

Snapshot of issues specific to Terms of Reference

The Centre for Innovative Justice (CIJ) welcomes the opportunity to contribute to this important Review. In fact, the overarching purpose of the CIJ is to research, advocate, teach and translate into practice innovative ways in which to increase access to justice, especially for the most vulnerable in the community, as well as to make it more affordable and efficient for people to resolve everyday legal disputes.

Accordingly, the CIJ broadly supports the objectives of the Review and, in relation to points 6 and 8 of the Terms of Reference, especially emphasises the importance of a properly funded public legal assistance sector. While other stakeholders will make detailed submissions on these points, it is vital that governments avoid seeking false economies in public legal assistance resourcing, particularly within the context of election cycles and annual budgetary demands. Rather, the provision of quality legal advice (such as, for example, by VLA Duty Lawyers who have received specialist training in family violence, see discussion on page 8) can achieve savings by preventing escalation and also by reducing the burden of self-represented litigants on the courts.

Further, it is vital that CLCs retain the capacity to service the specific needs of local communities. The strength of CLCs lies partially in the fact that they are situated in particular geographic locations and within particular populations. The value of CLCs also lies in their capacity to conduct broader advocacy, in addition to individual case work. This advocacy is vital not only in holding government at all levels to account, but also to enable early and pragmatic intervention in matters which may affect a broad cross-section of the community and prevent people placing further demand on the system down the track.

More specifically, certain points in the Terms of Reference are addressed throughout this submission in the context of broader discussions. These include encouraging the Review to recommend that government:

1. Increase the availability of accessible information on legal assistance services and the Victorian justice system as a whole. This includes supporting the use of plain English court forms and Orders not only to increase the capacity of users to understand these Orders but to comply with them (see page 10 for further discussion).
2. Divert people into alternative services where appropriate, such as through the development and provision of 'triage' models (see page 6 for further discussion).
3. Expand the use of dispute resolution mechanisms so that legal consumers can benefit from the processes most appropriate to their circumstances. In particular, the CIJ supports the expansion of the Dispute Settlement Centre of Victoria, which has proved especially beneficial in building the resilience and dispute resolution capacity of local communities (see page 5).
4. Before considering the expansion of the capacity of VCAT to resolve small civil claims, facilitate greater recognition of VCAT's contact with vulnerable parties in its existing jurisdictions. This includes victims of family violence in the Residential Tenancies List. Greater training and support should therefore be provided in this jurisdiction to enable Tribunal members and staff, as well as legal practitioners, to respond more effectively to the parties who come before them.

5. Expand the provision of pro bono services through a range of means (see page 5 for specific recommendations).
6. Reduce duplication by legal service providers, including through the development of legal education material. Given the existing pressures on the public legal assistance sector, however, the CIJ has previously recommended that governments find ways to reduce unnecessary duplication within private practices, so as to reduce the costs to consumers and potentially open up this private market to more clients (see page 4).
7. Providing better support to self-represented litigants. In particular, the CIJ urges the Review to recommend that all Victorian jurisdictions examine the Fair Work Commission's various assistance programs for self-represented litigants ([link](#)) and to consider the development of a broad self-represented litigants service akin to that operated by QPILCH across various jurisdictions in Queensland (see page 5).

Widening the scope of inquiry

Many other stakeholders across the justice system will be making submissions on these various points. The role of the CIJ, however, is to push the boundaries and to promote innovation in the way we think about the justice system as a whole.

Supported by examples of previous CIJ work, therefore, this submission invites the Review to consider its Inquiry within a broader framework, one which recognises that increasing access to justice, particularly for vulnerable Victorians, is also about bridging the divide between private services and public assistance, as well as improving the effectiveness, meaning, clarity and seamlessness of the system overall. By doing so, the justice system is more likely to meet the needs of its everyday users – getting it right earlier and more often, in turn freeing up more resources to be directed where they are needed most.

Building a bridge

In its 2013 report, [*Affordable Justice: a pragmatic path to greater flexibility and access in the private legal services market*](#), the CIJ makes a range of recommendations for ways to increase access for the 'missing middle' - those ineligible for public legal assistance but who, realistically, are unable to afford the fees of the majority of law firms in the private sector.

