
ACCESS TO JUSTICE ARRANGEMENTS

VCOSS submission to the Productivity Commission's Issues Paper

November 2013



About VCOSS

The Victorian Council of Social Service (VCOSS) is the peak body of the social and community sector in Victoria. VCOSS works to ensure that all Victorians have access to and a fair share of the community's resources and services, through advocating for the development of a sustainable, fair and equitable society. VCOSS members reflect a wide diversity, ranging from large charities, sector peak organisations, small community services, advocacy groups and individuals involved in social policy debates.

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Introduction

This brief submission outlines some preliminary policy positions from the Victorian Council of Social Service (VCOSS) in response to the *Issues Paper on Access to Justice Arrangements*. VCOSS welcomes the inquiry and would like to thank the Productivity Commission (the Commission) for this opportunity for input. We are pleased that the Commission is investigating several issues of direct relevance to the work of VCOSS including:

- the costs of accessing justice services and their effectiveness, including for disadvantaged parties and where resources disparities between parties exist
- the economic and social impact of the costs of accessing legal services
- alternative mechanisms to improve equity and access to justice.

The *Issues Paper* provides a comprehensive outline of the broad issues that will need further investigation in the Review. This paper emphasises a few areas that would be worthy of further analysis by the Commission.

Our concerns and approach

VCOSS is concerned about the uneven distribution of legal problems across the community. The recent Law Australia-Wide (LAW) Survey found that 10 per cent of Victorian respondents accounted for 64 per cent of the reported legal problems.¹ We are also concerned about the extent of vulnerability to legal problems for vulnerable and disadvantaged groups in the community. The LAW survey found that 'certain disadvantaged or socially excluded groups' do indeed have more legal problems and a consequent need for legal assistance. The LAW survey noted the 'significantly higher' prevalence of legal problems among people with a disability in Victoria. Other groups including 'the unemployed, single parents, people living in disadvantaged housing and peoples whose main income was government payments also had significantly higher prevalence according to several measures.'²

The Productivity Commission needs to identify approaches to both reducing the prevalence of these legal problems as well as identifying approaches to ensuring affordable and effective access to justice for all in the community.

VCOSS is also concerned that there may be many in the community who may be in need of legal assistance but who may not be accessing it for a variety of reasons. The LAW survey notes that people from culturally and linguistically diverse backgrounds and people with lower levels of education tend to have a lower prevalence of legal problems. This may be a consequence of failures among this group in identifying and seeking support for legal issues.³

In general, VCOSS is of the view that it is preferable to address issues before they require the need for a justice intervention. We advocate for policies and legal arrangements that:

¹ C Coumarelos, D Macourt *et. al.* (2012) 'Legal Australia-Wide Survey: Legal Need in Victoria', *Access to Justice and Legal Needs*, Volume 14, Law and Justice Foundation of New South Wales, p. xiv.

² *op. cit.* p. xv.

³ *op. cit.* pp. xv-xvi.

- reduce the incidence of disputes and other issues that may require access to justice interventions
- provide support before legal problems escalate to reduce social and economic costs
- ensure that professional legal supports are available to those that have critical legal issues but may not have the means to afford support.

VCOSS would like further analysis by the Commission of four important areas that affect access to justice. Discussed below, these are:

- Ensuring laws minimise the need for justice interventions
- Developing better systems for the early intervention of legal issues
- Legal and justice services that support the whole community
- Meeting increasing legal assistance demand and complexity.

Ensuring laws minimise the need for justice interventions

The LAW Survey makes it clear that there is a widespread prevalence of legal issues within our community. 50 per cent of respondents experienced at least one legal problem in the preceding 12 months.⁴ This suggests that there may be structural and systemic factors giving rise to a high incidence of legal issues. The design of legislation and regulation and its enforcement can have significant impact on the prevalence and nature of legal problems. It is important to address systemic issues that give rise to unnecessary legal problems if we are to truly provide access to justice.

