

## Department of Justice and Regulation Victoria: Access to Justice Review -

### Submissions from Inner Melbourne Community Legal

#### 1. Introduction

- (a) Inner Melbourne Community Legal (**IMCL**) is an independent not-for-profit organisation that provides legal assistance to people who cannot otherwise access legal help. We assist people who are on low incomes and who live, work, study or engage with partner services in Melbourne CBD, North Melbourne, Carlton, Parkville, West Melbourne and Docklands.
- (b) IMCL is a medium sized legal centre, which carries out pioneering innovative work through its co-located partnerships, Health-Justice Partnerships, extensive community legal education program and various projects.
- (c) IMCL focuses its resources towards assisting some of the most disadvantaged members of the community including individuals experiencing homelessness, mental illness and other disabilities, substance dependency and individuals from culturally and linguistically diverse backgrounds. IMCL promotes social justice and aims to improve the health and wellbeing of the community through the provision of high quality, accessible legal advice.
- (d) Acting on the findings of the Legal-Australia Wide survey,<sup>1</sup> IMCL is committed to collaborations and partnerships, and conducts a range of legal outreach programs at various locations including Ozanam Community Centre, the Royal Women's Hospital, the Royal Children's Hospital, the Royal Melbourne Hospital, Inner West Area Mental Health Service, Cohealth in Carlton and North Melbourne public housing. IMCL also participates in legally assisted family dispute resolution at the Family Relationships Centre in Melbourne.
- (e) From our experience working in this context, IMCL recognises that access to justice is a real issue for many Victorians, especially those who are socially or economically vulnerable, and welcomes this opportunity to make a submission to the Department of Justice and Regulation.

#### 2. Terms of reference:

##### 2.1 The availability of easily accessible information on legal assistance services and the Victorian justice system, including advice on resolving common legal problems

- (a) The accessibility of information on legal assistance services and the Victorian justice system is impeded due to a degree of fragmentation between service-providers.

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<sup>1</sup> Christine Coumarelos et al 'Legal Australia-Wide Survey: Legal need in Australia' (Report, Law and Justice Foundation of New South Wales, August 2012).

Whilst organisations in the legal assistance sector each play an important role, there are difficulties navigating myriad services which are available in order to identify the most appropriate assistance available in a particular case. By way of example, charge sheets issued by Victorian courts advertise three telephone numbers (for Victoria Legal Aid, the Federation of CLCs, and Victorian Aboriginal Legal Services) but no guidance is provided as to what assistance each service-provider offers.

- (b) There are initiatives underway to develop up to date databases of legal assistance services e.g. Orbit and InfoCom to ameliorate these difficulties. IMCL recognises the importance of continuing with this work. Community Legal Centres would need to be appropriately resourced to support their involvement in this process.
- (c) One example from another jurisdiction is LawAccess NSW (**LawAccess**) which provides a central directory of the legal assistance services funded by the state government. LawAccess operates as both a website<sup>2</sup> and a phone line and is advertised on charge sheets and other documents issued by the courts.
- (d) In Victoria, there is no equivalent of the LawAccess website but the Legal Help phone line already operates to provide over-the-phone advice on simple legal and procedural matters. If a comprehensive, up-to-date database of legal services was developed in Victoria, this could underpin the expansion of the Legal Help phone line to include referrals to the appropriate service-providers.
- (e) By enhancing the Legal Help phone line in this way, it could logically assume the role of the primary point-of-contact for people seeking assistance to engage with the Victorian justice system and allow a more stream-lined approach to the delivery of information and legal assistance services.
- (f) In addition to Legal Help phone line's referral service for vulnerable clients, in our view, direct client engagement between CLC's and the public through outreach is important to ensure CLC's can directly provide assistance to the most vulnerable.

Recommendations:

1. The development of a comprehensive, up-to-date database of legal assistance services and information available in Victoria; and
2. The expanded operation of the Legal Help phone line to include appropriate referrals to Victoria Legal Aid and CLCs (based on the database of legal assistance services)

**2.2 Options for diverting people from civil litigation and into alternative services where appropriate, such as a 'triage' model**

- (a) We consider that a number of people could be diverted from civil litigation if an ADR model was implemented for recovery disputes between motor vehicle insurers and uninsured drivers.
- (b) In our experience, letters of demand are routinely issued by motor vehicle insurers to under-insured drivers with a poor understanding of the English language, the court

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<sup>2</sup> See NSW Government, Law Access 2016, [http://www.lawaccess.nsw.gov.au/Pages/lawassist\\_index.aspx](http://www.lawaccess.nsw.gov.au/Pages/lawassist_index.aspx)

system, or the scope of cover provided by compulsory third-party insurance. Referring these people to a compulsory, court-run mediation before the issue of default judgment would assist these people to understand their liability and may facilitate the earlier and more cost effective resolutions and greater agency by disadvantaged client in process.

