



SUBMISSION

Prepared by South-East Monash Legal Service Inc. for the
National Legal Assistance Partnership Review

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Our organisation

Established in 1973, South-East Monash Legal Service (**'SMLS'**) is a community legal centre that provides free legal advice, assistance, information and education to people experiencing disadvantage in our community within the City of Greater Dandenong, the City of Casey and the Shire of Cardinia in Victoria.

SMLS operates a duty lawyer service at various courts in Victoria, including Dandenong Magistrates Court, the Children's Court and provides legal representation at courts and tribunals such as the Victorian Civil and Administrative Tribunal, Fair Work Commission, Federal Circuit Court, Family Court and Victims of Crime Assistance Tribunal.

For most of the 50 years in operation, SMLS has been running a clinical legal education program in conjunction with Monash University's Faculty of Law, whereby law students undertake a practical placement at the legal service as part of their undergraduate degree.

SMLS has an extensive community legal education program that is developed in response to feedback from the range of community engagement and community development activities that we are and have been involved in.

SMLS also has a significant policy, advocacy, and law reform program, contributing to reforms in family violence laws and practices, access to civil procedure reforms, employment law, sexual assault and victims of crime, youth law, gambling and electronic gaming machines and other legal topics relevant to our service delivery and the needs of our community.

Acknowledgement of Country

SMLS wishes to acknowledge the traditional custodians of this lands upon which our office are located, the Wurundjeri and the Boon Wurrung peoples. We pay our respects to the Elders past, present and emerging.

We acknowledge the people, traditions, culture and strength of Aboriginal and Torres Strait Islander peoples, and the fight for survival, justice and country that has taken place across Victoria and Australia.

We sincerely thank the Traditional Custodians for caring for Country for thousands of generations. SMLS recognises the ongoing impact of colonisation, dispossession and racism experienced by Aboriginal peoples. As a Community Legal Centre, we acknowledge the violence of Australian law and its ongoing role in processes of colonisation. We recognise that sovereignty was never ceded, and that this always was and always will be Aboriginal land.

LGBTQIA+ Community

SMLS is committed to supporting LGBTQIA+ people and communities, both as an employer, as a service provider, and an advocacy organisation. We stand with LGBTQIA+ people and communities and oppose any form of violence, bullying, harassment, vilification and discrimination, and with them in seeking to advance respect for their human rights.

We affirm our commitment to supporting LGBTQIA+ students, staff, volunteers, clients, and communities. We will continue to support all our people to better understand, support and engage in advocacy with LGBTQIA+ people and communities in our region.

SMLS acknowledges and endorses the Response to Issues paper submitted by the Federation of Community Legal Services (Victoria) October 2023.

SMLS provide following responses to discrete areas of the issues paper.

4.1 A comment at a specific issue funding

Increased funding should be provided to enable disadvantaged workers to access employment law services and to fund employment law education programs. Without help, our clients find it immensely difficult to pursue claims or resolve disputes with their employers. The piecemeal and multijurisdictional nature of the workplace relations landscape means that without assistance from an expert, enforcement is impossible for many vulnerable workers. There are currently different jurisdictions and agencies for the enforcement of workplace safety, wages and entitlements, unfair dismissal, general protections, superannuation and discrimination laws. This makes choice of jurisdiction and case management extremely challenging. Some claims carry a costs risk (meaning that if you lose your case, you may be ordered to pay the other side's legal costs), some claims prohibit other claims being made, and each claim has different processes and different limitation periods (for example, only 21 days to bring an unfair dismissal claim, but up to six years for an underpayment of wages claim). Furthermore, a decrease in union membership has had significant implications for monitoring and enforcement of workplace rights. Our clients generally require active assistance from the time of making a complaint through to mediations, and formally settling their dispute. At the initiation of an application, clients require assistance with the completion of the relevant forms and calculations. Many clients faced with the requirement to calculate underpayments and prepare a letter of demand, let alone a Court application, outline of submissions or witness statement would be locked out of the system without extensive assistance. The imbalance of power inherent in many of these disputes makes independent assistance for vulnerable workers crucial.

Despite significant need for employment law services there are limited avenues for workers to get help with their problems. Given the amount of time required to prepare and run underpayment and other employment matters, few private firms offer employment law advice on a 'no win, no fee' basis. Therefore, for low income earners, private legal assistance is not an option. While the Fair Work Ombudsman can offer limited assistance for unpaid wages and entitlements, both the FWO and other mainstream agencies, with their focus on telephone-based self-help models of assistance, are largely inaccessible to newly arrived, refugee or asylum seeker communities, and do not provide enough ongoing support.

