



SUBMISSION OF FITZROY LEGAL SERVICE:

ACCESS TO JUSTICE REVIEW

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ABOUT FITZROY LEGAL SERVICE

The Fitzroy Legal Service (FLS) is one of the oldest community legal centres in Australia, opening in 1972. FLS is a community-based organisation, independent of government, assisting members of the community whose access to legal resources is limited.

FLS provides legal information, advice and casework and plays a significant role in the areas of law reform and community legal education. FLS publishes a number of hard copy and on-line resources, including the Law Handbook, an iconic, plain language guide to the law.

FLS has a long-standing involvement in social justice issues with the local and wider community and relies on volunteer and pro bono partner participation in our core work. We do this by actively recruiting and training volunteers to participate meaningfully in FLS work and by forging links with the local community – both agencies and the general public. We also have partnerships with private law firms.

FLS is an independent, not for profit, membership based organisation, governed by a volunteer Board. An incorporated association, FLS employs a small team of 17 staff and receives support from over 250 volunteers. In the 2014/2015 financial year FLS assisted over 3,465 individuals with direct legal assistance services. Many more individuals accessed FLS resources such as the Law Handbook Online – over 1.5 million users during the 12 month period to 30th June 2015.

Our services include:

- a legal advice service that operates five nights a week, staffed primarily by volunteer lawyers;
- an outreach service and four specialist legal advice clinics (specialising in family law, animal law and LGBTIQ-related legal issues);
- a self-funding day practice that offers criminal, family and selected general law casework and court representation;
- a Drug Outreach Lawyer program that provides community legal education, referral, advice, advocacy and ongoing casework services to drug users on an outreach basis through health partnerships;
- two duty lawyers providing advice, casework and support services at the Neighbourhood Justice Centre;
- community development and community legal education activities, public interest litigation, law reform and the development of legal research and policy; and
- Publication of *The Law Handbook* (hard copy, eBook and online) as well as other websites and resources

FLS is located in the City of Yarra. A significant percentage of people from outside the City of Yarra receive one-off legal advice from our night service, or are provided with a referral to another service. The reason for this is that many other community legal centres that do not have the capacity to provide the level of legal advice services provided by FLS as a result of our volunteer pool, and regularly refer clients to FLS. Additionally, as a well-established community legal service, there is a level of awareness in the broader community of our existence as a provider of legal advice, referral and casework services.

The central location of FLS in terms of public transport access for volunteers and clients alike is also a significant factor in the level of service we are able to provide. Additionally, as outlined below, the demographic of the City of Yarra is nuanced, and the centralisation of a large number of support services also affects the trajectory of client access. The representation of homelessness in City of Yarra and City of Melbourne is high, and is potentially also linked to the presence of support services. City of Yarra, and particularly Richmond, is also recognised as a drug use 'hot spot' where significant numbers of people with complex needs and multiple barriers to equity in access to justice are present.

City of Yarra

The City of Yarra is located in the inner east of Melbourne. Whilst the SEIFA IRSED for City of Yarra is 1019.50, a relatively high score indicating lower disadvantage,¹ the area has pockets of highly disadvantaged households next to wealthy ones.

Four major public housing estates are located within the City of Yarra – Atherton Gardens, North Richmond, Collingwood and Carlton. There are just under 5,000 public housing dwellings in Yarra comprising 13% of Yarra’s dwellings, and 7% of all Victoria’s public housing stock. Significantly, 33% of Victoria’s high-rise public housing is in Yarra. Yarra is Victoria’s most socially and economically diverse community – a large very-disadvantaged population lives alongside significant affluence. Yarra has more high and more low-income households than the Melbourne average. Yarra is the only municipality that has a high proportion of its population living in very disadvantaged neighbourhoods – 9% of residents live in a collector district with a disadvantage index value below 700 (a value of 1,000 is the average for Australia)².

In their book, “The Spirit Level: Why Equality is Better for Everyone” (published in 2009), Kate Pickett and Richard Wilkinson highlight the “pernicious effects that inequality has on societies: eroding trust, increasing anxiety and illness, (and) encouraging excessive consumption”. The book outlines that for each of eleven different health and social problems: physical health, mental health, drug abuse, education, imprisonment, obesity, social mobility, trust and community life, violence, teenage pregnancies, and child well-being, outcomes are significantly worse in more unequal rich countries.

¹ <http://profile.id.com.au/yarra/seifa-disadvantage>

² [http://docs.health.vic.gov.au/docs/doc/05030C592C0BD11ACA257A100024B48F/\\$FILE/Yarra_2012-v02.pdf](http://docs.health.vic.gov.au/docs/doc/05030C592C0BD11ACA257A100024B48F/$FILE/Yarra_2012-v02.pdf)

INTRODUCTION

The Fitzroy Legal Service (FLS) welcomes the opportunity to contribute a submission to the Access to Justice Review.

We recognise that “the aim of the Access to Justice Review is to improve access to justice for Victorians with an everyday legal problem or dispute, and ensuring the most disadvantaged and vulnerable in our community receive the support they need when engaging with the law and the justice system.” Whilst we strongly support this aim, the current situation is that there are thousands of people falling through the cracks and unable to access any legal assistance.

Scope of this submission

In this submission the Fitzroy Legal Service responds to term of reference 1, 5, 6, 7, 8 and 9 of the Department of Justice and Regulation, Access to Justice Review. In preparing this response we have taken into consideration the Productivity Commission’s Inquiry Report: Access to Justice Arrangements and the National Partnership Agreement on Legal Assistance Services.

