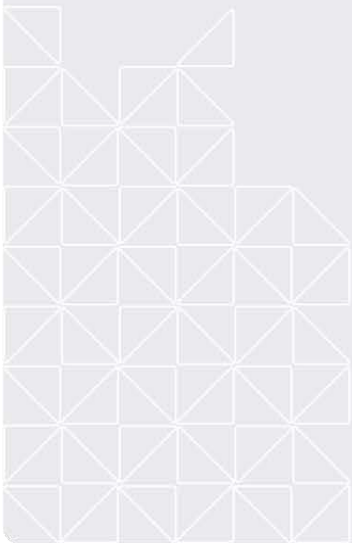


Access to Justice Arrangements

Submission to Productivity
Commission Draft Report



1. Introductory comments

Justice Connect welcomes the Productivity Commission Draft Report on Access to Justice Arrangements and its focus on promoting access to justice and equality before the law.

Justice Connect was pleased to make a submission in response to the Terms of Reference of the inquiry into Access to Justice Arrangements in November 2013. Our submission was limited to areas which have a direct and specific impact on the provision of pro bono legal services. It was based on our experience as a facilitator and coordinator of pro bono legal services in New South Wales and Victoria and a provider of legal services to people experiencing disadvantage using pro bono lawyers.

This response to the Draft Report is also limited in scope and focuses on the discussion of pro bono legal services in chapter 23 of the Draft Report. A number of our colleagues in the pro bono and community legal sectors are responding in detail to the Information Requests in other chapters of the Draft Report. We commend to the Productivity Commission the detailed analyses of issues affecting access to justice in those submissions. In particular we note the submissions made by QPILCH regarding pro bono legal services for self-represented litigants in the Federal Court. We endorse their submissions in relation to chapter 14 of the Draft Report (noting that Justice Connect will shortly be commencing a similar program in the Federal Court in NSW, Victoria, ACT and Tasmania.)

2. Comments on the Draft Report's examination of pro bono legal services

Justice Connect welcomes the Productivity Commission's close examination of pro bono legal services in Australia and its emphasis on the role of pro bono in meeting the needs of disadvantaged people. We agree with the assessment that pro bono plays a small but very important role in the overall legal assistance sector. We also agree that "pro bono service provision is unlikely to become the dominant means of assisting disadvantaged people with legal needs"¹ and note that that this is neither possible nor desirable. However, pro bono clearing houses have had a significant impact on the development and growth of the strong pro bono culture that Australia enjoys. Clearing houses have helped lead and shape this culture, providing encouragement and opportunities for pro bono work. Justice Connect's strategy reflects this; its first pillar refers to "Building, supporting and engaging a strong commitment to lawyers' pro bono responsibility".

We also agree that pro bono is neither a panacea, nor costless. Some of the costs associated with the provision of pro bono legal services arise from structures and systems (such as those developed by clearing houses), which help ensure that the potential limitations of that service can be managed and overcome. In our view, the modest costs associated with effective management and coordination of pro bono are outweighed by the benefits to clients and to the legal profession which accrue from pro bono legal service provision.

The Draft Report contains a good analysis of the benefits of pro bono for legal practitioners, as well as the challenges that are inherent in private lawyers doing work outside their usual area of expertise or for a different client group. While Justice Connect recognises that, as with all areas of the legal assistance sector, there is room for improvement and refinement in how pro bono services are delivered, we wish to emphasise that the pro bono contribution of Australian legal practitioners in civil law matters is one of the largest and most impactful collective efforts in the world. As noted below, pro bono legal services to disadvantaged people plays an important role in meeting the unmet legal needs of some of the most

¹ Productivity Commission 2014, *Access to Justice Arrangements*, Draft Report, Canberra, p 728.

marginalised and hard to reach people in the community, such as people experiencing homelessness and asylum seekers and refugees.

As stated in our November 2013 submission, pro bono is deeply ingrained in the Australian legal profession and is broadly considered “the right thing to do”. Given the important place of pro bono in the access to justice sector and its entrenched place in the Australian legal profession, Justice Connect considers that the most important question is how pro bono can be best coordinated and managed so that limited resources are used in the most effective way possible, to ensure the best outcomes for clients. If pro bono is not properly coordinated, the collective pro bono effort of legal practitioners will be less targeted, strategic and effective. In our view, pro bono organisations such as Justice Connect are both efficient and effective means of delivering targeting and coordinated pro bono, and work collaboratively with other parts of the access to justice sector.

The Draft Report asks whether government funds allocated to pro bono providers are devoted to their “best possible use in improving access to justice for disadvantaged people”.² It also asks whether funds could be better be devoted to community legal centres (CLCs) or legal aid commissions that are directly delivering services, or whether there are genuine benefits from leveraging these funds into pro bono service provision.³

The responsibility for providing legal assistance services in Australia is largely (and appropriately) borne by government funded legal aid commissions and CLCs. As noted above, pro bono plays a relatively small role in addressing unmet legal need in Australia. While it is difficult to be definitive, Justice Connect has previously estimated, based on the past reported statistics, that pro bono work from the larger Australian firms adds around 7% to the capacity of free legal services through their total pro bono legal work.⁴

However, while relatively small, the work undertaken by pro bono lawyers is critically important and strategically significant, because by definition, it is work that would otherwise not be done. That is, properly managed and targeted, pro bono work should not be done if a person is eligible for assistance through a government funded service, or their legal problem can be addressed in another way, such as by a no win no fee arrangement. That means that the cases which “good” pro bono undertakes are often for clients whose matters – or personal circumstances – are particularly complex, are outside areas for which CLCs and legal aid commissions are funded or where they have insufficient resources to respond. In Australia this currently includes, broadly speaking, large areas of civil and administrative law. These are often cases which involve a person’s ability to access social services from the government and will almost always involve people who are marginalised or experiencing disadvantage, such as a disability, homelessness, mental illness or family violence.

