

Narrowing the justice gap

VCOSS submission to the Access to Justice Review

February 2016



About VCOSS

The Victorian Council of Social Service (VCOSS) is the peak body of the social and community sector in Victoria. VCOSS members reflect the diversity of the sector and include large charities, peak organisations, small community services, advocacy groups, and individuals interested in social policy. In addition to supporting the sector, VCOSS represents the interests of vulnerable and disadvantaged Victorians in policy debates and advocates for the development of a sustainable, fair and equitable society.

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Contents

Introduction	2
Recommendations	4
Expand access to legal assistance	6
Support community legal centres	6
A mixed model of legal assistance improves access to justice	8
Expand access to legal aid.....	9
Ensure transparent allocation of funding	11
Encourage pro bono legal service delivery	11
Address specialist legal need and reduce barriers to accessing justice.....	13
Meet unmet civil and family law need	14
Provide specialist assistance to vulnerable groups.....	15
Improve legal education and information.....	23
Improve knowledge about the law and legal services.....	23
Maintain a no-wrong-doors approach.....	25
Extend collaborative and early intervention approaches to accessing justice	27
Recognise the role of non-legal services.....	27
Foster justice and community sector partnerships.....	29
Improve access to ombudsmen and other dispute resolution processes	32
Advocates and advocacy organisations complement legal assistance	34

Introduction

VCOSS welcomes the opportunity to provide input to the Victorian Government's Access to Justice Review. Access to justice is fundamental to a fair and inclusive society. Inadequate human rights protection, poor legal services access and inequality before the law can have significant and far-reaching impacts for vulnerable Victorians.

Access to justice, including a fair hearing and adequate legal assistance is important to protecting human rights and reducing disadvantage. Targeted legal assistance, delivered at the right time and the earliest possible opportunity can help resolve problems that can otherwise escalate, leading to more problems, greater disadvantage and higher costs.

Despite the high levels of need, community legal centres in Victoria face federal funding cuts of about 30 per cent over the next three years. The Productivity Commission has recommended that \$200 million be immediately injected into civil legal assistance services nationally 'to address the most pressing gaps in services'.¹ To meet this recommendation a minimum of an additional \$18 million each year is needed as an urgent interim investment by the Victorian Government, with a minimum additional \$27 million from the Commonwealth Government.

The burden of legal need falls particularly heavily on disadvantaged people and communities. People facing disadvantage are more likely to experience legal problems and often experience multiple legal problems at the same time.² People with disability, Aboriginal and Torres Strait Islander people, people experiencing homelessness and single parents experience legal problems at higher rates than the general community.³

Addressing legal problems promptly can stop problems escalating, for example, by preventing someone from losing their home to foreclosure, forcing a landlord to make important house repairs, protecting women from their violent partner and challenging bullying or discrimination in the workplace.

However, many people do not seek legal help when they need it. There are a range of reasons they may not access assistance, including shame, denial, hopelessness, not recognising the legal nature of problems, having other immediate priorities, believing they have insufficient power or the

¹ Productivity Commission, *Access to Justice Arrangements, Inquiry Report Overview*, 2014, p.741

² C Coumarelos et al. *Legal Australia Wide Survey; legal need in Australia*, Law and Justice Foundation of NSW, 2012, p. xxiii

² The Australia Institute, *Justice for All*, March 2012.

³ C Coumarelos et al. *Legal Australia Wide Survey; legal need in Australia*, Law and Justice Foundation of NSW, 2012, p. xxiii

³ The Australia Institute, *Justice for All*, March 2012.

law will be of no help to them. More can be done to help people identify legal problems and seek assistance to resolve them.

Too many Victorians are missing out on access to justice because they are unable to find affordable, timely, appropriate legal assistance. Legal assistance services provide people with affordable and accessible assistance to address legal problems, before they escalate. However, there is a growing justice gap between people who can identify and enforce their legal rights, and those who are unable to. Changes to Victoria's sentencing laws, an increased focus on family violence and increases in child protection notifications have all contributed to the growing demand for legal assistance.⁴

A conservative estimate is 500,000 people miss out on legal help every year in Australia.⁵ Another survey found 72 per cent of community legal centres were unable to meet demand.⁶ More than 150,000 people were turned away from community legal centres in 2013-14, with funding a significant factor.⁷

“A first class court system and a first class legal profession are of no avail to a person who cannot afford to access them.”⁸

VCOSS supports measures that make it easier for vulnerable people to resolve their legal problems and seek help. This includes demystifying the pathways that people can take, and resourcing the important support services that will walk with people on their journey through the legal system.

Non-legal community organisations are an important partner in helping people identify and resolve legal problems. Vulnerable people will often turn to organisations and workers they know and trust, providing an opportunity to link people in with appropriate legal support. Innovative models that support integration and collaboration between legal and non-legal services are a growing area of interest for government and the community sector. This review is an opportunity to identify strategies to foster innovation and improve the holistic support provided to vulnerable people.

VCOSS looks forward to working with the government to improve access to justice for vulnerable Victorians and strengthen legal and non-legal community organisations.

⁴ Victorian Auditor-General's Office, *Access to Legal Aid*, 20 August 2014.

⁵ The Australia Institute, *Justice for All*, March 2012.

⁶ Australian Council of Social Service, *Australian Community Sector Survey 2014*, 2014, p. 19.

⁷ National Association of Community Legal Centres, *National Census of Community Legal Centres; 2014 National Report*, May 2015.

⁸ Sir Anthony Mason, Former Chief Justice of the High Court of Australia, quoted in Community Law Australia, *Unaffordable and out of reach; the problem of access to the Australian legal system*, 2012.

Recommendations

Expand people's access to legal assistance

- The Victorian government provides additional funding to expand legal assistance, particularly through community legal centres to help them meet demand from people facing disadvantage, and advocate for the Commonwealth to do the same.
- The Victorian government maintains funding for law reform and systemic advocacy work by community legal centres, and advocates for similar support from the Commonwealth Government.
- Maintain the mixed model of legal assistance services to reflect the diverse needs of people facing disadvantage and provide people with choice.
- The Victorian government and Victoria Legal Aid review the VLA means test to increase the number of people receiving grants of legal assistance and identify alternate models that reflect the complexity of disadvantage in Victoria.
- Victoria Legal Aid establishes a transparent framework and system for the allocation of funding to community legal centres
- The Victorian government continue to develop incentives to strengthen pro bono service provision.

Address specialist legal need and reduce barriers to accessing justice

- VCAT reviews its fees to ensure they are not acting as a barrier to people making claims, especially credit, consumer law and tenancy claims.
- The Victorian government provides additional funding to legal assistance services to help people experiencing disadvantage resolve civil and family law problems.
- The Victorian government expands Aboriginal legal services, including the Victorian Aboriginal Legal Service and Aboriginal Family Violence Legal Service to provide services state-wide.
- The Victorian government and Victoria Legal Aid maintain and increase funding for specialist services that have expertise in working with older people, young people, people with disability, women, and people from diverse cultural backgrounds.
- The Victorian governments increases investment in interpreter and translator services.
- The Victorian government ensures people living in rural and regional Victoria have the same capability to access legal assistance as people living in Melbourne.

Improve legal education and information

- The Victorian government and Victoria Legal Aid continue funding and supporting targeted community legal education for vulnerable people and communities, provided by community legal centres.
- Maintain a no-wrong-doors approach to entry to the legal system to ensure any 'well-recognised entry point' does not act as a barrier for vulnerable people seeking help.

Extend collaborative and early intervention approaches to accessing justice

- The Victorian government increases access to training, advice and resources about legal issues, systems and services for non-legal workers.
- The Victorian government fosters innovation, including by supporting the expansion of models like health-justice partnerships.
- The Victorian government ensures funding and contracting structures allow organisations to invest time and resources in building partnerships and collaboration.
- Expand ombudsmen and dispute resolution scheme to sectors without industry schemes, including Vocational Education and Training, taxis and retirement housing.
- Ombudsmen and dispute resolution bodies ensure clear and targeted information is available to people about dispute resolution options, at the time they are likely to need it.
- The Victorian government recognises the important and complementary role of advocacy and community legal services in improving access to justice.
- The Victorian government continues to fund disability advocacy services beyond the implementation of the NDIS.
- The Victorian government funds advocate positions to assist people to navigate complex legal systems, including in the family violence area.

Expand access to legal assistance

Support community legal centres

Recommendations

- The Victorian government provides additional funding to expand legal assistance, particularly through community legal centres to help them meet demand from people facing disadvantage, and advocate for the Commonwealth to do the same.
- The Victorian government maintains funding for law reform and systemic advocacy work by community legal centres, and advocates for similar support from the Commonwealth Government.

