ACCESS TO JUSTICE REVIEW
OVERVIEW
August 2016
About the Review

On 22 October 2015, the Attorney-General, the Hon Martin Pakula MP, asked the Department of Justice and Regulation to undertake the Access to Justice Review.

The aim of the Review was to identify ways to improve access to justice for Victorians with an everyday legal problem and ensure that the most disadvantaged and vulnerable in our community, including Victorians from Aboriginal and Torres Strait Islander backgrounds, receive the support they need when engaging with the law and the justice system.

The Review was asked to examine:

- entry points into the legal system and increasing community members’ understanding of how they can get help with everyday legal issues;
- options for diverting people from civil litigation where appropriate, and whether alternative dispute resolution should be expanded;
- potential reform to the small civil claims jurisdiction of the Victorian Civil and Administrative Tribunal;
- the availability and distribution of legal assistance funding from the Victorian and Commonwealth Governments, including how to get the most from funding for legal assistance providers;
- how to boost access to pro bono legal help (where lawyers do work for the community for free); and
- how to support self-represented litigants.

The Access to Justice Review team consulted extensively with stakeholders and the public. It received 90 submissions, 339 survey responses, hosted four expert roundtables, and engaged in over 150 meetings.

The Access to Justice Review seeks to build on the Productivity Commission’s 2014 Inquiry Report on Access to Justice Arrangements, and to identify practical steps that could be taken by the Victorian Government to improve access to justice.

The Productivity Commission concluded that many people were deterred from seeking advice about civil legal problems because they thought that it would cost too much, or because they did not know what options were available to them. It also found that governments have a role in assisting disadvantaged Australians to deal with their legal problems.1 The Productivity Commission estimated that additional funding from Commonwealth, and State and Territory Governments of around $200 million a year was needed for civil legal assistance services.2

The Victorian Review has also been informed by the recent Royal Commission into Family Violence. The Royal Commission’s report was tabled in the Victorian Parliament in March 2016. The Victorian Government has committed to implementing all of the Royal Commission’s recommendations. The Royal Commission’s analysis of relevant institutional and service provision arrangements, and improvements that could be made, resonates strongly with the findings of the Access to Justice Review. Common themes include the need for:

- better data and evidence to inform the system;
- more co-ordinated governance arrangements;
- appropriate resourcing;
- integrated services; and
- community-centred design.

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The Review reported to the Attorney-General on 26 August 2016. It set out 60 recommendations for consideration by the Victorian Government.

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The Review has identified ways to improve the system so that justice is more accessible for all Victorians. There are already many promising initiatives and significant opportunities to improve practice and service provision across the board.

What is access to justice?

‘Access to justice’ refers to the ability of people to engage with the many formal and informal aspects of the justice system and to enjoy the benefits of living in a society governed by the rule of law.

For the purposes of its inquiry, the Productivity Commission took the view that improving access to justice in the context of civil dispute resolution means:

- making it easier for people to resolve their disputes according to law by improving the capacity and capability of the justice system, and overcoming barriers to accessing the system.
- The ‘system’ includes formal and informal institutions and processes, as well as information and advice.3

The Victorian Review has adopted a broader concept of ‘access to justice’, which includes considering fair and equitable access to legal information and legal assistance in both civil and criminal matters where they relate to the Review’s Terms of Reference.

Access to justice is fundamental to ensuring that core values of our community are translated into practice. Those values include the rule of law, fairness, and equity. Access to justice works to ensure that citizens are treated fairly by government; it supports social cohesion and a common commitment to the life and institutions of the community; and it encourages economic prosperity by providing a reliable mechanism through which citizens can resolve their disputes.

Yet the practical capacity of many citizens to gain access to justice is diminishing, and the gap between the Victorian community’s needs, and the justice system’s ability to meet those needs, is growing.

In practice, a variety of obstacles can prevent access to justice, from difficulties obtaining legal information and understanding the law, to the inability to afford private legal advice and assistance to navigate the formal justice system.

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Government has a central role in providing an accessible justice system to support the rule of law. Access to justice ensures that the benefits of living in a society governed by the rule of law are available to all members of the community, especially the most vulnerable.

Government also has a role in informing people about their rights and responsibilities under our laws, and doing so in ways that are accessible to the community.

Finally, publicly funded legal assistance services are a crucial safety net for the most disadvantaged members of the community. These services provide legal advice and representation, and information about rights and responsibilities and how to exercise them. This assistance ranges from providing advice about a civil matter affecting a person’s family or housing, to ensuring a fair hearing in the criminal justice process.

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What did the Review find?

The Review found a great deal of goodwill and dedication among institutions and service providers – people committed to doing their best to serve the growing needs and expectations of the Victorian community – despite the significant challenges in the justice system, including the legal assistance sector. Unfortunately, some important enablers of the system are weak: there is a lack of data, poor technology in many parts of the system, under-resourcing of legal assistance and related services, and services that are not sufficiently integrated.

