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**VICTORIAN ACCESS TO JUSTICE REVIEW
SUBMISSION TO THE DEPARTMENT OF JUSTICE**

23 February 2016

DLA Piper Australia is part of DLA Piper, a global law firm, operating through various separate and distinct legal entities.

A list of offices and regulatory information can be found at www.dlapiper.com

1. INTRODUCTION

About DLA Piper

- 1.1 DLA Piper is one of the largest law firms globally, with over 4000 lawyers and offices in the Americas, Asia Pacific, Europe, Africa and the Middle East. In Australia we have offices in Melbourne, Sydney, Perth, Brisbane and Canberra.
- 1.2 DLA Piper offers the full complement of corporate and commercial legal services. Our clients range from multinational, Global 1000 and Fortune 500 enterprises to emerging companies, governments and public sector bodies.

About our pro bono practice

- 1.3 DLA Piper has a leading global pro bono practice. In 2015 our lawyers and paralegals donated more than 200,000 hours of pro bono legal services globally. This is equivalent to 116 lawyers working full time for a year.
- 1.4 In Australia we are one of the largest providers of pro bono legal services. We are a signatory to the National Pro Bono Target promoted by the Australian Pro Bono Centre and average 50+ hours per lawyer every year. In Victoria we are a member of the Victorian Government Legal Panel and have committed to providing pro bono services equating to more than 20 per cent of fees earned under the panel contract.
- 1.5 In 2015 we were named Best Provider to the Government and Community Sector at the Australian Financial Review Client Choice Awards and in April 2015 received the Who's Who Legal Award for Pro Bono Law Firm of the Year.
- 1.6 Our pro bono practice comprises:
 - 1.6.1 A team of dedicated pro bono lawyers;
 - 1.6.2 Short term and long term secondments to community legal centres, NGOs and governments of developing countries;
 - 1.6.3 Work performed for individuals who have no other access to legal assistance;
 - 1.6.4 Work undertaken for charities and not-for-profits;
 - 1.6.5 International pro bono work aimed at increasing access to justice and strengthening rule of law through large scale research projects, innovative approaches to systemic discrimination and training and assistance to governments in developing countries.
- 1.7 In Victoria we work with, and have seconded lawyers to, the Human Rights Law Centre, Legal Aid Victoria, Justice Connect, Inner Melbourne Community Legal, First Step and numerous other NGOs and legal centres.

The role of pro bono

- 1.8 Lawyers perform pro bono work because it is our duty as lawyers to contribute to the administration of justice and because we recognise that our contribution can have a significant impact on the lives of our clients.
- 1.9 Pro bono work is undertaken principally in matters which have a public interest element, but increasingly pro bono is expanding to improve access to justice generally. In other words, many of the matters that are taken on a pro bono basis have no broader public benefit than to ensure that an individual gets proper advice, representation and access to justice.
- 1.10 Pro bono, while valuable, will and should never be a complete answer to the unmet needs in the community. Pro bono will only be provided where no other more appropriate form of assistance, such as legal aid or the community legal sector, is accessible. Pro bono should be seen as a last resort or a safety net.
- 1.11 Whenever a client applies for, and is unable to obtain, pro bono assistance, it can generally be assumed that the client will not access legal advice or representation. Pro bono lawyers are therefore uniquely placed to comment on legal need and access to justice, both in terms of the gaps and also in terms of the barriers to providing pro bono legal services.

Scope of this submission

- 1.12 This submission relates to the following terms of reference for the review:
- 1.12.1 pro bono legal services;
 - 1.12.2 the availability and distribution of funding amongst legal assistance providers; and
 - 1.12.3 the resourcing of VLA to ensure funding is directed to those most in need.