Community legal centres (CLCs) are independent, non-profit, non-government organisations with a focus on early advice, problem solving and working with other agencies to address connected legal, financial, social, and health problems.

Despite the high levels of need, community legal centres in Victoria face federal funding cuts of about 26 per cent over the next three years. This will further limit their ability to help people facing legal problems, and leave more people unrepresented or unable to address their problems.

The Productivity Commission has recommended that \$200 million be immediately injected into civil legal assistance services nationally 'to address the most pressing gaps in services'.⁹ They consider that 60 per cent of this funding would be contributed by the Commonwealth, with the remainder funded by State and Territory governments.

VCOSS welcomes the additional funds invested by the Victorian Government of \$2 million over 2 years into the Community Legal Centre Assistance Fund as a recognition of the unmet need. However Victoria currently receives about 23 per cent of legal aid and community legal centre funding,¹⁰ so to meet the Productivity Commission's recommendation a minimum of an additional \$18 million each year is needed as an urgent interim investment by the Victorian Government, with a minimum additional \$28 million from the Commonwealth Government.

CLCs focus on helping people who do not qualify for legal aid and mainly help people with civil and family law issues. Over 80 per cent of the people helped by CLCs receive income of under \$26,000 a year.¹¹

⁹ Productivity Commission, *Access to Justice Arrangements, Inquiry Report Overview*, 2014, p.741

¹⁰ The Allen Consulting Group, *Review of the National Partnership Agreement on Legal Assistance Services, Working paper two: Evaluation of legal assistance services*, p.xiv and p.22

¹¹ Community Law Australia, *Unaffordable and out of reach; the problem of access to the Australian legal system*, 2012.

Like other organisations in the community sector, CLCs significantly contribute to society's wellbeing. Community organisations support people overcome disadvantage by responding to immediate and long-term community need. They operate with direct on-the-ground experience of the communities, families and individuals with whom they work, and can be flexible in their approach to supporting people overcome disadvantage, while also helping develop long-term social policy solutions.¹²

Victoria has a strong community legal sector, with centres providing generalist, location specific and specialist assistance to low-income Victorians. Some of the features that make CLCs distinct from legal aid commissions include:

- Community legal centres operate with a strong connection to their local or client community by taking a community development approach. In helping disadvantaged people access legal help, community legal centres can identify emerging issues and formulate targeted responses to community need.
- Community legal centres are often small and flexible, allowing them to develop innovative and creative responses.
- Community legal centres are independent, so they can work to change unfair laws and policies, including by advocating to government.
- Community legal centres attract substantial volunteer, philanthropic and pro bono contributions.¹³

CLCs use on-the-ground experience to identify emerging issues and trends, and develop new ways of tackling disadvantage and unmet need. CLCs can often be collaborative in this work, working closely with other community, health or legal services to identify opportunities and deliver a more holistic response to people facing disadvantage.

There are many examples of the innovative approaches CLCs adopt to respond to community need, such as the Taxi Driver Legal Clinic operated by Western Community Legal Centre. The service helps low-income taxi drivers with problems related to disciplinary issues, traffic infringements, civil disputes and debts arising from motor vehicle accidents.

There is some evidence that legal need can be triggered by particular 'transition points' in a person's life. These transition points can include relationship breakdown, death in the family, sudden illness, job loss or natural disaster. Some legal assistance services specifically target important transition points, to prevent legal problems escalating and reach people in sudden need. For example, Disaster Legal Help is a group of Victorian legal services who provide free information, advice and support to people affected by disasters. Family violence related legal issues are a large and growing portion of community legal centres' work.

¹² VCOSS, *Building on the value of Victoria's community sector*, 2015.

¹³ Federation of Community Legal Centres, *Response to the Productivity Commission Draft Report: Access to justice arrangements*, May 2014, p. 8.

Several studies have found that CLCs are facing overwhelming demand. For example, the ACOSS Community Sector Survey found that 72 per cent of legal service providers were not able to meet demand for services.¹⁴ Similarly a National Association of Community Legal Centres survey found that across the 74 CLCs in Australia, 33,616 people were turned away in 2012-13. Fourteen per cent of respondents reported that they had to turn away more than 1,000 people.¹⁵

VCOSS strongly supports the comments made by the Productivity Commission about the strategic advocacy and law reform activities undertaken by community legal centres and other legal assistance providers. As noted by the Productivity Commission, strategic advocacy can not only have a substantial impact on a larger number of people, it can also be an efficient use of resources, maximising the impact of limited funding.

Strategic advocacy can benefit those people affected by a particular systemic issue, but, by clarifying the law, it can also benefit the community more broadly and improve access to justice.¹⁶

A mixed model of legal assistance improves access to justice

Recommendation

- Maintain the mixed model of legal assistance services to reflect the diverse needs of people facing disadvantage and provide people with choice.

The Victorian legal sector is comprised of a range of different types and models of services helping to meet the needs of people facing legal problems. These services include legal representation through Victoria Legal Aid staff, community legal centres, Aboriginal legal services and private practitioners.

This 'mixed model' is important, because people facing disadvantage experience a wide range of circumstances. There is no 'one-size-fits-all' model that will suit every person and resolve every challenge they face. VCOSS advocates for a community sector and a legal sector with a diverse range of services of different sizes, resources, structures, cultures and services and governance models. Some will operate at a local neighbourhood level, others across local government areas, and others statewide or national. This diversity helps meet the diverse needs of people facing disadvantage. Some organisations are expert in delivering specialist services or working with identified groups of people or types of social issues, and understand the complexities and sensitivities of these groups and issues. Others work more generally across the community, sometimes offering a wider range of programs.

¹⁴ Australian Council of Social Service, Australian Community Sector Survey, 2014, 2014, p. 19.

¹⁵ National Association of Community Legal Centres, *Memorandum to the Productivity Commission: Access to justice arrangements inquiry*, December 2013.

¹⁶ Productivity Commission, *Access to Justice Arrangements, Inquiry Report Overview*, 2014 p. 31.

Legal Aid Commissions, CLCs, Aboriginal and Torres Strait Islander Legal Services, Aboriginal Family Violence Prevention Legal Services are all set up differently and have different approaches that reflect the difference and diversity of the people they are set up to service.¹⁷

The terms of reference for this review asks about duplication of services provided by legal assistance services. Legal assistance services already target their services to the most vulnerable community members, reducing the likelihood of unnecessary duplication. Where there are multiple providers in a particular area, legal assistance services are providing people with a choice about how they seek help, and improving the sector's ability to reach vulnerable and marginalised individuals and communities and meet the varied needs of Victoria's diverse population.

VCOSS members also report sometimes multiple strategies are necessary to prevent people missing out on assistance. With demand for services high, people are sometimes unable to get help from the first organisation they contact; meaning having more than one service with expertise in an area can provide an alternative. Some suggested that more generalist CLCs and lawyers should be skilled up in specialist areas of law, for example debt and credit or tenancy, to reduce demand on specialist services with limited capacity.

To have a specialist centre support generalist CLCs by training and by sharing its knowledge of the recent laws and the precedents it develops, as well as sharing its skills through expert advice and casework support when requested, improves community legal centres' ability to advocate for their clients and achieve better outcomes.¹⁸

VCOSS believes that the review should recognise the different contributions that are made by different parts of the legal system, and the opportunity for different legal assistance services to work more closely together to support people facing disadvantage by maintaining a diversity of providers, allowing people choice in the service they use, and maintaining multiple innovative and creative means of reaching vulnerable people.

Expand access to legal aid

Recommendation

- The Victorian government and Victoria Legal Aid review the VLA means test to increase the number of people receiving grants of legal assistance and identify alternate models that reflect the complexity of disadvantage in Victoria.

¹⁷ Liz Curran, *A Literature Review: examining the literature on how to measure the 'successful outcomes': quality, effectiveness and efficiency of Legal Assistance Services*, prepared for the Commonwealth Attorney General's Department, February 2012.

¹⁸ Principal lawyer of a regional CLC, quoted in Consumer Action Law Centre, *Submission to the Productivity Commission Inquiry Access to justice arrangements*, 2013, p. 13.

Like other parts of the legal assistance sector, Victoria Legal Aid is experiencing significant underfunding and struggles to meet the high demand for its services. VCOSS acknowledges that the Commonwealth Government bears significant responsibility for this underfunding of legal aid commissions. For example, the Commonwealth contribution to legal aid funding now sits at about 33 per cent, compared to more than half in the 1980s and early 1990s.

