

1 March 2016

Ms Kerin Leonard  
Project Manager  
Access to Justice Review  
Department of Justice and Regulation  
Level 24, 121 Exhibition Street  
MELBOURNE VIC 3000



Dear Ms Leonard,

**ACCESS TO JUSTICE REVIEW - SUBMISSION FROM THE  
HUME RIVERINA COMMUNITY LEGAL SERVICE (HRCLS)**

**ABOUT HUME RIVERINA COMMUNITY LEGAL SERVICE ("HUME RIVERINA  
CLS")**

Hume Riverina CLS is uniquely positioned as a cross border community legal centre<sup>1</sup>. Based in Wodonga (Victoria) on the Victorian/New South Wales border, the centre receives Commonwealth, Victorian and a small portion of New South Wales funding to provide generalist legal services to a vast catchment area of 21 Local Government Areas (LGA's) in North East Victoria and the Southern Riverina of New South Wales.

The Victorian catchment area encompasses 7 LGA's being Wodonga Council, Wangaratta Rural City Council, Towong Shire, Mansfield Shire, Indigo Shire, Benalla Rural City and Alpine Shire. This covers towns such as Wodonga, Wangaratta, Benalla, Mount Beauty, Myrtleford, Bright and Corryong.

ABS statistics from 2011 indicate a total population of 116,824 people being serviced in the Hume Riverina CLS Victorian catchment area (with a total population of 292,497 within the 21 Local Government Areas serviced by Hume Riverina CLS). In the 2014/2015 year, 62% of our clients resided in Victoria and 38% in New South Wales.

Services provided include legal advice and casework assistance with family law issues (child contact, property disputes, child support and spousal maintenance), family violence, child protection, credit and debt problems, fines, motor vehicle accidents, criminal law issues, consumer law issues, neighbourhood disputes, wills and estates, employment issues and tenancy issues. Clients often have interrelated Victorian and NSW legal problems.

Hume Riverina CLS focuses on assisting disadvantaged people who are not eligible for legal aid, yet cannot afford to pay for a private lawyer.

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<sup>1</sup> Murray Mallee Community Legal Service is the only other cross-border community legal centre in Victoria.

In addition, Hume Riverina CLS hosts a lawyer who is employed by Victoria Legal Aid and seconded to Hume Riverina CLS to deliver family law and family violence services to clients who are eligible for legal aid. These services include legal advice, minor assistance, and casework including assistance at mediation, representation in the Federal Circuit Court, and a family violence duty service to Wodonga Magistrates Court. This service is funded by Victoria Legal Aid to increase access to family law legal aid services in North East Victoria, due to there being no Victoria Legal Aid office in the region. The nearest office of Victoria Legal Aid is located in Shepparton, a 2 hour drive away.

In the 2014/2015 year, Hume Riverina CLS provided 1927 advices with a total of 2815 legal problems, provided over 2000 information activities, delivered 29 community legal education sessions, and provided intensive casework to more than 387 people.

<b>1: Availability of easily accessible information on legal assistance services and the Victorian justice system, including advice on resolving common legal problems</b>
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### **Access to free/affordable legal assistance**

Having public information readily available is important, but it is not the answer in relation to ensuring that disadvantaged people are able to resolve their legal problems. A greater problem is that there is limited access to free or affordable legal advice and legal aid in regional Victoria. Furthermore, clients who are disadvantaged are unlikely to seek help with their legal problems when they need it, and often have complex problems which require tailored legal advice and ongoing assistance to resolve such issues. Community legal centres, when properly funded, are best placed to provide such assistance.

Although there is a significant amount of general information available in Victoria about legal assistance services, the civil justice system and general information for common legal problems, the fact that much of this information is fragmented across various information providers, available only in English and provided in an online format means that it is extremely difficult for the information to reach those who are unfamiliar with digital technologies, have no access to internet for reasons such as poverty, or lack English language ability. Very often, these people belong to the vulnerable and disadvantaged groups who need help the most and to whom the State is committed to providing assistance. It is essential that such people are given access to free legal advice and ongoing assistance, so that they can understand how the law applies to them, and receive the assistance and support to resolve their legal problems.

The Hume Riverina Community Legal Service conducted a Legal Needs Analysis in 2013 and a further consultation in 2014/15, and released a report entitled "Piecing together the Puzzle: the perspective of community organisations about

legal need” in 2015<sup>2</sup>. Organisations reported that legal issues were experienced by their clients on average on a daily (24.1%), weekly (26.9%) and monthly (26.9%) basis. These results are supported by the Legal Australia Wide (LAW) Survey which found that people generally sought help from non-legal advisors for a majority of their legal problems (69.7%)<sup>3</sup>. Community organisations are saying that they are regularly seeing legal issues arising from Family Violence (73.1%), Housing & Accommodation (69.2%), Family Law (65.4%), Child Protection (61.5%) and Credit & Debt (57.7%)<sup>4</sup>. In response to the question: “What difficulties does your organisation face in referring your clients to legal services?” one of the common themes was difficulties in finding appropriate referral services. Comments were made such as: “The service supports are very limited, people have very limited choice”. “[We have] difficulty finding appropriate referral services for rural clients”.<sup>5</sup>

### **Legal ‘problem clusters’**

Whilst common legal problems can be dealt with through online legal information provision, it is very difficult for laypersons to unravel complex legal issues. This situation is referred to as legal ‘problem clusters’ where there are legal issues entangled with other legal and/or non-legal issues.<sup>6</sup> These issues exist within the spheres of family law, civil law and criminal law, as well as encompassing both federal and state laws.

