

### **Access to Justice - Fixing the budget, nannying and**

1. This submission comes from the coal face of injustice. Apologies for its lateness and not quite as well put together as I would prefer but I believe it will significantly contribute to your examination of this important issue. My submission considers some causes other than lack of funding and therefore possible solutions which go beyond constant calls for increasing funding to pro bono services. Without tackling the causes of so much pressure on these services the solutions cannot and are not being addressed just by increasing funding. (Attach. 1) Articles by Judge Weinberg & Marcus Begaric illustrate contributing factors. . Although they have contributed to some change, there is still the cruel costly problem by politicians of “tinkering at the edges”
2. These suggestions relating to causes and solutions arise from participating in numerous law reform inquiries, examining many many cases sent to me due to my websites about injustice, most recently [www.democraticjustice.org](http://www.democraticjustice.org) “dna cases” tab and my own long and painful journey through the Courts both Family and Supreme Court and other excessive costs to taxpayers due to the resulting poverty, homelessness and mental anguish. All could so easily have been minimised if not prevented by a change to State law and genuine accountability of pro bono lawyers as well as saving PILCH and a dedicated pro bono barrister, Richard Cook, a huge amount of unnecessary time and work.
3. Prolonged injustice especially is death by a thousand cuts. It is significantly contributed to by uninformed out of touch Judges who fuel rather than minimise protracted court processes in an unnecessarily gladiatorial, costly process which leads to so much pressure on pro bono services and worse, injustice. It has to change. (2) See Farnell submission to Succession Laws Inquiry for example referred to ie Cindie Sassons’ affidavit. Ignored.
4. The fact those with the money, including government departments can drag out cases incessantly and without accountability must surely put off ethical lawyers acting pro bono from acting in other cases.
5. Although every situation is different, there are some common factors which if addressed, would not only lessen the pressures on pro bono services, it would ensure other branches such as mental health services due to drawn out stress related mental problems, welfare handouts due to\* loss of housing, loss of small businesses and other appalling consequences of an inequitable legal system.
6. Needless to say, political indifference to a failing justice system has terrible consequences not only to families but to taxpayers who fund out of touch out of date Courts, processes and procedures

7. **The most important solution is surely more input to hack at the causes (the roots) that led to so much unjustifiable cost to taxpayers who fund the consequences of so much pressure on pro bono legal services and injustice as well as maintaining costly out of date Courts and processes.**
8. **Such problems have little to do with lack of adequate funding to pro bono services and everything to do with out of touch out of date out of ideas out of compassion politicians which have led to an overloaded failing justice system.**

#### **Other Causes Contributing to Pressures on Pro Bono Services**

9. Although there have been some positive moves to ensure pre court mediation (which doesn't always need a lawyer) it is not filtering through enough and it is not being addressed enough.
10. Its well known that out of date laws and processes are a significant contributing factor to the pressures on legal services. Why isn't that problem, out of date laws, and therefore out of touch lawyers and courts addressed more quickly and appropriately in some States ie those that ignore the significant findings of law reform inquiries etc.. as in Victoria?
11. DNA as evidence is the more serious example ("fraud was and is happening and cannot entirely be prevented – ALRC Inq.96 long after victims of false DNA tried to blow the whistle) but hastily conceived bad laws relating to restricted breeds and the misery it has caused to owners and dogs as well as cost so illustrated by the Mylo case could so easily have been fixed by changing the law. Despite a huge effort by the public and many organisations the obvious early cost saving and misery for owner and dog, widely acceptable to the public is was and has always been the adoption of the globally accepted "Calgary model" – "the deed not the breed". See inet for more info. Its not the mistakes that politicians make that the public objects to it is the refusal by both sides to acknowledge when they are wrong and change it thus leading to more pressure on pro bono services trying to fight unjust laws. In many hidden cases of course the dogs have been unfairly put down after long, costly fruitless journeys through Courts – what do you suppose is the effect on the owners ?
12. Many other issues such as health, affordable housing, and an equitable budget as well as animal welfare **should all be bipartisan in their solutions** not the subject of endless, fruitless, politically motivated point scoring gladiatorial debate and pre election spin. How can we expect to influence justice and peace in other countries when our own system is geared to so much disharmony rather than co-operative solutions?

