



Access to Justice Arrangements  
Productivity Commission  
PO Box 14278  
Canberra City ACT 2601

12 November 2013

Please find attached our policy submission: **Access to Justice Arrangements** in response to the Productivity Commission's inquiry into Australia's system of civil dispute resolution.

We would welcome the opportunity to further discuss our submission.

Yours faithfully,

Redfern Legal Centre

Joanna Shulman  
Chief Executive Officer

*SUBMISSION:*

*ACCESS TO JUSTICE ARRANGEMENTS*

*SUBMISSION COMPILED BY  
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*DATE:  
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## **1. Introduction: Redfern Legal Centre**

Redfern Legal Centre (RLC) is an independent, non-profit, community-based legal organisation with a prominent profile in the Redfern area.

RLC has a particular focus on human rights and social justice. RLC provides generalist and specialised legal advice, service and education. RLC serves the community with specialist skills in domestic violence, credit, debt and consumer complaints, tenancy and housing, police and government accountability, employment, discrimination and human rights and runs specialist advice services for international students and Indigenous clients.

By working collaboratively with key partners, RLC specialist lawyers and advocates provide free advice and conduct case work. RLC works for the benefit of the community, as well as the individual. RLC delivers Community Legal Education projects to assist people identify their legal issues and points of redress. RLC also works towards reforming our legal system for the benefit of the community by writing publications and submissions addressing systemic issues.

Community Legal Centres are uniquely positioned to attract volunteers who are passionate about ensuring the community's disadvantaged and vulnerable have access to justice. RLC is able to deliver our voluminous and high quality legal services with such limited resources due to our use of dedicated volunteers. In 2012-2013 RLC benefitted from the support of 150 solicitor and law student volunteers, contributing 23,550 hours of work valued at \$2,677,000. Additionally, RLC is able to attract the partnership of pro bono law firms to support each of our key areas.

## **2. Redfern Legal Centre's View in Summary**

RLC welcomes this Productivity Commission inquiry into Access to Justice Arrangements.

Since 1977, as the first Community Legal Centre (CLC) in NSW, RLC has been assisting people to access justice and the legal system, as well as educating people of their legal rights.

Access to the civil dispute resolution system without access to legal advice and information is not access to justice.

CLCs, such as RLC, provide an enormous benefit of legal information, advice and if necessary, representation, to people who would not otherwise be able to afford it.

This submission is divided into six parts.

- Part 1: Avenues for Dispute Resolution and the Importance of Access to Justice
- Part 2: Is Unmet Need Concentrated Among Particular Groups?
- Part 3: Preventing Issues From Evolving Into Bigger Problems
- Part 4: Using Informal Mechanisms to Best Effect
- Part 5: Improving the Accessibility of Tribunals
- Part 6: Effective and Responsive Legal Services.

### 3. Responses to Specific Issues

#### I AVENUES FOR DISPUTE RESOLUTION AND THE IMPORTANCE OF ACCESS TO JUSTICE

There are numerous benefits to individuals and the community of an accessible civil dispute resolution system. However, simply providing access to courts and tribunals is not enough; access to justice is incomplete unless people also have access to lawyers, legal information and advice.

##### *A Failure to Receive Access to Justice*

Failure to provide adequate access to justice can have serious consequences. For victims of domestic violence, a lack of access to assistance to obtain an Apprehended Domestic Violence Order (ADVO) can lead to life threatening circumstances. The following case study reveals just how serious a failure to provide access to justice can become, and demonstrates that early intervention could have prevented 30 years of trauma.

##### Case Study: Catherine

The Sydney Women's Domestic Violence Court Advocacy Service (SWDVCAS) at RLC has been working with Catherine Smith, a victim of horrendous domestic violence perpetrated over a period of 30 years by her husband, Kevin Smith. Catherine reported the violence to Central Western NSW police on at least 18 occasions, with little or no action ever being taken.

When Catherine's six children had all left home or were at boarding school, she escaped the family farm for the last time, but her husband continued to stalk her.

In 2002, he kidnapped her son and his partner at gunpoint and forced them to reveal where Catherine was living. Smith was arrested when he was on his way to find Catherine with a gun, an electric cattle prod, gaffer tape, handcuffs and his handwritten Will in the boot of his car.

He was sent to Goulburn jail and on one occasion escaped for several days. When Smith was released from jail, in the belief that no one could or would protect her children and herself, Catherine bought a gun and went to the boarding house where he was living in

an attempt to shoot him.

Catherine was arrested and charged with attempted murder, but at her trial it took the jury only 25 minutes to find her not guilty. The trial judge ordered that police investigate charges against Smith for the years of abuse. These charges went to court in July and Kevin Smith was found guilty of 17 of the 20 charges, including three counts of attempted murder and charges of sexual assault.

As a result of early inaction and what the police have recognised as a failure to protect,<sup>1</sup> Catherine, her children and their partners have endured decades of abuse.

Failure to access legal advice can lead to financial hardship for people. Had our client received legal advice at the beginning of his problem, Housing NSW's error could have been identified, and our client would not have been paying off a debt he did not owe for nine years.

#### Case Study: Michael

Michael (not his real name) lived in a Housing NSW property in Waterloo. About nine years ago he was charged \$7,500 for repairs to his property. Michael didn't think he was responsible for the charges, but he arranged a payment plan that was manageable for him at \$10 per fortnight on top of his usual rent.

Around Christmas last year, Michael received a letter from Housing NSW that read 'FINAL WARNING' and stated that he owed \$1,100 for repairs. The letter contained no information about why the amount was due and Michael couldn't work out whether it was for the same debt he was already paying off.

Michael then received another letter from Housing NSW saying that the 'FINAL WARNING' letter was sent in error. He then received four more letters over a three-month period seeking payment of the debt and threatening termination. Michael was unable to get any information from Housing NSW about what the debt was for.

When Michael finally received details about the alleged debt it was revealed that Housing NSW had no evidence of his liability to pay the outstanding amount. In fact, substantial charges for repairs had been mistakenly added to his original debt from nine years ago.

Michael was refunded a significant portion of the installments he had been making for

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<sup>1</sup> Paul Carey, Commander of the New South Wales Police Professional Standards Command in 'Abused woman's long journey for justice' *ABC news Australian Story* (19 September 2011).

nine years. Despite tight financial circumstances, Michael had insisted on paying the installments because he was concerned his tenancy would be at risk otherwise.

RLC saw a client after she had attempted to access the civil dispute resolution system without obtaining legal advice first. Once again, this case provides evidence of the necessity of access to legal advice in order to effectively access the civil dispute resolution system.

#### Case Study: Sally

A recent SWDVCAS case highlights the importance of well-written statements to provide the requisite evidence for an interim or final ADVO to be granted.

Police had been called to Sally's (not her real name) house after a domestic violence incident and a Provisional Order was applied for and granted. Sally then went to the police station and provided a statement about the incident.

At the first mention of the ADVO the Magistrate did not believe that there was sufficient evidence to grant an interim ADVO, and Sally was then without an ADVO to protect her.

The SWDVCAS worker spoke to Sally and heard that there had been a long history of domestic violence by the defendant against her. The worker and Sally discussed the original statement she had given to police, which did not adequately convey the history of violence and the defendant's escalating behaviour. The worker gave Sally information about the importance of reporting the history of violence to police, not just the event that gave rise to the police being called.

