



Federation of  
Community Legal Centres  
VICTORIA

**VICTORIAN STATE BUDGET SUBMISSION 2011-2012**

“The incoming government’s initiatives in the field of justice will be directed...to make Victorians safer, improve access, reduce costs and waiting times, uphold rights and support the independent, impartial and efficient operation of our courts and tribunals.”

*Attorney-General Robert Clark*

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## Introduction

Legal problems:

*“are not problems that should concern only lawyers and those charged with civil law policy development. They are problems that should be of general concern since they relate to and impact on health, education, housing, welfare, commerce, citizenship, policing and communities. They are, in sum, problems that should not be associated narrowly with civil law, but broadly with social justice”.*<sup>1</sup>

Increasingly, access to justice research is confirming that:

- people who are already disadvantaged or socially excluded are more likely to experience legal problems than other people;<sup>2</sup>
- legal issues can bring about a range of social, economic and health problems;<sup>3</sup> and
- unresolved legal issues can reinforce and bring about social exclusion.<sup>4</sup>

Many people with legal problems have complex needs and multi-dimensional problems. People who cannot resolve their problems often end up in cycles of decline. If problems are not resolved early, they can escalate and become compounded by related legal issues.

The failure to resolve legal problems in a timely manner can lead to loss of employment and income, stress-related illnesses and relationship breakdown. The impact of unresolved legal problems represents a significant cost to government and the community. Attached to this submission, at Appendix 1, is a flow chart based on a case study to demonstrate the positive impacts of early resolution of legal problems.

Community legal centres (CLCs) play a vital role in providing access to justice and addressing disadvantage. Government reviews consistently confirm this important role<sup>5</sup>, as well as identifying the low funding levels for CLCs and the overwhelming demand for services.<sup>6</sup>

CLC strengths include “flexibility which enables responsiveness to emerging client needs” and a “multi-dimensional approach to service delivery which is well-suited to assisting people with complex needs and multiple disadvantages.”<sup>7</sup> CLCs integrate assistance for individual clients with community legal education, community development and law reform projects that are based on client need and are preventative in outcome.

CLC data outlined in Appendix 3 confirms that CLCs continue to help some of the most disadvantaged Victorians, with around 83% of clients earning less than \$26,000 per year. The

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<sup>1</sup> Pleasence, P, *Causes of Action: Civil Law and Social Justice* (2<sup>nd</sup> ed, 2006), p 153-4. At <http://www.lsrc.org.uk/publications.htm>.

<sup>2</sup> Ibid, p 155. See also Coumarelos, C, Wei, Z & Zhou, AH, *Justice made to measure: NSW legal needs survey in disadvantaged areas* (2006), Law and Justice Foundation of NSW, Sydney

<sup>3</sup> Pleasence, P, Balmer, N, Tam T, Buck, A, Smith, M and Patel, A, *Civil Justice in England and Wales: Report of the 2007 English and Welsh Civil and Social Justice Survey* (2008), London, Legal Services Commission, LSRC Research Paper No. 22, see chapter 3. At <http://www.lsrc.org.uk/publications.htm>.

<sup>4</sup> Pleasence, above n 1, p 155.

<sup>5</sup> The 2008 Review of the Commonwealth CLSP “confirms the key role the Program plays in assisting members of the community with legal and related problems, and the expertise and innovative approach adopted by community legal centres in providing this assistance”: Commonwealth Attorney-General’s media release, 18 April 2008. The 2007 Review of the NSW CLC Funding Program by the NSW and Commonwealth Governments found that the program in NSW is “an effective use of public funds and should continue to be supported by government.” (p.4).

<sup>6</sup> The 2008 Review of the Commonwealth CLSP confirmed that CLCs experience “particular problems in meeting demand for services within their current funding allocations” (p 47). Similarly, the Australian Council of Social Services “Australian Community Sector Survey Report 2007” found that CLCs are amongst the service providers with the highest “turn away” rate for clients seeking assistance. The Senate Legal and Constitutional Affairs Committee’s Access to Justice Inquiry noted at p 129 “Evidence to the inquiry, together with evidence from the 2003-04 inquiry, overwhelmingly suggests...that CLCs need greater funding to provide minimum levels of access to justice.”

<sup>7</sup> 2008 Review of the Commonwealth CLSP, p 6.

data shows that CLCs are helping more Victorians, and are providing more in-depth assistance, than ever before.

CLCs are extremely cost-effective. In 2009/10, the joint Federal and State Community Legal Services Program (CLSP) provided \$17.8 million in funding to Victorian CLCs. In return, Victorian CLCs funded by the CLSP delivered close to 140,000 information, advice and casework services to Victorians, the large majority of whom were significantly disadvantaged.

The funding investment in CLCs by government is boosted by the commitment of CLC volunteers and pro bono relationships. The National Association of Community Legal Centres (NACLC) estimated that in 2006, CLC volunteers provided the commercial equivalent of \$23 million of legal assistance services.

## The Submission

This submission outlines how the Victorian Government can achieve its policy objectives by strengthening the work of CLCs.

The submission is divided into two parts:

1. Building the core capacity of CLCs; and
2. Innovations in service delivery.

The submission draws on NACLC publications:

- Federal Budget Submission 2010-11 (7 September 2009);
- “Why Community Legal Centres Are Good Value” (2008); and
- “Community Legal Centres Across Australia – An Investment Worth Protecting” (2007).

The submission is intended to be a summary document only. More detailed information on each initiative is available on request. Some of the initiatives in the submissions are interrelated and the submission should be read accordingly (eg; achieving minimum baseline funding for CLCs will help to address gaps in civil law services).

Background information about CLCs and the Federation of Community Legal Centres (Victoria) is provided in Appendix 2.

