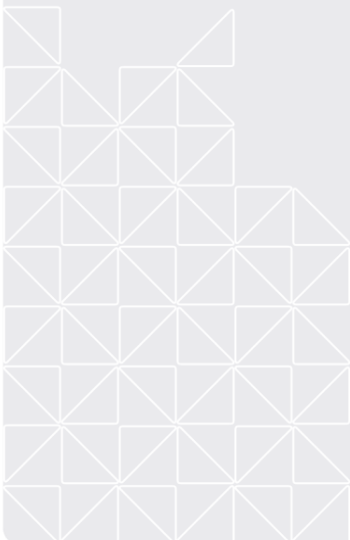


Access to Justice Review

Submission to Victorian Department of Justice



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Executive summary

Justice Connect welcomes the Victorian Government's Access to Justice Review (**Review**) and its particular focus on how the most disadvantaged and vulnerable in our community access the justice system.

An integral part of the legal landscape in Victoria, Justice Connect works with the corporate and community legal sectors to increase access to justice for those experiencing disadvantage and to provide free legal help to community organisations. Through our deep and strong connections with the legal community, we aim to respond to unmet legal need, grow pro bono culture, and advocate for policy reform where the law is ineffective in serving those most in need.

Justice Connect is the main facilitator of pro bono legal assistance to Victorians experiencing disadvantage, and the community organisations that support them. Victorian lawyers have a strong commitment to pro bono work. Building and nurturing this is a key element of Justice Connect's strategy.

Our programs

Justice Connect has three program streams:

- **Referral Service** comprises referrals of clients to member lawyers and the administration of the Victorian Bar Pro Bono Scheme and the Law Institute of Victoria's Legal Assistance Service. This program also runs the Self Representation Service, which provides advice to people who are without legal representation in the Federal Court and Federal Circuit Courts in the ACT, New South Wales, Tasmania and Victoria.
- **Legal Services** comprises a number of projects and pilots (including the Health Justice Partnership model of partnership between legal and health services) and three specialist outreach services:
 - **Homeless Law** (for clients experiencing or at risk of homelessness),
 - **Seniors' Law** (for older clients with a legal issue associated with ageing, including clients at risk of or experiencing elder abuse) and
 - **MOSAIC** (for newly arrived migrants, asylum seekers and refugees. Note however that this project currently runs in New South Wales only).
- **Not-for-profit Law**, a specialist legal service for not-for-profit community organisations, providing

information, training, advice and pro bono referrals.

Through its various programs, Justice Connect (and its predecessors PILCH Victoria and PILCH NSW) has provided information, advice and legal assistance services to the most vulnerable members of the community for over 20 years. Delivering access to justice for those experiencing disadvantage is at the heart of Justice Connect's work, and Justice Connect welcomes the opportunity to contribute insights from its work to the Review.

Key observations

This submission brings together the data and insights from Justice Connect's experience facilitating pro bono legal assistance to Victorians with a diverse range of needs, and makes some key observations for improving access to justice in Victoria.

Tailored responses for diverse needs

Improved access to justice requires tailored responses to address the diverse needs of different groups within our society. The unbundled and discrete responses needed to assist unrepresented litigants who have sufficient agency to address their legal problems independently, will be very different to the integrated models required to provide intensive support to address the complex legal and non-legal needs of the most vulnerable groups. The legal information and assistance provided to community services and not-for-profit organisations who support individuals experiencing disadvantage similarly requires tailored solutions to match the diverse needs of the organisations accessing legal help.

Strong triage and assessment systems require adequate resources

The process of sorting and assessing the large volume of legal assistance enquiries to ensure that appropriate services are identified to assist requires effective triage and strong connections between legal and non-legal service providers. Developing and maintaining strong triage systems and referral networks is resource intensive.

ADR mechanisms must be adapted for different client groups

Tailoring responses to the diverse legal needs of different client groups is equally important when identifying the appropriateness of different alternative dispute resolution mechanisms. The relationship and power dynamic between parties to disputes and the particular vulnerabilities of certain client groups must be considered when reviewing alternative dispute resolution processes and developing new initiatives.

Improved accessibility of VCAT requires internal review mechanisms

For the most vulnerable and disadvantaged clients who are seeking review of decisions of the Victorian Civil and Administrative Tribunal (VCAT), the daunting nature of Supreme Court proceedings to review decisions, and the associated risks of adverse costs orders can often lead to disengagement and prevent individuals from obtaining a just outcome to their legal problems. An easily accessible review mechanism within VCAT would provide a forum for clarifying VCAT members' decisions without placing additional strains on vulnerable Victorians.

Clarity is required around retirement village dispute resolution processes

Complexities in the dispute resolution process in Victoria in respect of retirement villages make it very difficult for older people to navigate the system in relation to disputes concerning their residence rights.

Clear, informal dispute resolution processes and improved access to legal assistance in relation to these disputes would enhance access to the justice system for older Victorians.

Effective delivery of pro bono services requires collaborative relationships across the legal assistance sector

Improving access to justice for Victorians experiencing disadvantage through pro bono requires deep and strong connections with the community legal sector and the private sector. These relationships enable Justice Connect to harness the breadth of expertise across the legal assistance sector to match capacity to deliver pro bono assistance with key areas of unmet legal need.

Strong collaboration across the sector can also enable community lawyers to work with the private sector to build the capacity of pro bono lawyers to deliver legal assistance to individuals experiencing

disadvantage in areas outside a lawyer's usual area of expertise.

Opportunities exist to strengthen pro bono through Government panel pro bono incentives

The pro bono requirements included in the Victorian Government's legal services contracts have made a significant contribution to Victoria being Australia's strongest performing pro bono jurisdiction. As pro bono culture develops in Victoria, the Victorian Government can continue to take an active role in encouraging increased pro bono participation by encouraging panel members to adopt the Australian Pro Bono Centre's Aspirational Target of 35 pro bono hours per lawyer each year; facilitating stronger relationships between panel firms and the government's central pro bono conflicts coordinator; and sharing data captured through its pro bono reporting requirements with legal assistance services.

An appropriately resourced legal assistance sector requires adequate government funding

Pro bono is not a substitute for adequately funded free legal services. Government bears the primary responsibility for properly funding legal assistance services. While philanthropic funding can be harnessed to develop innovative responses to legal need, ongoing government funding is required to ensure that the most vulnerable and disadvantaged Victorians can continue to access these services.

Reduced funding for Legal Aid applies pressure across the sector

Government cuts to Legal Aid funding can have significant and immediate increases in demand for services in the legal assistance sector. When funding is withdrawn, people unable to obtain legal aid or receive assistance from a community legal centre seek assistance from other services, including pro bono. This may be in areas of law such as family law, which is not easily placed with pro bono lawyers. In any event, there is insufficient pro bono capacity to respond to the significant levels of unmet legal need in the community. Reductions in funding thus put pressure on other areas of the legal assistance sector.

Conversely, adequately funded referral services can significantly increase the capacity of the legal assistance sector to respond to key areas of unmet need.

Close collaboration across the legal assistance sector avoids duplication

Extensive engagement with other legal and community services in the development of new initiatives to target unmet legal need means that the risk of duplication across different services is avoided. Collaboration across the sector enables the particular expertise of different services to be harnessed to achieve greater impact through replication of successful models across different jurisdictions.

Access to legal assistance is a critical component of a fairer, more equal Victoria

As the case studies in this submission show, access to free legal advice or representation can play a crucial role in preventing vulnerable members of the community slipping through the cracks. Well-resourced, targeted legal services can avoid issues escalating to crisis point and generate cost savings through the prevention of, for example, homelessness, protracted court proceedings, unemployment or elder abuse, and the myriad health, personal and social hardships that can accompany these issues. We congratulate the Victorian Government for recognising that access to legal assistance needs to be contemplated as a core component of a fairer, more equal community.

Recommendations

Informed by the observations set out above and discussed further in the submissions that follow, Justice Connect makes the following 14 recommendations for a fairer, more accountable and more sustainable legal assistance sector in Victoria.

Recommendation 1

The Victorian Government should recognise the importance of supporting multiple entry points for legal information and targeted, tailored access to legal services for different client groups (including integration of legal and non-legal services through co-location and Health Justice Partnerships).

All arms of Victoria's legal assistance sector – Legal Aid, community legal centres, Aboriginal controlled legal services and pro bono – need to be adequately resourced to support the delivery of appropriate, accessible and effective legal information, advice or representation to members of the Victorian community who are unable to access the private sector. Recognising the preventative role that early access to legal assistance plays, an investment in Victoria's legal architecture will deliver long term personal, social and financial benefits across the State.

Recommendation 2

The Victorian Government should update resources accompanying existing legal processes (for example, as part of the infringements and eviction processes) to provide clearer information to people about their options and the avenues for accessing free legal assistance.

Recommendation 3

The Victorian Government should develop training and resources within courts and tribunals that will create a more holistic understanding of the legal needs and options for people engaged in the justice system (for example, the intersection between the family violence and residential tenancies frameworks that has the potential to prevent homelessness for victims of family violence).

Recommendation 4

The Victorian Government should review State laws and practices to ensure that the rights to equal recognition before the law and access to justice are being realised.

Recommendation 5

The Victorian Government should ensure that legal assistance services are adequately resourced to implement effective triage systems, so that individuals have access to appropriate legal assistance at the earliest stages.

Recommendation 6

The Victorian Government should ensure that programs such as the Dispute Settlement Centre of Victoria are appropriately funded to ensure that all Victorians experiencing disadvantage can access a dispute resolution service that is positive, empowering, informal and easy to use, flexible, and confidential.

Recommendation 7

In the current context of a severe shortage of affordable housing and increasing homelessness, landlords, including the Director of Housing, community housing providers and private landlords, should be required to attempt to negotiate with tenants prior to making applications for compliance or possession orders, and the framework for alternative dispute resolution in the Residential Tenancies List should be strengthened. To minimise the power imbalance between landlords and tenants, tenants should be encouraged to access legal advice and be permitted to have an advocate or lawyer as part of the dispute resolution process.

Recommendation 8

The Victorian Government should make legislative amendments to allow for internal appeal of VCAT decisions.

Recommendation 9

Justice Connect urges the Victorian Government to encourage firms to become signatories to the National Pro Bono Centre Aspirational Target. Future tenders for legal services providers could also recognise firms who are Aspirational Target signatories.

Recommendation 10

The Victorian Government should consider aligning the pro bono reporting requirements for panel firms with the Commonwealth Government's reporting requirements under its panel terms, to streamline the process for firms undertaking government legal

work in both jurisdictions. Streamlining this process might further encourage firms to increase their pro bono contribution.

Recommendation 11

The Victorian Government should continue to facilitate the clearance of conflicts in pro bono matters, and to provide guidance around the type of commercial conflicts that government departments may consider clearing and in what circumstances.

Recommendation 12

Data captured by the government about the nature of pro bono participation should be made available to Justice Connect to identify new opportunities to increase effective pro bono participation in Victoria.

Recommendation 13

The Victorian Government should be mindful when assessing duplication of services and legal education material across the legal assistance sector that it considers the diverse needs of varied audiences and the issue of conflicts of interest.

Recommendation 14

The Victorian Government should provide funding to scope and pilot a self representation service in the Supreme Court modelled on the SRS now operating and delivered by Justice Connect in the Federal and Federal Circuit Courts.

Productivity Commission's inquiry

Justice Connect made a submission in response to the Productivity Commission's Inquiry into Access to Justice Arrangements in November 2013¹ and August 2014². Justice Connect's position in relation to the matters addressed in that Inquiry stands. To avoid substantial repetition of publicly available information, Justice Connect's submissions to the Productivity Commission's inquiry will not be repeated here.

Endorsements

This response to the Terms of Reference in the Access to Justice Review is based on Justice Connect's experience as a facilitator and coordinator of pro bono legal services in Victoria and New South Wales, and a provider of multidisciplinary services (legal and non-legal) to people experiencing disadvantage who are being assisted by pro bono lawyers.

A number of Justice Connect's colleagues in the pro bono and legal assistance sectors are responding in detail to various Terms of Reference. To avoid repetition, Justice Connect will make reference to those submissions it supports, but will not make detailed submissions on the same points.

¹ <http://www.pc.gov.au/inquiries/completed/access-justice/submissions/submissions-test/submission-counter/sub104-access-justice.pdf>

² <http://www.pc.gov.au/inquiries/completed/access-justice/submissions/submissions-test2/submission-counter/subdr290-access-justice.pdf>

1. Targeted, tailored legal information and pathways to legal assistance

Term of Reference 1

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

Access to information about the justice system and the availability of legal assistance services is critical to the provision of access to justice in Victoria. In working to ensure greater access to legal information and advice for those experiencing disadvantage it is important that the delivery of information is adapted to suit the varying needs of the different groups within our society.

For those well-positioned to help themselves and seek out the information they require on their own initiative, the availability of web-based resources, telephone advice services, and pamphlets and other paper materials will be adequate. For the most vulnerable members of our community however, greater proactivity on the part of legal services providers is required to ensure information is in fact being accessed.

Justice Connect's various programs are carefully designed to address the complex needs of different client groups across the community, with all programs having a specific focus and strategy to deliver that focus. Partnering with pro bono lawyers, Justice Connect's services range from those that are designed for people with greater agency and ability to access information to help themselves (such as the Self Representation Service and Not-for-profit Law program), to the integrated service models adopted by Justice Connect's Legal Services programs (such as Homeless Law and Seniors Law) which enable it to actively deliver legal information, advice and ongoing representation to those most in need.

1.1 Information for those able to help themselves

Justice Connect's Self Representation Service (**SRS**) is able to assist eligible self-represented litigants in the Federal and Federal Circuit Courts with disputes involving bankruptcy, Fair Work, Human Rights and Administrative Review. The SRS provides 'unbundled' assistance rather than ongoing representation. It aims to provide assistance to self-represented litigants so they better understand their legal rights and responsibilities, and options for resolving their legal issue. The SRS also assists procedural advice, and assistance with drafting documents.

The unbundled legal assistance model is premised on a client having sufficient agency to independently complete the tasks necessary to progress their proceedings with discrete advice provided by SRS lawyers. By nature, this requires clients to take the initiative to access the Courts in the first place. For such clients, the provision of legal information, such as online factsheets, as well as clear referral pathways to the SRS is vital. At present, the main referral pathway to the SRS is via the Courts, particularly the registries where self-represented litigants ordinarily present.

Clients also approach Justice Connect directly for assistance with their disputes, or are referred by agencies such as Legal Aid, or community legal centres.

The following case study provides an example of how the SRS model can support self-represented litigants to successfully access Court processes through unbundled legal assistance.

Cleaner owed unpaid wages successfully recovers what he was owed

Max worked as a cleaner in a department store and came to the SRS after his employer refused to pay him for his last two weeks of work. Max approached his employer about the unpaid wages and was shocked when his employer responded angrily and told him he was fired. Max felt intimidated and helpless, and was very distressed by the financial pressure he was experiencing. The situation was particularly concerning for Max as he was on a temporary visa from Spain and would not be eligible for any government benefits. Two weeks of pay was everything to Max.

Max spoke to the Fair Work Ombudsman about the dispute and was given an estimate of how much money he was owed, as well as a small claims form and affidavit to fill out. Max felt overwhelmed by the prospect of completing and lodging all the documents, and that's when Max contacted the SRS. The SRS was able to help Max with his court documents and help him to identify the entitlements that he was owed.

As a result, Max successfully initiated small claims proceedings and eventually settled the matter out of court. Max was able to recover even more money than the Ombudsman had initially suggested he was owed. This allowed Max to pay off some outstanding debts that were causing him stress, while also avoiding the stress and uncertainty of litigation. Max told us:

'I won the case! I am happy to pay off some of my debts and I'm in a better place financially. Really happy with the service that you provide'

NFP Law maintains a publicly available website, the Online Information Hub, containing a broad range of tailored legal information resources for NFPs, both written and multimedia. As illustrated on the following page, this information is structured in a way that is relevant to the life-cycle of a NFP, ranging from information specific to setting up a NFP to information applicable to well-established organisations. Information is sufficiently detailed to enable organisations to self-help in many cases, freeing up their time and resources to focus on their core activities and service delivery. Legal email updates are also sent to subscribers alerting them to new resources or changes to relevant laws.

While NFP Law's legal educational services are available to all NFPs (eg online information resources, seminars, webinars, email updates), the program focuses on assisting 'public interest NFPs', ie. organisations with limited resources that provide services to people experiencing marginalisation or disadvantage, especially in regional and rural areas. Pro bono legal advice through NFP Law is generally limited to such organisations. By providing free legal advice, information and free and low-cost training to NFPs and by undertaking law reform activities aimed at improving the legal framework within which the sector operates, NFP Law 'helps the helpers' and enables them to be better governed, more effective, more strategic and sustainable organisations. This in turn maximises their economic and social contribution to civil society.

