

Department of Justice and Regulation
Access to Justice Review
St Kilda Legal Service Co-Op Limited



Submission

BACKGROUND

About St Kilda Legal Service

St Kilda Legal Service (SKLS) is a community legal centre (CLC) that has been operating for over 43 years. We service the catchments of Port Philip, Stonnington, Bayside and parts of Glen Eira.

Our contribution to this Review comes from the perspective that the disadvantaged and vulnerable people in our community do not receive the support they need when engaging with the law and the justice system. We cannot always meet the high demand for legal services because our resources are limited due to a lack of funding.

Our clients and our work

SKLS provides legal information, advice, referrals, ongoing casework, representation and undertakes community legal education and law reform activities.

SKLS offers generalist legal assistance through our Night Service, which is provided three nights each week and is staffed entirely by volunteer lawyers and volunteer administration. This service is supplemented by administration support and our Day Service which provides support and case work management to the Night Service as well as limited casework. In addition to the volunteer service SKLS also operates two specialist programs: the Drug Outreach Program and the Family Violence Program. Both our Drug Outreach Lawyer (**DO Lawyer**) and Family Violence Lawyer (**FV Lawyer**) perform outreaches throughout our catchment.

SKLS also employs a Community Legal Education and Law Reform Lawyer (**CLE Lawyer**) to promote education and empower clients throughout our catchment.

Our service employs only one lawyer full time, the DO lawyer. Our principal lawyer role is shared between two solicitors. Our FV lawyer is employed three and a half days per week. The CLE lawyer is employed four days per week.

SKLS promotes self-help wherever appropriate; to this end we offer some one-off advice. We provide services within the context of our casework guidelines and the capacity of our clients to take their own action. We acknowledge that self-help is often not possible due to the circumstances of our disadvantaged clients.

We adopt a holistic view of our client's needs and respond accordingly, offering an approach that promotes a more wide-ranging resolution of legal problems. There can be a range of legal and non-legal factors that compound a person's situation.

SKLS recognises the important difference between legal information and legal advice. Legal information explains the law and the legal system in general terms and is not tailored to specific cases or groups. Legal advice applies the law and relevant procedures to specific cases, providing recommendations about the best course of action suited to the facts of the case and client expectations and needs.

From 2014 to 2015 SKLS:

- Assisted 1127 new clients;
- Provided 2485 people with legal information and referrals;
- 74% of our clients were low income earners and 8% don't receive any income;
- Our DO and FV Lawyers attended seven outreach locations each week including Resourcing health & Education (RhED), a specialist service for the sex industry in Victoria;
- We provided duty lawyer services at the Street Sex Worker List at the Magistrates Court each month;
- We provided duty lawyer services at the Moorabbin Justice Centre two days a week for family violence matters;
- Our FV Lawyer worked on 268 intervention order matters which impacted 417 children; and
- Over 60 volunteers assisted in the running of our night and day services.

WHAT IS ACCESS TO JUSTICE?

Among our values and mission statement, SKLS claims commitment to access to justice. We define access to justice as the following:

1. As all individuals being given a fair and effective opportunity for their rights to be determined through formal or informal legal and dispute resolution processes;
2. Improving the capacity of individuals to resolve disputes themselves where possible, through the provision of legal information and one-off advice about the relevant law and processes;
3. Access to justice does not imply that we agree that all laws and legal processes are fair or just, only that we attempt to provide equitable and effective access to them. In the case of unjust laws and processes which negatively affect a number of clients we attempt to engage in law reform;
4. We attempt to enable effective access which is dependent on a range of individual factors including career, education, age, mental and physical health, capacity, cultural and linguistic diversity and geographical location;

5. We agree with the Australian Law Reform Commissions definition of access to justice, stating that "(a)ccess to the system is no guarantee of a successful outcome from the process, and thus is no guarantee of litigant satisfaction."¹

SCOPE OF THIS SUBMISSION

SKLS is placed to provide insights into the legal needs of the major disadvantaged groups within our catchment, including but not limited to:

- A. Sex workers;
- B. People who are homeless or those at risk of homelessness;
- C. People who are affected by drugs or alcohol;
- D. People with a lived experience of mental illness or who have a living experience of mental illness; and
- E. Family Violence affected family members.