## Summary of initiatives

Initiative	Outcomes	Cost
<b>Sustainable minimum baseline funding for all Victorian CLCs</b>	<ul style="list-style-type: none"> <li>Greater capacity in CLCs to deliver access to justice;</li> <li>More efficient spend of access to justice funding;</li> <li>Improved sustainability of the CLC sector; and</li> <li>Improved effectiveness of CLC services.</li> </ul>	Around \$6.7 million recurrent funding.
<b>Sustainable annual indexation of CLC funding</b>	<ul style="list-style-type: none"> <li>Greater capacity in CLCs to deliver access to justice; and</li> <li>Improved sustainability of the CLC sector.</li> </ul>	Around \$100,000 per year for CLSP funding.
<b>Complete Victorian CLC service coverage – eliminating service area “blackspots”</b>	<ul style="list-style-type: none"> <li>Greater equity in access to legal services, particularly for rural and regional Victorians;</li> <li>Greater capacity in CLCs to deliver access to justice;</li> <li>Improved sustainability of the CLC sector; and</li> <li>Improved effectiveness of CLC services.</li> </ul>	Recurrent funding of \$1.3 million would establish a new service in the Goulburn Valley and outreach services in Gippsland; Nillumbik, Murrindindi and Mansfield Shires; and Northern Grampians, Horsham & West Wimmera.
<b>Recruiting and retaining excellent staff – increasing CLC salaries</b>	<ul style="list-style-type: none"> <li>Greater capacity in CLCs to deliver access to justice; and</li> <li>Improved sustainability of the CLC sector.</li> </ul>	To be costed based on further research into CLC staff numbers and current salary rates.
<b>Providing genuine career pathways into CLCs – CLC law graduate scheme</b>	<ul style="list-style-type: none"> <li>Greater capacity in CLCs to deliver access to justice, particularly for Victorians in rural and regional areas;</li> <li>Improved sustainability of the CLC sector; and</li> <li>Improved effectiveness of CLC services.</li> </ul>	Recurrent funding of around \$524,000 per year would create an additional 5 law graduate positions in CLCs, supported by effective training and coordination.
<b>Improved access to legal assistance in civil law matters</b>	<ul style="list-style-type: none"> <li>Victorians’ civil law rights realised;</li> <li>Improved compliance with Victorian laws;</li> <li>Reduced costs through early legal intervention and resolution of civil law issues; &amp;</li> <li>Improved confidence in the justice system.</li> </ul>	Around \$1.2 million per year would fund the establishment of a pilot network of eight civil lawyers, each supported by 0.5 EFT administration positions.
<b>Eliminating discrimination in Victoria</b>	<ul style="list-style-type: none"> <li>Promoting the human rights of those affected by discrimination;</li> <li>Reduced discrimination in Victoria; and</li> <li>Reduced community costs of discrimination.</li> </ul>	Recurrent funding of around \$530,000 per year will establish a new specialist service. Alternatively, specialist lawyer positions, with administrative support, could be added for \$154,000 per position.

<b>Supporting victims of crime – specialist CLC victims support services</b>	<ul style="list-style-type: none"> <li>• Greater legal assistance and support for victims of crime;</li> <li>• Improved recovery by victims from the effects of crime;</li> <li>• Improved confidence in the justice system; and</li> <li>• Improved awareness of victims’ rights.</li> </ul>	<p>Recurrent funding of around \$530,000 per year will establish a new specialist victims of crime service. Alternatively, a pilot of four lawyers supported by 0.5EFT administration positions, will cost \$154,000 per position.</p>
<b>Reducing reoffending by services to resolve legal issues impacting on prisoners’ ability to reintegrate into the community such as debt, welfare, housing and employment</b>	<ul style="list-style-type: none"> <li>• Access to legal assistance for prisoners for civil law issues;</li> <li>• Improved prisoner reintegration into the community;</li> <li>• Reduced reoffending rates; and</li> <li>• Reduced community costs of crime.</li> </ul>	<p>Recurrent funding of around \$530,000 per year will establish a new specialist service. Additional lawyer positions, with administrative support, will cost \$154,000 per position.</p>
<b>Preventing family violence in Victoria – increasing the capacity of CLC family violence prevention services</b>	<ul style="list-style-type: none"> <li>• Reduction in family violence;</li> <li>• Reduction in community costs of family violence;</li> <li>• Services delivered in appropriate and effective manner;</li> <li>• Identification of systemic issues impacting on family violence work; &amp;</li> <li>• Promotion of integrated family violence service delivery.</li> </ul>	<p>Additional family violence duty lawyer positions, supported by 0.5EFT administration support will cost \$154,000 per position in recurrent funding.</p>
<b>Access to justice for victims of sexual assault with a cognitive impairment – establishing a pilot advocacy service</b>	<ul style="list-style-type: none"> <li>• increased reporting to police by victims of sexual assault with a cognitive impairment;</li> <li>• increased prosecution of these crimes; and</li> <li>• increased protection against sexual assault for people with a cognitive impairment through increased prosecution and consequently increased deterrence.</li> </ul>	<p>\$175,000 (in addition to the \$231,000 already raised from philanthropic donors).</p>
<b>The Law Handbook Online for free for all Victorians</b>	<ul style="list-style-type: none"> <li>• Better availability of legal information to the Victorian public;</li> <li>• Better access by the Victorian public to legal services;</li> <li>• Earlier resolution of legal issues; and</li> <li>• Greater compliance with laws.</li> </ul>	<p>Approximately \$220,000 per year.</p>

## 1. Building the core capacity of CLCs to deliver access to justice for Victorians

### **Sustainable minimum baseline funding for all Victorian CLCs**

The average recurrent funding for a Victorian CLC under the CLSP in 2010/11 is \$426,856. The demands on these services are huge. Increasing rent, wages and travel costs are all impacting negatively on operational budgets. This impact is amplified in rural areas. Increases in Victoria's population, which rose by 1.8% to 30 June 2009, are increasing service demand.

The Victorian Government and Victoria Legal Aid have funded important CLC initiatives in recent years,<sup>8</sup> however there have been no general increases in recurrent CLC funding. Many centres, and in particular inner-city centres, continue to struggle with very low baseline funding.

The multi-disciplinary service delivery approach used by CLCs works effectively in disadvantaged communities and is flexible and responsive in targeting services towards areas of need. CLCs need to employ a multi-skilled team to effectively implement this model. The low level of core funding for many CLCs affects their ability to fully adopt this service model.

In addition, low core funding results in a disproportionate amount of resources being taken up by infrastructure and administration as opposed to service delivery. Analysis conducted by the 2007 Review of the New South Wales Community Legal Centres Funding Program, found that increasing funding up to and beyond the baseline level for existing CLCs, will have "an exponential effect on the level and range of legal services able to be delivered, and outcomes achieved".<sup>9</sup> The analysis found that a doubling of funding for NSW CLCs would produce more than a three fold increase in service outputs. It further showed that increasing the funding of the lowest funded NSW CLCs up to the average of all centres (a 50% increase), would almost double their outputs.

Low core funding makes it difficult for CLCs to recruit and retain good staff and obtain reasonable and accessible premises. It impacts on centres' ability to leverage their core funding by seeking philanthropic and other funding or pro bono and volunteer resources to extend their services to the community.

In short, low core funding negatively impacts on CLCs' ability to deliver effective and efficient legal services to the Victorian public.

The diagram on the following page outlines our recommended optimal *minimum* core funding for a CLC. The recommended salary rates are broadly comparable to Victoria Legal Aid rates. Based on this costing, the minimum annual funding for each CLC to most effectively implement the strategic service delivery model is \$532,053. The minimum core recurrent funding for Victorian CLCs should be raised to this level.