Sally returned home and another incident occurred and police were called. This time, when Sally gave her statement to police she told them about all of the events that had occurred during her relationship. She detailed the long history of abuse against her and detailed how the escalating violent behaviour now meant she had fears for her safety. The matter came before the court again and an interim ADVO was granted based on her more comprehensive statement.

These three case studies provide examples of people with legal needs. They all had claims that the civil dispute resolution could assist them with. In the first instance, our client would have benefitted from legal advice to support the problems she recognised but the police failed to deal with. In the second instance, our client needed legal information to know what his rights and obligations were. In the third, our client needed assistance in making sufficiently detailed statements to the police. Having access to a

civil dispute system without access to legal advice is an insufficient level of access to justice. Accessibility requires available and affordable legal advice.<sup>2</sup>

### *B Benefits to the Individual*

With access to the justice system people are able to settle their legal disputes, in a fair, effective and timely matter. With legal advice, individuals need access to a civil dispute resolution system to enforce their rights.

An employee who has been unfairly dismissed can get their job back, a person who has been discriminated against can be afforded the dignity of an apology or a company policy change to ensure it does not happen to another person. A tenant who has had their bond held unlawfully can seek legal help to get it reimbursed.

The civil dispute resolution system is too complicated for people to navigate alone and legal representation too expensive for the majority. Legal advice and representation must be as readily accessible as the system itself or for too many people access to justice will remain beyond the scope of reality, as people without advice may not 'know, find or express their rights'.<sup>3</sup>

### *C Benefits to the Community*

Ensuring all people have access to the law, whether through legal aid, community legal centres, private lawyers or otherwise, is a safeguard that contributes to the administration of justice, and is founded on the rule of law.<sup>4</sup> It is essential to the rule of law that there is access to justice.<sup>5</sup>

The community benefits from an ability to hold people to account. Access to the justice system provides stability, protecting and advancing people's relationships with others, and with the state.<sup>6</sup> Society cannot only have a vast network of rules to maintain harmony, it must also be afforded with the mechanisms required to effectively enforce them.<sup>7</sup>

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<sup>2</sup> Juan C Botero and Alejandro Ponce, 'Measuring the Rule of Law' (Working Paper Series No 001, The World Justice Project, November 2010) 14.

<sup>3</sup> The Hon Michael Kirby AC CMG, 'The Rule of Law Beyond the Law of Rules' (2010) 33 *Australian Bar Review* 195, 207.

<sup>4</sup> Gabriela Knaul, *Report of the Special Rapporteur on the Independence of Judges and Lawyers* UN Doc A/HRC/23/43 (15 March 2013).

<sup>5</sup> Hazel Genn, 'What is Civil Justice For? Reform, ADR and Access to Justice' (2013) 24 *Yale Journal of Law and the Humanities* 397, 411.

<sup>6</sup> The Hon J J Spigelman AC, 'Access to Justice and Access to Lawyers' (2007) 29 *Australian Bar Review* 136, 5.

<sup>7</sup> *Ibid* 2.



## II IS UNMET NEED CONCENTRATED AMONG PARTICULAR GROUPS?

### *A Introduction*

Legal assistance is outside the price range of many people who need it. Within this group of people who are financially disadvantaged within the legal system, there are particularly vulnerable groups of people who are further disadvantaged in accessing justice by reason of a particular attribute. RLC prioritises this sub-category of clients in our service delivery: Aboriginal and Torres Strait Islander (ATSI) clients, people from culturally and linguistically diverse (CALD) backgrounds, people living with a disability, international students, victims of domestic violence, and homeless persons. RLC's most disadvantaged clients often fall in more than one of these categories, and often experience significant and multiple legal issues.

People who are disadvantaged face significant barriers in accessing justice. Although they are most likely to experience legal need, they are less likely to access justice to resolve their issues.<sup>8</sup> Additionally, they are less able to access justice without legal advice whilst remaining more likely to become further disadvantaged as a result of the consequences of failing to be able to access justice.<sup>9</sup>

RLC has a strong focus on assisting vulnerable clients and removing barriers that clients may have in accessing legal advice, advocacy and representation. Front desk staff have been trained to understand the factors that may indicate vulnerability, which include disability, ATSI, CALD and international students, people on low incomes, young people under 21 years old and the elderly. In addition, they are trained to consider vulnerability in a more holistic way and emphasis is placed on 'gut feeling' as a mechanism to try and reduce the number of vulnerable clients that may slip through the cracks of standard definitions of a vulnerable person.

RLC is embedded in the community we serve. Our specialist practice areas, law reform work and Community Legal Education programs are developed in response to the particular needs of the vulnerable members of our community. RLC's extensive work with vulnerable clients has resulted in our high levels of expertise in dealing with the complex legal and non-legal needs of the vulnerable clients in our community. The following groups have been identified by RLC as vulnerable clients in our service area.

### *B Aboriginal and Torres Strait Islanders*

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<sup>8</sup> Christine Coumarelos et al, 'Legal Australia-Wide Survey: Legal Need in Australia' (Law and Justice Foundation of NSW, Vol 7, August 2012) 45.

<sup>9</sup> *Ibid.*

The legal needs of ATSI individuals residing in NSW have been discussed in the report 'The Family and Civil Law Needs of Aboriginal People in New South Wales' (2008).<sup>10</sup> In this report, the percentage of group participants seeking legal advice for disputes across all areas of law highlighted the need for better access and promotion of legal services available for Aboriginal people. ATSI people have more complex needs than other clients, exacerbated by lower literacy skills, increased levels of disability, psychological distress and drug and alcohol issues.<sup>11</sup>

ATSI people apply for civil aid and minor assistance at more than double the rate of non-ATSI people.<sup>12</sup> They are typically requesting assistance for disputes arising in relation to mental health (19.5%), injury and accidents (16.6%) and credit and debt matters (10.7%).<sup>13</sup> Increasingly ATSI women are accessing legal aid for civil justice at a higher rate than ATSI men (57% to 43%)<sup>14</sup> across a broader range of legal issues.<sup>15</sup>

While ATSI people are seeking assistance at a higher rate than others, they are still only accessing legal advice in a minority of instances where they need it. Accessing legal advice remains low whilst experiencing legal need remains high. Focus groups with ATSI people revealed that tenancy issues were identified by 41.2% of all participants, yet 70% did not seek legal advice in relation to their issues.<sup>16</sup> 20.9% identified employment issues, including bullying and harassment, but 71% did not seek legal advice.<sup>17</sup> 28.1% of respondents identified discrimination problems, but 82.9% did not seek legal advice.<sup>18</sup>

Victim's compensation, stolen wages and wills remain legal areas among ATSI people where there is a substantial unrecognised need.<sup>19</sup> This suggests a need for outreach and face-to-face legal advice services to assist ATSI clients in identifying their legal needs.

Lack of legal need awareness is particularly relevant to ATSI clients, who have historically been positioned as 'second class citizens without equal civil and political rights.'<sup>20</sup> Inaccessibility of legal services prevents ATSI people from realising equality.<sup>21</sup>

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<sup>10</sup> Chris Cunneen & Melanie Schwartz 'The Family and Civil Law Needs of Aboriginal People in NSW' (University of NSW, 2008)

<[http://www.jcu.edu.au/ilnp/public/groups/everyone/documents/technical\\_report/jcu\\_083446.pdf](http://www.jcu.edu.au/ilnp/public/groups/everyone/documents/technical_report/jcu_083446.pdf)>.

