding

1.12 A breakdown of the LPITAF Recurrent funding for community services for 2012-12 can be represented as follows:



1.13 This funding supports:

- 31 CLC members of the Queensland Association of Independent Legal Services (QAILS);
- the Cairns-based Indigenous Legal Service;
- the Banana Shire Community Legal Service; and
- six other organisations which provide some form of legal or law-related service:
 - Care Goondiwindi Association Inc
 - Carers Queensland Inc
 - Centacare: Catholic Diocese of Rockhampton
 - Court Network Incorporated
 - DVConnect Ltd
 - Queensland Aged and Disability Advocacy Inc.

1.14 The most recent recurrently funded services were ILS Qld Limited, Centacare and Sisters Inside in 2009-10. Sisters Inside is not included in the list above because it was defunded in 2012-13.

1.15 The funding for the 31 CLCs includes funding for generalist and a range of specialist centres.

1.16 There is a range of problems with the administration of LPITAF recurrent funding that impacts on the effectiveness and efficiency of CLCs.

1.17 The current level of funding is insufficient in meeting demand and in supplying even the most basic resources and pay levels that other similar legal services and the other LPITAF recipients enjoy and expect.

- 1.18 This resource shortfall is not just recent. It has occurred over the entire history of CLCs, thus embedding an unstable foundation and preventing CLCs from operating at optimum levels up to today.
- 1.19 A fundamental principle should be that necessary services are funded from a stable source at sufficient levels to ensure viability.
- 1.20 QPILCH submits that this parlous funding situation is derived from the failure of government to appreciate and understand the valuable and fundamental role that CLCs play as part of the infrastructure of justice.
- 1.21 The amount of funds provided to CLCs from LPITAF (irrespective of CLSP funding), limits viability and restrains realisation of their full potential.

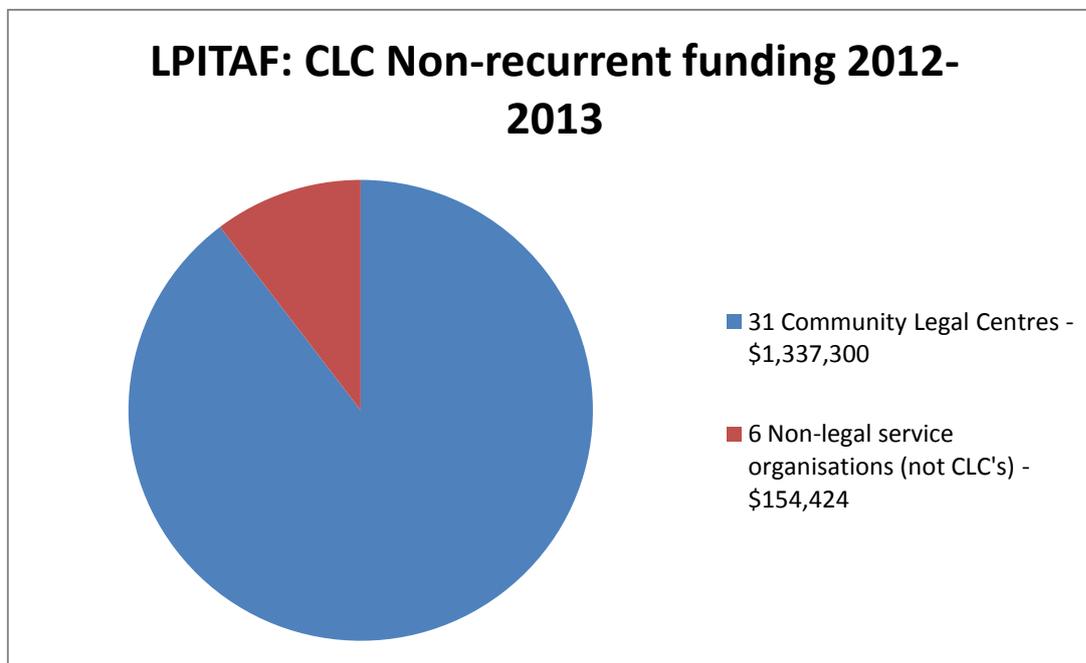
Problems with the recurrent funding process

- 1.22 When QPILCH was first funded under LPITAF (grants fund), it was funded at the limit of that funding, that is, for two FTE positions. However, at that time, QPILCH had 3.2 FTE positions (now 4.3). All positions were previously funded from membership fees and from careful management of our budget. However, this frugality could not be maintained with the increases in demand for service, particularly as QPILCH had cemented its position in the legal community and developed projects in the face of increasing demands to service legal needs and participate in other activities. When LPITAF funding was converted to CLSP funding (that is, from grants to recurrent funding), which permits a greater level of funding, there was no consultation or discussion about our service needs or opportunity to obtain more funds.
- 1.23 QPILCH's Self Representation Service (SRS) was originally funded for 1.6 positions from a non-recurrent LPITAF grant. It was subsequently recurrently funded. However, when this funding was consolidated with our core funding (two existing positions) then funded under CLSP, the funding provided could only be for 3.5 FTE, not 3.6, because CLSP does not fund other than .5 fractional staffing. This effectively reduced the funding for the SRS from 1.6 to 1.5 FTE, placing a strain on our ability to resource this service, as the staff member had already been appointed for .6 FTE. QPILCH was forced to find savings in other areas.
- 1.24 Our original SRS application to LPITAF indicated that the three day per week paralegal position was sufficient at commencement but may need to be reviewed depending on the workload. Our second application foreshadowed that we may need to increase the number of days per week worked by our paralegal. On demonstrating that the position should clearly be full-time, we obtained sustainability funding for it. But that funding was only available for six months and not maintained.
- 1.25 In 2001-02, when QPILCH was first established, it had one .6FTE solicitor and .6FTE administrator/bookkeeper. Today, it has 22 staff members, 11.8FTE legal staff to 1.9 administrative staff members. Numerous attempts to address this imbalance through LPITAF have failed.
- 1.26 With a staff complement of 22, other similar sized CLCs have split supervisory positions. Yet QPILCH has one position to fulfil the director, principal solicitor and office manager roles and attempts to obtain additional funds to support its size have failed.

1.27 Unlike most other CLCs, QPILCH's main source of funding is LPITAF, more than half of which is non-recurrent. For a snapshot of QPILCH's funding and profile, see **attachments 1 and 2.**

CLC non-recurrent funding

1.28 A breakdown of LPITAF non-recurrent grants program can be represented in the following chart:



Problems with the recurrent funding process

1.29 ILS Qld Limited was funded to provide a regional homeless legal service. The funding of this service exemplifies the failure of the current system to properly coordinate legal services and to know what is happening 'on the ground'. QPILCH has had a homeless persons' legal service since 2002 and prior to the funding of the ILS, had visited the Cairns region to establish such a service. Because the Grants Committee was unaware of our activity, the ILS was funded. While we support the ILS funding, the funding system failed to take account of other services and promote collaboration.

1.30 As a condition of the grant to QPILCH to undertake the Rural, Regional and Remote project, QPILCH was required to "work in conjunction with Legal Aid Queensland". In QPILCH's application for funding for its RRR project, we stated that we would liaise with LAQ and other CLCs on this project. However, as explained in the application, the primary intent of the project was to partner rural firms with large city firms to increase RRR pro bono work, which therefore had only tangential connection to the work that LAQ does through its Farm & Rural Legal Service and regional structure. Nonetheless, the conditions attached to the funding placed LAQ at the centre of our project.

1.31 That LAQ warranted special mention in our grant and that the Grants Committee had no knowledge of our homeless service shows that the process needs an improved information and coordination role in funding community legal service projects. The LPITAF grants scheme is administered by DJAG, yet there is little consultation

between DJAG and applicants and limited knowledge in DJAG of the community legal sector.

- 1.32 The greatest problem with the grants process is its uncertainty. Many CLCs rely on LPITAF Grants to maintain services and to remain viable yet most do not know if funding will continue.
- 1.33 Decisions are not timely. CLCs have been advised of funding well after the start of a new financial year, resulting in the loss of good staff and service momentum.
- 1.34 There are no particular criteria that guide the development of projects. Partnerships, for example, occur by chance rather than promotion.
- 1.35 The level of funding is based on a rigid formula rather than the amount required to properly operate the service, taking account of local circumstances or needs such as rent paid, service size, demand on services etc. Funding is currently one size fits all. These problems could be alleviated by structured consultation with services that are to be initially funded or granted further funding following on from an initial grant.
- 1.36 Grants have been provided for many non-legal services, reducing the availability of this scarce resource for actual legal service delivery.
 - there are no mechanisms to ensure that funded services are effective;
 - the application process requires a substantial resource commitment, often with little or no return.
- 1.37 Grants are not indexed and are funded at different levels than recurrent services. For example, QPILCH's SRS (Courts) receives \$164,000 per year for 1.5 FTE from LPITAF Recurrent, whereas SRS (QCAT) receives \$131,000 for 1.5 FTE from LPITAF Grants.
- 1.38 Because QPILCH relies heavily on grants funding, and because indexation and wage increases are only added to recurrent funding, it has been necessary to make cuts to some budget items in order to fund equitable pay levels.
- 1.39 Accordingly, QPILCH expenditure has exceeded income in recent years because of the need to fund services at an acceptable level, a level that is not recognised by the funding received. Our reserves for this purpose will have been depleted by the end of 2013-14.
- 1.40 QPILCH appreciates that the grants process, in particular the balancing of conflicting priorities, is not easy to manage. However, there are a number of ways in which the operation of the program could be changed to ensure funding consistency, reduction in duplication and waste, promotion of transparency and maximum use of the funds.
- 1.41 Faced with demands elsewhere, CLCs have always been an obvious target. As shown earlier, the only recipients to suffer when the LPITAF pool is low are CLCs. However, such an approach is short sighted. LPITAF, working effectively should be available to create innovative and flexible services that quickly respond to new needs, target those most in need, improve services overall, save funds in the longer term and importantly, relieve pressure particular on more costly legal aid.
- 1.42 Sustainability grants are provided in some years to assist CLCs experiencing problems, but it is unclear on what basis such grants are made.

1.43 In view of the history of CLC funding from LPITAF, if CLCs are a valued part of the infrastructure of justice, something more needs to be done that recognises and uses their effective and efficient approach.

Efficiency and effectiveness of current services delivered through these funding arrangements

1.44 It is not possible for QPILCH to comment on individual CLCs for a number of reasons. First, there is no baseline measure to determine what is efficient and effective. In addition, a history of chronic underfunding, inability to retain staff, competition for scarce resources, funding uncertainty, the absence of needs assessments and evaluations, ad hoc funding and de-funding decisions and the failure of government to explain its decisions makes any attempt to determine the value of individual CLCs and to increase its effectiveness difficult.

1.45 All the research points towards the effectiveness and efficiency of the CLC model when best practice in legal services.

