



St Kilda Legal Service Submission to the Access to Justice Arrangements Inquiry

St Kilda Legal Service understands the Access to Justice Arrangements Inquiry has a focus on constraining costs and promoting access to justice and equality before the law. Paragraph 5 of the Terms of Reference is most relevant to the work undertaken by St Kilda Legal Service:

5. *the impact of the costs of accessing justice services, and securing legal representation, on the effectiveness of these services, including analysis of:*
 - a. *the ability of disadvantaged parties, including persons for whom English is a second language, to effectively self-represent, and*
 - b. *the extent to which considerable resource disparity impacts on the effectiveness of the adversarial system and court processes.*

Our submission is focused on access to justice for those who are disadvantaged and addresses a small selection of the questions posed in the Issues Paper that relate to paragraph 5 of the Terms of Reference.

About St Kilda Legal Service

The vision of St Kilda Legal Service (SKLS) is a society that provides equitable access to the law and legal system and is committed to justice for all. SKLS aims to assist and empower individuals and groups who are disadvantaged in their access to justice.

SKLS is an inner metropolitan Melbourne community legal centre that provides free and accessible legal services to members of the community within the Cities of Port Phillip, Bayside, Stonnington and parts of Glen Eira. SKLS conducts a night service three nights a week, staffed entirely by volunteer lawyers. SKLS is a generalist community legal centre that provides legal advice and casework assistance with a broad range of legal issues, and often sees vulnerable clients with legal matters associated with poverty, drug

addiction, mental illness and homelessness. In addition SKLS operates two specialist programs: the Drug Outreach Program and the Family Violence Program.

SKLS is co-located with other community agencies at the St Kilda Community Centre. The Centre offers a range of programs that provide support and assistance to some of the most marginalised people within our community. St Kilda Community Centre programs provide emergency relief, including provision of food, financial counselling, No Interest Loans (NILs), recreational activities, including art groups for people with disabilities or who are isolated, support for rooming house residents and public tenants. St Kilda Drop In, also co-located at the Centre, provides meals and support for people with a mental illness.

Why Access to Justice is Important

Legal need is defined in the Issues Paper as “legal issues that individuals have not been able to resolve effectively by their own means”¹.

*What are the consequences of unmet legal need? For example, what are the social and economic impacts arising from problems that are either unresolved or escalate due to lack of access to legal assistance?*²

SKLS supports the view expressed in the submission of 2 August 2013 of the five peak organisations for community legal centres in Australia (including the Victorian Federation of Community Legal Centres”) that the “...terms of reference focus on the ability or capacity of disadvantaged persons to effectively self-represent. We would encourage the Inquiry to focus on other areas where disadvantaged persons face barriers... These include the ability of disadvantaged people to access legal information and seek early advice.”

Access to Timely Legal Advice

Positive social and economic impacts flow from disadvantaged individuals having access to legal information and being able to seek legal advice at an early stage. The case study below provides one example of the impact of timely legal advice:

The client was pursued by a debt collector for an unpaid consumer credit debt. The debt collector informed the client that he risked legal proceedings being commenced if the debt was not paid. The client did not know what effect legal proceedings could have for him. He sought the assistance of SKLS. The client at the time had no income, apart from Centrelink benefits, and has no assets of value. SKLS advised the client that at this point in time the creditor could not recover the debt from him because of his current financial circumstances, but that this could change if his situation improves in the future. The debt collector is unlikely to commence any legal proceedings until and unless the client’s financial situation improves because of the time and cost involved. This information

¹ *Access to Justice Arrangements Inquiry Issues Paper*, Productivity Commission, September 2013, p5

² *Access to Justice Arrangements Inquiry Issues Paper*, Productivity Commission, September 2013, p6

enabled the client to prioritise his rent and utilities costs above payment of the consumer credit debt. The client was able to continue to meet his basic needs in the areas of housing, food and utilities. If the client had fail to meet these expenses because he had paid unaffordable instalments on the consumer credit debt he would have become in need of crisis services in the areas of housing and emergency relief.