<sup>11</sup> Ibid 15.

<sup>12</sup> Ibid 10.

<sup>13</sup> Ibid 10.

<sup>14</sup> Ibid 44.

<sup>15</sup> Ibid 10.

<sup>16</sup> Ibid 12.

<sup>17</sup> Ibid 12.

<sup>18</sup> Ibid 13.

<sup>19</sup> Ibid 15.

<sup>20</sup> Ibid 39.

Failure to access legal justice for civil disputes has the potential for these matters to escalate into criminal issues further perpetuating ATSI over-representation in Australia's criminal justice sector.<sup>22</sup>

RLC has a priority service access policy for ATSI clients. The policy recognises the historic issues for the ATSI communities in accessing justice and that where possible, additional services should be provided to this client group. It is Centre policy that ATSI clients are seen at the time they drop in. If the client needs an evening appointment or is seeking advice for a number of legal matters, RLC reserves a 6pm appointment each day from Monday to Thursday specifically for Aboriginal clients. RLC also currently has two Indigenous employees on staff. In this way RLC is able to offer a holistic approach to Aboriginal clients

RLC has good relationships with many local Aboriginal organisations, such as Mudgin-gal (a local community support organisation), and we have spent a great deal of time working with and supporting such organisations.

6.1% of clients RLC assisted in 2012 identified as ATSI.<sup>23</sup> RLC feels that its service provision could be strengthened in relation to this client group, particularly through providing additional outreach services to Indigenous organisations. RLC is currently examining options in relation to this.

#### *C Culturally and Linguistically Diverse Backgrounds*

People from CALD backgrounds face particular disadvantage when accessing civil justice. Research shows that women from CALD backgrounds do not know their legal rights and do not know how to access information that can assist them.<sup>24</sup> People from CALD backgrounds can be disadvantaged in accessing civil justice in that they may not be aware of how the civil justice system can assist them. People with languages other than English have a significantly lower likelihood of seeing advice than others.<sup>25</sup> CALD clients represent a large proportion of people seeking advice from RLC, comprising 30.6% of our clients in 2012.<sup>26</sup>

After finding that ABS data showed a high Russian population within RLC's tenancy catchment area, yet noting that few Russians were accessing that services, RLC's tenancy division recently held a series of informal drop in session for Russian speakers living in the area where they could speak to someone in their language. It became

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<sup>21</sup> Ibid 31.

<sup>22</sup> Ibid 31.

<sup>23</sup> Redfern Legal Centre, Annual Report 2011-2012 (2012) 24.

<sup>24</sup> Women's Legal Services NSW 'A Long Way to Equal' (July 2007) 19, 20.

<sup>25</sup> Christine Coumarelos et al, above n 8, 103.

<sup>26</sup> Redfern Legal Centre, above n 23, 24.

apparent that elderly Russians were hesitant to make complaints to 'tribunals' as the word carried Stalinist connotations for them. Without RLC service, it is clear that these people would never have approached the civil dispute resolution system, with access to justice remaining beyond the sphere of a reality.

The high levels of community trust that CLCs have been able to develop and maintain place CLCs at the forefront of providing access to the civil justice system to CALD people.

Between August 2009 and June 2010, RLC undertook a community legal education project targeting CALD communities in the area. The project addressed credit and debt issues, building relationships with the community to provide pathways for CALD people to get legal information and advice on their issues. RLC's experience illustrates that many people from CALD backgrounds were aware that they had financial and money issues, but were not aware that these were also legal issues. Members of the CALD community often categorised their money issues as family or community issues.

#### Case Study: Asad

Asad (not his real name) is employed and considers that he has done well since his arrival in Australia. His English skills are considerably better than those of his extended family and a lot of the newer arrivals in his community. He has been assisting various members of his extended family and others within the community by helping them with letters and by advancing them money when they are in need. Seven months ago his cousin approached him about a loan for his son to buy a car. The immediate family was not able to borrow the necessary funds. Asad agreed to pay for the car and the son was to pay him back \$50 a week from his wages. They all went to visit car dealers and the boy purchased a car that cost \$4,200.

The boy has been making some payments but he has not been paying the amount back at the agreed rate and Asad has now had to use his credit card to cover his other debts thereby incurring further debt through interest charges. He wanted to know where he stood, but advised that he would not take action as it was not a legal problem but a family issue.

Multiple people came forward with similar issues, with members of the CALD community demonstrating a desire to know their rights and then decide whether or not they wanted to act on it. The project created a much greater awareness of the legal nature of credit and debt issues among people in CALD communities, where previously there was only limited awareness.

## *D Persons with Disabilities*

RLC has identified people with disabilities a group of individuals with unmet legal need. Disability is a consistent indicator of increased vulnerability to multiple legal problems.<sup>27</sup>

The Shadow Report to the United Nations Committee on the Rights of People with Disabilities, written by RLC in partnership with disability organisations, indicates that people with disability are overrepresented in the justice system,<sup>28</sup> and face a diverse range of legal problems.<sup>29</sup> Similar to RLC's experience with people from a CALD background, people with disabilities also lack awareness that a problem they are experiencing is a legal issue.<sup>30</sup> Individual barriers for persons with cognitive impairments in accessing legal assistance have been identified as including; being disorganised or overwhelmed, a mistrust of legal service providers, difficult behaviour and communication problems.<sup>31</sup>

People with disability face specific barriers to accessing civil justice including poorly resourced specialist services, a reliance on others to access legal assistance, a lack of access to AUSLAN interpreters and an inability to navigate or access information on websites.<sup>32</sup> For others access to justice is simply too difficult, hostile or ineffectual.<sup>33</sup>

People with disabilities are often unable to access justice, including police, courts and lawyers, in a way that accommodates their disability.<sup>34</sup>

### **Case Study: Helen<sup>35</sup>**

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<sup>27</sup> Christine Coumarelos et al, above n 8, 18.

<sup>28</sup> Compiled by Disability Representative, Advocacy, Legal and Human Rights Organisations, 'Disability Rights Now: Civil Society Report on List of Issues of Australia' (Aug 2012)  
<[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=883&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=883&Lang=en)> 74.

<sup>29</sup> Christine Coumarelos et al, above n 8, v.

<sup>30</sup> Maria Karras 'On the Edge of Justice: The Legal Needs of People with a Mental Illness in NSW' (Law and Justice Foundation of NSW, Vol 4, May 2006) 95.

<sup>31</sup> Ibid 94.

<sup>32</sup> Louis Schetzer & Judith Henderson, 'Public Consultations: A Project to Identify Legal Needs, Pathways and Barriers for Disadvantaged People in NSW' (Law and Justice Foundation of NSW, Vol 1, 2003) xvi

<sup>33</sup> Compiled by Disability Representative, Advocacy, Legal and Human Rights Organisations, above n 28, 74.

<sup>34</sup> Ibid 78.

<sup>35</sup> Ibid 79.

Helen (not her real name) has multiple chemical sensitivity and was retired from her job. During a worker's compensation hearing, the judge said that Helen would be held in contempt if she did not attend court. Unable to obtain information about pesticides used on the premises, Helen became sick upon entering the foyer.