1.2 Helping the helpers

Since its establishment, Justice Connect's Not-for-profit Law (**NFP Law**) has helped hundreds of thousands of NFPs with legal, regulatory and governance issues through an integrated service design. To date, NFP Law has focused on supporting NFPs located or operating in Victoria and NSW. However, many NFPs in other jurisdictions also access some of NFP Law's services, including free online legal information on federal laws available via its legal Information Hub website. NFP Law has recently launched a revised Information Hub with resources for every state and territory.

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1.3 More intensive models of supporting clients to address legal issues

Justice Connect's Homeless Law and Seniors Law services both utilise an integrated services model, designed to reach out and deliver legal information, advice and representation to some of the most vulnerable people in the community. The integrated services model recognises that legal need is often overlooked amongst client groups with other complex social needs. By integrating legal services in with other social services in an outreach location, legal information can be more effectively delivered to those in need, and legal problems more readily identified and addressed.

1.3.1 Homeless Law: an evolving specialist service for a hard to reach client group

Established in 2001, Justice Connect's Homeless Law program (previously the Homeless Persons' Legal Clinic) (**Homeless Law**) has 15 years of insight and expertise regarding the provision of holistic legal representation to a highly vulnerable group of Victorians.

Key aspects of Homeless Law's model are:

- **outreach-based:** Homeless Law runs seven weekly outreach legal clinics at homelessness, health and community services, as well as one monthly legal clinic at Port Phillip Prison.³
 - **pro bono:** Homeless Law works with eight partner law firms to provide ongoing legal representation to its clients.⁴ This model is discussed in more detail in relation to Term of Reference 5.
 - **holistic:** since 2010 Justice Connect has employed a social worker to help meet the non-legal needs of Homeless Law's clients, which create significant barriers to their ability to address their legal issues or engage with the justice system.
 - **centralised triage:** since 2012, Homeless Law has operated a 'centralised triage' model where all matters are triaged to assess eligibility before being booked in for an appointment at one of the Homeless Law clinics. This is discussed more in relation to Term of Reference 2.
- **ongoing legal casework:** recognising that Homeless Law's clients are not well-placed to navigate the legal system – even with access to information or advice – the Homeless Law model is focused on ongoing legal casework, which includes advice, negotiation and representation in court or VCAT. It may include assistance with multiple legal issues for clients and may also encompass non-legal support from Homeless Law's social workers.
 - **co-location:** to make sure that Homeless Law continues to be accessible to clients who are less likely to use its phone line, Justice Connect has set up two 'co-locations' where Homeless Law staff are based out of frontline homelessness services two days per week.

The evidence gathered through the development and adaptation of this model to best meet the needs of Homeless Law's clients has informed Justice Connect's contribution to the Review.

Through Homeless Law's work, Justice Connect sees that homelessness almost inevitably brings increased contact with the law, while simultaneously making it harder to navigate the justice system and to access legal assistance. This is consistent with the findings of the Legal Australia-Wide Survey (LAW Survey), conducted by the Law and Justice Foundation of New South Wales, which found that people who are homeless or in basic/public housing are at significantly increased risk of experiencing three or more legal issues. The LAW Survey found that people experiencing homelessness were both more likely to have legal problems and to have a significantly higher number of problems. Specifically, it found that:

- 85% of people experiencing homelessness experienced at least one legal problem, compared to 54% of those in basic or public housing;
- 50.5% of those who identified as homeless experienced three or more legal issues, compared to 22.8% of those in basic/public housing, and only 15.7% in other types of housing; and
- More broadly, people who were experiencing homelessness lived with multiple disadvantages, having an average of 2.2 types of disadvantage compared to people in basic/public housing (1.9 types), and those in non-disadvantaged housing (1.1 types).⁵

³ Clinics are held at: Melbourne City Mission (Footscray); a central city library (WHPP); Victorian Association for the Care and Resettlement of Offenders (VACRO) (CBD); Launch Housing (Collingwood); Central City Community Health Service (CBD, two clinics per week); Salvation Army (Geelong).

⁴ Homeless Law's partner law firms are: Allens Linklaters; Clayton Utz; Corrs Chambers Westgarth; Harwood

Andrews; Herbert Smith Freehills; King and Wood Mallesons; Minter Ellison; Transport Accident Commission.

⁵ Disadvantage includes: indigenous background, long-term illness/disability, low education, unemployment, single parenthood, government payments as the main sources of income, non-English main language and remoteness of area of residence.

Relevantly, the study also identified that there are considerable barriers to people who are experiencing homelessness accessing legal services, including the need to prioritise more basic human needs such as food or accommodation. Accordingly, services assisting people experiencing homelessness require ‘a holistic or client-focused approach, involving an integrated response from legal and broader human services’.⁶ This research confirmed what Justice Connect was seeing through Homeless Law’s work and has informed ongoing work on integrated service provision as a way of making justice accessible to our clients.

A move to centralised triage and the need for new methods of engagement

In 2012, Homeless Law moved away from the model of drop-in and bookings through host agencies (i.e. frontline housing and homelessness services) to a ‘centralised triage’ and appointment-based model. The aim of this change was to make sure all clients seeing pro bono lawyers at the clinic would be eligible for ongoing assistance from Homeless Law, and to avoid clients being provided with detailed information but later being told they need to be referred to another service. The change to this model was part of an overall strategic review process that reflected on whether Homeless Law’s current model was best meeting the needs of Victorians who were homeless or at risk.

While these changes have been effective and an overall success, the introduction of this new model initially saw a decrease in client bookings. In response to this, Justice Connect did a significant amount of thinking about other mechanisms for making sure information about legal issues and legal services was available to Homeless Law’s clients. Two key measures that were implemented following this process were:

Concerted stakeholder engagement: Like many CLCs, Homeless Law is constantly working to make sure non-legal agencies are well placed to spot legal issues and refer clients to legal services. By way of example, in 2014–15, Homeless Law undertook over 100 engagement activities (with a team of 5.6 staff), including meetings with partner agencies, outreach, attending team meetings and delivering training, aimed at building relationships and referral pathways with legal and non-legal agencies.

Co-location of staff with frontline agencies: Two Homeless Law staff (one social worker and one

lawyer) spend one day each per week working from specialist homelessness services.

The aim of this renewed strategy is to build strong relationships with frontline agencies and non-legal workers to enable Homeless Law to intervene early and resolve legal and non-legal issues prior to crisis point. These relationships are critical to Justice Connect’s ability to engage and assist highly vulnerable and hard-to-reach clients that may be otherwise unable to access existing legal services.

The model of co-location is discussed in more detail in the case study below. It has proven to be a highly effective model for helping people experiencing homelessness – and the services working with these clients – to understand the legal nature of their problems, and to access legal representation to help resolve those problems.

Co-location: some insights

Homeless Law’s two key insights through its work on co-location are:

Genuine integration and collaboration is not just about running a service at another site, it requires sharing time, energy, insight and expertise. It is about exchanging knowledge, building partnerships and improving our understanding of other service providers. When done well, integrated service provision can significantly increase the ability of isolated clients to access a range of different services to meet their needs.

Outreach-based, integrated legal services are an effective model for providing access to justice and improved outcomes for clients who are experiencing or at risk of homelessness and who would otherwise be unlikely to access legal assistance. They are a creative, innovative and effective response to the legal and non-legal needs of people experiencing homelessness.

These insights and Homeless Law’s expertise and experience as a provider of holistic, integrated services have meant Justice Connect is able to play a leading role in developing and implementing service models that make justice more accessible to clients experiencing or at risk of homelessness.

⁶ Christine Coumarelos and Julie People, Law and Justice Foundation of NSW, *Home is where the heart of legal need is: A working paper on homelessness*,

disadvantaged housing and the experience of legal problems (April 2013).

Under one Roof: case studies of improving access through integration

Central City

In 2013 Homeless Law undertook to develop its legal services at Central City Community Health Service (CCCHS). Justice Connect wanted to develop a service that was accessible to people experiencing or at risk of homelessness so that they could have their legal needs met. Justice Connect also wanted to form relationships with the array of health and homelessness experts who can assist clients with their non-legal needs through CCCHS.

In October 2013 the Homeless Law Homeless Persons' Liaison Officer (HPLO - a qualified social worker) commenced co-locating at CCCHS every Wednesday. The aim of the co-location is to work closely with the various non-legal experts located at CCCHS (including homelessness and mental health workers, RDNS nurses, nutritionists, podiatrists and women's health experts) to help spot legal issues and navigate access to appropriate legal services.

In 2014–15, the HPLO made approximately 76 referrals to legal services through the co-location at CCCHS:

- 21 were provided with legal representation by Homeless Law;
- 5 received telephone advice from Homeless Law;
- 2 were referred to Justice Connect's Seniors Law program;
- 10 were referred to Inner Melbourne Community Legal;
- 12 were referred to Victoria Legal Aid; and
- 26 were referred to other legal or court based services.

Of these people, all were experiencing or at risk of homelessness. 20 were sleeping rough, and 29 were reliant on the Disability Support Pension. All were highly vulnerable, and were unlikely to have accessed legal assistance or resolved their legal issues without the co-location of a social worker from a legal service at a specialist health service.

Launch Housing

In 2015, following on from the success of the co-location at CCCHS, Homeless Law established a second weekly co-location at Launch Housing (formerly HomeGround Services) in St Kilda. 'Under One Roof' embeds a lawyer into the day-to-day operations of a specialist homeless service with the aim of creating clearer pathways into legal services for clients who would otherwise face significant barriers to navigating the legal system. It does this by increasing:

- capacity of non-legal homelessness and health professionals to identify legal issues;
- visibility of Homeless Law within its partner agency; and
- access of people experiencing homelessness to the courts, legal advice and assistance.

In addition to locating onsite one day per week, the Homeless Law lawyer also undertakes outreach with the Rough Sleepers Initiative. In relation to this co-location, Launch Housing Services Southern Manager, Andrew Darcy, said:

'When you are facing eviction or already homeless, your capacity to take on ... complex legal issues ... is not great. Having access to a lawyer through "Under One Roof" will break down those barriers and improve a person's chance of getting justice.'

The co-located Homeless Law lawyer took 60 enquiries in the first 12 months of co-location: 30 clients received ongoing legal casework from Homeless Law; and 14 were referred to other legal services including Legal Aid, St Kilda Legal Service, Peninsula CLC, VALS and First Step Legal.

In a survey about the effectiveness of the co-location after 12 months, 88% of workers at Launch Housing who completed the survey indicated that the co-location had increased their understanding of the legal issues that affect their clients; 63% believed that the clients they referred via the co-location might not have otherwise been able to access legal services; and 100% thought their clients got better outcomes as a result of seeking legal assistance.

1.3.2 Seniors Law: using health justice partnerships to support access to legal information and services

Any program that delivers pro bono legal services must be effective and equitable. In 2014, Justice Connect's Seniors Law program (**Seniors Law**) undertook a review of the effectiveness of the delivery of pro bono services to vulnerable older people through its outreach clinic program. That review found that Seniors Law was not reaching the most vulnerable and isolated older people, including those at risk of or experiencing elder abuse. Whilst pro bono lawyers met with clients at health agencies where older people already attended, it was still left to the clients themselves or their health workers to identify that there might be a legal response to the client's circumstances, and to approach the legal service for advice and assistance.

Training program for health professionals

Seniors Law delivered training on identifying and responding to elder abuse and other issues associated with ageing to over 500 health and community workers in one year, in order to facilitate referrals to the service. Whilst attendees at the sessions reported that they were better able to identify and respond to elder abuse and other legal issues at the conclusion of training sessions, this did not lead to many referrals of clients to the service.

As a result, the number of clients Seniors Law saw who were experiencing elder abuse was relatively low. The pro bono legal assistance was not reaching those people who needed it most. Justice Connect's experience is borne out by research from the United States, as well as research now emerging in Australia, about the need for a multi-disciplinary approach to respond to the matrix of circumstances or "life problems" of those most in need of pro bono legal assistance.

Elder abuse as a health problem

Elder abuse can adversely affect an older person's mental and physical health. This is consistent with evidence that suggests law is an important "social determinant of health". Namely, people with unresolved legal problems also tend to experience multiple and complex health problems and vice versa, with a causal effect in both directions. Legal

problems can lead to or exacerbate health problems. People with multiple and complex health problems tend to have more interaction with the legal system.

Given the interconnectedness of legal and health issues, especially in the context of elder abuse, these issues are likely to be presented as part of a complex life or social problem.

A significant number of these "life problems" are likely to be concentrated in a small proportion of the community. In the Legal Australia-Wide Survey conducted in 2012, around 50% of respondents reported experiencing one or more legal problems in the preceding 12 months, with 65% of legal problems being concentrated amongst a small group of 9% of survey respondents.⁷

The role of health professionals

Research indicates that health professionals play a critical role in identifying and responding to elder abuse and other legal issues faced by people experiencing disadvantage. If an older person recognises that they have a legal problem, it is unlikely that he or she will speak to a lawyer about it.

In Australia, nearly 30% of people experiencing a legal problem will initially seek the advice of a doctor, or another trusted health professional or welfare adviser. This figure rises to 80% in relation to legal problems associated with health.⁸

Barriers to justice

In the context of elder abuse, the additional barriers to seeking help discussed above can further compound an older person's reluctance to seek legal assistance. In these circumstances, gaining the trust of the older person is vital. Lawyers rely on trusted health and community professionals to identify relevant legal issues and, if necessary, facilitate a legal response.

Overcoming barriers: health justice partnerships

To overcome the barriers outlined above and in an effort to better facilitate access to legal information and services by older people, following the 2014 review and with the support of the Legal Services Board, Justice Connect embraced the model of the Health Justice Partnership. Based on the United States' Medical-Legal Partnership (**MLP**), a Health

⁷ Law and Justice Foundation of New South Wales, *Legal Australia-Wide Survey: Legal Need in Australia* (Sydney, 2012) xiv.

⁸ Law and Justice Foundation of New South Wales, *Legal Australia-Wide Survey: Legal Need in Australia* (Sydney, 2012) 116.

Justice Partnership (or **HJP**) is a healthcare delivery model integrating legal assistance as an important element of the healthcare team. It is based on the theory that the provision of an integrated legal response to address the underlying cause of poor health outcomes, or the social determinants of health, can improve health outcomes for the older person. Similarly, the availability of community services – such as alternative housing – can assist a client in pursuing a legal remedy or make it redundant.

As part of its commitment to HJPs, in 2014 the Legal Services Board committed \$2.6m to establish nine HJPs, including a three-year HJP between Justice Connect and cohealth.⁹

cohealth is a community health service operating across the north and western metropolitan regions of Melbourne. It provides integrated medical, dental, allied health, mental health and community support services, and delivers programs to promote community health and wellbeing.

HJP aims

The aims of Justice Connect's HJP with cohealth include:

- improved collaboration between legal and health professionals and greater internal capacity to identify and respond to elder abuse;
- provision of legal assistance with a focus on early intervention; and
- development of relationships with local communities and an increase in the capacity of those communities to identify and respond to elder abuse through facilitating the development of community-specific screening tools.

Justice Connect's first HJP commenced in early 2015, with a project lawyer from Seniors Law based at cohealth four days a week. The lawyer works with staff to help identify legal issues for older people and provide more convenient legal assistance or referrals to alternative legal services, and is supported by a panel of pro bono lawyers with specialist knowledge of elder law issues, including elder abuse.

Since the commencement of the project in February, secondary consultations have emerged as one of the most important benefits of the HJP model. Close partnership between lawyers and health workers has allowed caseworkers to seek advice at an early stage, leading to the sharing of

legal information with a client, and intervention and referral to the lawyer where appropriate.

By establishing the HJP with cohealth, Justice Connect had expected to see clients earlier and be in a position to take a more preventative approach to legal problems. An unexpected positive outcome is that Seniors Law lawyers have been able to influence the outcome for clients before they are ready to seek legal advice through secondary consultations, for a variety of reasons.

