

# The value of investing in Community Law Centres

An economic investigation

NZIER report to Community Law Centres o Aotearoa  
September 2017



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## Authorship

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# Key points

## Background

In 2015/16 the Community Law network, or CLCs provided:

- almost 107,000 hours of advice, assistance or representation to at least 48,000 clients on over 53,000 legal issues
- over 16,000 hours of legal service information and law-related education services to 32,335 participants.

## Doing the job

The Ministry of Justice (MoJ) funding provided for this advice totalled just under \$11 million in 2015/16 (of which about \$7 million was from interest earned on solicitors' trust fund accounts). We estimate that if this role had to be undertaken by an alternative publicly-funded service along the lines of the Public Defence Service, the costs to provide these services would have been \$30 million to \$50 million. (Such avoided costs can be taken as benefits.) This represents a benefit cost ratio of between 3 to 1 and 5 to 1.

## From a public policy viewpoint...

The activities of the Community Law network are directed toward three aspects of public benefit:

- **Assisting with the proper operation of the legal system**, by ensuring access to the system for those who may otherwise be excluded
- **Furthering equity goals** of the Government, by providing a low-cost service, thus making it accessible to those with limited means
- **Dealing with potentially adverse economic outcomes**, particularly where there are externalities.<sup>1</sup>

This makes the CLC network an example of social investment in action. It is clearly value for money. And further, not only is there a high positive return on the funds employed, but the types of avoided consequences are those that society most wants to prevent – family breakups, crime and social tension. And these are potentially expensive. The social value of mitigating the impact of such events is not established here, but in Australia providing accommodation for a single child following a family break-up is assessed at \$A112,000 per annum.

A recent review in Australia by the Australian Productivity Commission (2014) thus found that this role was a vital one. It also saw the type of activities undertaken by the Community Law network as likely to be under-resourced and needing to be both expanded and better supported.

Here in New Zealand the current funding model (via the special fund with a top up) is not an assured source. This risk to the sustainability of the resources means there is an ongoing chance of a shortfall which would inevitably entail reducing services. This

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<sup>1</sup> These are unintended non-market consequences. Here they include the effects on families that may come from legal proceedings involving one of their number, such as a bread winner or immigration permit holder.

would reverse the favourable social investment results as the interventions would cease and negative consequences would follow.

### The richness of the role filled by CLCs

To illustrate the richness of the role filled by the Community Law network, a range of individual cases were sourced from the Centres. They showed the variety of activities attached to individual cases. This set of material, while diverse, reveals only a fraction of the complex sorts of problems the Centres typically deal with.

### Looking at the future

The Community Law network has a significant set of assets in terms of its organisational structure and reputation as well as the skillsets of the staff and volunteers. There are opportunities for these to be extended to provide additional services.

In the meantime, there are indications that the current level of services is below what could be provided to meet a valuable social need. This suggests a review of the need for extra funding would be timely.

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# 1. Valuing Community Law Centres (CLCs)

The national organisation for Community Law Centres, Community Law Centres o Aotearoa (CLCA) has commissioned NZIER to provide an authoritative analysis of the worth of the investment that the government makes in Community Law to support Community Law Centres (CLCs) delivering free legal services to groups of the New Zealand community that find it difficult to access legal advice.

This analysis examines evidence about the public value and cost-effectiveness of the Community Law network due, at least in part, to the employment of a socially passionate workforce and 1,500 volunteers.

NZIER has worked for the CLCA before,<sup>2</sup> producing robust and creative analysis that is trusted by public agencies.

Our approach in this project, in the light of the data available, as for last time (2012), involved innovative methods of analysis that are reliable and credible to a wide audience.

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<sup>2</sup> NZIER (2012).

## 2. Structure of report – outline

Our overall approach is to analyse the way the Community Law network works, and examine what it does to produce benefits to the New Zealand public at large.

This discussion is undertaken in a wider public intervention context. The report is structured as follows.

### 2.1. Frameworks – insights into the value of the Community Law network

A chapter deals with each of the following.

#### 2.1.1. Alternative supplier costings

We apply the same analytical approach that we used in our earlier report (2012). This costed selected CLC outputs (based on Ministry of Justice statistics) at the ‘prices’ of an alternative supplier (the Public Defence Service (PDS)) and thus, by comparison, showed the value for money the CLCs were achieving.

#### 2.1.2. Public policy viewpoint

We discuss the overall output structure of the CLCs from a public policy viewpoint, relating the outputs to policy objectives, and stressing the way the CLC interventions in such cases can produce better results.

#### 2.1.3. Case studies to show the breadth of public benefit

Drawing on the experience of the network members at the grass roots, we present a range of case studies (or stories). These have been provided by different Centres, to demonstrate the way the CLCs produce public benefits on an individual case basis.

#### 2.1.4. Wider picture and implications

We provide a scan of the caseload of the CLC network as a whole, plus some discussion. This leads into a brief series of suggestions for possible further areas of work.

The next four chapters of this report look at each of these aspects individually. A final chapter sums up the findings.



## 3. Alternative supplier costings

### 3.1. Introduction

Our approach to valuing the gross benefit provided by CLCs follows a similar analytical approach to that we used in our 2012 report:

- comparing the estimated costs of providing CLC case advice with that of the next most expensive public provider – the Public Defence Service (PDS) – as a measure of the value for money achieved by CLCs
- estimating the value of the volunteer effort provided by CLCs and the additional funding attracted by CLCs from other sources – as a measure of how CLCs add value by leveraging MoJ funding.

However, the estimates in this report are not fully comparable with estimates in our 2012 report, due to changes in the information available to us. We have estimated the average cost of the simplest class of PDS case, using two sets of MoJ data. Also, we note that the MoJ measurement of CLC deliverables has changed from ‘legal issues addressed’ to ‘clients assisted’.

### 3.2. Valuing case work

Based on the approach in our previous report, we estimate the gross benefit of CLC case work at approximately \$30 to \$50 million – by taking the number of clients assisted and multiplying this by 50 to 75<sup>3</sup> percent of the estimated average cost of the simplest PDS case (PAL 1). This estimated gross benefit is higher than the estimated gross benefit for the 2012 report, because the estimated PDS cost of a PAL 1 case is about 40 percent higher than the estimated PDS cost of the equivalent case in 2012.

This estimate does not include the benefit of the 16,218 hours of information and education services provided by CLCs to 32,953 participants.

We found it difficult to put a figure on these services because their detail was not clear, including the effect on the users, and we do not know what the recipients would otherwise do. But if the social value of the information supplied – in terms of reducing the use of other public services, for instance - averaged as little as a net \$40 per recipient<sup>4</sup> this would represent another \$1,318,120 of public value.

It also does not go into the social value of the social harms like family break ups, crime and social tension avoided by through intervention available from the CLC. Such events have consequences which are costly, and often protracted. The social value of reducing the impact of such events is not established for New Zealand, but in Australia the cost of providing accommodation for a child following a family break-up has been assessed<sup>5</sup> at \$A112,000 per annum.

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<sup>3</sup> The multiplier of 75 percent is the assumption used in the 2012 report. We have calculated the benefits in this report as a range to reflect the uncertainty about how the average cost and complexity of CLC cases compares to the average cost and complexity of PAL 1 cases.

<sup>4</sup> This might be thought of as say the saving of one hour of frontline attention at full cost. The case studies presented later, which are more fully engaged and complex show that in many instances much more than an hour is saved.

<sup>5</sup> See Judith Stubbs Associates (2012).

### 3.2.1. Public Defence Service

The first step in our benefit estimation process is to estimate the cost to the PDS of providing legal advice for the least complex cases that it manages – PAL 1.<sup>6</sup>

MoJ reports the total budget for the PDS and the total number of cases processed for June fiscal years. However, data giving a breakdown of the number of cases in each category from PAL 1 to PAL 4 is only reported for the year ending 30 November. Further, we have not been able to find any MoJ data on the average cost of cases in each category. We used the available data on case volumes that to estimate the average cost of a PAL 1 case.

Table 1 shows how we calculated the average proportions of PAL 1 to PAL 4 cases.

**Table 1 MoJ PDS case volumes**

Number of cases by complexity total annual cases<sup>7</sup>

Case Category	Year ended			Average over three years	Average share of cases by type
	30 Nov 14	30 Nov 15	30 Nov 16		
PAL 1	14,894	15,378	15,141	15,138	92.18%
PAL 2	706	808	488	667	4.06%
PAL 3	380	441	497	439	2.68%
PAL 4	171	166	193	177	1.08%
<b>Total cases</b>	<b>16,151</b>	<b>16,793</b>	<b>16,319</b>	<b>16,421</b>	

Source: NZIER analysis of MoJ data

The published MoJ data does not provide estimates of the average cost for cases in the different PAL categories. We have assumed a set of weightings<sup>8</sup> for the average cost of PAL 2, PAL 3 and PAL 4 cases relative to the cost of a PAL 1 case (as shown in Table 2). These weightings are loosely based on the estimates by Martin Jenkins (2011) of the relative average costs of PCI, PCII and PCIII criminal cases.

We combine these weightings with the average proportion of case by PAL category (as calculated in Table 1 MoJ PDS case volumes above) and the total number of PDS cases as reported by MoJ for the year ended 30 June 2016 (16,001),<sup>9</sup> to estimate the number of PAL 1 equivalent cases for the year to 30 June 2016.

<sup>6</sup> PAL 1 matters are non-jury trials in the Youth, District or High Court and attract hourly rates for Legal Aid of \$92 to \$106 per hour. See <https://www.justice.govt.nz/about/lawyers-and-service-providers/legal-aid-lawyers/provider-rates-and-special-rates/criminal-fee-rates/> last updated on 6 June 2017.

<sup>7</sup> This data is obtained from MoJ 'Criminal legal aid assignments - information & criminal case reports' available at <https://www.justice.govt.nz/about/lawyers-and-service-providers/legal-aid-lawyers/criminal-legal-aid-assignments-information-and-criminal-case-reports/>.

<sup>8</sup> 'Public Defence Service Benchmarking: 30 June 2011, Final Report to the Ministry of Justice', Martin Jenkins.

<sup>9</sup> See: 'MINISTRY OF JUSTICE ANNUAL REVIEW 2015/16 RESPONSE TO WRITTEN QUESTIONS,' Question 181, page 152 available at [https://www.parliament.nz/resource/en-NZ/51SCJE\\_EVI\\_00DBSCH\\_ANR\\_71420\\_1\\_A540798/ee7b294a821a1710fd91705f2ae8720a79a58363](https://www.parliament.nz/resource/en-NZ/51SCJE_EVI_00DBSCH_ANR_71420_1_A540798/ee7b294a821a1710fd91705f2ae8720a79a58363).

**Table 2 PAL average cost weightings**

Case Category	Average share of cases by type for the years ending 30 Nov 2016-16	Total PDS cases for year ended 30 June 2016	Estimated PDS cases by PAL category for year ended 30 June 2016	Cost multiple relative to PAL 1 case (assumed weightings)	Estimated PAL 1 equivalent number of cases
PAL 1	92.18%		14,750	1	14,750
PAL 2	4.06%		650	3	1,951
PAL 3	2.68%		428	4	1,712
PAL 4	1.08%		172	5	861
<b>Total</b>		<b>16,001</b>			<b>19,274</b>

Source: NZIER

We then divide the MoJ funding of the PDS for the year ended 30 June 2016 - \$26.7 million<sup>10</sup> by the estimated number of PAL 1 equivalent cases – 19,274 to estimate the PDS average cost per PAL 1 case of \$1,385.

### 3.2.2. CLC case work

In the year ended 30 June 2016, CLCs assisted 48,088 clients with 53,000 legal issues. The following table lists the top 10 types of cases that the Community Law Centres provide assistance with, covering issues that are both critical to clients' daily lives (employment, family, financial, criminal and immigration) and complex and expensive to resolve using privately funded or legal aid advice. The 'top 10' issues account for about 77 percent of the of the 50,033 legal issues on which CLCs have provided advice.

<sup>10</sup> See 'The Estimates of Appropriations 2016/17 - Justice Sector, B.5 Vol.7, Vote Justice, Public Defence Service (M42)' page 71 available at <https://www.budget.govt.nz/budget/2017/by/vote/just.htm>.

**Table 3 Community Law Centre advice by case type**

Top 10 case types account for almost 80 percent of claims

Issue	Legal Category	Cases	Share of cases
Employment	Civil	7,147	14.2%
Care of children	Family	6,266	12.4%
Financial	Civil	4,809	9.6%
Police prosecutions	Criminal	4,154	8.3%
Immigration / citizenship	Administrative	3,684	7.3%
Consumer	Civil	3,451	6.9%
Adult relationships	Family	3,219	6.4%
Tenancy	Civil	2,494	5.0%
Property	Civil	1,889	3.8%
Trusts	Civil	1,492	3.0%
<b>Total top 10</b>		<b>38,605</b>	<b>76.7%</b>

Source: NZIER analysis of MoJ data<sup>11</sup>

### 3.3. CLCs lever off MoJ funding

CLCs received funding from MoJ of just under \$11 million for the year ended 30 June 2016 and complemented this with both funding from other sources and advice provided by volunteers.