TERM OF REFERENCE ONE (1)

The availability of easily accessible information on legal assistance services and the Victorian justice system, including advice on resolving common legal problems

The Background Paper “Accessible Legal Information”³ notes that “in many cases, people would be capable of resolving commonly experienced legal problems on their own (or with minimal assistance) by accessing general information and advice. As discussed further below, many organisations currently provide information and advice on a range of legal topics. However, the Commission found that this information lacks visibility and that service efforts can sometimes be duplicated.” (p2)

Furthermore the background paper notes “There is a significant amount of information available in Victoria about legal assistance services and the civil justice system, as well as general information/advice to help people resolve common legal problems. However, much of this information is fragmented across various information providers. Further, most of the information provided is in English (though there is some limited information provided in other languages) and tends to be provided in an online format, rather than through telephone or face-to-face services.” (p3)

FLS Information, Referral and Legal Advice Services

As a well-known community organisation, FLS is often the first point of call for individuals seeking legal assistance. In the 12 months to 30 June 2015 FLS provided 1,993 information and referral services. In addition FLS assists individuals with free face-to-face legal information, advice and referral via our night service. In the 12 months to 30 June 2015 the FLS night service assisted 2,921 clients.

The FLS night service is conducted year-round, Monday to Friday, from 6.30pm. It is a drop-in, generalist legal advice service that assists clients with a range of matters. No appointments are taken – clients are seen on a first-in first-served basis, except where they are matched to volunteers with specific expertise. This generalist service is supplemented by three specialist clinics:

- family law clinic: Wednesday and Thursday evenings by appointment
- LGBTIQ (Lesbian, Gay, Bisexual, Transgender, Intersex, Queer) legal advice service: Thursday evenings, monthly, by appointment.
- animal law clinic: Friday evenings by appointment.

The FLS night service utilises significant pro bono support from members of the legal sector (community members, students and practitioners) who volunteer their services to make the law and legal support accessible to members of the community. The FLS night service assists clients who have not been able to get assistance anywhere else. Often clients have approached Victoria Legal Aid and/or their nearest community legal centre (if not FLS) before being referred to the night service as a last resort.

Whilst legal information and telephone advice lines do play an important role in opening up access to legal assistance, in our experience, for very vulnerable clients legal advice is more effective in a face to face environment, as the person providing the advice can more easily test if it is being understood. The often overwhelming stress that accompanies an individual’s engagement with the legal system is, in our observation, a strong factor also in the desire to consult a lawyer in person regarding legal issues. In many cases the client’s understanding of their legal matter will be different from their actual situation and it is only by reading through the client’s documents that a solicitor can give accurate assistance.

³ Department of Justice and Regulation, 'Accessible legal information - background paper' Department of Justice and Regulation.

FLS is approached by many clients who have contacted Victoria Legal Aid's Legal Help phone line and have been provided with some information and/or advice. These clients have approached FLS seeking additional assistance in the form of face-to-face assistance, indicating they were confused and/or unsure of the information provided by Legal Help.

The importance and effectiveness of face-to-face legal advice is also highlighted when considering civil matters. By being able to meet with a client and talk through their matter, this can assist clients to choose the best and most efficient avenues for recourse in relation to their issue, which can then save courts' time and money. The individuals attending the FLS night service for assistance with civil litigation are most always defendants in that litigation. They are not involved by choice and it is through the assistance provided by FLS that these individuals are able to identify ways to defend themselves.

For example, where a client has no assets and their income is protected under the provisions of the Judgement Debt Recovery Act, FLS assistance can deter a creditor from issuing proceedings by demonstrating that they will have no reasonable prospect of recovery. This saves both time and money – from a legal system perspective and also reduces the stress for individuals involved. Similarly, assistance in navigating infringements that have been incurred, for instance by entry into affordable instalment arrangements, or applications for re-consideration on the basis of 'special circumstances' where appropriate, save significant costs to the State and to individuals/ families who do not otherwise have access to legal assistance.

In 2016 demand for assistance by clients accessing the FLS night service has continued to increase, placing increasing pressure not just on staff and volunteers of the night service, but also the organizational supports around it, including size and quality of premises. Statistics for the FLS generalist night service (including the specialist clinics in Family Law, LGBTIQ and Animal Law) highlight the following:

- From 2013/2014 to 2014/2015
 - 19.6% more clients
 - 16.7% more advices
- From first six months of 2015 to second six months of 2015 - 8% more advices
- From last 22 sessions in 2015 to the first 22 sessions in 2016
 - 10% more clients
 - 9% more advices

Some possible reasons for the continued the growth in client numbers include:

- Narrowly defined limits on the types of matters and clients that will be assisted by Victoria Legal Aid and community legal centres, in response to funding constraints;
- An increased emphasis on telephone and internet-based public legal services at the expense of direct contact with clients;
- A tendency within the community legal sector to stop offering assistance in areas of law where a specialist community legal centre exists. For example, many CLCs will refer all employment law enquiries to Jobwatch, Centrelink disputes to Social Security Rights Victoria and tenancy issues to the Tenants' Union. None of the specialist CLCs are sufficiently resourced to deal with the demand and so will offer limited assistance subject to strict eligibility criteria - in most cases telephone advice only with a strong possibility that the client's call will be unanswered; and
- Increased prosecutions - there has been a huge rise in the number of infringements issued and the number of police applications for family violence intervention orders over the past twelve months.

The Law Handbook

The history and philosophy of FLS is inextricably bound with its iconic publication, *The Law Handbook* (LHB). When FLS was founded, it became clear that volunteers needed information they could rely on in order to provide the greatest possible help to those who came seeking legal information and assistance. Thus, *The Legal Resources Book* (LRB) came into being in May 1977. The editors of the LRB, who were among the founders of FLS, also sought to provide a plain-English legal resource for other professionals such as social workers, teachers and youth workers. The book was also intended to be a do-it-yourself guide that would assist and empower individual community members to resolve their own legal problems. The LRB was embraced by the legal and broader community. By 1985 the LRB had sold 40,000 copies. In May 1986 it was decided to produce the book annually as a bound volume, and the LHB was launched in May 1987.

The 2016 LHB is the 38th edition produced and it remains unique as a comprehensive guide to both State and Commonwealth laws as they relate to Victorians. The LHB has grown to a 1,000-page plain-English guide, covering areas such as family law, social security, debts and bankruptcy, superannuation, tenancy and neighbour disputes, consumer issues, employment disputes, discrimination, dealing with police, bail, criminal law issues, accidents, injuries, and health and ageing.

