

Submission

THIS SUBMISSION WAS PREPARED BY THE FEDERATION OF COMMUNITY LEGAL CENTRES (VICTORIA) INC, IN CONSULTATION WITH MEMBER CENTRES

March 2016

Federation of Community Legal Centres (Vic) Inc submission to the Victorian Government Access to Justice Review

Inquiries to:

Katie Fraser
Manager, Sector Strategy and Development
Federation of Community Legal Centres (Victoria) Inc
03 9652 1504
Email: sectordevelopment@fclc.org.au

Contents

Section 1: Introduction

- 1.1 About the Federation of Community Legal Centres (Victoria) Inc 4
- 1.2 About this submission 4

Section 2: Community legal centres as a vital part of the legal assistance sector

- 2.1 The mixed model of legal assistance services..... 5
- 2.2 Community legal centres in Victoria 5
- 2.3 CLCs’ distinct role and value as part of the mixed model 6
 - 2.3.1 Holistic, integrated approaches to legal need and service delivery 7
 - 2.3.2 Community development approach 7
 - 2.3.3 Independence and a systemic focus 7
 - 2.3.4 Specialisation 8
 - 2.3.5 Volunteers and pro bono 9

Section 3: Legal need and the adequacy of existing legal assistance resources

- 3.1 What we know of legal need in Victoria..... 10
- 3.2 Measuring numbers of people ‘turned away’ from services 10
- 3.3 What legal problems affect Victorians?..... 11
- 3.4 Government policy can drive demand for legal services..... 12
- 3.5 Specific areas of legal need..... 12
 - 3.5.1 Family violence..... 12
 - 3.5.2 Employment law 14
 - 3.5.3 Assistance for families in coronial proceedings 14
 - 3.5.4 Prisoners..... 15
 - 3.5.5 Summary crime 16
- 3.6 Quantifying the legal assistance gap..... 16
- 3.7 CLC funding..... 17
 - 3.7.1 State funding grants 17
 - 3.7.2 Federal funding 18
- 3.8 The importance of sector-wide engagement on priorities for legal assistance 19

Section 4: CLC efforts to understand and better meet legal need

- 4.1 CLCs and legal needs analysis 20
- 4.2 Collaborative planning resource 21
- 4.3 Local legal needs analysis needed to inform statewide planning 22
- 4.4 Need for research body to support legal need analysis and service planning in Victoria 22
- 4.5 CLCs’ approach to targeting services 23
- 4.6 CLCs proactively looking at how to work together better 23

4.7 Cross-sector efforts to improve coordination and meet gaps in legal assistance	24
4.8 Duplication.....	24

Section 5: Access to legal assistance services and legal information

5.1 Support for a well-resourced main entry point.....	25
5.2 The need for multiple entry points, particularly for people experiencing disadvantage.....	25
5.3 The valuable role of specialist phone advice services	27
5.4 Reducing the ‘referral merry-go-round’	27
5.5 Information on legal forms and documents.....	27

Section 6: Diversion from civil litigation and opportunities for improved triage

6.1 Most legal problems never reach court.....	29
6.2 CLCs support clients to resolve matters outside courts	29
6.3 CLCs triage multiple legal and non legal issues.....	30

Section 7: Factors to consider when expanding use of ADR

7.1 The need for ADR schemes to be robust	31
7.2. ADR schemes must be responsive to vulnerable and disadvantaged	31

Section 8: VCAT

8.1 VCAT’s processes too legalistic	33
8.2 Many applicants need assistance to develop a cause of action	33
8.3 Fee waiver process needs review	33
8.4 Categories of applicants who can be represented by an advocate need expansion	34
8.5 Internal review.....	34

Section 9: Improving pro bono contributions

9.1 Effective pro bono contributions	35
9.2 Building relationships between CLCs and pro bono firms	36
9.3 Incentivising pro bono contributions from firms	37
9.4 Incentivising pro bono contributions from law students.....	37

Appendices.....	39
-----------------	----

1 Introduction

1.1 About the Federation of Community Legal Centres (Victoria) Inc

The Federation of Community Legal Centres (Victoria) Inc (the Federation) is the peak body for 48 community legal centres (CLCs) across Victoria. A full list of our members is available at <http://www.communitylaw.org.au>.

The Federation leads and supports Victorian CLCs in pursuing access to justice and social equity. Funded by Victoria Legal Aid and supported by membership fees and project funding from various philanthropic organisations, the Federation:

- works to build a strong and effective community legal sector by providing services, professional development and support to CLCs
- provides information and referrals to people seeking legal assistance,
- works to advance social justice and a fair legal system through law reform and systemic advocacy, and
- promotes the purpose and value of CLCs.

1.2 About this submission

The Federation welcomes the Victorian Government's Access to Justice Review, and the opportunity to identify improvements that can be made at a state level to address the access to justice crisis.

The Federation, along with many member CLCs, made substantial contributions to the Productivity Commission's 2013-14 Inquiry into Access to Justice Arrangements. We support many of the findings and recommendations of that inquiry and have been disappointed that the Australian Government has not yet responded to the Productivity Commission's September 2014 final report.

While we await a response from the Australian Government, we note that tackling uneven access to justice and building a fairer, more effective legal system will also take action and investment at a state level. We look forward to working with the Victorian Access to Justice Review Team (the Review Team) and the Victorian Government on changes necessary to help the most disadvantaged and vulnerable in this state.

This submission articulates some key points the Federation thinks are important for the Review Team to consider. These are intended to summarise and complement the points made in the submissions of our member centres, as well as to represent the agreed positions of the Federation as a whole.

This submission should be read in conjunction with the joint submission of the Community Development and Community Legal Education Working Group of the Federation and Victoria Legal Aid, which addresses the provision of community legal education as a core element of legal service delivery.

We understand that the review process will include a series of round tables and further direct consultations, and look forward to providing further input on detailed proposals and specific issues as the Review Team's work progresses.

2 Community legal centres as a vital part of the legal assistance sector

2.1 The mixed model of legal assistance services

The Victorian legal assistance sector comprises different elements, each of which plays a distinct and complementary role. These include Victoria Legal Aid, private practitioners funded through legal aid, community legal centres and Aboriginal and Torres Strait Islander legal assistance services - Victorian Aboriginal Legal Services (VALS) and the Aboriginal Family Violence Prevention and Legal Service Victoria (FVPLS).

Our experience of the mixed model is that while there is scope to continue strengthening the way we work together to identify and meet legal need, these elements of the mixed model each play a distinct and important role in meeting the legal needs of disadvantaged people. Together, these components provide a strong foundation on which to build further improvements and can provide a high functioning blend of complementary services, particularly as the sector increases its focus on interagency coordination and collaboration.

2.2 Community legal centres in Victoria

Victoria was the birthplace of community legal centres, with the country's first non-Aboriginal CLC, Fitzroy Legal Service, opening in December 1972 followed closely by the Victorian Aboriginal Legal Service and Springvale Monash Legal Service.

There are currently 48 full members of the Federation, with a further two CLCs having been accepted as member CLCs and progressing through the final stages of the membership application process.¹

Of those 48 member CLCs, 23 are generalist centres that operate within a particular geographic community and focus on the meeting the legal needs of the people within that catchment area. Another 25 are specialist centres with a focus on assisting a particular demographic (such as Youthlaw, Villamanta Legal Service, Women's Legal Service Victoria) or with a focus on particular areas of the law that impact disadvantaged or vulnerable communities (such as Consumer Action Law Centre, Social Security Rights Victoria and Disability Discrimination Legal Service).

Included among the 48 full members of the Federation are VALS and FVPLS, two Aboriginal community-controlled organisations that work specifically with Aboriginal and Torres Strait Islander people in Victoria. These services play a unique role in increasing access to culturally safe help for Aboriginal and Torres Strait Islander people, which is vital given the over-representation of Aboriginal and Torres Strait Islander people both in the criminal justice system and as victims of family violence.

Thirty-eight CLCs receive funding through Victoria Legal Aid as part of what was formerly known as the Community Law Services Program (CLSP). Most, but not all, of these centres receive both state and federal funding. Others receive funding from a variety of sources. For example, the Asylum Seeker Resource Centre's Human Rights Law Program is funded entirely through donations and philanthropic grants. Many of the CLSP-funded CLCs supplement their government funding with philanthropic project funding, funding from other government programs or private fundraising efforts. Over time, CLCs have increasingly under-

¹ The Urban Justice Centre of the Salvation Army and the Young Workers Centre have both applied to become Federation members. Their membership applications have been approved and they will become full members on payment of the member fee, pursuant to the Federation's Constitution.

stood the value of diversifying funding and many CLCs have secured substantial additional funds to deliver services and programs far beyond those supported by recurrent government funds alone.

Victoria is fortunate to have the largest community legal sector in Australia, and to have a particularly vibrant and strong sector. One of the strengths of the sector is its diversity; CLCs work together through, and independently of, the Federation. They learn from one another's approaches to service delivery and practice, governance and funding, legal needs analysis and strategic direction setting. More than ever, CLCs are sharing their specific expertise in different areas of the law and in working with specific client groups.

Not all CLCs use the same database, so obtaining a comprehensive picture of services provided by Victoria's CLCs is challenging. However, the Federation collects data from 38 CLCs and in 2014-15 these CLCs provided 57,853 instances of information, 68,093 instances of advice and opened 25,282 cases.²

Clients of the 38 CLCs were mostly people on low incomes with 83 per cent of clients having incomes of less than \$26,000 and only 3 per cent of clients having household incomes of more than \$52,000. One in five CLC clients had a disability, and 59 per cent of clients were women. While these figures reflect reported data for 2014-15, the patterns have been constant for some years.

2.3 CLCs' distinct role and value as part of the mixed model

CLCs' distinct contribution to the legal assistance sector includes:

- **Connection to community** - CLCs operate with a strong connection to their local or client community and prioritise a community development approach. This increases access to legal help among disadvantaged members of the target community and also means CLCs can identify emerging issues and formulate targeted responses to meet community need
- **Flexibility and capacity to adjust approach in response to need** - CLCs are relatively small and flexible organisations, meaning they can move swiftly to adjust resource allocation and service delivery approach in response to changing need as they identify it
- **Capacity for innovation and creativity** - CLCs' size and flexibility outside a large bureaucracy or bureaucratic structure also means they develop innovative and creative responses to addressing legal need
- **A focus on identifying systemic problems** - CLCs' client work combined with their community development approach means they are especially well placed to identify unfair laws and policies and work to change them
- **An independent voice for disadvantaged client groups** - CLCs' status as independent organisations mean that they can work to change unfair laws, policies and practices even when this involves advocating for change to a government policy
- **Attraction of volunteer and pro bono contribution** - CLCs attract substantial volunteer and pro bono contribution to bolster government investment in legal services.
- **Attraction of philanthropic funding** - as independent, not for profit organisations, CLCs can also attract philanthropic funding, particularly to support new or innovative programs, and
- **Expertise in areas of law not practiced by other parts of the sector** - CLC efforts to address gaps in legal need have meant centres have developed specialisation in areas of law that other legal assistance providers do not practise in as well as expertise in working with clients with complex needs.

Some of these features are discussed in more detail below.

² This includes duty lawyer cases as the CLSIS database did not allow for these to be reported separately until 2015-16.

2.3.1 Holistic, integrated approaches to legal need and service delivery

The growing body of research on legal need, the confluence of legal need and disadvantage, and the increasingly sophisticated understanding of what constitutes effective legal service delivery, affirms approaches developed in Australia by CLCs over the past forty years.³

CLCs:

- focus on accessibility, including through outreach and community development activities
- integrate assistance for individual clients with community legal education, community development and law reform projects that are based on client need and that are preventative in outcome
- pursue holistic approaches that can tackle multiple, interconnected legal problems, as well as working with other professionals to tackle interconnected legal and non-legal issues, and
- tailor services for specific problems and to particular demographic groups.

CLCs continue to apply and develop these approaches and develop cutting edge models of service delivery, such as the advocacy-health alliances developed in Victoria by Loddon Campaspe CLC and Inner Melbourne Community Legal (see separate submissions by these organisations).

2.3.2 Community development approach

CLCs operate with a strong connection to their local or client community and prioritise a community development approach. Community development is about the active involvement of people in the issues which affect their lives. It is a process based on the sharing of power, skills, knowledge and experience by community workers, who engage with the community so that people in that community can act together to influence the issues which affect them. The objective of community development is to help community members to gain greater control over the conditions that affect their lives. This does not solve all the problems faced by a local community, but it does build confidence to tackle such problems as effectively as possible.

Community engagement increases access to legal help among disadvantaged members of the target community, and also means that CLCs can identify emerging issues and formulate targeted responses to meet community need. CLCs' direct client assistance, combined with their community development approach, means they are especially well placed to identify unfair laws and policies and work to change them, thereby preventing future legal problems and reducing future need for legal assistance.

CLCs often identify an issue of concern, develop an approach to addressing the issue and then work with legal aid commissions to "scale up" or extend the reach of these approaches.

2.3.3 Independence and a systemic focus

The Productivity Commission found that systemic advocacy should be a 'core activity' of legal assistance services and that government funding should be provided for this work.⁴

CLCs' status as independent organisations means that they can - and do - work to change unfair laws, policies and practices even when doing so involves advocating for change to government policy or legislation.

The Federation provided a number of examples of CLCs' high impact systemic advocacy in its supplementary submission to the Productivity Commission. These are attached for ease of reference in Appendix I. Throughout their history CLCs' systemic advocacy has led to improvements across many areas of law af-

³ See, eg, Christine Coumarelos et al, 2012, *Legal Australia-Wide Survey: Legal Need in Australia*, Law and Justice Foundation of NSW, Sydney ('LAW Survey'), 243.