1.46 It is clear that holistic, varied and integrated services are generally considered best practice service.

1.47 The Law Survey reported “The present findings indicate the value of a more holistic approach to justice in Australia that incorporates a variety of strategies to cater for the needs of different sections of the community, including integrated service provision for the most vulnerable groups” (p 240), yet there has not been much work in developing such an approach.

1.48 However, The Law Survey adds that “Implementing a more holistic, integrated approach to justice obviously requires a substantial injection of funding and resources (see Sackville 2011)”.

1.49 In several ways, QPILCH has attempted to integrate a range of its services to achieve the goal of providing best practice services. What we have achieved is largely due to the support of the private profession.

1.50 For example:

- QPILCH coordinates the public interest and QLS/BAQ referral services under one roof, which along with the legal outreach services for the homeless and self represented litigants and people with mental illness, are in constant conversation.
- QPILCH’s Mental Health Law Practice is providing an holistic service with the PA Hospital’s psychiatric ward with the support of a member firm and student advocates.
- We developed the legal health check to enable other participants to help in identifying the legal needs of the homeless and have been rolling this out to other services like the mental health law practice.
- QPILCH is working with a firm member to link with Centrelink to assist young people transitioning from care with legal assistance.
- All these activities are in partnership with welfare and social services. All rely on our member firms and students who staff the clinics and services.

- 1.51 However, the private profession should not be seen as the panacea. While there is some scope for accessing greater capacity in the profession, it is not limitless. Law firms do not provide funding, they only offer pro bono advice and representation. It therefore cannot be expected that all CLCs will be able to immediately adopt these practices.
- 1.52 If government expects more CLCs to operate in this way, particularly in locations without firms with the capacity to do large-scale pro bono work, it will have to commit more funds.
- 1.53 Similarly, QPILCH could only have been able to coordinate its mental health law services through the support of a philanthropic body, but that funding is non-recurrent.
- 1.54 There is no current interest or capacity in LPITAF funding to encourage and support these goals.
- 1.55 The strengths of the CLC model are:
- CLC lawyers are close to the community because they work with other community organisations in providing holistic support to clients in a systematic way.
 - By being close to the community they are aware of its legal needs. Local and direct knowledge is as useful as legal needs research.
 - They are not constrained by bureaucracy, so are fast and flexible in designing and implementing responses to the legal needs of their communities.
 - They draw huge resources and goodwill from the private and corporate sector in the form of casework, volunteers, secondees and donations.
 - CLCs work in partnerships with other organisations and with each other in developing projects and services.
 - They can diffuse other forms of dissent for more appropriate engagement.
- 1.56 It is vital not to underestimate the value of CLCs independence, their flexibility and their ability to attract and use of volunteers. In QPILCH's view, these strengths alone demonstrate the efficiency and effectiveness of Queensland CLCs.
- 1.57 Most CLCs make the most of this model in some form and to some degree. The challenges for individual centres are to use it more extensively and to find the resources to do it properly, in a climate of constant demand for service and uncertain funding.
- 1.58 Community legal centres are crucial to pro bono in Queensland. They are the conduit through which individual lawyers and law firms can best contribute and target their pro bono commitment.
- 1.59 Any model and individual organisation can be improved. In QPILCH's view, the CLC model is a perfect platform for adopting a more integrated and holistic approach. However, it needs to be supported and strengthened to reach its full potential as an integral part of the infrastructure of justice.
- 1.60 While the need for real partnerships and collaborations and integrated services that respond to all the needs of clients are acknowledged, the challenge is to create these connections appropriately without losing the key benefits currently offered. Forcing these arrangements may undermine the overall goals. They need to be encouraged where appropriate and adequately resourced.

1.61 Too much time is currently spent by CLCs in trying to prove their value for money and dealing with uncertainty. While any organisation can do better, the best way to increase effectiveness is to recognise the value of the model and to ensure that CLCs meet the standards of the model. Hopefully, the National Partnership Review will result in better reporting and evaluation. But a better funding regime must also play a part in supporting and promoting best practice.

The respective roles of the State and Commonwealth in funding LPITAF recipients

Commonwealth funding

- 1.62 Commencing on 1 July 2010, the National Partnership Agreement (NPA) is an agreement between the Commonwealth and the various state and territorial governments specifically for the delivery of Commonwealth-funded services by state legal aid commissions under the Commonwealth Legal Aid Program (CLAP).
- 1.63 While the agreement specifically applies to the legal aid commissions, it has been used as a reference point for CLCs.
- 1.64 The NPA states that the Commonwealth will maintain separate agreements for community legal centres funded by the Commonwealth under the Community Legal Services Program (**CLSP**).
- 1.65 The CLSP is a combined Federal and State program which provides recurrent funding to organisations to deliver legal services to people on low incomes and those with special needs. Funding is for generalist services but Commonwealth funding also includes ten specialist sub-programs which provide funding for assistance in specific areas of law or targets special needs groups. Funding is provided through a service agreement which is renegotiated every three years. State Program Managers from the state legal aid commissions are responsible for the day to day administration of the CLSP and ensure compliance with the accountability requirements of the service agreement.
- 1.66 LAQ manages the CLSP in Queensland, which includes Federal and State justice funding (that is, consolidated revenue) and LPITAF recurrent funds. Accordingly, while CLCs are not specified recipients of LPITAF, LPITAF recurrent funding is part of the community legal services funding program.
- 1.67 In 2010-11 year, Commonwealth funding under CLSP for Queensland CLCs totalled \$4.476m while Queensland Government funding amounted to \$1.8m.
- 1.68 In recent years, the Federal Government has provided one-off additional funding for legal assistance programs. In April 2008, the Commonwealth Government announced an additional \$10m for the CLSP Australia-wide to assist CLCs to manage the increasing demand for their services, with all Commonwealth funded centres receiving additional money. The funding was allocated on a needs basis, with a focus on each CLC's funding level, location and client demographics. The government approved a further \$4m grant to CLCs in 2009-10. Ad hoc funding was also provided in more recent years, but lesser amounts. There was also a recent increase for an award wage increase but this increase was only passed on to CLSP funded centres. Funds were also increased in 2010-11 and 2011-12.

- 1.69 The end of year ad hoc funding does not increase access to justice in any equitable, coordinated or systematic way. The loudest voice appears to prevail. In the last round, over \$1m was distributed to 12 NSW CLCs, 8 Victorian, 2 from Queensland and one each from the NT, SA and WA.
- 1.70 Since 2010-11, only one Queensland applicant has received funding from the Commonwealth administered Grants for Australian Organisations Program (GAOP) funding, and no Queensland based CLC.
- 1.71 All Commonwealth programs for legal aid and legal services are administered by the Federal Attorney-General's Community Legal Services Program in the Legal Assistance Branch.
- 1.72 The discussion paper refers to the CCLSP Guidelines in stating that in allocating new or additional CCLSP funds, the Commonwealth assesses the demand for services, capacity of existing providers and the amount of funds available and undertakes a competitive selection process. This is not QPILCH's experience.
- 1.73 For example, QPILCH was provided \$70,000 per year for 3 years to 2012-13 by AGD for our HPLC. This money followed the development of the federal government's homelessness strategy. We were not consulted in the process that led to this payment and we were not aware the money had been made available despite having made extensive submissions to the development of the homelessness strategy.
- 1.74 At the same time, our sister organisation in Victoria, which delivers a comparable homeless legal service, was provided with \$250,000 per year by the Commonwealth, received a grant from GAOP and received two ad hoc payments for 2011-12 and 2012-13.
- 1.75 In summary, while the recent Commonwealth ad hoc allocations to CLCs have been important and welcomed, over many years increases have been ad hoc and problematic because:
- only CLCs currently granted Commonwealth CLSP benefit from the injections;
 - only Commonwealth priorities are funded;
 - there is no transparency on how the funds are allocated;
 - funding injections are sporadic;
 - a considerable portion of new government funding over the years has gone into new services, rather than consolidating existing services;
 - government rarely funds important research and policy work;
 - services are rarely evaluated;
 - the current funding model impedes the ability of legal service providers to quickly respond to new legal needs and to develop more innovative approaches to the problems of their communities.

Queensland funding

- 1.76 Commonwealth CLSP funding has never been matched by the Queensland Government in any uniform way. Victorian and NSW CLCs, for example, have traditionally been better funded by their state governments than CLCs in other states. The less populated states have been considerably disadvantaged in providing legal services in their communities. The difference in state needs and resourcing is not always appreciated. The less wealthy states have less capacity to apply for project funding and have access to fewer funding sources. And the geographically bigger

states such as Queensland and WA have fewer CLCs in RRR areas and therefore experience greater service difficulties.

- 1.77 The inequity in funding, particularly comparing Queensland with NSW and Victoria, goes back 30 years, resulting in long-term under-resourcing in Queensland.
- 1.78 Recent extra funding by both the State and federal governments was not coordinated, such that some centres received considerable extra funds, while others received only an extra wage contribution. Greater consultation between the Federal and State governments may have led to greater funding equity and better use of funds, particularly for targeting needs. This will become increasingly more important with the review of tied federal/State grants. This issue could be addressed by ensuring better funding coordination of State and federal CLSP. We appreciate this would also require Commonwealth/state agreement.
- 1.79 The chart produced earlier shows that on a per capita basis, Commonwealth funding to Queensland is ranked seventh out of eight of the states and territories, and eighth out of eight when State and Commonwealth funding is combined. Queensland's position is only improved when LPITAF is added, but still does not reach the levels of per capita funding received by CLCs in NSW and Victoria.

The differing areas of law that fall within the respective jurisdictions

State priorities

- 1.80 The last information QPILCH has about state priorities for LAQ funding dates from 2007. At that time, State priorities in civil law were:
- Child protection
 - Domestic violence applications
 - Criminal injury compensation
 - Mental health
 - Workers compensation
 - Inquests
 - Discrimination
 - Consumer protection
 - Civil confiscation of proceeds of crime.
- 1.81 LAQ reads the State priorities as hierarchical with higher priority given to matters higher up the list. LAQ argued in its civil law discussion paper of 2005 that while it seems reasonable that Child Protection and Domestic Violence should have greater priority, there does not appear to be any reason for retaining a hierarchy for other matters.
- 1.82 As far as QPILCH is aware, criminal injury compensation work is winding down and there has been no recent grant of aid for worker compensation and inquests.

Commonwealth priorities

- 1.83 The purpose of the National Partnership Agreement (NPA) is to:
- address social inclusion and adopt “a more holistic approach to resolving people’s legal problems”, and
 - “support a holistic approach to the reform of the delivery of legal assistance services by legal aid commissions, community legal centres” etc, and

- “improve the targeting of services for disadvantaged Australians and the wider community, realise the opportunities for using resources more effectively and efficiently ...”.

1.84 The primary outcomes expected are:

- Earlier resolution of legal problems.
- More appropriate targeting of services.
- Increased collaboration between providers.

1.85 Under the NPA, the Commonwealth civil law priorities under the NPA are:

- Assistance to war veterans
- Matters relating to social security and other Commonwealth benefits
- Migration
- Commonwealth employment, equal opportunity and discrimination cases
- Commonwealth consumer law matters
- *Proceeds of Crime Act 2002* matters
- Sections 19 and 21 *Extradition Act 1988* matters.