This submission addresses the following in relation to the above mentioned disadvantaged groups:

1. The availability of easily accessible legal information or legal advice to resolve common legal problems;
2. Access to legal information alone is insufficient; most disadvantaged groups require legal advice and/or representation;
3. Self-representation is rarely possible for most disadvantaged groups for criminal or civil matters;
4. SKLS CLE is relevant to issues within our catchment and is presented within a specific context; therefore it does not duplicate other available resources, and
5. We receive insufficient funding to meet the demand of disadvantaged groups in our catchments. For example, our FV lawyer services the Moorabbin Justice Centre as the duty lawyer two days per week. Due to the increase in casework the court is seeking to use our service another day per week. As our FV lawyer is employed for three and a half day per week such an extension would present a significant strain on our staff and resources. To service the people within our catchment we require further funding to extend our FV lawyer's position to full time, as well as possibly add another solicitor to assist with family law, infringements and victims of crime matters.

RECOMMENDATION 1

SKLS REQUIRES MORE FUNDING TO PROVIDE ACCESS TO JUSTICE FOR ALL DISADVANTAGED CLIENTS WITHIN OUR CATCHMENT AREAS.

¹ ALRC - *Managing Justice: a Review of the Federal Civil Justice System* - 2000, p. 90

SEX WORKERS

The Victorian system of legalised sex work has resulted in a tightly controlled legal sector operating alongside a large and often vulnerable illegal sector.² St Kilda is a hub for the illegal industry; therefore we are uniquely positioned to assist this particular disadvantaged group.

Sex workers are often unaware of the serious penalties associated with illegal work. SKLS are the only CLC in Victoria that has produced legal information for this disadvantaged group.

RECOMMENDATION 2

RECOGNITION THAT SEX WORKERS ARE A UNIQUE DISADVANTAGED GROUP AND REQUIRE SPECIAL LEGAL ASSISTANCE AND OFTEN CANNOT ENGAGE IN SELF-HELP.

In 2011, the *Sex Work Act* and *Sex Work Regulations* replaced the *Prostitution Control Act Regulations 1994*. Changes to the Sex Worker legislation were championed by the Minister for Consumer Affairs, Hon. Michael O'Brien, who stated that the reforms "ensure that the authorities are better equipped 'to disrupt and deter illegal sex work activity and to deprive persons who engage in such activity of their ill-gotten gains.'³" It is clear that changes were brought about to ensure ease and clarity of enforcement rather than the protection of

workers, therefore making sex workers engaged in street sex work and unlicensed brothels particularly disadvantaged and vulnerable.

Furthermore, the law in this area is complex and engaging in sex work may fall inside or outside the law depending on whether an individual is working for an illegal or legal brothel, is an exempt escort or is undertaking sex work at home or on the street.

According to the Attorney-General's Street Prostitution Advisory Group Final Report, "[h]arm minimisation entails a range of strategies relating to supply reduction, demand reduction and harm reduction. In the context of street prostitution, harm minimisation strategies focus on the individuals and communities involved, and the social, cultural and physical environment.⁴ SKLS attempts to engage with harm minimisation strategies for sex workers, for example our DO Lawyer assists Sex Workers by providing outreach legal services at Inner South Community Health Service (RhED) which is a specialist service for the sex industry in Victoria. The majority of these outreach attendees become clients. Our DO lawyer is a duty lawyer for the Street Sex Worker List at the Melbourne Magistrates Court. There are no clear statistics on the illegal industry but we believe we are not adequately equipped to deal with the demand for sex workers due to the lack of funding which has resulted in only one solicitor completing sex worker specific legal work within the scope of the DO lawyer role.

² Sullivan, B. (1999). "Prostitution law reform in Australia: A preliminary evaluation." *Social Alternatives* 18(3).