⁴ Productivity Commission of Australia, *Access to Justice Arrangements – Inquiry Report No 72* (September 2014) 708-13

fecting vulnerable and disadvantaged people, such as door-to-door sales practices, family violence and sexual assault, police conduct and infringements.

The Federation believes that systemic work - driven by CLC clients' experiences and including policy advocacy, strategic litigation and law reform activity - is an essential aspect of CLC service delivery. Systemic work:

- prevents future legal or social problems and in many cases is the only means by which future problems can be prevented
- is often the most efficient use of scarce legal assistance resources
- usually creates broader cost savings and social benefits well beyond future savings to legal assistance services, and
- enables CLCs' unique knowledge about the 'on the ground' impact of laws and policies, acquired through their contact with thousands of disadvantaged community members weekly, to inform public policy.

Unfortunately, since July 2014 the Australian Government has restricted CLCs' capacity to use federal funding for systemic work. These restrictions were first included in individual CLC service agreements in 2014-15 and have now been entrenched in the National Partnerships Agreement on Legal Assistance Services 2015-20, which prohibits use of federal funding for lobbying or campaigning.

The Federation has welcomed the Victorian Government's clear and consistent support for client-driven law reform and systemic advocacy by CLCs, and encourages the Victorian Government to continue to voice concern regarding the Australian Government's ongoing efforts to define legal assistance in narrow terms, as has been done in the National Strategic Framework on Legal Assistance.

2.3.4 Specialisation

Community legal centre efforts to address gaps in legal need have meant that CLCs have developed specialisations not offered by other legal assistance providers.

Some forms of specialisation relate to working with particular client groups, such as the expertise of Aboriginal community-controlled Victorian Aboriginal Legal Service, which focuses particularly on assisting clients with criminal law but whose work also addresses the relationship between unmet civil need and criminal activity. Other examples include specialist centres who work with clients with a disability, such as Disability Discrimination Legal Service, AED Legal Centre and Villamanta Legal Service.

Similarly, CLCs have developed practice expertise in assisting victims of family violence as a result of their early identification that women seeking intervention orders required assistance at court. Early family violence duty lawyer services initiated in the 1990s were later funded by the Victorian Government when the first Family Violence Court Divisions and later the Family Violence Specialist Court Services were established and funded. CLCs now employ the only specialist family violence lawyers in the state. These lawyers meet to share practice knowledge through the Federation's Family Violence Applicant Lawyers Network.

Other forms of specialisation are developed in a particular area of the law not commonly covered by other legal service providers, such as credit and debt or consumer law.

2.3.5 Volunteers and pro bono

CLCs attract substantial volunteer and pro bono contributions to supplement government funds. For example, Victorian centres responding to the NACLC census in 2012-13 reported attracting 8,943 volunteer

hours per week in (37.1 per cent of the reported volunteer hours at a national level). Data collected for 2014-15 is still being collated, but data available indicates 96.8 per cent of respondent CLCs reported using volunteers.

In 2012-13, respondent CLCs reported attracting 18,114 pro bono hours per year (35.6 per cent of the reported national total). In 2014-15 this had fallen to 10,568 but the information is not yet available to allow analysis of whether this reflects an actual reduction or merely a change in reporting.

Recommendations:

That the Victorian Government continue to increase investment in CLCs as a vital element of the legal assistance sector, acknowledging the sector's specialist expertise in areas such as family violence and poverty law and supporting CLCs' capacity to develop and implement groundbreaking models that improve access to justice.

That CLCs' experience and expertise in approaches now recognised as best practice in effective delivery of legal assistance to disadvantaged communities (outreach, tailored services, integrated and multi-disciplinary approaches) be reflected in future funding allocation models so that CLCs are resourced and supported to develop and apply these approaches.

That the Victorian Government continue to support preventative, systemic work by CLCs including law reform, policy and systemic advocacy.

3 Legal need and the adequacy of legal assistance resources

3.1 What we know of legal need in Victoria

The Productivity Commission estimated that around 17 per cent of Australians have some form of unmet legal need,⁵ and has recognised that a large proportion of people who have a legal problem and require help to resolve it cannot afford a private lawyer. The Commission accurately identified that, for many members of this group, legal assistance services such as legal aid, community legal centres, Aboriginal and Torres Strait Islander Legal Services (ATSILS) and Family Violence Prevention Legal Services (FVPLS) provide the only option for disadvantaged Australians who need legal help.

The Legal Australia-Wide Survey (the LAW Survey), the world's largest survey of legal need, highlighted the extent of legal need in the Australian community and provided information about the extent to which disadvantaged people, in particular, are likely to experience multiple, interconnected legal problems. The survey found that 48 per cent of respondents in Victoria had experienced a legal problem in the previous 12 months, suggesting that around 2.6 million Victorians have at least one legal problem in any given year.⁶ Over one quarter of Victorians reported experiencing a substantial problem or problems, in that the problem had a severe or moderate impact on everyday life.⁷

The LAW Survey found disadvantaged Victorians are more likely to have multiple legal problems, particularly people with a disability, single parents, people who are unemployed, people in disadvantaged housing and people whose main income is government payments.⁸ In Victoria 10 per cent of people experienced 64 per cent of legal problems reported⁹ – meaning that while almost half the population experience some legal issues in a given year, a much smaller number need intensive support with multiple problems.

The LAW survey also found that 32 per cent of respondents handled their legal problems without advice and 18 per cent took no action. These figures do not include the people who did not recognise their problems as legal problems, and because of the data collection method used by the survey the figures also exclude Victorians who do not have a telephone.

3.2 Measuring numbers of people 'turned away' from services

Reliable data on how many people approach services and are 'turned away' or cannot be properly assisted is difficult to obtain. It is also, of course, an imperfect measure of legal need as we know that people with the most severe legal problems are less likely to understand that they have a legal issue and/or are less likely to approach a legal service. Nonetheless turn-away data can contribute to the picture of unmet need. In 2014-15, 25 CLCs (only half the total number of CLCs in that year) reported having to turn away a total of 32,495 people.

The 2013 ACOSS Survey of Community Services found that in 2011-12 CLCs were forced to turn away 20 per cent of clients in need of assistance, the highest turn-away rate across all community service types.¹⁰

⁵ Productivity Commission of Australia, *Access to Justice Arrangements Draft Report* (April 2014) Draft Finding 2.1, 105.

⁶ Coumarelos, C, Macourt, D, People, J, MacDonald, HM, Wei, Z, Iriana, R & Ramsey, *Legal Australia-Wide Survey: legal need in Victoria*, Law and Justice Foundation of NSW, 2012, xiv. By comparison, last year CLCs provided just over 150,000 services. As some of these services were provided to the same individuals, the number of people assisted is lower still. Victoria Legal Aid assisted 85,000 unique clients in addition to 114,000 calls to Legal Help.

⁷ *Ibid* 75

⁸ *Ibid* 76

⁹ *Ibid* xv

¹⁰ ACOSS, *Australian Community Sector Survey 2013* (2013) 10

The 2014 survey found that 72 per cent of CLCs reported being unable to meet demand, and only four per cent could meet demand. Again, unmet demand for community legal services was higher than any other category of community service surveyed including accommodation, counselling and family support/child protection services.¹¹

3.3 What legal problems affect Victorians?

The LAW Survey also reveals information about the kind of legal problems people experience, and about which problems have the most significant impact on people's lives. The highest number of problems reported by Victorians were in the following categories:

- Consumer – services (1,544)
- Crime – victim (1,244)
- Neighbours (681)
- Credit/debt (649)
- Employment (644)
- Family – children (451)
- Local government (403)
- Business/investment (322)
- Education (293)
- Discrimination (outside work) (279)
- Fines (246).¹²

Legal issues most likely to have adverse impact on people's lives included family, personal injury, employment and health issues. Some of the other most prevalent problems (listed above) also had serious impacts on many people's health, housing status or financial position.¹³

It is notable that, besides family law children's issues, most of the legal problems that people experience and that cause significant adverse consequences for individuals and their families are not problems for which legal aid has traditionally been available. Rather, these are civil law issues that have fallen to CLCs to address where possible. While Victoria Legal Aid has increased its assistance in civil law issues over time, the organisation spent \$14.2 million on its civil law program (including assistance provided with victims of crime issues) in 2014-15, compared to \$71.5 million on its criminal law program and \$52.9 million on its family, youth and children's law program.¹⁴

Assistance for people with criminal law issues is clearly important given the power imbalance between a criminal defendant and the state, and the potential for criminal proceedings to result in state interference with an individual's liberty, livelihood, connection to family and income. The Federation does not suggest that funding for criminal assistance should be reduced. However, we agree with the Productivity Commission's findings:

Civil law matters are the poor cousin in the legal assistance family. Australia's most disadvantaged people are particularly vulnerable to civil law problems and adverse consequences resulting from the escalation of such disputes.¹⁵

¹¹ ACOSS, Australian Community Sector Survey 2014 (2014) 20

¹² Coumarelos et al (2012) 60

¹³ Ibid 85: Issues related to employment, fines, crime victim, credit/debt all corresponded to significant incidence of stress-related illness, physical illness, moving home or loss of income/financial strain.

¹⁴ Victoria Legal Aid, *Annual Report 2014-15*

¹⁵ Productivity Commission (September 2014) 703

The Productivity Commission noted that the criminal courts can, and do, impose a discipline on providers to ensure defendants are represented and that “no such discipline exists in the civil space”.¹⁶ The Federation supports ongoing attention to the civil law issues that affect disadvantaged communities and can have serious, lasting effects on people’s lives.

3.4 Government policy can drive demand for legal services

We note the submission of Mary Anne Noone of LaTrobe University, and her point that there should be a recognition that government policies can drive demand for legal services:

Unremarkably, increased demand for legal aid can be directly related to shifts in government policy. There are multiple government policies relating to social security, immigration, employment, family and crime that impact on the demand for legal aid services. No allowance is made by government for the ‘downstream’ impact of these policy changes on demand for legal aid services. Despite the recognition of the need for impact statements in many other areas of policy development, it is still not standard to conduct impact statements when formulating government justice sector policy. In 1990, the National Legal Aid Advisory Committee recommended ‘all government policy proposals include consideration of the likely impact on the cost and need for legal aid programs’. At the time the Commonwealth government agreed to include the impact of legal services of any new policy proposal being considered by the Cabinet. It was also proposed that a legal aid impact statement protocol be adopted by the state and territory governments as well (NLAAC Report).

The Federation supports the view that changes to legislation and government policy at state and federal levels should be accompanied by a publically available legal assistance impact statement and, where an increase in demand is indicated, that appropriate funding be provided.

3.5 Specific areas of legal need

In addition to unmet legal need overall the Federation notes some areas of specific demand. These areas are included because the Federation has specific information or knowledge in these areas; their inclusion is not intended to suggest there are not other, equally serious, areas of unmet need.

3.5.1 Family violence

One example of an area of demand that has risen because of growing awareness and reporting of an issue is demand for family violence legal help.¹⁷

CLCs have provided free specialist legal assistance for victims/survivors of family violence since the early 1990s. In intervention order matters, Victorian policy- and decision-makers have long recognised that there is great value in having parallel duty lawyer services for the applicant/affected family member (AFM)¹⁸ and for the respondent. Where both parties are represented, there is a high rate of matters being resolved by consent at the first mention date, which not only is a safer outcome for the AFM, but also reduces pressure on the courts and is more cost efficient for the system as a whole.

¹⁶ Ibid 740

¹⁷ The LAW Survey did not specifically seek information on family violence. It can be assumed that family violence legal issues are reported in the high number of reported problems in the “crime victim” category.

¹⁸ While police applications are usually easier for victims of violence, Victoria Police is not acting for the victim (AFM), who therefore often needs her own advice.

While many CLCs will assist respondents as well as applicants/AFMs, generally, unless there is a conflict of interest, CLCs mainly assist applicants/AFMs, with Victoria Legal Aid mainly assisting respondents at court.

CLCs also provide advice and information on family violence issues, together with other specialist assistance for victims where financially feasible. In addition to CLCs that provide duty lawyer help at Magistrates' Courts, 15 other CLCs provide assistance to family violence victims in many related areas of law, including family law, fines, debts, housing/homelessness and crimes compensation. Generalist centres refer or receive expert input from specialist CLCs, often via integrated multidisciplinary support programs.¹⁹ This makes it more likely that a client can have their legal needs met via only one service contact.

CLCs are funded for their duty lawyer work through a combination of Family Violence Division and Family Violence Specialist Services Courts funding, together with small amounts of piecemeal funding and sometimes, where possible, from CLC core funding.

Forty per cent of new cases opened each year by Victorian CLCs are now family violence cases, an increase of 490 per cent in the last ten years. Over the same time there has been a 329 per cent increase in total family violence work by CLCs. Nevertheless, many victims still cannot access legal assistance when attending court to obtain an intervention order. In 2014-15 there were 35,691 intervention order applications and CLCs provided, at most, 9,857 duty lawyer services. Victoria Legal Aid provided 11,273 duty lawyer services to parties in family violence intervention orders. This means that – despite the efforts of both Victoria Legal Aid and CLCs – less than 40 per cent of parties to family violence intervention orders received a duty lawyer service at court.

In many courts, especially regional courts, the closest CLCs do not have resources to provide a duty lawyer service. In others, substantial increases in intervention order applications means the court lists additional sitting days which cannot be supported by a duty lawyer service. In addition, the number of matters dealt with daily can be as high as 70 or more. In excessively busy courts, the quality of duty lawyer services is seriously compromised because the lawyer has insufficient time to take full instructions and help the victim to obtain a tailored order that takes full account of the parties' living situation, child contact arrangements or other requirements. Orders that are not adequately tailored are more likely to result in breach. Rushed duty lawyer services also compromise the lawyer's capacity to provide safety planning, make non-legal referrals or identify and make referrals for other legal issues. These are vital given that court can be a victim's first contact with the service system.