Unfortunately, there is very little funding available for employment law services. Existing services are struggling to meet demand with limited resources. JobWatch, a community legal centre specialising in employment matters, cannot meet 57% of demand for telephone assistance (even fewer receive casework support and the most vulnerable will not utilise a telephone service). Justice Connect, a community organisation that helps facilitate pro bono referrals, reports that employment law is one of the top four problems that people request assistance for, however only

around one fifth of matters receive much needed help. In Victoria, Legal Aid does not provide assistance with employment matters (except where discrimination is involved) and frequently refer matters to other services. Apart from WEstjustice and SMLS, there are no other targeted employment law services for newly arrived, refugee or asylum seeker communities in Victoria, and our services are frequently inundated. As observed in a Report by the Federation of Community Legal Centres, 'there is a significant gap between the need and demand for assistance and the services that are currently available. 'Despite being best placed to provide face-to-face comprehensive assistance embedded in the community, very few generalist community legal centres provide employment law services. This is not due to a lack of need. Employment law is a highly specialised area of law with short limitation periods, and yet there is no recurrent funding for generalist centres to do this work. This means that centres are often unable to allocate already scarce resources to this area. Programs delivered by community legal centres such as face-to-face employment law casework services by WEstjustice and SMLS must be implemented across Victoria. In addition to the provision of education programs and targeted support outlined above, we recommend that the Victorian Government establish a fund to provide funding to community-based, face-to-face, and comprehensive employment law services for job seekers and those recently placed in employment. We see education about rights and responsibilities at work and assistance to enforce minimum standards as key factors in obtaining and maintaining sustainable employment.

Our research report [Empirical Insights, Recovering Underpaid Wages](#) demonstrates the complexity people face when trying to navigate the legal system for unpaid wages and entitlements. SMLS and other CLCS like us can provide critical assistance with enforcing a judgment, when an employer does not comply with a court order.

We urge the Government provide dedicated recurrent funding for community legal services to provide employment law assistance (both community legal education, legal advice and ongoing casework) to vulnerable workers. This assistance should include all aspects of employment and equality law, including (but not limited to) wages and entitlements, dismissals, sexual harassment, bullying, equality law (anti-discrimination and general protections) and victimisation).

4.4 Additional Disadvantaged Groups

LGBTQIA+ (SMLS notes the reference to this in the issues paper)

In our south-east metro region in Melbourne, we have become aware of emerging issues impacting LGBTQI+ people and families. We recognise that despite the launch of Q+Law, a specialist service in Victoria, funded by the State Government in 2023, there is still a significant service gap for those who cannot access inner city services. There is a need for place-based service delivery for LGBTQIA+ people that meets their diverse needs across the state.

There has been a rise in intersectional issues in this space, but there are limited or no services available to interrogate and/or respond. This is particularly where there is compounding impact of cultural or religious priorities for individuals who identify as part of the community.

We note that there needs to be significant work done in terms of gathering data and information to map the issues and needs of these people and their families. This is essential in providing effective services.

There is growing unmet need as people who identified as part of this community are looking for greater support including to protect their legal rights.

Refugees and People seeking asylum

People who are seeking asylum as well as people who are refugees have distinct and significant legal needs. While we have specialist legal services to provide migration assistance, the demand significantly outstrips supply. SMLS believes that generalist services must be funded to provide migration assistance to refugees and people seeking asylum in their communities. Frequently, migration is impacted by other legal problems such as family law, employment law and significant social and financial disadvantage. Wrap around, place based legal support is required to ensure that the problems do not escalate, and that families can rebuild shattered lives in our country. Migration is repeatedly identified by people in our community again as one of the major issues facing their lives, and yet so few centres are able to provide this life changing assistance.

4.8 Taking a Holistic Approach

Research and evaluation emphasise the importance of well-coordinated legal services in order to deal with co-occurring legal problems. Legal problems are often clustered together, and disadvantaged people are especially vulnerable to a wide range of legal problems. Legal services must be sophisticated and responsive enough to handle the multitude of complex situations that people face. Services must be funded to develop responses that can address the complicated, coexisting and interrelated legal and non- legal problems that cut across many aspects of people's well-being, including their family circumstances, finances, employment, health, housing and welfare. It is often inadequate to deal with each legal problem in isolation.

A holistic, client-focused approach to legal service provision is necessary to resolve the 'wicked' problems that disadvantaged people often face. (Law and Justice Foundation 2013. See also Buck et al. 2005; Coumarelos et al. 2006; Beardon 2021; Forell et al. 2005; Pleasence 2006). In Victoria, examples such as the Integrated Services for Survivor Advocacy, homeless persons' legal services, the co-location of the West Heidelberg CLC and Banyule Community Health and various Health Justice Partnerships have been able to demonstrate the impact integrated and multidisciplinary services can have.