In particular, with family law matters, legal problems such as divorce, separation and family violence can have a ‘trigger effect’ as they may result in ‘substantial changes in life circumstances, such as financial hardship, poorer housing, employment problems, difficulties as a single parent, and dependence on maintenance, child support and welfare benefits.’<sup>7</sup>

To get assistance with the range of legal problems arising from family violence, people may have to apply to several different courts such as the Federal Circuit Court of Australia, the Magistrates Court of Victoria, the Children’s Court of Victoria, and the Victims of Crime Assistance Tribunal. This process often involves different sets of legislation, different Government services, different court systems, and different lawyers.

With border regional centres, this problem is exacerbated due to the commonality of people having to engage with Court systems in both New South

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<sup>2</sup> Report available at <https://humeriverinacommunitylegalservice.files.wordpress.com/2015/08/hrcls-piecing-together-the-puzzle.pdf>

<sup>3</sup> Coumarelos, C., Macourt, D., People, J., McDonald, H. M., Wei, Z., Iriana, R., & Ramsey, S. (2012). *Legal Australia-wide survey: Legal need in Australia* (Vol. 8). Law and Justice Foundation.<sup>3</sup>

<sup>4</sup> “Piecing together the puzzle report”, page 9.

<sup>5</sup> “Piecing together the puzzle report”, page 12.

<sup>6</sup> Coumarelos, C., Macourt, D., People, J., McDonald, H. M., Wei, Z., Iriana, R., & Ramsey, S. (2012). *Legal Australia-wide survey: Legal need in Australia* (Vol. 8). Law and Justice Foundation.

<sup>7</sup> *Ibid*, 167.

Wales and Victorian. This means that for residents in regional centres such as Wodonga, it can be extremely complex to get full resolution for legal problems.

### **Cross-border Issues**

People living on the Victoria/New South Wales border frequently travel between the states to access services such as shopping, health care, child care, schooling, and Courts, as well as to visit family or friends, recreational facilities, for child contact purposes, and for many other reasons. Residents of Wodonga, Victoria frequently travel to Albury, New South Wales (a 6 kilometre distance or less than a 10 minute drive). The two border communities are seen as interconnected by the community. According to data collected by HRCLS in a 2015 survey, 47% of people living in Albury-Wodonga cross the border more than 7 times per week and over 14% said they did so more than 16 times. As a result, cross-border issues often arise even when they are not realised by those who are affected by them.

For example, registration of interstate orders do not happen automatically in family violence cases. An Intervention Order made by Wodonga Magistrates Court has no effect in New South Wales and an Apprehended Domestic Violence Order made in the Albury Local Court has no relevance in Victoria, unless the order is registered in the other State. It is the responsibility of the protected person to attend to the registration of the order. However, members of the public and even police officers often do not understand this jurisdictional gap and its practical implications. This leads to confusion among those who are affected by these Orders. The victim will not have the protection they need within their regional area if he/she has not taken the additional step of interstate registration, and there is the potential for breaches to occur accidentally.

Another example is 'sexting'. In Victoria, it is illegal to send on or share an intimate image of someone else who is under the age of 18. However, if the sender is under 18, he/she will not break the law by sending the image of himself/herself. In contrast, in NSW it is illegal to send on or share an intimate image of someone who is under the age of 18 even if the picture is of the sender himself/herself. 'Sexting' between states, such as from Wodonga to Albury, can result in offences being committed and charges being laid in both states. Unaware of the jurisdictional difference, teenagers living in those border communities may face severe consequences if images are sent interstate. HRCLS brought some of these issues to the attention of local youth last year, during seminars at the Wodonga Senior Secondary College. However, it is important that ongoing Community Legal Education is funded to ensure that ignorance of the law in the different jurisdictions does not have serious consequences for youth living on the border.

### **Conventional Methods of Information Delivery**

As a result of the abovementioned issues, the conventional methods of delivering legal assistance and legal information are still needed, such as face-to-face and telephone appointments. However, there is a lack of such free services regionally. The HRCLS is the only free legal service within a 2 hour radius. Over a third of HRCLS' total legal advices were provided "on outreach" with their lawyers travelling over 10,000kms to provide advice in the 2014/15 year. In that year HRCLS' legal staff comprised the equivalent of only 4 full-time lawyers, plus a Principal Lawyer/Manager and a Victorian Legal Aid seconded lawyer. HRCLS' catchment area covers 21 Local Government Areas in both NSW and Victoria in which there are very few free legal alternatives. The nearest community legal centre is Goulburn Valley Community Legal Centre in Shepparton (who assist in servicing Benalla). There is no Victoria Legal Aid office located in HRCLS' catchment area in North East Victoria (the closest also being in Shepparton, a distance of 170 kilometres away) and the nearest office of Legal Aid NSW is a similar distance away (although a satellite office will soon be established in Albury).