1.86 Commonwealth criminal law priorities favour a child in Commonwealth criminal proceedings and an adult facing a sentence of imprisonment.

1.87 Commonwealth family law priorities include family law matters involving children, people at risk of family violence and assisting family members to resolve the living arrangements, relationships and financial support of their children and state law matters where the child’s or applicant’s safety is at risk.

1.88 The Commonwealth also gives priority to cases involving people with linguistic or literacy problems, intellectual, psychiatric or physical disability or a person’s remote locality, placing them more at risk of social exclusion.

1.89 The Commonwealth emphasises prevention and early intervention.

1.90 The Commonwealth priorities are not hierarchical.

Effectiveness of tied funding

1.91 In QPILCH’s view, Federal and State government stipulation of service priorities and funding tied to jurisdiction has reduced the effectiveness of legal services to respond to need.

1.92 This rigid approach, based on jurisdiction and priority, impacts in three ways: by distributing funds inequitably; by preventing some areas of need from being assisted; and by limiting innovation and appropriate responsiveness.

1.93 However configured, tied funding hampers the ability of service providers to provide services fairly and where they are most needed. For example, except for LAQ services for Indigenous Queenslanders as part of its overall services to the community or its Cape York targeted services, only two lawyers specifically service Indigenous civil law services in Queensland as part of a holistic and culturally sensitive specialised service for Queensland’s most marginalised citizens. Commonwealth funds are not available for Queensland civil law and the Queensland Government does not provide funds to Indigenous legal services because it regards Indigenous legal services as a Commonwealth responsibility.

- 1.94 Child protection takes up a large proportion of LAQ's civil law budget. Child protection is an important issue, but there are other areas that also need supporting. Child protection is not just a matter of protecting children but also removing the problems that create pressures within families and is therefore ripe for developing innovative multi-agency, integrated and holistic responses, rather than a strict adherence to the service of one particular issue. It is now known that so many legal problems are inter-related, focusing on one problem in isolation may not have the desired long-term impacts. Strict funding guidelines limit new approaches.
- 1.95 Giving greater priority to one area over another not only limits the opportunity to respond to emerging need or problems that do not clearly fall within the guidelines but may also mean that a less important child protection case, for example, will take precedence over a more important discrimination test case.
- 1.96 In our submission to LAQ's civil law review, QPILCH supported LAQ's recommendation to loosen the hierarchy, but went further. We recommended that LAQ be given discretion to take on matters that the limited special circumstance clause does not permit so it can have some flexibility in how it responds to need.
- 1.97 Of course, government has a responsibility to ensure that issues of community concern are given appropriate attention and to determine the allocation of resources to address priority issues. However, this should not restrict services to the extent that they cannot address other pressing needs and develop innovative ways to respond to those needs. LAQ and CLCs should be given specific grants to address issues of concern that government sees as a priority, and also receive discretionary funding to meet the other demands on their services. The current funding model ties the hands of service providers.
- 1.98 With proper reporting, research and analysis, government should be able to fine-tune the funding regime over time to ensure, in consultation with LAQ and CLCs, that community needs are properly being addressed through targeted holistic responses.
- 1.99 The tied nature of much funding to services and government priorities has meant that some areas of law are not serviced to any real degree. The homeless have only seriously been assisted in the last decade through pro bono services. Legal assistance for people with mental illness has only recently been developed, but on an insecure basis. Pro bono services are bombarded with applications for assistance from people who have no access to legal aid even when they comply with the LAQ means test. Defendants without funds in civil cases almost have no chance of obtaining any assistance. Migration law receives little LAQ assistance despite its inclusion as a Commonwealth priority. There are limited avenues to obtain administrative law assistance. These difficult issues that generally arise from poverty and marginalisation fall mainly on under-funded CLCs or pro bono or are not serviced at all, and yet, as mentioned before, may form part of more complex webs of social exclusion and disadvantage.
- 1.100 QPILCH recommends that State and federal priorities with matched and discretionary funding should be developed in consultation between all relevant stakeholders.

Other sources of funding available to LPITAF recipients

- 1.101 In addition to CLSP and LPITAF, significant levels of funding are provided by other Commonwealth and State Government departments.
- 1.102 The Commonwealth's GAOP program has run for several years, but is not advertised and no Queensland based CLC has received a grant from it. QPILCH applied in 2012-13, but the scheme was suspended.
- 1.103 Many CLCs receive some funds from philanthropic sources, but rarely of any size or duration. Unlike Victoria and NSW, Queensland does not have the same culture of structured charitable giving and even fewer charities with an interest in legal issues.
- 1.104 In 2007, QPILCH suggested that this problem could be overcome by placing some legal aid surplus funds into long-term, actively managed accounts to be able to respond to economic downturns. At that time, LAQ had an enormous surplus, some of which could have been quarantined to support CLCs into the future. That opportunity was lost because of a failure to think creatively.
- 1.105 There is much discussion at the moment of sovereign funds for public purposes. This approach has been used effectively in other places. For example:
- The Judicial Council of California and the California Bar's Legal Services Trust Fund Commission have established the Equal Access Fund. Each year, \$US10m is distributed to court-based services for low income self-represented litigants in domestic violence, guardianship, family law, landlord and tenant and general civil litigation.¹ The EAF has received \$10 million from the Governor's budget each year from 1999 to 2004. California also has their equivalent of LPITAF called the Interest of Lawyers' Trust Accounts (IOLTA).
 - the NSW Legal Aid Commission has established a small *Legal Aid Fund*, with a first year budget of \$100,000, to provide legal aid for public interest human rights matters - administered by a separate committee that makes recommendations to the Legal Aid Commission.
 - It is also worth noting that a lone Sydney businesswoman in 2004 established a \$3.5M fund to assist young people in need. She intends that this fund will grow to \$6M. These are just a few examples of many public, professional and private funds around the world.
- 1.106 We note the LNP policy "A Fairer Queensland" recommends at point 5 "a permanent Fairer Queensland Investment Fund – we need a long-term investment fund for programs that make our communities more resilient and sustainable. This could be drawn from resource royalties, GST receipts or other sources so all Queenslanders benefit from the state's wealth." We support this policy.
- 1.107 A small organisation like QPILCH has raised more than \$70,000 and spent around \$10,000 over five years from its disbursement fund to assist pro bono clients. It has also established a *Civil Justice Fund* for civil law services in the longer term. With the help of government, for example, matching donations dollar for dollar, over 10 years

¹ Judicial Council of California, Administrative Office of the Courts, *Equal Access Fund: A report to the California Legislature*, March 2005.

this fund could be another source of funds for innovative and responsive community civil law services. Similar funds could be seeded for other areas of law.

The suitability of the current service delivery models in responding to legal needs of Queenslanders

- 1.108 Government priorities and funding arrangements have reduced the effectiveness of legal services by failing to capitalise on the strengths, skills and structures of the various and different legal service providers.
- 1.109 Funding of discrete services has seen CLCs being required to undertake casework in specific areas also undertaken by LAQ usually to avoid conflicts, but occasionally in the past in direct competition. However, CLCs are unlikely to work best as outposts of LAQ doing the same work with fewer resources. The private profession for example may be better equipped to do this sort of work. This is a matter for study and appropriate policy development.
- 1.110 The funding regime has sought to fix CLCs into the straight casework provider, without capitalising on their important role and limiting the opportunity to use their ingenuity to respond to need effectively. There is much more that can be made of the CLC model and the skills and position of their staff members. Some larger centres have been fortunate to employ social and welfare workers, for example, to more fully engage with their communities and some are outreaching their services where they are needed, but this is still largely undeveloped.
- 1.111 The Salvos Legal model looks attractive but is unlikely to provide a suitable model given the inability of even large CLCs, without the resources of the Salvos behind them, to conduct enough legal work, in competition with the private profession, to fund free services.
- 1.112 People must be able to get the help they need when they need it. This help should be available at both an early stage to prevent problems from developing and worsening and at all later stages, particularly when there are no options but final determination in court. While early intervention is laudable, it is not always possible.
- 1.113 There needs to be a clear allocation of roles, promoting what each service does best, and then through appropriate research and coordination, working out how the respective roles can best collaborate and be supported.

Policy and research

- 1.114 Research and development is no less important in the legal sector than other areas of human activity. Unlike other jurisdictions which have law foundations or research bodies that undertake legal service and access to justice research, Queensland has no record of thinking about what legal problems people have, who is particularly vulnerable, how people resolve their legal problems, at what stage they resolve them, the reach of particular legal services, and how best to address the legal needs of people who cannot afford legal assistance in the most cost-effective ways.

- 1.115 Mary Anne Noone's research and the recent Law Survey highlight that many people who seek free legal services experience multiple legal and non-legal problems² and in the first instance, seek help with their problems from non-legal sources.³ This research also shows that legal problems impact on a person's physical and mental health, reinforcing the need for multiple legal and non-legal responses to their problems, particularly responses that are coordinated and integrated.⁴
- 1.116 CLCs can use this type of analysis to identify where and how to respond with services for their community's needs. There are many examples of this happening already, but it takes too long and is under-resourced.
- 1.117 Even though CLCs in particular operate on a shoestring, they are more locally connected, flexible and therefore better able to assess data and trends and develop appropriate responses than unwieldy bureaucracies. Specialist CLCs in particular are usually the first to identify the problems that befall a group or arise in an issue, as they are usually the first point of contact between the legal system and their community. They also develop community relationships that make multi-agency approaches more likely. They are well placed to conduct targeted smart research and could be coordinated with university researchers and research funding to maximise that role. CLCs are also experienced at preparing CLE materials in accessible formats.
- 1.118 These important features of CLCs however are rarely encouraged by government as a source of rich information for policy development and program implementation.
- 1.119 A CLC strength, as 'front line' service deliverers, is the ability to devise best practice programs to address particular needs. Busy service providers with basic funding need help to craft the best programs and to draw on wider resources, such as the skills of universities and the pro bono commitment of the profession. Targeted funding could advance this goal.
- 1.120 A possible low cost initiative, which would also be of great use to us all and would facilitate this aim, would be a partnership of LAQ, CLCs, and the DJAG policy division working together on a project to analyse local data once obtained from the national legal needs survey and producing for example a 'civil law statistical review'. This would benchmark known data and give us all a tool for future project and policy development.
- 1.121 The ability of CLCs to be involved in research and development can lead to savings to government in the following ways:
- Foster networks
 - Build partnerships
 - Identify problems and develop solutions
 - Help reduce costs, and
 - Ensure coordination.

Information and advice

² See numerous reports of the NSW Law and Justice Foundation.

³ Noone, MA, Towards an integrated service response to the link between legal and health issues, *Australian Journal of Primary Health* (2009), **15**, 203-211.

⁴ Noone, n 6.