2. EXECUTIVE SUMMARY

- 2.1 Pro bono services are provided to improve access to justice for all people by providing free legal assistance to those who would otherwise be unable to obtain such assistance.
- 2.2 Pro bono providers, such as DLA Piper, rely on effective, well resourced, frontline services such as CLCs, Legal Aid and Justice Connect to:
- 2.2.1 connect pro bono providers to clients;
 - 2.2.2 ensure pro bono resources are targeted to the greatest areas of need;
 - 2.2.3 build up and share expertise and skills in specific areas of law or specific communities, such as homeless persons or prisoners; and
 - 2.2.4 undertake law reform and advocacy work based on their knowledge and expertise gained in frontline services.

- 2.3 Pro bono should complement, rather than replace, frontline legal services. While it is a valuable resource, it should not be seen as an answer to unmet legal need; it is often focused on metropolitan regions, can fluctuate in capacity and may not be able to provide assistance in particular legal areas, such as family violence and family law.
- 2.4 Providers of pro bono services encounter a number of barriers in providing effective pro bono services:
- 2.4.1 smaller pro bono providers may not be able to cover the disbursements incurred by a client;
 - 2.4.2 adverse costs orders act as a disincentive for public interest litigants;
 - 2.4.3 client conflict issues may act as a barrier to taking on clients whose interests are adverse to Government; and
 - 2.4.4 qualified lawyers who do not hold a practising certificate may find the costs of practising certificates and insurance prohibitive to volunteering as a pro bono lawyer.
- 2.5 Finally, the lack of sufficient legal funding for frontline legal services has meant that unmet legal need is growing. Particularly vulnerable groups, such as victims of family violence, Aboriginal Australians and prisoners are unable to access legal services. In Victoria, unlike NSW and Queensland, there is no dedicated prisoners legal service, leaving prisoners with little or no access to legal services for civil legal issues.

Summary of recommendations

Recommendation 1: The Victorian Government increase CLC and Legal Aid funding and build the capacity and effectiveness of frontline community legal services.

Recommendation 2: Amend the Law Aid scheme to improve accessibility for clients and lawyers, including ensuring funds can be provided retrospectively, that criminal and family law cases are covered and that the scheme fund a greater variety of public interest law cases.

Recommendation 3: The Victorian Government provide further guidance and communication on the pro bono conflicts Protocol, both internally and to law firms.

Recommendation 4: Volunteer practising certificates be made available and free of charge for both volunteer work at a CLCs and general legal work performed on a pro bono basis.

Recommendation 5: The Victorian Government develop a specialised Prisoners Legal Service, either as a community legal centre or through Legal Aid.

3. PRO BONO AND ACCESS TO JUSTICE

Funding of Community Legal Centres and Pro bono

- 3.1 People across Australia, including Victoria, are missing out on legal assistance. According to the Productivity Commission report released in December 2014, legal sector funding is inadequate to meet the requirements placed upon it. The public legal sector requires an

immediate injection of \$200 million per year, 60 per cent from Federal Government and 40 per cent from state governments.¹ The funding would assist in:

- 3.1.1 aligning the legal aid means test with other measures of disadvantage;
 - 3.1.2 maintaining existing frontline services that are beneficial to the community; and
 - 3.1.3 expanding the areas of law in which legal assistance providers can offer services.
- 3.2 Despite the call for additional funding, CLCs nationally face a funding cut of 30 per cent in 2017.² This is a cut to a system that is already chronically underfunded, with the National Census of Community Legal Centres reporting that in 2013-2014, 150,000 people were turned away from CLCs.³
- 3.3 At the same time, demand for legal services is growing. In four years Victoria has seen a 29 per cent increase in the number of criminal matters before the courts.⁴ While Legal Aid Victoria has received a slight increase in funding and service provision, this was still less than the increase in need for legal help, which increased by 21 per cent in the year 2014 - 2015. Victorian Legal Aid predicts that without additional funding they will be in deficit by 2018.⁵
- 3.4 As mentioned above, pro bono services are to supplement, not substitute, frontline legal services. As long as there is unmet legal need professional lawyers have a duty to provide pro bono assistance. However, for a number of reasons, such pro bono assistance should not be relied upon by the legal and justice sector as a method of meeting that need:
- 3.4.1 effective pro bono support relies upon well funded and functioning frontline services such as CLCs, Legal Aid and clearing houses;
 - 3.4.2 the capacity of firms to provide pro bono legal services varies greatly and, for this reason it is not a reliable resource;
 - 3.4.3 some of the greatest legal need exists in areas of law for which pro bono providers do not, and will not, have the expertise.
- 3.5 Pro bono providers rely on effective frontline services, such as Legal Aid, CLCs and clearing houses in order to connect with pro bono clients. Such frontline services are instrumental in providing training and support to pro bono lawyers in giving assistance and advice in