The CIJ notes that these legal consumers are 'sandwiched' out of access, despite the efforts of successive governments to address and understand acute legal need; to increase public legal assistance; and to encourage the provision of pro bono services by private firms. It also notes that, despite growing innovation in the private legal sector, this innovation has eluded a full range of consumer legal matters and has not been developed by the profession in any co-ordinated way. As such, legal practice is falling behind other professions in terms of its readiness to adapt, as well as to dismantle the unsustainable division between public or pro bono assistance on the one hand, and prohibitive expense on the other.

The CIJ's Affordable Justice Report aims to break down this division – highlighting existing and emerging innovations and proposing their adoption on a more widespread basis.

While the CIJ's recommendations and supporting discussion are contained in the Report, in summary, the recommendations fall into the following broad categories:

Recommendations to improve clarity around costs, such as:

- Collaboration between government, professional associations and Legal Services Commissioners to develop greater sources of information for consumers about what and how practitioners can charge, what in reality they do charge, whether practices offer price certainty, whether the use of multiple lawyers may be justified, and whether practices offer discrete task assistance. This website should include a function for consumers to rate lawyer affordability.
- Creation of an obligation on Legal Services Commissioners and formal cost assessment mechanisms to report on (de-identified) outcomes of solicitor-client costs disputes and the final figures considered reasonable.
- Establishment of a Legal Consumer Advocate charged with advocating for increased transparency about legal costs.

Recommendations to increase the availability of price certainty and efficiency in legal costs, such as:

- Analysis by professional associations to identify a wider range of legal matters that may adapt themselves to alternative fee arrangements, including fixed fees.
- Development of Model Rules which specifically provide for the availability of limited scope representation or discrete task assistance with training to support the release of these rules.
- Requirement of price certainty by governments in their own legal arrangements, to encourage the wider use of this approach. This goes to point 5 in the Terms of Reference, in which government can use panel arrangements not only to encourage the provision of pro bono services, but the broader adoption by firms of alternative fee structures.
- Refinement of conflict of interest provisions to prevent parties from exploiting discrete, one-off forms of advice from CLCs.
- Support for regulators to ensure that cost assessment and regulations mechanisms do not undermine efforts to offer price certainty by legal providers.
- Development of best practice models by regulators and professional associations to target legal skills and experience within private practices more efficiently so as to avoid unnecessary duplication.
- Examination of regulation and professional indemnity insurance to consider whether levels of regulation should be targeted at the level of risk undertaken. This could include consideration of restricted practising certificates either specific to a chosen area of practice or excluding certain high risk areas of practice.

Recommendations to encourage the provision of pro bono legal services (TOR, point 5), such as:

- Consideration of the establishment of litigation funding mechanisms which have a public interest, or not-for-profit objective.
- Consideration of tax deductions for practitioners for pro bono work performed.
- Creation of incentives to enable more practices to offer pro bono services to individual and small business, as well as organizational, clients, including mechanisms for better publicizing any work performed.
- Encouragement and support to private litigation funders to meet certain targets for funding pro bono or public interest matters.
- Examination of regulation and professional indemnity insurance to identify what concerns – on the part of insurers and practitioners – need to be addressed to facilitate more widespread pro bono work on a case by case basis.

Recommendations to assist and support self-represented litigants (TOR point 9), such as:

- Loosening restrictions by professional associations around the direct briefing of barristers in a wider range of cases, supported by adequate information and training.
- Identification of further areas of the law which may operate successfully – and potentially more efficiently – without the need for legal representation before courts or tribunals.
- Development of models of service provision to subsidise reduced fee-paying clients, such as QPILCH's Self-Representation Service. The CIJ recommended that government could, in close consultation with QPILCH and other equivalent bodies, investigate the development of a pilot of a new model at one jurisdictional site to trial the value of fee subsidisation.

Recommendations to reduce the use of the adversarial model

- Expanded use and availability of community-based dispute resolution services and strengthened capacity and quality of accredited mediators and other dispute resolution practitioners (see page 47 of the CIJ's Affordable Justice Report for discussion).

Other recommendations to facilitate the affordability of legal services to a broader range of people, such as:

- Consideration of the merits and feasibility of a legal expenses loans scheme, legal expenses insurance, options for co-contribution membership schemes.
- Adjustment of the guidelines of VLA in-house practices to provide services for more clients from a wider range of income brackets on the basis of a contribution.