This view of the ways pro bono operates is supported by the LAW Survey.⁵ It notes in its executive summary that a “two-speed system of legal service delivery may be appropriate: a heavily targeted and even case-managed approach to meeting the complex needs of the small minority of the community that experience the large majority of the legal problems, and a much ‘lighter’ model for the rest”.⁶ It also notes:

“... legal services must be able to handle severe, complex legal problems that require considerable resources, time and expertise to resolve, such as family law problems. They must also be able to process high volume legal problems, such as consumer and crime problems.”⁷

In our view, pro bono legal services are particularly suited to this “heavily targeted approach” to “complex legal problems”. These are often labour intensive and time consuming and require an ability to collaborate that can be more challenging for large organisations, such as legal aid commissions, which are necessarily

² Ibid, p 728.

³ Ibid.

⁴ Hugh De Kretser, Fiona McLeay & David Hillard, *Pro Bono Reflects Social Gap*, The Australian, 9 November 2012, p 33. The Commission’s estimate is of around 3%. This discrepancy reflects the difficult of obtaining and analysing accurate data about pro bono services.

⁵ Coumarelos, C, Macourt, D, People, J, MacDonald, HM, Wei, Z, Iriana, R & Ramsey, S 2012, *Legal Australia-Wide Survey: legal need in Australia*, Law and Justice Foundation of NSW, Sydney.

⁶ Ibid, p iv.

⁷ Ibid, p xx.i

focused on and adapted for efficient service provision and effective use of resources for the largest number of people at least cost.

In our initial submission to this inquiry, dated November 2013 (“**initial submission**”), we outlined in some detail on pages 7 - 10 the nature of the legal issues that clients Justice Connect assists present with. Page 5 of our initial submission outlines the types of clients seen by our Homeless Law service, illustrating the “complex needs” of this client group.

In our experience, well designed and managed pro bono programs can leverage considerable legal expertise from the private sector, which can be skilled up and supervised to provide targeted and tailored legal services to particularly disadvantaged groups who are hard to connect to traditional services. Justice Connect’s highly successful Homeless Law program is a good example of this and is outlined on page 5 of our initial submission.

Justice Connect’s experience does not support the contention that funds directed to supporting structured pro bono programs of this type would be better directed to CLCs or legal aid commissions. In fact, Justice Connect works in close partnership with these providers. We have developed strong relationships with legal aid commissions and CLCs, so that clients who are ineligible for these services are quickly referred on to us for assessment for pro bono. We have a sophisticated and efficient system for assessing these requests and the ability to place them swiftly with lawyers with capacity and skill to assist. Just as pro bono legal services cannot replace the work of CLCs or legal aid commissions, neither can those services replace pro bono. Over more than 20 years, Justice Connect has demonstrated that well-coordinated and properly supported pro bono legal services can play a vital and complementary function in the provision of legal services to marginalised and hard to reach clients.

Legal clinics

The Draft Report refers to perceived drawbacks of pro bono legal clinics. The Draft Report notes that the ‘issue-specific’ nature of clinics can limit their ability to deliver services in every area of law.⁸ Justice Connect does not consider that this is a limitation. As discussed below, properly understood, the focussed nature of the services provided by Justice Connect in its three outreach clinics is a strength of the model, rather than a weakness. Indeed, the careful targeting of both the client group and the type of legal services offered to them is an inherent part of the design of these services, refined over many years and designed to ensure the best outcome for clients and the most efficient use of pro bono resources.

In its 2013 publication *Pro bono partnerships and models: a practical guide to what works*⁹, the National Pro Bono Resource Centre (NPBRC) noted a perception that ‘pro bono lawyers assisting with legal outreach do not always have the expertise in the type of matters that arise at the clinics and may be unfamiliar with both the legal issues and dealing with disadvantaged clients’.¹⁰ Our experience at Justice Connect does not bear out this concern. In fact, as discussed below, the clinic model developed and managed by Justice Connect over many years shows that properly trained and supervised pro bono lawyers can provide consistent, high quality legal services to clients with complex needs who would otherwise not access the legal system. Indeed, the NPBRC itself noted in the same report that pro bono lawyers engaged in clinic work can develop expertise over time and quoted a pro bono coordinator at a mid tier law firm as saying: :

“A program to address infringement issues arose from seeing many homeless people at the clinic with the same problem, and is much more effective than having lawyers dealing with infringements on a case-by-case basis.”¹¹

Justice Connect currently operates three outreach services (Homeless Law, Seniors Law and MOSAIC (for newly arrived migrants)), as explained in our initial submission – sometimes known as “clinics”. We are

⁸ Productivity Commission 2014, *Access to Justice Arrangements*, Draft Report, Canberra, p 731 (see Box 23.3 – ‘Improving coordination through partnerships’).