13. Following on my own efforts in relation to false paternity tests and the findings of the ALRC Genetics Ethics Inquiry, the Status of Children Act s10 was updated in other States (NSW 2005 Qland 2002) to include DNA paternity testing could be Ordered by the Supreme Courts. G. Vs H. H.C. 1993 I think it illustrates how a discerning judge handled DNA as evidence. There are many little known cases where Mothers especially did not have to go to Court. Yet the intense effort I made to get Clarke to change it in Victoria, after his utter refusal to adopt even one of three solutions sent to him and in spite of significant new evidence coming to light (previous evidence being squashed by police and VPFSC as well as a **pro bono** lawyer) it is consistently refused with dismal excuses. (A huge amount of new evidence came to light after I discovered the solicitor appointed by PILCH had a serious conflict of interest. The Legal Services Commission response the usual load of misleading claims and responses, codswallop (coverup) and support for the wrongdoers that costs taxpayers so much and destroys the whistleblower. The case where a lawyer acted pro bono in a long running case against the government then costs awarded against the lawyer must be very offputting.
14. The reason it is so important to change this little known human rights law, which for so long previously ensured the rights of mothers in de facto relationships, is that when DNA paternity testing could first be ordered by the Family Court, a large percentage of women previously unable to prove paternity DID NOT HAVE TO GO TO COURT. Realising a Judge can order the test caused many fathers to agree to pre court DNA testing. The massive cost to taxpayers of cases dragging through Courts for years and years unnecessarily rather than DNA paternity testing seems to be off the radar of Judges as well as politicians. Awarding costs in favour of family members refusing DNA testing in years and years of litigation rather than pre Court is incomprehensibly cruel and unjust as well as costly to taxpayers who fund Courts as well as consequences.
15. Can you please wake up our politicians to the fact lawyers regularly recommend to those with money, including taxpayers money ie Councils, government departments, police, watchdogs etc., fathers in F.C. etc not to agree to pre Court mediation . It is still common practice party because some Judges lack the perception to address it and defence doesn't have to produce evidence in Court that opposing parties may well know exists. Numerous cruel examples if anyone interested in evidence of this despite recommendations by various Law Reform inquiries I have been involved in which are still being ignored.
16. The extraordinary amount of taxpayer money being wasted on pursuing Infringement notices and unnecessary stress is of course soon to be the subject of another inquiry.
17. Lack of education and accountability of Judges who unnecessarily contribute to drawn out, convoluted processes, fail to apply time honoured precedents and generally lack concern for taxpayers pockets can lead to new, bad precedents due to an uninformed Court

dismissing cases unjustly. There absolutely has to be a better way to ensure Judges are more up to date, better educated, are not allowed to handle cases where they have little if any experience, are made accountable if they do and fail, and that the selection process is not left to one individual. Especially a politically biased politician.

18. It seems extraordinary to me that despite the recommendations and implementation of pre court mediation in Victoria, the lawyer who recommended to family members they refuse pre court DNA testing, in a public interest case which dragged on unnecessarily for years and is still costing taxpayers a fortune via welfare and supported housing, as well as legal fees of such opposition in excess of \$700,000 rather than have a DNA test, is now a Judge who clearly favours litigation rather than resolution. !
19. Time for professionals to do some of the “heavy lifting” for the budget isn’t it?
20. Perhaps a better process to address at least some of the issues, especially public interest ones which put so much pressure on pro bono lawyers would be for States and Federal to have permanent independent “Justice Panels”, maybe run by Universities as part of lawyers training or other appropriate “Access to Justice” Committees ?
21. Lack of appropriate, independent eyeball to eyeball transparent mediation in relation to complaints against police, lawyers, watchdogs secret inquiries, and other wrong doers leading to lack of accountability is all putting unnecessary pressure and cost onto pro bono legal services. It is also extremely cruel. There has to be a better (compassionate as well as cost effective) way.
22. Transparent, well publicised bi partisan committees rather than politically appointed watchdogs just one of several possibilities.
23. Victoria is probably the worst, due to not having an appropriate, independent inquiry into corruption, a secretive, inefficient IBAC as well as ignoring the whistleblower if not the findings and recommendations of numerous diligent bi partisan inquiries. Numerous articles in the media as well as individual experiences illustrate that some of our watchdogs are a costly disgraceful and very cruel failure. Secret inquiries do not and cannot overcome the cone of silence in professions by way of the current secret one sided inquiries which favour the wrong doer rather than the complainant. Just ask if you would like significant examples. Nor do they address the obvious conflicts of interest in many professions, including judges and lawyers, when there is no independent transparent inquiry.
24. One of the cruelest, most obvious, most costly areas contributing to overload on pro bono services is the manner in which complaints ie whistleblowers are treated. It destroys the messenger and takes years if ever to fix the problem largely because of the propensity and

indifference of politicians who wait till the media finally manages to wake up and many many more people suffer before waking up themselves. The huge pressures on all services, not just the legal system costs in welfare, health, family breakdown etc not just to the whistleblower. The coverup of systemic problems and failures that lead to injustice rather than listening to and acting on information provided by the messenger is cruel, unnecessary backward and uncivilised as well as costly.