- **Better access to legal help, sooner:** there are many reasons why an older person does not want to seek legal help if they are experiencing elder abuse. With the availability of secondary consultations to health professionals, older people in this situation can still receive the benefit of legal information through a trusted worker who can continue to support them and build their capacity. By being informed of a potential legal solution and any associated time limits, the older person may be more likely to seek legal advice in the future. If the older person still decided not to seek legal help, at least the decision is informed, which can still be empowering.
- **Building trust and relationships:** by providing a convenient and immediate source of legal information, the HJP lawyer can add value to the health service and build trust and credibility with colleagues, who may be more likely to make subsequent referrals to the service and encourage others to do so.
- **Easier intake process:** for eligible matters, the process of secondary consultations also made the intake process quicker and easier. The client doesn't have to repeat their information to the HJP lawyer, who has already received information on the background facts and key legal issues and the health professionals does not have to comply with the formal intake process, which can be impracticable.
- **Better navigation of the community legal sector:** for non-eligible matters, the HJP lawyer can also increase health professionals' awareness of other relevant legal services. The HJP lawyer can also monitor requests to identify systemic, recurring legal issues and engage a relevant legal service to provide legal help, CLE and PD to address unmet legal need.

⁹ Legal Services Board, *\$2.6 million funding awarded in the 2014 Major Grants round* (22 May 2015)

<http://www.lsb.vic.gov.au/documents/Newsletter_11_Grants_Program_2014.PDF>.

Case study of the benefits of early intervention

Mary, an elderly woman, has a fall and is admitted to hospital. Upon being discharged, she mentions to a discharge worker that she does not think she can live on her own anymore. She plans to sell her house and move in with her son, giving him the proceeds of sale in exchange for which he will care for her. The worker, having received training on the risks of “assets for care” arrangements, asks the patient if she would like to speak to a lawyer about her proposed living arrangements. She agrees.

The HJP lawyer speaks with the client about her options and she signs an agreement with her son and is registered on the title of his home. This means, if her care needs increase, she can use her money to pay for aged care services.

Through the HJP model, Justice Connect can ensure that pro bono resources are utilised to assist the most vulnerable and difficult to reach members of the community. Following the success of the cohealth HJP, in January 2016 Justice Connect established a new partnership with St Vincent’s Hospital to establish a second HJP in relation to elder abuse, funded by Seniors Rights Victoria and St Vincent’s Health Australia.

1.4 The need for multiple, specialist entry points to Victoria’s civil justice system

Justice Connect acknowledges the potential benefit of promoting a centralised entry point to the civil justice system in Victoria, including a website and telephone advice service, which consolidates existing resources and simplifies the process of accessing legal advice and information about the availability of legal assistance services.

However, Justice Connect’s experience makes clear that a single entry point of this kind will not be suitable for all client groups, particularly for those who are most vulnerable and most in need of legal assistance. In particular, a centralized access point should not take the place of integrated services such as those provided by Homeless Law and Seniors Law.

Homeless Law’s co-locations and Seniors Law’s HJP are just part of the compelling evidence in the legal services sector that the physical presence of a person who has a strong understanding of the ‘legal landscape’ - including legal issues and legal referral pathways – can play a significant role in improving the ability of highly vulnerable clients to access legal services.

While clear, helpful legal information on a website or phone line may benefit some, the complexity of the legal services landscape across jurisdictions, areas of law, and specific client groups is such that it is impossible for one central point to accurately keep and convey this information. For example, as noted by the Law Institute of Victoria in its submission, there is an appetite within the sector to see Aboriginal Controlled Organisations become conduits for service delivery in circumstances where they may not be the primary service provider, to convey culturally appropriate information to Aboriginal and Torres Strait Islander Victorians.

A central access point will not be a substitute for more intensive and targeted ways of alerting people to legal issues, and helping them understand how and where to access appropriate assistance.

Recommendation 1

The Victorian Government should recognise the importance of supporting multiple entry points for legal information and targeted, tailored access to legal services for different client groups.

All arms of Victoria’s legal assistance sector – Legal Aid, community legal centres, Aboriginal controlled legal services and pro bono – need to be adequately resourced to support the delivery of appropriate, accessible and effective legal information, advice or representation to members of the Victorian community who are unable to access the private sector. Recognising the preventative role that early access to legal assistance plays, an investment in Victoria’s legal architecture will deliver long term personal, social and financial benefits across the State.

1.5 Other strategies to improve access to information on legal assistance services

1.5.1 Improving legal documentation to increase awareness of free legal services

As recognised in the Accessible Legal Information Background Paper and in the Productivity Commission Report,¹⁰ one of the major barriers to people seeking legal advice or representation is a lack of awareness that their problem has a legal dimension.

In the context of homelessness, evictions fall into the category of problems that people do not realise have a legal dimension, which leads to low levels of engagement with the legal process and contributes to preventable evictions.¹¹

In 2014–15, Homeless Law assisted 219 clients who were facing eviction into homelessness and, in the same period, through legal representation and social work support, 139 clients and their families were prevented from entering homelessness.

Through this work, Justice Connect understands that access to legal advice and representation has significant potential to prevent unnecessary evictions. Despite this, rates of tenant engagement with, and attendance at, VCAT hearings remain low, which means rights are not being exercised and protections are not being realised.

Homeless Law and other legal services do a considerable amount of work to improve awareness of the availability of legal assistance in relation to evictions, but it would also be of significant benefit if resources that are part of the existing legal process were improved to help people understand their options and avenues for accessing legal advice. Homeless Law has made detailed recommendations regarding improving information and documentation as part of the eviction process in a submission to the Victorian Government's Review of the Residential Tenancies Act.¹²

In addition to tenancy matters, the provision of legal and referral information on key documents could also be implemented in relation to fines and infringements.

The common lack of any referral information for parties on key documents – for example, notices to vacate and infringements – represents a missed opportunity to encourage people to try to address their legal issues, exercise their rights, seek legal advice, and engage with the legal process.

The changes proposed below would increase parties' ability to understand their options and to obtain legal advice and representation at the earliest stage in the process. This has significant potential to increase the number of negotiated outcomes and potentially avoid the need for a VCAT or court proceedings.

It also has significant potential to generate better, fairer outcomes, including, for example, preventing unnecessary and avoidable evictions into homelessness or arrests of vulnerable people for unpaid fines.

¹⁰ Productivity Commission, *Overview: Inquiry Report, Access to Justice Arrangements* pp 150–5 <http://www.pc.gov.au/inquiries/completed/access-justice/report/access-justice-overview.pdf>.

¹¹ The most recent available information about the rates of tenant attendance at VCAT indicates that in 2010, up to 80% of hearings were unattended by tenants. See The Hon Justice Iain Ross, *Transforming VCAT* (Discussion Paper, VCAT 2010) 9.

¹² See Justice Connect Homeless Law, *There's No Place Like Home: Submission to the Review of the Residential Tenancies Act* (2015) <https://www.justiceconnect.org.au/our-programs/homeless-law/law-and-policy-reform/preventing-evictions-and-sustaining-tenancies/there%E2%80%99s-no-place-home-submission-residential-tenancies-act-review>

Recommendation 2

The Victorian Government should update resources accompanying existing legal processes to provide clearer information to people about their options and the avenues for accessing free legal assistance.

Key areas where this could have a significant impact are:

- notices to vacate, notices of hearing and eviction warrants should all have information about how and where to seek legal advice;
- applications for intervention orders should note the ability, where a perpetrator is a tenant and is excluded from the property by a final intervention order, of a protected person to apply to have a tenancy created in their name (under section 233A of the RTA); and
- infringements documentation – including infringements, forms for application for internal review and revocation, and seven day notices – should include information about where to seek legal assistance.

1.5.2 Conveying legal information and information about legal assistance across jurisdictions

As part of the Access to Justice Review, the Government should consider the siloes within the justice system that prevent people understanding or exercising their legal rights or seeking legal assistance.

One clear example of this is the current limited awareness between jurisdictions of the specific amendments to the RTA that were introduced by the *Family Violence Protection Act 2008* (Vic) (**Family Violence Protection Act**), including section 233A of the **Residential Tenancies Act** (RTA). This provides that where a tenant is excluded from the premises pursuant to a final Family Violence Intervention

Order (**FVIVO**) (or a Personal Safety Intervention Order (**PSIVO**)), the protected person under that IVO can apply to VCAT for an order terminating the existing tenancy agreement and requiring the landlord to enter a new tenancy agreement with the protected person and any other persons.

At the time of its introduction, the second reading speech for the Family Violence Protection Act noted: “The bill makes a range of changes to the Residential Tenancies Act 1997 to ensure that there are mechanisms to align residential tenancies with the family violence intervention order system. These amendments [including section 233A of the Residential Tenancies Act] may enable victims to remain in their home where they wish to and therefore reduce the risk of homelessness, poverty and social dislocation following family violence.”¹³

Despite the laudable intention of section 233A, these provisions and their ability to reduce the links between family violence and homelessness are underutilised. According to information provided by VCAT on Homeless Law’s request, in 2013–14, a total of 22 section 233A creation applications were lodged, only 13 of which proceeded to a final hearing and determination. Given that in the same period 35,135 family violence intervention orders were finalised by the Magistrates’ Court,¹⁴ the VCAT figures represent a concerning low level of uptake.

The underutilisation of section 233A may be due to a combination of the following factors:

- the requirement under section 233A that an applicant has obtained a final IVO, and the significant delays in finalisation, by which time the tenancy may have terminated for other reasons, such as the accrual of rent arrears;
- a lack of awareness amongst protected persons and relevant support workers, including members of Victoria Police, about the ability to apply for a new tenancy agreement pursuant to section 233A, and the way this provision operates; and
- the lack of any formal notification requirement for Magistrates to ensure that protected persons under interim and final IVOs are aware of their right to make an application under section 233A once a final IVO has been made.

This is one example of the way in which targeted education, guidance and documentation across jurisdictions has a significant role to play in improving community awareness about legal rights

¹³ Second Reading Speech for the introduction of the *Family Violence Protection Act 2008* (Vic) *Hansard* 2649.

¹⁴ Magistrates’ Court of Victoria, *Annual Report 2013–2014* (2014) 68. Note, however, that this figure does not

specify how many of these intervention orders included conditions excluding respondents from a rental property.

and options and the availability of legal assistance. Targeted training for VCAT members and Magistrates about the overlap in their jurisdictions, as well as family violence more generally, would help to ensure better outcomes for victims of family violence by facilitating appropriate referrals and encouraging victims of family violence to make use of the legal protections available to them.¹⁵

Recommendation 3

The Victorian Government should develop training and resources within courts and tribunals that will create a more holistic understanding of the legal needs and options for people engaged in the justice system.

1.6 Legal capacity

Equal access to justice requires recognition of the right to legal capacity. Any interference with that right must be subject to rigorous safeguards. Equal access to legal assistance and representation is also fundamental to ensure equal access to the justice system.

Importantly, and relevant to this review, paragraph 3 of Article 12 of the United Nations Convention on the Rights of Persons with Disabilities “recognizes that State parties have an obligation to provide persons with disabilities with access to support in the exercise of their legal capacity” and must “provide persons with disabilities access to the support necessary to enable them to make decisions that have legal effect.”¹⁶

Support in the exercise of legal capacity must respect the rights, will and preferences of persons with disabilities and never amount to substitute decision making.¹⁷ Support may include, for example, ensuring universal design and accessibility measures are adopted by private and public actors.

Recommendation 4

The Victorian Government should review State laws and practices to ensure that the rights to equal recognition before the law and access to justice are being realised.

In particular, the Government should ensure:

- supported decision making is available to everyone;
- legal recognition of the support person(s);
- support is available at nominal or no cost to the person with disabilities and that financial capacity to pay is not a barrier to access;
- reasonable accommodation for persons with a disability in the exercise of legal capacity; and
- all procedures for the exercise of legal capacity, and all the information and communication concerning it are fully accessible.

¹⁵ For detailed recommendations in relation to these issues, see Justice Connect Homeless Law, *Home Safe: Submission to the Royal Commission into Family Violence* (2015) [https://www.justiceconnect.org.au/our-programs/homeless-law/law-and-policy-reform/preventing-evictions-and-sustaining-](https://www.justiceconnect.org.au/our-programs/homeless-law/law-and-policy-reform/preventing-evictions-and-sustaining-tenancies/home-safe-submission-royal-commission-family-violence)

[tenancies/home-safe-submission-royal-commission-family-violence](https://www.justiceconnect.org.au/our-programs/homeless-law/law-and-policy-reform/preventing-evictions-and-sustaining-tenancies/home-safe-submission-royal-commission-family-violence).

¹⁶ United Nations Committee on the Right of Persons with Disabilities, *General comment No.1* (2014), p4.

¹⁷ United Nations Committee on the Right of Persons with Disabilities, *General comment No.1* (2014), p4.

2. Triage and effective direction to appropriate services

Term of Reference 2

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

Justice Connect's response to Term of Reference 1 addresses a number of issues relevant to Term of Reference 2, including:

- the need for a range of specialised, targeted integrated services to help direct vulnerable Victorians to appropriate legal services;
- the benefits and challenges of a centralised 'triage' model in terms of accessibility; and
- features of the legal system that currently limit people's capacity to identify and access appropriate legal services (for example, documentation regarding legal matters and information provided across jurisdictions).

The following section addresses a number of issues relating to diversion and triage, including the importance of helping people recognise and assert their legal rights; the resource intensive nature of effective triage, with examples of how triage is undertaken with different client groups across Justice Connect's programs; and an example of some of the tools available for non-legal workers to assist members of the community to understand their options.

2.1 Directing into, rather than out of, the legal system

It is important to highlight that in many circumstances (and in Homeless Law, the vast majority of cases), Justice Connect's clients are the respondents in civil legal proceedings, including eviction proceedings, infringements, guardianship or administration orders and civil debts with telecommunications companies, utilities companies or banks.¹⁸

Given this, the focus of 'diverting people from civil litigation' by directing them away from commencing proceedings in the formal justice system is often not relevant to Justice Connect's clients. As identified in the Diversion and Triage Background Paper, and by the Productivity Commission Report, often individuals accessing Justice Connect's services 'have greater difficulty knowing they have a legal problem, lack of confidence ... additional barriers to using a helpline or online legal information ... [and] are less likely to seek assistance until their problems reach crisis point'.¹⁹

Accordingly, in considering this Term of Reference, Justice Connect reiterates that helping people to recognise and assert their legal rights is equally as important as diverting people away from formal legal proceedings.

By way of example, the most recent available information about the rates of tenant attendance at VCAT indicates that, in 2010, up to 80% of Residential Tenancies List hearings were unattended by tenants.²⁰ Furthermore, available data from VCAT's 2014–15 annual report confirms that landlords use VCAT far more often than tenants, with approximately 92% of the 59,184 applications received by the Residential Tenancies List in 2014–15 being initiated by landlords, and only 6% by tenants or residents.²¹

Within VCAT's nine lists, the Residential Tenancies List is busiest, accounting for almost 70% of VCAT's entire case load in 2014–15.²² VCAT members sitting in the Residential Tenancies List determine a range of different matters, but most commonly determine applications by landlords for possession and compensation orders due to rent arrears.²³

¹⁸ An exception to this is in the case of SRS where individuals are seeking review of decisions in which case there is an opportunity to divert away from proceeding based on legal advice as to merit.

¹⁹ Background Paper TOR 2 p 6.

²⁰ The Hon Justice Iain Ross, *Transforming VCAT* (Discussion Paper, VCAT 2010) 9.

²¹ Victorian Civil and Administrative Tribunal, *VCAT Annual Report 2014-2015*, 25 November 2015, p 30.

²² Ibid. In this period, VCAT's Residential Tenancies List finalised 59,184 cases.

²³ Ibid.

Once made, these orders allow landlords to purchase warrants to evict tenants, and to be compensated for financial loss out of a tenant's bond.

This data indicates that there are currently significant numbers of possession and compensation orders being finalised in the absence of affected tenants. The flow-on impacts of evictions are significant and can include homelessness, deterioration in physical and mental health, social dislocation and increased interaction with the justice system.

The example of eviction proceedings highlights the need for the Review to maintain a strong focus on supporting people to recognise the legal component to their problems, seek legal assistance early, engage with the legal process and assert their legal rights.

2.2 Resourcing effective, accurate triage

The sorting and assessing of legal problems has an important role to play in providing individuals with information about their legal problems and the service best placed to assist them.

It is resource intensive to undertake effective triage, particularly a system that provides accurate and appropriate referral information and, in some cases such as through Homeless Law, facilitates "warm referrals" through calling and making appointments for clients.

As the Background Paper recognises, '[e]ffective triage at this early stage requires service providers to have a good understanding of clients' needs, identify legal components, assess the severity and importance of the legal dimension, and refer clients to appropriate services which best suit their needs.'²⁴

The number of requests for assistance that each of Justice Connect's programs receive each year far exceeds the number of matters referred to law firms and barristers for pro bono assistance.

