

# **OUT OF AFRICA AND INTO COURT: THE LEGAL PROBLEMS OF AFRICAN REFUGEES**

**With a preface by the Hon. Michael Kirby**

**By Katie Fraser, Community Development Solicitor**

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**Footscray Community Legal Centre**

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#### **The Footscray Community Legal Centre and Financial Counselling Service**

Manager: Denis Nelthorpe

Administrators: Carol McNair and An Huynh

Solicitors: Ali Yildiz (Principal Solicitor); Katie Fraser, Jennifer Zacks, Ha Le and  
Priyanka Shetty

Financial Counsellors: Martin Stevens and Anita Smith

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#### **The African Legal Service**

Volunteers: Kofi Osei, Sarah Strapps

Interpreters: Ayen Mayor Nyariel, Esayes Terfere Haile, Peter Makuei, Ajak Mayor Nyariel, Gebremedhin Atsebaha

Mallesons: Patricia Mathews, Radha Govil, Kess Dovey, Laura Smith, Mikkeli Godfree, Cherie Canning, Katie Hamilton, Jayani Nadaraj, Kristian Imbesi, Nyree Lobb, Thea Schwartz, Shaun Gladman

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# Preface

*The Hon. Michael Kirby AC CMG*

*Past Justice of the High Court of Australia*

Nearly 20 years ago, before my appointment to the High Court of Australia, which has just concluded, I was serving in the Court of Appeal of New South Wales. I was asked by the Footscray Community Legal Centre (the Centre) to write a foreword to a case study on Vietnamese migrants and refugees, whose legal problems had brought them to the Centre and necessitated separate study and preparation.

Now, two decades later, the Centre is still at work assisting migrants, refugees and the marginalised who become caught up in the machinery of the legal system of Australia. Because of the differing waves of newcomers to Australia, it is impossible to stand still, either in the assistance that is afforded or in the study of the differences that emerge in providing services to ethnic groups.

As I pointed out in 1991, the Vietnamese newcomers in Australia derived from a society with a mixture of cultural forces: the Confucian, the Buddhist and the French colonialists. They came from the Asian mainland, where great emphasis is commonly placed on the community rather than the individual; upon duties rather than rights; and upon the rule of powerful men of virtue (as the ideal) rather than the rule of impersonal laws.

It is to the credit of the Centre that it has moved with the times: not only by providing legal assistance to newcomers from different regions but also by examining the particularities of the legal and social problems that they present.

Even before my service in the Court of Appeal, in the Australian Law Reform Commission, I learned, 30 years ago, that to provide effective laws and lawyering, it is necessary to go beyond solving immediate problems. Lurching from one problem to the next, without examining the underlying causes of the difficulty, leads to a band-aid mentality. Indeed, this is often the fault of the common law system itself. True, it is a highly practical system of law because it provides solutions for every individual case. However, it is often weak in conceptualising the law, defining underlying causes, identifying the broad themes and trends, and tackling systematic problems.

This is why the present work is so much to be admired. In the past 18 months, since the establishment of the African Legal Service, the Service has seen more than 350 clients deriving from countries with distinctive cultures, languages and problems but with common backgrounds of violence, oppression, autocracy and intolerance that exceed even those faced by the earlier wave of migrants from Vietnam. One has only to mention the countries from which the clients consulting the African Legal Service derive, to appreciate the huge step that is taken when people from such countries arrive in Australia to an utterly different culture, language, tradition and outlook: Sudan, Somalia, Ethiopia and Eritrea are a new catchment area for refugees and migrants presenting with very serious legal and social challenges.

My partner of 40 years, Jonan van Vloten, derives from the Netherlands. There is probably no other society in a non-English-speaking country that has so many similarities with life in the Australian community. Apart from everything else, the people of the Netherlands seem to be able to speak English as well as, or better than, we do, plus a few other European languages thrown in. But the English language, although increasingly the universal language of commerce, culture, air travel and global communications, is not a major language in the countries of north-eastern Africa from where the refugees and migrants come now to Footscray. Sudan, at one stage, briefly, was a condominium ruled by Britain and Egypt. But the other lands had different rulers, local chiefs and autocrats or no rulers at all. They are often places of cruel violence, prejudice and inequality, especially in their treatment of women and of minorities. To arrive in Australia, and specifically in the cosmopolitan community of Footscray, must be a tremendous culture shock. Little wonder that legal problems quickly present.

A point made in this work is that the legal problems arising are not those that the advisers in the Centre expected. The stereotype of lawless African youths, arrested for crimes of violence, drugs and conflict with the police, have not been borne out by the actual experience of the Centre to date. Instead, most of the legal problems can be traced to simple misunderstandings or attempts to graft onto the very different society of Australia, social norms and behavioural traditions that do not fit easily into our legal and social system.

Stereotypes and animosity are often the qualities that the popular media love. They are said to sell newspapers. In an earlier generation (and sometimes even today) stereotypes about gays pandered to stigma, discrimination and the status of a second-class citizen. As I am old enough to have experienced those features of society and its laws in Australia, I can partly understand the problems arising in the encounter between newcomers from the Horn of Africa and the agencies of law and order in Australia. The Golden Rule, which is common to all the world's great religions, requires us all to see the lives of others as we would have them understand our lives. This means, to

provide skills and legal assistance to newcomers with problems, just as we would hope for similar assistance if the tables were turned on us.

There is nothing like a healthy dose of empirical data to undermine fixed assumptions and to replace stereotypes with new perceptions. This is what this report seeks to provide. It makes the point that the newcomers to Australia from Africa overwhelmingly desire the same features in their lives that other Australians want: good housing, access to education, food and friendship, calm and stability, opportunities for advancements, provision of expert health care and occasionally a bit of fun and laughter in life.

The world's most creative societies – those that get the Nobel prizes, that produce great technological leaps and cultural achievements – tend to be ethnic melting pots. Occasionally, such societies have difficulties that monochrome communities do not face. But they tend to be livelier, more interesting and more creative. This is what we will find in Australia. Indeed, if we have been looking, we have already seen it emerging. Wave after wave of immigrants have come, bringing their different cultures, traditions, viewpoints and genetic gifts. Of course, there will be legal problems. Sometimes there will be crime (although, long-standing statistics show that first generation immigrants tend to be very crime-averse).

I hope that the endeavor of the Centre to replace stereotypes with empirical research will continue into the future. What they found two decades ago in the case of Vietnamese immigrants, they are finding again in the case of African Australian newcomers. Above the entry to the Centre should be the words: "Down with stereotypes!".

I congratulate the Centre for its ongoing work to support the rule of law in our multicultural society. I honour the lawyers and other staff who have worked to make the law an actuality; to reveal its imperfections; and work constantly for its reform.

# Executive Summary

The African Legal Service ('the Service') was set up in May 2007 to provide targeted legal services to new arrivals from Africa. The service model included African employees as on-site interpreters and specialist lawyers from the Homeless Persons' Legal Clinic to provide assistance with infringements. This report, which is based on the advice and casework of the first 18 months of the Service, identifies the most common legal problems experienced by new arrivals from Africa.

The majority of clients have sought help with 'problems of settlement': relatively minor legal problems which usually arise within the first four years after arrival in Australia, as new arrivals seek to establish themselves. Problems arise in part because new arrivals in new communities lack background cultural knowledge that most Australians take for granted, and the language skills to learn about Australian systems. Legal difficulties are compounded by the fact that new arrivals may find it difficult to recognise legal problems and to seek legal assistance.

Assistance given by the African Legal Service has led to good outcomes for individual clients. However, the Service is unable to reach every person with legal problems and lacks the resources to help them all. This report seeks to identify structural issues that give rise to recurring legal problems, and makes recommendations accordingly. In our view, the best approach is to prevent legal problems before they occur.

Many of these legal problems have also been experienced by refugee communities in the past. It is likely that many of the same issues will arise with other newly arriving communities in the future. And our casework shows that these legal issues are not very different to those experienced by other low-income Australians, the traditional clients of community legal centres. For these reasons, addressing the causes of common legal problems in African communities can have much broader social benefits.

## Common Legal Problems in African Communities

Refugees and humanitarian arrivals from Africa are likely to encounter a range of **common legal problems** in the first five years after they arrive in Australia. These include:

- driving without a licence and driving while suspended;
- driving without insurance, thus incurring large debts from car accidents;
- incurring large numbers of driving-related and other infringements;
- incurring large debts from loans, misuse of utilities, and contracts entered into with door-knockers;
- legal issues relating to private rental and public housing;
- administrative law issues involving appeal of decisions made by Centrelink regarding breach of obligations, applications to change name or birth date, and applications for citizenship;
- family law issues, including divorce and child contact; and
- issues relating to intervention orders.

Many clients struggle to deal with several legal issues at one time.

## Causes of Common Legal Problems

Through providing legal advice and conducting casework in more than 400 matters for more than 350 clients over 18 months, we have identified several **common causes** of these legal problems:

- The unfamiliarity of Australian systems. Many new arrivals from Africa—particularly people from non-urban areas in South Sudan—are poorly equipped to deal with Australian systems and regulations.
- Lack of access to information. Many clients are not able to speak, read or write English fluently. Some are not literate in their mother tongue. They rely on other sources for information, such as friends and community members; information from these sources may not be reliable. Consequently, people have unrealistic expectations of what the law is, what services are available and what those services can provide.
- Lack of affordable housing. Recent arrivals have been moving further out of the city to areas not well serviced by public transport. The imperative to drive to shops and schools has led to many of the unlicensed-driving offences.
- Type and location of work. People with few skills seek low-paid casual employment. This tends to be located in areas not well serviced by public transport—another pressure giving rise to driving-related legal issues.
- Reliance on close-knit community networks. This can lead to some unusual financial arrangements. People also lend each other cars, which leads to confusion over who to nominate for driving infringements.

- Family issues, including loans to extended family and ongoing relationships with family members overseas.
- Frequent extended travel to return to Africa, giving rise to the loan of vehicles, subletting arrangements and various precarious and informal property arrangements.

## **Consequences of Involvement in the Legal System**

These common legal issues place a significant burden on recent arrivals from Africa and compound other difficulties at settlement. Consequences include the following:

- Shame and stress.
- Legal problems creating a barrier to effective settlement in Australia and barriers to social inclusion in Australian and African communities.
- Potential for a criminal record or conviction, with associated consequences for future employment.
- Heightened potential for racial profiling by police.
- High levels of debt, resulting in financial stress and eventual bankruptcy.

These issues also result in high system costs—to courts, police, insurance companies, Victoria Legal Aid, and agencies seeking to enforce payment of infringements.

## **Preventing Legal Problems**

We believe that many of these legal problems could be avoided, or that their severity and complexity could be minimised, by the adoption of the following recommendations.

# Key Recommendations

## Settlement Support and Education

More legal information should be provided to refugees immediately before and after they arrive in Australia. In particular, new arrivals need more information about driving and insurance, and how to use utilities services. An enormous amount of information is currently provided to new arrivals in written form in a Department of Immigration and Citizenship (DIAC) booklet called *Beginning Life in Australia*. But written information alone is insufficient. It needs to be supplemented with face-to-face information provided by settlement workers, English-language teachers, financial counsellors and community leaders.

Settlement agencies should be better funded in order to provide additional intensive support to recently arrived refugees, focusing on issues arising from housing and consumer contracts in the period from 12 months to five years after arrival in Australia.

Decision makers within DIAC need to recognise that driving has become a key settlement need, and should make programs that provide driving education and free or subsidised driving lessons a settlement priority.

English-language providers should be better funded to provide increased hours of English teaching beyond the 510 hours currently provided. English-language education for refugees should include course materials that address how to avoid common legal problems. We suggest that education providers should be funded to provide additional intensive assistance to recent arrivals with special needs, including people who are illiterate.

## Government Agencies

Government agencies need to adopt innovative strategies to assist refugees and new arrivals to Australia in coping with our administrative and legal systems. In particular, government agencies need to ensure that key printed information is translated into the main African languages, with an emphasis on photos and illustrations for those who may not be literate. All correspondence should contain printed and visual information indicating that the recipient can access the agency by phone, and that phone interpreters are available. Phone interpreters need to be accessible immediately a person is put through, before callers encounter a complex series of pre-recorded prompts.

On the basis of observations arising from our casework, we recommend the following:

- That VicRoads review its standard correspondence, including the “option notice”, and rewrite form letters to ensure that information is provided in plain English. In addition, we recommend that the State Government initiate a review of the licence suspension system managed by VicRoads, which includes the ability to continue to drive on one demerit point for 12 months under the option notice system. We make this recommendation in order to determine how many people who take the “12 month” option subsequently incur demerit points and face a longer period of suspension. We believe such a review would be the first step in determining whether the options system is effective in providing a suitable path for all suspended drivers to retain their licence and improve their driving.
- That the Department of Justice review aspects of the infringements system and change the system where it has a disproportionately harsh effect on new arrivals. In particular, we recommend:
  - that infringements registrars exercise their discretion to revoke driving-related infringements on the basis that a person nominates another driver;
  - that the Infringements Act be changed in order to permit a registrar to revoke an enforcement order in circumstances where an application for revocation has already been refused; and
  - that the Infringements Court permit and encourage the consolidation of hearings for multiple fines on request, even where there are not special circumstances.
- That the Department of Justice and Victoria Legal Aid consider the need to provide a more holistic service to refugee and settlement communities. Legal services are usually provided in response to a crisis by Victoria Legal Aid, by generalist community legal centres focusing on criminal or family law, or by specialist community legal centres for specific problems such as Centrelink, consumer or tenancy issues. It is our experience that many refugee and settlement families have multiple, interconnected legal problems and it is difficult, if not impossible, for one agency to assist with all of these problems. In particular, the Department of Justice and Victoria Legal Aid should consider the urgent need for accessible and timely legal advice on Centrelink and tenancy problems within the refugee and settlement communities.

## Industry

Based on our casework, we recommend the following:

- That CityLink take steps to ensure that people are given greater opportunity to pay a toll or a late-administration fee before an infringement is referred to Civic Compliance and the fine increases tenfold. We suggest:
  - That CityLink explore the possibility of sending late-administration notices to the owner of the e-Tag in a vehicle, rather than to the owner of the vehicle.
  - That CityLink review the late-administration notice it sends to people who have travelled on CityLink without a valid e-Tag, and include a Late Toll Nomination Statement to enable a person to nominate another driver for the fine.
  - That CityLink improve information on its toll roads about how to pay for a day pass, including the option to pay for a day pass at a post office.
- That energy and water retailers take steps to ensure that they are more accessible to all consumers, including those who do not speak English. Companies need to ensure that they provide information about the availability of interpreters on all correspondence, and that people can access an interpreter as soon as their call goes through, i.e. before they are required to navigate a complex series of automated prompts.
- That the Energy and Water Ombudsman Victoria consider the adoption of the registration process used by the Financial Ombudsman Service to facilitate access for refugee and settlement communities. The current access regime for the scheme requires individual consumers or their advocates to first approach the internal dispute resolution department of a retailer. In our experience this requirement is beyond the capacity of non-English-speaking consumers and especially members of refugee and settlement communities.
- That insurance companies consult with community legal centres on the following:
  - Joint information programs to explain the importance of car insurance.
  - The need for tailored insurance products for low-income clients; and the need for more appropriate premium structures and payment methods, including accepting payments for insurance through Centrelink's Centrepay system.
  - The appropriateness of telephone underwriting processes and the strict application of information disclosure requirements where the consumers appear to speak English as a second language.
  - The need for a section on the provision of interpreter services in the General Insurance Code of Practice. In particular the code should acknowledge the need for the industry to be sensitive to the needs of non-English-speaking consumers and the need to encourage the purchase of insurance by members of the refugee and settlement communities.
  - Undertaking a cost-benefit analysis of insurance companies' current approaches to recovering debts owed by judgment-proof clients, in order to ascertain whether it would be more cost-effective to waive debts in defined financial and social circumstances. The Insurance Council should require the upcoming review of the General Insurance Code of Practice to consider the need to include a mandatory consideration of the provision of a waiver of debt in the section on financial hardship for third-party debtors.
  - Training for low-level recoveries officers who are seeking to recover debts from clients, to give them more discretion to resolve debts and disputes under \$1000.

## Community Agencies

Community agencies should be better funded to provide specific and focused support to newly arrived communities with high needs.

- Funding should be provided for financial counsellors to work with settlement agencies to provide targeted education and casework services to newly arrived refugees.
- Community agencies, including health providers, housing providers, settlement agencies, education providers and community legal centres, should commit to participating in broad communication networks to provide a holistic service to members of the refugee and settlement communities. Such networks have the potential to provide improved referrals, to ensure that all client needs are met.
- More funding needs to be made available so that community agencies can use professional interpreters to take legal instructions from clients.
- Intensive support needs to be provided to African community groups to help them become functional and fundable, in order to facilitate their development as sources of reliable information about legal and social issues, and as points of access for referral to mainstream services.

# Introduction to the African Legal Service

We have been seeing recently arrived migrants from African backgrounds for several years at the Footscray Community Legal Centre (Footscray CLC), and assisting them with the usual run of common legal issues—divorce, fines, and debts arising from motor vehicle accidents and lack of insurance.

But we often saw clients from Africa very late in the evolution of their legal problem: the day before a court case; the day after the Sheriff had come round to arrest them for non-payment of fines; or months after debt collectors had started calling to collect the damage owed from a car crash. In addition, we suspected that we saw people from the African community who were adjusting relatively well to Australia—those with a good level of spoken English, who were confident accessing mainstream services. We also believed there were common legal issues in African communities that people did not understand as legal issues, such as being unable to escape from contracts that they had entered into with a door-to-door salesman, or over-commitment to a loan.

A Vietnamese Legal Service was offered by the Footscray CLC in the late 1980s, and gave rise to a report about the common legal problems of the Vietnamese.<sup>1</sup> Given the changing demographics of Footscray and the City of Maribyrnong, and the increased number of African clients we had been seeing, we decided to create an African Legal Service (‘the Service’) to provide targeted legal services to African clients. The Service was offered one afternoon a week, and was provided by two generalist lawyers. The Public Interest Law Clearing House also agreed to participate in the Service through its Homeless Persons’ Legal Clinic. Homeless Persons’ Legal Clinic lawyers (from Mallesons) attended the Service to provide clients with specialist assistance to deal with infringements.

The Service was also staffed by a Sudanese worker and an Ethiopian worker, who helped lawyers to work with African clients. Our intention was that these facilitators would become the public face of the African Legal Service, and would make new arrivals more confident in accessing legal services. We expected the facilitators to help new clients complete intake forms, to explain what the service could and could not do, and to sit in on interviews with clients. We sought people with language skills and interpreter qualifications in African languages, so that we could use the facilitators as on-site interpreters to take initial instructions from clients. We hoped that, over time, we would be able to train the facilitators to provide assistance to the lawyers by providing basic paralegal assistance, such as by completing forms for utility relief grants.

The Service was initially started as a joint project with two local settlement agencies, which agreed to provide settlement assistance to clients if necessary.<sup>2</sup> Few clients needed help with specific settlement issues (which is not to say that the legal problems could not be characterised as issues arising from settlement). For these reasons, joint settlement/legal services were never provided. However, we continued to work with settlement agencies and African community groups to build the reputation of the Service, and encouraged agencies to refer clients who had legal problems to the Service.

The African Legal Service opened in May 2007, and has been running ever since. The Footscray CLC has also supported another related outreach program conducted by financial counsellors.<sup>3</sup> The African Legal Service was initially based off-site at the language school run by AMES Education, but was moved back to the legal centre in the interests of providing better services, and enabling clients to access mainstream services.

## Compiling the Report

This report analyses the casework completed in the first 18 months of the African Legal Service. It is divided into two main sections. The section “General Causes of Legal Problems” identifies some of the underlying social causes that we believe may be common to many legal problems experienced by African clients. We have made

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1 Wilson, Pam and Storey, Lyndon, *Migrants and the Law: the Vietnamese: A Case Study* (1991), Footscray Community Legal Centre. Copies are available on request to the Footscray CLC.

2 Settlement agencies, such as AMES Settlement, New Hope Foundation and Centacare, are agencies that provide settlement services to assist new arrivals in establishing themselves and settling in Australia. Settlement services usually receive the bulk of their funding from the Department of Immigration and Citizenship (DIAC), under the Integrated Humanitarian Settlement Strategy (IHSS) or the Settlement Grants Program (SGP). Under IHSS funding, agencies provide assistance for the period immediately after arrival in Australia up to 12 months after arrival. After clients have exited the IHSS program, they may be eligible for further assistance for up to five years after arrival. Organisations may apply for SGP funding for programs of up to three years’ duration. DIAC states on its website that SGP funding is designed to be “responsive to changing settlement patterns and needs”. See <http://www.immi.gov.au/living-in-australia/delivering-assistance/settlement-grants/what-sgp-about.htm>.

3 This project—which is run off-site at a local settlement agency—has resulted in considerable casework around utilities, which has been documented in a report entitled *The African Consumer Experience of the Contestable Energy Market in the West of Melbourne*. This report can be downloaded at [http://www.fcrc.org.au/html/s02\\_article/article\\_view.asp?article\\_id=408&nav\\_cat\\_id=1&nav\\_top\\_id=1](http://www.fcrc.org.au/html/s02_article/article_view.asp?article_id=408&nav_cat_id=1&nav_top_id=1).

these observations on the basis of our casework, conversations with clients, contacts with settlement agencies and involvement in settlement networks, discussions with community leaders, and reports from focus groups conducted with African women.

The section “Causes of Specific Legal Problems” addresses some of the structural causes of specific legal problems experienced by African clients. This section seeks to outline the problems lawyers have observed in conducting particular areas of casework, and considers the consequences of specific legal problems for individuals and communities.

It is worth noting that this report does not address every common legal problem experienced by African clients. For example, no section is included on criminal law because we saw relatively few criminal cases in the first year of the African Legal Service, and we believe we have not seen enough casework to draw informed conclusions about criminal law issues that are having a particular impact on African clients. Another community legal centre—the Flemington Kensington Community Legal Centre—has done extensive work on criminal cases and associated police brutality, particularly against young African men.

We have endeavoured to provide some information about the recurring problems experienced by our African clients, and we have provided summaries of our observations at the end of each section. But we acknowledge that these observations are just a starting point. The next step is to talk to the government agencies and private companies who have a role in creating or perpetuating these legal problems, in order to start discussions about how some of the systems that give rise to legal issues might be changed.

