

Submission

THIS SUBMISSION WAS PREPARED BY THE FEDERATION OF COMMUNITY LEGAL CENTRES (VICTORIA) INC, IN CONSULTATION WITH MEMBER CENTRES

May 2014

Response to the Productivity Commission Draft Report: Access to Justice Arrangements

Inquiries to:

Liana Buchanan
Executive Officer
Federation of Community Legal Centres (Victoria) Inc
03 9652 1505
executiveofficer@fclc.org.au

Contents

Section 1: Introduction

- 1.1 About the Federation of Community Legal Centres (Victoria) Inc 3
- 1.2 About this submission 3

Section 2: The legal assistance sector – central to improving access to justice

- 2.1 An adequately resourced, high functioning legal assistance system 4
- 2.2 The importance of tackling broader flaws in the legal services market..... 5
- 2.3 Quantifying the legal assistance gap..... 6
- 2.4 Preventing civil law needs from being ‘squeezed out’ 7

Section 3: CLCs’ distinct and critical role in the legal assistance system

- 3.1 Understanding the mixed model of legal assistance services 8
- 3.2 CLCs’ distinct role as part of the mixed model 8
 - 3.2.1 Holistic, integrated approaches to legal need and service delivery 9
 - 3.2.2 Community development approach 10
 - 3.2.3 Size and flexibility of CLCs 11
 - 3.2.4 Independence of CLCs 11
 - 3.2.5 Specialisation 12
 - 3.2.6 Diversity 12
 - 3.2.7 Volunteers and pro bono 13
 - 3.2.8 Philanthropic funding..... 13
- 3.3 CLCs and efficiency 13

Section 4: Making sure CLCs’ services are targeted to meet highest need

- 4.1 CLCs’ approach to targeting services 15
- 4.2 Eligibility criteria should recognise that income is not the sole indicator of disadvantage..... 16
- 4.3 A high level framework for eligibility tests? 17
- 4.4 Standardised eligibility criteria across legal aid commissions and CLCs? 17

Section 5: Distribution of CLC funds

- 5.1 Location of CLCs 19
- 5.2 Redistribution of CLC funds 20
- 5.3 The most effective method to ensure CLC funds are meeting changing legal need 21

Section 6: Comments on other recommendations..... 24

Appendices..... 25

1 Introduction

1.1 About the Federation of Community Legal Centres (Victoria) Inc

The Federation of Community Legal Centres (Victoria) Inc (the Federation) is the peak body for 51 community legal centres (CLCs) across Victoria. A full list of our members is available at <http://www.communitylaw.org.au>. Victoria's community legal centres assist over 60,000 people each year, providing around 50,000 instances of advice and a similar number of instances of legal information, and initiating around 23,500 cases.

The Federation leads and supports Victorian community legal centres in pursuing social equity and access to justice.

The Federation:

- provides information and referrals to people seeking legal assistance;
- works to build a stronger and more effective community legal sector;
- works for law reform to develop a fairer legal system that better responds to the needs of the disadvantaged;
- provides services and support to community legal centres; and
- represents community legal centres' priorities and interests.

The Productivity Commission's current Inquiry into Access to Justice Arrangements is an important one. Although there have been many reviews and inquiries into access to justice over the past two decades, our understanding of legal need, particularly the intersection of legal need and disadvantage, has developed markedly in recent years and demand for free legal help is increasing. Further, while previous reviews and inquiries have repeatedly found the legal assistance sector is not able to meet the needs of those excluded from the justice system, these reviews have not been able to quantify the extent of resourcing required to address these needs.

Given its particular expertise and experience in conducting inquiries into complex social issues, the Productivity Commission is well placed to make recommendations for consideration by current and future governments, particularly regarding the extent of resourcing required to adequately address the 'access to justice' gap.

The Federation therefore welcomes the opportunity to respond to the Commission's Draft Report on this important topic.

1.2 About this submission

The Federation is a signatory to the joint submission made in response to the Draft Report by the National Association of Community Legal Centres (NACLC) and other state and territory CLC associations.¹ This supplementary submission is intended to provide the Productivity Commission with additional information from the Victorian context and to reiterate Victorian community legal centres' perspectives on some of the key issues.

While many issues discussed in the Draft Report are relevant to community legal centre clients and work, our response will focus on those aspects that relate most directly to legal assistance services, particularly community legal centres.

¹ The Federation's endorsement of the NACLC submission is subject to one qualification - see National Association of Community Legal Centres *Response to the Productivity Commission Draft Report: Access to Justice Arrangements* (May 2014), 34-5.

2 The legal assistance sector - central to improving access to justice

2.1 An adequately resourced, high functioning legal assistance system

While many areas of the justice system and the broader regulatory environment must be adjusted to improve access to justice, an adequately resourced and well-functioning legal assistance system is central to any meaningful consideration of access to justice.

The Productivity Commission has estimated that around 17% of Australians have some form of unmet legal need,² and has recognised that a large proportion of people who have a legal problem and require help to resolve it cannot afford a private lawyer. The Draft Report accurately identifies that, for many members of this group, legal assistance services such as legal aid, community legal centres, Aboriginal and Torres Strait Islander Legal Services (ATSILS) and Family Violence Prevention Legal Services (FVPLSs) provide the only option for disadvantaged Australians who need legal help.

The Draft Report confirms that government funded legal assistance services generate net benefit to the community, that underfunding of legal assistance services leads to increased costs in other areas of government spending as well as in the justice system, and that the Australian legal assistance sector is relatively poorly funded as against other nations with comparable legal systems. We welcome these findings. They are particularly important given that as a result of the most recent budget, community legal centres will already be reducing services as funding will be cut by more than 26 per cent between 2013-14 and 2017-18.³ This means community legal centres will have to dramatically scale back support to the most disadvantaged in our community and, as always, try to do more with less.

The Draft Report also confirms that systemic work, namely strategic litigation and policy/law reform advocacy driven by client experiences of the law, can be an 'efficient use of limited resources'⁴ and should be a core activity of legal aid commissions and community legal centres.

This is an important finding in light of the Federal Government's recent decision to amend community legal centre service agreements to stop centres from conducting systemic law reform and policy activity using Commonwealth funds. These amendments are proposed to take effect from 1 July 2014. As the Productivity Commission has recognised, the contact community legal centres and other legal assistance services have with thousands of people weekly means they are uniquely placed to identify policies, practices and laws that impact unfairly on members of the community, particularly those experiencing disadvantage.

Not only is systemic work to change unfair laws and practices often the most efficient approach, community legal centres' law reform and policy work is frequently done at the request of government because agencies and Ministers, recognise the value of community legal centre expertise. For example, one of our member centres has received ten requests for advice, input and submissions on areas of Federal law and policy since late 2013. Preventing community legal centres

² Productivity Commission 2014, *Access to Justice Arrangements*, Draft Report, Canberra, released 8 April 2014 ('PC Draft Report'), Draft Finding 2.1, 105.

³ Portfolio Budget Statements 2014-15, Attorney General's Portfolio, p29. Funding declines from \$44,607 in 2013-14 to \$32,687 in 2017-18.

⁴ PC Draft Report, 623.

from conducting this work will close off a valuable source of advice to government, result in poorer public policy and leave many flawed practices and policies unaddressed.

This submission emphasises the importance of tackling long term under-resourcing of Australian legal assistance services, as has been identified in repeated inquiries and reviews over the past two decades.⁵ While we accept that there is scope to improve the operation of the legal assistance sector and are committed to working with legal aid commissions and Aboriginal and Torres Strait Islander legal assistance services to this end, it will be impossible to effect real improvement in access to justice for disadvantaged and low income Australians without an adequately resourced legal assistance sector.

Indeed, we submit it is contrary to the available evidence to assume that access to justice can be substantially addressed by simply reforming or redistributing existing services.

Currently, both legal aid commissions and the community legal sector provide legal services very cheaply when compared to the private sector. Any proposal to alter the way funding is provided to the sector should carefully consider whether changes can drive further efficiencies of great enough scale to outweigh potential transition costs and the loss of other positive characteristics of the current system.

Given the critical importance of tackling underfunding across the legal assistance sector, we request that the Productivity Commission apply its considerable expertise to analysing the extent of resources required to meet the civil law needs of disadvantaged Australians. We are not well placed to construct this type of economic analysis, but suggest that it may be useful for the Commission to estimate the current proportion of the overall population eligible for publicly funded legal support. This, combined with knowledge of the cost of providing this support, would allow the Commission to estimate the cost of expanding eligibility for legal assistance to, for instance, the bottom 20 per cent of the earnings distribution (those in some paid employment but still living poverty).

2.2 The importance of tackling broader flaws in the legal services market

Given imperfections in the current market for legal services result in a very high cost of private legal services, we consider measures taken to ameliorate some of these market failures and hence reduce the cost of private legal services could have a substantial impact on expanding access to legal services.

We caution the Commission against placing excessive emphasis on pursuing small efficiency gains from a very limited funding bucket (by rationalising community legal centres), given that even if these efficiencies are realised they only have limited potential to contribute to expanding access to justice when compared to addressing overall funding requirements or broader structural reform.

Indeed, while we are committed to maximising efficiency, we believe that efficiency gains are likely to be minimal given the very low cost of providing community legal services. As a result, we suggest that effort is best focused on mapping the cost of broadening out eligibility criterion for

⁵See, eg Senate Standing Committee on Legal and Constitutional Affairs, *The Cost of Justice: Foundations for Reform*, 1993; Federal Access to Justice Advisory Committee, *The Justice Statement*, 1995; Senate Standing Committees on Legal and Constitutional Affairs, *Inquiry into Legal Aid and Access to Justice*, 2004; Attorney General's Department, Commonwealth of Australia *Review of the Commonwealth Community Legal Services Program*, 2008; Senate Legal and Constitutional Affairs Reference Committee, *Access to Justice*, 2009.

legal services and the sections of the Commission's report that address the ever growing cost of private legal services.

In Germany for instance, regulations in the form of a statutory fee scale (which parties can opt out of with client consent) ensure that lawyers charge fees that are proportional to value of the claim in dispute, that are based on the services rendered rather than the hours worked and which allow certainty of total cost.

This model has potential to constrain high legal costs and remove perverse incentives that can exist in per hour billing systems. The Commission has cited the relevant study in relation to other matters, 'Civil Litigation in New South Wales: Empirical and Analytical Comparisons with Germany' but we would request that consideration is given to the discussion at pages 61 to 73 and would be interested in the Commission's views about the applicability of this model to the Australian market.

2.3 Quantifying the legal assistance gap

Information request 21.4 requests feedback on the extent of, and the costs associated with, meeting the civil legal needs of disadvantaged Australians, and the benefits that would result.

The Federation's position:

In order to ensure the civil law needs of disadvantaged Australians are met, and thereby ensure access to justice for disadvantaged members of our community, it is vitally important to quantify the costs associated with meeting these needs.

Numerous inquiries and reviews have confirmed that the legal assistance sector is under resourced. The Commission's Draft Report contains information to support that finding. The most significant contribution that the Commission can make to improve access to justice arrangements in Australia is therefore to quantify the resources that would be needed to support a system that meets the civil law needs of disadvantaged Australians.

The Commission's economic credentials and expertise make it well placed to do this economic analysis. We urge the Commission to dedicate a significant part of its remaining work in this Inquiry to investigating these questions.

In conducting this work, we urge the Commission to consider the cost of various elements and features of effective legal assistance for disadvantaged and marginalised community members, including:

- an integrated service delivery model that works effectively with people with complex needs;
- a strong community development approach; and
- early intervention and prevention approaches, including community legal education and systemic law reform and policy advocacy.

One manner in which the Commission might want to consider this unmet legal need is by modelling the cost of expanding eligibility to various proportions of the population. Government would then be in a better position to make evidence-based judgements as to the appropriate coverage of publically funded legal assistance. Currently it is not entirely clear what portion of the population is covered by the current mix of eligibility criterion and a clear finding in this regard would greatly inform the public debate around legal need and eligibility.

2.4 Preventing civil law needs from being ‘squeezed out’

Community legal centres have long recognised that civil law needs are important and that civil law problems directly impact people’s livelihood, housing, safety and welfare and that civil law assistance is severely under-resourced. For these reasons and as a result of legal aid commissions’ historical focus on criminal and subsequently family law assistance, Community legal centres have worked to fill the gap by focusing on civil law matters, and have developed expertise in working in areas of civil practice such as tenancy, credit and debt, consumer law, social security law, family violence protection orders and other civil law areas.