The Review proposes four key strategies to ensure that institutions and services in Victoria’s justice system better match the legal needs of the Victorian community and maximise the efficiency with which public resources are used. To advance the four strategies, the Review made 60 recommendations for consideration by the Victorian Government and relevant independent institutions, such as the courts and the Victorian Civil and Administrative Tribunal.

Practical access to justice means providing the right services, in the right places, at the right time, and in the right way.

To advance the four strategies, the Review made 60 recommendations for consideration by the Victorian Government.
a. Better information

The Review found that there is a lack of data and evidence across the justice system, particularly on issues of access to justice, legal assistance, and civil justice. This lack of evidence makes it difficult to know what the community needs, what works well to meet those needs, and how these things change over time.

Improving data, research, and evaluation capability across the system is fundamental to each of the recommendations in the Review. A better evidence base would also provide a stronger foundation for improved resourcing, facilitate greater co-ordination, and support responses based on legal assistance priorities across Victoria.

There is also a need to improve the provision of legal information to the public. Better sources and availability of legal information have great potential to assist the many Victorians who are not eligible for publicly funded legal assistance services, but who are unable to afford to engage a lawyer to appear in a court or tribunal, a group often referred to as the ‘missing middle’. Access to justice for these members of the community can be improved by empowering people to help themselves through relevant, accessible legal information.

Key recommendations to implement this strategy include proposals to:

- make the Victoria Law Foundation a centre for excellence for data analysis, research, and evaluation on access to justice, legal assistance, and civil justice, to support evidence-based planning and service provision (recommendation 1.1);
- make Victoria Legal Aid the primary entry point for information about legal issues for the Victorian community, and in this coordinating with other information providers in government, the private sector and community legal centres (recommendation 2.1);
- encourage the courts and tribunals to consider ways to make their websites and legal information materials more accessible and consistent, including possible provision of information in languages other than English and in “Easy English” format (recommendation 2.4); and
- make legislative amendments to improve the transparency and availability of Victoria Legal Aid’s operations, including public reporting of its expenditure and organisational performance against approved indicators, to be published online (recommendation 6.4).

b. More flexible and integrated services

Supporting practical access to justice means providing the right services, in the right places, at the right time, and in the right way.

Many justice system processes and institutions have traditionally been designed by lawyers to work in ways that suit lawyers. The quest for greater access to justice challenges the justice system to put the community member, or the court or tribunal user, at the centre of its design. The Royal Commission into Family Violence outlined a framework to design vital services around the needs of community members. This approach would help the justice system to better meet the needs of vulnerable and disadvantaged members of the community.

Putting citizens at the centre of service design begins with recognising that the different needs of individual members of the community call for different responses, depending on whether the individual recognises that they have a legal problem, their capacity to engage with the justice system, and the type of legal problem that they face. The services provided for a particular type of problem or client should be proportionate to the significance, value, and complexity of the matter, and the needs of the particular client. Services should also facilitate intervention in legal problems at the earliest appropriate point to minimise the effect of these problems on a person’s wellbeing, and minimise the costs that likely consequences can impose on other publicly funded services (such as housing, health, mental health, and child protection).

Vulnerable and disadvantaged members of the Victorian community can require more intensive services to help them to manage and resolve their legal problems. The safety net of publicly funded legal assistance is intended to provide this support. These services must be sufficiently flexible to respond to emerging needs in the community.
Key recommendations to implement this strategy include proposals to:

- improve the capacity of legal and community services, and the courts and the Victorian Civil and Administrative Tribunal to triage legal issues to help people to get the assistance they need at the right point (recommendations 3.1-3.4);
- provide support for proven models of integrated service delivery which might see a lawyer work with a health or other community service, or a non-legal worker such as a social worker or financial counsellor work with a legal service (recommendation 3.4);
- ensure that there is legal support in both the proposed Family Violence Support and Safety Hubs (recommendation 3.5), and the proposed Pride Centre to support lesbian, gay, bisexual, trans and gender diverse, and intersex members of the community (recommendation 3.6);
- help people to get access to alternative dispute resolution services that are right for them through improved screening of cases (recommendation 4.1), and for the Victorian Civil and Administrative Tribunal to consider partnering with the Dispute Settlement Centre of Victoria to provide expanded alternative dispute resolution services, including in regional areas;
- establish a Self Representation Service to help people who represent themselves in court or at the Victorian Civil and Administrative Tribunal to obtain some legal advice as they consider their options or prepare their case (recommendation 8.4).