Access to grants of legal aid is now restricted to people who can satisfy increasingly severe means tests and is provided mainly to people with criminal law problems who are facing imprisonment.

...restrictions on legal aid are now so severe that, in many jurisdictions, a substantial proportion of those living below the Henderson poverty line ... will not satisfy the means test for legal aid eligibility.¹⁹

Victoria has among the most restrictive means tests in the country, meaning grants of aid are restricted only to those on the lowest incomes. VLA acknowledged in their submission to the Productivity Commission that their means test is especially 'mean' but report they are required to prioritise limited funding and are unable to make significant changes without additional funding to increase the amount of services that can delivered.²⁰

Case study – eligibility for legal aid²¹

Sharon is a single mother with four children and lives in one of the Melbourne growth corridors. She is not currently working, has no savings and receives a full parenting payment from Centrelink. Sharon separated from her violent husband a year ago and is seeking funding for family dispute resolution to obtain parenting orders and child support. Living on the outskirts of Melbourne, public transport is scarce and she relies heavily on a car. Her car is currently valued on redbook.com as being worth \$17,000. She is eligible for assistance based on income, but is assessed to pay a \$1435 contribution based on the value of her car. As it is a contribution based on an asset, VLA requires this payment to be an upfront lump sum as it demonstrates capacity to borrow against the asset. It is highly unlikely that Sharon will be able to obtain a loan or if she does it will attract high interest rates with a realistic prospect of default. It is also not feasible for her to sell her vehicle.

VCOSS is currently engaged with the VLA review of the means test, aiming to ensure access to its services are fair and targeted to those in the most need. We will continue to work with VLA to explore options for improving access to legal aid within the current funding arrangements. For example, we are interested in a new eligibility test being trialed by Legal Aid NSW in employment matters that looks at social exclusion indicators to target services. This social disadvantage test looks at under-employment, low skills level, low income, poor housing, bad health and family breakdown. However, without significant increase in funding it is likely to be little more than a 'rearranging of the deckchairs' and many people in need will continue to miss out.

¹⁹ Law Council of Australia, *Submission to Productivity Commission Inquiry: Access to justice arrangements*, 2013, p. 38.

²⁰ Victoria Legal Aid, *Submission to Productivity Commission Draft Report: Access to justice arrangements*, May 2014.

²¹ Ibid.

In recent years, Victoria Legal Aid has sought to manage their budgetary problems by tightening eligibility for legal aid. This has resulted in more people facing court without representation, and some victims of violence being cross-examined by violent perpetrators. To their credit, VLA has since made changes to their eligibility criteria in the family law, child protection and family violence areas, to ensure vulnerable people are better able to access legal representation.

However, eligibility criteria continue to restrict grants of aid to people facing criminal charges that could result in imprisonment. This leaves many people facing summary charges without access to grants of aid.

Ensure transparent allocation of funding

Recommendation

- Victoria Legal Aid establishes a transparent framework and system for the allocation of funding to community legal centres

Victoria Legal Aid is currently responsible for the distribution of funding to community legal services in Victoria. There are a range of benefits to this model, including VLA's knowledge about the legal sector and legal need, and their strong professional and collaborative relationships with community legal centres.

However, VLA is also a provider of legal assistance services. As such, they face an inevitable actual or perceived conflict between building their own capacity and strengthening the delivery and reach of community legal centres. Some VCROSS members recalled the 2013 decision to cut funding to the independent Mental Health Legal Centre and redirect funding to its own mental health legal service as an example of this conflict.

To address the perception of conflict, it is important that VLA establish a transparent framework and system for the allocation of funding to community legal centres. One aspect of this is ensuring genuine and meaningful involvement of community organisations and representatives in the development of funding frameworks. We understand VLA is in the process of reconvening a community consultative committee that will undertake this role.

Encourage pro bono legal service delivery

Recommendation

- The Victorian government continue to develop incentives to strengthen pro bono service provision.

Victoria already has a strong culture of pro bono service delivery. For example, Victorian community legal centres attracted over 18,000 pro bono hours in the 2012-13 financial year. This is 34 per cent of the total hours delivered across Australia.²²

VCOSS supports the Victorian government's commitment to continuing to strengthen pro bono service provision across the state. For example last year, the government announced a doubling of the minimum pro bono contribution required by private law firms to participate in the Victorian Government Legal Services Panel.

However, VCOSS warns against an overreliance on pro bono services to address the 'justice gap.' Pro bono services are not appropriate in all legal matters. For example, it is difficult to secure pro bono legal assistance in family law matters, which are often complex and resource intensive. Pro bono assistance may also not be appropriate for all clients. For instance, culturally safe services that deeply understand the particular barriers people face may be more appropriate for Aboriginal people or people from culturally diverse backgrounds.

²² National Association of Community Legal Centres, *National Census of Community Legal Centres 2013 Report*, 2014.

Address specialist legal need and reduce barriers to accessing justice

Recommendation

- VCAT reviews its fees to ensure they are not acting as a barrier to people making claims, especially credit, consumer law and tenancy claims.

Vulnerable and disadvantaged Victorians are at heightened risk of experiencing legal problems. People with disability, Aboriginal and Torres Strait Islander people, people experiencing homelessness and single parents experience legal problems at higher rates than the general community.²³

People experiencing disadvantage are also more likely to experience several legal problems at the same time. Ten per cent of Victorian respondents account for 64 per cent of reported legal problems.²⁴

As disadvantage becomes increasingly concentrated, vulnerability to multiple legal problems compounds.’ Respondents with multiple disadvantages reported a greater number of legal problems and substantial legal problems. Importantly, each additional indicator of disadvantage was found to have an ‘additive effect’ that increased the average number of legal problems and substantial legal problems reported.²⁵

Legal problems are usually not isolated and cannot be separated from other economic, social or personal circumstances faced by people who access community services. The LAW survey showed that 45 per cent of people surveyed who were experiencing legal problems reported one or more of income loss/financial strain, stress-related illness, physical ill-health, relationship breakdown or moving home.²⁶ For example, a person being evicted from their rental property may have a tenancy law problem, while also dealing with finding alternative accommodation, high moving costs, family upheaval, employment or education instability and the possible threat of

²³ C Coumarelos et al. *Legal Australia Wide Survey; legal need in Australia*, Law and Justice Foundation of NSW, 2012, p. xxiii

²³ The Australia Institute, *Justice for All*, March 2012.

²⁴ C Coumarelos, D Macourt et al. ‘Legal Australia-Wide Survey: Legal Need in Victoria’, *Access to Justice and Legal Needs*, Volume 14, Law and Justice Foundation of New South Wales, 2012, p. xiv.

²⁵ Hugh McDonald & Zhigang Wei, *Concentrating disadvantage: a working paper on heightened vulnerability to multiple legal problems*, Law and Justice Foundation of NSW, May 2013.

²⁶ C Coumarelos et al. *Legal Australia Wide Survey; legal need in Australia*, Law and Justice Foundation of NSW, 2012, p. xxiii

homelessness. People with urgent competing needs may not prioritise even significant legal issues, meaning problems escalate or compound. They may also struggle to articulate the legal element of a complex problem, like homelessness.

VCOSS members report increased out-of-pocket costs are a significant barrier for many people in resolving legal problems. Fees for bringing cases to the Victorian Civil and Administrative Appeal Tribunal (VCAT) in credit, consumer law, discrimination and other areas have increased significantly in recent years, resulting in a sharp drop-off in the number of applications. In some areas, such as small claims in the civil list, fees increased 300 per cent in real terms.

Meet unmet civil and family law need

Recommendation

- The Victorian government provides additional funding to legal assistance services to help people experiencing disadvantage resolve civil and family law problems.

Failing to address civil law problems can have a profound effect on the lives of Victoria's most vulnerable people, directly affecting their housing, safety, welfare or livelihood. Addressing issues of debt, tenancy, consumer law, social security, discrimination and intervention orders are just as important as addressing criminal law problems.

Community legal centres have worked hard with limited funding to help people address their civil legal problems. However, the Productivity Commission has recognised that civil law matters remain the 'poor cousin in the legal assistance family.'²⁷ It found that:

Australia's most disadvantaged people are particularly vulnerable to civil law problems and adverse consequences resulting from the escalation of such disputes. Assistance for civil matters should be funded for the most disadvantaged.²⁸

The priority given to criminal matters is understandable. As the Productivity Commission noted, priority is given to criminal issues not just because of the serious consequences these matters have on people's lives (including possible imprisonment), but also because of the direction provided by the courts to do so. Criminal courts can, and do, stay proceedings involving indictable offences where parties are unrepresented. This is much less likely to occur in civil matters.²⁹

Unmet civil and family law needs relate to and contribute to social problems like poverty, homelessness and unemployment. They can result in complex and entrenched problems, and may escalate to criminal issues. For example, failure to resolve a debt related issue can lead to larger

²⁷ Productivity Commission, *Access to Justice Arrangements, Inquiry Report Overview*, September 2014.