We welcome the recognition in the Draft Report that funding for civil law matters has been the ‘poor cousin of the justice family’.⁶ Whether through separate determination and management or by some other means, we agree that some mechanism is needed in future to ensure appropriate allocation of legal assistance resources to civil law issues.

Recommendation 21.1 provides that: Commonwealth and state and territory government legal assistance funding for civil law matters should be determined and managed separately from the funding for criminal law matters to ensure that demand for criminal assistance does not affect the availability of funding for civil matters.

The Federation’s position:

While we do not take a stance on whether civil law funding should be determined and managed separately from funding for other matters, we strongly agree with the Productivity Commission’s finding that funding for civil law assistance has historically been inadequate and that some mechanism to ensure adequate allocation of funding for civil law matters is required.

⁶ PC Draft Report, 626.

3 CLCs' distinct and critical role in the legal assistance system

3.1 Understanding the mixed model of legal assistance services

While the Productivity Commission's Draft Report characterises the mixed model slightly differently, we understand the mixed model as comprising legal assistance provided by legal aid commissions, private practitioners funded through legal aid, community legal centres and Aboriginal and Torres Strait Islander legal assistance services (ATSILS and FVPLSs).

In Victoria, our experience of the mixed model is that while there is clearly scope to continue strengthening the way we work together to identify and meet legal need, these elements of the mixed model each play a distinct and important role in meeting the legal needs of disadvantaged people. Together, they provide a strong foundation on which to build further improvements. Together, particularly with strengthened coordination and collaboration, the components of the mixed model can provide a high functioning mix of coordinated and complementary services.

3.2 CLCs' distinct role as part of the mixed model

Some of the findings, draft recommendations and assumptions in the Draft Report suggest that the differences between community legal centres and other legal assistance service providers may not have been clear to the Productivity Commission, and that the distinct contribution community legal centres bring to the legal assistance sector warrant restatement.

Because Victoria has a particularly strong community legal sector with a large number of centres relative to some other states and territories, it is a useful jurisdiction to consider when assessing the benefits of a strong community legal centre contribution to the mixed model.

While some of the work done by legal aid commissions and community legal centres may appear similar, it is important to note the distinct features of community legal centres. These include:

- community legal centres operate with a strong connection to their local or client community and prioritise a community development approach. This increases access to legal help among disadvantaged members of the target community and also means community legal centres can identify emerging issues and formulate targeted responses to meet community need;
- community legal centres are relatively small and flexible organisations, meaning they can move swiftly to adjust resource allocation and service delivery approach in response to changing need;
- community legal centres' size and flexibility also means they develop innovative and creative responses to addressing legal need;
- community legal centres' client work combined with their community development approach means they are especially well placed to identify unfair laws and policies and work to change them;
- community legal centres' status as independent organisations mean that they can work to change unfair laws, policies and practices even when this involves advocating for change to a government policy;
- community legal centres attract substantial volunteer and pro bono contribution;
- as independent, not for profit organisations, community legal centres can also attract philanthropic funding; and

- community legal centre efforts to address gaps in legal need have meant centres have developed specialisations in areas of law that other legal assistance providers do not practise in as well as expertise in working with clients with complex needs.

Some of these features are discussed in more detail below.

Because these distinctive features are not consistently acknowledged in the Draft Report, some of the Commission's draft recommendations would, if implemented, reduce or remove community legal centres' unique role in the legal assistance system. Removal of or diminution of the contribution of community legal centres from the mixed model would result in:

- the loss of the various distinct benefits community legal centres provide;
- the loss of specialisation in areas of law not practised by other providers;
- a significantly reduced capacity to attract pro bono and volunteer contributions and philanthropic funds to the legal assistance sector; and
- the risk of civil law services being further 'squeezed out', given that it is independent community legal centres that have long understood and sought to prioritise civil law assistance.

3.2.1 Holistic, integrated approaches to legal need and service delivery

The growing body of research on legal need, the confluence of legal need and disadvantage, and the increasingly sophisticated understanding of what constitutes legal service delivery,⁷ affirms approaches developed in Australia by community legal centres over the past forty years.

Community legal centres:

- focus on accessibility, including through outreach and community development activities;
- integrate assistance for individual clients with community legal education, community development and law reform projects that are based on client need and that are preventative in outcome;
- pursue holistic approaches that can tackle multiple, interconnected legal problems, as well as working with other professionals to tackle interconnected legal and non-legal issues; and
- tailor services for specific problems and to particular demographic groups.

Example: Youthlaw

Youthlaw has been able to undertake some of its legal needs analysis by utilising its strong relationships with youth and community organisations. For example, this community legal centre knew its community sufficiently well to be able to locate its Skype-based legal service in seven regional community centres that had a high engagement with vulnerable and marginalised young people with high unmet legal need, resulting in increased access for many young people.

Example: Justice Connect Homeless Law

Through its provision of legal services to people experiencing or at risk of homelessness, as well as its close partnerships with homelessness and social service providers, Justice Connect Homeless Law identified the need for legal and non-legal assistance for women facing eviction into homelessness. They developed the Women's Homelessness Prevention Project (WHPP) to respond to this need. The WHPP weekly clinic is located at a central, accessible library with a

⁷ See, eg, Christine Coumarelos et al, 2012, *Legal Australia-Wide Survey: Legal Need in Australia*, Law and Justice Foundation of NSW, Sydney ('LAW Survey'), 243.

children's librarian available so women can bring their children to appointments.

The lawyers assist with tenancy legal issues and a part-time social worker provides up to three-months of intensive case work support to help link women and their children with a range of supports, including family violence services, financial counselling, employment or training and mental health or rehabilitation services. Through this integrated service provision, Homeless Law focusses on preventing evictions of women and children into homelessness by addressing both the legal and non-legal risks to their tenancies.

Community legal centres continue to apply and develop these approaches and develop cutting edge models of service delivery, such as the advocacy-health alliances developed in Victoria by Loddon Campaspe Community Legal Centre and Inner Melbourne Community Legal.

3.2.2 Community development approach

Community legal centres operate with a strong connection to their local or client community and prioritise a community development approach. Community development is about the active involvement of people in the issues which affect their lives. It is a process based on the sharing of power, skills, knowledge and experience by community workers, who engage with the community so that people in that community can act together to influence the issues which affect them. The objective of community development is to help community members to gain greater control over the conditions that affect their lives. This does not solve all the problems faced by a local community, but it does build confidence to tackle such problems as effectively as possible.⁸

Example: Aboriginal Family Violence Prevention & Legal Service Victoria (FVPLS Victoria)

FVPLS Victoria provides legal advice, referral and ongoing casework to Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault, according to a holistic model which is proven to more effectively address the complex and interconnected legal and non-legal needs of clients via paralegal and legal help. An essential aspect of this service is fostering and maintaining the trust of Aboriginal communities, including most importantly, women experiencing violence.

For this reason, it is crucial that communities are clear that there are no conflicts of interest for FVPLS Victoria because they do not also assist perpetrators of violence (who may instead receive help from the Victorian Aboriginal Legal Service). This also requires providing a culturally safe service and working collaboratively with Aboriginal community members, particularly Aboriginal women, together with extensive engagement in early intervention and prevention activities in culturally appropriate ways. One highly successful example of this is the Sisters Day Out program, which introduces Aboriginal and Torres Strait Islander women to the legal service and other local community agencies, and provides discussion about family violence issues.

Community engagement increases access to legal help among disadvantaged members of the target community, and also means that community legal centres can identify emerging issues and formulate targeted responses to meet community need. Community legal centres' direct client assistance, combined with their community development approach, means they are especially well placed to identify unfair laws and policies and work to change them, thereby preventing future legal problems and reducing future need for legal assistance.

⁸ Adapted from Community Development Foundation (UK), *Statement from Community Development Foundation (UK)* available at <<http://maaori.com/develop/commwhat.html>>.

3.2.3 Size and flexibility of CLCs

Community legal centres are relatively small and flexible organisations, which means that they can move swiftly to adjust resource allocation and service delivery in response to changing need. Their size and flexibility also enables them to develop innovative and creative responses to address legal need.⁹

Examples of this are evident in the innovative approaches developed on a weekly basis in centres across Victoria but two examples discussed previously in the joint submission made by the NACLCL, Federation and other CLC associations are the Footscray Community Legal Centre Taxi Driver Legal Service and Inner Melbourne Community Legal's 'Early Warning Signs' project.¹⁰

3.2.4 Independence of CLCs

Community legal centres' status as independent organisations means that they can work to change unfair laws, policies and practices even when this involves advocating for change to government policy or legislation.

Example: Loddon Campaspe Community Legal Centre (LCCLC)

After their adult son went missing in 2009, David and Julie Rosewall faced a number of hurdles when trying to manage his legal and financial affairs. They couldn't get his mail redirected, deal with creditors or utility providers, or resolve his lease lawfully.

At the time, there were no provisions in Victorian legislation enabling a next of kin or family member to act on behalf of a missing person where the missing person has not appointed a general or financial power of attorney.

The Rosewalls sought advice from a vast range of legal service providers and were told they could not be assisted. They approached LCCLC in 2010. Unable to assist the Rosewalls within the current confines of the law, LCCLC decided to take on the matter as a law reform project to assist the Rosewalls and others who found themselves in a similar situation.

LCCLC prepared a submission to the Law Reform Commission, undertook a media campaign and wrote to the then Attorney-General. Within weeks, the Attorney-General referred the matter to the Department of Justice who prepared legislation to amend the existing guardianship and administration legislation to enable the effective protection and administration of the affairs of missing persons.

The legislation passed in 2010 with bi-partisan support. As a result, David Rosewall was able to ensure that his son's affairs were kept in order, including the payment of debts, completion of tax returns and redirection of mail. Families in this situation in future will not face the same barriers that the Rosewalls had to encounter.

In some instances, including one of the examples referenced in the Draft Report, community legal centres are able to identify an issue of concern, develop an approach to addressing the issue and then work with legal aid commissions to further develop and extend the reach of these approaches.¹¹

⁹ See eg Productivity Commission 2010, *Contribution of the Not-for-Profit Sector*, Research Report, released 11 February 2010 ('NFP Report'), 237-8.

¹⁰ National Association of Community Legal Centres, *Submission to the Productivity Commission Access to Justice Arrangements Inquiry*, November 2013.

¹¹ For example the National Bulk Debt Project, see PC Draft Report, 625.

3.2.5 Specialisation

Community legal centre efforts to address gaps in legal need have meant that they have developed specialisations not offered by other legal assistance providers.

Some forms of specialisation relate to working with particular client groups, such as the expertise of Aboriginal community controlled and based Victorian Aboriginal Legal Service, which focuses particularly on assisting clients with criminal law but whose work also addresses the relationship between unmet civil need and criminal activity.

Other examples are specialist centres who work with clients with a disability, such as Disability Discrimination Legal Service, AED Legal Centre and Villamanta Legal Service.

... it is important in some areas that staff have an expertise that immediately lends itself to the client feeling that the service is accessible. For example, it is hard to give advice to a person with autism spectrum disorder about whether reasonable adjustments have been made for the disability if you are completely unfamiliar with what such reasonable adjustments may be. (Disability Discrimination Legal Service)

Other forms of specialisation are developed in a particular area of the law not commonly covered by other legal service providers, such as credit and debt or consumer law.

The Productivity Commission notes that while “CLCs are able to assist people with early and minor advice on civil matters, many are small in scale and may not have the expertise (particularly those specialising in particular areas of law) to undertake complex civil matters”.¹² This is certainly not borne out in Victoria.

Victorian community legal centres direct substantial energies to case work, initiating 23,500 cases in the 2012-2013 financial year. They also have a very strong record in running complex cases. For example, several cases have recently clarified laws in Australia after community legal centres pursued them to superior courts, often over the course of many years. The AED Legal Centre’s court action to ensure fair wages for people with a disability, Flemington Kensington’s racial discrimination litigation against Victoria Police and the Human Rights Law Centre’s voting rights cases are just three examples.

3.2.6 Diversity

As evidenced by community legal centres’ independence and specialisation, centres are not simply distinct from other legal assistance providers. There is also a great diversity of practice within the community legal sector. This diversity is a great strength of the sector and is an important theme when considering proposals such as the standardisation of eligibility criteria (see our response in 4) and questions about the location of community legal centres in response to legal need (see our response in 5).

