

NLAP: Revised Official Draft submission

We acknowledge the work done since the last draft to address a number of matters, including the reporting burden on the legal assistance sector.

We submit however that there are some issues in the NLAP Revised Official Draft which would benefit from further consideration with respect to practical consequences and to improve clarity. We also note issues where we can provide further advice at the appropriate time.

The comments below are limited to our expertise in access to justice and legal need data. They are set out below in NLAP revised official text numerical order.

Clause 26(k) – Commonwealth funded CLCs to report via CLASS

Clause 26(k) requires NLAP funded CLCs to collect and report data using the Community Legal Assistance Services System (CLASS) or 'a system that interacts with and migrates data to' CLASS.

We understand that there is a view that issues with CLASS functionality and roll out have been resolved. While CLASS functionality has improved, our recent research to map the Victorian civil justice data landscape (Data Mapping Project) indicates that Victorian CLCs experience ongoing issues with the system. These issues negatively affect efficiency of data collection and reporting as well as wider data capability.

CLASS was built for 2015 requirements, not 2020 circumstances. Our research also indicates that CLASS capacity building is ongoing and that due to CLASS limitations, many CLCs use additional data management systems (such as Excel spreadsheets). Some Victorian CLCs are at the vanguard of client and service outcome and evaluation and generating strong results in the interests of clients. The data that informs such work, however, tends to be recorded in non-CLASS data systems.

Several CLCs reported concern with the lack of an Application Programming Interface (API) in CLASS. We understand this means that CLASS interoperability is not yet functional (i.e. CLASS does not 'speak' with other systems). For example, several Victorian CLCs have wanted to implement more streamlined and efficient data collection by deploying tablets in legal assistance service settings. This, however, has not been possible because CLASS cannot interface with other systems. We further understand this is something Community Legal Centres Australia has considered but has not yet been able to implement.

Approximately one-quarter of the CLCs that participated in our Data Mapping Project had already moved or are planning to move to other data management systems that offer improved data and case/client management functions. These systems include Actionstep and Microsoft Dynamics. We understand both these systems have an API and could interact with CLASS, if CLASS had an API.

Requiring NLAP reporting through CLASS is therefore likely to have significant impacts on those Victorian CLCs who have invested in more sophisticated data systems. We submit that if the requirements specified in clause 26(k) remain, then further investment to improve CLASS interoperability must be made a priority. Clause 26(k) appears to lock Commonwealth funded CLCs into using CLASS for the duration of the Agreement. As such it is essential that CLASS is appropriately maintained and that its functionality is improved to meet evolving data collection and reporting needs. Several Victorian CLCs have also moved well beyond compliance with funding reporting requirements and acquittal. They are employing, or want to employ more sophisticated and meaningful service data measures to inform their own service planning and operations.

Some other Victorian CLCs, which do not receive Commonwealth legal assistance funding, also use other non-CLASS data management systems. This means that Victorian legal assistance data is fractured. Ideally, Victorian Collaborative Service Planning efforts, at both jurisdictional and local levels, as well as Victoria's Legal Assistance Strategy and Action Plan would be informed by CLC service data and other information, irrespective of NLAP funding and reporting requirements.

Clause 30 (c) – shared responsibility for consistent and improved service data

We support shared responsibility and collaborative efforts to improve the accuracy, consistency and quality of legal assistance data. We reiterate however, that realising many of the ambitions of the NLAP will be frustrated by poor quality data and measures. Our Data Mapping Project has indicated the potential utility of implementing a data quality framework to support the National Legal Assistance Data Standards Manual (DSM). Analyses for this project indicated data accuracy, consistency and quality issues that could be addressed by stronger focus and guidance as to quality data practices in addition to the guidance provided by the DSM as to data field definitions and counting rules.

We submit that a National Legal Assistance Data Quality Framework would be one sensible way for the parties to seek to improve legal assistance service data accuracy, consistency and quality. And further, that such a framework would be a useful addition to the National Legal Assistance Data Strategy in Schedule D10. We can provide further advice on these issues at an appropriate time.

Clause 30(d) – increased scope and number of data fields

While increased scope and number of legal assistance data fields for 2025 and beyond would build the legal assistance service evidence base, it is vital that appropriate efforts are undertaken to improve the accuracy, consistency and quality of current data practices. It is vital that data management systems are fit for purpose, and that improved data measures and methods can be operationalised more effectively in frontline service contexts.