Overall, we estimate that this CLC leveraging of MoJ funding provides an additional gross benefit of almost \$2.6 million, comprising an estimated:

- \$1.8 million of non- central government funding
- \$0.8 million from volunteer-provided legal advice.

#### 3.3.1. Funding sources

For most CLCs, funding from MoJ represents about 80 to 90 percent of their total funding with the remaining revenue coming from a variety of sources including donations, sponsorship, interest and dividends and income from services. More than half of the 'MoJ funding' for CLC is from interest earned on the balances held in solicitors' trust accounts<sup>12</sup>.

<sup>11</sup> The MoJ data on which this table is based, lists a total of 50,333 cases.

<sup>12</sup> MoJ funding of CLC is about \$11 million per year. The MoJ collected 'non-departmental receipts for Community Law Centres of \$7.4 million (for the year ended 30 June 2016) and \$6.9 million (for the year ended 30 June 2015) see 'MoJ Annual Report 1 July 2015 to 30 June 2016'- Schedule of on-departmental revenue and receipts FOR THE YEAR ENDED 30 JUNE 2016. P135.

**Table 4 MoJ funding as a proportion of total CLC revenue**

CLC revenue and MoJ funding for 2014/15 and 2015/16

CLC	2014/15		2015/16	
	Total revenue	Share from MoJ	Total revenue	Share from MoJ
One Double Five Whare Awhina	533,038	62.7%	682,780	49.0%
Auckland Community Law Centre	613,403	98.2%	620,342	97.1%
Auckland Disability Law Service	408,905	54.8%	282,198	79.4%
Baywide Community Law Service	452,773	97.2%	452,773	97.2%
Community Law Canterbury	2,424,617	45.2%	2,424,617	45.2%
Community Law Marlborough	312,298	97.8%	325,275	93.9%
Dunedin Community Law Centre	512,459	90.6%	498,844	93.1%
Community Law Waikato	529,507	94.9%		
Community Law Wellington and Hutt Valley			1,610,485	62.6%
Community Legal Advice Whanganui	409,710	93.7%	421,573	91.1%
Otara Community Law Centre	747,166	98.2%	754,223	97.3%
Hawkes's Bay Community Law Centre	350,247	98.4%	371,381	92.8%
Manawatū Community Law Centre	431,208	87.2%	428,333	87.8%
Māngere Community Law Centre	701,157	64.3%	769,910	58.6%
Nelson Bays Community Law Service	384,999	96.1%	421,992	87.7%
Ngai Tahu Māori Law Centre	295,273	89.8%	337,345	78.6%
Rotorua District Community Law Centre	311,877	97.7%		
Southland Community Law Centre	397,742	91.8%	391,058	93.4%
Tairāwhiti Community Law Centre	417,577	82.1%	413,885	82.9%
Taranaki Community Law Trust	394,212	95.9%	431,477	87.6%
Wairarapa Community Law Centre	216,606	94.6%	216,606	94.6%
Waitematā Community Law Centre Inc	610,473	87.3%	589,544	90.4%
Whitireia Community Law Centre	380,631	90.8%	380,631	90.8%
YouthLaw Aotearoa	617,725	86.0%	585,708	90.7%

Source: NZIER analysis of CLC annual returns to the Charities Commission and MoJ data<sup>13</sup>

In 2015/16 for the CLCs as a group, MoJ funding was about 75 percent of total revenue. For those CLCs with a share of MoJ funding less than 80 percent:

- some are providing community services on behalf of other agencies, such as One Double Five Whare Awhina Community House and Community Law Canterbury.

<sup>13</sup> The source for total revenue for each CLC are the annual returns provided by each CLC to the Charities Commission. The source for MoJ funding is the 'MINISTRY OF JUSTICE ANNUAL REVIEW 2015/16 RESPONSE TO WRITTEN QUESTIONS' – Question 145 - Funding for community law centres – pages 131-132.

- some earn revenue from other services, such as Māngere Community Law Centre.

For CLCs as a group (excluding One Double Five Whare Awhina Community House Trust<sup>14</sup>, Community Law Canterbury and Māngere Community Law Centre), MoJ funding was about 87 percent of total revenue for the 2015/16 year.

Core taxpayer government-funding of CLC is just over \$4 million per year as about \$7 million annually is provided to CLCs through the Lawyers and Conveyancers Special Fund. This is a mechanism created by the Lawyers and Conveyancers Act 2006 (s302(1)),<sup>15</sup> whereby 60% of the interest paid by banks on lawyers' trust accounts is passed on by the banks to the MoJ. The CLCs receive part of their support from this.

### 3.3.2. Volunteer contributions

During 2015/16 CLCs received 13,516 hours of volunteer legal advice of which 11,737 hours were used for case work and the remaining 1,779 hours were used for information and education services. We have valued the benefit of 13,516 hours of volunteer legal case work advice at \$0.81 million by multiplying the number of hours by 75 percent<sup>16</sup> of the minimum hourly rate paid by MoJ for legal aid for a PAL 1 case.<sup>17</sup>

In addition, we estimate that volunteers contribute a further 12,000 hours of governance per year which we have valued at \$1.2 million per year<sup>18</sup>.

This valuation of volunteer contributions does not include the following contributions by volunteers:

- legal advice hours used for information and education services
- office management support.

<sup>14</sup> Based on returns to the Charity Commission we have assumed that 'One Double Five Whare Awhina Community House Trust' is the successor to 'One Double Five Whare Roopu Community House' which was listed in the MoJ 2015/16 RESPONSE TO WRITTEN QUESTIONS' – Question 145 but, according to the Charities Commission was de-registered on 03/11/2016 and is no longer carrying on its operations.

<sup>15</sup> **302 Banks to pay interest on nominated trust accounts to Special Fund.**

(1) Subject to section 301(5), a bank must, as soon as practicable after the date on which it has calculated the interest on a nominated trust account kept at that bank, pay into the Lawyers and Conveyancers Special Fund Bank Account, in such manner as the Management Committee may approve, the monthly interest payable by that bank on that account.

<sup>16</sup> This is the same modifier as the upper limit for the modifier we have used in valuing CLC case work.

<sup>17</sup> MoJ 'Criminal fee' rates are available at <https://www.justice.govt.nz/about/lawyers-and-service-providers/legal-aid-lawyers/provider-rates-and-special-rates/criminal-fee-rates/>.

<sup>18</sup> This estimate is based on information from Community Law Centres o Aotearoa that there about 200 volunteers each providing on average about 5 hours of governance advice per month.

## 4. Public policy

### 4.1. Where does the Community Law network fit?

While the value of the Community Law network can be estimated in quantitative terms in the manner used above, as indicated, the wider worth of the organisation is difficult to put such figures on. This section seeks to discuss those aspects of the work of the Community Law network in public policy terms: how the network's operation contributes to the New Zealand public good.

Obviously in strict technical terms such a discussion requires a clear definition of the public good, which is tight enough to exclude marginal examples and yet include worthwhile operations.

Rather than spend time on this we have adopted a broad approach<sup>19</sup> to the question by listing the areas of operation and assessing the extent to which they contribute to the general public benefit<sup>20</sup>.

In general, the public policy approach sees the basis for a public intervention as "correctional"; that is to say, to remedy a failing in the way things would otherwise play out. This is a wider version of the frequently used idea of a "market failure" which focuses on the idea that the free play of markets will not provide the appropriate outcomes under certain conditions.

Within this approach, Community Law's activities can be seen as addressing three broad areas:

- **Assisting with the proper operation of the legal system**, by ensuring access to the system for those who may otherwise be excluded.
- **Furthering equity goals** of the government, by providing a low-cost service, thus accessible to those with limited means.
- **Dealing with potentially adverse economic outcomes**, particularly where there are externalities.<sup>21</sup>

In our earlier report<sup>22</sup> we looked at the place Community Law occupied in the legal services market. The role we focused on was of being able to supplement the other players by using volunteers and low-cost suppliers to enable the less well-resourced to access legal services relevant to their needs.

We have not changed our position about this, but take the opportunity to expand here on what the Community Law network is doing from a public policy viewpoint and on what it could possibly consider as a logical expansion of the role.

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<sup>19</sup> This approach is aligned with the general methods used in recent Australian investigations: Judith Stubbs and Associates (2012) and Allen Consulting Group (2014).

<sup>20</sup> Note that a number of more specific case studies are provided in the next chapter. These colour in the way that the clients and their presenting issues are varied, and that typical clients have multiple issues, often requiring a series of different interventions to address their situations.

<sup>21</sup> These are unintended non-market consequences. Here they include the effects on families that may come from legal proceedings involving one of their number, such as a bread winner or immigration permit holder.

<sup>22</sup> NZIER (2012).

## 4.2. Reflecting the view in Australia

We start with an international perspective. Clearly the New Zealand situation is not unique. All countries grapple with the problems associated with creating a strong institutional structure to settle disputes between citizens in ways that all can feel part of a common society.

In 2014 the Australian Productivity Commission (APC)<sup>23</sup> looked at access to civil justice. The brief was wide and the report dealt with a range of topics. But in their final report's Overview they summed up some key features of the way access to justice can be considered:<sup>24</sup>

*While much focus is on the courts, the central pillar of the justice system, much is done in their shadow, with parties resolving their disputes privately. Community legal education, legal information (including self-help kits) and minor advice help ensure that parties are better equipped to do so. Better coordination and greater quality control in the development and delivery of these services would improve their value and reach.*

*Where disputes become intractable, parties often have recourse to a range of low cost and informal dispute resolution mechanisms. But many people are unnecessarily deterred by fears about costs and/or have difficulty in identifying whether and where to seek assistance. A well-recognised entry point or gateway for legal assistance and referral would make it easier to navigate the legal system.*

*Most parties require professional legal assistance in more complex matters. But the interests of lawyers and their clients do not always align. [...]*

*Disadvantaged Australians are more susceptible to, and less equipped to deal with, legal disputes. Governments have a role in assisting these individuals. Numerous studies show that efficient government funded legal assistance services generate net benefits to the community.*

*The nature and predictability of funding arrangements constrain the capacity of legal assistance providers to direct assistance to the areas of greatest benefit. This needs to change and, in some cases, funding should be redirected.*

*While there is some scope to improve the practices of legal assistance providers, this alone will not address the gap in services. More resources are required to better meet the legal needs of disadvantaged Australians.*

We note the range of services discussed by the APC corresponds to the way our CLCs operate. The different aspects referred to can all be seen in terms of the three categories listed in 4.1 above and discussed further below.<sup>25</sup>

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<sup>23</sup> Australian Productivity Commission (2014).

<sup>24</sup> APC (2014, page 2).

<sup>25</sup> Indeed, (at page 7) the APC had its own three-part description of the type of issues to be covered:

- providing access to least cost avenues for dispute resolution and facilitating the quick resolution of disputes at the earliest opportunity
- enabling the provision of a range of legal services that are proportionate to the problems experienced, easy to access and understand, and treat people fairly
- promoting affordable services, so that access to justice is equitable regardless of people's personal, social or economic circumstances and background.



- **Assisting with the proper operation of the legal system**, is related to the APC's "Community legal education, legal information ... and minor advice" as well as "fears about costs" and "difficulty in identifying ... where to seek assistance."
- **Furthering equity goals** of the government, corresponds to the points above plus the APC's "low cost and informal dispute resolution" and finally the emphasis on resourcing to "meet the legal needs of disadvantaged Australians."
- **Dealing with potentially adverse economic outcomes**, relates to the APC's concern that "efficient government funded legal services generate net benefits to the community."

Of course, this enquiry focused on Australian issues and was, in fact, largely confined to civil legal matters. Nevertheless, the report was a good summing up of many of the aspects of modern life which are the backdrop to the functioning of the Community Law network here in New Zealand.

For instance, the report captures the way interaction with the legal system is often accompanied by stress in people's lives. The reason is clear, the cause of both the stress, and of the need to engage with the justice institutions is usually the same underlying problem.

Similarly, the report includes figures to show that the typical client often has many issues that require resolution. Indeed, their data showed that of the clients with at least one problem, 10% of the clients had about half of all the problems.

#### 4.2.1. Specific APC recommendations and their relation to the CLCs

There are twenty operative chapters in the APC report. Only one (Chapter 20) lacks recommendations, so there is a total of 83 recommendations covering many aspects of access to justice, from the use of technology to private funds for litigation.

We have extracted the key recommendations as far as the operation of the CLC network is concerned and present them below, with our comments as to how they apply in New Zealand.<sup>26</sup>

#### Consumers lack information to use legal services

##### People lack knowledge about whether and what action to take

The APC solution was to provide more information. The need is valid for New Zealand and one carried out by CLCs, but there is no obvious source for extra funds other than fresh money.

<sup>26</sup> This draws on a table in the APC Report (pages 35-39) which is attached as an Appendix.

## Big potential gains from early and informal solutions

### **Ombudsmen provide a low cost, informal pathway**

Advertise the services available, says the APC. This seems sensible but these services are already used by the CLCs where appropriate.