As one illustration, Aboriginal Family Violence Prevention & Legal Service Victoria (FVPLS Victoria) prioritises providing culturally safe access to justice for Aboriginal women in Victoria regardless of where they live. A more simplistic understanding of legal need in the context of limited funding would restrict funding of such a service to rural and remote locations. This is particularly inappropriate in the Victorian context because 47% of the State’s Aboriginal population live in cities,¹³ and because evidence suggests that Aboriginal women who experience violence in rural areas often flee to an urban area to seek help.

¹² PC Draft Report, 632.

¹³ Australian Bureau of Statistics, *Population Distribution Aboriginal and Torres Strait Islander Australians* (2006), 19.

A second example highlights the inadequacy of any simple 'efficiency' arguments for amalgamating services. Both FVPLS Victoria and the Victorian Aboriginal Legal Service provide highly valued services to their communities because they are not only clearly delineated from one another but also offer a culturally safe environment that would not be possible to the same extent if their organisations were not embedded in Victorian Aboriginal communities, including significant Aboriginal staff and volunteers. The distinct value of such community legal centres would be severely compromised by any proposals to amalgamate the two services. In addition, while it is essential that mainstream legal services are culturally aware and competent, nothing can substitute for community legal centres that are run by and located in their own Aboriginal communities, and which thereby provide the highest level of cultural safety for their clients.

3.2.7 Volunteers and pro bono

Community legal centres attract enormous volunteer and pro bono contributions. For example, Victorian centres responding to the NACLC census reported attracting 8,943 volunteer hours per week in 2012-13 (37.1% of the reported volunteer hours at a national level) and 18,114 pro bono hours per year (35.6% of the reported national total).

3.2.8 Philanthropic funding

As independent, not-for-profit organisations, community legal centres can also attract significant philanthropic funding for specific projects or pilot programs. Many Victorian community legal centres are increasingly successful in partnering with philanthropy, thereby extending the reach of government funds.

3.3 CLCs and efficiency

While there is always scope to improve efficiency, community legal centres by necessity run very lean operations with minimal waste.

The Productivity Commission has reached a number of conclusions about the efficiency or otherwise of community legal centres relative to other parts of the legal assistance sector, although in our view the Commission has not provided any compelling evidence that other service providers operate more efficiently. Rather, community legal centres provide legal services very cheaply at well below market rates. Government, by investing in community legal centres on a continued basis, is getting considerable value for money.

Any measure of efficiency should consider the outcomes achieved for clients (rather than just, for example, casework per lawyer numbers) and factor in the benefit of responsiveness, innovative capacity and a holistic, community development approach to delivering services. As the Commission's 2010 Report, *Contribution of the Not-for-Profit Sector* ('NFP Report') observes:

. . .NFPs that target more disadvantaged clients may require a more costly set of outputs to deliver the same activity.¹⁴

The provision of holistic services obviously requires a greater investment of resources up front, but the research clearly indicates it saves the community dollars further down the track.

The NFP Report notes:

Processes that appear messy and inefficient to outsiders can be essential for effective delivery of services, especially those requiring engagement with clients who face disadvantages and are wary of government and for-profit providers. They can also be important to attract and retain

¹⁴ NFP Report, 227.

volunteers, the involvement of which can be valued as much for the engagement outcomes as for replacing the need for paid labour.¹⁵

While the basis for the Commission's assumptions and statements about the relative efficiency of community legal centres is not always clear, we encourage the Commission to have regard to its previous findings in the NFP Report. In that inquiry, the Commission challenged any simple notion of efficiency, concluding with respect to processes that appear inefficient from a narrow economic perspective, stating

it may be these processes that give NFPs an advantage in trustworthiness or network governance that make them more effective, especially in the delivery of some human services.¹⁶

¹⁵ *NFP Report*, 13; and more generally, 13-22.

¹⁶ *NFP Report*, 19. See also the discussion in Chapter 3 of better approaches to measuring the contribution and effectiveness of the NFP sector beyond only market based activity.

4 Making sure CLC services are targeted to meet highest need

4.1 CLCs' approach to targeting services

The Productivity Commission's Draft Report considers whether legal assistance services are targeting the 'right' people and notes that, in a fiscally constrained environment, legal assistance funds should be allocated to unmet needs that deliver greatest benefit relative to cost. The Draft Report concludes that community legal centres' criteria for determining casework assistance is 'probably too lax' and expresses concern that community legal centres determine their own eligibility tests.¹⁷

As a result of the diverse and independent nature of community legal centres, the means by which centres target their services may be less clear than it is for legal aid commissions. However, it is not accurate to conclude that community legal centres are therefore 'lax' in their eligibility criteria, nor that they fail to ensure their scant resources are directed to meet the most pressing legal needs. All centres operate independently and hence have different ways in which they operate and target services, but community legal centres are accustomed to operating with extremely limited funds and to making and reviewing difficult decisions about who should receive the benefit of their stretched resources.

Our experience is that most, if not all, Victorian community legal centres have well developed eligibility criteria, triage processes and/or casework guidelines to direct their work. In addition, community legal centres are increasingly using legal needs analyses to review and amend eligibility criteria.

Like legal aid commissions, most community legal centres provide one-off advice to a broader range of community members and have more narrow and detailed criteria to guide the provision of ongoing assistance and representation.

The Federation has reviewed the casework guidelines of a number of our member centres. Common features include:

- case work is directed at people earning no or low income;
- assistance is prioritised for people facing other forms of social exclusion or disadvantage, such as disability, mental illness, victimisation or homelessness and in some instances there is flexibility to assist people facing disadvantage even where the person's income is slightly above a strict means test cut off;
- there is often an emphasis on prioritising cases that have potential to effect wider social change, benefiting both the individual client and the wider community;
- assistance is generally not provided if the person is eligible for legal aid, thereby minimising duplication; and
- certain areas of law – such as personal injury – are excluded on the basis assistance is available at private law firms, for example on a 'no win, no fee' basis.

Examples of CLC Eligibility Criteria (often referred to as Casework Guidelines)

Women's Legal Service Victoria (WLSV) Casework Guidelines

WLSV's casework guidelines set out the criteria to be considered when determining whether WLSV can assist in a matter beyond providing legal advice. WLSV will consider:

- a. The barriers that the client faces in obtaining access to justice (for example, health, capacity, socio-economic status). When assessing the barriers a client faces, WLSV

¹⁷ PC Draft Report, 647.

considers whether the barriers are temporary or part of entrenched disadvantage.

- b. The impact the matter is likely to have. When assessing impact, systemic impact is prioritised over impact for a single individual because of the potential to have wider impact on more women.

The Guidelines include an assessment tool which provides a numerical rating for the barriers a client faces and the potential impact of the case. The Guidelines are attached at Appendix I.

Consumer Action Legal Centre (Consumer Action)

Consumer Action's Case Intake Policy sets out the criteria to be considered when determining whether Consumer Action will provide legal representation. The Policy requires consideration of:

- a. Whether a consumer is disadvantaged or otherwise vulnerable - the policy is explicit that a consumer may be vulnerable by virtue of a combination of personal attributes or situations, as well as market or product characteristics and names factors which may contribute to vulnerability as including physical or intellectual disability, race, age or youth, mental health status and other characteristics;
- b. Whether the legal matter falls within the centre's area of expertise and the nature of the dispute;
- c. The merit of the case;
- d. The centre's current capacity; and
- e. Potential public interest impact.

The process is further guided to consider points such as:

- a. Whether the case demonstrates a systemic problem in the industry or a 'problem trader';
- b. Whether taking on the case might benefit a wider group of consumers, especially vulnerable consumers;
- c. Could the same policy outcomes be achieved without taking on the case; and
- d. Whether the case can contribute to a current policy priority or campaign area for the centre.

More detail is provided in Appendix II.

Other examples of community legal centres' approaches to determining casework assistance can be provided on request.

4.2 Eligibility criteria should recognise that income is not the sole indicator of disadvantage

CLSIS data on client income demonstrates that community legal centres' services are targeted to disadvantaged community members. In 2012-13, 82.2% of Victorian community legal centres' clients received a low income, defined for CLSIS as less than \$26,000 per annum. A total of 96.5% of clients were on incomes lower than \$52,000. Casework services were overwhelmingly provided to people on low income, with 85.5% of casework clients having an income under \$26,000 and just 3.5% of casework being provided to people with an income higher than \$52,000.

The Productivity Commission recognises that financial means is just one measure of disadvantage and that, when considering legal need and effective targeting of legal assistance resources, income should not be considered as the sole indicator of need.

People may be disadvantaged and may be in need of free legal assistance for a range of reasons besides their low socio-economic status. Community legal centres have a longstanding commitment to provide access to justice for those facing multiple forms of disadvantage, such as disadvantage or marginalisation connected to experience of systemic discrimination, disability,

mental illness, victimisation, homelessness or other circumstance, not just economic disadvantage.

It is not only the poorest of the poor that cannot afford private legal assistance. Employment is a common area for discrimination against people with disabilities, who may have jobs – however, they are often not high-paying jobs, due to the well researched and documented barriers in education for people with disabilities. These people may not be eligible for legal aid, however they may also not be able to afford to pay for private legal assistance. Many discrimination complaints that deal with education and employment—the highest areas for us – are complaints that may traverse a number of years. They may require a hearing or trial that is between three days and three weeks long. (Disability Discrimination Legal Service)

In Victoria, around one third of new cases opened each year are family violence cases, where centres often provide assistance to victims of family violence who may not meet a strict means test but do not have access to assets or financial resources and who are otherwise vulnerable and in need of legal support.¹⁸

4.3 A high level framework for eligibility tests?

Recommendation 21.2 provides: The Commonwealth and state and territory governments should ensure that the eligibility test for legal assistance services reflect priority groups as set out in the National Partnership Agreement on Legal Assistance Services and take into account: the circumstances of the applicant; the impact of the legal problem on the applicant's life (including their liberty, personal safety, health and ability to meet the basic needs of life); the prospect of success and the appropriateness of spending limited public legal aid funds.

The Federation's position:

We agree it is appropriate that the eligibility tests of different legal assistance services operate in accordance with a high level framework, noting that services must also retain capacity to develop their own criteria responding to priority groups and specific types of legal need within particular communities.

In addition to the factors named above, we suggest that eligibility tests for certain types of casework or other ongoing services should also reference whether the legal matter or case under consideration has potential to have an impact broader than the individual parties. This consideration allows community legal centres to save resources by tackling issues that affect many people rather than dealing with each case individually.

4.4 Standardised eligibility criteria across legal aid commissions and CLCs?

The Commission's concern that assistance for civil law matters should be better targeted to the most disadvantaged, when combined with its findings about the less visible and more varied nature of community legal centre eligibility criteria, results in a draft recommendation that legal aid commission and community legal centres' eligibility criteria for civil law assistance should be aligned.

¹⁸ For example, when considering all areas of Eastern Community Legal Centre's case work, CLSIS data (July 2012-May 2014) shows that 66% of case work clients have low or no income. However, if family violence case work is excluded from the calculation, 83 per cent of the centre's case work clients have low or no income.

This suggestion fails to recognise the distinct but complementary nature of community legal centres and legal aid services. It also overlooks the value of community legal centres' capacity to direct resources toward providing the services most needed in their local community.

In addition, strict and inflexible eligibility criteria can restrict a community legal centre's capacity to identify and work on systemic issues, even if the systemic issue affects many people who would meet the centre's eligibility criteria. Consumer Action Law Centre provides an example of a case in which they represented a client to challenge a particular company's home loan exit fee. While in that case the client had a higher income than most of the centre's clients, the matter contributed to a systemic outcome that benefited many low income consumers and, combined with the centre's policy and advocacy work, ultimately contributed to regulatory action by the Australian Securities and Investment Commission and a legislative ban on home loan exit fees.

If implemented, the introduction of standard eligibility criteria across legal aid commissions and community legal centres would severely reduce access to justice.

Recommendation 21.3 provides: The Commonwealth and state and territory governments should use the National Partnership Agreement on Legal Assistance Services to align eligibility criteria for civil law cases for legal aid commissions and community legal centres. The financial eligibility test for grants of legal aid should be linked to some established measure of disadvantage.

