

# **Submission to Department of Justice and Regulation**

## **Access to Justice Review**

**24 February 2016**



**Peninsula Community  
Legal Centre Inc**

## Introduction

Peninsula Community Legal Centre (PCLC) is founded on a commitment to fairness, equality before the law and improving access to justice for vulnerable and disadvantaged people in our community.

We welcome the opportunity to make this submission to the Department of Justice and Regulation, and refer to our initial submission to the Productivity Commission Inquiry into Access to Justice Arrangements of 1 November 2013 and post-draft submission of 21 May 2014, copies of which are contained in Annexures A and B.<sup>1</sup>

This submission addresses each of the terms of reference, as well as those issues highlighted in the background papers that are within our areas of expertise.

## About Us

PCLC is an independent, not-for-profit organisation that has been providing free legal services to vulnerable and disadvantaged people in Melbourne's outer south east since 1977. Today, it is one of the largest community legal centres (CLCs) in Australia, spanning a catchment of over 2,600 square kilometers, six local government areas and a population of almost one million people, with larger catchments for some programs.

PCLC's head office is in Frankston, with branch offices in Bentleigh East, Cranbourne, Pines (Frankston North) and Rosebud. The Centre also operates visiting outreach services in Chelsea, Mornington and Hastings.

We offer a suite of client services, including:

- Initial legal advice on most family law, civil and criminal issues (excluding business / commercial issues);
- Ongoing casework and representation targeted to assist vulnerable and disadvantaged clients, including dedicated programs in Family Law, Family Violence, Child Support and Fines;
- Duty lawyer service for Family Violence Intervention Order matters at Frankston Magistrates' Court;
- Duty lawyer service at Dandenong Family Law Courts;
- Duty advocate service at Dandenong and Frankston VCAT registries (Residential Tenancies List);
- Tenant Advice and Advocacy Program;
- Consumer Advice and Advocacy Program;
- Rooming House Outreach Program;
- Social worker to support clients with non-legal issues (pilot project).

Community information, education and engagement activities are also important aspects of the Centre's work, as is law reform and systemic advocacy.

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<sup>1</sup> Submission to the Productivity Commission Inquiry into Access to Justice Arrangements, Submission No.28, dated 1 November 2013, available at: <http://www.pc.gov.au/inquiries/completed/access-justice/submissions/submissions-test/submission-counter/sub028-access-justice.pdf> and Response to Draft Report, Submission No.192, dated 21 May 2014, available at: <http://www.pc.gov.au/inquiries/completed/access-justice/submissions/submissions-test2/submission-counter/subdr192-access-justice.pdf>

Key achievements for PCLC in 2014-15<sup>2</sup> included:

- 7,702 advices;
- 2,716 cases opened;
- 2,679 court / tribunal assistance;
- 5,494 unique clients assisted;
- 175 community legal education, information and engagement activities;
- Participation in law reform and systemic advocacy initiatives, including making a submission to the Royal Commission into Family Violence, the Victorian Law Reform Commission on Photographing and Filming Tenants' Possessions for Advertising Purposes and Submission to the 2015 (8 Year) Review of the *Charter of Human Rights and Responsibilities Act 2006*.

Our clients overwhelmingly experience disadvantage, with 75% of clients in 2014-15 having no or low income (less than \$26,000 gross per annum), more than a quarter (27%) reporting family violence and 23% reporting a disability. The most common legal problem for our clients was family law (54%), followed by civil issues (37%), frequently fines, tenancy, debt, motor vehicle accidents and neighbour disputes.

PCLC is primarily funded through the Community Legal Services Program of the Australian Attorney General's Department and Victorian Department of Justice and Regulation. It also receives funding from Consumer Affairs Victoria for its consumer, tenant and rooming house programs, and from local governments to support the operation of branch offices and visiting outreach services. From time to time the Centre has been successful in obtaining donations and grants to undertake special projects and activities.

PCLC attracts substantial volunteer, pro bono and in-kind support. In 2014-15, we were supported by 77 lawyer and 79 paralegal volunteers, as well as 2 policy and research volunteers and 9 volunteer management committee members. Volunteer lawyers provided 2,012 free legal advices. We also benefited from the assistance of 4 trainee lawyers. Pro bono support from Russell Kennedy Lawyers was costed at \$55,360, with significant additional pro bono assistance provided by other individual lawyers and firms.

## Response to Terms of Reference

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

We support the opening paragraph of the *Background paper – Accessible legal information* that refers to the need for individuals to understand the legal nature of their problems and identify mechanisms for their resolution, and services that can assist them, as essential for ensuring they can uphold their rights.

We note the key points and recommendations of the *Productivity Commission Report into Access to Justice Arrangements*<sup>3</sup> which included an expression of concern at the lack of awareness of which

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<sup>2</sup> Throughout this submission we use the term 2014-15, in which we are referring to the financial year (1 July 2014 – 30 June 2015).

service was most appropriate for particular people and issues and the need for well-established entry points. Recommendation 5.2 calls for legal aid commissions to coordinate with stakeholders and build on their existing helplines and websites, followed by a suggestion that other legal assistance providers review the allocation of resources to their helplines.

Whilst we understand the lure of this apparently straightforward and efficient approach, we caution strongly against any 'one-size-fits-all' solution. In our extensive experience of assisting vulnerable and disadvantaged people, a variety of strategies and access points are required to assist people to identify that their issue has a legal component and seek help at a time and in a way that is appropriate for them.

## Telephone Helplines

Telephone helplines offer a timely and convenient service for many people, however they can not be overly-relied upon, particularly for disadvantaged clients who commonly have no telephone access at all or access only to a mobile phone but without any credit to make calls (we note that many telephone helplines do not have toll-free numbers). Telephone services are also problematic when documents need to be viewed, particularly if the caller does not have the language and literacy skills to read them aloud to the advisor. It can also be problematic when a caller cannot immediately get through and leaves a mobile number, but then blocks the incoming call which is (necessarily) from a silent number.

We are conscious of the need to make optimal use of our stretched resources, including avoiding any unnecessary duplication. However, it is important to note that not all telephone-based services are alike. PCLC regularly provides telephone intake services as a fast and effective way of triaging the legal needs of clients. Our local knowledge of courts and agencies helps us to tailor our advice in a way that is highly useful for clients and different to that which could be provided from a central agency. We are also able to assess which clients require ongoing assistance and / or face-to-face services and take instructions for urgent matters or make arrangements for follow-up appointments accordingly. This telephone component of our triage and intake processes enables a timely response, which is necessary given the size of our catchment and frequently urgent calls from clients when their problems have escalated to crisis point. We respectfully submit that this does not constitute unnecessary duplication nor a poor use of our resources.

## Online Information

We note that online resources are increasingly accessed by those members of the public with internet access and sufficient literacy and language skills to do so. They may also be utilised by community workers to locate information and services for clients.

Online information is also useful for lawyers, particularly in the legal assistance sector where client queries can be diverse and, for volunteer lawyers, may be outside of their usual areas of practice. In late 2015, we undertook a Volunteer Survey in which we asked which resources volunteers used when volunteering. We had 39 responses to that question, with more than 90 percent saying they used the Fitzroy Legal Service *Law Handbook* and almost 85% saying they used the internet.

We appreciate Victoria Legal Aid (VLA) making available to our lawyers their 'LawGuru' closed website, which contains useful summaries of key legal topics, updates and links to legislation and other resources. This is a practitioner-based resource that is not available to (nor appropriate for) the general public. Having access to this resource avoids the need for us to create similar in-house resources, which is efficient and avoids duplication of effort and resources.

Online information is usually insufficient for vulnerable and disadvantaged people, not only because they may lack computer access and language or literacy skills, but because they may not be able to correctly identify the nature of the legal issue they are experiencing, and may lack other characteristics of legal

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<sup>3</sup> Productivity Commission, *Access to Justice Arrangements*, Report No.72 (2014), pp.149-185

capability, such as the confidence to take action.<sup>4</sup> It is crucial that online legal information not be viewed as a means of reducing access to free legal advice. Even clients with higher legal capability can benefit substantially from initial legal advice about their issue and assistance in completing online forms.

### Locating the 'Right' Service

We support the suggestion by the Productivity Commission of a “no wrong door” approach.<sup>5</sup> CLCs and VLA are very familiar with each other’s work and eligibility criteria and able to make targeted and appropriate cross-referrals to ensure clients are aligned with the service best able to assist them. This means that someone need not miss out on legal help, just because they don’t know which service to approach in the first instance.

It may be helpful to have a more highly visible and well-known entry point (such as a helpline and website), however we do not believe it would be appropriate for this to be the single entry point to legal assistance. Many vulnerable and disadvantaged people do not utilise services through these ‘mainstream’ means, and it is important that CLCs continue to operate: visiting outreach services, drop-in services, telephone triage, intake and localised advice, as well as community engagement activities.

Although VLA, the Victoria Law Foundation (VLF) and Fitzroy Legal Service’s *The Law Handbook*, are key providers of legal information, CLCs should not be overlooked as major providers of legal information to the public as part of their everyday business. In 2014-15 alone, PCLC recorded 13,677 information and referral activities. This included telephone and face-to-face enquiries that did not progress to legal advice being given. When we consider that PCLC’s catchment is less than one-fifth of the state’s population, this level of information provision is comparable to that of the VLF’s Every Day Law website with 72,000 visitors across the entire state during the same period (as cited in the *Background paper – Accessible legal information*).

Although this term of reference addresses only the provision of legal information, it is worth noting that many clients need legal advice rather than just legal information. We submit that it would be unworkable for a single provider to give legal advice on all enquiries, given the likelihood of conflicts of interest arising. There could also be an inherent risk of “cherry-picking” clients and matters for its own agency to the detriment of other providers.

### Legal Information for Community Workers

Another important strategy is to undertake legal information and education initiatives that are targeted at community workers and other professionals who can act as “problem noticers” and identify and support clients to obtain help.<sup>6</sup> With their close connections to their communities, CLCs are ideally placed to undertake such work.

In 2014-15, PCLC:

- Provided direct legal information upon request to 44 non-legal support workers;
- Attended 55 community meetings to improve awareness of our services, enhance cross-referrals and identify and respond to local issues;
- Presented 6 talks and workshops to community workers, including one ‘Law 4 Community Workers’ forum in collaboration with Fitzroy Legal Service.

<sup>4</sup> For example, it is noted that “those most vulnerable to legal problems tend to have less of the knowledge, self-help skills, motivation and resources required to deal with legal problems without assistance.” Forell, S, *Is early intervention timely?*, Justice Issues Paper 20, Law and Justice Foundation of NSW, August 2015, p.3

<sup>5</sup> Productivity Commission, op cit., p.8

<sup>6</sup> Forell, S & McDonald, H, *Beyond great expectations: modest, meaningful and measurable community legal education and information*, Justice Issues Paper 21, Law and Justice Foundation of NSW, December 2015, p.7

PCLC is currently trialling the use of 'Legal Health Check' postcards in talks to organisations, utilising the resources developed by QPILCH in their project undertaken on behalf of the National Association of CLCs.

### Non-Legal Partnerships

PCLC has been working in partnership with Family Life as the provider of Family Relationship Centre (FRC) Frankston and Mornington Peninsula since 2009. The Peninsula Regional Office of VLA has also joined the partnership, which aims to ensure that separated parents have access to free legal information and advice. Although not co-located, our Frankston office is only 500 metres from the FRC and clients have the option of face-to-face appointments or telephone advice. Last year, 89 advices were provided by PCLC to FRC clients through this partnership and 19 ongoing cases were undertaken. Additionally, we delivered 20 *Legal Information for Parents* workshops to 215 participants. As part of their intake process, the FRC asks whether clients have spoken to a lawyer and provides information about our free legal services. Family dispute resolution practitioners at the FRC have also been willing to suspend mediation to enable parties to seek legal advice, then resumed mediation once they have had advice and feel confident to proceed.

The Centre is currently negotiating with Headspace (Youth Mental Health Service) in Frankston to provide free legal assistance from its Frankston office, in partnership with Youthlaw. It is envisaged that this partnership will enable PCLC to provide legal information to workers, as well as provide legal advice to vulnerable young people with mental health issues, many of whom have experienced family violence, homelessness and other traumas, at Headspace so that psychologists can be present to provide professional support and counselling.

We are also in discussions with the Dispute Settlement Centre of Victoria with a view to them offering services from our Head Office in Frankston, to further assist clients with minor civil disputes.

The Centre's visiting outreach services in Chelsea, Hastings and Mornington are all based at community, including health, organisations to be easily accessible to users of other services and to facilitate cross-referrals and improved awareness of legal issues.

Additionally, the Centre maintains its close connection to its community through direct contact with agencies and participation in a variety of networks. Collaboration is a key part of our CLE strategies and activities. For example, the Centre presents a workshop to Men's Behaviour Change classes in conjunction with Peninsula Health, aimed at improving the men's understanding of Family Violence Intervention Orders, to prevent breaches and warn of the consequences of offending.

## 2. Options for diverting people from civil litigation and into alternative services where appropriate, such as a 'triage' model.

### Alternative Dispute Resolution

PCLC has long embraced alternative dispute resolution (ADR) strategies when advising clients about their options for resolving legal issues. A desire to "have their day in court" is rare among our clients who usually have low legal capability and instead view court or tribunal proceedings as a last resort. ADR is frequently the most appropriate, accessible and desirable option for our clients, as envisaged by the



Justice Principles<sup>7</sup> and requirements around appropriateness and proportionality in the current National Partnership Agreement.<sup>8</sup>

In 2014-15, almost one in five referrals made by PCLC was to ADR providers, including FRCs, Ombudsmans, and mediation centres. PCLC is also able to support clients through ADR processes, including providing advice about the merits of the issue, reasonableness of the client's expectations, preparation required to make ADR more effective and comparing likely outcomes if the matter proceeded to court.

As discussed earlier, PCLC is so committed to encouraging clients to utilise ADR services that it is currently in discussions with the Dispute Settlement Centre of Victoria to explore possible co-location of services at PCLC offices.

Whilst we recognise the value of ADR, it is our experience that many vulnerable and disadvantaged clients have low legal capability and cannot navigate ADR processes without legal advice and support. Thus it is important to recognise that, whilst ADR is often appropriate and preferable to court proceedings, it does not replace the need for legal advice and assistance.

## Triage

We agree with the assertion in the *Background paper – diversion and triage* that “frontline legal assistance providers... play a significant role in employing triage to direct people to the most appropriate service at the earliest opportunity.”

Triage is an important part of the work of PCLC and is undertaken at the earliest possible opportunity:

- At the time a person makes first contact with our Centre, our trained administration workers ascertain the nature of the client's legal query, urgency (including court dates and factors such as risk of homelessness and family violence) and eligibility to use our service, including checking for conflicts of interest, and referring the client to an information resource or another service if appropriate.
- From there, clients will either be provided with an appointment to see a staff or volunteer lawyer, or tenant / consumer advocate, or referred to our next telephone intake session (operating four mornings a week for clients with telephone access).
- At the appointment or telephone intake session, clients discuss their legal query with a lawyer, obtain advice and provide instructions for ongoing work to be undertaken by PCLC. Where appropriate, clients are referred to ADR providers such as ombudsmans and mediation services.
- In conducting ongoing casework for clients, we undertake negotiations and seek early resolution whenever that is possible and appropriate.

## Case Study – Homelessness avoided

“Sam” was facing eviction when he came to VCAT and saw our duty advocate. When Sam began renting, he had a job and could afford the rent. Unfortunately he suffered from mental health problems and was hospitalized and out of work for a period of time. This caused him to fall about \$450 behind in rent. The landlord's agent served Sam with a Notice to Vacate, but Sam desperately wanted to keep his home.

Our advocate was able to obtain financial assistance for Sam from a local agency, which reduced the amount of rent owing. We also negotiated with the agent, who agreed to let Sam stay in the property and

<sup>7</sup> Australian Government Attorney-General's Department, *A Strategic Framework for Access to Justice in the Federal Civil Justice System: A guide for future action*, 2009, p.8

<sup>8</sup> Council of Australian Governments, *National Partnership Agreement on Legal Assistance Services*, 2015, p.3

pay the balance of rent arrears by instalments. The Tribunal made orders by consent and Sam got to go home afterwards.

As is recognised in the *Background Paper – Diversion and triage*, CLCs also employ triage to help identify non-legal problems. This has long been part of the holistic approach of PCLC, which led to the Centre successfully obtaining funding from the Phyllis Connor Memorial Trust to undertake a Social Work Support pilot program. Through this program, lawyers and advocates are able to refer clients to the social worker for support with a variety of non-legal issues that are identified as underlying or contributing factors to their legal problem. The social worker can assist with issues such as housing, financial problems, family support, counselling, material relief, gambling and drug and alcohol addiction, where clients are not already accessing help.

### **Case Study: Social worker helps Mary manage her money and safely see her daughter**

“Mary” had been struggling with money for years. She was in her early 30s when she came to PCLC seeking help with her rent arrears. Mary was unemployed, isolated and suffering from anxiety as a result of the abuse and trauma she had suffered in her past. Her anxiety made it hard for her to communicate, causing her to become frustrated and verbally aggressive which had led to other services withdrawing their support.

Our tenant advocate successfully negotiated to save Mary’s tenancy and referred her to our social worker for further support. Our social worker gave Mary some interim strategies to manage her anxiety and referred her into a case management program with a local mental health service. She attended Mary’s intake interview and supported her engagement with that service over the next few weeks.

With our social worker’s assistance, Mary set up Centrepay so that her rent would be paid automatically from her Disability Support Pension. We also referred her to a financial counsellor to help her sort out her money and better manage it in the future.

We also referred Mary to a local charity and brokerage fund to get a new car booster seat fitted so that she could safely have contact with her young daughter who lived some distance away.