⁹ National Pro Bono Resource Centre (NPBRC) 2013, *Pro bono partnerships and models: a practical guide to what works*, Sydney.

¹⁰ *Ibid*, p 144.

¹¹ *Ibid*, p 124.

currently working with the Federal Court of Australia and Federal Circuit Court registries to establish a court-based self-representation service in Melbourne, Sydney, Hobart and the ACT, which will also use a clinic-type outreach model for civil law matters.

Justice Connect's view is that outreach clinics targeted towards specific issues and specific client groups are effective precisely because they address a carefully identified and specific area or areas of unmet legal need. These are selected because they are otherwise not being met by other services (thus ensuring there is no overlap of pro bono and other forms of legal assistance) and because research suggests that addressing the particular legal issue will contribute to improving the underlying social vulnerability or disadvantage of the client group.

For example, our Homeless Law service focuses primarily on two areas of unmet legal need for its clients – preventing the eviction of people into homelessness and addressing debts caused by public space offending. Evidence shows that maintaining people's tenancies and avoiding the incurring of fines and debt (and the risk of prison) associated with public space offences can significantly contribute to a person leaving the cycle of homelessness and getting their life back on a secure footing. For this reason, Homeless Law focuses its efforts on addressing these legal issues, and where possible, refers clients with other legal problems (such as criminal or family law) to other services.

In addition, clearly defining the issues addressed in outreach clinics helps to ensure that pro bono resources are effectively utilised. Targeted training on relevant law and policy issues is provided to pro bono lawyers. This builds on the inherent skills of private practice lawyers, such as knowledge of civil litigation, administrative law and contract law. Such training addresses the concerns raised in the Draft Report that private lawyers are unlikely to have broad experience in the types of legal issues that affect disadvantaged people. Through issue-specific clinics, lawyers are able to gain specialist knowledge and build their skills in particular areas of law. Further, clinics can involve the use of other support such as social workers and financial counsellors, providing a holistic response to client need.

Finally, dedicating pro bono resources to clinics also enables pro bono services to identify systemic issues that can be addressed through advocacy and law reform work. For example, our Homeless Law service assists over 400 people experiencing or at risk of homelessness each year and as a result has identified two key areas of ongoing law reform work: preventing homelessness and sustaining tenancies; and reform of law related to infringements and public space offences.

3. Responses to Draft Recommendations and Information Requests in chapter 23 of the Draft Report ('Pro Bono Services')

Draft Recommendation 23.1

Where they have not already, all jurisdictions should allow holders of all classes of practising certificate to work on a volunteer basis.

Further, those jurisdictions that have not done so already should introduce free practising certificates for retired or career break lawyers limited to the provision of pro bono services either through a Community Legal Centre or a project approved by the National Pro Bono Resource Centre. This could be modelled on the approach currently used in Queensland.

For those not providing court representation, persons eligible for admission as an Australian lawyer coupled with a practising certificate that has expired within the last three years (without any disciplinary conditions) should be sufficient to provide pro bono work, particularly if the service is supervised.

Justice Connect supports the first part of Draft Recommendation 23.1, namely that holders of all classes of practising certificate should be able to do pro bono work a voluntary basis. Justice Connect commends the approach taken in the *Legal Profession Uniform Law Application Bill 2013* to enable all holders of practising certificates in Victoria and New South Wales to undertake pro bono work. Justice Connect encourages the work of our colleagues at the NPBR to document opportunities and best practice tips for corporate and government lawyers undertaking pro bono work.

Justice Connect is supportive of measures that increase the overall pool of pro bono practitioners and the removal of any regulatory barriers to participation in pro bono. We support the idea of free practising certificates for retired or career break lawyers. However we consider that these practising certificates should be conditional upon the pro bono work being supervised by a CLC or pro bono clearing house, or where the NPBR approves a project which has a supervising lawyer overseeing the work of such volunteers. It is critical that pro bono clients receive the same quality of work as client who pay for legal services, and this means that advice must be provided by appropriately trained, skills and supervised lawyers, regardless of their level of experience.

Information Request 23.1

Would there be merit in exploring further options for expanding the volunteering pool for Community Legal Centres (CLCs)? For example, are there individuals with specialised knowledge that could provide advice in their past area of expertise such as retired public servants or retired migration agents that CLCs could draw on in the relevant area? Are there currently any barriers to prevent this?

Justice Connect supports efforts to expand the volunteering pool for CLCs, as volunteers play a crucial role in supplementing the work of CLC paid staff. Volunteering at CLCs is a richly rewarding experience for lawyers at all stages of their careers.

Many law students and graduates see volunteering as a means to get experience in what is currently a competitive market for legal jobs. Justice Connect has benefited from the voluntary contributions of law graduates who are seeking to gain professional experience, often with a view to continue to work in community law or pro bono. Many lawyers sustain a long term commitment to centres, although retention

of volunteers is an ongoing challenge, particularly as practising lawyers may become increasingly time-poor and unable to commit to a regular volunteering role.