By way of example, in 2014–15:

- **Referral Service** received and assessed 1,858 requests for assistance by or on behalf of individuals across all areas of law, and facilitated

396 referrals to pro bono lawyers. All other individuals were referred to alternative legal services such as Legal Aid and community legal centres.

- **Homeless Law** received approximately 1,400 enquiries. From these enquiries, Homeless Law opened 446 matters for clients to receive ongoing legal representation and provided 160 legal advices.²⁵ Approximately 820 people received information, most commonly information about and referrals to appropriate legal and non-legal services.
- **Self Representation Service** received 619 enquiries. From these enquiries, 333 advices were provided to 225 individuals. 133 individuals in total were referred to sources of legal information, including Self Representation Service fact sheets.
- **Not-for-profit Law** responded to 795 enquiries in Victoria, provided advice to 406 organisations, and referred 102 matters for pro bono assistance.

2.2.1 Referrals Service

Justice Connect's Referral Service uses a triage system when assessing requests for legal assistance for pro bono referrals on behalf of individual clients. Practical Legal Trainee volunteers, under the guidance of legal staff, take information from the individuals seeking assistance (or the organisations requesting pro bono referrals on their behalf in the case of "warm" referrals) including information about their legal problem, and information about the applicants' circumstances that will enable Justice Connect's in-house lawyers to assess whether the matter is suitable for pro bono. On average, the Referral Service's triage process takes an average of 26 minutes per request for assistance.

The Referral Service has worked hard to improve the clarity of information available to individuals seeking assistance from this service. In recognition of the important role of community legal centres and Legal Aid as a pathway to the Referral Service, Justice Connect created a new web page dedicated to community and Legal Aid lawyers. These improvements have reduced the number of requests the Referral Service receives from individuals in areas of law, such as family law, that are difficult to refer for pro bono assistance and to increase referrals from community lawyers.

The Referral Service has also taken steps to incorporate the "Lean" philosophy (first adopted by

²⁴ Background Paper TOR 2, 3.

²⁵ We note that, in recognition of the increased capacity of the Victoria Legal Aid Legal Help Line, Homeless Law has focussed on providing advice in matters where Homeless

Law is likely to be able to take the matter on (for example, urgent applications for review hearings or adjournments where Homeless Law will be able to assist with the substantive tenancy matter).

Toyota in the 1980s) to improve the information available on the telephone voice recordings and on the website, to redirect callers whose enquiries fall outside of Justice Connect's guidelines, avoiding a painful two-day wait to speak to someone within Justice Connect, only to be referred elsewhere.

The reality, however, is that the legal assistance services landscape is complex and there will continue to be a number of callers with issues that Justice Connect's programs are not able to assist with. Despite measures to streamline intake, it is clear that ensuring pro bono assistance is provided to those most in need of assistance will always require skilled lawyers and carefully calibrated processes, which in turn must be adequately resourced.

2.2.2 Self-Representation Service

The SRS conducts client intake through a centralised telephone number for enquiries across New South Wales, Victoria, the Australian Capital Territory and Tasmania. Applicants can also make enquiries with the service by email, or by dropping in to the SRS' Federal Court offices two days per week. SRS applicants (or persons assisting them) wishing to make an initial enquiry speak to an SRS paralegal or a Practical Legal Trainee, overseen by SRS legal staff, who conducts the initial intake. Once the SRS has taken preliminary instructions, applicants complete an application form, which enables SRS staff to assess their eligibility for pro bono assistance. If the individual meets the eligibility criteria, Justice Connect will offer the individual an appointment, for a later date, with a pro bono lawyer.

The SRS in Melbourne also works alongside the Consumer Action Law Centre's (CALC) financial counsellors in Court. Where appropriate, the Self Representation Service makes cross-referrals of clients seeking advice in relation to Bankruptcy proceedings to CALC for financial advice. This collaboration diverts people from Bankruptcy proceedings before the Court. The SRS is currently working with CALC to develop a co-located approach for some individuals needing legal and financial advice. This is consistent with the feedback provided by financial counsellors involved in the pilot.²⁶

More details about the SRS are provided in response to Term of Reference 9.

2.2.3 Homeless Law

Supporting a particularly vulnerable client group, in Homeless Law, two full-time legal administrators shared between Homeless Law and Seniors Law run Homeless Law's triage system. The administrators are supported by Practical Legal Trainees, and overseen by legal staff. Given the vulnerability of some Victorians, such as those accessing Homeless Law's services, and the fact that reaching the 'wrong door' may deter them from seeking further assistance, 'warm referrals' for those matters that Homeless Law is unable to assist with are a valuable contribution to assisting a hard to reach client group to access appropriate services to meet their legal and non-legal needs.

These two intake and triage professionals have built extensive knowledge of, and relationships with, legal and non-legal services that are best placed to assist people who are homeless or at risk of homelessness with the issues Homeless Law cannot assist with.

Some callers to Homeless Law will receive warm referrals, including calls to confirm the proposed service's ability to assist (either on a no names basis or with consent), and making appointments on behalf of callers to support access. In some cases, callers are encouraged to call Homeless Law back if the proposed legal or non-legal service is not able to assist.

2.2.4 Not for profit Law

Not for profit Law also conducts intake through a triage system. NFP Law has an online legal enquiry form and a central enquiry phone line.²⁷ If it is clear at the initial inquiry stage that the client is ineligible for pro bono assistance, the Practical Legal Trainees responsible for conducting the intake direct the applicants to NFP Law's Information Hub, or training resources that may assist. Otherwise, comprehensive triage is undertaken to determine whether the application for legal assistance is rejected, eligible for in-house legal advice from NFP Law's lawyers, or eligible for referral to pro bono lawyers. If the application is "rejected" because, NFP Law determines that it is unable to assist a client directly within the casework team, NFP Law staff identify whether there are any resources or training within the service that may assist the client, or if there is anywhere else that can assist.

²⁶ Federal Circuit Court Financial Counselling Project Evaluation – Associate Professor Paul Ali, Lucinda O'Brien and Professor Ian Ramsay, Melbourne Law School University of Melbourne August 2015

²⁷ www.justiceconnect.org.au/nfprequest; 1800 NFP Law (1800 637 529)

NFP Law has developed referral pathway options by topic and sector, which can connect NFP organisations with other forms of assistance, and, where appropriate, make “warm referrals” to another agency such as the LIV referral service.

Recommendation 5

The Victorian Government should ensure that legal assistance services are adequately resourced to implement effective triage systems, so that individuals have access to appropriate legal assistance at the earliest stages.

2.3 Strong connections between organisations can support useful referrals

Justice Connect builds awareness amongst a range of different referring agencies about the legal issues that its different programs are able to assist with. The approach of each program to developing connections with these agencies, and in many cases, individuals approaching its services for assistance, varies depending on the particular needs of the different client groups. An important tool common across many of Justice Connect’s programs is the use of transparent eligibility criteria. This information is available on Justice Connect’s website and shared with referring agencies, to provide clear guidance about the scope of assistance that Justice Connect is able to provide.

2.3.1 Stakeholder engagement and transparent eligibility criteria

For example, the Referral Service develops its connection with other legal assistance services through stakeholder engagement that directs community lawyers to its online resources, setting out eligibility criteria and online referral portals for community lawyers²⁸ and Legal Aid Lawyers.²⁹ This information is shared through direct engagement, and through postcards sharing key contact information for the Referral Service. In the experience of the Referral Service, direct engagement is the most successful approach to developing effective referral pathways to pro bono assistance. Homeless Law raises awareness amongst services about the types of legal issues it

assists with through extensive stakeholder engagement, including co-location (see part 1.3.1), and resources such as the Homeless Law Eligibility Flow Chart.³⁰ NFP law raises awareness of its services within the NFP sector in Victoria by working closely with the Victorian Council of Social Services, Australian Council of Social Services, and other peak bodies, to promote NFP Law’s services to their members through their websites, news publications and through targeted outreach for projects that would benefit particular groups of NFP organisations.

2.3.2 Legal health checks as a diagnostic tool

One tool that can facilitate the development of strong connections between referring agencies is the use of legal health checks.

Since 2012–13, Homeless Law has used a legal health check to:

- build Homeless Law’s engagement with the non-legal sector, including increasing awareness and understanding of Homeless Law and our services; and
- attract early, appropriate referrals to Homeless Law.

As part of the legal health check process, Homeless Law delivers training in legal issues and the legal health check to workers and carries out a pre- and post-training survey.

The survey results provide insights into:

- the extent of workers’ knowledge about Homeless Law and the legal issues we assist with;
- where workers would refer clients with legal issues (for example, Victoria Legal Aid, CLCs);
- whether the training session that accompanies the legal health check increased their understanding of Homeless Law and the services that it provides;
- whether the legal health check is a useful tool to help (i) spot legal issues, and (ii) respond to legal issues;
- whether they are likely to use the legal health check in the future; and
- whether the training increased their awareness of legal issues that affect their clients and their confidence in asking clients about legal issues and referring clients to services that can assist with their legal issues.

²⁸ <https://www.justiceconnect.org.au/get-help/referral-service/community-lawyers/community-lawyers>;

²⁹ <https://www.justiceconnect.org.au/get-help/referral-service/community-lawyers/legal-aid-lawyers>

³⁰ http://www.justiceconnect.org.au/sites/default/files/Homeless%20Law%20eligibility%20flowchart%20oct%2015%20%28final%29_0.pdf

In 2014–15, Homeless Law trained 30 workers at Hanover Southbank and Launch Housing (formerly HomeGround) in relation to legal issues and the legal health check.

Over approximately two years of using the legal health check, Homeless Law has observed that:

- clients may not be engaged with Homeless Law if they have not actively sought assistance themselves and may be difficult to contact and to book in or link with services;
- Homeless Law cannot assist with all legal issues identified in the legal health check (for example, family law issues), and is then required to facilitate referrals where possible; and
- workers may not complete the legal health check with clients because of constraints on time or resources.³¹

Reflecting on this, Homeless Law moved toward co-locations as the key mechanisms for building understanding of legal issues and helping difficult to reach clients to access appropriate legal assistance (as discussed in greater detail in Term of Reference 1).

Seniors Law also uses legal health checks as part of its engagement with health workers at cohealth.

However, this is done as part of the integrated model outlined earlier in this submission.

Our experience is that legal health checks on their own are insufficient to effectively engage workers. While both Homeless Law and Seniors Law continue to have the legal health check as part of a tool kit for engagement, they do not rely on it as the main mechanism for supporting community and health workers to identify legal issues.

Justice Connect is confident that Homeless Law's co-location model, and the health justice partnerships approach to integrated services is the most effective way of establishing strong relationships with non-legal partners and improving identification of legal issues and access to legal services.

Recommendation 5

The Victorian Government should invest in the strengthening of collaboration between members of the legal assistance sector, to develop targeted and efficient referral pathways between organisations.

³¹ For example, in 2013-14, 10 workers from CCCHS attended legal health check training, and seven of them completed a pre and post legal health check training survey. Key results in relation to the legal health check were: prior to the training, five of the workers felt 'somewhat' confident identifying legal issues, and two of the workers didn't really feel confident identifying legal issues; all the workers found the training helpful and indicated that the training made it more likely that they would use the legal health check; 86% of workers found that the training raised their awareness of client legal

issues; only one person used the legal health check during the post survey period and this person found it useful to help spot legal issues. This worker also felt more confident talking to clients about their legal issues after completing the legal health check; 67% of workers did not use the legal health check because they didn't think it was appropriate for the client, the other 33% didn't use it because the client's other needs took priority; and all the workers said they would use the legal health check in the future.

3. Alternative dispute resolution: benefits and risks

Term of Reference 3

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

In relation to Term of Reference 3, Justice Connect supports the LIV's recommendations.

Informed by the case work of Seniors Law and Homeless Law, Justice Connect also wishes to highlight the different ways that alternative dispute resolution (ADR) mechanisms can be used effectively to address the legal problems of individuals experiencing elder abuse and vulnerable individuals involved in tenancy proceedings.

3.1 ADR for people experiencing elder abuse

There are a number of personal and structural barriers to older people accessing the justice system. Personal barriers to accessing justice can include "declining health and mobility, disability, ethnicity, language, gender and social isolation".³² Legal processes can be complex and lengthy when older people require a swift remedy. Legal assistance can be prohibitively expensive as a result of the complexity of the legal issues faced by older members of the community.

In addition to barriers to accessing the justice system broadly, older people face further barriers to disclosing and seeking legal assistance in relation to elder abuse.

Elder abuse is defined as:

elder abuse: any act or omission, occurring within a relationship of trust which causes harm or distress to an older person.

³² House of Representatives Standing Committee on Legal and Constitutional Affairs, *Older People and the Law*, 2007, p.166 (citing the National Legal Aid submission 99, p 2, 7).

³³ Peteris Darzins, Georgia Lowndes and Jo Wainer, 'Financial abuse of elders: a review of the evidence' (2009) 8 citing Dong *et al*, 2008; Chokkanathan and Lee, 2006; Anne *et al*, 2005; Boldly *et al*, 2005; McCawley *et al*, 2006; Kemp and Liao, 2006; Rabiner *et al*, 2004; Choi and Mayer, 2000; Malks *et al*, 2003., 10; Rodney Lewis, 'Taking action against abuse of older people: pathways

Some older people, especially those with an extensive history of abuse, may not recognise elder abuse as a problem that can be resolved with a legal intervention.

There are many reasons why an older person may not disclose elder abuse, including:³³

barriers to disclosing elder abuse

isolation and reliance on the perpetrator for care and companionship

fear of institutionalisation

fear of family members being penalised or prosecuted

desire to preserve family relationships

shame

blaming themselves or feeling responsible for perpetrators actions

fear loss of independence

poor health impacts on energy and motivation to manage emotional conflict and physical change

Two of these reasons are particularly relevant to the legal system: (a) the need to preserve family relationships; and (b) the wish to avoid exposing family members to legal sanctions. Legal issues can remain unresolved for extended periods of time and, generally, it is only when significant consequences transpire – such as the sale of the family home – that the older person seeks help. At this stage the legal avenues to resolve the matter, if any, can be lengthy, stressful and costly.

out of the maze' (2013) 2-3; A Almogue, A Weiss, E-L Marcus, Y Beloosesky, 'Attitudes and knowledge of medical and nursing staff towards elder abuse' 51 (2010) *Archives of Gerontology and Geriatrics* 86; Seniors Rights Victoria, Submission No 71 to the Victorian Law Reform Commission, *Guardianship*, 3 June 2011; Lynette Joubert and Sonia Posenelli, 'Window of opportunity: the detection of management of aged abuse in an acute and subacute health care setting' 48 *Social Work in Health Care*, 702-714, 711.

For these reasons, ADR processes can be particularly well suited to older people wishing to preserve their relationship with family members. For example, 25% of the financial abuse cases that Seniors Law assisted with during the 2013-2014 financial year concerned disputes over significant legal and equitable interests in property, which often resulted from the failure of an assets for care arrangement. These disputes could, in some cases, have been prevented if the older person had obtained information, support and advice prior to the property being transferred.

The Dispute Settlement Centre of Victoria (DSCV) in conjunction with Seniors Rights Victoria, offers a free, confidential Family Meeting Service to older Victorians looking at entering into assets for care agreements.

DSCV employs professionally trained mediators to facilitate discussions between family members, considering options and addressing any concerns at an early stage. DSCV has developed a checklist of general concerns to assist with discussions, and can help with the drafting of written agreements relating to assets for care arrangements.

Recommendation 6

The Victorian Government should ensure that programs such as DSCV are appropriately funded to ensure that all Victorians experiencing disadvantage can access a dispute resolution service that is:

- **positive** – builds on existing relationships and is future focused;
- **empowering** – people find their own solutions;
- **informal and easy to use** – no forms, no fees;
- **flexible** – we can work out times and places to mediate to suit all parties; and
- **confidential** – under the *Evidence (Miscellaneous Provisions) Act 1958* nothing said during a mediation can be used in court.

3.2 ADR in tenancy proceedings

Reducing stress and over-reliance on VCAT

As part of a submission to the Residential Tenancies Act Review, Justice Connect made a series of recommendations aimed at reducing unnecessary evictions into homelessness and minimising the personal hardship and financial costs that accompany these evictions.³⁴ One of these recommendations was to introduce a framework for negotiation and mediation for tenancy matters.

Justice Connect reiterates that a focus on early resolution of tenancy disputes would reduce the burden on VCAT and has significant potential to achieve better outcomes for both tenants and landlords.

ADR has been recognised by VCAT as:

a more cost-effective and flexible alternative to traditional Tribunal hearings and can be less stressful for the people involved. It gives parties greater control over the outcome of their disputes and can often lead to successful outcomes not achievable with traditional methods of dispute resolution.