- (c) In our view, the existing ADR/conciliation systems that are in place in the family law and employment jurisdictions provide effective opportunities for the resolution of cases before hearing. Inspiration could be taken from these systems in developing an ADR process in the context of motor vehicle insurance claims.
- (d) The Dispute Settlement Centre of Victoria is another example of an ADR service which is successfully used by IMCL clients. We submit that this service would benefit from the availability of case workers to support users of the service.

Recommendation:

1. The development of an ADR model for recovery disputes between motor vehicle insurers and under-insured drivers.

**2.3 Whether and how alternative dispute resolution mechanisms should be expanded so that more Victorians can make use of them**

- (a) As per paragraph 2.2 above.

**2.4 Potential reform to the jurisdiction, practices and procedures of the Victorian Civil and Administrative Tribunal (VCAT) to make the resolution of small civil claims as simple, affordable and efficient as possible**

- (a) VCAT provides a valuable low/no-cost jurisdiction for the resolution of small claims in Victoria. Two reforms would, however, enhance the efficiency and affordability of VCAT, namely:
  - (i) Shorter lists - there is currently a delay of approximately twelve months from the time a small civil claim is issued at VCAT before it is heard before a Tribunal Member; and
  - (ii) Improved enforceability of decisions - as matters currently stand, successful applicants to VCAT need to apply to the Magistrates Court in order to enforce decisions. This undermines the cost-saving achieved by using VCAT in the first instance (particularly given the long delays involved in having cases heard).

Recommendations:

1. The appointment of additional Tribunal Members to ensure the timely hearing of claims by VCAT;
2. The amendment of legislation so that VCAT decisions can be enforced without recourse to the Magistrates Court.

**2.5 The provision and distribution of pro bono legal services by the private legal profession in Victoria, including:**

- **Ways to enhance the effective and equitable delivery of pro bono legal assistance;**
  - **Opportunities to expand the availability of pro bono legal services in areas of unmet need;**
  - **Options for expanding existing incentives for law firms within the Victorian Governmental Legal Services Panel.**
- (a) IMCL recognises the importance of pro bono legal services provided by the private legal profession in Victoria (and indeed, we utilise pro bono legal services provided by private practitioners in some aspects of our work, see paragraph (d) below) but rejects any suggestion that many of the access to justice issues that exist in Victoria can and should solely be addressed by pro bono legal services provided by the private legal profession.
  - (b) It is our position that those people who face the most serious obstacles to accessing legal assistance have complex needs (spanning mental health issues, drug and alcohol dependency, and homelessness) which should be addressed by specialised providers, including CLCs. If vulnerable clients do not receive legal assistance from practitioners with the appropriate skills and experience, there is a real risk that their problems will be exacerbated.
  - (c) Private practitioners working on a pro-bono basis may be able to complement and supplement the work of CLCs but they cannot displace CLCs and VLA as the primary providers of many legal services to the community. The Federal and State governments have the responsibility to fund legal aid/CLCs to ensure access to justice, especially for the most disadvantaged.
  - (d) We consider that pro bono legal services can address areas of unmet need when private practitioners work in partnership with CLCs. At IMCL this occurs in two ways:
    - (i) we train and supervise lawyers who provide clinics focussed on particular practice areas such as debt and infringements. These clinics are best served by volunteers from small and medium firms who practice in these areas;
    - (ii) we work with lawyers from medium and large law firms who have technical expertise in relevant areas of law to arrange assistance for our clients in specialised areas of practice in which we do not have expertise. For example, there have been a number of clients whom IMCL has assisted with issues concerning tenancy and infringements who have also needed assistance in tax disputes with the ATO.