As with the other identified groups of people with unmet legal need, a lack of awareness as to their rights creates a barrier to accessing justice.<sup>36</sup> RLC specifically addresses some of the legal needs of people with disability in our work in discrimination law, employment law and tenancy. People with disability are particularly vulnerable to credit and debt issues.<sup>37</sup>

The following case study relates to a client with a disability who was charged 240% interest by a pawnbroker to address his financial needs.

#### Case Study: Paul

RLC's client, Paul (not his real name), is a man with a chronic mental illness. Although when he was younger Paul was employed full time and got a home loan, he has been on the disability pension for the last 10 years, supplemented with some casual work. Apart from his mortgaged flat, Paul's only asset was a new car purchased for him by his mother after the death of his father.

Recently Paul has had numerous health problems and hospital admissions, stopping him from doing casual work and giving him additional expenses. Paul got into arrears with his home loan payments, and also with strata levies and utility bills. He could no longer get financial help from his mother as she developed dementia.

In 2009 and 2010, Paul got a series of small loans to try and deal with his various debts but it got to the stage where the finance company would not lend any more. Paul could not afford to register his car, and his telephone was disconnected. Paul then contacted a pawnbroker and pawned his one-year-old car, purchased by his mother for \$15,000, for a loan of \$5000.

The terms of the pawn broking agreement were that the car had to be redeemed within three months, and the interest rate was 240% per annum or \$1,000 a month.

Paul came to RLC when he was unable to redeem his car at the end of the three-month period. Paul's car was sold by the pawnbroker, and after sale and storage expenses and the interest payments, there was no money returned to Paul from the sale.

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<sup>36</sup> Abigail Gray, Suzie Forrell and Sophie Clarke, Law and Justice Foundation NSW, *Cognitive Impairment, Legal Need and Access to Justice*, Justice Issues Paper 10 (March 2009) 5.

<sup>37</sup> Ibid 3.

RLC acted for Paul in a claim in the Local Court against the pawnbroker under the unjust contract provisions of the National Credit Code.

RLC argued that the pawnbroker failed to make any inquiries about Paul's capacity to repay the loan, and that if reasonable inquiries had been made it would have been clear that Paul had no capacity to repay the loan.

RLC also argued that Paul was not reasonably able to protect his interests because of his mental illness, and that the interest and other charges were excessive in the circumstances. The claim was settled with a payment to Paul from the pawnbroker.

### *E International Students*

RLC identified international students as a highly vulnerable group of individuals who experience multiple and often protracted legal problems after noticing an increase in international students presenting to the Centre with complex and often irretraceable legal issues. The majority of international students are from non-English speaking backgrounds and from countries with very different laws and customs to those in Australia. International students are vulnerable to exploitation by employers and landlords, can experience racist violence and abuse, and are unfamiliar with the Australian legal system - meaning minor issues can quickly become significant legal problems.<sup>38</sup> Fears about their visa status can prevent international students from seeking advice or asserting their rights.

#### Case Study:

An international student came to RLC for support after fleeing a violent domestic relationship. Her husband, the perpetrator of the violence had also sponsored her visa, supported her financially and paid her rent. She had no support network in Australia. RLC was able to assist her in getting an ADVO against her partner, in applying for victim's compensation and in providing her with expert immigration advice. We were also able to refer her to counselling and support services for accommodation and emergency financial support.

For her, the violence she suffered had consequences for her tenancy, her finances, and her immigration situation.

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<sup>38</sup> Jacqui Swinburne, *Innovative new project to provide legal assistance to international students in regional NSW launched*, Media Release (2013)

<<http://www.rlc.org.au/publication/media-release-innovative-new-project-provide-legal-assistance-international-students>>.

The following case study shows that for international students, unfamiliarity with the legal system and lack of support networks can compound already difficult situations. A single event can create a series of legal consequences for our clients that they are then not able to solve on their own.

Case Study:

RLC saw a student from China who moved into on-campus accommodation at his University. The student became friends with one of his roommates, who he relied on for help adjusting to the University and to life in Australia. Eventually, the student and his roommate began to argue, and their arguments escalated to the point where the roommate violently attacked the student with a sword.

The police were called, and as a result the student was evicted from his accommodation, thrown out of University, and left to pay for the costs of his medical treatment.

RLC was able to help him with his multiple problems, writing an application for victim's compensation, assisting him get his rental bond back, and explaining the situation to the University so that he was allowed back on campus.

International students and their families play a significant role in Australia's economy. As Australia's third biggest export sector, International students contributed \$15 billion in income to Australia's economy in 2012.<sup>39</sup> Enabling access to justice and legal advice is essential in ensuring international students have a high-quality experience in Australia, thus attracting further international students to study in Australian institutions.

### III PREVENTING ISSUES FROM EVOLVING INTO BIGGER PROBLEMS

#### *A Introduction*

RLC has implemented a number of strategies to prevent issues from evolving into bigger problems. Access to legal advice at the beginning, and during, a dispute can reduce the likelihood of matters evolving. Ensuring everyone has access to advice can prevent strain on the system in the instances where the advice has been that a matter lacks merit. Advice can direct matters to the appropriate forum for resolution, saving time and allowing for early dispute resolution.

CLCs are at the forefront of delivering effective partnerships and services to improve community access to legal advice and services. Effective models are refined and

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<sup>39</sup> Australian Education International, *Export income to Australia from international education activity 2012*, Research Snapshot 2013, <<https://aei.gov.au/research/research-snapshots/pages/default.aspx>>.



enhanced by CLCs to ensure that there are enhanced levels of access to justice for individuals with complex needs. Partnerships with allied health organisations are supported, including employing a solicitor within Medical services and employing a social worker within a CLC. Referral services within the legal centres may also be of use. Specialist Court lists have been effective in domestic violence matters, as has the Legal Aid Early Intervention Unit in dealing with family matters.

RLC's objectives also include providing legal education to disadvantaged people regarding their rights so they can resolve their problems. Education can reduce legal issues at the outset, preventing contact with the civil dispute resolution system at all.

### *B Early Access to Legal Advice*

Access to legal advice is an important strategy in providing timely resolution to civil disputes.

Whichever avenue people use to settle their dispute, better outcomes will be ensured if people can access legal advice, information and or assistance throughout the process. With legal assistance people can be made aware of the law surrounding their issue, their options (if any) and can be assisted in drafting letters, application forms and representation if necessary to avoid misconceived applications, duplication of work and longer than necessary processes.

The following case study reveals how a client's matter can be unnecessarily drawn out, to the detriment of the civil justice dispute resolution system and the client, when a client does not seek access to legal advice early on.

#### Case Study: Thomas

Thomas (not his real name) migrated to Australia from Chile, and had limited English. Over 12 years ago, he had a credit card with a department store, which he used to pay for items amounting to \$800. Shortly after, his wallet and the credit card were stolen. Thomas reported the theft to the credit card company on the day of the theft. Later, Thomas received a letter saying that he owed \$1,500 on the credit card. When asked for a breakdown of these fees, it was revealed that \$700 of this was for the retrieval of 70 statements at a cost of \$10 each. Thomas was not sure what to do, but agreed to pay the amount claimed in installments. Thomas paid a total of \$1,200 over time.

Thomas lost his job, and was unable to continue with his payments. The credit card company sought and was awarded default judgment in the amount of \$3,700. When Thomas asked the credit card company's lawyers why he owed this much, he was informed that it was due to enforcement costs and interest, which amounted to a much higher amount than the original debt of \$800. The debt was sold to a debt collector, who pursued Thomas for payment.