(This case study is a compilation case study drawing on elements from more than one case.)

Access to Justice to Maintain Confidence in the Rule of Law

SKLS provides a night service 3 nights a week that is staffed entirely by volunteer lawyers. SKLS volunteers, including volunteer lawyers and administration volunteers, contribute at a conservative estimate approximately 150 hours a week. SKLS volunteer lawyers generally volunteer one night per week. In addition to this contribution many undertake work in their own time away from the office. This includes pro bono court appearances, undertaking research and drafting of documents and letters. SKLS volunteer lawyers include lawyers with expertise in family law, employment law and criminal law. The example below illustrates how a young low income client benefited from the level of legal assistance provided by a SKLS volunteer lawyer.

A young person contacted SKLS for employment law assistance. The client said he had been underpaid by his employer. He said that when he sought an explanation for the underpayment from his employer he was dismissed from his employment shortly after. The SKLS volunteer lawyer assisted the client including providing a pro bono appearance at conciliation. The matter was resolved at conciliation and the employer agreed to make payment to the client. The outcome helped “maintain confidence in the rule of law”³. Without this outcome the young person would have lost his job with no compensation and the employer would have been able to act with impunity.

Interactions Between Criminal and Civil Justice Systems

SKLS understands that while the inquiry is examining the civil law dispute resolution system it “will also explore the interactions between the criminal and civil justice systems where appropriate”⁴. ““Consumer fraud costs Australians almost \$1b a year and most of this fraud involves scams in which individuals are persuaded to part with an upfront, or advance, fee, with the promise of large financial or other gain in the future”⁵. The case study below illustrates that access to remedies through the criminal justice system in appropriate cases is important for maintaining confidence in the rule of law.

Our client was defrauded approximately \$130,000 by a con man, a US citizen who was living in Australia. He claimed to be a successful business man, environmentalist and humanitarian. After he relocated to New Zealand he

³ *Access to Justice Arrangements Inquiry Issues Paper*, Productivity Commission, September 2013, p4

⁴ *Access to Justice Arrangements Inquiry Issues Paper*, Productivity Commission, September 2013, p1

⁵ “Sentencing Scammers: Law and Practice”, Lorana Bartels, *Trends & Issues in Crime and Criminal Justice*, No.443 August 2012, Australian Institute of Criminology

contacted our client and asked her to invest in a book he was writing, promising to double our client's investment. Our client invested her life savings but no book was ever written and she didn't hear from him again. Only after our client approached SKLS did she learn that she was the victim of a scam. As she met the man in Victoria and transferred funds to him while she was in Victoria and because he returned to Victoria from New Zealand on numerous occasions after funds were transferred to him, our client approached Victoria Police to complain about the fraud. Despite having contacted Victoria Police on three separate occasions, including the Fraud Squad and a detective, no statement was taken and no action was taken in Victoria. SKLS provided New Zealand Police with a detailed account of the case as well as evidence. The New Zealand Police filed a charge and the offender was found guilty in a New Zealand court of obtaining pecuniary advantage by deception to the amount of over \$100,000. SKLS has concerns that Victoria Police are dismissing allegations of deception and fraud as civil matters and not identifying or investigation them as potential criminal offences.

**Individuals with Multiple and/or Complex Legal Issues;
“Joining-Up” Services; and
Improving “User Friendliness” of the Legal System**

*How might people with complex legal issues be better directed to multiple legal and non-legal services to meet their needs? How can services be ‘joined-up’ to assist in this regard?*⁶

*Which particular mechanisms, processes or court practices have improved the ‘user friendliness’ of the legal system?*⁷

SKLS currently operates two programs where services are “joined-up” to assist individuals with complex needs: our Drug Outreach Program and Family Violence Program. In addition, the family violence lawyer provides a duty lawyer service at court and working alongside family violence support services contributes to a more “user friendly” process for court users who have been affected by family violence.