# A Profile of Our Clients

From 23 May 2007 to 31 December 2008, we provided advice and casework services in 400 matters to more than 350 clients who attended the African Legal Service. The Service is still continuing as of May 2009. Lawyers from Footscray CLC see approximately six new clients every week; lawyers from Homeless Persons' Legal Centre see two or three clients a week.

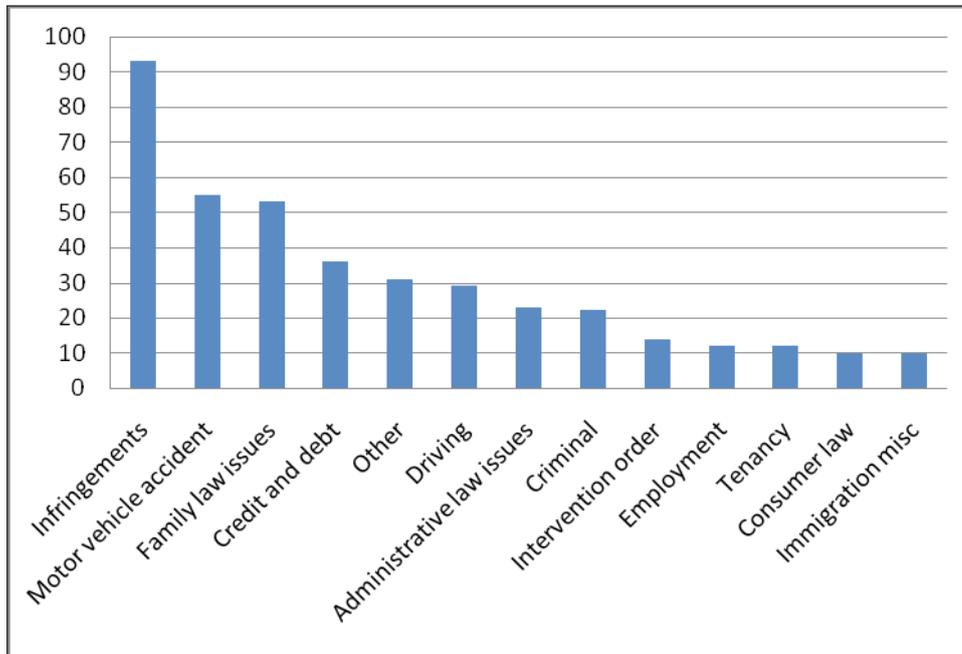


Figure 1: Common legal problems of clients at the African Legal Service

Figure 1, above, shows the most common legal issues of the African Legal Service's clients. Fines (infringements) constituted the single largest legal issue that clients sought help with. The second largest group of issues related to motor vehicle accidents. If you add the other driving matters—which include driving unlicensed and driving while suspended—it becomes clear that large numbers of legal issues arise from driving.

When compared with the generalist clients of the Footscray CLC over the same period (see Figure 2), it can be seen that African clients are comparatively over-represented in some areas: infringements, motor vehicle accidents, credit and debt, and driving.

Generalist clients also tended to attend the Footscray CLC with a broader variety of issues. The category "other" for the African Legal Service in the chart below includes property matters, discrimination issues, civil disputes and neighbour disputes. The category "other" for generalist clients includes significant numbers of generalist clients with wills, Victims of Crime Assistance Tribunal (VOCAT) cases, property matters, neighbour disputes, civil contracts, and a variety of other matters for which we saw a small number of clients. All of these matters have been collated under the category "other" in order to allow for a direct comparison between the legal matters of generalist clients and African Legal Service clients.

A detailed statistical analysis of our clients is included in Appendix 1. It is worth making a few observations based on the statistics:

- The majority of our clients were male (61% male; 39% female). There may be several reasons for this disparity. Women were more likely to need an interpreter than men (34% of women used an interpreter, as opposed to 20% of men), and may therefore have found the Service more difficult to access. We also have anecdotal evidence from focus groups conducted by the Centre for African Australian Women's Issues (CAAWI) that several women sought legal help from the Service, but had to be referred elsewhere because we had a conflict; that is, we had already seen the other party in the matter.
- The most common legal problems for male clients involved driving offences: fines, driving without a licence and motor vehicle accidents. Females were more likely to seek help with debt and family law issues. The personal aspects of those legal issues may also have discouraged some women from attending the Service.

- The majority of our clients were from Sudan (43%) and Ethiopia (31%). This is hardly surprising, given the fact that we employed a Sudanese and an Ethiopian worker as on-site interpreters.
- The majority of clients had arrived in Australia between 2001 and 2005. Almost a quarter of all our clients had arrived in 2004.

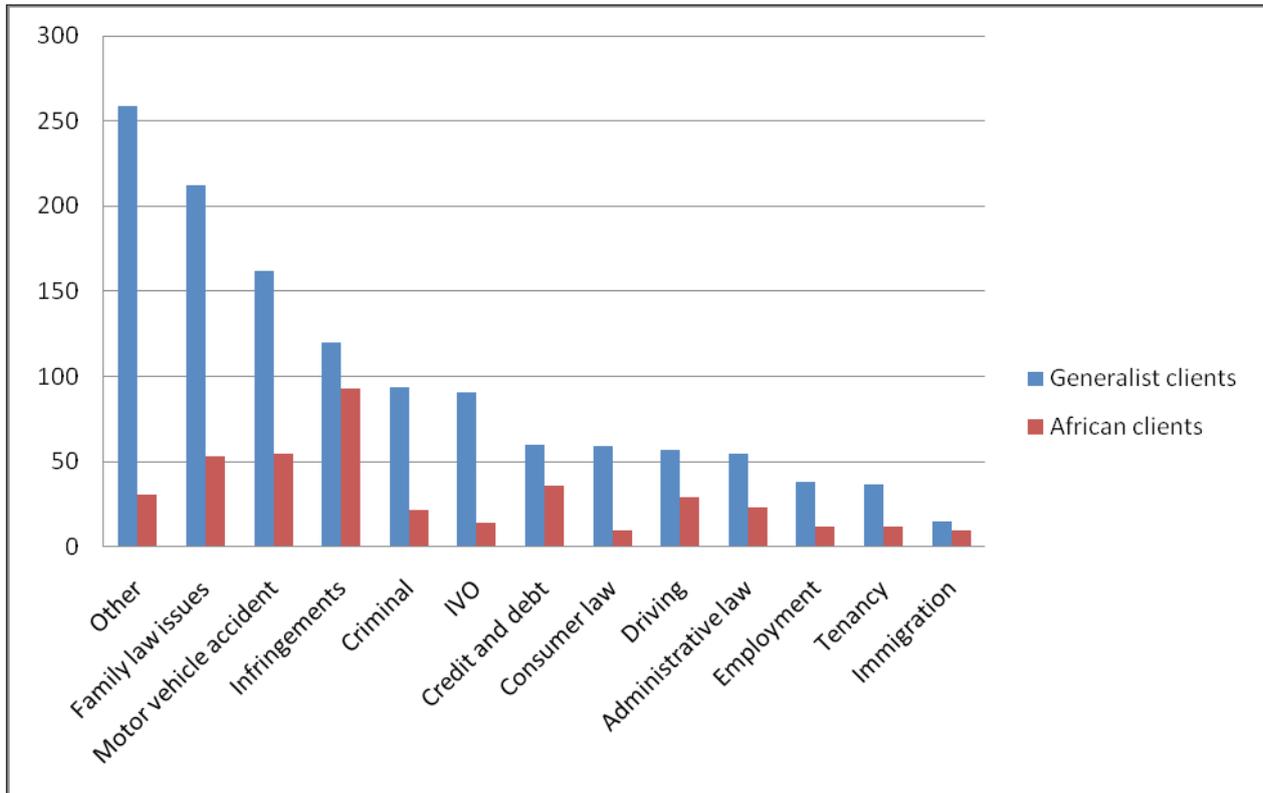


Figure 2: Comparison of African Legal Service clients and clients of “generalist” services at the Footscray CLC

## Why Did African Clients Experience These Kinds of Legal Problems?

In reaching conclusions about the root causes of common legal issues, we have relied on the following sources:

- information given to us directly by clients;
- information gathered from government agencies and insurance companies in the course of conducting casework;
- information provided by settlement workers and other professionals who work closely with new arrivals from Africa; and
- information provided by African community leaders and community groups, in particular through focus groups conducted as part of this project by CAAWI.

We have divided the causes of legal problems into two parts. First, we have identified some of the general issues that underlie many common legal problems—such as cultural differences and difficulty accessing services. Second, we have outlined some of the problems relating to specific legal issues—including driving, debt and housing.

# General Causes of Legal Problems

The general causes of common legal problems that we have identified, based on our casework and our clients, do not necessarily apply to all African migrants and refugees. For example, we saw several Sudanese clients who were not literate in English or in their own language, and we have identified this as a general cause of various legal problems. We do not wish to imply that all Sudanese refugees are not literate in English; that is clearly not the case. Similarly, some observations have been made based on the experiences of newly arrived refugees that are not relevant to African Australians who have lived in Australia for many years.

## Unfamiliarity with Australian Systems

Many of our clients—particularly people from non-urban areas in South Sudan—are poorly equipped to deal with some of the basic systems and regulations in Australia. They are not aware of Australian laws and the consequences of breaking the law. Many low-income Australians struggle to deal with the complexity of systems and regulations in Australia. New arrivals who are not literate in English will inevitably struggle. For example:

- Some new arrivals from refugee camps have never rented a house. Accordingly, they are unlikely to be aware of the responsibilities of landlords and tenants. They may not complete a condition report as proof of the condition of a property they are renting. They may not understand their responsibility to pay rent on time, and to maintain the condition of the property. They become vulnerable to eviction and to loss of rental bonds.
- Most new arrivals have never had to deal with utility companies, particularly utility companies that are not government-run, but are privatised, profit-seeking entities in a competitive marketplace. They may not be aware that they have to pay bills regularly. They may not be aware that if they move house they have a responsibility to disconnect the utilities, and if they don't, the utilities may still be in their name when the next tenants move in.
- Some new arrivals have never owned a car. They are unaware of the need for insurance—particularly third party property insurance. They are unfamiliar with the enforcement of infringements, may incur large numbers of fines, and may have difficulty in paying.
- Some new arrivals have never had their own income. This is particularly the case for some African women who receive income in their own name for the first time when they start to receive Centrelink benefits. People who have not managed money before are likely to have difficulty budgeting. This leads to various financial problems, from difficulty paying bills when they fall due, to over-commitment in personal loans and mortgages.
- Some new arrivals have not been consumers of goods and services in a complex and competitive market before. Some new arrivals from Africa do not understand the concept of a contract, particularly a contract that you can enter into without signing anything, for example over the phone, or by using services. They are more likely to make poor choices about goods and services, and less likely to shop around for the best deal. They are vulnerable to—and targeted by—door-to-door marketers and telemarketers. They are unlikely to be in a position to negotiate contract terms and conditions, or understand the contracts that they enter into.

## Difficulty Accessing Information and Services

Most of the problems listed above could be addressed by access to information. But new arrivals from Africa often face difficulties accessing information through the usual channels for the following reasons:

- Lack of fluency in spoken English. Many non-English speakers find it difficult to access information by phone because they do not speak or understand English well. Some agencies do provide interpreter services on request. But many of our clients are not aware that an interpreter can be made available, and are unable to negotiate the pre-recorded telephone prompts to get to the point where they can request an interpreter. Even when a phone interpreter can be provided, it can still be difficult for a person to understand complex information provided through an interpreter, particularly if specialist words are used.
- Lack of literacy in English, and inability to access information through written materials. Many clients cannot understand letters from government agencies or utility companies. They cannot read contracts. They cannot read information brochures in English, no matter how simple the language.
- Unavailability of resources in some African languages and lack of literacy in their mother tongue. Few services provide information in Sudanese languages such as Dinka and Nuer. Some services do provide information in African languages. This does not help people who are not literate in their first language.
- Over-reliance on others in the community for information. Given the difficulties in accessing the information listed above, many people rely on friends and community leaders for information about how things work

in Australia. Unfortunately, there is often inaccurate information circulating within recently arrived African communities.

- Reliance on children for information. It is often the case that the children in a family speak good English, while the parents speak very little. Parents rely on their children to interpret for them. In some cases, marketers are willing to accept children as interpreters in order to make a sale to the parents. Obviously, this might lead to misunderstanding by the parent and lack of capacity to give informed consent. If the child does not translate faithfully, it might also result in the parent entering into contracts for services that the child wants (e.g. internet access) that the parent does not.
- High support needs and unrealistic expectations of service providers. Many clients expected to see a lawyer immediately, as soon as they walked through the door, and were frustrated that they had to wait for an appointment. Participants in CAAWI focus groups spoke of their frustration at being referred from one community legal centre to another, and were unwilling to follow through with the first referral. For example, a woman had tried to access the Footscray CLC for assistance with a family law matter, and had been referred to another community legal centre and Victoria Legal Aid because the centre had a conflict (i.e. it was already acting for the husband). She did not understand why the Footscray CLC was unable to help her, was frustrated, and did not follow through with the referrals.
- Reluctance to seek help where the problem involved family or personal issues. For example, the CAAWI focus groups included two women who had become guarantors for family members. When the family members defaulted on the loans, the women became liable for the debt. Neither of the women sought assistance from a financial counsellor, apparently because they were not willing to discuss the family dispute associated with the debt. They may also have believed that the family member would get into trouble if they sought help from a financial counsellor.
- Lack of services. For example Footscray CLC's financial counsellor has experienced periods where more than 70% of his new clients were African clients seeking help in resolving a dispute with a utility company. It is impossible to provide this intense level of service to the African community in the long term without having to reallocate resources from other clients. There is also a very high demand for assistance with migration issues, and competition for the scarce resources of non-profit migration agents. There are very few non-profit migration agents in the western suburbs.

## **Lack of Timely and Continuing Support from Settlement Agencies**

Refugees and special humanitarian entrants are eligible for up to 12 months of settlement support after they arrive in Australia from agencies funded under the Integrated Humanitarian Settlement Strategy (IHSS).

Clients told us they received help to get started in Australia—to get utilities connected and sign up for Centrelink benefits—but did not receive information about how systems worked. So, they didn't know that they should get utilities disconnected when they moved house. They knew how to turn on the heater in their house, but did not know that keeping it on all the time would result in large electricity or gas bills. It may also be the case that in the first few weeks after arrival, refugees suffered from information overload, and could not remember all the information they were initially given. And people are not ready for some kinds of information when they first arrive in the country. For example, people are unlikely to absorb information about car ownership and insurance until they own a car.

Settlement support is available under the Settlement Grants Program (SGP) for up to five years after arrival. SGP-funded agencies deliver services and programs designed to help people become self-reliant, and participate equitably in Australian society. These agencies have limited capacity to assist people with specific problems, such as finding housing. For many people, this is the period in which they need the most help and information. Their first lease may expire after one year, and they may need support to find private rental accommodation. They are more likely to be seeking work, and more likely to be buying a car to get them to and from work. They are more likely to sign contracts, for such purposes as financing goods and buying a mobile phone. Unfortunately, at this point, settlement agencies simply don't have sufficient resources to provide personal assistance to all the recent arrivals who need help with these kinds of specific problems.

## **Reliance on Community Networks**

To the outside observer, African communities can often appear extraordinarily close and well-networked. Many of our clients have numerous close friends and an extended family in the local area. People are generally well-integrated into their African-Australian ethnic communities. Those who do not speak English are particularly reliant on their

community for information, advice, support, and assistance in navigating Australian systems. As noted above, this can sometimes lead to people relying on inaccurate information.

In addition, communal attitudes to property within African communities give rise to certain circumstances:

- People within the community lending each other money but not documenting the loans.
- People lending each other cars, sometimes in order to repay a debt.
- People moving in and out of each others' homes.

Australian systems are usually set up to deal with individuals who, it is assumed, are acting in their own best interests. This is not always the case in African communities. The level of trust between community members and the fluidity of ownership of goods have legal implications. For example, the person driving a car is not necessarily its owner. People do not always nominate their friends for driving infringements, when they should. The person whose name is on a utility bill is not always the person who is living in the house.

## Family Issues

African families may differ from the average Australian families in several respects:

- Many of our African clients have large families, with three or more children. Finding affordable housing is more difficult for large families.
- Extended families are in close contact. People who are distant relatives may describe each other as “cousins”. An old family friend may be described as an “auntie.” This can be confusing for support agencies that make decisions based on familial relationships. For example, a client who was sleeping on his “auntie’s” couch was reluctant to describe himself as homeless, even though the accommodation was insecure and short term.
- People are often separated from their extended family. For example, a person’s parents and siblings may be overseas. People have very strong links to family and friends in their country of birth. Many of our clients regularly send money to relatives still living in Africa.
- Several clients returned to Africa to marry or remarry. They then sponsored their spouse to come and live in Australia. The spouse is not eligible for Centrelink benefits for two years, so such families often suffered financial stress. If the relationship broke down within two years, the spouse would lose their right to stay in Australia (unless the non-citizen had an intervention order against the Australian spouse or child contact orders), so migration and family law issues often arose. In the CAAWI focus groups, one woman on a spousal visa said her husband had threatened her with deportation when she sought to separate (after she had been in Australia three years). Another woman who had sponsored her husband sought to have him deported when the relationship broke down.

## Frequent Travel

People frequently return to Africa. We had several clients who visited Africa for a long holiday (two or three months) in order to see friends and family. This kind of travel can lead to the following issues:

- Debts arising from community and personal loans to pay for plane tickets.
- Illegal subletting of public housing, and related disputes when people return home.
- Difficulty paying rent while people are overseas.
- People lending their cars to friends while they are overseas, leading to fines and demerit points for driving offences they do not commit.
- Difficulty resolving disputes with utility companies or seeking utility relief grants in circumstances where the utility bills are in the name of a family member who is overseas.

Some female clients also reported that their husbands had returned to Africa indefinitely. They did not see themselves as “separated” and did not wish to seek a divorce, but were effectively single. This creates financial issues (when utility bills are still in the husband’s name and the wife is unable to communicate with the utility company) and potential for problems with Centrelink (if a woman is drawing a single parenting payment, and her husband then returns to Australia).

## **Lack of Housing**

There is a housing shortage in Melbourne. It is virtually impossible to get public housing (the waiting time for public housing for people who do not have special circumstances is indefinite). Rental stocks have decreased, rents have increased, and there is more competition for housing, particularly at the bottom end of the market. African individuals and families may be discriminated against on the basis of their race and family size. Because of this, people who are reliant on Centrelink benefits for their income and who have little rental history are compromising their housing needs. People are settling for sublets, more crowded conditions, and flats and houses in poor condition. They feel that they have little power to make landlords comply with their responsibilities.

People are also moving further out from the centre of the city, often into less desirable residential areas. These homes tend to be further from public transport. This leads to a need to drive to get to shops, schools and community hubs, which can result in driving-related legal problems.

## **Type and Location of Work**

Many of our clients were working in low-skilled jobs in factories on the city's fringes.

- Clients reported feeling pressure from Centrelink to take low-skilled work in locations that were inaccessible by public transport, creating an increased incentive to drive (with associated legal problems).
- Jobs were casual, and people often had more than one job. This created difficulty in reporting income to Centrelink and gave rise to Centrelink debts. It also meant people had very little job security, which could result in financial problems when they lost a job and could no longer make loan repayments.
- Workers knew very little about their rights in the workplace, potentially giving rise to under-reporting of workplace injuries.

## **Availability of Credit**

Many of the financial problems experienced by clients arose from the fact that lenders were willing to make loans to people who had a very limited capacity to repay. (This may no longer be true to the same extent in the wake of the changed financial climate.) Banks were willing to give loans to people whose only income was from Centrelink, or would make five-year loans based on a person's income from a casual or a seasonal job. Vehicle finance companies were also willing to make loans that clients could not comfortably service. Our clients have not always understood the relationship between permanency in the workplace and the capacity to manage medium-to-long-term instalment payments. As a result, some clients who have been in Australia for only a few years have been unable to service loans and have been forced to declare bankruptcy.

Clients also often said they had misunderstood the terms on which they were entering a loan contract. Misunderstandings related to the amount of the loan, the amount of interest payable, the term of the loan, the consequences of breaching the terms of the loan contract, and additional costs of the loan (e.g. loan insurance).

## **Targeting of African Communities by Door-to-Door Marketing Campaigns**

Some door-to-door marketers focus campaigns on low-income neighbourhoods as a deliberate strategy. African clients are particularly vulnerable to misunderstanding the representations of door-to-door marketers, and may sign contracts that they do not understand and which are not in their best interests.

The issues listed above contribute to a range of specific common legal problems. These are discussed in more detail in the following sections.

# Causes of Specific Legal Problems

## Driving on a Learners' Licence Without an Experienced Driver in the Car

*Mr M is a young man who needs to get his drivers' licence so that he can start an apprenticeship. He has been caught driving on his Ls without having an experienced driver in the car on three separate occasions. Each time, he was driving in a car by himself and displaying P-plates. He was charged by police with failure to display Ls, driving without a fully licensed driver in the car, and with displaying Ps. He received three charges and summons relating to the offences.*

*Mr F had been involved in a motor vehicle accident, and presented to the Service with a letter from an insurance company asking him to provide the name of his insurer, or to pay \$2000. The client instructed that he was not insured. In addition, he only had his learners licence. The client explained that he could drive and had been licensed in Sudan, that his driving test was booked in for two months' time, and that he needed to drive in order to get to casual shifts at a factory in Laverton.*

Many clients of the African Legal Service sought assistance because they had been charged with driving while on their Ls without having an experienced driver in the car. A majority of those charged have been men; however, the number of women who have been charged with driving on their Ls has increased over the course of the last 18 months. All of the clients we assisted did have a learners licence; some also held a licence from another country, which was not valid in Australia.