RLC assisted Thomas to write a complaint to the credit card company and the debt collector to request that the debt be waived.

This request was rejected. RLC assisted Thomas to make a complaint against the debt collector to the Australian Securities and Investment Commission. This was unfortunately rejected, partly due to time limitations.

Making a complaint to the Ombudsman was not an option, given that default judgment had already been obtained. A better outcome may have obtained had Thomas sought help earlier, before judgment had been entered. Taking action early on debt matters is the best way to resolve them.

Ensuring all people have access to legal information and advice can provide a simple response to avoiding civil disputes at all. Instances when the RLC has considered a client's matter and provided legal advice to the effect that they do not have any reasonable prospects of success have provided an early avoidance of a potential dispute. A lack of legal advice presents a barrier to justice.

The following case highlights the benefit of providing legal advice and assistance to people that would otherwise be unable to afford it, not only to them, but also in reducing ongoing costs to courts and tribunals. When people have access to timely and quality advice on the merits of their case they are more likely to accept a reasonable offer of settlement rather than pursue a weak case at a court or tribunal.

#### Case Study: Kim

Kim (not his real name) came to RLC after being sacked from a factory after asking for reimbursement for some medical expenses after a workplace injury. He was concerned about safety practices at the factory and the way he was sacked in which he was humiliated in front of all staff to make an example of him.

Both the employee and the employer gave very different versions of what had happened and both said they had witnesses to the allegations over why he was sacked and the way in which he was sacked.

The employee felt very aggrieved and wanted a court to hear what had happened. While his case had some strengths, we advised that as he had only worked there for just over six months, he would not be awarded much compensation if his matter went to hearing.

With the assistance of a pro bono partner law firm we assisted him in a conciliation at the Fair Work Commission. The parties settled on a payment that was equivalent to

around four weeks wages. This was more than the employer had wanted to settle for and less than our client wanted to settle for. It was due to our advice to our client that he decided to settle the matter and not proceed to a formal hearing.

Legal Aid's Family Law Early Intervention Unit has been effective at achieving early dispute resolutions, saving considerable amounts of court time. RLC refers clients to this service when a client has a family law issue. This particularly arises in the course of our work in Domestic Violence. The Early Intervention Unit is able to provide people with early legal advice – which might happen if they take their matter to court. People are given access to legal advice early in their dispute and are informed as to what the law can and cannot do to assist them. In 2011-2012 this service was able to reach settlement of 79.4% of 2586 family disputes in conferences, saving around 110 hours of court hearing time.<sup>40</sup> RLC applauds this effort and would like to see an increase in the provision of early legal information.

### *C Legal and Non-Legal Services*

#### *1 Lawyers in Medical Centres*

The survey of Legal Need in NSW, carried out by the Law & Justice Foundation (2012),<sup>41</sup> indicates that the majority of legal advice is not sought from lawyers, but rather from other trusted non-legal professionals. In up 53% of cases, legal help was provided in substantial proportions by health or welfare providers.

The United States' 'Medical-Legal Partnership' (MLP) model was researched to consider its application in Australia.<sup>42</sup> The Clayton Utz Foundation funded the research, which made the recommendations that pilot sites should begin to apply an MLP approach in Australia.<sup>43</sup> Responses from over 100 CLCs showed a wide variety of areas of legal practice related to health issues.<sup>44</sup> It was further found that resolving legal issues could have a positive impact on health and wellbeing. Establishing multi-disciplinary practices will enhance services provided to highly vulnerable clients.<sup>45</sup>

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<sup>40</sup> Legal Aid NSW, *Annual Report 2011-2012* (October 2012) 20.

<sup>41</sup> Law & Justice Foundation, 'Legal Australia Wide-Survey: Legal Need in NSW', Access to Justice & Legal Needs, Vol 8, August 2012.

<sup>42</sup> Peter Noble, 'Better Health Through Medical-Legal Partnership' (Advocacy-Health Alliances, August 2012)

<[http://advocacyhealthalliances.files.wordpress.com/2012/08/aha-report\\_general1.pdf](http://advocacyhealthalliances.files.wordpress.com/2012/08/aha-report_general1.pdf)>.

<sup>43</sup> Ibid 25.

<sup>44</sup> Ibid 19.

<sup>45</sup> Ibid 20.

RLC is currently establishing a medical advocacy partnership. By providing a legal advice service within a Medical Service, it is hoped that we will be able to enhance prevention and early intervention of legal problems within the Community.

## *2 Social Workers in Legal Centres*

A social worker employed within a CLC is another way to effectively join up the legal and non-legal needs of a client with complex issues. RLC sees numerous clients seeking legal advice but who also need information to address non-legal issues. Much of the support they require falls outside the scope of training legal practitioners and would be more efficiently and effectively dealt with by a social worker. RLC previously employed a social worker to assist clients with complex needs. However, a lack of funding has meant that this service is no longer provided.

### *D Referral Services*

Referral systems should exist at the first instance where people without access to legal advice have contacted a tribunal or ombudsman. Referrals back to legal advice providers, including CLCs, can give people an opportunity to access legal advice that can help them identify their legal issues and potentially provide early resolution.

### *E Specialist Court Lists*

RLC has had a very positive experience with the provision of specialist court lists dealing with domestic violence. Specialist AVO lists at local courts provide victims with increased access to the justice system along with access to support and advocacy services. Setting aside times where the Court hears only AVO applications allows for specialist services to attend court on those days and to provide services to victims in domestic violence related court proceedings. Domestic Violence Police Liaison Officers (DVLOs), the Sydney Women's Domestic Violence Court Advocacy Service (auspiced by RLC), specialist domestic violence solicitors and domestic violence workers seconded from local agencies all attend Downing Centre, Waverley, Balmain and Newtown Local Courts on AVO list day to provide services to women and children victims of domestic violence. Our statistics show that the integration of domestic violence services and the provision of specialist assistance on AVO list day generally results in the favourable early resolution of matters.

The integrated service delivery in the specialist AVO Courts provides a good model as to the efficiency of a specialist court list.

### *F Community Legal Education*

Community Legal Education (CLE) workshops are a cost effective strategy to provide information to the community about identifying legal issues and how to seek early legal advice and/or access to dispute resolution. Training community workers to identify and

deal more effectively with 'low level' legal issues promotes early intervention and lowers the cost of accessing justice. In late 2012 RLC conducted a series of eight workshops in our program 'Helping the Helpers'. These workshops were directed at community workers and were designed to identify the relevant areas of law that community workers need to be aware of in their work and provide them with relevant and up to date resources to assist them to provide outcomes for their clients.

Each attendee at these workshops completed a feedback form, 90% of attendees said they expected to use resources from the workshop in their work and 89% said that following the workshop they knew where to find legal information and referrals.

Some specific comments from the workshops were:

*'Keep up the great work! Please let me know of all future workshops, really enjoyed this workshop, the networking is great, now I know who to refer my DV victims to and have faith that they will receive the right service.'*

*'The resources are excellent. Gave a good handle on a scary topic for a lot of clients.'*

*'Really engaging and helpful to discuss issues.'*

*'The workshop was very useful. It's good to know how much power consumers actually have.'*

*'Brilliantly run and very informative.'*

*'Very informative.'*

*'Very valuable workshop, thankyou.'*

*'It was presented in a logical order and case studies were very helpful. More would have been even better.'*

Most participants indicated that they would like more training in areas that RLC specialises and a number of organisations have requested training specifically for their organisations.