In HRCLS' "Piecing together the puzzle" report, some of the general comments from organisations about the barriers their clients faced in accessing legal services were: "Geography and location in this area is a big problem – it is difficult for our clients to get to some of the services because of the distances between them". "Transportation and money are the biggest factors." The biggest barriers identified by these organisations were financial barriers (92%), Literacy barriers (68%), Lack of available legal services (60%), disability barriers (56%) and location & mobility barriers (52%).

Such lack of legal services can largely be accounted for by the fact that there is a chronic lack of funding. There is a high demand for the service provided by HRCLS, so people seeking assistance with their legal problems are often turned away due to the limited capacity of the service. The chronic underfunding to community legal centres generally has been well documented in recent times<sup>8</sup>. This underfunding has an increased impact in regional communities where there is only one free legal service that can assist people located within the community.

The "Piecing together the puzzle" report showed that the three most common referrals by community organisations surveyed in the HRCLS catchment area were to Community Legal Services (69.2%), Legal Aid (53.9%) and the Police & Self-help resources (each 38.5%). These statistics may demonstrate that organisations prefer to refer their clients to local services which they can access easily and which offer in-person advice within close proximity<sup>9</sup>. It also shows

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<sup>8</sup> See, for example, the Australian Government Productivity Commission Report on Access to Justice Arrangements.

<sup>9</sup> "Piecing together the puzzle" report, page 10.

that self-help resources are important but cannot replace individual, professional, specific legal advice.

The secondment of a Victoria Legal Aid lawyer has been incredibly beneficial for HRCLS and their clients. This Family Lawyer service (reserved for clients who are eligible for legal aid) has been in existence since 2006, primarily because there is no Legal Aid office in the vicinity. As a cross-border service, advice and assistance is available to clients who have legal aid funding from either Victoria or NSW. However, this is limited to family law, child protection or family violence matters. Demand for this service exceeds the capacity of the one lawyer, so clients are often turned away. HRCLS also has no capacity to provide more than preliminary advice in criminal matters, even if the clients are eligible for Legal Aid and these too are turned away. Between June and October 2015 snapshot period, 672 clients were booked in for legal advice and 377 were referred on or turned away. Up to 31% per month of turnaways were due to no appointments being available.

### **Conflict of Interest Issues**

One of the problems encountered by the conventional methods of service delivery is associated with conflict of interest issues. Lawyers have ethical obligations that require them to assist only one party in a dispute. This means that service providers such as HRCLS are required to turn away potential clients if a conflict of interest exists with the HRCLS, including people who are financially and socially disadvantaged, with no funds to pay for a private lawyer.

Such issues arise more frequently for lawyers in regional communities and this often results in an inability to access services. During the snapshot period of April 2015, HRCLS turned away 20 people who had sought assistance from its service, due to a conflict of interest which prevented HRCLS from assisting those potential clients. During that month, there were 85 family violence matters listed at Wodonga Magistrates' Court. Our service had previously been contacted by at least one of the parties in 54% (46) of these cases, and was conflicted out of assisting on a duty basis in 14% (12) of them. In HRCLS' "Piecing together the Puzzle" report, organisations stated that conflict of interest issues were a significant barrier in referring their clients to legal services<sup>10</sup>. "Local services often have conflicts of interest, [there is] limited choice for local legal support for our client group." In the aforementioned period of June to October 2015, over a quarter of clients turned away each month were due to a conflict of interest, with this percentage increasing to up to 37%. This is a significant issue and barrier to people living in North Eastern Victoria.

### **Delivery of Legal Information Online**

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<sup>10</sup> Ibid, page 12.

Delivering free legal information online in digital format has the advantage of efficiency and effectiveness. With a central entry point, the information can reach a vast number of people at the same time. In the information technology era, the development of digital technologies and the increasing prevalence of computers and smartphones make this all feasible and sensible. Online information delivery, accompanied by improved technology literacy, can assist to break the barriers of geographical isolation and remoteness. Thus, establishment, development and enhancement of a free online legal information port is important.

However, as stated above, a website with free legal information is not easily navigated by clients with multiple levels of disadvantage and is not the answer for this cohort. Free legal information is likely to be useful for the large number of Australians who cannot afford to pay for a private lawyer, but are capable of resolving issues themselves. However, for those with multiple and complex needs (such as clients with mental health issues, disabilities, Indigenous backgrounds or experiencing family violence or other crises in their lives), a website is unlikely to be utilized and is not a substitute for legal advice from a lawyer. Community legal centres target their services to such clients and it is imperative that community legal centres receive adequate funding to assist these people.