However, any efforts to encourage volunteers into CLCs should include measures to ensure that volunteers are appropriately qualified and able to be properly supervised. Just as pro bono is not costless, there are significant costs to CLCs in managing and supervising volunteers. Volunteers can supplement and support the work of qualified CLC lawyers, but cannot substitute for them in providing legal assistance and advice.

We recommend that the Productivity Commission considers the 2012 report by Michael McKiterick, a former employee of PILCH Victoria, titled 'The Volunteer Cycle: A report on the role and management of volunteers within community legal centres'.¹² McKiterick's report draws on data he derived from surveys of CLC volunteers and volunteer managers. McKiterick's report found that the majority of people who volunteer at community legal centres are under the age of 29.¹³ However, retired lawyers and more senior lawyers on career breaks have valuable legal knowledge and client relationship skills that would be useful in a CLC setting.

In order to increase the pool of volunteers, McKiterick's report explains that CLCs must consider the overall 'changing volunteer climate'. He identifies changes including: 'a growing preference for online volunteering, an increased desire by more young people and highly skilled early retirees to volunteer and an increasing interest in short-term or project-based volunteering.'¹⁴ Considering options for online volunteering, short-term or project-based work could be particularly helpful for CLCs in rural, regional or remote areas where it is difficult for volunteers to travel on a regular basis.

Draft recommendation 23.2

The Commonwealth Government, and the remaining states and territories, should adopt the Victorian Government's use of a pro bono 'coordinator' to approve firms undertaking pro bono action. The coordinator should be situated within the Department with primary responsibility for legal policy.

Justice Connect welcomes Draft Recommendation 23.2. As discussed in our November 2013 submission, the Victorian Government's model has had a very positive impact on the pro bono culture in Victoria and on the overall pro bono contribution of Victorian Government panel law firms.

Information Request 23.2

The Commission seeks views on the potential for industry pro bono 'coordinators' to alleviate conflicts of interest for pro bono providers. Which, if any, industries should this apply to? Where should the 'coordinators' be housed? What should their relationship be with the industry? Are there barriers that would limit or prevent their effectiveness? If so, can they be circumvented or removed without affecting the relationship between law firms and their corporate client?

Based on feedback from a number of our member firms, Justice Connect does not consider that industry pro bono coordinators would be effective in alleviating conflicts of interest for pro bono providers.

While we support the introduction of use of government coordinators, as outlined in Draft Recommendation 23.2, industry associations are unlikely to be able to address perceived commercial conflicts. The concerns that law firms have with regard to commercial conflicts are ultimately a relationship management issue and we do not believe that law firms would wish to contact an industry association for guidance. As one Justice Connect member firm's pro bono coordinator told us, "the reality is that I will not accept a referral if any of the [law firm] partners believe there is a conflict regardless of what a co-ordinator may say.

¹² Michael McKiterick, 'The Volunteer Cycle: A report on the role and management of volunteers within community legal centres' 2012.

¹³ Ibid, p 27.

¹⁴ Ibid, p 26.

The Draft Report quotes the NPBRC in stating, ‘Banks and utility companies are often happy for representation to be provided to clients who would otherwise find it difficult to articulate the issues and provide their consent for our firm to act.’¹⁵ Anecdotally we understand that even where these conversations have taken place, there can still be a reluctance to implement them, particularly as relationship partners at the law firm and general counsel at the client change over time.

A further difficulty is that Australia does not have strong culture of pro bono work within corporate legal teams, as recognised in the Draft Report. Justice Connect hopes that as regulatory obstacles to in-house lawyers participating in pro bono are reduced, and more corporate legal teams become involved in pro bono, there will be a greater understanding of and support for law firms’ pro bono work. Justice Connect expects that building the culture of pro bono work within corporate legal teams may have an impact on law firms’ willingness to act in matters that might involve a perceived commercial conflict. Justice Connect is currently looking for ways to engage more corporate members in pro bono work and encourages our law firm members to explore opportunities for partnering with their clients in pro bono projects.

Finally, Justice Connect asks our law firm members to provide us with information about likely commercial conflicts. We use this information when referring pro bono matters to avoid approaching a law firm with a matter that will likely be rejected on the basis of a commercial conflict. This saves unnecessary conflicts checks which can be time consuming for law firms, particularly for international firms which are required undertake global conflict searches. This is an example of the way that pro bono clearing houses can support the efficient use of pro bono resources.

Information request 23.3

The Commission invites views on whether other larger jurisdictions beyond the Commonwealth and Victoria, such as New South Wales, Queensland and Western Australia, should adopt a pro bono target, with conditions tied to government tender arrangements. What prevents the use of a single target by multiple jurisdictions? What approaches should be adopted by smaller jurisdictions to pursue similar objectives?

Justice Connect considers that other larger jurisdictions should adopt pro bono targets with conditions tied to government tender arrangements.

In our view, the same target should be used across all jurisdictions. We do not consider that there are any barriers to use of a single target. We believe the National Pro Bono Aspirational Target (**Aspirational Target**) of at least 35 hours of pro bono legal services per lawyer per year could be used across all jurisdictions.

Use of one target in multiple jurisdictions would require some consideration and agreement on basic threshold questions. For example, if the Aspirational Target was used as an incentive for tenders by the New South Wales Government, it would need to be determined if a national firm should calculate the hourly pro bono contribution of their lawyers in New South Wales, or whether the firm’s overall pro bono work would be considered. These types of questions are not insurmountable and are certainly not barriers to taking a unified approach.