The Federation's position:

We agree that community legal centres and legal aid commissions should work together to ensure that services' eligibility criteria are complementary and operate together to provide maximum access to justice for the relevant community or client groups.

However, a proposal for uniform criteria across community legal centres and legal aid commissions is not supported as this would remove community legal centres' capacity to:

- **focus on community-specific needs or variations in the legal issues affecting a community legal centre's client group or community;**
- **respond to emerging issues and needs within a community legal centre's client group or community;**
- **act in cases which have potential to deliver significant systemic outcomes for the benefit of disadvantaged community members; and**
- **assist people who do not meet the means test elements of legal aid eligibility criteria but who experience various forms of disadvantage and marginalisation and would face severe injustice if excluded from all legal service assistance.**

5 Distribution of CLC funds

5.1 Location of CLCs

We agree with the Productivity Commission that demand for legal assistance services is influenced by a range of factors including demographic changes. We also agree that service provision, including location of services, should adapt to meet changing needs. We would note, however that:

- many community legal centres have relocated since their establishment and many have changed their service delivery model, for example by establishing outreach services in areas where there is significant emerging need;
- many centres, especially specialist centres that operate at a statewide level, have an extremely broad client base or have a large catchment area and are most appropriately located in a central location easily accessible by public transport. These locations are not necessarily areas of high disadvantage.

The Commission is critical that “there is no formula for linking CLCs with the areas of highest legal need”¹⁹ and notes that “over two thirds [of CLCs] are located in the top three SEIFA deciles”.²⁰ The Commission also finds that community legal centres in high SEIFA areas tend to service clients who earn a higher income.

As the Commission notes in Appendix I, SEIFA data is a blunt tool for assessing disadvantage. It is based on average ratings within any given area and by its nature does not account for pockets of advantage or disadvantage in a local area. While some Victorian community legal centres operate in high SEIFA areas, there are significant pockets of disadvantage in their communities. Flemington Kensington Community Legal Centre and Inner Melbourne Community Legal are both examples of Victorian community legal centres that operate in areas where pockets of advantage mask significant disadvantage in any simplistic data analysis. Both centres are located in Local Government Areas (LGAs) that have high average SEIFA scores.

Example: Flemington Kensington Community Legal Centre

Flemington Kensington Community Legal Centre’s (FKCLC) office is located in Kensington, which has a postal area SEIFA decile of 5.²¹ It assists people who live, work or study in the Flemington and Kensington area.

Flemington is located in the City of Moonee Valley Local Government Area (LGA), which has a SEIFA decile of 9. Kensington is located in the City of Melbourne LGA, which also has a SEIFA of 9.²²

FKCLC’s analysis of its catchment area provides a strong illustration of the complexity of assessing advantage and disadvantage in a local government area. The Centre’s catchment analysis is at Appendix III. In brief, the analysis demonstrates that there are significant and enduring pockets of disadvantage within its catchment area, despite recent gentrification.

CLCIS data recording client income demonstrates that 89% of FKCLC’s casework clients are low income and 90% of FKCLC’s ‘advice only’ clients are on low income. CLCIS defines low income as earning under \$500 per week or \$26,000 per year.

¹⁹ PC Draft Report, 655.

²⁰ PC Draft Report, 634.

²¹ SEIFA Index of Relative Socio-economic Advantage and Disadvantage, ABS. 2033.0.55.001 - Socio-economic Indexes for Areas (SEIFA), Released at 11.30am (Canberra time) 28 March 2013. Table 1. Postal Area (POA) SEIFA Summary, 2011.

²² SEIFA Index of Relative Socio-economic Advantage and Disadvantage, ABS. 2033.0.55.001 - Socio-economic Indexes for Areas (SEIFA), Released at 11.30am (Canberra time) 18 July 2013. Table 1. Local Government Area (LGA) SEIFA Summary, 2011.

Example: Inner Melbourne Community Legal

Inner Melbourne Community Legal (IMCL) is located in the suburb of North Melbourne, which has a postal area SEIFA decile of 6.²³ It provides services to financially disadvantaged people who live, work, study or engage with services in a number of suburbs in the City of Melbourne. As noted above, the City of Melbourne LGA has a SEIFA of 9.²⁴

While the City of Melbourne is a high SEIFA Local Government Area, CLSIS income data for Inner Melbourne Community Legal's clients from 1 July 2013 to May 2014 indicates that 86% of IMCL's clients are on a low or no income. The income breakdown for clients is as follows:

- 86% of clients were on a low income or no income;
- 8% of clients were on a medium income;
- 2% of clients were on a high income; and
- 4% of client's income was not stated.

A review of the people IMCL assists with casework indicates:

- 90% of casework was for clients with low or no income;
- 6% of casework was for clients with medium income;
- 4% of casework was for clients where income was not stated;
- There were no cases for clients with high income.

We also make the following observations about assumptions based on SEIFA and CLC income data:

- If the Productivity Commission has relied on income data for advice **and** casework clients, it is inevitable that average client income will be higher given community legal centres, like legal aid commissions, do not apply strict means tests to people seeking advice; and
- As discussed above, income is not the sole indicator of disadvantage, meaning even if the income of community legal centre clients in high SEIFA areas is higher than other centres, it does not mean that the services are not meeting vital community needs associated with non-economic marginalisation.

5.2 Redistribution of CLC funds

Recommendation 21.4 provides that the Commonwealth Government should:

- discontinue the current historically based Community Legal Services Program (CLSP) funding model;
- employ the same model used to allocate legal aid commissions funds to allocate funding for the CLSP to state and territory jurisdictions;
- divert the Commonwealth's CLSP funding contribution into the National Partnership Agreement on Legal Assistance Services and require state and territory governments to transparently allocate CLSP funds to identified areas of 'highest need' within their jurisdictions. Measures of need should be based on regular and systematic analyses in conjunction with consultation at the local level.

²³ SEIFA Index of Relative Socio-economic Advantage and Disadvantage, ABS. 2033.0.55.001 - Socio-economic Indexes for Areas (SEIFA), Released at 11.30am (Canberra time) 28 March 2013. Table 1. Postal Area (POA) SEIFA Summary, 2011.

²⁴ SEIFA Index of Relative Socio-economic Advantage and Disadvantage, ABS. 2033.0.55.001 - Socio-economic Indexes for Areas (SEIFA), Released at 11.30am (Canberra time) 18 July 2013. Table 1. Local Government Area (LGA) SEIFA Summary, 2011.

The Federation's position:

Regardless of the approach used to allocate community legal centre funds it is clear that, on its own, redistribution of community legal centre funds will not enable services to meet even the most pressing civil law issues of disadvantaged Victorians. Redistribution of current funds to meet gaps in service, with no increased resources overall, will unacceptably reduce access to justice for many disadvantaged Victorians in some areas. Shifting a centre from a suburban location to regional Victoria, for example, may well result in significant levels of unmet need in the area newly deprived of a centre.

As stated in section 2, we encourage the Commission to conduct or commission detailed analysis on the extent of resourcing required to provide a reasonable and necessary level of assistance, as the Commission has done in a number of other inquiries.

Any changes to the legal assistance system should not lead to reduced access to disadvantaged people currently receiving assistance. It is incorrect to assume low or no legal need in particular areas based on those areas having higher overall SEIFA index ratings.

However, we:

- **agree resources should be targeted to meet highest need;**
- **agree there are areas of significant unmet need and serious gaps in service;**
- **agree some work is warranted to ensure community legal centre resources are being applied in a way consistent with changing legal need; and**
- **agree there is some potential for community legal centres to work together to improve coordination of legal needs analysis, service planning and service delivery.**

We note these issues are most effectively addressed by legal assistance services and that a number of Victorian community legal centres are already leading this work, sometimes in collaboration with Victoria Legal Aid, as demonstrated in the examples provided below.

5.3 The most effective method to ensure CLC funds are meeting changing legal need

The Productivity Commission seeks feedback about how, if re-distribution of community legal centre resources is needed, re-distribution should be achieved.

One option suggested by the Productivity Commission is competitive tendering. As the Commission notes in its NFP Report, non-market-based approaches are likely to be more relevant than competitive tendering for tackling intractable (or 'wicked') problems.²⁵ Indeed, market-based approaches risk eroding the strengths and distinctive contributions of not-for-profits such as community legal centres.²⁶

This risk is relevant in the case of community legal centres, as a tendering process would risk the loss of the various distinctive benefits of community legal centres referred to in section 3, particularly:

- Specialist knowledge among community legal service providers, both in terms of working with particular groups in the community and in areas of law in which community legal centres have developed expertise;
- Connection to the local community and to relevant non-legal organisations;

²⁵ NFP Report, 297.

²⁶ NFP Report, 303-47; see also Peter Shergold, *Service Sector Reform: A Road Map for Community and Human Services Reform* (2013), 28.

- Pro bono and volunteer contributions that are often built on long term associations and partnerships with a centre; and
- Trust and preparedness to collaborate between legal assistance service providers, given tendering is likely to result in competition within the sector.

Tendering is a process that does not involve the community, one that often favours larger organisations and in which it can be difficult to effectively assess the quality of legal assistance services in a sufficiently sophisticated way.

Moreover, there are costs stemming from funding uncertainty and the tendering process itself that would impose a considerable burden on already stretched community legal services in addition to increasing the administrative burden on government. Given community legal centres already provide services at well below the market rate (in part because community legal centre staff subsidise the provision of legal services via lower wages) there is little evidence that a tendering model would drive efficiencies substantial enough to mitigate these costs.

Indeed, for these reasons we believe that a tendering model will be less efficient. In addition, we believe that funding uncertainty will make it harder to retain staff, driving up labour costs over time and, as a result, the cost of providing services.

Information request 21.3 provides: The Commission seeks feedback on how community legal centre funds should be distributed across providers while at the same time ensuring providers are of sufficient scale and the benefits of the historic community support of community legal centres are not lost. Competitive tendering might be one possible method for allocating funds. The Commission seeks feedback on the costs and benefits of such a process and how they compare with the costs and benefits of alternative methods of allocating community legal centre funding.

The Federation’s position:

Competitive tendering is not necessary and would negatively impact sector productivity, capacity and performance. In turn, this would negatively impact services to clients.

A collaborative model involving community legal centres in the decision making process is a more appropriate and effective approach. There are already examples of Victorian community legal centres working either with other centres or with Victoria Legal Aid to jointly map legal need, plan and coordinate services and maximise efficiency and effectiveness.

CLCs working together to maximise effectiveness, efficiency and targeting of legal assistance services

South East Legal Needs Project

The South East Legal Needs Project is a collaborative project between four community legal centres and two Victoria Legal Aid regional offices, in which the various legal service providers are working together to share data, plan and conduct an analysis of legal need in the South East region of Melbourne.

The project is intended to avoid duplication of effort, ensure all legal assistance service providers have access to the results of the legal needs analysis to inform planning and to establish a basis on which legal service providers can work collaboratively to meet legal needs and address service gaps in the region.

Western CLCs Reform Project

Four Victorian community legal centres are currently involved in a joint project, the Western Community Legal Centres Reform Project, to explore:

- the potential for improved coordination of administrative and corporate services
- the potential for improved coordination in the planning and delivery of legal services across the centres
- whether the current mix and location of services best meets need and whether current governance or organisational structure would provide greater flexibility and efficiency in delivering legal assistance.

This project shows that community legal centres are capable of, and are already involved in, driving reform to make sure that resources are being directed to those most in need. This can include assessing whether changes in demographics require services to be provided in a different way or in different locations, and whether community legal centres can work differently to maximise efficiency and effectiveness for clients.

Importantly, each of the above projects have been supported through the allocation of project resources provided by Victoria Legal Aid. This support recognises that, while community legal centres are willing and capable of working together and with legal aid commissions to review and develop their models of service delivery and governance, centres generally operate with no spare capacity that can readily be diverted from direct services in order to conduct this work.

6 Comments on other recommendations

Other issues that we have not discussed above but wish to highlight are discussed below.

Competitive labour rates across all legal assistance services, including CLCs

When discussing the benefits of the mixed model of legal service delivery, the Productivity Commission focuses on the benefits of a model that engages legal aid staff practitioners and private practitioners. The Draft Report seeks information at Information Request 21.2 about the appropriate relationships between legal aid and market rates for the provision of legal services and what might be the cost of altering the relationship between the two rates.