Currently there is no mechanism requiring ADR in the RTA. A small number of matters have been mediated at VCAT, with encouraging results in terms of resolving matters prior to final hearing. In 2013–14, 30 matters in VCAT's Residential Tenancies List were referred to mediation, 18 of which were resolved through mediation. A further three matters were resolved prior to final hearing.³⁵

Despite its proven effectiveness, mediation and other forms of ADR are underutilised in Victorian tenancy matters. In most tenancy matters run by Homeless Law, the landlord has sought for the matter to be resolved by VCAT at a hearing. This is the case even where a payment plan has been negotiated prior to the hearing date and orders of consent have been agreed to by both parties.

³⁴ Justice Connect Homeless Law, *There's No Place Like Home: Submission to the Review of the Residential Tenancies Act* (August 2015) (RTA submission) (<https://www.justiceconnect.org.au/sites/default/files/Homeless%20Law%20-%20Submission%20to%20the%20RTA%20Review%20%28August%202015%29.pdf>)

³⁵ Victorian Civil and Administrative Tribunal, *VCAT Annual Report 2013–2014*, 8 September 2014, 7.

The heavy reliance upon a VCAT hearing can be problematic for a number of reasons, including:

- VCAT hearings can be stressful for both parties, and although VCAT is regarded as an informal jurisdiction, the hearings can involve complex processes such as calling evidence from witnesses; and
- The volume of matters heard by the Residential Tenancies List (with 59,184 applications made during 2014–15)³⁶ places VCAT under strain and can be an inefficient way of resolving matters that could have been resolved at an earlier stage.

The benefits of mediation from a tenant perspective were identified by a former client of Homeless Law who Justice Connect consulted with as part of the RTA Review:³⁷

I was given the option of doing mediation [by the landlord] with the other tenant, which I did and ... it was an amicable meeting. We were both present with case managers and the people at the actual mediation made sure that both parties were given fair chance to get their points across. It was done really respectfully. I think we both sort of saw things from a different point of view ... For the time being we ended on a handshake and everything has gone back to pleasant.

As highlighted in Justice Connect's RTA Review submission, compliance proceedings are a key area in which tenants, landlords and VCAT could benefit from mediation and its potential to resolve matters to the satisfaction of both parties before escalation and without the need for a VCAT hearing. Justice Connect also identifies rental arrears matters as an area in which mediation has significant potential to reduce unnecessary reliance on VCAT and to improve outcomes for both landlords and tenants.

Another former client that Justice Connect consulted with as part of the RTA Review was not offered the opportunity to participate in a mediation prior to her VCAT hearing for arrears. She said:³⁸

I didn't receive the VCAT notice and I found out through the support services when I was trying to sort out the issue, there was no other avenue to go back ... before proceeding to VCAT... [to] have an opportunity to see if we can sit down and work out an arrangement ... I think a mediation and finding other support avenues or to be able to take the issues rather than leaving us homeless and having a timeframe to move out with no support. This should come before [the] VCAT [hearing] ... [having] an opportunity to sit down and maybe even a support worker there that can educate both, or work out an arrangement that can work for both parties before it goes to VCAT.

Furthermore, of the 62 clients Homeless Law has represented through its Women's Homelessness Prevention Project (WHPP), 42 women (68%) were facing eviction due to rent arrears. Of these 42 women, 24 were living in private rental, 11 were living in public housing, four were living in community housing, two were living in transitional housing, and one woman was living in a private rooming house. The average amount of arrears owed amongst this group of 42 women at the time of their first appointment was \$2177, with the lowest amount owed being \$70, and the highest amount owed being \$7,700.

After 12 months, 33 of these 42 matters had finalised, with 76% of women able to maintain their tenancy through the negotiation of payment plans, including lump sum payments from Homeless Law's brokerage fund. Of this group, however, 76% of women were still required to attend a VCAT hearing prior to their matter being finalised. These figures indicate that landlords are often too quick to resort to VCAT to resolve disputes over rent arrears, rather than negotiating with tenants and their representatives before commencing proceedings. This reliance on the Tribunal places an unnecessary resource burden on VCAT, in circumstances where the parties are capable of resolving the matter to their mutual satisfaction at an earlier point.

³⁶ Victorian Civil and Administrative Tribunal, *VCAT Annual Report 2014–2015*, November 2015 p 30.

³⁷ RTA submission

³⁸ RTA submission

As identified in the ADR Background Paper and the Productivity Commission Report, the obvious risk in ADR for tenancy proceedings is the power imbalance between landlords and tenants.

To minimise this imbalance, tenants should be encouraged to access legal advice and be permitted to have an advocate or lawyer as part of the dispute resolution process.

Recommendation 7

In the current context of a severe shortage of affordable housing and increasing homelessness, landlords, including the Director of Housing, community housing providers and private landlords, should be required to attempt to negotiate with tenants prior to making applications for compliance or possession orders, and the framework for alternative dispute resolution in the Residential Tenancies List should be strengthened. To minimise the power imbalance between landlords and tenants, tenants should be encouraged to access legal advice and be permitted to have an advocate or lawyer as part of the dispute resolution process.

4. Reforming VCAT: improving accessibility, consistency and oversight

Term of Reference 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

Informed by the case work and experience of clients accessing assistance from Homeless Law and Seniors Law, Justice Connect makes the following submissions and recommendations about the practices and procedures of VCAT.

4.1 The need for accessible oversight

Justice Connect's most extensive experience in relation to VCAT is in the Residential Tenancies List, rather than the small claims list, which is the focus of the Review.³⁹ One recommendation that is relevant across VCAT's jurisdictions, however, is the need for an avenue of internal appeal to provide a more accessible mechanism for oversight that would encourage consistency and quality in VCAT decisions and fair outcomes for parties.

There is currently no provision under the VCAT Act for internal review of decisions. The only option for parties is to apply for leave to appeal to the Supreme Court of Victoria on a question of law.⁴⁰ The Supreme Court is not an accessible forum for tenants or, in many cases, landlords.

The absence of a mechanism for a matter to be reconsidered or re-opened by VCAT once an order has been made limits the consistency and quality of VCAT decisions, and leaves parties dealing with often harsh consequences, including eviction.

In a 2010 review of VCAT, then-President of VCAT Justice Bell noted: ⁴¹

There was widespread criticism of the tribunal's current limited capacity for internally rehearing and reopening cases and with the lack of an internal appeal tribunal. There was widespread support for such a system, although many were concerned about how added costs and delay could be minimised.

As the following case study illustrates, even where an appeal to the Supreme Court has reasonable prospects of success, it is a daunting jurisdiction for clients, which carries a risk of adverse costs and protracted proceedings. For many tenants, it is simply not an option to pursue their appeal in this forum.

³⁹ For detailed recommendations regarding changes to VCAT's processes and jurisdiction see Justice Connect Homeless Law, *There's No Place Like Home: Submission to the Review of the Residential Tenancies Act* (2015) <https://www.justiceconnect.org.au/our-programs/homeless-law/law-and-policy-reform/preventing-evictions-and-sustaining-tenancies/there%E2%80%99s-no-place-home-submission-residential-tenancies-act-review> and *Charting a Stronger Course: Submission to the Eight Year Review of the Victorian Human Rights Charter* (2015) <https://www.justiceconnect.org.au/our-programs/homeless-law/law-and-policy-reform/preventing-evictions-and-sustaining-tenancies/charting-stronger-course-homeless-law-submission-eight-year-charter-review>.

reform/preventing-evictions-and-sustaining-tenancies/charting-stronger-course-homeless-law-submission-eight-year-charter-review.

⁴⁰ *Victorian Civil and Administrative Tribunal Act 1998* (Vic) s 148.

⁴¹ The Hon Justice Kevin Bell, *One VCAT – President's Review of VCAT* (25 February 2010) p23. Justice Bell recommended that the VCAT Act be amended to: establish an appeal Tribunal within VCAT; and provide the Tribunal with a general power of reconsideration subject to sensible limits, whether or not an appeal Tribunal is established (at 5).

Client unable to appeal potentially flawed VCAT decision because too disheartened by the result at VCAT

Mabel is a public housing tenant who received a number of breach of duty notices over the past few years. More recently, she had been issued a breach notice for causing a nuisance to her neighbours.

Mabel sought Homeless Law's assistance after learning that, in her absence, the Office of Housing had obtained a compliance order from VCAT, based on allegations she had caused a further nuisance after receiving the recent breach notice. Mabel hadn't known about the VCAT hearing due to issues with receiving her mail. Homeless Law helped Mabel to apply for a review, and obtained a copy of the Office of Housing's application to VCAT, which had included only a copy of the recent breach notice Mabel had been given.

At the VCAT review hearing, however, the Office of Housing sought to lead evidence about all the previous breach notices Mabel had been given over the years. When Homeless Law's lawyers objected to this on the basis that it was procedurally unfair because the application to VCAT had not referred to any of this historical evidence, the VCAT member disagreed and allowed this evidence to be led. Ultimately, the VCAT member confirmed the previous compliance order. When the Homeless Law lawyers requested written reasons for the member's decision, this request was denied.

Mabel was disappointed with the VCAT member's decision, and Homeless Law obtained an opinion from a barrister who confirmed it was likely that the decision could be successfully appealed to the Supreme Court as a number of errors of law could be identified. Homeless Law offered to assist Mabel with an appeal, but she was so discouraged by what had occurred that she became disengaged and did not return calls before the 28 day period to lodge an appeal had expired.

For Mabel, the availability of an easily accessible review mechanism within VCAT might have provided

her with a more appropriate forum for clarifying the VCAT member's decision, without placing additional strain and pressures on an already struggling tenant.

Victoria can look to other jurisdictions for guidance on the need for, and effectiveness of, a mechanism for internal appeal:

Queensland

The Queensland Civil and Administrative Tribunal (QCAT), which hears a range of disputes, including residential tenancy disputes brought under the *Residential Tenancies and Rooming Accommodation Act 2008* (Qld), has an internal appeals process, including for tenancy disputes. If the original QCAT decision was made by a non-judicial member (a senior member or ordinary member who is not a judge, or an adjudicator),⁴² a party wishing to appeal the decision may appeal to QCAT's Internal Appeal Tribunal.⁴³ Parties do not require leave to appeal a question of law.⁴⁴ Leave of the Internal Appeal Tribunal is required to appeal a decision of fact, or a decision of mixed law and fact.⁴⁵ A hearing by the Internal Appeal Tribunal involves a reconsideration of the original evidence. If a party is dissatisfied with a decision made by the Internal Appeal Tribunal, the party can apply for leave to appeal to the Court of Appeal on a question of law.⁴⁶

New South Wales

The *Civil and Administrative Tribunal Act 2013* (NSW) (**C&A Act**) provides a limited 'internal appeal' right for certain decisions made by NCAT in certain circumstances.⁴⁷ Parties generally have a right to appeal a question of law without needing to seek leave. Parties can seek leave to bring an internal appeal on 'any other grounds' (other than a question of law) to the Appeal Panel.⁴⁸ The Appeal Panel may 'permit such fresh evidence, or evidence in addition to or in substitution for the evidence received by the Tribunal at first instance', to be given in the new hearing as it considers appropriate in the circumstances.⁴⁹ Parties need to seek and obtain leave before bringing fresh evidence before NCAT in an internal appeal.

In response to potential concerns about the costs or complexities associated with introducing an internal

⁴² *Queensland Civil and Administrative Tribunal Act 2009* (Qld) Schedule 3.

⁴³ *Queensland Civil and Administrative Tribunal Act 2009* (Qld) Part 8 Division 1.

⁴⁴ *Queensland Civil and Administrative Tribunal Act 2009* (Qld) s 142(1).

⁴⁵ *Queensland Civil and Administrative Tribunal Act 2009* (Qld) ss 142(1), (3)(b).

⁴⁶ *Queensland Civil and Administrative Tribunal Act 2009* (Qld) s 150.

⁴⁷ *Civil and Administrative Tribunal Act 2013* (NSW) s 32.

⁴⁸ *Civil and Administrative Tribunal Act 2013* (NSW) s 80(2)(b).

⁴⁹ *Civil and Administrative Tribunal Act 2013* (NSW) s 80(3)(b).

appeal mechanism, Justice Connect reiterates the comments of Justice Bell:⁵⁰

That more parties might appeal is not a persuasive reason not to have an appeal tribunal at VCAT. The present system is less accessible than it should be. I am concerned that some parties with legitimate grounds are not pursuing an appeal because of these restrictions. This is not consistent with the principle of equal access to justice, which should embrace an appropriate appeal system.

A process for internal appeal would ensure that parties had an affordable and accessible right of appeal and that the quality of VCAT decision-making is monitored and maintained. Given the magnitude of the consequences for tenants of decisions made in the Residential Tenancies List, such an avenue for appeal has significant potential to reduce arbitrary evictions and to build trust and confidence in the decisions of the Tribunal.

Justice Connect recommends that allowing for internal appeal would create an accessible mechanism of oversight, and improve the consistency, predictability and quality of decisions.

Recommendation 8

The Victorian Government should make legislative amendments to allow for internal appeal of VCAT decisions.

4.2 Retirement villages

4.2.1 General disputes

The current dispute resolution process in respect of retirement village disputes is complex and obscure. It is extremely difficult for an older person with no legal training to navigate the relevant legislation in order to seek legal redress from the Tribunal.

Residents who are unhappy with the conduct of a manager are able to access the Consumer Affairs

Victoria conciliation service. If they are unhappy with the outcome of the conciliation, they are able to apply to the Tribunal, however the path to do so is far from clear.

The only explicit right to make an application to VCAT in the *Retirement Villages Act 1986* (Vic) (**RV Act**) is in respect of a retirement village manager refusing to enter into a management contract with the purchaser of retirement village premises.⁵¹

However, section 18 of the RV Act, in combination with section 224 of the *Australian Consumer Law and Fair Trading Act 2012* (Vic) provides the Tribunal with the power to hear disputes about the supply of goods and services under residence contracts.

In order for a resident to make such an application, it is necessary to correctly identify the Tribunal's jurisdiction and to plead what may be a relatively simple dispute in terms of a breach of consumer law. There is extremely limited free or even low cost advice available.

Other jurisdictions provide a clear pathway for residents to make an application to the relevant Tribunal in respect of any dispute concerning a retirement village. Most relevant legislation provides a clear right to make an application to the relevant court or tribunal.⁵² Some jurisdictions require parties to mediate first,⁵³ and others provide the relevant court or Tribunal with the power to decline to hear a matter if it thinks that the dispute should be resolved under the retirement village's dispute resolution procedure or through mediation.⁵⁴

The legal framework in Victoria makes it very difficult for older residents of retirement villages to access the justice system in relation to disputes concerning their residence right.

4.2.2 Termination disputes

Section 16 of the RV Act sets out a process for an owner to terminate a residence contract. If a resident is in breach of a residence contract, the owner may issue a notice requiring the breach to be remedied, or the resident to cease the breach, within 28 days. If the resident fails to remedy the breach within that period, and the breach is

⁵⁰ The Hon Justice Kevin Bell, One VCAT – President's Review of VCAT (25 February 2010) p58.

⁵¹ The Retirement Villages Act 1986 (Vic), s. 32E and F

⁵² Retirement Villages Act 1999 (NSW) s.122(1); Retirement Villages Act 2012 (ACT) s.176(1); Retirement Villages Act 1999 (Qld) s.167; Retirement Villages Act (NT) s.13 (court); Retirement Villages Act 1987 (SA) s.32(1)

⁵³ Retirement Villages Act 1999 (Qld) s.154; Retirement Villages Act (NT) s.13(1)

⁵⁴ Retirement Villages Act 1992 (WA) s.42, Retirement Villages Act 1987 (SA), s.32.

“substantial”, the owner may serve a further notice requiring the resident to leave the village.

Pursuant to sub-section 16(7), it is an offence for an owner to serve a non-compliant termination notice.

It is, therefore, open to a resident to challenge a notice on the grounds that it was not a valid notice under the provisions of the RV Act. The resident could claim, for example, that the notice did not disclose a substantial breach of the residence contract, or failed to allow the required period to rectify the breach. Consumer Affairs Victoria can investigate and prosecute breaches of the Act.

Alternatively, the resident is entitled to apply to the Tribunal for an order restraining the eviction on the basis that the owner has failed to comply with section 16. However, the right to make such an application is not explicitly stated in the legislation and so is not easily accessible for residents who are unable to access legal advice.

