

**SUBMISSION TO THE ATTORNEY-GENERAL OF VICTORIA**

**ATTORNEY-GENERAL'S JUSTICE STATEMENT 2008**



**Federation of  
Community Legal Centres**  
VICTORIA

**May 2008**

Inquiries to Hugh de Kretser, Executive Officer, Federation of Community Legal Centres (Vic) Inc  
T 9652 1505 or [executiveofficer@fclc.org.au](mailto:executiveofficer@fclc.org.au)

Information about the Federation and community legal centres can be found at  
[www.communitylaw.org.au](http://www.communitylaw.org.au)

## **Introduction**

Each year, the Federation produces its Justice Policy Positions document which sets out how the Victorian community legal sector believes the justice system should be reformed. The Federation also produces an annual State Budget Submission to inform the Victorian Government of the sector's funding priorities. Both of these documents have been provided to the Department of Justice and should inform the development of the next Justice Statement.

This submission is intended to complement those documents. It focuses on big picture ideas from the sector as to how we should shape Victoria's justice system over the next 5-10 years. It separates those ideas into the themes from the current Justice Statement. The initiatives suggested are only described briefly. More information on specific initiatives can be provided.

## **Modernising Justice**

### **Knowing what works – evidence-based best practice**

Law reform initiatives are increasingly relying on evidence based analyses. At the same time, more sophisticated research is being conducted on legal needs and the justice system (eg: NSW Law & Justice Foundation national legal needs survey). Access to relevant and reliable data helps to develop more effective systemic legal responses and assists in dispelling myths and misconceptions about the justice system. The challenge to Government is in ensuring that the data and evidence are readily accessible to stakeholders. To help promote accessibility, we believe the Government should consider producing and maintaining:

- An online clearing house of justice research and statistical analysis (including crimes statistics);
- A guide to evidence-based best practice in justice eg: who does research, and on what.

These initiatives could draw on the experience in the health sector which utilises initiatives such as [www.cochrane.org](http://www.cochrane.org) and [www.healthinsite.gov.au](http://www.healthinsite.gov.au).

### **Knowing what works – thinking beyond crime**

Since 1999, Victoria's crime rate has dropped by 23.5 per cent. Despite this, Victoria's prison population has increased by close to 60% in the 10 years to 30 June 2007. Given the high rates of recidivism (around 53% of prisoners have been in prison before), an increasing prison population is not only a bad social outcome, it is incredibly expensive.

The Victorian Government is pursuing important initiatives to tackle disadvantage and address the root causes of offending. But while crime has been falling, Victoria's prison population has increased. To reduce the prison population and better reflect the successes in reducing crime, the Victorian Government should be pursuing justice initiatives such as:

- promoting the availability of diversion programs and removing the requirement that the prosecution consent to diversion so that courts can employ diversion in appropriate cases without a recommendation from the prosecutor;
- promoting the use of community corrections;
- maintaining suspended sentences;
- promoting rehabilitation through access to employment by providing protection against discrimination on the grounds of irrelevant criminal record, as well as stopping the disclosure of non-convictions on criminal record checks; and
- promoting community education and awareness concerning sentencing and its impacts (as opposed to advocating for longer sentences).

## Protecting rights and addressing disadvantage

### **Ensuring access to justice – using empirical data to address unmet legal need**

Community legal centres continue to identify and experience gaps in service delivery. The gaps arise through underfunding of existing services, difficulties in servicing particular locations (eg: Shepparton, Gippsland) and difficulties in providing adequate services in particular areas of law (eg: discrimination complaints, employment law, victims of crime, prison law, inquests etc).

The NSW Law & Justice Foundation is currently undertaking a national legal needs survey commissioned by the Australian legal aid commissions. This survey will provide critical empirical data on access to justice in Victoria. It will allow governments and legal service providers to better target their services to address unmet legal need. The Victorian Government should harness this opportunity to devote strategic resources towards tackling areas of unmet legal need.

The Commonwealth Attorney-General's Department recently concluded its review of the Community Legal Services Program. Key recommendations include a revised funding model for the allocation of new funding targeted towards need and a greater focus on identifying and planning to respond to legal needs. The National Association of Community Legal Centres will be working with Commonwealth AG's Department to develop these initiatives.