RLC has recently employed a part-time Community Engagement and Community Legal Education Worker to develop RLC's community engagement program and coordinate CLE, ensuring information provided is accessible for people with disability and to CALD community workers.

#### *G Addressing Systemic Issues*

RLC works to make positive changes in laws and the legal system in each of its specialist areas of law where there are defects that impact disadvantaged people. RLC's work in this area is based on our clients' experience in interacting with the legal system.

In 2011-2012 RLC undertook 70 law reform projects for the benefit of the community. The law reform work completed by CLCs, including RLC, identifies and removes inequalities in the laws, legal system, administrative practices and society as a whole that affect disadvantaged people by working for social and legal change to enhance respect for human rights.

Addressing systemic issues and engaging in law reform work is more effective than providing the same direct legal services our clients on the same issue.<sup>46</sup> The CLC model of delivering legal assistance to disadvantaged and vulnerable people is founded upon community development and collective approaches.<sup>47</sup> Individualised legal assistance fails to address the underlying inequities in a law. It is an expensive process, costing the CLCs and the relevant dispute forum, be it a court, tribunal or ombudsman, time and money settling the same disputes regularly rather than addressing the cause.

Law reform work can reduce the burden on the justice system, making access to justice for others more timely. A strategic approach and law reform work can result in real change and prevent further cases.<sup>48</sup>

#### Law Reform Submission: Boarders and Lodgers

Informed by RLC's long history of assisting clients who fell outside the protection of the *Residential Tenancies Act 2010* (NSW), RLC drafted a law reform submission to enhance the protections of vulnerable clients who resided in boarding houses. We made recommendations on the most common problems we encountered in our tenancy service.

Following a long campaign on lobbying to redress the inefficiency in the laws, the NSW government enacted the *Boarding Houses Act 2012* that recently came into effect.

The new legislation addresses many of the concerns RLC raised and ensures stronger protections for the clients who see who were previously unprotected and unable to access the Consumer, Trader and Tenancy Tribunal.

<sup>46</sup> Nicole Rich, 'Reclaiming Community Legal Centres: Maximising Our Potential So We Can Help Our Clients Realise Theirs' (2009) *Consumer Action Law Centre and Victoria Law Foundation* <<http://consumeraction.org.au/downloads/VLFCLCFellowship07-08reportWebFinal.pdf>> 13.

<sup>47</sup> *Ibid* 11.

<sup>48</sup> Liz Curran, 'Solving Problems – A Strategic Approach' (2013) *Legal Workshop, ANU College of Law* 8.

#### IV USING INFORMAL MECHANISMS TO BEST EFFECT - OMBUDSMAN

RLC welcomes a more efficient and effective Ombudsman service. RLC has identified a number of areas where an Ombudsman is not working to its potential. There could be greater consistency in the roles and available outcomes between industry and government Ombudsmen. The clients we assist at RLC are predominantly low-income earners, or on Centrelink payments, and frequently from Aboriginal/Torres Strait Islander, CALD or non-English speaking backgrounds. In our experience, accurate awareness of the various Ombudsman services amongst our client-base is low. The provision of legal advice throughout a person's interactions with the Ombudsmen can manage their expectations and reduce the burden of misconceived applications to the Ombudsmen.

##### *A Industry Ombudsman*

In our experience the Industry Ombudsmen are generally more effective than other Ombudsman. They can make contractually binding orders, which can be helpful in leading to a result for the client. They are industry funded. The companies about which the complaints are made fund the Ombudsmen and so they have the incentive to ensure their services are effective. For example, at the Financial Ombudsman the further you engage in the dispute process and the longer it takes the more the member must pay – so it becomes more costly for them to delay, thus encouraging early settlement before the matter reaches the final stages of the process.

Of the clients who come to see us for assistance in resolving disputes with their telecommunication provider, the overwhelming majority have attempted to contact their provider to resolve the dispute, but have been unsuccessful and do not know what to do next. It is our clients' experience, the telecommunication providers do not always advise their customers of the existence of the Telecommunication Industry Ombudsman scheme, although this is possibly because many of our clients are unable to even get to the stage where an 'outcome' is reached. They simply give up attempting to contact their provider.

Greater publicity about the Ombudsmen would increase public awareness and use of the schemes. Community Legal Centres need to be better resourced to provide people with legal advice prior, and during, their contact with any Ombudsman. With increased availability of legal advice, people accessing the Ombudsman services can be better informed of their rights, the potential outcomes and the correct places in which to file their complaints.

##### *B Government Ombudsmen*

RLC is concerned that the Government Ombudsmen are not as efficient or as effective as they could be. There is general public misconception as to the role of the Ombudsmen, particularly in relation to their lack of direct investigation and inability to make binding recommendations.

### *1 Investigation*

There is confusion amongst RLC clients as to the scope of the powers of NSW Ombudsman. The general perception among clients RLC sees is that if they make a complaint to an Ombudsman, the Ombudsman will investigate the complaints. From our clients' perspectives, when they bring a complaint to the Ombudsman, they envisage an investigation into their matter. The NSW Ombudsman emphasises its role in government scrutiny, yet their failure to actively investigate matters impacts on their efficiency and effectiveness. RLC has noted this is particularly the case in matters regarding the NSW Police Force.

### *2 Binding Orders*

The NSW Ombudsman has limited powers and cannot issue binding orders. The NSW Ombudsman is able to make recommendations to agencies but this may not always result in a resolution for the party bringing the complaint. The agency is not obliged to follow the Ombudsman's recommendation. A practical solution to this limitation could be to oblige the NSW Ombudsman to publish a list of all matters where a government agency failed to implement one of their recommendations within three months.

### *3 Systemic Issues*

A limitation of the NSW Ombudsman is their failure to address systemic issues. Whilst the NSW Ombudsman has the power to consider systemic issues, they generally do not. The perception of Ombudsman is inaccurate as they do not bring about meaningful change in systemic issues, dealing instead only on a case-by-case basis. Ensuring Ombudsmen address systemic issues would alleviate the civil dispute resolution system.

### *4 Legal Advice*

Some of the problems people experience with Ombudsmen could be alleviated with access to legal advice prior to, and during, their complaint.

More than 20% of the complaints and notifications received by the NSW Ombudsman, over 7500 individual complaints, fell outside their jurisdiction.<sup>49</sup> This highlights a lack of public knowledge about the role of the Ombudsman. Access to legal advice before making a complaint to the Ombudsman could reduce this waste of resources. This could even be as simple as active referral by the Ombudsman to CLCs. Too many of our clients

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<sup>49</sup> Ombudsman NSW, *Annual Report 2011-2012* (2012) 11.



reach us after an Ombudsman's investigation has concluded. Increased funding of Community Legal Centres would allow a more robust access to the civil justice system.

At the first instance of contact with RLC, the law surrounding a person's matter is explained to them. RLC advises many people that the outcome they are seeking from an Ombudsman is not something that the Ombudsman has to power to make. Numerous clients prefer at this early stage to not waste their time seeking something unattainable. Their access to early legal advice reduces impact on the system and alleviates some of the strain under which the Ombudsman operates.

RLC also sees clients who have already accessed Ombudsman services. The following case study highlights that even though a person has access to the Ombudsman, without access to legal advice they still do not have access to justice.

