

16 February 2017

The Hon Martin Pakula  
Attorney-General  
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**By email: [martin.pakula@parliament.vic.gov.au](mailto:martin.pakula@parliament.vic.gov.au)**

Mr Donald Speagle  
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Department of Justice and Regulation  
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**By email: [donald.speagle@justice.vic.gov.au](mailto:donald.speagle@justice.vic.gov.au)**

Dear Attorney-General and Mr Speagle,

### **Justice Connect's Response to the Access to Justice Review Report**

Justice Connect commends the Department of Justice and Regulation (**Department**) for undertaking a comprehensive review of the Victorian justice sector. The Review's recommendations provide an opportunity to bridge some of the justice gaps experienced by Victorians, in particular Victorians experiencing disadvantage.

This letter sets out Justice Connect's key points and recommendations in relation to the following aspects of the Review:

- Making better use of technology;
- Accessible information about legal issues and services;
- Diversion from civil litigation, the triage model and integrated legal services;
- Pro bono legal assistance; and
- Self-represented litigants.

We look forward to continuing to work with you and our colleagues in the justice and legal assistance sectors toward a fairer, more efficient, better resourced justice system in Victoria.

### ***Making better use of technology***

Justice Connect is pleased to see significant acknowledgement of the role that technology can and will play in legal services in Victoria. The Review identifies opportunities for technology to play a role in access to justice in Victoria, and Justice Connect supports these recommendations. However, we consider that there are more opportunities for technology to play a role than those identified in the Report, in particular in relation to triage, pro bono capacity management (more broadly than in relation to CLCs), and the development of sophisticated self-help tools. In this response we highlight some additional opportunities for use of technology.

The question of how to build the technology/digital capacity of the legal sector was not dealt with at length by the report. Further consideration needs to be given on how to assist legal agencies to get up the curve on their use of technology and systems. Importantly, we have observed a general lack of capacity (both financial resources and know-how) in the legal assistance sector to design and develop efficient and effective technology approaches to deliver access to justice. The sector requires assistance to up-

skill and network around the potential of technology. There are many models already in use around the world, and lessons that have already been learnt by earlier adopters of technology approaches. It is critical that the sector be supported to access lessons already learned, and efficiently upskill to be able to embrace and navigate the potential of technology in legal services.

We also note that other barriers to innovation (including but not limited to technological innovation) exist, such as in outdated legal practice regulation. It is critical that regulation of legal services keep pace with movements to modernise legal services, such as through unbundling legal services and new approaches to giving 'legal help' that are facilitated by technology, such as live chat. It is also critical that legal insurance products keep pace with changing practice (an example is through the provision of legal assistance through live chat).

## Recommendation

We recommend that the Victorian Government fund Justice Connect:

- to coordinate a community of practice to help the legal assistance sector embrace and utilise effective technology approaches to improving and scaling the impact of legal services, legal information and self-help tools; and
- to undertake a review of the regulation of legal practice (including the definition of "legal practice") and professional indemnity insurance requirements to ensure that definitions are keeping pace with evolving practice, and so that regulation is not a barrier to innovation.

## Chapter 2 Accessible information about legal issues and services

Justice Connect supports the conclusion that parts of the community can be empowered to help themselves through relevant and accessible legal information. We note that the legal information and self-help field is rapidly evolving, and technology offers solutions to go beyond providing mere information to providing sophisticated tools to help people progress their legal matters. Developing self-help tools that complement one-to-one legal services should also be strongly encouraged. There are significant efficiency dividends that flow from such tools, and evidence from Australia and overseas that when carefully conceived and executed, such tools are impactful.

We have significant experience in this respect, in particular through our Not-for-profit Law service, and stress that a future-oriented approach needs to be taken to the design of tools to empower people to self-help. We support the Review's conclusions about human-centred service design and flexible and integrated service design, and again stress that increasingly, technology will play a role in this design.

We also note that the application of human centred design to the development of technology solutions will inevitably confirm that some people and organisations in the community with unmet legal needs will lack the capacity to access or effectively engage with digital resources. Technology solutions are not a panacea, and appropriate services for people who lack technology capacity must be maintained. In particular, Justice Connect reiterates the Review's recognition of:

- The ongoing need for targeted, face-to-face services for particular client groups, including people with chaotic or complex circumstances (for example, Victorians experiencing homelessness), low levels of English literacy, limited access to the internet, an inability to identify that a problem has legal implications, or a lack of confidence to seek legal help.
- The need for courts and tribunals to improve referral practices and information provision, including making sure staff are equipped to connect people with appropriate services and developing clear, accessible communication and documentation that helps justice system users understand their legal issue and options for seeking assistance (recommendations 3.2 and 3.3).

## Chapter 3 Diversion from civil litigation, the triage model and integrated legal services

Justice Connect welcomes the Review's recognition of the impact and effectiveness of integrated models of legal service, including the recommendation that both the Victorian and Commonwealth Governments seek to identify ongoing funding for integrated services (recommendation 3.4).