²⁸ Ibid.

²⁹ Productivity Commission, *Access to Justice Arrangements, Draft Report Overview*, April 2014, p. 32.

debt, financial problems, stress and family conflict, bankruptcy and homelessness. Similarly, family law issues can quickly escalate into an incidence of family violence.

If left unresolved, civil problems can have a big impact on the lives of the most disadvantaged. The Commission was given many examples of simple problems spiraling into complex problems when legal assistance was not provided. Unmet civil problems can also escalate into criminal matters.³⁰

Adequate, timely and affordable services to help address civil and family law needs will help close the justice gap, reduce disadvantage and keep people out of the criminal justice system.

Criminal, civil and family law services are all underfunded. As a result of this underfunding, and the priority given to criminal matters, organisations are often forced to make difficult compromises, prioritising one area of legal service provision over another. Funding is inevitably directed to the 'pointiest end,' for people at risk of imprisonment or facing criminal charges. Civil and family law needs to be protected from the constant pressure to channel funding into criminal law matters.

Provide specialist assistance to vulnerable groups

Recommendations

- The Victorian government expands Aboriginal legal services, including the Victorian Aboriginal Legal Service and Aboriginal Family Violence Legal Service to provide services state-wide.
- The Victorian government and Victoria Legal Aid maintain and increase funding for specialist services that have expertise in working with older people, young people, people with disability, women, and people from diverse cultural backgrounds.
- The Victorian government increases investment in interpreter and translator services.
- The Victorian government ensures people living in rural and regional Victoria have the same capability to access legal assistance as people living in Melbourne.

Aboriginal and Torres Strait Islander people

Aboriginal people are more likely to experience legal problems than non-Aboriginal people. They also experience higher rates of disadvantage, and poorer health, justice and education outcomes than non-Aboriginal people. Reducing Aboriginal disadvantage and closing the gap in health and wellbeing outcomes is a priority for government and the community sector.

A number of reports have highlighted the levels of unmet needs for civil and family law in Aboriginal and Torres Strait Islander communities. The leading study is the Indigenous Legal Needs Project (ILNP) which highlighted various priority areas of civil and family law needs. Particular needs identified in this project included housing, disputes with neighbours,

³⁰ Productivity Commission, *Access to Justice Arrangements, Inquiry Report Overview*, September 2014, p. 24

discrimination, credit/debt, stolen wages, stolen generations, consumer law issues, child protection, education, social security/Centrelink and wills.³¹

The ILNP found:

*The non-criminal legal needs of Indigenous people require much greater attention than they are presently afforded. Currently, there are significant gaps in accessing legal assistance for civil and family law matters. These gaps arise because of the focus on criminal law practice and the model of Melbourne-centric service provision.*³²

Aboriginal and Torres Strait Islander legal services report there is also a significant lack of awareness and understanding amongst Aboriginal and Torres Strait Islander communities about their legal rights and the avenues that are available to realise them. This means that there is not only a high level of unmet need but also a high level of unidentified need.

This lack of awareness and understanding is exacerbated by a historical reluctance to engage with the civil and family law system.

*In the context of the past history of forced removal of Aboriginal and Torres Strait Islander children and the contemporary extent of non-voluntary engagement with the criminal justice and child protection systems among Aboriginal and Torres Strait Islander peoples, there is significant resistance to voluntary engagement with government and justice system services.*³³

Aboriginal people require a more holistic or client-focused approach to their problems, including a coordinated response across legal and other human services.³⁴ Aboriginal legal services and Aboriginal family violence prevention legal services adopt a holistic and intensive support model that link Aboriginal people in with other services that address the underlying issues that can lead to legal problems. Aboriginal legal services report that this is crucial, because:

*Aboriginal and Torres Strait Islander peoples are less likely than mainstream clients to follow through with referrals, especially to mainstream organisations or organisations with which they are unfamiliar.*³⁵

An important difference between Aboriginal legal services and other mainstream legal services is their ability to provide culturally competent services to Aboriginal people. Cultural competency is essential for effective engagement, communication, delivery of services and attaining successful outcomes.³⁶

³¹ M Schwartz et al, *The civil and family law needs of Indigenous people in Victoria*, James Cook University, 2013.

³² M Schwartz et al, *The civil and family law needs of Indigenous people in Victoria*, James Cook University, 2013.

³³ NATSILS, *Submission to Senate Inquiry Access to Legal Assistance Services*, 2015, p. 6.

³⁴ C Coumarelos et al. *Legal Australia Wide Survey; legal need in Australia*, Law and Justice Foundation of NSW, 2012.

³⁵ NATSILS, *Submission to Senate Inquiry Access to Legal Assistance Services*, 2015, p. 6.

³⁶ Ibid.

Aboriginal organisations can build on their position of trust and legitimacy in the community to engage people who might not otherwise seek help. Often these relationships have been developed and nurtured over years, or even generations. Aboriginal organisations are embedded in their communities with established approaches to outreach and engagement. For example, the Aboriginal Family Violence Prevention Legal Service's Sisters Day Out workshops engage Aboriginal women in discussions about family violence and legal need through participation in a range of relaxation and self-care activities.

There is a lot of fear and mistrust about disclosing family violence. At FVPLS Victoria, we know Aboriginal women experiencing violence won't just walk through our doors - we need to take our services to the community.³⁷

However, Aboriginal organisations, including the Victorian Aboriginal Legal Service (VALS) and FVPLS Victoria, have little or no presence in some regions of Victoria, limiting their capacity to help Aboriginal Victorians. VALS, for example, has one civil lawyer to cover the entire state.

[Aboriginal services are] vastly under-resourced in terms of capacity to address legal need in Aboriginal communities. Additional funding is urgently required for civil/family law work, with priority to be given to Indigenous legal services as primary providers of legal assistance to Indigenous people.³⁸

Aboriginal Family Violence Prevention and Legal Service Victoria

The Aboriginal Family Violence Prevention and Legal Service Victoria (FVPLS Victoria) is an Aboriginal community controlled organisation that provides legal assistance to Aboriginal and Torres Strait Islander survivors of family violence and sexual assault. FVPLS Victoria's clients often present with complex and interconnected legal and non-legal needs, such as drug and alcohol abuse, psychological distress, and experiences of intergenerational trauma.

Although on average Aboriginal people are more likely to experience legal problems than non-Aboriginal people, they face many barriers to accessing legal assistance services and are less likely to engage with a mainstream service than an Aboriginal specific service.

Many clients of FVPLS Victoria are connected to the service by culturally safe, community-based activities such as the Sisters Day Out® program, which brings together Koori women and children to promote wellbeing and prevent family violence.

One Aboriginal woman named Sue* attended a Sisters Day Out event where she heard an FVPLS Victoria lawyer speak about victim's compensation. Sue had been in an on-again/off-again relationship with the father of her four children for 12 years and had been too scared to report to police the many times he had assaulted her.

³⁷ FVPLS Victoria, *Sisters Day Out continues but funding remains uncertain*, Media Release, 5 October 2015.

³⁸ Productivity Commission, *Access to Justice Arrangements, Inquiry Report Overview*, September 2014, p. 24

After the community event she felt confident enough to approach FVPLS Victoria for assistance. The service discovered Sue was in fear for her life and had accrued significant debts due to her partner's ice addiction. FVPLS Victoria's lawyer helped Sue secure an Intervention Order in the lead-up to her ex-partner's anticipated release from prison. The lawyer also helped her with victim's compensation matters because her ex-partner had accrued fines, and had crashed the family's car.

FVPLS Victoria's lawyer was able to have many fines revoked and helped Sue by taking her claim to the Aboriginal-specific Koori List of the Victims of Crime Assistance Tribunal, where she was awarded a vehicle to take her children to school. Throughout this process, Sue was supported by a paralegal support worker who understood her anxieties and assisted her to remain engaged in the legal process, attended each court hearing with her, and linked her into counselling services and new accommodation.

*Names have been changed.

Older people

Victoria's population is ageing. The proportion of the population aged 65 years or over is projected to be over 22 per cent by 2051.³⁹ Services and infrastructure are already struggling to respond. The review must consider the growing needs of older people, and the capacity of the legal system to provide accessible, affordable and appropriate legal assistance.