³ Victoria, Legislative Assembly (2011) *Debates*, Book 14 12 October," p. 31673

⁴ Attorney-General's Street Prostitution Advisory Group Final Report 2002

SKLS has also provided specific community legal education for sex workers including pens, factsheets and booklets produced in partnerships or with consultation with the industry and community stakeholders. SKLS submits that whilst the information provided in this CLE can be available through other organisations like Victoria Legal Aid (VLA) it must be presented to sex workers in a specific way. Therefore, whilst there may be a technical duplication of CLE material, the context in which it is provided makes it unique. For example, sex workers in St Kilda were using small spray deodorants as weapons. If they were attacked they would either ignite the spray of deodorant with a lighter to create a small flame thrower to startle the attacker to run away or would spray it in the attacker's eyes, nose and mouth. We needed to explain the laws around possession of a weapon so that sex workers were better informed of their responsibilities.

RECOMMENDATION 3

RECOGNITION THAT CLE MUST BE TAILORED TO PARTICULAR DISADVANTAGED GROUPS TO BE BENEFICIAL. WHILST SOME OF THE CLE CONTENT MIGHT BE AVAILABLE ELSEWHERE IT REMAINS UNIQUE DUE TO THE CONTEXT OF ITS DELIVERY.

SKLS submits that sex workers are a uniquely disadvantaged vulnerable group who are often unable to self-help due to the social stigma surrounding the profession and discrimination. Often sex workers who require legal assistance can have a large range of legal issues. Providing adequate legal information and self-help resources on such a wide range of issues can be difficult and lack usefulness considering the depth of help required. We have attempted to provide all this information in a dedicated book for sex workers entitled the Legal Issues for Professionals book, however as this publication covered such a breadth of topics, the information quickly became outdated.

SKLS believes that CLCs must proceed with caution when assisting disadvantaged groups, Francis Regan stated that 'self-reliance easily degenerates into neglect, 'if for example, legal problems are of such complexity that people are unable to deal with them on their own.'⁵ The emotional and problematic nature of the legal issues associated with sex work could also make self-representation extremely difficult and disturbing to some clients. SKLS believe it is unrealistic that unrepresented sex workers will be able to make effective use of the Victorian Justice System.

PEOPLE WHO ARE HOMELESS OR AT RISK OF HOMELESSNESS

From 2014 to 2015 SKLS assisted over 235 clients who self-described as either homeless or at the risk of homelessness. SKLS provide outreach services to Launch Housing and Sacred Heart Mission to assist such clients. The majority of outreach attendees received ongoing casework regarding infringements; we also provided advice on criminal law and family law.

⁵ Regan, F., 'Why Do Legal Aid Services Vary Between Societies?' in F. Regan, A. Paterson, T. Gorjely and D. Fleming (eds), *The Transformation of Legal Aid: Comparative and Historical Studies*, Oxford University Press, 1999 p.181.

It is estimated that there are over 22,789 homeless people in Victoria.⁶ As per the Chamberlain and Mackenzie study,⁷ SKLS believe there are three categories of homelessness:

- Primary homelessness - people without accommodation, i.e. living on the streets, squatting or using cars or public transport for temporary shelter.
- Secondary homelessness - people who move frequently from one temporary shelter to another, i.e. using emergency accommodation such as hostels, refuges or residing temporarily with other families.
- Tertiary homelessness - people who live in boarding houses on a medium- to long-term basis.

Due to the transient nature of this disadvantaged group there are specific issues they face when accessing legal information and advice. Some of the clients within this disadvantage group are also affected by drugs and alcohol. We cannot expect homeless people to address legal issues without legal assistance as they are unable to receive correspondence and often are uncontactable due to a lack of phone or issues with paying phone bills.

In 2014-2015 there were 3.3 million infringement notices issued in Victoria.⁸ People experiencing homelessness are more likely to receive fines because they are forced to carry out their private lives in public spaces and are less likely to be able to address the infringements because of the complex legal system.

RECOMMENDATION 4

MORE FUNDING IS NEEDED TO PAY FOR THE NECESSARY DETAILED REPORTS FROM HEALTH CARE PROFESSIONALS TO ASSIST DISADVANTAGED GROUPS TO ADDRESS LEGAL NEEDS AND FINALISE COMMON LEGAL PROBLEMS.

Furthermore, many of our clients in this disadvantaged group do not have dedicated health care professionals who can assist with legal processes by providing reports or letters. If we are lucky enough to engage with health care professionals, as clients are unable to pay for reports, the documents we do receive are often lacking necessary details about the nexus of the client's special circumstances to the infringements. SKLS does not have adequate funding to support the growing homeless community in our catchment. SKLS also require further funding to pay for

adequate reports to meet the legal needs of this disadvantaged group.