The relevant legislation in New South Wales⁵⁵ and the Australian Capital Territory⁵⁶ provides more detailed procedures for ending a residence contract and recovering possession of the retirement village residence. Those jurisdictions effectively require a Tribunal order except in limited cases of abandonment, death or frustration.

4.2.3 Access to legal assistance

Given the current complexity of the law concerning retirement villages disputes, it is imperative that residents who are unable to afford a lawyer are able to access free legal assistance. Even if the law is amended to simplify the complaints process, it will be critical to ensure that older people have access to legal assistance in order to ensure access to the justice system.

Other jurisdictions have recognised the importance of the provision of free legal advice. In New South Wales, for example, the Seniors Rights Service is funded to provide a Retirement Village Legal Service.⁵⁷ Similarly, in Queensland the Caxton Legal Centre is funded to provide the Park and Village Information Link service.⁵⁸

Recommendation 9

The Victorian Government should

- Amend the RV Act to:
 - include a less formal dispute resolution procedure which is clear to residents, for example, mediation and the establishment of an Ombudsman;
 - include a right for the parties to apply to the Tribunal for an order in respect of any dispute concerning a retirement village; and
 - provide a specific process for ending a residence contract and recovering possession of the RV residence, similar to the provisions in the *Retirement Villages Act 1999* (NSW) and the *Retirement Villages Act 2012* (ACT). An order of the Tribunal should be required except in limited circumstances such as abandonment, death or frustration.
- Fund the provision of legal advice and assistance for residents in relation to Retirement Village disputes, similar to the Seniors Rights Service Retirement Village Legal Service in New South Wales.

⁵⁵ The Retirement Villages Act 1999 (NSW) Part 9

⁵⁶ The Retirement Villages Act 2012 (ACT) Part 9 s.184

⁵⁷ This specialist service provides legal advice and assistance to residents of retirement villages in all aspects of retirement village law. The solicitors also visit retirement villages to conduct seminars to educate residents about their rights and responsibilities and to provide information about the services they provide. – see <http://seniorsrightsservice.org.au/our-services/#legal>

⁵⁸ The Park and Village Information Link (PAVIL) is a specialist service providing free information and legal assistance for residents and prospective residents of retirement villages and manufactured home parks in Queensland – see https://caxton.org.au/park_village_information.html

5. Effective pro bono as a part of Victoria's legal landscape

Term of Reference 5

The provision and distribution of pro bono legal services by the private legal profession in Victoria

5.1 Effective delivery of pro bono services

Justice Connect is the main facilitator of pro bono legal assistance to Victorians experiencing disadvantage, and the community organisations that support them. Victorian lawyers have a strong commitment to pro bono work. Building and nurturing this is a key element of Justice Connect's strategy.



At the core of Justice Connect's approach is the intake assessment of legal issues presented by people experiencing disadvantage, and the referral to pro bono lawyers who will assist for free. If Justice Connect assesses that a request for legal help can be addressed through pro bono assistance, it will match the client with a lawyer who can help, and provide legal documentation and support to the lawyer.

Assessment and referral data informs Justice Connect's understanding of unmet legal need and so its project development and refinement of existing programs. It is also used to inform law and policy reform priorities and activity.

Justice Connect also looks for new opportunities to respond to unmet legal need with the unique skills and contribution of pro bono lawyers. In doing this, Justice Connect draws on the expertise and passion of its staff and engages collaboratively with the community sector and the legal profession to identify opportunities and design and resource

Justice Connect's work involves the following elements:

- an intake assessment phase;
- the provision of information, non-legal support and training of lawyers and/or clients; and
- legal assistance through casework and referral to pro bono lawyers.

effective pro bono responses. Justice Connect's organisational structure and operations support team underpins this.

When deciding whether to respond to unmet legal need with either referral or the development of a new program, Justice Connect asks:

- Is the client unable to **afford to pay** for legal representation or does their legal problem otherwise **raise public interest** questions?
- Is there **another agency** better placed to assist?
- Do pro bono lawyers have the **skills and willingness** to assist the client (or can we help develop this)?
- Do we have the **expertise and resources** necessary to support a pro bono response (or can we get these)?

Where a need is demonstrated and pro bono lawyers and resources are available, Justice Connect will make a referral or develop and pilot new ideas. Some of these will be developed to become new programs of Justice Connect. Others may become stand-alone programs which are supported by Justice Connect through, for example, co-location, administrative support or access to pro bono lawyers. Some may become completely independent from Justice Connect.

5.1.1 Building collaborative relationships to connect pro bono opportunities

The Referral Service facilitates access to pro bono lawyers for people experiencing disadvantage that cannot otherwise access legal services. It is able to achieve this because it has strong established relationships with lawyers and a proven ability to effectively assess legal matters appropriate for pro bono assistance.

The Referral Service is uniquely placed to access a large pool of lawyers because it is able to make pro bono referrals to Justice Connect Members and because it manages the pro bono programs of the Law Institute of Victoria and the Victorian Bar.

In seeking to improve its ability to reach people who qualify for pro bono assistance, Justice Connect recognises the importance of developing and maintaining strong relationships within the legal assistance sector. In this way Justice Connect

builds dedicated and effective pathways for people to access pro bono services where appropriate.

Our growing relationships in the legal assistance sector also bring opportunities to identify and participate in challenging and changing laws that are unfair and create barriers to access to justice. We do this by using evidence from our referral work, including our data collection and the stories of our clients.

An example of our work developing dedicated referral pathways from community legal sector to pro bono is the project we developed together with JobWatch. Because it can be difficult for unrepresented employees to exercise their rights at the FWC, Justice Connect's Referral Service is working with JobWatch to help secure pro bono legal representation in unfair dismissal and general protections claims listed for conciliation or conference. We have placed a lawyer at JobWatch one day per week to do on the spot assessments of cases that JobWatch cannot address and which could be assisted by a pro bono lawyer. As a result of this close collaboration, we have seen a significant increase in referrals for employment law assistance. This is an area which has traditionally seen high levels of unmet legal need and low levels of pro bono uptake.

Expansion of the model into other Community Legal Centres with employment law services has commenced with Western Community Legal Centre and their Employment Law Project.

How the Justice Connect and JobWatch project works



Other examples of our work with CLCs is illustrated in the following case stories:

Family violence survivor seeks protection for family

Justice Connect received a request from the Women's Legal Service (WLS) on behalf of their client Liana. Liana, a sole carer for her four children aged nine to sixteen years and who did not speak English, was seeking an intervention order to protect her and her children from her violent ex-partner. Liana was in receipt of the disability support pension for significant health issues.

Liana's application for an intervention order was listed for directions hearing before the Magistrates' Court at Frankston. Legal Aid duty lawyer services were not available to the client and legal aid funding was not available. WLS had serious concerns about the client representing herself given the history of family violence and her special circumstances.

Justice Connect referred the matter to Counsel for representation. The Court granted the client's application for a 12 month intervention order for her and her children.

The WLS expressed their gratitude for Counsel's assistance, without which the client would have been unlikely to obtain the desired order. The solicitor at the WLS wanted us to know that "our Client would have struggled to self-represent and obtain the intervention order in Magistrates' Court – she required protection. It was a privilege to help Liana. She was a pleasant middle aged lady who simply wanted her husband's abusive behaviour toward her and her children to stop. She was extremely relieved and happy with the result we were able to get and this gave me great satisfaction."

Counsel echoed his satisfaction, describing providing pro bono assistance as a "privilege and that the client's satisfaction with the outcome for him affirmed the value of pro bono," also adding "I am greatly concerned that a person in Liana's position was not in receipt of legal aid funding. She had very little English speaking ability, a history of mental illness and no disposable income. She was caring for her family solely on welfare. If she was not eligible for VLA funding, I query who is?"

A Parent's anxiety allayed thanks to specialist CLC – Counsel and Our commitment to Access to Justice

Lucy approached the Women's Legal Service Victoria (WLSV) for assistance one week before the final hearing of her application for sole Parental Responsibility (PR) before the Family Court.

The father of her children had perpetrated serious family violence against her on more than one occasion in breach of existing intervention orders. At the time of the final hearing, the father had supervised contact with the children. Lucy sought consent orders which ordered a graduation to unsupervised contact for the father on the condition that she obtained sole PR.

Lucy's former solicitor had ceased to act as a result of the changes to Victoria Legal Aid (VLA) funding in Family Law matters.

The WLSV advocated that representation for Lucy at the final hearing was warranted given the serious family violence and the possibility that she would be subject to cross-examination by the perpetrator. The WLSV sought assistance from Justice Connect requesting Counsel to appear at the hearing.

On very short notice, Justice Connect referred the matter to Counsel who appeared on Lucy's behalf. This hearing was adjourned on the basis that the period of supervised time with a professional supervisor had not been completed by the father, in line with family report recommendations. Without the completion of the supervised time the Court was not in a position to evaluate the level of ongoing risk to the children.

The hearing was re-listed for later in the year. The WLSV continued to represent the client and appealed VLA's decision not to provide trial funding on the basis that without funding for a barrister the client would be alone at trial and facing a man who had previously assaulted her in Court. WLSV were unsuccessful in appealing VLA's decision and sought our further assistance.

Lucy was successful in her application and was extremely grateful for the assistance. She explained her relief: "I was suffering anxiety at the thought of facing the other party in Court. I broke down with relief when Deb Harris agreed to assist me. Deb was absolutely beautiful and knowledgeable and I appreciate what she did for me especially on such short notice."

Counsel echoed her satisfaction with being able to "give back" by assisting Lucy to negotiate "an appropriate outcome that was empowering for the client".

continued

Counsel also reflected upon her assistance as necessary “to fill the gap that legal aid failed to fill”.

Counsel further commented that “The legal aid funding cuts have increased the likelihood of children being placed in danger. Sadly, it is often those who do not have the means to privately fund lawyers who are in the most ‘at risk’ group. These people are often also poorly educated, suffer mental health difficulties or are immigrants. It asks a great deal of the court to ensure children’s best interests are met when advocacy is poor or non-existent. This, of course, is heightened when one party has been abused by the other. In these circumstances, we at the bar continue to offer our services for little or no fee for those who seem most in need. I have no doubt that funding levels and criteria will change again, but I fear what it may take to scare our government(s) into making it happen.”

5.1.2 Maximising the potential of pro bono

A lack of skills and knowledge of commercial lawyers of the areas of law in which disadvantaged individuals require assistance will not necessarily present an insurmountable barrier to undertaking pro bono work outside a lawyer’s usual area of expertise. In Justice Connect’s experience, well designed and managed, and adequately resourced, pro bono programs can leverage considerable legal expertise from the private sector, which can be skilled up and supervised to provide targeted and tailored legal services to particularly disadvantaged groups who are hard to connect to traditional services. The following case study sets out the

model of training, supervision and resourcing that Homeless Law uses when working with its eight pro bono partner firms and approximately 400 pro bono lawyers to meet the legal and non-legal needs of clients experiencing or at risk of homelessness.

Using this model, Homeless Law works with pro bono lawyers to provide legal representation in relation to infringements, tenancy, credit and debt and guardianship and administration. Together with a small team of in-house lawyers and social workers, Homeless Law assists a highly vulnerable client group to access the justice system and achieve better outcomes.

Resourcing well-supported pro bono legal services for clients experiencing or at risk of homelessness

Key aspects of Homeless Law’s model for working with its pro bono teams are:

Compulsory induction training for all new pro bono lawyers on key areas of law, dealing with challenging clients and risk management. All new graduates and lawyers to the program receive 8 hours of compulsory training, which is also available online. The Annual Pro Bono Lawyer Survey is used to identify other training needs for pro bono lawyers. In 2014 – 15, masterclasses were delivered in Advanced Interview Techniques and Client Skills and Human Rights in Tenancy Negotiation and Advocacy.

Centralised bookings, targeted areas of law and eligibility criteria. All matters are ‘triaged’ by Homeless Law before being booked into a clinic and the range of legal issues Homeless Law assists with is limited, so its pro bono lawyers build expertise in these areas.

Intake memos. At the outset of a matter pro bono lawyers are provided with an intake memo setting out the legal issue, timeframes, relevant law, scope of assistance, suggested steps and key resources. In 2014–15, in-house Homeless Law lawyers prepared 452 detailed intake memoranda for pro bono lawyers before their first appointments with clients. The memos play a crucial role in providing guidance to Homeless Law’s pro bono lawyers to improve the quality and efficiency of their casework, as well as their confidence in running the matters. In the 2015 Pro Bono Lawyer Survey, one lawyer commented:

‘The support from Homeless Law is incredible; always available and accessible; high quality advice and assistance; intake memos are invaluable.’

Online resource, ‘Homeless Law in Practice’, provides practice-based guidance to pro bono lawyers, including template correspondence and submissions.

continued

Homeless Law staff lawyer guidance to pro bono lawyers by phone, email or attendance on a regular basis. In October 2015, Homeless Law recorded a snapshot of the in-house support provided to pro bono lawyers in the form of calls and emails providing guidance on Homeless Law files (ie not including telephone advice, triage, development of resources or preparation of intake memos). Throughout the month of October 2015, the Homeless Law team of 5 lawyers (2 x full time; 2 x 0.8 EFT; 1 x 0.6 EFT) had 104 contacts with pro bono lawyers, and recorded approximately 43 hours of support (i.e. over one full time work week).

Clear pro bono team structure and well defined roles, expectations and responsibilities. These are set out in a detailed Policies and Procedures Manual and roles are: Team Leaders, Supervising Lawyers and File Lawyers.

Clear policies and checklists for attending clinics, running files, using PIMS (online information management system) and dealing with challenging clients.

Secondment agreements between pro bono lawyers and Homeless Law setting out obligations and responsibilities.

Matter debrief with in firm supervising lawyer and file lawyers after the clinic (to discuss matter strategy, risks, timeframes and key resources) and sign-off requirements.

Regular file review by in firm nominated people and desk-based review by Homeless Law staff lawyers (using PIMS, which includes all file notes and key documents).

Multi-disciplinary team. Homeless Law's two social workers provide support to pro bono lawyers to assist them to provide holistic assistance to a vulnerable client group with complex circumstances.

In relation to different models of utilising pro bono, since the Productivity Commission's Inquiry, Justice Connect has also embraced the Health Justice Partnership model, which is discussed in detail in Term of Reference 1.

Another example of an holistic service delivery model that partners pro bono legal services with in-house expertise and non-legal service providers can be seen in Homeless Law's Women's Homelessness Prevention Project.

Pro bono and holistic service delivery: Women's Homelessness Prevention Project

The Women's Homelessness Prevention Project (WHPP) is a holistic, integrated model of providing legal services that focuses on preventing homelessness through addressing both legal and non-legal issues. It keeps women and children in housing through a combination of legal representation and social work support.

Homeless Law commenced the WHPP with funding from the Lord Mayor's Charitable Foundation and support from the City of Melbourne and Herbert Smith Freehills in September 2013. After six months of planning (including building relationships with key referral agencies and developing policies and procedures), the first clinic was held at a Melbourne city library on 8 April 2014.

Holistic legal services

In its first 12 months:

- 62 women were provided with legal representation (including advice, negotiation with landlords and representation at VCAT) and intensive social work support (including links with family violence counselling, financial counselling, employment, housing and mental health services).
- These 62 women had a total of 102 children in their care who were also at risk of homelessness and the hardship and social dislocation that comes with it.
- 95% of the women assisted to date have experienced family violence in the past 10 years. 90% of women reported that they were suffering from a mental illness, and 81% suffer from anxiety and/or depression.

At the 12-month point (April 2015), through the WHPP's combination of legal representation and intensive social work support, 81% of finalised matters resulted in women maintaining safe and secure housing or resolving a tenancy legal issue (eg a housing debt) that was a barrier to accessing housing.

continued

Social and financial benefits of preventing homelessness

Falling behind in rent is the most common risk to WHPP clients' housing. Of the 62 clients assisted in the first 12 months of the WHPP, 42 women with a combined total of 60 children in their care were facing eviction into homelessness due to rent arrears. The average amount of arrears owed was \$2,177.

Some key data regarding the costs of homelessness includes:

- A 2013 Australian Housing and Urban Research Institute (AHURI) study that identified that people experiencing homelessness had higher interaction with health, justice and welfare systems than people with stable housing and estimated that an individual experiencing homelessness represents an annual cost to government services that is \$29,450 higher than for the rest of the Australian population. Of this increased cost, \$14,507 related to health services, \$5,906 related to justice services, and \$6,620 related to receipt of welfare payments.
- A 2006 Victorian Government paper, which identified a potential cost of over \$34,000 per year to support a tenant evicted from public housing through homelessness services. This was compared to approximately \$4,300 in service costs per year for a household in public housing.
- A 2011 AHURI study, which identified the long term impact of homelessness on children. The study noted: '[we] know that children who become homeless, whether through domestic violence or other events, frequently suffer the trauma of disrupted schooling and friendships and that homeless families almost always experience financial disadvantage'.