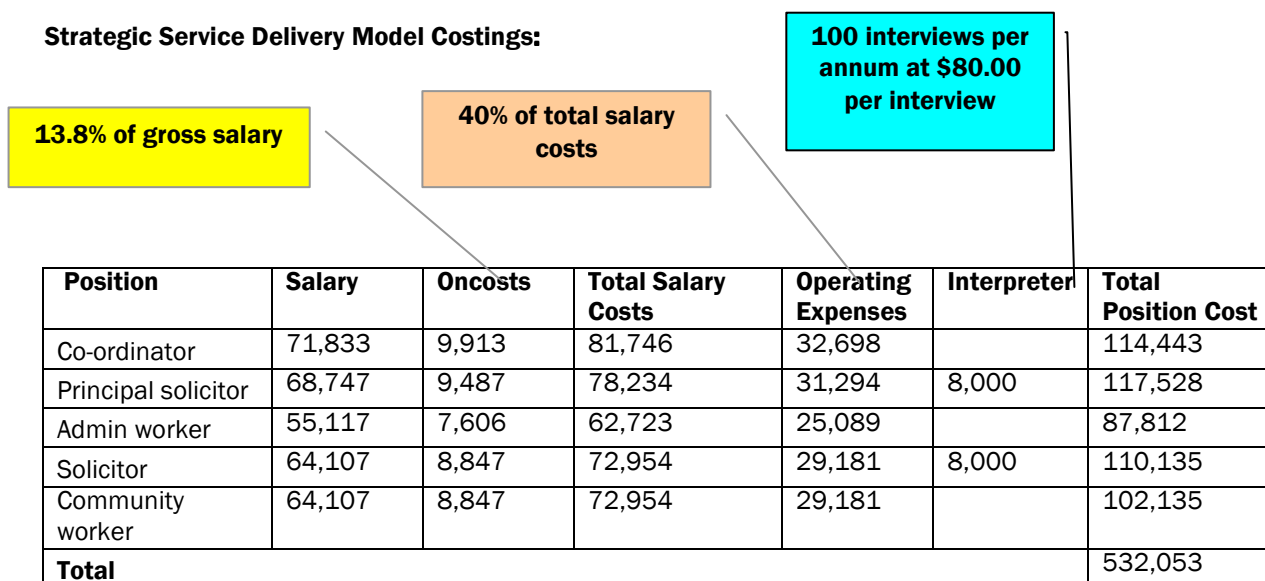
This baseline funding should have an additional loading of 30% on operating costs for Victoria's rural and regional CLCs to recognise the increased costs in relation to travel, communication, technology and recruitment. This loading would amount to \$44,233 using the following costings.

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<sup>8</sup> In 2007-08, the Victorian Government funded 8 family violence and 5 rural and regional lawyer positions in CLCs. Victoria Legal Aid provided funding for 3% salary increases in many CLCs in 2008/09 for three years and for one year in 2010/11.

<sup>9</sup> See pages 173-175 of the Final Report. The review was commissioned by the Commonwealth and New South Wales Attorneys General.

**Strategic Service Delivery Model Costings:**



**Outcomes:**

- Greater capacity in CLCs to deliver access to justice;
- More efficient spend of access to justice funding;
- Improved sustainability of the CLC sector; and
- Improved effectiveness of CLC services.

**Cost:**

Raising the average recurrent funding of all Victorian CLSP CLCs to the strategic service delivery model baseline funding would cost around \$6.7 million annually.

**Sustainable annual indexation of CLC funding**

The sustainability of CLC funding depends heavily on annual indexation of government funding which matches the real increases in expenses such as rent, wages and travel. However, each year the Victorian and Australian Governments index CLSP funding below annual CPI, meaning annual decreases in funding in real terms for many CLCs, even ignoring increases in population which in turn increase demand for CLC services. For example, CPI for Melbourne for the year to June 2008 was 4.4% yet 2008/09 CLSP funding was indexed at only 2.25%.

Since 2003, the Victorian Government has utilised an “NGO Price Index” to fix the level of annual funding indexation for some community organisations. The current NGO Price Index is 3.14% per year for three years from 2009.

However, the NGO Price Index only applies to community agencies funded by the Department of Human Services or the Department of Education and Early Childhood Development (and some organisations funded by the Department of Planning and Community Development).

Department of Justice funded agencies are not currently covered by the NGO Price Index.

It makes no sense for the Victorian Government to differentiate in its indexation of community agency funding by reference to which Department funds the agency. The Government should adopt a whole of government approach to indexation which matches the NGO Price Index.

In response to our advocacy on this issue, Victoria Legal Aid (VLA) matched the NGO Price Index for 2009/10 and 2010/11 CLC funding. VLA used its own funds to provide this fairer rate of indexation as the Victorian Government had indexed the CLC funding it provides to VLA to

administer at a lower rate. VLA has not committed to maintaining this indexation in future years.

The Victorian Government should commit to meeting the NGO Price Index across all Departments, including Department of Justice.

*Outcomes:*

- Greater capacity in CLCs to deliver access to justice; and
- Improved sustainability of the CLC sector.

*Cost:*

Around \$100,000 per year for CLSP funding. The cost of matching the NGO Price Index for other Department of Justice funded community agencies needs to be costed.

### **Complete Victorian CLC service coverage – eliminating service area “blackspots”**

Generalist CLCs provide services to a specific geographic region, often defined by local government area. While there are 27 generalist CLCs in Victoria, their funding does not allow them to cover the entire state. Most of the service gaps are in rural areas.

In recent years, the Victorian Government has supported important initiatives to improve the reach of CLC services through:

- funding new CLC services (either stand alone centres or permanent offices of existing centres) in Bendigo, Rosebud, Melton, Boronia and Cranbourne; and
- increasing the capacity of five rural and regional CLCs to deliver outreach services in their service areas.

However there still remain large areas of Victoria which have little or no access to CLC services. These include:

- *Gippsland:* Gippsland CLC, with recurrent CLSP funding of only \$468,000 has an enormous service area stretching from Pakenham to Mallacoota to Wonthaggi to Dargo;
- *Goulburn Valley:* with limited philanthropic funding, Loddon Campaspe CLC has established a small pilot outreach service in Shepparton. Apart from this pilot, large areas in this region, including population centres such as Shepparton, Euroa, Seymour, Cobram and Benalla have limited or no access to CLC services;
- *Nillumbik, Murrindindi & Mansfield Shires* – residents of this corridor, which includes metropolitan fringe areas such as Diamond Creek and St Andrews and extends to Yea, Marysville and Mansfield, have little or no access to CLC services; and
- *Northern Grampians, Horsham, West Wimmera* – residents of this area have little or no access to CLC services.

The gaps in CLC service areas were highlighted by the Black Saturday fires. Areas such as Marysville and Kinglake fell outside CLC service areas. The nearest CLCs to these areas still helped bushfire-affected clients and in some cases, with short term Federal funding, established temporary outreach clinics. However, the location of the fires highlighted that residents of areas like Marysville and Kinglake do not have the same access to legal services as residents of other areas of Victoria. For example, Whittlesea CLC observed that its promotion of the availability of services to assist bushfire-affected people led to an increase in demand for assistance with non-bushfire legal issues, particularly from areas like Kinglake which it was normally unable to service due to funding constraints.