In particular, the CIJ wishes to draw to the attention of the Review an opportunity to consider and recommend that government support the development of a greater diversity of legal service models. Government should support the development of legal service models which facilitate:

- Transparency around costs
- Price certainty
- Reduced overheads, potentially through virtual practice
- Discrete task assistance, with an emphasis on ‘triage’, early advice on the merits, and legal diagnosis
- Targeted use of legal advice supported by services, such as social work and financial counselling.

Various examples of such models are noted in the CIJ’s Affordable Justice report. The report further notes that practitioners working in these business models should be supported by secure and sophisticated information technology and by the use of flexible and collaborative work practices which encourage further innovation. Potential may also exist for these practices to be supported through the provision of initial funding for virtual office spaces, or other forms of administrative support.

Further to this, however, the CIJ is now exploring the potential of a ‘law firm incubator’ model within RMIT University. This is a model being adopted on an increasingly widespread basis across the US, in which law graduates are mentored by experienced legal professionals in the establishment and operation of small legal practices which offer affordable fee structures to a range of clients. Given the abundance of law graduates entering the legal services market in Australia, and the increasing expectation of tertiary institutions to provide tangible pathways to employment, as well as qualifications, it would seem to be a model which offers benefits to consumers and emerging practitioners alike.

Recommendation: Hybrid models of legal practice/law firm incubators:

The CIJ encourages the Review to recommend that government support the development of hybrid models of legal practice which offer triage services and which are partially subsidised by government.

The CIJ also asks the Review to recommend that legal educators and professional associations encourage the inclusion of business skills as an optional part of any professional legal training to encourage innovation in small and emerging practices.

These suggestions are not intended to replace or cut into the existing work of publicly funded services in any way, nor to excuse governments from meeting their essential responsibilities to the public in this area. Rather, these suggestions are about augmenting, or bolstering, this essential public work. The CIJ believes that governments have a real and tangible opportunity to promote a different construction in the way that legal services are delivered. By encouraging a greater diversity and agility in the models of legal service available, the influence of government on the capacity of ordinary Victorians to access legal services and resolve disputes is much greater than we first might imagine.

Making justice meaningful

As the Review will be aware, increasing access to justice is not only about ensuring that victims of crime can be a party to proceedings, or receive legal representation within the existing adversarial process. In other words, access to *justice* is more than access to *legal proceedings*. Access to justice is also about ensuring that those proceedings are more meaningful - and therefore more effective – and deliver better outcomes. Victims of crime who feel that they have been heard and had their experiences acknowledged are much less likely to place demand on publically funded services down the track.

This is one of the primary messages of the CIJ's 2014 report, [*Innovative justice responses to sexual offending: pathways for victims, offenders and the community*](#). In this report, the CIJ explores the benefits of a range of innovative approaches which are more likely to bring about a meaningful outcome for victims, and potentially increase a sense of accountability on the part of offenders. In particular, the CIJ proposes a model of restorative justice conferencing for sexual offences which can sit alongside the criminal justice process and which, under the guidance of suitable gatekeepers and with a range of suitable safeguards, can offer victims a greater role in the criminal justice process – allowing them to receive answers to specific questions, to hear genuine remorse from the perpetrator, and to plan for recovery and a way forward.

Following on from this initial report, the CIJ sought and received independent funding from the Legal Services Board to develop a restorative justice conferencing model in matters which involve driving causing death or serious injury. ([link](#)) Over the course of this project, the CIJ will not only develop a model appropriate to this particular jurisdiction, but facilitate the provision of case conferences, in turn contributing to the evidence base in this important area.

In addition, however, the CIJ has also recently been approached about the potential for developing restorative justice models appropriate to other matters. These include redress for victims of institutional abuse, occupational health and safety, and family violence. In relation to the latter, it is widely expected that the Royal Commission into Family Violence will make recommendations in this area, while recent research indicates that victims of family violence do not necessarily want to see their offender punished, but instead for the violence to stop and for some acknowledgment of their experience to occur.

It would seem timely that this option be made available, not as an alternative where prosecution and/or civil protection orders are appropriate, but as an additional process of 'justice beyond the justice system' which may assist the recovery of victims more fully and enable them to imagine a life beyond the harm.

Recommendation: Justice beyond the justice system

The CIJ urges the Review to recommend that government support and resource the development of a robust and victim driven restorative justice framework in family violence matters which can augment and sit alongside the conventional legal process.

