

Federation of Community Legal Centres (Vic) Inc

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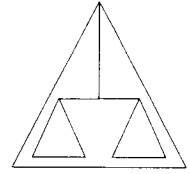
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19th March, 2004

Chris Humphreys
Deputy Director, Courts
Level 1, 436 Lonsdale Street
MELBOURNE Vic 3000

Dear Chris,

Re: Attorney General's Justice Statement
Consultation Draft – February 2004

The Federation of Community Legal Centres has prepared the following comments for your consideration.

The Federation of Community Legal Centres welcomes the Attorney General's proactive approach to review and reform in the legal sector. In particular:

- Overall we support the governing principles applied in the draft including 'The Rule of Law', the stated essential values and the emphasis placed on the maintenance of the separation of powers, judicial independence and discretion and the need to balance sometimes competing community values within the Court system (particularly in the criminal law jurisdiction).
- We welcome the articulation of a need to streamline and simplify processes, make the system more transparent in process and accountability and the need for ongoing review processes.
- We welcome the desire for further dialogue and discussion regarding a Human Rights Charter or similar 'codification' of community principles within the justice system.
- We support the recognition that the justice system does not act in isolation to other community needs and social values. Underlying issues such as affordable and stable accommodation, sustainable employment and income security and community support services for marginalised and disadvantaged members of the community impact on the justice system and its ability to maintain the essential values upon which it is premised.
- We would like to have more up to date and meaningful statistics on CLCs service provision than is outlined in 4.4.3.

The Federation of CLCs considers that the provision of legal services within the context of the overall service system is incomplete without robust debate, review and systemic change. We acknowledge that the Justice Statement and its processes are a positive contribution to the review and renewal. It is vital that regulatory watchdogs of aspects of the system continue to provide independent research and analysis of the system and of government policy. There should be an environment within the justice system that allows for reflection and informed debate and discussion in order that the government courts and service system can continue to address the needs of the community. The Justice Statement is largely silent on this vital aspect of system review and renewal. There is a requirement that the government provides resources to ensure that law reform and policy development work is undertaken both within government and by independent bodies. We would like to see a greater emphasis on these aspects of the system in the Justice Statement given it is a vital aspect of the system.

Our key concerns with the Justice Statement (as outlined in this document) are:

- Insufficient acknowledgment of the barriers to justice and ways to overcome them.
- Too great an emphasis on mediation without adequately acknowledging the inappropriateness of mediation where there are power imbalances such as worker/employer, family violence, sexual assault.
- CLCs contribution to the provision of legal information should be acknowledged.
- We are very concerned about the intention to explore opportunities for first tier advice being delivered by agencies such as Community Information Centres and Citizens advice Bureaus. Community Legal Centres are best placed to provide information, assistance and advice to the community and any funding to improve the communities access should be directed to CLCs. It is our experience that other agencies refer people to CLCs and to increase their contact with people in relation to legal matters will simply increase the demand for assistance at CLCs which are already resource stretched.
- There is a need for timeframes for initiatives to give a sense that they will happen.
- The government has made a significant contribution in the re-establishment of the VLRC and this should be stated.

3. Modernising Justice

3.1 Criminal Law and Procedure

- We note the challenges articulated – finding balance is not an easy process.
- There are concerns that community attitudes as expressed by conservatives and those who are not fully informed give rise to pressure for an overall emphasis on enforcement processes – at the back end of offending – rather than proactive preventative measures to address offending.
- We have concerns about the rapid development of new forensic tools and technologies in the context of ensuring their integrity and the ongoing issues of providing fairness to defendants and the public with respect to rights issues.
- We acknowledge the work done by government in relation to cross boarder jurisdictional issues and welcome consistency of approach.
- We acknowledge concerns and tensions regarding the sentencing process and welcome the articulation of the need for balance, informed debate/dialogue and judicial independence and discretion.
- We welcome moves to ensure greater understanding by victims of the judicial process and appropriate involvement in it, with perceptions of victims needs being balanced in the sentencing process.
- The initiatives regarding the Sentencing Advisory Council are welcome.
- Further discussion about ‘restorative justice’ approaches and their appropriateness is necessary (we do not consider they are appropriate in family violence and sexual offences).
- We welcome review of the Evidence, Bail and Crimes Acts and look forward to the opportunity to input into those reviews.