- 1.122 Currently, for many citizens, the most that is available is a 20-minute to one hour advice session by a volunteer lawyer at a community legal centre, or phone/video or interview advice service from LAQ, with limited prospect of further assistance. But this limited assistance is invaluable if obtained at the right time. CLCs part in this is particularly cost effective because of their ability to draw on a large volunteer commitment.
- 1.123 CLCs and LAQ work best in this area, but need to be better coordinated. NSW has LawAccess which provides a central contact point.
- 1.124 LAQ operates a call centre and first advice contact point. The QLS is often a contact point and many other agencies receive direct calls. There is no central access referral point, unlike the NSW call centre. There are unfortunately, many cross and incorrect referrals creating referral fatigue for some clients.
- 1.125 LawAccess was established at considerable expense. Queensland could feasibly establish a cheaper but effective option with research and some funding to channel calls to the array of quality legal services available in Queensland.
- 1.126 QLAF, supported by LAQ's CLE staff, is well placed to reduce information duplication. It has already undertaken a CLE audit and much information has been placed on the QLAF website. All services could be required to 'register' their CLE.
- 1.127 The DJAG 'factsheet' budget could be allocated to the CLE funding pool to augment the Commonwealth's contribution and all CLCs, LAQ and DJAG could apply to prepare factsheets that fill a gap in CLE or CLE evaluation. It would be appropriate if this pool was managed independently, perhaps through LPITAF, so that it did not have to be expended in full each year.
- 1.128 52% of all hits on QPILCH's website are to its factsheets, showing that access to such information is important to the community.

Minor assistance

- 1.129 In QPILCH's view, CLCs provide great assistance here.
- 1.130 Also, the greatest opportunities for improvement lie in facilitating involvement of CLCs in delivering minor assistance services. This has the potential to forestall legal problems by assisting clients with correspondence and documentation at an early stage. Generalist CLCs are hampered by a lack of specialist knowledge in a broader range of crucial areas. If access to such knowledge and skills can be arranged with appropriate resources and support, CLC staff could play a much greater role in the delivery of such services. The appropriate use of new technology is likely to play a significant role here (see later).

Discrete task assistance

- 1.131 CLCs also have the best opportunity to increase their involvement in providing discrete task assistance through duty lawyer schemes and self representation services.
- 1.132 Self-representation services have great potential to provide high level assistance in complex matters at a modest cost.

1.133 While the Commonwealth's priority is early resolution of legal problems, the fact is that many people slip through the net before their problems escalate and end up in a court or tribunal.

1.134 In QPILCH's self representation service, client numbers have increased dramatically since the first clients were seen in December 2007. The service model is predicated on having a high quality paralegal who can prepare case summaries so that volunteer solicitors who give advice to self-represented litigants can make the most of their 60 minute appointments. Solicitors in CLCs could be easily training to provide this type of assistance. However, they have to have the time and resources to do this extra work, and if it is expanded, appropriate protections need to be put in place.

Casework

1.135 In providing representation services, the following are best placed:

- LAQ for crime, family law and some civil law;
- specialist CLCs in particular areas which affect particular issues or client groups; and
- pro bono in civil law.

1.136 In casework services, generalist CLCs work well in collaboration with others. Recent High Court litigation⁵ conducted by the Prisoners Legal Service with the assistance of Blake Dawson Waldron (now Ashurst) and the partnership of Caxton and Minter Ellison in the Gleneagles case demonstrate the value of partnerships that could be facilitated between CLCs and the private profession and which deliver benefits to the courts and justice system. These are examples of the partnerships that are occurring on the ground..

Collaboration and coordination

1.137 Without effective coordination, current service models are less effective in responding to legal need and collaborative efforts are less possible and directed, and both feed off each other.

1.138 All CLCs and LAQ need to be more creative in how we share information and skills and make the most of our resources and collaborate as a group and with government and other non-government organisations.

1.139 We must be better coordinated. There are several coordinating mechanisms already in place. QAILS for CLCs is one. QLAF for the legal assistance sector is another. The discussion and information considered by QAILS is passed on to all CLCs so that we can all be involved in the discussion and debate. QLAF could be more structured to be more outcome focused.

1.140 LAQ collects a lot of data as does the Commonwealth. Yet little of this is fed back to services. LAQ's annual report has been shrinking, rather than putting more information into the public domain. There is little available analysis that can assist in coordination. There is little reliance on the empirical knowledge of the people who are providing the services.

⁵ Fardon v Attorney-General (Queensland) [2004] HCA 46.

1.141 QPILCH recommends that LPITAF should place greater emphasis on funding coordination. We need to know who is doing what, how and what is happening, but not just sharing ideas, working together in implementing them. A new funding model could facilitate this.

1.142 Collaboration, not forced linkages or amalgamation, is the best tool to create appropriate referral pathways, share resources and avoid duplication.

The relative benefits of generalist and specialist services provided by LPITAF recipients and equitable access to these

1.143 As stated in the recent legal needs research report: “a ‘holistic’ approach to justice, comprising multiple, integrated strategies, to cater for different needs within the community, and suggests tailored, targeted intensive assistance for people with complex legal and non-legal needs.”

1.144 Both generalist and specialist services, accessible to their clients, provide the best mix of assistance available to the community. Both are needed for the same reason that there are specialists and generalists in the private profession. The law is complex and specialisation permits speedier responses and a greater knowledge of client needs. But because many clients have multiple problems, the conjunction of specialist and generalist services, if not in the same service, but easily referred, offer the best chance of a holistic response. Generalists are also important in the cross-fertilising of ideas.

1.145 Rather than seeking to know the relative benefits of each kind of service, a better question is “what are the types of legal services that people need?” and the applicability and utility of specialist and generalist will follow. The type and nature of the client and their legal needs will help determine what kind of service is needed, whether general or specialist advice or discrete task assistance or casework (representation) or issue or location focused. But these classifications too are insufficient because there is much room for innovation in service delivery that should inform consideration of the services we offer.

1.146 Prior to the establishment of the PLS, LAQ ran a small prisoners’ legal advice service. It was operated by LAQ solicitors who developed little expertise in prison law and it was ill-equipped to assist in complex disciplinary, parole and similar internal prison issues. It was not seen as the prisoners’ service, which could operate as a safety valve for prisoner concerns. A specialist PLS filled these needs, among others.

1.147 In regional towns, specialisation was necessary to avoid conflicts, such as child support. One centre in Cairns for example, could not assist in family conflicts. Both men and women needed a different place to access assistance.

The existence of current service gaps and/or duplication of legal services provided by LPITAF recipients

Areas of law covered

1.148 QPILCH is not aware of any duplication of services. However, there are some areas of legal need and legal issues in which Queenslanders are neglected.

Mental health law services

1.149 Many CLC workers know of the needs and challenges of clients with mental illness and know that many of the entrenched problems we see are related to mental illness. What is important and different now is that QAI and QPILCH have established direct

specialist services to assist people in this most difficult of situations. But this work addresses a very small percentage of the need. For example, a sizeable proportion of the prison population is made up of people with mental health issues.

- 1.150 Some other states have dedicated specialist mental health legal services that provide a range of services for people with mental illness and draw on the resources of the private profession to support services in this area of significant need.
- 1.151 As often repeated, legal service and welfare service partnerships and collaborations can help to address legal needs in cost-effective ways. For example, the strength of project funding is that for example, a mental health service could be extended to other parts of Queensland. A stand alone specialist mental health legal service that combines the services currently provided by QAI and QPILCH would be best placed to collaborate with mental health support organisations.
- 1.152 QAI's mental health law services, which are recurrently funded by LPITAF and QPILCH's mental health law services which are non-recurrently funded by a private philanthropist, should more appropriately be funded on a recurrent basis. The Attorney and DJAG could advocate with the health minister to transfer these services from LPITAF to more targeted funding.
- 1.153 It should be borne in mind that the resolution of legal problems benefits not just the justice system but most areas of state and local government. Investment in such services should therefore be a whole of government responsibility.

North Queensland pro bono office

- 1.154 QPILCH has received a non-recurrent grant from LPITAF to continue the RRR Project for a period of 6 months on a full time basis during 2012-13. This continues a similar half-year grant for the previous three years. Over this time, QPILCH has worked to increase the number of RRR firms and barristers involved in pro bono, make discrete referrals of RRR clients to both RRR and Brisbane firms and develop several partnerships between rural and national firms.
- 1.155 Of the 469 applications for assistance assessed under our referrals schemes 2011-12, 101 (23%) were from RRR areas. 40 of these matters were successfully referred.
- 1.156 Analysis of the 444 QPILCH Self Representation Service (**SRS**) (QCAT and State and Federal Courts) files that were opened in 2011-12 shows that 78 or 17.5% of these applications were received from remote areas. The matters are dealt with by email.
- 1.157 QPILCH provides a tailored service for disadvantaged people that are living in RRR locations in Queensland. The service is coordinated by a solicitor who:
- Assesses and refers applications for pro bono assistance that are received from RRR areas;
 - Manages and strengthens the relationships with RRR based member and participating law firms and barristers;
 - Engages additional RRR based barristers and law firms in QPILCH activities;
 - Develops better ways to engage with regional community legal centres;
 - Identifies non-case based legal work in regional Queensland;
 - Responds to the needs of RRR community legal centres and law firms when required by assisting them to access the resources and expertise of the private profession including through mentoring relationships and/or secondments;

- Investigates the possibility of opening up another QPILCH office in Townsville, including organising an initial meeting with key stakeholders in the area.

1.158 However, this service is carried out on a part-time or sporadic basis because of the nature of the funding.

1.159 QPILCH has been approached to establish a self representation service in the north and James Cook University has asked us to establish a student clinic to support it. QPILCH already operates a Homeless Persons' Legal Clinic (**HPLC**) in Townsville on a part-time basis, which is managed remotely from Brisbane. There is also a demand for mental health legal services.

1.160 Accordingly, QPILCH is investigating the possibility of establishing a QPILCH office in Townsville to service clients in North Queensland.

1.161 While QPILCH could seek to manage outreach services from Brisbane or encourage other local community legal centres to establish similar services, these options are not preferred at this stage. It would potentially be more efficient and productive to open a small office (covering northern and far northern regions). This office would be staffed by a solicitor and an administrative officer/paralegal to develop and conduct a range of services, including:

- managing the Townsville HPLC;
- starting and operating an SRS;
- assisting with mental health cases;
- assessing applications for referral;
- developing relations with the courts and other agencies; and
- increasing local membership.

1.162 QPILCH could establish this NQ office, or it could be put out for tender for other agencies to bid.

New technology

1.163 New technology should also be able to help us improve services.

1.164 UK research shows that technology can improve access to justice, but we must bear in mind that there are still many people without IT resources and who have difficulty using it.

1.165 US research on the use of technology to enhance free legal service provision clearly states that the views of clients and users must be considered in developing a technological approach. Technology alone is not enough.

1.166 One QPILCH HPLC is a telephone service provided to clients of a welfare agency in an outer Brisbane suburb by a QPILCH member firm. In theory, such a service could operate anywhere in the State. It improves access for people with distance and mobility problems. QPILCH SRS provides considerable assistance by email. However, such assistance, while important, is by its nature more difficult the more complex a problem becomes..