This behaviour had several potential consequences. Some drivers had been stopped by police and charged with driving without having a fully licensed person sitting next to them (under Regulation 213(1)(b) of the Road Safety (Drivers') Regulations). Most of these clients were also charged with failure to display L-plates (under Regulation 214(1)(b) of the Road Safety (Drivers') Regulations). One driver was also charged—on more than one occasion—because he displayed P-plates, even though he was on his Ls (under Regulation 217(2) of the Road Safety (Drivers') Regulations). These charges all result in a summons to court. The charges do not have any automatic demerit points consequences, and do not lead to any delay in a person's ability to take their driving test. At court, a magistrate has broad discretion in how to deal with these matters. Clients of ours have been referred to diversion (where the client admits guilt, is diverted into a community program, and no conviction is recorded), have received fines, or have agreed to voluntary undertakings. A magistrate ordered one client (who had obtained his Ps shortly after he was charged with driving unlicensed) to stop driving for two weeks.

It is worth noting that the road rules include an odd inconsistency: if a client does not have their Ls, and is stopped for driving without a licence, then the charge is a ticketable offence, and does not automatically result in a summons.

Going to court results in inconvenience, shame, stress and financial costs (in terms of penalties imposed by the court) for the driver. It also results in high system costs—for courts and for Victoria Legal Aid. It leads to an increased perception by police that African drivers are less likely to be licensed, leading to the real risk of racial profiling of drivers for "random" stops, and a feeling within African communities that they are being targeted.

All of the unlicensed drivers we saw were uninsured, and several unlicensed drivers attended the Service because they had been involved in car accidents. These clients had received letters of demand from insurance companies and/or their agents, requesting payment of sums that they could not afford. The consequences of being involved in a car accident without insurance are discussed in more detail in the section on Accidents and Insurance. There are also, obviously, road safety concerns: learner drivers are likely to lack experience and driving skills.

Community groups and settlement agencies have told us that unlicensed driving is a serious problem for recently arrived African refugees. Our casework points to several possible causes of the relatively high number of cases involving driving without a licence.

### Difficulty getting P-plates

Getting a provisional licence is difficult.<sup>4</sup> It is difficult to learn to drive if you do not have a fully licensed driver in your family unit or in your community. Professional driving lessons can be expensive (approximately a dollar a

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<sup>4</sup> Appendix 2 includes an overview of the process of getting your Ls and getting your Ps.

minute), particularly if you are starting from a point where you have never been behind the wheel of a car. Elements of the test itself present barriers to new arrivals from Africa. All learner drivers must take a hazard perception test on a computer at VicRoads. The test can be particularly difficult for people who are not familiar with computers; this includes many people from a refugee background. Having to repeatedly taking the driving test can also be expensive, and people may have to wait weeks or months between tests.

## **L means licence**

Some settlement workers have told us that there has been—and may still be—real confusion about what an L licence entitles you to. Some workers have reported clients telling them that they think “L” stands for “licence”, and that the written test they have taken entitles them to drive on the road.

## **Lack of censure**

Driving without a licence is so common within some newly arrived communities, among both young and old, that people no longer see it as criminal behaviour and there is little social censure attached to driving without a licence.

## **Dealing with unlicensed driving offences: diversion**

The charge of driving on your Ls without an experienced driver in the car is one that the courts can deal with through diversion. In most cases the person will be ordered to pay a fine to the Magistrates’ Court fund. Lawyers at the Footscray CLC seek diversion from the police officer who charged the driver before the hearing date, and in many cases the officer consents. On some occasions where the charging officer has refused, Police Multicultural Liaison Officers have been able to talk to the charging officer to suggest diversion might be appropriate. The court has the power to order diversion even in the absence of a charging officer’s consent.

Diversion is obviously a good outcome for the majority of clients. However, the diversion process can present barriers for new arrivals. For example, one common diversion is an order to attend a road trauma course. A payment of \$160 must be made at the time of booking. A booking must be made at least one month in advance. The course has no capacity to accept payment by instalments. Payments are not administered by the court. Some clients have advised that it is difficult for them to save this much money as a lump sum.

Courts have been proactive in seeking to make diversions meaningful and appropriate for new arrivals. At Sunshine Magistrates’ Court, for example, a specific road trauma course has been created for Africans. In this course, information is simplified and interpreters are provided.

## **Observations**

- New arrivals feel pressure to drive to get to schools, work and community hubs.
- Learning to drive is difficult for these groups because:
  - professional driving lessons are expensive; and
  - few people in the new communities are fully licensed and able to teach others to drive.
- It is difficult to pass the driving test, particularly if a person has not had professional driving lessons. The expense of taking the test also presents a barrier for many new arrivals. Computerised aspects of the test may present difficulties.
- Confusion about the requirements for driving may persist, including the belief that “L” means “licence”.
- New arrivals are not aware of the consequences of unlicensed driving, including the high costs of an accident if driving without insurance.

## MODEL PROGRAM

### Wheels in the West: an L2P Program

The Footscray CLC has collaborated with Maribyrnong Council and local settlement agencies (New Hope Foundation, AMES and Centacare) to set up a pilot “L2P program”, designed to help new adult arrivals progress from their L-plates to their Ps. The program is based on a model developed by Frankston City Council to provide free driving experience to young people under 21. The program is to be implemented through 2009.

In the program, a local car dealership is asked to donate a car for a learn-to-drive program. The car becomes a part of the council fleet, is insured as part of the fleet, and is garaged at the council. The council and participating agencies identify volunteers who are willing to take adults out for driving experience until they are ready to take the test for their Ps. The participating agencies identify students who meet the following criteria:

1. Have arrived in Australia within the last five years.
2. Hold a current learners licence.
3. Live, work, study or access services in the City of Maribyrnong.
4. Have a healthcare card.
5. Do not have access within the immediate family unit to a car and fully licensed driver.
6. Are over 21 (council is seeking funding for a similar program for drivers under 21, who must get 120 hours driving experience before they can take their Ps).

The proposed pilot includes several crucial features:

1. Before they start their driving experience, participants are taken to a closed course driving facility for some driving practice. Access to the Metropolitan Transport Education Centre facility in Bayswater is currently funded by Shell.
2. Participants take at least one professional driving lesson, until they reach a point where the teacher believes they are safe to begin driving experience with a volunteer. RACV Foundation has provided funding for 10 professional lessons for each of the 12 participants in a pilot program.
3. Volunteers have their driving records checked by police, and are taken to a police defensive driving course.
4. Each volunteer is paired with a participant. The volunteer and student meet at least once a week for at least one hour of driving experience.
5. The participant continues to take professional driving lessons at key stages; for example, before they drive on the freeway.
6. One condition of participation is that the student attend at least three information sessions. Sessions will be on topics including buying and selling a car (Consumer Affairs); road rules and police (Victoria Police Multicultural Liaison Officers); and insurance (Footscray CLC).
7. Students will also be required to sign a pledge to promise that they will teach at least one person in their family or community to drive when they graduate from the driver training and have their full licence.

The strength of the program is that it is driven by collaboration between local agencies and the Maribyrnong Council. Because the driving experience is given by volunteers and the car is donated, the cost is relatively low.

The program does need a project manager to coordinate use of the car, and training for volunteers and students. Funding has been granted by TAC.

If the pilot project is successful, the program could be sustained with funding from Maribyrnong Council, VicRoads, or through DIAC’s Settlement Grants Program. The hope is that the need for the program will lessen after several years, as people get their full licences and teach their children and others in the community to drive.

## Licence Suspension and Driving While Suspended

*Mr H had been driving on his Ps for approximately six months, and had received two infringement notices for failing to display his Ps. One day, he received an option notice from VicRoads giving him 30 days to decide whether to take a three month suspension, or continue to drive with only one point on his licence for 12 months. He did not understand the letter, and took no action. He received a phone call from VicRoads towards the end of the 30-day period. VicRoads staff told him that he could keep his licence if he agreed to the 12-month option. Our client agreed and continued to drive, without understanding that he only had one demerit point remaining. He received one more infringement, accrued three demerit points, and automatically lost his licence. He continued to drive for several months, until he was stopped by police, who told him that his licence had been suspended.*

*The client came to the legal service asking for assistance with his fines (totalling \$8000); he believed his licence had been suspended because he had not entered into an instalment plan to pay his fines. He had no apparent understanding that he had lost his licence because he had accrued more than one demerit point while driving on the 12-month option. The client had to attend court, where he was represented by the Victoria Legal Aid duty lawyer and was convicted of driving while suspended and ordered to pay a fine for his first offence.*

*Mr G said he had drunk two or three beers one afternoon, and had been stopped by police for a breath test in the evening. The test showed the presence of some alcohol in his blood. He agreed to accompany police to the police station. At the police station, he answered some questions with the assistance of a phone interpreter. Via the interpreter, the police officer asked our client to take a blood test. The police officer told our client he would have to wait for the interpreter to arrive in person in order to take the test. The interpreter added, in Tigrinya, that he lived a long way away and it would take him a long time to get to the police station. The client told the police officer that he wanted to go home because he had to start an early work shift at 5.30am. The police officer advised him, through the interpreter, of the consequences of refusing to take a blood test. According to the police officer's written statement, he used the following warning (which refers to a breath test):*

*In the circumstances it is compulsory for you to remain here for the purpose of providing a sample of your breath for analysis by an approved breath analysing instrument. If you refuse to remain here for the purpose of the breath test, you may be charged with this offence. If convicted, you may be fined and will lose your licence for the prescribed period. Are you prepared to remain here?*

*Our client decided to go home. He says he did not understand the meaning or consequences of the warning. He then received a charge and summons for his refusal to take a blood test. He sought advice from Victoria Legal Aid, agreed to plead guilty on their advice, and was charged and convicted, receiving the minimum licence suspension of two years. He sought additional advice from the African Legal Service two days after his hearing.*

*Mr B is a young man on his P-plates. He first had his licence suspended (in October 2006) for incurring more than five demerit points in a one-year period. He took the 12-month option, and accordingly had one demerit point for 12 months.*

*In the same month he lost three demerit points for a speeding camera offence [offence A]. This constituted a breach of his 12-month bond. Mr B continued to drive until he received a letter from VicRoads five months later—in February 2007—advising him that he had breached his 12-month bond and his licence was suspended for six months.*

*However, Mr B continued to drive during those five months. He continued to commit more demerit points offences [offences B and C]. Offences A, B and C triggered VicRoads to send him an automatically generated option notice in March 2007 offering him another option. Again he took the 12-month bond.*

*So our client came to the Service with two letters from VicRoads. The first letter (dated February 2007) advised him that his licence was suspended as a result of offence A, and that he had to stop driving. The second letter (dated March 2007) confirmed that he had taken a 12-month option for offences A, B and C, and said he could continue to drive.*

*Our client continued to drive. The first time he was stopped by police he showed them the letter from VicRoads dated March 2007 and they let him continue to drive, even though the system showed he was suspended. The second time he was stopped he showed police the letter, but was charged with driving while suspended.*

*Mr H came to the African Legal Service with several letters from VicRoads. His licence had been suspended for three months, for a drink driving offence. The client received the option notice. He chose to take the three-month suspension. He was sent a notice of suspension, which included information about the need for him to do a drink-driving education course within 30 days, or his licence would be cancelled. The client did not read English well, believed that his licence was already cancelled and that he could not drive, and so took no action and continued to serve out the suspension. He received another letter from VicRoads, which advised him that his licence had been cancelled because he had failed to do the required course. Our client did not understand the letter, and took no action.*

*After he had served the three-month suspension period, our client went to VicRoads and asked for his licence back. VicRoads told him that his licence was cancelled until he did a drink-driving course. Our client agreed to do it, and completed the course the next day. He took the certificate of completion to VicRoads, and again asked for his licence back. VicRoads staff explained that for the period that his licence had been cancelled—for the last 80 days—the period of time on his suspension had stopped running. The cancellation ended when he showed evidence that he had completed the drink-driving course, but he still had almost the full length of his licence suspension to serve. Our client insisted that he had not understood the letters he had received. VicRoads responded by sending him a new option notice, which gave the client the option of starting the three-month suspension from the beginning again.*

*We assisted the client to communicate with VicRoads and explained the injustice of the situation, given that their letters to a client who spoke little English were complex to the point of being incomprehensible, and understanding them depended on understanding that “suspension” and “cancellation” were different penalties for different offences. VicRoads responded that lack of understanding of its letters was no excuse, and that its staff had no discretion to waive the cancellation period, or take the suspension already served in ignorant good faith as having completed the suspension. We were only able to ensure that the client was given credit for the time he served on his suspension before his licence was cancelled. His licence was then suspended for the remainder of the period owing—i.e. 80 days.*

The consequence of a licence suspension is, obviously, that a person is not able to drive legally for the period of the suspension. This can have a negative impact on a person’s ability to work, for example if they are a shift worker with no way to get to work except by driving, or if the person is a taxi driver.

Some people continue to drive after their licence has been cancelled or suspended. Section 30 of the Road Safety Act (1986) makes it an offence to “drive while disqualified”. If a person drives while disqualified, they may be charged and will receive a summons to court. At court, he or she may be fined or jailed. Jail is mandatory for repeat offences.

## **Why do clients have their licences suspended?**

Our African clients, like our Australian clients, had their licences suspended for two reasons:

- Accrual of demerit points for speeding, red-light-camera offences, and breach of other road rules. Drivers with their full licences were sent an option notice and ultimately suspended because they had accrued 12 or more demerit points over a three-year period (Road Safety Act (Vic) 1986 section 25(3)(a)). Drivers on their Ps were suspended because they had accrued more than five demerit points within a 12-month period. (Road Safety Act section 25(3)(b)). For some driving offences (e.g. excessive speeding), one offence results in a licence suspension (section 89D of the Road Safety Act). Many clients had accrued excessive demerit points for relatively minor offences, such as failure to display P-plates, or speeding offences in which their speed was less than 10 km/h over the limit. In some cases, another person’s offence had contributed to the licence suspension. For example, some clients told us that their licences had been suspended for demerit points offences that had been incurred by a friend or family member driving their car.
- Drink driving offences. We assisted one client who had been suspended because he was stopped while driving with a high blood-alcohol reading. We saw several clients who had taken preliminary breath tests that had shown the presence of some alcohol, but had refused to go back to the police station to have a blood-alcohol test, or had refused to take a blood-alcohol test at the station. Refusal to take a blood test results in mandatory licence cancellation for two years under section 56(3)(a) of the Road Safety Act.

It is worth noting that the Sheriff also has power to direct VicRoads to suspend a person’s licence under section 110 of the Infringements Act 2006 and section 24 (1A) of the Road Safety Act. None of our clients had had their licence suspended for this reason.

## Why were clients driving while suspended?

We have identified some reasons why clients had their licence suspended. We saw many of our clients several weeks or months after their licence had been suspended, when they had received a summons to appear at court to face the charge of “driving while suspended”. Why were clients driving while suspended?

We assisted some clients who were deliberately driving while their licences were suspended. At least one client who had had his licence suspended continued to drive in order to get to and from work, and insisted that it was his only option in the absence of public transport, and given his responsibilities to his dependants. Other clients drove while suspended because they made an error of judgement.

A majority of clients were inadvertently driving while suspended because they had failed to understand information they had received from VicRoads. There are several root causes of this problem:

- The licence suspension system is complex. It gives people two options, with two possible sets of consequences. When a person has accrued enough demerit points to have their licence suspended (12 points in a three-year period for fully licensed drivers; five points in a one-year period for P-platers), he or she will be sent an option notice by VicRoads.<sup>5</sup> This notice gives the driver two options, as follows (the example below is for a three-month suspension):

**Option 1** Keep your Driver Licence/Learner Permit. However, if you accumulate any further points within the 12 month period commencing on [40 days from date of letter], your Driver Licence/Learner Permit will be suspended for 6 months.

**Important** If you wish to keep your Driver Licence/Learner permit you must telephone VicRoads before [30 days from date of letter].

**Option 2** Have your Driver Licence/Learner Permit suspended. If you do not telephone VicRoads to record your election of Option 1, a 3 month suspension of your Driver Licence/Learner Permit will commence on [40 days from date of letter]. You must return your Driver Licence/Learner Permit to VicRoads within 7 days after the commencement date of your suspension.

The system is designed to provide drivers with the opportunity to continue to drive if they want to; the punishment, and the incentive to improve their driving, is that people are given just one point and face a longer period of suspension if they lose it.

- On the basis of our casework, we believe that many people make a choice that is not in their best interests, by taking option one and then immediately accruing more demerit points.
- The complexity of the system is compounded by the fact that VicRoads communicates almost exclusively in writing, by mail. The assumption is that all those in receipt of these letters will have the ability, or the resources, to understand the information conveyed. No information is given in other languages about the addressee’s ability to access the information in another form, or to access an interpreter. Many of our African clients are not literate in English, and do not have ready access to interpreters who can help them understand the information given. In addition, communication by mail presents problems for people who are not in secure housing and move frequently. If a person fails to update his home address with VicRoads, he might never receive notification of a suspension.
- Correspondence from VicRoads is often in highly complex written English. Even people who are literate in English may sometimes have problems understanding some of VicRoads’ correspondence.
- There are also some urban myths circulating in different African communities. For example, one Sudanese client attended the Footscray CLC asking for assistance with an application to VicRoads for a variation of his licence suspension that would allow him to drive to and from work. VicRoads informed us that such an option has not been available for over 15 years.
- Clients informed us that when they did visit VicRoads in person to seek clarification of correspondence they had received, they were not always given the opportunity to access an interpreter to assist them with information they have received in writing. Thus, visiting VicRoads is no guarantee that a client will receive the information they need in a language they can understand.

## Delays in notification of offences and suspensions

Confusion results from the interaction between Victoria Police, Civic Compliance and VicRoads around infringements that result in demerit points and licence suspension.

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<sup>5</sup> The operation of the option notice system is set out in the Road Safety Act sections 35(3A) and (3B)

When a person commits a demerit points offence such as a speed-camera offence or a red light-camera offence, he or she receives an automatically generated infringement notice issued by Civic Compliance on behalf of Victoria Police.

If someone receives a traffic infringement notice from police, then police must notify Civic Compliance of the offence so that Civic Compliance can issue an infringement notice. There can be some delay between the date of the offence and the notice being issued.

As a matter of policy<sup>6</sup>, Civic Compliance does not notify VicRoads of demerit points offences at the time the infringement notice is issued. Presumably, this is to ensure that the recipient of the notice has time to nominate another driver or seek revocation of the infringement. Civic Compliance notifies VicRoads of demerit points offences when:

- the person pays the infringement in full; or
- the person makes the first payment on an instalment plan.

If no payment is made, then VicRoads is notified when the infringement is converted to an enforcement order and is referred to the Infringements Court. This happens approximately 90 days after the infringement notice is sent.

This system has some unintended effects. As illustrated by the third case study at the beginning of this section, the delays built into the system can give rise to serious errors by VicRoads which result in confusing correspondence and a lack of clarity for drivers about whether they are in fact suspended.

To add to the confusion, section 89A (2) of the Road Safety Act states that a traffic infringement notice for drink driving, drug driving or an excessive speeding offence takes effect as a conviction for the offence within 28 days. That section could give rise to a person's licence being suspended, before VicRoads has been informed of or recorded the offence and the demerit points.

## Observations

- Clients of the African Legal Service had their drivers licences suspended or cancelled for reasons including
  - accrual of excessive demerit points;
  - failure to nominate other drivers for driving offences; and
  - failed interactions with police, including refusal to submit to a blood test because of lack of understanding of the consequences.
- Clients continued to drive after their licences had been suspended because they did not understand the notification they received from Vic Roads, because:
  - the options system is complex;
  - the option notice is confusing, and does not provide information about access to interpreters;
  - there is confusion about the meaning of terms in automatically generated correspondence from VicRoads; for example, the difference between “suspension” and “cancellation;”
  - interpreter services are not readily available at VicRoads or over the phone; and
  - VicRoads may not be notified of an offence until up to 90 days after the infringement notice has been issued. Where the person continues to drive and incurs more infringements, this built-in delay can mean that VicRoads automatically generates complex, and sometimes contradictory, correspondence.

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<sup>6</sup> Civic Compliance outlined this policy in response to a question at a training day at the Federation of Community Legal Centres on 25 November 2008.

## Accidents and Insurance

*Mrs H was driving her car on a rainy night when her brakes failed as she approached traffic lights. Her car went into the stopped car in front of her, which bumped into the car in front of it, which in turn went into the car in front of it.*

*Mrs H had no third party damage insurance, and received letters of demand from three separate insurers for damages in excess of \$12,000. Mrs H has no assets. In addition, she has virtually no income. She is unemployed and she cannot receive Centrelink benefits in her own name because she is a citizen of New Zealand. She only receives family benefits to support the children in her care.*

A common driving-related issue for clients of the African Legal Service relates to lack of insurance to cover damage to third-party property in the event of an accident. This problem applied across the board: to fully licensed drivers, drivers on their Ps and people driving on their Ls.

When someone who is not insured has a car accident, events unfold as follows:

- The drivers exchange details—name, address, licence number, phone number and vehicle registration.
- In most cases, the police do not attend. As a result, an accident will not necessarily result in charges for driving unlicensed or driving while suspended. Police will attend an accident scene in circumstances where one driver refuses to disclose his or her details, or if anyone is injured.
- A few weeks or months after the accident, the uninsured driver receives a letter from an insurance company—such as AAMI, RACV, GIO, Hotline etc. The letter asks the person to advise of their insurer, or to pay the amount quoted to cover the cost of repairs to the other person's car.
- If the uninsured driver ignores the letter, the insurer may refer the debt to a recovery agent.
- The recovery agent may send the uninsured driver several letters and make phone calls to him or her. The insurer (and its agent) have the right to recover the amount owed for up to six years after the date of the accident.
- The insurer also has the right to issue proceedings in court to recover the debt. It has been our experience that the insurer is unlikely to take this step unless the debt exceeds \$10,000. These proceedings are rarely defended. If the insurer is successful, then it can pursue a judgement debt for up to 14 years after the date of the accident. The judgement debt accrues interest. However, if a person has no assets and receives their only income from Centrelink, then he or she is judgement-proof under the terms of the Judgment Debtor Recovery Act. This means that the judgement creditor cannot garnish the debtor's Centrelink income.

As a result of having a car accident, many of our clients become personally liable for large debts. Some clients, trying to do the right thing, have taken out personal loans to pay off the amount they owe, and keep paying the bank for years. Some have taken out loans within their community. Other clients have considered bankruptcy. The Footscray CLC has assisted clients to negotiate with insurance companies using a process outlined in Appendix 3: Insurance Project.

