

27 October 2023

BY EMAIL: submissions@nlapreview.com.au

To whom it may concern

Consumer Action Law Centre submission to National Legal Assistance Partnership Review

Thank you for the opportunity to provide a submission to the National Legal Assistance Partnership (**NLAP**) Review.

The community legal sector's work would not be possible without stable, indexed NLAP funding. This is a critical part of specialist community legal centres' (**CLC**) baseline resourcing, now and into the future. We have felt the impact of the broad based decreases in sector funding identified in the Issues Paper, particularly as the real costs of service provision have increased. We call on the Government to increase community legal centre funding under the NLAP to enable us to continue to provide frontline services and undertake systemic advocacy and law reform.

Consumer Action Law Centre (**Consumer Action**) is one of dozens of specialist CLCs in Australia that have a vast range and variety of expertise. Specialist CLCs make a unique contribution through expert advice, collaboration and capacity building with local support services and evidence informed advocacy. This submission focuses on Consumer Action's activities and achievements *as an example* of the role specialist CLCs play in addressing legal need and improving outcomes for Australians.

This submission seeks to respond to the NLAP Review Issues Paper in four parts:

1. Who we are and what we do
2. Our evaluation and Legal Needs Analysis, including client experiences, direct service delivery, partnerships and policy and advocacy work
3. Funding
4. Future demand and service gaps .

Please find enclosed Consumer Action's [Legal Needs Analysis](#), which further addresses a number of the questions in the Issues Paper. Please consider this document as part of the submission.

As requested, we consent to the following:

- Publication of this submission on the Review website
- Being identified in the Report of the Review as having made a submission
- The submission being quoted with attribution in the report of the Review.

1. WHO WE ARE AND WHAT WE DO

1.1 About Consumer Action Law Centre

Consumer Action is a specialist CLC with deep expertise in consumer and consumer credit laws and policy, and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy seeks to ensure a just marketplace for all people in Australia.

1.2 Consumer and Credit Law: Context and Demand

Everyone must engage with the marketplace and everyone has consumer/trader interactions. People who are most vulnerable—those who are on a low income, those who have a low education level, Aboriginal and Torres Strait Islander people, and Culturally and Linguistically Diverse people—are at a considerable disadvantage in their relationship with traders. This power imbalance is becoming even more pronounced as we see the big businesses that we all engage with—e.g. monopoly telecommunications providers, banks and duopoly supermarkets—growing market share, as demonstrated by record billion-dollar profits this year. The digitisation of products and services further clouds information and impedes consumer choice. The cost-of-living crisis is exacerbating credit and debt issues. This is clearly presenting in increased demand and complexity on our frontline services.

The Legal Australia Wide Survey (LAW Survey) published in 2012 found that consumer law problems were the most commonly reported legal problem (experienced by 21 percent of respondents). The recent Victoria Law Foundation Public Understanding of Law Survey (**PULS**) shows consumer law issues are by far the most common legal need among Victorians and are more pronounced during natural disasters.

2. EVALUATION AND LEGAL NEEDS ANALYSIS

[Consumer Action's legal needs analysis](#) builds on our evaluations to look at how our service addresses legal need through the alignment of client-facing legal services, partnerships and capacity building, and policy and advocacy work.

The Review's Issues Paper requests help in 'identifying credible data sources of unmet legal need that may exist.' We note we have used a number of data sources to identify unmet legal need in our Legal Needs Analysis. A particularly valuable source of data was from the Department of Human Services, which showed the locations of people who are paying for 'consumer leases' via Centrepay. Consumer leases (for example, rent-to-buy arrangements for household goods like refrigerators) are low-value products. People who pay their bills from Centrepay are some of the most low-income people in Australia. This data was a valuable proxy for latent consumer/credit legal need. We strongly encourage the Review to seek data from the Department of Human Services on these and other payments that Centrelink recipients make via Centrepay as a source of data and a proxy for latent legal need.

Our Legal Needs Analysis underscores the value of investment in sophisticated, connected generalist and specialist CLCs to address legal need for the most vulnerable.

2.1 The impact of consumer and credit law problems on ordinary people

Consumer and credit law problems create significant financial stress for people and have a cascading impact, affecting peoples' housing, health and families. **Part 1** of our Legal Needs Analysis includes the words of our clients talking about the impact that consumer and credit law issues have had on their lives, and the difference that legal help made.



These quotations have been collected in interviews held as part of regular evaluations of our services, which help our service continue to be client-centred and appropriate (a guiding principle of the National Strategic Framework).