3.1.3 Jurisdiction

The Federation of CLCs welcomes the move toward greater specialisation in the Courts. We note however, the need for this to be accompanied by adequate specialisation and educative training of the judiciary and the provision of well resourced support services.

3.1.4 Procedure

We see that appropriate sentence indication applied consistently would be advantageous to the resolution of matters. This must be balanced with adequate resourcing of Legal Aid to ensure that defendants are well advised and can exercise their rights to plead not guilty. We would have concerns regarding any significant change to the committal process and would want to be involved in any considerations which may arise. Many view the committal process as having considerable merit and in many instances its perceived failure to provide outcomes prior to trial may lie in the lack of Legal Aid resources to fund intervention by lawyers.

3.1.5 Sentencing

- Once again we acknowledge that this is a difficult and challenging area in which to find the balance.
- We reiterate our support for the governing principles applied in the draft - the stated essential values and the emphasis placed on the maintenance of the separation of powers, judicial independence and discretion and the need to balance sometimes competing community values within the Court system (particularly in the criminal law jurisdiction.)
- We reject mandatory sentencing and the associated loss of judicial discretion outright.
- We support a move toward emphasizing the need to address the underlying issues which bring about offending for those disadvantaged in the justice system particularly Kooris', drug effected persons and those with mental health and psychiatric issues.

3.1.6 Infringements

- We have considerable concerns about the way that the current system operates. Of particular concern is the reticence of government and statutory authorities to allow instalment payments for infringements at first instance (thereby penalizing and increasing the obligation for those who cannot afford to pay) and the emphasis on punitive punishment which may be imposed on those who are not recalcitrant.
- We welcome the initiatives which allow for special consideration by the Magistrates' Court to be given to matters where people have particular issues impacting on their obtaining of fines. Note that this process is administratively difficult and resource intensive. There is a need to make administrative changes to streamline these processes.
- We stress the need for considerable and urgent improvements to this system.

3.2 Civil disputes

- We acknowledge the need for increased emphasis on ADR and the need for greater co-ordination. We would like greater emphasis given to recognition of power imbalances between parties particularly those from CALD communities in their understanding and involvement in the process. The need for accessible legal assistance and advice is vital.
- We welcome the opportunity to input into discussions regarding the overlapping jurisdictions of VCAT and the Magistrates Court but generally support the shift to lower cost resolution of disputes.
- We support increases in jurisdiction of Magistrates Court but highlight the need for adequate specialisation and on going professional development of the Magistracy.
- There is a need for increased education within the community as a proactive preventative measure to avoid civil litigation.
- We are very concerned about the lack of Legal Aid resources which make it almost impossible to receive funding for civil matters. This further jeopardises fair and equitable outcomes given significant financial resource and power imbalances between parties.
- We generally agree with the need to simplify overall processes and where possible allow for reduced reliance on professional intervention. Agree that discovery processes, use of expert evidence and the reform of pleadings should be considered. Need to balance these reforms with a need to ensure clarity of process and accessibility to the Courts.

3.3 *The Courts*

- There is a need for greater education to the Community about the structure and processes of the Courts and the principles of sentencing and other judicial decision making.
- We encourage greater responsiveness of Courts to provide greater access, diversity and good management practice whilst maintaining the independence of the Court system.
- We support positive initiatives to increase Court capacity to respond to broad range of inquiries.
- Training and professional development of the judiciary and Court staff are extremely important particularly in providing skills to address the needs of a diverse community – issues such as family violence, Kooris, drug effected persons and those with mental health and psychiatric issues.
- Access to interpreters is a significant issue particularly in the lower Courts and tribunals. We recognise that the government expends a significant amount of money for interpreters. There is a need for a review of access to interpreters in the Court system and a substantial need for attitudinal change in Court administration regarding the vital function of interpreters in providing access to justice. This may identify a need for increased resourcing of interpreter services in individual court allocations.