Older people are particularly vulnerable to legal problems including discrimination, elder abuse and neglect, fraud or other economic abuse, housing and tenancy related problems and issues related to guardianship and power of attorney.

Technological barriers and digital inclusion are significant barriers for older people in accessing justice. According to ABS data, 46 per cent of older people (aged 65 or over) accessed the internet in 2012-13. This is the lowest rate of any age group surveyed. Rates were significantly higher for men than women, with only 38 per cent of women accessing the internet at home in 2012-13.⁴⁰ With more services and information being made available online, consideration of this 'digital divide' is important, to ensure vulnerable people are not further excluded.

Many older people are also reluctant to speak about issues they consider to be private or family business. In situations of abuse or neglect by family members, older people can be reliant upon the family member for care, assistance, accommodation or to communicate for them. They may face difficulties in getting transport to appointments or to meet lawyers. There is a need for targeted services that understand the complex dynamics of elder abuse.

³⁹ Department of Environment, Land, Water and Planning, *Victoria in Future 2015; Population and household projections to 2051*, 2015, p. 1.

⁴⁰ ABS, *Household use of information technology 2012-13*, Cat No. 8146, 2014.

Young people

Young people are one of the least likely groups to seek legal assistance, but often experience basic civil law problems, including tenancy, employment, immigration and family violence, that if left unattended can lead to more serious problems. Many young people will only seek legal help due to mandatory contact with the legal system when issues have escalated, including criminal charges, infringements or debt proceedings.

Fines are a significant issue for young people. Many young people are issued on-the-spot fines for public transport or other offences, which require them to pay the same fine as an adult despite having no or limited income. Seeking to waive or reduce the fine due to disadvantage or special circumstances is difficult. This issue should be examined as part of the review into public transport fare enforcement.

VCOSS members working with young people report that innovative service delivery models that partner with frontline youth services are an effective way to engage young people. For example, Youthlaw provides legal assistance via Skype to youth services in Seymour, Shepparton, Barwon, Cobram and Yarra Junction.

Some VCOSS members also suggested that schools are an opportunity to provide young people with information about legal rights. Funding could be allocated to legal assistance services to provide targeted legal education to young people.

Women

Women are more likely than men to report legal problems in areas including child protection, family law and family violence. Women are also likely to access legal assistance for family violence, discrimination, family law and child protection matters. However, legal aid funding is concentrated on criminal matters, where the accused is more likely to be male. As a result of this inequality, women are less likely to have their legal aid applications granted.

The overwhelming majority of family violence is perpetrated by men against women. For women in family law and family violence proceedings, legal representation and assistance is crucial to achieving financial security and avoiding homelessness. Family violence related legal issues are a large and growing portion of community legal centres work. Similarly, Victoria Legal Aid continues to report increases in the demand for family violence advice and support.

More women than men are also primary carers in single parent families. Single parents report high prevalence of legal problems, as well as high prevalence of multiple problems or substantial problems. In particular they experience high rates of credit and debt and family related legal problems.

People with disability, mental illness and cognitive impairment

People with disability and people with mental illness have high levels of unmet legal need. People with disability are twice as likely as other people to experience legal problems, and significantly more likely to experience multiple legal problems.⁴¹

People with disability experience legal disadvantage for a number of reasons, including discrimination, a high level of intervention in their lives (for example from child protection, mental health and guardianship systems), and inaccessible services or services with limited expertise in working with people with disability. A lack of financial resources can also be a barrier to accessing legal assistance services.

People with cognitive impairment can face significant barriers at all stages of the justice system, often not receiving adequate or appropriate support to communicate instructions to legal representatives, understand the substance and significance of legal issues and documents or understand formal court processes.

People from diverse cultural backgrounds

Lack of knowledge about legal rights and the legal system means many people from culturally and linguistically diverse (CALD) backgrounds experience poorer legal outcomes than other people. The LAW survey found that although people from non-English speaking backgrounds had a significantly lower prevalence of legal problems than other Victorians, where they did have legal problems, they were less likely take action or seek advice.⁴² A lack of information and knowledge about legal problems may be contributing to this problem.

In addition, CALD people may be more distrustful of the legal system, and more likely to experience shame as a barrier to seeking help. An InTouch report found that CALD women also face obstacles throughout the legal process such as language difficulties, intimidating court processes, prejudicial attitudes, and inadequate support from services.⁴³ In relation to family violence, InTouch found that women were deterred from seeking help for numerous reasons including: an unwillingness to contact police, lack of confidence in the legal system and a denial that family violence constitutes a crime.

I knew nothing about Australian law, which was why I didn't know what to do at the beginning⁴⁴

People's lack of knowledge about their rights and the way the system works can be compounded by low levels of English literacy, low socio-economic status and a lack of accessible information, especially in their own language. Much of the information about legal rights is only available if the person is able to attend a community organisation, police station or a Court. Very vulnerable

⁴¹ C Coumarelos et al. *Legal Australia Wide Survey; legal need in Australia*, Law and Justice Foundation of NSW, 2012

⁴² C Coumarelos, D Macourt et al. 'Legal Australia-Wide Survey: Legal Need in Victoria', *Access to Justice and Legal Needs*, Volume 14, Law and Justice Foundation of New South Wales, 2012.

⁴³ Intouch, *Barriers to the justice system faced by CALD women experiencing family violence*, 2010.

⁴⁴ Ibid, p. 16.

people, including women living with family violence can find it extremely difficult to attend any of these places.

CALD women consulted by InTouch reported they rely on community workers to advise them of their rights, to support them through advocacy and provide support through the legal process. This support requires community workers to have a significant level of understanding and knowledge about the legal system and the law.

Greater investment in interpreter and translator services is required for people from CALD backgrounds to be able to access legal services. Effective use of these services will be enhanced by developing the cultural competencies of police, as well as developing community education strategies that address many of the difficulties CALD people have in negotiating and understanding the legal systems and in accessing meaningful information in their own languages.

Rural and regional Victorians

Rural and regional Victorians are disadvantaged in administration of the law, compared with people living in metropolitan areas. The smaller and more remote the community, the greater the disadvantage they are likely to face.⁴⁵

Distance from courts and services raises a 'natural barrier' for rural and regional Victorians, causing both financial and personal hardship.⁴⁶ VCOSS members report that the problems of accessing legal assistance in regional areas are getting worse, rather than improving. In recent years there has been a move towards consolidation of small regional and rural services, into larger regional providers covering wide geographic areas, sometimes resulting in less services provided in each area. Legal services themselves also face challenges, including servicing a large geographical catchment area, maintaining expertise across a wide range of legal areas, difficulties attending professional development events often delivered in Melbourne and greater likelihood of conflicts of interest.

Limited availability of mental health services and other community services (such as drug and alcohol treatment, youth services, disability, family violence and homelessness) in rural and regional areas also increases the difficulty of addressing legal problems and the likelihood of involvement in the criminal justice system.

Emerging technologies may provide opportunities for increasing access to legal services. While VCOSS is interested in the potential of technology to support access where it is an appropriate and preferred method for individual people, its limitations should be recognised. 2014 Victorian research has shown that although households in regional centres are benefiting from the rollout of the National Broadband Network, it is doing little to address isolation and lack of connection for rural communities.

⁴⁵ Richard Coverdale, *Postcode Justice: Rural and regional disadvantage in the administration of the law in Victoria*, Deakin University Centre for Rural Regional Law and Justice, 2011.

⁴⁶ *Ibid.*

For those choosing to live in rural areas, it was hoped that isolation due to lack of transport proximity might be mitigated by the connection of broadband technologies.

But rural households remain more isolated than connected. Faced with even more inadequate transport connectivity than their regional cousins, they struggle to overcome a number of technical, environmental and other obstacles to access NBN Co provided services.⁴⁷

Research has shown the potential of technology to improve access to health services has shown that telehealth has some benefits for rural and remote populations, including access to otherwise unavailable services, satisfaction with the video style of delivery and decreased travel time and costs. However, if they had been given the option, all participants would have preferred face-to-face services in their own community.⁴⁸

Outcomes may also be different for marginalised and disengaged communities, including Aboriginal and Torres Strait Islander and culturally and linguistically diverse communities, where trust between people and service providers is likely to be even more important.

⁴⁷ Rowan Wilken et al, Swinburne University, *NBN benefits regional centres, but rural Australia is still left wanting*, The Conversation, 27 November 2014.

⁴⁸ Primary Health Care Research and Information Service, *Remote participants experiences with a group-based stroke self-management program using video conferencing*, e-bulletin, 5 April 2012.