¹ Productivity Commission *Access to Justice Arrangements* 3 December 2014 <http://www.pc.gov.au/inquiries/completed/access-justice/report> accessed 22 February 2016

² National Association of Community Legal Centres "One year on: community lawyers across Australia call for funding of Productivity Commission recommendations" December 2015 http://www.naclc.org.au/cb_pages/news/OneyearoncommunitylawyersacrossAustraliaicallforfundingofProductivityCommissionrecommendations.php

³ National Association of Community Legal Centres *National Census of Community Legal Centres 2014 National Report* May 2015 http://www.naclc.org.au/resources/NACLCL_NationalCensusofCLCs_2014_COMBINED.pdf accessed 7 January 2016.

⁴ PricewaterhouseCoopers *Criminal and Family Law Private Practitioner Service Delivery Model*, 2015 http://www.liv.asn.au/PDF/Practice-Resources/LIV-Service-Delivery-Model_FINAL-REPORT

⁵ Victoria Legal Aid *Annual Report 2014-2015* at 4

unfamiliar areas of law. They are also able to understand the systemic needs and issues of their clients and to create programmes and solutions that allow for more effective delivery of services.

- 3.6 Frontline service providers have also effectively lost funding to undertake law reform and advocacy work thanks to restrictive clauses in Federal Government contracts. The law reform and advocacy work undertaken by CLCs is of enormous benefit to the broader community, as recognised by the Productivity Commission in its draft report, stating that CLCs play a key role in law reform, policy and advocacy which should be a core activity of CLCs.⁶ State Governments have a role to play in closing the gap in advocacy and law reform funding created by restrictions in Commonwealth funding agreements.
- 3.7 When these services are absent or insufficiently funded, as outlined above, that efficiency, targeted service provision, link to clients and support for lawyers is lost. Lack of funding, and funding on a year by year basis affects staff turnover, service provision, long term planning and the ability to effectively harness pro bono services. In 2013-2014 over 72,000 hours were contributed by pro bono partners to CLCs across Australia; hours that will drop if CLCs cannot operate effectively.⁷

Limitations of pro bono

- 3.8 Anecdotal evidence from CLCs also indicates that pro bono support in the last few years has been dwindling. Secondments to CLCs, once a mainstay of the relationship between CLC and law firm, are rare. The most common request we now receive from CLCs is for a secondee. Overall, the delayed legal reaction to the 2008 financial crises has seen a tightening of the legal market, with a corresponding reduction in capacity to take on pro bono work. Pro bono support is also not a constant and can fluctuate from year to year; the Australian Pro Bono Centre's annual performance report demonstrates that in any one year a law firm's ability to provide pro bono can change dramatically, with some firms reporting a 35 per cent reduction in pro bono support, and others a 56 per cent increase.⁸
- 3.9 Pro bono services are often location specific and in Victoria are overwhelmingly provided in the Melbourne metropolitan area. Those CLCs located in the inner city are able to attract and retain volunteers in the evenings and are more likely to be able to refer individual cases as both lawyers and clients are in a similar location. Across Australia, obtaining pro bono services in regional, rural and remote areas is particularly difficult.⁹ The Australian Pro Bono Centre and DLA Piper have researched and trialled the possibility of utilising video-conference and other technologies to provide pro bono assistance, however all potential

⁶ Productivity Commission *Access to Justice Arrangements Draft Report* (April 2014) 609, 622