After 18 weeks of social work support, Mary had almost finished repaying her rent arrears and was linked in with a financial counsellor as well as continuing to engage with a mental health service. She was very grateful to have had someone who followed-up with her and genuinely cared about her. She felt that, without that support, it was unlikely she would have successfully engaged with a mental health service, and that she would still be “going around in circles”.

## **3. Whether and how alternative dispute resolution mechanisms should be expanded so that more Victorians can make use of them**

Further to our comments above, we reiterate the need for vulnerable and disadvantaged people to have access to legal assistance at any stage of the ADR process. This is particularly crucial where there is a power imbalance between the parties.

### **Case Study – Training and legal advice to address power imbalances**

Throughout our six year partnership with Family Life as the provider of FRC Frankston and Mornington Peninsula, we have regularly discussed how family violence is identified and responded to and its impact on family dispute resolution (FDR). We understand that the FRC’s intake workers, educators and professional FDR practitioners have extensive training in detecting and responding appropriately to



family violence concerns. Although some cases will be declared unsuitable for FDR, in many others strategies can be employed (including shuttle mediations and arranging free legal assistance with PCLC) so that parties can proceed with mediation, be empowered to retain control over outcomes and avoid the added delay and stress of court proceedings.

Although the above example shows mediation being undertaken where a power imbalance needed to be addressed, we acknowledge that there are many situations where that imbalance is so great that it cannot be overcome and mediation is wholly inappropriate.

In relation to the potential use of online technologies for ADR, again we would caution against a 'one-size-fits all' approach and reiterate that many disadvantaged people do not have the legal capability to use such self-help systems, as well as experiencing barriers like lack of internet access, language and literacy.<sup>9</sup>

#### 4. Potential reform to the jurisdiction, practices and procedures of the Victorian Civil and Administrative Tribunal (VCAT) to make the resolution of small civil claims as simple, affordable and efficient as possible

In PCLC's experience, clients who are disadvantaged are poorly equipped to navigate VCAT processes for civil claims and require direct legal assistance to make claims that, whilst regarded by VCAT as "small", represent a very significant amount of money for them.

The process can seem overwhelmingly complex for a person who is self-representing, particularly if they are disadvantaged. For example, they are required to:

- Obtain and complete an Application Form;
- Conduct an ASIC business or company search, identifying the correct trader;
- Submit their form to VCAT;
- Receive VCAT's confirmation, Notice of Hearing and Declaration of Service form;
- Collate evidence and serve Application and supporting documents on the other party;
- Complete and sign the Declaration of Service form before a qualified witness;
- Provide Declaration of Service and copy evidence to VCAT on the day of Hearing;
- Attend and present their case at the Hearing.

As civil matters are usually listed in Melbourne, clients and witnesses also have the added expense and inconvenience of travelling, which is an extra hurdle for those who live some distance from Melbourne with limited transport options.

Many clients have trouble completing quite complex fee waiver or exemption forms, and we suggest that the acceptance of a health care card would be a far simpler process. We also suggest that an additional ground for exemption be included, where the person is a client of a CLC or VLA and is therefore already subject to eligibility criteria. This is currently the approach of the Family Law Courts, where fees are waived for legal assistance sector clients.<sup>10</sup>

<sup>9</sup> McDonald, H., Forell, S. & People, J., *Limits of legal information strategies: when knowing what to do is not enough*, Updating Justice No.44, Law and Justice Foundation of NSW, December 2014

<sup>10</sup> For a list of grounds for exemption, see <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/reports-and-publications/publications/fees/guidelines-for-exemption-of-court-fees> and to view the list of "approved legal aid schemes"

Another complexity is the requirement to produce expert evidence, something disadvantaged clients find daunting. We suggest that, just as the Tenancies List is able to utilise CAV inspectors, this Review explore the option of instilling in-house or CAV-appointed experts for civil claims, such as mechanics and solar panel experts.

As we have stated elsewhere in this submission, online information – or in this case, online dispute resolution, would only be suitable for those people with higher legal capability, as well as internet access. However, even those with high capability are likely to benefit from legal advice in assessing the merits of their potential claim, as discussed in the section on self-represented litigants, later in this submission.

We are also aware of a number of consumers who successfully obtain VCAT orders being unable to pursue enforcement measures, both through the further complexity of having to register the orders in Court, and the additional fees for enforcement – particularly where those costs may be almost as much or more than the claim itself. These are significant barriers for disadvantaged clients.

## 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

### Our 'Creative' Pro Bono Partnership – Russell Kennedy Lawyers

PCLC formed a pro bono partnership with Russell Kennedy Lawyers (RK) in late 2009, following discussions at an event organised by the Federation of CLCs, the 'Attorney-General's Community Law Roundtable'.

This partnership is a creative one that has gone beyond the traditional confines of simply referring clients to lawyers for pro bono assistance with legal issues. Instead, we have received pro bono support across the entire RK organisation – partners, associates, administrative workers, human resources, business management and lawyers. RK has arranged for the professional designing and printing of our public newsletters, photocopied our brochures, printed and bound our volunteer manuals, donated gifts for our volunteers, created an annual 'client disbursement fund' that pays for process servers and other unaffordable necessities for our clients; they've supported our organisational management structure, helped us draft our new Rules of Association, sponsored staff recognition awards, hosted our events at their premises, established a mentor program, provided continuing professional development for our staff and volunteers, advised on community legal education materials – and accepted client referrals.

In 2014-15 alone RK's pro bono support of PCLC was costed at \$55,360 and included:

- Client Disbursement Fund of \$4,000;
- Legal advice to PCLC on its professional indemnity insurances;

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see <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/forms-and-fees/fees-and-costs/approved-legal-aid-schemes/>

- Legal advice to PCLC on Privacy Principles;
- Continuing Professional Development (CPD) Day for staff and volunteer lawyers with CLC volunteer-only practising certificates;
- Mentoring and advice on client files;
- Printing 500 copies brochures;
- Professional development session to PCLC staff at the Centre's Head Office;
- Sharing of legal updates and client bulletins;
- Staff attendance at RK in-house professional development sessions;
- Printing & collating volunteer manuals;
- Design and printing two editions of our public newsletter *Community Law News*;
- Hosting and providing refreshments for a meeting of the Community Development and Community Legal Education Working Group of the Federation of CLCs;
- Complimentary ticket to Human Rights Dinner.

Whilst this support has been costed, its impact goes further in that it has saved PCLC management, administrative and lawyer time and resources, which could instead be devoted to service delivery.

Exclusivity is not a feature of PCLC's pro bono partnership with RK - RK provides additional pro bono support to other CLCs and organisations, and PCLC is free to seek pro bono support from other firms.

### Other Pro Bono Supporters

In addition to having a number of lawyers volunteer with us, **Maurice Blackburn Lawyers** has sponsored the Centre's volunteer awards since 2011 (now donating \$600 per annum), enabling us to recognise volunteer long service and special achievements, and has also supported our social work pilot project, by providing advice and guidance, and participating in the project's steering group. Maurice Blackburn Lawyers have also delivered CPD seminars for staff and volunteers of PCLC.

With the support of **Moreheads Lawyers**, PCLC has been trialling the 'Peninsula Lawyer Discount Scheme', for clients referred by PCLC who live in the southern region of the Mornington Peninsula. The idea was put forward by Michael Morehead, a long-term lawyer volunteer with the Centre, who was concerned that some clients might "fall through the cracks" because they do not qualify for legal aid, cannot afford to pay market rates for a private lawyer and cannot be assisted by PCLC, due to limited capacity and competing client priorities. Under this scheme, clients referred to Moreheads Lawyers by PCLC are offered a discount of up to 50 percent on legal fees, plus GST and disbursements. Moreheads Lawyers retains discretion to determine whether a client is eligible for the scheme, and reports regularly to PCLC about how the scheme is working. A number of clients have now received discounted legal fees under the service, with some excellent outcomes, and the Centre is hoping that the scheme can be expanded and will be inviting other local firms to participate.

### Case Study – Peninsula Lawyer Discount Scheme helps Mother

"Amy" was referred to Moreheads Lawyers for assistance with an urgent Family Court application, after her abusive ex-partner refused to return their children to her. Amy had some financial means, but could not afford to pay full legal fees. With a discounted fee, she was able to provide instructions for an urgent application to be lodged, resulting in the Court ordering the immediate return of her children to her.

PCLC clients also benefit from a number of barristers who agree to accept reduced fee and pro bono briefs.

### Pro Bono CPD

In addition to the pro bono CPD provided by RK, PCLC has also utilised other offers of pro bono CPD for staff and volunteer lawyers. In 2014-15, this included a series of family law seminars organised by Amanda Graham, an accredited family law specialist with **White Cleland**. Workshops included guest speakers, Anthony Grimes (Family Life / FRC Frankston & Mornington Peninsula), Victoria Campbell (Barrister) and James Gorman (Gorman & Hannan).

Following the success of the pro bono family law series, Victor Moss of **Moss Legal**, delivered a 'Criminal Law' CPD series to staff and volunteers, with the fifth and final seminar comprising a panel of speakers including Victor Moss, a senior PCLC lawyer and a lawyer from Victoria Legal Aid (Peninsula Regional Office).

We also acknowledge the support of **VLA** providing access to LawGuru (its closed website with legal information for practitioners), and to its Professional Legal Education seminars to staff lawyers and volunteer lawyers with a CLC practising certificate.

Another way in which PCLC receives pro bono support is through mentoring. This is provided by RK lawyers for their areas of expertise, but has also been provided by Amanda Humphreys of Kennedy Partners, an accredited family law specialist, and Terry Weerappah of Bayside Solicitors.

### Non-Legal Pro Bono

PCLC has also been able to attract pro bono or in-kind support from outside of the legal sector. Since 2014-15, the **Halpin Partnership** has provided management consultancy services to work with PCLC's Management Committee to help set the foundations for strong future planning at this level.

Frankston City Council provides us with exclusive use of an office in the Mahogany Integrated Services Hub in Frankston North for our Pines branch office, at no charge. The City of Glen Eira provides us with our Bentleigh Branch office and although rental is charged, this is then returned to the Centre in the form of a community grant.

We were also exceptionally fortunate to secure a commercial lease for our Head Office for which our monthly rent is significantly below market value, because our private landlord recognised and wanted to support our work for the local community.

As a registered charity with DGR status, PCLC avails itself of any discounts or donations that may be available, including discounted phone line rental from Telstra, discounted technology products through Donortec and recently a donation of furniture from the Royal Commission into Family Violence.

### Volunteers

For almost 40 years, PCLC has relied on the support of volunteer lawyers and community members to enhance and extend its operations. Although we use the term "volunteers" rather than "pro bono", there is otherwise no meaningful distinction. We estimate that, over and above the pro bono support previously described, our lawyer and paralegal volunteers provide around \$200,000 worth of free legal help each year.

In 2014-15, we operated more than 400 volunteer advice clinics, with volunteer lawyers providing 2,012 free legal advices. Paralegal volunteers (commonly tertiary law students) coordinated the sessions, conducted preliminary client interviews and provided research and administrative support. Five volunteer lawyers also operated files and provided ongoing work at various times throughout 2014-15, and the Department of Justice released a worker for a five day secondment. From time to time, PCLC also

benefits from the work of policy, research and special project volunteers. The Centre is also governed by a volunteer-based Management Committee. We estimate that volunteers contribute over 3,000 hours per year.

Contrary to the position of the *Background paper – Pro bono legal services*, our volunteer lawyers are almost exclusively from small to medium sized firms, sole practitioners, CLC lawyers, barristers, or not currently employed as lawyers (for example, working in government departments, universities or retired). At the time of writing, PCLC has 64 active volunteer lawyers, of whom just 1 is employed by a large firm. 14 lawyer volunteers have CLC-Volunteer only Practising Certificates. Anecdotally, we are also aware of many small firms undertaking client work with informal pro bono or reduced fee arrangements where clients do not have capacity to pay full rates and would not satisfy legal aid guidelines.

This Review may be interested to see publications about pro bono partnerships and volunteers in CLCs produced by the National Association of CLCs (NACLC), including data about the extent of pro bono and volunteer relationships as determined by its annual Census.<sup>11</sup>

### Trainee and Student Placements

PCLC recently piloted hosting placements for trainee lawyers undertaking a recognised Professional Legal Training course. Trainees were able to work with clients with mentoring from experienced PCLC lawyers and undertook a range of tasks. Feedback from the trainee lawyers and PCLC supervising lawyers has been very positive, and following evaluation of the pilot, it has been determined that this will be an ongoing program at PCLC.

In 2016, PCLC has commenced hosting Deakin University Law Students to undertake legal internships, for which students earn credit towards their degree.

### Supporting Pro Bono Relationships and Volunteers

Pro bono relationships and volunteers provide tremendous benefits to PCLC and strengthen our capacity to respond to legal need in our community. However, it is essential to note that each requires substantial staff resourcing and the net gains to the Centre are less than may first appear.

In relation to pro bono relationships, these have been built over time and need to be maintained through regular contact and reporting. Where CPD sessions are provided pro bono, there is still significant staff input required administering and supporting the events.

Operating a large volunteer program requires substantial staff input and PCLC employs a manager and deputy manager of volunteers whose roles include recruitment and selection, training, rostering, supervision, support and maintaining resources for volunteers, as well as reporting and recognising volunteer contributions (through events, references and awards). Our Principal Lawyer is responsible for ensuring that every volunteer advice file is checked for quality and compliance with professional indemnity insurance requirements.

PCLC invited all of its volunteers to complete a survey in late 2015. 47 volunteers participated in the survey, including 26 lawyers. The majority had volunteered with PCLC for 2-5 years and indicated that they prefer to volunteer monthly. In terms of why they volunteer, a variety of options were presented with room for comments. The top answers were:

<sup>11</sup> National Association of Community Legal Centres, *Working Collaboratively: Community Legal Centres and Pro Bono Partnerships*, 2014, available at [http://www.nacalc.org.au/resources/NACLC\\_probono\\_WEB.pdf](http://www.nacalc.org.au/resources/NACLC_probono_WEB.pdf)

NACLC, *Working Collaboratively: Community Legal Centres and Volunteers*, 2014, available at [http://www.nacalc.org.au/resources/NACLC\\_VOUNTEER2014\\_WEB.pdf](http://www.nacalc.org.au/resources/NACLC_VOUNTEER2014_WEB.pdf)

National Association of Community Legal Centres, *National Census of CLCs 2014 National Report*, 2015 available at [http://www.nacalc.org.au/resources/NACLC\\_NationalCensusofCLCs\\_2014\\_COMBINED.pdf](http://www.nacalc.org.au/resources/NACLC_NationalCensusofCLCs_2014_COMBINED.pdf), pp.26-32



- “Give back to the community” (91%);
- “Improve access to justice” (71%); and
- “Gain experience” (51%).

Volunteers who completed the survey indicated that the induction and training they received prior to commencing was adequate (90%) and that they found the Centre’s Volunteer Manual useful (88%). Just over half (58%) had attended additional CPD training provided by PCLC. Volunteers expressed an interest in learning more about a variety of legal topics, the highest rating being: Employment law (58%), Family law (55%), Family violence (53%), Criminal law (51%), Personal injury (44%) Fines (41%), Ethics (27%), Interviewing skills (25%) and Legal research (25%).

Whilst CLCs may be strengthened by the addition and / or expansion of volunteer and pro bono programs, it is vital that they are properly resourced to manage those programs, to ensure their effectiveness.

We do not believe it would be feasible for any pro bono or volunteer program to operate in isolation, and we strongly support the position expressed in the *Background paper – Pro bono legal services* that “Pro bono work complements, but is not a substitute for, funded legal assistance schemes.”

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

### Funding

As we stated in our submissions to the Productivity Commission, the legal assistance sector is significantly underfunded. We reiterate that “Although we are open to identifying and implementing potential improvements, we submit that **under-resourcing is the real issue facing the sector, rather than lack of efficiency in fund distribution or service delivery.**”<sup>12</sup>

We note that one of the key points made by the Productivity Commission was that “More resources are required to better meet the legal needs of disadvantaged Australians.”<sup>13</sup> It went on to recommend measures to align means tests, maintain frontline services and expand services in other areas of law, requiring an addition \$200 million funding per annum.

Contrary to this, the sector faced drastic federal funding cuts that were due to take effect from 1 July 2015. We are grateful for the advocacy of the Victorian Attorney General, and others, who staunchly supported the legal assistance sector and warned of a worsening access to justice crisis if funds were reduced.<sup>14</sup> However, whilst we are relieved that those funding cuts did not proceed, we remain deeply concerned at the Australian government’s indicated reduction of around 30 percent in CLC funding from 1 July 2017.<sup>15</sup>

We welcomed the Victorian State Government’s announcement of \$3.2 million additional funding to CLCs last year<sup>16</sup>, which included PCLC, and is enabling us to expand family violence duty lawyer

<sup>12</sup> PCLC Submission in Response to Draft Report of Productivity Commission Inquiry into Access to Justice, Submission No. 192, 2014, Annexure B of this submission, p.2

<sup>13</sup> Productivity Commission, op cit., p.2

<sup>14</sup> See for example <http://www.smh.com.au/federal-politics/political-news/state-attorneysgeneral-unite-to-warn-george-brandis-of-crisis-in-legal-funding-20150306-13x8d1.html>

<sup>15</sup> Details of funding cuts are available at <https://communitylawblog.wordpress.com/the-facts-about-federal-cuts/>

<sup>16</sup> For further information, see <http://www.premier.vic.gov.au/grants-strengthen-community-legal-centres/>



services and pilot a Fines Clinic. This goes some way to enhancing our capacity to respond to local legal need, however more support is needed.

We have long embraced measures to optimise our efficiency and ability to respond to the legal needs of our community. Examples include volunteer and pro bono programs, successfully applying for funding from Consumer Affairs Victoria to operate complementary tenant and consumer programs, successfully obtaining financial contributions from local government and philanthropic organisations and obtaining grants to operate projects. For PCLC, operating a head office with four branches has also enabled the Centre to benefit from some economies of scale in terms of infrastructure, administration and management.