Improve legal education and information

Improve knowledge about the law and legal services

Recommendation

- The Victorian government and Victoria Legal Aid continue funding and supporting targeted community legal education for vulnerable people and communities, provided by community legal centres.

There are many people who would benefit from legal assistance but may not receive it for reasons including a lack of knowledge about the legal system or legal rights, a failure to identify the legal nature of their problem, a fear of stigma or a distrust of the legal system.⁴⁹ VCOSS members report that Aboriginal and Torres Strait Islander people and young people are particularly unlikely to seek assistance for legal problems.

People from culturally and linguistically diverse backgrounds and people with lower levels of education tend to have a lower prevalence of legal problems. The LAW survey report suggests this may be a consequence of people failing to identify legal problems and therefore not seeking support.⁵⁰

As the discussion paper on *Accessible Legal Information*⁵¹ notes, there is a significant amount of information available in Victoria about legal assistance services, the civil justice system, and general information or advice to help people resolve common legal problems. Informing and educating the community about the law and potential issues that they may encounter is an important element of the work of legal assistance services, including community legal centres and legal aid commissions. This work is also undertaken by government, ombudsmen, community organisations and dispute resolution services.

These education initiatives should be expanded, given the low levels of knowledge about the law, legal services and pathways to dispute resolution among certain sections of the community

Effectively reaching marginalised groups requires knowledge and expertise. Information may need to be provided in different ways or in accessible formats. For example, the Indigenous Legal Needs

⁴⁹ C Coumarelos et al. *Legal Australia Wide Survey; legal need in Australia*, Law and Justice Foundation of NSW, 2012,

⁵⁰ C Coumarelos et al. *Legal Australia Wide Survey; legal need in Australia*, Law and Justice Foundation of NSW, 2012, pp. xv-xvi.

⁵¹ Department of Justice and Regulation, *Background paper – Accessible legal information*, Access to Justice Review, 2015.

Project found that ‘low levels of literacy... make it hard for Indigenous people to understand rights and responsibilities and how to respond to legal issues and to negotiate the legal system and legal processes... A different way of communicating with Indigenous people is required, including in terms of how legal services inform the community of help that is available to them.’⁵²

Similarly, older people may be less likely to seek information online, requiring a greater emphasis on face-to-face contact or partnerships between legal services and other social or health services that work with older people.

Community legal centres and community organisations are well placed to reach marginalised communities and to develop and deliver these targeted community education programs. They have strong connections and long-term relationships with their local community and client groups and adopt a community development approach to working with communities.

Diversity Consultancy Panel

Eastern Community Legal Centre (ECLC) established the Diversity Consultancy Panel (DCP) to act as an Advisory Committee to the Centre. The project aims to provide advice on how to improve the Centre’s services and community education projects for diverse communities. The DCP also provides a chance for community members to discuss and share opinions on legal issues facing diverse communities, while assisting members to develop their leadership skills and learn how to support community groups.

The opportunity was advertised in many forums including local media and through culturally-specific groups via a mail out. The group currently has four members representing diverse cultural backgrounds.

Meeting bi-monthly, so far the group has consulted on a number of topics including ECLC’s promotional materials and language services. This feedback helps inform the development of culturally responsive and appropriate services and resources within the Centre

Community Car Connections

In 2010, in response to a large number of newly arrived migrants from Africa, Afghanistan and Burma moving to the area, Peninsula Community Legal Centre partnered with New Hope, Frankston City Council and seven other organisations to develop and present *Community Car Connections: New arrival driving program*. The project educated participants to prevent driving-related problems that have arisen in other communities, such as fines being incurred by unknown drivers when vehicles were shared and vulnerable consumers being ripped off when buying a car. The project included the delivery of an eleven week course, in which participants learned about driving and car related laws, and

⁵² M Schwartz et al, *The civil and family law needs of Indigenous people in Victoria*, James Cook University, 2013.

made connections with local agencies. Participants were also able to access subsidised driving lessons.

Maintain a no-wrong-doors approach

Recommendation

- Maintain a no-wrong-doors approach to entry to the legal system to ensure any 'well-recognised entry point' does not act as a barrier for vulnerable people seeking help.

The discussion paper on *Accessible legal information* proposes the review consider establishing a 'well-recognised entry point' to the civil justice system, consisting of a telephone service and website.⁵³

VCOSS supports measures to increase knowledge about legal assistance services and legal problems, and to reduce barriers to people facing disadvantage accessing legal help. However, we are concerned that a single well-recognised entry point may unintentionally discourage some of the most vulnerable Victorians from seeking help from a legal service.

The Victorian Legal Aid Legal Help service already operates as an entry point to the system for many people, providing legal information, advice and referrals. We support the continuation and improvement of this service as one mechanism for improving access to legal assistance service. However, it is important that Legal Help be accompanied by a 'no wrong door approach' so people can get help regardless of where they first enter the system, through strong referral pathways between legal assistance providers.

Some very vulnerable Victorians, including people experiencing homelessness and Aboriginal and Torres Strait Islander people may be less likely to seek support through a single access point, especially where it is delivered by a more formal, mainstream service. Some marginalised or vulnerable people lack trust in government and legal systems, and are reluctant to engage in a mainstream system. They are far more likely to seek help from services with whom they have established relationships and trust, and who can provide 'soft entry points' to the system.

The recent reforms to the alcohol and drug treatment system demonstrate the risks of moving to a catchment-based centralised intake model. A recent evaluation of this process found that for many people, entry points were more difficult to find and for some clients, telephone based intake created significant disadvantage.⁵⁴ Almost half of respondents to a survey about the reform strongly disagreed that the reforms made the system more accessible and easy to navigate. Survey respondents reported difficulties in engaging Aboriginal, CALD and GLBTI people in the

⁵³ Department of Justice and Regulation, *Background paper – Accessible legal information*, Access to Justice Review, 2015, p. 7.

⁵⁴ Victorian Alcohol and Drug Association, *Challenges and opportunities: Key findings from VAADA's Alcohol and other drug sector recommissioning survey*, August 2015.

new system, because of system inflexibility, lack of cultural appropriateness, 'reduced front doors' and 'white-man focused' processes.⁵⁵

The discussion paper suggests a model based on the NSW Law Access service. VCOSS members with partners and offices in NSW reported that Law Access works well for many people, and is a significant source of referrals for community legal centres. However it cannot replace specialist and local services, and should work alongside other existing referral pathways. Despite the existence of Law Access, NSW CLCs continue to receive referrals from a wide range of sources.

It was also reported that Law Access is a generalist service, and advice given is often scripted and not well-tailored. This can result in people having to tell their stories many times, or feeling frustrated when they do not receive the help they need immediately, or when no referral option is available. VCOSS believes disadvantaged people receive the right help on their first contact. If a person is repeatedly shifted from one service to another, or does not receive a prompt, appropriate and empathetic response, they are less likely to seek help again and may disengage from other support.

VCOSS also questions whether a single entry point would prevent duplication in legal education material, as suggested in the discussion paper. VCOSS members working in the community legal education field report they already have processes in place to reduce duplication. For example, most utilise the Community Legal Education and Reform (CLEAR) database, which collects information about community legal education and law reform projects undertaken by CLCs and other legal services, to identify if services are being duplicated. The Victorian Legal Assistance Forum has also developed best practice guidelines for the development and maintenance of online community legal education to provide guidance to organisations about raising the standard of legal education, maintaining its quality and making best use of resources. Other states have highlighted the Victorian process as an example of good practice in preventing duplication and maximising efficiency.⁵⁶

One of the most important characteristics of community legal centres is their strong connection to their clients and communities. This makes them well placed to develop targeted legal education materials that meet the needs of their own client groups. It is VCOSS' experience that where new materials or resources are developed it is usually as a result of an identified gap or need in a local community client group or as an alternative strategy to reach a vulnerable or marginalised community.

⁵⁵ Ibid.

⁵⁶ See for example, Queensland Association of Independent Legal Services, *Coordination community legal information and publication*, December 2015.

Extend collaborative and early intervention approaches to accessing justice

Recognise the role of non-legal services

Recommendation

- The Victorian government increases access to training, advice and resources about legal issues, systems and services for non-legal workers.

Community organisations have an important role as the gateway to legal services. The first port of call for people experiencing legal problems will often be the community service organization they know and trust. People may turn to a trusted case-worker or healthcare professional with whom they have an existing relationship. They may seek help for the non-legal part of a problem. For example, the LAW survey found that a professional legal adviser was consulted for less than one third of cases where respondents sought help.⁵⁷ Nearly 30 per cent of people contacted a health or welfare adviser instead.