Lack of third-party property damage insurance sometimes made our clients vulnerable to insurers in circumstances where an accident was not their fault. In one case, for example, our client instructed that the other driver had given misleading information to his insurer, in circumstances where it seemed clear that our client was not at fault. The insurer sent a letter of demand to our client, and referred the matter to a recovery agent when it became apparent that our client was not insured. When we started to represent the client, the insurer agreed that in the circumstances, our client was not liable and agreed to pay for the damage to his car. Insurers may be more likely to adopt aggressive recovery tactics against uninsured drivers.

In another case, we assisted a client who was involved in an accident in which he appeared to be at fault. Our client had third-party property damage insurance; the other party was not insured. We contacted our client's insurer, who confirmed that our client was at fault in the matter. Nonetheless, the insurer's representative told us that he would happily send letters of demand to the other party just to "see if we can get anything out of him".

Of course, there are broader social costs to the problem of not having car insurance. Lack of third-party property damage insurance presents a cost for insurance companies where an insurer makes payouts to their insured clients, but is not able to recover those costs from the uninsured third party. And it shifts a financial burden to other drivers who don't have comprehensive insurance and must bear their own losses arising from a crash that was not their fault.

### Why don't people have insurance?

Several clients of the African Legal Service did not have third-party property insurance because they did not know what it was or why they needed it. The idea of advancing a small amount of money to offset the risk that you

might have to pay a large amount of money is economically sophisticated. Many people simply did not know that insurance existed.

In some cases, clients were aware of insurance, but believed it was a luxury that they could not afford. Many people overestimated the cost of insurance. Reasons for this might include:

- They were not aware that they could make monthly payments to break up the cost of an annual premium.
- They had purchased the car from a dealer and had secured car finance, which required them to get comprehensive insurance for one year. Comprehensive insurance is significantly more expensive than third-party property damage insurance. In addition, car dealers are not likely to shop for competitive quotes from more than one insurer. As a result, people had an inflated estimate of the cost of insurance.

In a few cases, clients had signed up for third-party property insurance, and had opted to have monthly premiums deducted from their bank accounts. However, as a result of poor skills in financial management and having very little money, they usually did not have sufficient funds in their bank account for the premium deductions, causing their insurance to lapse. If they did not, or could not, read correspondence from the insurer, then they were often unaware that the policy had lapsed until they attempted to make a claim. In some instances this problem could easily be rectified if insurers enabled payment by Centrepay, a system in which the payment is deducted from Centrelink before the money even goes to the payee's bank account. To our knowledge, no insurer is currently willing to accept instalment payments for insurance via Centrepay.

Finally, it is possible that some drivers may have insurance, but cannot use it because they are driving unlawfully. This would be most likely in a situation in which a learner driver was driving an insured vehicle, but was not accompanied by an experienced driver. In these circumstances, the insurer would be unlikely to cover the person. We are aware of several cases where this has occurred.

Lack of comprehensive insurance was also an issue for several clients. If people have relatively cheap cars, then lack of comprehensive insurance is a calculated risk that many are willing to take. The consequences can be severe, however, when people own expensive cars on which they depend for their livelihood. It can also be a major financial risk if people have taken out personal loans to buy a car, or have sought car finance. Several clients of the African Legal Service had car accidents when their cars were still under finance. They were left in the unfortunate situation of having a damaged car or no car, while still owing thousands of dollars to a bank or vehicle finance company, which they had an obligation to repay for five years or more.

## Observations

- Many newly arrived people do not have third-party property damage insurance for one or more of the following reasons:
  - They don't know that the product exists, or that they could be personally liable for damage to another person's property in the event of an accident. People said they had never received information about insurance from settlement agencies, teachers, driving instructors, car salesmen, friends or community members.
  - They believe it is too expensive.
  - They are not confident in their ability to buy insurance over the phone.
  - They have bought insurance, but it has expired because they have insufficient funds available for the direct-debited payments.
- If a person is involved in a car accident and is at fault, he or she can become liable to pay a large debt to an insurance company.
- If a person is involved in a car accident but is not at fault, he or she may nonetheless receive letters of demand from the insurer, and may agree to make payments.
- Insurance companies often refer debts to recovery agents, who use aggressive tactics to try to recover money owed.
- Most of our clients are judgement-proof—that is, they have no assets and receive their only income from Centrelink. However, in some cases, clients were pressured into borrowing money to pay off a debt owed to an insurer. Bankruptcy was also an option considered by some clients.
- Some clients were involved in car accidents where both parties were uninsured and judgement-proof. This situation often led to a fruitless exchange of letters of demand. In these situations, both parties suffered loss and each party had to bear their own costs.

## Infringements (Fines)

*Mr S has been a taxi driver since he arrived in Australia several years ago. When he started driving taxis, he drove a friend's taxi. The friend said "Don't bother buying an e-TAG. Give me \$50 per week and I'll make sure the e-TAG is always in credit." Mr S never bought an e-TAG and paid his friend some cash every week.*

*Mr S's friend did not keep his e-TAG in credit. He nominated Mr S for the CityLink fines that resulted. Over several years, Mr S accrued more than \$25,000 in fines.*

*Mr S still drives taxis for a living. He lives in public housing and has 10 children. His wife receives Centrelink benefits. He entered into an instalment payment to pay \$200 per month on his fines. He came to the African Legal Service because he could not afford to make these repayments.*

More clients sought assistance in dealing with infringements than with any other kind of legal issue. From May 2007 to December 2008, 93 clients attended the African Legal Service and were internally referred to the Public Interest Law Clearing House Homeless Person's Legal Clinic's lawyers.<sup>7</sup> The majority of clients were assisted without an interpreter (although lawyers said their clients' English was not perfect and, for example, it was difficult to take instructions over the phone); the majority of clients were male, and the majority were from Somalia.

Clients presented with a range of fines. Most of the fines related to driving (e.g. parking offences, speeding, red-light-camera offences, or driving on CityLink without a valid e-TAG). Several clients had one or more fines that had been issued by police for non-driving matters, such as fines for littering and failure to wear a bike helmet. Several clients had outstanding fines relating to a court appearance, often for driving unlicensed. A few clients had fines relating to public transport offences—such as travelling without a valid ticket, travelling without a valid student concession card, and placing feet on the seats. The clients with public transport fines were all relatively young.

The consequences of having a large number of fines were mostly financial. Most clients did not take any steps to deal with an infringement after they had incurred it—they did not pay the fine, enter into an instalment plan, or seek to have the fine revoked. As a result, costs would be added. (This process is discussed in detail in Appendix 4: A Summary of the Infringements System).

The consequences of having outstanding infringements include the following:

- High levels of stress and guilt, particularly for clients who owe thousands of dollars in fines and costs.
- Financial stress. Many clients had entered into instalment plans to make repayments on their fines. Most clients missed repayments because they simply couldn't afford to make payments every month. Some instalment plans were structured over several years. Some clients had entered into more than one instalment plan for more than one series of infringements. This created confusion for the client.
- Seizure of a person's car. The Sheriff has the power to seize a person's car if it is parked in a public place. The car will not be released until the person agrees to enter into an instalment plan.
- Seizure of goods. The Sheriff has power to seize goods in order to pay off fines. None of our clients had experienced this, and most clients would not own any seizable assets.
- Arrest. The Sheriff has the power to arrest a person, but can do so only after providing seven days' advance warning. This gives a person a chance to enter into instalment plans as a means of avoiding arrest. However, if this is not done, then the person could be arrested.

There were several common reasons that African clients incurred fines, including the following:

- Misunderstanding parking signs. For example, one client had repeatedly incurred fines for parking in a disabled parking zone. She had a disability, and felt entitled to park in disabled-only places. However, she had not applied for and did not have a disabled parking permit.
- Failure to understand the law, in circumstances where cultural background made the law seem to be an unlikely one to the offender, such as littering or failure to wear a bike helmet.
- Many regulatory systems are difficult for new arrivals to navigate. For example, getting a day pass for travel on CityLink may require a person to have access to a phone (with credit on it), a credit or debit card (with funds available), and the ability to navigate an automated phone system. It is not widely known that you can buy

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<sup>7</sup> Infringements are traditionally dealt with by financial counsellors and community legal centre lawyers. However, getting infringements revoked can be extremely time-intensive, particularly if a client needs representation at the Magistrates' Court. Lawyers from Mallesons working as part of the Public Interest Law Clearing House Homeless Persons' Legal Clinic (HPLC) agreed to be involved in the African Legal Service to assist clients with fines. All of the interviews, casework and court representation discussed in this section was conducted by HPLC lawyers from Mallesons. This section is based on information those lawyers provided. We are grateful to them for all their contributions to this project.

a day pass at the post office. The easiest way to get an e-TAG and maintain credit is via the internet; as the CityLink web site says, “The web is by far the easiest way for you to purchase a CityLink Pass or top up your account.”

There were many reasons why people did not pay infringements, or did not deal with them at an early stage:

- An inability to pay the fine.
- An inability to navigate the system (by phone or in writing) in order to enter into an instalment plan to pay the fine.
- A decision to not pay because someone else had incurred the fine. For example, some clients said another person was driving their car at the time the fine was incurred. Sometimes they were able to substantiate that claim by showing evidence that they were overseas at the time the fine was incurred. Nominating another person was difficult for several reasons:
  - Some clients could not read the forms and did not know they could nominate another driver.
  - Some clients did not know the name and date of birth of the person they wished to nominate for the offence. As discussed below, this was particularly problematic for taxi drivers who did not have access to log books in order to find the name and details of the actual driver.
  - Some clients did know the full name and details of the other driver, but were reluctant to nominate that person for the infringement. In some cases, that reluctance arose from the fact that the client had a close family or personal relationship with the driver. For example, one client was reluctant to nominate a friend who had incurred several thousand dollars of infringements while driving her car, because she believed he had been the guarantor on her car loan.
- Inability to navigate the system to seek revocation of a fine, even in circumstances where revocation would be well founded.
- Unwillingness to seek revocation on the basis of special circumstances such as homelessness or dependence on drugs/alcohol because of embarrassment or shame. Some clients did not fit a traditional profile of homelessness because they did not access Supported Accommodation Assistance Program (SAAP)-funded housing services; instead, they “couch surfed” for extended periods. For example, one client who had been homeless for some time did not mention this to the Homeless Persons’ Legal Clinic (HPLC) lawyer because he had found temporary accommodation in the home of a woman in the Sudanese community. This temporary accommodation involved sharing a bedroom with eight other adult men. After a few nights, the client resumed sleeping in his car because of the stress and overcrowding he experienced in this temporary housing. It was only when the HPLC lawyer probed specifically for this information, and gave multiple assurances of confidentiality, that the client told her about his housing situation.

HPLC lawyers had considerable success in working with clients of the African Legal Service to have: fines withdrawn by agencies; costs and fees reduced by the infringement registrar; and fines reduced in amount, withdrawn or revoked at hearings in court. In almost all instances, the outcomes following representations by HPLC lawyers meant that clients were in a better position than they would have been. For example:

- Many first-time offenders with a fine for public-transport-related matters had their fines withdrawn by the Department of Transport following letters from HPLC lawyers (this is a relatively simple process, and rarely requires more than a letter from the lawyer).
- Clients with special circumstances (within the meaning of the Infringements Act) had their enforcement orders revoked and then the offences dismissed by the court. This requires the lawyer to gather medical or other evidence of the special circumstances, to write an extensive letter to the infringements registrar seeking revocation, and to attend court (often for at least half a day) to deal with the offences if the agencies do not withdraw the offences following revocation by the registrar (agencies rarely withdraw the offences).
- Several clients who could nominate the driver at the time had their offences dismissed by the court following appeals of the infringements registrar’s decision not to revoke enforcement orders. This requires the lawyer to take instructions and gather evidence for the revocation application, to write the application with the client, to attend court to appeal the infringement registrar’s refusal to revoke if that is what has occurred (often multiple hearings on different dates at different venues), and then to attend court to deal with the underlying offences (again, multiple hearings on different dates at different venues).

Client W’s case provides an example of a good outcome, and of the resources required to achieve that result. He had about 45 to 50 traffic-related enforcement orders which he could nominate another driver for, and he had reasonable grounds for not having done so at a much earlier stage. HPLC lawyers assisted him with a revocation application and none of the enforcement orders were revoked by the infringements registrar. All of these applications for revocation were then referred to the Magistrates’ Court.

About six to 10 of these enforcement orders were withdrawn before the court hearings, but for about 40 of them HPLC lawyers have appeared in court on behalf of Client W. All of the enforcement orders were revoked by a magistrate, and the underlying offences dismissed. Because of the involvement of different agencies, this has required HPLC lawyers and Client W to attend five different hearings, at different courts. On one occasion, a hearing had to be adjourned because Client W had inadvertently gone to the wrong court.

That success, however, can be measured at a cost of thousands of hours of lawyers' time, spent in writing letters to the agencies and to the registrar, and in appearing at court. Lawyers agreed that clients would be unlikely to achieve such results if they represented themselves, particularly given the complexity of the infringements system. If clients in circumstances of genuine hardship, who have genuine grounds to believe they have been treated unfairly, can appear in court before a sympathetic magistrate, they are likely to have an improved outcome. But most people do not have the time, energy, resources or expertise to get to that point; navigating such a system is beyond most African clients. That said, there are several strategies that can be pursued to reduce the burden of infringements on African communities.

1. Continuing to provide representation to African clients with large numbers of fines in the short to medium term.
2. In the long term, seeking to prevent African clients and other new arrivals from incurring fines. This strategy can be pursued by providing information at the settlement stage about the most common infringements: those for public space, public transport and driving offences. Information also needs to be given to the community about the risks of lending your car to other people. This information could be provided by settlement information officers, and through curriculum delivered in English-language classes. Community legal centres also need to be able to work with community groups to provide information that they can take to the community.
3. Advocating for changes to aspects of the infringements system at the agency level. This includes educating agencies generally about the high costs that infringements have for newly arrived communities, and encouraging agencies to issue warnings for first offences. It might include working with agencies to provide more accessible information to people about how they can deal with their infringements.
4. Advocating for systemic changes to the infringements system, outlined below.

## **Systemic issues**

There were several structural or systemic issues that contributed to the large number of fines within African communities, and which made it more difficult for advocates to assist African clients.

### *CityLink: Sending late-administration notices to the owner of the car (and not the owner of the e-TAG)*

Taxi drivers sought assistance with a variety of driving-related infringements, for CityLink offences, parking, speeding, and red-light-camera offences.

The infringements issued by CityLink stemmed from the fact that taxi drivers did not have credit on their e-TAGs. By convention, drivers have their own e-TAG, which they use throughout their shift, and take with them from one taxi to another. It is the driver's responsibility to keep the e-TAG in credit. Many taxi drivers, who are on a low income and may support several dependents, put credit on their e-TAGs in small increments, for example \$25 or so per shift. It is possible to set up an e-TAG account with CityLink in such a way as to have CityLink direct debit an account or credit card when the account reaches a low level. However, some clients told their lawyers that they did not take this option. And some who did set up a direct debit did not keep their bank accounts in sufficient funds to enable the debit. As a result, HPLC lawyers said taxi drivers may run out of e-TAG credit in the middle of a shift, and incur several infringements in one day.

When a driver travels on CityLink and his or her e-TAG is not in credit, the e-TAG system will not record the driver's e-TAG account details. Instead, it will take a photo of the taxi's licence plate. CityLink will then send a late-administration notice to the registered owner of the taxi. The notice charges an "administrative fee" of \$10, plus the cost of the toll.

Often the taxi owner does not send the late-administration notice to the driver of the taxi. This may be a consequence of the fact that there is no easy process to formally nominate another driver at the late-administration notice stage. In order to nominate another driver at this stage, it is necessary to go to the CityLink website and print off a form, fill it in, and then send it to CityLink. HPLC lawyers said that African Legal Service clients who are taxi owners have indicated that their understanding was that it was not possible to nominate another person at this stage, and this appears to be because there was no nomination form sent with the late-administration notices. Notifications of other traffic offences—for speeding and red-light-camera offences—include a nomination form on the infringement notice.

If CityLink receives no response to the late-administration notice within 28 days, then it refers the matter to Victoria Police, and Civic Compliance will issue an infringement notice for \$100. At this point, the owner becomes

more likely to nominate the driver of the taxi, because the stakes are higher, and because the infringement includes information about nomination.

If the infringement notice is not paid, it is referred up to the enforcement stage, where more costs become payable. Again, the taxi owner is more likely to nominate the driver (if the owner has not already done so) for the fine at this point, after fees have accrued. The taxi driver therefore becomes liable to pay the fine at either the agency stage (Victoria Police), or after further costs have been accrued at the enforcement stage. Given that taxi drivers use CityLink routes during every shift, and several times per shift, the infringements can quickly mount to a very high level.

It is worth noting that the nominations made by taxi owners are not always accurate; nominations are based on a log-book system, and log books are sometimes not complete. Because of this, the taxi owner may well nominate the wrong driver. The driver, who does not have access to the log books, will have difficulty in nominating another driver if the taxi owner has made a mistake.

#### *The infringements registrar: refusal to revoke fines on the basis of failure to nominate another driver*

Because of the issues listed above, several clients (including taxi drivers) did not nominate another driver for the infringement when it was at the agency stage. In these cases, HPLC lawyers sought revocation from the infringements registrar in writing. Under section 66(4) of the Infringements Act (2006), nomination of another driver is one of the grounds on which a registrar can revoke an enforcement order and cancel an infringement notice. However, in the majority of cases, the registrar refused to revoke, and the matter was referred to open court. At court, the enforcement orders would then usually be revoked and the underlying offences dismissed. HPLC lawyers surmised that the registrar may have been reluctant to revoke in circumstances where a person had waited for a long time before attempting to nominate another driver for the fine, possibly due to time constraints on the agency's ability to re-issue the infringement to the person nominated as the driver.

#### *The Infringements Act: no provision for infringements to be reduced on the basis of "financial hardship"*

The majority of clients seen by HPLC lawyers at the African Legal Service could not show that they were affected by special circumstances within the meaning of the Infringements Act—mental illness, drug and alcohol dependency or homelessness. In some of these cases, the lawyer would write to the registrar to ask that the outstanding amounts be reduced on the basis of the client's financial hardship. Financial hardship is not a ground for revocation in the Infringements Act; however, the registrar does have discretion to vary fees and costs. Lawyers would prepare detailed financial profiles based on the client's income and expenditure, number of dependents, and commitments to send money to family overseas. In some cases, the registrar did reduce the amount of costs and fees payable on outstanding infringements. Some clients were then able to enter into sustainable instalment plans. This is sometimes a substantial reduction in what the client has to pay: where enforcement orders and infringement warrants have been issued, the fees and costs added at each stage can be about the same amount as the fines themselves. Provided that the amount to be paid off each fortnight/month was realistic, clients were usually able to adhere to the instalment plan, especially if payments were made through Centrepay.

Clients also had the right to go to court, and in some cases this was a better option. At court, the magistrate is obliged to take all the person's circumstances into account under the Sentencing Act, 1991. Because of that, all the client's circumstances (including financial hardship) become relevant. Magistrates sometimes dismissed the fines or reduced the amounts of the fines on the basis that the client just could not afford to pay.

#### *The Infringements Act: restrictions on applying for revocation of enforcement orders*

The Infringements Act does not permit the registrar to revoke an enforcement order if an application for revocation has already been refused. Further, the Infringements Act does not permit an application to refer the registrar's refusal to revoke an enforcement order to court more than three months after the date of notice of that refusal. This means that clients who have previously sought revocation of an enforcement order without the benefit of legal advice or without any understanding of the system and have had that revocation refused, have no avenue of bringing their case before the court. Sometimes, the client's contact with Civic Compliance is treated as an application for revocation, even though the client is unaware of it being so treated. These situations can lead to real injustice.

Client A's situation is illustrative of this. He had a fine for which he could nominate the responsible driver, as Client A himself was overseas at the time of the offence. He went to Civic Compliance and sought to nominate the driver, and as the fine by then had passed from the infringement stage to the enforcement stage, the application to nominate the driver was treated by Civic Compliance as an application for revocation. The application was refused by the registrar and a notice sent to Client A, who was unaware of the significance of the notice. Some time later, Client A sought assistance from the African Legal Service with a number of fines, including this particular fine. The

HPLC lawyer obtained clear evidence that Client A could not have committed the offence as he was overseas at the time (an extract from the records held by the Department of Immigration and Citizenship). As the HPLC lawyer did not know that this particular fine had already been the subject of an unsuccessful application for revocation, this fine was included in the application for revocation. The Infringements Court informed the HPLC lawyer that revocation could not be sought for this fine, as it had already been refused. It could not be referred to court, as it was more than three months since the refusal. The HPLC lawyer then wrote to the agency explaining the situation, attaching the proof that Client A could not have committed the offence and stating who was responsible, but the agency merely referred the request to the Infringements Court. The Infringements Court then sent the HPLC lawyer a form letter stating that if Client A wanted to challenge the fine he could apply for revocation (which, of course he could not). Client A is a Somali immigrant with poor English skills, and he is not good at dealing with Australian regulatory systems. He was not aware that he was applying for revocation, nor of the consequences of the revocation being refused. In circumstances where it is clear that he could not have committed the offence, this is a patently unjust outcome.

To avoid such injustices, the Infringements Act should be amended to allow the registrar to consider more than one application for revocation.

### *The Infringements Court: refusal to consolidate cases*

If clients with special circumstances apply to the Infringements Court and have their enforcement orders successfully revoked, then their applications to revoke the original infringements are consolidated and heard in one hearing in the Special Circumstances List. As noted above, few African Legal Service clients fit into the legislated definition of “special circumstances”. If people do not have special circumstances, then it is very rare for all fines to be listed for one hearing at one venue. Usually, each agency has particular time slots for their matters at the Magistrates’ Court. For example, if a fine has been issued by Maribyrnong Council, the appropriate venue is Sunshine. But if a client has infringements issued by the police, the City of Maribyrnong and the Traffic Camera Office, he or she may have three or more different court hearings, often at different venues (e.g. Melbourne Magistrates’ Court, Broadmeadows Magistrates’ Court and Sunshine Magistrates’ Court). The result is that one client with several fines might be given multiple hearings at multiple courts across Melbourne. The experience of Mallesons lawyers was that the prosecuting agency would not bother to appear in approximately one-third of cases.