Our Drug Outreach Program

SKLS and Fitzroy Legal Service are the only two community legal centres in Victoria to operate Drug Outreach Programs. The SKLS drug outreach lawyer visits community centres such as crisis centres, homeless shelters and drug and alcohol services to see clients and works closely with support workers. The drug outreach lawyer works with a wide range of issues and clients. Frequently Drug Outreach Program clients are in crisis, disorganised, and unable to provide many - or any – details in relation to the matters for which they are seeking advice. It is common for the drug outreach lawyer to need to chase up these details so that she can assist the client with their matter. Clients of the drug outreach program are susceptible to being lost to the system. The Drug Outreach Program

⁶ *Access to Justice Arrangements Inquiry Issues Paper*, Productivity Commission, September 2013, p14

⁷ *Access to Justice Arrangements Inquiry Issues Paper*, Productivity Commission, September 2013, p9

was commenced 10 years ago. SKLS identified that individuals with drug and/or alcohol addiction were unlikely to access legal assistance by attending an appointment at SKLS and that to reach and engage marginalised and often transient drug users with complex needs an accessible and flexible outreach legal service was required. The Drug Outreach Program offers clients who are in a state of crisis, and who may be difficult to keep in touch with, due to their circumstances, a high level of support with their legal matters. One of the strengths of the program is that the drug outreach lawyer is able to assist clients through many of the stages of the legal process and with a range of legal issues.

The nature of the legal casework undertaken by the drug outreach lawyer is intensive and requires a multi-disciplinary approach. The holistic approach taken to legal casework has been essential to the health, treatment and well-being of clients. This program aims to reduce legal problems faced by drug users, thus assisting rehabilitation.

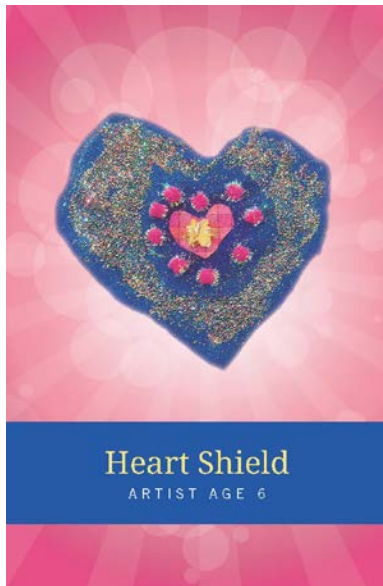
Our Family Violence Program – An Integrated Response to Family Violence

Many community legal centres in Victoria work closely with local family violence support services in delivering family violence legal services to clients. SKLS operates one such program. The SKLS family violence lawyer is employed as part of the “Community Action for Small Courts – Family Violence Response” project, a three year project supported by the Legal Services Board. The family violence lawyer provides:

- a family violence duty lawyer service for applicants and affected family members at the Moorabbin Justice Centre each Monday;
- family violence legal outreach services at a local community agency that provides family violence support services, and at a local Maternal and Child Health Service; and
- family violence training for local community organisations.

The “Community Action for Small Courts – Family Violence Response” project is led by SKLS and involves eight local community agencies that provide a range of family violence services. The community agencies involved in the project provide family violence services to court users at the Moorabbin Justice Centre each Monday. The project partners enjoy an excellent relationship with the court, hold regular meetings and are constantly working towards improving procedures for the benefit of court users.

The project partners have also developed with a local council the “Heart Shield” referral card that fits within Child Health Record booklets in the City of Bayside. The image on the front of the card was designed by a 6 year old who was affected by family violence. The child attended an art therapy workshop run by one of the agencies involved in the project.



