



**SPRINGVALE MONASH
LEGAL SERVICE Inc.**

Celebrating 40 years of Working for Justice

Submission to the Productivity Commission:

Access to Justice Issues Paper

Springvale Monash Legal Service Inc.

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Background

Springvale Monash Legal Service Inc. (SMLS) is a community legal centre that has operated within a diverse community for 40 years. For all of our operation, we have been co-located with the Springvale Community Aid and Advice Bureau within the Local Government Area (LGA) of the City of Greater Dandenong. We have been addressing the needs of marginalised community members, the majority who reside within the City of Greater Dandenong and its surrounds. The City of Greater Dandenong is the second most culturally diverse municipality in Australia, and the most diverse in Victoria. People from over 150 different countries reside in Greater Dandenong and 60% of the residents were born overseas¹. It also has highest number of resettlements from newly-arrived migrants, refugees and asylum seekers in Victoria². Data from the 2011 Census revealed that Greater Dandenong was the second most disadvantaged LGA in Socio-Economic Indexes for Areas (SEIFA) ratings³.

For most of the 40 years in operation, SMLS has been running a clinical legal education program in conjunction with Monash University's Faculty of Law, whereby law students undertake a practical placement at the legal service as part of their undergraduate degree. Additionally, as a community legal centre, we offer legal assistance as well as an extensive community legal education program that is developed in response to feedback from the range of community engagement and community development activities that we are and have been involved in. For example SMLS has contributed to reforms in family violence laws and practices, access to civil procedure reforms, discrimination towards young community members in their use of public space and their interactions with the criminal justice system, as well as in highlighting the needs of refugees and asylum seekers, particularly unaccompanied humanitarian minors and women escaping family violence.

We will address sections of the Access to Justice Arrangements Issues Paper that we believe we are qualified to comment on.

Section 3: What is legal need?

SMLS welcomes the opportunity to contribute to this inquiry. The legal service offers a significant number of intake sessions for the community through its clinical program, specialist program staff and the volunteer program. This amounts to 9 separate intake sessions each week, 51 weeks of the year. Despite the high level of service delivery, we are frequently unable to assist community members and have to refer them to other services or leave them to resolve matter themselves.

¹ City of Greater Dandenong, (2013) *A Profile of Health and Wellbeing in Greater Dandenong*

² Ibid.

³ Australian Bureau of Statistics (2013) *Census of Population and Housing: Socio-Economic Indexes for Areas (SEIFA), Australia 2011*

We constantly review our intake guidelines to ensure our resources are being used to meet the greatest area of need and the services we offer are of a high standard. For example, in recent times were frequently approached for employment law advice, in particular unfair dismissal and protection of conditions. We have developed the necessary skills in staff to address these concerns for people from culturally and linguistically diverse (CALD) backgrounds and now offer a weekly employment law clinic. Our experience in negotiating and attending conciliation at the Fair Work Commission is that many of our clients have received a favourable outcome that would not have been possible without assistance.

People from CALD backgrounds have significant challenges in dealing with the legal system beyond the obvious one of language barriers. For some, there are issues with trusting a system to be impartial when contrasted to the system they are familiar with in their country of origin. Australia's laws against discrimination and harassment are often not understood, leading to misunderstandings in expectations of what behaviour is acceptable and not acceptable in the home, the workplace and in the community more generally. Many feel they are victimized due to their appearance or cultural practices, as was the finding in *Haile-Michael & Ors v Konstantinidis* which was settled in February 2013 in the Federal Court in Melbourne.

Many SMLS clients have a mental illness or experience homelessness. We have commenced regular visits to the psychiatric unit in the local hospital where we have discovered many patients with legal matters that would otherwise go unresolved. To be released from the unit, there needs to be a range of measures put in place to ensure that the individual remains stable, from health supports, case management, housing and employment, to name a few. As a result their legal dispute is often low on their list of priorities. For example, a young client of SMLS had significant debt to a telecommunication company which was found to be void. The time it took to recover monies expended and to put a stop to the practices of the debt collectors were very stressful for him and his family. In such circumstances, it is not uncommon for the family to give up and make payments even when there is no liability to do so. Without legal advice and assistance marginalized community members often do not pursue their complaint in the first instance, either through lack of knowledge of their right to complain, how to go about it or where to get assistance to see it through to a resolution. If they do come to SMLS, they may not be able to proceed due to limitation issues, cost factors (even if the legal advice and negotiation is done by SMLS for free), their ability to deal with the uncertainty as well as the time required to reach a resolution.