## **Observations**

### *General observations*

- African clients attending the Service had a broad range of infringements, relating to these issues:
  - Driving offences. These included on-the-spot fines and automatically issued fines for offences captured by speed cameras and red light cameras.
  - CityLink offences (for driving on CityLink without a valid e-TAG).
  - Parking offences (issued by local councils).
  - On-the-spot fines issued by the Department of Infrastructure for offences relating to public transport.
  - On-the-spot fines issued by police for non-driving matters, such as littering.
  - Court-ordered fines relating to driving without a licence, careless driving etc.
- African clients have difficulty navigating the infringements system without assistance from a lawyer, and are usually not successful in:
  - seeking to enter into sustainable instalment plans;
  - nominating other drivers for driving-related infringements; or
  - seeking revocation of fines, for example on the basis of special circumstances.
- Advocates from the Public Interest Law Clearing House HPLC encountered barriers to their work in seeking nomination, revocation or reduction of fines, including the following:
  - Some agencies were often not willing to withdraw fines on initial application by a lawyer. Some agencies became more willing to withdraw fines on the day of a court hearing.
  - Infringements registrars are not usually willing to exercise their discretion to revoke driving-related infringements on the basis that the person nominates another driver. This is particularly the case if the infringement was issued more than 12 months from the time of the application for revocation.
  - The Infringements Act does not permit the registrar to revoke an enforcement order if an application for revocation has already been refused. Further, the Infringements Act does not permit an application to refer the registrar’s refusal to revoke an enforcement order to court more than three months after the date of notice of that refusal. This means that clients who have previously sought revocation of

an enforcement order without the benefit of legal advice or without any understanding of the system and who have had that revocation refused have no avenue for bringing their case before the court.

- In the current system it is difficult to get the hearings for several fines consolidated so that a lawyer and client only need to attend one court on one day.
- If a lawyer is attending a hearing and seeks to have all aspects of the matter heard (i.e. whether to revoke the enforcement order *and* determine the underlying offence) on the same day, then the lawyer must inform the agency. This can take substantial correspondence. Even then, the court will sometimes adjourn the underlying offence to a different date. Where the basis for revocation is similar to the basis for disposing of the underlying offences, particularly if the client is pleading guilty or can nominate the driver, this is especially inefficient.

#### *CityLink-related issues*

- Taxi drivers incurred large numbers of fines for travelling on CityLink, usually because they were travelling on CityLink without enough credit on their e-TAG.
- In the event that a taxi travels on CityLink without sufficient credit, a late-administration notice (a \$10 fine plus the cost of the toll) is sent to the owner of the taxi (not the owner of the e-Tag in use at the time).
  - The owner of the taxi often fails to nominate the driver of the taxi at this stage. CityLink does not send the owner information about the nomination process. To nominate another person, the taxi owner must go to the CityLink website, print off a form and return it to CityLink.
  - The owner is more likely to nominate the driver when the fine is referred to Victoria Police (and the fine increases to \$100). Taxi drivers can incur thousands of dollars worth of fines very quickly.
  - If the nomination is incorrect, the taxi driver may have difficulty disputing it because they cannot access the log books that record who was driving the taxi at what time.

## Debts

*Ms M is a single mother whose sole source of income is Centrelink benefits. She came to the Service with a number of unpaid utility bills, several thousand dollars of infringements, letters of demand from two different insurance companies for damage to other vehicles arising from two different accidents, and details of a \$15,000 car loan from the Commonwealth Bank. Her monthly payments on debt, rent and essentials exceeded her income by several hundred dollars. She had recently taken a loan out from GE Finance to try and cover her rent. She had missed some repayments on that loan and was paying interest rates of more than 30%.*

*Ms G came to the Service seeking help in dealing with her insurer because her brand-new car had been stolen. We advised her that her insurance policy had lapsed because she did not have enough money in her account at the times that the insurer sought to make direct debits from her account. The client returned a few days later with a notice of repossession, which she could not read or understand. It turned out that she had failed to make any payments on her car loan since she had bought the car, and it had been repossessed.*

*We had considerable difficulty representing the client because, although the car was in her name, the loan was in her partner's name. The loan was for \$25,000. Neither of them spoke English well, and neither could explain why the loan was only in his name, not in hers. An interpreter had not been used to explain the terms of the loan at the time they bought the car. Our client's partner refused to sign an authority for us to act on his behalf. He did not understand why the loan was in his name. He did not want to arrange to pay the missed payments so that he could get the car back. He did not understand that if the car was sold (for an estimated \$10,000), he would be liable for any shortfall in the amount owed.*

We saw several clients who attended the Service because they were struggling to deal with debt and financial issues<sup>8</sup>. The largest number of clients attended the Service seeking assistance with financial issues and debts arising from utilities contracts for essential services (gas and electricity). Other clients attended the African Legal Service seeking assistance with personal loans. Many clients had a mix of debts arising from bills for utilities, infringements, personal loans and vehicle financing. The most appropriate course of action in these cases was often to refer a client to a financial counsellor.

### Debt-utilities

Clients attended the African Legal Service with a variety of issues related to utilities, including the following:

- Very large gas or electricity bills (i.e. more than \$1000).
- More than one utility bill. For example, clients might bring two electricity bills to the Service, from different providers or from the same provider.
- Utility bills addressed to a previous tenant of the home.
- Utility bills addressed "to the occupant".
- Utility bills addressed to a family member who is no longer living in the residence.

The consequences of these issues include:

- confusion; and
- an inability or refusal to pay bills, resulting in the disconnection of the utility service, increased costs and negative credit ratings

These consequences are exacerbated by the fact that clients were generally unable to contact their utility company because utility companies are only accessible by telephone. African clients did not have the language skills, the confidence, or the understanding of the system to access the utility company and explain that they were experiencing financial hardship. They did not have the skills to apply for a utility relief grant. Clients were not aware of the existence of the Electricity and Water Ombudsman of Victoria, or of its role in resolving disputes with utility companies. If they were aware of the ombudsman's office, they may not have been able to contact it by phone.

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<sup>8</sup> In the last year, the financial counsellor at Footscray CLC has conducted targeted outreach programs to Sudanese women. He has seen many more clients with similar issues to those outlined below. This section has been prepared with the benefit of his observations, which are based on financial counselling casework conducted with the African community. The work of Footscray's financial counsellors on utilities has also been documented in a report entitled *The African Consumer Experience of the Contestable Energy Market in the West of Melbourne*, which is available from the website of the Financial and Consumer Rights Council, at [http://www.fcrc.org.au/html/s02\\_article/article\\_view.asp?article\\_id=408&nav\\_cat\\_id=-1&nav\\_top\\_id=-1](http://www.fcrc.org.au/html/s02_article/article_view.asp?article_id=408&nav_cat_id=-1&nav_top_id=-1).

There are several causes of clients' issues with utility companies, outlined below. These causes often overlap. For example, a client might receive a very large bill for gas, addressed to somebody not living at the house, and be unable to seek utility relief because the bill was not in their name.

### *Overheating*

The financial counsellors at the Footscray Community Legal Centre believe that the root cause of many high utilities bills is that new arrivals are given insufficient information by settlement workers when they arrive in Australia. Clients have reported that they are shown how to turn the heating on, but are not shown how to use a thermostat or turn heating off. Clients have never learned how to read a thermometer. As a result, they may keep the heating on high throughout winter, while also opening windows to cool the house down. The result is very high heating bills.

Some clients with high electricity bills live in public housing that uses electricity for its facilities. Heating by electric heaters is more expensive than by gas; the high cost is exaggerated when people live in run-down public housing with gaps, draughts and poor insulation.

### *Door-to-door sales*

Some of the issues relating to clients receiving more than one bill for the same utility can be traced back to door-to-door sales. Lawyers and financial counsellors heard many accounts of encounters with door-to-door marketers:

- Door-to-door marketers provided information to people who could not speak or understand English. On more than one occasion, marketers provided information to people using their children as interpreters.
- A door-to-door marketer examined a person's bill and promised they would get cheaper services if they changed their utility company.
- The person was not informed that they might have to pay termination fees to the existing provider.
- The person agrees to change providers; a few weeks later the old provider sends door-to-door marketers to the area, and the person might agree to change back to the old provider

Sometimes confusion resulted if a person transferred only one utility to a new provider. For example, gas and electricity might be provided by AGL. Only electricity might be changed over to Tru Energy. The person would then receive gas bills from AGL, and electricity bills from Tru. If the person is not literate (and looks only at the logo to identify bills), they might believe they only have to pay the Tru bills, and stop paying the AGL bills.

More than one client attended the Service because one or more utility providers had made an error, and the client received bills from two utility companies relating to the same time period.

### *Confusion over connection of utilities*

Some clients told the financial counsellor that when they arrived in Australia the settlement worker had arranged for the utilities to be connected to their new house. They received bills addressed "to the occupier" and did not understand that they had a responsibility to pay that bill, because it was not in their name.

If people received two utility bills from the same provider (e.g. gas and electricity were both provided by AGL), they might pay only one bill—the first one to arrive. For example, one client always paid his gas bill to AGL, because it arrived before the electricity bill. When he got the electricity bill he ignored it because he had already paid AGL and didn't realise the bills were for different services. As a result, he accrued a very large electricity bill. AGL refused to allow an instalment payment because it stated that the client had demonstrated his capacity to pay by always paying the gas bill on time.

### *Failure to disconnect utilities*

Clients told the financial counsellor that on arrival in Australia they were not given information—or did not remember information—about the need to disconnect utilities.

So, when people move house for the first time (often at the end of a 12-month lease, when they are no longer eligible for assistance from a settlement worker), they may not disconnect utilities. This meant that bills keep going to the old address in the old tenant's name. The new tenants may not realise their responsibility to pay and may eventually have their utilities disconnected. And because the new tenants are not on the bill, they cannot talk to the utilities company about the account and, for example, cannot apply for a utility relief grant or an instalment payment. If the new tenants do not pay, the negative credit report is in the old tenant's name.

The financial counsellor has observed that the same problem exists when the bill is in the name of a husband, who then leaves the family home to return to Africa for months or years at a time. The wife cannot seek hardship payments or utility relief because the utility is not in her name.

## Observations

- African clients often have relatively high utilities bills because of the following:  
They may not understand the relationship between high consumption (e.g. gas or electricity for heating) and high bills.
  - They may not know how to read a thermometer or control a thermostat.
  - They may live in run-down, uninsulated housing.
  - They may live in public housing where heating is run by electricity, and is thus more expensive.
- African clients experience confusion about their contractual relationships with, and liabilities to, utility companies, because of the following:
  - They may have been charged termination costs by a previous provider as a result of entering into a contract with a new provider via a door-to-door marketing approach.
  - As a result of door-to-door marketing campaigns, they become confused about which company is the current provider of each utility.
- African clients encounter problems when seeking to resolve their utilities problems because of the following:
  - They have difficulty contacting utilities companies by phone, and particular difficulties contacting the appropriate department.
  - They are not aware of the role of the Electricity and Water Ombudsman of Victoria.
  - The contract with the relevant provider may be in another person's name. The other person may not live in the property, and may not even be known to the resident of the property.

## Debts-other

Clients had a variety of other debts, including the following:

- Mobile phone bills arising from long-term phone contracts. In some cases, clients had not understood at the time they signed the contract that their monthly bill might be more than the monthly minimum payment. If clients had signed a contract, then obviously they still had to pay the bill every month, even if they no longer used the phone.
- Bills for Foxtel and broadband internet connections. In some cases a child under 18 had sought to enter into a contract with a provider (i.e. the contract was invalid), but parents believed they had an obligation to pay the bills.
- Personal loans to buy a car, and vehicle finance loans. Many new arrivals from Africa perceive a car to be an essential settlement need, to help them get housing and employment. Clients often did not understand the consequences of failing to repay a secured car loan: that the car could be repossessed, and they could be liable for any debt outstanding after the car was sold.
- Large vehicle finance loans, which included debts rolled over from other personal loans.
- Debts to Centrelink. Many people who depended on Centrelink benefits received a reduced amount every fortnight over a long period of time, because they were paying off a debt owed to Centrelink. This debt might have been accrued because people failed to disclose earnings from a part-time or casual job, or failed to disclose a change in circumstances (e.g. reuniting with a spouse, moving in with a de facto partner, or having a dependent child move out of the family home). In the focus groups conducted by CAAWI, several women from different ethnic backgrounds said that their husbands would not give them any allowance; the women were entirely dependent on Centrelink to meet all the household expenses. As a result, the women were reluctant to report their husbands' income to Centrelink because their own income would be reduced. In some cases the debt arose from the fact that a client had been breached (for example, for failing to attend a job interview), but asked for continuation of his or her benefits on the grounds that he or she had no other financial means to support a family and pay rent.
- Debts owed to insurers. As discussed in the section on insurance above, if people have an accident while driving, and they do not have third-party property insurance, they can be left with substantial debts to insurers.
- Infringements (as discussed in the previous section).

As a result of these debts, many clients lived beyond their means and were juggling financial crises all the time. They often paid whoever shouted the loudest, and did not have enough money to pay for costs such as rent, food, and bills for essential services.

There are several possible reasons for clients' difficulties in managing their debt:

- The basic cost of living is high in Melbourne. There is a shortage of public housing and many new arrivals have been placed in private rental accommodation. This can prove unaffordable for people who depend on Centrelink benefits. The cost of rent constituted more than 50% of total income for some clients.

- Some clients were not working and were not eligible for Centrelink benefits. This included:
  - People who arrived in Australia on a spouse visa (and are ineligible for benefits for two years). Some families got by on the Centrelink benefits income of one spouse. If the spouses separated within two years, the non-resident spouse faced destitution, homelessness and deportation.
  - People who are New Zealand citizens, and who arrived after 26 February 2001. There is a substantial population of refugees from Somalia who were granted asylum in New Zealand and became citizens, and then moved to Australia where there is a larger Somali community. Many of these Somali New Zealanders are single women with children. If they cannot find work, they may subsist on loans from the community and family assistance payments. Many of these families are also experiencing homelessness, in that they are staying for an extended time with family and community members.
- Our clients borrowed beyond their means. This can be attributed to a lack of financial acumen and budgeting skills, and poor skills in reading, writing, and/or speaking English. Women in the CAAWI focus groups said that young people were particularly likely to take on a large debt to buy a car, and were at risk of having their car repossessed.
- Lenders lent more than clients could afford to repay. Lenders failed to ensure that vulnerable clients understood what they were signing up for, and were willing to make loans that were unconscionable. Lenders also made inappropriate loans to people on the basis of income from casual work.
- CAAWI focus groups reported that some people in the community had agreed to be guarantors for friends or family in the community without understanding that they would become eligible to repay money in the event of default. Two women in this situation had negotiated an instalment plan with the lender. They had not seen a financial counsellor for assistance.
- People were struggling to deal with numerous debts, and created a debt vortex by borrowing money to pay off other loans. If people miss one or more payments on some loans, interest rates rise to very high levels.
- Many African clients have financial priorities that are different from those of other low-income groups in Australia. Our clients had relatives who were refugees and were living overseas in refugee camps. They felt an obligation to send money overseas to support family members. In some cases, they provided the only source of income to family members. The need to send money home has existed for many generations of migrants. However, today the means of communication are so much improved that people stay in touch with relatives by phone and by email, and are under intense and immediate pressure to continue to supply money to help relatives deal with everyday needs and with financial crises. For example, one client gave up study to take on full-time work because her father was sick and she needed to send money home to Sudan. A settlement agency told us of an employee who asked for more hours of work, because there had been floods in Sudan and his family had lost its cattle and were deprived of income. The link between Africa and Australia is powerful and immediate.
- Some clients borrow money from friends, family and their community. People often borrowed money to go back to Africa for a holiday, or to get married. The pressure to repay community loans can be intense, and so repaying community loans becomes the financial priority.
- Some people are already in debt when they arrive in Australia. If people come to Australia on a special humanitarian visa, they must pay for the cost of their own airfare. This money is usually raised by the family in Australia, either via a bank loan, a credit card or a community loan. Our clients have told us that when they arrive in Australia they are expected to pay back the cost of the airfare to the friend or family member who acted as their “proposer” to bring them to Australia.

The CAAWI focus groups revealed several other debt-related issues that we did not pick up through casework. One participant had been taken advantage of by her husband when they bought a house together. The woman provided half of the deposit. She could not read and write English, but believed she had co-signed the documents and was the co-owner of the house. When the marriage broke down several years later, she discovered she had been tricked and that the house was actually in her husband’s name only. She sought legal help from a private solicitor to get a caveat placed on the house.

There were also several implications that flowed from community lending (known as *uqub* in Eritrean, Ethiopian and Sudanese communities, and as *hagbad* or *ayuto* within the Somali community). A lending system is set up so that 10 or 15 people who trust each other agree to put a certain amount of money into a fund every month. The amount people put in can vary—in some groups everyone contributes \$50; in others, where all the participants are working, everyone contributes \$500. The funds are operated on a cash-only basis: bank accounts are not used for the fund. Each month, the accumulated funds are given to one person in the group. In some funds, the recipient is chosen by ballot; in others, the group agrees to give the money to the neediest person. If any person defaults and does not make the required contribution, they are excised from the group.

People commonly use *uqub* money to make a major purchase, such as a deposit for a house. They also use it to pay for family airfares from Africa, or for holidays back to Africa. We saw one client who intended to use money from *uqub* to pay a \$2000 credit card debt.

Some families also contribute money into a fund to send money overseas. For example, one participant said she and her family collect \$1500 per month, and send it to family who remain in Somalia.

### Observations

- The majority of clients who came to the African Legal Service for debt reasons had more than one debt, including one or more of the following:
  - An unpaid mobile phone bill.
  - An unpaid bill for an essential service, such as gas or electricity.
  - An unpaid bill for a non-essential service, such as Foxtel or an internet provider.
  - A personal bank loan.
  - A credit card debt.
  - A vehicle finance loan.
  - A debt to Centrelink.
  - A debt to an insurer, arising from a car accident in which the person was at fault and uninsured.
  - A personal debt to a friend or family member. This often arose from borrowing money to pay for a special humanitarian entrant's air ticket to Australia.
  - A debt to a landlord arising from late payment of rent.
  - One or more unpaid infringements. Some clients also had some court-ordered debts, for example, for driving unlicensed.
- These debts arose because:
  - People do not have sufficient income to meet their needs. People who do receive an income, from Centrelink or paid work, may live beyond their means and accumulate debt. Asylum seekers and newly arrived spouses may not receive any income from Centrelink or from work. New Zealand citizens do not receive Centrelink benefits. These people survive by going into debt.
  - Lenders have been willing to make loans to people who receive their only income from Centrelink, and to people in temporary or short-term employment.
  - People have not understood the true costs of a loan—including fees and interest.
  - People lack the skills to budget for loan repayments. In particular, people have taken on long-term loan commitments on the basis of short-term employment.
  - People have an ongoing obligation to send money overseas to support family members.
- Consequences of high levels of debt include the following:
  - People juggling financial crises all the time.
  - People prioritising sending money to support family overseas. They may also make payments to persistent debt collectors. They do not have enough money to pay for essential costs, such as rent, food and bills for essential services.
  - As a result of inability to make payments, people may:
    - have their cars repossessed, and be left liable to pay outstanding debts;
    - fall behind in rent payments and be threatened with eviction; or
    - accrue high levels of personal debt, to the extent that they feel compelled to bankrupt; we have seen several judgement-proof unemployed clients who have decided to declare themselves bankrupt.

## Housing

*Ms X is a young mother. When she arrived in Australia, she went onto the priority list for public housing. She got public housing after being on the waiting list for several years.*

*Ms X didn't like the housing she was in. It was in run-down condition, and very damp. She decided to leave. She sought private rental.*

*Ms X found a two-bedroom apartment. At first, she lived with her partner. But because her partner was working, her Centrelink payments were reduced. She could not contribute any money to the household. Her partner moved out.*

*Ms X is still on Centrelink benefits. She cannot find work. Rent takes more than 50% of her income. She would like to move to a smaller apartment, but she is worried that she might not be able to find another place to live. She is constantly in debt. She wants to know how she can get public housing again.*

*Mrs A lives in private rental accommodation with her four children, all of whom are under the age of 11. When she sought legal assistance she had been without hot water in her house for three months. She had repeatedly asked her landlord to make repairs, and he had failed to do so. Mrs A speaks very little English and did not know what she could do. For three months, she had to boil the kettle in order to wash herself and her children. In addition, only one power point in the house is functioning.*

We saw several clients, and received many more queries, regarding housing. Clients came to the African Legal Service seeking assistance with a variety of housing issues, including the following:

- Homelessness and support in finding accommodation.
- Appealing decisions (e.g. that the client did not qualify for emergency housing) made by the Office of Housing.
- Questions about a “notice to vacate” a property.
- Questions about the landlord’s right to sell a property, and a landlord’s right to arrange inspections of the property for prospective buyers.
- Questions about a landlord’s responsibility to repair a property, and the tenant’s ability to withhold rent if the property is not repaired.

Unfortunately, many problems that people wanted help with were not strictly *legal* problems. They were *housing* problems arising from a tight rental market and lack of public housing. We saw several clients who simply wanted our help finding them a property. We received many more phone calls and requests for information about how to find a rental property. We generally referred people to a housing service or a settlement agency for assistance and support.

The legal questions relating to housing spring from unfamiliarity with the procedures and laws around renting residential property. This ignorance leads to people struggling to maintain private rental. For example:

- Most people who have just arrived in Australia are not aware of the need to complete a detailed condition report when they enter into a lease, or may not be able to do so because of poor writing skills. If people do not complete a condition report, they are vulnerable to landlords who may seek to recover their rental bond to pay for pre-existing damage.
- Some people are reluctant to make complaints to the landlord about the rental property, because they fear losing the property; others make complaints but do not follow up if the landlord does not act. Some clients had withheld rent because they believed they had a right to do so until repairs were made.
- Because of the difficulties with debt and budgeting described in the section on debt, some clients fail to pay rent on time. They immediately become vulnerable to receiving a notice to vacate.
- Because of the difficulty of renting, some people have agreed to subletting arrangements. These leave the tenant vulnerable to above-market rents charged by the subletter, tenancies that can be terminated without notice, and substandard living conditions that the subletter fears to address because they don't want to lose their home.

Many clients had difficulty accessing services for assistance with finding housing. Some clients were unable to get assistance from housing agencies because those agencies are stretched to breaking point.

