Don't Settle For Less:

The Settlement Justice Partnership and Fairer Outcomes for Refugees in Melbourne's West

Tess Matthews and Joseph Nunweek, July 2023



WEstjustice

Footscray

Workplace 365 90 Maribyrnong St, Footscray VIC 3011 Tel: + 61 3 9749 7720 Fax: + 61 3 9749 8276

Email: admin@westjustice.org.au

Werribee

Level 1/8 Watton Street, Werribee VIC 3030

Tel: + 61 3 9749 7720 Fax: + 61 3 9749 8276

Email: admin@westjustice.org.au

Sunshine

Visy Cares Hub, 80B Harvester Road, Sunshine VIC 3020

Tel: + 61 3 9091 8237 Fax: + 61 3 9091 8207

Email: sunshine@westjustice.org.au

WEstjustice provides free legal help to people in the Western Suburbs of Melbourne. We can help with a broad range of everyday problems. Please call (03) 9749 7720 to find out more about our services or to make an appointment.

WEstjustice

© WEstjustice Western Community Legal Centre 2023 westjustice.org.au

Authors: Tess Matthews and Joseph Nunweek July 2023

WEstjustice acknowledges the Peoples of the Kulin Nation as the Traditional Owners of the lands and waters of our region. We acknowledge the Kulin Peoples' ongoing connection to Country, and we pay our respects to Elders past and present. As we work to achieve a just and fair society, we acknowledge the fundamental role of First Peoples in the life of this region, as Custodians of the world's oldest living Culture.

TABLE OF CONTENTS

1.	Executive Summary					
2.	Acknowledgements					
3.	Project Partners					
	3.1	West	justice	15		
	3.2	MiCo	ire	15		
	3.3	Wyn	dham Community and Education Centre	15		
4.	Intr	oduc	tion	17		
5.	Pro	roject Timeline 2°				
6.	The Settlement Justice Partnership – Context and Purpose					
	6.1	Rece	ntly-arrived communities in Melbourne's Western Suburbs	26		
	6.2	Settl	ement outcomes	26		
	6.3	6.3 Settlement services				
	6.4	The r	relationship between Westjustice and settlement services: historic limitations	27		
	6.5	West	justice's multidisciplinary, place-based partnerships	27		
	6.6	The S	SJP pilot	28		
7.	Bac	kgro	und to Project Design	31		
	7.1	Barri	ers to access to justice for recently-arrived people	32		
		7.1.1	Low English language and literacy levels	32		
		7.1.2	Unfamiliarity with Australian laws and legal systems	32		
		7.1.3	Distrust of authorities	33		
		7.1.4	Limited financial resources	33		
		7.1.5	Cultural isolation and lack of cultural competency within the Australian legal system	33		
		7.1.6	The digital divide	33		
	7.2	2 Importance of early intervention in legal problems		33		
	7.3	Impo	rtance of positive interactions with the justice system	34		
	7.4	Co-lo	ocation, accessibility and trust	34		
	7.5	Ident	ification of systemic issues	34		
	7.6	Relat	cionship and capacity building – professional development for settlement workers	34		
8.	Ser	Service Delivery and COVID Arrangements				
9.	The	The My Name Project 4				
10.	SJP Outcomes					
	10.1	Lega	I casework statistics	46		
		10.1.1	Breakdowns of types of legal problem	47		
	10.2	Clien	t surveys	48		
	10.3	Profe	essional development sessions for settlement workers	48		
	10.4	Settl	ement worker surveys	48		
		10.4.1	Qualitative surveying	49		