### **Alternative dispute resolution (ADR) can be effective, but not for all**

Courts are to incorporate ADR in their processes. This makes sense as CLCs already use such techniques when fitting.

### **Informal resolution processes need to be improved for family disputes**

Suggestions are made by the APC to use specialists and lawyers to address violent disputes and greater use of mediation. The situation here is different, but the basic ideas are sound, with CLCs already using mediation widely.

## Aspects of the formal system contribute to problems accessing justice

### **The system is adversarial so there is little incentive to cooperate**

New rules are suggested by the APC to encourage quick settlement. Such moves would be sensible, as CLC clients are usually looking for speedy resolution.

### **Not all parties are on an equal footing**

The APC proposes courts and tribunals look at ways to encourage self-representation, including impartial assistance from court staff. This would tend to improve access to justice, but not all CLC clients can self-represent.

## Improving legal assistance services for disadvantaged people

### **An overarching vision is required and should be reflected in eligibility principles**

The APC recommends a formal measure of disadvantage be developed to determine eligibility for assistance. The level of income that allows eligibility here needs to be reappraised to ensure all those who need assistance are included.

### **A more systematic approach for allocating funds is needed**

The APC wants funding for legal assistance to balance costs and need. Here the CLCs are already low cost and any formal means of relating the funding to need would improve the service.

### **Interim funding is required to fill service gaps**

The APC recommends an immediate increase in funding. More funds here would allow CLCs to provide better service and support an expansion of the coverage.

### **Getting better value for money from legal assistance**

The APC suggests allocation of funding should take account of need plus the efficiency of the providers. Here the CLCs are providing value for money and still not meeting the full need.

### 4.2.2. What does this say to for New Zealand?

Adjusting for the differences in environmental setting and enquiry focus we are left with a conclusion that the role of the local Community Law network is a sound one. And, that the work it does complements other facets of the public system.

There is also a strong appeal in Australia for sufficient resources to enable the network to fulfil its role effectively. This is couched within a strict prioritisation/ evaluation/ accountability approach that would seek to assign the various types of intervention to the most suitable agencies.

Here in New Zealand there is likely to be a similar funding shortfall. The CLCs could do more with more resources to address their excess demands. The Australian recommendation was for a sum of \$200m immediately. But the basis of that was an examination that was particular to their specific circumstances, including their federal nature and the existence of a variety of institutional agencies with funding responsibility.

Further work would be needed here to size up the CLC funding lack accurately, though the return ratio given above suggests that any extra money provided would be a sound social investment.

## 4.3. Policy aspects of the role

To make this more concrete we now discuss a series of high-level outcomes of Community Law network activities in general public policy terms.

### 4.3.1. Early intervention

It is now commonplace<sup>27</sup> to suggest that there are situations when advance action can prevent situations from getting out of control and becoming harder to resolve for society as a whole. The usual style of such analysis is to develop analytical ways of predicting longer term results of today's conditions<sup>28</sup> as a guide to designing and operating a system of tailored interventions.

But the consequences addressed here are already within the system. Their implications are at hand. Delay and its consequences are extremely likely without a positive early intervention by a legal advisor.

Quick resolution should reduce the overall number of outstanding disputes at any time. This is a clear example of the way social investment is supposed to work.

### 4.3.2. Reduced system cost

As hinted above, a lack of access to earlier interventions to address a given problem not only causes delay, but is often producing escalation to a more complex and likely more socially expensive problem.

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<sup>27</sup> There is now a whole government department – the Social Investment Agency – looking at ways this idea can be furthered. A discussion of the various applications of the approach and its strengths and weaknesses is in Boston and Gill (2017 forthcoming).

<sup>28</sup> See, for instance, Hughes (2015).

The structure of our institutions for dispute settlements, whether they are related to the courts or to other administrative arrangements, is essentially a hierarchy, whereby failure to converge the issue at a lower level means the problem transfers to a higher forum. And the height of the body corresponds to its relative cost. That is, the further into the system the dispute proceeds, the more expensive the process is likely to be, from a total society cost viewpoint. So, any arrangements that encourage early – that is, low level - resolution are probably saving resources.

Thus, a cheaper more accessible legal advice system is likely to result in disputes (including family problems and neighbourhood issues) being settled faster and without serious consequences. This is going to reduce the number of calls on the courts and even on the corrections system.

As most of the costs here fall on the taxpayer it is a social saving.

### 4.3.3. Reduced impacts on clients

Corresponding to the social costs discussed above, there are the direct impacts that would otherwise fall on Community Law clients as disputes or unresolved administrative issues that drag on.

The clients would have to bear the inevitable consequences of those disputes that were made more serious by the delay in settlement. These can include financial damage and even custodial sentences with their lasting impact on reputation and thus labour market prospects.

### 4.3.4. Reduced chance of negative social outcomes

Without readily available legal advice via the Community Law network, clients are more likely to have negative outcomes. These might include, for instance, reduced income as their rights under ACC or the welfare system are not fully and appropriately exercised. They might include not being given their due in the housing market as either a private landlord or the Housing Corporation fail to properly identify their rights.

### 4.3.5. Better information and thus better choices

Today's society is a complex web of detailed information which can be difficult for individuals to navigate without expert advice and interpretation. One of the functions of a legal advisor is to provide general background on the way the system operates and about the individual's rights within it.

Proper advice about, for instance, the complicated workings of the training system can change the way an individual decides to proceed in their working life. New goals for skills to be acquired might be set and achieved.

And we know that the benefits of a successful employment strategy are not confined to that individual – or even their immediate family. The more the citizen makes of their inherent skills and abilities, the greater the likely social benefit.

## 5. Illustrative case studies

We asked CLCA to send through a sample of the type of case work undertaken. The detailed results are attached as an appendix to this chapter. We have reviewed these and presented them in a common style. They can be seen as complementing the discussion in the previous chapter of the public policy setting.

### 5.1. What is the picture?

From these case studies we can see in more detail the way the CLCs operate. Each Centre has its own case load and client set, but there is a strong degree of similarity in the sort of issues covered.

In summary, the cases in the appendix to this chapter above can be seen as a random sample of the way Community Law broadly responds to the total unmet legal advice and support need in New Zealand. The table in the next chapter shows that these are not necessarily representative of the national workload.

In particular, the cases presented are relatively light on the following types of work:

- police prosecutions.
- adult relationships (though several of the cases presented may qualify).
- property.
- trusts.
- legal system.

They are on the other hand, over-representative of:

- ACC
- education
- Māori issues generally.

The idea of these cases was to show the way the CLCs deal with cases that the rest of the legal advice market is unlikely to cope with in as effective a manner.

What this tends to show – without being a solid evidence base, given the way the cases came forward – is that the service provided by the Community Law network is supplementing the rest of the market in ways other than price. The frequently complicated nature of the resolution process also lends weight to the idea suggested above that the public benefit entailed here is significant.

## 5.2. Annex: Case studies provided by CLCA

These 39 examples of particular cases, have been edited to shape them for this purpose of illustrating the range of service offered by the Community Law network. In the process, a degree of background and colour may have been lost. For confidentiality reasons, names have been changed.

### **Janice and the cell phone - consumer**

Janice lives alone with very limited English, and had only gone to school for a couple of years in her home country before coming to New Zealand. She was scammed by a woman who deceived Janice into signing a 24-month mobile phone contract which included the latest smartphone. The woman took the phone and Janice never saw her again. Janice was left owing over \$2,500 to the mobile phone company.

She approached the Law Centre for help. The Centre helped her prepare evidence to file a police complaint, and entered into discussions with the phone company and the debt collector. It was settled that Janice would only pay \$100 of the debt and the rest would be cancelled.

### **G & L and their first home – tenancy, property and financial**

G & L are in their late 40s with several grandchildren. They have always been a low income family. In June 2008, they entered into what they believed was a rent to buy for their first house, using their life savings of \$1,000 as a deposit. The ongoing cost was \$400 per week, plus all repairs and maintenance. They knew market rent was around \$260 per week. While the promotional material talked about rent to buy, the agreement was just an option to purchase. Eighty dollars of the \$400 was to be put towards a 'deposit'. Under the contract, in the event of a default all monies were the landlord's and the option to purchase no longer existed.

Late 2011, the landlord (who has 20 or so other properties), went to the Tenancy Tribunal to evict G & L as they were in arrears. The landlord sought compensation for damages to the property, plus cleaning. He claimed that the whole house needed repainting from top to bottom, as well as new curtains, carpets and landscaping.

The Law Centre made a Cross Application on G & L's behalf, claiming:

- the option to purchase was a prohibited transaction pursuant to section 137 of the Residential Tenancies Act
- return of the \$80 per week
- that market rent was estimated at only \$260 per week
- that market rent was all that was due
- exemplary damages for the landlord's breaches of failure to maintain the property and of acting in contravention of the Act were also sought.

In addition:

- G & L repaired legitimate damage themselves and cleaned the property
- the Centre defended the damages claim
- the Centre defended the eviction claim.

This was largely successful, as G & L were awarded \$10,692.14 (after an award to the landlord of \$250), the rent was set at market rates, and the eviction dismissed.

G & L have since left the property after giving notice. The landlord, however, failed to pay the sum ordered, saying he was appealing the decision. There was no appeal. The Law Centre assisted G & L to obtain a charge over the property. (Of note, the landlord re-advertised the property with a weekly rental of \$245.00 – its true market value.)

#### **Taking advantage – tenancy and financial**

The client signed a tenancy agreement on behalf of a "friend," who was unwilling and unable to enter into a tenancy agreement due to her precarious finances. She assured the client that she would pay the rent. It turned out this friend had induced the client to enter many transactions to his financial detriment. She defaulted on rent running up thousands of dollars of debt.

A tenancy agreement is a common transaction which would ordinarily be enforceable. However, as the client presented, it was readily apparent that he had an intellectual disability. His support worker advised he was unable to read or write and had very limited comprehension; this left him open to people who took advantage of his good nature.

The Centre drafted submissions to empower the client with the assistance of his support worker; putting forward the argument that he lacked capacity to enter into the agreement. The Tenancy Tribunal agreed and found for him.

The landlord appealed to the District Court. Again, the Law Centre drafted submissions and gathered evidence. The Judge found for the client and dismissed the appeal. The client would have been unable to advance the complex arguments around intellectual incapacity to contract and navigate the tribunals and courts without assistance.

#### **Helicopter pilot – medico legal**

A client had been a helicopter pilot in New Guinea and then got tropical malaria which caused him to have a stroke. He has been unable to work since and on a sickness benefit. His company had insured him and others under a 'block' lump sum compensation policy for disability. The policy was with Lloyds of London who used 'every trick in the book' not to pay.

Eventually the Law Centre had the UK Insurance and Financial Ombudsman review the matter and he 'requested' them to pay (apparently he could not order it - only a Court could do that) and they did pay.

#### **Fall from a box - ACC**

The client's 36 year old son passed away after falling from a box. In the incident (accident), he scratched his leg, but it was imagined that this was a minor injury that would resolve itself. Less than 48 hours later he was dead. He had contracted a secondary infection, necrotising fasciitis, which took his life very swiftly and left his family shocked and bewildered.

The day after the fall his leg ached severely and his mother took him to their doctor, who queried whether the abrasion had caused sepsis. However, the ACC claim form has room for three diagnoses, so he listed other concerns such as possible tendon damage. The doctor failed to note the "abrasion", although his notes clearly recorded this. Antibiotics and pain medication were prescribed.

Later on, he felt worse and his mother was worried. He was crawling as walking was painful, and soon found he could not lift his legs. An ambulance was called

immediately. When it arrived, minutes later, he could not lift his arms either, and was incoherent and semi-conscious. He died at 11pm that same day from multiple organ failure. On admission, the scratch on his leg was a large ulceration the hospital believed was a serious burn from a hot water bottle. It covered most of his lower calf area.

The client, Mum, came to see the Law Centre in January 2011, she had been trying to get ACC to pay a grant towards her son's funeral since August 2010. She was bereft, depressed and undergoing counselling. As an invalid's beneficiary, she had paid what she could towards his funeral, but she was struggling to meet the rest of this debt, over \$5,000.

ACC's stance was that, as the Coroner referred to his death as due to 'natural causes', although he had cover for his injury itself, the injury had not resulted in his death. The evidence showed this was plainly wrong. After submitting further evidence from his GP and pointing out the obvious connection between the injury and his death, ACC accepted cover in June 2011 (after a delay in part caused by the Christchurch earthquakes).

Mum was very happy. She would get the funeral covered and around \$600 repaid to her as the grant was more than the outstanding debt. She said she would buy food, as it had been three weeks since she had been able to afford to purchase groceries.

#### **Minimum wage waitress - employment**

The client was a 17-year-old female, living at home with her mother.

She had found a job as a waitress on minimum wage (\$13.50). She had a written employment agreement and was to work a minimum of 35 hours per week. The employment agreement had a trial period but it was a performance based trial (s67) not the 90-day trial period (s67a).

Besides the odd job here and there this was her first full time job. She worked for 6 weeks (31 August – 17 September 2011) when at the end of her shift all the waitresses were called together by the Manager and told one of them was being fired that night. The client was then dismissed.