In criminal law, there is increasing evidence that tough on crime approaches that couple expanded monitoring and enforcement with more severe penalties do not have a significant impact on the incidence of crime. Such approaches give rise to a range of other issues including increased costs to the administration of justice and the perpetuation of disadvantage and social exclusion.⁵

Similar parallels can be found in civil law – the focus of the *Issues Paper*. This can be seen if we examine particular areas of law that give rise to a high incidence of legal issues. The LAW Survey found that the most common type of legal problem experienced by respondents were consumer issues. 20 per cent of respondents had experienced consumer problems in the preceding 12 months. Approaches to reducing the prevalence of consumer legal problems could significantly reduce the demand for justice related services, reducing demand on the system, reducing costs for the community and freeing up justice related services to focus on areas of greater need. There are serious questions as to whether our trade practises law, and specific consumer protections for essential services including financial services, telecommunications and utilities are serving to minimise the incidence of disputes and hence need for accessing justice services.

A quick look at figures from a variety of ombudsman services highlights the extent of the problem. This data is provided in the table below.

⁴ op. cit. p. xiv

⁵ H De Kretser 'Myths, misinformation and missed opportunities', *Insight*, issue 8, 2013, pp. 4-6, Victorian Council of Social Service, Melbourne

Complaints data from a variety of consumer ombudsmen⁶

Financial Services Ombudsman (National)						
Year	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13
Complaints	14,359	22,392	23,790	30,283	36,099	32,307
Percentage annual increase		56%	6%	27%	19%	-11%
Telecommunications Industry Ombudsman (National)						
Year	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13
Complaints	119,249	175,946	167,772	197,682	193,702	158,652
Percentage annual increase		48%	-5%	18%	-2%	-18%
Public Transport Ombudsman (Victoria)						
Year	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13
Complaints	1137	1180	1835	1838	3555	
Percentage annual increase		4%	56%	0%	93%	
Energy and Water Ombudsman (Victoria)						
Year	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13
Complaints	25,413	38,533	38,430	49,580	61,176	
Percentage annual increase		52%	0%	29%	23%	

Data in the table demonstrates that for most of the industries surveyed and in most years there has been a significant increase in consumer complaints which required formal dispute resolution. This has been particularly marked for some industries in some years. It is clear that there is an upward trend in consumer complaints that outstrips the growth of these industries. This raises a number of questions:

- Are the consumer protections and the level of competition in these industries sufficient to minimise consumer issues and therefore the need for dispute resolution?
- Are similar issues emerging in the broader market for goods and services?
- Would law reform or alternative policy directions reduce the incidence of disputes?

Given that consumer problems are a commonly occurring legal problem for many in the community, it is appropriate for this inquiry to consider whether there are any policy or law reforms that may significantly reduce the incidence of disputes and other legal problems. Similar consideration should be given to other areas of law. The Commission should identify whether there are obvious changes that are required to other areas of our civil law system – such as family law, credit and debt, tenancies etc. – that could reduce the incidence of legal problems. In turn this can improve the access to justice for parties in need of more critical support from the system. Law and policy reform may also be a particularly useful approach to address the high prevalence of legal problems among particular groups in the community.

⁶ Taken from annual report data from the respective Ombudsman services available at www.ptovic.com.au/publications-a-media/annual-reports, www.ewov.com.au/publications-and-media/annual-report-2009, www.tio.com.au/publications and www.fos.org.au/custom/files/docs/2011-2012%20annual%20review.pdf.

Developing better systems for the early intervention of legal issues

The *Issues Paper* highlights the benefits of early intervention in our legal system likening it to education and other prevention activities in our health system. VCOSS supports this view and sees a role for expanded programs to deliver targeted interventions to reduce the need to access justice related services as well as to better match services with legal need. The LAW survey highlights the great potential for such expanded programs.