1.167 QPILCH is also considering a pilot project where we equip a community centre, medical centre or courthouse with an e-tablet, connected to a roster of lawyers anywhere, with access to a secure database and easy video/telephone conferencing.

Such ideas have been tried before, but the technology has now become much more usable.

- 1.168 Poorly funded CLCs cannot be expected to do this themselves. However, if government wants the best out of the use of CLCs and LAQ, it could facilitate and fund a technology development seminar that accesses experts in the field.

Conflicts

- 1.169 There are opportunities for CLCs to assist more clients if conflict policies and procedures can properly use information barriers.

Training

- 1.170 Training is not done as consistently as it could be, mostly due to the limited availability of funding. CLCs generally apply for scarce funds for services, rather than using them for training programs. Specialist CLCs along with LAQ, if funded and planned, could extend their services to other CLCs and private lawyers.

2. Recommendations for change to the funding system

Funding from consolidated revenue for CLCs in 2013-14

- 2.1 Queensland is growing, and therefore there are growing social, economic and environmental pressures. Efficiencies can be achieved, but not sufficiently to address the ever increasing growth in demand. Accordingly, new money for essential frontline services must be injected into a system that relies on a diminishing resource.
- 2.2 A one-off additional amount should be paid from consolidated revenue for CLCs in 2013-14. Each CLC should be consulted to ascertain the funding required to fund CLCs at the NACLIC recommended levels, feeding into the 2013-14 budget process.
- 2.3 If the following recommendations to change the LPITAF system are adopted, there should be no need to find additional funds from consolidated revenue after 2013-14 for the foreseeable future.
- 2.4 The first role of the new Legal Services Secretariat and Legal Services Board recommended later in this paper, should be to ascertain the funding required.

Overall use of LPITAF

What should LPITAF be used for?

- 2.5 How would recipients of LPITAF function and survive if LPITAF did not exist? We cannot answer this for other recipients. But for CLCs, it is absolutely clear. Half of all CLC services would end and there would be no coordinated pro bono contribution.
- 2.6 The current specified uses are:
- Legal Aid Queensland (used assumedly for state law services)
 - Legal library services (Supreme Court Library)
 - Professional regulation and discipline (LSC; BAQ; QLS; LPC)
 - Various other QLS uses.
- 2.7 Non-specified users include CLCs and some legal and non-legal support services.

Specified recipient - LAQ

- 2.8 LAQ receives the lion's share (54% in 2011-12, 51% in 2012-13). QPILCH does not suggest that the overall funding of LAQ should be reduced. On the contrary, it should be increased to make legal aid work more attractive to the private profession and to reach more people in need, particularly in civil law.
- 2.9 However, QPILCH's view is that while LPITAF should fund LAQ to some degree, its share of LPITAF should be reduced and it should obtain greater funding from consolidated revenue. Legal services should benefit from the bounty that Queensland has enjoyed from mining in the last few years.
- 2.10 Over the last 5 or 6 years, LAQ has ended several years with substantial surpluses, at a time when some CLCs did not know if they would be funded in the following year. Payment of LPITAF funds to one recipient reduces the availability of funds to another. It would therefore be more practical if surpluses from any recipient were made available to other recipients through an appropriate process. As LAQ receives the bulk of its funding from consolidated revenue, it is accountable for those funds through the budget process.

Specified recipients - legal information and resources

- 2.11 The Supreme Court Library is the only specialist public law library, so its funding from LPITAF is appropriate.

Specified recipients - LSC; BAQ; QLS; LPC

- 2.12 Well-funded professional regulation and discipline is essential for public confidence in the profession. Its funding from LPITAF is appropriate.
- 2.13 However, while the QLS should be funded for its role in professional regulation, its administration of the guarantee fund, 'free legal advice' service and LCA membership should not be funded from LPITAF.
- 2.14 Payment to the Fidelity Fund should only occur if there are insufficient funds to meet a claim, as under the LPA in Victoria.

Community legal services

- 2.15 CLCs currently funded from LPITAF Grants should be converted to LPITAF Recurrent.
- 2.16 CLCs should become specified users under the Act.
- 2.17 CLCs should get a greater share of LPITAF, this scarce public purpose resource, including for research and development, and recurrent and grants funding (see later).
- 2.18 CLCs should also have access to DJAG's budget process.
- 2.19 LPITAF grants for legal projects should be available for up to three years funding (rather than the current 2 years).
- 2.20 Some specialist services could be funded from other sources. For example, QPILCH's Self Representation Service could be funded from the interest on the Appeal Costs Fund. This interest is currently returned to consolidated revenue. As stated previously, Queensland Health might be encouraged to fund mental health legal services.

- 2.21 Where a CLC is to be adversely affected by a service or funding decision, it should be given an opportunity to make a submission.

Other recipients

- 2.22 Non-community legal services (excluding the specified recipients) currently funded by LPITAF should be directly assisted by DJAG to obtain funding from more appropriate non-legal service sources such as the Department of Communities.

General funding and distribution

- 2.23 We propose that where possible, the funds available for distribution be augmented from time to time from consolidated revenue to maintain reasonable funding levels to fire-proof against a possible downturn in the economy.
- 2.24 From 2014-15, LPITAF funding should be allocated in the following ratio: 70% for all the currently specified members and 30% for CLCs (recurrent and grants). This would be an 8-9% increase for CLCs, as an acknowledgement of the long-term chronic underfunding of these essential community services and to increase their capacity to respond to service demands and to the expectations that arise from this review. This should not occur until 2014-15 in order to assess the impact on other recipients.
- 2.25 All recipients that can justify the need for more funding should apply through the budget process for additional funds if their allocation is likely to be insufficient.
- 2.26 If there are insufficient worthy projects under the LPITAF Grants Fund for CLCs, any residual funding could return to boost the reserve.

LPITAF distribution from 2013-14

- 2.27 The distribution in 2013-14 should be as predicted in Attachment 1 of the discussion paper, that is, payments at 2012-13 levels with indexation, with the savings as suggested above.
- 2.28 Removal of some projects from LPITAF Grants to LPITAF Recurrent in 2013-14 will free up LPITAF grants for (i) new projects (developed in accordance with new evidence-based guidelines and in keeping with a greater understanding of the legal need landscape; (ii) make more money available for special circumstance and emergency needs; (iii) allocate money for research of more efficient service delivery models (i.e. research best use of technology); and (iv) potentially generate savings for later year funding if the increased grant pool is not allocated and potentially contribute to the one-off CLC funding increase recommended earlier..
- 2.29 Initial research to underpin new service and funding approach should commence as soon as possible in 2013.
- 2.30 Administration of the fund should be met from consolidated revenue.
- 2.31 The Legal Services Secretariat recommended below is best placed to conduct an audit of services (commenced by this review) from 2014-15.
- 2.32 DJAG should compile an annual report of all payments from LPITAF (including to DJAG) alongside payments from CLSP, which shows in standard brief form what

each recipient has received and for what purpose it has been expended. Each recipient should also provide detailed public expenditure reports in their annual report as usual.

Distribution from 2014-15

- 2.33 From 2014-15, the amount received by all recipients should be justified according to the funding principles determined by the Legal Services Board as recommended later: up to 70% for the currently specified members and up to 30% for CLCs.
- 2.34 On the current forecast, the 30% CLC allocation in 2014-15 would amount to \$11.8m, a 60% increase on 2012-13 LPITAF funding. This is needed to address chronic under-funding.

LPITAF funding principles

- 2.35 While for the purposes of the FAAA the interest on solicitors' trust funds is not public monies, its use must be for public purposes.
- 2.36 Public purposes means for the benefit of the public, not the benefit of a recipient.
- 2.37 The range of issues that come within the definition of a public purpose includes:
- The provision of actual legal services to the public
 - Information services for the public and profession
 - Professional regulation
 - Research and development associated with these purposes.
- 2.38 'Public purpose' should not include the administrative costs associated with management of these purposes, except where no other source of funding is available.
- 2.39 Except for the specified users, LPITAF should be reserved for direct legal services provided by CLCs and for the research and development that underpins direct service delivery.
- 2.40 All funding should be indexed, not just the recurrent funds.
- 2.41 All recipients should be subject to the same service/funding agreement and reporting requirements.
- 2.42 Best practice in service delivery should be rewarded with appropriate funding. Best practice would involve partnerships which are knowledge based to target funds where they are most needed, draw on the skills of university/professional researchers where appropriate, draw on the pro bono commitment of the profession where appropriate, draw on corporate sponsorships.
- 2.43 Applications for research projects should only be approved where they are likely to have practical legal outcomes as a result of the research and preferably be made in partnership with a CLC at the application stage.

Other funding ideas

- 2.44 Justice services also benefit the private sector. Early and aided resolution of commercial disputes advantages the private sector, which however rarely contributes to the cost of the assistance provided to them. For example, a smooth running court system provides enormous benefit to corporations and QPILCH's self representation service contributes to the early resolution of unmeritorious disputes.

- 2.45 For that reason, we propose that the government encourage the private sector to contribute to the work of community legal services. QPILCH has two suggestions for obtaining this contribution:
- (a) *Civil Justice Fund* – QPILCH has established a civil justice fund for the benefit of all CLCs. It will not be viable for at least five years. Government could match private sector contributions dollar for dollar as a way of encouraging contributions, promoting an additional source of funds for CLC’s civil law work.
 - (b) *Increase in court fees* - In May 2012, the US state of Connecticut increased court filing fees by \$50 to raise \$4.8m for legal aid. That amount is transferred to a fund similar to LPITAF for wide distribution. In September 2012, the Federal Government increased Federal Court fees. A State increase could be confined to corporations over a certain size. A small fee increase could pay for QPILCH’s Self Representation Service and the Court Network. Corporate litigants would therefore be funding services for all court users who need support and who cannot afford a lawyer.

Amendment of the Act

2.46 The Act should be amended to recognise CLCs as a specified recipient and inserting clearer ‘public purposes’ for distribution of funds based on the funding principles developed by the LSS and LSB and approved by the Attorney, principles that should apply to all recipients.

2.47 QPILCH recommends that s289 should be redrafted as follows:

289 Payments from fund

- (4) The chief executive may make payments from the fund to any of the following for any *public purpose*—
 - (i) Legal Aid Queensland;
 - (j) the fidelity fund;
 - (k) the Supreme Court Library;
 - (l) the commissioner;
 - (m) a disciplinary body;
 - (n) the board;
 - (o) community legal centres and the Queensland Association of Independent Legal Services;
 - (p) the law society and bar association.
- (5) A *public purpose* includes—
 - (g) professional regulation;
 - (h) information services;
 - (i) maintaining the fidelity fund;
 - (j) the collection, assessment and dissemination of, and facilitation of access to, information concerning legal education, the law, the legal system, law reform, the legal profession and legal services, particularly for the benefit of economically or socially disadvantaged people;
 - (k) administration of the use for which a grant is made, where approved;
 - (l) for community legal centres—
 - (v) legal services;
 - (vi) research and coordination to improve or develop legal services;
 - (vii) administration of the community legal centre and administration of QAILS;
 - (viii) law reform;

- (6) The chief executive must not make a payment under subsection (1) unless the Minister has decided the amount may be paid and has given written authority to the chief executive to pay the amount.