She was so distraught she had to be picked up by her mother. The Manager spoke to the mother and apologised for having to dismiss her and said that if he did not the owner was going to dismiss him. He also said that the owner had instructed him to dismiss her because she served the owner the wrong drink the previous evening.

Effectively there was no process; she was not made aware that her employment was at risk, no allegations were raised before dismissal; and she had no opportunity to say anything in her defence.

She was upset with the dismissal and contacted the owner for the reason she was dismissed. The owner responded by letter saying that she had been dismissed because she was on the 90-day trial period (no process is required by the employer – s67A).

A personal grievance was raised without response from the employer. A request for mediation was made due to no response from the employer for 2 weeks. The Department of Labour (DOL) contacted the employer and he agreed to mediation but would not agree a date. Eventually the employer stopped responding to DOL and mediation did not go ahead.



An application (Statement of Problem) was filed with the Employment Relations Authority (ERA). The employer did not respond nor attend the teleconference. An investigation meeting date was set.

To ensure that the employer had no excuse not to attend the investigation meeting, the Law Centre also served the employer with the Statement of Problem, Bundle of Evidence and Notice of Hearing at the last known address for service on the Companies Office records. An affidavit to this effect was also filed with the ERA.

The employer failed to attend the investigation meeting. The Authority Member attempted to contact the employer at the last known phone number without success. The Authority Member was satisfied that all papers had been served on the employer and the investigation meeting went ahead without the employer having reasonable excuse for not attending.

Our client was successful and awarded \$6,142.50 (gross) lost wages and \$4,000 hurt and humiliation. Subsequently the employer's business was put into liquidation and the Centre assisted the client in lodging a claim with the liquidators.

(One thing not mentioned in the Determination, but raised at the Investigation Meeting is that the wrong drink server was not the client: she took over from another waitress having problems with the owner and that waitress served the wrong drink.)

#### **Domestic Purposes Benefit, Care of Sick and/or Infirm ('DPB-CSI') - welfare**

The client was informed by Work and Income New Zealand ('WINZ') that she was not eligible to apply for the DPB-CSI. She wanted assistance with:

- proving eligibility for the DPB-CSI to WINZ, and
- seeking retrospective payment back to the date that she initially tried to apply for the DPB-CSI, and
- acting as her Agent at WINZ.

The client's income reduced significantly when she quit her job to care for her daughter full time. The additional money from the DPB-CSI, although not much more than the DPB-SP (just over \$40 per week), went on living costs and her daughter's special needs. Sometimes there was not enough money for petrol to attend the Law Centre. The application process took up to 6 months and was likely to have increased stress levels and hardship in the family home.

The client's daughter suffers from severe Separation Anxiety and Obsessive Compulsive Disorder ('OCD'). She has also recently been diagnosed with General Anxiety Disorder. The client's care for her daughter is 24/7 and she has struggled with these diagnoses and high needs relating to associated behaviours since she was six years old (2006). Although the client worked on and off during those years she frequently took her daughter to work or had to quit work in order to attend to her needs.

Due to the need for the client to care for her daughter at all times, she was required to leave her job and apply to WINZ for assistance.

On 30 November 2011 the client applied for the DPB-CSI at WINZ. The application was received by a WINZ Case Worker; it was put on hold awaiting the DPB-CSI medical certificate to be completed.

On 9 December 2011 the Case Worker told the client that she was not able to apply for the DPB-CSI and that she could only qualify for the DPB-SP. The client never received a formal letter stating that her application had been declined and so she was unable to apply for a review. The DPB-SP entitlement commenced on 3 December 2011.

The Law Centre understood that no medical information was ever submitted to WINZ to establish the Medical Qualification for the DPB-CSI. This was due to the daughter's Psychiatrist misunderstanding a part of the Medical Qualification for the DPB-CSI.

On 21 February 2012 the client contacted another Case Worker at WINZ to ask for help. This Case Worker was happy to contact any health professionals involved in the daughter's case to support the Psychiatrist and Clinical Psychiatrist with any misinterpretation they may have had with the Medical Qualification section of the DPB-CSI application.

The client met with a different Psychiatrist, who reviewed the case and agreed to sign the Medical Qualification for the DPB-CSI application.

On 7 June 2012 the client contacted the second Case Worker who confirmed that there was evidence on her file at WINZ that she had applied for the DPB-CSI on 9 December 2011; however WINZ did not follow usual protocol by sending out a declining letter. As the client did not receive written notification she was disadvantaged as the 3 month period within which to apply for a review had lapsed.

The client was therefore seeking retrospective payments for the DPB-CSI dating back to about 9 December 2011 as this was the time that she applied for and should have qualified for the DPB-CSI.

The client first contacted the Law Centre on 16 May 2012. She provided the Centre with copies of correspondence between her and WINZ, in particular with the second Case Worker. She also provided an indepth description of her daughter's illness and the way that it affects their everyday lives.

The Law Centre contacted the second Case Worker on behalf of the client and requested copies of medical records and a letter from the daughter's psychiatrist. The second Case Worker was also able to confirm that the client did attempt to apply for the DPB-CSI on 9 December 2011.

The Law Centre were able to establish that although the client did attempt to apply for the DPB-CSI in December 2011 she would have to reapply if she wanted the application to be considered. The Law Centre had some difficulty at this point as the client was unsure whether or not she would be able to find an alternative psychiatrist to assess her daughter's condition and complete the medical qualification component of the application. Fortunately, the client was able to resolve this issue as stated above.

At this stage the Law Centre were not acting as the client's 'agent' for WINZ and therefore WINZ had requested that the client attend an appointment with them in order to complete the DPB-CSI application forms and discuss the DPB-CSI matter. The client informed the Law Centre that she did not feel comfortable attending this appointment and she felt that WINZ were unable to understand her situation and no longer wished to assist her. Therefore, the client requested that the Law Centre act as her agent for the rest of the matter. The Law Centre provided WINZ with the appropriate agent documentation.

The Law Centre assisted the client with drafting a 'Carer Statement' WINZ require in order to obtain retrospective payment for the DPB-CSI. The Carer Statement described in detail the need for the client to care for her daughter 24/7 as well as a description of their everyday lives.

In July 2012 the Law Centre contacted WINZ and requested an appointment with a person at management level. On 7 July 2012 the Law Centre met the Assistant Manager and the client's Case Worker. The Law Centre provided the client's completed application for the DPB-CSI as well as the Carer Statement. The Law Centre discussed the client's circumstances and the length of time that it has taken her to make any progress with her case.

The Law Centre was informed that WINZ would transfer her to the DPB-CSI and that they would send her application to Wellington to be assessed for retrospective payments dating back to about 11 December 2011. The Law Centre was informed that this process could take some months. On 17 July 2012 the client informed the Law Centre that the payments for the DPB-CSI had commenced although she was still waiting to hear from WINZ regarding the retrospective payment. The client was very satisfied with this result.

#### **Deportation - immigration**

Ms Y applied for residence based on marriage in early 2010. She and her husband had a child in 2008. In November 2010 the relationship broke down before she obtained her residency. Ms Y's interim work visa expired on 10 May 2012 when her application for a work visa, lodged on 1 February 2012, was declined. She was therefore unlawfully in New Zealand and faced deportation. She had no income but was not eligible for legal aid because of the nature of the proceedings. Her relationship property claim had not been resolved.

The CLC represented her with a Section 61 application and an appeal to the Immigration Tribunal on humanitarian grounds – the impact on the client and her son if they were forced to return to her country of origin, Zz. It would be difficult for the client to be available for court hearings regarding her relationship property case which would prejudice her chances of obtaining a fair settlement. Her son has a medical condition. It is unlikely that he will be able to access equivalent medical care in Zz. Her son would also receive a far worse education. Furthermore, as Zz do not recognise dual citizenship, her son would be forced to revoke his New Zealand citizenship if he were to return to Zz. As a result of the appeal Ms Y received an additional one year work visa.

#### **Work injury – benefit**

A woman fell through a skylight at a restaurant trying to close a window. The 5 metre fall broke one leg badly, smashed the other heel and damaged her back. She was in plaster for nine months and could not work. She was receiving both benefits and an income related payment from ACC. She said benefit staff knew about the ACC payment as she told them. The benefit agency sought to recover \$25,000.

The local Law Centre established the agency was not entitled to recover the sum under its own legislation and it was written off.

### **Subscription – consumer**

Margaret, an elderly woman made it clear on many occasions she wanted to cancel her subscription but the mail order company continued to send her books, and charge her a subscription for the following year.

The Law Centre was able to resolve the situation the day she brought it to their attention, by contacting the company. They deleted the account and refunded the money in dispute.

### **Grievance - employment**

A client approached the Law Centre and was given advice that she had a grievance and that it would be worthwhile to proceed to the Tribunal. Further advice from the Law Centre supported the client by re-writing the client's story as a cohesive case that soon led to a positive result.

### **Redundancy - employment**

A client came into the CLC upon referral from a large local law firm which sends through a number of clients every year. The client met the CLC's financial criteria, as they had been reduced to accepting food parcels and help from neighbours. The client had been made "redundant" without due process. An added complication was the client being on ACC at the time of "redundancy".

The CLC provided liaison with ACC and successfully resolved issues of entitlements (which also meant, with the client's permission, that ACC were appraised of the employment issue, were advised that the CLC was working on settlement for that, and in addition facilitated a really good meeting with an ACC case worker to form a training and "back to work" programme that was supportive and helpful to the client).

The CLC requested mediation with representatives of the employer and met with the employer, outlined issues with false "redundancy" and the processes utilised. Settlement agreed meant the following for the client:

- Pay-out of all leave entitlements immediately.
- Pay-out of compensation for humiliation, loss of dignity etc.
- Positive reference.
- A gag order for the employer and associates who had been spreading rumours around a very small town about the client – all of which were untrue and harmful.
- Public apology made to the client through the local paper for those rumours.

Total package \$19,000 + ACC benefits.

Savings – no ERA hearing, no need for unemployment benefit for client. Also, unintended benefit of educating employer about rights and responsibilities (and they have since hosted one of the CLC's Governance workshops in the town where they are situated!)

### **Wrongful death claim – ACC and medico-legal**

The client – a pensioner on superannuation – had claimed ACC for wrongful death of spouse via treatment injury by hospital. The claim was declined by ACC because treatment injury "not proven".

The CLC requested all documentation from ACC and the DHB and lodged a review request based on both the ACC file and the hospital files received.

Prior to the Dispute Resolution Service (DRS) hearing, the CLC facilitated a meeting with hospital staff where startling admissions were made about the care of the deceased spouse. A complete breakdown of communication between DHB and ACC was also apparent.

The CLC wrote a submission for the DRS review and attended the hearing as a representative for the client.

The ACC decision was quashed outright, with some rather barbed comments directed at both the DHB and ACC's handling of the case.

A total settlement of \$15,500 was paid out to the client. The CLC is now taking (on behalf of the family) the DHB to the Health and Disability Commission over the treatment injury issues, as well as the way they treated the surviving spouse.

Savings – based on the evidence, this case could have gone to the civil court had the DRS not found in the clients favour. Empowerment of a disillusioned elderly man (and proving that the system can work effectively for an ordinary family), as well as provision of peace of mind to the client and family about what actually happened to their loved one, is immeasurable.

#### **Accident consequences - consumer**

A Centre has dealt with two similar incidents in the past year of an older woman being hit by a car and then being pursued by the drivers' insurance companies for reimbursement of the damage to the vehicle. In both cases the sum claimed was around \$1,300-\$1,800.

One of these stories ended up in the New Zealand Herald as follows:

*An 83-year-old spent three weeks in hospital with serious injuries after she was hit by a car as she crossed the road to pick up her Christmas ham - and was then smacked with an \$1,800 bill by the driver's insurance company.*

*But yesterday, after being contacted by the Herald, the insurance company backed down.*

*The woman had serious internal and head injuries and cuts and bruises all over her body after she was hit by the car in Glen Innes on December 21 as she was going to the Nosh food store on Apirana Ave.*

*"I parked my car across the road. I got out of the car, locked it and stood with my back to the car. I looked right and there was nothing coming. I looked left and there was nothing coming. I remember thinking to myself 'fancy that, there's no traffic on such a busy road at 11.20am, four days before Christmas'," she said.*

*"I know I stepped out to cross, but I don't remember anything after that.*

*I must have just stepped right out in front of the car, she must have come from a driveway after I checked the road."*

*The woman bounced off the bonnet, over the top of the car - which was travelling at about 20km/h - and landed on the road behind it.*

*"I was terribly lucky I didn't break any bones, very lucky I wasn't killed," she said.*

*Not long after she was discharged from Auckland City Hospital she was contacted by AA Insurance.*

*"They told me about the damage to the car and how much it was going to be, and that I was liable and had to pay it. I couldn't believe it.*

*"My husband has cancer and I'm looking after him at home, my life isn't easy. This was the last thing I needed - I didn't need any more stress in my life."*

*The woman was told her house and contents insurance should cover the damages. But, when she and her husband moved into a retirement village they cancelled their policy.*

*"The chances of fire or burglary are zilch so we cancelled all of that."*

*She sought legal advice and had the CLC contact AA on her behalf.*

*"Her savings would be totally wiped out by this claim," he said. "I have spoken to the insurers on two occasions and explained her circumstances. They insist that she is liable."*

*But yesterday, after Herald inquiries, AA Insurance conceded there was no case against the woman.*

*"We absolutely do not, now I've found out about this, intend to pursue the woman," said the head of customer relations.*

*"That claim should have been flagged or raised by one of our recovery consultants. It's certainly not a case we would normally pursue.*

*"We're obviously sorry for causing the woman the stress she has been caused and we will contact her immediately to resolve the situation and apologise.*

*"We are also going to review our internal processes to make sure a similar situation doesn't arise in the future. It shouldn't have happened."*

*When told about AA's turnaround the woman was overjoyed.*

*"It's absolutely wonderful, it really is a relief," she said. "I can't tell you how much this means."*

Insurance companies will classify matters in which the victim of an accident is over 65 years of age as a 'sensitive matter'. Such files will be referred to a manager and are generally not pursued. In the first instance in June 2013, the representative of the insurance company repeatedly refused to consider the age and financial circumstances of the victim and it was only when the media became involved that they resiled from their position. In the second instance in March 2014, the insurance company representative agreed not to pursue the matter when the Centre pointed out that she was 69 years of age.

