



SPRINGVALE MONASH
LEGAL SERVICE Inc.

Submission to the
Department of Justice and Regulation

Access to Justice Review

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About SMLS

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

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

1. The availability of easily accessible information on legal assistance services and the Victorian justice system, including advice on resolving common legal problems.

Springvale Monash Legal Service (SMLS) welcomes the opportunity to contribute to the Access to Justice Review by the Department of Justice and Regulation.

SMLS has worked for over 40 years to make the legal system accessible for members of our community who are experiencing disadvantage, and have expertise in providing effective legal services to marginalised individuals. We have established services to reach otherwise hard to engage groups through strategic outreach and co-location, as vulnerable individuals are less likely to access legal assistance in an office setting. Inter-sectoral collaboration has been recommended to address the lack of awareness by marginalised groups on where to access legal assistance.

SMLS has been co-located with South East Community Links (SECL, formerly SCAAB) for all of its operation. Our co-location and partnership work over the years has resulted in a robust referral system with a range of community organisations. In addition, we have established regular outreach services to meet the legal needs of our diverse community, which include:

- YSAS Dandenong: legal advice to young people with substance dependence and misuse issues
- SECL Youth Links: legal advice to multicultural youth
- Dandenong Hospital: legal advice and legal education for clients in the psychiatric ward
- Monash Health Community Hub: legal clinic at Monash Health Dandenong for health clients (starting March 2016)
- AMES: legal education for youth in the AMEP program
- Windana: legal education for youth withdrawing from drug and alcohol addiction in detox
- SECL and SMRC - Refugee Action Program: Legal education for newly arrived people of refugee and/or asylum seeker background
- Fitzroy Legal Service: Taxi Driver Legal Education Seminars at 13 CABS Oakleigh
- Berwick Family Relationship Centre: legal education and family law assistance for clients

In 2012, the LAW survey in Victoria reported that 10 per cent of respondents accounted for 64 per cent of legal problems.¹ They found socially excluded or disadvantaged groups, including people with a disability; single parents; those who live in public housing, unemployed, or who relied on Centrelink payments, had a higher level of legal need because they were more likely to have legal problems. Legal issues rarely develop in isolation, and they can have a greater negative impact on particular groups in society. Experiencing one legal problem can increase the prospect of another issue arising, either because one causes the other to arise or because

¹ Christine Coumarelos et al, "Legal Australia-Wide Survey: Legal Need In Victoria" (Law and Justice Foundation of New South Wales, 2012) xiv

of systemic issues inherent within our justice system – that is, some groups are more susceptible to experiencing a particular type of legal issue.²

We recognise that vulnerable communities may be reluctant to access legal advice from our office, and as evidenced above, have responded by developing partnerships with other service providers to establish place-based outreach legal advice clinics.

CASE STUDY: YSAS

In 2014, SMLS established a weekly outreach service at Youth Support and Advocacy Service in Dandenong to provide legal advice to young people with drug and alcohol dependency. Young people engaged with this service often have multiple legal issues which impact on their health and well-being. The place-based service provides them with the opportunity to get legal advice for issues such as unpaid fines, warrants or debt that they otherwise may not have talked to a lawyer about. Our holistic service delivery model, where timely legal intervention is coupled with non-legal social support means that we are able to address legal issues which impact on a young person's attempts to stop using drugs and alcohol.

Today, we have three locations we provide weekly legal advice from, including a multicultural youth service, a youth drug and alcohol service as well the psychiatric unit of a local hospital. We are currently establishing a legal clinic at the Monash Health Community Hub to provide legal advice through both drop-in and appointments to further reduce the barriers to justice. In addition to legal advice services, we provide regular legal education as part of our prevention and early intervention work. Our co-located outreach services were established to act on the recommendations of reports which found that it increased access for individuals with a multiple and complex legal and non-legal issues.³

Successful engagement of vulnerable and hard to reach clients requires working with appropriate organisations who support the target population, and address the issue holistically through a contextualised understanding rather than addressing the legal issue in isolation.⁴ Marginalised communities sometimes experience difficulties working with lawyers to resolve their legal issues.⁵ Our holistic service delivery model through co-located drop-ins allows us to reach clients who otherwise may not engage with a lawyer out of fear or mistrust.