Nonetheless, resource constraints mean that only around one third of PCLC clients who received advice were able to have cases opened in 2014-15, despite the fact that many more would struggle to self-represent and could benefit greatly from further help. We note that the most recent ACROSS Community Sector Survey indicates that over 70 percent of community legal services were unable to meet demand, with 33 percent of those indicating they needed to increase capacity by 11-25 percent and a further 30 percent estimating that an increase of between 26-50 percent would be necessary to meet demand.<sup>17</sup> In responding to a differently framed question in the National Census of CLCs, 65 percent of CLCs reported turning away people due to insufficient resources, resulting in 156,854 people being turned away.<sup>18</sup>

Over and above this unmet legal need is that experienced by people who didn't seek help, but who could potentially have been reached through expanded community legal education and outreach activities.

### Addressing Legal Need

It is well-established, and was confirmed by the LAW survey, that there is a strong correlation between disadvantage and legal need. Those experiencing disadvantage and social exclusion are dramatically over-represented, with 65 percent of legal problems being experienced by just 9 percent of respondents. The survey found that people who are disadvantaged are particularly vulnerable to legal problems and more likely to experience multiple and severe problems, which in turn often have considerable adverse impacts on their lives, including income loss or financial strain, stress-related illness, physical ill-health, relationship breakdown and moving home.<sup>19</sup>

The National Partnership instructs States to "identify and analyse evidence of disadvantage, as a proxy for legal need", requiring that services should be provided to people who are financially disadvantaged and listing "priority groups" who are likely to have increased susceptibility to legal need. We are pleased that the list is "for guidance only and is not exhaustive. Service providers are not excluded from assisting clients that fall outside these groups."<sup>20</sup>

### Demographic Data

We welcome the inclusion in the Law and Justice Foundation of NSW's *Jurisdictional Data Resource* of "small area" data, which captures smaller pockets of disadvantage that risk being overlooked if only local government area data is used.<sup>21</sup>

An example of the risk of looking at only local government area level data would be in relation to SEIFA scores. For example, one local government area in PCLC's catchment is the Mornington Peninsula

<sup>17</sup> ACROSS, *Australian Community Sector Survey 2014*, available at [http://across.org.au/images/uploads/ACSS2014\\_final.pdf](http://across.org.au/images/uploads/ACSS2014_final.pdf), p.17

<sup>18</sup> National Association of Community Legal Centres, *National Census of CLCs 2014 National Report*, op cit., p.11

<sup>19</sup> Ibid, pp.xiv-xvi

<sup>20</sup> COAG, op cit., pp.A1,B-1

<sup>21</sup> Law and Justice Foundation of NSW, *Collaborative Planning Resource – Jurisdictional Data 2015*, available at <http://www.lawfoundation.net.au/ljf/app/C10F3BA43A50B79BCA257EF50011AA5A.html>

Shire. Its SEIFA score shows a relative disadvantage score of 1,022.5, which is slightly above the weighted population average of 1,000, suggesting lower levels of disadvantage in that Shire. However, within the Shire are a number of smaller areas that have significantly lower SEIFA scores, such as Rosebud West with a score of 894.9 and Hastings with a score of 912 – both indicating high levels of disadvantage.<sup>22</sup>

Another highly useful data source is the *Dropping off the Edge* study, which examines 667 postcodes in Victoria across 22 different indicators of disadvantage. Its key findings include:

- Disadvantage is concentrated in a small number of communities within Victoria.
- These communities experience a complex web of disadvantage and bear a disproportionately high level of disadvantage within the state.
- A significant number of postcodes have remained depressed for long periods demonstrating the persistent, entrenched nature of the disadvantage experienced by these communities.<sup>23</sup>

### **Rising to the Challenges of Disadvantage and Legal Need**

(Excerpt from PCLC's *Community Law News*, December 2015<sup>24</sup>)

With a core catchment of around 956,600 people<sup>25</sup>, across a distance of 2,600 square kilometres, and larger catchments for some programs, it is vital that Peninsula CLC works smart, as well as hard, to address local legal need. This has been highlighted by recent research which confirms that parts of the Centre's catchment are among the most disadvantaged in Victoria.

*Dropping off the Edge 2015*<sup>26</sup> found that there is a disproportionate distribution of disadvantage in Victoria and that it persists in many locations, with those in the 3% most disadvantaged postcodes being:

- 3 times more likely to experience long term unemployment or to have been exposed to child maltreatment;
- 2.6 times more likely to have experienced domestic violence;
- 2.4 times more likely to be on disability support;
- Twice as likely to have criminal convictions as the rest of the population.

It is notable that many of the indicators of disadvantage identified by this study correlate to those indicating heightened legal need and susceptibility to multiple and severe legal problems, identified by the LAW Survey in 2012<sup>27</sup>.

Frankston North and Doveton, both within Peninsula CLC's catchment, were in the 'Band 1' most disadvantaged 6 postcodes (out of 667) in Victoria. Close thereafter were Rosebud West, Dandenong, Hastings and Rosebud. Whilst staff and volunteers are all too-aware of the high need for free legal

<sup>22</sup> Based on ABS Census data, as reported by Atlas.id, available at <http://atlas.id.com.au/mornington-peninsula#MapNo=10013&SexKey=3&datatype=2&themtype=2&topicAlias=socio-economic-disadvantage&year=2011>

<sup>23</sup> *Dropping Off the Edge 2015: Persistent Communal Disadvantage in Australia*, Jesuit Social Services & Catholic Social Services Australia, 2015, [www.doteorg.au](http://www.doteorg.au)

<sup>24</sup> Available at <http://www.pclc.org.au/wp-content/uploads/2014/05/Community-Law-News.December-2015.pdf>

<sup>25</sup> Source: Australian Bureau of Statistics, Regional Population Growth, Australia (3218.0). Compiled and presented in profile.id by .id, the population experts (Estimated Resident Population for municipalities of: Casey, Mornington Peninsula, Kingston, Glen Eira, Frankston and Cardinia).

<sup>26</sup> *Dropping Off the Edge 2015: Persistent Communal Disadvantage in Australia*, Jesuit Social Services & Catholic Social Services Australia, 2015, [www.doteorg.au](http://www.doteorg.au)

<sup>27</sup> Coumarelos, C, Macourt, D, People, J, MacDonald, HM, Wei, Z, Iriana, R & Ramsey, S 2012, *Legal Australia-Wide Survey: legal need in Australia*, Law and Justice Foundation of NSW, Sydney

services in these and other disadvantaged areas, the findings serve as a cold reminder of the continuing and entrenched disadvantage experienced by many in our community.

Peninsula CLC has long supported a holistic approach to its provision of free legal services, and this was recently strengthened by the appointment of a social worker, as part of a pilot project funded by the Phillis Connor Memorial Trust, to help clients address non-legal issues that are, or could, negatively impact on the resolution of their legal problems. The Centre is also trialling a new intake system, which seeks to provide initial same day advice and triage to clients, and is already dramatically reducing waiting times.

Another consideration when analysing data as an indicator of legal need, and anticipated demand for legal assistance services, is to look at raw numbers and not only data expressed as a proportion of the overall population. To again use the Mornington Peninsula Shire as an example, when analysing data on the location of low income households, it can be seen that 29 percent of all households in Hastings have low income, whereas only 23 percent of all households in Mornington have low income. However, the actual ('raw') number of households is twice as large in Mornington (2,128 households) compared with Hastings (1,024 households).<sup>28</sup>

The same is true when considering family violence data<sup>29</sup>, a very important indicator of likely legal need and demand for free legal assistance services. When considering reports to police of "family incidents", both the rate and actual numbers ought to be taken into account. For example, in the Southern Metro Region, the highest rates of family violence per 100,000 population are:

- |                         |         |
|-------------------------|---------|
| 1. Frankston            | 1,853.9 |
| 2. Cardinia             | 1,533.3 |
| 3. Greater Dandenong    | 1,369.6 |
| 4. Casey                | 1,312.9 |
| 5. Mornington Peninsula | 1,258.4 |

However, the actual number of incidents would rate these local government areas (and potential legal need) differently:

- |                         |       |
|-------------------------|-------|
| 1. Casey                | 3,775 |
| 2. Frankston            | 2,498 |
| 3. Greater Dandenong    | 2,123 |
| 4. Mornington Peninsula | 1,945 |
| 5. Kingston             | 1,350 |

Additional data that is likely to be useful in considering concentrations of legal need include data on financial stress, such as loan defaults and bankruptcy, and crime / victims of crime figures.

### ***Stakeholder Consultation and Local Knowledge***

Whilst demographic data provides useful insight into the geographic clustering of disadvantage, it is not the only indicator of legal need, and we are pleased that among the sources listed in the National

<sup>28</sup> <http://atlas.id.com.au/mornington-peninsula#MapNo=10039&SexKey=4&datatype=1&themtype=1&topicAlias=low-income-households&year=2011>

<sup>29</sup> The following statistics are from July 2014-June 2015, obtained from Family Incident Report data tables available at <http://www.crimestatistics.vic.gov.au/home/crime+statistics/year+ending+september+2015/family+incidents>

Partnership Agreement is the Legal Needs Assessment Framework and Toolkit produced by the National Association of Community Legal Centres, which in turn builds in the need for both demographic data and stakeholder consultation. Likewise, the *Collaborative Planning Resource – Service Planning* recently published by the Law and Justice Foundation of NSW, doubtless a highly useful guide to service planning, emphasises not only empirical data, but stresses the need for “local knowledge of legal and human services and stakeholders” at many stages throughout the planning process.<sup>30</sup> Because of their close connections with their communities, CLCs have considerable expertise about existing and emerging legal needs.

The National Partnership Agreement requires states to determine funding distribution through collaborative service planning, including evidence and analysis of legal need and collaborative service planning meetings involving the Commonwealth, State and legal assistance providers. It may be highly useful, in addition to these statewide meetings, for regional analyses and meetings to be conducted, to ensure that local knowledge and stakeholder feedback are adequately considered.

### Regional Planning: South East Legal Needs Analysis

PCLC recently concluded the first phase of a collaborative planning project, the ‘South East Legal Needs Analysis’ (SELNA). This project was undertaken over almost two and a half years by four CLCs in the south eastern region of Melbourne (PCLC, Springvale Monash Legal Service, Casey Cardinia CLC and St Kilda Legal Service), VLA Peninsula Regional Office, Westernport Regional Office as well as VLA’s Head Office and the Federation of CLCs.

The Legal Needs Assessment Framework developed for NACLC was the underpinning methodology for the SELNA, which studied eight local government areas in Melbourne’s south east. VLA provided financial assistance to employ a consultant, Sam Horsfield of Real Politic Consulting, to work alongside the coordinating Group to collect and collate demographic and service data and the outcomes of stakeholder consultation from across the region.

To the best of our knowledge, this was the first time CLC and VLA data had been combined in an attempt to identify the levels of met and unmet legal need for the region.

Stakeholder consultation included a variety of local agencies, such as police, courts, health providers and community organisations, as well as specialist CLCs.

Key findings included:

- The South East region (the 8 LGAs included in this study) represents around 20 percent of the Victorian population and is forecast to grow by around 20 percent by 2031.
- Between 2010 and 2014, VLA and CLCs provided 189,705 legal services to 83,544 clients in the south east.
- Based on unique client counts, VLA and the four CLCs assisted 2.3 percent of the South East population in 2013-14.
- VLA and the four CLCs have a conspicuous presence in the South East. CLC service data for the period 2010 to 2014 demonstrates that the number of clients from and services to the South East have been increasing over time, which would be expected with the growth in the region’s population. Access to legal services for people from the South East through VLA’s Legal Help telephone service also increased over the period covered by this study.
- Areas of particularly high disadvantage in the South East, in particular the LGAs of Greater Dandenong and Frankston, are well reflected in VLA and CLC client and service data.

<sup>30</sup> Coumarelos, C., McDonald, H., Forell, S. and Wei, Z., *Collaborative Planning Resource – Service Planning*, Law and Justice Foundation of NSW, 2015, p.10

- Other service providers consulted as part of this project indicated that they were generally knowledgeable about services provided by VLA and the CLCs and confident about referring clients to these services. They also provided feedback that VLA and CLCs were generally responsive to referrals into their services.
- Potential unmet legal need was flagged in the SELNA Report which was finalised, but not published, in June 2015.

The SELNA coordinating group is continuing to meet to explore opportunities for collaboration across the region.

### **Shifting Resources from Met to Unmet Need**

As was stated in the SELNA Report:

“An important objective of a legal need analysis is ascertaining unmet legal need, so that where legal assistance is not reaching less advantaged members of the community, this can be ameliorated. The risk accompanying this focus is that maintaining current service distribution can be overlooked in the process of prioritising unmet legal need, which may then increase or displace the pool or overall need.”

We support this position and caution against disturbing currently met needs to address unmet legal needs.

### **Funding Certainty to Support Planning**

We note the difficulties of undertaking meaningful future planning in the face of funding uncertainty. Instead of three, or ideally five, year funding cycles, CLCs have frequently experienced 12 month funding roll-overs, often without funding levels being confirmed until just before the commencement of a financial year. As Community Legal Service Program funding is the ‘core’ funding for the sector, it is highly desirable that funding levels be known well in advance so that quality strategic planning can be undertaken and implemented.

## **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**

### **Duplication in Services**

Legal assistance providers have a common, uniting purpose – to make justice accessible for all members of the community, particularly those who may otherwise be denied or unable to uphold their rights because of poverty and other forms of disadvantage.

CLCs and VLA both provide free legal advice and ongoing casework assistance, as well as undertaking community legal education and systemic advocacy and law reform work.

Not only is it vital to have multiple providers of free legal assistance to address conflicts of interest, but there are other advantages to the mixed model of service delivery, given the diverse and complementary roles of service providers. This was highlighted in our first submission to the Productivity Commission (see Annexure A, pp.3-4).

We submit that, given the high levels of disadvantage in our community, even with multiple providers of legal assistance, the supply is unequal to the demand for free legal help.



### South East Legal Need Analysis – Combined Efforts Not Enough

It was found that, based on unique clients, VLA and the four CLCs “assisted 2.3% of the South East population in 2013-14. The recent LAW Survey found that approximately 48% of the Victorian community experiences a legal problem in a 12-month period and that approximately 17% of those experiencing a legal problem seek help from a lawyer. Even assuming that a majority of this 17% seeks assistance from a private lawyer, 2.3% representation of the residential population appears low in terms of meeting demand for legal services. It is noted that VLA’s Legal Help service does not currently record unique clients and therefore additional clients who used this service in 2013/14 are not included in this percentage.” (p.17)

“This legal need analysis did not indicate over-servicing in the South East (although it is noted that the analysis focused on areas of unmet need, rather than investigating areas that are less disadvantaged but may be particularly well represented in the service data). This analysis suggests that demand is likely higher than service supply in most of the South East region and that demand for legal services in the region will continue to increase as the population grows.” (p.19)

PCLC is mindful of the need to use its resources in a targeted and efficient way. We regularly liaise with the Peninsula Regional Office of VLA and have exchanged strategic plans. PCLC is an active member of the Federation of CLCs and NACLC, collaborates with a variety of specialist and generalist CLCs and participates in a variety of Working Groups. This high level of collaboration improves sector-wide service quality and co-ordination and reduces the risk of unnecessary duplication.<sup>31</sup>

### Legal Education

PCLC is currently convening the Community Development and Community Legal Education Working Group of the Federation of CLCs, and wholly supports that group’s submission to this Review.

We are highly committed to collaborating with other service providers in the development and delivery of community legal education (CLE) and provide the following excerpt from our December 2015 edition of *Community Law News*<sup>32</sup> which illustrates some of our recent CLE work.

#### “Thank you angels”: Community grateful for legal education

It was immensely gratifying to read “Thank you angels” on a survey response from a participant at a recent community legal education forum on Elder Abuse, Wills and Powers of Attorney. This participant, a woman in her 60s, raved about the things she had learnt at the session, and was profuse in her thanks (and use of exclamation marks)!

Whilst many participants are less effusive in their praise, satisfaction levels for our community legal education (CLE) activities, such as forums and workshops, are typically high, with many community members not only enjoying the sessions, but able to identify the new legal information they have learned, and demonstrating improved awareness of how to access legal help.

Peninsula CLC has been deeply interested in the work of the Law and Justice Foundation of NSW, which has recently released reports about legal capability, the meaning of ‘early intervention’ in the

<sup>31</sup> For more information about our collaboration with the legal assistance sector, please see p.27 of PCLC’s Annual Report 2014-15, available at <http://www.pclc.org.au/wp-content/uploads/2014/05/PCLC-Annual-Report-2014-15.pdf>

<sup>32</sup> Available at <http://www.pclc.org.au/wp-content/uploads/2014/05/Community-Law-News.December-2015.pdf>



context of disadvantage and the effectiveness of CLE.<sup>33</sup> We were also fortunate to have Dr Hugh McDonald, Senior Researcher with the Foundation, present at a National CLE and Community Development Network Meeting in Melbourne in August this year, which was convened by Andrea Staunton of Peninsula CLC and attended by CLC and Legal Aid Commissions from around Australia.

In tune with these recent studies, Peninsula CLC is increasingly mindful of the different roles CLE and Legal Information may play, and considers these factors when designing and evaluating its CLE work. For example, the Centre recently presented to three adult English classes for newly arrived people who had limited English and many of whom had very little education (some reporting no formal education and others primary school only). Recognising that these participants were likely to have lower legal capability, we pitched the session towards identifying legal problems and providing information about where to get help. We utilised the 'Legal Lingo Bingo' tool developed by Eastern CLC as a way of engaging with the group and covering a variety of legal topics. Following the sessions, 91% of attendees provided basic survey responses, in which 96% of respondents could answer the question "Where could you get help if you had a legal problem?", with answers noting Peninsula CLC, Victoria Legal Aid and "lawyer". 96 percent stated that they had enjoyed the session and 98 percent said the information they learned would help them now or in the future.