We note the feedback of one of our member firm’s pro bono coordinators, who told us: “If there are to be new pro bono targets in other States they should be consistent. My personal view is that the National Aspirational Target is the easiest way to satisfy all. The amount of administration we spend on reports and targets would just increase and we would much prefer to spend our time actually doing pro bono work.”

We also consider that the Aspirational Target could be used in smaller jurisdictions. While there are more

¹⁵ Productivity Commission 2014, *Access to Justice Arrangements*, Draft Report, Canberra, p 735.

limited pro bono opportunities in some states and territories in Australia, the Aspirational Target still serves an important function in encouraging firms and lawyers to establish a pro bono practice, even if it takes some years to advance toward the 35 hour target. It also provides encouragement for firms to seek out opportunities in their local communities to undertake pro bono work, such as seeking out relationships with CLCs.

Should targets be aspirational or mandatory?

Targets should be voluntary and aspirational in nature. We agree with the disadvantages of mandatory targets cited in the Draft Report. However, where they are used for the purposes of government tender arrangements, Justice Connect considers that firms should be required to report on the steps that they have taken towards meeting the target. These could include actions such as joining a pro bono clearing house or establishing a partnership with a CLC.

Draft recommendation 23.3

Any pro bono targets used by governments as incentives in tender arrangements should remain flexible. Reporting required for pro bono targets should be clear and simple.

Justice Connect agrees with Draft Recommendation 23.3. In particular, care should be taken in the design of any reporting requirements, to ensure that it does not unduly burden pro bono lawyers. We recommend that pro bono lawyers, and organisations such as Justice Connect, be involved in the design of reporting requirements.

Information Request 23.4

The Commission is seeking views on the most efficient form of pro bono targets. How should they be expressed (in hours, dollars or some other means)? How do the reporting requirements of the two current targets (one for the Commonwealth and the other for Victoria) compare in terms of limiting compliance costs?

Justice Connect considers that the most efficient form of pro bono target is one expressed in hours. We endorse the use of the Aspirational Target administered by the NPBRC. One of our member firm's pro bono coordinators has told us, "I think hours worked is a better basis for a target than dollars. A dollar figure is not an accurate figure if you add in the variable charge out rates across firms and divisions within firms, the level of seniority of lawyers carrying out the work and the on costs that may be added to chargeable rates. Hours are clear and easier to compare and calculate."

Based on discussions with our member firms, we understand that the time and cost of compliance with the Victorian reporting requirements is significantly higher than the Commonwealth reporting. Reporting to the Commonwealth is simple and requires only one page of information which is already required in order to report to the NPBRC on their performance against the Aspirational Target.

Draft Recommendation 23.4

The provision of public funding (including from the Commonwealth, state and territory governments, and other sources such as public purposes funds) to pro bono service providers should be contingent upon regular, robust and independent evaluation of the services provided.

Justice Connect welcomes Draft Recommendation 23.4. Justice Connect agrees with the Productivity Commission that evaluation, and clarification of how a project will be evaluated from the start of a project, is essential. As detailed in our initial submission, Justice Connect has adopted a robust approach to evaluation of the impact of its work, using the "theory of change" methodology to undertake continuous

monitoring and evaluation of our impact. We note that independent evaluation of pro bono services can be costly. Accordingly, where public funding requires independent evaluation, that evaluation should be fully funded. Where possible, evaluation and reporting requirements attached to government funding should be consistent.

Information Request 23.5

The Commission is seeking views on methods to implement data collection on pro bono services without increasing unnecessary reporting burdens. Are there ways to better utilise existing sources? Can reporting be standardised? Are there existing social impact metrics (or categories of outcome) that should be adopted? How would data collection best be done in a systemic manner? Who should collect the data?

In Justice Connect's experience there are numerous ways that evaluation of pro bono services can be approached. As noted in the Draft Report, Justice Connect uses the Theory of Change model of evaluation for all of our programs and we previously evaluated the economic contribution of our PilchConnect service (now known as Not-for-profit Law). The Draft Report contains a number of other methods of evaluating pro bono programs, cited by Cummings and Sandefur (2013). Justice Connect provides comments on our experience of each of these below.

1. Standardised data collection about the work pro bono lawyers do

Justice Connect is not aware of any firms that publicly report their pro bono data and many do not track the outcomes of their pro bono work. Where pro bono work is coordinated by an external agency, for example through a clinic which has oversight of the matter from start to finish, it is easier to collate data and show the impact of the work on unmet legal need. This is another example of the value that an organisation such as Justice Connect can add to the provision to pro bono services.

Justice Connect's Referral Service tracks the area of law and type of legal assistance required for each enquiry it receives and referral it makes. However we are reliant upon law firms to provide information about the outcome of matters. Indeed, some law firms have declined to provide this information.

2. Standardised client and lawyer satisfaction evaluations

Justice Connect uses client surveys in each of its three clinic-based programs. In our experience, client surveys cannot be entirely standardised across organisations, or even within the one organisation working with multiple client groups, as the types of information that the survey should elicit will differ depending on the client group and the nature of the pro bono service. For all surveys, it is essential that the client knows that the responses are confidential and will not affect their ability to get further pro bono assistance.