In many cases, due to limited capacity, the CLC will be unable to provide ongoing assistance with the raft of other legal issues arising from the victim's experience of violence. Missing out on this help compounds and prolongs the impact of victimisation and can have serious financial, legal and safety consequences for adult and child victims. It can lead to homelessness, financial disadvantage and hardship, and can put the safety of women and their children at risk through unsafe child contact arrangements.²⁰

Aboriginal women and women from culturally and linguistically diverse backgrounds experience high levels of family violence, but will not necessarily access mainstream services. Culturally safe legal services via

¹⁹ Emerging evidence suggests an integrated, multi-disciplinary approach is the most effective way to meet the legal needs of vulnerable and disadvantaged people, including - if not especially - victims of family violence. See, eg: Pleasence, P, Coumarelos, C, Forell, S & McDonald, H M, *Reshaping legal assistance services: building on the evidence base: a discussion paper*, Law and Justice Foundation of NSW (2014); Coumarelos et al (2012) 214-19.

²⁰ See eg, Emma Smallwood, *Stepping Stones: Legal Barriers to economic equality after family violence*, Women's Legal Service Victoria (September 2015); Australian Institute of Health and Welfare, 'Domestic and family violence and homelessness 2011-12 to 2013-14' <http://www.aihw.gov.au/homelessness/domestic-violence-and-homelessness/>

Aboriginal Family Violence and Prevention Legal Service (AFVPLS) and inTouch Legal Centre are vital but are limited by resources.²¹

Additional CLC family violence duty lawyers are needed to ensure that all victims of family violence have access to specialist legal advice and representation when attending the Magistrates' Court to obtain an intervention order to prevent violence against themselves and their children. Further, specialist family violence legal assistance is also required in high demand/high need areas and to help the most vulnerable women and children with the raft of legal issues arising from family violence, such as housing, credit and debt or minor property, victims compensation, Centrelink, fines and family law children's issues.

3.5.2 Employment law

The LAW Survey identified that 5.9 per cent of respondents in Victoria had experienced employment law problems in a one year period and that employment law problems were associated with significant levels of stress-related illness, physical ill-health and income loss or financial strain.²² Employment law problems are trigger problems that can lead to a range of other legal and non-legal problems.

Despite the prevalence of employment law problems, there are few sources of free legal advice or assistance with employment law issues and, as our 2014 report *Putting the law to work* discussed, demand for these services outstrips capacity.²³ The report outlined that:

- JobWatch is the only specialist employment law legal centre in Victoria and provides the bulk of free employment law advice, but due to resource constraints, JobWatch is unable to meet 57 per cent of demand for its services
- Justice Connect, which coordinates pro bono referrals in Victoria, reports that employment law consistently features in the top four problem types for which people seek pro bono help but that in the five years leading to 2013 Justice Connect has only been able to successfully refer about 20 per cent of employment matters to pro bono providers.
- Victoria Legal Aid received over 3,700 employment related calls in the 2012-2013 year and had to refer around three quarters of these callers to other services because Victoria Legal Aid only provides employment law advice when the problem relates to a discrimination matter.

The level of specialisation required to safely assist with employment law matters means that only a few CLCs are able to provide employment law assistance. There is an urgent need for greater funding of free and low cost employment law assistance in Victoria.

3.5.3 Assistance for families in coronial proceedings

Under Victoria's coronial process, coroners are required to discover the truth about a death, whether it was preventable and if so, how the system failed and how future such deaths might be prevented.²⁴ Discovering what led to a person's death is vitally important for their family, who often say they would get some comfort from sparing others the same fate.

However, coronial matters also represent a significant area of unmet legal need. Previous work by the Federation of Community Legal Centres has found that families are often confused and frustrated about

²¹ For more detail on the above, see Federation of Community Legal Centres, Submission to the Royal Commission into Family Violence <http://www.rcfv.com.au/Submission-Review>

²² Coumarelos et al (2012) 85, 162

²³ For a more detailed discussion, see Federation of Community Legal Centres (Vic) Inc, *Putting the Law to Work: Meeting the demand for employment law assistance in Victoria* (2014)

²⁴ See eg Lyndal Bugeja, Roderick J McClure, Joan Ozanne-Smith and Joseph E Ibrahim, 'The Public Policy Approach to Injury Prevention' (2011) 17(1) *Injury Prevention* 63.

aspects of the investigation or inquest process, and often only find out about their rights to participate when it is too late to try to exercise them meaningfully.²⁵

Legal assistance for a coronial investigation or inquest can be very expensive,²⁶ but there are almost no free legal services doing this work. Few CLCs can currently provide assistance with coronial matters; the process is resource-intensive and can continue for years.²⁷ Very few firms and barristers are prepared to undertake such assistance on a pro bono basis because, again, the longer the inquest, the less likely that any solicitor and barrister will be able to give unpaid time. It is also very rare for families in such circumstances to receive legal aid, even for legal advice.²⁸

Although the Federation is not a legal service, families regularly contact us as well as individual CLCs because they cannot find an affordable lawyer, or feel they have been on a referral ‘merry-go-round’ without obtaining effective legal assistance. Their contact with us is often at the last minute and because they feel they have ‘reached the end of the line’ in trying to access legal help and information.

These factors result in most families not being legally represented at inquests.²⁹ Lack of clear and timely information, coupled with lack of legal help, means that the coronial process can be an exceptionally difficult and traumatic experience for bereaved families. The absence of legal assistance for families may also compromise the quality of the investigation, because the interests of all relevant parties are not able to be fully ventilated.

The Federation will be looking at this issue further throughout 2016 and has recently commenced a Legal Services Board-funded project, ‘Wanting justice: Helping families through the coronial process after a family violence death’. Preliminary consultation with project stakeholders has already underscored family members’ unmet needs for legal assistance, especially representation at inquest. The Coronial Council has also recommended to the former Attorney-General that the State Coroner be given legislative discretion to identify the need for legal aid to be granted to families in certain circumstances.³⁰

3.5.4 Prisoners

Unlike jurisdictions such as Queensland, Victoria does not have a dedicated prisoners’ legal service. Service mapping undertaken by the Victorian Legal Assistance Forum Prisoners Working Group has highlighted that people in custody in Victoria’s prisons have limited or no access to legal help for issues other than their criminal law issues.

This is despite prisoners having a range of legal needs, including civil law housing, fines and debt needs that, if not resolved while they are in custody, are likely to increase the prospect of reoffending on release.

Two CLCs, Justice Connect and Brimbank Melton CLC, have recently developed pilot projects on a small scale to assist prisoners to resolve civil law issues. The projects show significant potential, but at this stage are reliant on philanthropic funding and, in each case, reach only one prison and assist with a narrow range of legal problems. Other CLCs—such as Mental Health Legal Service and Darebin CLC—provide limited telephone advice to prisoners, using philanthropic or volunteer resources. Mental Health Legal Centre also provides a philanthropically funded weekly civil law service, “Inside Access,” within the Dame Phyllis Frost Centre.

²⁵ Federation of Community Legal Centres (2013), *Saving Lives by Joining Up Justice: Why Australia Needs Coronial Reform and How to Achieve It*, 20

²⁶ Federation of Community Legal Centres Victoria (2013), *Saving Lives by Joining Up Justice*, 53

²⁷ Community Law Australia, *Unaffordable and Out of Reach: The Problem of Access to the Australian Legal System* 9–10 <www.communitylawaustralia.org.au/wp-content/uploads/2012/07/CLA_Report_Final.pdf>.

²⁸ Federation of Community Legal Centres Victoria (2013), *Saving Lives by Joining Up Justice*, 53-57.

²⁹ Federation of Community Legal Centres Victoria (2013), *Saving Lives by Joining Up Justice*, 50-70.

³⁰ Coronial Council of Victoria *Annual Report 2013-14*, 8.

Victoria Legal Aid is considering a dedicated helpline for prisoners which will reflect a significant improvement. However, we are concerned that resolution of many issues will remain out of reach unless the helpline can refer people to services able to provide ongoing assistance.³¹

3.5.5 Summary Crime

Another area some CLCs have noted serious concerns about unmet legal need is in relation to summary crime. During 2015, the Flemington Kensington CLC turned away 37 clients who were seeking criminal representation in circumstances where they also wished to make a complaint against police.

Given the VLA guidelines on summary crime, unless there is a CLC with capacity to take on a contested hearing, there are no referral options for people without capacity to pay for criminal representation. As criminal representation is a critical requirement for holding police who engage in misconduct to account, this gap reflects a critical failure in Victoria's accountability system as well as a lack of access to justice.

3.6 Quantifying the legal assistance gap

Numerous inquiries and reviews undertaken in the past two decades have identified that resources are inadequate to meet legal need and the legal assistance is severely under-resourced.³²

The Productivity Commission reached the same conclusion, noting that legal assistance services deliver social and economic benefits, including cost savings to other areas of government service delivery, and that Australia is one of the lowest funding nations of legal assistance services on a per capita basis.³³ The Productivity Commission recommended that the Australian, State and Territory Governments should provide additional, interim funding of \$200 million for civil legal assistance funding "to address the more pressing gaps in services".

These inquiries have confirmed the experience of CLCs across Victoria. As the place of last resort for those who cannot afford a private lawyer and cannot get legal aid (either because legal aid does not provide assistance with their problem or because of the stringent legal aid means test) CLCs see the impact of this inadequate resourcing daily.

Therefore, while there is some scope to improve the operation of the legal assistance sector and are committed to working with legal aid commissions and Aboriginal and Torres Strait Islander legal assistance services to this end, it will be impossible to effect real improvement in access to justice for disadvantaged and low income Australians without an adequately resourced legal assistance sector.

It is contrary to the available evidence to assume that access to justice can be substantially addressed by simply reforming or redistributing existing services.

Indeed, as we argued before the Productivity Commission, any changes to the legal assistance system should not result in reduced access to justice for disadvantaged people who currently receive assistance. Redistribution of current funds to meet gaps in service, with no increase in overall resources, will unacceptably reduce access to justice for many disadvantaged Victorians.

³¹ See also the submissions of DLA Piper and Centre for Innovative Justice

³² See, eg Senate Standing Committee on Legal and Constitutional Affairs, *The Cost of Justice: Foundations for Reform* (1993); Federal Access to Justice Advisory Committee, *The Justice Statement*. (1995); Senate Standing Committees on Legal and Constitutional Affairs, *Inquiry into Legal Aid and Access to Justice* (2004); Attorney General's Department, Commonwealth of Australia *Review of the Commonwealth Community Legal Services Program* (2008); Senate Legal and Constitutional Affairs Reference Committee, *Access to Justice* (2009)

³³ Productivity Commission (September 2014) 735

We therefore urge the Victorian Government to act on the Productivity Commission's recommendation and to advocate to the Australian Government to do the same. Based on the current allocation of funding to Victoria, this amounts to funding injection of \$18 million per year from the Victorian Government and an additional \$28 million per year from the Australian Government.

We also note the Productivity Commission's finding that there is no transparent or evidence-based assessment of what overall quantum of funding for legal assistance is required to adequately address legal need, and support the Productivity Commission's recommendations that a comprehensive assessment of the appropriate quantum of funding be conducted.³⁴

3.7 CLC funding

Centres funded through the main CLC government funding program received a total of \$25.4 million in 2014-15 (38.6 per cent from the Federal Government and 61.4 per cent from the Victorian Government). This includes funding provided to 38 CLCs, the Federation and one organisation that is not a CLC.³⁵

3.7.1 State funding grants

Additional one-off funds of \$2 million general grants and \$1.2 million for family violence help were made available from the Victorian Government in 2015. The \$1.2 million family violence grants of approximately \$50,000/year were provided to 23 CLCs to increase family violence duty lawyer services. This commitment was made in recognition of urgent demand pressures that could not wait until the Royal Commission into Family Violence completed its work. This fund has allowed CLCs to provide victims of family violence with specialist legal help at regional courts where there was previously no CLC family violence lawyer available. It has also allowed CLCs to extend their duty lawyer services to cover additional family violence sitting days where courts have listed these to help manage growing demand. As discussed above, this fund has helped but not fully addressed the need for legal help to support victims of family violence. Ongoing and additional investment will be required following the findings of the Royal Commission.

The \$2 million CLC Assistance Fund has enabled 28 CLCs to extend their services to disadvantaged communities. The services provided with these grants include services to young people at risk, employment law services to migrant workers, help for people with mental health legal issues, and services to women facing eviction and homelessness. Each of these services is meeting serious, ongoing need to some of the most vulnerable people in this state. Funding for these services must be sustained beyond the end of the grant period.

Any additional funding is positive, but CLCs already rely on temporary, project-based funding from philanthropy to supplement core funding. Managing temporary funding can be challenging and resource intensive. Most importantly, having to cease effective projects or reduce much needed services is damaging for the people reliant on the services, and has a negative impact on staff morale and to the CLC's reputation. It is important that the Victorian Government ensure ongoing funding for the services established through the grants process.

3.7.2 Federal funding

The most significant threat to CLCs' capacity to maintain service levels is from the Federal Government. Already under-resourced and unable to meet demand, Victorian CLCs face almost 30% Federal Government funding cuts commencing July 2017. Federal funding to CLCs (excluding supplementation to allow

³⁴ Productivity Commission (September 2014), Recommendation 21.5, 743 and Recommendation 25.2, 897

³⁵ Springvale Community Aid and Advice Bureau

CLCs to maintain award wages in line with the Equal Remuneration Order) will drop from \$9.737 million in 2016-17 to \$6.836 million in 2017-18.