The Victorian Government should provide funding to ensure complete and equitable access to CLC services for all Victorian communities.

There is a risk that in seeking to address gaps in CLC service areas, further pressure will be put on an already strained and limited funding pool – undermining the ability of existing centres to



achieve sustainable funding levels. Accordingly, our preference is for funding to be used to build the capacity of *existing* centres to deliver services to areas with little or no access.

*Outcomes:*

- Greater equity in access to legal services, particularly for Victorians in rural and regional areas;
- Greater capacity in CLCs to deliver access to justice;
- Improved sustainability of the CLC sector; and
- Improved effectiveness of CLC services.

*Cost:*

Recurrent funding of \$1.3 million would:

- Establish a CLC with the minimum Strategic Service Delivery Model funding servicing the Goulburn Valley;
- Establish five additional outreach lawyer positions supported by 0.5EFT administration positions, based at existing CLCs and servicing Gippsland (1), Nillumbik, Murrindindi and Mansfield (3) and Northern Grampians, Horsham & West Wimmera (1).

**Recruiting and retaining excellent staff**

The capacity of CLCs to deliver effective public legal services is negatively impacted by the fact that CLC lawyer and manager salaries are not competitive with the government and private sectors.

71% of the 24 Victorian CLCs who responded to a 2008 Federation salary survey pay their community lawyers \$57,000 or less. The top salary rate under the relevant award for Victorian CLCs and the CLC Multiple Business Agreement 2006-09 is less than \$54,000.

In contrast, private and government sector salary rates are far higher and the pay disparity increases as lawyers progress through their careers.

*Victoria Legal Aid*

VLA salary rates are set out in the table below. VLA employees receive the same salary packaging benefits and can get performance pay bonuses under their enterprise agreement. These rates were current at May 2010.

VLA 6 - Senior Manager	\$111,212 - \$127,927
VLA 5 - Manager of Section or Regional Office	\$87,379 - \$111,211
VLA 4 - Experienced Lawyer, Deputy Manager of Section or of Regional Office	\$69,906 - \$87,378
VLA 3 - Lawyer	\$54,019 - \$69,905
VLA 2 - Admin worker	\$39,720 - \$54,018

*Private sector*

Information on private sector rates is taken from the Michael Page Legal Salary and Employment Forecast 2010 extracted below. The rates are cash only, excluding superannuation and other benefits.

<i>Years since admission</i>	<i>Vic medium firm (\$,000)</i>	<i>Vic top-tier firm (\$,000)</i>
Graduate lawyer	45-65	55-70
1 <sup>st</sup> year PQE	60-80	65-90
2 <sup>nd</sup> year PQE	80-100	75-95
3 <sup>rd</sup> year PQE	90-110	90-120
4 <sup>th</sup> year PQE	100-120	110-130
5 <sup>th</sup> year PQE	120-150	120-160
5-10 years PQE	150-220	150-250

PQE = post qualification experience

The lack of competitive CLC salaries impacts significantly on CLCs' ability to recruit and retain excellent staff. It is extremely difficult for CLCs to address this issue without additional dedicated funding. Without funding, CLCs must cut services to increase salaries.

Fair Work Australia is currently hearing a pay equity test case in the community sector that may see substantial increases in minimum pay for sector workers, including CLC workers.

The Victorian Government should ensure that funding is provided to increase CLC salaries either through:

- the outcomes of the pay equity test case; or
- an independent process such as a multi-CLC employer enterprise agreement.

*Outcomes:*

- Greater capacity in CLCs to deliver access to justice; and
- Improved sustainability of the CLC sector.

*Cost:*

Needs to be costed based on further research into CLC staff numbers and current salary rates. We are currently collecting workforce data to cost this.

### **Providing genuine career pathways from university into CLCs**

The capacity of CLCs to deliver effective public legal services is also impacted by CLCs' ability to attract the best law graduates exiting university.

Many law students study law to work for social justice. However, many of these students end up undertaking traineeships at commercial law firms because the pathways into a CLC or public interest law career are extremely limited. While these graduates may later explore different careers, the low salaries in CLCs make it difficult to attract experienced lawyers.

To attract the best law graduates, CLCs need to offer accessible and attractive pathways from university to work in a CLC.

In 2010, the Legal Services Board funded the Federation to establish a CLC Law Graduate Scheme. The funding enabled the recruitment of one graduate per year in 2010 and 2011. Under the scheme, graduates gain admission and then undergo three four month placements over 12 months including one rural and regional placement. The Federation then works with graduates to assist them to obtain ongoing work in CLCs beyond the 12 month period.

The recruitment process for the 2010 and 2011 graduates underscored the success of the scheme. Two outstanding candidates were selected from a pool of over 150 applications.

While the Legal Services Board funding is a welcome start, it is finite. We need further funding to expand and continue the scheme.

*Outcomes:*

- Improved legal services in regional and rural Victoria for those most in need within those communities;
- Immediate and longer term increase in the availability of quality legal and community services for disadvantaged and at risk Victorians;
- Increased capacity of the community legal centre sector to deliver high quality services to the Victorian community; and
- A pathway into public interest law for the best and brightest law graduates.

*Cost:*

Recurrent funding of around \$524,000 per year would create an additional 5 law graduate positions in CLCs, supported by effective training and coordination.

## 2. Innovations in Service Delivery

Victorian CLCs have identified a range of innovative service delivery strategies to build on existing infrastructure and to expand services to disadvantaged Victorians.

### **Improved access to assistance and representation in civil law matters**

Civil law continues to be the greatest area of unmet legal need. In its submission to the Victorian Law Reform Commission's Civil Justice Review, the Department of Justice recognised that the impact of 1996 cuts by the Australian Government to legal aid funding:

*“was severe. It included the almost complete abolition of legal aid for civil matters so that now grants of legal aid are very rarely made for matters such as discrimination, consumer protection, tenancy law, social security law, contract law and personal injuries. Some of these matters have been picked up by the private profession...but substantial areas of law, particularly poverty-related law, have not been picked up.”*

The lack of availability of legal aid for civil law matters has impacted significantly on community legal centre work. In 2008/09 around 59% of CLC work was in civil law. Due to lack of resources, the bulk of this work focuses on one-off advice and information activities, as opposed to ongoing assistance and representation.

The lack of civil law assistance also appears to be reflected in the increasing number of people representing themselves in civil litigation. The VLRC's Civil Justice Review notes that the “increasing level of self-representation in courts at all levels has been observed and documented in a range of contexts”. Similarly the recent Senate Legal & Constitutional Affairs Committee Access to Justice Inquiry 2009 noted that self-represented litigants “experience particular difficulties in accessing justice, and the number of such litigants is by all accounts increasing”.