Non-legal community organisations play an important role in helping people with legal problems identify their problems; find the appropriate help, and navigate the legal system. VCROSS members report helping people in a number of ways, including providing information about a legal issue and the process of resolving it, assisting with preparing or finding documentation and supporting people through the legal process.

Financial counsellors are an example of a non-legal community worker who is often called to provide legal information in the course of providing support to their client. These workers are often required to assist clients resolve disputes that they may have with financial institutions and utility companies.

The capacity and ability of non-legal services, including community services, to respond to legal problems appropriately depends on the knowledge and expertise of the organisation and the workers involved. It is important that non-legal services and workers have enough information to

⁵⁷ C Coumarelos et al. *Legal Australia Wide Survey; legal need in Australia*, Law and Justice Foundation of NSW, 2012. p. xvii.

help people identify legal problems, make appropriate referrals and support people through the legal process.

Many non-legal services and workers already receive information and training on a range of topics related to the legal system. VCOSS members highlighted the important role of services like the Consumer Action Law Centre's community worker advice line, Justice Connect's Seniors Law and Not-for-profit law services and the Women's Legal Service Victoria training program. Others reported less formal but equally valuable arrangements, where workers seek advice from their local CLC. Some specialist services, like the Domestic Violence Resource Centre Victoria also provide education and training with a legal component in their areas of expertise.

However, not all community organisations and workers reported using these types of services. There is opportunity to improve knowledge and use of legal training and resources for non-legal workers in the community sector.

Non-legal professionals could be more formally equipped and trained to identify legal problems and to more systematically provide timely referral to legal information and advice services.⁵⁸

In addition some VCOSS members reported that funding for these education activities is often short-term project funding. As a result, organisations are forced into an endless cycle of using valuable resources to write applications and pursue short-term funding opportunities. Similarly, many community organisations operate on extremely tight budgets, and funding for staff training and backfill is scarce. Organisations must balance competing training and professional development priorities.

Improved identification and referral by non-legal services may also increase demand on legal assistance services that they will struggle to meet at current funding levels. Workers report difficulties where they help people identify legal problems, raise expectations about the assistance available, but people are then unable to get the support and assistance they need.

The Access to Justice and Legal Needs Research Program in NSW also highlighted the importance of networking between workers in legal and non-legal sectors who help support disadvantaged and vulnerable people. Potential benefits identified in the study include increased non-legal worker knowledge of the law, increased knowledge among legal service providers of the services provided by other agencies, clarification of roles, more efficient use of resources and a greater ability to deliver services to clients, particularly in rural areas.⁵⁹

While recognising the importance of this work, VCOSS members also warn about the ever increasing expectations on already overburdened workers in mainstream and non-legal services, especially volunteer based organisations like playgroups or neighbourhood houses. They report

⁵⁸ C Coumarelos et al. *Legal Australia Wide Survey; legal need in Australia*, Law and Justice Foundation of NSW, 2012p. xxii.

⁵⁹ Law and Justice Foundation of NSW, *Pathways to justice; the role of non-legal services*, 2007.

that workers are now expected to have broad expertise in many different areas, potentially resulting in high training costs to organisations and in increased burn-out among workers.

Women, Lawyer, Workers

The Women, Lawyers, Workers Project provided free legal advice via Skype to women who experienced family violence, as well as workers in the family violence field. The project was a partnership between Women's Health in the North, Women's Health Goulburn North East and Berry Street, working closely with Women's Legal Service Victoria. The project aimed to prevent new or on-going violence against women getting ready to leave, or who had left violent relationships by providing legal advice on the complexities of the legal system which governs family law matters; from children's living arrangements, intervention orders to property settlement after separation. Women experiencing family violence obtained legal advice on family law matters with the support of a worker from participating agencies. Workers supporting women had access to secondary consultations with lawyers.

An evaluation of the project in 2014 found women who had experienced violence had increased access to free, confidential and timely legal information and advice; workers received additional tools and education on the legal process in relation to family violence, and lawyers increased their understanding of the situation experienced by women and children who have experienced family violence.

Project funding ceased in 2014, but the project has expanded to become part of the Link Virtual Outreach Program of Women's Legal Services Victoria.

Foster justice and community sector partnerships

Recommendations

- The Victorian government fosters innovation, including by supporting the expansion of models like health-justice partnerships.
- The Victorian government ensures funding and contracting structures allow organisations to invest time and resources in building partnerships and collaboration.

Many people experiencing legal problems also experience a range of other economic, social or health problems. It is often beyond the scope and expertise of legal assistance services to address the range of complex and interrelated factors that can lead to legal problems. For example, in one community organisation, lawyers and financial counsellors work closely together on complex cases in direct reaction to problems arising where a legal issue would be resolved only for the client to end up in bankruptcy or lose their home anyway because the rest of their financial situation required advice.

More legal assistance and community services are investigating options for integrating services and providing holistic support. This integration can take different forms, including co-location, multi-

disciplinary teams or partnerships with other community services. Such responses help identify legal need and support community legal workers to address needs beyond a discrete legal issue.⁶⁰

Justice Connect Homeless Law and CCCHS

In early 2013, Homeless Law began a new partnership with Central City Community Health Service (CCCHS), a 'one-stop-shop' for health services for people experiencing homelessness in the City of Melbourne.

The integration included: rolling out the 'legal health check' tool for non-legal professionals located at CCCHS; participating in leadership forums focussing on the operation and service provision of CCCHS; and commencing the co-location of Homeless Law's Homeless Persons' Liaison Officer at CCCHS every Wednesday.

This more permanent co-location exploits the value of relationships for education and improves collaboration, thus improving the experience of the consumer. For workers, sitting in the same office as others results in a kind of osmosis, knowledge is absorbed, questions can be easily answered, and there is a face to a name.

For consumers, what they need does not require a service-hop around the suburbs, calling ten different intake lines or repeating their story over and over. What they need to access is right there and with the right consent, information can be easily shared.⁶¹

Health and justice partnerships are an example of this way of working. Health and justice partnerships embed legal assistance within healthcare settings. The primary objective is to improve the overall health and wellbeing outcomes for people experiencing disadvantage. Health justice partnerships are not necessarily new, but are increasingly being recognised as an effective way of delivering joined-up services to vulnerable people.

Advocacy Health Alliance

In 2013 Loddon Campaspe CLC and Bendigo Community Health Services (BCHS) launched the Advocacy-Health Alliance (AHA) project at BCHS' Kangaroo Flat site. This project was the first of its kind in Australia. Funded by the Clayton Utz Foundation, the project provides legal services to address the unmet legal needs of vulnerable families and their children. The AHA project focuses on breaking the cycle of disadvantage through working with the family to empower them by directly addressing their unmet legal needs. The lawyers work with health professionals and advocate for access to education, employment opportunities and deal with discrimination to ensure the child, through their family, have an equitable future.

⁶⁰ Justice Connect, *The benefits of integrated service delivery legal and non-legal collaborations*, <https://www.justiceconnect.org.au/benefits-integrated-service-delivery-legal-and-non-legal-collaborations>

⁶¹ Justice Connect, *The benefits of integrated service delivery legal and non-legal collaborations*, <https://www.justiceconnect.org.au/benefits-integrated-service-delivery-legal-and-non-legal-collaborations>

Another example of a developing health justice partnership is the Health Justice Partnership for Youth in the Ballarat region. A partnership between Ballarat Community Health, the Central Highlands Community Legal Centre and Federation University Australia, the program seeks to identify and address legal, health and wellbeing issues for young people. The partner organisations have found that young people often do not realise they have a legal problem or that their problem can be resolved by speaking to a lawyer. By asking the right questions young people can be assisted in seeking legal advice.

A 'Legal Health Check', incorporating questions which reflect the range of legal problems commonly experienced by young people, has been developed for the program. The 'Legal Health Check' can be completed by a young person or used by a referring worker at the time when seeing them about other issues.

Acting on the warning signs: Addressing violence against women through hospital settings project⁶²

A partnership between North Melbourne Legal Service and the Royal Women's Hospital (the Women's) aims to empower and protect a significant number of Victorian women by providing legal assistance and training within the hospital context. North Melbourne Legal Service has been providing a legal assistance outreach service at the Women's since 2009. The Acting on the Warning Signs project came about through recognition that an increasing number of clients accessing the service were seeking advice in relation to matters involving family violence.

This health/legal partnership is being established to assist health professionals at the Women's to identify family violence and provide basic family violence information to patients, complemented by a range of health, legal and social welfare assistance available at the hospital site. The project aims to create momentum for other hospitals throughout Victoria, to develop a clear understanding of the importance of a multi-disciplinary approach to family violence and the importance of 'warm' referrals in supporting women. The Acting on the Warning Signs project builds on this approach by implementing a legal assistance outreach post at the Women's. This outreach post aims to ensure the hospital site is a safe and accessible hub where women can obtain a range of coordinated support services to address family violence.