Section 5: Is unmet need concentrated among particular groups?

The majority of the client demographic at SMLS are people of CALD backgrounds. Civil law matters are often characterised by an imbalance in power. For example, in the case of a Self-Represented Litigant (SRL) v an Insurer in a motor vehicle accident, it is commonplace for the Insurer to allege that the SRL is at fault. Often, the SRL does not understand their right to rebut this assertion nor do they have the

means to prove otherwise, for example, through independent valuations of motor vehicle damage following a collision.

Family law matters for SMLS clients often involve families without means and compounding factors of one or all of the following: a history of family violence, possible drug use and mental health issues. Litigants with these issues have difficulties navigating the legal considerations and processes associated with family law disputes.

How can the disadvantage by a group be measured?

Data can be obtained from community legal services regarding their client demographic; the volume of those particular individuals that access the service for specific disputes, and what level of assistance is provided to the client. This coupled with statistical data retained by courts, tribunals and other dispute resolution services would inform analysis.

Increased SRLs are a representative of a growing numbers of disputes, limited resources and the encouragement to less adversarial forms of dispute resolution. Whilst it is not proposed that moving away from adversarial (and often costly) dispute resolution is not to be encouraged, this needs to be considered in light of the compounding factors and power imbalances mentioned above. In family law trials for instance; legal aid guidelines will only fund a party when the other party is represented. In many of our cases both parties cannot afford representation therefore the legal aid commission deems neither entitled to a grant of aid, presumably as there is no perceived inequity. As many of SMLS clients experience family violence, having SRLs manage this type of trial and cross examine each other is an inappropriate scenario for self-representation.

Impact of self-representatives

From SMLS's experience it is fair to say that SRLs can have an obstructive impact on opposing parties, courts, tribunals and the parties themselves. This obstruction can manifest in the form of procedural delays; matters not resolving at the earliest opportunity as litigants are unwilling or unable to negotiate due to an inadequate comprehension of the application of law and litigants, whilst not vexatious, wanting an opportunity to air their grievances. In the case of SMLS clients, many cannot speak English or have an inadequate level to engage effectively in the legal process. Jurisdictions that do not offer interpreting services free of charge are hampered by parties unable to bear these costs.

How does the legal systems accommodate self-representatives?

There are many examples now of alternative dispute resolution processes. For example, pre-action mediation in the family law jurisdiction and pre-hearing conferences in the civil jurisdiction. Community legal services provide an integral step by informing litigants of their rights, responsibilities and managing their expectations. Community legal services can provide initial assistance in trying to negotiate resolutions that avoid the emotional and financial cost of litigation together with risks in adverse outcomes for our clients. Potential litigants need to have access to legal advice in order to assess merit, risks, be informed about process and possibly supported with challenges such as preparation of court documentation. This

advice needs to be obtained from appropriately trained legal practitioners, which means attracting and retaining practitioners in community based services. Duty lawyer systems need to be adequate and not limited to criminal and family law, particularly where the other party is represented.

Section 7: Preventing issues from evolving into bigger problems

Newly arrived migrants, refugees and asylum seekers experience social exclusion and often have minimal knowledge and information on the Australian legal system and the law. CALD groups are doubly disadvantaged due to their lack of social capital and networks which are often compounded by limited fluency in English. Many newly arrived groups will be unfamiliar with the Australian regulations and systems when settled in the community, and rely on community networks for information if they are unable to speak or read English. At times, the information they receive from others may not be correct, causing problems at a later stage. The National Association for Community Legal Centres noted that CALD groups were less likely to experience a legal problem in comparison to the general population, however they were also marginally less likely to seek legal assistance to resolve their problem. However, it was also noted that the legal problems experienced by CALD communities were around employment, discrimination and immigration⁴.