⁷ National Association of Community Legal Centres *Submission to Australian Government Federal Budget 2016-2017*

⁸ Australian Pro Bono Centre *Eighth Annual Performance Report on the National Pro Bono Aspirational Target* October 2015 https://esvc001818.swp0002ssl.server-secure.com/ssl/CMS/files_cms/Eighth_Annual_Performance_Report_on_the_Aspirational_Target_2015.pdf at 14

⁹ Australian Pro Bono Centre *Pro Bono Legal Services via Video Conferencing: Opportunities and Challenges* July 2015 http://www.nationalprobono.org.au/ssl/CMS/files_cms/ProBonoLegalServicesViaVideoConferencing-OpportunitiesAndChallenges040615.pdf accessed 21 February 2016

versions require well resourced frontline services, such as a CLC or Legal Aid, to be present on the ground in these areas.

- 3.10 Finally, the areas of greatest legal need in Victoria are those which the majority of large commercial law firms have little knowledge or experience. According to the Federation of Community Legal Centres, more than 40 per cent of new cases opened by CLCs in Victoria in the second half of 2014 relate to family violence. Advice provided in family violence cases also rose by 27 per cent from the previous year.¹⁰ Assistance in these areas require specialised knowledge of family law, criminal law and children's rights, all areas which, traditionally, larger law firms, do not practice. Nor are they areas of law in which commercial lawyers can easily gain sufficient experience and knowledge to be able to effectively assist clients.
- 3.11 Pro bono services are most effective when they complement the work of frontline service providers, working closely with them to, for example, take on large public interest litigation matters, or assist CLC lawyers with particular areas of law. Not all areas of law are suitable for pro bono support and for many reasons frontline services should not be left to rely upon pro bono support to meet the needs of their community.

Recommendation The Victorian Government increase CLC and Legal Aid funding and build the capacity and effectiveness of frontline community legal services.

Barriers to providing pro bono legal services

- 3.12 The most well-known limitation to pro bono is the need to balance provision of pro bono with ensuring a profitable commercial business. However, there are also significant barriers to providing pro bono legal services, in addition to hours. Law firms face issues around:
- 3.12.1 disbursements;
 - 3.12.2 adverse costs orders;
 - 3.12.3 conflicts; and
 - 3.12.4 regulations around supervision and practising certificates.

Disbursements

- 3.13 The costs of providing pro bono support in some cases can act as a substantial barrier to pro bono service delivery. Costs associated with pro bono delivery include medical reports, expert reports, transcripts of proceedings, travel costs, copying, interpreter fees, FOI request, criminal record checks and so forth.
- 3.14 The majority of our pro bono clients, do not have the capacity to fund such disbursements which can act as a substantial barrier to justice. While DLA Piper and other firms do maintain

¹⁰ Federation of Community Legal Centres (Victoria) Inc Annual Report 2014-2015 at 4, 14

a budget for some larger litigation matters, they cannot cover all pro bono costs, and not all firms will have the capacity to provide this service.

- 3.15 Fee waivers go some way to alleviating costs, although they are not available for all disbursements. For example transcripts and title searches do not have fee waivers. Both the Commonwealth and Victorian Governments have created disbursement funds to assist with this issue. In our view they are insufficient to overcome the barriers that the majority of our pro bono clients face.
- 3.16 In Victoria disbursements are funded through Law Aid which primarily funds cases where the client is seeking compensation. We welcome the expansion of case criteria to include public interest cases where no compensation is sought or expected. The fund is, however, underused, with less than 300 applications each year.¹¹ The fund provides very little guidance as to the type of non-compensatory litigation it will fund, and requires that the preliminary investigations and consideration of merit be well advanced before an application is made for funding. The scheme also prioritises no win-no fee cases, due to the requirement that the fund be largely self-sustaining. According to Justice Connect the application fee is also a barrier to clients and lawyers accessing the scheme. Funds also cannot be made available retrospectively except in exceptional circumstances, meaning that any expenses required in the initial investigations may not be covered and urgent disbursements cannot be recouped.¹²
- 3.17 Given the above it is unsurprising that the fund is underutilised. Changes to the administration of the fund could benefit a large number of public interest clients wishing to litigate matters where compensation is not the primary outcome sought, such as environmental litigation, family law or administrative law and Victorian Charter cases.