Compared with NSW, Victoria lacks an authoritative, coordinated and highly visible free online legal information provider. In NSW, the LawAccess website is well-recognised and reputed to be a reliable source of legal information for common legal problems. For example, the legal problem of a debt of a relatively small amount is commonly experienced in the community. In NSW, people can easily find the relevant information on the LawAccess website, which can reduce their stress, open up conduits to a solution and enable them to resolve the legal problem on their own. For example, on the Law Access website, there is a section called "Law Assist" which has extensive information about how to make a small claim, how to prepare a defence, and other tools to guide people who wish to represent themselves. By contrast, in Victoria there is no equivalent of the LawAccess website, which in turn leads to many people taking no action or consulting non-legal advisers.

Efforts should also be made to increase the number of languages available so that people from culturally and linguistically diverse (CALD) communities can obtain the help they need. This is especially important in regional centres where an increasing number of migrants are being settled. In HRCLS' "Piecing together the puzzle" report, it is significant to note that 'domestic violence and new arrivals' was a topic identified as one which was impacting the organisations' clients of the local community and one which they thought should be addressed

by law or policy reform.<sup>11</sup> These issues are complex and cannot solely be addressed by accessibility to information.

However, it is again important to note that such legal information cannot replace personal legal advice. Without adequate literacy, language and communication skills, people are unlikely to be able to pursue a legal resolution effectively. In the "Piecing together the puzzle" report, 68% of organisations stated that their clients had literacy issues and 56% had disability issues which were barriers to them accessing legal services, it is essential that legal services remain flexible and personal.<sup>12</sup> Organisations also stated that while legal fact sheets and community education sessions were important, they were also less useful than face-to-face legal advice/representation, outreach services and legal advice over the phone or skype. Community Legal Services must be adequately funded to provide advice and assistance particularly to those with complex, individual needs.

### **Single Entry Point**

A single entry point such as the Legal Help Line operated by Victoria Legal Aid may be helpful, however the most vulnerable clients are unlikely to call a central phone number when they have legal issues. For this reason, it is critical that local community legal centres are also funded to provide services in their local communities, that reach clients who are unlikely to contact the central access point. The central intake services can never be a substitute for local services but should supplement them.

Furthermore, community legal centres have local knowledge that is not held by metropolitan statewide services. For example, community legal centres have strong relationships with local support services to enable them to link clients to other help that they may need. In the case of Hume Riverina CLS, it has local knowledge that is useful for cross border residents about how to navigate between the Victorian and NSW legal systems in relation to their interrelated legal problems – this knowledge and expertise is unique and is necessary for local residents.

It is submitted that the single entry point must not act simply as a referral service. What this means is that a 'Legal Help Line' needs to be properly funded in order to provide information and advice, not just refer to the local service provider (CLC) who may be unable to assist due to the aforementioned lack of capacity or conflict of interest.

### **Specialist Assistance**

Notwithstanding the problems and challenges the current system is faced with, many existing specialist service providers have been making valuable and

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<sup>11</sup> Ibid, page 16.

<sup>12</sup> Ibid, page 15.

effective contributions to the community by assisting the vulnerable and disadvantaged cohort in specialised areas. For example, the Tenants Union of Victoria and Youthlaw target tenants and young people in their provision of assistance and advice. Another specialist service provider, the Consumer Law Action Centre, gives priority to people calling from a regional area because there are very few options for them in terms of legal advice.

These specialist services should be funded adequately so that they are able to deliver dedicated services into regional areas, which will assist to meet the overwhelming need in those regions that lack services.

### **Legal Education**

Legal education is closely linked with the cross-border issues in border communities. It is unlikely that the legal information provided to the general population will draw people's attention to the cross-border issues. This makes community legal education indispensable in border communities in terms of getting legal information regarding cross-border issues to these local communities (such as 'sexting' as noted above). Unfortunately, there is currently inadequate funding to run these community legal education programs.

Besides cross-border issues, people also encounter legal 'problem clusters'. Training can be provided to other non-legal service providers to increase their ability to identify legal issues and provide early referrals as many people with a legal problem often turn to non-legal service providers (as discussed above). It is important that such providers have the capacity to identify where there are potential legal issues and the knowledge about where to refer their client or patient.

### **Health Justice Partnerships**

The recent Legal Australia Wide survey found that vulnerable clients who are more likely to have legal problems are also less likely to access legal help when they need it.

In Victoria, there are a growing number of health justice partnerships developing, which involve community legal centres providing co-located services in health centres or through other non-legal service providers.<sup>13</sup> This model of service delivery is particularly effective in reaching clients with complex needs and multiple legal problems, who would otherwise not access legal help. As discussed above, the HRCLS "Piecing together the puzzle" report noted that community organisations are generally already engaged with a high number of vulnerable clients who have multiple legal problems. Community legal centres should be funded to work closely with these community organisations in order to reach and support these people to resolve their problems.

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<sup>13</sup> For example the Victorian Legal Services Board & Commissioner recently provided grants to a number of new health justice partnerships in Victoria.