290 Minister to decide distribution

- (4) The Minister must decide—
- (c) whether a payment is to be made under section 289; and
 - (d) if the Minister decides a payment is to be made, the amount of the payment and any conditions applicable to the payment.
- (5) For subsection (1), the chief executive must make recommendations to the Minister on the basis of service priorities and funding guidelines approved by the Minister and published from time to time.
- (6) The amount used for each of the following must not be more than the amount prescribed for it under a regulation for this subsection—
- (c) the fidelity fund as mentioned in section 289(1)(b);
 - (d) grants approved by the Minister as mentioned in section 289(1).

Responsibility and coordination

- 2.48 Structural changes are needed:
- A combination of broader representation on decision-making/recommendatory bodies and consultation by dedicated and experienced staff to ensure that duplication is avoided, coordination promoted and sufficient information obtained for informed decision-making.
 - State and Federal CLSP funding should be coordinated with LPITAF funding.
- 2.49 QPILCH and the National Pro Bono Resource Centre have previously submitted that LAQ's role in managing CLSP funding potentially gives the perception that LAQ has a veto over where money is directed, representing a barrier to full cooperation between CLCs and LAQ, particularly where there is no transparency.
- 2.50 In the past, LAQ has competed for funds with CLCs, undermining the cooperative spirit that is so necessary for coordination and targeted servicing.
- 2.51 As manager of funding rather than funder, LAQ is once removed from decision making that could more easily rectify these problems.
- 2.52 Administration of CLSP funding by a body other than LAQ would encourage true cooperation between LAQ and community legal centres in our respective.
- 2.53 For these reasons, QPILCH proposes a new structure (see **attachment 3**) for responsibility and coordination for all relevant funding. This new model of transparent decision-making should comprise:
- A new unit called "Legal Services Secretariat" (LSS)
 - A new advisory committee called the "Legal Services Board" (LSB).
- 2.54 To enhance transparency and independence, these new entities could be created as a statutory board with secretariat support, or the LSS could remain a part of DJAG with input from the less formal board. Either way, it would be responsible to the Attorney and DJAG would be represented on the LSB.

Legal Services Secretariat

- 2.55 The Legal Services Secretariat (LSS) would comprise several staff members, whose role would be to:

- coordinate, supervise and manage LAQ and CLSP funding and liaise with the federal government
- monitor and manage LPITAF and assess LPITAF grant application process and coordinate it with CLSP funding
- act as the secretariat for the Legal Services Board
- develop budget bids for LAQ and CLCs where appropriate
- support CLCs and facilitate communication with the department
- support the work of QLAF
- work closely with the funding schemes of other relevant departments to ensure consistency of reporting and reduce 'red tape'
- coordinate legal needs and service research
- monitor and streamline accountability processes.

Legal Services Board

2.56 The Legal Services Board (LSB) should comprise:

- a Supreme Court Judge (chair)
- CEO of LAQ or delegate
- Director, QAILS or delegate
- Executive Director, Community Justice Services, DJAG
- CEO of QLS or delegate
- CEO of the BAQ or delegate
- Director, QPILCH or delegate (representing the pro bono sector).

Role of LSB

2.57 The Legal Service Board's role should include:

- Review and recommend to the Attorney funding principles and policies and service priorities in consultation with QLAF and CLCs.
- Ensure proportionality, accountability, consistency, transparency, and targeting. This body would oversee coordination of the funding of community legal initiatives to enhance social inclusion.
- Simplify guidelines to:
 - prioritise funding for the provision of direct legal services.
 - use funding to encourage partnerships and collaboration in developing and delivering services.
- Give advice on and propose other funding initiatives.
- Oversee coordination of CLC funding.
- Assess expressions of interest and applications for project funding as recommended by the Legal Services Secretariat..
- Recommend grants to the Attorney-General.
- Make recommendations to DJAG for recurrent funding of evaluated services through the DJAG budget processes.
- Ensure greater consistency in funding while recognising regional variations.
- Be able to make recommendations to respond to emergencies and special needs to ensure service stability and continuity.

2.58 The QAILS and QPILCH representatives would absent themselves from any decision that could give rise to a conflict of interest.

2.59 To enhance transparency, the LSB, supported by the LSS, could become an independent statutory body, funded by DJAG because of its broad role in reviewing, assessing, coordinating and recommending to the Attorney-General legal aid and legal service funding.

Grants process

- 2.60 A new grants process, administered by the Legal Services Secretariat, should include:
- Develop a two-stage process by inviting expressions of interest for funding rather than a full application, so that legal need, other similar services and local circumstances can be assessed.
 - The two-stage process could be a platform for identifying those likely ongoing projects which could potentially receive the maximum LPITAF funding and benchmarking at that stage, with extended but definite timelines for supplying statistical information to establish efficiencies and effectiveness.
 - Prioritise expressions of interest and invite full applications.
 - Consult with applicants and other stakeholders to obtain information about proposals and similar services to ensure that they are not duplicative and are supported by stakeholders.
 - A more rigorous application process would lead to a simpler reporting process.
 - Provide funding for evaluation in appropriate cases.
 - Announce grants by 31 March each year so that services can effectively plan and manage staffing arrangements.
 - Bring CLCs into the DJAG budget bid and budget review processes.
- 2.61 QLAF should be revamped to give it clearer responsibility for the coordination and delivery of free legal services in Queensland as distinct from the LSB's responsibility for the coordination of legal aid, CLSP and LPITAF funding. The QLS and BAQ representation on QLAF may not be necessary in this scenario, because strong communication will be encouraged between the LSB and QLAF.

Accountability (including funding agreements and reporting requirements)

What is accountability trying to achieve?

- 2.62 Has the centre, reasonably funded, met the client's need for assistance in the best way possible?
- 2.63 A member of the public is entitled to receive from a legal service (whether publicly funded or not), the right advice when they need it (even if that advice is not what they want to hear). If a publicly funded service, then the entitlement is subject to the availability of a fair and reasonable distribution of public resources.
- 2.64 A person has a legal problem and they need legal assistance:
- a) has the centre been accessible to the client? - for example, if the homeless do not visit a established service, has the service gone to them by partnering with a homeless agency which supports the homeless;
 - b) has the centre given the right level of advice? - does the assistance fit the purpose for which it is created. For example, everyone may benefit from full representation, but that is something no society can afford. Does a 20 minute interview for a complex litigation question fit the purpose for which it is funded and if not, how can that need be economically serviced? This is the best practice question; and
 - c) does the centre provide the right advice in the circumstances? - so if the homeless person's debt can be waived, it will be. This is the practice standards question.
- 2.65 It is difficult to calculate the amount of actual time spent by CLCs on the current accountability process, which in any event varies depending on the size of the CLC. However, it would be fair to say that many hundreds of hours each year are spent by

a number of staff members involved in considering, developing, drafting and checking of the assorted reporting arrangements at a cost that could be far better spent in service delivery and potentially without any reduction in accountability. And is far from certain that it addresses the three questions above.

- 2.66 In addition to the CLSP (including LPITAF Recurrent), many CLCs have accountability requirements to other funders such as to DJAG for LPITAF Grants, other government departments (federal and state), charitable funders, and government funding schemes such as the Gambling Community Benefit Fund, all of which have different requirements, making accountability a burden rather than an essential component of everyday practice.
- 2.67 QPILCH takes its accountability responsibilities seriously. However, when QPILCH obtained CLSP funding (LPITAF recurrent) in 2007-08, our reporting obligations increased from three to 11 reports and extra sub-reports annually. This is an additional resource demand on an organisation that receives no government funding for administrative support. Our reporting requirements for Department of Communities funding for the HPLC is not so onerous.
- 2.68 Community legal centres are under constant pressure to service greater demand. At the same time, they are burdened by the uncertainty of funding and the amount of time and resources invested in sourcing funding through government and philanthropic bodies. Excessive accountability and reporting requirements just increase the administrative burden.
- 2.69 Alan Milburn, the former UK Cabinet Office Minister, has identified the key problem for funding of community services as a:
- “vicious cycle that limits the voluntary sector’s ability to deliver as the sector ends up chasing dozens of short-term funding streams, rather than investing in staff development and service improvement”, thus in turn government agencies become “nervous about contracts with organisations that lack capacity. They then want voluntary organisations and charities to account for every penny, micro-managing the relationship and clawing back resources whenever they can. In turn, this keeps capacity in the sector down, preventing it from moving up.”⁶
- 2.70 The regulatory burden is disproportionate to the capacity of CLCs to comply and of regulators to effectively scrutinise the mass of information and statistics supplied.
- 2.71 While the importance of accountability measures is recognised and fully supported, aspects of the reporting obligations are unnecessarily duplicative, complex and do not promote greater accountability. With a streamlining of the system, CLCs would have more space to innovate and deliver services. At the present time, the accountability requirements are ‘one size fits all’, irrespective of the size of resources of the CLC.
- 2.72 We propose some tentative changes to improve accountability while saving much needed time. Outlined below are a number of current requirements with suggested improvements. QPILCH recommends that an early research task of the LSS, if created, would be to work with DOC and CLCs to establish a similar reporting regime to the DOC model.

⁶ Citizens Advice Bureau, *Lord Carter of Cole's review of legal aid procurement*, www.citizensadvice.org.uk.

- 2.73 By implementing more efficient reporting requirements, CLC staff will have more time to focus on delivering the legal services to disadvantaged clients they were established to perform.
- 2.74 A CLC is a responsible organisation with a management committee generally dominated by lawyers. Such members are very mindful of their responsibilities and want to make the most of their resources, financial and human.
- 2.75 There are numerous reports that CLCs are required to prepare on a regular basis. The following are required by Legal Aid Queensland for centres funded under Commonwealth and State (CLSP) and recurrent LPITAF funding:
- CLSP Plan (annual – by end May)
 - Annual Accrual Budget (by end July)
 - Annual Targets (by 1 May)
 - Excess Surplus Spending Proposal (annual – by end October)
 - Income and Expenditure Reports (half-yearly)
 - Progress Reports (half yearly – by end January and end July)
 - CLSIS statistical reports (monthly – by 21st of each month)
 - Annual Report (by end October)
 - Audited Financial Statement (by end October)
 - Certificate of Compliance (by end October)
 - Certified last quarter Income and Expenditure Report (by end October).