People with legal issues often seek advice from people/services with which they are already in contact. This places health professionals in a powerful position to make appropriate referrals and to take steps to protect and empower Victorian women.

The opportunity for partnerships between legal and social services is not limited to the health sector. Further work and investment is needed to support the development of integrated models and collaborations between justice and other social service organisations.

⁶² Legal Services Board, *Prevention of Violence against Women Funded Projects; Report of developments 2012*, March 2013

There are already a range of resources available to help organisations establish these types of partnerships. For example, Justice Connect has developed a toolkit to assist organisations interested in establishing a health justice partnership.

Some organisations have also developed or adopted their own 'legal health checks' which can be more widely adopted. Legal health checks are generally a form with a basic 'tick box' series of questions to enable non-legal professionals to identify a legal issues and direct the person to an appropriate response. They enable non-legal professionals to:

- have conversations with their clients about legal issues
- identify legal issues
- understand how to respond to legal issues.

However, VCOSS members report that building these kinds of resources, relationships and partnerships takes time and resources. They often involve collaboration and shared goal setting across services, and co-design with clients and community members. Funding for this type of partnership is limited, and contracts can be a barrier to such innovation.

Government can support this kind of collaboration and innovation through developing funding and contracting systems that enhance and foster it. When organisations are forced to guard against each other in highly competitive funding environments, the culture of collaboration can be lost and be difficult to rebuild.

Improve access to ombudsmen and other dispute resolution processes

Recommendations

- Expand ombudsmen and dispute resolution scheme to sectors without industry schemes, including Vocational Education and Training, taxis and retirement housing.
- Ombudsmen and dispute resolution bodies ensure clear and targeted information is available to people about dispute resolution options, at the time they are likely to need it.

Government and industry Ombudsmen (and other external dispute resolution processes) play an important role in providing a low-cost, informal pathway for resolving some legal issues.⁶³

Ombudsmen can be a preferable option for people who are reluctant to engage in the more formal legal system, are struggling to find legal help, or who want to prevent a problem escalating. VCOSS members report there is potential to expand such schemes to industries with limited access to dispute resolution, such as Vocational Education and Training, taxis and retirement

⁶³ Productivity Commission, *Access to Justice Arrangements Overview Report*, September 2014, p. 11.

housing. Access to ombudsmen schemes could help people experiencing poor service, discrimination or disputes about costs.

However, it has been VCOSS' experience that many disadvantaged people are unaware of the role of ombudsmen. For example, a recent survey undertaken by the Victorian Ombudsman found that young people were less likely to have heard of the Ombudsman than older people. Less than 40 per cent of people surveyed said they would bring a complaint to the Ombudsman.⁶⁴ This leaves a significant majority of people who are either unaware of the Ombudsman, or choosing not to use the service.

There are a range of barriers to people using ombudsmen or other complaint processes. Power imbalances between the individual with the legal issue and the large company or service provider can make people reluctant to complain about poor service or unjust treatment. This is particularly the case where people are reliant on continued support or services, such as from disability, housing or social services, banks, utilities providers and Centrelink. People may not wish to make a complaint due to the fear of the consequences, including that services will be withdrawn.

For example, VCOSS members and disability advocates report that people with disability, their carers and family face multiple barriers in addressing complaints and issues about government and social services. They do not necessarily know who to complain to or how to make an official complaint. While information on the complaints system is provided by the Disability Services Commissioner and others, it is either not accessible or not known by many people with disability or their carers.

Ombudsmen and complaints processes may not meet people's expectations or deliver the outcome they were expecting. For example, people consulted to inform the VCOSS submission into the *Inquiry into Abuse in Disability Services* reported that the Disability Services Commissioner's role is not seen as effective. This perception may relate, in part, to the Disability Services Commissioner seeking to conciliate complaints rather than making a finding and a recommendation for action regarding the person complained against.

The jurisdictions of the various ombudsmen and complaint bodies can be very confusing and may deter a person from engaging with the system at all. For example, a person with a physical or psychosocial disability with concerns about their treatment is faced with a range of potential complaints bodies, including the Disability Services Commissioner, Mental Health Complaints Commissioner, Victorian Ombudsman and the Health Services Commissioner. Similarly, it is unlikely that a person with a human rights related complaint or legal issue will know that they can make a complaint to the Victorian Ombudsman, but not to the Victorian Equal Opportunity and Human Rights Commission.

It is important that information is made available to people about ombudsmen and complaints schemes at the time they are most likely to experience problems. For example, under the National

⁶⁴ Victorian Ombudsman, *Annual Report 2014-15*, p. 21.

Consumer Credit Protection Act 2009 all default notices in relation to consumer credit contracts must contain information about an approved external dispute resolution scheme and where the person can go to receive financial counselling assistance. This kind of targeted promotion and information should be expanded to other industry and service areas.

The Victorian Ombudsman has proposed the development of a central complaints portal for the Victorian public sector as one way to improve accessibility. Such a portal will need to be accompanied by other strategies, including improved community information. It must also not be the only avenue for making a complaint. Some people will choose to make a complaint through whatever avenue they are most familiar with, and may be disadvantaged if they can only access the complaints system through the single portal. The portal must be complemented by a 'no wrong door' approach to complaints and disputes, and improved referral between complaints bodies.

Advocates and advocacy organisations complement legal assistance

Recommendations

- The Victorian government recognises the important and complementary role of advocacy and community legal services in improving access to justice.
- The Victorian government continues to fund disability advocacy services beyond the implementation of the NDIS.
- The Victorian government funds advocate positions to assist people to navigate complex legal systems, including in the family violence area.

Advocacy services play an important role in protecting the rights and interests of vulnerable people, ensuring people are informed about their rights and able to participate in decisions that impact their lives. A well-funded and supported advocacy system, including services for older people, people with disability, people with mental illness and family violence survivors compliments the role of legal advocacy and assistance services and helps meets the needs of vulnerable Victorians.

Many of the complex issues advocates encounter when helping vulnerable people have legal components. As a result, advocacy organisations and advocates have an important role in improving access to justice. In general, advocacy is about empowerment and information provision, assisting with complaints and informing people about their rights. It can take a simple form such as assisting a person to complete an application for a service or helping them to communicate their needs, through to lodging a human rights or discrimination complaint. Advocates can provide a person with support to seek legal help, and walk with them through the complex legal system.

Advocacy also builds the capacity of people to self-advocate. Empowering and resourcing people with information enables them to advocate more effectively. Advocacy services can help people to identify and resolve issues earlier, before they escalate or without involving more formal legal processes.

Case study: Cynthia⁶⁵

Cynthia was very distressed because her children had been removed from her home by child protection services for reasons she did not understand. Cynthia, an Aboriginal woman with an intellectual disability, was unable to obtain assistance from the local Aboriginal cooperative because she did not have any proof of her aboriginality. With assistance from a disability advocacy organisation, Cynthia learned that she was entitled to use the service of another Aboriginal cooperative that did not require her to provide proof of aboriginality. The matter is now being investigated and Cynthia has been provided with legal representation.

Navigating the legal system can be confusing and intimidating for many people. Advocates can assist people to navigate the complex legal and support system, and walk with them through the process. In the recent inquest into the death of Luke Batty the State Coroner recommended the Victorian Government consider creating and resourcing family violence advocate positions to assist women through the family violence system. Luke's mother, Rosie Batty, gave evidence that she would have been assisted in managing the risk posed by Luke's father if she had someone consistently supporting her as she dealt with the various parts of the system. She said:

... I wish there was a way that people work with you through a journey of – rather than isolated incidences..." and "...you need more support than what are currently there for you, because really you're just alone, to enforce all these things."⁶⁶

The Victorian Government has agreed to implement this recommendation.

VCOSS members also report that the introduction of the National Disability Insurance Scheme and aged care reform is likely to increase the need for disability and aged care advocacy services. For example, disability advocacy services in the NDIS launch site in Barwon have experienced significant increases in demand. VCOSS believes that the Victorian Government should have a continuing role in funding disability advocacy beyond the implementation of the NDIS.

⁶⁵ Names changed to protect the identity of individuals. Disability Advocacy Resource Unit, *Disability Advocacy by the Numbers*, June 2014.

⁶⁶ Judge Ian Grey, State Coroner, *Finding – Inquest into the death of Luke Geoffrey Batty*, Coroners Court of Victoria, September 2015.

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