Restrictions on NLAP funded programs on the types of roles that can be funded create barriers in achieving this model of service delivery. In addition, the way data is collected focusses on legal service provision rather than client outcomes. This shapes the way we focus our service delivery, this influence on our focus must be reformed.

Benefits of providing Holistic Support: Legal assistance funding should support activities that take a holistic approach to preventing legal issues. This includes legal education, public awareness campaigns, and development programs that empower individuals to understand their rights,

obligations, and the consequences of legal actions. This must also include social work support and financial counselling.

The fragmented nature of service delivery in Australia means that assistance tends to be problem-focused rather than person-focused. This can be a challenge for people with multiple problems, who often need to identify a separate service provider for different types of problem and navigate the often complex and confusing eligibility criteria attached to each service provider. A problem-focused rather than person-focused approach can also mean that only some of the problems faced by an individual are discovered and addressed. A person's problems may not be dealt with in their entirety, resulting in the need for extra contacts with legal services or, worse, in people giving up on seeking help.

By resourcing CLCs to provide holistic legal assistance that includes social work and financial counselling, we can provide flexibility whenever possible to accommodate the pace and priorities of the client as they deal with the complexity of illness, trauma impacts and poverty. A multidisciplinary program model can allow for stronger capacity to build trust, optimise communication and client capacity to make decisions and plan actions. SMLS has run a highly successful multidisciplinary program *Support Connect Integrated Program* (SCIP) which has shown significant lasting impact on client lives.

4.9 Community Legal Education and Prevention

SMLS is a leader in the design and delivery of community legal education programs.

SMLS continues to educate and empower communities through impactful community engagement programs rooted in increasing awareness of law, legal processes and navigating the legal system.

Program Spotlight: Sporting Change

PROGRAM SUMMARY

Since 2018 South-East Monash Legal Service has been engaging and educating young people in our region about their legal rights and responsibilities through the Sporting Change program. Sporting Change draws on our strong relationships with schools and local sporting clubs to educate and empower young people to understand the justice system while increasing access to justice through an integrated school lawyer.

Sporting Change consists of two main components; the school lawyer program and the after-school program.

School Lawyer Program: Sporting Change provides a school lawyer at the schools once a week on the day that the after-school program is running. The school lawyer provides free confidential legal advice to students from any year level.

After School Program: Through legal education, young people are empowered to understand their rights at work, in public spaces, in the home, and when making purchases. We use fun and engaging activities to teach young people about the legal consequences of highly relevant issues such as drugs, weapons, sexual assault and family violence. It is a free and voluntary program that runs one day a week in the school gym.

Sporting clubs run the sporting session together with SMLS staff where we explain the sporting links between the activity of the day and the module. After the sports has finished, SMLS staff facilitate interactive learning about the law.

OUTCOMES

- Young people receive holistic support addressing their legal and non-legal needs
- Young people have access to justice
- Young people's lives are decluttered
- Young people can navigate the service delivery system
- Young people participate in the community
- Young people have increased understanding of their legal rights and responsibilities
- Young people have an increased knowledge of the law and legal systems

IMPACT

Many of the young people who sought legal advice from the school lawyer have never been in trouble with the law before. The integrated school lawyer can assist young people to deal with legal issues before they become a crisis. Research indicates that timely, accessible legal advice improves young peoples' outcomes in the justice system and prevents issues from escalating.

- Young people have improved wellbeing: decreased fear, decreased stress, increased resilience
- Young people avoid negative engagement with justice system
- Early intervention keeps young people out of the criminal justice system
- Diverse young people are aspiring leaders
- Young people have an enhanced capacity to remain attending school and living at home.

These community based development programs are core business of a community legal centre. We need to be supported to provide these models of assistance, meeting people where they are at to ensure access to justice for our most vulnerable community members.

By offering resources and guidance that are not purely legal, people can make informed decisions and avoid legal problems. Early intervention can lead to better outcomes for individuals. It can prevent negative trajectories and promote positive development, whether it's in education, health, or personal well-being.

Benefits of early intervention legal assistance

Preventing Recidivism: Early intervention can help break the cycle of recidivism and criminal behavior by addressing root causes, providing support, and offering alternatives to incarceration.

Child Wellbeing: Early intervention is particularly critical in child welfare. Assisting families with the social issues that often surround family violence and family law matters can contribute to the prevention of long-lasting trauma and improve the well-being of children.