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c. Making better use of technology

Community expectations are changing as a result of the digital revolution. People can book into the doctor or hairdresser online, and outside of regular business hours. They can ask questions and resolve problems with their telecommunications provider, bank or airline online, sometimes instantly. They can have documents and reminders sent directly to their electronic devices. People are becoming more familiar with, and expect, mobile and flexible services, designed around the ways that they work and live. If government complaints bodies, dispute resolution services, and the justice system fail to adapt, there is a risk that the formal institutions of government could become a second-rate service or even irrelevant to meeting the community’s needs.

The Review found examples of successful initiatives by service providers and other justice system institutions to use different technological platforms to reach members of the community. It also identified further opportunities to make greater use of technology that would require investment by government in design, infrastructure, and implementation.

While greater use of contemporary technology can overcome some of the barriers that are currently preventing some people from resolving their everyday legal problems, the Review recognises that not all members of the Victorian community can use online technologies. The use of technology must therefore be accompanied by other strategies to overcome barriers that people face in accessing the justice system.

Key recommendations to implement this strategy include proposals to:

- modernise services offered by the Victorian Civil and Administrative Tribunal, including better utilisation of online technology to provide more accessible, user focused and responsive administrative services (recommendation 5.1);
- develop an online system for the resolution of small civil claims in the Victorian Civil and Administrative Tribunal that is a more flexible and proportionate way of resolving small claims (recommendation 5.2); and
- consider development of an online tool or website portal to match community legal centres and other organisations with legal practitioners who can provide pro bono legal assistance (recommendation 7.7).
d. Stronger leadership, governance, and linkages

All governments must endeavour to ensure the provision of a fair and accessible justice system. Equally, it is incumbent on government to maximise value for money in the use of public resources. The Victorian Government is accountable to the Victorian community for both of these things.

The Review found that despite a number of improvements, the legal assistance sector remains fragmented between different service providers. In this context, ensuring that appropriate governance arrangements are in place can be challenging.

Stronger governance mechanisms would help to support more co-ordinated, integrated and accountable legal assistance services to the Victorian community, and enhance overall efficiency. Stronger governance would help the sector to transition to a co-ordinated system of legal assistance.

The Review also found that there could be stronger linkages between different institutions in the justice system. The Review identified that there could be better communication and sharing of experience and expertise, particularly about alternative dispute resolution, and supporting self-represented litigants in the system.

In addition, the Review found that there is a need to foster a stronger culture of transparency and continuous improvement in some parts of the justice system.

Finally, the Review found that maximising value for money in publicly funded services, especially those provided in the legal assistance sector, requires stronger relationships between government and service providers. Services must be informed by government priorities for the community, better evidence of the community’s legal needs, and what works best to meet those needs.

Key recommendations to achieve this strategy include proposals to:

- establish Victoria Legal Aid as the ‘system manager’ for publicly funded legal assistance services, to improve co-ordination based on government priorities and evidence of community needs (recommendation 6.1), while at the same time improving Victoria Legal Aid’s transparency and accountability (recommendations 6.2-6.5);
- streamline the administration involved in legal assistance funding arrangements to reduce the burden on service providers, and provide greater funding certainty through four-year allocations to legal assistance services (recommendations 6.7 and 6.8);
- improve government planning and co-ordination when policy decisions might influence legal assistance services (recommendation 6.9);
- provide additional funding to ensure legal assistance services can meet critical legal needs (with initial priority for duty lawyer services, family violence-related services, Aboriginal legal services, and integrated service provision partnerships). The Review proposes that the Victorian Government negotiate with the Commonwealth Government to return its contribution to legal assistance funding to at least 40 per cent, and to establish a recurrent funding arrangement between the Commonwealth and the States and Territories to meet ongoing legal need in the community (recommendations 6.20-6.22).
More Accessible Justice

The Access to Justice Review creates a platform for widespread change in the justice system. While the system is not broken, it is under considerable strain. The Review has identified ways to improve the system so that justice is more accessible for all Victorians. There are already many promising initiatives and significant opportunities to improve practice and service provision across the board. Equally, there are significant risks in not taking steps to increase the ability of Victorians, especially vulnerable and disadvantaged Victorians, to obtain effective legal advice and assistance. The gap between community needs and system capacity will continue to widen if action is not taken now.

The Review proposes strategic responses – better information, more integrated services, better use of technology and stronger governance – to enhance access to justice through a systemic approach. If the Review’s recommendations are adopted, more Victorians will have greater access to better services. They will be able to get information about a legal problem quickly, use processes that resolve their disputes as fairly and quickly as possible, and, if they are disadvantaged or vulnerable, they will have better access to legal advice and assistance.

There is an opportunity to track progress towards identified outcomes, ensuring that the Review marks the commencement of a new phase of continuous improvement in the Victorian justice system.

All governments must endeavour to ensure the provision of a fair and accessible justice system.