In a 12 month period, the WHPP directly prevented the eviction of 35 women and their families into homelessness. Using the AHURI figures, this would mean **a cost saving of \$1,030,750**. Twelve of these women were in public housing, so their costs of support if evicted would have been approximately \$408,000. These figures do not capture the costs in relation to the 68 children in these women's care who have also avoided homelessness.

Given that the majority of WHPP clients are at risk of eviction for rent arrears of less than \$2,200, the above figures indicate that the WHPP's focus on intervening early to prevent women and children entering homelessness delivers significant personal, social and financial benefits.

The WHPP costs Homeless Law approximately \$220,000 per year, which includes employing a project lawyer and 0.6 social worker, as well as the management, administration and other infrastructure (eg IT and communications) required to run an effective, efficient program.

Homeless Law leverages the pro bono services of our project partner, Herbert Smith Freehills, who provide approximately 40 lawyers to the WHPP, and in this way Homeless Law is able to multiply the impact of any funding received.

Through an innovative, integrated model, incorporating multi-disciplinary in-house expertise and pro bono, the WHPP is delivering real results for women and children, as well as alleviating pressure on the homelessness, health and justice sectors through its preventative focus.

5.2 Understanding the benefits and challenges of pro bono

In April 2015, Homeless Law undertook its third Annual Pro Bono Lawyer Survey. The survey is an important tool for Homeless Law's planning, including identifying the benefits of the program, understanding the challenges and understanding the training and support needs of our lawyers.

Homeless Law received 143 responses from pro bono lawyers. Questions and responses include:

- identifying how many years lawyers have been part of the Homeless Law program (36% of

participants had been involved more than 3 years);

- gauging use of Homeless Law resources (including Homeless Law in Practice and PIMS, an online electronic client file database);
- understanding the benefit of Homeless Law's integrated practice for lawyers who had worked with the Homeless Persons' Liaison Officers (85% of respondents identified that working with the HPLO allows them to focus more closely on their clients' legal issues);
- assessing use of the Charter of Human Rights and Responsibilities in casework;
- identifying whether lawyers feel their work has made a difference to their clients (85% did); and

- understanding the skills, challenges and motivations of Homeless Law's pro bono lawyers. As with previous years, over 80% of lawyers identified their wish to improve access to justice and use their skills to address disadvantage as key motivators. This year, advocacy and appearance experience was identified by 90% of respondents as a skill built by participation in Homeless Law, closely followed by file management and client interview skills. Pro bono lawyers again identified client management as a challenge of their Homeless Law work and Homeless Law will continue to develop its training and support program with this in mind.

Other insights from the survey include:

- **Non-legal issues:** the most common non-legal issues that the pro bono lawyers identified amongst their clients were mental health (83%), financial (80%), housing (79%) and drug and alcohol (76%).
- **Files and workload:** most lawyers run 1 to 2 files per year (33%) but it is notable that 28% run 5 to 6 files per year which is a significant commitment for Homeless Law pro bono lawyers. Almost 50% of lawyers spend between 11 and 30 hours per file from start to finish, and not surprisingly, 73% of lawyers said that their commercial workload could prevent them from doing Homeless Law work in the future, as indicated by this response:

'A great program. Difficult to juggle at times with a commercial workload, but very rewarding.'

- **Supervision:** 92% of lawyers found that contact with their internal supervising lawyers was helpful or very helpful. 77% of lawyers have contacted the Homeless Law team directly when running a file, and 96% of those who contacted Homeless Law directly found it useful. One lawyer commented:

'Program is great – keep up the great support JC!! All the team who make it run so smoothly for the lawyers – thank you.'

Other feedback from lawyers indicating that they are well supported and satisfied with the Homeless Law program includes:

'I love working for Justice Connect. I feel a huge sense of achievement when we get a great outcome for the client. I feel like I am giving back and have such a deeper understanding of homeless people and their underlying problems. Working for vulnerable clients makes me feel like I am contributing to a better society!'

'I think it is very rewarding and great for building skills as a junior lawyer. I have advised all my friends starting as graduates this year to sign up for the clinic.'

'I really enjoy the work, and feel like I make a tangible difference to people's lives. The outcomes are often immediate, unlike some of my commercial work. I have always found Homeless Law staff to be extremely helpful when I contact them about novel or complex issues. My clients are often grateful for my assistance.'

'It is a great program and I really enjoy being a part of it.'

'Thank you for coordinating such a great program and enabling commercial lawyers to dedicate time and experience to the program.'

5.3 Opportunities to strengthen pro bono: Legal Services Panel incentives

The current requirement that law firms who are on the Victorian government's Legal Services Panel, covered by a State Purchase Contract (Deed of Standing Offer), are required to do pro bono work has played an important role in encouraging the commitment of Victorian lawyers to undertake pro bono work.

Justice Connect commends the Victorian Government for inclusion of pro bono requirements in its contracts for legal services. It is clear that the Victorian Government's inclusion of a pro bono obligation in the contractual requirements for the Legal Services Panel since 2002 has made a significant contribution to Victoria being Australia's strongest performing pro bono jurisdiction today.

It should be noted, however, that as pro bono culture in Victoria has developed, many firms are now finding their contractual obligations to the Victorian government to undertake pro bono work are being easily met. The Victorian government contractual requirements can be far less onerous in terms of average participation rates than the

Australian Pro Bono Centre's Aspirational Target (Aspirational Target), to which many Victorian government Legal Services Panel firms are also signatories.

To demonstrate, Clayton Utz, Ashurst and Allens, in their submission to the Productivity Commission's Inquiry into Access to Justice Arrangements⁵⁹, set out the following calculations which show that even in circumstances where large firms might have been awarded a large government contract, often the pro bono obligations under that contract are much less onerous than the firm's existing obligations under the Aspirational Target, and indeed, their actual annual pro bono performance:

"By way of example, assume that a firm has 200 lawyers and will perform \$2 million worth of government legal work under a tender arrangement:

- (i) If the government asks that a firm performs 15% of the value of the tender work in pro bono work, such an arrangement might be expected to result in \$300,000 of pro bono work being performed during the financial year. At an average charge out rate of \$350 per hour, this would require 857 hours of pro bono work**
- (ii) However, if that firm instead met the 35 hour Target figure, this would result in 7,000 hours of pro bono work being performed..." (p15)"*

**By our calculations this equates to roughly 4.28 pro bono hours per lawyer in a year.*

On the other hand, Justice Connect appreciates that there are still many firms who find the Victorian Government's contractual pro bono requirements challenging. Using the percentage of panel work as the benchmark for each firm's pro bono contribution can potentially create unequal burdens across different panel firms. For example, the firms who do a lot of Victorian government work would have an obligation to do much more pro bono work than those who do small pieces of work for the Victorian government. Similarly, firms which have a narrow area of expertise may find it difficult to find appropriate pro bono work to undertake on behalf of individuals or organisations with access to justice priorities. They may also be firms with a smaller or less developed pro bono practice.

It is therefore necessary to strike a balance between the capacity of the firms with well-developed pro bono programs and a broad range of expertise that is best suited to responding to unmet legal need through pro bono legal assistance; and those firms who find it more challenging to contribute pro bono legal services.

Recommendation 10

Justice Connect urges the Victorian Government to encourage firms to become signatories to the Aspirational Target. Future tenders for legal services providers could also recognise firms who are Aspirational Target signatories.

For example, additional weight might be applied during the tender process to firms who are signatories to the Aspirational Target. Reporting on their efforts and achievements working towards the Aspirational Target would encourage firms to continually improve upon their pro bono contribution in a way that takes into account the size of the firm and the capacity of its pro bono program while also meeting the minimum compulsory contribution that is prescribed in the existing panel arrangements.

5.3.1 Challenges with meeting the Victorian Government pro bono requirements

Pro bono coordinators from the member firms Justice Connect consulted commended the recognition of non-legal assistance in the Victorian government's Policy Guidelines for the delivery of Pro Bono Services for an Approved Cause under the Government Legal Services Contract (**Policy Guidelines**). This was because in circumstances where there was a limited pro bono or Corporate Social Responsibility budget to work with, coordinators could rely on these requirements to encourage the firm to provide non legal assistance to community legal centres.

⁵⁹ <http://www.pc.gov.au/inquiries/completed/access-justice/submissions/submissions-test2/submission-counter/subdr224-access-justice.pdf>

However, some challenges were identified with meeting the requirements in the Policy Guidelines. In particular, the concept of pro bono for an approved cause is framed slightly differently to the definition developed by the Australian Pro Bono Centre and adopted by the Commonwealth Government. The practical reality of this difference in definition often means that much of a firm's pro bono work will fall outside the scope of the Policy Guidelines, even though it falls squarely within the widely accepted Australian Pro Bono Centre definition.

This often does not present issues for larger firms, or firms with a broad range of practice areas in Victoria. However, for smaller firms or those with a limited range of expertise, a lot of the pro bono work that the firms were best suited to tends to fall outside of these guidelines (for example, assisting not-for-profit organisations with advice on governance issues).

5.3.2 Administrative challenges associated with pro bono reporting requirements

Justice Connect's member firms also identified challenges with the administrative aspect of the reporting requirements. This is widely considered to be unduly time consuming for pro bono coordinators, as they need to track through the pro bono work undertaken in a relevant period, identify the matters that fell within the requirements, and record that information into the Victorian government's software program. This process can be particularly onerous for smaller firms that don't have a dedicated pro bono coordinator.

Recommendation 11

The Victorian Government should consider aligning the reporting requirements with the Commonwealth Government's reporting requirements to streamline the process for firms undertaking government legal work in both jurisdictions. Streamlining this process might further encourage firms to increase their pro bono contribution.

5.4 Expanding pro bono in areas of unmet legal need

5.4.1 Pro bono coordinator- central conflict clearances

Justice Connect commends the government on its facilitation of a central conflict coordinator role within the government.

As most pro bono work for low-income and disadvantaged people involves government, clearing a perceived or commercial conflict is crucial to encouraging law firms who act for government to also take on pro bono work for these clients. Feedback received from Justice Connect's member firms is that they have had a very positive experience working with the Victorian Government's pro bono coordinator. The absence of such a role in other states (notably NSW) has had a "chilling" effect on pro bono work in those jurisdictions.

As the Productivity Commission noted at p831 of its Access to Justice Inquiry Report in relation to other jurisdictions, appointing a pro bono coordinator to clear conflicts:

"The coordination role performed by the Department of Justice provides important 'distance' for the firms, allows the nature of the concern to be relayed to the relevant agency in an anonymous form (preventing any risk of the agency 'retaliating' against the potential pro bono client), and fit naturally with the centralised tender arrangements for government legal services. Adopting, and publicly announcing, such a coordinator would go at least some way to dispelling adverse perceptions, and potentially increase pro bono services. A central coordinator with a record of actions allowed, or those not allowed due to direct conflicts, could also provide a repository for information."

Recommendation 12

Continue to facilitate the clearance of conflicts in pro bono matters through the central conflict coordinator role, and to encourage pro bono coordinators or relationship partners within panel firms to familiarise themselves with this process to give them comfort in making use of this function when assessing potential conflicts in pro bono matters.

To ensure consistency in the management of potential conflicts in pro bono matters across all panel firms, we recommend that the Government develop a guidance paper around the type of commercial conflicts that Government departments may consider clearing and in what circumstances. For example, the Government could implement a policy providing that it would clear a conflict of interest in circumstances where, provided there was no direct legal conflict of interest involving the pro bono lawyer, a panel firm wishing to represent an individual experiencing disadvantage in relation to disputes against the department could do so, up to a certain threshold amount.

5.4.2 Mapping data to identify gaps in pro bono services

Justice Connect expects that through Legal Services Panel firms' extensive reporting requirements, the Victorian Government is able to capture rich data about the nature of pro bono assistance that firms are engaging in to meet their contractual requirements. To date, very little of this sort of data has been made available to pro bono firms or to Justice Connect.

An examination of this data captured over the past 13 years would enable Justice Connect and its colleagues in the legal assistance sector to map gaps and trends in the provision of pro bono legal assistance against unmet legal need in Victoria, and identify targeted strategies that would enable us to help Legal Services Panel firms to increase the impact of the pro bono assistance they are undertaking.

Recommendation 13

Data captured by the government about the nature of pro bono participation be made available to Justice Connect (on an appropriately de-identified basis to protect the privacy of Legal Services Panel Firms, or alternatively, released with the express consent of the firms whose data is being released) to identify new opportunities to increase effective pro bono participation in Victoria.

6. Maintaining an appropriately resourced legal assistance sector through adequate government funding

Term of Reference 6

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

6.1 Ongoing resources to deliver innovative responses to unmet legal need

Pro bono is not a substitute for an adequately funded free legal services sector.

As discussed above, all arms of Victoria's legal assistance sector – Legal Aid, community legal centres, Aboriginal controlled legal services and pro bono – need to be adequately resourced to support the delivery of appropriate, accessible and effective legal information, advice or representation to members of the Victorian community who are unable to access the private sector.

Justice Connect uses its own resources and philanthropic funding to set up innovative responses to legal need, such as Homeless Law's Women's Homelessness Prevention Project, and the Debt and Tenancy Legal Help for Prisoners Project (initially funded by the Lord Mayor's Charitable Foundation and The Ian Potter Foundation respectively).⁶⁰ However, once the initial independently funded phase of Justice Connect's innovative projects have reached their conclusion, Justice Connect, like many community legal centres, then faces uncertainty as to whether these projects will receive ongoing funding.

The Government should contemplate the need for ongoing funding where innovative projects to meet legal need are established with organisational or philanthropic funding. In considering investment in these projects, the cost savings generated through early access to legal assistance, for example through the prevention of homelessness,

unemployment, protracted legal proceedings or elder abuse, should be kept in mind.

Justice Connect echoes the Law Institute of Victoria and Productivity Commission's recommendations that the government invest at least an additional \$24 million immediately per year in civil justice services. Justice Connect also supports the Law Institute of Victoria's recommendations in relation to the funding of the legal assistance sector, particularly the recommendations that:

- the government also increase funding to legal assistance services to the equivalent level per capita as New South Wales;
- the government ensure, by working with the Commonwealth government, that funding of at least \$9.7 million per year from 2017/18 is maintained to avoid funding shortfalls that will arise in 2017/18 under the new National Partnership Agreement on Legal Assistance Services;
- as well as maintaining funding, the government work with the Commonwealth government to increase community legal centres' funding in response to the increasing demand for services; and
- the government ensure that any changes to the distribution of funding ensure that multiple entry points to legal assistance services, and the mixed-model approach to delivery of legal assistance services are preserved.

⁶⁰ See Justice Connect Homeless Law, *Twelve Months of Keeping Women and Children Housed: Report on the Women's Homelessness Prevention Project* (2015) [https://www.justiceconnect.org.au/our-programs/homeless-law/law-and-policy-reform/preventing-evictions-and-sustaining-](https://www.justiceconnect.org.au/our-programs/homeless-law/law-and-policy-reform/preventing-evictions-and-sustaining-tenancies/twelve-months-keeping-women-and-children-housed)

[tenancies/twelve-months-keeping-women-and-children-housed](https://www.justiceconnect.org.au/our-programs/homeless-law/law-and-policy-reform/closing-revolving-door); and *Closing the Revolving Door: 12 Month Report on the Debt and Tenancy Legal Help for Prisoners Project* (2016) <https://www.justiceconnect.org.au/our-programs/homeless-law/law-and-policy-reform/closing-revolving-door>.

6.2 The economic benefits of government support for legal services

Not-for-profit Law has received recurrent funding from the Victorian Government for the last six years for its legal services for not-for-profit community organisations. External evaluations of the Not-for-profit Law service have found that this funding, which is applied to boost the capacity and compliance of the not-for-profit, has resulted in cost savings to government through a more productive not-for-profit sector and a reduced enforcement burden for government regulators.⁶¹

Adequately funding services such as Not-for-profit Law has also been found to have benefits in the broader access to justice sector. A recent evaluation of the Not-for-profit Law service identified and reported on the benefits of Not-for-profit Law's work with organisations assisting people at risk of entering the justice system:

"NFP organisations that work with people who may be at risk of breaking the law may generate flow-on impacts resulting in savings to the justice system. In the case of some NFPs, support may be provided to individuals at risk of criminal behaviour, effectively helping to prevent future arrests or incarceration. Not only does this have tremendous benefits for the individual in question, it also represents a significant saving to the broader community in terms of the potential legal and justice system costs avoided"

The economic contribution of NFP Law in FY2014-15 is conservatively estimated to be approximately \$8.9 million (of which, the estimated economic contribution of this program in Victoria is \$5.7 million). Approximately 8,000 additional client services 'episodes' will be provided over the next three years as a result of efficiency gains in NFP organisations assisted by NFP Law in FY2014-15.⁶²

⁶¹ Deloitte Access Economics, *The economic contribution of Justice Connect's Not-for-profit Law service*, December 2015, page 11; see also *Deloitte Access Economics* 2011, 'The Economic contribution of PilchConnect: A

Measurement Framework', report to the Public Interest Law Clearing House (Vic) Inc, February 2011.