A team of eighty contributing legal experts donate their time and legal expertise every year to ensure the publication's accuracy. This strong pro bono support would be unlikely replicated elsewhere. The publication has remained inexpensive and accessible because of the generosity and good will of these volunteer contributors.

In June 2009, the LHB was launched as a free website – the Law Handbook Online. This online resource has been a resounding success, greatly increasing both the reach of the LHB and the community's access to the law and legal information. The LHB website was re-developed in 2015 in line with best-practice for on-line legal resources, incorporating user testing and with accessibility and mobile responsiveness at the forefront of the new design.

To our knowledge, the FLS LHB is accessed more than any other legal information resource in Victoria, with links incorporated into a range of government sites, including dispute resolution and Court/ Tribunal sites, and is relied on extensively by legal assistance organisations. The position of the community legal sector in being able to garner pro bono goodwill has been central to the success and longevity of the LHB.

We agree duplication of resources is not necessarily beneficial. However legal information resources which, on the surface appear to duplicate other types of resources, may be relevant and required as it is often a variation or modification which makes the information more accessible to targeted audiences.

The LHB holds a unique place in terms of other legal information available. We acknowledge it is a comprehensive resource that does require a certain level of literacy. Hence it is used extensively by lawyers and community workers and general members of the community who have that level of literacy. In comparison a number of other legal information resources are more simplistic, not as comprehensive and aimed at individuals with lower levels of literacy. We acknowledge that the content of the LHB is only currently available in English. Resourcing to translate the material into other languages would enhance access immeasurably.

Reaching hard-to-reach clients

Streamlining contact points for legal information and assistance may have benefit for those individuals able to identify they have a legal issue, however it will not aid those who are unable to self-identify. The Legal Australia Wide (LAW) survey⁴ results highlighted that legal professionals are only consulted for approximately 16% of all legal problems and that people often turn to their trusted health and welfare professionals for advice and assistance with legal issues. The LAW survey highlighted the value of a

⁴ Legal Australia-Wide Survey, Legal Need in Australia, Christine Coumarelos, Deborah Macourt, Julie People, Hugh M. McDonald, Zhigang Wei, Reiny Iriana and Stephanie Ramsey, Law & Justice Foundation of NSW, August 2012

holistic, integrated, and multifaceted approach to justice that addresses the diverse needs of different people and, in particular, addresses the needs of disadvantaged people, who are particularly vulnerable to legal problems.

In the Access to Justice Review Background Paper "Accessible legal information"⁵ it is noted "the department is interested to hear about existing partnerships between legal and non-legal service providers (for example, if legal services are provided in collaboration with community health organisations), including the effectiveness of such partnerships in helping people to understand the legal nature of some problems and their options for resolving problems." (p5)

For FLS, the localised relationships, networks and varied activities through which our service engages with the local community plays a significant role in facilitating identification of legal problems and promoting referrals. This occurs through strong connections and integration into the health/ community service sector, and through the professional development and community development work FLS performs with allied agencies, as well as partnership approaches to delivering casework in a therapeutic jurisprudence framework.

The development of relationships of trust and visibility in the community have been crucial to servicing the needs of the most vulnerable FLS clients, and this access to justice goes beyond a local focus. For a significant portion of our client base, facilitating access to justice and identification of legal problems is reliant on an outreach model. The ability to identify a legal issue, or to obtain preliminary support in the process of identifying a legal issue can be complex and challenging. For example, women experiencing family violence may need significant support to receive legal information/ advice, and it is incumbent on legal service providers in cases of significant vulnerability, to adjust service delivery models to ensure equity of access. For FLS, the local focus of our networks and service delivery model assists in providing the intelligence required to identify gaps and unaddressed legal needs.

However this model of service delivery does require higher levels of resourcing than legal information or telephone advice lines.

North Richmond Outreach

As part of the night service FLS conducts a generalist legal advice service at North Richmond Community Health Centre (NRCH) on Tuesday evenings for residents of the North Richmond Public Housing Estate. The NRCH is located on the Estate, thereby providing a highly accessible legal assistance service to estate residents.

Billabong Outreach

FLS staff attend a regular outreach "Billabong BBQ" at Harmsworth Hall in Collingwood which is targeted to the Aboriginal community. Regular attendance by staff has been a priority for FLS, whose relationships with participants in the BBQ require a gestational period of trust/ relationship building. FLS staff have provided advice, referral and ongoing casework to local Aboriginal communities as a result of this engagement. The 'Billabong BBQ' initiative was the recipient of a National Reconciliation Week Award in 2013.

St Mary's House of Welcome Outreach

FLS operates a similar outreach presence at St Mary House of Welcome (SMHOW) in Fitzroy. SMHOW is a community support service helping people who are experiencing homelessness, poverty and mental illness, and operate a soup kitchen and activities centre for the local area. This initiative has been developed in recognition that many vulnerable community members are in a position where they are (a) unable to identify they have a legal problem; and /or (b) not able to attend a legal service; and/ or (c) will require intensive support to engage in legal processes.

⁵ Department of Justice and Regulation, 'Accessible legal information - background paper' Department of Justice and Regulation.

Drug Outreach Lawyer Program

In the Productivity Commission's Access to Justice Report, it was noted that "Addressing the legal needs of disadvantaged Australians requires more than effective referral services as their legal problems often coexist with other social, economic and health issues" (p171).

The FLS Drug Outreach Lawyer Program is a long standing example of a highly effective way to facilitate referrals for legal assistance across human service agencies, particularly for individuals who are unable to identify that they have a legal problem and/ or have complex needs that present multiple barriers in accessing legal services. The program involves a lawyer attending a number of health services on a fortnightly basis, engaging in discussions with clients and workers, providing support in identifying legal issues that can be assisted with, and engaging in a collaborative form of case management with allied services in providing case work support. Large proportions of the clients of the Drug Outreach Lawyer Program have a dual diagnosis, and are also experiencing homelessness, poverty, and trauma. Many clients will not be in a position to be pro-active in taking steps to address their legal issues. In fact, many clients will often not identify that they have a legal issue until they come into contact with the lawyer at the health services. An example is provided below.