The 2012 LAW survey found that people of CALD backgrounds were less likely to report having a legal problem.⁶ However, they noted that this may largely be attributed to their

² Law and Justice Foundation of NSW, *Justice Made to Measure: NSW Legal Needs Survey in Disadvantaged Areas* (2006)

³ Povey, Kate and Chris Moore, "Dividing Walls An Examination Of Unmet Legal Needs In Family Law, Family Violence And Child Protection: Women (And Their Accompanying Children) Who Are Homeless Or At Risk Of Homelessness" (PILCH, 2012)

⁴ Buck, Alexy and Liz Curran, 'Delivery of Advice to Marginalised and Vulnerable Groups: The Need for Innovative Approaches' (2009) 3 *Public Space: The Journal of Law and Social Justice* 1

⁵ Buck, Alexy, Tania Tam and Cate Fisher, Legal Services Research Centre Research Paper No. 6, *Putting Money Advice Where the Need is: Evaluating the Potential for Advice Provision in Different Outreach Locations*, Legal Services Commission No (2007)

⁶ Coumarelos, Christine et al, *Legal Australia-Wide Survey: Legal Need in Australia* (Law and Justice Foundation of NSW, Vol 7, 2012) 45

failure in identifying the legal nature of the problem. Our experience in working with newly arrived communities supports this observation. SMLS delivers tailored workshops to address common issues based on our experience, analysis of trends in case work and through information shared within our networks. The trust gained through our community development and CLE projects determines our ability to respond to and provide access to justice for people of CALD background.

CASE STUDY: AMES

SMLS has been working in partnership with AMES to deliver a community development project to young people enrolled in the AMEP program every term. The project was developed as newly arrived community members are prone to experience a range of legal problems as they embark on their settlement journey in Australia. Often issues are experienced because they are not aware of their legal rights and responsibilities, nor are they familiar with the operation of the Australian legal system. The project was designed to complement and support the development of independent living skills by newly arrived young people, encompassing the ways the law impacts on daily life at particular points in their resettlement journey.

Through experiential workshops, young people build their knowledge about their rights and responsibilities; increase their capacity to access appropriate legal assistance, and expand their knowledge on the different ways a lawyer can assist with problems that do not involve the police or the courts. More than 150 students have participated in the project, and evaluation of the program in Term 2, 2015 found that 95% of those who responded to the evaluation reported that they knew where they could seek assistance for legal issues. Students have sought legal advice from the service on a range of matters, and have shared their knowledge with their peers who have also engaged with us. Due to the success of the project, AMES contacted Eastern Community Legal Centre to replicate project in their Box Hill location.

CLE is an effective legal capacity building strategy, as the likelihood of individuals taking action to resolve legal issues is dependent on their ability to recognise the legal nature of their problem. a distinctive role of CLCs, and is an integral function of our strategic service delivery model, and complements our law reform and case work activities. While we provide legal assistance to individuals, we recognise that structural inequalities cannot be addressed through casework alone. Community development and CLE is an integral aspect of CLCs early intervention and prevention work, as it aims to educate the community about the law in order to avoid legal problems from arising, or to resolve the problem to prevent it from escalating and negatively affecting their health and wellbeing. The key values of empowerment, sustainability and capacity building is inherent in legal education, as it increases our community's knowledge and confidence in navigating the legal system. Individuals who are aware of their rights and responsibilities are better able to protect them and seek support.

Technology has made a significant impact on the way we access information, as is evidenced by the abundance of information on the internet. However, when experiencing a legal

problem, people prefer to get advice on a specific situation instead of generic legal information available through legal publications.⁷ A digital by default approach for legal information, may be suitable for the general population, however, ignores the need for a variety of different access points that many vulnerable and marginalised individuals seeking legal assistance require. For socially excluded groups, inaction to resolve a legal problem was not only due to their inability to recognise the seriousness or what action to take on the issue, but also because the ability to deal with a problem on their own required confidence, expertise and financial resources.⁸ In particular, youth experiencing disadvantage who have low levels of educational attainment and limited access to the internet will have diminished success in using online publications alone to seek advice.⁹

As has been recognised by the commission, there is a substantial amount of legal information, in particular fact sheets, available on the internet. However, these resources whether they be in English or in another community language relies on the assumption that the person seeking the information has successfully identified their problem as a legal one. Our experience in providing legal education, and research by Footscray CLC have found that a key barrier for CALD communities to access legal assistance stems from their inability to recognise that their problem has a legal nature.¹⁰ Additionally, it rests on the assumption that everyone has internet access as well as English and computer literacy.

A single entry point, no matter how well publicised or resourced will not be effective if community legal centres are not adequately funded to meet the demand. At-risk clients who are difficult often cancel appointments due to various reasons. Many individuals who are unable to access assistance through initial contact with drop-in services do not make appointments for another session. Similarly, a referral, whether it be 'warm' or not does not address the root cause of referral fatigue - the underfunding of legal assistance providers to meet the needs of the community. As previously discussed, it can act to increase a gap in access to justice for hard to reach groups who are less likely to follow up with the referral.