As noted in the Report, significant philanthropic funds have been invested to trial and evaluate models of integrated service delivery including programs employing non-legal professionals such as social workers and Health Justice Partnerships.

Justice Connect's Homeless Persons' Liaison Officer program (funded by the Department) and our Women's Homelessness Prevention Project, together with our Health Justice Partnerships and co-locations with specialist homelessness and health services, are key examples of holistic models of legal service provision that create efficiencies within the justice system by:

- Identifying and addressing legal issues early, before they escalate; and
- Addressing some of the underlying causes of clients' contact with the justice system and reducing the emergence of new legal issues.

These models acknowledge the significant interplay between social and legal issues, which can be addressed simultaneously to increase the potential for positive and sustainable outcomes for clients.

There is sound evidence supporting the effectiveness of integrated services to reach the most difficult to reach members of our community. Ongoing government funding is required to ensure that these effective, targeted programs are able to continue to strengthen access to legal assistance and improve outcomes for the most vulnerable and disadvantaged Victorians. As the Review recognises, in addition to improving individual outcomes and wellbeing, these programs reduce the flow-on costs of unresolved legal issues, including health impacts, homelessness and pressure on other arms of the justice system.

Justice Connect applauds:

- Recommendation 3.5 that the Victorian Government should ensure that the design of the Support and Safety Hubs recommended by the Royal Commission into Family Violence includes legal professionals to perform legal triage, to provide legal information, education and referrals to people experiencing family violence, and to build the capacity of non-legal professionals to identify legal problems. Based on our experience with the Women's Homelessness Prevention Project and our Health Justice Partnerships working with older Victorians, we reiterate that the legal issues stemming from family violence are diverse and can include eviction and housing matters, infringements, debts, property disputes and Centrelink issues.
- Recommendation 3.6 that the Victorian Government include legal triage and services in the proposed Pride Centre, to provide tailored and specialist legal information, education, referrals and advice to LGBTI people. Members of the LGBTI community continue to face barriers in accessing the justice system. A lawyer in the Pride Centre provides an opportunity to build capacity of existing legal services and build support for members of the LGBTI community across the legal assistance sector. At Justice Connect we recently launched Stage 2 Access, a free service to help young transgender people navigate the Family Court to access vital hormone treatment. We will actively engage with the Pride Centre to build support for the LGBTI community and our pro bono partners.

## **Chapter 7 Pro bono legal assistance**

Justice Connect welcomes the recommendations in the Review in relation to protective costs orders in public interest litigation (recommendation 7.1 and 7.2); the availability of disbursements funding for pro bono cases (recommendation 7.3); providing clarity in the Professional Conduct Rules to support the provision of unbundled pro bono legal services (recommendation 7.4); and promoting pro bono contributions (recommendation 7.6).

As to recommendation 7.5, Justice Connect commends the Victorian Government for recognising the importance of delivering pro bono services to assist community legal centres and their clients. Recommendation 7.5 suggests that the Victorian Government amend the requirements of the Victorian Government Legal Services Panel in future by placing greater weight on contributions that deliver pro bono services in areas of unmet legal needs that assist community legal centres and their clients. The Review provides some examples of how this may play out, noting that greater weight could be placed on contributions through secondments to community legal services, or to the number of hours providing advice through Self Representation Services.

Justice Connect has some reservations with this approach. For example, a smaller panel firm would have much less capacity to provide a secondees than a larger firm. However, proportionately many smaller firms may be making a more significant pro bono contribution when calculated based on the average hours each lawyer has contributed per year. This inequity may have the unintended consequence of acting as a disincentive for smaller firms to increase their pro bono hours if that contribution is overlooked in the Legal Services Panel requirements in favour of contributions such as secondments. The same effect may apply to specialist law firms with expertise that is better suited to supporting not-for-profit organisations, who may provide a substantial amount of support to not-for-profit organisations with public interest objects but not necessarily to the clients of community legal centres.

Justice Connect considers that the better approach would be to incentivise pro bono contributions from firms of all sizes by aligning the pro bono reporting requirements for panel firms with the Commonwealth Government's pro bono reporting requirements. This would have the added benefit of streamlining the process for firms undertaking government legal work in both jurisdictions.

Rather than amending the Legal Services Panel Requirements to apply weight to different types of pro bono contributions, the objective of encouraging pro bono support for the unmet legal needs of community legal centres and their clients would be better

addressed by supporting the development of forums and tools that will more effectively connect community legal centres and their clients with pro bono lawyers who have the capacity and expertise to assist them, including through secondments or outreach services.