Given the enormous challenges involved in self-representation, it is reasonable to assume that behind the increasing numbers of self-represented litigants, there are far greater numbers of people giving up their legal rights because they are unable to access ongoing legal assistance and representation.

Lack of access to advice and representation renders people's rights meaningless. It is a source of injustice. In some cases, it may also breach the right to a fair hearing under the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

The injustice flowing from lack of civil law legal assistance affects Victorians:

- facing foreclosure on mortgages;
- facing eviction from rental properties;
- struggling with debts and at risk of bankruptcy;
- who have been ripped off and denied consumer rights;
- who have been discriminated against; and
- who have been unfairly dismissed from their jobs or who are owed wages and entitlements.

Alongside initiatives to reduce the cost of civil litigation, promote alternative dispute resolution and provide increased support for self-represented litigants, greater funding is urgently needed to increase access to ongoing legal assistance and representation in civil law matters, including in supporting people engaged in alternative dispute resolution processes.

There are a range of initiatives that the Victorian Government could pursue to address this significant unmet civil law need. Increases in the core CLC funding will help. Alternatively, more targeted funding could be used to address specific priority areas. We suggest a pilot network of

eight civil lawyers across Victoria which could be targeted to providing legal advice, representation and education in priority areas of civil law need such as:

- *Eliminating elder abuse* – expanding the scope of services delivered by Seniors Rights Victoria through positions based in outer metropolitan and rural areas (currently services are only located in central, outer Eastern Melbourne and Bendigo);
- *Promoting young people’s rights* - expanding outreach youth legal services (both physical and technology assisted) to all homelessness youth hubs in Victoria through Youthlaw or local generalist CLC programs;
- *Reducing homelessness* – expanding the scope of services delivered by specialist centres such as the Tenants Union of Victoria, PILCH Homeless Person’s Legal Clinic or by generalist centres; and
- *Assisting migrant and refugee communities* – expanding the capacity of generalist CLC services to assist migrant and refugee communities with civil law legal issues.

This pilot network of eight civil lawyers would be an important step towards realising Victorians’ civil law rights.

*Outcomes:*

- Victorians’ civil law rights realised;
- Improved compliance with Victorian laws;
- Reduced costs through early legal intervention and resolution of civil law issues; and
- Improved confidence in the justice system.

*Cost:*

An investment of around \$1.2 million per year would fund the establishment of a pilot network of eight civil lawyers, each supported by 0.5 EFT administration positions, in CLCs across Victoria.

**Eliminating discrimination in Victoria**

The 2008 Equal Opportunity Review Final Report “An Equality Act for a Fairer Victoria”, made important recommendations to modernise and improve Victorian anti-discrimination law.

In the context of access to justice, the Final Report recognised that the “lack of availability of early strategic advice” was “repeatedly raised in consultations”. At page 76, the Report noted the very limited number of grants of legal aid funding for discrimination matters. The Report also referred to research conducted in 1999 by the Victorian Equal Opportunity Commission that found that 72% of people who experience discrimination “do nothing about it”.

Similar concerns about access to justice on human rights were raised by the National Human Rights Consultation Report.

If people cannot access proper legal advice and representation to deal with discrimination, the policy intent behind anti-discrimination laws is undermined. A legal system that does not properly address discrimination creates economic and social costs to individuals, organisations, and the broader community, and thereby also impacts on the economy as a whole.

The Equal Opportunity Review Final Report recognised that access to legal advice and representation promotes fairness, efficiency and effectiveness. Recommendation 31 of the report was to:

*Establish a legal service either within VLA or in a single community legal centre that can develop specialised expertise in relation to discrimination and equal opportunity law. The service should, among other functions, be a source of early strategic advice.*

Our proposed initiative would implement this recommendation, either by establishing this service in an existing CLC, or by boosting the resources available to existing CLCs with expertise in discrimination law.

*Outcomes:*

- Promoting the human rights of those affected by discrimination;
- Reduced discrimination in Victoria; and
- Reduced community costs of discrimination.

*Cost:*

The cost of this initiative would depend on the model chosen for implementation. Recurrent funding of around \$530,000 per year would provide the minimum core funding needed to effectively implement the CLC strategic service delivery model for a new service. Additional lawyer positions, supported by 0.5EFT administration positions, could be added for around \$154,000 per position to increase the capacity of existing CLCs with expertise in discrimination law.

**Supporting victims of crime**

Crimes compensation under the *Victims of Crime Assistance Act 1996* (Vic) (VOCAT Act) provides important support and assistance to victims of crime to help them to recover from the physical, emotional and financial impacts of the crimes committed against them.

However, it is becoming increasingly difficult for victims of crime to access justice through VOCAT applications. This is occurring because of the increasing reluctance of the legal profession to conduct VOCAT work, due to its unprofitability.

Victims of crime do not themselves have to pay for legal costs associated with the VOCAT claim because lawyers can only recover fees for VOCAT work through an award of costs from the Tribunal, and cannot otherwise charge clients for preparing VOCAT applications.

The low level of costs being awarded by the Tribunal, compared with the amount of work involved in a VOCAT application, is resulting in lawyers increasingly withdrawing from this area of practice. It also increases the likelihood of lawyers avoiding complex cases or clients with complex needs, and increases the prospect of poorly prepared applications.

There have been concerns expressed by the Tribunal that reduced quality of applications being brought before the Tribunal can mean that victims may not receive their full entitlements under the legislation.

Community legal centres are experts at supporting victims of crime with targeted, sensitive and appropriate legal services. In 2009/10, Victorian CLCs provided over 16,000 services in relation to family violence and hundreds of services in relation to crimes compensation.

This initiative would establish specialist community legal services to better support victims of crime. The services will assist victims with VOCAT applications and other legal issues including adherence to the *Victims Charter Act 2006* (Vic), advice and support in relation to criminal justice processes, and pursuing compensation under the *Sentencing Act 1991* (Vic) and civil law. The funding would also assist with conducting community legal education and law reform on victims of crime issues.

*Outcomes:*

- Greater assistance for victims of crime;
- Improved recovery by victims from the effects of crime;
- Improved confidence in the justice system; and
- Improved awareness of victims' rights.

Cost:

The cost of this initiative would depend on the model chosen. Recurrent funding of around \$530,000 per year would provide the minimum core funding needed to effectively implement the CLC strategic service delivery model for a new service, potentially collocated with an existing CLC. Alternatively, a pilot of four lawyers supported by 0.5EFT administration positions would cost \$154,000 per position annually. The lawyers would be placed in existing CLCs in regions where victims experience particular difficulties accessing legal assistance for compensation claims and other services.

### **Reducing reoffending through civil law services to prisoners**

Access to justice for Victorian prisoners is not only a welfare and human rights issue; it is a community safety issue. Providing prisoners with proper legal support concerning financial, housing, welfare, employment, health and education issues promotes reintegration into the community and reduces reoffending.