We submit that people who are homeless or at risk of homelessness are a disadvantaged group who require access to legal advice, not information to assist them with legal issues or they will be further disadvantaged.

⁶ <http://www.homelessnessaustralia.org.au/index.php/about.homelessness/homeless-statistics> - Last viewed 1 December 2015

⁷ C Chamberlain and D MacKenzie, Counting the Homeless 2001, Australian Census Analytic Program, cat. no. 2050.0, ABS, Canberra, 2003, (Counting the Homeless 2001), pp. 12.

⁸ http://www.parliament.vic.gov.au/file_uploads/DJR_Report_2014___15_-_1_2HPGLdJm.pdf - 21-12-2015 - viewed 1 December 2015

PEOPLE WHO ARE AFFECTED BY DRUGS OR ALCOHOL

SKLS assist many clients who are affected by drug and alcohol problems. Around 1 in 5 (18.2%) Australians over 14 drink at levels that put them at risk of alcohol-related harm over their lifetime.⁹ Around 7.3 million people in Australia reported having used an illegal drug in their lifetime, and almost three million had, used an illegal drug in the last 12 months.¹⁰ Many clients consume alcohol and use drugs as a way to deal with difficult circumstances or trauma. Often clients within our other disadvantaged groups can have drug and alcohol dependence problems.

Alcohol and drugs generally lower inhibitions and can lead clients to behave inappropriately or illegally. In 2010 more than 70,000 Australians were victims of alcohol-related assault, among which 24,000 were victims of alcohol-related domestic violence.¹¹

Clients who are affected by drug and alcohol addictions can present with a large range of legal problems. When assisting these clients we require detailed medical reports to assist the court in understanding the reasons why our clients have found themselves in illegal situations.

SKLS find that clients with drug and alcohol dependence issues often lack capacity; lawyers are unable to provide clear instructions and ethically cannot act. This disadvantaged group require consistent, accessible, legal advice rather than information as they can misplace documents, may miss appointments and are often unable to engage with relevant support systems. SKLS do not receive adequate funding to allow consistent access to legal advice and assistance to the extent required by many of our clients who fall within this disadvantaged group.

As with people experiencing homelessness or at risk of homelessness, we find collating the necessary evidence about our client's drug and alcohol dependent extremely difficult due to a lack of funding to pay for the necessary medical reports for the court processes.

Drug and alcohol dependent clients do not benefit from legal information as they often cannot understand the relevance of the information nor are sober enough to apply it when necessary. Therefore clients who fall within this disadvantaged group cannot self-help.

⁹ <http://www.druginfo.adf.org.au/top/cs/qujck-stat/stjcs#sthash.djChHm94.dpuf> - last seen 22 December 2015 - 2010 National Drug Strategy Household Survey report

¹⁰ <https://www.betterhealth.vic.gov.au/health/healthyliving/drug-use-in-victoria> - Last seen 22 December 2015

¹¹ Roche, A.M, Bywood, P.T, Borlagdon, J, Lunnay, B, Freeman, T, Lawton, L, Tovell, A & Nicholas, R. (2007). Young People and Alcohol: The Role of Cultural Influences, National Centre for Education and Training on Addiction, South Australia

PEOPLE WITH A LIVED EXPERIENCE OF MENTAL ILLNESS OR WHO HAVE A LIVING EXPERIENCE OF MENTAL ILLNESS

In 2014-2015 SKLS assisted 184 people with who recognised that they had a psychiatric disability. Every year approximately one in every five Australians will experience a mental illness.¹² Many of these people will face barriers in accessing the Victorian Justice System.

One of the largest challenges for SKLS practitioners can be identifying that a client has a mental health issue and then allocating the appropriate amount of legal support as a result. This group require more time intensive assistance to ensure that they are able to finalise their matters.

Capacity and the ability to take instructions also make the provision of legal information and advice extremely difficult as there can be a peaks and troughs of lucidity within this disadvantaged group.

There are more practical issues associated with this disadvantaged group, namely attending court and tribunal dates. SKLS find that mental health illnesses can lead to clients having difficulties in organising their lives and making the necessary arrangements for their court dates.