In 2012-13, Homeless Law used three client surveys: at the time of intake, mid-matter and matter closure. These surveys were used to assess clients' engagement with the legal system before, during and after Homeless Law's assistance. Homeless Law encountered some challenges in maintaining engagement, administering the survey and resourcing and as a result has recently developed the following new model for gathering client feedback:

- Homeless Law staff will administer a telephone survey to a randomised sample of clients whose matters were closed in the last quarter. Approximately 50 to 60 matters are closed each quarter and 25% of these people will be surveyed, ie 12 to 15 people.
- The survey will be set up on Survey Monkey, so that responses can be recorded and analysed.
- The survey is intended to take no longer than five to ten minutes and covers how the client became aware of Homeless Law, ease of access, how easy the legal information was to understand, quality of the non-legal support the client received, an overall rating of the service and any comments the client has about the difference Homeless Law's assistance made to their circumstances.

Justice Connect's MOSAIC service also uses a survey which asks questions of the client including whether they:

- had previously seen a lawyer;
- were apprehensive about seeing a lawyer;
- found the lawyer and MOSAIC staff polite and helpful;
- understood what their lawyer told them;
- understood what was going to happen after speaking to the lawyer;
- felt the lawyer's advice would fix the legal problem;
- felt the lawyer respected and listened to the client;
- felt the lawyer cared about the client and not just their legal problem;
- would refer a friend or family member to MOSAIC or their lawyer; and
- wished anything went differently during their appointment.

3. Enhanced cost tracking

Justice Connect would welcome more coordinated tracking of costs of undertaking pro bono matters, noting the time and value of work of lawyers, support staff and community partners. However, based on our experience many firms are not willing to share this information, other than in the anonymous surveys conducted by the NPBRC.

Most law firms collect a base level of data regarding the cost of running matters, as most use standard time entry databases to record their time – however, it is at the discretion of the firm whether this detailed information is shared externally.

4. Social impact metrics

In 2010, Social Ventures Australia conducted an evaluative social return on investment (**SROI**) analysis of the Homeless Persons' Legal Clinic (the program now known as Homeless Law) for the 2008-2009 financial year.

SROI is a useful framework for measuring and accounting for the value of pro bono work, as it also considers the broader social and economic benefits for stakeholders. The SROI analysis indicated that Homeless Law delivered an indicative SROI of 2.21:1 in the 2008-9 financial year, which means that for every \$1 invested in the service, approximately \$2.21 of social value was created. The report estimated that Homeless Law created a total of \$9.75 million in social value to the Victorian community with recurrent government funding (at that time) of only \$279,556 and a total estimated investment of \$4.41 million. The report also identified the major stakeholders who benefit from Homeless Law, and the social value generated for each, including clients, government (who benefit from avoided costs associated with corrections, support services and well as policy and legislative advice), law firms, barristers and community agencies that work with Homeless Law.

Evaluation of this kind is resource intensive and costly. SVA Consulting spent approximately 20 days collecting the data for SROI analysis and compiling the report. Homeless Law staff spent approximately 8 days assisting in the data collection and analysing the compiled data. While supportive of this type of evaluation, Justice Connect notes that funding would be required for this to become a regular feature of the evaluation of pro bono work.

4. Responses to selected Draft Recommendations and Information Requests

The Commission seeks feedback on the likely effectiveness and efficiency of extending the use of legal health checks to those groups identified as least likely to recognize problems that have a legal dimension. More vulnerable groups include people with a disability, sole parents, homeless people, public housing tenants, migrants and people dependent on income support.

Legal issue screening tools or 'legal health checks' are designed to:

- help to identify issues as 'legal problems' that may not be apparent to the person experiencing the problem; and
- help to separate legal problems from complex social issues, which may have a legal dimension.

Where they are properly designed and administered, legal health checks provide a variety of efficiencies for legal services, and for the clients they serve, including helping to:

- prevent legal problems from escalating, through early intervention;
- save money for the client – and the legal/healthcare systems;
- improve the health and wellbeing of clients;
- minimise anxiety and stress associated with experiencing legal problems;
- create confidence and trust in the legal system;
- allow for detection of multiple problems, in clients with complex social situations; and
- allow for triage and prioritisation of legal problems through management of the relationship with the client.

Legal health checks are particularly useful for clients experiencing multiple or complex social issues with a legal dimension. Around 65% of legal problems are concentrated amongst a small group comprising less than 10% of Australians. Legal screening may have the most impact in resolving the problems of these people who are recognised as experiencing substantially more problems than the average community member.

It is well recognised that certain 'patterns' of unmet legal need occur within distinct, at-risk population groups. For this reason, it is important to identify the group to be targeted from the outset, to ensure that the screening tool asks the most relevant questions of the client.

General screening tools can be used for clients who do not fall within an identifiable risk group, but may be less useful than targeted screening tools in identifying relevant legal problems, as they will almost certainly incorporate a number of categories that are irrelevant to the client.

Particular at-risk groups that targeted screening tools can be designed for include, but are not limited to:

- people experiencing homelessness, or those at risk of homelessness;
- elderly people, particularly those living in assets for care arrangements (i.e. where an older person has moved in with their family);
- people living with a disability;

- people at risk of, or experiencing family violence (including children);
- people living with mental illness, or with a history of mental illness;
- recent migrants and asylum seekers; and
- people living with a chronic illness.