CASE STUDY

A young man had found stable accommodation and was starting to look into drug treatment options. He had an unpaid debt and legal proceedings had been issued. A process server tracked him down at his new residence however the man was not home when he arrived. After finding out that the process server had attended the young man left his address and started living on the streets again to avoid detection. This matter could have been easily dealt with if this person had been linked up with a lawyer and provided with advice at an earlier stage.

FLS came into contact with this client through the Drug Outreach Program. We were able to assist this client to resolve the debt matter meaning the client was able to return to their accommodation. This example highlights that through outreach FLS has capacity to reach the client rather than the client having to identify that they need to access a lawyer.

Met and Unmet Legal Need

For the 12 month period 1st July 2014 to 30 June 2015 FLS provided the following direct legal assistance services:

- 3,465 clients assisted
- 3,922 advices provided
- 920 new cases opened
- 760 cases closed

The main categories of legal problems that FLS assists with through our various services are listed below:

Family Law Casework

- Family or domestic violence 37%
- Other civil violence / restraining order 17%
- Child contacts or contact order 16%
- Parenting plan 9%

Criminal Law Casework

- Fines 18%
- Acts intended to cause injury 12%
- Road traffic and motor vehicle regulatory offences 10%
- Illicit drugs (major and minor) 10%

- Theft and related offences 8%
- Other civil violence/restraining orders 6%

Neighbourhood Justice Centre casework

- Family or domestic violence 19%
- Other civil violence / restraining orders 17%
- Tenancy 16%
- Road traffic and motor vehicle regulatory offences 12%
- Fines 9%

Drug Outreach Lawyer Program

- Fines 33%
- Theft and related offences 13%
- Road traffic and motor vehicle regulatory offences 13%
- Illicit drugs (major and minor) 9%

Taxi Driver Legal Assistance Program

- Fines 32.65%
- Traffic offences 13.27%
- Motor vehicle accident 6.12%

Night Service Generalist Service

- Fines 15%
- Employment 10%
- Motor vehicle accident / property damage / other 8%
- Other civil (debts, neighbourhood disputes, property, fences) 6%
- Consumer complaints (claims under the Australian Consumer Law, disputes with utility companies, disputed debts with providers of goods and services) 6%
- Tenancy 5%
- Government / administrative complaints ('show cause' proceedings for security and taxi licensing, disputes about government services, disputes with police and authorised officers) 5%

Animal Law Clinic

- Other and misc offences incl weapons/explosives 40%
- Govt/admin complaints - govt processes/procedures 13%
- Other civil property disputes 13%
- Govt/admin issues relating to fines 10%

Family Law Clinics

- Property in marriage/de facto 23.62%
- Child contacts or contact orders 16.26%
- Parenting plan 13.5%
- Family or domestic violence 9.2%%
- Divorce/Separation 7.98%
- Family Law other 7.98%

LGBTIQ Clinic

- Technology or surrogacy 30%
- Property de facto 22%
- Parenting plan 11%
- Child contacts or contact orders 11%

North Richmond Outreach

- Wills / probate / guardianship / power of attorney 13%
- Fines 12%
- Neighbourhood disputes/complaints about neighbours 12%
- Consumer complaints financial/insurance/super etc 8%
- Credit and debt Other 8%
- Tenancy 8%

When considering the problem types people sought advice from FLS, family law has increased considerably – a 78% increase from 2013/2014 to 2014/2015, making up 23.26% of all problem types with which members of the community attend for assistance. Second is infringements which makes up 13.21% of all problem types.

From our experience in the night service, the main areas of law requiring increased support are:

- Employment (with a substantial increase in unfair dismissal and unpaid wage claims);
- Family law (large numbers of self-represented litigants being required to compile lengthy and complex submissions);
- Infringements not falling within the 'special circumstances' provisions (a huge contributor to financial hardship - a \$6.00 toll fine becomes a \$300.00 penalty if not addressed. We frequently see clients with tens of thousands of dollars in infringement debt); and
- Migration - There is hardly any public assistance for migration law. FLS does not assist in this area because of the requirement that lawyers giving migration advice must pay a fee to the Migration Agents Registration Authority. We turn away several clients per week and in many cases have nowhere to refer them to.

People who experience family violence typically have a cluster of legal and non-legal problems. Types of legal issues include tenancy, infringements, and victims of crime. Victims of family violence can also incur criminal charges that occurred at a time of experiencing mental health issues relating to the family violence. For example, FLS assisted a vulnerable young mother charged with traffic offences that occurred at a time that the mother was dealing with family violence issues. The client pleaded guilty and the sentence was deferred by the court to enable the client to address underlying mental health issues through engaging with a psychologist. The matter achieved successful outcomes on a number of levels. The Magistrate considered the client's positive engagement with the psychologist and services at the NJC in determining the client's sentence for her criminal matters. Moreover, the client was able to achieve effective assistance to address the underlying causes of the criminal conduct.

Access to interpreters and translators

It should be a basic right for all people to access free legal information and advice in a language that they can understand. Currently CLCs, including FLS, have access to telephone interpreting services, as required, funded by the Commonwealth. However over the life of the National Partnership Agreement on Legal Assistance Services, the Commonwealth is withdrawing from a number of functions, including support for telephone interpreters.

A significant proportion of FLS clients speak a language other than English. Should access to interpreters, either face to face or telephone interpreters, be reduced, this will create grave injustice to people from non-English speaking or hearing-impaired communities.

In terms of provision of interpreters at court, FLS duty lawyer services at the Neighbourhood Justice Centre have experienced challenges in that interpreters are only booked for half-days at court and are shared between both parties. This results in added pressure on lawyers, and clients who don't understand the process and don't feel properly heard in court. There are also conflict/ethical issues raised by applicants and respondents in family violence intervention order matters sharing one interpreter.

Therefore consideration should be given to improving access to interpreters, including for community legal education sessions which at present is limited due to funding constraints. Furthermore consideration needs to be provided to ensuring clients can request same-sex interpreters, particularly in relation to family violence and/or sexual assault matters, and to increasing interpreter services for particular communities. FLS clients have raised concerns about being uncomfortable with particular interpreters given connection to community or perceived connection.