In addition to working directly with communities impacted by the law, CLCs work with professionals who provide support to vulnerable or marginalised individuals. It is widely recognised that many people seek advice from non-legal professionals, for example the Advocacy Health Alliance reported that close to 30% of Australians seek advice on a legal problem from a health professional or welfare advisor during an appointment.¹¹ A number of CLCs, including SMLS, have partnered with hospitals and health care providers in a health-justice partnerships to increase access to justice for their clients. Through this partnership, legal need is addressed through the provision of weekly outreach to patients at the Dandenong Psychiatric ward. Additionally, we are currently in the process of establishing a legal clinic at

⁷ Buck, Alexy, Tania Tam and Cate Fisher, Legal Services Research Centre Research Paper No. 6, *Putting Money Advice Where the Need is: Evaluating the Potential for Advice Provision in Different Outreach Locations*, Legal Services Commission (2007)

⁸ Buck, Alexy, Nigel Balmer and Pascoe Pleasence, "Social Exclusion And Civil Law: Experience Of Civil Justice Problems Among Vulnerable Groups" (2005) 39 *Social Policy & Admin* 320

⁹ Denvir, Catrina, Nigel Balmner and Pascoe Pleasence, 'Surfing the web – Recreation or resource? Exploring how young people in the UK use the Internet as an advice portal for problems with a legal dimension' (2011)(23) *Interacting with Computers* 96

¹⁰ Fraser, Katie, *Out of Africa and into Court: The Legal Problems of African Refugees* (Footscray Community Legal Centre 2009)

¹¹ Advocacy Health Alliance, "Health-Legal Partnerships Help Vulnerable Populations" (2014) *Health Matters: The Victorian Healthcare Association*, 10

the Community Hub in Dandenong, and will be delivering professional development sessions to allied health workers.

SMLS has delivered professional development workshops to community sector workers. In 2014, we delivered a workshop for the City of Greater Dandenong, City of Casey and Shire of Cardinia targeted to youth workers in the South East, with the aim to increase knowledge on the duty of care for workers and the role of CLCs in assisting clients. The evaluation showed that all of the participants found the workshop either 'useful' or 'very useful' and 77% of participants reported an increase in knowledge. We have also worked in partnership with other CLCs to deliver CLE, and have an extensive history of working together with Flemington Kensington CLC and our local community on police matters. Most recently, SMLS, Peninsula CLC and Casey Cardinia CLC have partnered with VLA to provide a modified version of their *Settled and Safe* training to workers who attend the *Critical Linkages* network meeting.

2. Options for diverting people from civil litigation and into alternative services where appropriate, such as a triage model.

SMLS sees the right to bring legal proceedings as a fundamentally democratic one and would be wary of attempts to divert people away from civil litigation against their will. Further, reforms brought about by the introduction of the Civil Procedure Act (Vic) (2010) ("the Act") mean that "proper basis" certification¹² must now be made by practitioners, which should reduce claims brought for improper purposes, such as to "tie up" an opposing party or disadvantage them financially.¹³

The Act contemplates greater management of civil disputes, in particular by the Courts,¹⁴ which we believe is helpful and cost-efficient. Management of all disputes at all levels is likely to be advantageous.

However, it is SMLS' experience that some management practises can be detrimental or unfavourable for unrepresented parties. SMLS submits it should not be for the registry to decide, for example, whether the Victorian Civil and Administrative Tribunal (VCAT) has jurisdiction to hear a particular dispute where the point is borderline or arguable. Rather, such cases should proceed before a Member. Nor should there be any expectation of complexity in application forms which are beyond unrepresented parties, or those, for example, from a non-English speaking background.

Similarly the success of a triage-model, at any level, would depend on the qualifications, training and resources available to the people conducting it. Efficiencies such as timely resolution of matters, and effectiveness such as appropriate client and/or appropriate client matters being triaged will only be successful if the capacity of those administering it is appropriate. Without appropriate level of staff expertise, people with legitimate claims to litigate may be diverted from doing so. Whilst SMLS supports any model that considers

¹² SS 18 and 42

¹³ See *White Industries (Qld) Pty Ltd v Flower and Hart* (1998) ALR 169

¹⁴ See generally Part 4.2

efficiencies and effectiveness in the context of access to justice, this pursuit will include litigation. In some cases, litigation is the most necessary action to resolve civil disputes.

CASE STUDY: HAMZA

“Hamza” is a young migrant that has been in Australia for a couple of years. Hamza has skills in basic tiling, rendering and plastering work and has registered a sole proprietary business in the hope of finding sub-contract work.

Hamza answered an advertisement on Gumtree seeking tilers for small sub-contracting work and was put in touch with Paul. Paul explained the job and hired Hamza to complete it as a sub-contractor. Paul agreed to pay him a fixed amount for the job. Hamza was also to be reimbursed by Paul for the building supplies and other items he needed to purchase to complete the job.