Recommendation Amend the Law Aid scheme to improve accessibility for clients and lawyers, including ensuring funds can be provided retrospectively, that criminal and family law cases are covered and that the scheme fund a greater variety of public interest law cases.

Adverse costs in public interest litigation

- 3.18 Public interest matters are generally accepted to be those legal matters which affect a significant number of people, raise matters of broad public concern, or impact on disadvantaged or marginalised groups. It is an important instrument in law reform and, if successful, the benefits can flow on to the broader community.
- 3.19 Sir Anthony Mason affirmed that public interest proceedings ‘can enhance the democratic process by making government accountable and by enabling us to scrutinise government actions and its decision-making processes.’¹³
- 3.20 In our experience, many potential public interest litigants are deterred from commencing proceedings by the prospect of adverse cost orders. This is a known and on-going issue: in

¹¹ Law Aid Website <http://lawaid.com.au/law-aid-all-you-need-to-know/> accessed 21 February 2016

¹² Law Institute of Victoria Letter to Law Aid Trustees 15 November 2010 <http://www.liv.asn.au/getattachment/ff64d24d-aff5-4a28-91a4-15b387a4cab6/Expert-witness-fees-and-disbursements-in-pro-bono-.aspx> accessed 21 February 2016

¹³ Keynote Speech by The Hon Sr Anthony Mason AC KBE *PILCH: Access to Justice and the Rule of Law* 9 September 2004

2001 the Pro Bono Task Force Team found that adverse costs orders provided a significant barrier to pro bono work and needed to be addressed.¹⁴

- 3.21 The usual rule in Australia is that costs will follow the event and a successful party can expect that costs will be awarded in its favour. In Australia there is no general public interest exemption, although courts in a few jurisdictions have shown a willingness to make no order as to costs and in some cases cap the costs at the beginning of the case. The rule strongly discourages individuals from pursuing public interest litigation as they may be liable for extensive costs. As such, the threat of adverse costs can act as a serious barrier to public interest litigation, particularly where novel or untested issues arise as it becomes difficult for lawyers to advise on potential cost exposures or the likelihood of an outcome.
- 3.22 While courts can alter the rule in the case of public interest litigation, or cap costs at the outset, there is no requirement that they do so, nor are there well defined guidelines or principles that indicate when costs may not follow the cause or may be capped.¹⁵
- 3.23 In Victoria section 65C of the *Civil Procedure Act 2010* (Vic) empowers the Court to make any order as to costs it considers appropriate to further the overarching purpose including fixing or capping costs in advance¹⁶ or order that specific parties bear specific costs¹⁷. Section 9(2)(g) of the *Civil Procedure Act 2010* (Vic) provides that in making any order or giving any direction the court have regard to the public importance of the issues in dispute and the desirability of a judicial determination of those issues. In the last few years in Victoria we have started to see a few protective costs orders in public interest cases, most notably where the individual was unemployed and would become bankrupt in a case involving the Victorian Charter of Human Rights.¹⁸ However in the majority of cases requests for cost caps have been rejected.¹⁹
- 3.24 Public interest litigation is also an area in which pro bono providers are most useful. Public interest litigation can often be long, involved and resource intensive, taking it outside the capacity of Legal Aid or Community Legal Centres. However, there is little a pro bono law firm can do if the plaintiffs themselves are unwilling to run the case.
- 3.25 Given the public importance of such litigation, particularly around law reform, it is necessary to remove the primary barriers faced by potential litigants, including adverse cost orders. This can be achieved by altering the general rule in relation to general costs orders to ensure adverse costs are not made in public interest litigation cases. Litigants ought to be able to

¹⁴ National Pro Bono Task Force, Recommended Action Plan for National Co-Ordination and Development of Pro Bono Legal Services, June 2001, p 19 <http://www.nationalprobono.org.au/ssl//CMS/files/cms/NPBRCActionPlan.pdf> accessed 21 February 2016.