3.4 *The Legal profession*

- We support the initiatives of government to address and clarify regulatory processes of the profession and a single gateway for dispute resolution through the development of the Legal Services Board and the Commissioner. We also support the Nationalisation of the profession as sponsored by the Standing Committee of Attorneys-General whilst ensuring adequate regulation of services outside the profession by 'non-traditional' legal service providers in limited areas to ensure adequate consumer protection.

4. Protecting Rights and addressing disadvantage.

The Federation of CLCs believes it is imperative that the justice system remains Human Rights based and we support any initiative towards developing a Human Rights Charter for Victorians. The Federation of Community Legal Centres has considerable experience and expertise in areas where human rights are breached in terms of advocacy, law reform campaigns, community development and community legal education and we look forward to continuing dialogue regarding the development of a Human Rights Charter or similar document to recognise and protect those rights in Victoria. We would like to see a timeframe indicated for this process.

4.1.2 *Reducing discrimination*

- We encourage a systemic approach to addressing discrimination with proactive research and investigation regime and increased education to the community by the EOC. The promotion of attitudinal change is challenging.
- There needs to be a continuation of the emphasis of consulting with community leaders in the CALD community.

4.2 *Disadvantage in the Criminal Jurisdiction*

- The justice system does not act in isolation to other community needs and social values. Underlying issues such as affordable and stable accommodation, sustainable employment and income security and community support services for marginalised and disadvantaged members of the community impact on the justice system and its ability to maintain the essential values upon which it is premised. Integration of well resourced social services is a necessity.

- Requirement for research, diversity of process and flexibility.
- We acknowledge the work of Govt. in the initiatives toward 'problem solving courts' and 'restorative justice'. These initiatives require adequate resourcing and education within the Court system to ensure they address the underlying issues impacting on offending.
- There is a need for greater discussion and debate about specialist courts and restorative justice.
- There is a need for greater consistency in the procedures and operations of Courts.

4.2.6 Children's Court

- We applaud the government's intention to implementing the increased age jurisdiction in the Children's Court in line with International Convention.
- There is a need to look at specific issues within the operation of the law re children and we are happy to input into government considerations. One such issue is the remanding of juvenile offenders within the adult system.

4.3 Victims of Crime

- We welcome greater understanding by victims of the judicial process and appropriate involvement in it with perceptions of victims needs being balanced in the sentencing process.
- Welcome the establishment of a well resourced Victims Support Agency. Such an agency needs to be accessible to all victims given the diversity of the community and has an educative role. Welcome support for the Witness Assistance Scheme

4.3.2 Family Violence and Sexual Assault

- We consider that these areas require special consideration regarding resourcing. We welcome the need for a comprehensive strategy.
- Family Violence and police responses remain a significant challenge.
- The important work of the Statewide Steering Committees to Reduce Family Violence and Sexual Assault should be acknowledged.
- We look forward to inputting into the review of the Family Violence legislative framework by VLRC.
- There is a need for greater administrative consistency in police and court responses and greater training for the judiciary and Court staff.
- There is a significant need to increase services and legal advice provision to victims of family violence within the Court system and recognition that access to legal advice for defendants of Intervention Orders facilitates less confrontational resolutions. Further resources are required to ensure appropriate and adequate responses.

Sexual assault Reform

We look forward to continued involvement in the VLRC's consideration of these issues.

4.4 Access to Legal Advice

- Access to legal advice is vital to the efficient processes of the Court System.

- Adequate funding for Legal Aid and CLCs is imperative.
- We welcome the Government's continued dialogue with the Commonwealth to shift intransigent attitudes to the provision of adequate Legal Aid funding to the states. We acknowledge that the government has made a commitment to increasing Legal Aid funding, however, there is still a significant shortfall in the resource levels required. We consider that access to Legal Aid and Community legal Centres remains a fundamental issue for the legal system and requires the urgent attention of both State and Commonwealth governments.