The “Reshaping Legal Assistance services: building on the evidence base” report, published by the Law and Justice Foundation of NSW<sup>14</sup>, recommended that to be effective in reaching vulnerable clients, services must be timely, targeted, joined-up and adapted to the client’s capabilities. Health Justice partnerships meet this criteria.

### **RECOMMENDATIONS:**

1. Increase and prioritise funding for community legal centres in regional areas where there is a lack of alternative free services available for people, such as Hume Riverina CLS.
2. Fund additional services (such as a family violence prevention legal service or Aboriginal legal service) within regional areas such as in North East Victoria where there is currently only one free service provider, to ensure that there are other services available to assist, when Hume Riverina is unable to help due to conflicts of interest.
3. Develop a website comparable to LawAccess NSW in multiple languages and formats, including detailed civil law information about how to self-represent.
4. Increase funding for community legal centres to deliver Community Legal Education in their communities, particularly to enable them to deliver tailored presentations that are relevant to local need.
5. Provide a funding stream for health justice partnerships to be established in multiple locations across Victoria between community legal centres and health centres.
6. Provide adequate funding to resource a central intake service such as a Legal Help Line.
7. Prioritise funding to CLCs and specific initiatives by CLCs which target services to the most vulnerable and disadvantaged people in the community. This should be regarded as a higher priority than a central intake number or a centralized website.
8. Adopt the principles within the “Reshaping Legal Assistance Services” Report published by the NSW Law & Justice Foundation by prioritizing funding to services that are timely, joined-up, targeted and adapted to the client’s capabilities.

## **2: Options for diverting people from civil litigation and into alternative services where appropriate, such as a ‘triage’ model**

The Dispute Settlement Centre of Victoria is a well-used resource in the region and does assist people in resolving disputes outside of the Court system.

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<sup>14</sup> Available at [http://www.lawfoundation.net.au/ljf/site/templates/reports/\\$file/Reshaping\\_legal\\_assistance\\_services\\_web.pdf](http://www.lawfoundation.net.au/ljf/site/templates/reports/$file/Reshaping_legal_assistance_services_web.pdf)

Regardless of the dispute resolution method, it is essential that people can access early legal advice in order to be aware of their legal rights and obligations. When people are unaware they can either, on one hand, not pursue their legal remedies or on the other hand, not be prepared to compromise or settle.

Again in a cross-border setting these issues are often more complex depending on where the individuals live and where the transaction or debt occurred.

### **RECOMMENDATIONS:**

1. Increased funding for community legal centres to provide early legal advice to people, including clients participating in mediation.

### **3: Whether and how alternative dispute resolution mechanisms should be expanded so that more Victorians can make use of them**

The Dispute Settlement Centre Victoria provides alternative dispute resolution in general matters and can usually assist people and organise mediation promptly. HRCLS greatly values this service in their catchment area and the options it provides to their clients outside of the court system.

However, there is limited assistance for people to resolve their family law property disputes outside of the court system. The DSCV does not accept these cases and many can't afford a private mediator.

It is essential, as stated above (point 2), that participants in alternative dispute resolution have access to affordable/free legal advice. The imbalance of power that can occur in ADR, can be, in some cases, offset by an informed and educated participant about the issue at hand. Of course, lawyer-assisted ADR can also be most helpful in these cases.

HRCLS has a Legally Assisted Family Dispute Resolution partnership with the Family Relationship Centre in Wodonga and Murray Mallee CLC, which has been very successful with an internal review of participants in 2014 making comments like "Having a lawyer assist helped me understand it/made it easier", "made me feel more comfortable/confident with speaking for myself", "helped me to get the outcome I wanted" and "helped to have legal advice".

In HRCLS' "Piecing together the puzzle" report, 76.9% of organisations indicated that they would benefit from receiving legal education sessions on issues that affect their client group. 25% stated that they would like to receive education on "dispute resolution and mediation services". Organisations obviously think that ADR is important for their clients, but something that they feel uninformed about. An expansion of ADR needs to

be accompanied by both legal advice and legal education with funding for both.

#### **RECOMMENDATIONS:**

1. Expansion of services offered by DSCV – especially in regional Victoria and particularly to include family property disputes and IVO programs.
2. Increased funding to community legal centres such as Hume Riverina CLS to provide early and appropriate legal advice and referral to clients, to assist in the alternative dispute resolution.
3. Increased funding to community legal centres for Legally Assisted Family Dispute Resolution, particularly in regional Victoria.
4. Increased funding for community legal centres to provide education to service providers about the benefits of ADR and how to access it and refer clients.