Hamza completed the work and invoiced Paul. Paul made numerous excuses as to why he could not pay Hamza including that the owner had not paid him and therefore he could not pass it on. Hamza contacted the owner and the owner confirmed he was happy with the job and had paid Paul some time ago.

After more excuses from Paul, Hamza eventually approached him about payment and was threatened with physical violence. SMLS assisted Hamza with a small claims application at VCAT for the monies owed to him. Hamza had very little understanding of English and the legal system. Hamza was successful with his claim at VCAT and SMLS are further assisted with enforcing the Orders against Paul in the Magistrates’ Court.

SMLS is supportive of expanding alternative dispute resolution services in civil litigation, subject to our comments below.

3. Whether and how alternative dispute resolution mechanisms should be expanded so that more Victorians can make use of them.

SMLS is not necessarily opposed to the expansion of alternative dispute resolution (ADR) mechanisms. Indeed, when well used, ADR can substantially reduce the cost, complexity and time of litigation to the benefit of all parties. However, SMLS represents and advises a particularly disadvantaged client group, whose best recourse in certain disputes is to the law and traditional legal processes. ADR in such cases, in an attempt to “level the playing field”, may leave such clients worse off than if they applied for remedies in VCAT or the Courts.

An example might be a residential tenant who is being harassed by their landlord, who wants the tenant to vacate quickly (without prescribed notice)¹⁵ so he can sell a residence in a rampant property market. A tenant could apply to VCAT for an urgent order restraining the landlord from entering the property without notice.¹⁶ By virtue of current Tribunal practices,

¹⁵ S.259 of The Residential Tenancies Act 1997 (“RTA”)

¹⁶ s.472 of the RTA

such an order would be immediately faxed to, and enforced by, the Police. Use of ADR in such circumstances might have the effect of diluting the tenant's rights, by attempting to find "middle ground", such as bringing into existence an agreement between the parties that has less force than a Tribunal order.

A key factor in whether ADR is used effectively is whether the parties have access to adequate advice before participating in it. If ADR is to be expanded, provision should be made for advice services (especially free services) to be adequately funded and resourced. These include both at-Court services and Community Legal Centres.

4. Potential reform to the jurisdiction, practices and procedures of the Victorian Civil and Administrative Tribunal ("VCAT") to make the resolution of small civil claims as simple, affordable and efficient as possible.

VCAT was established to provide a highly equitable dispute resolution service to individuals. In June 2013, VCAT application fees were raised substantially. The application for civil claims for \$500 or more but less than \$10,000 is now \$174.10. Previously it was \$30. According to VCAT Annual Reports, civil claims lodged declined from 9205 in 2012-2013 to 7794 in 2013-2014 to 6895 in 2014-2015. This represents a significant decline (of almost a quarter). Anecdotal evidence suggest some litigants are precluded from accessing legal remedies due to financial limitations.

For people who are owed, say, less than \$1000, a VCAT application makes little economic sense. Such a debt could arise from a contract for services – say a newly arrived migrant, employed as a painter for \$20 per hour, or it could mean a tradesman who was not paid for a day's work. To people on low incomes, VCAT is now a less accessible forum.

Although the fee regulations expire at the end of 2016, and are subject to review, SMLS believe that the increase was a retrograde step, and that fees should be reduced to a more modest level. Further SMLS believes the fee waiver process,¹⁷ for disadvantaged applicants, should be simplified and made more generous.

Current grounds for having the application fees waived are:

- Holding a Commonwealth concession card; or
- Financial hardship.

Those claiming financial hardship must fill out a complex and lengthy affidavit as to their means. This process is more demanding than the Supreme Court of Victoria's fee waiver process. Also, anecdotally, VCAT staff do not apply this criteria consistently: that is, those with a commonwealth Health Care card are often also asked to fill out an affidavit as to their means.

¹⁷ Under section 132 of the Victorian Civil and Administrative Tribunal Act 1998, fees may be waived where it is considered that payment would cause the person responsible for payment of the fee financial hardship. In all cases, there is a general discretion to grant or refuse the waiver application.

Those who deemed eligible for free legal services such as legal aid should also be eligible for a VCAT fee waiver. A simple income and assets limit should be set. This would also substantially increase access to justice, one of the key principles on which VCAT was founded.

6. The availability and distribution of funding amongst legal assistance providers by the Victorian and Commonwealth governments to best meet legal need

In the changing economic environment the ongoing risk to reduction in funding levels to the legal service sector (certainly to community legal centres) seems extraordinary. Federal cuts to the legal assistance sector are contrary to the clear cost benefit analysis of CLCs.¹⁸ This is a particularly important when considering how to address compounding systemic issues. However, SMLS accepts the relevancy of a review of distribution of funds irrespective of cuts.