When designing activities for groups likely to have higher legal capability, we include more self-help information; and for workers we pitch activities towards helping them identify and assist with their clients' legal problems and making appropriate referrals.

We recognise the wealth of expertise of our colleagues in the legal assistance sector and local connections, and we frequently collaborate in designing and delivering activities, as well as utilising and promoting resources created by other organisations, particularly CLCs, Victoria Legal Aid and the Victoria Law Foundation.

In addition to our participation in Victorian and national CLE working groups and networks, we make regular use of the NACLC CLEAR database<sup>34</sup> and Victoria Law Foundation's Everyday-Law website when preparing CLE materials and activities. This helps us identify existing resources, further reducing the risk of duplication.

<sup>33</sup> For example, see:

- Forell, S 2015, 'Is early intervention timely?' Justice issues paper 20, Law and Justice Foundation of NSW, Sydney;
- Forell, S 2015, 'Beyond great expectations: designing relevant, realistic and effective community legal education and information', Paper to the International Legal Aid Group Conference, Edinburgh, June 10-12, 2015 (updated)
- McDonald, HM, Forell, S & People, J 2014a, 'Limits of legal information strategies: when knowing what to do is not enough', *Updating justice*, no. 44, Law and Justice Foundation of NSW, Sydney;
- Wilczynski A, Karras M & Forell S 2014. The outcomes of community legal education: a systematic review, *Justice issues paper 18*, Law and Justice Foundation of NSW, Sydney.

<sup>34</sup> Accessible at [http://www.nacalc.org.au/cle\\_database.php](http://www.nacalc.org.au/cle_database.php)

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

We recognise the challenge faced by VLA in setting eligibility guidelines that appropriately balance competing legal needs. CLCs are much impacted by VLA guidelines, in that our clients typically do not qualify for legal aid and cannot afford a private lawyer.

However, there are situations in which we will assist a client who is eligible for some VLA assistance, particularly a grant of assistance to pay disbursements. This may be, for example, where the client has a multitude of legal issues (some of which are outside VLA guidelines) and it is preferable to deal with them together to ensure continuity and high quality legal services.

In relation to panel arrangements, whilst we acknowledge the need for quality assurance, we submit that CLCs should be differentiated from private practitioners and exempted from strict compliance, provided they can establish that a supervising lawyer has sufficient experience and knowledge. This is necessary to take into account that many CLC lawyers are generalist lawyers, some working part-time, who may also have responsibility for community engagement and education activities as well as law reform work. In order to meet 30% panel thresholds, CLCs are faced with having to restructure their practices to ensure an individual lawyer can meet the required 30% of a full-time workload. It is also problematic that the certification attaches to an individual as it can result in service gaps when there is staff turnover.

CLCs rely on disbursement grants of aid to run child support, family law, criminal and some civil matters (such as fines). Clients are usually unable to afford disbursements such as medical reports and barrister appearances, and it is a cost-effective option for VLA to make a grant for those items, as CLCs do not claim their professional costs.

We support a holistic approach to service delivery across the legal assistance sector. PCLC has embraced this approach, for example piloting a social work support program, discussed earlier in this submission. We believe this is an appropriate model for organisations working with vulnerable and disadvantaged people, and hope there will be greater investment in CLCs to enable them to also provide allied support services.

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

### Disadvantaged Clients who Self-Represent

We refer to our first submission to the Productivity Commission in relation to self-represented litigants (SRLs) and our experiences in assisting them (Annexure A, pp.7-10).

Although the *Background paper – Self Represented Litigants* refers to findings by the Productivity Commission that up to a third of SRLs choose to self-represent because they consider themselves best-placed to handle their cases, that is not our experience, particularly in supporting vulnerable and

disadvantaged people for whom self-representation is an absolute last resort because they do not have the means to pay for private representation and cannot obtain a grant of legal aid (or their grant of aid has been exhausted).

SRLs accessing our services, particularly our duty lawyers and duty advocates, are almost overwhelmingly experiencing disadvantage, including low income, lack of education, disabilities, limited or no English and family violence. When combined with the stress, sometimes trauma, of Court or Tribunal proceedings, these clients have great difficulty handling their legal case and are in great need of assistance.

We find that many SRLs are unable to cope in practice, particularly in family law or family violence matters. SRLs can present with badly drafted, emotionally charged documents, and have trouble focusing on the issues the court deems important, as opposed to those that the litigant wishes to focus on. Without legal representation, it can also be difficult for a party to negotiate with opposing parties and resolve the matter before a hearing, increasing pressure on the system. For example, our duty lawyers have come across situations where unrepresented applicants have been ‘bullied’ or pushed into parenting orders by the lawyers for the opposite party, or even succumbed to pressure to agree by a Magistrate, in a context where the opposite should be happening.

Furthermore, SRLs who have consulted with duty lawyers may have met with different lawyers at each stage of the proceedings, which can create confusion – not to mention the distress to a client of having to repeat their story at every stage.

In our view, self-representation can undermine access to justice for disadvantaged Australians, as well as compromising the efficient operation of the legal system. In short, it can make the process unfair, slow and expensive. As well as being clearly inequitable, SRLs can put further strain on over-worked courts and tribunals as it takes additional time for courts to deal with SRLs, ensuring that the party understands the process and the consequences of choices they make.

### Legal Information and Advice

For those who have higher legal capability and are able to self-represent, access to timely, accessible, accurate and relevant information and advice is paramount. Our volunteers and staff regularly encourage SRLs to make use of self-help kits, web-based and printed resources. However, we note that it is important for SRLs to have access to legal advice as well as information.

#### Civil Claims Workbook and Workshops

PCLC has considerable experience in supporting consumers make applications to VCAT’s Civil Claims List. For a number of years, the Centre received funding from Consumer Affairs Victoria to run ‘Civil Claims Workshops’, which were well-attended and highly regarded. PCLC also produced two editions of a ‘VCAT Civil Claims Workbook’ which was a step-by-step guide to completing a Civil Claim application<sup>35</sup>.

It was our experience that, even among SRLs with higher legal capability (for whom our workshops and guide were most appropriate), information alone was insufficient and legal advice was required. For

<sup>35</sup> A copy of PCLC’s Civil Claims Workbook is available at [http://www.pclc.org.au/wp-content/uploads/2014/05/PCLC\\_Civil\\_Claims\\_Workbook\\_2012\\_final\\_.pdf](http://www.pclc.org.au/wp-content/uploads/2014/05/PCLC_Civil_Claims_Workbook_2012_final_.pdf)

example, SRLs often needed advice about the merits of their case and its likelihood of success in deciding whether or not to proceed with a VCAT application.

Whilst high quality legal information and advice can benefit SRLs with high legal capability, we submit that vulnerable and disadvantaged SRLs need direct legal assistance, not self-help.

### Duty Lawyer Services

The *Background paper – Self Represented Litigants* refers to QPILCH's self representation service model for providing additional assistance to self-represented litigants which appears to be similar to the duty lawyer services operated by PCLC and other CLCs. Duty lawyer services offered by the legal assistance sector do much to address the acute vulnerability of many self-represented litigants, but they are frequently stretched and further investment is needed to expand the capacity of legal assistance providers to respond to the need for duty lawyers, particularly those who need more in-depth assistance, such as drafting documents and those who need ongoing assistance to prepare for the next stage of proceedings, or to conduct negotiations that may lead to an out-of-court settlement.

#### **"You have gone beyond the call of duty"<sup>36</sup>**

These were the words spoken by a judge in a full court room to one of our duty lawyers after he successfully applied to the Court for an urgent order instructing the Australian Passports Office in Melbourne to issue a passport.

A desperate young mother was referred to our duty lawyer service by the Dandenong Federal Circuit Court staff. The mother, a refugee, had settled into Australian life three years ago with her young child, who was born in Australia, when she was coerced by her family elders to return to her birth country to reconcile with the violent father of the child.

On her return he attempted to murder her and took their child and his Australian passport from her. Fearing for her life, she fled back to Australia in the hope that she could obtain another passport for her child and bring him back. Despite receiving proof that her ex partner had first abandoned their child by leaving him at an orphanage, which refused to keep him, and then receiving further reports of subsequent abuse he was receiving at the hands of his violent father when the child was returned to him, she was unable to successfully obtain assistance in Australia from the authorities and was refused another passport for her child.

Our Centre also helped organise financial assistance for the client so she could purchase air tickets. The Hague Convention on International Child Abduction was no assistance to our client as her birth country is not a signatory to the Convention, nor is it a country known for its rule of law, respect for human rights and equal treatment of women. We are pleased we could help her and hope that she and her child will soon safely return to Australia.

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<sup>36</sup> Excerpt from PCLC's *Community Law News*, December 2014 edition, available at <http://www.pclc.org.au/wp-content/uploads/2014/05/Community-Law-News.December-2014.pdf>

## Technology-based Solutions

The *background paper – Self Represented Litigants* refers to technology-based solutions as a way in which courts, tribunals and legal service providers can offer assistance and advice to SRLs in a cost effective manner. In our view, website and phone applications might be useful to the limited number of SRLs with high legal capability, however they are not a suitable substitute for advice and representation for disadvantaged people.

## Law Students

The *background paper – Self Represented Litigants* also refers to initiatives which utilise law students to provide legal assistance to SRLs. We caution strongly against any mandatory pre-graduation requirement compelling law students to undertake this work. Not only would it be unappealing for those students not intending to practise as lawyers, but the limitations of students' skills and experience mean that they require extensive resourcing and supervision and are only able to undertake limited tasks. We further submit that SRLs are most commonly among the most disadvantaged and vulnerable in our community, frequently presenting with multiple and complex issues. A holistic approach is required to address their legal and non-legal needs. We question whether students undertaking a short-term subject are best-placed to address those needs.

# Conclusion

Victoria's Human Rights Charter provides that "every person is equal before the law and is entitled to the equal protection of the law".<sup>37</sup> For such equality to meaningfully exist, it is vital that vulnerable and disadvantaged people have access to free and high quality legal information and assistance.

Whilst some opportunities may exist to enhance currently available legal information and improve processes for SRLs, these are no substitute for timely, quality legal advice and assistance.

The Victorian government has long supported the work of the legal assistance sector, including recently creating a CLC assistance fund, and advocating on behalf of the sector to the Australian government regarding proposed funding cuts. However, despite this support, and despite our innovation and ability to attract volunteer, pro bono and in-kind support, our resources are continually stretched, and we are unable to meet the demand for free legal services.

We do not believe that the deficit in our resources is caused by inefficiency or duplication, but rather that funding levels are inadequate to address the high level of disadvantage and legal need in our community.

We hope that this Review will recognise the invaluable role CLCs like ours play in addressing the legal needs of the most disadvantaged and vulnerable in our community and helping achieve true equality before the law.

# Annexures

- Annexure A: Submission to Productivity Commission Inquiry into Access to Justice Arrangements, November 2013

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<sup>37</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic), s.8(3)

- Annexure B: Response to Draft Report of the Productivity Commission Inquiry into Access to Justice Arrangements, May 2014

## Contact

We would welcome the opportunity to address any queries or provide further information to this Review. Please contact Jackie Galloway, Chief Executive Officer, on (03) 9783 3600 or [pclc@pclc.org.au](mailto:pclc@pclc.org.au).



# Submission to Productivity Commission

Inquiry into Access to Justice Arrangements

1 November 2013



Peninsula Community  
Legal Centre Inc

## Introduction

Peninsula Community Legal Centre (PCLC) welcomes the opportunity to contribute to the inquiry by the Productivity Commission into Access to Justice Arrangements.

We submit that Australia's current "mixed model" of service delivery for addressing legal need, via community legal centres (CLCs), legal aid commissions (LACs) and the private legal profession, is an excellent one that ought to continue into the future.

However, the lack of adequate funding for community legal centres and legal aid commissions is placing such strain on the legal assistance sector that Australia is facing an access to justice crisis, with huge unmet demand. There appears to be an ever-increasing group of people who cannot afford a private lawyer and do not qualify for legal aid. These people would ordinarily rely on the services of CLCs – however CLC resources are so stretched that many clients are, regrettably, being turned away, or offered only part of the assistance they need, in order to prioritise those who are most vulnerable and disadvantaged and / or facing the most serious consequences. As a result, not only is access to justice being compromised, but opportunities for early intervention and resolution risk being lost in many cases.

This strain on the justice system, and legal assistance sector in particular, brings with it risk of huge economic and social costs, as outlined in this submission.

*We fear that, without an **adequate and secure funding stream for the legal assistance sector**, access to justice in Australia will always be compromised.*

## Scope of this submission

This submission will primarily focus on the following sections of the Issues Paper:

- 3) Exploring legal needs
- 5) Unmet need in particular groups
- 7) Preventing issues from evolving into bigger problems
- 9) Using informal mechanisms to best effect
- 12) Effective and responsive legal services.

## Recommendations

### **PCLC makes the following recommendations to the Commission:**

1. That it be recognised that the private legal services market alone does not address the legal needs of Australians.
2. That improving access to justice for disadvantaged Australians must remain a priority.
3. That the significant economic and social benefits of investing in the legal assistance sector be recognised.
4. That the Australian Government immediately doubles funding for the legal assistance sector to address the current access to justice crisis.

## About Peninsula Community Legal Centre

Peninsula Community Legal Centre is an independent, not-for-profit organisation that has been providing free legal services to Melbourne's south-eastern communities for 36 years. PCLC is one of the largest community legal centres in Australia, spanning a catchment of over 2,600 square kilometres, six local government areas and almost one million people, with a larger catchment area for some programs. In addition to its general services, the Centre operates programs and services in family law, child support, family violence intervention orders, tenant and consumer advocacy and rooming house outreach.

As is typical of CLCs, PCLC provides legal information, advice, ongoing legal assistance and representation and undertakes community legal education, community development and public advocacy activities. CLCs utilise a holistic approach, taking into account and, where possible, addressing the underlying causes of legal issues. This often allows for early dispute resolution as well as helping prevent future legal issues from arising.

In 2012-13, PCLC:

- provided 7,225 free legal advices;
- provided 2,330 instances of court assistance (including representation);
- opened 2,481 cases;
- assisted 5,293 clients;
- provided 205 community legal education activities;
- participated in 18 law reform activities.

PCLC currently has 30 staff, more than half of whom are employed part-time. The Centre has 162 volunteers, including lawyer, paralegal and special project volunteers. In 2012-13, volunteer lawyers provided 1,971 free legal advices to clients.

PCLC primarily receives financial support from the Australian Government Attorney-General's Department, Department of Justice / Victoria Legal Aid, Consumer Affairs Victoria and five local governments. The Centre also receives significant pro bono support from its pro bono partner, Russell Kennedy (valued at \$67,385.75 in 2012-13) and local firms.

PCLC takes great pride in providing high quality legal services that are accessible and responsive to its local community. In 2011, the Centre was named *Legal Organisation of the Year* in the prestigious Law Institute of Victoria President's Awards.

### Our clients

PCLC's staff and volunteers provide clients with free and accessible legal services, particularly the most disadvantaged and marginalised in our community who may otherwise 'fall through the gaps' as they cannot afford private lawyers and would not qualify for legal aid. Most of our clients have no or low income:

78% of our clients in the 2012-13 financial year earned less than \$26,000 a year. This is consistent with the experience of other CLCs<sup>1</sup>

The free legal services and resources we deliver can often assist our clients to move on with their lives and become active participants in their local communities, often avoiding or minimising financial, social and health problems that have both a personal and a societal cost. As the 2009 *Justice Taskforce Report*<sup>2</sup> noted:

*Without access to legal advice the legal dimensions of many problems of day to day life, including financial difficulties, unemployment and family breakdown, can escalate and lead to entrenched disadvantage.*

By working to overcome the structural and systemic barriers to justice, CLCs, including PCLC, help to secure the right to equality before the law<sup>3</sup> for individuals and the efficient functioning of the legal system.

Underpinning all of our service delivery is a philosophy of client empowerment and recognition of the inherent dignity of all people. In casework services, this translates to a focus on informed decision-making by clients and supported self-help wherever appropriate, so that clients achieve the confidence and skills to navigate the legal system.

PCLC has a strong commitment to empowering the broader community through community development and community legal education activities that improve access to justice. PCLC is regarded by the local community as a key legal resource, organising and participating in forums about legal issues, providing customised workshops and engaging and reporting on policy issues that affect the community.

## Mixed model of legal assistance

PCLC endorses the current structure of the legal assistance sector, which refers to the full range of services provided by Legal Aid Commissions (LACs), Community Legal Centres (CLCs), Aboriginal and Torres Strait Islander Legal Services (ATSILS) and Family Violence Prevention Legal Services (FVPLS). This “mixed model” of service delivers legal assistance tailored to the particular community/ies it services (whether different geographical or client groups) and each part is indispensable to the efficient, effective operation of the sector. As Curran has noted:

*“LACs, CLCs and ATSILS and FVPLS are all set up differently and have different approaches that reflect the difference and diversity of the people they are set up to service.”*

For example, our expertise, like other CLCs, lies in community law and we are accessible to people with complex and disadvantaged needs. As we are embedded in the local community, we understand the issues and barriers faced and provide advice to people often disregarded or disadvantaged by the legal system –

<sup>1</sup> Community Law Australia has found that more than 80 per cent of people helped by community legal centres earn under \$26,000 a year. See [www.communitylawaustralia.org.au/get-the-facts](http://www.communitylawaustralia.org.au/get-the-facts)

<sup>2</sup> Attorney General's Department, *A Strategic Framework for Access to Justice in the Federal Civil Justice System*, Access to Justice Taskforce, 2009, p.142 ('Taskforce Report'), <http://www.ag.gov.au/LegalSystem/Documents/A%20Strategic%20Framework%20for%20Access%20to%20Justice%20in%20the%20Federal%20Civil%20Justice%20System.pdf>

<sup>3</sup> For example, see Article 14(1) of the International Covenant on Civil and Political Rights (ICCPR) which states that all persons shall be equal before the courts and tribunals.

people experiencing or at risk of homelessness, young people, people from culturally and linguistically diverse communities, people with a disability or mental illness, people held in detention, and people experiencing family violence.