Community Legal Education

Community legal education – informing and educating the community about the law and potential issues that they may encounter – is currently an important element of the work of legal aid commissions and community legal centres across Australia. This work is also undertaken by governments as well as ombudsmen and other dispute resolution services. The LAW survey highlights the importance of expanding these education initiatives given the low levels of knowledge about the law, legal services and pathways to dispute resolution among certain sections of the community. The LAW survey also highlights the potential for better targeting of legal information and education given the way that legal problems are distributed across the community. For example, the LAW Survey found clearly that particular types of legal problems were closely associated with different life stages. 'Accidents, crime personal injury and rights problems peaked between 15 and 24 years of age, and credit/debt and family problems peaked between 25 and 44 years of age.'⁷

The evidence of co-occurring legal problems in the LAW survey also suggests ways in which legal education can be targeted. For example, information can be developed to reduce the incidence and severity of legal problems that tend 'to cluster in three combinations':

1. Consumer, crime, government social security and housing issues
2. Economic and family issues
3. Rights, employment, injury and health issues

Ensuring that community legal education is targeted to the demographic groups and type of legal problems that arise for those groups will improve the knowledge of our legal system and the best approach to avoiding the pitfalls that can interrupt the smooth resolution of disputes and other legal problems. Approaches to developing community legal knowledge need to be closely considered as the Commission develops its recommendations.

Non-legal advisers

A further avenue for improving access to justice relies on an expanded capacity of advisers who have not been formally trained in the law to assist people with legal issues. This already happens across the community services system as various community workers assist their clients with the resolution of legal issues. This was clearly demonstrated in the LAW survey that found that professional legal adviser was consulted for no more than one third of cases where respondents sought advice from a professional.⁸

Financial counsellors are an example of a community professional who is called to provide legal advice in the course of providing support to their client. These workers are often required to assist clients resolve disputes that they may have with financial institutions and utility companies. Legal

⁷ Coumarelos, C. *et. al.* (2012) *op. cit.* p. xv

⁸ *op. cit.* p. xvii

assistance from non-legal advisers would also take place across a range of other areas including family law, consumer issues, health and personal injury.

Creating an integrated and collaborative community services system is a priority for VCOSS. Our recent involvement with the Service Sector Reform Project⁹ has highlighted the importance of better integrating community services to achieve the best possible outcomes for the community. Increasing the capacity of community service providers to identify the potential for legal problems, provide limited advice and referral would be a useful approach to earlier identification and resolution of legal problems as well as improving pathways to justice services for those in greatest need. This is underscored by the LAW Survey that highlighted ‘the need for more holistic, integrated service delivery across legal and non-legal services, including more tailored and intensive support for the most vulnerable groups...Non-legal professionals could be more formally equipped and trained to identify legal problems and to more systematically provide timely referral to legal information and advice services.’¹⁰

Legal and justice services that support the whole community

VCOSS is concerned about findings from the LAW Survey about the prevalence of legal problems among particularly vulnerable groups in the community along with the lack of knowledge about legal issues and how to resolve them. Fortunately, the survey provides useful data on how legal services can be better targeted.

The low level of knowledge about legal issues and the high level of inaction in responding to legal problems among culturally and linguistically diverse groups and people with lower levels of education indicate the need for more effectively targeted legal support for these groups.¹¹ In the first instance, this requires targeted awareness raising activities. However it will also require targeted access to justice support. The high prevalence of legal problems among community members with a disability and a low level of finalisation of legal problems for this group also highlights the need for targeted interventions.

There are many innovative approaches to such work that is evident among community legal services across Victoria such as the Taxi Driver Legal Clinic operated by Footscray Community Legal Centre.¹² The provision of professional legal support either temporarily or permanently co-located with services that support particular communities is also a successful model that has been pursued by many community legal services.

Ensuring that accessible services are available for the diversity of community needs is an important mechanism to improving access to justice. The above examples suggest that there may need to be an analysis of the current availability of community and public legal services and how this system could be better targeted to meet the demands of all Victorians. We would welcome further analysis by the Commission of how this can be achieved.

⁹ More information is available on the VCOSS Website at vcoss.org.au/sectorreform2013..