### **5: The provision and distribution of *pro bono* legal services by the private legal profession in Victoria**

#### **What works well?**

##### **Generalist Advice Clinic**

The Hume Riverina Community Legal Service (HRCLS) operates a generalist advice clinic every Tuesday night in Wodonga and every fortnight in Wangaratta. The clinic is staffed by private lawyers from the local area, who provide advice on a roughly six- weekly basis. The clinic operates between the hours of 5.30 and 7pm. Appointments of half an hour duration are scheduled for this period. The generalist advice clinic is supervised by a lawyer from HRCLS who provides support and assistance where necessary. A total of 355 advices were given by volunteer lawyers at these evening clinics in 2014/15.<sup>15</sup>

##### **Deferred fees arrangements**

HRCLS has deferred fee arrangements in place with several local private lawyers. As part of our work, HRCLS helps to broker *pro bono* assistance to clients who may otherwise be unable to obtain such help. The local knowledge that staff have enables the formation and continuation of close working relationships with legal service providers within the area.

##### **Volunteers**

HRCLS is heavily reliant on volunteers to assist with all aspects of the service's work. In the year 2014/15, 59 volunteers including students assisted at HRCLS<sup>16</sup> with the 4,000 total volunteer hours recorded in that period.

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<sup>15</sup> Ibid, 8.

<sup>16</sup> Hume Riverina Community Legal Service, *Hume Riverina Community Legal Service Annual Report 2014-2015* (2015, 8. Report available at [www.hrcls.org.au](http://www.hrcls.org.au))

Some undergraduate and Practical Legal Training (graduate law) students travel large distances to volunteer at HRCLS. In addition, they are required to self-fund their placement and arrange their own accommodation. Universities could encourage further participation by offering incentives for students to come to regional, remote and rural areas. Some of the students enjoy their experience with HRCLS that they continue to volunteer well after their requirements have been met and often as volunteer solicitors. This is to be encouraged and facilitated.

Free volunteer practicing certificates in Victoria encourages pro bono work and volunteering in CLCs. The new Legal Profession Uniform Law coming into force means that this is now replicated in NSW and we hope that this leads to an increased number of volunteers to our service.

### **Probono partnerships**

Hume Riverina Community Legal Service also has *pro bono* partnerships with several private law firms. Clayton Utz will conduct *pro bono* work in circumstances where HRCLS does not have the capacity or expertise to carry out such work. This is on the proviso that the client meets the economic and social disadvantage requirements of HRCLS.

Ashurst Australia can also conduct *pro bono* work where Clayton Utz has a conflict and is therefore unable to assist. In addition, Ashurst Australia assist with Wills Seminars for parents and carers of people with intellectual impairments<sup>17</sup>

HRCLS also takes time to nurture relationships with local lawyers, including being active members of the North East Law Association (NELA), resulting in a ready sharing of expertise and experience by many in the local profession.

HRCLS also has a long-standing partnership with a local health support network and a private practitioner from Halliday Solicitors, to provide regular community legal education in relation to life planning and other elder law issues.

### **Wills workshop for Aboriginal clients**

Over a two day period in 2015, Gilbert and Tobin assisted with the running of a free Wills, Power of Attorney and Guardianship workshop. On Day 1, Gilbert and Tobin provided education about legal planning and focused on issues particularly relevant to Aboriginal people. In the afternoon of Day 1, lawyers began taking instructions from people attending the workshop. On Day 2, lawyers returned the completed documents for clients to sign and take home.<sup>18</sup> The workshop was held at Albury Wodonga Aboriginal Health Service, in conjunction with CLSD and Gilbert and Tobin.

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<sup>17</sup> Ibid, p.25.

<sup>18</sup> Hume Riverina Community Legal Service, *E-news July 2015*.

### **Subsidised wills scheme**

HRCLS operates a scheme in conjunction with local law firms, whereby those who have financial difficulties and a particular vulnerability may have a will, power of attorney or enduring guardianship drafted at a reduced rate.<sup>19</sup> At present, the rate for this service is \$55.00. Providing clients meet the criteria, following an interview with HRCLS, they will be given a voucher to use for the drafting of one of the above documents.

A case study example of a client who was assisted is as follows. An older woman with serious health issues was seeking to have a will made, power of attorney and enduring guardianship granted. However, she had no-one to appoint as executor, attorney or guardian. She had a telephone appointment with Hume Riverina CLS as she was unable to travel. During this appointment, the woman was asked to consider who she may be able to appoint to these positions. She was required to pay \$55 for each document required and it took her some time to save this money. When HRCLS contacted her some time later, she had managed to appoint people as required. She had also found a solicitor to complete the necessary documents at the reduced rate. She reported that she felt relieved and happy with the outcome.

### **Gaps in pro-bono legal services**

One of the gaps in *pro bono* legal work is in the area of family law. If clients are unable to obtain Legal Aid for their matters, there are limited options for representation. Clients may choose to self-represent but the process is complicated and not a viable option for many people. *Pro bono* assistance may be sought through the weekly clinic at HRCLS. However, appointments are limited and the assistance is generally provided on a one-off basis only. The service is also limited by the number of private lawyers participating in the clinic.