Intervening earlier

In the CIJ's 2015 report, [*Opportunities for early intervention: bringing perpetrators of family violence into view*](#), the CIJ identifies a range of ways in which legal mechanisms could intervene more effectively at the source of a problem which continues to place an insurmountable burden on our social and economic wellbeing. Intervention at an earlier point can not only reduce the risk of escalation and increase the safety of victims in many cases, but can also help to identify those cases which present the highest risk – keeping perpetrators on the radar through repeat contact with agencies so that as much information as possible is known.

The recommendations and discussion in the CIJ's report is wide ranging, with opportunities highlighted right along the spectrum of the legal system, from callout by police through the initial contact that a perpetrator has with a range of services and personnel at court, through experiences in the Corrections system and beyond.

Particularly relevant to the specific Terms of Reference of this Review, the CIJ's report notes that specialist family violence training of VLA duty lawyers can play a role in reducing perpetration, with data suggesting that respondents to intervention orders who receive advice from VLA duty lawyers are far less likely to breach these orders than those who receive advice from private lawyers, or from duty lawyers in other jurisdictions who have not yet received this training.

In addition, the report notes that family violence is in fact the core business of our court system – not only in the Magistrates' Court jurisdiction, but in the higher courts and, somewhat less well acknowledged, in other jurisdictions such as VCAT. Though this will be apparent in some lists, such as the Residential Tenancies List, or in relation to some offences, such as homicide, it will not be as apparent in other matters where the primary charge is aggravated burglary or arson, for example, or in another seemingly unrelated civil list. Specific to the Review's Terms of Reference, the CIJ recommends that greater resources be invested in the capacity of all jurisdictions to identify and respond to the vulnerable parties who come before them.

Beyond this, however, the CIJ wishes to draw the Review's particular attention to an issue which it believes has gone largely unaddressed and which is placing current and future demands on the criminal justice system. The rise of adolescent violence in the home is increasingly apparent. Recent statistics suggest that 6000 family violence reports were made against young people under 24, while the Children's Court is witnessing growing numbers of children as respondents to intervention orders, with parents struggling to know how to address their child's escalating behaviour.

As the CIJ's report identifies, exposure to family violence can increase the likelihood that children will be propelled into various forms of offending. In particular, prior experience of family violence is known to be the greatest contributor to adolescent use of violence in the home, with many young boys, especially, mirroring the behaviour of their abusive father once he has been removed from the home.

Whatever the contributing factors, sole mothers are 80% of the victims of this form of violence, while male adolescents are two thirds of offenders. This makes adolescent violence in the home a gendered issue, and one which should be considered squarely within the broader response to family violence. In Australia, however, there is limited research in this area, while there is currently no considered justice response to this problem. With parents left to call the police as a last resort, children are often propelled into a criminal justice system which can compound, instead of change, their behaviour.

Recommendation: Responding to Adolescent Violence in the Home

The CIJ is strongly of the view that a considered justice response to this increasing problem should be developed. It therefore encourages the Review to recommend that government support and resource work which:

- Gathers and analyses available data around police reports of AVITH, as well as the number of Family Violence Intervention Orders issued against adolescents
- Compares this data against information in the youth justice sector to map the trajectory and relationship between prior experience of family violence, use of violence in the home by adolescents, and broader patterns of offending
- Brings together a range of relevant stakeholders across the justice and service delivery sector to develop a considered justice response.

Improving understanding

Submissions addressing the Review's first point in its Terms of Reference will all acknowledge that legal processes and terminology are notoriously difficult to understand, with alienating conventions and the 'churn' of high volume courtrooms reducing the likelihood that court users will fully comprehend what has occurred, or what they are expected to do next.

What's more, the reality is that the majority of individual court users have low levels of legal capability, with almost a third of people with legal problems handling them without legal advice and almost a fifth taking no action at all.¹ In turn, low levels of legal capability mean that limited capacity to understand written orders is likely to be coupled with limited capacity to get advice about the meaning of those orders.

As a result, the CIJ has recently assisted the Magistrates' Court of Victoria in the redevelopment of standard conditions for Family Violence Intervention Orders so that respondents are more likely to comply; courts are less likely to be burdened with applications for variation and revocation, or prosecutions of inadvertent breaches; and victims are more likely to stay safe.