SMLS acknowledges that changing demographics and community structures may impact on the relevancy of community based organisations and their viability. SMLS also acknowledges that technological developments have meant major changes in organisational management; including the finance and administration components.

SMLS is sensitive to proposals akin to competitive tendering, a corporate strategy being applied to a not-for-profit business model. It does not reflect nor foster the capacity of the legal assistance sector to work strategically to meet unmet need with reference to internal and external considerations (for instance, working with a variety of other service providers in partnerships).

CLCs are capable of responding with flexibility to changes in their community's needs as well as the nature of funding models. However, it cannot be emphasised enough that CLCs are distinct from other legal aid assistance programs and should be managed accordingly. SMLS works very closely (often in partnership) with other community organisations to develop and implement programs. The viability of program development includes assessment of our financial capacity. SMLS is frequently canvassing grant opportunities to deliver capacity building projects which increase access/legal capability, a proactive response to legal need.

7. Whether there is any duplication in services provided by legal assistance providers, and options for reducing that duplication

Firstly, it is expected that any discussion regarding duplication would require appropriate data analysis. Secondly, duplication must be considered in the context of:

- Conflict of Interest policy
- Cultural diversity throughout regions
- Special Disadvantage

¹⁸ Stubbs, Judith, John Storer and Colleen Lux, *Economic Cost Benefit Analysis of Community Legal Centres*, National Association of Community Legal Centres (2012)

- Nature of community based organisations
- Service delivery model based on legal issue or based on attributes of the client

SMLS supports the proposition that CLCs have the unique capacity to explore exceptional legal issues that a particular group may experience; and that it may be crippling for that group. This proposition is different from being responsive to a particular legal issue affecting a less defined group in society. As smaller distinct services, CLCs are connected to the specific community it serves and more flexible to explore targeted needs.

SMLS is located in highly disadvantage pocket in urban Australia. However more importantly than a low SEIFA rating is the high percentage of non-English speaking migrants that live within the surrounding local government areas. The mode in which newly arrived communities settle in Australia will impact on their capacity to engage within our legal system. It is SMLS' submission that without its own autonomy, control, and eligibility assessment, this organisation would not have been so positively adaptive in our service provision to the disadvantaged demographic in our service region.

SMLS employs a strong community development philosophy in order to inform our case work provision, educate our community and evaluate our programs. By way of example; we engage in outreach services and education programs to inform our community of the Australian legal system. We craft our education programs in response to community issues. For instance, education programs designed around 'Youth & the Police' have been in response to knowledge gained from outreach services to *Youth Links* – a youth service with predominantly young people who arrived as unaccompanied-minor asylum seekers. Taking a community development approach, we have worked with the local community and the police to address negative experiences when dealing with the police. This has led to a number of projects spanning several years, from publication of research reports and toolkits to delivering community development projects and contributing to law reform activities.

Two LAC satellite offices are situated in our service region. These complement the legal aided assistance services by way of their more general service provision in the areas of criminal law, family law, mental health review tribunal work and social security matters. The cooperation includes frequent cross referrals between the services particularly where there is conflict of interest. Another example is where SMLS provides an outreach service to a psychiatric unit at the local hospital. SMLS can ensure clients are linked back to the LAC which provides assistance and representation with applications under the Mental Health Act.

SMLS has recently completed a multi-service (CLCs & regional LACs in the south eastern metro-region) needs analysis project. This project is a pro-active initiative to inform services of the legal needs – met & unmet – of our region and guide cooperative service delivery. Arguments for the sustainability of current services (certainly in this region), and any proposed change, to streamline or consolidation of any perceived overlaps, should not be to the detriment of overall service capacity to some of our most vulnerable members of the community.

We note that there is a perception of duplication in legal services and education, however we submit that this may be premised on the homogeneity of our clients and experiences of disadvantage. Rather than duplication, we see a lack of resources to respond to the various needs of our diverse community. This is particularly true when working with CALD communities, as the majority of published legal information is in English. As a resource constrained CLC, we target our work to assist the most vulnerable, and develop the capacity of community sector workers to identify legal issues and make appropriate referrals. As part

of the (Victorian) Community Development and Community Legal Education Working Group (CDCLEWG), SMLS participates in meetings to share information on legal education and community development projects. We have worked in partnership with Victorian CLCs to collaboratively develop CLE material and work on community development projects, and also collaborates with VLA on Community Development/CLE projects.