Some clients wanted assistance applying for public housing. In two cases, clients had lived in public housing and had left because the housing was in poor condition. At the time they left, they did not realise that they would be moved to the bottom of the list of public housing applicants.

Clients also sought help from settlement services providers. IHSS providers have funding to provide people with assistance to find housing within 12 months after the person arrives in Australia. But after the person has been in Australia for 12 months, they are no longer eligible for assistance under the IHSS funding and must seek

help from agencies that receive SGP funding. SGP-funded organisations have said that they are struggling to meet the need for housing support to help people find housing. Part of the problem is that people are eligible to receive intensive help to find their first house in Australia, but do not have the skills to find another home if their lease ends or is ended 12 months or more later, when they are eligible for less assistance from settlement workers. Sometimes people do not have the skills to maintain their first private rental property and face eviction because of late payment of rent or failure to keep the property in good condition.

People also had difficulty accessing legal services for assistance at Victorian Civil and Administrative Tribunal (VCAT) hearings. Most community legal centres (including the Footscray CLC) do not have a lot of expertise in representing clients in housing and tenancy matters. The Footscray CLC refers clients to the Tenants Union or Consumer Affairs, and does not take on tenancy cases that require representation. African clients had difficulty seeking help at the Tenants Union because it is located on the other side of the city (in Fitzroy).

We believe that some people may not be attending VCAT proceedings at all, because they believe they have no chance of success. Other clients may not ever receive notice of VCAT proceedings, or may not understand a written notice. For example, one client did not know about a VCAT hearing in which his landlord sought to recover the total of the bond, because he had not provided a forwarding address. By the time he sought help at the Footscray CLC, the landlord had successfully recovered the bond and the client was out of time to appeal.

## **Observations**

- There is a city-wide shortage of rental housing in Melbourne and stiff competition for cheap housing. As a result, people are: moving further away from Footscray, with its support agencies, community networks, transport, shops and amenities; are settling for situations that are not ideal (such as insecure subletting arrangements); and are reluctant to make complaints to their landlords.
- New arrivals receive intensive support to find their first rental house when they arrive in Melbourne. However, they may not have a good understanding of their rights and responsibilities as a tenant, including the need to complete a condition report, maintain the condition of the property (including the garden), and pay rent in advance and on time.
- If people do encounter problems with their tenancy, they may have difficulty accessing expert legal services for help.
- After people have been in Australia for 12 months, they are no longer eligible for housing support as part of the IHSS program. As a result, they may find it difficult to get support to find another house if their first lease has expired.
- People had difficulty accessing mainstream housing services for assistance with finding accommodation.

## Administrative Law

*Mr B is approximately 35 years old. However, his travel document states that he is 55 years old. He wrote to the Department of Immigration and Citizenship (DIAC) to ask them to change the details on his travel document. He provided a copy of his birth certificate. The Department considered his application and decided that the birth certificate had been altered and did not constitute sufficient evidence of Mr B's date of birth. The Department wrote to inform Mr B of the decision. Unfortunately, by the time the letter arrived Mr B had moved house. He did not provide a forwarding address. Months later, Mr B went to the Department to ask about the decision. They provided him with a copy. Mr B does not read English at all, so he asked a friend in his community who could read to translate it for him. The friend read the letter and told him his application to the DIAC had been successful. Our client was delighted and took no further action for several months. In fact the letter informed the client that his application had been unsuccessful. Mr B was not sure what he could do next to try and change the official record of his date of birth.*

*Mr M is on Newstart allowance. He has been breached for failing to attend an appointment. He says he had permission to attend a training course instead. His payments have been stopped for eight weeks. Mr M has four young children. The loss of income means that he cannot pay rent or afford food. He has been referred to an agency in Cranbourne (on the other side of Melbourne) for support.*

*Ms J was married in Sudan. Her husband was murdered during the war in Sudan. After she came to Australia, she decided to remarry. She was married in a religious ceremony. When she and her new husband applied to the Registry of Births, Deaths and Marriages, the registry rejected their application to register the marriage. The registry staff informed them that they could not register the marriage until Ms J supplied the registry with a copy of the death certificate for her first husband. Ms J explained that her husband was killed in the context of a civil war in Sudan. He was killed in front of her, and she could bear witness to his death. The registry maintained that it could not accept the statement, and that it required a death certificate. Ms J sought the help of a lawyer. Under threat of imminent legal action, the registry agreed to register the marriage.*

We provided assistance to several clients who needed help in dealing with administrative agencies, including:

- cases in which people sought assistance with an application to change a name through the Registry of Births, Deaths and Marriages;
- cases in which people sought assistance to change their date of birth or apply for citizenship through DIAC; and
- cases in which people sought review of decisions made by Centrelink.

These legal issues obviously involve very different types of agencies, and so the consequences range widely. The less severe consequences were that a person's official records indicated an incorrect name; more seriously, an incorrect date of birth was recorded. In one case involving a teenager, the error led to a transport infringement (he was 17 but his travel documents indicated he was 14; the transport officials believed he was lying about his identity). More severe consequences ranged from an inability to apply for citizenship to complete deprivation of income as a result of a Centrelink breach.

The most common causes of the identity cases (incorrect name and birth date) were related to the person's experience as a refugee. Most clients did not have any original personal documents from Africa, because any documents they had were left behind when they left their homes. Any identity documents they did have were from refugee camps. In some cases where a person was not literate, someone else (a UN official, relative or friend) had filled in the application forms for refugee status and had mistakenly or deliberately provided false information. Most of our clients were uncertain about their own date of birth (hence most clients gave their date of birth as the 1 January.) One client told us he had lied about his date of birth when he left Sudan in order to evade conscription.

The Centrelink cases arose from the person's failure to attend appointments due to illness, illness of children, confusion about what to attend when two activities were scheduled at the same time, difficulty communicating with Centrelink staff (and misunderstanding information provided by Centrelink staff over the phone), and poor record-keeping by Centrelink.

All the cases involving administrative agencies were characterised by an individual's struggle to navigate a complex agency, complete complex forms, understand correspondence, and provide a large number of documents. For some people, the biggest hurdle was understanding letters that the agency had sent. If a client cannot read, he or she will obviously be unable to understand a letter. Sometimes even a person who can read would be unable to make sense of the complex bureaucratic language used in standard letters.

For other clients, the biggest hurdle was providing sufficient identification documents and proof of address to the agency. Many people did not have passports, drivers' licences or birth certificates to provide as proof of

identification. Most people did have copies of their travel document, which was not listed on forms as an acceptable form of identification. Proof of address was difficult for clients who were subletting, or who were living in a group home and did not have their name on the lease. Proof of address can also be provided by showing a utilities bill, but as noted in the section on debt above, many clients received bills that were not in their own names.

Identification documents also posed a problem for clients who were applying to an administrative agency seeking to change personal details. In two applications to DIAC seeking to change a date of birth, the evidence the client supplied (an original birth certificate) was deemed unreliable, and the applications were refused.

## **Observations**

- New arrivals struggle to deal with large government agencies, such as DIAC, Centrelink, and the Registry of Births, Deaths, and Marriages.
- People are often unable to read and understand correspondence from these agencies, and are not provided with ready access to interpreters.
- People are not aware of their right to appeal Centrelink decisions. There are very few solicitors who have expertise in welfare law.
- Agencies set a high bar for required documentation, which people from Africa find difficult to meet. For example, birth certificates were rejected as unreliable and death certificates were required as proof of death of a person overseas, where that death had occurred in the context of war.

## Family Law

*Mrs A migrated to Australia with her husband. They separated several years ago. She wants to divorce him so that she can marry her partner, with whom she has a child. Her partner is currently overseas in a refugee camp.*

*Mrs A does not have a copy of the marriage certificate. She says she has no idea where her husband is.*

We assisted several clients at the African Legal Service with applications for divorce. We referred some clients (those who were eligible and were comfortable with the referral process) to Victoria Legal Aid for assistance.

Clients knew very little about the divorce process. Focus groups conducted by CAAWI confirmed that many African women were ignorant of the law regarding divorce and separation. According to CAAWI, women were not aware of the difference between a legal divorce and a religious one. Some Muslim women believed they had been divorced because their husband had performed a religious divorce by saying “I divorce you” three times. So some people in the community may believe they are divorced and act accordingly, when in fact they have only completed a religious divorce. According to CAAWI focus groups, women did not understand that they can leave a spouse and initiate a divorce.

Our own experience with clients was that:

- They did not understand the concept of a no-fault divorce, and that they did not need to show wrongdoing by another party. People did not understand that a divorce could be initiated by one person, and that the consent of the other spouse was not required.
- They were not aware that they had to be separated for 12 months before they could apply for a divorce.
- They did not realise that an application for divorce could take several months to process. Some clients had planned to go overseas and marry again, without leaving enough time to finalise their divorce. We were told by one client that her spouse had already remarried overseas, before either spouse had even applied for a divorce.
- They did not understand that divorce is separate from child contact proceedings. They believed that a divorce proceeding could result in them losing contact with their children.
- They feared that divorce would result in deportation. For spouses who had been in Australia for less than two years, deportation was indeed a possible consequence.

There were several common procedural issues that African clients experienced with divorce:

1. In the majority of cases, the certificate of marriage could not be located and the client had to make an affidavit explaining why he or she could not provide the marriage certificate.
2. Many clients did not know the location of their spouse, and so had to make an application to dispense with service.
3. Because of common misunderstandings of divorce proceedings, some people had difficulty getting their spouses to sign an acknowledgement of service. Some spouses refused to sign because they did not want to consent to the divorce.

It is worth noting that the majority of African clients were not capable of completing their own application for a divorce, because of the procedural issues mentioned above and because of literacy and language issues. A few clients had completed the form correctly, but had signed the form without having the declaration witnessed by a lawyer. African clients also tended to need more assistance than non-African clients to be guided through the service process.

There are several possible consequences of the issues outlined above. One of the most serious consequences arises from the possibility that people may be remarrying overseas before they are divorced in Australia. If they then seek to apply to bring the new spouse to Australia on a spouse visa, they are unlikely to be successful.

Ignorance of the divorce process may also lead to people remaining in relationships purely because they believe they cannot initiate a divorce, or that their spouse would not “consent” to a divorce. The CAAWI focus groups revealed that in the event of disagreements with the spouse, the woman was likely to seek help from older women in the community, who might counsel them on the advantages of remaining in the marriage. Some Muslim women sought mediation from the imam, who would make one attempt to assist couples reach an amicable agreement on divorce, division of assets, and child contact. If this mediation failed, the imam would refer the couple to a lawyer.

Many African clients also sought assistance with child contact matters. In most respects, the issues arising from child contact matters were similar to those experienced by Australian clients. Problems with reaching agreement on contact were exacerbated by the fact that some families had been separated for a long time—for example, where one partner had been interstate or overseas for an extended period. Negotiations on contact

were also made more difficult when clients had very firm ideas about their rights to contact as a result of cultural differences, for example, the fact that in Sudan the father usually has primary care and responsibility of children after they turn 12.

## **Observations**

- Recently arrived African people do not have a good understanding of the following issues:
  - The concept of no-fault divorce that can be initiated by either spouse.
  - Civil divorce as a separate procedure to religious divorce.
  - The need for a 12-month separation before divorce proceedings.
  - That divorce proceedings take three months to finalise.
- African clients experienced several common procedural issues with their divorces, relating to:
  - lack of a marriage certificate;
  - lack of knowledge of the spouse's whereabouts; and
  - difficulty getting the spouse to acknowledge service.

## Intervention Orders

*Ms S is 14 years old, and arrived as a refugee in Australia when she was 12. A few months ago her dad got angry with her for talking so much on her mobile phone. He yelled at her and snatched the phone away. Ms S phoned the police and complained about her father. Ms S said the police took her father to court, and warned him not to hit his children. Mr S does not speak any English.*

*Ms S attended the Footscray CLC several months after the incident. Her father had received several phone calls which he did not understand, and which Ms S thought might be from the Department of Community Services. Ms S had attended the police station and asked the police to stop the matter. The police told her she could do nothing because the case was already in the court system.*

*Mr D was involved in a domestic argument with his wife, in the course of which he assaulted her. His wife called the police, and the police sought an intervention order (IVO) against Mr D on her behalf. At the intervention order court, Mr D made an undertaking in which he promised not to fight with his wife or harm her in any way.*

*Mr D was subsequently charged with assault. He sought legal advice because at the assault hearing the magistrate had ordered him to perform one year of community work. Mr D believed he had already been punished for assaulting his wife, in that he had appeared before a judge and had promised not to fight with his wife. He did not understand the distinction between the IVO proceeding and the criminal proceedings for assault.*

An intervention order is a court order that seeks to ensure the safety of the applicant for the order by placing limits on the behaviour of the respondent to the order. A court will make an intervention order in circumstances involving family violence, violence between neighbours or friends, threats, property damage, harassment, and stalking. Intervention orders may restrict a person's ability to approach or communicate with the applicant for the intervention order. The Footscray CLC provides a duty lawyer service at the Sunshine Magistrates' Court to assist people who are applying for or named in an intervention order. African people have sought assistance at that duty lawyer service. However, this section is based only on those clients who have sought information or advice from the legal centre through the African Legal Service. Those clients sought assistance on the following issues:

- Information about the intervention order process in order that they might apply for intervention orders themselves.
- Information about responding to intervention orders.
- Information about intervention orders that police had applied for on their behalf, or in which they were named as a respondent.
- In some cases, clients had arrived in Australia on a spouse visa, and the marriage had broken down within two years of the person arriving in the country; these clients sought an intervention order in order to avoid deportation from Australia.

Common sources of confusion about intervention orders include the following:

- A belief that domestic arguments are a private matter that could and should be resolved by family members and community elders, and a corresponding reluctance to seek intervention orders.
- A consequent lack of understanding of police powers to seek an intervention order on a person's behalf. We were told by CAAWI staff of an African woman who called police during a fight with her husband in the hope that police would remove him from the home until he calmed down and sobered up. She was distraught when police sought an intervention order that required him to stay away from the family home.
- Lack of understanding about intervention orders as a distinct and separate proceeding from criminal proceedings, as noted in the case study mentioned above.
- Lack of understanding of intervention orders as a serious legal procedure, as illustrated in the case study above.
- Lack of understanding of the consequences of an intervention order, and the consequences of breaching it. Several clients sought advice because they said they were still scared of the person named in the intervention order, and did not understand how it could protect them, or what they could do in event of breach.

Consequences of this confusion may include the following:

- People seeking to resolve family violence through family and community networks, rather than seeking intervention orders.
- People becoming reluctant to report family violence to police, because they do not want police to take out an intervention order on their behalf.
- People not complying with intervention orders, because of a lack of understanding of the consequences of a breach.
- People not reporting breaches of intervention orders to police.
- People seeking intervention orders for flimsy reasons.

# Conclusion

The African Legal Service has now provided legal assistance to more than 350 clients involved in more than 400 separate matters. Clearly, many clients have sought assistance with more than one kind of legal matter, and this overlapping of several legal issues (and financial issues) is something of a hallmark of African Legal Service clients. The remarkable thing is that the majority of clients have sought help with a few common kinds of relatively minor legal problems. The most common legal issues arise from driving, debt and housing.

Of course it is worth noting that, for various reasons, there may be other kinds of legal problems in African communities that we didn't see. People with certain kinds of legal problems might be seeking help from other lawyers or from Victoria Legal Aid. In addition, there may be social issues that have legal implications which we did not see at the Service.

To some extent, the recurring legal problems we did see can be categorised as problems of settlement. They most commonly arise within the first four years after arrival in Australia. This is a time when people are seeking to establish themselves in Australia by learning to drive, finding a home and buying the things they need to make their home in a new country.

Problems arise because new arrivals in new communities have never done these things before, and don't know anyone else who has done them either. They don't know some of the basic things that most of us learn from our peers or our parents. They don't know about insurance, they don't know about leases, they don't know how to shop around for the best deal, and that door-to-door marketers may not have their best interests at heart.

This lack of knowledge is compounded by the fact that many new arrivals from Africa cannot speak or read English, while contracts, correspondence, information provided by government agencies, and even bills, all require high levels of English literacy. People who cannot read their own language are even more isolated.

These may be relatively minor legal problems, but they can have serious consequences. Driving unlicensed is a road safety issue: unlicensed drivers are more likely to have car accidents. It is also a legal issue: it can lead people into their first contact with the court system, and driving while suspended can result in jail time. These driving issues can give rise to debts—for court-imposed fines, infringements, and debts owed to insurance companies. High levels of debt can lead to utilities being disconnected, eviction (for failure to pay rent), homelessness and bankruptcy. People experiencing these problems are stressed, ashamed and desperate. These legal problems put pressure on their health, education, workplace, families and communities.

Assistance given by the African Legal Service has led to good outcomes at court, debts being reduced or waived, and infringements being withdrawn. These have been great outcomes for individual clients.

However, the Service cannot reach every person with these problems, and does not have the resources to help them all. Many of the most common legal problems are preventable, and can be addressed by community legal education and improvements in the kinds of information people receive during the settlement process. The Footscray CLC will continue to work with settlement agencies to provide information to workers and to new arrivals about common preventable legal issues. The Footscray CLC will also seek to assist government agencies to take the steps necessary to accommodate the basic needs of people who do not speak or read English, and who are unfamiliar with Australian systems. This may mean making interpreter services more accessible in order to provide translations of correspondence, or to explain an agency's decision. It may mean updating and rewriting form letters to ensure that they are written in plain and simple English.

This report has drawn on casework to present a big picture of the legal issues experienced by African people in Australia. We know that some of these legal problems have been experienced by refugee communities in the past. It is likely that many of the same issues will arise with other newly arriving communities in the future. And our casework shows that these legal issues are not very different to those experienced by other low-income Australians, the traditional clients of community legal centres.

This, in a sense, is good news, because solving a problem for one group of people has the potential to solve a problem for many. Every change we make to the settlement process in response to the needs of African clients—to improve legal education and settlement services—will benefit future generations of migrants. And every change we make to the laws, regulations and systems that affect vulnerable African clients—to improve communication from agencies, to enable better access to review—will also benefit other vulnerable Australians in need of support.

# Appendices

## Appendix 1: Statistical Overview of Clients

### Most common legal problems of clients at the African Legal Service

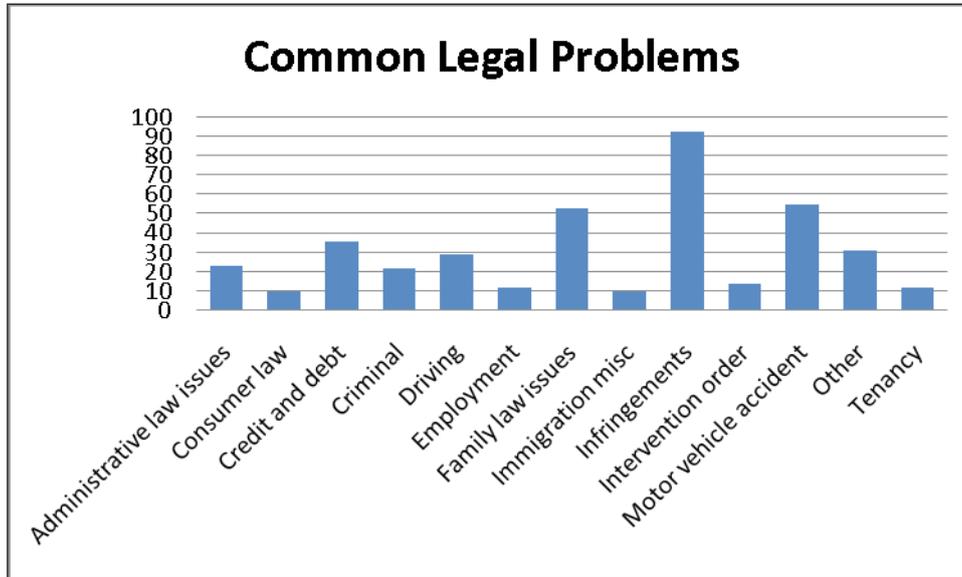


Figure 3

The information about the matter type is entered into the centre’s CLSIS database for each client. There are dozens of codes for different types of matters. For the purposes of this report we have collated similar legal issues. We have set out what is included in each category below:

- **Administrative law issues:** change name or birth records; government/admin–FOI, privacy; government/admin-complaints against police, government pensions, benefits and allowances–refusal, eligibility; government pensions, benefits, allowances-recovery of overpayment, government pensions, benefits, allowances-review of benefits; government pensions, benefits, allowances-other.
- **Consumer law:** consumer complaints-building; consumer complaints-medical, including psychiatric; consumer complaints-products; consumer complaints-services; consumer complaints-other; consumer complaints-financial, insurance, super etc; consumer complaints-fair trade, trade, sell practice.
- **Credit and debt:** credit and debt bankruptcy; credit and debt owed to client; credit and debt owed by client; credit and debt-consumer credit; credit and debt collection; credit and debt-other.
- **Criminal:** acts intended to cause injury; police charges against persons; police charges-other; police charges-theft and related.
- **Driving:** road traffic and motor vehicle regulatory offences.
- **Employment:** employment conditions or entitlements; employment-unfair dismissal; employment-other.
- **Family law issues:** child support-other, child residency, divorce, taking child overseas, child contacts or contact orders, family and domestic violence, property in marriage, family law-other.
- **Immigration misc:** refers only to cases coded as “immigration misc”. This includes all cases involving migration law issues, including applications for protection visas, offshore refugee visas to sponsor relatives overseas, and spouse visas.
- **Infringements:** government/admin issues relating to fines.
- **Intervention order:** intervention order; family or domestic violence order.
- **Motor vehicle accident:** motor vehicle accidents; motor vehicle property damage; injuries-transport/motor vehicle accident; motor vehicle-other.
- **Other:** property-other; overseas jurisdiction; other civil contracts; other civil defamation/libel; other civil property disputes; other civil; discrimination—race; neighbourhood disputes-complaints about neighbours. It also includes files in which the legal problem was not stated for administrative purposes.
- **Tenancy:** tenancy-bond; tenancy-other; tenancy-general rights and responsibilities; tenancy agreement; tenancy notice.

## Legal problems and the country of origin of clients

Figures 4 to 7 show that clients from different countries tended to present with different legal problems. This can also be attributed to the fact that some people were more likely to be recently arrived than others. For example, intake of Somali refugees to Australia peaked in the 1990s. The intake of Sudanese refugees peaked in 2004–05. We believe some types of problems—such as driving unlicensed and driving without insurance—are more likely to occur within a short period after arrival. Other legal problems—such as substantial numbers of infringements—continue to be an issue years after arrival.