The Heart Shield overlay was designed in 2012 by a 6 year old in an art therapy workshop run by Emerge Women and Children's Support Network. Children were invited to create a special tool that would give them strength and protection when faced with bullying or a difficult situation.

emerge Emerge enables independence for women and children by breaking the cycle of domestic violence.

Family Violence Support Services
 If urgent call police on 900
 Statewide 24 hr support: Women's Domestic Violence Crisis Service
 8322 3555 1800 015 188

Local Support Services
Salvation Army
Family Violence
Outreach Program
 Case management, outreach and housing support.
 9539 7777
SECASA
 Counselling for victims of family violence
 11 Chevalier St, East Donnington
 9554 2289
 (24 hr crisis line)
Emerge Women & Children's Support Network
 1300 536 330
Family Life
 Counselling services, child services and group programs
 197 Buff Rd, Sandringham
 8559 5433
 See also Ask Someone!
 www.asksomeone.org.au

Local Court & Legal Assistance
 For intervention order applications...
Moorabbin Justice Centre
 1140 Nepean Highway, Highett
 9090 8000
St Kilda Legal Service
 Family violence legal services at Moorabbin Justice Centre Mondays.
 Outreach service at Highett Community Hub & other locations
 8598 6625
Support workers
 at Moorabbin Justice Centre Mondays

Crisis Housing
Opening Doors
 1800 825 955
Men's Behaviour Change Programs
Family Life
 For men who use violence against family members
 8599 5433

Bayside

This program is part of the Community Action for Small Courts - Family Violence Response project 2012-2015

And generously supported by the Legal Services BOARD

Disincentives to Taking Legal Action

*To what extent are the costs of dispute resolution proportional to the matters at stake? Can consumers readily judge the expected costs and benefits of taking action?*⁸

*How does the legal system accommodate self-represented litigants and does this take into account the attributes of self-represented litigants themselves?*⁹

Disincentives can arise for a disadvantaged individual when considering whether or not to commence legal proceedings. For example SKLS assists many clients who are involved in car accidents and are uninsured. If the uninsured driver has good evidence to support the argument that she was not at fault the client may, nonetheless, ultimately need to commence proceedings in the Magistrates' Court if the other party (or the other party's insurer) disputes this claim. SKLS is not generally able to assist clients at court in motor vehicle accident matters. A client on a low income who is not able to afford a private lawyer would need to represent herself at court. The client runs the risk that if she loses at court she could expect to be liable for costs of the other party. If the other party is insured she can expect they will have legal representation.

Timelines and Delays

Are disputes taking more or less time to resolve and does this depend on the type of dispute?

It is the experience of SKLS that the amount of time involved in resolving a dispute does depend on the type of dispute. One type of legal matter where clients of SKLS regularly experience significant delays in having their matter resolved is in the area of infringements (fines). Issues relating to fines made up over 10% of the casework of

⁸ Access to Justice Arrangements Inquiry Issues Paper, Productivity Commission, September 2013, p8

⁹ Access to Justice Arrangements Inquiry Issues Paper, Productivity Commission, September 2013, p11

SKLS in the last financial year. Many clients who seek assistance have multiple fines and not uncommonly thousands of dollars of fines. Many of the clients who seek assistance with infringements matters have drug or alcohol addiction, have a mental illness or are homeless. These clients regularly have grounds to apply to have the infringements “revoked” because they were incurred when the client suffered from one of these conditions. “Special circumstances” infringement matters where the client has grounds to have the infringement revoked can take over a year to resolve. Clients regularly express that they are experiencing high levels of stress due to their legal matter. The Monash University Criminal Justice Consortium states in their February 2013 report “An Examination of the Impact of Unpaid Infringement Notices on Disadvantaged Groups and the Criminal Justice System – Towards a Best Practice Model”:

“enforcement agencies do not have adequate or consistent internal review processes with regard to special circumstances. Their reluctance to withdraw matters on these grounds at the internal review stage means that many people are forced to remain in the system for protracted periods in order to ensure that their matters are heard in the Special Circumstances List.”¹⁰