### **Medical bill – ACC**

One of the larger cases, in terms of the financial impact to a client, involved a new immigrant to NZ who was faced with a potentially devastating debt of over \$100,000 for medical treatment.

This client was skilled in the hospitality trade and had arrived in New Zealand as a skilled worker with his wife and young family.

The client began working in the hospitality industry but was unfortunate to fall subject to two separate work place injuries. During the course of his work he tore a tendon, and on a separate occasion his arm was crushed with a 15kg weight.

As a result of both of these injuries, the client claimed ACC through his accredited employer, and sought treatment. The course of the treatment involved physiotherapy and steroid treatment.

Following these treatments, the client felt very unwell. He was in pain and had difficulty breathing. He sought medical treatment but no infection was located. The client's neighbour, a medical professional, was concerned for his wellbeing and insisted she take him to the emergency department at the hospital.

At the hospital, it was discovered the client was suffering sepsis / necrotising fasciitis (otherwise known as the 'flesh eating bug'). The client was in multi-organ failure and admitted to the Intensive Care unit knocking on death's door. The client spent 2 weeks in hospital undergoing several surgeries for washout and debridement. Thankfully, the skilled staff at the hospital managed to save not only his arm, but most importantly his life.

The client was eternally grateful for the skill and care received however, due to the fact he was on a work visa, he was not eligible for publicly funded healthcare. The client's bill for his stay in Intensive Care exceeded \$100,000. As the infection was the result of treatment for a work place injury, the client sought ACC cover through his accredited employer. This was declined stating there was no link between the work injury and infection.

The client sought assistance at the CLC. The solicitors made submissions and represented the client at several ACC reviews. Questions arose over jurisdiction and the causative link which required both medical evidence and legal submissions. The reviews and submissions back and forth covered a period in excess of 2 years. Much to the client's relief, the outcome was a successful review, meaning the accredited employer had to cover the client.

Although this decision is now subject to an appeal by ACC, the client is grateful for the CLC's ongoing support. By no means could he afford legal representation to fight ACC and further, the technicality of the situation would have required expert legal assistance for the ordinary New Zealander let alone someone who is new to this country.

### **Trustee hearing - rights**

YouthLaw received a phone query in late July 2013 from a young boy A's mother. He was 13 years old and had been diagnosed with Asperger's syndrome, dyslexia and a number of behavioural learning difficulties.

A's mother reported that A had been well supported in his special educational needs until he transitioned to high school when funding to enable wrap-around support was reduced. Following an incident which involved a tussle between a teacher and A over A's skateboard, A was suspended for what the principal deemed to be gross misconduct pursuant to Section 14 of the Education Act 1989.

A then attended a School Board of Trustees hearing following the suspension where the Board made the decision to exclude A from the High School, despite being under the age of 16 and legally required to be enrolled on a roll of a local mainstream school,



and indeed entitled to an education adapted to his special needs under Section 8 of the Education Act. After the Board meeting, A remained out of school for a number of months. Although A was engaged in some alternative therapy, and a few hours a morning at tuition services Kip McGrath, A did not receive any systematic or regular schooling. The remainder of A's time was spent catching public transport on his own to various parts of Auckland in neighbourhoods where A's mother felt concerned for his safety.

The Board of the school cited the reason for the decision to exclude A as the fact that A had a long history of complex behavioural and learning needs which required a significant level of support and the mainstream setting being unable to provide sufficient resourcing to ensure that A's needs could be met and ensure the safety of other students and staff in the school.

YouthLaw provided advice to A's mother that:

- It was questionable whether the incident in fact met the high statutory threshold of gross misconduct which justified disciplinary action to suspend pursuant to section 14 of the education act;
- That there appeared to be procedural and substantive defects in the process and decision made by the Board. In particular, the failure of the Board to consider the impact of A's special educational needs, the lack of adherence to principles of natural justice and lack of appropriate and adequate reasoning and documenting of the decision.; and further;
- That the decision was arguably discriminatory as A's disabilities seemed to be a motivating factor for the Board's decision.

When it became apparent that the Board would not reconsider its decision to exclude A and, given A's pastoral record of exclusion, barred A from acceptance into other local schools, YouthLaw instructed barrister Simon Judd to lodge a judicial review of the school principal and Board's decision. Following a hearing in the Auckland High Court, Justice Faire quashed the decisions of the principal and Board finding that the principal of the school had acted too hastily in moving to suspend A without taking into account the circumstances of A's special educational needs. Further, as a corollary, that the Board's decision had identified procedural and substantive defects. Subsequent to the judgment, YouthLaw continues to negotiate A's transition back into mainstream schooling so that A can obtain a satisfactory and appropriate education.

### **Fencing – rights and consumer**

The client is an intellectually disabled man who is employed by a 'sheltered workshop' Trust, in their mail room. He has been classified by DoL as qualifying to earn less than the minimum wage – so he labours under a double 'discrimination'.

Part of this Trust runs a commercial business arm, manufacturing and installing fences and gates to the public. The client is entitled to access this facility himself – and so empowers himself and his colleagues with a project that allows them to 'compete' in the open market. He happily commissions a fence and gate – his brother draws up the plans – and the Trust fencing team comes along to erect the structures.

However, to his great disappointment, the project is completed to such a poor standard that he cannot close the gates and the trellis fencing begins to very rapidly warp. He and his brother go to see a private lawyer, who due to their financial



constraints, does not even send a letter, but bills them \$255. Months elapse, with the brothers frantically trying to get the fence/gate remedied. Nothing works and their cries fall on deaf ears. It gets worse when the Trust begins to deduct outstanding monies from the disabled staff member's salary, citing a signed "Consent to Deduct" form, which our client quite frankly does not understand.

Some 10 months after the project ended, they arrive at the Law Centre. A quick glance at the photos and plans shows what a disaster they are living with. A meeting with the Trust achieves no positive way forward. The CLC contacts the local Polytech and enrolls the *pro amica* services of their carpentry lecturer, who confirms that the fence/gate are so sub-standard that they cannot be remedied.

A second meeting is held with the Trust, and a final request made to remedy the worst of the project. The response is, as expected, unsatisfactory. So, the CLC sent a letter in terms of the Consumer Guarantees Act, stating that both the materials and service were sub-standard, cannot be remedied and that it cancels the contract, tenders the fencing back and requests a full refund.

Days pass – the poor client misses out having a party at his home due to the shoddy fencing. Then the wondrous email arrives – the Trust will come and remove the fence/gate, refund the client his money, and he gets to rebuild with the free and awesome services of the Poly staff!!

#### **Consumer debt - financial**

A finance company had obtained a Court Order stating that Jane was liable for a debt. Jane did not know about this until she received a notice from the Court ordering her to attend an 'examination' to determine how she was going to pay a debt. Jane attended the examination and the Court made an Order that \$20 per week would be cut from Jane's pension until she finished paying the amount of \$12,630.76. Jane was confused. She did not even know why she owed this amount of money to the finance company.

The Law Centre obtained copies of documents from the finance company. Jane had purchased a vacuum cleaner many years before and had failed to keep making the agreed payments. Jane acknowledged this but was surprised by the amount owing. The documents showed that the finance company had added \$10,000 to her original debt. The CLC addressed the matter with the finance company. The finance company acknowledged their error and agreed to have the Court Order varied to reduce the amount owing in the Court Order by \$10,000.

#### **A man who was down on his luck – consumer and financial**

A man brought a fairly simple consumer matter of a mechanic not completing work on his car and billing an excessive amount into the CLC. He had purchased the second-hand car on his arrival in New Zealand. The car was averse to travelling uphill. The mechanic took apart and effectively immobilised the car before telling the man the parts were not available in the whole South Pacific. He argued that his actions were that of a responsible automotive technician and forthwith invoiced \$1,400.

The CLC wrote to the original vendor of the vehicle who initially insisted that the vehicle was of acceptable quality for its price and age. A second letter pointing out the finer points of the Consumer Guarantees Act 1993 and the Motor Vehicle Sales and Fair Trading Legislation prompted them to consider the matter more seriously.

In the interim the client had purchased a replacement car for \$600, paid the mechanic \$800 of his bill (he still expected the balance) and travelled south of Auckland to meet his newly born grandchild. Inexplicably he stopped responding to CLC's emails for some weeks. He finally called from an orthopaedic ward. He had serious injuries from a major car accident. He was uninsured and had no recollection of the accident. The other driver said he had been unable to avoid the client as he came out of a drive-way which seemed odd because the client knew no-one in that town. The police suspended his driving licence. While he was comatose he had failed to re-apply for his job contract which expired, putting him out of work. His work included accommodation, so he now had nowhere to stay.

The car vendor, with the CLC's encouragement, has replaced the original car. The CLC contacted the overcharging mechanic who expressed horror at the client's predicament. He agreed to waive storage fees on the dead (by his hand) vehicle. He released the remains upon the payment of a further \$300. The client had the vehicle towed to another workshop that located the required mysterious car component and resurrected the car within 4 hours at a cost of \$65. It is now estimated that the original car may bring \$6,000, recouping some money.

The client is now merely injured, cannot drive, is unemployed and has nowhere to stay. People who use the CLC service often live on the edge where one or two events can snowball into disaster. The law team has done their best for this man and he is very grateful. Social services workers are now working on his other issues.

### **The kuia and the hard sell cell phone - consumer**

Mrs W commonly known as "Nan" is a 75-year-old kuia who tries to do her best for people and who is much loved by her wider whānau. One late afternoon there was a knock on the door and a young salesman began telling her how she really needed to buy a smart phone. He was so convincing especially when he offered to drop the price from \$399 to \$299 and promised she would have her phone within two weeks. Although Nan struggles to work a television remote, her kids always wanted her to have a cell phone for safety so she decided that maybe it was a good idea. Almost before she agreed the salesman had a contract filled in and ready to go and told her she had to sign both the contract and an authority to direct debit there and then, on the spot. Nan signed.

Later that night Nan sat and read through the contract and when she realised just how much this phone would cost her in the long run she had second thoughts and she decided that on her pension she really could not afford the phone. Part of the contract said, "Notice to Customer: Right of Cancellation," and so she tried to phone the number on the contract but it was after hours and she just ended up talking to the cleaner but she had the right place. She thought *kei te pai* I have got 7 days I'll do it in the morning. At 9.03am next day Nan got help to send an email to the Sales Company saying that due to financial reasons she wanted to cancel under the contract. She kept a copy of this email and the address she sent it to matches the one on the contract.

The weeks passed and she heard nothing further from the company and Nan forgot about it and was just concentrating on Christmas with the whānau. It was about then that she realised that payments were being made to the Company – over \$450 of payments. Nan rang their Auckland number to find out what was happening and why the payments hadn't stopped. The Company blamed Nan saying that the payments had started in September and it was December and she should have noticed that they

were going out sooner and done something about it. They then offered her some other gadget, in Nan's words '*something magic*' for \$600 instead. She refused and asked for her money back.

Nan thought she had done everything right. She had followed the right procedure in the contract and had done it almost straight away and yet the company seemed to be blaming her. She went to the bank and got them to stop the payments and they told her she was entitled to her money so she rang again. This time the company treated her even worse and refused to accept she had cancelled the contract and said that she still owed them \$50! Nan said, "*I told you I didn't want the phone and I don't owe you anything - you owe me my money. I've got the paper here and I'm looking at it where the phone was meant to cost \$399 but you said you would give it for \$299 and I have paid more than that and you didn't even send a phone?*" The company representative on the other end said, "*you're not getting any money back – go get a lawyer, do what you like - I'm hanging up*". Nan said she hung up first because it was one thing she could do – stop him hanging up on her!!