We work closely and collaboratively with our local community, including other community services (such as health, housing and financial counselling services) so that a client's legal and non-legal needs can be met in a holistic way. We participate in a range of local networks aimed at coordinating and improving service delivery, including Dandenong Homeless Alliance, Frankston and Mornington Peninsula Family Violence Network, Southern Emergency Relief Network and Court Users' Meetings (Frankston Magistrates' Court and Dandenong Family Law Courts). We also support many community events.

We are highly engaged within the legal assistance sector, and regularly meet to coordinate our work and share best-practice with Victoria Legal Aid (Peninsula Regional Office), neighbouring community legal centres, the Federation of Community Legal Centres (FCLC), and pro bono supporters.

See **Appendix A: All in a Day's work** for a snapshot of the range of work that the Centre carries out.

The demand for our services is relentless and our resources are continually stretched to capacity. PCLC is currently working on the first stage of a legal needs analysis in our community with other CLCs in Melbourne's south east, Victoria Legal Aid Regional Offices and the Victoria Legal Aid Community Legal Services Program. Early indications suggest that this is likely to show considerable areas of disadvantage and population growth, likely to result in increased legal need in the future.

### 3. Exploring unmet legal need

What are the characteristics of individuals who experience multiple problems and what types of disputes are they typically involved in?

As the Commission referred to in the Issues Paper, legal problems are widespread, with the *Legal Australia-Wide Survey on Legal Needs in Australia* (LAW Survey) estimating that 8,513,000 Australians experience a legal problem in a 12-month period, including 3,736,000 experiencing three or more legal problems.<sup>5</sup> Indigenous people, people with a disability, single parents, unemployed people and people living in disadvantaged housing are particularly vulnerable. Indigenous people were found to be more likely to experience multiple legal problems. These particular groups correspond to the people in our community most likely to experience "deep and persistent disadvantage" as identified in a recent Productivity Commission staff report<sup>6</sup>. See also "5. *Is unmet need concentrated among particular groups?*" below for further discussion.

In our view, to help assess the scale of unmet legal needs it is important to note the statistics on people experiencing poverty in Australia. The ACOSS report, *Poverty in Australia*, 2010 found that "in 2010, after taking account of housing costs, **an estimated 2,265,000 people or 12.8% of all people**, including 575,000 children (17.3% of all children), lived in households below the most austere poverty line widely

<sup>5</sup> Law and Justice Foundation of NSW, Legal Australia-Wide Survey (LAW Survey) Legal Need in Australia, Media release, 11 October 2012, available at <http://www.lawfoundation.net.au/ljf/app/&id=FC6F890AA7D0835ACA257A90008300DB>

<sup>6</sup> Productivity Commission staff working paper, *Deep and Persistent Disadvantage in Australia: Key points*, available at <http://www.pc.gov.au/research/staff-working/deep-persistent-disadvantage/key-points>

used in international research (50% of the median (middle) disposable income for all Australian households)".<sup>7</sup> 62% of people below the poverty line had social security as their main income and 29% had wages as their main income.

### How well does the legal system identify and deal with cases of persistent need?

The private legal services market does not adequately address the needs of vulnerable and disadvantaged people. As recommended by the LAW Survey, access to justice for disadvantaged people must remain a priority.<sup>8</sup>

The social and economic benefits of funding the legal assistance sector are clearly made out and it is well-recognised that CLCs are cost-effective and facilitate access to justice for significant numbers of people. We refer the Commission to the *Economic Cost Benefit Analysis of Community Legal Centres*<sup>9</sup> commissioned by the National Association of Community Legal Centres Inc. which found that, on average, CLCs have a cost benefit ratio of 1:18. To express this in dollar terms, if the average held constant for CLCs across Australia, the \$47.0 million spent on the program nationally in 2009/10 would yield around \$846.0 million of benefit to Australia.

Other research includes:

- Actuarial modelling from PricewaterhouseCoopers found that for every dollar invested in legal aid there is a saving of \$1.60 to \$2.25 in the delivery of justice.<sup>10</sup>
- The 2007 Institute for Sustainable Futures research project (commissioned by NACLC) into the economic value of the services provided by CLCs, which showed that community legal centre work provides enormous value for money in 'avoided' costs and benefits to individuals and indicated savings that can be made through upfront investment in preventative and early intervention services such as CLCs.<sup>11</sup>
- The 2009 Taskforce Report endorsed CLCs as being cost effective and facilitating access to justice for significant numbers of people whilst recognising that CLC's are significantly underfunded.

The demand for our services is relentless. According to the Australian Council for Social Service (**ACOSS**) *Australian Community Sector Survey* (ACOSS Survey) 63% of legal service providers reported not being able to meet demand for services. 20% of all clients in need of assistance from surveyed community legal

<sup>7</sup> ACOSS, *Poverty in Australia: ACOSS Paper 194*, 2012, p.7, available at <http://www.acoss.org.au/policy/poverty/>

<sup>8</sup> Law and Justice Foundation of NSW, as above.

<sup>9</sup> Judith Stubbs and Associates, *Economic Cost Benefit Analysis of Community Legal Centres*, June 2012, p. 17, [http://www.communitylawaustralia.org.au/wp-content/uploads/2012/08/Cost\\_Benefit\\_Analysis\\_Report.pdf](http://www.communitylawaustralia.org.au/wp-content/uploads/2012/08/Cost_Benefit_Analysis_Report.pdf)

<sup>10</sup> PricewaterhouseCoopers, *Economic value of legal aid: Analysis in relation to Commonwealth funded matters with a focus on family law*, 2009, p.viii, <http://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/a-z-docs/fmsdownload15a6.pdf>

<sup>11</sup> Institute for Sustainable Futures, *The economic value of community legal centres*, 2007, <http://www.isf.uts.edu.au/publications/edgertonpartridge2006economicvalue.pdf>



services were turned away in 2011/12, the highest turn-away rate across all service types. 85% of legal services reported having targeted their services more tightly or limiting levels to meet demand.<sup>12</sup>

PCLC has a strong capacity, greatly enhanced by its large volunteer program, to provide initial legal advice to clients within a reasonable timeframe (usually within a fortnight). However resource constraints mean that only around one in five clients is able to receive ongoing assistance, despite the fact that many more will struggle to self-represent and would benefit greatly from further help. We can only speculate how many legal problems are left unresolved by these clients because we were not able to help them fully resolve their legal problem. This accords with the findings of the ACOSS Survey:

*The most commonly reported response to this inability to meet demand was to target service more tightly or to limit service levels. In practice, this might mean that a client who requests legal representation instead receives legal advice, or instead of receiving legal advice is referred to a private or pro bono solicitor. Indeed, with the system at 'crisis point' people who cannot afford a lawyer are missing out on access to justice. This is because community legal centres are often the last option for people needing legal assistance who cannot afford to pay; and for those turned away, there is often nowhere else to go. Similarly, for people at immediate risk of family violence, eviction or being unfairly dismissed, increased waiting times undermines their capacity to seek professional legal help at all.<sup>13</sup>*

To address some of the unmet legal needs of our community, we strongly support the work of Community Law Australia in highlighting this challenge and calling for greater financial investment in the legal assistance sector.

## 5. Is unmet need concentrated among particular groups?

The experience of PCLC equates with the findings of the LAW Survey outlined on p.10 of the Issues Paper:

*In Australia as a whole, people with a disability had significant higher prevalence of legal problems overall ... Indigenous people, the unemployed, single parents, people living in disadvantaged housing and people whose main income was government payments also had significantly higher prevalence according to several measures (Law and Justice Foundation 2012, p.xv).*

A 2013 paper that further analysed the LAW Survey national data set using new measures of multiple disadvantage<sup>14</sup> showed:

*as disadvantage becomes increasingly 'concentrated', vulnerability to multiple legal problems 'compounds'. Respondents with multiple disadvantage reported a greater number of legal problems and substantial legal problems. Importantly, each additional indicator of disadvantage was found to have an 'additive effect' that increased the average number of legal problems and substantial legal problems reported.*

<sup>12</sup> ACOSS, *Australian Community Sector Survey 2013 National Report*, June 2013, available at [http://www.acoss.org.au/media/release/australias\\_community\\_services\\_unable\\_to\\_meet\\_growing\\_demand](http://www.acoss.org.au/media/release/australias_community_services_unable_to_meet_growing_demand)

<sup>13</sup> ACOSS Survey, p. 34

<sup>14</sup> Hugh M. McDonald & Zhigang Wei, *Concentrating disadvantage: a working paper on heightened vulnerability to multiple legal problems*, May 2013, [http://www.lawfoundation.net.au/ljf/site/templates/UpdatingJustice/\\$file/UJ\\_24\\_Concentrating\\_disadvantage\\_FINAL.pdf](http://www.lawfoundation.net.au/ljf/site/templates/UpdatingJustice/$file/UJ_24_Concentrating_disadvantage_FINAL.pdf)

The authors found that respondents who were Indigenous, disabled, unemployed, single parents, lived in disadvantaged housing, and lived in a regional area (compared to those in a major city), had significantly higher rates of multiple legal problems.<sup>15</sup> These groups often face a “double whammy” of disadvantage in terms of accessing civil justice. As well as being more likely to experience legal problems in the first place, these groups can then often be disadvantaged by barriers to resolving those problems such as low income, lack of education, disabilities, limited or no English and family violence.

### Illness/Disability

“A recent study ... based on the Legal Australia-Wide (LAW) Survey<sup>16</sup> confirms a strong relationship between illness/disability and the increased experience of legal problems. Compared to people with no illness/disability, those with combined mental and physical illness/disability of high severity were more than 10 times as likely to report legal problems and reporting levels were consistently higher across illness/disability types.

Furthermore, those who have an illness/disability that limits capability to resolve legal problems also face an increased need for help to deal with these problems. **Thus, illness/disability potentially acts to inflate demand for advice services in two ways.”**

Sixty percent of our clients are women, usually requiring assistance with family law, family violence and civil law. However, under the current funding structure, women don’t receive an equitable share of legal assistance funding. LACs receive the bulk of the legal assistance funding, with the majority of legal aid grants go to men in relation to serious crime matters. We recommend that this funding inequity be examined and addressed to improve access to justice for disadvantaged women.

PCLC notes that many Aboriginal and Torres Strait Islander Australians face entrenched disadvantage and some of the most significant barriers to justice. We urge the Commission to pay specific attention to the legal needs of Aboriginal and Torres Strait Islander communities and individuals.

### Self-represented litigants (SLRs)

In our view, costs are a significant factor behind high rates of self-representation. Self-representation can be a significant disadvantage, despite efforts by courts and tribunals to accommodate and assist SLRs appearing before them.

### What is the impact of self-representation on opposing parties, courts and tribunals and the parties themselves?

PCLC recognises that some tribunals are meant to be low-cost, accessible jurisdictions that are designed for self-representation, noting that vulnerable and disadvantaged community members often need assistance in these forums (see example below).

<sup>15</sup> Ibid.

<sup>16</sup> Christine Coumarelos, Pascoe Pleasence and Zhigang Wei, *Law and disorders: illness/disability and the experience of everyday problems involving the law: A working paper*, April 2013, [http://www.lawfoundation.net.au/ljf/site/templates/UpdatingJustice/\\$file/UJ\\_22\\_Law\\_and\\_disorders\\_working\\_paper\\_FINAL.pdf](http://www.lawfoundation.net.au/ljf/site/templates/UpdatingJustice/$file/UJ_22_Law_and_disorders_working_paper_FINAL.pdf)

For those who are able to self-represent with access to timely and relevant information, CLCs are able to provide such information and resources, such as PCLC's *Civil Claims Workbook*, a guide for consumers who are considering making claims against traders in the Civil Claims list of the Victorian Civil and Administrative Tribunal (VCAT).<sup>18</sup>

However, in many instances in courts and tribunals, self-representation can compromise access to justice for disadvantaged Australians, and comprises the efficient operation of the legal system. In short, it can make the process unfair, slow and expensive.

As well as being clearly inequitable, SRLs can put further strain on over-worked courts and tribunals as it takes additional time for courts to deal with SRLs, ensuring that the party understands the process and the consequences of choices they make. As the Issues Paper sets out, 'the large and reportedly increasing number of SRLs can create challenges for courts and tribunals, as SRLs often require assistance, which impacts on the administration of the system.'<sup>19</sup> We find that many self-represented litigants are unable to cope in practice, particularly in family law or family violence matters. SRLs can presenting with badly drafted, emotionally charged documents, and have trouble focusing on the issues the court deems important, as opposed to those that the litigant wishes to focus on. Without legal representation, it can also be difficult for a party to negotiate with opposing parties and resolve the matter before a hearing, increasing pressure on the system.

### How does the legal system accommodate SRLs and does this take into account the attributes of SRLs themselves? How can parties best be assisted to self-represent?

Duty lawyer services offered by the legal assistance sector do much to address the acute vulnerability of many self-represented litigants. PCLC operates a duty lawyer service for Family Violence Intervention Orders at Frankston Magistrates' Court three days per week, a duty lawyer service at the Federal Circuit Court of Australia (Dandenong Family Law courts) five days per week and a duty advocate service at the Dandenong Victorian Civil and Administrative Tribunal two days per week.

In our experience, clients seeking duty lawyer services are almost overwhelmingly experiencing disadvantage, including low income, lack of education, disabilities, limited or no English and family violence. When combined with the stress, sometimes trauma, of Court or Tribunal proceedings, these clients are in great need of assistance.

PCLC has developed a model of service delivery that includes a duty lawyer present at local Courts, who is equipped to provide initial advice and, in many cases, extensive assistance, including taking instructions, conducting negotiations, drawing documents and making appearances. Additionally, the Centre provides advice and casework services to clients out of Court, which may involve follow-up work from Court or advice and negotiations that can lead to settlement out of court.

Benefits of the duty lawyer model include:

- Saving the court time and assisting the Court/Tribunal with the administration of justice by providing advice, casework and representation often in urgent, sensitive and stressful circumstances, at times

<sup>18</sup> Available at [http://pclc.org.au/static/files/assets/e08b96e0/PCLC\\_Civil\\_Claims\\_Workbook\\_2012\\_\\_final\\_.pdf](http://pclc.org.au/static/files/assets/e08b96e0/PCLC_Civil_Claims_Workbook_2012__final_.pdf)

<sup>19</sup> *Issues Paper*, op.cit. p.11.

avoiding the need for a judicial hearing and reducing demands on other resources, such as Family Consultants.

- Provides a 'buffer' between the parties or the other party's legal representative, thereby improving the likelihood of achieving timely orders with minimum inconvenience to the court and the parties.
- Enabling both parties to a dispute to be advised and represented where conflict of interest and excessive demand would otherwise prevent that.
- Provides additional services such as the correction and witnessing of client prepared court documentation, and input through Court meetings and networks to improve Court services.

In a 2010 letter of support for our Dandenong duty lawyer service, the Honourable Diana Bryant Chief Justice of the Family Court of Australia wrote:

*The Peninsula Community Legal Centre (PCLC) provides a much-needed service in the Dandenong area where many litigants are unrepresented and unable to afford to pay for private legal services.*

*In this regard they provide free legal advice and assistance particularly when presenting at Court. I have no doubt they provide a valuable service in giving advice and directing parties to other appropriate services.*

*In Court, where they are most often visible to Judges and Federal Magistrates, I am told there is evidence that their intervention has resolved a number of matters on an interim basis that would otherwise create the necessity for a hearing by a judicial officer or would call on already stretched Family Consultant resources.*

*They are vitally important in duty lists if Victoria Legal Aid declines assistance because of a conflict of interest.*

*As you know Legal Aid needs to husband its finite resources and a service such as that provided by PCLC especially in a low socio-economic area like Dandenong provides a real and genuine service to many litigants who would otherwise be unrepresented. In a parenting matter in particular, which compromise most of the matters at Dandenong, this puts pressure on the judicial officer but also creates risks for the child or children concerned that issues will not be able to be presented to the Court which would assist in determining their best interests.*

An example of a complex case that one of our duty lawyers dealt with is set out below. Unfortunately, this kind of case is not that unusual for our duty lawyers.

#### **Galina's Story**

"Galina" was living in her native country with her Australian husband "James" and young children who were Australian citizens. James was a drug-user who had connections in the local underworld, viewed pornography in front of the children and brought other women into their home. Throughout their relationship, Galina was beaten by James and threatened by his "friends".

After one particularly heated incident, James took the children from Galina, claiming they were going on a holiday. Galina was worried the children had been taken overseas and feared she would never see them again.

James called Galina from Australia a few days later and asked her to join him, where he was living with the children, his mother and other family members. Galina rushed to Australia to be reunited with her children. She was held prisoner by James, subjected to further abuse by him, and required to cook and clean for his extended family. Eventually, Galina tried to escape when James was away. The extended family tried to prevent her escape and neighbours called the police, who helped Galina leave but did not allow her to take the children. Police applied for an Intervention Order on Galina's behalf.

Galina, who has limited English, sought help from our duty lawyer at the Family Law Court. We urgently prepared and lodged documents for Galina as well as liaising and co-ordinating with police. We represented Galina in Court that same day, where the Judge agreed to abridgement and granted Galina's application for a Recovery Order. Police removed the children from the paternal grandmother and returned them to Galina, as well as arresting James on his return to Australia. James was charged with numerous offences against Galina, including false imprisonment.