CLCs have been provided a notional allocation of funding over the five years of the National Partnership Agreement. This has allowed CLCs to understand the likely impact of the cuts on their CLC and their services to clients. Examples of the impact of this funding loss include:

- Darebin CLC will lose 70.3 per cent of their federal funds, meaning 150 women they would otherwise have been able to assist with family law and family violence matters will miss out on help
- Goulburn Valley CLC will lose all federal funding, which equates to one full-time lawyer providing family violence, family law and generalist legal help in Shepparton, a high needs area which is also home to the largest Indigenous population in Victoria outside metropolitan Melbourne, and
- Westjustice (Western CLC) will lose \$142,747 (56.3 per cent of the federal funding previously provided to Wyndham Legal Service) which means it will have to close all youth law services including a clinic held at the Council Youth Centre in Wyndham and will have to lose a staff member dedicated to working with newly arrived communities in an area with a high number of refugees and newly arrived persons.

The prospect of funding cuts in July 2017 comes after several turbulent years:

- **July 2013** – the Federal Government announced an additional \$33.5 million over four years for CLCs
- **December 2013** – the Federal Government Mid-year Economic and Financial Outlook (MYEFO) included a cut of \$43.1 million over four years to the legal assistance sector, including \$19.61 million to CLCs, \$13.34 million to ATSILS and \$3.65 million to FVPLS
- **January 2014** – Environmental Defenders Offices lost some of their funding, with all federal funds ceasing from July 2014
- **May 2014** – the Federal Budget 2014-15 included MYEFO cuts (above) plus an additional \$6 million/year cuts to CLCs
- **May 2014** – the Federal Attorney-General's Department provided advice about which CLCs were to receive MYEFO funding cuts effective July 2015
- **March 2015** – the Federal Attorney-General announced the reversal of some of the MYEFO cuts three months before they were due to take effect following concerted advocacy by CLCs and CLC associations
- **July 2015** – the new National Partnership Agreement on Legal Assistance Services 2015-20 is signed, and reflects a 30% (\$12 million/year) drop in federal funding to CLCs between 2016-17 and 2017-18. The new NPA also shifts costs to the Victorian Government for management of a CLC database and for telephone interpreters.
- **September 2015** – the Federal Government announces \$15 million over three years for family violence legal assistance as part of a Women's Safety Package. Most, but not all of the \$5 million/year funding will be provided to CLCs. Three Victorian CLCs will receive a share of this funding and be able to increase support.

As at March 2016, therefore, Victorian CLCs are once again in a position of having to plan to reduce services, terminate lawyers' employment, close branch offices and cease providing duty lawyer services. This was the position of 14 Victorian CLCs one year ago, before the March 2015 reversal of the first cuts. In the face of massive unmet legal need, the instability caused by the Federal Government's approach creates inefficiency, impedes planning and impacts services to vulnerable and disadvantaged people, even before the scheduled cuts take effect.

3.8 The importance of sector-wide engagement on priorities for legal assistance (ToR 6)

We note that several CLC submissions to this Review have suggested that CLC funding be increased when VLA Guidelines change, in acknowledgment of the fact that when VLA tightens its guidelines, there is a corresponding increase in demand for CLC services (See for example the submissions of YouthLaw and Fitzroy Legal Service).

We acknowledge that in a funding constrained environment—such as one in which Legal Aid guidelines are tightened—there is unlikely to be additional funding for CLCs available.

However, the legal assistance sector is clearly one in which a reduction of legal services by one provider will lead to an increase in demand for legal services by another provider. For this reason, we believe there is a need for VLA and CLCs to work together to come to a shared view on priority client groups, or at least to understand the likely impact on other services, before VLA makes significant changes to guidelines. VLA's more recent processes of engagement and consultation, such as those used in the family law services review and those underway in relation to VLA's means test review, reflect a positive process. Use of an open and consultative process ensures the VLA Board's decisions are informed by expertise from outside VLA as well as from within the organisation. Another appropriate forum for this engagement may be the community consultative committee convened under section 12K of the Legal Aid Act 1978 (Vic), which is convened for the purpose of providing advice to the Legal Aid Board. This committee has been reconvened to undertake collaborative service planning as the Sector Innovation and Planning Committee.

Recommendations:

That funding provided to CLCs through the Victorian Government's CLC Assistance Fund be made available on an ongoing basis.

That the Victorian Government provide additional funding to ensure that every family violence applicant has access to a specialist family violence duty lawyer and to increase access to ongoing legal assistance with related family law, credit and debt, tenancy and other issues.

That additional funding be allocated to address significant areas of unmet need, including employment law, and that historical underfunding of assistance for serious civil law problems be addressed.

That the Victorian Government provide \$18.4 million in urgent, interim additional funding to the legal assistance sector in line with the Productivity Commission's recommendations.

That the Victorian Government continue to advocate to the Federal Government on the need to reverse planned CLC and ATSILS funding cuts and to make urgent, interim additional investment of \$27.6 million in line with the Productivity Commission's recommendation.

That all changes to government legislation and policy at state and federal level should be accompanied by a legal assistance impact statement and, where an increase in demand is indicated, appropriate funding be provided.

That Victoria Legal Aid consult with other providers before making major changes to eligibility criteria and guidelines and that providers work together where possible to reach a shared view of priority clients and services.

That the Victorian Government work with the Federal Government to improve data collection and facilitate an accurate understanding of the resources required to properly address legal need.

4 CLC efforts to understand and better meet legal need

Since their inception, CLCs have managed scarce resources and made difficult decisions about which community members can be assisted and what assistance they can receive. The CLC sector is therefore accustomed to adapting to meet the greatest areas of legal need and has done so for over 40 years. In recent years, however, CLCs have become more rigorous and sophisticated in their efforts to understand legal need in their target community and ensure they are working as effectively as possible to meet the most serious needs.

We include information about these efforts as the Productivity Commission raised some concerns that CLCs nationally may not be targeting their services to greatest need, and that CLC locations and the allocation of resources within the CLC sector are based on history rather than a contemporary understanding of legal need. It is important that the Review Team understand the extent to which the Victorian CLC sector and the broader legal assistance sector is already addressing these issues.

4.1 CLCs and legal needs analysis

CLCs have been undertaking legal needs analyses for more than a decade. For example, a legal needs analysis was undertaken by Advocacy and Rights Centre in Bendigo in 2004, in order to make the case for the funding of a Loddon Campaspe CLC.³⁶ In 2012, the National Association for CLCs developed a Legal Needs Analysis framework and toolkit, and supported twenty CLCs to undertake a legal needs analysis in accordance with the methodology it outlined.³⁷ The kit provided guidance on undertaking a legal analysis through the following steps:

1. CLCs take a snapshot of their data collection rates, which could reveal gaps in their data collection
2. CLCs analyse their service data over a five year period to get an understanding of where in their catchment their clients are coming from and their clients' demographics
3. CLCs look at census data, including the SEIFA index, and other data made available by local agencies (e.g. data relating to health, policing, and housing agencies)
4. CLCs interview local legal and non-legal agencies to test whether the service data and demographic data matches the perception of need on the ground
5. CLCs undertake a gap analysis to identify whether they are seeing the most disadvantaged clients from their catchments.
6. CLCs consider service changes in response to this legal needs analysis.

The process came with significant challenges, one of which was the fact that some CLCs have very large catchment areas composed of multiple local government areas, and undertaking a legal needs analysis of a large catchment required significant resources to identify areas of high legal need. In some locations, such as Flemington, a relatively gentrified area and high SEIFA index disguised pockets of extreme disadvantage. Despite these issues, several Victorian CLCs undertook a legal needs analysis and made changes to service delivery as a result. Not all of these legal needs analyses were released as public documents.

The NACLCLC Toolkit presented particular challenges for specialist services, and those specialist services that have undertaken a legal needs analysis—such as Social Security Rights Victoria (SSRV) and Women's Legal Service Victoria (WLSV)—have adjusted the NACLCLC methodology. Both these services have made changes to their service delivery as a result of undertaking a legal needs analysis.

³⁶ Smith, "Access to Justice in the Loddon Campaspe Region... demonstrating the need for a Loddon Campaspe Community Legal Centre," (2004), Advocacy and Rights Centre Limited.

³⁷ The Legal Needs Assessment Framework can be found on the NACLCLC web site at http://www.naclc.org.au/cb_pages/legal_needs_assessment_framework.php.

Case study: Social Security Rights Victoria

SSRV's legal needs analysis uncovered areas of Victoria which have a high proportion of social security recipients but do not have localised social security specialist services operating. As a result of their legal needs analysis, SSRV provide a higher proportion of CLE activities to these areas. Their analysis also found that other CLCs have an inconsistent approach to detecting social security law issues and referring clients who present with social security law issues. To address this, SSRV run a CLC secondment program. In this program, a CLC lawyer works 1 day per week at SSRV for a period of time (usually 3 months) to gain specialist knowledge of social security law. The project started in late 2014, where a solicitor from Western Suburbs CLC was seconded at SSRV. The result is that Western Suburbs CLC discovered a significant and systemic social security issue amongst a cohort of CALD clients in their catchment. Western Suburbs CLC (Now Western CLC) have applied for and received funding for a project to address this systemic issue. SSRV is also working with a number of metro and rural CLCs to devise a project aimed at increasing the capacity of generalist CLCs to detect social security issues. The project will create a series of client profiles or lists of characteristics that indicate a higher likelihood of that client experiencing a social security law issue. This project is in its early stages and will be piloted later this year.

Case study: Women's Legal Service Victoria

WLSV undertook a major service review in light of their legal needs analysis and have made changes to their service delivery model to reach the most disadvantaged women in the most disadvantaged areas. This has meant rolling back the non-means tested services they offered, including a "drop in" clinic in Melbourne and day time phone advice line. They have also commenced providing child protection legal services which were found to be a key issue of legal need for the most disadvantaged women. And they focussed their outreach services through the LINK project (legal advice via video-conferencing) to priority local government areas across the state.

Case study: Southeast legal needs analysis

In 2014-15, several CLCs in the southeast of Melbourne undertook a legal needs analysis project jointly with Victorian Legal Aid offices in the southeast region, broadly using the methodology outlined in the NACLC toolkit. This project is described in the submission to this Review made by Peninsula Community Legal Centre. This project can be distinguished from the legal needs analyses undertaken by other CLCs in two ways:

1. It involved several CLCs, and required the service data of multiple CLCs in the south east region to be combined;
2. It included the local VLA offices in the area, and required the service data of the participating VLA branches to be considered alongside CLC data. This presented particular challenges because of differences in the data collected by VLA and CLCs, and a need for data to be manipulated in order to be comparable.

Key findings of the project can be found in the submission of Peninsula CLC, and partners are still working to explore opportunities for collaboration across the region.

4.2 Collaborative planning resource

In 2015, the NSW Law and Justice Foundation created a collaborative planning resource and made it publicly available on its web site. This resource adds to what has come before in two ways:

1. It includes suburb-level data for Victoria that not all CLCs were previously able to access
2. It includes Need for Legal Assistance Indicators (NLAS) that are designed as a proxy for "legal capability", and can be used by CLCs to identify areas of high legal need in their local area.

The resource provides a more straightforward way for CLCs to analyse demographic data in their catchment to identify areas of high legal need in their catchment than the NACLCL Legal Needs Assessment Toolkit, using three NLAS indicators: NLAS (Capability), NLAS (Indigenous) and NLAS (CALD).

The Law and Justice Foundation agrees that data alone does not provide a clear picture of what legal need exists in a community, and, more importantly, how that legal need can best be met. Geoff Mulherin, the EO of the NSW Law and Justice Foundation, has spoken about local and regional planning being needed to take into account the mix of legal and non-legal services in any particular jurisdiction, and the accessibility or lack thereof of particular services. In our view, demographic data should always be tested through qualitative research, such as interviews with courts, police, other legal assistance providers and local non-legal agencies.

4.3 Local legal needs analysis needed to inform statewide planning

CLCs have been aware of the need for, and methodology of, legal needs analysis for some years. CLCs are sophisticated in using evidence to make decisions about issues such as priority clients, priority legal areas in which they should have staff expertise, and places in which outreach is necessary. CLCs will bring this expertise to the collaborative planning process required under the NPA (see 4.4 below).

There is a need to support CLCs to continue to take legal needs analyses that are rigorous, regular (ideally at least every five years, timed to coincide with the release of the latest census information), and have a broadly consistent methodology so that they can be compared. These local legal needs analyses should include:

- review of demographic information in the local area using the NSW Law and Justice Foundation Collaborative Planning Resource
- review of other information that can be accessed by the CLC (e.g. relevant data from police, prisons, office of housing, health services)
- review of CLC service delivery data
- qualitative information collected through interviews with key stakeholders in the area.

These analyses can be used to inform regional service planning that is undertaken jointly with Victoria Legal Aid, although we note that a process for this has yet to be agreed, and we are reluctant to pre-empt the decision on an appropriate process, likely to be considered by Victoria Legal Aid's Sector Innovation and Planning Committee.

4.4 Need for research body to support legal needs analysis and collaborative service planning in Victoria

The NSW Law Foundation has added significant value to the legal assistance sector across Australia through its research, including the Law Survey. It has also worked closely with NSW Legal Aid to combine Legal Aid and CLC data for the purpose of conducting legal needs analyses. We see a need for a body in Victoria to undertake research in order to provide an evidence base for Victorian legal assistance services to make decisions about how they provide services, and to whom.