Goals and objectives

- 2.76 The CLSP Plan is the organisation's required strategic plan, setting out its objectives, strategies and actions for a three year period. It is updated annually. LAQ provides centres with a template for the plan.
- 2.77 Like most strategic plans in organisations without inadequate staffing, they are useful in helping an organisation formulate and clarify its plans and activities but difficult to monitor and implement in any systematic way. While some CLCs may use it as a regular guide, others prepare it because they must and then do not look at it until it must be updated. These CLCs would have other effective internal processes for determining how they are progressing though the year.
- 2.78 While LAQ checks that submitted plans comply with the requirements of the planning process and monitors the plan through half-yearly progress reports (see below), the organisation itself sets its agenda and can plan for as little or as much as it wants to a reasonable level. Many CLCs would rarely meet all its objectives in a year, yet there is rarely feedback on either the plan or progress.
- 2.79 The purpose of the plan should be to encourage the organisation to have a broader perspective of its operations and give direction to its activities rather than operate as an accountability mechanism. However, to regularly monitor a plan needs staffing resources. It is unlikely that any funding body has the ability to know in detail how a centre works. However, funding bodies must be able to see if has been executed effectively. That is the difference between reporting in advance and being accountable for the process followed and the goals achieved.

- 2.80 The annual report is first and foremost an organisation's account of the year's activities to its members. To be accountable to its members, the annual report must provide a full record of its financial position and activities.
- 2.81 The annual report is after all the primary accountability tool for members of an organisation, funders and the public. They are extremely variable in quality.
- 2.82 The annual report is an important statement to an organisation's members and funders. QPILCH recommends that it should be the principal document relied upon for accountability and planning purposes. In the case of CLCs, this should be the only annual document required to be lodged with the fund manager (and other government agencies) to account for their activities.
- 2.83 An annual report is not solely an opportunity to look back. The annual report should include:
- a section for the next year's plans (to replace the annual CLSP plan);
 - other requirements as determined in a template supplied to all CLCs.
- 2.84 This makes sense because reviewing a year past is probably the best time to consider the organisation's future.
- 2.85 As the annual report is not required until the end of October under CLSP or 31 December under the *Associations Incorporations Act 1982*, the future plans included in the annual report could operate for the next calendar year.
- 2.86 CLCs provide a six monthly progress report against the CLSP Plan in January and July. We suggest that the first report in January is unnecessary. As mentioned above, the progress report has no other purpose than to measure activity against the CLSP plan, yet if progress is wildly different from the plan in relation to casework, then that would already have been picked up through the monthly statistical reports (see below) and casework is the most pressing measure for 'front-line services'.

Annual budget and casework targets

- 2.87 The CLSIS format is not in accord with the Chart of Accounts and is therefore not synchronised with the internal budget formats used by some centres. Such centres in effect have two budget layouts to prepare. If it is necessary to retain this requirement, then the budget format should be in accord with the Chart of Accounts and should be able to match the accounts in MYOB or other accounting software.
- 2.88 DOCs reporting for example now requires submission of the organisation's quarterly report by lodging the accounting software report in accordance with the Chart of Accounts. This is far simpler, yet just as efficient as it uses the centre's own reports rather than a re-calculated one.
- 2.89 It is also more costly for the centre, as the auditor has to ensure that the two sets of accounting reports tally.
- 2.90 Annual activity targets should be submitted along with the annual budget.

Financial statements

- 2.91 In addition to the signed audited financial statements for the financial year, CLCs are required to provide:
- a signed certificate of compliance from the organisation stating that funds have been expended appropriately and that a qualified auditor has certified the financial statements
 - a copy of the final income and expenditure report signed by the auditor certifying that is correct.
- 2.92 CLCs should provide one document - the audited financial statements as part of their annual report with relevant certifications from the auditor and the organisation's representatives.

Casework accountability

- 2.93 The current funding model is based on outputs, that is, the number of services provided to the number of clients each year, and to some extent outcomes (which is difficult to measure in legal service delivery as the best assistance cannot guarantee a successful outcome).
- 2.94 Quantitative measuring is important, but so is qualitative measurement - the assessment of throughputs: are people getting the right service and being referred appropriately if we cannot help; do they get the best outcome that is possible, even if that outcome is an appropriate referral or clear advice that their matter has no prospects - is equally important.
- 2.95 For example, the referral service lawyers at QPILCH gather information and assess applications for legal merit before either seeking to refer the cases to members for representation or succinctly and plainly informing the applicant they cannot be assisted pro bono.
- 2.96 With every applicant who applies, if we cannot refer it, we write to them to give them some advice on how they could pursue their matter themselves, or help them to understand why their matter may not be worth pursuing through a court or tribunal, either due to lack of merit or for practical reasons, or refer them to a service which can provide more appropriate assistance. We see this as a vital part of ensuring the smooth running and efficient use of community legal services.
- 2.97 Throughputs are a better measure in areas such as homelessness. QPILCH's HPLC cannot assure clients of housing, but can do what is necessary to ensure that there no legal or financial impediments to it. Similarly, for people at risk of homelessness, QPILCH cannot necessarily prevent their home from being sold by a mortgagee, but can ensure that they have a pathway for dealing with their legal problem that reduces its impact and help them towards a more secure future.
- 2.98 How can the quality of the services, designed and funded to address agreed goals and objectives, be better measured and reported on? The NPA Review will hopefully answer this question.

Evaluation

- 2.99 "Evaluation is a valuable tool for guiding the efficient targeting of finite resources to facilitate access to justice". The Law Survey adds, "... investment in rigorous

evaluation of new access to justice initiatives is essential to ensure that limited resources are optimally allocated to meet the legal needs of the community on an ongoing basis.” (The Law Survey, 2012, p 242)

2.100 The Law Survey: “Sackville (2011, p 235) argued ... for a more systematic approach to research and evaluation in order to ‘fit the various parts of the access to justice jigsaw together’.”

2.101 For these reasons, QPILCH has completed two comprehensive external evaluations – of our HPLC and SRS (Federal Courts) funded by DOC and AGD respectively. We are also conducting a major evaluation of our State Courts SRS, the first stage of which is funded by the Australian Institute of Judicial Administration.

2.102 At the same time, QPILCH is developing an ongoing internal evaluation tool that can collect data on a monthly basis at every stage of the management/service cycle. This process is based on the successful adaptive management system employed in environmental decision-making as shown in the chart below used by the Great Barrier Reef Marine Park Authority in its 2009 Outlook Report.

2.103 The methodological framework is based on a cycle “in which management is continuously evaluated and refined (figure 6.4). The most effective management [of the reef] is achieved when all steps in the cycle are functioning well” (p 128).

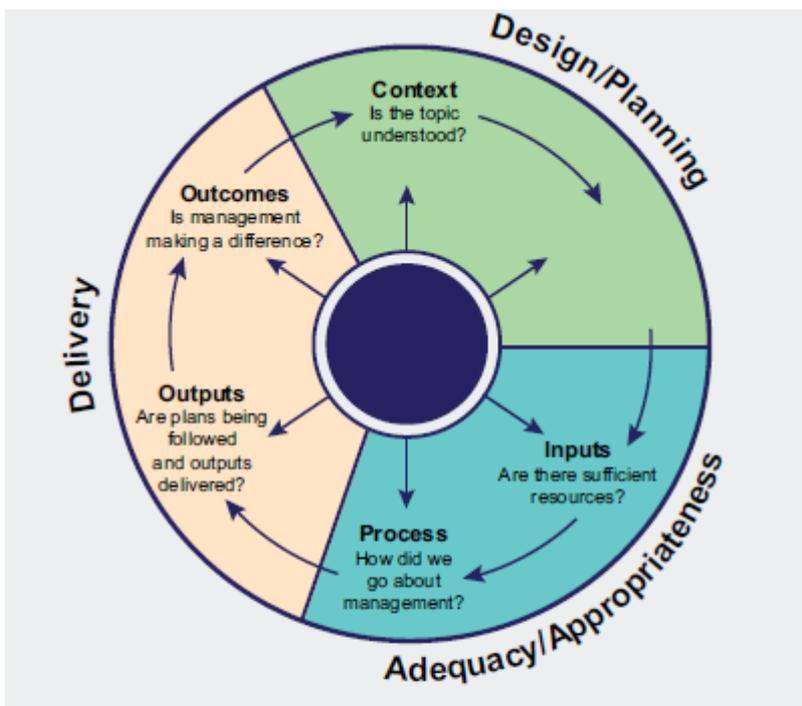


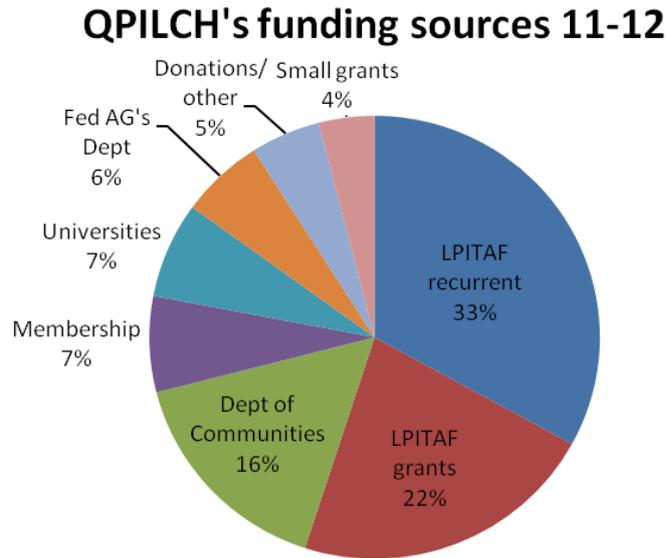
Figure 6.4 | The management cycle

Effective management is a closed loop where issues are considered, plans are made, resources are expended, proper processes are followed and products and services are delivered, all leading to outcomes that address the issues. (Adapted from Hockings et al. 2006³)

2.104 QPILCH proposes to use this model to assess its effectiveness by an ongoing internal review of its goals and targets (informed by external goals and priorities), the resources available to do this work, management of the resources and services in accordance with the goals, the effectiveness of services determined by our targets and goals, and the assessment of our impact on clients and the legal system.

Attachment 1

QPILCH'S FUNDING POSITION



QPILCH's funding sources in 2011-12 are represented in the above chart:

- The total income was \$1.205m and expenditure \$1.3m.
- 55% is LPITAF funding.
- While 33% of our funding from LPITAF recurrent is relatively secure, 38% (or 22% from LPITAF Grants and 16% from the Department of Communities) is non-recurrent.
- Only 6% or \$73,000 is Commonwealth CLSP.
- Total DOC/CLSP/LPITAF funding was 75.7%.
- Members' contribution is 14.8%; philanthropic is 3.5%, and other is 6%.
- Except for CLSP/LPITAF Recurrent, all other funding is insecure.

QPILCH's annual expenditure exceeds its annual income and has relied on an accumulated reserve to provide its services. This reserve is dwindling to the extent that it will have been largely exhausted by the end of 2013-14.

The shortfall in funding is due to:

- Grants funding does not match recurrent funding, yet staff doing similar work need to be paid at the same, irrespective of the funding source.
- Grants funding is not indexed.
- For historical reasons, QPILCH is not funded to the same level as other CLCs of a similar size and performing similar work.

