

CENTRAL HIGHLANDS COMMUNITY LEGAL CENTRE

SUBMISSION: Inquiry into Access to Justice by Productivity Commission

Date: 30 November 2013

The Central Highlands Community Legal Centre Inc ('CHCLC') is based in Ballarat, Victoria, and has a catchment area which covers 11 different local government areas including West Wimmera and Yarriambiack. CHCLC provides services at our office in Ballarat, along with outreach services to Federation University, Hopkins Correctional Centre, Langi Kal Kal Prison, and the Grampians Community Health Centres located in both Stawell and Ararat. Our solicitors also provide a Family Violence duty lawyer service 2 days per week at the Ballarat Magistrates' Court, and conduct regular information sessions at the Family Relationships Centre in Ballarat. Solicitors and administrative staff also conduct Community Legal Education programs off-site as requested by a range of community groups including Dads In Distress and Hospice. CHCLC solicitors and staff have also provided legal training to other service providers as requested.

Below are our submissions in relation to some of the questions raised in the Issues Paper.

Geographical barriers

As stated above, we provide services at a number of locations in order to increase access to justice for individuals. Where clients are unable to attend our office or one of our outreach locations or the matter is urgent, solicitors are able to conduct appointments by telephone. Often clients will send copies of any documents which they require assistance with, or have questions about, prior to the appointment so that accurate and timely advice can be provided to the client. Solicitors are also able to visit clients at home in certain circumstances. However, despite the services we provide to assist with geographical barriers faced by our clients, our clients are still faced by those barriers in a range of ways.

In many cases, the nearest rural court for our client may be over an hour's distance to travel, and only open on certain days. In those cases, if a client requires a matter to be listed urgently, or documents lodged, they must either travel to a larger regional city where the Court operates every day, or wait until the rural Court is open; rural courts are often open only one day per week.

In addition to this, regional and rural clients can also experience barriers in costs or fees charged for services. For example, in order to lodge a caveat over a property which is the subject of a Family Law Property Settlement, the client must either lodge the document him or herself, arrange for a person to lodge the caveat at the Land Titles Office in Melbourne, or send the application by post. To lodge the document in person rather than through the electronic system, which CHCLC clients do not have access to, they pay an additional \$22.70. However, to lodge the caveat by post, the client must pay an additional \$5 fee per instrument to be lodged.

Another example is a recent client which has approached CHCLC in relation to a costs agreement

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relating to a Family Law dispute, where the legal firm involved is based outside of the metro-Melbourne area. The fees in the costs disclosure statement include \$280 per hour for a clerk, and up to \$750 per hour for the senior solicitor of the firm. Clients in rural areas are not spoilt for choice for solicitors to assist them in their civil claims. As is the case in most rural or regional areas, young solicitors either do not want to practice in small country towns, or if they do, it is only for a short period of time. This inevitably leads to the situation where there are only a few solicitors or firms available to assist clients. Competition for clients is reduced and as such, these firms or solicitors are free to charge extraordinary fees for their work. Often a client will have no choice but to engage one of these solicitors due to issues with conflicts of interest and/or limited choices as to local solicitors that practice in the area of law which is in dispute.

Financial costs as a barrier

Our clients are generally disadvantaged, and have little to no income. Whilst solicitors at CHCLC are able to draft documents and guide clients through the process of issuing court proceedings, what we often find is that whilst a client will have a strong case the amount of the claim is very similar to the representation fees which will be charged by a private solicitor. In these cases, clients are either forced to self-represent or abandon their claim; a proportion of our clients have disabilities that would prevent them from self-representing and so they have no option but to abandon their claim.

Fees required to lodge documents or conduct searches again provide a barrier for our clients. Another recent example of this was a client who was the victim of a horse betting scam. He was a pensioner and had invested the last of his savings into this scam. Amazingly, our client took the matter to VCAT unrepresented and was able to obtain judgement against the company. However, the other party failed to pay and our client was left to take steps to enforce the judgement through the Magistrates' Court. This meant our client had to undertake company searches again, and then pay filing fees for oral examination of the company director. As is often the case for those living on a pension, our client basically lived from hand to mouth, and it took him several weeks just to save up the money to be able to afford to complete the necessary title searches.

Prevention or early resolution of disputes

As stated above, CHCLC provides Community Legal Education ('CLE') to a number of community groups and organisations in relation to a range of areas of law. Examples include Wills & Powers of Attorney, Police Powers, Sex and the Law, and Divorce. These presentations can be provided by volunteer students, administration staff and solicitors. Our solicitors also provide an information session in relation to options to resolve disputes around spending time with children to the clients of the Family Relationship Centre ('FRC'). We find to be an incredibly important avenue to reach a larger portion of the population, and to provide not only legal information about legal rights and issues, but also about potential disputes that may arise, and how those disputes can be dealt with early. For example, our solicitors will often use the sessions at the FRC to spook the value of mediation in matters concerning children over taking the matter to Court. Unfortunately too many of our clients come to see us for assistance in relation to a legal matter when they are out of time, or there are no positive options left for the client. We see CLE as the best way to help prevent clients finding themselves in this situation. Often just knowing that that CHCLC exists means that they will approach our service early and we will be able to obtain a better outcome for the client.

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Pro bono work

CHCLC operates two advice sessions per week which are conducted by local solicitors who volunteer their time on a roster arrangement. Each session is made up of 6 appointments and the areas of law in which advice is given are broad. We have approximately 16 different solicitors who volunteer at CHCLC. In addition to this, we have another solicitor who volunteers one day per week giving advice to clients, with the ability to take on case work as required. The time given by these solicitors is vital to CHCLC and often allows clients to obtain specialist advice in areas of law, particularly Family Law, which employee solicitors are not as experienced in. It also enables us to see an additional 12 – 14 clients per week, which enables clients to obtain timely assistance in relation to their legal issues.

On top of their voluntary work at CHCLC, some of our volunteer solicitors also provide free 30 minute interviews to clients who have been referred to them by the CHCLC for whatever reason. This is another way in which clients can obtain more specialised legal advice in relation to their issues which would not otherwise be available.