Targeted screening tools should be designed by considering the legal issues likely to impact upon that population group, and with clear referral pathways in mind. It is the experience of Justice Connect that identifying legal issues for which one of our services cannot assist is likely to leave the client frustrated.

By way of example, set out below is information regarding the experience of Justice Connect's Homeless Law service in implementing legal health checks.

Homeless Law has implemented a legal health check with key partners in the homeless sector, including Hanover, Royal District Nursing Service homeless outreach and Central City Community Health Service. The health checks help to build engagement with the non-legal sector, including increasing awareness and understanding of Homeless Law and its services. They also attract early and appropriate referrals of legal matters to Homeless Law.

Homeless Law's experience rolling out the legal health check survey in 2013-2014 showed that key risks with the survey are:

- clients may not be engaged with Homeless Law if they have not actively sought assistance themselves and may be difficult to contact and to book in or link with services;
- Homeless Law cannot assist with all legal issues identified in the legal health check (for example, family and criminal law issues), and is then required to facilitate referrals where possible; and
- workers may not complete the legal health check with clients because of constraints on time or resources.

Homeless Law conducts both 'pre training' and 'post training' surveys of workers administering its legal health checks. In the second quarter of 2013-14, 27 agency workers had completed the pre-health check survey for the year to date and 12 have undertaken the post-health check survey. Key results were:

- 80% of the surveyed workers stated they would refer the matter to a legal service if they identified a client's legal issue. However, 66% of the workers did not know what legal issues Homeless Law can provide assistance with.
- All said they found the training session helpful and all had more of an understanding of Homeless Law and its services.
- The two workers who had used the legal health check at the time of completing the post-training evaluation survey found it useful to help spot legal issues and respond to legal issues.
- Ninety-one percent of surveyed workers said they were likely to use the legal health check in the future.
- Seventy-five percent of the workers felt that the training increased their awareness of legal issues that affect their clients. The survey also showed that having the legal health check as a tool to use with clients increased the workers' confidence in asking about their legal issues and referring clients to services that can assist with their legal issues.

While 27 workers attended the legal health check training in the second quarter of 2013-14, only two of the 12 people who completed the post-training evaluation survey identified that they had used the legal health check (although 91% of surveyed workers said they were likely to use the legal health check in the future).

Importantly, from the post-training evaluation survey, workers identified that there were two main reasons that they did not use the legal health check with their clients: the client's other needs took priority or the client did not present with any legal issues. This first reason highlights that non-legal workers must be adequately resourced and supported to make effective use of legal health checks and to justify the time spent on training and development.

Where greater use of legal health checks is deemed appropriate, information is sought on who should have responsibility for administering the checks.

Legal health checks can be highly effective in identifying the legal needs of people who are not likely to recognise their own legal problems. However, to be effective the staff administering the legal health checks must be properly trained and resourced. Use of legal health checks requires ongoing review to ensure that they process is as easy as possible for workers to use, effective as an engagement tool and helpful in terms of identifying client legal issues and facilitating early access to appropriate legal services.

It is well established that there is a substantial level of legal need in Australia, with around 50% of respondents in the Legal Australia-Wide Survey reporting one or more legal problems in the preceding 12 months. Only 50% of those people sought advice in relation to their legal problem(s), with a substantial proportion of those people seeking advice from people without a legal background; for instance, case workers, healthcare professionals, counsellors and other non-lawyers.

For these reasons, non-legal workers are often best placed to identify people who are experiencing legal problems, and refer them to legal services that are suited to their needs and means. However, most frontline workers are not trained to screen for legal issues, or may not have the tools to do so in a comprehensive way.

Legal health checks are designed to be a service delivery tool, rather than merely an educational resource or self-help document. Australian providers of legal services have noted that many clients are 'systems-fatigued', and are not expected to undertake assessment independently; rather, legal screening is intended to facilitate service delivery and direct both lawyers and non-lawyers to address the issues that most commonly arise in high-risk populations.

When these services work in partnership, better social and legal outcomes can be achieved for clients. Legal health checks not only assist to identify legal issues, they strengthen partnerships between community services and legal services.

What role should non-legal agencies that have regular contact with disadvantaged clients play?

The effective development and administration of legal health checks requires the organisations to work together. Justice Connect has gathered together much of the work related to the developing these tools, and will shortly release a guide to the development of legal screening tools. Whilst this work will ensure services are not 'reinventing the wheel' to implement screening tools, there is still some work to be done. Justice Connect advocates that legal screening tools need to be individually for particular population groups, and particular legal agencies. A 'one size fits all' will not be effective. Once a tool is developed, it is best practice to pilot the tool, and evaluate the effectiveness of the questions utilised. It is also necessary to ensure appropriate training for the community workers administering the tool, and ongoing training will be required to allow for staff turnover. Regular evaluation should also be built in to allow for changes over time in the needs of a particular population group.

Justice Connect's Seniors Law Program received a grant to pilot a new legal screening tool for use by health care workers in an aged care setting. Seniors Law estimated the costs of the development process to be approximately \$50 000. This included the necessary literature review, development, consumer feedback,

materials, training and evaluation process. The training program was delivered to 80 workers across three agencies.