Nan was really stressed out and she couldn't believe how rude they were to treat her like that when she had not done anything wrong. Then she remembered that many of her family had received help from the CLC. She rang and the Centre got involved contacting the Company for a response. The Company said that because their standard practice was to reply to emails in 48 hours, they must not have received the emailed Notice of Cancellation and that if Nan had not heard back from them then she should have followed them up. They also blamed Nan again for not noticing the payments were going out and said that all these contributions (of Nan's money), incurred costs to the Company and so they were charging her "Administration Fees" on the payments. They offered a refund of her money AFTER they had deducted \$82 for their fees. Nan refused the offer and it was only when the Centre began further action, that the Company decided to 'waive the collection fee' and refund the full amount. Nan baked the CLC a cake.

### **Confused claim – ACC**

Client A was declined ACC earnings compensation for an accident he suffered in 2014 due to the former employer having claimed he was not aware of the accident and that the client had been 'fit for work' when his employment ended. The same client had also been represented on a lengthy employment mediation on an unfair dismissal personal grievance which had resulted in a lump sum settlement.

At the ACC Review hearing the CLC lawyer was able to bring medical evidence to verify when Client A had sought medical help after the accident and also satisfy the Reviewer that the employer had in fact been notified of the incapacity prior to termination of employment, and that the employment had in fact been terminated due to 'unsatisfactory work performance' which was itself due to the incapacity from the accident. The former employer's stance had been totally inconsistent. For various reasons, the Review hearing did not take place till 2016 and the Reviewer directed back-dated earnings compensation to be paid which amounted to approximately \$40,000.

### **School bus no show – rights**

A Human Rights mediation was conducted by a CLC lawyer involving a disabled boy who had been abandoned on a school bus for several hours by the driver who had

‘forgotten’ about him. The school apologised as did the bus company, but the Ministry of Education would not. After a five hour mediation, the Ministry of Education said they did regret the incident and would ensure that all schools and providers had their health and safety plans ‘up to scratch’.

### **Special Education – rights**

YouthLaw was instructed by the families of three girls with unique special education needs seeking to challenge the Ministry of Education’s provision for difficulties at school. (The ‘difficulties’ were due to a variety of severe special needs and consequent intellectual disabilities.) The difficulties continued until they were accepted into a special girls’ only school where they began to thrive socially and academically.

In 2012, the Ministry of Education (MOE) began the process of looking to closing some special schools, including the girls’ school. Consequently, at the end of the year the MOE decided to close the girls’ school, despite the school objecting by providing significant research and reports to show girls with intellectual disabilities are at a high risk of suffering sexual abuse if integrated into a co-educational school. Issues were raised around whether the MOE had done enough to meet their obligations under the Education Act and under the Human Rights Act and Bill of Rights Act. YouthLaw was able to mediate for the three girls at the Human Rights Commission and provide a settlement agreement which gave the girls certainty about their future.

### **Special Education - rights**

This case concerns the right of a 7-year-old boy, ‘D’, to receive special education pursuant to section 9(1) of the Education Act 1989. D was diagnosed with Autistic Spectrum Disorder. However, D was denied ORS eligibility funding under Criterion 5 and 8 as his characteristics were not considered severe enough despite D having a substantive amount of professional endorsement for the application. Consequently, D’s parents took the Ministry of Education to Arbitration with the support of YouthLaw, to appeal their decision to decline the two ORS applications that were made. Subsequently, D was awarded funding under Criterion 5 at the High Needs Level and is therefore entitled to funding until he leaves school. Without extensive or individualised one-to-one support D would be unable to access the curriculum or enjoy his education in a meaningful sense.

### **GST issues for non-English speaker - tax**

A senior solicitor recently dealt with a Kiribati couple, Mr and Mrs E, whose English was minimal, and who came to the CLC office bearing a letter and a lengthy IRD computer printout which, including interest and penalties for non-payment, concluded that they owed GST of over \$22,000. The letter was a copy of one from the IRD to their bank, the effect of which was to require that funds were to be withdrawn from our clients’ accounts from time to time, to pay the sum claimed by IRD. A considerable sum had already been withdrawn.

Mr and Mrs E had no idea what “GST” was or their obligations if they registered for GST. They brought along a relative, who spoke fluent English. Through the translator, Mr and Mrs E said that some time previously they had opened an account with a direct-selling company. This enabled them to purchase and on-sell the company’s products and therefore develop their own direct-selling business. At the outset, the company introduced them to a person whom they described as their “accountant.”

They advised that they had bought less than \$1,000 worth of product in their first year, had used it all themselves, and had told their “accountant” within that first year that they did not want to continue buying those products. They had discarded letters from the IRD as they did not know what those letters were about.

Whilst Mr and Mrs E signed an Authority for the CLC to Act, the IRD would not accept this. So Mr and Mrs E had to be in the office each time our solicitor telephoned the IRD, and had to give personal permission to the IRD clerk before the clerk was willing to talk to their solicitor. At least this meant the clerk could ascertain how little grasp of the English language our clients had.

It appeared that it had been the “accountant’s” practice to hold group meetings with new direct-selling recruits, during which the advantages to them of registering for GST were outlined. Forms were provided for them to sign and immediately seek registration for GST. However, it appeared that no steps were taken to ensure that the new recruits understood what they had been told at the meeting before they signed the GST registration forms.

As the clients failed to file GST returns and had not de-registered from GST, the IRD computer automatically continued to add interest and penalties, based on their initial product purchases. The CLC solicitor negotiated with the IRD, who agreed to zero and close Mr and Mrs E’s GST account, and refunded to them the money that had been taken from their bank accounts.

### **Restructuring - employment**

The client, a tutor, was employed by a private school that received some funding from central government. The school began a restructuring process and from the outset employees were advised positions could be disestablished resulting in redundancies.

At the end of the consultation process the client was advised her position was to be disestablished and she would be redundant, but she could apply for any of the newly created positions where she had the appropriate skills. When the CLC asked the employer why redeployment was not considered as an alternative to redundancy the response was that since the school received some central government funding then it was subject to the State Sector Act 1988. This legislation requires the school to advertise any vacant position and so redeployment can never be a consideration. Clearly, this was a mechanism engaged to remove the employee.

The CLC successfully argued that by applying the ‘good faith’ section of the Employment Relations Act 2000 meant the employer had a duty to redeploy the employee to a vacant role as an alternative to making her redundant. This section indeed trumped section 77H of the State Sector Act 1988 stating the employer has an obligation to notify vacancies.

A settlement was reached to the satisfaction of the client.

### **Housing – Māori Trust**

Client F’s wife purchased general land from her whānau, as the land was at risk of being sold. The status was changed back to Māori freehold land and it was put into a Whānau Trust to benefit her descendants. The family home was then built on the land which was also eventually owned by the Trust. Sadly, client F’s wife died suddenly leaving client F with a number of children. Client F was not from the area and wanted to move

closer to his whānau for support. Because the land and house was in a Trust – a sale of the house and land was prevented.

Client F moved closer to his whānau and to begin with rented the house out but it became a financial strain and Client F needed to sell the house. The income from the rent was not meeting the costs of the house. Client F was falling behind with the rates and it was forcing him and his children to go without. They were facing financial hardship.

The Law Centre represented client F with a variation to the Trust (section 244 of Te Ture Whenua Māori Act 1993) which allowed the land and house to be sold. Some beneficiaries of the Trust were minors so a *guardian ad litem* was appointed to represent their interests, this obviously complicating issues. Unlike general family trusts, variations to Māori land trusts require an application and hearing at the Māori Land Court. The Trust deed was successfully altered to allow for the sale of Trust assets. However, as the land was Māori freehold land, the land had to be first offered for sale to Client F's whānau ahead of anyone else, so the actual sale of land took some further time to complete. Eventually, sale to a member of Client F wife's whānau was completed (section 150A of Te Ture Whenua Māori Act 1993). The Law Centre also acted for Client F in obtaining the necessary orders from the Māori Land Court in this sale. As with variations to Trusts, sales of Māori land also require an application and hearing at the Māori Land Court. Following the sale, Client F was no longer facing financial hardship and was able to move on with his life. This process took approximately five years to move through. That is the reality of such a situation that includes Māori land.

#### **Avoiding mortgage sale and other issues – Māori tenure and property**

Client G initially came to the Law Centre as Māori land that his whānau owned was at risk of being sold under mortgagee sale. The whānau homestead was on this land so the land was of significant importance to the whānau. Another whānau member had been living in the homestead and there was agreement that this person would make the mortgage payments. Unfortunately, this did not happen so the bank was moving towards foreclosure. In addition, the whānau member occupying the property would not let anyone else onto the property. The Law Centre assisted the client to arrange a payment plan with the bank and then secondly with the consent of all relevant parties, the property was transferred to another entity which afforded a greater level of protection to the client and his whānau and the lending institution (section 215 of Te Ture Whenua Māori Act). The trustee of the new entity (Client B) with Law Centre assistance then worked with the whānau member who was occupying the property and eventually an agreement was reached whereby this whānau member left the property amicably.

Client G and his whānau were also the owners of a block of Red Zoned Māori freehold land. They were therefore entitled to receive an offer from CERA who would purchase the land and it would then be reserved. This seems relatively straight forward. However, communication within this whānau was difficult and the timeframe for accepting the offer had almost expired. The Law Centre sought an extension which was granted. The Law Centre was able to trace all relevant whānau members, and organise a whānau hui with a neutral facilitator. There was agreement to accept the offer from CERA and the CLC assisted the whānau through that process. Client G and his siblings received compensation and the land was then set aside as a reservation for the



descendants of their ancestor (sections 135, 338 and 133 of Te Ture Whenua Māori Act).

### **Inheritance after adoption – Māori succession**

Client H was adopted out at birth. Client H obtained her pre-adoptive birth certificate that showed her biological father was Māori. Client H tried to reconnect with her Māori heritage but struggled to make any real headway. Her biological father had also died so she did not meet him. A person suggested Client H find out if she could succeed to any Māori freehold land that belonged to her biological father. Client H started to make enquiries but felt she was going around in circles and was referred to the Law Centre.

The CLC was able to trace the will of Client H's father. Adoption and wills can complicate succession to Māori land. However, the Law Centre was able to navigate the relevant laws and determine that the client was entitled to succeed. An application and hearing for the succession was held. Client H's application was successful (sections 113 and 118 of Te Ture Whenua Māori Act 1993). The land holdings were quite substantial.

However, the most important part of this journey for Client H was reconnecting with whānau. A number of Client H's natural whānau were well known in the local Māori community. Client H gave the CLC permission to pass on her details to one of those people as she wanted to connect with them. The Law Centre did this, connection was made and Client H has now been to the Marae she is from and knows a large number of her biological first cousins.

### **Bankruptcy, negotiating a settlement – financial**

A young woman made an enquiry in relation to bankruptcy and the Non-Asset procedure. The reason was that her income had started to fluctuate as a result of a reduction in her working hours. The client could no longer afford to meet her financial commitments and had a number of outstanding debts with different credit providers. One debt in particular was the "tipping point" for her financial wellbeing. This debt was incurred in the form of a personal loan and had been handed over to a third-party credit agency for collection. The total outstanding amount of this debt was \$18,675.18.

After advising the client of the consequences of bankruptcy and the Non-asset procedure, the CLC decided to advise the client to explore ways in which to gather enough money to make a settlement offer as she also had a vehicle she was paying off valued at much higher than the threshold of \$5,000 for insolvency. The acquisition of the money needed was successful and was acquired via a hardship claim with the client's KiwiSaver provider. The amount obtained was roughly \$9,000.

The CLC began to negotiate a settlement offer. The first offer was \$7,000 as the client had another financial obligation that needed to be met. The credit agency responded with a counter offer for roughly \$15,000 which the CLC declined and responded with an offer of \$8,000 urging them to take it as the financial impact on the client could result in her going into a Non-asset procedure and not being able to repay any money at all.

The credit company then requested copies of various financial information to consider the settlement offer of \$8,000. These documents requested consisted of 3 months' bank statements, 3 months' payslips, proof of expenditure and living costs such as rent and utilities, as well as a forecasted weekly income statement. These documents were provided and the weekly income statement was calculated and presented by the CLC.

Approximately a week later the credit company contacted the CLC with an offer of approximately \$8,100 which was presented to the client and accepted as a full and final settlement. This kept the client out of bankruptcy or insolvency, saved her approximately \$10,575.18 and allowed her to keep her car. The client was extremely happy with this outcome and is now on top of her financial obligations, whilst meeting her weekly living expenses comfortably.

### **Identity theft, credit consequences - financial**

The CLC received a referral from local police to assist a woman who discovered that her identity had been used to obtain goods from a large telecommunications company. The client was unable to obtain a power account in her name due to a default listed on her credit rating by the telco. This impacted on her children.

There were multiple problems, including proof of debt, information matching and an unreasonable burden of proof placed on the client to clear her name.

The CLC Initiated contact with the debt collection agency who failed to provide adequate proof of debt. The Collectors were ignorant of what proof of debt is needed.

The local police were asked why they failed to take a complaint on the basis that it was 'a civil matter'. This had been a major hurdle as a complaint acknowledgment document was being demanded by both collectors and the Telco.

Discussions with senior legal counsel at the Telco were held around proof of debt, ensuring identity of the party they wish to do business with to establish a legitimate claim and putting company policy ahead of an individual's right for accurate information to be on their credit file.