We do not have adequate funding to engage with this disadvantaged group effectively as assistance can be very time intensive, nor are we able to engage with health care professionals for adequate assessments to assist us in providing legal assistance.

FAMILY VIOLENCE AFFECTED FAMILY MEMBERS

SKLS have a dedicated FV lawyer for three and a half days a week; we run a family violence duty lawyer service at Moorabbin Justice Centre (**MJC**) on Mondays and Fridays. SKLS assisted 268 Applicants for Intervention Orders in 2014-2015. Due to the ever growing demand of our service, the MJC have requested that we attend an extra day pending funding approval.

Some clients are able to engage with the legal process and be self-represented to a point. Our clients who engage with our service on a Friday at the MJC have usually independently made an application for intervention order. That said many of them are unaware of the process of their application if the respondent refuses the consent to the order. This said, due to the structure of this court process, relaxed rules of evidence and protections in place, once clients are provided with legal information some of them are able to self-represent.

There is an abundance of accessible legal information, both in the form of CLE and workers available at courts and services.

¹² Australian Bureau of Statistics. (2007). National survey of Mental Health and Well-being: Summary of results. Catalogue No. 4326.0. Canberra, ACT: Australian Bureau of Statistics.

SKLS cannot represent clients at contested hearings. Due to the difficult nature of family violence many clients do not feel capable of facing the accused perpetrator in court and require legal assistance and advice. SKLS do not have adequate funding to provide the necessary assistance to affected family members, especially at contested hearings. SKLS require more funding to extend the FV Lawyers position to full time and engage in duty lawyer services.

We expect that many people who are victims of family violence who may attend our future outreaches could be in situations where they are unable to self-help due to fear for their safety and the safety of their family. Also, many people affected are in controlling relationships where their contact with the outside world is carefully monitored. The more unsafe the family violence situation and the more affected the family member is, the less likely the client is to self-help.

RECOMMENDATION 5

RECOGNITION THAT FAMILY VIOLENCE CLE WILL REPRODUCE THE SAME INFORMATION BUT INCLUDE SIGNIFICANT DIFFERENCES LIKE GEOGRAPHICALLY CONVENIENT SERVICE REFERRALS AND BE PRESENTED IN UNIQUELY DISCRETIONARY WAYS FOR SAFETY REASONS.

There is an abundance of accessible legal information, both in the form of CLE and community workers available at courts and services. This can assist many people but the emotional and dangerous nature of family violence means that CLE must continue to evolve and change to keep up with the growing danger people in this disadvantaged group experience. For example, SKLS produced the Heart Shield Card in 2013. This is a family violence referral card designed for inclusion in the Maternal and Child Health Booklet so that mothers could have access to discrete information if they were in danger.

This CLE has a “use by date” because once perpetrators realise these cards are being sourced they become unusable. We must continue to produce new materials reiterating the same or similar information so that people can use it when needed without putting themselves in further danger. Discretionary materials mean that SKLS cannot always publicise the great CLE work that they’re doing in the field and discover that further funding for such projects can be difficult to apply for as there is limited measurable success with previous related CLE.

RECOMMENDATIONS AND CONCLUSION

SKLS faces significant ongoing challenges assisting clients many of whom fall inside one or more of the above listed disadvantaged groups. We face challenges in securing funding the legal services that we do provide and have no other monetary support to pay for reports or necessary documents to further assist clients.

St Kilda Legal Service makes the following recommendations:

RECOMMENDATION 1

SKLS requires more funding to provide access to justice for all disadvantaged clients within our catchment areas.

RECOMMENDATION 2

Recognition that sex workers are a unique disadvantaged group and require special legal assistance and often cannot engage in self-help.

RECOMMENDATION 3

Recognition that often CLE must be tailored to disadvantaged groups and whilst some of the content might be available elsewhere the CLE remains unique due to the context and demographics of its delivery.

RECOMMENDATION 4

More funding is needed for CLCs to pay for the necessary detailed reports from health care professionals to assist disadvantaged groups to address legal needs.

RECOMMENDATION 5

Recognition that family violence CLE will reproduce the same information but include significant differences like geographically convenient service referrals and be presented in uniquely discrete ways for safety reasons.