In June 2008, the Law and Justice Foundation of NSW published an important research report which examined the legal needs of NSW prisoners.<sup>10</sup> The report, at page 26, notes:

*“Each time the person cycles through the justice system personal supports are strained, skills become atrophied, financial resources are depleted and the capacity to operate well ‘on the outside’ and without resort to unlawful means is further diminished. Many of the symptoms and causes of these problems have legal implications, with family breakdown, difficulties with housing, high level of debt, and conflict with government authorities all generating and reflecting the disadvantage that prisoners experience.”*

The report confirms the need for accessible non-criminal law services for prisoners and recognises the connection between effectively addressing prisoner legal needs and safe prisons and reduced reoffending.

Presently, it is extremely difficult for Victorian prisoners to obtain legal assistance in prison for non-criminal law matters. Victoria Legal Aid provides important legal services in Victoria’s prisons, but these services focus on criminal law, with some family and immigration law services.

CLCs and other providers have struggled to meet the demand for non-criminal law services. Recently, some progress has been made. With funding from the Legal Services Board, Brimbank Melton Community Legal Centre has been conducting a pilot prisoner legal service, and is now providing civil law services at several metropolitan Melbourne prisons. There has been strong demand for the service, but funding is about to expire. Mental Health Legal Centre, with philanthropic funding and pro bono support, is also delivering civil law services to prisoners with mental illness in specialist prison mental health units and secure treatment facilities. PILCH Homeless Persons Legal Clinic, using pro bono support, also delivers civil legal services to recently released prisoners through a clinic based at VACRO.

These services are in a fragile funding state and/or rely on voluntary pro bono contributions from the private sector. Further, the services do not extend to rural and regional Victoria where most of Victoria’s prisons are located.

Victoria has made very positive advances in reducing reoffending, with reoffending rates dropping for the past seven consecutive years. This initiative will strengthen that work by establishing specialist prisoner civil law legal assistance focussed on helping prisoners resolve legal issues

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<sup>10</sup> Grunseit, A, S Forell & E McCarron, *Taking justice into custody: the legal needs of prisoners*, Law and Justice Foundation of NSW, Sydney, 2008

impacting on their ability to reintegrate into the community such as debt, welfare, housing, identification documents and employment.

*Outcomes:*

- Access to legal assistance for prisoners with debt, welfare, housing, employment and other civil law issues;
- Improved prisoner reintegration into the community;
- Reduced rates of reoffending; and
- Reduced community costs of crime;

*Cost:*

The cost of this initiative would depend on the model chosen. Recurrent funding of around \$530,000 per year would provide the minimum core funding needed to most effectively implement CLC strategic service delivery model for a new specialist prisoner service (either stand alone or located at an existing CLC). Additional lawyer positions, supported by 0.5EFT administration positions, could be added for around \$154,000 per position. Additional positions, either located in the new service or in existing CLCs, would expand the ability of existing CLCs to deliver services to prisons located in rural and regional Victoria.

### **Preventing family violence in Victoria**

The National Plan to Reduce Violence Against Women, released in 2009, identified six key areas where improvements are required:

- Communities need to be safe and free from violence;
- Relationships must be respectful;
- Services must be able to meet the needs of women and their children;
- Responses must be just;
- Perpetrators must stop their violence;
- Systems must work together effectively.<sup>11</sup>

All of these areas require accessible and effective legal services for women and their children.

The National Plan builds on the considerable advances made in Victoria over recent years including the Government integrated response to family violence<sup>12</sup> and the *Family Violence Protection Act 2008 (Vic)*.

CLCs have an important role to play in this integrated response.

Without dedicated funding, for many years CLCs had been conducting family violence duty lawyer services at Magistrates Courts to obtain protection for victims of family violence.

In 2005, Darebin and Central Highlands CLCs were funded to establish full-time family violence applicant duty lawyer positions servicing the Family Violence Court Division at Ballarat and Heidelberg Magistrates Courts. In July 2007, the Victorian Government and Victoria Legal Aid provided funding to 10 CLCs across Victoria to establish 6 full-time and 4 half-time specialist family violence lawyer positions.

These funding initiatives have been welcome, however many CLCs continue to provide family violence duty lawyer services without any dedicated funding, or without sufficient funding relative to demand.

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<sup>11</sup> National Council to Reduce Violence against Women and their Children, *Time for Action: The National Council's Plan for Australia to Reduce Violence against Women and their Children, 2009-2021* (2009).

<sup>12</sup> Statewide Steering Committee to Reduce Family Violence, *Reforming the Family Violence System in Victoria* (2005).



This State Budget initiative would see the expansion of funding to CLC family violence prevention court programs, prioritised to those duty lawyer services that receive no dedicated funding, and those services that receive low funding relative to demand.

The initiative would also provide ongoing support and coordination to CLC family violence lawyers, based either at the Federation or Women's Legal Service Victoria. The support services would ensure consistent, high quality family violence services across Victorian CLCs. The support services would include providing program support, professional development, mentoring, debriefing and identification of systemic family violence issues.

As set out in our 2010-11 State Budget Submission, this would be an extremely cost-effective initiative, generating savings through violence prevention far in excess of the cost of the program.

*Outcomes:*

- Reduction in family violence;
- Reduction in community costs of family violence;
- Services delivered in appropriate and effective manner;
- Identification of systemic issues impacting on family violence work; and
- Promotion of integrated family violence service delivery;

*Cost:*

Additional family violence duty lawyer positions, supported by 0.5EFT administration support, will cost \$154,000 per position in recurrent funding. New positions should be focussed on the unfunded and underfunded services with the highest demand. The program support and coordination services position will cost around \$100,000 in recurrent funding.

**Access to justice for victims of sexual assault with a cognitive impairment**

Achieving justice for victims of sexual assault with a cognitive impairment<sup>13</sup> or communication difficulties is an enormous challenge for the justice system. People with a cognitive impairment or communication difficulties are more vulnerable to sexual assault, and to more severe and prolonged abuse. The rates of prosecution of sexual assault where the victim has a cognitive impairment are extremely low. There is increased disengagement with criminal justice processes and police are less likely to believe their reports of assault.

The Victorian Law Reform Commission concluded in 2004 that "it is clear that the criminal justice system offers people with a cognitive impairment very limited protection against sexual assault....However, with adequate assistance many people with a cognitive impairment can tell the police what has happened to them and can give evidence in court."

The Federation has been working to provide that practical assistance. The Federation developed a model for a pilot specialist advocacy support service in collaboration with agencies including South Eastern Centre Against Sexual Assault (SECASA), Springvale Monash Legal Service, Mental Health Legal Centre, Disability Discrimination Legal Service and Women with Disabilities Victoria.