Offshore refugees who will be resettled in Australia can access the Australian Cultural Orientation Program (AUSCO), the content developed by the Department of Immigration delivered to a small group of 5 – 20 people over 3 – 5 days. However, not all refugees are able to access the program, as there are limitations on countries that trainers can travel to facilitate the training⁵. A 2009 report on AUSCO stated that while the program was able to decrease the shock experienced upon resettlement by refugees, it also noted limitations such as time constraints to deliver the program and the difficulties for participants to absorb the content without experiencing the Australian context⁶. Refugees who are settled through the Humanitarian Settlement Services (HSS) program are eligible to access the Onshore Orientation Program (a voluntary program) to build their capacity across a variety of core competencies, including Australian law. Additionally, refugees can increase their knowledge of living in Australia through enrolling in other complimentary programs. The focus of the HSS program is on client responsibilities and obligations in areas such as money management, work and renting which result in a lack of knowledge of their legal rights. The core competencies covered in the section on Australian law provides a shallow understanding on the complex nature of the Australian legal system, and provides information on child protection and family violence laws as well as the role of the police⁷.

⁴ National Association for Community Legal Centres, (2012). *National Legal Needs and Strategic Planning Project: Victoria*

⁵ Footscray Community Legal Centre, (2011) *Prevention is Better than a Cure: Can Community Legal Education Prevent Legal Problems?*

⁶ Reiner, Annerose (2009). *Cultural Orientation for Refugees: a five-day course or years of learning?*

⁷ Department of Immigration and Citizenship, (2011) *The Onshore Orientation Program*

We agree that topics should be introduced to newly arrived groups progressively over their settlement period, and that critical and relevant information is best provided at appropriate times. We would however like to see an increase in the range of legal topics covered, as we believe that knowledge of legal rights and responsibilities is the best method to prevent many of the common legal issues from arising. We also believe that a legal orientation program should be provided to all newly arrived groups living in the community, irrespective of their mode of arrival to Australia as there will be an overlap in many of the legal issues they experience.

SMLS often sees clients to advise them at a point of crisis, and many of their legal matters could be avoided if they had the knowledge of their rights or responsibilities. It is critical that we address these underlying causes and stem the difficulties and legal problems that arise for CALD communities. If systemic issues are not addressed, we will continue to see newly arrived communities experience easily avoidable legal problems. Footscray Community Legal Centre reported on common legal problems experienced by Burmese and African communities experienced once settled in Australia, which included:

- Problems with door-to-door salespeople and signing contracts
- Driving offences, including driving without a license
- Debt incurred from a motor vehicle accident when driving uninsured
- Large debts incurred from utility bills due to not understanding accounts and contracts
- Tenancy problems⁸

SMLS has similar experiences with CALD communities that seek legal advice from the service. In our experience, during Community Legal Education (CLE) sessions with newly arrived community members many were unable to identify their problem as a legal problem until an example was provided by the educator.

We acknowledge that CLE will not prevent people from experiencing legal issues, nor will it stop people from breaking the law. However, we believe that some legal issues can be prevented if legal information is provided to the community in a format that is easy to understand, including some of the matters listed above. For example, SMLS provided a legal education session on consumer law, in particular relating to door-to-door salespeople to a group of newly arrived women. The women had expressed their frustration in dealing with salespeople, and were not aware of their rights as consumers, such as their right to request salespeople to leave, their right to decline requests to sign a new contract as well as cooling off periods. Several women at the session spoke about their confusion as to whether they had switched energy companies or not, and some recounted having to pay two bills as they were unaware of what they were signing. SMLS believes that legal disputes, such as disputes about termination of contracts signed by a door-to-door salesperson could be avoided if community members had knowledge of their rights to begin with.

⁸ Footscray Community Legal Centre, (2011)

Section 9: Using informal mechanisms to best effect

Alternative dispute resolution

SMLS strongly supports the use of Alternative Dispute Resolution (ADR) as it is cost and time effective and is accessible to a wide reach of people. Our clients are generally satisfied with the ADR process and have a positive view of it. The low cost of the ADR jurisdictions means that clients of CLCs can have their matters heard in a fair and timely manner and not be burdened with the risk of being exposed to an excessive cost order.

However, the ADR process can still be very confronting for self-represented parties, particularly where one party can exert considerably more power than the other. This often occurs in employment matters or disputes with local government. The process can be particularly daunting for people who do not speak or understand English and are reluctant to ask for clarification, which can result in a settlement in which the implications are not fully understood by the client.

Evidence can be found in the percentage of matters that settle through ADR, which affirms the effectiveness of the ADR process. As fees in ADR jurisdictions are evidently lower than that of the courts, and as the length of the hearings are significantly quicker, the process is one that is generally both fair and equitable and more accessible to disadvantaged clients. SMLS would encourage the use of ADR across all civil jurisdictions as it is significantly more cost effective and accessible to clients that are disadvantaged within the legal system. ADR makes for a more level playing field particularly for clients that are opposed to parties that have more funds and resources at their disposal. We feel that mandatory ADR is a useful settlement mechanism and would encourage greater use of it as it is more accessible to clients that would not be able to fund litigation using traditional means.