#### **Example: Duty Advocate Service**

With funding from Consumer Affairs Victoria, PCLC operates a Duty Advocate Program in the Dandenong Registry of VCAT. This service was piloted in Berwick and Dandenong in 2011-12 and had excellent feedback from clients and the Tribunal itself, with Members standing matters down for vulnerable clients to receive advice and assistance in relation to their residential tenancy matters.

An example of this work was noted in the daily journal of a Tenant Advocate kept during the pilot: "The first matter was a landlord's claim for compensation. Just going to VCAT had caused this tenant so much stress and had triggered a relapse back into depression. Though she was older (48) she came with her dad and broke down while giving instructions. Many such tenants find it hard to understand that landlords are allowed to cause them such distress... We had each item of the landlord's claim dismissed and the tenant's bond was returned in full to the Director of Housing."

#### **Homelessness Avoided: Ryan's Story**

Ryan had just become homeless and was "couch surfing" at various friends' houses. He had a job and could usually afford to pay rent for the unit he was living in. Unfortunately he suffered from mental health issues and had to be hospitalised, which caused him to fall behind in his rent. He had been given a 14 day notice to vacate and had left the property, but not returned the keys.

Fortunately Ryan came to VCAT and saw our Duty Advocate. We were able to access Housing Establishment Fund monies from another agency to help Ryan pay some of the arrears and we negotiated with the real estate agent for the balance to be paid by instalments. VCAT made orders by consent and Ryan returned to his home.

## 7) Preventing issues from evolving into bigger problems

PCLC agrees that the justice system should seek to prevent legal problems as well as providing assistance when they arise.

Through early intervention and preventative legal work, CLCs play a fundamental role in reducing potential long-term costs to the community. This early intervention and prevention work aims to educate people about the law so they can avoid legal disputes altogether, or where people are already involved with the law, assist them to resolve disputes early without them escalating and adversely impacting a person's health, finances and relationships.

Example of early intervention and prevention work:

### **Community Car Connections: New Arrival Driving Program (2007-2011)**

When Frankston, Victoria, played host to new arrivals from Africa, Afghanistan and Burma, PCLC partnered with New Hope, Frankston City Council and 7 other organisations to develop and present *Community Car Connections: New Arrival Driving Program*. The project aimed to educate participants to prevent the driving-related problems that had arisen in other communities, such as fines being incurred by unknown drivers when vehicles were shared and vulnerable consumers being ripped off when buying a car. An eleven week course was developed in which participants learned about driving and related laws and made connections with local agencies. Participants were also able to access subsidised driving lessons, pursuant to a charitable grant.

### **Legal education for older community members**

PCLC has responded to requests from community groups, particularly those with older participants, to deliver community legal education on "lifetime decision-making", such as wills, powers of attorney and refusing medical treatment. It is not uncommon for entire audiences to acknowledge that they do not have a current will, and participants often comment after workshops that they will now arrange one. Although difficult to quantify, potentially hundreds of intestacies have been prevented through this legal education. Similarly, Power of Attorney self-help kits potentially avoid the need for future applications to the Victorian Civil and Administrative Tribunal Guardianship List.

The Centre recently made a presentation to a group of grandparents who were caring for grandchildren who had been orphaned or abandoned. The grandparents, some quite elderly, were very worried about what would happen to their grandchildren if they were no longer able to care for them due to death or illness. We spent time listening to their concerns and answered their questions about family law, child protection, guardianship and estate issues. Due to the special circumstances of this group, who were also struggling financially, we arranged appointments for them to obtain legal advice about their particular circumstances and prepared Powers of Attorney and wills for them, as well as lodging their wills with the Registrar of Probates for safe-keeping. The grandparents were extremely relieved that they had made the best arrangements they could to provide for the future care of their grandchildren.



## 9) Using informal mechanisms to best effect

### Alternative dispute resolution

We are pleased that the Issues Paper acknowledges that the ‘advantages of ADR need to be weighed against considerations of fairness and equity, which have the potential to be distorted if one party to the dispute can exert excessive influence on the ADR process and outcome’.<sup>21</sup>

Alternative Dispute Resolution (ADR) may disadvantage some parties if settlement is required via this process and the party does not have access to legal assistance. For any party to have any measure of success in ADR whilst unrepresented, it is necessary for that party to be aware of their legal rights. In many instances this is not the case. PCLC receives numerous referrals from Family Dispute Resolution (FDR) practitioners where parties have proceeded to mediation and are unaware of their legal rights and obligations. It appears, however, that many others continue in mediation, unaware of their rights and accept outcomes which may otherwise be unacceptable. For example, we have seen many instances of unworkable and massively unfair parenting agreements that have been reached by parties without legal advice prior to mediation. This results in further disputes, possible risks to safety where family violence is an issue, as well as the potential for huge financial and emotional costs to the individual and additional pressure on the legal system. PCLC contends that such an outcome is undesirable both for the individual concerned and the public as a whole.

If this example extends to civil law matters, it is likely that unrepresented individuals in ADR will be subjected to power imbalances in negotiation and will not be protected by many of the safeguards which exist inside the court room. We are concerned that undue pressure and influence upon an unrepresented individual may result in an unfair and unjust outcome. Such a result diminishes access to justice and cannot be seen as cost-effective.

PCLC believes that it is imperative that legal assistance schemes play a role in all ADR processes, to ensure that individuals are able to obtain a fair and just outcome. Both legal assistance schemes and ADR therefore require appropriate funding independently of one another. In addition, PCLC believes that appropriate funding allocations are required to ensure that there is provision for interpreters in ADR processes.

#### Example

PCLC operates a Family Relationship Partnership Program in which clients of our local Family Relationship Centre attend a *Legal Information for Parents Workshop* which provides an overview of legal rights, the family law system, and which dispels some commonly held myths about the family law system., Workshop participants are then also able to access free legal advice before, during or after Family Dispute Resolution (FDR).

Although not formally evaluated, we have had feedback that clients feel more confident attending FDR as a result. We have also feedback from staff at the Family Relationship Centre that pre-FDR advice helps clients to ‘reality-check’ their situation and helps them prepare for a positive FDR process and outcome.

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<sup>21</sup> Issues Paper, p.15.

## 12) Effective and responsive legal services

### How appropriate are the restrictions on non-lawyers that prevent them from carrying out certain forms of legal work and how could improvements be made

In our view, the restrictions on non-lawyers that prevent them from carrying out certain forms of legal work are generally appropriate.

In some circumstances it can be appropriate for non-lawyers to carry out certain forms of legal work under the supervision of legal professionals to assist access to justice for users facing significant barriers. For example, with funding from Consumer Affairs Victoria, PCLC operates a Tenant Advice and Advocacy Program and Consumer Advice and Advocacy Program. Trained non-lawyer advocates work within the legal practice and under the supervision of the principal lawyer to provide advice, negotiation and advocacy services, including representation in the Victorian Civil and Administrative Tribunal (VCAT) to vulnerable and disadvantaged tenants and consumers. This is an excellent example of non-lawyers being able to assist vulnerable and disadvantaged clients.

The program uses non-lawyer advocates as VCAT is largely intended to be low cost, accessible jurisdiction that can operate without the need for parties to be legal represented. However, many vulnerable and disadvantaged clients require assistance and advocacy in the proceedings, particularly if the other party is a professional such as a real estate agent or a trader. Our advocates are part of our Centre's legal practice and come under the supervision of our principal lawyer – an essential element of the model. The supervised advocate model works extremely well in a CLC context.

We have heard of effective models of supervised paralegals providing legal services in remote areas of Western Australia (for example, the Geraldton Resource Centre) due to the difficulties of attracting and retaining qualified staff in remote areas. This model may be something to usefully explore further in regional and remote areas where there is a shortage of qualified staff. However, there is certainly not a shortage of qualified lawyers in Victoria. We have large numbers of unemployed lawyers and law graduates looking for experience with our Centre.

We commend to the Commission the special provisions in the *Victorian Legal Professional Practice Act* that enable qualified lawyers to obtain CLC Volunteer Practising Certificates without cost, allowing engagement in legal practice as a volunteer at a community legal centre.<sup>22</sup> There are also special provisions allowing non-lawyers to work in CLCs under supervision.

### How might the development of legal skills for non-legal professions improve access to justice, especially for those users who face significant barriers?

The CLC working model recognises that non-legal professionals that work with disadvantaged community members (for example in health, housing or financial counselling) can identify existing and potential legal issues they face and assist the client to take action. Training and support for relevant non-legal professionals around legal issues can therefore potentially increase access to justice, and is part of our

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<sup>22</sup> Part 2.4 *Legal Profession Act* 2004 (Vic)

community legal education work. This may take the form of providing individual advice to a community worker or delivering training seminars:

#### **Adolescent Violence in the Home Legal Workshop**

PCLC developed and delivered a free workshop on legal responses to family violence for practitioners working with young people and families. Delivered in Dromana in September 2012, the workshop was part of the Adolescent Violence in the Home Project being undertaken by Peninsula Health, Victoria Legal Aid and the City of Greater Dandenong.

In 2012-2013, we provided individual advice to 62 community workers and 11 per cent of our referrals came from community organisations.



Are the requirements for entry into practice as barristers and solicitors appropriate and what are their costs and benefits? Where they exist, what are the costs and benefits from the formal or informal divisions between solicitors and barristers?

In our view, the requirements for entry into practice are appropriate.

However, we would like to comment on the increasing requirement for students to volunteer in a paralegal capacity as part of their undergraduate law degrees, which is having a significant effect on CLCs.

Like other CLCs, PCLC Peninsula Community Legal Centre utilises the skills and work of volunteers to extend and enhance its operations and service delivery, providing greater access to justice than would be otherwise possible on our limited budgets. In 2012-2013 PCLC volunteers provided clients with 1,971 free legal advices, an increase of over 20 per cent from the previous year. Free legal advice is provided by lawyer volunteers, with paralegal volunteers co-ordinating clinics and providing administrative and paralegal support.

In recent years, we have seen a staggering growth in the number of law students applying for paralegal work. While we value their work and are pleased to be able to offer students the opportunity to gain experience in our diverse legal practice, training and supervising students is resource-intensive and risks being counter-productive for CLCs if the administrative and supervisory burden is too large. In the words of our General Manager - Volunteer & Education Programs:

*"I have been in my role here for almost 12 years, and have experienced astronomical growth in the number of students applying for paralegal work. At one stage we had 65 paralegal positions in volunteer advice clinics across our five branches, and we had a waiting list of a further 65 people. The shift seems to be that all these students need to volunteer as part of their degrees. It's been a huge amount of work for us just to cope with the volume of enquiries and applications, let alone training, rostering etc., and that's for a program where students **don't** give advice. We are currently scoping how to expand volunteer roles, but this involves significant resources – at least initially diverting them away from existing services".*

Increased use of volunteers is not a magic answer to unmet legal need. If CLCs are to be able to increase access to justice utilising law students and to properly provide the community benefit of training future legal practitioners, they need to be properly resourced to do this.

What restrictions should apply to billing arrangements, and what cost disclosure rules should apply? Which billing practices more frequently result in client complaints?

We do see clients from time to time who were not aware of the costs of private lawyers. In our experience, the sense of disempowerment resulting from a lack of transparency in relation to billing is one of the most prevalent complaints from clients against lawyers under the present system.

We therefore recommend the highest standards of disclosure and transparency around legal costs and disbursement. Plain English is vital.

Do legal assistance service providers deliver the right mix of services (in terms of forms of assistance and across the various areas of law)? Do they complement each other or are there areas of overlap? Is the current model of legal assistance service delivery efficient, effective and appropriately focused on specific legal needs?

In our view, the legal assistance sector does provide the right mix of services in terms of forms of assistance and across the various areas of law, and we support the current framework. The issue is the **chronic and long-term underfunding** of the sector. Funding has not kept pace with demand, inflation or population growth and legal assistance services are forced to limit eligibility to people on very low incomes. We refer the Commission to Community Law Australia's 2012 *Unaffordable and out of reach: the problem of access to the Australian legal system* report for further information about the underfunding of the sector.<sup>23</sup>

### Pro bono

In our experience, there is a strong commitment to pro bono work among the legal profession. It is not uncommon for solicitors and barristers to reduce or waive their fees where a client is facing extreme hardship and many lawyers also volunteer their time in CLCs.

However, it can take considerable resources for CLCs to "match" a client's needs to the right pro bono provider, particularly where the nature of the legal problem is outside those commonly handled by firms in established pro bono schemes. Pro bono relationships also require a commitment of time and effort from CLCs, in terms of seeking partner firms and providing briefings and reports.

<sup>23</sup> [http://www.communitylawaustralia.org.au/wp-content/uploads/2012/07/CLA\\_Report\\_Final.pdf](http://www.communitylawaustralia.org.au/wp-content/uploads/2012/07/CLA_Report_Final.pdf)

PCLC has been fortunate to establish a pro bono partnership with Russell Kennedy, which includes support with professional development and mentoring, legal advice on governance and commercial leases, design and printing of documents, annual donation for a client disbursement fund and more. In 2012-13 alone, this was valued at \$67,385.75. Other firms assist from time to time with providing professional development and mentoring, sponsorship of volunteer awards and reduced fees.

We greatly value our pro bono partners and their work to help meet unmet legal needs in our community, however pro bono work does not replace the need to properly fund the legal assistance sector. Pro bono and volunteer contributions are significant, but are only a fraction of the work by funded legal assistance services.

## More information

PCLC would be pleased to provide further information to the Commission.

Please contact:

Jackie Galloway, Chief Executive Officer  
Peninsula Community Legal Centre

## Attachments

- Appendix A: June 2013 edition of Community Law News.

*This submission was prepared by Alison Laird, Volunteer Policy Worker.*



Peninsula Community  
Legal Centre Inc

Registered No. A8T  
ABN 23 591 244 622

#### Head Office

441 Nepean Highway  
Frankston Vic 3199

Tel 03 9783 3600

Fax 03 9770 5200

Free Call 1800 064 784

DX 19953 Frankston

Email [pclc@pclc.org.au](mailto:pclc@pclc.org.au)

[www.pclc.org.au](http://www.pclc.org.au)

#### Bentleigh Branch

82 Brady Road  
Bentleigh East Vic 3165

Tel 03 9570 8455

#### Cranbourne Branch

Bella Centre  
Suite 12  
33-39 High Street  
Cranbourne Vic 3977

Tel 03 5995 3722

#### Pines Branch

2A Candlebark Crescent  
Frankston North Vic 3200

Tel 03 9786 6980

#### Rosebud Branch

1375 Point Nepean Road  
Rosebud Vic 3939

Tel 03 5981 2422

#### Visiting Services to:

Chelsea  
Hastings

#### We gratefully acknowledge the financial assistance of:

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Victoria Legal Aid  
City of Casey  
City of Glen Eira  
City of Kingston  
Frankston City Council  
Mornington Peninsula Shire

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Service to the Community  
since 1977



# Community Law News

June 2013

Issue 7

## SUCCESS STORY EDITION

### All in a Day's Work: *When Ordinary is Extraordinary!*

In an environment where the demand for services is relentless and resources are invariably stretched, it is easy to fall into the habit of focusing on what needs to be done rather than celebrating what is being done. This 'Success Story Edition' provides us with the opportunity to highlight the many ways in which Peninsula CLC is advancing justice for its community.

Take for example Thursday, 30 May. It was a busy day for Peninsula CLC, which is perfectly ordinary. Here's a snapshot of just some of the things accomplished in that day's work:

- A duty lawyer assists self-represented litigants with family law matters at the Federal Circuit Court at Dandenong;
- Staff lawyers and advocates provide advice to clients on a variety of issues at the Centre's Frankston and Cranbourne offices;
- Volunteers provide advice to clients at the Centre's Frankston office during the day and Bentleigh office in the evening;
- Administration workers field over 30 enquiries, including:
  - A man who is facing court over traffic offences;
  - A community worker seeking information about tenancy issues for a client;
  - A mother calling for information about managing her son's affairs while he is in prison;
  - A mental health worker making an appointment for an elderly client with family law issues;
- A health practitioner calling to discuss a rooming house;
- A client calling to say thank you to a tenant advocate who helped him win his case in VCAT and to keep his home.
- A workshop on 'Legal Issues for Separated Parents' is delivered to 13 participants at the Family Relationship Centre Frankston and Mornington Peninsula;
- Senior Civil Lawyer, Kate Ross, attends a Practice Forum on 'Responding to the Abuse of Older Women and Men' organised by the Outer South Peninsula Integrated Family Violence Partnership;
- A public information stall is held at the 'Pathways to Better Living Expo' at Chisholm Institute to help link culturally and linguistically diverse community members with services that can assist them;
- We attend a meeting of the Peninsula Community Development Network, convened by Victoria Legal Aid (Peninsula Regional Office) and attended by a range of organisations to consider local issues, share information and facilitate cross-referrals;

*continued...*

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*This newsletter was produced with pro bono support from Russell Kennedy*



- We host a Partnership Working Group Meeting with Family Life and Victoria Legal Aid (Peninsula Regional Office), to review the operation of the Frankston Family Relationship Centre and Legal Assistance Service Partnership project;
- Staff meet with representatives of the Federation of Community Legal Centres to share information and ideas and explore opportunities for sector collaboration.



**Pictured:** Senior Civil Lawyer, Kate Ross



**Pictured:** Saskia Weerheim, Deputy General Manager, Volunteers & Education, at the 'Better Pathways' Expo

As this snapshot illustrates, Peninsula CLC is highly engaged with its community and responds to a large range of legal needs.

For the Peninsula CLC team, Thursday 30 May was just an ordinary day – but maybe, upon reflection, it was actually extraordinary!