National Performance indicators

The changes in **clauses 33 to 35** appear to have substantially reduced the reporting burden. Some changes however, raise new issues and concerns, particularly when framed as performance indicators. All measures and reporting requirements should produce information that is more valuable than the burden of collecting it. They should also avoid creating perverse service delivery incentives.

Clause 33(a), 33(d) 33(g), 42 and Schedule D4(c) – funding category and stream

It appears replacing reporting by funding stream with the new formulation of funding category is intended to reduce the reporting burden. Reporting by funding stream, however, remains a feature of the Clause 42 Jurisdictional Performance Reports.

Defining funding category as specific Commonwealth funding streams under the NLAP (i.e. baseline funding, domestic violence units and/or health justice partnerships and Family Advocacy and Support Services) appears to severely limit information about overall performance within a jurisdiction.

We have previously noted the difficulty of disaggregation by funding stream, and how doing so raises counting issues under the National Legal Assistance Data Standards Manual. Requiring performance

reporting for specific types of Commonwealth funding *implicitly* requires that the distinction between Commonwealth and State funding is still made.

Rather than simplifying reporting requirements, in operational terms this may *increase* the reporting burden, given that a distinction between State and Commonwealth still has to be made, and then *additional* efforts are also required to disaggregate specific Commonwealth funding streams.

Clause 33(c), Clause 34(d), Schedule D13(e) and D15 – financial disadvantage

The effect of these clauses appears to be that reporting of legal service provision disaggregated by financial disadvantage is only required with respect to representation services.

While this reduces the data collection and reporting burden, we submit that information about the financial circumstances of those receiving legal advice, task, and duty services is essential to understanding performance of public legal assistance services. And particularly with respect to civil legal issues where representation services are rarely available or provided. While representation services are more frequently available and provided for family legal issues, there is still substantial provision of legal advice, task, duty services and dispute resolution services provided for family issues.

Whether or not recipients of unbundled forms of legal assistance services are financially disadvantaged is an important performance feature of public legal assistance services. This is particularly so given the objectives and outcomes of the NLAP and National Legal Assistance Strategic Framework priorities. From an analysis point of view, a financial disadvantage indicator is one of the most important indicators. It is central to construction of any proxy measures of multiple disadvantage and client capability.

If this change is due to some legal assistance service providers not routinely collecting financial disadvantage, we urge further consideration about whether a plan to transition to its collection can be implemented, particularly given transition for other data fields as specified in Schedule D15 and Table 8.

Clause 33(e) – number of referrals

While this change likely recognises the limited nature (and quality) of current referral data, we question the utility of making the total number of referrals a performance indicator. We also note that doing so creates an incentive to make referrals irrespective of their appropriateness. And further it is not clear how this data could be meaningfully used without further context. For instance, referral can simply reflect a service operating at capacity, a service being accessible and known to the community, or a service with a high need catchment or community etc. It is also unclear what the utility of this information at a jurisdictional level would be.

We further submit that improved referral data should be a focus for efforts to improve the accuracy, consistency and quality of legal assistance service data. One priority for outcomes measurement should be referral effectiveness. Effective referral is an important characteristic of a well-functioning legal assistance sector and Collaborative Service Planning would benefit from a stronger evidence base.

Clause 33(g) – estimated time spent

The changes in clause 33(g) and associated changes in Schedule D4(b), D4(e), D13(p), D14 and D17 concerning estimated time spent, to be collected in a two-week period, requires further consideration and specification. For example, what is an 'estimate'? This wording suggests that accuracy is not important. We submit that it should at least be accurate within the nominated time brackets specified in D4(e), and if so, it does not need to be an estimate. We also urge further guidance and specification to appropriately operationalise data collection with enough consistency to justify its collection. Again, issues of data accuracy, consistency and quality are vital for meaningful analysis.

The utility of requiring estimated minimum and maximum time spent is unclear. This appears to require reporting of outliers. Outliers are not useful for gauging performance unless there is also further information available about distribution of time spent. We submit that measures of central tendency (mean, median and mode) as well as its frequency distribution would be much more informative of performance than asking

about outliers. Presumably these measures could be calculated from reported unit level data. If so, then just requiring the estimated median time spent to be reported may be a more appropriate performance indicator.

If estimated time spent is required to be unit record data for a two-week period, collecting and reporting this at a jurisdictional level may be unnecessarily complicated. For example, it may be more appropriate and meaningful for every state and territory to use a much narrower two-week window (considering respective public holidays etc). Legal assistance services are strongly seasonally patterned. Data utility will be undermined by inconsistency, particularly where extraneous factors affect the data collection period selected across jurisdictions or providers etc.