We note that section 5 of the Victoria Law Foundation Act 2009 (Vic) sets out the functions of the Foundation, which include:

- (c) to commission research, and disseminate such research, in relation to—
 - (i) access to the law
 - (ii) identifying the needs of persons who are unable to access, or face barriers in accessing, the law effectively

- (iii) community and professional education about the law and the legal system
- (iv) the administration of justice.

We understand that the Victoria Law Foundation has prioritised another function set out in section 5(a), “to promote or undertake community education within Victoria,” and the organisation’s current priorities fall within this function.

We suggest the Victorian Government consider the best means of ensuring Victoria receives the benefit of research and analysis of the sort provided by NSW Law and Justice Foundation. This may involve the Victorian Law Foundation working with the NSW Law Foundation to explore how might work with the legal assistance sector to commission and distribute research on legal need. Such research is necessary to inform and support the legal needs analysis work conducted by legal assistance services and to inform statewide service planning.

4.5 CLCs’ approach to targeting services

Increasingly, CLCs use the evidence and findings obtained through legal needs analysis to review and amend the centre’s service delivery model or eligibility criteria. Our experience is that most, if not all, Victorian CLCs have well developed eligibility criteria, triage processes and/or casework guidelines to direct their work.

Common features of CLC eligibility criteria include:

- case work is directed at people earning no or low income
- assistance is prioritised for people facing other forms of social exclusion or disadvantage, such as disability, mental illness, victimisation or homelessness and often there is flexibility to assist people facing disadvantage even where the person’s income is slightly above a strict means test cut off
- in some instances there is an emphasis on prioritising cases that have potential to effect wider social change, benefiting both the individual client and the wider community
- assistance is generally not provided if the person is eligible for legal aid, thereby minimising duplication, and
- certain areas of law – such as personal injury – are excluded on the basis assistance is available at private law firms, for example on a ‘no win, no fee’ basis.

4.6 CLCs proactively looking at how to work together better

The Productivity Commission formed the view that the size of some CLCs impacts their efficiency and that CLCs should be encouraged to amalgamate.

The Federation suggests that, while there is always scope to improve efficiency, CLCs by necessity run very lean operations with minimal waste. CLCs provide legal services at well below market rates; by investing in community legal centres on a continued basis, governments are getting considerable value for money.

However, Victorian CLCs are actively considering whether there is scope to improve their operations, including through amalgamation. In the past two years, four groups of Victorian CLCs have embarked on projects to examine whether there are different models they can use to work together with neighbouring CLCs to meet the needs of the local community.

The first of these involved four CLCs in Melbourne’s West. As a result of that project three of the CLCs, Footscray CLC, Western Suburbs Legal Service and Wyndham Legal Service amalgamated to form the new Western CLC, or Westjustice, in July 2015. Another two CLCs decided to amalgamate to form the Northern CLC in January 2016. Other groups of CLCs are still engaged in the process of identifying and evaluating

different options, from coordinated service planning, to shared corporate functions to shared management or full amalgamation.

The Federation does not take the view that merging CLCs will always deliver efficiencies or improvements for clients, but strongly supports CLCs in their efforts to look afresh at how they are working and where they are directing resources in light of changing legal need. That a number of Victorian CLCs have proactively taken these steps is a sign of a mature and sophisticated sector, and a sector that remains committed to delivering the best possible outcomes for the communities they serve.

4.7 Cross-sector efforts to improve coordination and meet gaps in legal assistance

As the Review Team is aware, several processes are being established to improve planning and coordination of legal assistance in Victoria. These are also expected to develop a clearer, evidence-based framework for the allocation of legal assistance resources. These include Victoria Legal Aid's Sector Innovation and Planning Committee and the Department of Justice and Regulation's Victoria Legal Assistance Planning Committee.

The Federation supports these processes and wants to make sure that any framework for service planning and resource allocation is sophisticated enough to accommodate qualitative data on legal need as well as relevant quantitative data from legal service providers and external sources such as the Australian Bureau of Statistics. The Federation will be represented on, and will contribute to the work of, both committees.

As discussed above, statewide planning efforts must be informed by rigorous and consistent legal needs analyses at local and regional levels. Some additional centralised support will facilitate CLCs in achieving this.

4.8 Duplication

We encourage the review, and governments generally, to exercise caution before assuming that multiple providers with apparently similar service offerings necessarily indicate duplication.

While there is always scope to improve coordination, it is our experience that the extent of unmet legal need among disadvantaged community members and the relative scarcity of legal assistance resources, means that unnecessary duplication in service delivery is rare.

It is also important to distinguish between unnecessary and wasteful duplication on one hand, and multiple providers providing, e.g. legal education services or publications on the same topic but tailored to different groups with different needs on the other.

The joint submission of Victoria legal Aid and the Community Legal Education Working Group of the Federation discusses this issue in more detail.

Recommendations:

That the Federation be funded to provide centralised support to CLCs to continue to undertake sophisticated and broadly consistent legal needs analyses at a local level using qualitative data collection methods and the Law and Justice Foundation's Collaborative Planning Resource.

That the Victorian Government consider the best means of ensuring Victoria receives benefit of research and analysis of the sort conducted by the NSW Law and Justice Foundation to support legal needs analysis, service development and statewide planning by legal assistance services.

That Victoria Legal Aid be encouraged to consider redevelopment of its database so that it is consistent with the definitions of the National Data Standards Manual (as the new national database for CLCs will be), so that in the future CLC data and VLA data can be meaningfully compared for the purpose of legal needs analysis. The ability to compare Victorian CLC and Legal Aid data to data from other states will enable Victoria to make an evidence-based claim for a larger allocation of Commonwealth funding.

That Victoria Legal Aid continue to provide resources to support CLCs that have, of their own volition, initiated examination of whether and how they might work together differently to maximise sustainability and delivery of CLC services for the community .

That the Review Team note the work underway to improve collaboration and coordination within the Victorian legal assistance sector, and assess whether adequate resources are available to ensure this work will have maximum impact.

5 Access to legal assistance services and legal information (ToR 1)

5.1 Support for a well-resourced main entry point

There is value in a clear, well-resourced and well-known main entry point to the legal assistance sector for people who know they have a legal problem and need legal assistance. While the NSW Law Access model has some advantages, we query whether developing a new entity and new infrastructure to improve telephone access to the legal assistance sector represents the best use of scarce resources.

Victoria Legal Aid's development of the Legal Help telephone line has been a positive step towards establishment of a main entry point for those seeking legal advice and help. More work is needed to ensure quality referrals to CLCs and other agencies, and this work is underway (see section 5.4 below). Feedback from community members also suggests that at times demand exceeds capacity for the Legal Helpline, with people experiencing long waiting times of up to an hour and a half. The Federation supports Victoria Legal Aid's ongoing work to monitor demand, review resource allocation and ensure a high functioning and accessible advice line.

5.2 The need for multiple entry points, particularly for people experiencing disadvantage

While a main entry point is important as a means of enabling most people to access initial information and then navigate their way through the legal assistance sector, it would be a mistake to strive for a single entry point. Indeed, doing so would reduce access to justice for the most disadvantaged in the community.

The best available research is clear that people experiencing different forms of disadvantage and those with the most serious legal problems may not recognise that they require legal help and/or are unlikely or unable to seek out a mainstream legal service. Multiple entry points are vital.

For the most vulnerable clients, CLCs facilitate pathways into legal services through regular outreach at locations that are easily accessed by clients (e.g. Maternal and Child Health Services) and partnerships with non-legal organisations that are providing assistance to vulnerable people (e.g. homelessness services, drug treatment services). Several CLCs have started to explore the benefits and improved access to justice that can be achieved through co-location with schools (see the submission of WestJustice and YouthLaw) and health services (see submission of Loddon Campaspe CLC).

CLE can also facilitate access to legal services. CLE workers at Eastern CLC tell us:

The aim of much CLE is to facilitate access to the legal centre. The CLE and community development undertaken by CLCs create relationships and build trust with workers at non-legal organisations and with clients. It is these relationships and trust that encourages vulnerable and disadvantaged clients to contact a CLC.

CLE can be most effective when it is delivered to a captive audience. The submission of YouthLaw, for examples, emphasises the benefit of delivering CLE in schools. Other CLCs have engineered delivery of CLE to large numbers of people through Adult Migrant English program classes.

Many clients access legal services via phone but some of the most vulnerable clients to access CLCs are "drop-ins". Face to face contact can facilitate triage assessments that cannot be done over the phone—for example a client's appearance or behaviour (e.g. shaking), body odour, appearance (inappropriate clothing,

e.g. long sleeved clothing on a hot day) can suggest homelessness, attempts to conceal injuries, mental illness, or other vulnerability.

5.3 The valuable role of specialist phone advice services

Often, advice provided by a practitioner with specialist expertise in the relevant area of law will provide more advanced advice and reduce the need for an individual to make multiple contacts to get sufficient information on which to act.

A number of CLCs, including JobWatch, Consumer Action Law Centre, Youthlaw, and Justice Connect Not-for-Profit Law offer specialist advice via statewide telephone services. Where existing statewide telephone services offer specialist advice in a particular area of law, these services should be promoted and re-sourced so that as many people as possible can access them. Maximising awareness of, and access to, these specialist sources of advice means that people do not have to first approach a general advice line and be referred on.

5.4 Reducing the ‘referral merry-go-round’

One of the serious problems affecting people trying to find legal help is the prevalence of ‘the referral roundabout’. It is too common for individuals to be passed from one service to another on the basis the next service ‘may be able to assist’. There is scope to improve:

- the effectiveness of referrals from CLCs to other CLCs
- the effectiveness of referrals from CLCs to Victoria Legal Aid, and
- the effectiveness of referrals from Victoria Legal Aid to CLCs.

The expansion of Legal Help and the number of referrals it makes to CLCs has led to a renewed focus on referrals. CLCs agree that there is a need for an information database that can be accessed by both CLCs and Victoria Legal Aid, which is adequately resourced and updated. VLA is developing the “Orbit” program to improve referrals from VLA Legal Help to regional VLA offices, and we strongly support the expansion of Orbit to include information about CLCs that can facilitate referrals to CLCs, and for Orbit to be accessible by CLCs to enable referrals to other CLCs and Legal Help.

Some CLCs are also undertaking work to ensure that self-referrals (by the public seeking legal help) are effective. In our view, this can best be achieved by ensuring that CLCs provide clear information in plain English on their web site, providing details of what legal assistance they provide and broad eligibility guidelines. CLCs need to ensure that this is updated when staff or service delivery changes. If a directory for the public is to be managed by an external service provider, there must be funding to ensure the directory is regularly updated.

5.5 Information on legal forms and documents

We support the view of some CLCs that there is significant room for improvement in the legal information conveyed on legal documentation such as infringements and notices to vacate. We note with approval the process the Magistrates’ Court of Victoria has engaged in with support from the Centre for Innovative Justice to review standard intervention order conditions and the information available on orders. The process used has involved significant consultation with relevant stakeholders including community lawyers, and has had a clear focus on improving the extent to which parties to intervention orders can readily understand the terms of an order and its implications.

Recommendations:

That specialist CLCs providing statewide legal advice be funded to improve access to telephone legal advice services through improved technology, increased staffing and promotion of their services across the state.

That the capacity of Legal Help to meet demand be closely monitored and that additional funding be made available if needed to support Legal Help as an effective main entry point to services.

That decisions in respect of improving access to legal information and entry into the legal system recognise the importance of multiple entry points, including the importance of outreach, drop-in and culturally specific service models to ensure access among particularly disadvantaged groups.

That technology developed by one legal assistance provider to improve referrals be made available to the whole sector, including CLCs.

6 Diversion from civil litigation and opportunities for improved triage (ToR 2)

6.1 Most legal problems never reach court

As discussed at section 3.1, the Law Survey provides valuable information about what people do when they have a legal problem. Of the 50 per cent of people who seek advice in relation to their legal problem, less than one third sought advice from a legal advisor.³⁸

It is not the experience of CLCs that they use significant time assisting people who have no legal problems. Rather, evidence and research suggests the opposite; that most people who have legal issues are unaware that they are legal problems and, even if they are, a very small proportion seek assistance from a legal service. This is why CLCs focus on outreach, collaboration with non-legal agencies and, in recent years, integrated service delivery models such as health-justice partnerships.

CLCs approach legal problems from a broad perspective, consistent with the definition used in the LAW Australia Wide Survey:

a matter experienced by a respondent which raised legal issues, whether or not it was recognised by the respondent as being ‘legal’ and whether or not any action taken ... to deal with the event involved the use of any part of the civil justice system.”³⁹

The vast number of legal problems will never reach a court or tribunal. Those that do reach a court or tribunal are the exception rather than the rule—a tiny fraction of the total legal problems that exist in Australia. Funding allocations should reflect this evidence, and provide more funding to community legal centres to increase access to justice (particularly by the vulnerable and disadvantaged, who we know are more likely to experience multiple legal problems).

6.2 CLCs support clients to resolve matters outside court

CLCs will always support a client to resolve an issue without recourse to the courts if that is a viable option. In many CLC cases, clients are not applying to the courts seeking redress. As noted in the submissions of Fitzroy Legal Service and Westjustice, the most vulnerable and disadvantaged clients are much more likely to present to a CLC because they have been named as the defendant in a legal matter, as a result of an unpaid debt, infringements, or a tenancy-related matter such as an eviction. Where CLC clients are seeking legal redress, there are numerous barriers that make going to court an unrealistic option, including application fees, the risk of costs, the lack of availability of legal representation, and the client’s reluctance or limited capacity to self-represent. Given these circumstances, the vast majority of clients will seek to avoid court through negotiation or by accessing ADR schemes where available.