CASE STUDY

FLS lawyers collaborated with Victoria Legal Aid to secure the release from prison of an ill client, after learning he had been picked up on an imprisonment in lieu order for missing a fines payment. When Ari (not his real name) was arrested for missing a payment on his significant infringements debt, no one asked him whether his cancer or his subsequent inability to work much had played a part. Ari, a machine operator who was waiting for a particular cancer treatment, had been following court orders and making payments on his Citylink fines for two years before he defaulted. It may have been his poor proficiency with English that prevented his situation becoming known as he was taken to prison, but the absence of a legal requirement to ask would see him remain there for some weeks. It was a distressed relative who told his story at the FLS night service. FLS staff prepared an affidavit and presented medical materials to the Magistrates' Court showing the change in Ari's circumstances. The Court expedited the hearing and sought out a Victoria Legal Aid duty lawyer to apply for revocation of the warrant. After hearing arguments, the Magistrate ordered Ari's release and discharged his fines in full. Ari, who appeared in court via video link from prison, was overwhelmed by the prospect of release and broke down in tears as the translator's words sunk in.

Raising awareness

Strategies to increase community awareness of the available legal assistance services are vital in order to prevent legal problems arising and/or prevent small problems from becoming large ones. Often clients attend FLS at crisis point whereby earlier assistance could have avoided a lot of stress, anxiety and cost for the individual. A state-wide campaign such as the QUIT, drink driving, and speeding ones should be considered as part of this review.

TERM OF REFERENCE FIVE (5)

The provision and distribution of pro bono legal services by the private legal profession in Victoria, including:

- *ways to enhance the effective and equitable delivery of pro bono legal assistance*
- *opportunities to expand the availability of pro bono legal services in areas of unmet need*
- *options for expanding existing incentives for law firms within the Victorian Government Legal Services Panel*

Pro bono is not, and should never be, a substitute for adequately funded legal assistance services. The increased use and commitment to pro bono activity, whilst in many regards welcome, reflects a slide back to the old charity model of dealing with legal issues affecting the poor and disadvantaged.

The Fitzroy Legal Service could not possibly undertake the breadth and depth of work that we do without significant pro bono and volunteer support. We rely heavily on the generosity and good will of over 250 individuals who volunteer their time and expertise to deliver FLS services and on the support of pro bono Counsel in our advocacy work.

We estimate FLS is in receipt of approximately 230 volunteer hours per week. Using similar costing to that in the Peninsula Community Legal Centre Productivity Commission Submission of \$48.54 per hour⁶, this would equate to an amount of \$11,164.20 per week or \$580,538.40 per year. In the 12 months to 30th June 2015, FLS provided 3,922 advices, the majority of these provided by volunteers working in the FLS night service. Direct legal costs for the night service during those twelve months were approximately \$82,000 (consisting of wages for the night service manager and volunteer coordinator). This equates to a cost of just under \$21 per advice.

The proximity of FLS to the Melbourne CBD is an important factor in our ability to engage large numbers of lawyers and law students in our volunteer program, which predominantly contributes to the FLS night service. Volunteers are also involved in governance, policy and administrative roles as well as direct legal assistance services. The benefits of volunteering for both the individual involved and the community is well recognised and it is only because CLCs are independent community based organisations that they are able to engage such significant volunteer involvement.

Whilst there is a strong culture of pro bono in Victoria, and FLS is a fortunate recipient of significant pro bono support, we understand that the bulk of pro bono provided by large private law firms is directed to not-for-profit organisations. This doesn't help the thousands of individuals who seek assistance directly from FLS.

There is a huge need in the community for legal assistance and additional pro bono resources could certainly assist in meeting some of this need, However volunteer programs must be properly resourced in order for them to run efficiently, effectively and within the risk management parameters of a legal practice. This would make volunteering in CLCs more attractive to volunteers if they are to be part of a properly supported and managed volunteer program. CLCs must therefore be adequately resourced to effectively induct, train and support volunteers and must have adequate facilities (ie premises, IT) to support volunteer engagement.

⁶ Submission to Productivity Commission, Inquiry into Access to Justice Arrangements: Response to Draft Report, 21 May 2014, Peninsula Community Legal Centre, page 6.

TERM OF REFERENCE SIX (6)

The availability and distribution of funding amongst legal assistance providers by the Victorian and Commonwealth governments to best meet legal need

The fundamental reality about the availability of funding for legal assistance services is that there are insufficient funds to adequately meet need.

The crisis in legal help has been well documented. The Productivity Commission recently called for all levels of government to work together to provide an immediate injection of \$200 million per year for legal assistance services – across Community Legal Centres, Indigenous Legal Services and Legal Aid Commissions. Yet CLCs are faced with a Commonwealth funding cut of almost 30% in 2017/2018. This will mean that FLS, along with our fellow Community Legal Centres, will need to dramatically reduce support to the most disadvantaged members of our community. Furthermore the additional reporting and jurisdictional service planning requirements proposed, without provision of additional resources, would impact on direct service delivery and require services already struggling to meet demand to redirect resources to fulfil these new requirements.

Insecurity of funding adds to inefficiencies with CLCs not able to undertake longer-term planning and can lead to loss of staff. This creates additional pressures on already over-stretched services. It is also very important to note that funding over the years has fallen behind increases in organisational expenditure, including average weekly earnings.

Most Victorian CLCs are used to working at the grass roots level and have been able to endure under conditions, which others in the legal profession in general would find intolerable – substandard premises and operational environments, wage levels which are below general market rates, and challenges of assisting increasingly frustrated and difficult clients.

For FLS, located in the inner city of Melbourne, an additional pressure is the rising cost of premises. Following the completion of a long term lease in 2016, FLS is facing a 30% increase in rent. As noted on page 13 of this submission, the proximity of FLS to the Melbourne CBD is an important factor in our ability to engage large numbers of volunteers. The accessibility of our location in terms of access to public transport and proximity to a large number of other types of social services, has considerable benefits for clients. However without additional resourcing, FLS will be forced to reduce services in order to retain a presence in inner city Melbourne.