The Report did not delve deeply into questions of rethinking intake models and allocation processes for people with unmet legal need across a fragmented legal assistance sector. This is an issue that is currently receiving some attention in the sector, both within Victoria Legal Aid, and at NGOs like Justice Connect. Justice Connect was awarded significant seed funding (\$250,000) through the Google Impact Challenge to develop a Legal Help Gateway - a portal to transform the way that unmet legal need is matched with pro bono capacity.

Justice Connect is uniquely placed to deliver this solution, sitting at the heart of the justice sector as an independent innovator, collaborator and broker of pro bono legal help, with the largest network of pro bono lawyers in Australia. There is no other organisation in Australia with a product similar to our proposed Gateway. The seed funding will enable Justice Connect to establish reference groups, scope and develop a prototype plan.

We note that Justice Connect's Legal Help Gateway will become an access point to the justice system, and Legal Aid and Justice Connect will work closely to ensure that our Gateway and Legal Aid's systems work side-by-side. We have already set up information sharing systems to support this.

Further investment in this tool beyond the pilot would support the development of a case management system that will sit at its heart, that could be scaled for use across the Victorian legal assistance sector, with the Gateway prototype developed and tested, with semi-automated intake linking people to lawyers and resources; a customised client management system automatically populated by the intake system; and a pro bono management system with lawyer profiles. There is potential, down the track, for the Gateway (or components of it, such as the intake side) to be made available to CLCs to assist with their own triage and allocation processes.

Justice Connect welcomes the proposal in recommendation 7.7 that consideration should be given to developing an online tool or website portal whereby community legal centres or other organisations requiring pro bono assistance can advertise their need and be matched with legal practitioners who have the capacity to assist them. We have already presented the Department with a proposal to augment the Legal Help Gateway so that it can match CLCs directly with pro bono resources to support the activities of CLCs in addition to matching people with unmet legal needs with pro bono resources.

It is important that solutions are considered in a linked up way. Without a coordinated and systematic approach to digital capacity building, there is a risk that CLCs looking at these questions in isolation could make technology investments that don't link up with each-other. With appropriate financial support, Justice Connect could run a community of practice network of people working in the legal assistance sector at the juncture of technology and law.

## Recommendations:

Justice Connect recommends that:

- any changes to the Legal Service Panel requirements should be better aligned with the Commonwealth Government pro bono requirements; and
- the Victorian Government provide funding to Justice Connect to:
  - develop and pilot a Legal Help Gateway prototype to improve efficiencies in matching unmet legal need with pro bono capacity; and
  - develop a web portal to connect CLCs with pro bono capacity to support the work of CLCs (we envisage this as an additional component of the Legal Help Gateway).

## Chapter 8 Self-represented litigants

We commend the Review for its recommendations in respect of self-represented litigants and welcome the opportunity to explore the establishment of self-representation services in Victorian Courts.

As outlined in our submission to the Review, Justice Connect has extensive experience responding to the needs of self-represented litigants both through our Referral Service and our Self Representation Service.

Further to our recommendation to the Review that the Victorian Government provide funding for Self Representation Services to be piloted in the Supreme and County Courts, we recommend this be extended to include the Victorian Civil and Administrative Tribunal (VCAT).

Justice Connect is working with VCAT to further scope and develop the next phase of a support service for self-represented litigants. Justice Connect and VCAT have signed a Memorandum of Understanding that will see a Project Officer, funded by VCAT and employed by Justice Connect, work with VCAT staff for 9 months to investigate, scope and develop a model for the next phase of the Self Help centre at VCAT. Government funding would allow Justice Connect to pilot the model for self-represented litigants at VCAT developed through this project.

We also reiterate that, through the work of our Homeless Law and Seniors Law programs, we see the benefits of legal representation for vulnerable people appearing in VCAT, particularly in the Residential Tenancies List and the Guardianship List, where the consequences of those proceedings can include eviction into homelessness and restriction of decision-making. The significant benefits of legal representation for vulnerable members of the community appearing in VCAT must be kept in mind when designing self-representation services.

Finally, although the Review focussed on VCAT small civil claims, Justice Connect draws your attention to the joint briefing paper, 'Reform Proposal for an Internal Appeals Division in the Residential Tenancies List' endorsed by Justice Connect, Tenants Union of Victoria, Community Housing Federation of Victoria, Real Estate Institute of Victoria, Law Institute of Victoria and Victoria Legal Aid. These proposed reforms would play an important role in improving the operation, accessibility and outcomes of VCAT's busiest jurisdiction,

### **Recommendation:**

We recommend that the Victorian Government provide funding to Justice Connect to:

- pilot a self-representation model at VCAT;
- investigate, scope and pilot a self-representation model at the Supreme and County Courts.

We would welcome the opportunity to discuss these recommendations with you in more detail. Please contact Tina Turner on 03 8636 4424 or at [tina.turner@justiceconnect.org.au](mailto:tina.turner@justiceconnect.org.au) with any questions about Justice Connect's comments.

Yours sincerely,



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