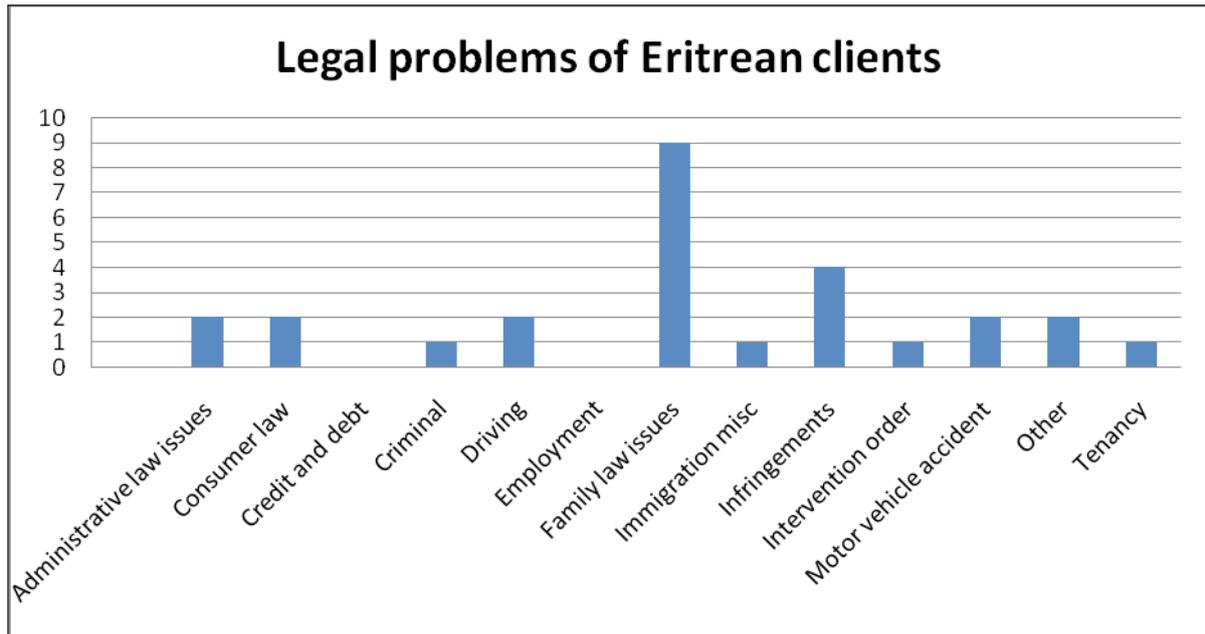


Figure 4

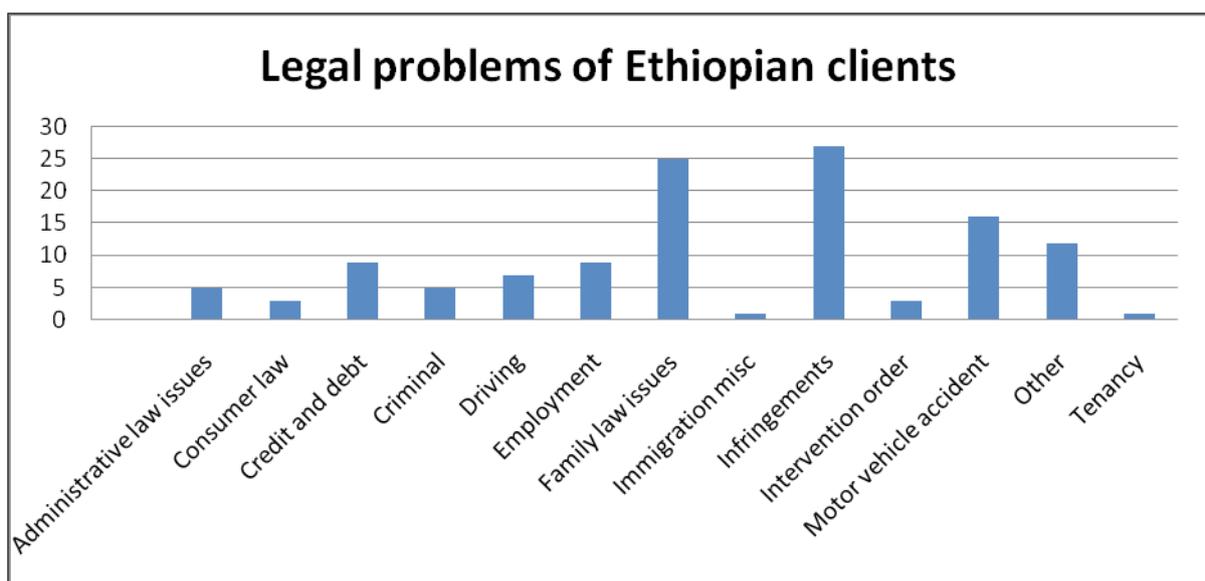


Figure 5

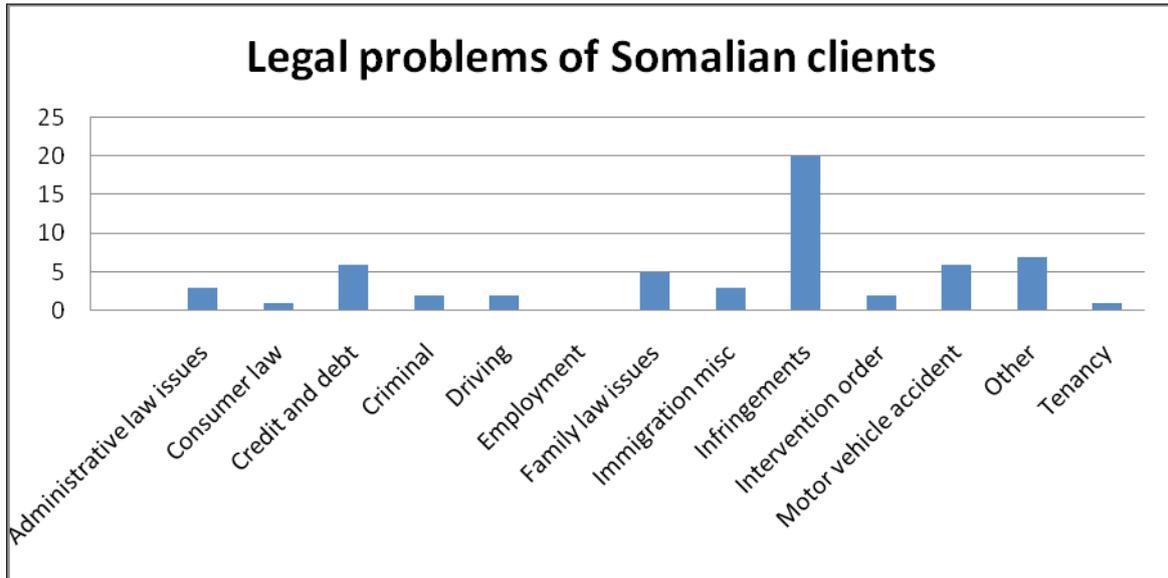


Figure 6

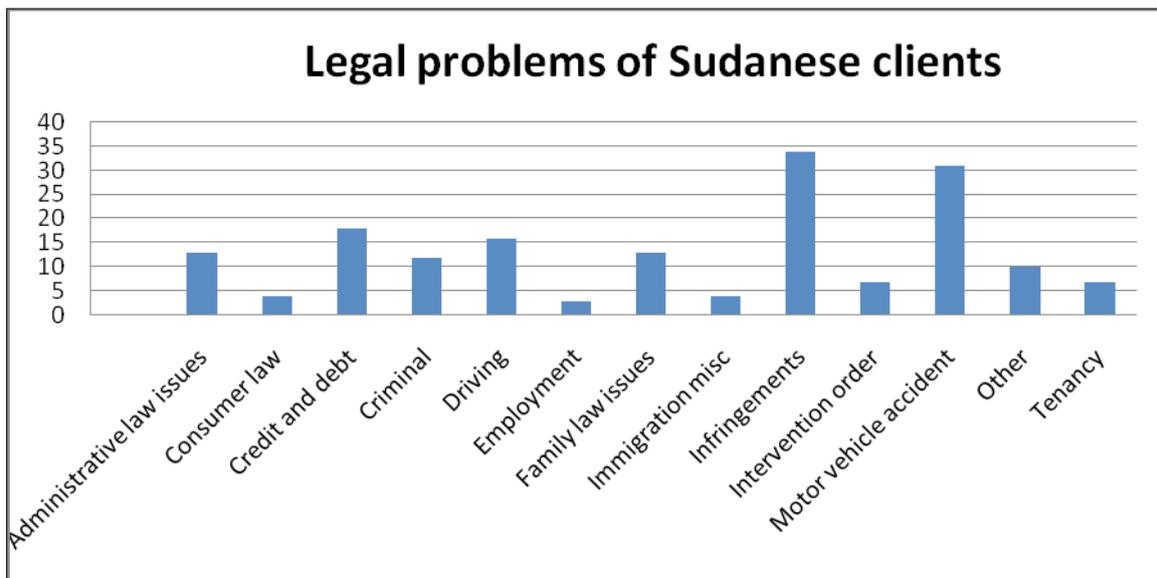


Figure 7

## Legal problems and the gender of clients

Figure 8 shows that we saw more male clients than female clients across the African Legal Service. This pattern was repeated for the four main countries of origin (Figure 9). In particular, only 26% of the Eritrean clients we saw were female.

There may be several reasons for the disparity between male and female clients. Figure 10 shows that women were more likely to need an interpreter than men (34% of women used an interpreter as opposed to 20% of men). Women may also have found the service more difficult to access for other reasons—perhaps because they were not attending a settlement agency or other referring body, or because they had full-time childcare responsibilities.

Figure 11 shows that women were more likely to seek assistance with family law matters and credit and debt issues; men were more likely to seek assistance with infringements and motor vehicle matters.

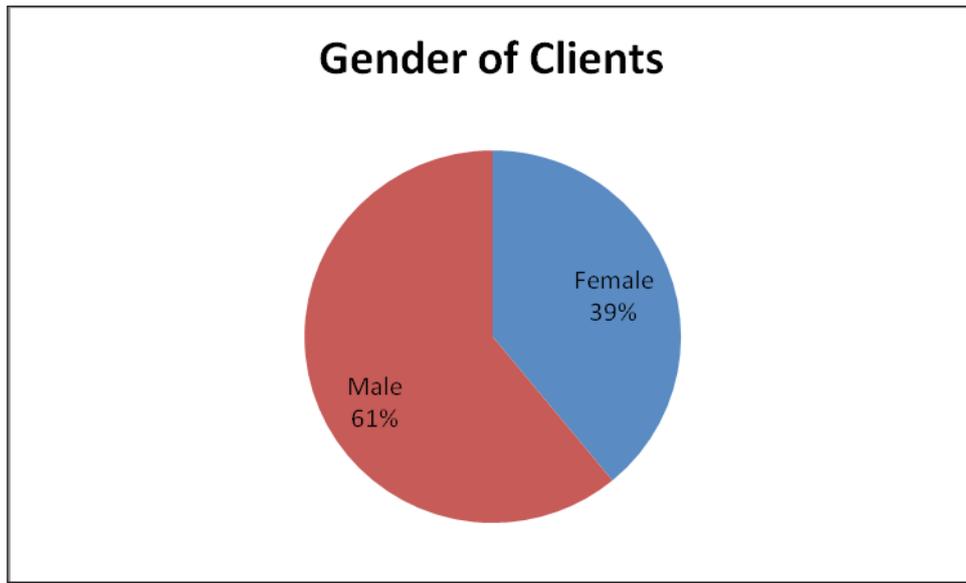


Figure 8

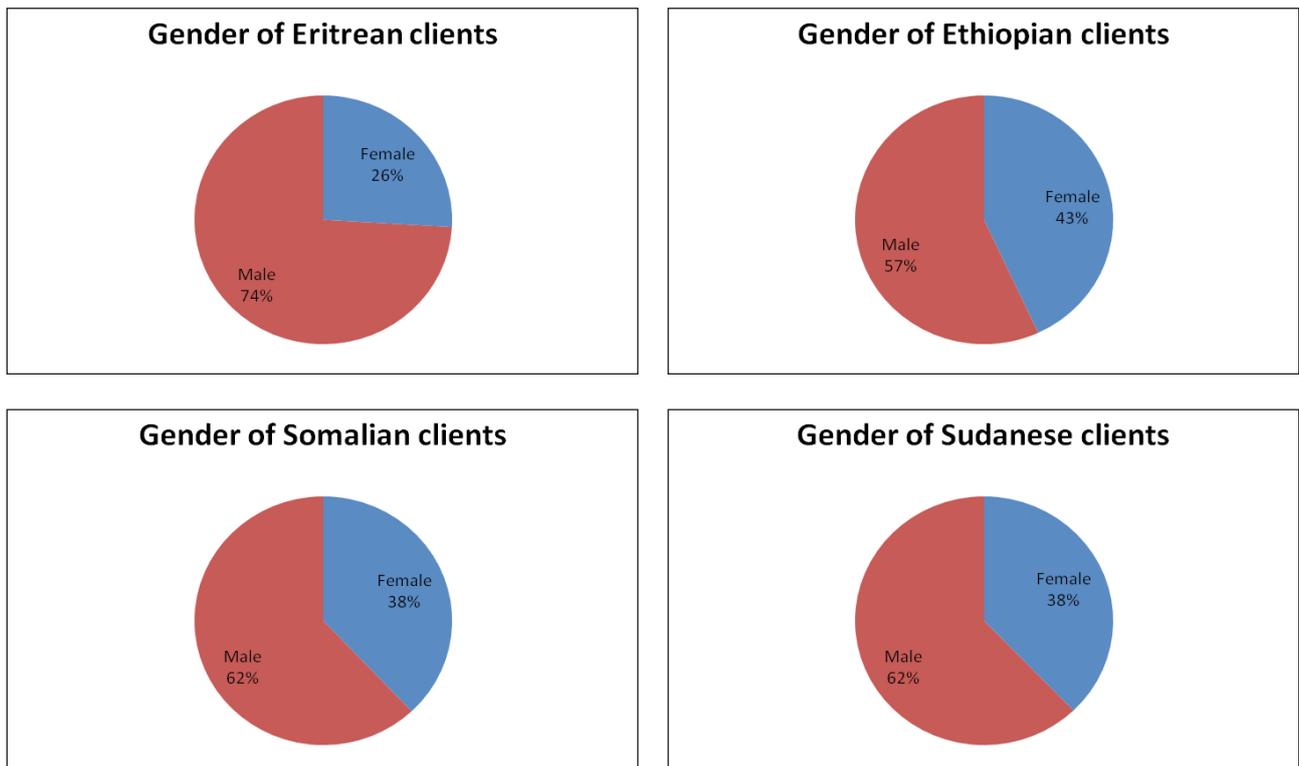


Figure 9

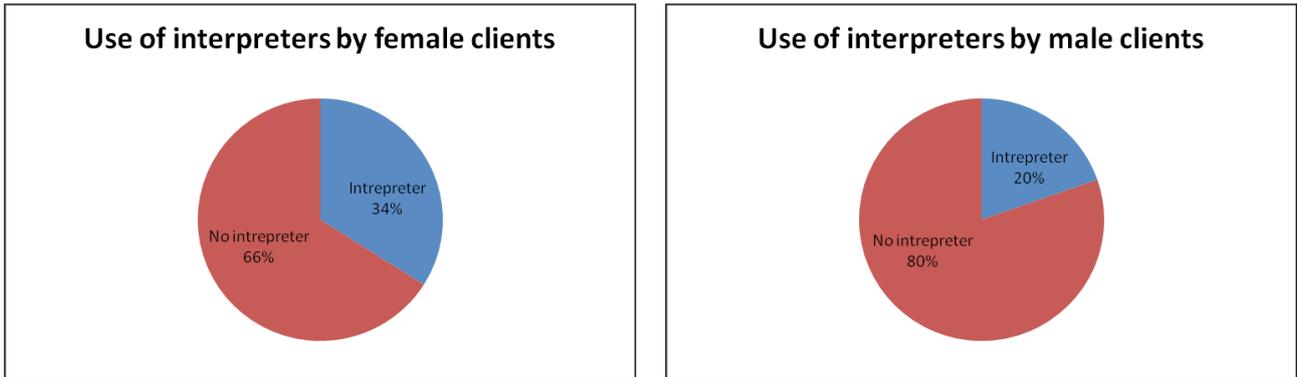


Figure 10

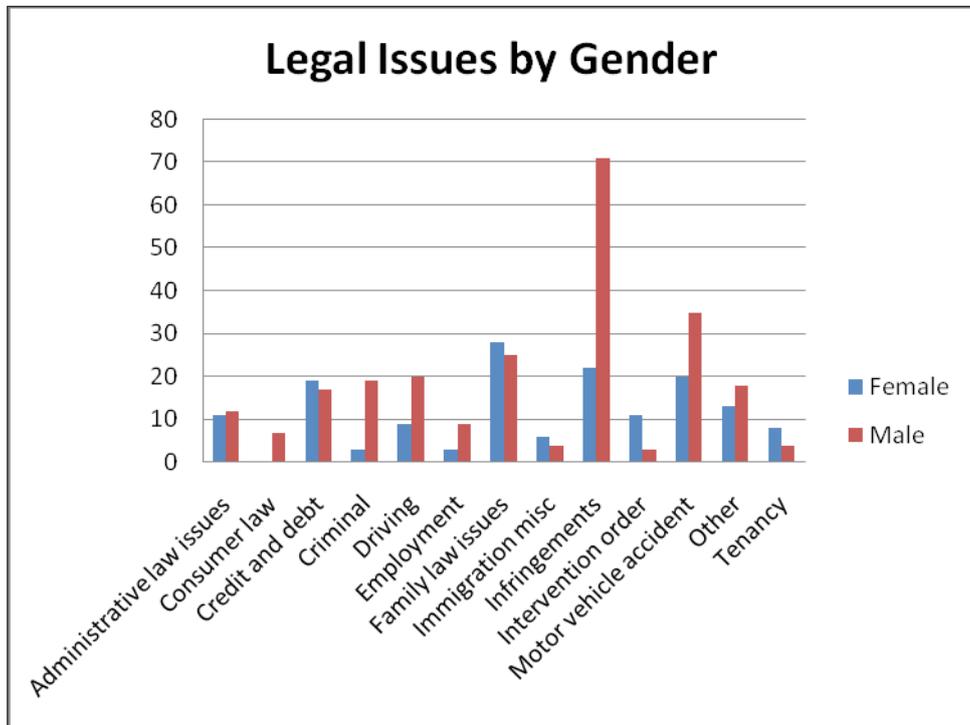


Figure 11

## Legal problems and year of arrival

Figure 12 shows that most of the African Legal Service's clients arrived in the country between 2002 and 2006; they sought assistance with legal problems that had developed between two and five years after arrival. Figures 13, 14 and 15 show the legal problems of people who arrived in 2002, 2004 and 2006.