Community Legal Centres (CLCs), such as FLS, play a unique and vital role as part of the mixed model of legal assistance services. FLS is a public benevolent institution (PBI) with deductible gift recipient (DGR) status. As a charitable organization we are bound by our Purposes, as listed in the FLS Rules, which include “to provide free and readily accessible legal service to people in necessitous circumstances”.

As a PBI with DGR status, FLS is able to engage community and philanthropic support thereby positively leveraging government funding. FLS total income in 2014/2015 was \$1,553,766. Approximately 70% was sourced via government departments or agencies (ie Commonwealth Attorney General’s Department, Victoria Legal Aid, Department of Health, City of Yarra), the remainder of income was sourced through other means (grants, donations, fundraising).

The holistic nature of FLS services – which span criminal, civil and family law - results in an ability to assist clients across a range of matters, rather than referring to other specialist services. This provides continuity of service for clients, reducing the “referral roundabout” that a lot of clients face, and creates efficiencies in

terms of addressing a range of legal issues at once. This is particularly important in relation to vulnerable people, including clients from culturally and linguistically diverse communities, and Aboriginal people, who may face significant barriers to seeking assistance and dealing with multiple and interrelated legal and non-legal needs.

CASE STUDY

FLS duty lawyers assisted a single mother with a number of children who instructed of serious and ongoing domestic violence. The client had a number of previous intervention orders issued to protect her. The client instructed of having to move houses frequently due to domestic violence by the respondent. Shortly after the previous intervention order expired, the client instructed of serious family violence.

FLS provided casework assistance to the client in seeking an intervention order for her protection and that of her children. In light of a number of issues including issues relating to service of intervention orders, there have been over 3 mention hearings to date. FLS worked collaboratively with the Berry Street Family Violence Worker to address issues relating to police accountability, including in relation to safety concerns surrounding service of the intervention order. These issues have been escalated to the Family Violence Unit of Victoria Police.

FLS lawyers referred the client to the FLS night service for free advice about related family law matters. In the course of that assistance, it became apparent that the client had interrelated legal issues. FLS has also assisted the client with:

- Infringements matters in which submissions relating to domestic violence and attendance at intervention order hearings constituted a key part of the successful resolution of the matter.
- A number of tenancy matters. FLS assisted the client with these matters through alternative dispute resolution and representation at the Victorian Civil and Administrative Tribunal.

TERM OF REFERENCE SEVEN (7)

Whether there is any duplication in services provided by legal assistance providers, and options for reducing that duplication, including the development of legal education material

CLCs are often the place of last resort for individuals who can't afford a private lawyer and can't access legal aid (either because of means or Victoria Legal Aid does not provide assistance with their problem). As discussed under Term of Reference One, individuals are attending the FLS night service as they are unable to get assistance anywhere else.

Whilst we are fully supportive of efforts to reduce duplication of services, it is our experience that the extent of unmet legal need and the scarcity of legal assistance resources means that duplication in service delivery is rare.

CLCs are well placed to respond to changing legal needs in the community. As an example, FLS has had a long standing specialist family law advice clinic. Changes in legal aid guidelines restricting the number of people eligible for assistance, increased the community need in relation to this service. As a result FLS developed a second family law clinic, through the provision of volunteer support. These two clinics are often booked out weeks in advance. If access to early legal advice were unable to be provided, the subsequent impact on people's lives, their health and wellbeing, would be significant.

Regardless of how creatively or efficiently Victoria Legal Aid and CLCs try to deliver their services, the extent of unmet legal need cannot be met without additional resources.

CLCs are proactively responding to changing community need and organisational challenges. FLS and the Darebin Community Legal Centre (DCLC) are currently undertaking a joint project which is reviewing the effectiveness of current organisational arrangements at FLS & DCLC & exploring new, innovative structures/models to deliver community legal services. The project will aim to identify a number of options for consideration, ranging from co-ordinated or shared administrative/corporate services to a merger of both organisations.

The importance of Community Legal Education (CLE)

In order for CLE to be most effective, it must be based on identified community need and delivered with community input. This is where CLCs have a have a unique ability to positively impact. Strong partnerships with community and community sector partners are central to identifying and delivering education initiatives that will be of most benefit within a community development framework. Examples of FLS work in this area are listed below:

Relationships with the health sector providing opportunities for creative community legal education

FLS engaged in intergenerational CLE regarding female genital circumcision through local health services. Through partnership with community connected workers in the health service, CLE was able to take place in the context of a broader framework including religious doctrine, cultural practices, and cross cultural critiques around double standards. The approach taken by the CLC sector that knowledge and comprehension of the laws that bind you is one of the most fundamental rights provides somewhat unique opportunities to engage with the community in a non-judgmental way to enhance knowledge. This CLE was taken up by community radio and brochures developed for the health service.

Taxi Driver Legal Education Seminars at 13CABS

FLS provides legal education to taxi drivers undertaking the Advanced Training Program at 13CABS. The project was initiated after it had been observed that a number of taxi drivers were presenting at the FLS legal advice clinic who had been charged with sexual assaults. This pattern was raised at a Victorian Taxi

Directorate meeting, and a program was developed by FLS in recognition of the specific vulnerabilities of taxi drivers as workers, and the role that increased legal knowledge could play in the prevention of taxi driver legal issues arising and/ or spiralling out of control.

The sessions are presented weekly at two 13CABS training centres, in Preston and Oakleigh. FLS partners with Monash Oakleigh Legal Service and Springvale Monash Legal Service to present the sessions at the Oakleigh location. FLS has presented this program to over 1,000 taxi drivers, covering legal topics such as fines and infringements, assault and sexual assault, Workcover and victims of crime, and other legal topics specific to taxi drivers in their work. Evaluation surveys reflect that over 95% of the drivers find the sessions either very easy or easy to understand, and the same amount of drivers find the content either very useful or useful. Further, many taxi driver participants reported that they were not aware of the availability of free legal help prior to the seminars. This project provides FLS with invaluable insight into the taxi services industry and the legal issues that arise for taxi drivers.