For example, in order to maintain equity, greater discretion should be shown to an employee (in an employee/employer dispute at the Fair Work Commission) when a lawyer seeks leave to appear on behalf of an employee in a conciliation, particularly in scenarios where an employee would be significantly disadvantaged in not having legal assistance available to them. SMLS suggests a clinical duty service similar to those run in other practice areas could address this need. This would allow self-represented litigants to access a supervised student duty service for preparation in a conciliation. This would provide a mechanism for more informed participants that would foster efficient and effective outcomes for all.

Ombudsman Role

SMLS feels that the Ombudsman role is effective and generally efficient in the services they provide. In particular, SMLS has had positive outcomes and experiences through matters handled by the Telecommunications Ombudsman.

Any service that is an alternative to costly and prolonged litigation is looked upon favourably by SMLS. The Ombudsman role provides access to a dispute resolution process that is affordable and relatively effective. Whilst the decisions are not always final in the sense that they somewhat lack teeth, often a fair outcome is reached between the parties and the requirement for further costly litigation is prevented.

SMLS finds that Ombudsman services are particularly useful in disputes between industry and consumer and has had positive experiences with them from that perspective.

Ombudsman services could be improved by giving more weight to their findings thereby reducing the amount of matters that are pursued beyond the Ombudsman's decision.

Section 10: Improving accessibility of tribunals

Tribunals are promoted as a user friendly, cost and time effective option in the dispute resolution process. SMLS believes that whilst this was the initial intention of the tribunal jurisdiction there has been a drift away from this ethos. The recent increase in fees at VCAT for example has seen many disenchanted clients effectively shut out from accessing the services of the tribunal because it is unaffordable.

Appeals processes should also be compared Australia wide; in Victoria an appeal of a VCAT decision goes directly to the Supreme Court which is financially out of reach for most people. This leaves a gap for those that are on the end of an adverse tribunal decision but don't have the means to test that decision in a court of law. Whilst SMLS still believes that the VCAT and other tribunals are efficient services, it is the access to those services that is becoming more out of reach for many people.

SMLS believes that where appropriate the scope for legal representation should be less limited. In many instances clients have little or no understanding of legal procedure even at tribunal level. With the rules of evidence being inapplicable in most tribunal jurisdictions, the process often becomes more confusing. This confusion is compounded when you have disadvantaged parties that have genuine claims but cannot articulate them sufficiently. The increasing procedural complexity of VCAT means it is becoming more important than ever for a client to be adequately represented in a proceeding.

It is vital that these clients get access to some form of legal guidance, no matter how small the claim or what list or jurisdiction it is being brought under. The discretion of the tribunal member is an important mechanism in ensuring that a hearing that involves legal representatives is fair and the running of a matter is confided to the informal obligations of the tribunal process. Determining principles should revolve around the complexity of a matter, the remedy being sought, the type of matter before the tribunal, the implications of the findings and if legislation is involved the complexity and level of understanding a tribunal member would have of that legislation. SMLS is of the belief that there is a general lack of specialised members and is in favour of increasing the number of specialised members across all tribunal jurisdictions.

Section 12: Effective and responsive legal services

Non-lawyers performing legal work

Currently at SMLS the volume of work initially undertaken and that does not fall within a specialty service, is administered by students who are supervised by legal practitioners. Obstacles are faced when bodies such as insurers or tribunals do not recognise that the student is 'representative' of the legal service and can correspond accordingly. Whilst this issue is remedied relatively easily it mostly reflects a reluctance to accept non-lawyers undertaking legal work.

Another arm of our program is student appearances. Over the years we have established a relationship with the Dandenong Magistrate's Court whereby students may appear for pleas of guilty and adjournments in relatively 'minor' matters for clients with little or no criminal record. This program has filtered out to other Magistrates Court, however the reception has not always been positive. Whilst we provide case law in which the student may seek leave to appear (with the supervision of Counsel in the courtroom) the decision is ultimately at the discretion of the Magistrate.