### **Ensuring access to justice - better co-ordination of legal services from the bottom to the top**

In 2004, the NSW Government established an innovative pilot program in two regions of country NSW to promote better coordination and cooperation among providers of legal services to disadvantaged people and communities and to achieve a more seamless experience of the system for its users. The evaluation of the pilot, which concluded in 2005, was positive and the program has been expanded to additional regions. There is merit in the Victorian Government considering implementing a similar initiative in Victoria.

There is also merit in the Victorian Government considering supporting the establishment of a Victorian Legal Assistance Forum (VLAF) similar to the forums operating in NSW (NSWLAF) and nationally (ALAF). Members of the VLAF could include Victoria Legal Aid, the Federation of Community Legal Centres (Victoria), the Law Institute of Victoria, Victorian Bar Association, PILCH, Victorian Aboriginal Legal Service and the Department of Justice. The VLAF would promote cooperation, information sharing, coordination of service delivery and the better targeting of resources towards need.

### **Ensuring access to justice – seamless access to legal assistance**

Victorians who need legal assistance normally will not know whether they should first approach a community legal centre, Victoria Legal Aid, the Law Institute, a private law firm, PILCH for pro bono assistance or some other body.

While there is some overlap, each of these bodies generally services different areas of legal need. Each body has referral mechanisms which mean that clients should end up with assistance from the right organization. However, there is currently no single phone number or website for the Victorian public to access legal assistance. Accordingly, it may take clients multiple enquiries to end up at the right organization to assist them with their issue.

The Federation is currently embarking on a project to upgrade its website [www.communitylaw.org.au](http://www.communitylaw.org.au) to provide an online gateway into Victorian legal services that helps clients find the right organisation to assist with their legal issue. The site is currently the number one site on Google for search strings "legal advice Victoria" and "free legal advice victoria". The upgraded site should significantly improve online access to legal assistance.

In conjunction with this project, there is an opportunity for the Victorian Government to establish a single telephone referral service for members of the public to find legal assistance. The NSW Government has established a similar service with its Law Access initiative, which is focused on assisting people who have difficulty in accessing a free legal service.

### **Building a fairer legal system – promoting community sector involvement in law reform through better co-ordination of law reform initiatives**

The Victorian Government has a commendable commitment to actively reforming and improving Victoria's legal system. There is a range of government and statutory bodies conducting important law reform initiatives including the Victorian Law Reform Commission, Department of Justice, Victorian Parliamentary Law Reform Committee and the Sentencing Advisory Council.

However, it is often very difficult to respond in a timely and detailed manner to the many reform initiatives which are relevant to our sector. Response times for submissions are often relatively short and often overlap between the various bodies.

To promote community and stakeholder involvement in law reform initiatives, we suggest that the Victorian Government consider means of better coordinating the law reform initiatives and response timelines between the various law reform bodies. For example, an annual statement of proposed initiatives (perhaps similar to the annual statement of legislative intent) might be a useful idea to assist stakeholders to plan their resources around responding to the various inquiries. This would also provide stakeholders with greater opportunities to collaborate on responding to initiatives, preventing duplication and better targeting resources.

### **Gateways to civil justice**

Civil law continues to be the priority area in terms of gaps in legal representation. Victoria Legal Aid guidelines are very restrictive around civil law grants. For Victorian community legal centres, around 64% of advice work and 52% of casework is in civil law. This reflects the lack of availability of other free legal services in civil law areas. By both necessity and design, community legal centres are experts in the early resolution of civil disputes.

In Victoria, important initiatives in alternative dispute resolution and through the Victorian Law Reform Commission's Civil Justice Review are being pursued. We believe that the focus over the next 5 years should be on ensuring access to justice in civil law matters that affect ordinary Victorians (as opposed to large scale commercial litigation). We suggest that the Government consider the following initiatives:

- A referral to the Victorian Law Reform Commission to conduct a Stage 2 Civil Justice Review focused on ways of promoting access to justice in smaller civil law matters. The review could consider alternative models for dispute resolution, including the relative merits of shifting to a more inquisitorial approach to resolving disputes;
- Greater resources to community legal centres and Victoria Legal Aid to expand the availability of access to legal representation in civil law matters for clients who cannot afford a lawyer;
- Expanding civil duty lawyer services in courts and tribunals;
- Greater resources to conduct workshops and provide support to self-represented litigants in civil proceedings; and
- Funds to enable the provision of on-site interpreter services in all civil matters where a party cannot afford an interpreter (eg: where they qualify for a court fee waiver).