25. Requests for pro bono assistance are mostly handled by comparatively in experienced though usually very dedicated lawyers is back to front. Some of the responses of those involved in pro bono services including PILCH are not only ill informed they highlight serious lack of appropriate research effort to be informed – ie meet eyeball to eyeball with the client and not listening in cases where it is clearly important to do so such as those that apply to whistleblowers. This, lack of transparent, eyeball to eyeball, early discussion is merely adding to their own difficulties and failed efforts to get legal assistance through not being fully informed not because they do not work hard or lack funding. I have nightmares still about the suffering of those wrongly jailed and their families, and destitute homeless people ive met including mothers due to ignorance and indifference and the cruel systemic failure to understand the problems. And not just with DNA as evidence. see supplementary submission to Succession Laws re young people. Its only my ongoing efforts in the area of law reform and other inquiries which ensure I don't commit suicide as a result of my own experiences.
26. Since systemic indifference is prevailing and all parties are guilty of indifference to the problems then the obvious solution for benefiting from whistleblowers is the adoption of "Que Tam" laws ie rewarding them rather than destroying and a National Independent Crimes & Corruption Commission mooted years ago by Professor Fells and only recently again being called for via the media.
27. Finally, conflict of interest of some of the larger law firms who do great work in pro bono services has worsened due to governments, Councils, Police, big business and other wealthy organisations such as Red Cross etc. using more than one large law firm, e.g. Police use both Maurice Blackburn & Slater & Gordon, police are not made accountable via current inept indifferent process. It is partly this that creates difficulties for PILCH and other Community Legal Centres under the current system where they try to obtain a pro bono lawyer. (Confirmed in PILCH letter as well as cases and my own)
28. With failing watchdogs who support wrongdoers rather than victims of crime and injustice, exacerbate injustice and lack of independent law firms it is a recipe for disaster not to adopt the Salvo NSW model which last time I examined was totally independent and on the surface at least had not been "bought" in the way other law firms have. In fact limited though my own research may be State by State, its seems to me Victoria is lagging way

behind NSW in addressing the issue of access to justice, especially the causes such as lack of accountability.

### **Possible Cost effective solutions**

29. Can the following be examined/considered with a view to encourage the establishing and developing of programmes in all States along the lines of the self funding, independent NSW Salvation Army Legal Centres rather than the failing bottomless pit currently the norm? Contact Urban Justice Centre or Salvos NSW for more detail.
30. Perhaps also direct funding into Victoria Legal Aid type set ups who, as I understand it, are independent of conflict of interest problems due to employing their own lawyers – e.g. employ more duty lawyers pre rather than in Courts?
31. Such schemes have a variety of advantages apart from saving government money. e.g. there is more direct relationship between **experienced lawyers** actually working in “the business” with the newly qualified and less experienced. By encouraging this type of independent programme where the Centre itself actually can make money in the way any law firm does then recycle the funds to help the penniless and powerless it is not only a more cost effective way but for other reasons is better than the nanny way and would also receive the support of voters.
32. I had the privilege of meeting with Lou Pakula when also interviewed by an idiot at the Legal Services Commissioners office. This is what my next suggestion is formed on. What quickly came across at the interview was the difference between an experienced solicitor with knowledge of the real world, insight, intelligence and a good strong knowledge of the problems in the system as opposed to someone totally inadequately experienced dealing with complex issues, further confirmed and exacerbated by a dismally inept indifferent response that bears no relationship to the facts which would have come out if the mediation with the solicitor I requested had been established.
33. It has recently been pointed out to me that many experienced, retired lawyers do in fact offer their services to community legal centres and PILCH? But they are not the first person one sees. Its often someone comparatively inexperienced in the real world and fresh out of training, then passing on a skewed view of a case, and relying on incorrect information rather than listening to the client.
34. My experience with other cases as well as my own is that the current referral system tends to aggravate injustice and costs and should be the other way round. Other than the more straightforward cases, such as traffic offences and similar could/should? be assessed by these experienced retired lawyers **first** because inexperience can and does muddy the waters regardless of dedication or otherwise.