When CLC clients do apply to the courts with the support of a CLC, most cases are settled before a full hearing. There is pressure to settle many cases because of the limited capacity of the CLC, the reluctance of clients to go through a hearing, and the fact that a modest financial settlement can make a difference to the life of a disadvantaged person. The fact that almost all cases settle can be a source of frustration for lawyers, because systemic injustice can remain hidden as a result.

³⁸ Coumarelos et al (2012) 111.

³⁹ Coumarelos et al (2012) 4.

6.3 CLCs triage multiple legal and non-legal issues

The most disadvantaged clients may have multiple, intersecting legal issues, including fines and other debts, insecurity of housing, and issues related to family violence. CLCs undertake a process to triage to identify and prioritise clients' most urgent legal issues, and develop a plan for dealing with other legal issues.

CLCs also play another triage role in working with clients to identify and triage non-legal issues and to make referrals to the right non-legal services. This is part of the holistic service delivery of CLCs.

Where people have identified or been advised that they have a legal issue, it is our view that triage conducted by a lawyer (as opposed to non-legal triage) is usually most appropriate to ensure that some of their legal issues or avenues available to them are not missed. This applies both prior to a matter being dealt with through the courts and to any triage process contemplated as part of the court process.

Recommendations:

That the role of CLCs in diverting clients from civil litigation be recognised, and funding allocated to CLCs accordingly.

7 Factors to consider when expanding use of ADR (ToR 3)

7.1 The need for ADR schemes to be robust

Robust ADR schemes can be a useful way of resolving disputes between parties. Many industry ADR schemes, for examples, can resolve disputes on the papers and without the need for a hearing. This can result in lower costs, the ability to manage a large volume of disputes, and fewer barriers to people—including vulnerable people—seeking access to justice.

ADR schemes must be subject to independent review to ensure the quality of their processes and outcomes. This is necessary given the fact that ADR proceedings do not result in public judgments that can be scrutinised. The test of whether ADR is successful should not only be how many matters are resolved, but the quality of the process and the outcomes achieved. The industry schemes, such as those managed by the Telecommunications Ombudsman and the Finance Industry Ombudsman, provide examples of how this can occur with independent reviews including a review of process and a sample of disputes handled. ADR schemes supported by industry codes of practice are annually reviewed against strict national benchmarks, and are assessed for continuing relevance every three years.

7.2 ADR schemes must be responsive to vulnerable and disadvantaged

It is important to ensure ADR schemes are responsive to the special needs of vulnerable and disadvantaged people. ADR practitioners need a good understanding of the range of legal rights that may apply where one party suffers from financial disadvantage and hardship. In civil cases, for example, the financial circumstances of the parties in the ADR process can be very relevant to the strengths and weaknesses of each party's case and may be as important – or more important – than the law and facts in dispute. These rights include financial hardship obligations of certain types of parties including credit providers, utility providers and insurers and some debt collectors, as well as limitations on enforcement (for example where assets would all be protected from seizure by the sheriff) and rights under section 12 of the Judgment Debt Recovery Act 1984 (Vic) which prevents a court from making an instalment order against an individual whose sole income is a government pension or benefit (without that individual's consent). Industry schemes are aware of hardship provisions because they specialise in disputes with a particular industry and are aware of legal obligations of that industry.

Industry ADR schemes have been successfully utilised by vulnerable people in part because CLCs have worked with industry schemes to improve access, and to support clients to access schemes. For example, the Telecommunications Industry Ombudsman and the Energy and Water Ombudsman Victoria have worked with CLCs on “bring your bills” days to facilitate access for low income people to their ADR schemes.

As noted in the submission of Springvale Monash Legal Service, a key factor in whether ADR is used effectively is whether the parties have access to adequate legal advice before participating in it. If existing ADR schemes are expanded or new ADR schemes are created for particular categories of disputes, provision should be made for access to free legal advice services for vulnerable and disadvantaged clients.

As noted in the submission of Environmental Justice Australia, ADR is not suitable for all disputes, in some cases because a good outcome cannot be negotiated, and in others because there is a need for a Court to clarify the law and create precedent. The EJA also notes: “Public judgments also facilitate the law to play a role in preventing unlawful behaviours, by demonstrating there are consequences for breaching the law—this outcome would not be achieved through a confidential settlement.”

Case study: police complaints

The police complaints process is an example of a scheme that is effectively an ADR scheme that is not sufficiently robust, in that it is not independent, and has not been independently reviewed to test the quality of its processes and outcomes. The very low substantiation rate in police complaints increases the demand from complainants to initiate civil claims against police in the Court. Overwhelmingly, people initiate civil claims against police in circumstances where their complaint has failed in the police complaints process. In our view, the effective and independent investigation of complaints will divert a large number of civil claims from the courts.

Recommendations:

That existing ADR schemes, including ADR undertaken by the Dispute Settlement Centre and within VCAT and the Magistrates' Court, be independently reviewed to ensure the quality of processes and outcomes.

That any new ADR schemes be piloted, and their outcomes and processes be the subject of independent review before schemes are permanently established.

That, for any new or continuing ADR schemes, funding be provided to ensure that legal advice is available for any vulnerable clients referred into ADR.

8 VCAT: small civil claims (ToR 4)

As noted in the section addressing ToR 1 above, most CLC clients appear in VCAT because they are respondents in tenancy, eviction, and bond and compensation matters. Many vulnerable and disadvantaged clients do not appear or are not represented in such proceedings. In the civil list, CLC clients are occasionally assisted to make an application by CLC lawyers, and the sections below are written with the CLC client as applicant in mind.

8.1 VCAT's processes too legalistic

VCAT's processes should reflect the fact that it is intended as an accessible jurisdiction. The submission of Peninsula CLC sets out all of the processes that an applicant at VCAT must navigate:

1. obtain and complete an Application Form
2. conduct an ASIC business or company search, identifying the correct trader. Other CLCs have noted that a full company search is required, at a cost of \$20, even if the business is a large company such as Commonwealth Bank.
3. Submit the form to VCAT
4. Receive VCAT's confirmation, Notice of Hearing and Declaration of Service form
5. Collate evidence and serve Application and supporting documents on the other party
6. Complete and sign Declaration of Service form before a qualified witness
7. Provide declaration of service and copy evidence to VCAT on the day of hearing
8. Attend and present their case at the Hearing.

These steps, particularly the requirements related to service, are onerous and intimidating for a person who is vulnerable or disadvantaged, and likely to act as a disincentive to applying.

We note the submission of Westjustice and the fact that some unscrupulous defendants, such as Publicity Monster, have manipulated the service requirement in VCAT by providing multiple addresses for service and protracting proceedings when they fail to appear due to an apparent lack of process.

8.2 Many applicants need assistance to identify a cause of action

Most people—including the vulnerable and disadvantaged—have a very strong sense of whether they have been treated fairly. Many people who come to a CLC seek advice because they feel like they have suffered unfair treatment, and want to find out if they have any legal redress. But to bring an application in VCAT, a person must do more than tell their story—they must identify a legal basis for their complaint, for example, the section of the Australian Consumer Law on which they can base a cause of action.

Some CLCs, such as Fitzroy Legal Service, provide this advice through their volunteer-run night service—but additional assistance is needed. This could be provided through a duty lawyer service provided through a CLC, or, as suggested in the submission of YouthLaw, “the provision of a warm and friendly single access point that assists people to lodge their claims (e.g. an in-person and telephone help desk with trained staff to assist people with limited literacy to complete the relevant paperwork”.

8.3 Fee waiver process needs review

We understand that the fees at VCAT sit outside the terms of reference of this review, but note that the fees have recently increased, and there has been a corresponding decrease in the number of applications. The process around fee waiver is not entirely clear or consistently managed. As set out in the submission of Springvale Monash Legal Service:

Current grounds for having the application fees waived are: holding a commonwealth concession card; or financial hardship. Those claiming financial hardship must fill out a complex and lengthy affidavit as to their means. This process is more demanding than the Supreme Court of Victoria's fee waiver process. Also, anecdotally, VCAT staff do not apply this criteria consistently: that is, those with a commonwealth Health Care Card are often also asked to fill out an affidavit as to their means.

The submission of Westjustice provides a case study to illustrate this point at page 38.⁴⁰

8.4 Categories of parties that can be represented by a professional advocate needs expansion

Some applicants to VCAT are particularly vulnerable and need the support of an advocate to assist them to put their case. Westjustice is funded by Consumer Affairs Victoria to assist applicants who are vulnerable as a result of family violence, intellectual or physical disability, limited English proficiency, mental health issues and substance abuse.

Section 62 of the VCAT Act sets out the categories of person that can seek to be represented by a professional advocate in VCAT. This list does not include any people with the vulnerabilities listed above. The Westjustice submission provides examples of cases in which an applicant was vulnerable and representation was merited in light of significant power imbalances, and yet the advocate was excluded from the proceeding.

8.5 Internal review

An internal review process should be added to VCAT. This can help ensure that decisions are high quality and broadly consistent.

Recommendations

That VCAT processes be reviewed with a view to reducing legalistic and onerous requirements that reduce accesibility, such as the requirement that the applicant serve documents.

That CLCs be funded to provide free advice or duty lawyer services to VCAT applicants in the civil list.

That fee waiver be granted to any applicant who holds a Healthcare Card, with no requirement that the applicant be required to show any other proof of income or assets.

That consideration be given to review of the VCAT Act to expand the categories of persons who can be represented by a professional advocate, to include people who have special vulnerabilities, such as mental illness, intellectual or physical disability, or lack of proficiency in English.

⁴⁰ We note that the fee waiver schemes at the Magistrates, County and Supreme Courts are also overly onerous on litigants and their solicitors (if they have one). For example, each time a person needs to file a document they have to go through a process of providing an affidavit of their financial circumstances. This can sometimes take days to approve, which is a particular problem when time constraints apply, such as the filing and serving of witness subpoenas and the initiation of proceedings within statute of limitations or appeal time frames. The alternative approach and the one adopted by the Federal and High Courts (and even FOI applications) is for the person to provide the Court with a copy of their health care card (or even Centrelink number) at the initiation of proceedings and then agree to inform the court if their status changes. The requirement to submit and affidavit to get a fee waiver also precludes low-income applicants from accessing e-filing systems at the County Court.

9 Pro bono legal services (ToR 5)

9.1 Effective pro bono contributions

CLCs and law firms that undertake pro bono work agree that pro bono work is no substitute for an adequately funded CLC sector—see for example the submissions to this Review by YouthLaw (at page 5), Fitzroy Legal Service (page 13), Justice Connect (page 4), and DLA Piper (pages 4-5). For example, some CLC work is in specialised areas outside the expertise of pro bono law firms. While pro bono assistance is important, building and retaining expertise and capacity within CLCs is critical to meet the need of the community. And CLCs that do generalised work have a specialised ability to provide legal assistance services to the most vulnerable and disadvantaged clients.

Having said that, CLCs can leverage pro bono contributions to increase provision of legal services to the most vulnerable and disadvantaged. The most effective pro bono contributions improve access to justice by working closely with CLCs to:

- Provide regular secondments to CLCs. Long-term secondments (such as the six-month secondment of a lawyer from Ashurst to Youthlaw) enable CLCs to train pro bono lawyers and then increase service delivery to the client group for the period of the secondment. Lawyers who have completed such a secondment return to their law firm with a good understanding of relevant legal areas, client group vulnerabilities, and CLC practice
- Staffing regular outreach clinics based at a CLC, such as fines clinics provided at Westjustice or Homeless Law
- Provide other ad hoc legal support, such as a willingness to enable CLCs to “phone an associate” to seek legal advice on a legal issue, and/or
- Providing non-legal support, such as rooms for CLCs’ meetings, printing services to produce annual reports, and document management to prepare large files in litigation. Some law firms have even provided assistance with graphic design and in seconding administrative staff to cover staff leave at a CLC. Firms that have provided a whole of firm response tell us there are advantages in having a strong pro bono culture that includes non-lawyers at a firm.

It is worth noting that there is a cost for CLCs in working with pro bono firms to provide direct legal services to disadvantaged clients. CLC staff must train and support pro bono lawyers to work with clients, in legal areas that are unfamiliar and provide legal supervision. This cost is only worthwhile if a pro bono lawyer can commit to a substantial ongoing involvement.

The most effective pro bono contributions come about as a result of an ongoing relationship between a community legal centre and a pro bono partner.

Ongoing relationships between CLCs and firms enable the pro bono contribution to adapt as the needs of the CLC and, importantly, their clients, change over time.

Partnerships between CLCs and private firms can be a useful mechanism for ensuring that firms’ contributions are targeted to the communities and legal issues where need is greatest.

Case study: Pro bono lawyers mediate a win for migrant Mum

The Consumer Action Law Centre contacted Justice Connect on behalf of Sonia, who had recently arrived in Australia and was having issues with a migration service. Sonia moved to Australia with her husband, who was studying in Melbourne, and was pregnant with their first child. She engaged a migration service to lodge her application for a permanent residency visa costing her life savings of approximately \$25,000.

The migration agent informed her that it would establish a business in a regional area and would train, employ and sponsor her as a skilled migrant. The migration agent took her to a shop-front in the area and

told her that it would be the business premises. However, Sonia never received any confirmation in writing or otherwise in relation to the operation of the business.

Sonia's visa application was rejected on the basis that the proposed business was not financially strong enough to sponsor her. Pregnant and facing the prospect of deportation from Australia, and having no funds left to lodge another visa application she sought help from the Consumer Action Law Centre. Justice Connect referred the matter to a member and Counsel. Proceedings were issued in the Magistrates' Court to recover the money that Sonia paid the migration service. The matter settled at mediation where Sonia was offered a sum that she was very happy with.