Given recent research by Victoria Legal Aid² which reveals that a significant proportion of its clients who do breach intervention orders have an ABI, this work is even more pertinent. The CIJ is now hoping to assist the court as it proceeds to user testing of these Orders to establish whether they are in fact more readily comprehensible to users who are not well versed in legal terminology and who may have little prior experience of the courts.

Beyond this, however, the CIJ's supporting research for this work points to a need not only to improve the quality of written information, but of verbal communication – the 'listenability' - of information provided to parties. For example, studies of verbal police cautions suggest that they are very poorly understood – including by many police members themselves³ – while the instructions issued by a lawyer or a Magistrate at court can seem mystifying even to sophisticated court users, let alone those who may be experiencing post-traumatic stress disorder as a consequence of family violence or who may have an ABI or other cognitive impairment.

Certainly, the CIJ's ongoing work in the context of its [Enabling Justice](#) project reveals the significant barriers to understanding that court users with an ABI experience. While various forms of disadvantage can intersect to criminalise people with ABI and prevent them from accessing justice in a meaningful way, lack of clarity in the way that information is conveyed – both in writing and in the spoken word - acts as a further impediment.

¹ People with lower levels of education or with English as a second language are overrepresented in this group. C Coumarelos, D Macourt, J People, M McDonald, Z Wei, R Iriana & S Ramsey (2012). *Legal Australia-Wide survey: legal need in Australia*. Law and Justice Foundation of NSW, Sydney.

² See *Characteristics of respondents charged with breach of family violence intervention orders*, Victoria Legal Aid Research Brief (November 2015). <https://www.legalaid.vic.gov.au/about-us/news/research-reveals-risk-factors-for-continuing-family-violence>.

³ I Clare, G Gudjohnsoonn and P Harari(1998). 'Understanding of the current police caution (England and Wales) *Journal of Community and Applied Social Psychology* 8, pp 323-329.

Even without a formally recognised impairment, the reality of most people’s experience of the justice system is that it occurs at a time of considerably heightened stress. This in turn has been shown to reduce retention of information significantly, one study suggesting that 70% of information is lost within a day and 90% within a week.⁴ It is vital, then, for parties to have clear written information to which they and police can refer, as stress can become both a cause and an effect of impaired comprehension.

More broadly, the importance of procedural fairness is well recognised across legal scholarship. For example, research confirms that the way in which a defendant is treated in the courtroom – including whether he or she feels heard and respected, and whether communication is clear – has a profound effect on his/her perception of the process, as well as the likelihood of him complying with court orders and the law generally.⁵ Equally, victims of family violence frequently describe the significant difference that a positive intervention with a Magistrate can make.⁶

The CIJ’s research across a range of areas suggests that work to improve the ‘listenability’ of legal information, as well as its accessibility in written form, is essential.

Recommendation: Listenability and the law

The CIJ encourages the Review to recommend that government support and resource further research around the ‘listenability’ of legal information in order to increase the capacity of all courts users to understand proceedings and comply with orders.

Such research should be supported by the development of appropriate training packages to be delivered to all members of the judiciary, court personnel, Victoria Police, Victoria Legal Aid and CLC lawyers. Training could also be delivered to private practitioners through the LIV and the Victorian Bar.

⁴ J Hill (2015) ‘Home Truths: The Costs and Causes of Family Violence’, *The Monthly*, At <http://www.themonthly.com.au/issue/2015/march/1425128400/jess-hill-home-truths> See also KC Scherr & S Madon (2012), ‘You have the right to understand: the deleterious effect of stress on suspects’ ability to comprehend Miranda’, *Law and Human Behaviour*, 36, 275-282.

⁵ P Bowen & E Gold LaGratta, *To Be Fair: Procedural Fairness in Courts*, Policy Briefing 24 November 2014, Criminal Justice Alliance at <http://justiceinnovation.org.better-courts/publications/be-fair-procedural-fairness-courts> Similar observations emerge from an older study of domestic violence perpetrators in the context of their contact with police. R Paternoster, R Brame, R Bachman & LW Sherman, ‘Do Fair Procedures Matter?’ The Effect of Procedural Justice on Spouse Assault’, *Law & Society Review*, Vol 31, No 1 (1997), pp 163-204.

⁶ A George & B Harris, *Landscapes of Violence: Women Surviving Family Violence in Regional and Rural Victoria*, Centre for Rural Regional Law and Justice, Deakin University, 2014.