The CLC worked with the fraud section of the Telco, assisted with a statutory declaration, evidence of identity, evidence of address and supply of complaint acknowledgment forms from police. The CLC also followed up to ensure that the default had been removed from the credit file.

The client was advised to complete a full credit check to ascertain if there may be other false claims.

The outcome was the client was extremely relieved as she had had great difficulty in receiving assistance to deal with the matter and is now in a position to receive power to her rental property to feed, clothe and keep her children warm.

### **Wages withheld – employment**

An employer decided that after an expensive piece of machinery broke to terminate the employee's employment. The employer told the employee that he was "calling it [the employment] quits". The employer then withheld the employee's final pay and holiday pay because the employer felt that the employee was responsible for the machinery breaking and wanted the employee to pay for the repairs and other various equipment.

Based on the employee's information and the response to the personal grievance, the employer had not followed a process to call the employment quits nor investigated how the machinery broke to determine culpability. The employer "guessed" it was the employee's fault.

To resolve the matter the CLC suggested to the employer that they seek independent legal advice as they were conducting their defence in an inappropriate manner (making



personal comments in respect to the client's family members and unfounded allegations). This was causing the issue to escalate. The employer engaged a local lawyer with whom we had developed a good professional relationship with and the matter was able to be settled prior to mediation.

The matter was resolved without the need to go through the remaining formal process under the Employment Relations Act (mediation and Authority). This was to the satisfaction of the client as they could not easily take time off from the new job and did not want to go to the Authority.

### **Grandmothering – rights and care of child**

Client I called into the CLC with her 3-month-old mokopuna (grandchild) whom she is looking after at the moment. The mother of the child lives elsewhere, and last week told Client I she was going to adopt out the child. The mother separated a month ago from the father (the client's son). Client I travelled a long distance and collected the child with the father's (her son's) approval. Her son works full time so is not in a position to care full time for the child at the moment.

On the following weekend the mother attempted suicide. The mother has now contacted Client I to say she is coming to collect the child to take him/her back. Client I is concerned about the child's safety with mother suffering mental instability and possible post-natal depression. Client I wants to apply for "custody" of her mokopuna.

The CLC advised the client to talk with CYFS on the matter urgently because of the possible child-safety issues and advised the client to discuss this with her son. He may need to consider an urgent care application in view of the mother's mental condition. The CLC discussed with the client the Family Court system and advised that the mother's threat to adopt the child out as not being realistic as the father would need to give approval and clearly this would not happen. The CLC discussed Client I's rights as a paternal grandmother and referred her to "Grandparents raising Grandchildren".

### **State agency treatment of child – welfare and legal system**

Client J is unemployed, semi-literate and itinerant. S/he spent early years in Child Welfare homes and then Borstal suffering from life-changing abuse from staff and other inmates. Client J contacted the CLC 8 years ago for assistance to join a class action suit against MSD. The CLC put the client in touch with lawyers handling class actions. Since then, the CLC has acted variously as, agent, representative, contact point and conduit for and between the client, MSD, WINZ, Legal Aid, a lawyer, and anyone else involved. Complicating the matter were the client's multiple addresses and phone number changes over the 8 years. The CLC assisted the client with multiple applications, evidence requests, affidavits etc. over the 8 years. A final outcome has been reached with a recent compensation settlement with MSD, including an apology. Since settlement and apology there has been a life-changing turn-around for the client, both in appearance and attitude to life.

### **Farm hand – employment**

Client K was a general farm hand, employed 4 years on a sheep and beef farm with no employment agreement. The client worked long hours and the employer was mentally and physically abusive. Client K eventually resigned following abusive comments from the employer on the client's use of Te Reo at his workplace.

The client was referred to the CLC by WINZ after discovering he was not paid statutory holiday entitlement. The CLC established the employee was paid less than the minimum wage as the employer was "averaging" his working hours. The client was also not paid holiday pay, public holiday or KiwiSaver contribution for some years. The CLC "roughly" calculated the employee's entitlement to wages and holiday, statutory and KiwiSaver based on details provided by the employee.

The outcome was the CLC negotiated with the employer's accountants who realised the size of the "error" and illegality in the employer's wage records, and a substantial five figure "full and final" settlement was reached to the employee's satisfaction.

### **Guardianship, rights to marry – rights**

The CLC assisted someone with a brain injury. They were subject to a welfare guardianship and a property order requiring they reside at a particular facility. They wanted to get married and move into shared care with their partner. Even when someone has a welfare guardian, they still have the right to get married. The guardian should also do what they can to support the person in making their own decisions. This right to supported decision making is protected by international human rights law.

In providing legal services, lawyers also should take a supported decision-making approach with clients. In this case, the CLC visited the client in person and spent a lot of time taking instructions about what they hoped to achieve. The CLC met resistance from the welfare guardian who refused to recognise the client's right to marry. The CLC then assisted the client to apply for Legal Aid and supported them in challenging the guardian's decision in the Family Court.

### **Guardianship, living with family – rights**

The CLC assisted a person with a learning disability who had been living in a residential facility and was very unhappy. He was being unnecessarily medicated, which was slowing him down and having unwanted side effects. He had been placed there by an agency when his mother was unable to care for him. When the mother's health improved, she was told her son had to stay there, even though he wanted to return home. Everyone over 18 years has the right to choose where they live unless they are under a welfare guardianship or some other legal authority.

The CLC asked the facility to provide a copy of the authority under which they were holding him and found that they did not have any. After some negotiation, he was permitted to leave and go back to live at home with his Mum. The CLC was also able to connect them both with an advocate who went to his doctor with him and advocated on his behalf for a review in his medication.

### **Course accommodation – education and rights**

The CLC assisted a disabled person to negotiate reasonable accommodation for Client L's tertiary course. Reasonable accommodation means changes made to allow the disabled person to participate in everyday life, just like everyone else. The way in which the course was being delivered and assessed presented challenges for Client L's disability.

Although assistance had initially been provided by the tertiary provider's disability support department, Client L was still facing resistance from the academic staff, and negotiations had reached a standstill. The CLC lawyer met with administration and academic staff to remind them of their obligations under the Human Rights Act, and

to negotiate accommodation for the remainder of the course. This allowed the student to complete the course, and allayed fears held by the academic staff about maintaining the integrity of the course. As a result of the accommodation Client L was able to complete their course, thereby equipping them to be employed in their chosen profession.

### **Constitution – legal entities and employment**

A community group approached the Centre for help in reviewing their constitution and an employment agreement that was out of date. There were time constraints involved due to an upcoming AGM. Initial advice was provided at a free legal drop in session and then passed to staff for further assistance. The employment contract was reviewed at a specialist employment advice session while a review and update of the constitution was completed with volunteer lawyers doing a first review and staff lawyers a second. There was frequent consultation between Community Law and the community group as the work progressed.

### **Bullying – employment**

Client M came in having just resigned his/her job after an extensive period of bullying – including the boss yelling at him/her in front of co-workers and clients and overloading him/her with work, particularly at the end of the day so s/he felt forced to work extensive hours or risk his/her job. The lawyer checked over the resignation letter and wrote out a draft personal grievance for the employee to raise regarding a constructive dismissal. They discussed low cost strategies for negotiating with the employer regarding the personal grievance, and settled on the client speaking to the former employer with a support person, who would come into Community Law with the client the next time the client came in. In addition, the lawyer checked the client's current financial situation and drafted him/her a letter for Work and Income setting out the personal grievance case so the client would avoid a 13 week stand down for resigning without good reason.

### **Student suspension – rights**

Client N called the Student Rights phone line, her son had been suspended for gross misconduct. The family were to attend a Board of Trustees meeting about the situation and the client wanted to understand what would happen at the meeting. A Student Rights advisor returned the call and talked to the client about the process and how to prepare for the meeting. They discussed possible questions to ask and who should be present. The client called back to say that the meeting had been successful and her son was able to return to school.

## 6. Wider picture & implications

### 6.1. Wider picture

An overview of the total work of the Community Law network for a year is in Table 5.

**Table 5 Client classification by legal category 2015/16**

Legal Category	Legal Category - Detail	Count
Administrative	ACC	689
Administrative	Births Deaths and Marriages	846
Administrative	Education	902
Administrative	Immigration / Citizenship	3,684
Administrative	LTSA	287
Administrative	Legal Aid	130
Administrative	Local Government	273
Administrative	Mental Health	81
Administrative	Ombudsman	20
Administrative	Tax	214
Administrative	Welfare	1,296
Civil	Consumer	3,451
Civil	Employment	7,147
Civil	Financial	4,809
Civil	Legal Entities	663
Civil	Legal System	1,371
Civil	Media	29
Civil	Medico Legal	194
Civil	Neighbour	870
Civil	Personal and Human Rights	1,141
Civil	Property	1,889
Civil	Tenancy	2,494
Civil	Trusts	1,492
Criminal	Crown Prosecutions	232
Criminal	Local Government Prosecutions	128
Criminal	Police Prosecutions	4,154
Family	Adult Relationships	3,219
Family	Care of Children	6,266
Family	Domestic Violence	829
Family	PPPR/Disability	1,000
Māori Legal	Environmental	9
Māori Legal	Incorporation	6
Māori Legal	Marae	14
Māori Legal	Reserves	3
Māori Legal	Runaka	2
Māori Legal	Succession	209
Māori Legal	Tax	3
Māori Legal	Tenure/Ownership	151
Māori Legal	Trusts	131
Māori Legal	Waitangi Tribunal	5
<b>Total</b>		<b>50,333</b>
<b>High Level Legal Category</b>		
Administrative		8,422
Civil		25,550
Criminal		4,514
Family		11,314
Māori Legal		533
Note: The numbers here do not correspond to individuals, as clients can have issues in more than one category – even at the high level.		

Source: Ministry of Justice

(The total number of cases reported in this table is slightly lower than the 53,000 cases reported in the 'Community Law Centres o Aoteroa Annual Report 2015-2016'. We have not been able to reconcile these two data sets.)

The mix and distribution of CLC types of case shown in Table 5, has features that seem to indicate gaps in the provision of service to those that need but cannot afford legal advice. In particular, if the potential clients are defined generally as 'disadvantaged', the CLC focus on employment, financial consumer, and tenancy issues may follow from the typical pressures of their circumstances. Also, the family and criminal court work could flow out of their lack of resources. But the possible underrepresentation of Māori cases could indicate a lack of supply, or perceived access to CLC services for this group – as the CLC network has only one specialty office. (A similar observation may also apply to youth cases.)

## 6.2. Future prospects

### 6.2.1. Expanding existing work

As already discussed above (section 4.2.2) there are indicators of a degree of underfunding of the service offered by the CLC network in New Zealand. The network is a form of social investment, and the level of demand and the returns on the costs both indicate extra funding is likely to produce further social value.

As was noted above, further work is required to get a specific handle on the type of sums that would be appropriate. We think such an investigation would be timely.

### 6.2.2. Growth potential

The Community Law network has been in operation for nearly forty years since the Grey Lynn office opened in 1978. Over that time there has been a deal of innovation and evolution. This has included extensions of the range of services provided.

As noted previously, not all offices offer the same range of services, with the differences manifest in the various specialised offices.

But given the success of the network to date, the question arises whether it might usefully provide a wider range of products. We understand resourcing is an ongoing problem, but investigating such services may assist with the issue.

Within the scale of this report we can only provide a preliminary advice on this topic. We start with the basic assumption that the aim is to build on what is in place in the network, and that there is little point in considering expensive offerings.

Together these factors suggest that the core competencies of the offices are the key to what they might be well placed to provide.

Our assessment of their key factors is that they include the following:

- Low cost legal/ professional advice givers
- Wide-spread network of offices
- Credibility and positive reputation among the disadvantaged (often hard to reach) groups.

Looking at what is done now this suggests thinking about extending the offering to include the following:

- **Increasing the level of qualifying income** – the income bracket eligible for Community Law services excludes many for whom a lawyer is unaffordable. An examination of the level could check whether it is still appropriate
- **Mediation services** - not all Centres at present provide in-house mediation services. But these are the epitome of low cost dispute resolution. Having them on tap is a natural extension of the existing ‘access to justice’ role of the Centres
- **Advocacy work with ACC clients** – as the examples above show the CLCs have a track record of solving problems clients have with the ACC. A natural extension that would benefit both the clients and the ACC would be for the CLCs to develop advocacy services
- **Investigating increased use of technology** – the website already has around 4000 hits a day. This suggests that a more sophisticated use of IT could improve the way information is delivered to clients, for example through chatbots (which are being trialled by CLCs.)
- **Assisting clients enmeshed in the justice system** – that is, families of those in prison or on probation/ community sentences. Many of the families and individuals involved in these situations are going to be seeking assistance to find their feet. It is a natural extension of existing work as it entails being sufficiently well informed about the potential problems and their potential solutions in the local community. The wider background of the Community Law network may be valuable as cases will involve interaction with elements of the justice system like Corrections
- **Community Justice Panels (CJP)** – an experimental model was established by the Christchurch CLC in 2010. When evaluated two years later – despite the stress of the earthquakes and a necessary relocation – it was adjudged a success as an alternative low cost low key approach to justice<sup>29</sup>. But among other required success factors, the evaluation stressed the need for the whole process to be community based/ owned while being well managed without bureaucratic processes.