In recent years there has been an increase in the legal needs of people in regional areas. However, there has been a decrease in the number of regional lawyers which has resulted in a shortage of lawyers.<sup>20</sup> The implications for this are serious as private legal practitioners in regional remote and rural areas undertake significant amounts of legal aid work<sup>21</sup>. In the past, several financial incentives have been successful in attracting and retaining graduate and experienced lawyers to regional remote and rural areas. These include financial incentives such as HECS\_HELP debt relief and free housing. Such incentives may assist in attracting more lawyers to areas of need.

### **RECOMMENDATIONS:**

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<sup>19</sup> Hume Riverina Community Legal Service, *Life Planning Clinic* pamphlet.

<sup>20</sup> Fitzroy, L ABC Rural, *Regional lawyer shortage could jeopardise access to justice says Law Council* at <http://www.abc.net.au/news/2015-11-05/rural-and-regional-lawyer-shortage-threatens-access-to-justice/6915136>

<sup>21</sup> Law Council of Australia *Fact Sheet- Recruitment and retention of legal practitioners in rural, regional and remote areas of Australia*

1. Fund law student placements within community legal centres.
2. Provide subsidies for law students who wish to travel to regional areas to undertake a placement at a community legal centre.
3. Provide incentives to private lawyers to encourage them to provide pro bono assistance to disadvantaged people, including by volunteering their time to their local community legal centre.
4. Provide incentives to encourage lawyers to relocate to the country, such as HELP debt relief, salary packaging or housing subsidies.
5. Provide incentives to encourage private lawyers to meet a quota of legal aid work.
6. Provide additional funding to community legal centres who utilize volunteers.
7. Work with the Law Institute of Victoria to foster a culture within the legal profession of providing pro bono assistance, recognizing that many lawyers do already provide significant pro bono assistance.
8. Increase funding to Victoria Legal Aid so that it can increase the funding provided to private lawyers who undertake legal aid work.

## **6. The availability and distribution of funding amongst legal assistance providers by the Victorian and Commonwealth governments to best meet legal need**

The Hume Riverina Community Legal Service (HRCLS) faces challenges experienced by many regional and rural legal services. We endorse the statements made in the submission by Deakin University in relation to issues relevant to such services. Issues identified within that submission include the fact that access to legal services is more difficult in regional areas, distribution of funding is weighted heavily towards metropolitan areas even after accounting for population distribution and geographical catchment areas are often much larger than in metropolitan areas.<sup>22</sup>

We refer to previous points above, and submit that community legal centres are overstretched and underfunded yet have an extremely valuable role to play in servicing the most disadvantaged and vulnerable in the community. Funding should be immediately increased for community legal centres.

We further submit that any funding distribution model needs to take into account current services available within the community. Although Wodonga is an area of disadvantage, it only has one free legal service provider. The model must also be tailored to reflect the level of disadvantage in the community and any issues specific to the area. The biggest area of growth in 2014-2015 for HRCLS was

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<sup>22</sup> Coverdale, R and Parson, I *Submission from the Centre for Rural Regional Law and Justice, School of Law Deakin University - Department of Justice and Regulation Victoria, Access to Justice Review*, 8-9.

family violence issues. Family violence accounted for approximately 24% of cases during that period.<sup>23</sup> In addition, it was identified that in 2013 -2014, 29% of young people aged 15-25 who requested legal assistance disclosed family violence. A specific program called the Invisible Hurdles Project (funded by the Victorian Legal Services Board & Commissioner) has been commenced to address this issue.

HRCLS is in a unique position as a cross-border legal service. This has significant legal and service delivery implications. In some situations, service access is available to clients living on one side of the border but not the other. In other situations, processes are duplicated.<sup>24</sup> Due to the cross-border position of HRCLS, many clients have legal issues that have a basis in both New South Wales and Victorian law. Such issues are often complex, and difficult to untangle. A survey conducted by HRCLS found that 47% of people surveyed crossed the border between Albury and Wodonga more than 7 times a week and over 14% did so more than 6 times a week.<sup>25</sup> A prime example of a cross-border issue relates to family violence orders. When an Apprehended Domestic Violence Order is granted in New South Wales, it must be registered in Victoria to be effective and vice-versa. Such registration is the responsibility of the protected person.<sup>26</sup>

It is hoped that when funding is allocated and distributed that all the above factors are taken into consideration. In addition, it is vital that recognition is given to the unique difficulties involved in dealing with cross-border issues.

#### **RECOMMENDATIONS:**

See above points.

<p><b>7. Whether there is any duplication in services provided by legal assistance providers, and options for reducing that duplication, including the development of legal education material</b></p>
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As we have discussed throughout this submission, the primary issues faced by regional and rural legal services relate to lack of services rather than duplication. The demand for legal services exceeds the capacity of the publicly funded sector to provide such services as are required. This is highlighted by the fact that there is only one free legal service available in this area. If a conflict of interest occurs within this service then access to services is further limited.

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<sup>23</sup> Hume Riverina Community Legal Service (HRCLS) *Annual Report 2014-2015* (2015) 11

<sup>24</sup> Hume Riverina Community Legal Service (HRCLS) *Annual Report 2014-2015* (2015)21.

<sup>25</sup> *Ibid* at 21.