Understanding vulnerability

This Review's Terms of Reference ask it to ensure that the most disadvantaged and vulnerable in the community receive the support they need when engaging with the law and with the justice system. The category of 'disadvantaged and vulnerable' in the community arguably covers a considerable scope. As a recent report by the Victorian Ombudsman ([link](#)) identifies, however, some of the most vulnerable people in the community are currently cycling in and out of our Corrections system.

Rather than the calculating offenders that the broader public might imagine, this and other reports consistently reveal that the majority of inmates in Victorian and other prisons have dramatically lower levels of education than the rest of the population; have experienced or are experiencing a mental illness; have an ABI or other cognitive impairment; are Aboriginal or Torres Strait Islander; or have experienced another form of disadvantage, including being victims of crime.

In fact, as the CIJ's recent submission to the Victorian Law Reform Commission Inquiry into the role of victims in the criminal justice system argued, there are often more victims of crime standing in a courtroom than we first might assume ([link](#)). The CIJ's submission therefore argues that interaction with the criminal justice system is not only an opportunity to repair the harm of the immediate offence to the greatest extent possible, but to address the impacts of past victimisation that the offender may have experienced as well.

This is particularly the case with female offenders. To this end, in addition its report on opportunities for early intervention described above, the CIJ also made a submission to the Royal Commission on Family Violence concerning the high level of victimisation amongst Victoria's female prisoners. The submission explored research in this area, as well as detailing results of an audit of 50 randomly selected files of the CIJ's neighbour, the Mental Health Legal Centre (the MHLC), whose program *Inside Access* provides legal assistance to female inmates so that outstanding civil matters do not plague women upon release.

The file audit plus interviews with *Inside Access* staff confirmed a high prevalence of family violence victimisation, as well as sexual assault and childhood trauma. As well as prior experience of family violence contributing to the disadvantage which had propelled inmates into offending, the research, audits and interviews confirmed that family violence often directly contributes to women's incarceration – with perpetrators deliberately forcing or tricking women into debt, or women assuming culpability for their violent partner's offending purely out of fear. The CIJ's submission therefore questioned the extent to which Victoria would need a women's prison at all if it were not for its epidemic of family violence.

The CIJ and MHLC have secured funding for a team of supervised social work students to offer a new wraparound, multidisciplinary service which sits alongside the legal service and provides social work support to inmates in the six months prior and subsequent to their release. The CIJ has also commenced discussions with RMIT University more broadly about providing meaningful educational opportunities and pathways to employment following release.

The CIJ believes, however, that government has an opportunity to make significant budgetary and social savings by investing in greater access to justice and holistic service provision for prisoners on a wider scale.

Recommendation: Improving pathways from prison

The CIJ encourages the Review to recommend that government consider resourcing a properly developed sector of specialist multidisciplinary practices which offer legal, social work, health and financial advice services to prisoners to prepare them for successful integration upon release from prison, and to support them once they have re-entered the community.

This should include the expansion of the *Inside Access* service beyond the provision of services to clients who identify as having mental health issues, as well as the development of a broader equivalent service to address the needs of male prisoners across the spectrum of the Victorian Corrections system.

Discussion - Putting the puzzle together

This submission has encouraged the Review to consider a range of issues beyond the immediate scope of its Terms of Reference. This is because the aim of the CIJ is to broaden our understanding of what we mean by a 'justice system' and how different parts of it relate to one another. To this end, when the Centre for Innovative Justice (CIJ) was commissioned by the Commonwealth Attorney-General's Department to conduct four distinct projects concerned with increasing innovative approaches to justice, the first three of which have been discussed in this submission, the CIJ designed its fourth project to consider ways in which Australian jurisdictions could measure the performance of their justice systems more effectively.

Certainly, while the presence of a well-functioning legal system and the rule of law are often nominated as measures of a healthy democracy, it is less clear what we mean by these things. Do we mean an impartial judiciary and courts free from Executive influence? Appropriately resourced police and Corrections systems? Formal equality before the law? A regulated legal profession and adequately funded legal assistance schemes? These are some of the predominant aspects conventionally assumed to comprise a healthy legal system and are certainly amongst those most regularly measured.

Governments and other agencies are beginning to realise, however, that they need to take the analysis further - that they need a much wider and more nuanced understanding, not only of the factors which contribute to effective justice, but how these impact on one another.