The Draft Report refers to information provided about the recruitment and retention challenges faced by community legal centres, including those caused by low remuneration compared with equivalent positions in the public or private sector and, sometimes, inferior work premises and resources.²⁷ The Productivity Commission has made no draft recommendation about these issues. We suggest that any funding model for the adequate resourcing of legal assistance services should include provision for competitive labour rates among all legal assistance staff, including those in community legal centres.

Volunteers in CLCs

The Federation welcomes the Productivity Commission's exploration of avenues to expand the pool of volunteers. It is important to remember, however, that proper supervision of volunteers requires resources and infrastructure.

We agree with the suggestion that all jurisdictions should allow holders of all classes of practising certificate to work on a volunteer basis. We are also in favour of allowing people who have a practising certificate that has expired within the last three years (without any disciplinary conditions) to apply for a free volunteer practising certificate.

We do not agree with the recommendation in Recommendation 23.1 that people with a practising certificate *that has expired* within the last three years (without any disciplinary conditions) should be able to provide legal advice in community legal centres without a valid practicing certificate. All people providing legal advice should hold a current practicing certificate. Allowing individuals without a current practicing certificate to provide pro bono legal services at community legal centres would increase the required level of supervision of volunteers and result in an additional strain on, and burden for, community legal centre staff and supervisors. In addition, setting different standards for legal qualifications to differentiate between pro bono and paid legal assistance creates a negative perception that pro bono work requires less expertise or experience than paid work. Importantly, requiring a person to hold a current practicing certificate means they are required to undertake continuing professional development, and this should not be compromised.

²⁷ PC Draft Report, 650.

Appendix I

Women’s Legal Service Victoria Casework Guidelines

In determining whether WLSV can assist in a matter the impact of the case and the barriers faced by the client should be assessed. The following questions and assessment tool have been designed to assist in this process:

What barriers does this client face in obtaining access to justice?

- See annexure ‘A’ for a non-exhaustive list of examples of barriers a client may face.

When assessing what barriers a client faces it is important to consider whether those barriers are temporary or part of entrenched disadvantage faced by the client.

What impact is this matter likely to have?

- See annexure ‘B’ for assistance identifying the potential impact of a matter (again this list is non-exhaustive):

When assessing impact, systemic impact should be prioritised over impact for an individual because of the potential to have wider reach to more women.

Assessment Tool

The assessment tool below should be used to assess and prioritise the matters that WLSV assists in. A rating should be given to the barriers faced and potential impact to determine the priority of a matter. The matrix is structured so that any matter that has potential systemic impact is rated a three and therefore receives a ‘high’ or ‘very high’ priority category.

WLSV aims to have all ongoing casework being within the first or second priority categories.

Impact	3	High	Very High	Very High
	2	Medium	Medium	High
	1	Low	Low	Medium
	0	1	2	3
Barriers				

First Priority	Second Priority	Third Priority	Non Priority
----------------	-----------------	----------------	--------------

Annexure 'A' to casework guidelines

Barriers to access to justice

- Health

Disability, physical health issues, chronic illness, mental health issues, dependent child with special needs or illness.

- Racial/cultural background

Born outside of Australia and in a non-English speaking country, Indigenous, impact of religious and/or cultural expectations, impact of values associated with role or status of women, barriers associated with cultural and community issues.

- Background

Current or past trauma, imprisonment, institutionalisation, child protection involvement, mistrust of authority because of personal circumstances, old age, youth, issues with drug and/or alcohol misuse, experience of homelessness, childhood abuse/neglect/mistreatment, sexual abuse, experience of being trafficked or disempowerment because of family violence, trauma due to migration experience or refugee experience, women who are vulnerable because of spousal, bridging, student or other insecure visa status.

- Capacity

Lack of English literacy or low level of educational attainment, intellectual or learning disability or lack of understanding of the law.

- Social exclusion

Not employed or employed in a marginalised workforce (e.g. sex worker), lack of financial resources, lack of support from friends and/or family, dependency or isolation.

- Access

Rural, regional and remote, 'referral fatigue' – clients who have been shuffled from service to service, or women who are in new growth suburbs with limited services or otherwise isolated.

- Socio-economic

Receiving low or no income (e.g. poverty line for single adult no children is \$490.37 per week, \$669.24 for single adult two children). Client is entitled to department of housing accommodation or client's only income is a centrelink benefit.

Annexure 'B' to casework guidelines

Systemic impact

- Will the case have broader impact for Victorian women who suffer a similar injustice?
- Will this create change at a broader level through: law change, policy or practice change or community attitude change?
- Does the matter relate to a key policy platform issue or a current priority for WLSV?
- Does the matter highlight a pattern of adverse outcomes for women or a legal process that disadvantages women?
- Does this matter highlight an omission in the current law?
- Is there an integrated approach to this case - i.e. legal education or policy?

Individual impact

- Will WLSV make a significant difference to the outcome or impact for the client by being involved? What might be the consequences if WLSV not involved?
- Will WLSV's involvement give the client confidence to engage with services or empower them to break the cycle of violence?
- What impact will WLSV involvement have for others involved, particularly the children?
- Will WLSV assistance address or make meaningful difference to the disadvantage the client is experiencing?
- Is there injustice, unfairness or discrimination experienced by the client in this case?

Appendix II

Consumer Action Law Centre Case Intake Policy

1.1 General

Consumer Action Law Centre provides legal advice to consumers and workers representing consumers. It provides legal representation to consumers who meet certain criteria.

This Case Intake Policy sets out the manner in which clients and legal matters will be accepted by Consumer Action for legal representation (as compared to legal advice), and the extent of the legal assistance that can be provided by the Consumer Action Legal Practice.

The dual purposes of the Consumer Action Legal Practice are to:

- a) assist individual consumers to resolve their particular consumer disputes, either through direct assistance or through assisting workers to assist their clients; and
- b) to achieve positive developments for consumers generally through the generation of favourable judicial and quasi-judicial precedent, industry practice, law reform or other policy development.

While the Consumer Action Legal Practice in its entirety will pursue these goals equally, the balance of these two factors in individual cases will be variable. Identifying which cases will be taken on by Consumer Action therefore requires the consideration of a range of factors which are outlined in this document.

The assessment of whether to take on a particular case will in most cases be made at the weekly Case Intake meeting (with reference to the criteria outlined in sections 2-6 below). All legal staff attend this meeting. In all cases, the decision whether to take on a case will be made by the Director Legal Practice – or a principal practitioner acting on the Director’s authority – in consultation with senior management as required.

1.2 Conflict

A potential client's interests must not be in conflict with those of an existing client in accordance with the legal professional standards of the *Legal Profession Act 2004* and Consumer Action’s Professional Indemnity Insurance Policy. Consumer Action will not act for such a potential client.

1.3 Disadvantaged or vulnerable client

In general, Consumer Action provides legal representation only to consumers who are disadvantaged or otherwise vulnerable.

Consumers may be vulnerable by virtue of a variety and/or combination of personal attributes or situations, as well as market or product characteristics. For example, exploitative supplier motivations or complex products could also contribute to make a consumer vulnerable in a particular situation. The impact that the problem potentially has on the consumer also contributes to the level of vulnerability. Other factors which may contribute to a consumer’s vulnerability include:

- physical or intellectual disability
- race or ethnicity
- cultural diversity
- English literacy
- age (or youth)
- gender and sexual preference

- health status
- mental health status
- generally high naivety
- educational attainment
- labour force status (employed or unemployed)
- income status; and
- geographical location (remoteness from urban-based services).

Consumer Action may decide to act for a client, the conduct of whose matter allows significant legal or industry practice issues relevant to disadvantaged consumers to be addressed, *even though* the client being assisted may not themselves be a disadvantaged person.

1.4 Areas of practice

The Consumer Action Legal Practice is a specialised service that provides legal advice and representation to consumers in the following areas of consumer-related law and practice:

- general fair trading issues (*including, for example, unfair contract terms, high pressure sales, door to door sales*);
- credit provided for consumer purposes (*including, for example, fringe lending, over-commitment, false business purpose declarations*);
- banking and financial services (*including, for example, bank fees*);
- insurance;
- telecommunications (*including content and credit*);
- energy and Water;
- bankruptcy and debt agreements;
- credit reporting;
- debt collection;
- mortgage brokers;
- vendor terms contracts;
- motor car sales (including those with related credit contracts);
- public transport infringements
- scams
- the practice and procedure of internal and external ADR schemes (including all relevant ombudsman schemes)

Consumer Action does not provide legal advice and representation in:

- family law matters;
- criminal law matters;
- tenancy matters;
- neighbourhood disputes;
- rates, planning and other local government matters;
- personal injury;
- domestic building disputes;
- body corporate disputes;
- motor vehicle accidents; or
- employment law

Further, Consumer Action does not provide legal advice or representation in:

- disputes between individuals; or
- disputes between businesses.

1.5 Merit of case

Generally the Consumer Action Legal Practice will only take on matters which appear to have a reasonable prospect of producing a successful outcome (which may include a compromise settlement).

It is acknowledged that, in some cases, it will not be possible to fully determine whether a matter has the required prospects of success until some preliminary work has been undertaken. In such cases, Consumer Action may decide to provide initial legal assistance subject to a further consideration of the merits of the client's case once further information has been obtained.

In some cases Consumer Action will take on a matter where the likelihood of a successful outcome is not high, but the case has the potential to have a broader impact for all consumers. Such cases, which Consumer Action believes have legal merit, will only be taken on, on the basis that the client understands any potential risks or benefits.

Consideration will be given to the nature and extent of any benefit which may accrue to the client if assistance is given. Where the likely benefit to the client is minimal or notional, the CA casework service will only take on the matter where the case has a strategic aspect.

1.6 Capacity

The capacity of the Consumer Action Legal Practice to take on clients is necessarily limited by constraints on its resources. The Practice naturally cannot operate beyond its staffing capacity.

In order to maximise the reach of free legal advice services, including our own, the CA casework service therefore considers the referral of matters to other legal centres or services, subject to their availability and expertise. The CA casework service may also assist client caseworkers, for example financial counsellors, in providing advice to their clients, without the service taking those persons on as clients of its own.

These actions reflect the view that Consumer Action is not the only Centre which works in support of our target client base, and that to ensure more consumers are adequately supported, we must make the most efficient use of all the community services undertaking this work.

1.7 Case in-take policy – clients and media

1.7.1 Introduction

In some cases Consumer Action has required, as a condition of acting on behalf of a consumer, that the consumer agree to the matter being publicised in the media.

This was done after consideration of the appropriateness of such a requirement in relation to our Case Intake Policy. We believe that our approach is appropriate, ensures best use of Consumer Action resources, and does not conflict with the lawyers' obligations to act in their clients' best interests.

1.7.2 Background

Consumer Action is a public interest organisation. We advocate for the rights of consumers as a whole, for example we seek to influence Government and industry to bring about change. As a public interest organisation, Consumer Action seeks to progress the interests of all consumers (particularly vulnerable and disadvantaged consumers). In this role we aim to act in the interests of consumers who may sufferer detriment in the future, those who are currently suffering detriment but do not choose to (or cannot) access our limited services as well as the individuals we assist through the legal practice.

Consumer Action also has a legal practice, which provides advice and representation to individual consumers. As a legal practice, our lawyers are obliged to act in the best interests of our individual clients.

Consumer Action recognises that tensions between these two interests can arise. For example, an individual may choose to settle a "test case" that could have had a broader impact on consumers, or a client who could assist in bringing about change by talking to media, may choose not to "go public". However, we are clear that when it is acting on behalf of a client, Consumer Action acts in the best interests of that client and on the client's instructions.

We have a case intake policy to help us determine which clients and legal matters will be accepted by Consumer Action for legal representation and the extent of the legal assistance that can be provided by our legal practice. One of the principal reasons we require a case intake policy is that demand for our legal services will always exceed our capacity (as is generally the case for all forms of legal aid in Australia).

Our case intake policy identifies the range of factors we consider in deciding whether to take on a case. These are primarily:

1. vulnerability of consumer
2. merit of case
3. our areas of expertise
4. current capacity; and
5. Potential public interest impact.

As such, the potential impact of a matter on broader consumer policy is a factor in the decision about what cases to take on. The policy recognises this by providing that, where there is a public interest issue involved, Consumer Action may take a matter on that would otherwise be excluded by criteria 1&2.

For example, we may choose to act for a consumer who has a high income, or for a consumer who had a low likelihood of success, if there were potentially public interest outcomes to be achieved.