TERM OF REFERENCE EIGHT (8)

The resourcing of Victoria Legal Aid (VLA) to ensure that Government funding is used as effectively and efficiently as possible and services are directed to Victorians most in need, including:

- *within the total funding envelope, the types of matters funded by VLA, eligibility criteria for legal assistance and the level of assistance provided*
- *VLA's current service delivery model, including the use of panel arrangements and internal lawyers, and spending on allied support services*

The current legal assistance landscape is not meeting the needs of an extremely vulnerable cohort of the community - economically disadvantaged (families and single parents on low incomes), people experiencing homelessness and mental illness, members of newly arrived communities. The impact of Victoria Legal Aid's (VLA) changes to eligibility for grants of aid in summary crime and infringement matters has resulted in a significant number of individuals missing out on legal representation and assistance. Whilst duty lawyer services are available for those who attend Court, they are not resourced to provide Court representation for all. Additionally, duty lawyer services are unable to provide the level of preparatory support and assistance required by extremely vulnerable and disadvantaged clients. VLA criminal law eligibility guidelines provide funding to those facing imprisonment, which is not the majority of people before the Magistrates' Court. Therefore a large and vulnerable cohort is slipping through the cracks, attending court unrepresented, unprepared or not attending at all. FLS has identified instances of clients receiving harsher penalties through lack of legal assistance than they may have received had a lawyer been advocating on their behalf.

FLS core business is to work with extremely vulnerable and marginalised communities. Our holistic practice engages clients in the system and provides links to support services. It is by assisting individuals in the early stages of their interaction with the criminal justice system that further involvement can be minimised and/or avoided. Furthermore, research, such as the LAW Survey, highlighted that there are non-legal negative consequences for unmet legal need - stress-related illness and ill health generally.

FLS is of the strong view that we need to move some way towards returning to previous levels of service provision to very marginalised and disadvantaged members of the community. FLS has years of experience in providing high quality therapeutic support to individuals engaged in the criminal justice system, focusing on addressing underlying causes of offending, such as alcohol and drug dependence, lack of housing, mental health, family trauma. Many of the clients FLS has traditionally serviced require high levels of support in order to effectively engage with their legal issues, such as attending appointments without reminders, attending court without support, receiving correspondence. These types of issues can lead to escalation of problems, unfortunately duty lawyer services are generally unable to provide continuity of service.

From an individual's perspective, more positive legal outcomes can be achieved through having a dedicated lawyer who understands the client and their circumstances and can create links to support services if necessary. This would also assist with court processes by ensuring clients are legally represented – self represented litigants can often create delays in court processes, and where extreme vulnerability or disadvantage exists, compromise to the integrity of administration of justice and principles of equality before the law are of concern.

For over thirty years, the FLS legal practice has assisted clients eligible for grants of legal assistance in criminal law matters, focusing on summary crime. Through our strong networks across the community, social welfare and health sectors, we regularly receive referrals for clients who require legal assistance for criminal matters. However due to the changes to VLA eligibility guidelines the number of individuals who meet the guidelines has reduced, thereby impacting on the number of people that can be assisted by the

FLS legal practice. FLS has made every effort to bridge this gap but unfortunately there is a group of people who are extremely vulnerable that no one seems to be able to help.

FLS has also observed impacts on non-legal local agencies due to the changes to legal aid eligibility guidelines in relation to summary crime and infringements. Local agencies are increasingly being relied upon to offer greater support and practical assistance to clients, such as, preparing support materials for clients' cases, completing Legal Aid applications and seeking alternative avenues for legal representation,

In recently launching research on characteristics of respondents charged with breach of family violence intervention orders, conducted by Victoria Legal Aid⁷, Managing Director Bevan Warner noted that legal help for both victims and perpetrators was fundamental to prevent family violence and stopping it from escalating. However less than four in ten people saw a lawyer at court because of overwhelming demand.

FLS has also encountered challenges in regards to the amounts of funding, or lack there-of, available for legally aided matters, particularly in relation to appearance at mentions. There is a disjunct between the work required of lawyers by VLA to properly discharge the terms of a grant of aid, and what the grant will actually remunerate. Efficient and expeditious case management by lawyers frequently results in matters resolving as a result of negotiations conducted before or shortly after summary case conference; technically a mention date for which no grant of aid is provided. In many cases, courts require lawyers to attend mention dates. Clients are disadvantaged and lawyers are underpaid as a consequence.

- For example: A client was charged with multiple breaches of an intervention order proceeding in the Magistrates' Court. The Court has a policy of expedited proceedings in family violence matters. Our office provided police with a comprehensive analysis of the fourteen-charge brief ten days before further mention in the matter, and only days after instructed to act. We received no response by further mention. The grant of aid did not, in those circumstances, cover any appearance at Court. We wrote to the court requesting a further adjournment and why that was necessary. Despite the fact of our letter and the accused's presence, the court refused to adjourn the matter without a lawyer appearing, whether they were the accused's lawyer or not. The duty lawyer was unnecessarily troubled to appear on behalf of a client already represented, to affect a request already made. The client was required to remain at court for hours rather than minutes and were extremely distressed.

A number of other case studies below outline the types of clients that do not meet the current VLA eligibility criteria and save for a small number of pro bono cases such as those listed below, FLS is usually unable to assist.