This necessity stems in part because the detached *modus operandi* of conventional justice systems is *not actually delivering justice* for many who seek its help. As the work of the CIJ referred to throughout this submission highlights, adversarial processes are largely failing victims of sexual assault; the hands off approach taken by courts does not intervene effectively with perpetrators of family violence; our Corrections systems are full of people with mental illness and ABI; while, even in the civil sphere, many ordinary citizens feel sandwiched out of the private legal market and associated redress.

Recognition is growing, therefore, that an experience of genuine 'justice' is likely to depend on much more than being processed efficiently by police, Corrections or courts. A growing evidence-base, for example, is demonstrating that - no matter how efficiently a legal system detects, prosecutes, and punishes crime - it will be *inefficient* overall if it is not working to address factors that contribute to crime in the first place.⁷ This suggests that the duty of a justice system may go beyond functioning purely as a detached and impartial machine – one which takes no interest in what brings people through its doors, nor responsibility when they keep coming back. Recognition is growing that a truly 'just' system should act as more than a conveyor belt on an inevitable path from disadvantage to dysfunction and institutionalisation.

This is not only a policy imperative, but an economic one. After all, legal systems are expensive, though this expense varies greatly depending on the point at which resources are invested. For example, an effective intervention on an initial callout to a family violence incident is more cost effective than the investigation of a family violence related homicide down the track. Similarly, a civil dispute resolved through mediation

⁷ See for example, B, Brown, C, Cunneen, M, Schwartz, J, Stubbs, and C, Young, *Justice Reinvestment: Winding Back Imprisonment*, Palgrave Macmillan, 2016.

places less demand on a court's resources than a matter which proceeds to litigation and is resolved by adjudication.

It makes sense, therefore, for jurisdictions to measure whether their justice systems are doing their jobs as cost effectively as possible. Despite this, many jurisdictions do not appear to display an understanding of this imperative. In recent years, for example, some governments have spent more money on prison infrastructure than early intervention or even hospital beds – presumably indicating that they have not properly grappled with how to allocate justice resources in the most cost effective way, or even what the purpose of justice mechanisms really are.

For example, is the purpose of police simply to detect crime, or to find ways to help to prevent it? Is the purpose of courts simply to adjudicate disputes or administer sentences, or is it to function as a positive intervention that will prevent further disputes or offending from occurring? Is the purpose of a Corrections system to function as a revolving door for the disadvantaged, or as one-way door towards better choices?

The CIJ has submitted an initial report to the Commonwealth Attorney-General's Department which scans existing ways to measure justice and other systems, and which identifies the considerations that need to be brought to bear when developing any measurement mechanism. The CIJ plans to release its research in a series of discussion papers over the course of 2016, accompanied by public forum.

Ultimately, however, the CIJ hopes to collaborate with government, legal service providers and other community agencies to develop a blueprint which helps government to grapple with the challenges of measurement in more useful and innovative ways.

Recommendation: Increasing measurement mechanisms

The CIJ encourages the Review to recommend that government increase its capacity to not only to measure and assess the outputs of various parts of the legal system, including public legal assistance providers, but also the outcomes that users of this system experience.

In addition, the CIJ urges the Review to recommend that all governments work towards development of a mechanism which can reflect the level of performance of justice systems overall.

Conclusion

This submission has canvassed a much wider range of issues than are specifically captured in the Review's Terms of Reference. This is because the CIJ believes that the challenge of improving access to justice - particularly for the most vulnerable Victorians - cannot be met by tinkering at the edges. Rather, every reform needs to be viewed as part of a larger picture, one in which:

- Greater diversity in the legal market increases the number of people who receive legal services
- More meaningful outcomes reduces the trauma to victims and their reliance on services
- Earlier intervention reduces escalation and associated burden on the courts
- Greater clarity and 'listenability' of information, as well as procedural fairness, increases compliance
- Better recognition of the trajectory from victim to offender, and more tangible pathways from prison, reduces the burden on the Corrections system
- Broadened perceptions and measurement helps justice mechanisms become a real system

The CIJ strongly encourages the Review to keep these considerations in mind as it canvases the breadth of material before it. Many other submissions will make specific recommendations about targeting or increasing public legal assistance, as well as increasing the efficiency of court processes or reach of pro bono services.

Until the relationship of each legal intervention to one another is properly perceived, however, governments will continue to play 'catch up' - struggling to resource a system which sees far too many recycling through its doors, and just as many excluded from genuine redress.