<sup>26</sup> Hume Riverina Community Legal Service (HRCLS) *Family Violence and Rural Regional and Remote Communities- A Submission from the Hume Riverina Community Legal Service (HRCLS)* 29 May 2015 at [3.2]

We also submit that:

- Community legal education publications must always be tailored to meet the need of the specific audience. For example, Hume Riverina CLS recently utilised an excellent publication produced by Victoria Legal Aid and Loddon Campaspe CLC about sexting, however Hume Riverina CLS was required to adapt this publication for delivery to school children on the Victorian border, so that children would understand the consequences of cross border sexting due to the different laws applicable. Hume Riverina CLS had to revise the presentation to incorporate NSW and Victorian information. This has to be done by Hume Riverina CLS in relation to any community legal education presentation produced by another service provider in Victoria, to ensure its relevance to clients on the border.
- There have been allegations that community legal centres duplicate the services provided by Legal Aid. This is simply not the case. Community legal centres target their services to the areas of unmet need. There is an increasing number of people in the community who are not eligible for legal aid, yet are extremely vulnerable and cannot afford a private lawyer. As highlighted above under point 1, Hume Riverina CLS is unable to meet the current level of demand on its service, but is also unable to refer those clients back to Victoria Legal Aid or an alternative legal service provider, as there is no alternative service provider within its region. The legal assistance sector (including community legal centres and legal aid) is extremely stretched and unable to currently cope with the current demands upon it.
- Due to conflict of interest ethical obligations that lawyers are required to abide by, there will always be the need for at least 2 free legal service providers to assist in any region, otherwise only one party in a dispute will be able to access a free service. As discussed above, Hume Riverina CLS is frequently required to turn people away due to conflict of interest.

<p><b>8. The resourcing of VLA to ensure Government funding is used as effectively and efficiently as possible and services are directed to Victorians most in need</b></p>
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Hume Riverina CLS supports additional resourcing being provided to Victoria Legal Aid, so that the guidelines for legal aid eligibility are able to be expanded. This would relieve some of the demand upon community legal centres as it would increase the number of clients that VLA could assist.

HRCLS also supports additional resourcing being provided for the VLA Help Line so that it can operate properly, but only so that the Help Line can supplement services being provided by community legal services and other services provided by legal aid. As discussed above, the service that is able to be provided by a call centre is not the answer for assisting the most vulnerable clients.

It is noted that the VLA panel arrangements have led to considerable difficulty in the country where few practitioners have been accepted. While we applaud the attempts to ensure that there is accountability and certain standard achieved by lawyers who are eligible for Legal Aid work, the ramifications have been that few lawyers are choosing, for whatever reason (including time constraints, lack of experience etc), to go through the process to be accepted on the panels and vulnerable clients in regional and rural Victoria are being disadvantaged. There is now a significant shortage of lawyers in our region who are on the panel and able to accept legal aid work. We submit that VLA should review the impact on regional access to justice of these policies. If there is a resulting shortage of practitioners in the country that are able to do legal aid work, then VLA should fund community legal centres to meet the gap, or supply its own lawyers to the regions that are affected.

### **9. Options for providing better support to self-represented litigants throughout the Victorian justice system**

Self-represented litigants (SRLs) are often faced with a number of difficulties in the justice system. These include identifying the legal issues, understanding the applicable laws and navigating the court procedures.

In terms of identifying legal issues, the problems associated with legal 'problem clusters' as discussed under question 1 are equally relevant here. With respect to understanding the applicable laws and navigating the court procedures, the problems are the same as the limits on accessible legal information. In particular, the information is fragmented, largely in English and in an online format. Thus, the kinds of support as identified under question 1 should be extended to SRLs. At the same time, assistance to SRLs in person is also necessary. For example, many vulnerable or disadvantaged people lack the skills to complete their intervention order applications correctly. The Victoria Legal Aid seconded lawyer to HRCLS is able to assist with intervention order matters on a duty basis at Wodonga Magistrates Court, once applications have been made to the Court. However, HRCLS does not have funding or capacity to assist clients to complete their intervention order applications. This means that sometimes clients do not have sufficient evidence contained in their applications to support an order being made, even though there may have been a history of family violence.

Hume Riverina CLS has a student program that involves students attending on placements and supporting the work of the Hume Riverina CLS. Students provide significant and extensive assistance in client matters under the supervision of the lawyers at Hume Riverina CLS (such as drafting letters and court documents). This increases the capacity of Hume Riverina CLS to assist a greater number of clients who are self-representing.

**RECOMMENDATIONS:**

1. Ensure that funding is given to community legal centres and Victoria Legal Aid to ensure that a greater number of vulnerable clients receive representation from the outset (including help with preparation of the court documents themselves, not just a duty service), and to ensure that vulnerable clients are not required to self-represent.
2. Provide funding to community legal centres to enable them to support SRLs more effectively, such as through funding law student programs to enable law students to assist with supporting SRLs under the supervision of the CLC.

Submitted by:

**Hume Riverina Community Legal Service**

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