¹⁵ Justice Connect *Protective Costs Orders in Public Interest Litigation: Jurisprudence Review 2013* <https://www.justiceconnect.org.au/sites/default/files/Protective%20Costs%20Orders%20in%20Public%20Litigation%20Jurisprudence%20Review%202013.pdf>

¹⁶ 65C(2)(d)

¹⁷ 65C(2)(b)

¹⁸ *Bare v Small & Ors* [2013] VSCA 204

¹⁹ *Khalid v Secretary, Department of Transport, Planning and Local Infrastructure* [2014] VSCA 115; *Aitken & Others v State of Victoria* [2013] VSCA 28

secure declarations as to the public interest nature of the matter and the protective costs order consequences early in proceedings, before any substantial costs are incurred.

Conflicts

- 3.26 As with any legal advice, pro bono providers are prevented from giving legal advice where doing so would result in a legal conflict. Often law firms will refrain from acting against a large current or former client where, while there is no legal conflict, they do not wish to appear to be acting against a client, in what is often termed a commercial or indirect conflict. Where a large number of firms act for the one client, be it a government or a bank, this can significantly reduce the availability of pro bono support for disadvantaged individuals.
- 3.27 In Victoria, the state government utilises a legal panel system to procure legal services. Currently 23 firms serve on the legal panel, including DLA Piper. The legal needs of Government are large and varied, often relying on the expertise of a large number of major law firms in a state. Lawyers and law firms advising Government can sometimes be reluctant to provide pro bono assistance in matters against Government because of concerns about real and perceived conflicts of interest which may prejudice them in securing or retaining government work.²⁰ In many cases the conflict is a commercial or indirect conflict rather than a direct legal conflict of interest.
- 3.28 It is also the case that much of the legal need in our community involves interactions with Government agencies, including housing, health, fines, police complaints and so forth. According to the Productivity Commission review on Access to Justice, the second and third most common legal problems faced by individuals were housing and government.²¹
- 3.29 In 2004 the Australian Pro Bono Centre recommended that governments adopt a pro bono Protocol around commercial conflicts and strategies for reducing the incidence of direct legal conflicts of interest. Victoria is to be congratulated for having adopted a Protocol at an early stage and appointing a Conflicts Coordinator within Government. However, anecdotal evidence indicates that the Protocol and role of the Coordinator are not well known or utilised either by Government or by law firms. The only mention of conflicts appears in clause 22.2 of the legal services contract. Unlike the Commonwealth Legal Services Directions, the clause does not impose an obligation upon government entities not to discriminate against law firms that act against them on a pro bono basis, or provide guidance on what the government considers to be a conflict of interest.²² Very little information is made available regarding the Protocol, nor is it mentioned in the *Legal Panel Policy Guidelines for Pro Bono Services*.²³

²⁰ National Pro Bono Resource Centre *Pro Bono Conflicts and Government*
http://www.nationalprobono.org.au/publications/documents/govt_conflicts2.pdf

²¹ Productivity Commission *Access to Justice Arrangements* 3 December 2014 <http://www.pc.gov.au/inquiries/completed/access-justice/report> accessed 22 February 2016 at 4

²² *Legal Services Directions 2005* (Cth) 11.3 - 11.5

²³ Department of Justice, *Policy Guidelines for the delivery of Pro Bono Legal Services for an Approved Cause under Government Legal Services Contract* <http://www.procurement.vic.gov.au/files/17cfcbbc-5e24-44b1-8915-a40500f0e937/Legal-Panel-Policy-Guidelines-for-Pro-Bono-Services-October-2012.pdf>

- 3.30 The result is that the Protocol has had very little effect on the way in which law firms approach potential conflicts with Government in pro bono cases. We believe that greater clarity around the Government's approach to commercial conflicts, and awareness raising within Government and law firms would help increase the amount of pro bono support available to individuals with interests adverse to Government. The approach should be embedded within tender debrief questions and the procurement policy, prohibiting discrimination against a firm that acts pro bono adverse to Government.