Information Request 5.2:

Information is sought on the costs and benefits of adopting the legal problem identification training module (being developed by the Commonwealth Attorney General's Department and Department of Human Services) more widely among non legal workers who provide services to disadvantaged groups.

Feedback is also sought on which agencies' staff should receive this training and whether funding should be provided to cover training costs.

Justice Connect supports the value of further training in legal issues identification for staff working in the Department of Human Services and other service providers working with disadvantaged groups. Approximately half of enquiries made to Justice Connect's legal clinics are referred by another community agency, which suggests that individuals experiencing disadvantage either do not know how to identify that they have legal issues, or how to seek assistance.

A two-way way dialogue is vitally important. Any training programs should be developed in partnership between community legal services such as legal aid commissions and CLCs, and the community organisations.

It is widely recognised that the social determinants of health provide a paradigm for analysing the factors that impact on a person's health. It has also been highlighted by the LAW Survey that those experiencing health problems and disability are more likely to have legal problems. The social determinants include:

- Education
- Work and employment
- Income
- Access to health care services
- Housing
- Disability
- Gender
- Whether a person is an Aboriginal or Torres Strait Islander person
- Race/ethnicity

Social and community services that address these issues, such as community health services, Centrelink, emergency relief services, cultural groups, housing services, mental health support services, and employment services are all likely to be working with individuals experiencing legal issues. Workers at these types of organisations, particularly those who conduct an intake or triage function, would benefit greatly from legal issue identification training. Any programs are likely to be more effective if they are developed in conjunction with community legal services.

Information Request 5.3:

The Commission seeks feedback on how best to facilitate effective referrals for legal assistance between organisations responsible for human service delivery, and, where appropriate, greater information sharing across departments and agencies.

There are a number of ways in which legal services and other organisations can work effectively to ensure successful provision of services.

- Integrated service delivery models – including partnerships such as advocacy-health alliances and blended service models such Justice Connect's new Women's Homelessness Prevention Project, which

involves both legal and social worker support. Under these models, rather than separating the different types of services (eg case management and legal, or health and legal) professionals from the various sector come together to provide a holistic service.

- Outreach models – legal services provides outreach services onsite at community services. This ensures regular contact between the organisation, and easier access to legal services for clients.
- Building effective partnerships takes time, effort and resources, but ultimately the value to the clients and the efficiencies for the organisations are worth the effort. The medical-legal partnership/advocacy-health alliance model is a clear example of the value of these partnerships. However in Australia, most health services are not privately funded, and there is not the same incentive to allocate already stretched resources to the development of this work. Incentives for the development of these partnerships needs to be provided by funders, or separate funding allocated to the development of this work.

Information request 7.4 (from Chapter 7: A responsive legal profession)

How should money from ‘public purposes’ funds be most efficiently used?

Justice Connect wishes to reinforce the importance of public purpose funds in facilitating access to justice including the funding of coordinated pro bono. Justice Connect endorses the approach taken in Victoria where the Legal Services Board has primary responsibility for maintaining the Victorian Public Purpose Fund. Our experience is that the Victorian model, which includes well structured and administered grants program, is highly efficient and effective.

Information request 13.1 (from Chapter 13: Costs awards):

The Commission seeks feedback on the most appropriate means of distributing costs awarded to pro bono parties. Options to consider may include allocating the awarded costs from a case to:

- **The legal professional providing pro bono representation**
- **The not-for-profit body providing or coordinating the pro bono service**
- **A general fund to support pro bono services**

The Commission is interested in any other options that could be examined.

Justice Connect considers that costs awarded to pro bono parties should be allocated to the pro bono practitioner to be applied at the pro bono practitioner’s discretion. Currently, law firms apply awards of costs in a number of ways, including paying for disbursements, including counsel’s fees; funding their pro bono budgets; making donations to charity; or making donations to pro bono disbursement funds.

Justice Connect considers that it would create undue administration to create a general fund and that this would not achieve any significant additional benefit, given that most awards of cost are reinvested in supporting pro bono. We do not recommend use of a ‘general fund’. We note that in the United Kingdom, section 194 of the Legal Services Act 2007 (UK) provides for ‘pro bono costs orders’. Where a party is represented wholly or partly pro bono, the ‘losing’ party is ordered by the court to make a payment in an amount equivalent to legal costs to The Access to Justice Foundation. The Foundation uses the funds to make grants to national pro bono organisations, Regional Legal Support Trusts and strategic pro bono projects, but does not fund litigation, including disbursements.

Justice Connect strongly considers that the costs and additional administration involved in establishing such a fund in Australia is unwarranted. Our preferred approach is that any costs awarded should be directed back to the legal practitioner that showed a willingness to take on the matter. In our experience, firms that take on public interest litigation generally have a strong commitment to pro bono and are willing to do pro bono litigation on a repeated basis. Accordingly, redirecting funds back to the pro bono budgets in those firms would have a more direct impact on achieving access to justice than making payments to a centralised fund.

5. Further information

Justice Connect looks forward to attending the public hearings in June 2014.

For copies of any of the evaluation reports, legal health checks or client surveys referenced in this submission, please contact Fiona McLeay, Chief Executive Officer at Justice Connect,

Justice Connect

June 2014