With calls from Māori leadership to have greater involvement in the justice system to help address the poor Māori incarceration statistics, Community Law Centres could play a supportive administrative role for Iwi Justice panels through their close working relationship with Iwi at a local community level. This suggests that the Community Law network would be well placed to look at a national roll out.

- **Facilitating Pro Bono assistance** – many law firms are prepared to act on a pro bono basis. In Australia, pro bono clearing houses have successfully linked disadvantaged clients with the firms prepared to offer pro bono services. A similar programme could be developed here if CLCs were given additional support funding.

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<sup>29</sup> See NZ Police 2012. This evaluation report draws on information from the CJP and Police monitoring data and quarterly updates, as well as observations of 12 CJP hearings and interviews with 19 key stakeholders and six offenders undertaken by independent evaluators on behalf of the NZ Police. (The independent evaluators were Judy Paulin and Nicolette Edgar, Artemis Research. Observations and interviews were undertaken between February and April 2012.).

- **A source of advice on the working of the law** – CLC lawyers work on 53,000 legal issues a year. This background means that collectively the law Centres have unique, experience-based insights into the way the law affects individuals and families on an everyday basis. With additional funding this knowledge could be mobilised to advise departments, policy advisors and Parliament on needed law changes and reform.

## 7. References

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# Appendix A Recommendations of the Australian Productivity Commission

**Table 6 Australian Productivity Commission recommendations**

<i>Current problem</i>	<i>Proposed reform</i>	<i>Main benefits of change</i>
<b>Consumers lack information</b>		
<i>People lack knowledge about whether and what action to take</i>		
For most individuals and businesses, legal problems arise irregularly. They lack information on their legal rights and responsibilities, what action to take, or who to consult. Legal information and referral services are fragmented and duplicated.	Legal Assistance Forums should establish Community Legal Education Collaboration Funds to develop high quality education resources. (5.1)  Legal aid commissions should enhance their existing activities to develop well-recognised entry points for the provision of legal information, advice and referrals. (5.2)	Individuals and businesses will be able to access information from a well-recognised entry point to determine whether they have a legal problem and be referred to an appropriate service to resolve their legal issue. Consolidation of current services provides potential for reallocation of existing funding to higher priority areas.
<i>It is hard to shop around for legal services</i>		
The irregular, subjective and uncertain nature of legal services means that consumers find it hard to shop around and cannot easily compare value for money.	A central online portal, which provides consumers with information on typical prices for a range of legal services, should be made available in each jurisdiction. (6.2)	Consumers will be better informed about potential costs prior to engaging a legal professional. Better access to information will improve consumer choice and reduce the transactions costs of engaging legal services providers.
<i>Consumer redress options need to be more effective</i>		
The powers of complaint bodies need to be strengthened to better protect consumers of legal services from wrongdoing.	Complaint bodies in each jurisdiction should have consumer protection as their primary objective, be equipped with powers to allow this, and be more transparent. (6.4-8)	Giving consumers an effective avenue for redress will provide appropriate incentives to deter wrongdoing by those offering legal services. This allows complaint bodies to exercise their functions more efficiently and effectively.

<i>Current problem</i>	<i>Proposed reform</i>	<i>Main benefits of change</i>
<b>Big potential gains from early and informal solutions</b>		
<i>Ombudsmen provide a low cost, informal pathway</i>		
Many consumers are not well informed of the services that ombudsmen offer in resolving disputes. In some cases, the small scale of ombudsmen can contribute to a lack of visibility.	Government and industry should raise awareness of ombudsmen, including among providers of referral and legal assistance services. Governments should look to rationalise the ombudsmen services they fund to improve the efficiency of these services. (9.1-2)	Raising the profile of government and industry ombudsmen would promote relatively low-cost dispute resolution options. Greater visibility and use of ombudsmen could reduce the level of unmet legal need.
<i>Alternative dispute resolution can be effective, but not for all</i>		
More legal problems could be resolved through alternative dispute resolution processes.	Courts should incorporate the use of appropriate alternative dispute resolution in their processes, where they are not already doing so, and provide clear guidance to parties about alternative dispute resolution options. (8.1, 12.2)	Adopting processes that facilitate greater use of alternative dispute resolution will lower costs and lead to faster resolutions.
<i>Informal resolution processes need to be improved for family disputes</i>		
Parties who experience family violence have few low-cost options for resolving their disputes and may participate in processes that are not appropriate due to limited options.	Family violence specialists and lawyer assisted dispute resolution should be used more broadly to better facilitate dispute resolution where violence is a factor. (24.1)	Those experiencing family violence will have more accessible and appropriate informal options for resolving their family law disputes.
Obtaining advice and dispute resolution services at a cost that is proportionate to the value of assets in dispute is a problem for family law property disputes. The law does not provide clear guidance on the likely distribution of property after separation and families with property disputes are not necessarily encouraged to undertake early, informal resolution.	Requirements to undertake mediation should be extended to property as well as parenting disputes and the Australian Government should consider how the law governing property division could be clarified to promote greater certainty, fairness and reduce transaction costs. (24.3-4)	Parties engaged in property-based family law disputes would use proportionate options for resolving them. It will be easier and cheaper for people to work out their entitlements and come to fair agreements about their division of property.
<b>Aspects of the formal system contribute to problems in accessing justice</b>		
<i>Tribunals have been accused of 'creeping legalism'</i>		
Tribunals are intended to be a low cost, less formal and more timely way to resolve disputes compared to courts. Outcomes do not always align with these objectives.	Tribunals should enforce processes that enable disputes to be resolved in ways that are fair, economical, informal and quick. Restrictions on legal representation should be more rigorously applied. (10.1)	Parties to disputes will be able to access justice through tribunals in the way that was intended. Improved processes will diminish the need for, and value of, legal representation.
<i>Court processes have been improved but reforms have been uneven</i>		
Court processes have significantly changed to improve the efficiency of the litigation process, but there is scope for further reform.	All courts should examine their processes in terms of consistency with leading practice in relation to case management, case allocation, discovery and use of expert witnesses. (11.1-6)	Adoption of leading practice processes will streamline the court system thereby reducing costs and time associated with litigation.

<i>Current problem</i>	<i>Proposed reform</i>	<i>Main benefits of change</i>
<i>The system is adversarial, so there is little incentive to cooperate</i>		
Adversarial conduct works against the timely and effective resolution of disputes in courts and tribunals.	Statutory obligations should be placed on parties and enforced to facilitate just, quick and cheap resolution of disputes. Targeted pre-action protocols may also assist. (12.1-2)	Overarching obligations on parties and targeted pre-action protocols will potentially reduce the costs and time associated with some litigation processes.
Parties have little control over the amount of activity undertaken by their opponent and little ability to predict potential liability for costs.	Lower-tier courts should award costs based on fixed scales. Higher-tier courts should further explore the introduction of processes for cost management and capping. (13.2-3)	Parties will have greater certainty about their potential cost liability and have more information on which to base their litigation decisions.
<i>Not all parties are on an equal footing</i>		
Some parties, including many self-represented litigants, do not understand the processes involved in undertaking legal action and appearing in a court or tribunal.	Courts and tribunals should further develop plain language forms and guides, assist self-represented parties to understand time-critical events and assess whether their case management practices could be modified to make self-representation easier. (14.1)	These initiatives will make the justice system easier to use by reducing complexity and giving parties a clearer understanding of the process.
Self-represented litigants can be disadvantaged in certain circumstances and would benefit from further assistance.	Consistent rules and guidelines are needed to give judges and court staff the confidence to assist self-represented litigants, while remaining impartial. Clearer rules on when non-lawyers can assist are also required. (14.2-3)	Self-represented litigants will be better supported in the court and tribunal systems. Clear guidelines and rules would make case management more responsive to self-represented litigants.
<i>Prices do not always reflect the balance of private and public benefits</i>		
Court fees are not set according to a consistent framework, vary widely and provide a significant subsidy to many parties who do not need it. For many parties, court fees do not provide an appropriate signal for parties to resolve disputes expeditiously.	Court and tribunal fees should be set to recover a greater proportion of costs depending on the characteristics of parties and the dispute. Fee waivers should continue to be provided to disadvantaged litigants. (16.1-3)	Higher and differentiated fee structures will increase fiscal sustainability and provide parties with an incentive to resolve disputes informally, while still providing a safety net. Extra fee revenue would improve services.
<b>Assisting the ‘missing middle’</b>		
<i>Unbundling legal services would help</i>		
Legal services are generally provided on a ‘full-service’ basis with limited opportunity to purchase discrete task assistance.	Governments should develop a single set of rules to offer consumers the option of purchasing unbundled assistance. (19.1)	Consumers will be able to choose which legal services they want and access services from which they would otherwise be excluded.
<i>Limited licences can also play a role</i>		
Restrictions that only allow lawyers to provide legal services can have a detrimental effect on access to justice.	A taskforce should design and implement a limited licence for family law, with other areas of law to be explored following the implementation of the family law licence. (7.5)	Developing limited licences will facilitate access to appropriately trained and lower-cost service providers for transactional elements of matters.

<i>Current problem</i>	<i>Proposed reform</i>	<i>Main benefits of change</i>
<i>Private sources of funding are important</i>		
Not all consumers can afford the upfront costs of legal actions. While some forms of billing alleviate this, restrictions on damages-based billing mean that some meritorious claims may not be pursued.	Governments should remove the ban on damages-based billing (for most civil matters) subject to comprehensive disclosure requirements and percentage limits on a sliding scale. (18.1)	Removing these restrictions will encourage legal professionals to take on more cases. This may lead to more litigation but only where legal professionals consider a case to have merit.
Litigation funders are not appropriately regulated. This leaves consumers at risk of potential default on financial undertakings.	The Australian Government should establish a licence for third party litigation funding companies to verify their capital adequacy and properly inform clients. (18.2)	Regulating third party litigation funding companies will safeguard consumers while preserving a valuable mechanism that facilitates access to justice.
<b>Improving legal assistance services for disadvantaged people</b>		
<i>An overarching vision is required and should be reflected in eligibility principles</i>		
Eligibility tests for grants of legal aid vary across different legal assistance providers and access varies across different dispute types.	Governments should align the principles for determining eligibility for grants of legal aid so they are consistent and linked to a measure of disadvantage. (21.2)	Aligning eligibility tests will facilitate the allocation of scarce legal assistance resources to deliver the greatest benefit.
<i>A more systematic approach for allocating funding is needed</i>		
Funding for each of the four legal assistance provider categories is determined independently and inconsistently.	Commonwealth funding for legal assistance services should be allocated according to models which reflect the relative costs of service provision and indicators of need. (21.5)	Legal assistance services will be better targeted to areas of need and the funding model will be able to adapt to changing needs.
	Legal assistance forums in each state and territory should be used to reach an agreement between the four main legal assistance providers on their respective roles in addressing governments' service priorities. (21.7)	
State and territory governments adopt different funding approaches. In some cases, they face poor incentives to consider the impact of their policies on the demand for legal assistance services.	Commonwealth funding for civil legal assistance services should be restructured to encourage greater parity in state and territory government funding. State and territory governments should contribute to the funding of services provided by ATSILS and FVPLS. (22.4)	Direct incentives, in the form of funding contributions, would prompt state and territory governments to consider the implications of policy changes on the demand for legal assistance services.
<i>Interim funding is required to fill service gaps</i>		
A lack of resources, combined with a focus on representation for criminal matters, has led to an under-provision of services for civil law matters.	Government funding for legal assistance services should be increased by around \$200 million to better align the means test, maintain existing frontline services and broaden the scope of legal assistance services. (21.4)	Improving access to legal assistance for civil matters will often prevent legal problems from escalating, reducing costs to the justice system and the community.

<i>Current problem</i>	<i>Proposed reform</i>	<i>Main benefits of change</i>
<i>Getting better value for money from legal assistance</i>		
Many community legal centres are relatively small and significant resources are dedicated to administration.	Allocation of funding for community legal centres should reflect legal need and the efficiency and effectiveness of service providers. (21.7)	A greater share of resources will be dedicated to frontline services.
<i>Some separation of funding for civil and criminal matters is required</i>		
Access to legal aid grants for civil matters is highly restricted	Governments should separately determine and manage funding for civil legal assistance services. Such funds should not be diverted to criminal legal assistance. (21.4)	A specific funding allocation for civil matters will mean the demand for civil legal services is matched by a more appropriate level of service provision.
<b>Steps to understand how the system is functioning</b>		
Evaluation of informal resolution services, formal institutions and legal assistance services is poor and does not provide a robust evidence base to determine what is working and where improvements can be made.	All governments should work together and with the legal services sector as a whole to develop and implement reforms to collect and report data that can be used for policy evaluation and research purposes. (25.1-4)	Improving the reliability and quality of data collected about the sector's activities will facilitate robust policy evaluation, lead to more evidence-based policy decisions, and improve targeting of government expenditure.

**Source: Australian Productivity Commission 2014**