The pilot service will be based in Melbourne's South East region. SECASA, Springvale Monash Legal Service and disability agencies will provide victims with:

- advocacy and support during dealings with police and prosecutors. Crisis support will be offered through a 24 hour service;
- ongoing advocacy and support during investigation, prosecution and court processes. Victims will be helped to monitor, understand and participate in these processes;
- legal and other advice on criminal justice processes and the options and services available;

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<sup>13</sup> Cognitive impairment is a term which includes acquired brain injury, intellectual disability, dementia and/or mental health issues.

- legal support to access crimes compensation and other compensation options; and
- a skilled communication support service and other disability support services where required.

There will be a strong focus on data collection and evaluation with a view to modifying and expanding the pilot across Victoria in the future.

The Federation has so far raised \$231,000 towards its goal of \$405,864 to fund the two year pilot. Confirmed funders are the William Buckland Foundation, the Reichstein Foundation and two private donors.

The balance of the funding is needed to ensure that this important pilot service can proceed.

#### *Outcomes*

- increased reporting to police by victims of sexual assault with a cognitive impairment;
- increased prosecution of these crimes; and
- increased protection against sexual assault for people with a cognitive impairment through increased prosecution and consequently increased deterrence.

#### *Cost*

\$175,000 to meet the balance of funding required.

### **The Law Handbook Online for free for all Victorians**

Accessible and comprehensive legal information is critical to ensuring informed participation in the legal system.

*The Law Handbook*, produced by Fitzroy Legal Service, is a reliable, practical and easy-to-read guide to the law in Victoria. For over 30 years it has provided comprehensive up to date information on the law in plain English. Content is provided by over 70 expert volunteers and it is currently used by the legal profession, universities and libraries, small business, students and teachers and the general public who purchase or who access it through libraries or online. *The Law Handbook* clearly fits well with the Government's vision to improve access and uphold rights.

At present, *The Law Handbook* is a self-funded publishing venture by Fitzroy Legal Service and is available for purchase in hardcopy. Thanks to major grant funding from the Legal Services Board, *The Law Handbook* became available online for free for all Victorians in 2009. This initial funding expired in 2010.

The Legal Services Board and the Department of Justice have provided additional funding to ensure the continued availability of the *Law Handbook Online* to the general public in 2011. Fitzroy Legal Service is seeking ongoing funding from government and the private sector.

Around 1400 people a day are currently accessing *The Law Handbook Online*. This initiative would provide government funding to enable this vital resource to continue to be widely accessible and free for all Victorians on an ongoing basis.

#### *Outcomes:*

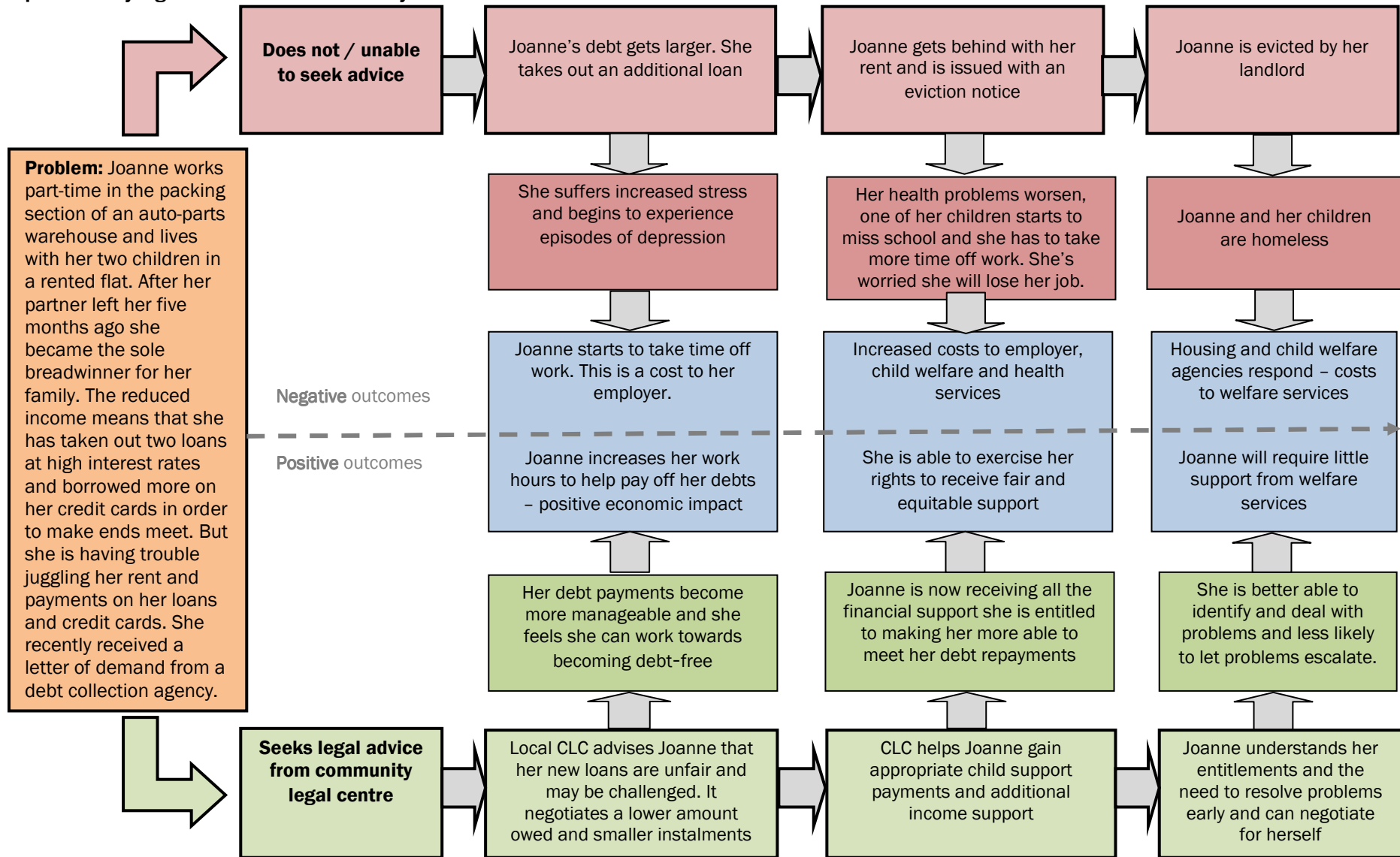
- Better availability of legal information to the Victorian public;
- Better access by the Victorian public to legal services;
- Earlier resolution of legal issues; and
- Greater compliance with laws.

#### *Cost:*

- Approximately \$220,000 per year.

Appendix 1

Impact of early legal intervention – case study:



## Appendix 2: **About community legal centres**

Community legal centres are independent community organisations that provide free legal services to the public. Community legal centres provide free legal advice, information and representation to more than 100,000 Victorians each year.

Our clients are those who face economic, social or cultural disadvantage and whose life circumstances are often severely affected by their legal problem. Our clients are often unable to access other legal services. We are experts in working with these clients.