- (e) We consider that the pro bono barrister programs are extremely beneficial in providing access to justice for our client base. This is applicable to client's who are not eligible for a grant of aid to fund disbursements such as barristers, but have low income and therefore cannot afford such representation.
- (f) There have been previous suggestions to allow individuals without current practicing certificates to provide pro bono legal services at CLCs in order to manage service shortages. Consistent with our position that the majority of the work provided by CLCs cannot be delivered by individuals without the requisite training and experience, IMCL opposed this suggestion.
- (g) We consider that allowing individuals without a current practicing certificate to provide pro bono legal services at CLCs would increase the required level of supervision of volunteers and result in an additional strain on, and burden for, CLC staff and supervisors. This is increasingly the case as supervision, practice management, and professional indemnity requirements become increasingly demanding for all areas of law – the requirements of which should be at least as strict for vulnerable and disadvantaged clients. In addition, the quality of pro bono assistance should be on par with paid legal assistance, and setting different standards for legal qualifications to differentiate between pro bono and paid legal assistance creates a negative perception that pro bono work requires less expertise or experience than paid work. Importantly, requiring a person to hold a current practicing certificate means they are required to undertake continuing professional development, and this should not be compromised.

## **2.6 The availability and distribution of funding amongst legal assistance providers by the Victorian and Commonwealth governments to best meet legal need**

- (a) The lack of continuity and stability of funding for the legal assistance sector creates profound challenges for organisations seeking to focus on meeting the needs of disadvantaged client groups, develop partnerships and tailor services to respond to need. A significant proportion of IMCL's time is spent pursuing funding. This in turn takes away from our core business of providing legal assistance to those most in need. We have found that in many ways the current CLSP funding cycle is unreasonable and harsh. In recent years funding has been provided on a one-year extension basis (where by the previous agreement was rolled over for one year periods) and last year funding agreements were provided for two years only. It impedes our ability to forward plan, creates uncertainty of services and limits our capacity to provide job security to highly skilled staff committed to working with vulnerable and disadvantaged clients.
- (b) In terms of how funding is allocated, the IMCL submits that funders need to take a nuanced and holistic view of the demographics associated with legal assistance providers. Confining the analysis to the mean income and/or housing price, without regard to public housing, homeless populations, and the existence of public hospitals and crisis centres, distorts the true disposition of an area (particularly gentrified inner-city suburbs).<sup>3</sup>

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<sup>3</sup> According to the Australian Bureau of Statistics Socio-Economic Indexes for Areas, Melbourne contains Victoria's most economically advantaged area and some of Victoria's most disadvantaged areas. On average, 5.7% of the

- (c) Residents in the public housing areas of Carlton, North Melbourne and Kensington are identified as the most disadvantaged in the Melbourne municipality.<sup>4</sup> These areas have high proportions of vulnerable population groups including<sup>5</sup>:
  - (i) low income earners;
  - (ii) unemployed;
  - (iii) people with low English proficiency;
  - (iv) students;
  - (v) older adults, particularly those who have a disability, living alone in public housing; and
  - (vi) people with disabilities needing ongoing assistance.
- (d) The effects of gentrification have also created a significant disparity between the earning capacity of these disadvantaged people and the mean house price and weekly rent of the areas they live in.<sup>6</sup>
- (e) IMCL have recently developed outreaches to the Carlton and North Melbourne public housing estates, along with outreaches to homeless services in the Melbourne City. IMCL's own experience in this regard highlights the need to stay away from a government funding model which is based on geographical mean income or house value.

**2.7 Whether there is any duplication in services provided by legal assistance providers, and options for reducing the duplication, including the development of legal education material**

- (a) Legal aid and community legal centers work in collaboration and complement each other's work. The best way to maximize access to justice and benefit vulnerable groups is to strengthen these complementarities rather than assume one or other could deliver all access to justice outcomes.
- (b) Legal aid is the largest organisation providing legal services in Victoria. Accordingly, they need to apply strict guidelines in their administration. Whereas, CLCs (in particular, generalist CLCs) are agile and hold strong connections with their local communities and agencies. The community based work of CLCs is exemplified by the examples below of Acting On The Warning Signs and Youth Advocates Against

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residents of inner Melbourne live in public housing. To give further context, the weekly individual income threshold for public housing eligibility in Victoria is \$531.

<sup>4</sup> Australian Bureau of Statistics, 2006, Census Socio-Economic Indexes for Areas, Melbourne Local Government Area, 2006.

<sup>5</sup> Urban Health Profile 2012, <https://www.melbourne.vic.gov.au/.../urban-health-profile-2012.doc>

<sup>6</sup> For example, the median personal weekly income in Carlton is \$366<sup>6</sup> compared with the median house value of \$1,168,686 and mean weekly rent of \$560.<sup>6</sup> These comparisons suggest that a significant number of Carlton residents are experiencing significant financial stress or are living within the community housing estates.

Family Violence – both of which are highly tailored responses to specific needs of vulnerable clients and local services.