Recommendation The Victorian Government provide further guidance and communication on the pro bono conflicts Protocol, both internally and to law firms.

Regulations and Volunteer Practitioners

- 3.31 The majority of this submission relates to pro bono services provided by lawyers employed by law firms. Outside of this realm, regulations around practising certificates and PI Insurance can have a significant impact on when and how pro bono services can be provided.
- 3.32 Currently there are a large number of career break and retired legal practitioners who do not hold a practising certificate and cannot undertake pro bono legal work. This is a significant amount of experience and skill that remains untapped. For these lawyers to provide pro bono legal services they would currently need to pay for a practising certificate and PI Insurance, both of which can be cost prohibitive.
- 3.33 During the drafting of the Uniform Law Rules DLA Piper and the Australian Pro Bono Centre submitted that consideration be given to providing free practising certificates to qualified legal practitioners who are not otherwise practising, to allow them to engage in legal work at a CLC or otherwise on a pro bono basis.²⁴ This recommendation is in line with the Productivity Commission's report which recommended that States and Territories 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.²⁵

Recommendation That volunteer practising certificates be made available and free of charge for both volunteer work at a CLC and general legal work performed on a pro bono basis.

4. INCREASE IN AND ALLOCATION OF FUNDING FOR FRONTLINE SERVICES

Legal services for prisoners

- 4.1 Unlike Queensland and NSW, Victoria does not currently have a dedicated prisoners legal service. That there is unmet legal need in prisons is borne out by a number of studies. Between 2012 and 2015 the prison population of Victoria rose by more than 25 per cent.²⁶ In

²⁴ Australian Pro Bono Centre *Submission to the Legal Services Council 'Legal Profession Uniform General Rules 2014: Consultation Draft'* 27 November 2014

²⁵ Productivity Commission *Access to Justice Arrangements* 3 December 2014 <http://www.pc.gov.au/inquiries/completed/access-justice/report> accessed 22 February 2016 at 829

²⁶ Victorian Ombudsman *Investigation into the rehabilitation and reintegration of prisoners in Victoria* September 2015 <https://www.ombudsman.vic.gov.au/getattachment/5188692a-35b6-411f-907e-3e7704f45e17> accessed 20 February 2016 at 4

January 2015 there were 6,506 prisoners in Victoria, the highest ever prison population recorded. This is projected to increase to 8,300 by June 2019. Complaints by prisoners are the most common form of complaint received by the Victorian Ombudsman.²⁷ According to the Ombudsman as prisoners become more crowded, conditions in prison are deteriorating²⁸

- 4.2 In 2011 a review of prisons by Justice Connect (then PILCH) found that there was significant unmet legal need in civil law assistance for prisoners, including both issues around conditions of incarceration and those legal problems generally experienced by marginalised and disadvantaged people. Justice Connect receives enquiries from prisoners and their families about a variety of issues, including access to health care, challenging parole, classification and transfer, discrimination, loss or confiscation of personal property or assault by other prisoners or staff.²⁹ In addition, an increasing number of prisoners are choosing not to apply for parole, instead leaving prison on 'straight release' without completing programs that that might address offending behaviour, and without any community support once released.³⁰ Case management for prisoners is currently undertaken by prison officers also responsible for maintaining security and good order of the prison. Any issues the prisoner may have regarding their treatment and rights in prison are unlikely to be addressed by the officer or referred to a lawyer.
- 4.3 We refer to our submissions above regarding the use of pro bono in the stead of Legal Aid and/or CLCs. While we believe that pro bono could enhance any prisoners legal programme, it should not be the only, or even principal, method of providing civil legal services to prisoners. In Queensland, which has a similar prison population size to Victoria, the Prisoners Legal Service ("PLSQLD") in 2013 – 2014 provided 4,880 advices on 104 different topics and took on 202 cases. There is no reason to think that the demand for legal services would be any less in Victoria. A pilot project being undertaken by Justice Connect demonstrates a high level of unmet need in the Port Phillip Prison, with a significant number of prisoners reporting issues with credit, debt, fines and housing.³¹
- 4.4 The expertise and knowledge held by PLSQLD is a crucial element in ensuring pro bono services to prisoners are effective. PLSQLD lawyers are able to train and support pro bono lawyers to provide advice and representation to prisoners and transfer skills and knowledge through training programs with pro bono law firms.³² DLA Piper works closely with the Prisoners Legal Service, being a founding partner of the Safe Way Home clinic and seconding a lawyer to PLSQLD for six months. The relationship between our firm and PLSQLD ensures