Mental Health: The relationship between mental illness and other forms of social and economic disadvantage makes this a group of particular importance to programs addressing access to justice. Research from the Law and Justice Foundation and the Royal Commission into Mental Health demonstrate common legal needs among people that experience mental health problems:

- legal issues relating to mental illness specifically, such as those falling under the Mental Health Act and adult guardianship issues
- discrimination in relation to employment, education and insurance
- housing issues, including problems relating to Department of Housing, private rental and boarding house accommodation
- social security issues, including eligibility, breaching, social security debt and prosecution for fraud
- consumer issues, such as credit card debt and banking issues, mobile phone and other contractual debt
- domestic violence and victim of crime issues
- family law and protection issues.

Timely legal intervention in mental health issues can mitigate legal problems from escalating and worsening someone's mental illnesses, improve emotional well-being, and reduce the burden on the mental healthcare system.

Risks and Considerations:

1. **Cost Shifting:** While funding preventative activities is essential, there is a risk of cost shifting from reactive legal services to preventative services. Striking the right balance between the two is crucial.
2. **Measurement of Success:** Determining the effectiveness of preventative activities can be challenging. Indicators for success may include a decrease in the number of legal disputes, increased legal literacy, and improved access to justice. However, these outcomes are not always easy to quantify.
3. **Resource Allocation:** Legal assistance funding must allocate resources strategically between reactive and preventative services. Both are essential components of a comprehensive legal assistance system, and neglecting either can have adverse consequences.

4.10 Law Reform and Advocacy

Policy and law reform are essential components in the pursuit of social justice. They play a crucial role in addressing systemic inequalities, protecting individual rights, and promoting fairness within society. They are an essential part of a community legal centre, part of our identify and highlight unique role we play in society.

Law reform helps identify and rectify inequalities that exist within a society. Through reform, governments can address issues such as discrimination, economic disparities, and unequal access to resources and opportunities, all of which are barriers to social justice. Law reform contributes to accountability and the rule of law. It establishes a framework that ensures that institutions, organizations, and individuals are held accountable for their actions and decisions, helping to prevent abuses of power and discrimination. Social justice so often requires addressing systemic issues deeply embedded in policies and laws. Reforming these systems is vital to dismantle structural inequalities and promote fair access to opportunities and resources for all.

Law reform can foster a culture of equality and inclusion. They create a framework for diverse voices to be heard and respected, facilitating a society where individuals from all backgrounds can thrive. Policy and law reform work can be seen as an investment in preventative service delivery. If we can strengthen social safety nets, improve access to and experiences in healthcare, education and work we prevent legal problems from occurring or escalating, or reduce the impact on someone's life. We also acknowledge that our legal systems should evolve with changing societal norms and values. Reform is essential to ensure that the law remains relevant and reflective of the contemporary understanding of justice and equity. Social justice concerns are not static; they evolve over time. Policy and law reform are crucial for addressing new and emerging issues, such as environmental justice, privacy rights in the digital age, and LGBTQ+ rights.

However, like all service delivery, we need to be able to measure and evaluate this work, we need to ensure we are consulting our community. We need to build organisational culture that includes reflection on the laws we advise on and their impact on disadvantaged and vulnerable groups and be able to build systems internally that support the production of powerful, informed and useful law reform activities. We cannot do this without dedicated funding streams that build organisational capacity in this space.

SMLS supports the allocation of 1.0 FTE or more into a policy and law reform role.

4.14 What other changes to the NLAP would further improve service delivery outcomes and maximise use of resources?

Rather than a comment how NLAP could be changed this is a statement to ensure that there is not a not an erosion of effective and efficient service delivery inadvertently undermined by shift towards state-wide services, or a lack of recognition of specialist services that exist within generalist community legal centres.

Place Based Service Delivery

Place based legal assistance is incredibly important in meeting the needs of our communities. We strongly recommend ensuring place-based generalist legal assistance services are funded and supported to deliver programs to their communities. Place-based legal services offer tailored support to individuals and communities based on their specific needs and geographic location. This means that resources and assistance can be more effectively directed to those who require them. Place-based legal services facilitate community engagement and participation.

Place based legal services better understand the unique challenges and circumstances faced by people in their given area. This can lead to more responsive and effective service delivery. Place-based legal services can help social service providers map local resources, such as shelters, food banks, family violence crisis centres and healthcare facilities. This information is invaluable in connecting individuals with the services they require. For our community, this is essential in ensuring holistic and trauma informed care. Place-based legal services encourage collaboration and partnerships with local organizations, businesses, and government entities. This contributes to comprehensive and efficient social service delivery.

By connecting individuals in the same geographic region who may be experiencing similar social issues or seeking support, place-based services can foster a sense of community and provide a platform for sharing experiences, resources, and solutions. Place based services enhance data-driven decision making. CLCs can use location-based data to make data-driven decisions about where to allocate resources, plan interventions, and target their efforts to maximise the impact of their services. Place-based legal services facilitate community engagement and participation.

References

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