- (c) IMCL does not consider that there is duplication in the services that it provides. Whilst it might appear that certain services - particularly community legal education - overlap with those offered by other legal assistance providers, we stress that our services are distinguished by targeted delivery to specific audiences.
- (d) Just two areas of IMCL's many notable community legal education programs are:
  - (i) Acting On The Warning Signs – training at the Royal Women's Hospital for staff on identifying and responding to signs of family violence; and
  - (ii) Youth Advocates Against Family Violence.
- (e) We describe these projects in further detail below to demonstrate how they address the particular needs of the communities that we work within.

***The Acting on the Warning Signs Project: IMCL's Health-Justice Partnership with the Royal Women's Hospital***

- (f) IMCL and the Royal Women's Hospital have developed the "Acting on the Warning Signs" Project (**the AOWS Project**). The AOWS Project is an innovative project which complements training to clinicians at the Royal Women's Hospital to recognise the warning signs of family violence with an integrated, on-site legal service which provides free legal advice and assistance to all patients of the Royal Women's Hospital.
- (g) The aims of the AOWS Project are to:
  - (i) build the capacity and willingness of health professionals to identify signs of family violence and provide appropriate information and referral pathways;
  - (ii) empower patients from low socio-economic backgrounds who are experiencing family violence or at risk of family violence to obtain appropriate legal and non-legal assistance; and
  - (iii) develop and evaluate a model for a multi-disciplinary approach to addressing family violence in the hospital context.
- (h) In order to provide a multi-disciplinary model of care for women experiencing violence, it is critical that the frontline health professionals to whom disclosures of violence occur are provided with adequate and appropriate skills to identify violence, respond to disclosures and refer appropriately.
- (i) Since August 2012, the AOWS Project has provided training to 219 health professionals including 27 doctors. Two training modules have been developed. These include a full-day study day for all hospital staff as well as a 90-minute session for doctors. The training for doctors has received accreditation from the Royal Australian and New Zealand College of Obstetricians and Gynaecologists and accordingly, participating doctors receive continuing professional development points for their attendance.

- (j) Both training modules are modelled on a multi-disciplinary approach and include presentations from clinicians at the Royal Women's Hospital, allied health professionals at the Hospital and lawyers from IMCL. Further, the full-day study day includes presentations from members of Victoria Police.
- (k) This multi-disciplinary training approach not only ensures that participants are provided with an understanding of the necessity of a holistic approach to family violence, but it also solidifies the partnerships between the presenters in an effort to ensure that referrals are seamless between welfare providers, health providers, police and legal services.
- (l) An external evaluation of the AOWS Project conducted by the University of Melbourne has found that:

training significantly improved health professional's self-reported knowledge of family violence and the common presenting symptoms of family violence. There was also a significant improvement in their self-reported confidence in having sufficient knowledge and skills to respond to women experiencing family violence and to refer.

- (m) Further, all of the 67 health professionals who responded to the survey felt that they were able to help or knew what to do if they had a patient with family violence and after training, 90 per cent (compared to 66 per cent prior to the training) understood the role of lawyers in a hospital setting. The evaluation also showed a notable increase in total referrals to the IMCL legal service following the training including both family violence and non-family violence related clients.
- (n) IMCL also fosters and strengthens relationships with local community organisations. For example, IMCL regularly meets with homeless services and provides CLE to caseworkers. As a result, caseworkers are better equipped to identify legal issues and make timing referrals to our service. Consequently, clients can address and resolve their legal disputes earlier which reduces pressure for both the individual and the legal system.

***IMCL's Youth Advocates Against Family Violence project***

- (o) IMCL's Youth Advocates Against Family Violence project aims to give young people a better understanding of family violence and how it can be prevented, as well as how they and their communities can seek help from legal and other support services.
- (p) In 2015, IMCL delivered 12 community legal education sessions for young people in school and community-based settings, many of the young people attending those sessions were from culturally and linguistically diverse backgrounds, including Sudanese, Somali, Afghani and Iranian communities.
- (q) With the announcement that respectful relationships will become part of the Victorian school curriculum in 2016-7, IMCL is currently working with schools and alternative education providers to redesign the Youth Advocates program to compliment the roll-out of respectful relationships education in schools and support school staff to adopt a 'whole-of-school' approach to preventing family violence. IMCL will support schools to deliver more frequent and multi-faceted education programs on family violence as well as offer training to school staff on how to access legal support when dealing with disclosures of family violence.

- (r) IMCL's above two projects show that the services provided by legal assistance providers are often unique to their experience, areas of expertise and community focus.