2.2 Direct legal services can help some people

Like many specialist CLCs nationally, Consumer Action's legal team provides direct legal advice, limited ongoing assistance, and limited casework services to people in Victoria. Almost all of our legal advice is provided online or over the phone. Our advice and ongoing assistance work supports people to self-advocate.

We seek to focus our service delivery on people facing disadvantage. We prioritise casework services based on several factors, including vulnerability of the client, prospect of success, and value of the case for our policy and advocacy work.

The legal advice service is complemented by our financial counselling service (funded as part of the National Debt Helpline by the Victorian Department of Government Services and Commonwealth Department of Social Services). Our financial counsellors provide advice on credit and debt matters and work closely with our legal team on complex cases.

Part 2 of our Legal Needs Analysis shows the value and impact of our casework, but also shows that our frontline services meet will never meet expressed unmet legal need. We can assume this is the case for all specialist CLCs. Our data suggests that Consumer Action's legal advice service receives up to ten times the number of calls we can answer. Our services cannot assist those people with latent legal need—i.e. people who do not identify that they have a legal problem (although some people with a 'money problem' may contact a financial counsellor).

2.3 Partnerships help us reach people who are most vulnerable... and build the capacity of other services to meet demand

In the context of overwhelming unmet legal need many specialist CLCs partner with local services and CLCs to extend our reach, impact and effectiveness. For example, Consumer Action builds partnerships to share expertise so local CLCs and financial counsellors can identify and respond to consumer law issues (see **Part 3** of our Legal Needs Analysis). We have established strong relationships over the last decade with Westjustice (a CLC that services the western suburbs of Melbourne), Barwon CLC (serving the Geelong region), and Hume Riverina CLC (serving the Albury/Wodonga cross-border region).

This capacity-building work aligns with the National Strategic Framework's guiding principle of collaboration and integrated approaches.

Our evaluations have shown that specialist-generalist partnerships are an effective way to respond to unmet and latent legal need. Capacity building enables financial counsellors and CLCs that are embedded in their local communities to provide consumer and credit law help to the most vulnerable consumers, including to people who are unlikely to find or access our telephone service. The workers we train can use this knowledge again and again for their future clients. We learn from financial counsellors and generalist CLCs about the vulnerabilities of high needs clients and the other legal issues that intersect with consumer and credit law issues.

For example, since 2021 we have built a partnership with a generalist community legal centre, Gippsland CLC. This is an area that has high levels of disadvantage and has been impacted by bushfires and floods every year since 2019.

Partnership activities have included delivery of training by our lawyers (including insurance law), shadowing, and mentoring. As a direct result, their lawyers are identifying and undertaking more consumer and credit law cases. This



can be particularly valuable with clients they are assisting with multiple other legal issues, including family violence and criminal matters. Gippsland CLC is able to provide these clients with a coordinated, integrated approach that our specialist legal service cannot provide. Gippsland CLC has, in turn, facilitated our engagement with local support services in disaster affected areas and shared client cases and stories that we can use in our policy work.

Another example is our partnership with the Victorian Aboriginal Legal Service (**VALS**), an Aboriginal Community Controlled Organisation. Since 2018, short-term project funding from state government enabled us to fund VALS to recruit a new lawyer to undertake consumer, credit and debt work. We provided training and mentoring to build the lawyer's ability to undertake this work and have since built capacity across their civil team. We have undertaken joint outreach and engagement activities across the state, relying on the relationships that VALS staff (including local staff) have within community. This partnership is consistent with the principle of self-determination, and has facilitated access of Aboriginal people to culturally appropriate, specialised help with consumer, credit and debt issues. These issues are particularly common, and have a particularly harsh effect, on Aboriginal people and communities.

This partnership has also built Consumer Action's ability as a mainstream legal service to provide culturally appropriate legal help to Aboriginal people. This has been a steep learning curve for us. Our improved ability in this area, and ongoing relationship with VALS, means that Aboriginal people have genuine choice about which service to access. It also means they can access help with consumer, credit and debt issues when VALS cannot assist because of a conflict of interest.

As a result of our partnerships with generalist CLCs and VALS, we have been able to provide locally-informed insights and trends with our key contacts, including insurance executives, ASIC, and the Insurance Council of Australia.

3. Advocacy work can reform laws and systems to improve the market and reduce demand

A key function of many specialist CLCs is systemic advocacy work. Leveraging our frontline insights and evidence is effective in reforming laws and systems for Australian consumers, which in turn reduces legal need in the community and service demand (see **Part 4** of our Legal Needs Analysis for detail and examples). Like other specialist CLC policy experts, Consumer Action's policy and advocacy team have the expertise and rich evidence from our frontline work to inform and influence law and systems reforms.