#### Case Study: Lucy

Lucy (not her real name) had a series of issues with the Police over the course of 12 months. She made a complaint to the Ombudsman, and was surprised that it referred the matter back to the Local Area Command (LAC), the very people she was complaining against. This is standard procedure. The LAC conducted their internal investigation and provided their investigation to the Ombudsman. The Ombudsman reviewed the investigation and found no issues and that the Police had acted properly.

Lucy came to RLC for advice at this late stage in her complaint. Until now she had not obtained legal advice.

RLC noticed issues that had not been addressed by the LAC or the Ombudsman, including a prima facie case of unlawful arrest.

Following a referral from RLC to a better-resourced solicitor's office, Lucy is now considering legal action.

## V IMPROVING THE ACCESSIBILITY OF TRIBUNALS

### *A Introduction*

RLC's general legal service has assisted or represented clients in the General Division and the Equal Opportunity Division of the Administrative Decisions Tribunal; the General Division of the Consumer, Trader and Tenancy Tribunal; and the Guardianship Tribunal. RLC's tenancy service (Inner Sydney Tenants Advice and Advocacy Service) frequently represents tenants in the Residential Tenancy Division of the Consumer, Trader and Tenancy Tribunal.

Tribunals enhance access to the legal system and the resolution of disputes for all members of the community. The availability of tribunals can make access to justice a reality for many of our clients who would not go to Court. The essential characteristics of an effective tribunal are fairness, speed, low cost, accessibility, flexibility and specialisation.

### *B Specialist Tribunals*

Specialist tribunals can have an impact on the costs of dispute resolution and access to justice. Their filing fees are much lower than those associated with courts. They do not order costs if a matter is unsuccessful, so people are able to pursue their legal rights without the fear of an adverse costs order if they lose.

Consistency in decision-making is a very important aspect of fairness. Tribunal members are likely to produce more consistent decisions if they have a strong knowledge of the area of law, and have adequate training and professional supervision.

### *C No Cost Jurisdictions*

RLC's experience in discrimination matters indicates the risk of an adverse cost finding means clients are hesitant to access courts, preferring tribunals. The risk of an adverse costs order in a court means many discrimination matters are taken to state-based tribunals, even where their case may be stronger at the Federal level.<sup>50</sup>

#### Case Study:<sup>51</sup> Darren

Darren (not his real name) worked as a labourer. He lived in Western Sydney with his young family and had a mortgage. He was sacked from his job as his employer believed he had a medical condition that could affect his job in the future. Darren disputed that he did have a medical condition and therefore did not believe it affected his ability to do his job. Darren's doctor supported this.

Darren lodged proceedings with the AHRC, which failed to settle. A CLC assisted Darren and told him that his case had the potential to be a test case. Darren lodged proceedings in the Federal Magistrates Court. Despite advice from the CLC and a barrister that his case was relatively strong, Darren accepted a low figure settlement at the Federal Magistrates Court mediation. Darren did this as he was worried about an adverse costs order and the subsequent risk that he may lose his house. He wanted to seek justice but felt the risks just seemed too great.

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<sup>50</sup> The National Association of Community Legal Centre, Submission to The Attorney-General's Department, *Inquiry into the Consolidation of Commonwealth Anti-Discrimination Laws Discussion Paper September 2011*, 1 February 2012, 58.

<sup>51</sup> *Ibid* 58.

## D Legal Advice

RLC strongly supports the proposition that parties should have access to legal advice. This has dual effects, enabling applicants to run their matters more effectively and within the parameters of the law; and easing the burden on the system by weeding out misconceived matters with no reasonable prospects.

RLC notes the NSW Administrative Decisions Tribunal (ADT) is one such tribunal that could have a more effective role in the civil dispute resolution system if more applicants had access to legal advice throughout their applications.

Numerous self-represented applicants appear before the ADT with proceedings that are misconceived or have no prospect of reasonable success. The Appeals Panel of the ADT noting in *Mytilinos v Chief Commissioner for State Revenue (RD)* that a self-represented applicant there appealed a decision that 'would be clear to a detached observer that there were no prospects at all of success'.<sup>52</sup>

In *APD v Commissioner of Police*<sup>53</sup> the ADT upheld a decision made by NSW Information Commissioner to not disclose information under the *Government Information (Public Access) Act 2009* (GIPA) as to do so would not be in the public interest. The applicant was utilising GIPA inappropriately. The applicant there sought a police report and details about a man with whom he had recently had an altercation. Legal advice at the outset may have dissuaded the applicant from forcing a government agency from having to appear in a matter that should not have been brought. With proper legal advice, the situation could have been avoided.

In another decision in the ADT a self-represented applicant filed a discrimination claim against Bi-Lo Pty Ltd on the grounds of Age and Disability.<sup>54</sup> Agreeing with the Applicant as to the facts, the ADT was unable to make a finding against Respondent, instead dismissing the case as 'misconceived' as the Tribunal had not been 'presented with a case which showed the real reasons for her treatment'.<sup>55</sup> The Applicant was given a review right, but with little to no understanding of the legislative framework of her matter, she contributed to the already burdened caseload of the Tribunal. With legal advice this matter could have had different outcomes.

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<sup>52</sup> [2011] NSWADTAP 56 [34].

<sup>53</sup> [2012] NSWADT 42.

<sup>54</sup> *Beagan v Bi-Lo Pty Ltd T/As Bi-Lo Killarney Vale* [2011] NSWADT 301.

<sup>55</sup> *Ibid* [39].

RLC has advised multiple clients in similar circumstances. The following case study provides a recent example of RLC's work in advising clients long after their interaction with the tribunals has begun.

#### Case Study: Marian

Marian (not her real name) came to RLC after she had taken her matter through various informal mechanisms. Prior to seeking RLC's advice, Marian had been through internal processes with the responsible government department, the Office of Privacy Commissioner, the ADT, the ADT Appeals Panel and the NSW Ombudsman. She came to RLC asking if she could pursue her matter in a higher court. This is now more than two and a half years after her first complaint to the department.

Marian had received adverse judgments and a lengthy response from the NSW Ombudsman in relation to her matter and but has still not been given clear advice that there are no reasonable prospects of success in her matter.

These informal systems are difficult to navigate and Marian provides a good example of an RLC client who has not received clear, succinct and meaningful individualised legal advice regarding the prospects of the success of her case.

RLC has been able to provide Marian with clear, understandable advice outlining the various weaknesses in her case and how these will prevent her from successfully pursuing the matter further. Personalised legal advice is essential in proceedings to prevent matters with no reasonable prospects of success advancing through each of the informal mechanisms due to a client's uninformed expectations as to outcomes.

#### *E Legal Representation*

It is common for tribunals to have restrictions on legal representation, and to require leave for a party to be represented. We believe that it is an essential aspect of fairness that people who would have difficulty advocating for themselves (because of lack of education, low literacy, a disability, or because their first language is not English) have a right to be legally represented before a tribunal. This is particularly the case where the other party, while not represented by a lawyer, is represented by a professional person experienced in tribunal appearances, such as real estate agents, or industrial advocates.

We have considered the question of whether legal representation should be a matter of right in any proceedings. However we are swayed by arguments that tribunals need to remain geared primarily to unrepresented parties. We accept therefore that it is desirable that there remains a requirement for leave in many matters with considerations for granting leave to include the complexity of the matter; disadvantage, knowledge and power imbalance of the parties; and/or capacity of the party. Pursuant

to this is it essential that the tribunal members must be able to identify when a party is vulnerable or their matter is, or likely to develop, into a complex matter.