This settlement has made a huge difference to Sonia's life. It allowed her to re-apply for a visa and stay in Australia with her husband and young baby daughter. Sonia was extremely grateful for our assistance and all the work the pro bono lawyers provided. She wanted us to know that without pro bono assistance and the generosity of her lawyers she would not have received a fair outcome. Sonia said "thank you for your dedication ...your help, advice and time was most helpful and provided me with great assistance to achieving my result."

9.2 Building relationships between CLCs and pro bono firms

Not all CLCs have relationships with pro bono firms. According to some data the number of CLCs that report a relationship with a pro bono firm is falling. According to the survey of CLCs undertaken every year by the National Association of CLCs, in 2012-13, 72.5 percent of CLCs reported having a pro bono partnership. In 2013-14, this fell to 67 percent, and in 2014-15 it fell to 60 percent.

Justice Connect is the primary means by which individual CLCs connect with pro bono firms and barristers to seek assistance for a particular case or client. Justice Connect is ideally placed to perform this role through the organisation's referral service. Justice Connect has promoted the use of their referral service to connect with pro bono firms and barristers for assistance to clients and to centres. In addition, Justice Connect runs a number of specific programs that harness pro bono contributions in different ways to meet various distinct needs.

Justice Connect can also link CLCs to firms for assistance with ongoing pro bono commitments (such as providing legal advice at clinics) through its pro bono secretariat meetings and meetings with individual CLCs. For example, Justice Connect has worked with Asylum Seeker Resource Centre's Human Rights Law Program to seek pro bono assistance to deal with the "Legacy Caseload".

However, Justice Connect has limited capacity to link CLCs to firms if the CLC is seeking purely non-legal support (such as access to meeting rooms and printing). It is our understanding that Justice Connect has limited capacity to work with CLCs to build their capacity to develop an appropriate "pitch" for pro bono assistance for a particular project, or to develop a pitch for the CLC to attract a pro bono relationship.

The centres that are less likely to have relationships with pro bono firms include: those that are smaller and less sophisticated; those that are in outer metro areas; or those that are in RRR areas. For those CLCs that do not already have a relationship with a pro bono firm, relationships can be difficult to establish. This is in part because the larger firms with substantial pro bono practices already have relationships with one or more CLCs and do not have capacity to work with new partners; in part that the CLCs are not able to articulate what projects or programs they need pro bono support for; and in part that travel to outer metro areas can be logistically difficult for pro bono firms. Justice Connect informs us that CLCs have not approached them with proposals that Justice Connect can take to firms, and they encourage CLCs to articulate the assistance they seek. In our view, some CLCs need support to develop such proposals in a form that will be attractive to pro bono firms. This capacity building role is one that is appropriate for the Federation to undertake, in close partnership and consultation with Justice Connect.

We believe there is scope to refresh the Attorney-General's Community Law Partnerships scheme. This will support new pro bono partnerships among CLCs that face greater barriers in engaging firms, for example because they are located in outer metropolitan areas. These are areas in which legal need is growing. These partnerships can help ensure the 20 per cent contribution expected from the Government's new panel is realised and is directed to the most disadvantaged in the community.

9.3 Incentivising pro bono contributions from firms

Based on CLC data, the Victorian Government panel arrangements have driven pro bono contributions in Victoria beyond those of any other state and we support these arrangements. The Federation supports any efforts to increased pro bono contribution by government lawyers. The Victorian Government Solicitor's Office currently contributes to two CLCs. At one centre, for example, the VGSO provides valuable staff secondments and effectively adds the equivalent of one FTE lawyer to the resources of that centre. This approach to ongoing pro bono contribution through a CLC partnership should be encouraged for any large branches of lawyers across government.

The Federation supports necessary regulatory changes to clarify the availability of costs in pro bono matters. This clarity will address an imbalance between disadvantaged and financially affluent parties in certain civil disputes. The prospect of paying another party's costs forces a party to consider the merit of bringing, defending or settling a claim. Further, we expect certainty will support sustainability of pro bono services and encourage practitioners to provide pro bono services. Ideally, however, costs recovered in pro bono matters would be reinvested into future pro bono work.

The Federation does not support the suggestion that lawyers be able to claim CPD points for providing pro bono help. Lawyers would only need to claim 12 CPD points per year, and 12 hours is not a useful commitment for a CLC.

9.4 Incentivising pro bono contributions from law students

Many law students volunteer at community legal centres, and provide thousands of hours of work every year to undertake jobs including answering phones, and conducting legal research.

From 2009 to 2015, there was a pathway for the best and brightest law student volunteers at CLCs into the CLC sector, through the CLC Law Graduate Scheme. It was specifically designed to enable such graduates to enter the CLC sector at an optimal time and in a supported manner. This Scheme was supported by the Legal Services Board for two three-grant periods. Over this time, seven CLC lawyers went through a graduate program. Six of those lawyers are still in the sector. We believe the existence of the law graduate scheme also provided an incentive for law students to volunteer at CLCs.

In 2015, the Legal Services Board declined to consider an application for another law graduate position, on the grounds that it had already funded the scheme twice and could not be seen to provide ongoing funding. While we understand this decision we feel that there was a lost opportunity to institutionalise this scheme as a cornerstone of excellence in CLC professional practice. In 2015, the last CLC law graduate position was advertised. For one position, we received more than 100 applications. Of those, more than 80 percent of students had either volunteered at a legal centre or participated in a Clinical Legal Education program. Losing this valuable program means that there is now no clear pathway for outstanding graduates to plan their entry to the CLC workforce. They must take their chances in the roulette of job vacancies as they arise, undermining certainty and confidence.

The Federation has developed a proposal for a revised law graduate scheme, to provide a pathway for law students into employment in CLCs. The proposal is based on a model of public interest fellowships devel-

oped in the United States by Equal Justice Works. It would require a law student to work with a CLC to develop a project idea, and then pitch it as a fellowship proposal to the Federation. Successful applicants would be able to work at a CLC for a year, in which time they could work with the CLC to carry out a project (which might involve use of new technology to reach new clients or improve client services, development of new outreaches or new partnerships, research projects to explore legal need, and other projects). We believe that funding such an iconic program would be a significant legacy, be of enormous benefit to the CLC sector, continue to attract excellent candidates, and build the Federation's own capacity to understand the professional support needs of lawyers in the sector.

Recommendations

That the Victorian Government support a refreshed Attorney General's Law Partnerships scheme by funding a role at the Federation to facilitate partnerships between CLCs and pro bono firms.

That the Federation of CLCs be funded to establish public interest law fellowships, to build a pathway from volunteering at a CLC as a law student to becoming a CLC lawyer.

Appendix I

Examples of systemic advocacy and law reform by CLCs

Examples of work by individual community legal centres

Eastern Community Legal Centre – Sexting and family violence

Eastern Community Legal Centre (ECLC) drew on its casework with people charged with sexting offences, and with victims of family violence, to provide a submission to the 2013 Victorian Parliamentary Law Reform Committee for the Inquiry into Sexting. ECLC supported the recommendations of the National Children's and Youth Law Centre that specific sexting-related defences to child pornography possession should be incorporated into all Victorian criminal laws that may apply to sexting; there should be discretion for Sex Offender Registration; and defences should be available for innocent third party recipients. These recommendations were aimed at addressing an identified problem where young people experimenting or acting out of curiosity can currently be convicted of child pornography offences even though the recipient is similar in age and the sexual activity depicted is lawful.

At the same time, ECLC raised the need for a new sexting offence where a person intentionally disseminates material without the consent of the person depicted in it. ECLC made this recommendation on the basis of its work with clients who experience sexting, or the threat of it, as a part of family violence. The creation of a new sexting offence of this type was then recommended by the Committee, and the Victorian Government has since committed to introducing legislation. It is unlikely that a new sexting offence would have resulted without ECLC's input. Since the Report of the Inquiry, ECLC has received regular requests from community organisations and sexual assault counsellors for legal education sessions designed for young men and women and which address the issue of sexting and family violence.

Consumer Action Law Centre – stopping irresponsible marketing of credit

The Consumer Action Law Centre (CALC) financial counselling team regularly heard from families burdened by credit card debts of more than \$20,000. While customers have a responsibility not to take out credit they cannot afford, banks are also required to assess what a customer can afford before extending credit. However, before July 2012, banks would commonly make unsolicited offers of increased credit limits to customers who would not normally have asked for such an increase and in some cases could not afford it.

Research by Deakin University showed that banks were using sophisticated psychological techniques to encourage people to agree to increases on impulse and without thinking about whether or not they were in a financially sound position to do so.

CALC and other CLCs compiled case studies and briefed Parliamentarians across the country. These discussions led to legislation that banned unsolicited credit limit increase offers, but allowed customers to opt in to receive them. The new law recognises that credit should not be bought on impulse.

Peninsula Community Legal Centre - Volunteer Practising Certificates

Advocacy by Peninsula Community Legal Centre (PCLC) is an example of an initiative that successfully sought legislative change to boost efficiency in centre capacity to legally assist clients, via enabling more lawyers to volunteer in community legal centres.

In 2004, PCLC raised concerns about the requirement for volunteer lawyers who did not otherwise hold practising certificates to pay \$200 a year for a corporate practising certificate. This affected volunteers

who had retired or who worked for government and were exempt in their employment from the requirement to hold a practising certificate. That year, four lawyer volunteers resigned from Peninsula CLC as they were unable or unwilling to pay \$200 for a practising certificate for the sole purpose of volunteering.

At a meeting of Federation member centres, a motion was passed expressing concern at this situation. PCLC wrote to the Attorney-General, as well as the Law Institute of Victoria and Legal Services Board, both of which subsequently raised concerns with the Department of Justice. The Department of Justice liaised with the Federation and officers from the Legal Profession Project and took these concerns into account in drafting legislation.

The *Legal Profession (Consequential Amendments) Act 2005* was subsequently introduced and provided that no fee or surcharge was payable for a practising certificate if the solicitor only volunteered in a community legal centre. Those volunteers are now also supported by free membership of the Law Institute of Victoria and are eligible to attend free continuing professional development training provided by Victoria Legal Aid.

In the 2013-14 financial year, PCLC had 19 volunteer lawyers who held a CLC volunteer practising certificate. These lawyers collectively provided more than 900 free legal advices to vulnerable and disadvantaged clients.

Loddon Campaspe Community Legal Centre – Identifying system needs

As we outlined in our response to the Productivity Commission's Draft Report, the holistic nature of CLC legal assistance means that our centres do not simply provide legal help but are also able to use client-based data to advocate for systemic improvements to the justice system. Loddon Campaspe Community Legal Centre's (LCCLC) family violence casework is an example. In 2011 LCCLC received funding through Victoria's Legal Services Board to undertake *Why Didn't You Ask?*, a project that aims to improve the safety, social and health outcomes for women at risk of or experiencing family violence.⁴¹

The project uses an in-court survey and in-depth interviews to ask women victims of family violence who have been assisted by LCCLC about the appropriateness of the legal interventions and the women's preferred outcomes. Interim results show how pertinent the project is for ongoing policy development. As one example, a large proportion of women have indicated that they wanted to heal from the harm that had occurred and that they wanted their partner or former partner's behaviour to be monitored and for him to acknowledge the harm that he had done. As the Interim Report notes,

'[i]f women do not feel that their experiences have given them these preferred outcomes, it indicates a significant disconnect. It will be worth considering what other processes that could better achieve these outcomes might look like.'⁴²

This finding has direct relevance to current stakeholder discussions about whether the large increase in demand for family violence intervention orders, and consequent pressures on Magistrates' Courts, should be alleviated by the introduction of self-executing orders. Stakeholders such as CLCs publicly oppose such a measure on the basis that this is likely to reduce accountability for respondents to intervention order applications because they may never have to attend court. The interim findings of *Why Didn't You Ask?* provide evidential support for this stance.

The project also provides a valuable opportunity to assess whether the intervention order system is working in the way it was intended by policy makers and Parliament. The survey found that women had varied responses when they were asked whether they felt that the Magistrate was receptive to their concerns for their safety, with 10 per cent stating 'not really' or 'not at all'. Other concerns included inconsistent Magis-

⁴¹ Loddon Campaspe Community Legal Centre, '*Why Didn't You Ask?*' *Interim Project Report* (October 2013).

⁴² Loddon Campaspe Community Legal Centre, '*Why Didn't You Ask?*' *Interim Project Report* (October 2013), 5.

trate practices regarding the addition of children to intervention orders, safety at court, and variable approaches to risk assessment by court staff. LCCLC continually feeds in such findings to its advocacy and the Federation's advocacy with decision makers.

Footscray Community Legal Centre and the Federation of Community Legal Centres – Improving conditions and reducing future legal need among taxi drivers

The Productivity Commission's Draft Report references Footscray Community Legal Centre's Taxi Driver Legal Service.⁴³ Given recent developments and action by the Victorian Government, it is timely to update the Commission on the impact of this work.

Footscray CLC established the Taxi Driver Legal Service in 2011, having recognised that many taxi drivers were being assisted by CLCs and they experienced unique, complex and unusual legal problems. Casework in the Taxi Driver Legal Service identified a number of systemic issues in the taxi driver industry, particularly the adverse impact employment conditions and insurance arrangements were having on drivers.

Among the issues apparent through Footscray CLC's casework was that taxi drivers were exposing themselves to serious financial risk every time they drove because most taxis were not properly insured. Taxi drivers' status as bailees, rather than employees, also meant they were subject to a range of serious problems associated with poor pay, legal entitlements and safety at work.