Some examples of this impact are listed below.

- In 2022, after a 10-year campaign with many consumer advocates across the country, in which Consumer Action published research and advocated publicly with clients, we successfully secured better regulation of the payday lending and consumer lease sectors. These products were widespread. Between April 2016-July 2019, 4.7 million payday loans were written, worth around \$3.09 billion. The impact on people who took out these loans was severe: 15 percent of borrowers fell into debt spirals, borrowing more money to make payments on their debt. Interest rates of up to 400 percent exacerbated financial stress and caused widespread harm including impacts on housing security, relationships, and health.
- Consumer Action campaigned over a number of years, using many advocacy strategies, to ban "junk add-on insurance" that is sold when people make a purchase or get a credit card. Sellers of junk insurance include appliance and electronic stores, car yards, and banks). These products provide nil value and most consumers didn't know they had or were paying for it—it met the definition of latent legal need.

In response, Consumer Action:



- designed an online self-help tool called Demand a Refund which automatically generates letters and seeks refunds for people paying junk insurance premiums worth well-over \$35 million;¹
- worked with ASIC, which secured remediation of \$160 million for affected consumers; and
- supported class actions which resulted in payouts of more than \$300 million.

Our campaign activities helped to reduce number of junk insurance policies sold by more than half: from 2,616,000 in June 2018 to 1,088,000 in June 2022, and significantly changed the predatory behaviour of junk insurance companies.

- Poor quality cars that break down quickly and often are sometimes called 'lemon cars'. Lemon cars and poor trader responses have been a perennial problem on our frontlines for decades. We have been campaigning for an ombudsman service to effectively and efficiently deal with consumers' motor-car disputes. Currently it can take up to two years for a dispute to reach decision at VCAT via 60 stages. This process is only accessible for those consumers who have the time, energy and money to keep the faulty car and pursue the case. In 2019 we costed the time it took for our lawyer to resolve a lemon car issue via VCAT on behalf of a client. We found that the costs in a lawyer's time, at reasonable private practice rates, amounted to more than \$30,000. We recently commissioned the [first comprehensive research into this longstanding issue](#). We have the opportunity to improve the system and thereby address legal need and reduce service demand, particularly as State and Federal regulators are now prioritising consumer guarantees and faulty cars, we attribute this in part to Consumer Action's work in the space. Again, change is only possible through a systemic approach.

As noted by the Independent Reviewer, 'policies that... adopt non-lawyer intermediated dispute resolution reduce the demand for legal assistance services as the people involved in such disputes are disproportionately disadvantaged.' We hope that system change to create a motor-car ombudsman at the state level will have this effect.

Finally, we note that, like many CLCs, our policy work means we hold relationships that connect to decision-makers and influential bodies. In the consumer space, these include relationships with government, the executive, ASIC, ACCC, AFCA, banks, essential services, insurers and other traders. Question 9 of the Issues Paper asks: How should legal assistance funding support activities that at an early stage reduce or prevent legal need, including activities not purely of a legal character? We believe CLCs' ongoing policy work to maintain these relationships as advisors and stakeholders, can enable us to share information about potential or emerging consumer and credit law issues at an early stage, and advocate for system changes to prevent legal need.

Question 10 of the Issues Paper asks: Should legal assistance funding be provided to legal assistance providers for advocacy and law reform activities? Our view, for the reasons above: Yes.

4. FUNDING

NLAP funding is critical for specialist CLCs. We cannot do our work without NLAP funding, and the current level of funding doesn't go as far as it used to as inflation increases our operational and staff costs. In our view, increasing operational, baseline funding via NLAP will help CLCs continue to work effectively and efficiently. With increased operational and baseline funding CLCs can continue to retain staff, invest in systems, keep up with changes in technology, and address new legal need as it emerges.

¹ Scott Pape, known as 'The Barefoot Investor', has published several columns that explain junk insurance and refer people to demandarefund.com. See for example [Single Mum Slays a Dragon — The Barefoot Investor - Scott Pape](#).

4.1 Staff wages

This section seeks to answer Question 13 of the Issues Paper: How does workforce supply and remuneration impact on the provision of legal assistance services?

As an example of a specialist CLC, we seek to recruit, train and retain staff to build expertise in complex consumer and credit law systems. This is a substantial and worthwhile investment, but does result in increasing costs over time.