We further submit that clear guidance should be issued on the way in which estimated time spent is collected and that any two-week 'representative sample' needs to be further defined and operationalised.

Clause 33(f)(iv) – number of community legal education resources developed

This formulation creates an incentive to create new resources irrespective of need, and to innovate for its own sake. The review of NPA 2010-2015 identified that similar reporting requirements created perverse incentives to rename or retitle resources. It is unclear what 'resources developed' requires. For example, what is the minimum amount of 'development' required to get counted? Should it be more than simply renaming the resources? What would a good performance figure be?

Jurisdictional Performance Report

Clause 43(f)

We reiterate our strong view that an improved and more meaningful set of questions is needed for the biennial client survey as well as the need for further guidance to ensure robust survey methodology that justifies and outweighs the cost and burden of data collection. We also reiterate the significant opportunity that client surveys offer to develop and include judicious outcome measures.

Legal Assistance: National Services Summary

Clause 43 – collaboration to produce summary

The Victoria Law Foundation is willing to share its expertise through participation in the National Legal Assistance Advisory Group.

Schedule C - Legal Assistance Strategy and Action Plan

Legal Assistance Strategy

Clause C5(a) requires states and territories to develop a publicly available Legal Assistance Strategy that indicates the estimated level and nature of legal need in the jurisdiction, including sub-jurisdictions where appropriate.

We submit that current circumstances surrounding COVID-19 will increase family and civil legal need. Accurately estimating the level and nature of legal need will require further support. We further note that proposed resourcing levels that do not adequately anticipate and respond to increased demand stemming from COVID-19, and may well overtake formulation of a Legal Assistance Strategy and Action Plan.

Schedule D - Legal Assistance Service Data

D2 – Commonwealth guidance

To support accurate, consistent and quality data, clear guidance and support is vital.

D4(a) – age brackets

Defining age brackets is likely to have implications for the configuration of data system fields, particularly where CLASS may require new or redefined fields. This is also an example of where changes made to reporting requirements will necessitate changes to CLASS as well as the data systems used by legal aid commissions.

D4(b) and D14 – estimated time spent

See also discussed above with respect to clause 33(g).

D4(e) – time brackets

The proposed time brackets are very broad in the higher categories. There may well be reason for this, however we urge reconsideration of more finely grained time brackets which may be more useful, and better discriminate in terms of the time spent for different types of legal assistance service (excluding information and referral services). We note that requirements to report estimated time spent will extend beyond representations to other services from July 2022. For instance, most legal advices and duty services can be expected for fall within brackets i to iii; most task assistance within brackets iv to v; and representations in v to viii. This may not be all that informative. Additional time brackets would therefore help to better distinguish which client and matter types that tend to result in either longer or shorter service time across the different service levels.

It is also worth bearing in mind that one of the drivers of time spent on representation services is court listings, procedural matters, the willingness of the other side to proceed, as well as the other side's representation status. For example, additional time will be expended where the other side seeks repeated adjournments or is unrepresented. This is common story in many family law matters, where lack of judicial officers is also widely cited as a factor in repeated adjournments.

D4(c) – funding category

Discussed above with respect to clause 33(a) etc.

D13, D15, Table 8 and D18 – staged transition to provision of unit-level legal service data

This appears to be a reasonable reporting compromise. We note however, that the proposed staged approach means that the data available to inform an Independent Review of the NLAP will be patchy and will have limited utility when the Independent Review falls due, particularly around key indicators such as financial disadvantage and education level etc.

D14 – two-week representative sample

D14 provides that for hearing and court/tribunal types (both required only for representation services) and estimate of time spent (reported in time brackets), information is to be collected through a two-week representative sample. As set out under Clause 33(g) above, further guidance and specification is required to appropriately operationalise data collection with enough consistency to justify its collection.

D16 – data collection inappropriate or alienation of clients

We reiterate that incomplete data will limit data utility. Rather than recording (non)collection of data as a 'blank' in circumstances where it would be inappropriate or would risk alienating clients, we urge that it is instead recorded as 'Not collected - considered inappropriate' and 'Not collected – avoid client alienation' or some similar wording.

This is necessary to distinguish missing data from deliberately not collected data. This is important with respect to how missing data is treated in any analyses and calculations.