CASE STUDY: COLLABORATING TO ADDRESS POLICING ISSUES

Safe Spaces

In 2012, SMLS and Western Suburbs Legal Service (now West Justice) collaborated on *Safe Spaces*, a toolkit for workers promoting ethical, youth focussed and rights-based approaches to working with young people who are experiencing policing issues. The resource was developed with the aim to reduce young people's contact with the criminal justice system, and to increase the support to vulnerable young people and the issues they experience with the police. The project was developed as a result of conversations with young people and youth workers through '*Boys, You Wanna Give Me Some Action?*' a joint research project into the experience of policing practices on African youth in three regions across Melbourne.

Stop Watch VIC

In 2015, we partnered with Flemington Kensington Community Legal Centre to produce and deliver legal information and legal education workshops to increase community awareness of Victoria Police's *Receipting Proof of Concept* trial in the Dandenong and Moonee Valley Police Service Areas. The project delivered accessible, independent and accurate legal information about the purpose of the receipts, and to provide youth-focused, rights-based education on dealing with the police. The information was distributed through both organisation's networks, and workshops delivered over a three month period to over 100 participants in the South East.

SMLS, like other CLCs has a contextual understanding of how laws impact our local community, both from working directly with the affected community as well as close working relationships with non-legal services. CLCs provide CLE in many forms, from legal education workshops, participating at forums and events or through the production of resources. A 'one size fits all' approach does not lead to effective CLE, as the communities that we work with have varying and diverse needs, reflective of the diversity within the wider Australian community. There is a sizeable amount of literature which demonstrates that CLE needs to be tailored to meet the legal capability of participants.¹⁹ While legal education seminars or self-help strategies are a reasonable option for individuals with high legal capability, CLE is may be the first step towards the resolution of legal problems for groups with low legal capabilities as a result of language and literacy issues. Providing English language publications on the law to newly arrived students at AMES will have little impact on their capacity to identify the legal nature of a problem.

SMLS is embedded within the local community, and as a result is able to identify and respond to legal issues quickly as they emerge. We are able to identify common legal issues for the target audience, and tailor the information provided to reflect their capacity and their needs. We believe that tailoring CLE sessions to best suit the audience and their needs is not

¹⁹ Forell, Suzie and Hugh M McDonald, 'Beyond great expectations: modest, meaningful and measurable community legal education and information' (2015) (21) *Justice Issues*

duplication, rather it is what makes CLE effective. While the law does not change, our community's experience with the law is influenced by a range of factors whether it be their access to resources, personal attributes or their openness to seeking help. The key messages on employment law for young workers in casual employment will be markedly different from a workshop delivered to adults of refugee or asylum seeker background hired as independent contractors. Both groups often lack knowledge of workplace rights, however are vulnerable to exploitation in different ways.

CASE STUDY: EMPLOYMENT LAW FOR YOUNG WORKERS

SMLS has delivered employment law workshops for young workers focusing on common legal problems for this group. Often young people have low levels of knowledge of their workplace rights and entitlements, and have no knowledge of industrial awards or award rates. Not only do young workers experience insecurity through casual contracts, some work 'cash in hand' jobs, usually with pay below the award rate, while being denied other entitlements such as superannuation, annual/sick leave and penalty rates.

Young workers are doubly disadvantaged in these situations as they have little knowledge of their workplace rights nor do they have experience within the workforce. The high levels of youth unemployment in the South East adds to their precarious situation, and acts to widen the power imbalance between young workers and employers trying to shirk their responsibilities to provide work based entitlements. Working with youth organisations and the youth services department of local government, SMLS delivers legal education to young people focussing on the difference in entitlements for permanent and casual (or contracted) employees and common issues on workplace rights.

CASE STUDY: EMPLOYMENT LAW FOR INDEPENDENT CONTRACTORS

As asylum seekers, who previously were denied work rights, transitioned to a visa which allowed them to engage in employment, many organisations provided them with 'job ready' skills training. Often this included a *White Card Construction Induction* training which allowed them to work in the construction industry. Job ready training programs built the capacity of asylum seekers to build critical skills to gain employment, such as resume preparation and interview skills, however provided limited information on workplace rights. Our employment law clinic identified a trend where large numbers of our CALD clients made appointment to seek assistance for misleading employment ads and sham contracts.

Newly arrived community members on temporary visas are targeted specifically for their vulnerability - with low skills, limited English and little knowledge of workplace rights, may enter employment as independent contractors or casual labourers. Our clients would often respond to ads targeted at vulnerable community member with low skills and limited English, and accept positions as independent contractors. They are provided with minimal documentation

Ads target vulnerable community members with low skills and limited English. Our clients were often hired as independent contractors and provided with little documentation, however when they completed their work the 'employer' refused to pay them. Unpaid contractors had little recourse other than to seek claims through VCAT. However even this remedy had its limitations as contractors had little information about the employer. Working with local organisations, SMLS delivered targeted CLE to the Burmese, Rohingya, Tamil, Afghan and Iranian communities to build their capacity to protect their rights, increasing their knowledge on what details they should request from prospective employers. At the end of the session, all participants stated that they understood how to identify fake employment ads and what information they should get from an employer if they were to accept positions as independent contractors.