**Pictured:** Administration Workers, Lisa Green and Beth Weerheim

## Bowling for Justice!

**Peninsula Community Legal Centre volunteers celebrated National Volunteer Week (13-19 May) in a friendly bowling tournament at Moorabbin AMF on Friday 17 May 2013.**

Volunteers are highly prized at Peninsula Community Legal Centre. During National Volunteer Week alone, volunteer lawyers provided 45 free legal advices across five locations, paralegal volunteers co-ordinated and supported legal advice sessions and management committee volunteers met to provide strategic governance for the organisation.

General Manager of Volunteers & Education, Andrea Staunton, says "We are exceptionally proud of our team of around 150 volunteers, who greatly extend and enhance our free legal services to the community. National Volunteer Week provides us with a great opportunity to say thank you to our volunteers on behalf of our Centre and community."

Peninsula CLC's Acting CEO, Jackie Galloway, was the 134th of 225 signatories to Volunteering Victoria's Thank You petition, which states:

"We, the undersigned, take this opportunity to make it known that we appreciate the thousands of volunteers who make our organisations and our State great. We rely

on your commitment, skill, time and energy as volunteers in and through our organisations. Your efforts make our community great. We simply could not do it without you. "Thanks a million!"



The 'Thanks a Million' petition can be viewed at [www.volunteeringvictoria.org.au/resources/nvw-2013/thank-you-petition/](http://www.volunteeringvictoria.org.au/resources/nvw-2013/thank-you-petition/).

## Clients Put First

"A God send!" is how one client described the assistance provided by Peninsula CLC in a recent client satisfaction survey. Each year the Centre conducts an anonymous survey to obtain client feedback. This year's survey showed a high level of satisfaction, with 99% of clients who responded saying they were satisfied with the service they received. Other comments included:

"I was treated with respect and empathy."

"It seems as if the client is put first."

"Excellent. She was very busy, but took the time to explain everything to me."

# Connecting for Homeless People

Peninsula CLC was pleased to support 'Frankston Connect Day' held at Seaford Community Centre on 17 April 2013. The event was initiated by the Australian Government Department of Human Services and supported by 22 government, private and community agencies, who provided a range of information and services for people experiencing housing difficulties and homelessness.

The sun shone on the event – both literally and metaphorically, with around 250 vulnerable community members coming along for free health checks, flu injections, dental assessments, giveaways and connecting with services like Peninsula CLC.

Our free legal services were promoted throughout the day, with workers in attendance to provide free legal information and engage with people needing legal help. Rooming house residents were able to speak with our Rooming House Outreach Program Workers, and obtain information about their rights and supports available. Peninsula CLC's Rooming House Outreach Program, funded by Consumer Affairs Victoria, was also part of the organising committee for the event.

Jean-Michel Heurtau, Homeless Outreach Program, Australian Government Department of Human Services, describes a conversation with a local worker who had been concerned that the Frankston Connect event would not attract the long term homeless who were 'sleeping rough':

"...On the day of the event [the worker] spoke about his amazement that some of his regular homeless people had made it to the event. One person in particular that he had seen walking up and down the streets a few times 'staking out the place' before he finally came in. I saw the person laughing, smiling and having a great time on a grassy area outside in the sunshine... [The worker] told me that this was the first time that he had ever seen this person smile and enjoy himself, interact with more than one person and was amazed that he had managed to get from Frankston to Seaford to attend the event. A few hours later I saw the same person come inside the hall and get a cup of coffee. This story really stood out for me as here was a person who felt safe and comfortable enough to join in the event and then felt safer as the day went on to venture inside."

Peninsula CLC values its community connections, and regularly collaborates in public events across its catchment to provide information about the law and raise awareness of free legal services.



*Pictured: Information stall at the Frankston Connect Day*



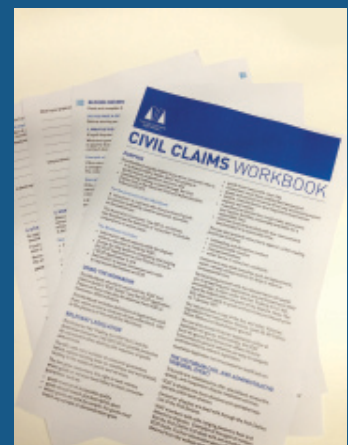
*Pictured: Rooming House Outreach workers, Jasmin Underwood and Chris Horsburgh*

## Consumers Helped in a Couple of Clicks

Recent research shows consumer issues to be the most common legal problem in Australia, affecting around one in five people in a single year<sup>1</sup>.

With funding from Consumer Affairs Victoria, Peninsula CLC has been providing information and advocacy for vulnerable consumers for over 15 years. In 2012, the Centre completed the second edition of its highly-respected Civil Claims Workbook, a guide for consumers who are considering making claims against traders in the Civil Claims List of the Victorian Civil and Administrative Tribunal. The Workbook is free and is available online – just click on the Resources tab on Peninsula CLC's webpage, [www.pclc.org.au](http://www.pclc.org.au).

<sup>1</sup> Coumarelos, C, Macourt, D, People, J, MacDonald, HM, Wei, Z, Iriana, R & Ramsey, S 2012, Legal Australia-Wide Survey: legal need in Australia, Law and Justice Foundation of NSW, Sydney, p.59



# Case Studies

## Working Together to Save a Home

It wasn't raining, it was pouring for a client with mental health issues who had experienced family violence, was being prosecuted by Centrelink and was about to become homeless.

Fortunately, she sought help from Peninsula CLC and we were able to work intensively with the client and other services assisting her. We helped her defend the alleged breach with Centrelink and obtain a crimes compensation payout that went towards her debts. We negotiated extra time with the Sheriff's office and obtained specialist support for her housing issues.

The outcome? Our client has kept her home and is receiving her pension. While life is still not easy for her, the sun is peeking out from behind the clouds.

## Working Together for a New Start

Our client was very vulnerable, experiencing both physical and psychological disabilities. She was physically assaulted by a male family member on numerous occasions, until police obtained a Family Violence Intervention Order and laid criminal charges.

Our client was struggling to cope with her life, but with flexible and intensive support from our Centre, and a high level of co-operation between the different services assisting her, we were able to make a successful application to the Victims of Crime Assistance Tribunal, which saw our client reimbursed for her medical and security expenses, as well as receiving a lump sum payment that will enable her to visit family overseas and begin rebuilding her life.

## Elderly Man can Breathe Easier

Our client was worried that he and his seriously ill wife would lose their home because of the exploitation of a power of attorney by another family member. Already the agent appointed under his wife's power of attorney had taken considerable money from his wife's bank account for an undisclosed purpose. Our client was worried that the power of attorney would be used to secure a loan against the family home. He was relieved to learn that, as joint tenant, the property could not be mortgaged without his consent; and further, if his suspicions about the misuse of the power of attorney were not allayed, he could apply to the Guardianship List of the Victorian Civil Claims and Administrative Tribunal ("VCAT") for accounts to be produced and the power of attorney to be revoked.

## "You've changed my life!"

Our client had the misfortune to be in the wrong place at the wrong time, when a car being pursued by police crashed into her vehicle, causing her serious injuries as well as her car being written off. Our client was uninsured and could not save enough money from her disability pension to purchase a reliable vehicle. She was delighted when we were able to help her obtain a settlement in respect of the accident, which is enough to buy a decent second-hand car. Our client is ecstatic with the outcome and said our lawyer has "changed her life".

## Invaluable Experience: A Volunteer's Perspective

Shai Sommer is a paralegal volunteer with Peninsula CLC, a commitment he juggles with the demands of studying law and fulfilling the role of President of Deakin Law Students' Society (DLSS). We were delighted with Shai's recent comments about volunteering in the DLSS Careers Guide 2013 (available at [www.deakinlss.org/careers-guide-2013/](http://www.deakinlss.org/careers-guide-2013/)) :

"...I was fortunate enough to obtain a volunteering position at the Peninsula Community Legal Centre in January 2012. Whilst volunteering, I found the centre provided me with invaluable experience and skills. Interviewing clients, briefing lawyers and overcoming cultural and socio-economic differences were only some of the tasks that I was required to do. This centre, and any other CLC for that matter, should be the first stop for any law student endeavouring to gain legal insight and experience!"

**Peninsula Community Legal Centre law reform submissions and media releases are available on [www.pclc.org.au](http://www.pclc.org.au).**

*Peninsula Community Legal Centre is an independent, not-for-profit organisation that has been providing free legal services to Melbourne's south-eastern communities for over 35 years.*

*The Centre helps people use the law to protect and advance their rights, offering free advice on most legal issues. Ongoing assistance is targeted to assist clients who are experiencing disadvantage. In addition to its general services, the Centre operates Family Law, Child Support, Family Violence, Rooming House Outreach and Tenant and Consumer Advocacy Programs.*

*Community legal education, special projects and participation in law reform are also important aspects of the Centre's work.*



# Submission to Productivity Commission

Inquiry into Access to Justice  
Arrangements: Response to Draft Report

21 May 2014



Peninsula Community  
Legal Centre Inc



## Introduction

Peninsula Community Legal Centre (**PCLC**) welcomes the opportunity to review and comment on the Productivity Commission Draft Report into Access to Justice Arrangements (**Draft Report**).

PCLC congratulates the Commission on its Draft Report which captures many important issues relating to access to justice for disadvantaged Australians - our area of focus - very well. In particular, we congratulate the Commission on recognising the significant economic and social benefits of investing in the legal assistance sector.

## About Peninsula Community Legal Centre

Peninsula Community Legal Centre (PCLC) is an independent, not-for-profit organisation that has been providing free legal services to Melbourne's south-eastern communities since 1977. PCLC is one of the largest community legal centres in Australia, spanning a catchment of over 2,600 square kilometres, six local government areas and almost one million people, with a larger catchment area for some programs.

In addition to its general services, the Centre operates programs and services in family law, child support, family violence intervention orders, tenant and consumer advocacy and rooming house outreach.

As is typical of CLCs, PCLC provides legal information, advice, ongoing legal assistance and representation and undertakes community legal education, community development, law reform and legal policy activities.

## Summary

We welcome clear statements in the Draft Report that:

- Rationales for the governments providing legal assistance include – 'equity' in terms of accessing the justice system; flow on benefits (economic and social) to the community; and addressing market failures (p.609).
- Unresolved civil legal problems can spiral without legal assistance and 'not providing legal assistance in these instances is a false economy as the costs of unresolved problems are often shifted to other areas of government spending such as health care, housing and child protection'(p.28).
- Disadvantaged Australians are more susceptible to, and less equipped to deal with, legal disputes. Governments have a role in assisting these individuals. Numerous studies show that government funded legal assistance services generate net benefits to the community (p.2).
- Barriers faced by disadvantaged people are not just financial, and that even low cost remedies such as ombudsmen may prove inaccessible (p.28).
- CLCs play a key role in identifying and acting on systemic issues (p.622), that CLCs can 'add an important and different voice to the sector' (Victoria Legal Aid submission, p.623),

that advocacy can also be an efficient use of limited resources and that law reform and strategic advocacy should be a core activity of Legal Aid Commissions (**LACs**) and CLCs (p.625).

We urge the Commission to undertake more econometric work to capture the cost-effectiveness and cost benefits of investing in the legal assistance sector, and of the economic implications of some of the suggestions put forward by the Commission, including competitive tendering to allocate CLC funds.

As outlined in our first submission to this inquiry (sub. 28), the legal assistance sector is significantly underfunded. Although we are open to identifying and implementing potential improvements, we submit that **under-resourcing is the real issue facing the sector, rather than lack of efficiency in fund distribution or service delivery**. We note that funding for CLCs is a relatively small part of the funding for government funded legal assistance providers. In 2012-13 CLCs received \$67.6 million (p.575) out of the \$730 million in government funding provided to the sector in 2012-13 (p.29).

## Recommendations

In order to further strengthen the Draft Report before it is finalised, PCLC recommends:

- Emphasising the capacity of CLCs to harness in-kind resources through volunteers and pro-bono contributions as a major benefit of CLCs on p.576 of the Draft report.
- Including a recommendation that duty lawyer schemes should be expanded, as part of a range of legal services, as recommended by previous inquiries (pp.446-447).
- Including a recommendation that further evaluation of duty lawyer services, as part of a range of legal services, is undertaken to develop the evidence-base for the impact of duty lawyer services in increasing access to justice and reducing costs to government.
- Including a recommendation that the Australian Government should significantly increase funding for the legal assistance sector to capture the significant social and economic benefits of sector investment.
- That, notwithstanding it could delay the publication of the final report, the Commission undertakes further econometric work to cost the savings of the preventative, early intervention, legal education, law reform and systemic advocacy work of CLCs, as well as the volunteer and pro bono contributions harnessed by the sector.

Including further research about the economic impact of the legal assistance sector in the final report will carry great weight and be very valuable to the sector in planning for future needs.

## 5.1 Understanding when problems have a legal dimension

### Community legal education

PCLC welcomes references to and discussion of the economic benefits of community legal education (**CLE**) in the Draft Report in terms of preventing and minimising later costs. We recognise



that evaluating the effectiveness of community legal education is not straightforward. However, we urge the Commission to undertake further work to capture the economic value (in terms of cost savings to the community) of community legal education work, even if it can only be done by analysing some specific example projects.

PCLC suggests costing something like the following example:

### **Helping Kinship Carers Plan for Life's Unpredictable Events**

The Mirabel Foundation is an Australian Children's Charity established in Victoria in 1998. It is the only organisation in Australia specifically addressing the needs of children who have been orphaned or abandoned due to parental drug use and who are now in the care of extended family (kinship care).

PCLC recently had the privilege of speaking with kinship carers from Mirabel about family law issues and other legal issues relating to wills, powers of attorney and guardianship of minor children in the care of extended family as a result of intervention by the Department of Human Services (DHS).

Following the talk, the Centre provided attendees with assistance in drafting Wills and Enduring Powers of Attorney, based on their special circumstances. By ensuring their estate planning affairs are in order, the attendees are able to provide for the children under their care in the future. Potential costs to government are also minimised.

This work was followed up by PCLC entering into a partnership with Permanent Care and Adoptive Families to hold a forum and produce a series of fact sheets addressing key legal issues for permanent care families. With a small grant from the Victoria Law Foundation and pro bono support from Russell Kennedy Lawyers, those fact sheets were launched at a forum on 30 April 2014, with the potential to positively impact on permanent care families across Victoria by helping them to recognise, address and in some cases prevent legal issues from arising.

PCLC welcomes the suggestion that the NACLC Community Legal Education and Reform (CLEAR) database could be extended and used as a learning network with results from evaluations and pilot projects made available for the sector to draw on.

## **5.2 Information and advice for resolving disputes**

In relation to Draft Recommendation 5.1, PCLC submits that benefits may flow from an improved, highly visible entry point or gateway for legal assistance and referral in each jurisdiction. However it is important that this does not become the sole point of entry, particularly for Australians experiencing disadvantage.

CLCs are an important source of information and advice for resolving disputes. CLCs are often the first point of contact for people with legal problems. They are visible (often in shop fronts), well-known organisations with strong connections to the local legal profession, other community organisations and partners. PCLC, like other CLCs, actively promotes its services to other organisations and the general public that those in need of free legal help know how to access us. In 2012-13, a third of our clients accessed us from their "general knowledge" of the Centre, having

been before, self-referred or been referred by family or a friend. It is vital for CLCs to remain highly accessible, with the ability to deal with the people who contact us directly.

We submit that any entry point or gateway needs to be equitable and efficient, and must

- Ensure that any information, advice and referrals provided are current and accurate.
- Not send disadvantaged and vulnerable clients on a referral 'merry-go-round.'
- If the entry point is provided by a service provider, ensure that a fair and transparent process is in place to allocate referrals between itself and other service providers.

PCLC already has an excellent working relationship with Victoria Legal Aid generally, as well as the Peninsula Regional Office of VLA, and both organisations cross-refer where conflicts of interest arise or the matter better fits within the work of the other organisation.

While there can be some benefits to centralised resource production (for example, PCLC uses Victoria Legal Aid, Victoria Law Foundation and other information brochures extensively to assist clients in understanding the law as well as distributing them at community legal education activities), CLCs also use their expertise in working with local communities to create local resources that are highly useful. It is important that this can continue to maximise the effectiveness of our work.

#### **Past project: Family Violence Help Cards**

PCLC worked with the Frankston and Mornington Peninsula Family Violence Network, with financial support from Frankston City Council and Mornington Peninsula Shire, to produce *Family Violence Help Cards*.

The cards, distributed by local police at family violence incidents and distributed through health and community agencies, listed local support services and contact details. The project group is currently reviewing the use of the cards given new resources that have become available, such as mobile phone applications.

## 20.1 Who are the main players?

### CLCs work alongside the LACs

PCLC welcomes the description of the role of CLCs on page 576. However we would like to see some more emphasis on the way that generalist CLCs are embedded in their local communities. This is a great strength of CLCs, allowing them to respond to local needs and collaborate where possible with government, legal aid and other publicly funded legal assistance service providers, volunteers and pro bono contributors, the private legal profession, police, Courts and Tribunals, community services agencies and other community partners to ensure the best outcomes for our clients. The National Association of Community Legal Centres (**NACLC**) describes CLCs in the following way:

*CLCs are located throughout Australia in urban, regional and remote locations. They are part of their communities and respond flexibly to the changing needs of those communities, offering creative, effective and targeted solutions to legal problems. CLCs also consult and*

*involve their communities in their operations and management, always striving to make their services accessible and appropriate, to listen to their communities about their understanding of their needs and the solutions they want. It is the relationship with their community that distinguishes CLCs from other legal services.<sup>1</sup>*

For example, in the 2012-13 financial year, PCLC worked closely with its local community, including participating in a range of networks:

- AAA Housing Committee (Mornington Peninsula Shire).
- Adolescent Violence in the Home Strategic Reference Group.
- Bethel House Service Providers Network.
- Booroondara Rooming House Network.
- Child Support Stakeholder Engagement Group.
- Frankston Bring Your Bills Day Committee.
- Court Users' Meetings (Frankston Magistrates' Court and Dandenong Family Law Courts).
- Cranbourne and District Community Services Group.
- Critical Linkages (Casey-Cardinia Family Violence Network).
- Dandenong Homeless Alliance.
- Frankston and Mornington Peninsula Family Violence Network.
- Family Relationship Services Reference Group Frankston and Mornington Peninsula.
- Local Connections to Work Community Partnership Group.
- Mornington Peninsula Combined Service Provider Network.
- Peninsula Community Development Network.
- Peninsula Housing Network.
- Rooming House Network.
- Inner Southern Emergency Relief Network.
- VCAT Residential Tenancies User Group Melbourne.