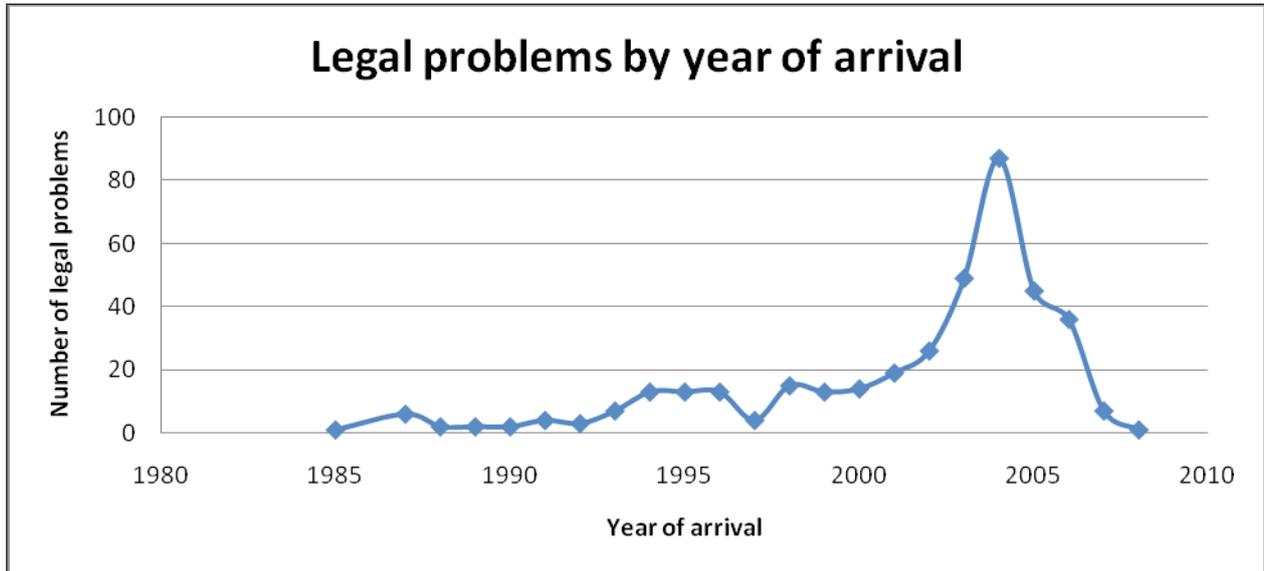


Figure 12

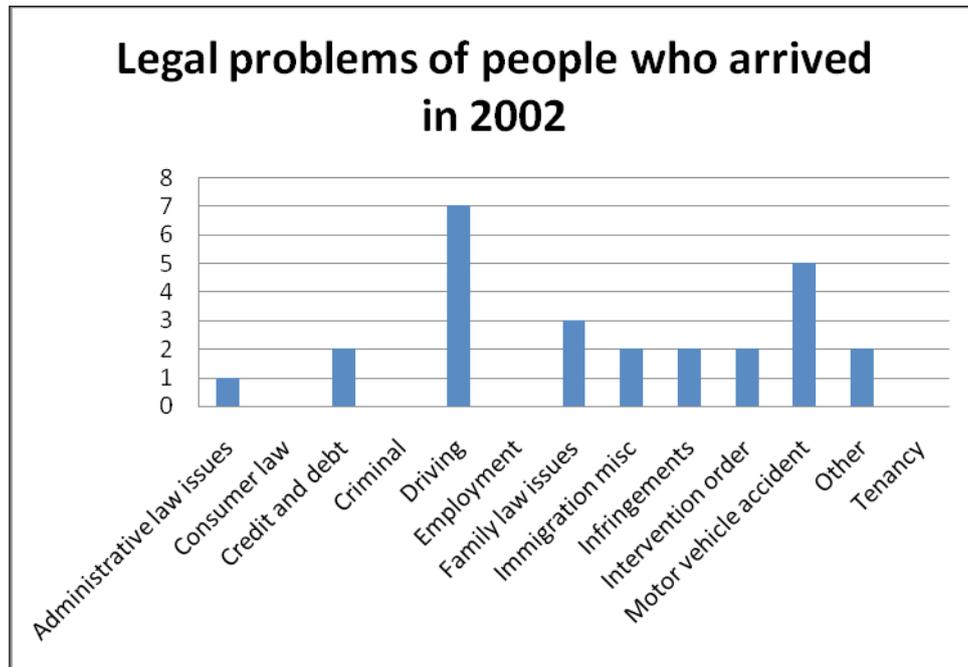


Figure 13

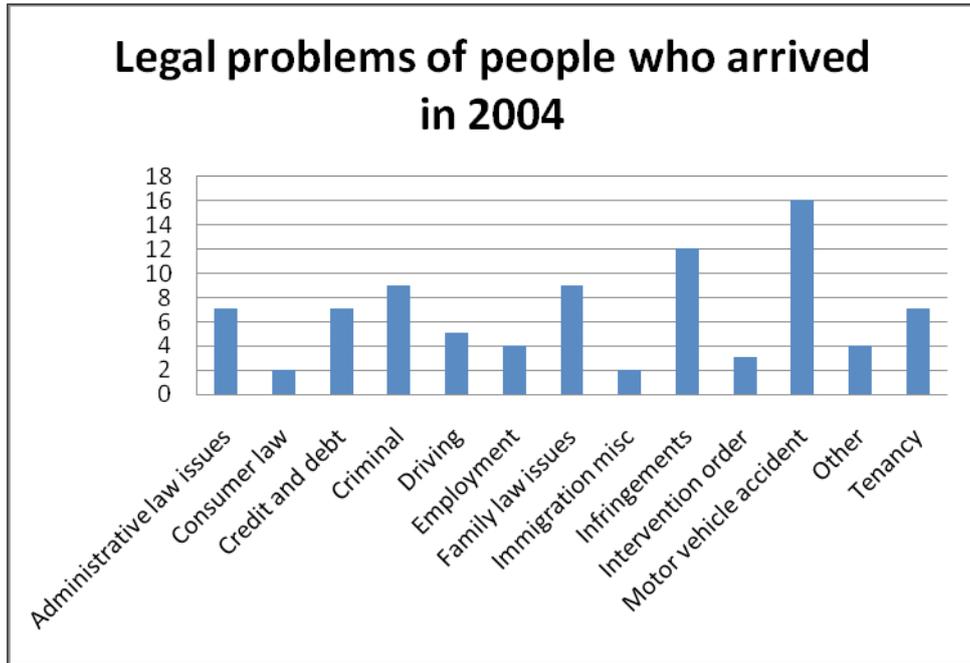


Figure 14

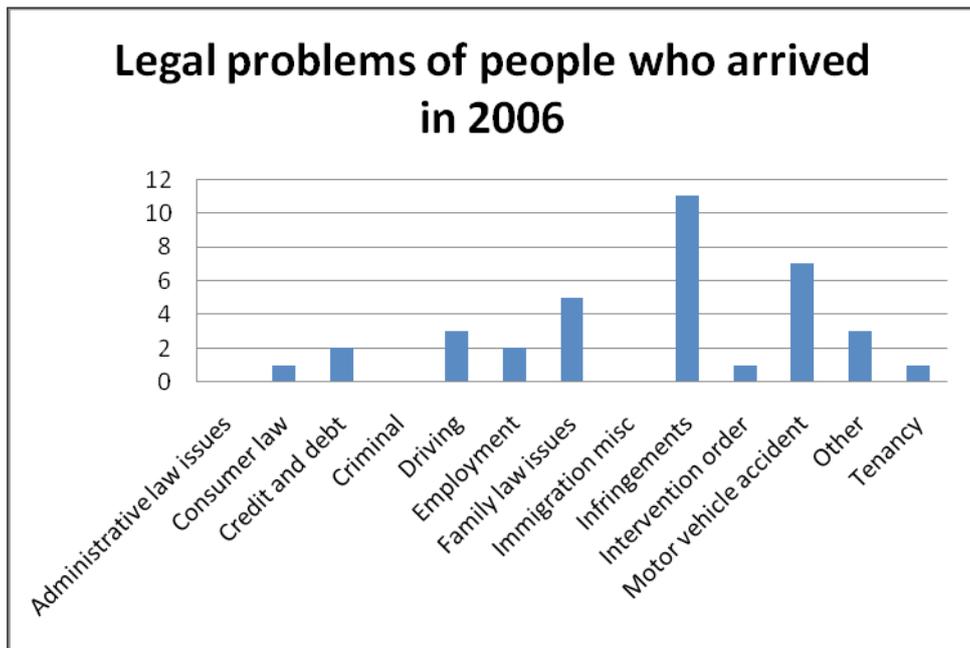


Figure 15

## Legal problems and date of birth

Figure 16 shows how old our clients were. It illustrates the fact that we had large groups of clients in their twenties, thirties and forties.

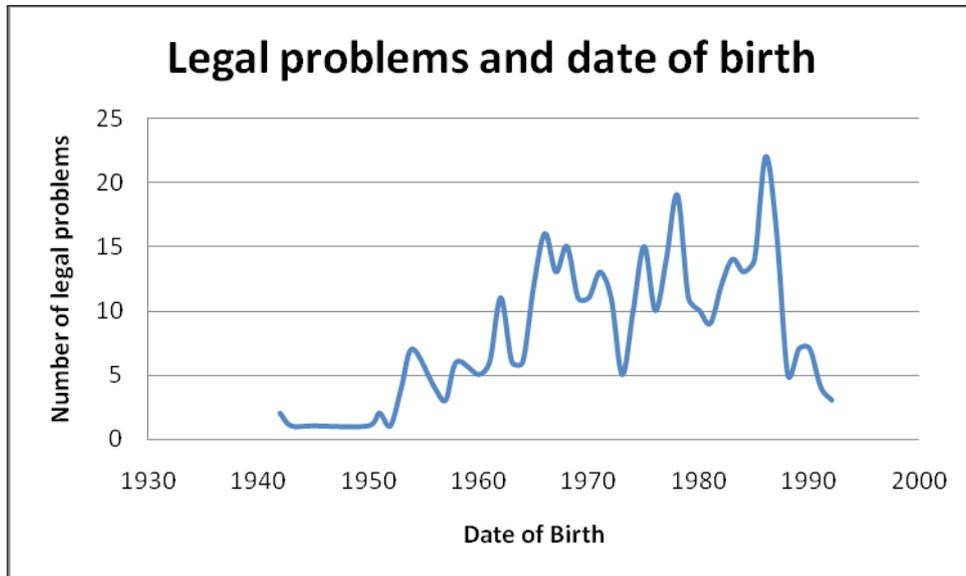


Figure 16

## Appendix 2: Getting Your Ls And Your Ps

The section below provides an outline of the processes that people have to navigate to get their Ls and their Ps, in order to illustrate some of the barriers to getting a licence.

### Getting your Ls

Understanding why people drive while on their Ls requires some background information on how people get their Ls.

In order to pass your Ls, you need to answer 30 multiple-choice questions. These questions are based on the information about the road rules in the *Road to Solo Driving* handbook which is available from in five languages: Arabic, Chinese (Mandarin), English, Turkish and Vietnamese. If you do not read one of these languages, then you need to prepare for the test by learning directly from others—in an English class (for example, AMES occasionally runs week-long courses to assist people in getting their Ls), or from a friend who can help you to read and understand the road rules.

When people are ready to take the test they must phone VicRoads to make an appointment. They must bring appropriate identity documents. They must pass an eyesight test. If an applicant is more than 10 minutes late for the test, they must make another appointment. Fees must be paid according to the following schedule:

Appointment: \$10.80

Learner permit test: \$18.50

Victorian learner driver permit card: \$18.70

**Total fee payable: \$48.00**

When people who do not speak English go to VicRoads in order to sit the written multiple-choice test for their Ls, they have two options:

1. They can take the written test in one of the following 20 languages:

Albanian	English	Macedonian	Sinhalese
Arabic	German	Polish	Somali
Cambodian	Greek	Romanian	Spanish
Chinese (Mandarin)	Italian	Russian	Turkish
Croatian	Laotian	Serbian	Vietnamese

Note that the written test is not available in some of the most common African languages: Dinka, Amharic and Tigrinya. In addition, clients have informed us that the Arabic written test is not in Sudanese Arabic, which means that some words and phrases are different and some questions cannot be readily understood by Arabic speakers from Sudan. Practice tests—in English only—are available online at <http://clt.vicroads.vic.gov.au/>.

2. They can take the test with the assistance of an on-site interpreter, provided by VicRoads at no cost. The on-site interpreter interprets each written test question for the person taking their test, and the possible answers. The person taking the test then selects an answer.

Several clients complained that there had been miscommunications between them and the interpreter, and that they had failed the test as a result.

### Getting your Ps

Once someone has their Ls, they can legally drive while displaying L-plates and with a fully licensed driver (i.e. a person who has had their Ps for three years) sitting beside them. In order to take their provisional licence test, learners must meet additional requirements.

First, learners must make an appointment to take a “hazard perception test” at VicRoads, for which they must pay \$14.50. This is a computer-based test in which learners must identify potential hazards. A sample can be viewed online at <http://clt.vicroads.vic.gov.au/>. Again, this test can be difficult for people who are not comfortable using computers.

Learners must then make an appointment to take a practical driving test. People may need to book two months or more in advance. There are further costs (correct as of May 2009):

Appointment: \$11.10

Car practical driving test: \$35.00

Victorian probationary driver licence card: \$45.30 (three years)

If someone fails the driving test, the total fee payable is \$46.10. If they pass, the total fee payable is: \$91.40.

Of course, those who fail the test have to make another appointment (several weeks or months in advance), and pay additional fees for the new appointment and practical test.

Several of our clients have reported failing the test one or more times. They attributed their failure to a lack of professional driving lessons, unfamiliarity with the road rules and failure to understand the instructions of the examiner.

*For drivers who got their learners licence after 31 July 2007*

In July 2007 VicRoads introduced some new rules as part of the Graduated Licensing System, designed to improve the driving and safety of young drivers. These rules apply only to people who got their Ls after 31 July 2007. They did not apply to most of the clients we saw at the African Legal Service, most of whom had got their Ls before the rules changed. However, they do constitute an additional barrier to getting your Ps. These changes may have a disproportionately harsh effect on new arrivals who do not have ready access to experienced drivers and must rely on professional driving lessons.

Under the rules introduced by VicRoads in July 2007:

- Learners under 21 must complete 120 hours of driving experience.
- Learners who are over 21 but under 25 at the time that they apply for their Ps must have their Ls for at least six months before they take their driving test.
- Learners who are over 25 must have their Ls for at least three months before they take their driving test.

## Appendix 3: Insurance Project

The majority of clients who have come to the African Legal Service for assistance with letters of demand from insurance companies or recovery agents have been judgement-proof—that is, their only income is derived from Centrelink benefits, and they have no valuable assets. Footscray CLC lawyers have followed an innovative approach in order to assist judgement-proof clients in seeking waiver of debts by insurance companies. Our standard practice in negotiating with insurers has been as follows:<sup>9</sup>

- We set out the client’s circumstances in a letter to the insurer and/or recovery agent. Relevant circumstances might include the fact that the client recently arrived in Australia as a refugee, the client’s obligations to support a large family, the client’s obligation to support relatives in Africa, and the fact that the client has no assets and is judgement-proof. We ask the insurer to waive the debt.
- If we receive no response within 21 days, we write again. We advise that if the insurer does not decide to waive the debt, we will consider it a “failure to reach agreement” within the terms of the Insurance Code of Conduct, and request that the insurer refer the matter to Internal Dispute Resolution (IDR).
- If we receive no response within 21 days, we make a complaint to the Code Compliance Committee of the Insurance Ombudsman’s Service. The Committee investigates the alleged breach.

In some cases the insurer has requested an extensive financial profile (including tax returns and details of a spouse’s income) and has agreed to a waiver or to a lower lump sum repayment. In other cases the insurer has agreed to waive the debt after the complaint has been referred to the Code Compliance Committee.

Using the process outlined above has been useful in several ways. Our casework has demonstrated that in many cases the dispute resolution procedures were not working effectively. For example, staff at several insurers refused to refer a dispute to IDR, and referred a case to a recovery agent instead. Making a complaint to the Code Compliance Committee has led to insurers changing their practices so that complaints are referred to IDR for consideration.

However, the process does have some limitations. The approach was based on the observation that low-level employees at call centres were always unwilling to agree to waive debts in any circumstances, but more senior management at insurance companies were willing to consider a waiver as an alternative to pursuing a debt they were unlikely to be able to recover. Our hope was that at the IDR level insurers would be more willing to waive a debt when we explained to them that the client was judgement-proof and was unlikely to be in a situation where they could afford to pay off the debt any time in the immediate future. Unfortunately, this has not proved to be the case. Even at the IDR level insurers have been unwilling to waive debts against clients. They have often been willing to suspend collection activities indefinitely, but have reserved the right to recommence collection activities. Many insurers have agreed to cease collection activities for one year, and then recommence efforts to recover the debt in the hope that the client’s circumstances have changed. Insurers have the right to collect up to six years after an accident. Therefore there is no finality for the client, and the debt still hangs over them. In cases where the client has no education and limited language skills, their circumstances are unlikely to change, and the entire process must be navigated again. In cases where our client is a student and has reasonable prospects of an income in the future, it is possible or even likely that the insurer will recommence collection activities at some point.

We believe that referral of a case to IDR may become even less effective as a method of getting debts waived in the future. As insurers improve their internal procedures and become more compliant with the Insurance Code of Conduct, referral to IDR will become a streamlined process. Giving our clients access to that level of review may be worth a try, but it is a time-consuming process and there is no guarantee that it will result in waiver of their debts.

## Appendix 4: A Summary Of The Infringements System

To understand some of the legal issues faced by African clients in relation to fines, it is necessary to provide an outline of the infringements system.

Infringement notices, or on-the-spot fines, are issued for many minor public transport, public space, parking and traffic offences. Agencies that issue infringement notices include Victoria Police (public space, public transport and traffic offences), the Department of Infrastructure (public transport offences), city councils (parking and public space offences), and tollway operators such as CityLink (tollway offences).

While the infringement is being managed by the agency the fine is described as being at the *agency stage*. At this stage, a person can make full payment, enter into an instalment plan, nominate another person for the fine, or seek to have the fine withdrawn by writing to the agency. A penalty reminder notice, including additional costs, is sent if no payment is made within 28 days.

The grounds for seeking withdrawal are set out in section 22 of the Infringements Act 2006. They are that the decision:

- i. was contrary to law; or
- ii. involved a mistake of identity; or
- iii. that special circumstances apply to the person; or
- iv. the conduct for which the infringement notice was served should be excused having regard to any *exceptional circumstances* relating to the infringement offence.

Under the Act, “special circumstances” are defined as:

- a mental or intellectual disability, disorder, disease or illness; or
- a serious addiction to drugs, alcohol or other volatile substance; or
- homelessness.

“Exceptional circumstances” are not defined in the Infringements Act.

The agency may withdraw the fine, or issue an official warning. If the fine is withdrawn at this stage the matter comes to an end.

If the agency does not withdraw the fine, the person can refer the matter to be heard by the Magistrates’ Court in open court. The Magistrates’ Court has a wide discretion to make orders to dismiss the infringement, impose a greater or lesser fine, reduce or cancel the amount of costs payable on the infringement or convert the fines into community work. The matters the Magistrates’ Court will consider in deciding how to deal with the infringement are governed by the Sentencing Act 1991.

If the agency receives no payment or other response within 28 days of issuing the Penalty Reminder Notice, or if the person seeks to have the fine withdrawn but the agency refuses to do so and the matter is not referred to the Magistrates’ Court, the agency will refer the infringement to the infringements registrar. An administrative fee will be added to the infringement. From this point the fine is dealt with by the Infringements Court. This is known as the *enforcement stage*. The Infringements Court makes an enforcement order. Notice of this is sent to the client. By then the payment required is the amount set out in the Penalty Reminder Notice plus costs added by the Infringements Court. If the amount demanded under the enforcement order is not paid, then an infringement warrant is issued and more costs are added. The infringement warrant can be enforced by way of seizure of property or arrest of the person.

At the enforcement stage the client can make payment, enter into an instalment plan, nominate another person for the infringement, or seek to have the enforcement order revoked by writing to the infringements registrar.

If the infringements registrar revokes the enforcement order, the infringement is referred back to the agency and the agency can then choose to either withdraw the infringement or proceed to have the matter heard in open court by the Magistrates’ Court.

If the infringements registrar does not revoke the infringement, the person can refer their application for revocation to the Magistrates’ Court. This application (which is referred to by the Magistrates’ Court as an appeal against the infringements registrar’s refusal to revoke the enforcement order) is heard at an open court hearing and the Magistrates’ Court has the power to revoke the enforcement order and then the agency can decide whether to withdraw the infringement at that stage. Often, the agency will not withdraw an infringement that the Magistrates’ Court has revoked, and a court hearing is necessary to determine the underlying offence.

If the Magistrates’ Court refuses to revoke the enforcement order, it will be referred back to the Infringements Court for enforcement.

It is worth noting that once infringements are listed before a magistrate, the agency may change its attitude to withdrawing fines on the day of the hearing but before the matter is heard. For example, the agency may become willing to withdraw one or more fines, waive costs or impose fines at a lower level. Lawyers said that this change

of attitude only occurs on the day of the hearing; contacting an agency before the hearing date in an attempt to persuade it to withdraw or revoke fines was rarely successful.

Matters are usually referred to court for a hearing to determine the question of whether the enforcement order should be revoked. Of course, in most cases a lawyer and client will want all aspects of the matter heard (i.e. whether to revoke the enforcement order *and* determining the underlying offence) on the same day. In order to try and achieve this, lawyers notify the agency to inform it that they will be seeking to have the matter heard and finally determined on the day it is first scheduled to be heard. If the lawyer fails to contact the agency, there is a real risk that the lawyer and client will have to come back for another return date. Even if such a letter is written, there is no guarantee that the court will deal with both aspects on the one day. It is possible that the court will list the underlying offence for a mention at a later date: if the client plans to plead not guilty, then there is a further hearing after the mention. The point is simply that seeking revocation of a fine in court may require substantial correspondence and multiple court attendances and is therefore time-intensive for the lawyer involved.

It should also be noted that, for clients with multiple fines, it is very rare for all fines to be listed for one hearing at one venue. Usually each agency has particular time slots for their matters at the Magistrates' Court. So a client with fines imposed by the police, the City of Maribyrnong and the Traffic Camera Office may have up to three or four different Court hearings, often at different venues (e.g. Melbourne Magistrates' Court and Sunshine Magistrates' Court). For example, one client had about 40 enforcement orders, all of which he could nominate another driver for. The infringements registrar did not revoke the enforcement orders so the applications for revocation were referred to court. This necessitated at least five different court appearances at three venues (one time the hearing had to be adjourned because the client mistakenly went to the Broadmeadows Magistrates' Court instead of Heidelberg). Fortunately, at four of these hearings the magistrate dealt with the underlying offences as well. By the end of the process all of the enforcement orders had been revoked and the underlying offences had been dismissed, but this required a significant commitment by the lawyers (and the client) in terms of time and resources.

## Appendix 5: Model Programs

### Educating new arrivals: AMES digital stories

AMES has received funding from the Legal Services Board to work with the Footscray CLC to create digital stories to advise clients about the costs of driving unlicensed and other legal issues. A digital story is a very simple short film that uses still images and a voiceover to provide information. It can be accessed by individuals online or used as part of a curriculum in the classroom. The advantage of the medium is that it is not text-dependent, and is a good way of providing information to people who lack literacy skills. In addition, one digital story can be given voiceovers in a number of different languages. If the law changes, the voiceover can be updated with no need to change the visual component. New voiceovers can be created in new community languages as needed.

The Footscray CLC is working with settlement information officers from a variety of countries, to create culturally sensitive digital stories on 12 different legal issues, with voiceovers created in 10 community languages. These digital stories will be used in AMES classrooms to provide legal information to new arrivals who are receiving 510 hours of English language classes.

### The CUAC partnership model for community agencies

In 2008, the Consumer Utilities Advocacy Centre (CUAC) launched a report on its partnership model for community agencies. The model is based on a pilot project that involved a partnership between four agencies:

1. Springvale Community Aid and Advice Bureau (SCAAB);
2. Energy and Water Ombudsman of Victoria (EWOV);
3. Australian Gas and Light Company (AGL); and
4. CUAC.

The project grew out of an observation by workers at SCAAB that many African families were struggling to pay very large gas and electricity bills. Part of the reason for this was that new arrivals from Africa were keeping the heat very high and keeping windows open during winter in order to replicate the weather in Africa (a combination of great heat and cool breezes).

The four-way partnership came about when SCAAB sought to work with a corporate partner (AGL) in order to get information about using utilities and managing bills out into the local African community. The ombudsman brokered the relationship between SCAAB and AGL. CUAC provided funding for the project. As a result of the project AGL provided information sessions to African community leaders and community groups. SCAAB and a community steering committee were able to provide information to AGL about common issues and problems experienced by the African community. AGL created resources directed at preventing the problems.

We are currently considering whether such a partnership project could be developed between community legal centres, insurance companies, and the Insurance Ombudsman Service to provide information to achieve the following goals:

- Working with the community to identify barriers to getting third-party property damage insurance.
- Working with one, or more, insurance companies to provide information to the community about insurance, and to consider the costs and benefits of creating streamlined insurance sign-up procedures to clients with special needs.