**2.8 The resourcing of Victoria Legal Aid (VLA) to ensure that Government funding is used as effectively and efficiently as possible and services are directed to Victorians most in need, including:**

- **Within the total funding envelope, the types of matters funded by VLA, eligibility criteria for legal assistance and the level of assistance provided;**
  - **VLA's current service delivery model, including the use of panel arrangements and internal lawyers, and spending on allied support services.**
- (a) Changes to the Legal Aid guidelines in 2013 were introduced because the services being provided were identified as being “unsustainable” in the face of increasing demand in the community for legal services. Stricter eligibility criteria for Legal Aid services were introduced and changes to service delivery for clients were implemented. Legal Aid was forced to introduce these changes in order to remain financially viable, but the changes restricted community access to vital legal services and support. While Legal Aid aimed to still prioritise services for their most vulnerable clients, in reality many disadvantaged people that genuinely required legal assistance, were precluded from accessing Legal Aid. These people could ill afford to pay for private legal representation, and so CLCs essentially had to fill the void created by these guideline changes. Some of these changes to the guidelines have since been reviewed, more notably as part of the Family Law Legal Aid services review and accordingly some of these sweeping guideline changes have been revised. Nevertheless there still are large gaps in service provision.
- (b) Since the changes to the Legal Aid guidelines were first implemented in 2013, a large part of IMCL's practice has been devoted to assisting people with criminal matters that were no longer eligible for legal assistance from Legal Aid as they did not immediately face the prospect of a term of imprisonment. While they may have only faced the prospect of paying a fine or conviction if found guilty, the impact of these sentences cannot be under-estimated. A large fine for a client on a limited income, or a conviction being recorded on their criminal record can have far-reaching consequences on a person's life. The early intervention work undertaken by CLCs to assist people to navigate a complex and at times overwhelming criminal justice system, when they are already facing some form of disadvantage, has value and merit.
- (c) Increased demand for CLCs to provide assistance with particular aspects of civil law (e.g. tenancy), has also been the result of the guideline changes implemented by Legal Aid. Clients can be affected by a whole range of legal problems, but because Legal Aid has had to prioritise spending and funding in particular areas of law, these clients often struggle to obtain assistance to resolve their problems. It has far-reaching consequences for their lives and families. With limited funding and resources CLCs also struggle to fill these gaps.
- (d) In terms of VLA's current service delivery model, IMCL submits that:
- (i) the duty lawyer services provided by internal lawyers at Legal Aid are over-burdened and cannot meet increasing demand, where clients cannot access

duty lawyer services due to conflicts of interest these clients can effectively be shut off from assistance. Further resourcing for allied support services such as CLCs, in other areas of law aside from family violence, would help to ameliorate this; and

- (ii) The application process and reporting obligations for CLCs that apply for panel membership are very onerous for CLCs who can seek payment for disbursements, but not for preparation costs. Moreover, CLCs are already obliged to undertake extensive reporting for Legal Aid as part of their other funding arrangements and this only increases the administrative burden on CLCs. From our experience, the application process to access VLA services is lengthy and involves considerable delays and uncertainty. Prior to February 2016 the threshold income criteria to access this service have been harsh. IMCL submits that the new threshold level providing a welcomed increase to the mean weekly disposable income will serve to provide greater access to justice.

## **2.9 Options for providing better support to self-represented litigants throughout the Victorian justice system.**

- (a) It is likely that self-represented litigants have become more common with the tightening of the Legal Aid guidelines and the reduced availability of duty lawyers.
- (b) In the experience of IMCL, self-represented litigants pose a unique problem in family violence cases. Until October 2015, parties were only entitled to one-day of representation in contested family law matters. This meant that victims of family violence, who were parties to contested family law matters, could be exposed to cross-examination by their perpetrators. In such cases, the court is now able to make orders that a party have access to additional representation by Legal Aid or a CLC.
- (c) IMCL submits that such powers should be expanded and encouraged so that vulnerable parties (and counter-parties) can be well-advised and represented. It is recommended that this power should be extended to CLCs or VLA to appear on behalf of these clients and supported by adequate funding.
- (d) IMCL recommends that an assistance program could be implemented to provide support for self-represented litigants. An example of a successful program offering an assistance service for self-represented litigants is the Family Law Assistance Program (FLAP) run by [insert name of CLC – Monash?]. IMCL submits that FLAP could be expanded to other areas of law and other areas geographically to provide valuable support for self-represented litigants.