With limited legal representation in the context of tribunals, tribunal members should be vigilant in taking an investigative and inquisitive role and not be purely adversarial. In this regard, it is important for tribunal members to have legal expertise in the issues that are brought before them. In order to remain accessible and able to deliver a fair and efficient dispute resolution service, tribunal members must be able to assist unrepresented litigants to draw out the legal issues in their matter and bring up issues that the self-represented litigant may have overlooked.

## VI EFFECTIVE AND RESPONSIVE LEGAL SERVICES

This part of the submission will discuss aspects of effective and responsive legal services. RLC has identified the use of technology as a strategy to overcome barriers faced by people in regional and remote parts of Australia.

### *A Use of Technology*

A lack of physical proximity and face-to-face contact represents a barrier to accessing justice. RLC was one of four legal centres to receive federal government funding to connect regional and city lawyers through the NBN in our 'Regional Legal Assistance Project'. This funding enabled RLC to improve and broaden the scope of our service delivery.

The Regional Legal Assistance Project created a 'digital bridge' between RLC and the University of New England (UNE). RLC is providing 'face-to-face' legal advice to people in the rural area of Armidale online with high speed internet.

This project has provided a unique opportunity to expand RLC's current International Student Advice Service to one that offers face-to-face access for regional and remote clients to a range of specialist pro bono law firms. Users of the service are able to speak to a solicitor about their legal issues and get advice relevant to them via video conferencing. Clients are given oral and sometimes written advice about how to deal with their legal problem, including relevant referrals and instructions about how to access further legal information online. Participants sought advice related to student visa issues, discrimination, consumer complaints and administrative law complaints. 13 advice sessions were provided over the life of the trial to Armidale, with an additional four appointments being provided to other regional locations in NSW using the technology.

Nine solicitors provided services over the trial. Seven of the solicitors came from RLC's collaborative partners Corrs Chambers Westgarth and Fragomen. These solicitors volunteered their time to RLC. The remaining two solicitors were supervising solicitors

from RLC. Four of the paralegal staff members at RLC assisted in service delivery by managing the technology, appointments, and related document capture.

Solicitors at RLC connect with international students either from their own homes or from the library at UNE using a video conferencing program. The student can see their advisor, send important documents through the program and share their computer screen to quickly give their solicitor the information they need to provide comprehensive legal advice.

All participants indicated that they preferred to speak to an advisor they could see, rather than speaking on the phone. For many, this was a matter of knowing that they were being listened to and understood, and of personally connecting to their advisor. RLC was told:

*'It was good to be able to talk to someone face to face, from wherever you are.'*

*'I liked the fact that you could see someone, they were a real person and they could understand what you were saying, and exactly what you wanted.'*

*'(The service) was wonderful, it was much easier and quicker than I was expecting.'*

This project highlights the importance of face-to-face meetings with clients, even if these meetings are online. Without this technological advance, participants responded when asked how they otherwise would have dealt with their lack of access to legal advice:

*'I would have had to drive to Sydney.'*

*'It is good to know you have someone to turn to.'*

*'I didn't know anywhere else I could get help.'*

This program has been expanded to Coffs Harbour and RLC took our first appointments on 30 October 2013. The service at Coffs Harbour provides computer access in a Community Centre, ensuring people who face technological barriers, such as the elderly, disabled and ASTI people, can also have access to this service.

The success of this project supports the proposition that technology can overcome geographic barriers. This technology can reduce barriers to justice through allowing more pro bono and volunteer lawyers to assist CLCs in the delivery of legal advice and information. The efficiency of this technology can enable CLCs to attract and retain pro bono partner lawyers and volunteer solicitors by providing them the convenience of

delivering the service from their own offices rather than having to come to our centre physically.

RLC is keen to use its program to demonstrate the possibilities for increasing the accessibility of free legal advice to disadvantaged people across NSW and Australia.

## *B Legal Assistance Agencies*

### *1 Legal Aid*

Legal Assistance agencies traditionally provide complementary products with a view to increasing accessibility. However, as competition for limited funding increases, Legal Aid is moving further into civil law disputes, encroaching on the services traditionally provided by CLCs, with limited consultation. However, the role of CLCs continues to be essential for ensuring accessibility to civil justice system.

Legal Aid is limited by strict means and merits tests. A client who has complex legal needs who has been dealing with a bureaucratic government department may be reluctant to engage with Legal Aid. Legal Aid service provision can be inflexible and unnecessarily complex, impeding access to justice for the most disadvantaged clients.

### *2 Community Legal Centres*

CLCs are a highly valuable legal assistance service in the provision of legal services to vulnerable clients. The work of CLCs is for the benefit of society, particularly the most vulnerable and disadvantaged people in the community. Funding for CLCs is far outweighed by the benefit provided to society. A recent study found that the average cost benefit ratio for CLCs is 1:18.<sup>56</sup> Every dollar provided to CLCs returns 18 times that benefit to society. Yet CLCs continue to be underfunded, and in a survey 63% of CLCs were unable to meet demand.<sup>57</sup> Once people are turned away from a CLC, there is often nowhere else for them to go to get the legal advice they need.<sup>58</sup>

CLCs complement LACs as a more flexible option for receiving legal services for vulnerable clients. CLCs are not limited by the strict means and merits tests that restrict the provision of Legal Aid. Nor does RLC limit client contact meetings in the same manner as Legal Aid.

CLCs are in a strong position to connect with vulnerable clients in the community. RLC has been operating in Redfern since 1977 and has developed strong connections with

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<sup>56</sup> Judith Stubbs & Associates, *Economic Cost Benefit Analysis of Community Legal Centres*, Report for National Association of Community Legal Centres Inc (June 2012) 17.

<sup>57</sup> Australian Council of Social Service, *ACOSS Australian Community Sector Survey 2013*, National Report, ACOSS Paper No 202 (2013) 34

<sup>58</sup> Ibid.

the community. RLC has established the trust with the community that is essential when dealing with the high needs, vulnerable clients we assist.

### *3 Volunteers & Pro Bono*

CLCs have the capacity to attract and retain quality volunteer support, setting them apart from other legal assistance agencies. 150 solicitor and law student volunteers provided RLC the support of 23,550 hours in 2012-13, valued at \$2,677,000. RLC received further benefit from ongoing pro bono partnerships with law firms and barristers. This represents an enormous contribution to the provision of legal services to vulnerable clients.

### *4 Retention of Staff*

There is continued disparity in pay between CLC lawyers, legal aid lawyers and other government lawyers. Mercer conducted a benchmarking review in 2011,<sup>59</sup> comparing the remuneration of NSW social and community service legal related positions against Crown legal officers. They observed that the remuneration of CLC staff was not competitive but positioned well below comparable remuneration.<sup>60</sup> RLC recommends a review of CLC remuneration to competitively attract and retrain appropriately qualified lawyers as core staff.

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<sup>59</sup> Mercer, *CLC Salary Benchmarking Review* (2011)

<[http://www.clcnsw.org.au/cb\\_pages/publications.php?category\\_id=1160](http://www.clcnsw.org.au/cb_pages/publications.php?category_id=1160)>.

<sup>60</sup> *Ibid* 11.