As a result of collaborating with other service providers, we are able to identify issues that may be common to a particular client group or local area, allowing early intervention and a holistic approach to issues. We are also able to contribute to better service delivery by local courts and tribunals and undertake joint projects, such as our recent *Law Week Forum for Seniors* – a collaboration between PCLC, Seniors Rights Victoria, Peninsula Advisory Committee for Elders, and Mornington Peninsula Shire and attended by over 100 seniors who learned about protecting themselves from elder abuse and other key legal issues. The third highest referral source for PCLC clients in 2012-13 was from other community organisations. The Centre also provided 62 legal information activities to community workers in 2012-13, to assist them in determining whether clients had legal problems and if so, how they might be addressed.

As discussed on p.599 of the Draft Report, the capacity of CLCs to harness in-kind resources through volunteers and pro-bono contributions is a major feature of CLCs. We would like to see this feature also explicitly referred to in this section of the Draft Report.

Additionally, avoiding conflicts of interest is a fundamental principle of the Australian legal system. PCLC would like to see explicit reference in this section to the role that CLCs play where LACs have to decline assistance to an individual because of a conflict of interest (and vice versa). In such a

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<sup>1</sup> [http://www.nacalc.org.au/cb\\_pages/clcs.php](http://www.nacalc.org.au/cb_pages/clcs.php)

case, CLCs provide a different source of legal advice and/or representation in a way that is cost-effective to government. This also highlights the importance of having multiple providers of legal assistance services in any given area.

## 20.5 What do their service delivery models look like?

### CLCs employ a diverse mix of service delivery models

We welcome the Commission's estimates (based on NACLC survey figures) on pages 589-590 that the net contribution of pro bono and volunteers across the CLCs in 2012 was nearly 480,000 hours per year – around 246 fulltime equivalent employees or around \$18.2 million at average weekly earnings, allowing for training and supervision of volunteers and pro bono practitioners.

We submit that the real value would actually be much higher. For example, according to the [mycareer.com.au](http://mycareer.com.au) website, the average legal wage (including legal secretaries) is \$95,924 per annum. Based on a 38 hour week the hourly rate would equal \$48.54 per hour. PCLC has an estimated 77.25 volunteer hours per week, which would amount to \$3749.71 per week or \$194,985.18 per year. Using the NACLC survey figure of 480,000, this would amount to over \$23 million of value overall.

PCLC also receives significant pro bono support from its pro bono partner, Russell Kennedy (valued at \$67,385.75 in 2012-13), local firms and barristers and also from Victoria Legal Aid in the form of legal resources and continuing professional development training for staff and volunteers who hold a CLC only practising certificate.

We urge the Commission to further investigate and value the net contribution of pro bono support and volunteers across CLCs, as well as the likely impact on this volunteer and pro bono support, should changes be made to the CLC model (for example, relocating CLCs).

## 21.1 Are the right mix of services being provided?

### Duty lawyer services

In our view, the right mix of services are being provided by the legal assistance sector.

PCLC would like to see the section on pages 617-18 of the Draft Report relating to 'Duty lawyer services' strengthened to highlight the benefits of duty lawyer services delivered by LACs and CLCs, both in terms of addressing the acute vulnerability of many self-represented litigants, improving systemic fairness and participation and in terms of economic efficiency by assisting the work of courts and tribunals. As the Draft Report notes, '[d]uty lawyer services' are a relatively cost-effective way to deliver legal advice' (p.617).

As part of our range of legal services, PCLC operates a duty lawyer service for Family Violence Intervention Orders at Frankston Magistrates' Court three days per week, a duty lawyer service at the Federal Circuit Court of Australia (Dandenong Family Law courts) five days per week and a duty advocate service at the Dandenong Victorian Civil and Administrative Tribunal two days per week.

Efficiency benefits of the CLC duty lawyer model include:

- Assisting the Court/Tribunal with the administration of justice by providing advice, casework and representation often in urgent, sensitive and stressful circumstances, which can facilitate resolution of matters, or narrowing of matters in dispute, and reduce demands on Court/Tribunal time and resources.
- Enabling both parties to a dispute to be advised and represented where a conflict of interest and/or excessive demand would otherwise prevent that. It is important that there is more than one legal assistance service in any area.
- Providing additional services such as the correction and witnessing of client prepared court documentation, and input through Court meetings and networks to improve Court services.
- Holistic approach to client's legal issues, which may include referring to other CLC services and accessing assistance from other community services (for example, PCLC's Family Violence Duty Lawyer may refer a client to PCLC's tenancy program which may then access community funding to help the client with a new bond).

We are concerned that the current drafting of this section of the Draft Report which refers to 'limited evidence on effectiveness of duty lawyers' (p.617) undersells the importance of these services.

PCLC would welcome the Commission making the following recommendations:

- That duty lawyer schemes should be expanded as part of a range of legal assistance services, as recommended by previous inquiries (pp.446-447).
- That further evaluation of duty lawyer services is undertaken to develop the evidence-base on the impact of duty lawyer services in increasing access to justice and reducing costs to government.

## 21.2 Is the balance right in terms of areas of law?

### Civil law matters – the poor cousin in the family

PCLC welcomes the Commission's findings that:

- Not providing legal assistance for civil matters can be a false economy as the costs of unresolved legal problems are often shifted to other areas of government spending such as health care, housing and child protection' (p.631).
- "Areas of civil law identified by participants where legal assistance services are particularly thin include employment, housing, rights and consumer matters... Gaps in legal assistance for civil law matters means that Australia's most disadvantaged people may not get legal representation for these types of civil law matters (p.631).

#### DRAFT RECOMMENDATION 21.1

Commonwealth and state and territory government legal assistance funding for civil law matters should be determined and managed separately from the funding for criminal law matters to ensure that demand for criminal assistance does not affect the availability of funding for civil matters.

## Information Request

*The Commission seeks views on whether the above demarcation of funds would be sufficient to ensure that appropriate resources are directed towards non-criminal, non-family law matters.*

**Our response:** Whilst welcoming the concept of ensuring that there is sufficient funding for civil law assistance, PCLC has concerns about how separate funding streams for civil and criminal law matters may be administered in practice. In the context of CLCs where we use a holistic approach to service delivery, we can often be required to address someone's criminal and civil issues at the same time. PCLC is concerned that a funding structure may be created that is difficult and inefficient to administer, which would detract from our core work of delivering services.

## 21.3 Are legal assistance services in the right locations?

CLCs are located in areas that have been previously identified to have strong community need. Although demographics of an area change over time, CLCs have innovated in response to changing needs in their communities, developing branch offices, outreach services and specialising in areas of law that particularly affect their community, such as family violence. In our view, the historical connections, built over many years and involving much community trust and goodwill, need to be respected. We would urge caution in having an external body work out where CLCs are needed, particularly as there is evidence that CLCs have, and continue to, undertake legal needs analysis to ensure appropriate targeting of services (see 'Determining Legal Needs' section, below).

### SEIFA

PCLC has concerns about the Australian Bureau of Statistics' *Socio-Economic Information for Areas (SEIFA)* Index of Relative Socio-Economic Disadvantage (**IRSED**) data being relied on as a sole measure for where legal assistance services should be targeted. From our experience, SEIFA data can actually mask areas of concentrated disadvantage.

For example, the Mornington Peninsula Shire's ranking is 1,022.5, which is a relatively high score indicating less disadvantage.<sup>2</sup> The Shire includes areas of high wealth such as Portsea, but also areas with much lower IRSED scores. We know that within those areas with lower scores, there are pockets of deeper disadvantage that need targeted assistance. Although a few years old now, a 2007 study found that parts of the Mornington Peninsula Shire were among Victoria's 'most disadvantaged' post codes, most notably Rosebud West and Hastings.<sup>3</sup> Other studies, such as the LAW survey, further confirm that there are a variety of indicators of vulnerability to legal problems, including disability, lone parents, vulnerable housing, unemployment and indigenous status.

### Determining legal needs

CLCs already conduct research and analysis to support the effective delivery of their legal services to ensure they are targeted at those with the greatest need. Evidence-based planning of services around disadvantage is part of the work that CLCs do to ensure that we fulfil the purposes of our organisations. For example, NACLC developed the *Legal Needs Assessment Framework* and its

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<sup>2</sup> See <http://profile.id.com.au/mornington-peninsula/seifa-disadvantage>

<sup>3</sup> Vinson, Tony, *Dropping off the Edge: The Distribution of Disadvantage in Australia*, Jesuit Social Services and Catholic Social Services Australia, 2007.



associated *Strategic Planning Toolkit* to help CLCs carry out evidence-based strategic planning<sup>4</sup> and many CLCs have already undertaken this process.

CLCs also work collaboratively with other legal assistance providers and stakeholders in regions to share data and plan where legal services should be directed to avoid service gaps and duplication. For example, PCLC is currently working in partnership with Casey Cardinia Community Legal Service, Springvale Monash Legal Service, St Kilda Legal Service, Victoria Legal Aid (VLA) Peninsula Regional Office and VLA Westernport Office, as well as the VLA Civil Justice Division to collaboratively research and identify legal needs for the south-east region of Melbourne. This regional planning process is also being carried out in the Western region of Melbourne by other legal assistance providers. It is worth noting that the regional planning process we are participating in has reinforced that the CLC data system provided by the Attorney-General's Department is inadequate (See also '24.4 Improving data collection and evaluation' below).

### *Barriers to relocation*

PCLC sees a number of barriers to physically relocating CLCs:

- CLCs are highly visible and well-known in their local community.
- Because of their historical links, and in recognition of the vital services CLCs provide to the community, some CLCs are provided with free or low-cost premises. For example, rental for PCLC's Bentleigh Branch office is reimbursed by the City of Glen Eira and our Pines Branch office is provided gratis by the City of Frankston.
- Relocation and establishment costs (including removalists, signage, information technology, phones, stationery replacement, updating websites, brochures, etc) are often required to be budgeted out of existing funds, impacting on service delivery.
- Some CLCs are placed so that they are easy to access by public transport.

## 21.4 Are assistance services targeting the right people?

Like many other CLCs, PCLC is a registered charity (Public Benevolent Institution) with Deductible Gift Recipient (**DGR**) Status. Our DGR status is contingent on the Centre continuing to fulfil our purposes which are to 'empower and support people who live work or study in the Catchment who are disadvantaged and vulnerable to address their legal needs.' In this way, we are legally required to ensure that our assistance services are targeting the right people. Assisting disadvantaged and vulnerable people is also our core philosophy.

While initial advice may be given to any client, regardless of income, who lives works or studies within the PCLC catchment area, ongoing case work (letters, negotiation, drafting documents, representation, etc) is targeted to those experiencing disadvantage. Under our *Advice and Casework Guidelines*, PCLC prioritises the cases of people with no or limited income in the provision of case work services. In practice, this means that casework is generally provided only for clients on no or low incomes. The Community Legal Services Information Scheme (CLSIS) definitions of income prescribed by the Commonwealth are:

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<sup>4</sup> For more information see [http://www.nacalc.org.au/cb\\_pages/legal\\_needs\\_assessment\\_framework.php](http://www.nacalc.org.au/cb_pages/legal_needs_assessment_framework.php)

- **Low:** Under \$500 per week or \$26,000 per year
- **Medium:** Between \$500 & \$1,000 per week or \$26,000 & \$52,000 per year
- **High:** \$1,000 per week or over or \$52,000 per year or over

For example, in the 2013 calendar year, PCLC provided over 7,000 **advices** of which:

- Just over 80 per cent of clients were on no or low income.
- Around 16 per cent of clients were on a medium income.
- Less than 3 per cent of clients were on a high income.

In terms of ongoing casework services, those figures shift such that more clients on no or low incomes are assisted. Of the relatively small proportion of ongoing clients who had medium or high incomes, most were assisted at duty lawyer services at the Frankston Magistrates' Court (Intervention Order service) or Family Law Courts at Dandenong. If duty lawyer and duty advocate services are taken out, **ongoing casework** figures for the 2013 calendar year are:

- 89.5 per cent of clients were on no or low income.
- 9.5 per cent of clients were on a medium income.
- 1 per cent of clients were on a high income.

We note that a client on a medium income of \$500-\$1000 gross per week would, depending on the nature of the legal issue, be unlikely to afford a private lawyer in many instances, and may be subject to other disadvantages precluding self-representation or self-management of a legal problem, such as low literacy, language barriers, mental health issues, or the matter may involve intimate partner and/or family violence or urgent family law issues. Even a so-called 'high' income earner may struggle to afford a private lawyer, particularly if they have dependents or face other forms of vulnerability or disadvantage.

As outlined in our first submission to this Inquiry, the early intervention and preventative legal work that is a fundamental part of CLC operations plays an important role in reducing potential long-term costs to the whole community. In our view, it is vital that CLCs continue to offer initial advice and information to all of the community to prevent legal problems from escalating and causing individual and societal costs. This is an efficient use of resources, particularly given that a large proportion of our initial advices are provided by volunteers.

Whilst we consider it appropriate for ongoing casework services to be targeted towards clients experiencing disadvantage, it is vital that CLCs not be compelled to apply identical guidelines as LACs, and retain flexibility to assess vulnerability and disadvantage on a broader range of factors.

## 21.6 Does the distribution of funds need changing?

We note the Commission's statement that on p.656 that a new funding allocation model for Community Legal Services Funding (CLSP) funding is required to better reflect need.

We query whether there is any evidence that CLCs are not appropriately targeting their services, particularly given the existing accountability requirements imposed on CLCs regarding strategic planning, work plans and six monthly reporting.

DRAFT RECOMMENDATION 21.4

The Commonwealth Government should:

- discontinue the current historically- based Community Legal Services Program (CLSP) funding model
- employ the same model used to allocate legal aid commissions funds to allocate funding for the CLSP to state and territory jurisdictions
- divert the Commonwealth's CLSP funding contribution into the National Partnership Agreement on Legal Assistance Services and require state and territory governments to transparently allocate CLSP funds to identified areas of 'highest need' within their jurisdictions. Measures of need should be based on regular and systematic analyses in conjunction with consultation at the local level.

### INFORMATION REQUEST 21.3

*The Commission seeks feedback on how Community Legal Centre (CLC) funds should be distributed across providers while at the same time ensuring providers are of sufficient scale and the benefits of the historic community support of CLCs are not lost. Competitive tendering might be one possible method for allocating funds. The Commission seeks feedback on the costs and benefits of such a process and how they compare with the costs and benefits of alternative methods of allocating CLC funding.*

### Our response

Any CLC funding model must ensure that the historic community links of CLCs are not lost, while at the same time allowing new funding to address demonstrated unmet legal need.

In relation to the option of using the LAC funding allocation model to allocate CLSP funding to states and territories, which would then have responsibility for allocating the funds (pp.656-657), we agree that there would be a serious conflict of interest in the second approach that would see LACs decide how the funding envelope is distributed. We see this approach as unworkable and potentially damaging to longstanding collaborative relationships between LACs and CLCs.

PCLC does not support the use of competitive tendering to allocate CLSP funds, particularly where LACs and other potential providers are able to compete for that funding. Our concerns include:

- Potential damage to the current 'tried and tested' structure, services and effectiveness of CLCs.
- Competitive tendering will be damaging to long-standing collaborative relationships between CLCs, LACs and private practitioners that provide pro bono and volunteer services.
- Competitive tendering is extremely time-consuming and would be an inefficient use of expertise and resources, deflecting from service delivery.
- Conflict of interest issues can arise if there are too few service providers in a given area.

- Extra costs to government if another organisation or bureaucratic layer is formed to determine tenders. Again it would be inappropriate for LACs to determine successful tenders.

## 21.7 Is the quantum of funding adequate?

In short, the quantum of funding to the legal assistance sector is grossly inadequate.

As outlined in our earlier submission, the sector is significantly underfunded and cannot meet the huge legal need in our communities. This is the real issue facing the sector, rather than lack of efficiency in fund distribution or service delivery. We welcome recognition in the Draft Report that Australia is one of the lower funding nations of legal assistance services (on a per capita basis).

PCLC would be pleased to see a clear recommendation from the Commission that the quantum of funding to the legal assistance sector service should be substantially increased given the social and economic benefits of legal assistance services. This is particularly important in light of recent funding cuts to the sector announced by the Australian Government which will place further pressure on already stretched services.

We would welcome a recommendation such as:

- The Australian Government should significantly increase funding for the legal assistance sector to capture the significant social and economic benefits of sector investment.

## 24.4 Improving data collection and evaluation

PCLC agrees that there is a definite need to improve data collection systems. CLCs use the Community Legal Service Information System (**CLSIS**), which has longstanding deficiencies that make reporting and planning difficult. For example, producing reports is a convoluted process and definitions can be incompatible with those used by other legal assistance providers.

PCLC welcomes Draft Recommendation 24.3 and supports the LAW survey being undertaken on a regular basis at least every five years, with the results being made publicly available.

## More information

PCLC would be pleased to provide further information to the Commission.

Please contact:

Jackie Galloway, Chief Executive Officer  
Peninsula Community Legal Centre  
T: 03 9783 3600  
E: [pclc@pclc.org.au](mailto:pclc@pclc.org.au).

*This submission was prepared by Alison Laird, Volunteer Policy Worker, Peninsula Community Legal Centre, 21 May 2014.*