35. Contract employment of Community services of all types including legal is dumbing down advocacy due to fear of government cuts. The squashing of dissent is a national disgrace.
36. The problem with PILCH also is that there are fairly regular changes of comparatively inexperienced lawyers and “Managers” - ie those assessing the application and if one is rejected by one section e.g. Human Rights its rejected for e.g. the LIV scheme – this latter having become far less accessible and effective under PILCH than it was when it was independently handled by the Law Institute.
37. (I used to work for the Dean of Monash by the way and have held other positions where my interest in justice as opposed to the law was enhanced. )
38. Currently, when one applies to PILCH or a local legal centre even unusual, serious, and or complex issues are dealt with first by lawyers still cutting their teeth and with little experience of the reality of problems with the legal system. This is no reflection on the many dedicated young people who join Legal Centres but what my experiences as well as the light bulb meeting with Lou highlighted is that inexperienced assessment can exacerbate injustice and costs, as well as being unnecessarily time consuming when things go wrong in much the same way as wrongful diagnosis in health issues.
39. Community Legal Centres originally were funded and encouraged to help people able and willing to prepare their own case and would then assist with advocacy for an appropriate barrister. It was a much better system. Some changes have recently occurred to try to assist self represented litigants but my personal view is that whoever is compiling them does not have a clue as regards some of the insurmountable difficulties self represented applicants come up against such as having to obtain evidence against police and other agencies and wrong doers via FOI , (absolutely no reflection on FOI of course) rather than transparent eyeball to eyeball disclosure in mediation, thus ensuring the facts and truth get trampled on in Court.
40. The unwillingness of Experts to talk to one direct rather than through a lawyer etc. would be quickly overcome if Community Legal Centre lawyers first examined the facts and issues through the eyes of the applicant then simply did what is done for those with money – have a transparent video hookup with the applicant, the Expert and the opponent. Pre Court.
41. In my opinion worst of all, the attitude of Judges to self represented litigants including ignoring significant affidavits which so unnecessarily prolongs cases then not only blames the applicant but unjustly awards costs against the person having to utilise pro bono services or unrepresented! In fact, an examination of the pack put out by the Courts shows that the difficulties experienced in handling witnesses etc are not even mentioned

thus making justice even less accessible due to overloading of Community Centres with often fairly basic matters. I have several examples I could point you to.

42. There are also some time honoured laws and precedents which could and should be included which have broad application to the poor and powerless but not applied by Judges. Maybe they could be displayed in Courts to replace the picture of the current Attorneys Generals or other irrelevant portraits?
43. The insistence by the Courts as well as the Law Institute that one has to have a solicitor acting before being able to access a barrister should not be an arbitrarily set in stone rule especially in Civil cases. Rather it should have the flexibility as previously where those trying to help themselves are given information re laws and processes they need to understand (e.g. relating to Expert evidence and calling witnesses etc.) instead of getting trampled on. Its merely an opportunistic cash grab by lawyers being applied to civil cases not just criminal ones. Community Legal Centres as well as Courts are blaming self represented litigants for clogging up the courts when in fact it is the way their evidence is ignored, obviously lying lawyers believed and other inefficient handling issues by Judges that are often to blame.
44. In the interests of taxpayers as well as justice, Councils, police, government departments and professional bodies must be made to first establish INDEPENDENT mediation because self interest lawyers recommend they don't meet with the complainant who has little money to pursue a case through Court. Small businesses as well as low income people are then forced to withdraw or not apply at all. Ie simply fold up – as has also happened to Mothers. Despite the recommendations of the Justice Department as well as Law Reform Commission etc. the huge unnecessary cost to taxpayers by litigating even frivolous easily resolved complaints. Is adding to the pressures on pro bono services not to mention welfare and mental health costs.
45. I am deeply concerned about the effects of the rising tide of sophisticated fraud, and the manner in which police refuse to give the most basic assistance thus forcing victims of fraud already cheated by fraud onto pro bono services. (Compare Long case with Davis' and Farnell experience at [www.democraticjustice.org](http://www.democraticjustice.org).) Document fraud is on the increase but has existed for years yet the Courts naively seem to believe it doesn't exist or ignore fraud in civil cases when the police have not assisted. What should be more perceptively considered points to the fact that police should assist victims of fraud to enable them to seek justice in other jurisdictions. Would this be a cost effective self funding plan in the money it would save the welfare and health and affordable housing programmes as well as pro bono services.? Inaction by police should be sorted out via independent mediation rather than secretive costly non event inquiries by more police. In every profession there are the good guys and the bad guys – my guess is the good guys being squashed by the



cone of silence would prefer this solution and the bad guys not want it including those at the top.

46. The horrendous consequences of fraud to families is trivialised. The ease with which documents can be fraudulent, including Experts' reports, not addressed. Not all the homeless are into substance abuse or lazy – as politicians would have us believe.
47. Although I am secretary of a justice group, an avid current affairs follower and contribute to numerous law reform and other inquiries even while homeless and write to politicians and Councillors as well as victims of injustice etc. I am appalled as well as disappointed that I somehow missed out on the fact there was an inquiry into access to justice. Also relevant – there was a housing affordability inquiry .
48. Perhaps instead of spending so much money on spin advisers and irrelevant publicity about stuff we all know the media /politicians could publicise these significant inquiries better?
49. My personal experience/view is that the public benefits hugely and could/should be encouraged to participate in by -partisan law reform inquiries more as a way of ensuring they are heard? The whole justice system seems to be bogged down by those who really have a vested interest in maintaining current inequities rather than minimising the black holes in the budget? Addressing causes and providing real solutions to lack of access to justice might bring down the homeless figures, welfare figures and health costs?

I hope I have provided some digestible (positive) food for thought.

Respectfully,  
Patti Farnell