In some of these types of cases, there may be a potential public benefit but only if the details of the case are made public. In such a situation we believe it is appropriate to advise an individual that we are not able to take their matter on, unless they agree to media coverage.

The two examples of where this has been applied are as follows:

1) Consumer Action received over 100 calls in relation to mortgage lender RHG, which was responsible for the older RAMS loans (prior to RAMS being owned by Westpac). RHG maintained high interest rates, but also had high termination fees so that its customers were unable to move away from these loans. We could not act for all 100 clients - or even a small proportion. We were (and still are) considering whether we could undertake any type of group representation; however we were keen to run one case. One particular potential client was not on a low income. However, she was prepared to (a) pay for a barrister and (b) talk to media, if we acted on her behalf. Media coverage helped to raise the issue (Treasury staff contacted us about the case). However, our case in-take policy would not have supported acting for this client if the public interest was not also served.

2) Consumer Action was contacted by a financial counsellor whose client had been sent bankrupt as a result of a \$1,000 Telstra bill. From a legal perspective there was nothing that we could do, as it was too late for a defence or a rehearing, and there were no grounds to challenge the bankruptcy. However, we believed that we might have been able to obtain a positive outcome for the consumer - and to raise the issue publicly - if the consumer would agree to us publicising the case. While in this case our media coverage was not successful in resolving the individual matter, we have had similar cases in the past where debts have been waived in such circumstances. Further, the coverage added to pressure to reform the law

that allows consumers to be bankrupted over such small debts, and the Federal Attorney-General has indicated that he is currently considering reforms to the bankruptcy laws.

Neither of these two consumers would have been represented by Consumer Action had they not agreed to media coverage - the first would have been excluded due to her income, and the second due to the lack of legal merit of her case.

1.7.3 Conclusion

The integration of casework and policy at Consumer Action strengthens our policy/campaign work but can also have positive benefits for individual clients. There are potential conflicts in some cases between the interests of an individual client and the interests of consumers as a whole. While the legal practice is representing an individual consumer, the lawyers act in the interests of that individual, even if the client's interests or wishes do not advance our policy/campaign outcomes. However, in relation to the decision whether to act for an individual we believe that it is appropriate (in a limited range of circumstances) to take into account the potential impact of the matter on our policy/campaign work and in a handful of cases, require agreement to media coverage as a condition of providing legal representation.

Consumer Action Law Centre, Assessing policy outcomes during the case intake process

Background and purpose

One of the factors considered during the Consumer Action case intake process is whether taking on a particular case may help achieve a policy outcome.

The purpose of this document is to give guidance on what we mean by a 'policy outcome' and assist staff to identify which cases are more likely to achieve them. It is intended that this document could be used when discussing cases during case intake meetings, and also by caseworkers when considering whether to bring a case to the intake meeting.

The points below should be considered as guidance rather than an exclusive list.

Points to consider

1. Could taking on this case support a current campaign or an emerging issue/mini-campaign the policy team is currently running?

For example, taking on a case may support a campaign if it:

- a) provides a case study which can be used in the media, a submission, or elsewhere to raise public awareness or strengthen arguments for reform;
 - b) may lead to strategic litigation or EDR complaints (for example, proceedings which test the bounds of the law) or a test case (where there are realistic prospect of matter reaching hearing);
 - c) provides information/experience which helps us better understand a particular practice or process or could be used as the basis for a factsheet, or resources for workers or a warning on the website;
 - d) allows us to send a complaint to a regulator;
 - e) allows us to send a letter to an influential person in government or industry to raise awareness of a problem and encourage reform.
2. Does this case demonstrate a systemic problem in the industry, a problem with the legal/dispute resolution processes or does it look like the trader is a problem trader? A 'problem trader' might be one who is involved in repeated misconduct or appears to have an unfair business model.
 3. Could taking on the case benefit a wider group of consumers, especially disadvantaged or vulnerable consumers?
 4. Is the subject matter of the case a policy priority and would taking on the case support Consumer Action's work on this topic (for example, through one of the ways mentioned in point 1) ?
 5. Even if we could achieve policy outcomes by taking on this case, could we achieve the same or similar outcomes *without* taking it on? For example, the same outcomes may be achieved if we:
 - a) request documents from the client;
 - b) support someone else to assist the client; or
 - c) get permission to do a case study and making a complaint to regulators.

Appendix III

Service catchment analysis for Flemington Kensington Community Legal Centre

The Flemington and Kensington Community Legal Centre provides services to people who live, work or study in Flemington or Kensington. Additionally, the service focuses on people who are directly affected by legal issues arising in the Flemington and Kensington community.

The Legal Centre operates across two key Local Government Areas ('LGAs'): Moonee Valley and Melbourne.

Flemington is located in the Moonee Valley LGA and Kensington is located in the Melbourne LGA. 40.03% of matters undertaken by FKCLC are from clients living in the Melbourne LGA, and 34.59% of clients are from clients of the Moonee Valley LGA. The remaining clients are residents of LGAs across Victoria who are referred to FKCLC for its specialist police accountability and migration services.

As of 1 July 2008, Kensington which was originally split between the LGAs of Moonee Valley and Melbourne is now fully under administration of City of Melbourne.

Flemington remains the suburb with the highest level of disadvantage in the Moonee Valley area, and its SEIFA (Index of Relative Socio-Economic Disadvantage) scores place the area consistently within the most disadvantaged at both the state and national levels.

Kensington is amongst the bottom third of disadvantaged suburbs in the Melbourne area. However, Kensington's score on the current Advantage and Disadvantage Index still sits above average in Australia and Victoria, respectively. Current SEIFA Disadvantage Index figures indicate an increase in the level of disadvantage in Kensington since the 2006 census.

It should be noted that in the last decade, FKCLC's catchment area has experienced significant shifts in its socio-demographic make-up. The processes of gentrification have meant Flemington and Kensington, which were traditionally populated by working class residents, have attracted populations with higher income and education levels. Whilst gentrification can have many positive impacts in terms of improving infrastructure and bringing investment into the area, such elements are not evenly spread, leaving pockets of unchanged or *worsening* disadvantage.

Furthermore, high levels of gentrification – often involving steep increases in the cost of housing – have the potential to result in *displacement and isolation of such disadvantaged populations*.

It is imperative that the enduring pockets of disadvantage in Flemington and Kensington are not overlooked or disregarded. This is especially relevant in the case of FKCLC's catchment area.

Practice areas of FKCLC

Flemington and Kensington only

- Consumer Rights
- Debts (consumer debt)
- Fines
- Social security (Centrelink and other social security matters)
- Tenancy
- Criminal law
- Motor vehicle accidents

- Employment (limited advice and referral)
- Family violence (advice, referral and casework in some matters)

Flemington, Kensington and Moonee Valley area

- Simple wills and estates

Statewide

- Police accountability
- Offshore refugee migration service (offshore and family reunion matters only)

Social-Economic Indexes for Areas (SEIFA)

Separate from the LNAF is the SEIFA Index of Relative Socio-Economic Disadvantage. SEIFA is derived from the Australian Bureau of Statistics Census variables related to disadvantage such as low income, low educational attainment, unemployment and dwellings without motor vehicles. Although disadvantage is not the sole indicator of legal need, it is related to issues such as access and equity, as residents of disadvantaged areas are less likely to be able to pay for legal services, and are therefore target groups for CLCs.

Index of Relative Socio-economic Advantage and disadvantage is a continuum of advantage (high scores) and disadvantage (low scores) derived from Census data. For example, people with tertiary education and low household income, respectively. This index gives provides an umbrella depiction of how advantage and disadvantage stand in a particular locality.

Index of Relative Socio-economic Disadvantage is derived from Census variables only related to disadvantage, such as low income, low educational attainment, unemployment, dwellings without motor vehicles.

Index of Economic Resources focuses on Census variables related to income, housing expenditure and assets of households.

Index of Education and Occupation focuses on Census variables relating to educational and occupational characteristics of communities, the proportion of people with a higher qualification or those in a skilled occupation.

A low SEIFA score indicates a geographical area which experiences higher disadvantage in relation to other areas. A score for a collection district (eg. a local government area or state suburb) are created by adding together the weighted characteristics of the district. The scores are then standardised to a distribution where the average is 1000 and roughly two thirds of the scores lie between 900 and 1100. SEIFA percentiles are a ranking mechanism, which allows for the comparison of areas according to their SEIFA scores on a scale between 1 and 100. Percentile 1 is the most disadvantaged relative to other percentiles. It should be noted that percentiles have equal numbers of areas, but not people.

Moonee Valley and Flemington

The Moonee Valley LGA has consistently ranked at average or above in terms of SEIFA data. In 2011, Moonee Valley's Advantage and Disadvantage Index score was 1031, a minor increase from 2006's 1029. According to 2011 data, Moonee Valley ranks at the 84th percentile nationally.

Despite this, Flemington remains the suburb with the highest level of disadvantage in the Moonee Valley area, and its SEIFA scores place the area consistently within the most disadvantaged at both the state and

national levels (these figures are in contrast to other suburbs in Moonee Valley, all of which have SEIFA scores ranging between 992 and 1086).

Flemington SEIFA data indicates that residents of Flemington consistently experience high relative levels of disadvantage. This is reflected by the Advantage and Disadvantage Index score of 846, which places Flemington in the 12th and 6th percentile relative to all suburbs in Australia and Victoria, respectively. These figures point to an increase in levels of disadvantage in the last five years when considered in conjunction with 2006 SEIFA data, which found Flemington to score 844 on the SEIFA scale, placing it in the 29th and 22nd percentiles nationally and in Victoria, respectively.

When focusing purely on disadvantage indicators, the 2011 Disadvantage Index score of 846 shows that Flemington falls into the bottom 6 percent of communities nationally, and 3 percent in Victoria, in terms of disadvantage. This figure reflects a miniscule improvement from the 2006 Disadvantage Index score of 844.

The Economic Resources Index, which scores Flemington at 810, also illustrates that Flemington is amongst the 3 percent and 1 percent of areas *most likely to experience economic pressures* in Australia and Victoria, respectively.

In contrast to these figures, Flemington tends to score highly against the Education and Occupation Index. 2011 data scores Flemington at 1036, placing it amongst the top 74th and 64th percentiles in regards to educational attainment and participation in skilled employment. This Index and the socio-economic indicators it represents, is the key reason for the fissure disparity between the collated Advantage and Disadvantage score, and the disadvantage-focused indexes.

Melbourne and Kensington

Like Moonee Valley LGA, Melbourne LGA is ranked consistently average or above in terms of SEIFA data. According to 2011 data, Melbourne's Advantage and Disadvantage Index score sits at 1051, placing it in the 90th percentile in terms of LGAs nationally.

Kensington is amongst the bottom third of disadvantaged suburbs in the Melbourne area. However, Kensington's score on the Advantage and Disadvantage Index still sits above average at 1060 (80th and 82nd percentile, in Australia and Victoria, respectively). This shows a decrease from the score of 1093 (91st and 93rd percentiles in Australia and Victoria, respectively) from 2006 Census data.

SEIFA Disadvantage Index figures indicate an *increase in the level of disadvantage* in Kensington. 2006 SEIFA data places disadvantage in the Kensington area as 1050 (72nd and 71st percentile in Australia and Victoria, respectively).

However, 2011 data shows that Kensington's Disadvantage Index has dropped to 1042, placing it in the 70th and 66th percentiles in Australia and Victoria, respectively.

In terms of Economic Resources, Kensington scores at 955 on the SEIFA index (23rd and 15th percentiles). Again, this is a drop from 1002 (44th and 40th percentiles) according to 2006 data, reflecting a general trend of increase in disadvantage in the Kensington area between 2006 and 2011.

However, similar to the Flemington results, Kensington Education and Occupation Index figures show that the suburb has performed consistently strongly in this area. Following the strong performance in this area documented in 2006 SEIFA data (score of 1148), 2011 data scores Kensington at 1152, placing it in the 97th and 98th percentiles nationally and in Victoria, respectively.

Gentrification in FKCLC's catchment

It should be noted that in the last decade, FKCLC's catchment area has experienced shifts in its socio-demographic make-up. The processes of gentrification have meant Flemington and Kensington, which were traditionally populated by working class residents, have attracted populations with higher income and education levels. Whilst gentrification can have many positive impacts in terms of improving infrastructure and bringing investment into the area, such elements are not evenly spread, leaving pockets of unchanged disadvantage.