As previously mentioned, our clients are predominantly from CALD backgrounds with other compounding factors that increase their vulnerability, including economic status, housing and employment. The service a student provides in articulating the issues and the mitigating factors on behalf of the clients are invaluable to outcomes as well as the process. It would be a significant benefit if this was a service that we could guarantee the client rather than rely on the acceptance or lack thereof by the bench on the day.

Legal Education and skills

SMLS has been involved in the education of law students at Monash University for nearly 40 years. We run three clinical periods each year with 40 students enrolled each clinical period. The students run the intake sessions, run cases and have court appearances all under the supervision of qualified practitioners, for 17 weeks. We believe students gain very important skills for practice but do so in an environment where their views and values on access to justice are challenged on a daily basis. At the end of the unit students have not only acquired valuable skills that can be transferred to practice immediately, but also gain an understanding on the impact of the law and legal systems on marginalized groups within the community.

We would recommend that all law students have access to a practical skills unit that is based within a social justice framework, although we acknowledge the cost implications given the numbers of students in each enrolment, the costs of a clinical program and the financial situation of many universities. Undertaking the *Professional Practice* Unit at Monash University has given many current members of the legal fraternity a solid grounding.

Legal Assistance Services

SMLS considers that the legal assistance service providers are complimentary to each other and quite distinct in the services that they provide. The work of CLCs is informed by the community's legal needs and particularised for that community. In contrast, Legal Aid commissions are more general than responsive to the specific community. The Aboriginal and Torres Strait Islander Legal services are limited to specific client groups.

Eligibility

There has, and always will be, resource issues relating to legal assistance programs. SMLS highlights the growing number of individuals on medium incomes who do not meet the eligibility criteria of either the Commissions or CLCs, but who nevertheless do not have the capacity to pay for legal assistance. Whilst these guidelines are necessary to manage the burden on service providers the impact on people who in 'real' terms cannot afford legal assistance through alternative means can be devastating. An example of this is the need to sell the family home to recognise debts owned to debt collectors, or due to the self-managed family law applications without adequate access to legal assistance.

At SMLS we recently reviewed the information provided on the Fairwork Commission's website for people considering unfair dismissal or general protections applications. The simplicity of the information is a necessity to the lay person however there are intricacies of running these applications that impact significantly on the bargaining power of a party. The necessary knowledge or expertise cannot be conveyed through the website. In our opinion there is necessary legal advice/information for people considering their employment issues that should be accessible through legal assisted programs.

With respect to CLCs, there is always an ongoing tension between the value of 'information only', 'advice only' or 'ongoing casework'. The old adage 'bang for buck' applies.

Questions are raised about individuals who have ongoing access to services to the detriment of others due to either conflict of interest or lack of resources. Is it possible to place a cap on an individual's access to legal assisted services?

Assisting with Complex matters

In addition, CLCs consider merit and complexity. There is no simple solution to the effective and efficient use of funding however these are reasonable measures to manage limited assistance available. For a CLC like SMLS to be involved in a complex matter it needs to relate to the demographic of our clients together with an issue that has arisen within a practice area. It is important that a CLC is involved in these more complex matters from time to time, as CLCs have grassroots understanding that the issue always affects more than one individual and a positive outcome can have far reaching consequences.

Legal assistance services cannot satisfy all need, nor can private practice be expected to be responsible for the shortfall. However, there needs to be a recognition that programs that offer legal assistance are more valuable now than ever due to the increasing number of people who experience financial limitations due to an increase in living costs, despite their middle income.

Staffing of legal assistance services

Attracting and retaining qualified and competent staff is an issue for CLCs. SMLS believes that this is a central consideration and that staff should be supported in contributing to a powerful and efficient service. CLCs have forever competed against the pay scales and conditions of Commissions despite providing comparable services.

Legal assistance service funding

SMLS is a relatively large CLC receiving funding from Commonwealth and State governments as well as Monash University. Specialist program funding has expanded SMLS' funding base over the years as it has become available. For instance SMLS receives funding to offer duty lawyer services to victims of family violence both in the Magistrate's court and Children's court.

Legal needs in this region are analysed regularly by SMLS to ensure services are available to meet the most pressing needs at any given time. A CLCs close connection to the community means we can be responsive in a relatively short space of time. Our assistance to people with mental illness who are involuntary patients in a psychiatric unit is an example of this type of responsiveness. SMLS's community development work enabled the service to identify a previously unmet legal need, which was then addressed through the provision of advice and casework. This integrated model is particular to a CLC and ensures that emerging needs are met in a timely manner.