Generalist community legal centres provide services on a range of legal issues to people in their local geographic area. There are generalist community legal centres in metropolitan Melbourne and in rural and regional Victoria. Specialist community legal centres focus on groups of people with specific needs or on particular areas of law (eg; mental health, disability, consumer law, and environment).

State and Federal Government funding provides the main source of most community legal centres' funding. This is supplemented by funding from a variety of sources including local government, philanthropic foundations, pro bono contributions and donations. Centres also harness the energy and expertise of hundreds of volunteers across Victoria.

Community legal centres provide effective and creative solutions to legal problems based on their experience within their community. It is our community relationship that distinguishes us from other legal providers and enables us to respond effectively to the needs of our communities as they arise and change.

Community legal centres integrate assistance for individual clients with community legal education, community development and law reform projects that are based on client need and preventative in outcome.

Community legal centres are committed to collaboration with government, legal aid, the private legal profession and community partners to ensure the best outcomes for our clients and the justice system in Australia.

The day to day work of community legal centres reflects a 35 year commitment to social justice, human rights, equity, democracy and community participation.

### **Federation of Community Legal Centres (Vic) Inc**

The Federation is the peak body for fifty community legal centres across Victoria. The Federation leads and supports community legal centres to pursue social equity and challenge injustice.

The Federation:

- provides information and referrals to people seeking legal assistance;
- initiates and resources law reform and policy work to develop a fairer legal system that better responds to the needs of the disadvantaged;
- works to build a stronger and more effective community legal sector;
- provides services and support to community legal centres; and
- represents community legal centres with stakeholders.

The Federation assists its diverse membership to collaborate for justice. Workers and volunteers throughout Victoria come together through working groups and other networks to exchange ideas and develop strategies to improve the effectiveness of their work.

More information can be found at [www.communitylaw.org.au](http://www.communitylaw.org.au)

### Appendix 3: Victorian CLC Services

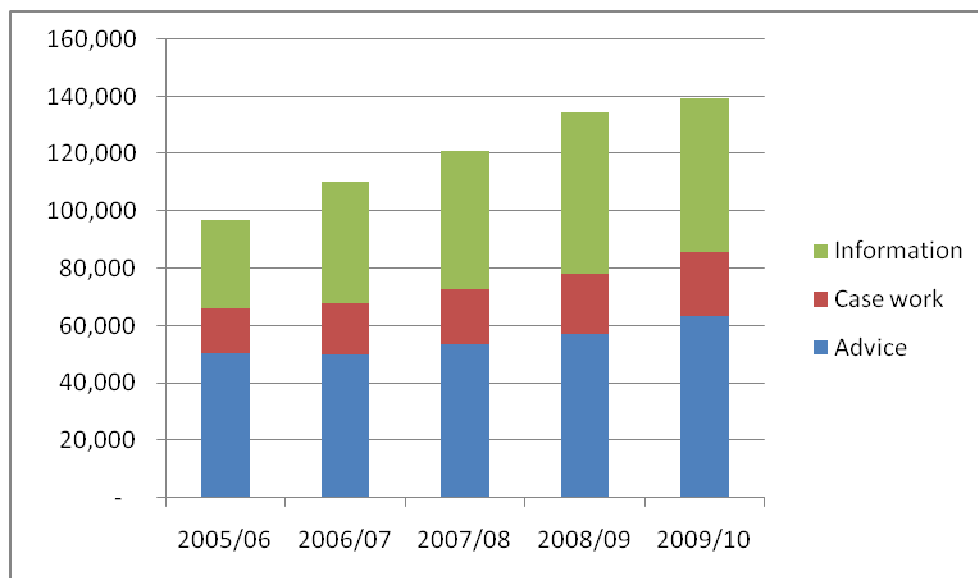
35 out of the 50 Victorian CLCs record their work on the Community Legal Service Information System (CLSIS). Issues such as consistency in recording data, funding levels and changes to the number of CLCs recording on CLSIS need to be taken into account when interpreting CLSIS data. Nevertheless, CLSIS data provides a reasonably good broad measure of trends in CLC work.

#### Overview of individual client work

Using CLSIS, CLC individual client work is separated into three activities; information, advice and casework. “Information” includes referrals to another provider or providing a client with legal information such as a legal brochure, “advice” is a discrete legal advice with no follow up and “casework” is an ongoing legal matter.

	05/06	06/07	07/08	08/09	09/10
<b>Information</b>	30,921	42,578	48,072	56,343	53,529
<b>Advice</b>	50,600	49,959	53,672	57,004	63,584
<b>Cases opened during period</b>	15,468	18,054	19,313	21,001	22,288

Table: Victorian CLC activities 05/06 – 09/10 recorded on CLSIS. This table includes Tenants Union of Victoria advice and casework data for each of the five financial years.



Graph: Victorian CLC activities 05/06 – 09/10 recorded on CLSIS. This table includes Tenants Union of Victoria advice and casework data for each of the five financial years.

Overall, Victorian CLCs have delivered increased individual client services each year for the past five years. It is pleasing to see the substantial increases in casework services - 44% over the past five years - meaning CLCs are delivering more in-depth and ongoing assistance to clients, as opposed to one-off advice. Major cases, which involve 20 or more hours work, increased 160% over the period.

#### Overview of client demographics

CLSIS data for 2009/10 confirms that CLCs are helping some of the most disadvantaged Victorians with around 83% of clients earning less than \$26,000 per year. 61% of Victorian CLC clients were female. Client demographics have been relatively consistent over the past five years, with the exception of clients aged

65 and over, where the data shows a significant increase. These clients now make up 18% of all clients up from 6% five years ago.

### **Overview of legal problem types**

In 2009/10, 59% of individual client services were in civil law, 35% in family law and 6% in criminal law (although under CLSIS, fines and infringements, a significant source of CLC work, are categorised as civil law). These figures are relatively constant across the last five years, although there has been a trend towards more family law casework. In particular, casework to prevent family violence has more than doubled over the last five years. This is likely to be the result of the increased Victorian Government funding from 2007/08 onwards creating an additional eight equivalent full-time family violence lawyer positions in Victorian CLCs.

### **Overview of project work**

On CLSIS, CLC project work is broken down into Community Legal Education (CLE) projects and Law Reform & Legal Policy (LRLP) projects. The 2009/10 figures show an increase in both CLE and LRLP projects. On the aims of the Federation's Grounded Justice project is to boost the capacity of CLCs to undertake increased and more effective law reform and policy work and the impact of this project seems to be reflected in the 2009/10 data.

	<b>05/06</b>	<b>06/07</b>	<b>07/08</b>	<b>08/09</b>	<b>09/10</b>
<b>Community legal education projects</b>	400	450	576	534	610
<b>Law reform and legal policy projects</b>	129	82	201	141	270

*Table: Victorian CLC project work 05/06 – 09/10 recorded on CLSIS (projects closed at end of period)*