Furthermore, high levels of gentrification, often involving steep increases in the cost of housing, have the potential to result in *displacement and isolation of such disadvantaged populations*.

SEIFA data indicates that the Centre's catchment experiences average to slightly-above-average levels of advantage and disadvantage relevant to other LGAs and suburbs. These results are, in many senses, a reflection of gentrification processes, which the Flemington and Kensington areas have undergone in recent years. In considering this data however, it is imperative that the enduring pockets of disadvantage in Flemington and Kensington are not overlooked or disregarded.

This is especially relevant in the case of FKCLC's catchment as many key public housing establishments fall within the Flemington and Kensington areas, and these establishments remain home to some of Victoria's most socially and economically disadvantaged populations. It should also be noted that the effects of gentrification has in some cases exacerbated experiences of disadvantage through the creation of increasingly segregated and polarised communities.

SEIFA Index	Moonee Valley LGA		Flemington		Melbourne LGA		Kensington	
	2006	2011	2006	2011	2006	2011	2006	2011
Advantage and disadvantage	1029	1031	933	892	1120	1051	1093	1060
Disadvantage	1016	1027	844	846	1049	1026	1050	1042
Economic Resources	1000	998	827	810	962	870	1002	955
Education and Occupation	1041	1055	1025	1036	1190	1175	1148	1152

Despite 'gentrification' our catchment has experienced an increase in numbers of social housing tenants over recent years.

A social housing tenant is defined as someone living in some form of subsidised accommodation (state or territory government, community, church co-operative or Aboriginal housing). Such social housing tenants are more likely than the general population to experience legal problems related to Neighbours, Welfare payments, Housing (Tenancy or Homelessness), Family Law (Relationship Breakdown or Children Problems) and Domestic Violence.

Approximately 5.2% of all Australian households are social rental dwellings. The state average is 3.6% whilst the Melbourne average sits at 3.3%.²⁸ Moonee Valley LGA and Melbourne LGA show slight increases of 5.3% and 6.8%, respectively.

These figures preclude the steep increase of social renters in the suburbs of Flemington and Kensington. **Almost one third of households in Flemington (29.33%) live in socially subsidised dwellings, whilst 12.32% of households in Kensington are social renters.**

This may be chiefly attributed to the high number of public housing estates in Flemington and Kensington.

More recently-arrived migrants (such as those of Sudanese or Somali background) – as well as the increasing phenomenon of ‘stagnant’²⁹ migrant populations including the Chinese and Vietnamese – frequently settle in the areas of Flemington and Kensington where there are a high number of public housing estates, as well as access to services and public transport. The Flemington Public Housing Estate is one of the largest public housing establishments in Victoria composing of four twenty-storey towers housing over 4000 people.³⁰ Agency reports indicate that the actual population of the estate is up to *three times higher* than the official occupancy rate.

Apart from the high rise towers, there are also several walk-up blocks of flats established in the Flemington area. The public housing environment in Kensington consists of two 12-storey towers as well as some low-rise walk-up flats.

	Moonee Val- ley LGA	Flemington	Melbourne LGA	Kensington
Social Renters	5.3%	29.33%	6.8%	12.32%

Figure 8³¹

Focus: Flemington Estate

The Flemington estate is a pocket of disadvantage that sits within a highly affluent area. Residents of the estate are often attributed with several of the LNAF variables other than being social renters, including age, lone parenting and ethnicity (age and ethnicity are discussed in more detail below). On the Flemington estate 56.2% of residents are female, and 43.8% of residents are male. The Flemington Estate has a largely young population. Every second person on the Estate (53%) is under the age of 30 . Almost seven out of ten people (66%) are under the age of 50. Approximately three out of four families (75%) on the Estate have children. Half of those families with children (36.7% of the total number of families) are lead by single parents. There is a higher prevalence of single parent families on the Flemington Estate (37%) compared to the Melbourne metropolitan area (10%). Census data shows that 10.4% on the Flemington Estate speak only English at home, this compares to 68.1% of households speaking only English at home

²⁸ National Legal Needs LNAF Tables Toolkit (taken from ABS 2006, 2010 and JSA 2011).

²⁹ That is, migrants to Australia who have since developed a capacity to move out of social housing, but choose to maintain their residence in such developments. This may be due to a combination of reasons including the availability of social infrastructure (schools, public transport, shopping) and the relevant convenience of if the locality. On the other hand, moving out of social housing into an area which they can afford may introduce difficulties such as the increased need for cars, location of new schools, and the adaptation to a new locality.

³⁰ The Flemington High Rise Housing Estate alone is home to about 4000 people, many of whom are refugees from the horn of Africa, including Ethiopia, Eritrea, Sudan, and Somalia. Many others are from countries such as Afghanistan, Turkey and Vietnam (Hopkins, 2007a: 1.

³¹ ABS website: Community profiles of Moonee Valley LGA, Melbourne LGA, Flemington and Kensington.

in Metropolitan Melbourne. Weekly Income by Individual signifies an area of low income incomparision to more consistent levels of income in Metropolitan Melbourne. Income levels are fairly similar between men and women. Unemployment sits at 88% of tenants on the Flemington estate.³²

Private Renters

Private renters are likely to have significantly greater legal problems associated with Money/Debt, Welfare Payments, Housing (Tenancy or Homelessness) and Immigration compared to the general population. Although historically associated with young workers as a temporary step towards household formation, private renting is increasingly become a longer-term housing option. This is a result of the home purchase market being largely inaccessible to younger people and those on low to moderate incomes, particularly in larger cities.

It should also be noted that private renters tend to be more concentrated in the inner and middle-ring suburbs of capital cities where flats and units have been built historically and recently, rather than rural and regional areas. This is also relevant to the suburbs of Flemington and Kensington which sit in the inner Melbourne area.

21.8% of Australian households are private renters. Statistics for Victorian and Melbourne SD households are similar at 20.4% and 21.8%, respectively. Moonee Valley LGA also maintains an average number of renters (23.8%), however, figures regarding private renters in Flemington are relatively high at 31.74%. More shocking are statistics for Melbourne LGA which show that over half of Melbourne residents are renting (54.9%). Though not as high as it's LGA average, Kensington also has an considerately elevated rate of private rental at 37%. These numbers are likely to reflect the historical development of rental properties and increasing demand for properties near the city centre, as discussed above.

	Moonee Val- ley LGA	Flemington	Melbourne LGA	Kensington
Private Renters	23.8%	31.74%	54.9%	37%

Figure 9³³

Ethnicity (born in non-English speaking country)

People from culturally and linguistically diverse (CALD) groups are less likely than the general population to experience a legal problem of *any* type. However, it should be noted that the statistical 'lack' of legal problems reported by this population is likely to be a consequence of a data collection flaw. That is, statistical data fails to account for the tendency of migrants to refrain from seeking legal assistance when faced with legal problems/events. Upbringing in vastly different social and legal environments often trigger a misunderstanding of fundamental legal rights or different interpretations of what constitutes a legal issue. Such reasons are likely to prevent a person from a CALD background from seeking legal assistance unless the service is clearly presented to them.

³² Census Data 2006 and Department of Human Services Statistics 2011.

³³ ABS website: Community profiles of Moonee Valley LGA, Melbourne LGA, Flemington and Kensington.

In light of the above discussion, those born in a non-English speaking (NES) country are more likely to experience legal problems associated with Employment, Discrimination/Human Rights and Immigration. Another legal issue stemming from a CALD background is traffic and car-related offences.³⁴

Of 564 LGAs in Australia, both Moonee Valley LGA and Melbourne LGA fall within the top 50 LGAs in Australia in terms of proportion of NESB population. Moonee Valley LGA ranks at 42 with 24.4%, and Melbourne ranks at 9 with over 40% of the population being born in a non-English speaking country.

Flemington and Kensington also show high proportions of a people with ethnic backgrounds (37% and 22.6% respectively).

Client Region of Birth

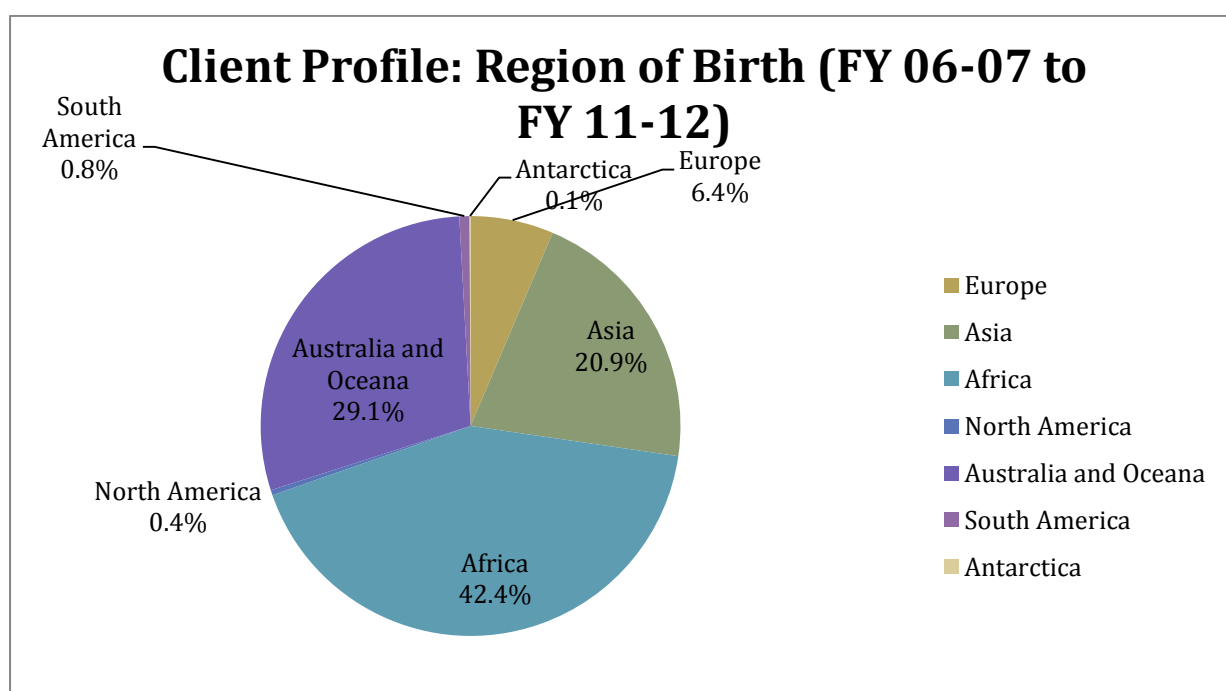


Figure 5F.1 Client Profile: Region of Birth (FY 06-07 to FY 11-12)

Data collection rate for Country of Birth is 99.53%, indicating the high reliability of the data this section (5F).

The above graph depicts a cross section of the regions where FKCLC's clients are born. Most of FKCLC's clients are natives of Africa, chiefly from countries in the horn of Africa including Ethiopia (27.6%)³⁵, Somalia (27%), Sudan (22.1%), Eritrea (11.9%). Other African countries of birth include Liberia (3.5%) and Egypt (2%).

The region from which FKCLC receives the second-greatest number of clients is Australia and Oceania. Australia and Oceania includes both Australia and New Zealand. 97% (362 of 373 clients) of this figure

³⁴ This draws from the above discussion related to 'different legal environments'. Migrants who may have had a different understanding of road rules or driving experience in their previous country may have difficulty comprehending vastly different Australian road laws. This leads to traffic-related legal issues including motor vehicle crashes, licensing, driving offences, and purchasing of cars etc.

³⁵ This percentage (and the following) indicates the proportion of African-born clients (as opposed to the proportion of all clients of FKCLC).

represents clients who were born in Australia. It should be noted that although these clients may have been born in Australia, it is also highly likely that they hail from varying ethnic backgrounds.