Footscray CLC and the Federation worked together to document the legal and financial problems affecting taxi drivers and set out recommendations for reform in a report published in August 2012.⁴⁴

By this time, the Victorian Government had appointed Professor Allan Fels to conduct a broader inquiry into the taxi industry. We used the policy work to make submissions to the inquiry and many of our recommendations were included in the inquiry's final report. The majority of these recommendations were accepted by the Victorian Government and have recently been implemented as 'implied terms' in taxi driver's agreements, including:

- Compulsory insurance for operators covering the taxi drivers against liability for third-party damage (to apply from 30 September 2014);
- Minimum income of 55 per cent of gross fares earned during a shift;
- Up to four weeks of unpaid leave where the driver has worked 12 months or more for the same operator.⁴⁵

Most recently, Footscray CLC and the Federation made a submission in response to the Regulatory Impact Statement on driver's agreement 'implied terms' in June 2014, specifically in relation to insurance. We expressed our concern in regard to the proposal that taxi operators be permitted to charge drivers for excess (which is against normal insurance practice, where employers commonly pay excess).⁴⁶ This submission was accepted and the recommendation that excess be paid by taxi operators has also been implemented.

This example illustrates that in some cases a community legal centre is uniquely placed to identify systemic issues that create unfairness and legal need. Unless Footscray CLC had noted systemic problems in the taxi industry through interactions with clients, established the Clinic and worked to record and raise these issues in joint law reform work with the Federation, these issues would not have been raised in the Fels inquiry and would not have been brought to the attention of government.

⁴³ Productivity Commission's Draft Report, 624.

⁴⁴ Footscray Community Legal Centre and Federation of Community Legal Centres, *'In the driver's seat: Achieving justice for taxi drivers in Victoria'* Report (2012), 5.

⁴⁵ <http://www.taxi.vic.gov.au/taxi-reform/reforms-implemented>, http://www.taxi.vic.gov.au/__data/assets/pdf_file/0015/213531/Implied-Conditions.pdf

⁴⁶ Federation of Community Legal Centres, Footscray Community Legal Centre, *'Response to the Regulatory Impact Statement for the Transport (Compliance and Miscellaneous) Act 1983 Implied Conditions – Taxi Driver Agreements'* (May 2014).

Footscray CLC estimates that, over time, the changes to insurance arrangements alone will protect drivers and owner drivers in up to 1,000 motor vehicle accidents per year and will remove up to 100 civil debt cases per year from the courts and the Taxi Driver Legal Service.

Footscray Community Legal Centre – Changing the way the insurance industry deals with debts owed by uninsured drivers

CLCs' casework on behalf of a few individuals can lead to changes in systems that affect large numbers of people on low incomes. Sometimes that systemic change does not involve reform of any laws or regulations. For example, in 2008 Footscray CLC started an innovative case work and advocacy project that sought to change the way insurers deal with judgment-proof debtors.

Footscray CLC had often provided advice to low-income clients who had caused damage in motor vehicle accidents and did not have third party property damage insurance. Because these clients were not insured, insurers or debt collectors were pursuing clients individually. The majority of clients were judgment proof, meaning that they had no assets and their only income was derived from Centrelink. This income is protected by the *Judgment Debt Recovery Act (Vic)* and the *Social Security Act (Cth)*. It was standard practice for CLC lawyers to send a letter to the insurer setting out the client's financial hardship. Usually the insurer would not respond. Months or years later the client would hear from debt collection agency still seeking to recover the debt. Some low-income clients would then—under pressure and fearing bankruptcy—agree to enter a repayment plan to pay off the debt. Some repayment plans were manifestly impractical; for example, requiring people to pay \$20 per fortnight over 30 years to pay off the debt. Footscray CLC developed a casework/advocacy plan to stop this absurd process, where clients who could not pay were pursued by debt collectors who would never recover the money owed.

Footscray CLC determined that all the major insurers are members of the Insurance Council and voluntarily agree to abide by the Insurance Code of Practice. The 2006 Code stated that if the insurer and the debtor could not agree then the matter would be treated as a dispute and could be referred to the insurer's internal dispute resolution (IDR) procedure. Footscray CLC created a series of standard letters that caseworkers could send when assisting judgment proof clients, designed to force insurers to treat these matters as disputes and refer them to IDR. If insurers did not use IDR, then the matter would be referred to the Insurance Council's Code Compliance Committee. Insurers were required to pay the Insurance Council every time the Committee intervened. These letters were rolled out to all other CLCs in Victoria (and eventually nationally) to encourage them to adopt the same approach. Simultaneously, Footscray CLC met with the managers of insurers' IDR schemes, to persuade them that it was much more cost-effective for them to write off a debt at an early stage rather than spend time and money pursuing a judgment-proof client who would never be able to make all the payments. Since 2008, insurers have agreed to write off more than \$690,000 owed by judgment-proof clients of Footscray CLC alone.

As a result of this casework strategy, insurers changed their internal processes to ensure that matters involving low-income debtors were referred to their IDR schemes. As a result of the advocacy to insurers, insurers made decisions to write off debts owed by judgment proof debtors. Some insurers subsequently developed hardship schemes to deal with judgment proof debtors. On 1 July 2014 a new Insurance Code of Practice included detailed provisions about how insurers must treat debtors in financial hardship and options they can consider, including waiver. A comparison of the Insurance Codes of Practice of 2006 and 2014 shows the impact of Footscray CLC's advocacy.

These changes collectively mean CLC lawyers no longer have to undertake time-consuming, ineffective negotiations with insurers and/or debt collectors, but are able to pursue a streamlined process to seek write-off of debts. Vulnerable people in financial hardship are less likely to be pressured into entering re-

payment plans with insurers, and thereby avoid the broader social consequences that payment of such debts can trigger in vulnerable low-income people, such as eviction, homelessness and unemployment.

The success of this strategy led to the Bulk Debt Negotiation project at West Heidelberg CLC.⁴⁷

Footscray Community Legal Centre – Providing information about common legal issues to recently arrived refugees

When a CLC maintains a systemic approach, casework can drive community legal education, and strategic community legal education can then be used to change systems in order to prevent or intervene early in legal problems.

Lawyers at Footscray CLC started a targeted legal outreach service for recently arrived migrants and refugees from the Horn of Africa, in partnership with local agencies providing settlement services and English classes through the Adult Migrant Education Program. A firm acting pro bono also attended every outreach service.

After 18 months of providing the legal service, Footscray lawyers analysed casework data to identify the most common legal problems experienced by recently arrived migrants and refugees, and some of the underlying causes of those problems. One identified cause was ignorance of the way in which legal, regulatory, and bureaucratic systems worked.

Lawyers undertook a strategic CLE/advocacy project to ensure settlement agencies provided information to migrants and refugees about how to prevent common legal problems, and how to access a lawyer. As a result of this approach:

- Footscray CLC partnered with a local settlement services provider to create a DVD entitled “Getting to know the law in my new country,” containing short films showing common legal problems, how they could have been avoided, and how to access legal help.
- Footscray CLC sought representation on the Orientation Consultative Committee in the Humanitarian Branch of the Department of Immigration and advocated strongly for the need for information to be provided throughout the settlement process to prevent legal problems, and ensure that new migrants and refugees were able to recognise a legal problem and seek legal help. The next tender (in 2010) required settlement service providers and providers of the Adult Migrant English Program to provide information about common legal problems.
- Footscray CLC worked with National Legal Aid to transform the DVD into a national community legal education (CLE) resource to be used in Adult Migrant English Program classes (provided to 60,000 migrants and refugees every year) so providers could meet their tender requirements. The resource, entitled “What’s the Law,” has been rolled out nationally.

Victoria Legal Aid is undertaking a research project to determine whether the CLE resource has potential to change attitudes. Preliminary results indicate that watching a “What’s the Law” story about buying a car changes the attitudes of newly arrived migrants who watch it.

As a result of Footscray’s strategic CLE work and partnership with National Legal Aid, some common problems with a legal dimension will be prevented. This includes driving without a licence, without a child seat, or without insurance. This could save CLC and VLA lawyers’, police and court time in trying to resolve these issues; as well as reducing the social costs associated with common legal problems being experienced by highly vulnerable people who are newly arrived in Australia, including stress, bankruptcy, and barriers to employment and successful long term settlement, such as criminal records.

⁴⁷ National Association of Community Legal Centres (NACLC) in conjunction with state community legal centre peaks, Submission No 077 to Productivity Commission, *Access to Justice Arrangements*, 14 November 2013, p 29.

Flemington Kensington CLC – tackling racial profiling by Victoria Police

In 2005, staff at Flemington and Kensington CLC began to receive a large number of complaints about police brutality against African and Afghan Australians in Flemington and surrounding neighbourhoods. After complaints were made to Victoria Police, the Office of Police Integrity and the Australian Human Rights Commission, lawyers at Flemington and Kensington CLC were frustrated by the consistently inadequate responses they received from all these organisations. Accordingly, the CLC brought a ‘test’ discrimination case against Victoria Police in the Australian Federal Court on behalf of 17 victims.

Amid a significant level of media attention and public scrutiny, the matter was ultimately settled out of court, but the outcome included the CLC securing agreement from Victoria Police to commission an independent review of its training and practices. Importantly, the agreement allowed public access to the documents from the case and allowed parties to speak about the allegations and the settlement. This was crucial because the CLC used media extensively to build awareness of the issues affecting their clients, and this outcome allowed them to continue to use the media effectively after the settlement.

Following the inquiry, Victoria Police released the *Equality Is Not the Same* report (Victoria Police 2013), in which it committed to a three-year action plan to address community concerns about discriminatory policing. As a result of this CLC’s work, Victoria Police introduced receipting pilots in specific areas across Victoria – a process that requires Victoria Police members to provide receipts to individuals who are stopped, as an accountability mechanism – , rolled out new training for all members in relation to dealing with vulnerable groups, and established a network of 17 community reference groups as well as a Chief Commissioner’s Human Rights Advisory Committee which includes four members from different CLCs.

Throughout its work on the Police Accountability Project, Flemington and Kensington CLC made it a priority to ensure that community voices and experiences were central in the push to change the approach of Victoria Police and that the affected community were supported and empowered. The CLC worked to support those involved in the litigation, including by making sure that they were connected with health, housing, education and other services as needed, and employed a youth worker to provide ongoing support. Flemington and Kensington CLC kept the public informed of the progress of the case and the action taken afterwards by holding regular public meetings and releasing information on its website. Public meetings were also held to encourage the community to give evidence and document their experiences.

Flemington and Kensington CLC’s commitment to work alongside those most affected by discriminatory practices continues to date. Since April 2014, the CLC has held regular racial profiling monitoring meetings with the community to monitor the progress of the police action plan. The meetings provide a forum for community members to discuss and document their experiences of racism by police and to discuss how the problem can be addressed.

Infringements Working Group – fines reform

The Infringements Working Group (IWG) is a joint working group of the Federation and the Financial and Consumer Rights Council, comprising of 29 member organisations including community legal sector lawyers and financial counsellors with extensive experience assisting people to deal with infringements.

As a working group comprised of organisations that provide direct casework services to vulnerable Victorians, the IWG has been at the forefront of fines reform through advocacy and consultation with the State Government on the impact of the fines system on clients experiencing disadvantage and hardship. In July 2013, the IWG released an evidence-based Position Paper, *A simple, fair and effective infringements system for all Victorians* (IWG Position Paper), calling for an infringements system that operates effectively as an enforcement mechanism and efficiently promotes rehabilitative outcomes for struggling members of the community. The IWG Position Paper identified the significant resource burden of the current infringe-

ments system for legal services, financial counsellors and other support services that assist clients to deal with infringements.

The IWG also made a submission to the Sentencing Advisory Council's (SAC) inquiry into the Imposition and Enforcement of Court Fines and Infringement Penalties in Victoria. In the report released by SAC on 30 May 2014, the IWG submission was extensively cited and most of the IWG's recommendations were reflected in the SAC recommendations. The IWG was also involved in consultations with the Department of Justice on fines reform, including through representation on the Victorian Attorney-General's Infringements Standing Advisory Committee.

The IWG and its member organisations highlighted through evidence and case studies the inefficiencies and unfairness of the current system for vulnerable clients. For example, Justice Connect Homeless Law launched a video project, *In the Public Eye*, six personal accounts of what it's like to be homeless and caught up in the fines system.

As a result of the work of the IWG and its members, the *Fines Reform Act 2014* (Vic), passed on 26 June 2014, reflects many of the IWG's key recommendations aimed at providing better options for clients experiencing disadvantage and hardship, as well as reducing the significant resource burden for the legal services, financial counsellors and other support services that assist clients to deal with infringements. In particular, the establishment of a central agency, Fines Victoria, to deal with both infringements and court fines will assist clients to deal with their fines earlier and ensure that they can exit the fines system, where appropriate. Fines Victoria will also have the power to oversee and review the decisions of enforcement agencies, determine enforcement review applications, and develop guidelines, which will ensure consistency in relation to internal review and special circumstances applications, as recommended in the IWG Position Paper.

The IWG's recommendations regarding alternative non-monetary options for dealing with fines, including by participating in rehabilitative and therapeutic programs, education activities or community work, have also been taken up through the Work and Development Permit scheme, which provides the opportunity to deal with fines through non-monetary means and address some of the causes of offending conduct. Finally, as recommended by the IWG, centralised guidelines and criteria for 'special circumstances', both through the internal review process and enforcement review, will lead to a more consistent and transparent approach to 'special circumstances'. With greater oversight of first instance decisions, including an avenue to have those decisions reviewed through enforcement review, these changes will encourage greater rigour and consistency of decision-making and ultimately reduce the burden on the courts by ensuring that court is a last resort for people with special circumstances.