At the same time, the level of accountability for the funds received can be overwhelming. Our community development experience confirms that projects may take many years to see desired outcomes. Short term funding (even for one or two years) often means programs do not get the opportunity to explore and be responsive to the feedback of participants to develop in ways that bring about lasting change. Longer term funding arrangements and greater flexibility to use funds that meet local needs is vital to retaining that connection and responsiveness to community need. Another example has been the change to VLA guidelines in recent times and the impact that has had on service needs.

Pro Bono

SMLS believes that pro bono representation is a paramount element in facilitating access to justice. With the number of self-represented litigants at unprecedented levels and the high levels of demand for access to both CLC representation and legal aid applications, pro bono work is vital in not only providing adequate advice and assistance to those that cannot afford private representation, but in assisting in the adherence to court processes and procedure.

Whilst self-representation is an alternative to pro bono it is not feasible for many people. Pro bono work undertaken by private solicitors and barristers is provided to parties at a steady rate but at a rate that does not meet an overwhelming need. Most medium and top tier firms have a pro bono department overseen by a partner that chooses to provide pro bono assistance on a basis that meets their set criteria. Generally matters that are of legal or public significance is preferable to “run of the mill” matters, which SMLS believes are equally important.

Barristers that provide pro bono assistance are generally those that have recently joined the bar or again are seeking a matter that is of legal or public significance. Pro bono access is vital in almost every area of law. In particular these include criminal, family and civil law. The National Pro Bon Resource Centre report of 2013, ‘Pro Bon legal services in family law and family violence’, indicated that unlike their top tier firm colleagues, mid tier and smaller firms did not generally assist in family law matters due to budgetary constraints. Pro bono is of utmost importance to vulnerable clients particularly clients who are from low socio economic backgrounds, lack literacy and numeracy skills, are not proficient in English, suffer from a mental or physical disability, are affected by drug addiction or domestic violence.

SMLS sees a range of clients from one or more of these demographics. Mostly with the capacity to provide assistance but sometimes with the need for more specialised pro bono advice. Many of these matters could be dealt with solely by CLCs but the demand is generally too great and resources are seriously stretched.

SMLS is not in a position to comment on the costs that accrue to legal service providers who offer pro bono services. However, in relation to the benefits accrued from providing pro bono services, assisting a client in justly dealing with a legal issue is rewarding in itself. This kind of assistance also has a “knock on” effect within the court system in that it prevents unnecessary delay and time wastage, it greatly assists the judiciary, it saves tax payer money, it assists in the negotiation of fair settlements and so on. Whilst these implications do not necessarily have a direct effect on the pro bono providers the overall legal sector is greatly assisted by the provision of these services.

Pro bono work when undertaken by junior solicitors provides an excellent opportunity to experience the running of a file and in some instances appearance experience which is beneficial in the development of young lawyers.

SMLS believes that providing more funding to community legal centres would allow them to brief counsel on a more regular basis (for specialist matters) which would have a ripple effect on the provision of pro bono appearances by counsel. By briefing counsel, where appropriate, on a more frequent basis there would be an incentive for those briefed to occasionally provide pro bono assistance.

We engage in partnerships with large firms, as do many of our CLCs colleagues. These partnerships often work in tandem on a range of pro bono matters particularly in instances where specialised advice or representation is required. In working with CLCs, firms that have pro bono programs could more effectively identify clients that would most benefit from their assistance. For disadvantaged members of the community often pro bono services are inaccessible due to a lack of awareness of its

availability and provision through law firms. CLCs can assist in increasing this awareness, particularly if a sustainable partnership is formed.

One barrier many pro bono providers face is the rising costs of disbursements. Whilst some providers cover the costs of disbursements on behalf of the client, often the provider can only represent a client on the proviso that the client cover their own disbursement costs, including the use of interpreters for CALD clients which can be costly but vital. With stricter fee waiver requirements this often means that despite the client having access to pro bono representation it cannot be used beyond a certain point as the client simply cannot afford the disbursement costs. A solution to this issue would be to make fee waiver approvals throughout the various jurisdictions more accessible. A further barrier is the costs of appeals. Often pro bono providers cannot offer their services beyond the initial hearing because the cost of running an appeal and the exposure to a costs order should the appeal fail makes the process too risky. Often this means that disadvantaged clients have no opportunity to appeal an adverse finding.

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