The community development work we have undertaken over the years has resulted in a high level of trust between the service and our local community. As a result of our relationships, we are able to consult with grassroots community groups and provide critical information on how to prevent legal issues from arising, or to give them information on where to seek legal assistance. Our prevention or early intervention work with the community aims to reduce the likelihood of the problem escalating to crisis point leading to a need for greater legal intervention at a later date. Through our community development and CLE projects, we are able to address systemic issues to ameliorate some of the factors which inhibit access to justice

CASE STUDY

SMLS has worked with the local Burmese community for a number of years. The Community Development worker was approached by a community leader at an event, who shared concerns on policing issues. Of particular concern was the misinterpretation of the Code of Conduct by asylum seekers, who believed that they were not allowed to have any contact with the police, even if they had been victims of crime themselves. They refused to report assaults and burglaries, and believed that if the perpetrator was injured that the victim would be held responsible.

Misinformation spread through the community heightening their fear, which was compounded by previous negative experiences with authorities in Burma. Many community members were being blackmailed with threats that they would be reported to the police. SMLS worked with the local community and South East Community Links to deliver a legal education workshop discussing the separation of powers, role of police in Australia and rights when dealing with the police. At the end of the workshop the community reported that they had a clearer understanding of the role of the police in Australia, and due to the success of workshop, they agreed to a follow up session where they could meet a Multicultural Liaison Officer.

Legal education is an integral aspect of a CLCs service delivery, and acts as a way to prevent issues from occurring or escalating, or alternatively, to build the capacity of participants to identify legal issues and seek assistance to resolve the matter. We have worked in collaboration with CLCs and VLA to provide legal education, and have shared both our CLE materials with colleagues in other CLCs. Finally, SMLS advocates for this Review distinguish the tailoring of CLE to best meet community need rather than view it merely as duplication.

9. Options for providing better support to self-represented litigants throughout the Victorian justice system.

SMLS assists clients in jurisdictions that have progressively moved toward self-representative ('SRL') models or at the very least, targeted education and changes to facilities to assist self-represented litigants. Examples of these include the family law (specifically the Federal Circuit Court, VCAT and Tribunals including Fairwork Commission. SMLS notes that accommodating self-represented litigants assist the administration of justice. Any mechanism needs to ensure, where possible, individuals have access to information and resources to assist them. SMLS submits some classes of SRLs will always be subject to foreseeable power imbalances that are difficult to ameliorate from disputes within our justice systems.

Specific examples include:

- Employer v non-English speaking employee
- Parent subject to family violence in a family law dispute
- Independent Contractors pursuing payments from Companies (usually 1 or 2 directors)
- Social security disputes where special circumstances exist

In the above examples there are current measures in place to support and assist self-represented litigants. However at SMLS we continue to witness inequities in the balance of power when litigants in the above scenarios are required to be self-reliant. At the very least there are specific classes of clients that require greater access to support. For example, assistance in breaking down the legal requirements of an Unfair Dismissal claim as per Fairwork legislation, including explanations as to how or whether their factual scenario is applicable to relevant tests at law.

SMLS has seen an increasing number of clients (see case study, p.8) who have been scammed by subcontract work by way of advertising on 'Gumtree'. Many of our clients have appropriate business setups (e.g. ABNs) but do not know how to navigate the systems to recover for unpaid invoices. Our clients are predominantly non-English speaking and irrespective of the available information they are faced with obstacles in their pursuit of justice. For instance, understanding that there are different jurisdictions and electing the appropriate jurisdiction to bring a claim.

Below are a number of case studies which provide an insight into the vital role that an appropriately targeted legal assistance sector can play to ensure access to justice for vulnerable community members. These are the examples that should be considered when the role of SRL is considered a viable option, and the level of support they may require.

CASE STUDY: LIEN

“Lien” is in her early fifties, speaks limited English and had little knowledge of her rights as an employee and the obligations of her employer. She had worked as a casual shop assistant for two years, until she was dismissed without a reason by her employer.

Lien approached our service for assistance in June 2015. There did not appear to be a valid reason for dismissal, nor had the employer afforded her with any procedural fairness. While working with Lien, it became apparent that unfair dismissal was not the only employment law issue she was experiencing. She was being paid below award rate, and her employer was not making superannuation payments.

We assisted Lien with an application to the Fair Work Commission for unfair dismissal, and also offered to assist with recovering her unpaid wages. Lien and the employer eventually settled both matters prior to the conciliation proceedings, and the employer paid Lien a settlement sum. Not only were we able to assist Lien with the unfair dismissal application, she also gained an understanding of her additional entitlements which enabled her to make a claim for these.