¹⁰ Coumarelos, C. et. al. (2012) op. cit. p. xxii

¹¹ op. cit. pp. xvii-xix

¹² Find more details at http://www.fclc.org.au/cb_pages/news/Taxireportlaunched.php

Meeting increasing legal assistance demand and complexity

While a range of interventions are necessary to improve access to justice including significantly expanded efforts to allow for early identification and self resolution of legal problems, it remains clear that community legal services and legal aid commissions do not have the resources to provide sufficient response to meet the critical legal needs of the community.

A notable feature of the community services landscape is the complexity of some of the issues facing some of the more vulnerable groups in our community. Complex and multi-faceted problems require a coordinated and integrated response from the services system. Addressing the critical legal needs of vulnerable and disadvantaged community members is an important part of this response. The specialist legal services provided by legal aid commissions and community legal services are an important part of this response.

The recent restriction of access to Legal Aid Services in Victoria to maintain the financial sustainability of the system highlights the problem.¹³ New eligibility guidelines introduced in early 2013 by Victorian Legal Aid restrict the ability of vulnerable and disadvantaged clients to access the services they need while increasing demands on already stretched community legal centres. VCOSS understands the need to ensure the financial sustainability of legal aid commissions. The eligibility changes became necessary as a result of record demand for services that has not been matched by adequate funding increases. Problems caused by this restricted eligibility are hampered by lack of resourcing in the community legal sector. The ACOSS Community Sector Survey found that legal services had one of the highest 'turn away' rates of any of the community services surveyed. The following findings from the survey highlight the extent of the resourcing challenge:

- 63% of legal service providers reported not being able to meet demand for services, and legal services ranked second highest on inability to meet demand.
- 20% of all clients in need of assistance from surveyed community legal services were turned away in 2011/12, the highest turn-away rate across all service types.
- 85% of legal services reported having targeted their services more tightly or limiting service levels to meet demand.
- 67% reported being underfunded and 59% said they had increased waiting times for services.
- 76% of services asked staff and volunteers to work additional hours in attempt to meet demand.¹⁴

Ultimately, additional resources will need to be found to adequately fund our legal support services to ensure they can meet demand into the future. As part of this, we welcome calls by Victorian Legal Aid for the better coordination of legal support funding between State and Commonwealth Governments and the burden of funding Legal Aid to be shared equally by the Commonwealth and State Governments.¹⁵

¹³ See Victorian Legal Aid Press Release, 7 January 2013, *New eligibility guidelines effective 7 January 2013*, available at <http://www.legalaid.vic.gov.au/about-us/news/new-eligibility-guidelines-effective-7-january-2013>

¹⁴ Australian Council of Social service (2013) Australian Community Sector Survey 2013, National Report, ACOSS Paper 202, p. 10

¹⁵ See Victorian Legal Aid Press Release, 16 May 2013, *Victoria Legal Aid welcomes funding boost and exemption on family court fees in Commonwealth Budget*, available at <http://www.legalaid.vic.gov.au/about-us/news/victoria-legal-aid-welcomes-funding-boost-and-exemption-on-family-court-fees-in-commonwealth-budget>

The role of legal aid commissions and community legal centres – in particular specialist legal centres – is also of crucial importance in the development of community legal education programs and law reform that can reduce the need for more costly justice interventions. We would particularly like to emphasise the important role of the Community Legal Centre sector in resolving civil legal matters and innovatively participating in strategic litigation and community legal education activities.

We would also welcome consideration by the Commission as to whether other funding mechanisms could support our legal aid systems particularly in relation to civil disputes. Further analysis on the effectiveness of cost orders on covering the costs of services provided by legal aid commissions and community legal services would be one avenue to consider. The potential for innovation to ensure adequate compensation through cost orders for successful outcomes by these legal representatives would be worthy of further analysis.

It is perhaps best to conclude with a finding of the LAW Survey: 'given that a large portion of the legal problems experienced by the community are concentrated within disadvantaged groups, quality public legal services constitute a critical component of a holistic justice system, providing the backbone infrastructure necessary to support integrated and multifaceted access to justice strategies.'¹⁶

¹⁶

C Coumarelos *et. al.* (2012) *op. cit.* p. xxiii