Consumer Action offers competitive staff wages for our sector, and many other benefits. However, in our recent staff survey, many staff members reported feeling they are underpaid for the work they perform. As noted in the Issues Paper, 'legal assistance lawyers are among the lowest paid people in the profession.' Staff leaving Consumer Action regularly move to higher-paying roles within Regulators, Ombudsman Services and Industry Associations.

Like other specialist CLCs, Consumer Action plays a vital role in its area of expertise, and we attract excellent staff. However, the drawback of our position within the sector means it can be a challenge to retain staff when they are headhunted for far higher-paying roles. When funding uncertainty means we are unable to offer ongoing roles and can only offer contract positions, staff have an even greater incentive to move on. These issues also create challenges for recruitment of new staff.

4.2 Operational and baseline funding

Consumer Action supports greater investment and a longer timeframe for the NLAP funding to CLCs to provide certainty and sustainability to undertake major and transformative projects. Specialist CLCs need NLAP funding (plus some state core funding) to support baseline operational resourcing. It is impossible to operate a large and dynamic CLC with short-term project or philanthropic funding, which is generally tied to service outputs.

With insufficient NLAP funding, we are also limited in our ability to adapt to changing demands and improve our services for greatest impact for those who need it most.

As an example, Consumer Action is undertaking a Data Reform project to improve the quality of the data we collect and use to better-understand, improve and target our services for greatest impact. Quality data will also enable us to repeat Legal Needs Analyses on a regular (annual) basis. We are now using the recommendations and insights from our Legal Needs Analysis to improve our service design and ensure we are reaching people who are most vulnerable. This work enables us to use our limited resources for greatest impact.

Operational investment builds CLC workers' skills in house to continue developing and improving our systems. This core operational work directly impacts how CLCs work toward and achieve the six guiding principles for provision of legal assistance services in the National Strategic Framework.

5. FUTURE DEMAND AND SERVICE GAPS

We are pleased to see that the Terms of Reference for this review include an assessment of the current level of unmet legal need and demand, and that the Independent Reviewer has expressed interest in identifying and potentially forecasting levels of future demand.

Our assessment of future demand relates to consumer issues but may be extrapolated out for other areas. We consider two factors: the behaviour of traders in the marketplace; and the impact of social, economic, environmental and other changes that we cannot predict.



In our experience, our vision of a just market where traders play fair is always receding. The market is necessarily dynamic. Changes in the economy create new opportunities to compete in the marketplace, including in lightly regulated areas. Traders create new products when there is an opportunity to make a profit, often structuring a product to evade regulation. For example, a payday lending company (Cigno) repeatedly structured its financial product to avoid the protections in the *National Consumer Credit Protection Act* (Cth) and circumvent legal action taken by ASIC to ban its lending model. Our casework shows that borrowers were required to repay anywhere between two and eight times the principal borrowed.² It is unknown exactly how many people borrowed from Cigno, but Federal Court documents (published in July 2023) show that in around six months Cigno arranged 166,045 loans for \$46 million that incurred fees of around \$61 million.

Changes in technology also have an impact on legal need. For example, in the last five years we have seen a massive increase in the number and sophistication of online scams. This is a new source of legal need. We are responding to this need through legal advice; casework; and policy work in which we seek to make banks more accountable, including large-scale investment in robust systems to detect and prevent scams – and improving responses when a customer loses (often substantial) money through no fault of their own.

Unanticipated world events can also impact on consumer and credit legal need. For example, after the COVID pandemic, there was a dramatic increase in demand for used cars. This increased the price of cars, led to the provision of loans that did not comply with responsible lending laws, and led to an increase in the number of 'lemon cars' sold. These changes had a disproportionate impact on people who are vulnerable and increased demand for legal help.

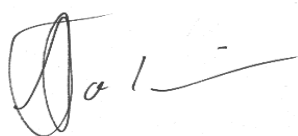
In short, it is difficult to anticipate future legal need, but we can say with certainty that legal need relating to consumer issues, credit and debt, will continue to arise as long as there is a market.

FURTHER INFORMATION

Thank you for the opportunity to contribute to the NLAP Review. We would be happy to provide further information, including recent Annual Reports and examples of our strategic policy work. We would also be happy to meet with you to discuss the key points in this submission in more detail.

If you have any questions, please contact Consumer Action CEO, Stephanie Tonkin on 9670 5088.

Yours faithfully



Stephanie Tonkin
CEO
Consumer Action Law Centre

² Our worker resource about Cigno provides more information about three changes to its lending model in response to regulatory changes since 2019: [Cigno-toolkit-worker-final-27-08-2023.pdf \(consumeraction.org.au\)](https://www.consumeraction.org.au/resources/cigno-toolkit-worker-final-27-08-2023.pdf)