⁶² Deloitte Access Economics, *The economic contribution of Justice Connect's Not-for-profit Law service*, December 2015, p ii-iv.

7. Collaborative responses across the legal assistance sector avoid duplication

Term of Reference 7

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

Justice Connect does not consider that there is a significant issue of duplication in services provided by the legal assistance providers, including pro bono lawyers. When developing pro bono initiatives to address unmet legal need in the community, Justice Connect undertakes extensive stakeholder and community engagement to identify the gaps in the legal assistance sector to avoid duplication of existing services.

Justice Connect also works closely with other legal and community services to ensure that collaborative responses to unmet legal need avoid duplication and focus on the areas of expertise of each of the participating legal services providers. For example, since 2011, almost 30,000 asylum seekers who arrived by boat have been granted bridging visas and are living in the Australian community. There are over 10,000 asylum seekers living in Victoria. The Department of Immigration and Border Protection has implemented a policy to 'fast track' the processing of claims for protection for these individuals. Through the Legacy Caseload Group initiated by the Law Institute of Victoria, Justice Connect has been working with the LIV, the Asylum Seeker Resource Centre, Refugee Legal and Victoria Legal Aid to explore options for responding to the unmet legal need that will arise from this 'fast track' process and to ensure a coordinated response in providing legal assistance.

Justice Connect is also careful to avoid duplication across jurisdictions. For example, when piloting the SRS in Victoria and New South Wales, Justice

Connect collaborated closely with QPILCH to replicate the successful Self Representation Service model that was already being used in Queensland, to ensure that the lessons learned in Queensland were taken into account at the outset. More information about this model is provided in response to Term of Reference 9.

There is however room for increased collaboration, both in planning and service delivery. Government can encourage collaboration by resourcing joint projects and providing funding to support the scaling of effective programs from one area to another.

Overall however, in our view, multiple players focusing on different areas does not necessarily indicate duplication or a lack of collaboration. More often, it is a reflection of the need to carefully target legal responses to a special group or area of law.

Recommendation 14

The Victorian Government should be mindful when assessing duplication of services and legal education material across the legal assistance sector that it considers the diverse needs of varied audiences and the issue of conflicts of interest.

8. Funding to help those most in need

Term of Reference 8

The resourcing of VLA to ensure that Government funding is used as effectively and efficiently as possible and services are directed to Victorians most in need

Pro bono is just one of a number of sources of legal assistance for people experiencing disadvantage. By far the majority of such people are assisted through legal aid commissions and community legal centres.

In the case of civil law, many people are also assisted by ‘no win no fee’ arrangements in cases where a sum of money by way of compensation is available.

Despite this spectrum of legal assistance services, there is still significant unmet legal need.

8.1 Reduced funding applied pressure on other legal assistance services

Funding for legal aid commissions and community legal centres falls significantly short of what is required to respond to legal need. As government funding reduces, there is greater demand for pro bono.

For example, funding pressures forced Victoria Legal Aid to change its guidelines for funding for criminal and family law in 2012. This resulted in a significant increase in the number of requests Justice Connect received in those practice areas in 2012-2013. Justice Connect struggled to refer those matters, particularly family law cases, which

can often be complex and resource intensive and not easily placed with pro bono lawyers. In 2013 Justice Connect conducted a survey of family law practices to gauge the appetite and capacity for doing this work pro bono. The survey results indicated a low probability of successfully referring family law cases to most firms. Pro bono is clearly not the answer to unmet legal need and cannot ‘fill the access to justice gap’ created by reduced government expenditure on legal services.

8.2 Coordinated referrals for vulnerable client groups increases capacity across the state

Justice Connect commends VLA’s decision to fund a position within Justice Connect to provide a central point of coordination to facilitate referrals for free or low cost legal assistance for the 10,000 asylum seekers living in Victoria who fall within the “Legacy Caseload”, recognising the anticipated overwhelming unmet legal need that will arise from the fast track process and our experience in managing pro bono referral pathways. Without that resource, thousands of the most vulnerable people in the community will be worse off.

VLA’s decision to fund this position is an example of how an adequately funded referral service can increase the capacity of the legal assistance sector to respond to key areas of unmet legal need.

9. Strategic collaborations: increasing support for self represented litigants

Term of Reference 9

Options for providing better support to self represented litigants throughout the Victorian justice system

The challenges faced by self represented litigants (SRLs) vary depending on the complexity of the legal issue, the jurisdiction and the personal circumstances of SRLs. Some individuals have the means to access legal assistance but choose to self represent, others have the capacity to navigate the justice system with minimal assistance, however a number of individuals face significant barriers in accessing the justice system. The barriers include language and literacy barriers, low socio-economic status, cultural and linguistic diversity, disabilities including mental health issues and geographic barriers presented by residence rural and remote areas.

Through its Referral Service and Self Representation Service, Justice Connect has significant experience in responding to the unmet legal need presented by SRLs in both the state and federal jurisdictions. The Referral Service connects individuals who need but cannot afford advice and representation with pro bono lawyers who will act for them usually on an ongoing basis. This type of assistance is limited and there are many more individuals needing assistance than can be assisted

in this way. In particular, SRLs in the Supreme Court are difficult to place with pro bono lawyers. The complexity of proceedings, the cost implications, court rules and conflicts all contribute to the limited pro bono capacity. In contrast, the Self Representation Service provides “unbundled” advice only to clients.

9.1 Strategic collaborations to target unmet legal need

The partnership between Justice Connect and JobWatch has been outlined above. Our evaluation⁶³ of this Pilot shows the impact of:

- connecting unrepresented employees experiencing disadvantage with legal advice and representation up to and including conciliation or conference before the FWC; and
- addressing unmet legal need by establishing a new referral pathway and model of collaboration between the Referral Service and CLCs.

The impact of the Referral Service and JobWatch collaboration is described in the following client stories:

⁶³

<http://www.justiceconnect.org.au/sites/default/files/Unfair%20Dismissal%20Evaluation.pdf>

From Unfair Assessment to Equal Footing

Steve* suffered from several disabilities that made it difficult for him to work. Steve had been a recipient of the Disability Support Pension since 2008 due to chronic injuries, depression and Post Traumatic Stress Disorder. Steve's situation was made worse when, in 2012, he was severely and permanently injured in a motor vehicle accident.

After taking three years off, Steve returned to his job at a paper mill as part of the Commonwealth Supported Wages Scheme. Steve arranged to work part time over a few days per week.

Like all workers at the paper mill, Steve was required to undergo productivity assessments to determine his wage.

When Steve undertook his assessment, he was subjected to a more difficult test than other workers and his productivity rating subsequently dropped. Steve's employer told him that his income would be reduced by 25% based on his new productivity rating. Steve's employer asked him to sign a new agreement reflecting this change. When he queried the outcome of his assessment, Steve was told to go home. His employer later sent him a letter of termination.

Steve then filed a General Protections Application with the Fair Work Commission. Steve called JobWatch and was sent a Justice Connect application form after being screened in the Justice Connect and JobWatch Unfair Dismissal Pilot Project.

Steve's matter was referred to a Justice Connect Member law firm for assistance at his Fair Work Commission Conciliation. At Conciliation, Steve and his employer reached a confidential settlement.

Steve was extremely pleased with the assistance he received from the law firm. Steve said that before receiving assistance he "thought [he] had no chance." He said "the lawyer representing me helped me understand my rights and stood up for me."

*client's personal details have been changed

Eritrean factory worker forced to pay loan to keep job

"Many people that work in the same factory are new to this country and treated badly. When my supervisor forced me to pay money so I could keep my job and told me not to come back to work when I asked for the money to be returned I felt helpless and confused. The lawyer gave me answers and helped get my money back. I have let all of my friends at the factory know that they are being treated unfairly and should speak with a lawyer."

Adiam is a young female refugee who had been working at a food packaging factory in regional Victoria. It was her second job since coming to Australia. Adiam was excited to be in the workforce and building the foundations for a new life in Australia.

This year it came as a shock to Adiam when her supervisor told her that she would lose her job unless she took out a loan and paid him \$20,000. Adiam was under the belief that she had to follow the direction. She explains, "I tried to listen and follow my supervisor because having a job and future is my dream".

After a few months had passed Adiam asked her supervisor when she would receive the money back. Adiam's supervisor terminated her on the spot and told her not to return to work and that she would be paid back in 4 weeks.

Adiam called JobWatch and was sent a Justice Connect application form after being screened in the Justice Connect and JobWatch Unfair Dismissal Pilot Project.

Adiam filed an unfair dismissal claim with termination at the Fair Work Commission. With a "helping hand" from a member law firm of Justice Connect Adiam was represented at conciliation and settled for an award of compensation for underpayment of wages, an agreement for Adiam's \$20,000 to be paid back and a \$12,000 lump sum payment.

9.2 Promoting greater access to pro bono representation in courts

Self-Representation Services

Justice Connect's Self Representation Service (SRS), modelled on the QPILCH Self Representation Service, is federally funded and operates in the Federal and Federal Circuit Courts in Victoria, NSW, ACT and Tasmania. The SRS commenced in August 2014 and has, as at 29 February 2016, assisted 173 Victorians experiencing disadvantage mainly in relation to bankruptcy and Fair Work matters. The SRS has broadened the areas of law it can provide assistance in to include Human Rights/Discrimination and Administrative Review matters.

These client stories illustrate the impact of the SRS:

Woman wrongly made bankrupt no longer bankrupt

Rhea was a migrant woman who came to the SRS after she was made bankrupt. Rhea explained that she had been made bankrupt while overseas, but before she left, Rhea contacted the solicitor who agreed to request an adjournment so she could attend her hearing. Unfortunately, the solicitor wrote her name down incorrectly and asked for an adjournment in a matter involving a different person. When Rhea got back to Australia she was shocked to discover that she had been made bankrupt.

Rhea again contacted the solicitor for the other side, who now told her that he could help her get the bankruptcy withdrawn if she paid off the debt. Rhea quickly paid off the debt, but then ran out of time to lodge her appeal. Dealing with the bankruptcy was particularly difficult because English was not Rhea's first language. On top of this, Rhea was also battling ongoing depression, making it hard for her to prepare and lodge all the necessary court documents. Rhea had been subjected to the bankruptcy through the error of another and did not have the capacity to make it right by herself. The SRS recognised the unjust and overwhelming situation she was in.

continued

Rhea had several appointments with the SRS to get advice about how to start applying for a review of her bankruptcy. The SRS was then able to organise for a firm to take on her matter on a pro bono basis. The pro bono lawyer was able to get around the time limitation issues and successfully argue that Rhea's bankruptcy should be set aside, without trustee costs being applied.

Rhea was particularly relieved because the bankruptcy could jeopardise her ability to travel to see her family overseas. Rhea left the SRS having paid off her debt and with her court proceedings fully resolved. She said:

'It was a really good service and I had really great help from the solicitors you recommended. It's really, really great. I couldn't express my appreciation enough.'

Woman made bankrupt by debts incurred through husband's deceit

Sally was shocked when she discovered she was being chased for a substantial debt owed by her husband's company, despite there being no link whatsoever between herself and the company. Sally's husband had been intercepting paperwork, so she was unaware that she had been named in a court proceedings to enforce the debt. He managed to keep the whole thing a secret from her, and did not attend the court hearing himself. With no one to defend the proceedings, default judgment was entered against them both.

Sally first found out about the debt when she was served with bankruptcy paperwork. Sally appeared in the Federal Circuit Court with absolutely no idea what her legal options were. Her attempts to negotiate with the creditor were unsuccessful. Her matter was adjourned in order to allow her to seek some assistance from a financial counsellor and from Justice Connect. The SRS was able to assist Sally by providing some preliminary advice about her options to respond to the bankruptcy proceeding. Given the situation the SRS was able to link Sally with the Justice Connect Referral Service who successfully referred Sally for further assistance. With the assistance of the firm, Sally has a further adjournment, and has filed an application to set aside the underlying debt.

This model of service for SRLs is appropriate in certain disputes, for certain individuals.

Justice Connect considers access to legal assistance for self represented litigants (SRLs) crucial to access to justice for people experiencing disadvantage and to the administration of justice.

With funding committed for four years from the federal government as part of a national program, Justice Connect operates the SRS in the Federal and Federal Circuit Courts in NSW, Victoria, Tasmania and the ACT. The SRS provides assistance to self-represented litigants who do not have access to legal assistance and advice through other sources. The SRS is based on the successful QPILCH service run in several jurisdictions including the Federal Court in Queensland.

The SRS provides advice and assistance to self-represented parties involved or preparing to be involved in proceedings.

The SRS is staffed by a Manager, 2 lawyers and 2 paralegals to deliver the service in NSW, Victoria, ACT and Tasmania.

The service's aims are to help provide self represented litigants with:

- legal advice about the issue at court;
- assistance in preparing documents, including correspondence and court forms;
- advice about other options to resolve the issue;
- information about court procedures and court orders; and
- assistance to conduct their case in the best possible manner.

Eligible persons are booked for a 1 hour consultation with a volunteer lawyer who provides the following 'unbundled' legal assistance:

- legal advice about the issue at court;
- assistance in preparing documents, including correspondence and court forms;
- advice about other options for the resolution of the dispute; and
- information about court processes.

This model has recently been successfully piloted in the Supreme Court of South Australia.

Successful pilot of Self Representation in Supreme Court jurisdiction

In September 2013, JusticeNet, a not for profit organisation that brokers pro bono legal assistance in South Australia, commenced a pilot Self-Representation Service, providing advice and assistance to eligible 'litigants-in-person' in the civil jurisdiction of the Supreme Court of South Australia. The Self-Representation Service (the **SA SRS**) was established as a 12-month pilot program,

The SA SRS aims to provide discrete task assistance (and not representation) throughout the progress of a client's proceeding, by assisting people to:

- understand the law, and the rights and perspective of the other party;
- observe court and tribunal rules and procedures;
- be aware of potential orders and the effect of not complying with orders; and
- present their case in the best possible manner.

An evaluation¹ of the SA SRS outlines the benefits of the SA SRS for clients included better understanding of the law in relation to their situation, and almost all reported a better understanding of legal processes and procedures. In addition, half of the clients reported that their intentions in relation to their matter had changed as a result of the advice they had received, with some also indicating that following the advice they intended to discontinue proceedings or seek out of court settlement.

Justice Connect works with SRL Coordinators in the County and Supreme Courts to ensure, where appropriate, litigants who qualify for pro bono assistance are directed to Justice Connect for referral to pro bono lawyers.

Preliminary conversations with Justice Connect Member firms suggests that matters in some Lists in the County Court and Supreme Court are appropriate for pro bono assistance and others are more appropriate for assistance by no win no fee arrangements.

Recommendation 15

The Victorian Government should provide funding to scope and pilot a self representation service in the Supreme Court modelled on the SRS now operating in the Federal and Federal Circuit Courts and delivered by Justice Connect.

9.3 Other strategies to promote greater access to the courts

Justice Connect encourages the adoption of the Productivity Commission's Recommendations in relation to Protective Cost orders and Recovery of Costs, so far as it relates to Victorian jurisdictions.⁶⁴

Justice Connect also encourages the adoption of the Productivity Commission's Recommendation, to the extent that it relates to Victoria,⁶⁵ and the Law Institute of Victoria's recommendation in response to Term of Reference 5, in relation to supporting the provision of unbundled legal services.

For copies of any of the evaluation reports, legal health checks or client surveys referenced in this submission, please contact Fiona McLeay, Chief Executive Officer at Justice Connect.

Justice Connect

March 2016

⁶⁴ Productivity Commission, *Overview- Inquiry Report, Access to Justice Arrangements*, pp54-55
<http://www.pc.gov.au/inquiries/completed/access-justice/report/access-justice-overview.pdf>

⁶⁵ Productivity Commission, *Overview- Inquiry Report, Access to Justice Arrangements*, p62
<http://www.pc.gov.au/inquiries/completed/access-justice/report/access-justice-overview.pdf>