Prevention

*The Commission invites comment on strategies for the avoidance and early resolution of civil disputes. What evidence is there of the benefits and costs of these approaches and strategies?*¹¹

Community legal education is an integral part of the work of SKLS. Through community legal education we raise awareness of individuals’ rights and responsibilities and aim to empower our clients and members of the community. An example of a highly successful community legal education initiative SKLS undertook with two other community legal centres (YouthLaw and Consumer Action Law Centre) and with the support of Victoria Legal Aid, was the production of the “Keeping Out of Debt” publication in Z-Card format for young people. The publication incorporated light-hearted cartoon scenarios illustrating common credit and debt problems. The Z-Card brochure also provided information about legal rights and responsibilities and where to go to when things go wrong. The brochure aimed to help young people avoid legal problems in the area of credit and debt. Victoria Legal Aid offered to distribute the brochure and it was one of the most popular legal information resources distributed by Victoria Legal Aid in 2011. Despite this, the brochure is now out of print and we have been unable to secure funding for a new edition of the brochure. It has been the experience of SKLS that while project funding is available for new and innovative community legal education initiatives, where an initiative has proved successful it can be difficult to secure funding to continue this initiative.

¹⁰ p93 of the report: http://www.cjrc.monash.org/unpaidfines/unpaid_infringements_final_report.pdf

¹¹ *Access to Justice Arrangements Inquiry Issues Paper*, Productivity Commission, September 2013, p9



(From the “Keeping Out of Debt” Z-Card brochure.)

Court processes and power/resource imbalances

How are imbalances in the resources available to disputing parties best addressed so that outcomes are not based on one party being able to effectively exhaust the resources of another, rather than winning on merit?¹²

The case study below is from the SKLS Family Violence Program. It illustrates that if there is not adequate legal assistance for those affected by family violence and there is not vigilance on the part of the courts, perpetrators of family violence can seek to use the legal process against victims of family violence.

Our client had had an intervention order in the past to provide protection from her ex-partner. She had found the court process stressful and convoluted so despite there being breaches of the intervention order had not sought an extension when the order expired. Her ex-partner had been manipulative and controlling and had dragged proceedings out. She didn’t feel she could go through it again but after a sexual assault with support from her family violence worker, and the SKLS family violence lawyer applied for a new intervention order. An interim order was granted and a mention date set. The respondent’s lawyer made it clear he would contest the application. Eventually a date for the contest was set. Neither the respondent nor his lawyer showed up. The intervention order was granted. Six months later the respondent applied for a rehearing. Leave is required before making a rehearing application. It appeared that the respondent had managed to convince a magistrate to allow his application, on the basis that he was overseas at the time of the contest. When the matter was called the SKLS family violence lawyer was well-prepared, with all our notes from the previous dates. We read, to the court, that the respondent and his lawyer had been present at the directions hearing, and both were quite aware of contest date. The respondent claimed that his lawyer had written to the court, requesting an adjournment. The magistrate stood the matter down to investigate if the letter could be located. Eventually a letter was found, from the respondent’s lawyers, stating that they had tried to contact him on a number of occasions. As there had been nil response, and no instructions, they had no choice but to withdraw. The magistrate struck out the respondent’s application, and intervention order remained in place.

¹² Access to Justice Arrangements Inquiry Issues Paper, Productivity Commission, September 2013, p20

A Final Comment...

SKLS faces ongoing challenges in securing funding for the innovative and cost-effective legal services that we provide for those who are disadvantaged in their access to justice. One example of this is the Family Violence Program. SKLS commenced its family violence duty lawyer service at Moorabbin Justice Centre in 2008 soon after the court opened. When the court first opened there were no family violence support services operating at the court. Since 2008 SKLS has lobbied for ongoing funding for the family violence lawyer role. The role is currently funded as part of a three year project which will end in late 2014.