4.4.2 Legal Information

- This section should acknowledge that legal information is provided by Community Legal Centres as well as by Legal Aid and The Victorian Law Foundation. Community Legal Centres produce a range of kits, pamphlets and information brochures on a broad range of legal issues such as motor vehicle accident kits, fencing kits, guns and intervention orders pamphlets, consumer information brochures etc. CLCs also produce local information sheets on specific issues impacting on their client groups. CLCs often work collaboratively with VLA and VLF to produce information materials. CLCs frequently provide advice or ideas for publications which we are not sufficiently resourced to publish ourselves such as the Common Ground brochure produced by VLF.

4.4.3 Legal Advice

- We would like to see more current statistics provided on CLC service provision than 1999/2000. It is also not clear what 'advice sessions' means. We are happy to provide more current and detailed information and will forward this to you under separate cover.
- Well resourced face to face professional services are paramount in the provision of assistance and advice. The diversity of the Victorian CALD community and the issues faced by those who are disadvantaged in accessing justice require targeted and holistic service delivery approaches. There is a particular need for research into the needs of the CALD communities in accessing and understanding the legal system.
- Both Legal Aid and Community Legal Centres have significant experience and networks within the community to deliver services to those requiring assistance. Community Legal Centres are focused directly on and are responsive to their local communities. Generalist and specialist community legal centres provide proactive preventative education strategies as well as delivering core services such as advice and on going assistance. The Legal Aid service system is supported by and is reliant on the services provided by Community Legal Centres. In addition, Community Legal Centres are well placed to provide the government with valuable research, analysis and policy recommendations. Submissions to the government on various legal issues are provided by our members regularly. Community Legal Centres, with increased resources, would be able to continue to provide the government with expert suggestions in dealing with disadvantaged community members in a sustainable manner.
- Legal advice in isolation is insufficient to ensure that the legal system can respond to community need. There is also a need for adequate services to assist with on going legal issues through professional intervention by well resourced [Community Legal] services.
- There needs to be a distinction drawn between information and advice. Legal advice needs to be provided by qualified practitioners at Legal Aid or Community Legal Centres.
- The Federation of Community Legal Centres is concerned that the Justice Statement suggests that first tiered legal advice be delivered through a wider range of community agencies, e.g. community information centers and citizen advice bureaus. Our concern is that the government might overlook the established network of legal centers that is already providing information, assistance and advice to disadvantaged people. Whilst CABs and other organisations may have a role to play in the provision of information and linkages to other

social support services, we would be greatly concerned if the government were to adopt a situation similar to Britain where CABs or another network is established to give legal advice. There will always remain a need for independent and professional legal advice and on going assistance and advocacy. These services are already being provided by resource stretched Community Legal Centers and Legal Aid offices. Rather than developing an alternative network, the Federation believes increased resources to the existing CLC / Legal Aid network would be more beneficial to disadvantaged people in Victoria.

- It is our experience that Community Information Organisations and Citizen Advice Bureaus refer people to CLCs for information, assistance and advice. Any increase in the contact these groups have with people requiring legal assistance will have a flow on effect to increase demand to already resource stretched Community Legal Centres.
- If money is to spent to increase the communities access to legal information and assistance, Community Legal Centres are best placed to provide these services rather than any consideration of funding other agencies.
- Community Legal Centres are currently providing services from an holistic approach. We are able to provide necessary referrals to clients with complex and diverse needs.
- It is our belief that Decision Support System's are costly, difficult to get right and need a person to interpret.
- When resourced sufficiently Community Legal Centres are well placed to provide the government with valuable research, analysis and policy recommendations and we look forward to maintaining dialogue towards this end.

Thank you for the opportunity to comment on the Attorney General's Justice Statement Consultation paper, we look forward to further dialogue with you. We would like to take this opportunity to thank you for involving us in your consultation process throughout the development of the Justice Statement.

Yours sincerely,

Deborah Kirkwood
Acting Executive Officer
Federation of Community Legal Centres.

*Draft JS document
was confidential
to-ord, secretariat
Sally Smith, Marcus
Williams + DK
had input*