CASE STUDY

X had proceedings in the Children's Court for trafficking in a drug of dependence. The matter was not able to be funded by a VLA grant due to the guidelines for Children's Court matters which relevantly state that unless the person is likely to receive a penalty of probation or higher, or a diversion (ROPES), then the matter will not attract a grant of aid. X had previously received ROPES for possession of a drug of dependence, which generally excludes application for a second diversion. FLS had been involved with X previously, and was aware he was in a very vulnerable state, having been removed from his family at a young age and placed into the care of DHS. It was while residing in residential care that X developed an addiction to illicit substances having been introduced to drugs by older peers. X had dropped out of school, increased his drug use, fled residential care and was sleeping in abandoned buildings. X had no supports in the community other than a case worker from DHS who our solicitor found was very difficult to contact and did not offer assistance in providing support. FLS worked with this young person and linked them in with Drug and Alcohol case management through YSAS. With the assistance of DHS FLS contacted X's family

⁷ Characteristics of respondents charged with breach of family violence intervention orders, Victoria Legal Aid, 2016

and helped facilitate reunification. At court, FLS made lengthy submissions in support of a further day of ROPES so that X could avoid a criminal record. The police and the court were opposed to this course of action as a result of X being previously given this opportunity. FLS then looked into alternative programs that offer a diversion and identified a program called EMERGE, which if successfully completed would offer the Magistrate the option of dismissing all charges. Two lengthy court appearances were required before X was given the opportunity to complete the program. A third appearance was then required to have the charges dismissed. In this case X was successful in receiving a diversion, enhancing rehabilitation prospects through employment opportunities. Involvement with FLS also allowed for therapeutic outcomes in terms of counselling and family reunification. This matter was assisted on a pro bono basis.

CASE STUDY

B had proceedings before the Magistrates' Court for assaulting police and driving offences. Due to B's lack of priors they are not eligible for a grant of aid. B is currently homeless, struggles with addiction to drugs and alcohol, and is in a severely violent relationship. We referred the client to CISP so that they are able to obtain assistance with housing and substance abuse. We have engaged in negotiations with police regarding the charges, and will also be assisting the client in making a complaint about the arresting officer who broke B's arm in three places while restraining them on the ground. The outcome of this matter is still pending.

CASE STUDY

Y had proceedings in the Magistrates' Court at Melbourne. Y was charged with threat to inflict serious injury, reckless conduct endangering serious injury, and assault with a weapon, and had been referred to FLS by an Intensive Case Manager at Hanover Welfare Services. This matter was not eligible for funding from legal aid due to the relevant guideline which states that a grant may only be provided in these matters where a conviction is likely to result in a term of immediate imprisonment. Due to Y's age and lack of criminal history, this precondition could not be met. Y is a young female who has recently arrived in Australia as a refugee without family or stable housing. She had developed an alcohol dependency, had been linked with crisis accommodation services, and had a history of anxiety and depression. She was later referred to other services and currently resides in residential rehabilitation. She is undergoing counselling for survivors of trauma. Our office obtained the brief of evidence, conducted three court appearances and careful negotiations. Written submissions were advanced to the prosecution as to the nature of the charges and the presentation of the prosecution case. The factual faults in the evidence as outlined cumulatively gave rise to the consensual conclusion that the investigation had mis-characterised the circumstances of the case. The matter resolved with all charges being withdrawn on the basis of a plea of guilty to a substantially lesser charge. The summary was considerably amended. The matter was carried for three months wherein frequent contact was maintained with Y and support services. At the plea hearing, the key case worker was organised to attend. Submissions were made and evidence was tendered in mitigation, which indicated that Y had engaged meaningfully and successfully with services. In this case Y received an adjourned undertaking without conviction.

CASE STUDY

Z had proceedings in the Magistrates' Court at Dandenong, having been charged with one count of committing an indecent act with a child under the age of 16. A finding of guilt would have resulted in orders under the Sex Offenders Registration legislation. This matter was not eligible for funding from legal aid

given that an immediate term of imprisonment was unlikely. A grant under the special circumstances guidelines was considered, however Z's DSP application had been denied and was subject to a reconsideration request. Additionally, Z's parents would have been considered financially associated. Enquiries revealed their financial circumstances were very grim, with their income just above the relevant threshold. They supported other dependent children, and were ineligible for Centrelink assistance due to their citizenship status. Z had been diagnosed with Schizophrenia and Pervasive Developmental Disorder, and was very unwell. At the time of the alleged offending he was not subject to a Community Treatment Order, and had presented as mute for weeks at a time, having been noted to have "left home on a number of occasions and wandered the streets, almost naked, needing police help to return home." The brief of evidence was obtained. The audio record of interview was later requested and transcribed by our service, the content of which suggested serious reliability concerns. An initial report was requested from the treating psychiatrist who had managed Z's inpatient admissions. This was submitted in a case conference at court. Lengthy submissions had to be made as to jurisdiction, which required advocacy for Z given his relative difficulty in attending court. A further evidentiary-based psychiatric report was requested and obtained. Written correspondence was advanced to the treating hospital to request the professional fee be waived. The further report and written submissions were provided to the prosecution in advance of the further hearing date. All charges against our client were withdrawn.

TERM OF REFERENCE NINE (9)

Options for providing better support to self-represented litigants throughout the Victorian justice system

Resources supporting self represented litigants vary in availability/ accessibility dependent on the nature of the legal issue and the jurisdiction. For example, in family law matters, resources to assist self represented litigants are readily available to the public. This is less so for criminal, civil debt, and infringement matters.

As many online resources provide basic information only, and do not incorporate procedural information/ precedent documents, a self-represented litigant may not be hugely assisted by such publications. The disadvantage to a litigant in being self-represented can vary, both having regard to the nature of the legal issue and the particular circumstances of the self-represented litigant. Matters such as literacy, confidence, mental health, trauma and cultural barriers can all contribute to a significantly unequal outcome before the Courts.

A significant amount of work performed by CLCs is to prepare individuals to engage with Court proceedings in the absence of a legal representative. Ideally, representation of some sort would be available to all engaged in legal processes who do not feel able to self-represent, particularly where opposing parties are represented. The impact on Court resources in supporting self-represented litigants to receive a fair hearing should be considered in the question of the overall allocation of resources to enhance access to justice.

The assessment of the importance of a legal issue, such as to warrant allocation of resources to support legal representation, should take into account factors such as the following:

- severely deleterious impacts on mental health, families and children of unresolved debt and infringement matters;
- opportunities for diversion into therapeutic relationships to address underlying causes of offending at an early stage, wherein it is more likely to be effective, in criminal law matters; and
- the extraordinary importance of fair and complete adjudication of family law disputes involving children, wherein exhaustion of legal aid funds can lead to outcomes that favour the party with more significant assets.