We make further related suggestions below in relation to court reform.

## Unified and engaged court system

### **Consumer-focused court system**

For an ordinary Victorian, the Victorian court system is largely unintelligible. There is a plethora of courts and tribunals, often with names that say little or nothing about the work they do (eg: County Court), each with different offices (registrar, coordinator, prothonotary) and different rules of procedure giving rise to different forms and processes. Realistically, to ensure a fair hearing, a lawyer is needed for almost anything except for the most basic claim.

Court documents contribute to the confusion for ordinary Victorians. In general, they tend to use arcane language that does not easily disclose the relevance of the document, are poorly laid out, and lack plain English guidance as to how to respond to the document or where to get help.

For example, a Magistrates Court Complaint Form that alleges a debt owed, is one of the most common court forms an ordinary Victorian is likely to receive. These forms use confusing and often vague “pleadings” language to describe the claim. They often fail to even attach the document or invoice giving rise to the alleged debt, instead stating something like “the agreement is available for inspection at the plaintiff’s lawyer’s premises”. Overall, the process does not adequately ensure that the debtor has the necessary information to identify and respond to the debt alleged to be owed by them.

The Court rules require the plaintiff to serve two blank copies of the defence with the complaint. There is no plain English guidance as to how to complete the defence or any information about where to get legal assistance with the matter.

This form and the process around its use could be radically altered to promote better understanding of the content of the document and the process involved in responding to it, and where to go for assistance. Improving these and other similar forms would empower Victorians in their interactions with the justice system, improve confidence in that system, make it easier for lawyers to assist clients and ultimately promote the earlier resolution of disputes as clients would be equipped with better information as to how to respond to the form.

Similarly, the Magistrates Court Charge and Summons Form is another common court form an ordinary Victorian may receive. This form seems to have been developed from the point of view of a police officer completing the document, as opposed to the person receiving the document. It seems to be designed as a “tick the box” document for the officer to ensure they have included all the required information in the one form. It could be easily altered so that it clearly conveys in plain English what is alleged against the person, the possible penalties, what they need to do to respond and where they can go for help.

We believe the Victorian Government should consider a range of initiatives to simplify and improve the court system, particularly in areas where it commonly interacts with individual Victorians, such as:

- An overhaul of court documents and processes focusing on plain English and lay out. The review should include an analysis of the information required by an individual to respond appropriately to the documents. Focus groups could be used to inform the review;
- Promoting consistency in court office names (eg registrar/coordinator/prothonotary and member/judge);
- Promoting consistency in court terms (prehearing conference/mediation and statement of claim/complaint/application/originating motion/writ);
- Measures to ensure that the Victorian Civil and Administrative Tribunal (VCAT) can enforce its own orders;
- Exploring ways to improve the accessibility and effectiveness of VCAT, especially for low income Victorians; and
- Exploring ways to change the court system to rename courts and tribunals to describe what they do (eg: Victorian Criminal Court) and remove duplicated jurisdictions (eg: VCAT and Magistrates Court on consumer complaints).

## Victims strategy

### **Delivering real justice for victims**

We believe the Victorian Government should implement initiatives such as:

- Establishing a statewide community legal centre program to provide specialist legal services to victims of crime in relation to crimes compensation applications, Sentencing Act applications, civil claims and assistance with police and court processes (eg: Victims Charter rights, subpoenas, understanding criminal prosecutions);
- The expansion of restorative justice programs in appropriate areas;
- A non-adversarial compensation scheme for survivors of abuse and neglect in institutions and out of home care;
- Improved support for victims of sexual assault with cognitive impairment or little or no speech focusing on improved access to advocacy, communication and legal support in connection with criminal justice and victims of crime processes; and
- Expanding the obligation and powers of coroners to make recommendations to prevent future injuries and deaths from occurring.