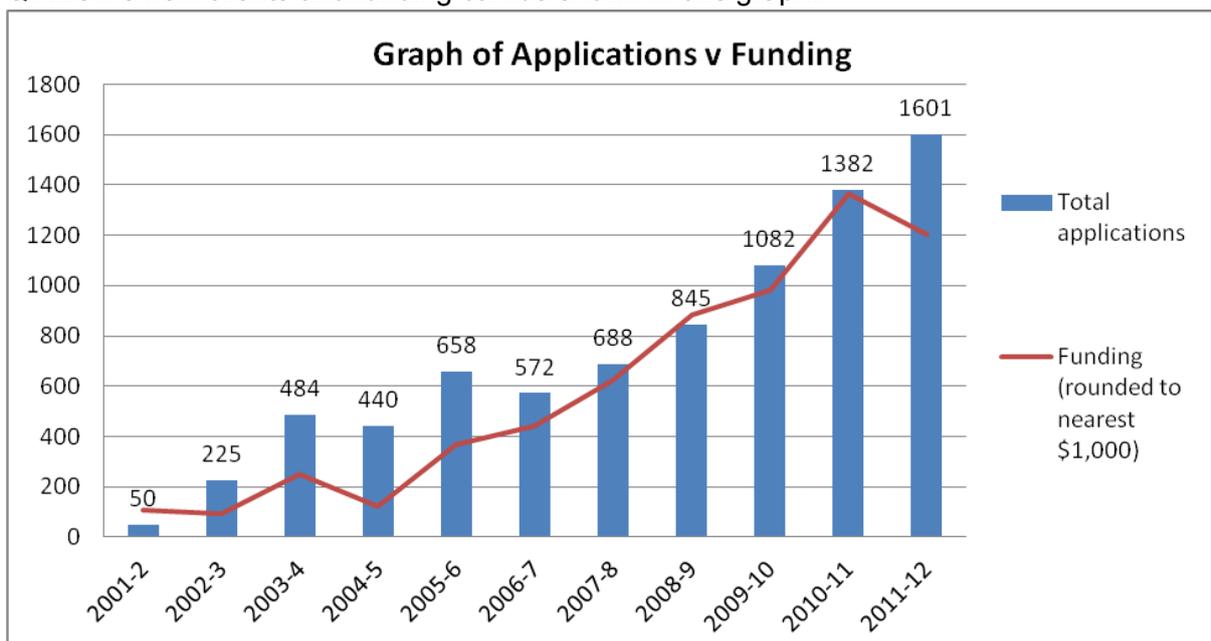
QPILCH has established a Disbursement Fund from its annual fundraiser, The Walk for Justice, to pay for disbursements that arise in pro bono referrals that cannot be met by either the client or the firm. QPILCH has established the Civil Justice Fund to create another source

of potential funds for civil law projects. This fund will be not available for at least five years, possibly longer.

The staff complement at QPILCH as at 30 October 2012 is as follows:

Program	Position	FTE	Funding source
Management/principal solicitor	Director	1	LPITAF Recurrent
Administration	Administrator	1	Self Funded
	Bookkeeper	.4	Self Funded
	Admin support	.5	Self Funded
Referrals	Coordinator	1	LPITAF Recurrent
	QLS/Bar	1	LPITAF Grants
	Secondee	.8	Corrs Chambers Westgarth
RRR	Coordinator	.5	LPITAF Grants
Self Representation Service	Coordinator QCAT	1	LPITAF Grants
	Paralegal QCAT	.5	LPITAF Grants
	Coordinator State Cts	1	LPITAF Recurrent
	Paralegal State Cts	.6	.5 LPITAF Recurrent
Mental Health Law Practice	Coordinator	.8	English Family Foundation and UQ
Homeless Persons' Legal Clinic	Coordinator	1	DOC (to June 2013)
	Research coordinator	.6	DOC "
	Solicitor	.6	DOC "
	Paralegal	.6	DOC "
	Paralegal (Toowoomba)	.2	Perpetual (to June 2013)
Student programs	Coordinator	.4	UQ and GU
	Supervisor	.2	Bond
TOTAL		13.7	

QPILCH's new clients and funding can be shown in this graph:



Attachment 2

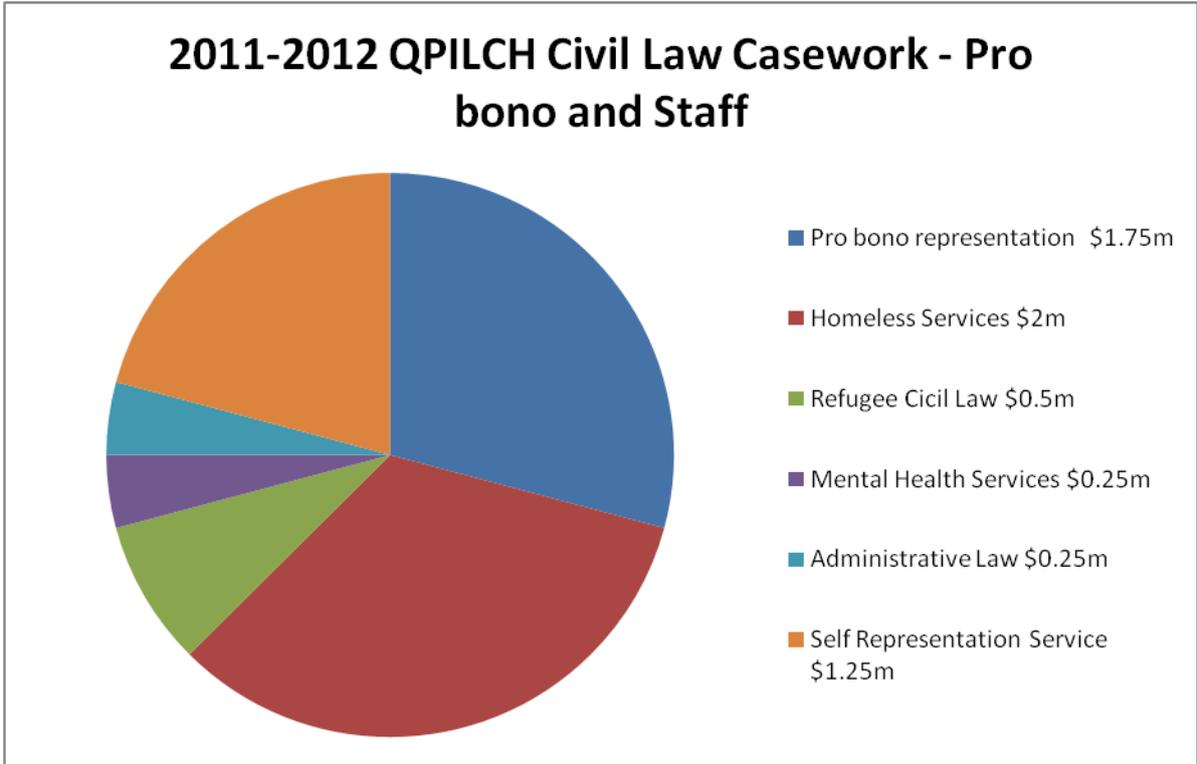
QPILCH'S CIVIL CASEWORK SNAPSHOT

The majority of QPILCH clients are experiencing complex and/or multiple legal problems. QPILCH was established to help disadvantaged people with these problems, where legal aid was unavailable:

- Referral for pro bono representation.
- To provide holistic services, in conjunction with welfare agency partners, to help the homeless transition to housing and those at risk of homelessness to stay in housing.
- To assist self represented litigants who could not afford a lawyer to progress their litigation as plaintiff, defendant, appellant or respondent.
- To provide holistic services, in partnership with welfare agencies, to assist people with mental illness to deal with the civil law consequences of their illness and to navigate the mental health system.

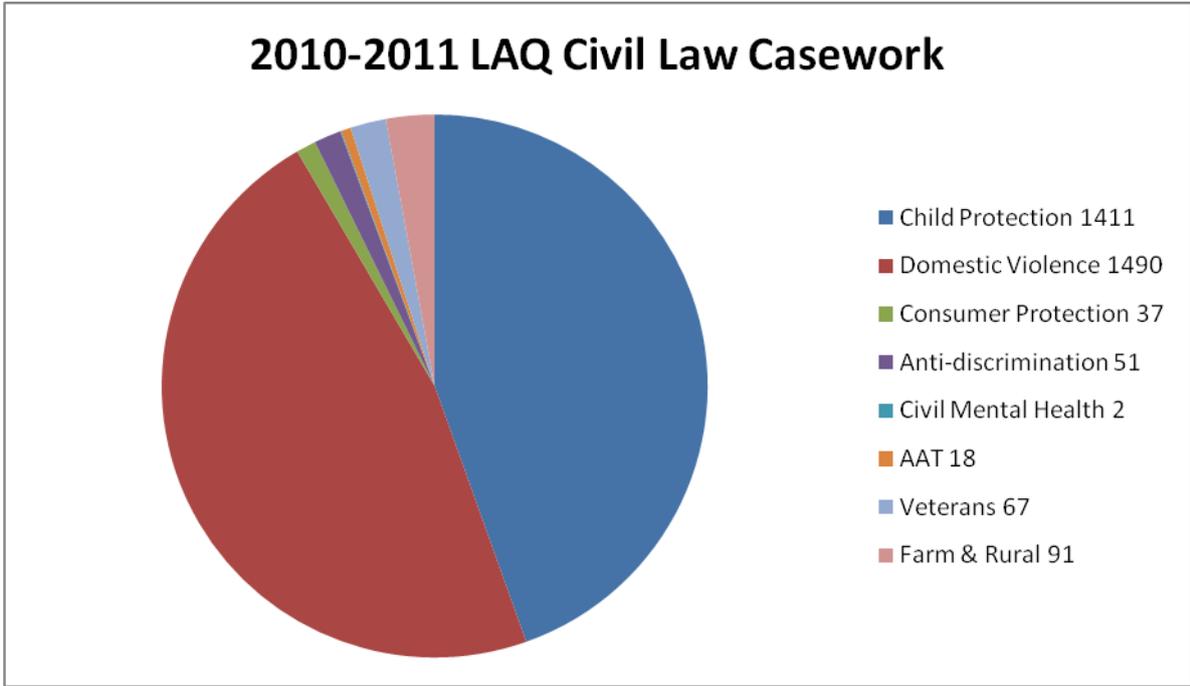
It is not primarily an advice service, although it gives information and advice to people it cannot assist more comprehensively.

In 2011-12, QPILCH estimates the civil law pro bono contribution coordinated and facilitated by QPILCH amounts to approximately \$6m as estimated in the chart below.



LAQ'S CIVIL CASEWORK SNAPSHOT

As this chart shows, there is little overlap between the civil law services provided by QPILCH, and those provided by LAQ. LAQ's work focuses on a number of discrete areas that have been identified by government as warranting priority assistance. Overall, our combined services only touch the surface of civil legal need in Queensland.



Estimated Value of civil law casework undertaken by LAQ is \$3.9m

Only a small percentage of civil law work is conducted in house, primarily consumer protection, anti-discrimination and farm and rural. The above figures are casework statistics and thus exclude advices provided by LAQ.

Attachment 3

Proposed Responsibility and Coordination Structure