CASE STUDY: SAMUEL

“Samuel” is from a culturally and linguistically diverse background, with a low income and a physical disability. He had been in a relationship with “Mary”, and presumed that “Peter”, the child born from that relationship, was his child. Although Samuel was named as the father on Peter’s birth certificate, Mary later disclosed that he was not the biological father. Samuel and Mary separated and Mary remarried “Jonathan”. Mary and Jonathan also later separated. Jonathan claimed that Peter was now in his care and applied to the Child Support Agency for Samuel to pay him child support.

Samuel attended the legal service in January 2015 for assistance in obtaining a court order to remove his name from Peter’s birth certificate and to stay any payments he had been deemed liable for as a liable parent payer. Being named as the father on a child’s birth certificate is prima face evidence that person is the father and is liable to be assessed for child support.

SMLS was successful in obtaining the orders. We also succeeded in having Jonathan repay the money Samuel had incurred as a debt to Child Support. We were able to provide evidence to the court that paternity was not in dispute, thereby negating the necessity for a costly DNA test.

Samuel would have struggled to negotiate through this very complex legal issue to achieve justice without the guidance and assistance of the legal service. The result benefited him financially and emotionally.

CASE STUDY: CARL

“Carl” is newly arrived in Australia. He is proficient in English but has little understanding of the law. While working as a truck driver for “Pulse Movers” Carl was involved in a motor vehicle accident for which he was not at fault. When Carl attended the service in March 2015 a Magistrates’ Court Order had been made against him to pay \$14,000 in damages, plus costs and interest as a result of the accident. Carl had also been served with a Bankruptcy Notice as a result of the orders. He earns a low income and was at risk of losing his home. Carl denied liability and in any event was performing his duties as an employee at the time of the accident.

SMLS successfully applied to have the Magistrates’ Court Orders and Federal Court Bankruptcy Notice set aside and a re-hearing was granted. SMLS then added Pulse Movers as a third party.

Carl’s application to have Pulse Movers indemnify him was successful and he was subsequently covered for the full amount of the claim plus interest and costs. SMLS was able to assist Carl to understand and assert his rights to protection as an employee. We helped Carl to enforce Pulse Movers’ obligations, thereby enabling him to avoid bankruptcy and the loss of his home.

CASE STUDY: MICHAEL

“Michael” is newly arrived in Australia, has low income and very limited English. He is a married father of four dependent children who was involved in a motor vehicle accident with “Chloe”, for which he was not liable. He was not insured at the time of the accident. Michael initially attempted to resolve the matter on his own, but came to us in April 2014 seeking help to recover damages from Chloe when his efforts were unsuccessful.

SMLS issued several Letters of Demand to Chloe with no response. SMLS then filed a Statement of Claim in the Magistrates’ Court. Chloe did not file a Notice of Defence and SMLS successfully applied for a Judgement in Default of a Defence.

Chloe then served a Summons for Oral Examination, as well as engaging her insurance company and solicitors, who sought a re-hearing for what they said was an excessive claim amount.

We assisted Michael to successfully negotiate with Chloe’s solicitors for a payout of the claim and costs, avoiding the need for further court intervention.

CASE STUDY: DAVID AND ANITA

“David” attended the legal service in February 2014 seeking assistance in negotiating a variation to parenting orders. David is a young man with a low income. He is the father of “Jeremy”. Jeremy’s mother is “Anita”. Jeremy lived with Anita and spent time with David under orders. Anita withdrew all contact time between David and Jeremy, citing family violence. David alleged family violence against Anita’s new partner. Jeremy had difficulty coping with the continued conflict between David and Anita, both of whom had re-partnered, and was experiencing learning difficulties.

Negotiations with Anita were not successful. SMLS made an application to court for the orders to be varied, by which stage David had not seen Jeremy for two months. The initial orders that David and Jeremy spend time together supervised by children’s contact supervisor went well and at the next hearing orders for regular unsupervised overnight contact were made.

Due to the ongoing conflict between David and Anita, the court also ordered ‘reportable counselling’ with a family consultant for them and the child. The benefit of the counselling included the consultant identifying the long term impact of the conflict on Jeremy and making suggestions for behaviour management.

RECOMMENDATIONS

1. Adequate funding for advice sessions at all jurisdictional levels, but particularly in high volume tribunals such as VCAT, as part of a triage system for individuals who qualify for legal assistance.
2. Recognition of the need for multiple access points to ensure that socially excluded and marginalised community members have access to justice.
3. Evidence based funding models need to reflect the distinct role of specific legal assistance service providers.