²⁷ Victorian Ombudsman *Investigation into the rehabilitation and reintegration of prisoners in Victoria* September 2015 <https://www.ombudsman.vic.gov.au/getattachment/5188692a-35b6-411f-907e-3e7704f45e17> accessed 20 February 2016 at 13

²⁸ Victorian Ombudsman *Investigation into the rehabilitation and reintegration of prisoners in Victoria* September 2015 <https://www.ombudsman.vic.gov.au/getattachment/5188692a-35b6-411f-907e-3e7704f45e17> accessed 20 February 2016 at 2

²⁹ PILCH *Prisoners Scoping Study: Investigating the Feasibility of a PILCH civil law program for prisoners* 2012 <http://www.justiceconnect.org.au/sites/default/files/Prisoners%20Report%20-%20July%202012.pdf> accessed 20 February 2016

³⁰ Victorian Ombudsman *Investigation into the rehabilitation and reintegration of prisoners in Victoria* September 2015 <https://www.ombudsman.vic.gov.au/getattachment/5188692a-35b6-411f-907e-3e7704f45e17> accessed 20 February 2016 at 4

³¹ Justice Connect *Debt and Tenancy Legal Help for Prisoners Six Month Project Report* March 2015.

³² Queensland Prisoners Legal Service *Annual Report 2013-2014* http://www.plsqld.com/Prisoners_Legal_Service/Annual_Reports_files/Annual%20Report%20-%202013-14%20final%20print.pdf accessed 20 February 2016.

our lawyers are able to assist clients effectively and efficiently and that our resources are targeted appropriately. PLSQLD is also able to undertake advocacy and law reform work (where resourcing allows) informed by their experience and client base.

- 4.5 We believe that a prisoners legal service is necessary in Victoria to meet the needs of the prison population. The Victorian Government should review the pilot being undertaken by Justice Connect and work closely with Justice Connect and others to determine the best way of meeting the needs of the prison population.

Recommendation: That Victoria develop a specialised Prisoners Legal Service, either as a community legal centre or through Legal Aid.

5. CONCLUSION.

- 5.1 DLA Piper is committed to improving access to justice by providing significant pro bono services to the community in response to unmet legal needs.
- 5.2 Pro bono should complement and support, rather than replace, frontline legal services such as Legal Aid and CLCs. These frontline services must be properly funded and supported to meet community legal needs.
- 5.3 We rely upon these frontline services to act as a first point of contact, target pro bono assistance to where it is most needed, build the skills and knowledge necessary to assist the most disadvantaged members of our community and undertake law reform and advocacy work.
- 5.4 Pro bono service delivery could be enhanced by:
- 5.4.1 increased availability of disbursement funding;
 - 5.4.2 changes to rules relating to adverse costs orders;
 - 5.4.3 introduction of free volunteer practising certificates and insurance;
 - 5.4.4 better funding for CLCs; and
 - 5.4.5 dedicated funding and services to particular vulnerable groups such as prisoners

6. FURTHER INFORMATION

- 6.1 For further information in relation to this submission, please contact:

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