

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 CLCs¹

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*² 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 law³ 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 –

¹ 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

² 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>

³ 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.⁵ 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 report⁶. 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

⁵ 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>

⁶ 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)".⁷ 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.⁸

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*⁹ 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.¹⁰
- The 2007 Institute for Sustainable Futures research project (commissioned by NACLIC) 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.¹¹
- 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

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

⁸ Law and Justice Foundation of NSW, as above.

⁹ 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

¹⁰ 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>

¹¹ 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.¹²

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.¹³

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 disadvantage¹⁴ 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.

¹² 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

¹³ ACOSS Survey, p. 34

¹⁴ 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.¹⁵ 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) Survey¹⁶ 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).

¹⁵ Ibid.

¹⁶ 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).¹⁸

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.'¹⁹ We find that many self-represented litigants 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.

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

¹⁸ Available at http://pclc.org.au/static/files/assets/e08b96e0/PCLC_Civil_Claims_Workbook_2012__final_.pdf

¹⁹ *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 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 items 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’.²¹

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.

²¹ *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.²² 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

²² 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.²³

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.

²³ 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:

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Attachments

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

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