Proficiency in English

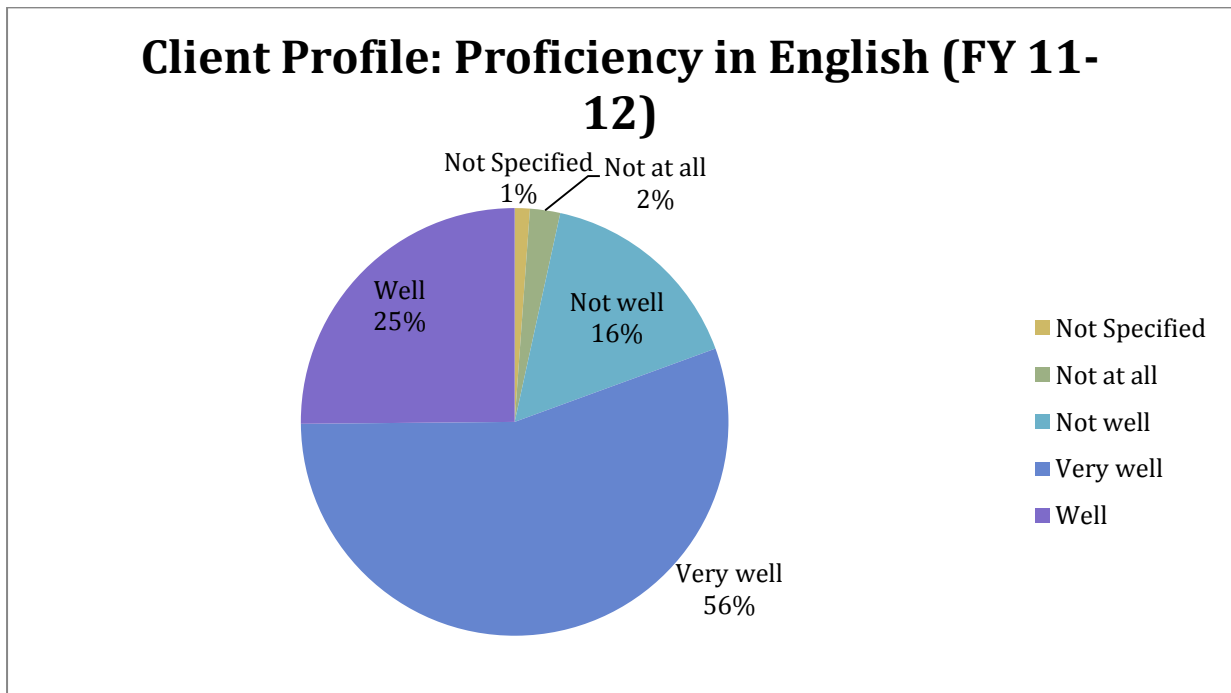


Figure 5H Client Profile: Proficiency in English (FY 11-12)

Again, there is a very high data collection rate of 99.82% for this variable. This graph depicts recent data collected within the last financial year (FY 11-12). Over 80% of FKCLC's clients speak English either Well or Very Well. The remaining 18% are likely to reflect those clients in need to interpreter services.

Income Source

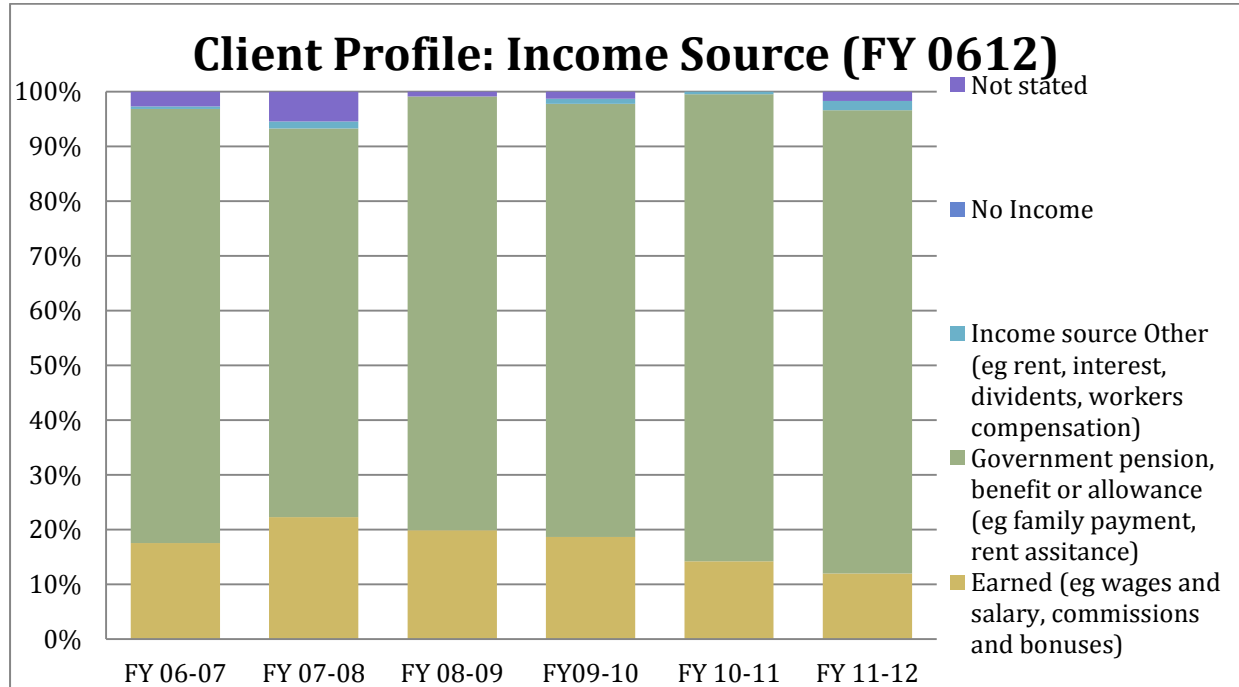


Figure 5I Client Profile: Income Source (FY 06-07 to FY 11-12)

Data collection rate for Income Source is also very high at 98.29%. The above graph indicates whilst a small proportion of FKCLC's clients earn wages, the majority of FKCLC's clients are dependents on government supported social welfare payments.

Income Scale

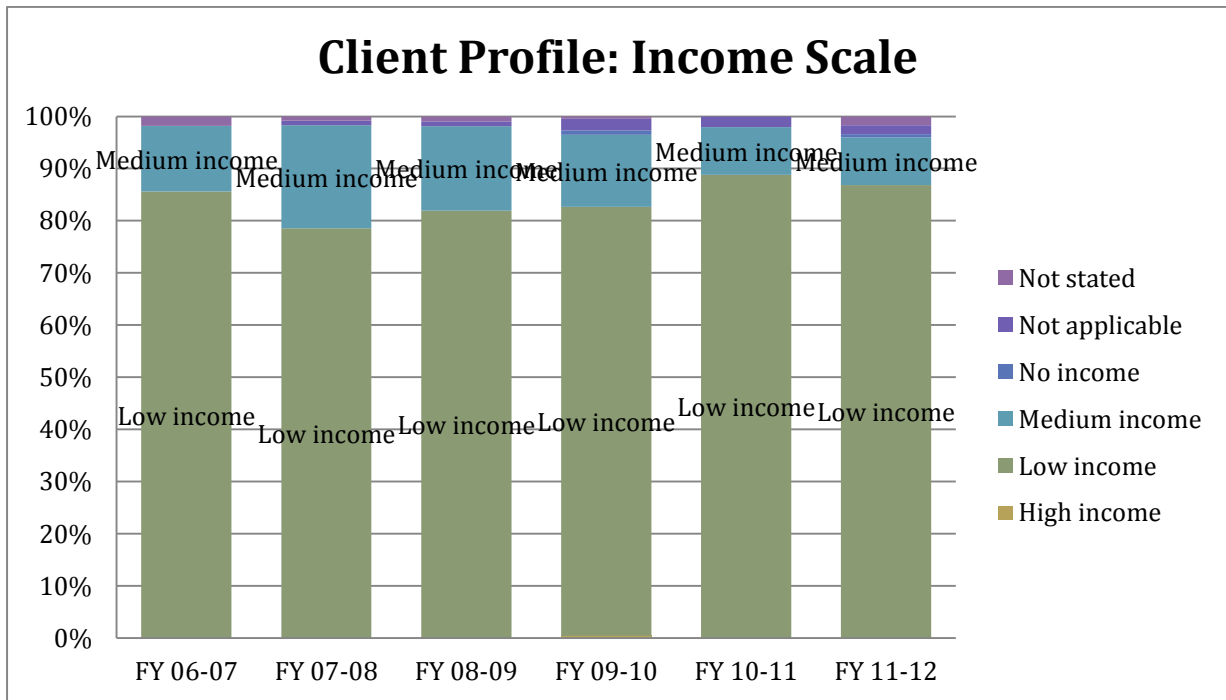


Figure 5I Client Profile: Income Scale

The data collection rate is high at 99.65%. From the graph above, it is evident of all FKCLC clients who have an income, most (~80%) still fall within the low income bracket.

Family Type

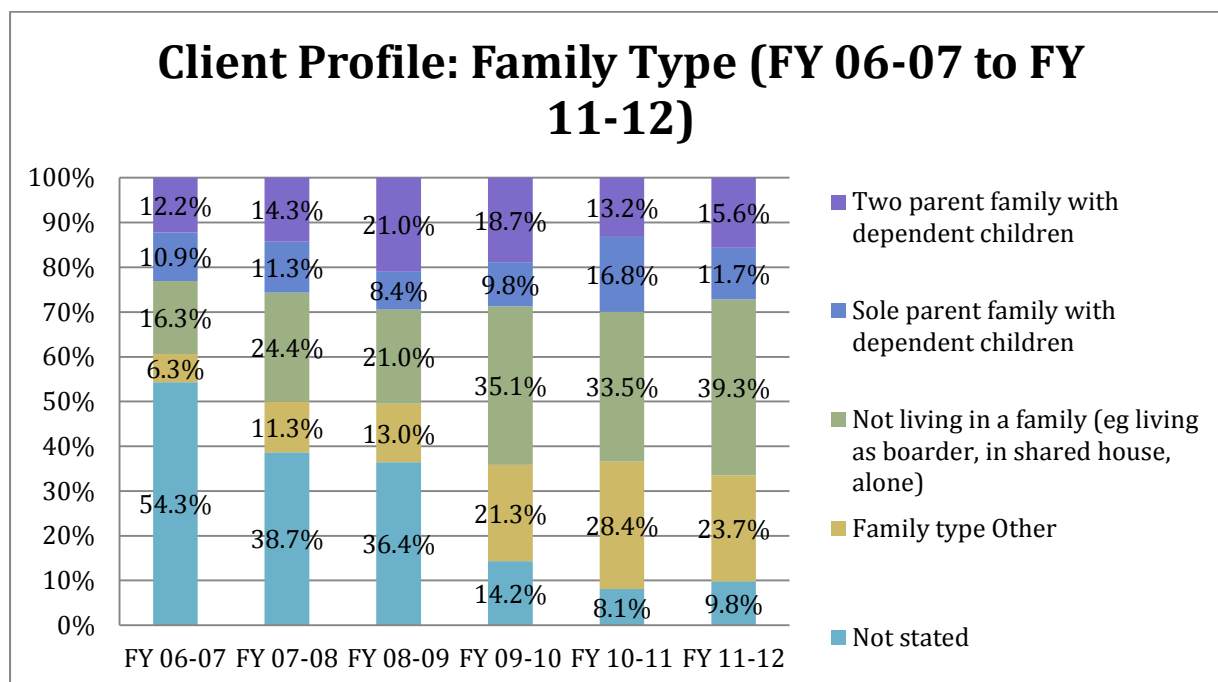


Figure 5K.1 Client Profile: Family Type (FY 06-07 to FY 11-12)

It should be noted that the data collection rate for Family Type is 68.71%. Although this may be a drop in data collection compared to that of previous variables, it is likely to be high enough to indicate relevant trends. The decreasing size of the green bar (corresponding to client data that is 'not stated') indicates that an increasing number of clients of the Legal Centre are providing their details regarding Family Type. As a result, the data collected in recent years is more comprehensive and thus, better placed to represent trends regarding the variable Family Type. Based on the more reliable data collected from FY 09-10 onwards, it can be observed that most of FKCLC's clients are not living in a 2 parent family (generally over 30%). Of the remaining, over 20% generally fall into the category of Other, whilst two-parent families generally account for a little over 10% each.

For more information please contact:

22 Bellair Street, Kensington VIC 3031
 PO Box 487, Flemington VIC 3031
 Phone: 03 9376 4355 Fax: 03 9376 4529
 Email: fklegal@fkclc.org.au
www.communitylaw.org.au/clc_flemingtonkensington
 ABN: 38 029 753 353 Reg No: A0017061M