4

11.	Disc	cussion and Recommendations	51			
	11.1	Adequate support for settlement	52			
	11.2	Digital divide	52			
		11.2.1 The court system during the COVID-19 pandemic	54			
	11.3	Scams	55			
	11.4	Consumer and motor vehicle accident matters	57			
		11.4.1 Failure to use interpreters	57			
		11.4.2 Energy and water concession rates	59			
		11.4.3 Motor vehicle accidents and insurance	59			
		11.4.4 A prohibition on unfair trading?	60			
		11.4.5 The value of early intervention in consumer matters	61			
		11.4.6 Other recommendations arising from our consumer casework	62			
	11.5	Tenancy	62			
		11.5.1 Better help for renters communicating their needs	62			
		11.5.2 Setting expectations for how providers communicate with renters	63			
	11.6	Fines	66			
		11.6.1 Resolving deficiencies in the fines system for innocent people	66			
		11.6.2 Inconsistent fines practice across councils.	67			
		11.6.3 Resolving the risk of prosecution in the event of internal review	67			
		11.6.4 Better work and development permit options for humanitarian visa arrivals	68			
	11.7	Family violence	69			
		11.7.1 Value and insights from early intervention in family violence matters	69			
		11.7.2 Issues with Victoria Police in family violence matters	70			
		11.7.3 Inconsistent court processes for interim order applications	72			
		11.7.4 Lack of culturally and linguistically appropriate programs for respondents	73			
	11.8	Employment law	73			
		11.8.1 Improving community knowledge of work rights	74			
		11.8.2 Employment law reform proposals	74			
	11.9	My name project – ongoing issues	76			
12.	Ide	ntified Issues and Gaps in Our Delivery	79			
	12.1	Length and complexity of appointments and matters	80			
	12.2	Effective use of interpreters	80			
	12.3	Gaps in our SJP legal practice offerings	81			
		12.3.1 Family law	81			
		12.3.2 Migration advice for clients who are not citizens	81			
		12.3.3 Social security and the National Disability and Insurance Scheme ('NDIS')	81			
13.	Nex	tt Steps for the SJP	83			
	13.1	Increasing community legal education and information	84			
	13.2	Securing ongoing resourcing	84			
	13.3	Project expansion opportunities	84			
14.	Cor	Conclusion 87				
15.	App	pendix: List of Recommendations	91			
	End	Inotas	05			





1 EXECUTIVE SUMMARY

This report describes the nexus, design, delivery, and recommendations, of the Settlement Justice Partnership ('SJP'). The SJP is innovative, place-based, partnership between Western Suburbs Community Legal Centre ('CLC'), Westjustice, and two Western Suburbs settlement agencies, MiCare and Wyndham Community and Education Centre ('WCEC').

The fundamental aim of the SJP has been to improve access to justice for recently-arrived refugees. Access to justice requires more than mere statements of equality before the law. Rather, it requires the 'affirmative steps' necessary to give 'practical content to the law's guarantee of formal equality'. A core component of the fair experience of the Australian legal system is the opportunity to understand and intervene early in legal problems, before they escalate.

While Westjustice has enjoyed valuable working relationships with its local settlement agencies in the past, it was apparent even before the impact of the COVID pandemic that this was sometimes constrained by lack of awareness, inaccessibility, or reluctance of clients to participate.

Design of the SJP therefore required reflection on entrenched practical barriers that preclude recently-arrived people from understanding or acting upon their legal rights, and the development of a project model that mitigated against those barriers. These matters, as well the role of settlement services, the historic collaboration between Westjustice, MiCare and WCEC, and of the resulting pilot model, are detailed in Parts 6 and 7 of this report.

It became apparent that the most pressing barriers to acting on rights included:

- Low English-language and literacy levels
- Unfamiliarity with Australian law and legal systems
- Distrust of authorities (including perceptions of law services and lawyers)
- · Limited financial resources
- Cultural isolation
- · Digital divide.

Conversely, where these barriers could be overcome, existing literature identified a valuable opportunity in early intervention to create better legal, financial and social outcomes and ensure that positive interactions with the legal system led to navigating these institutions with higher confidence in future.

This led to our decision to embark on embedded co-location with our partners to remove or mitigate these barriers where possible. Parts 8 – 10 of this report describe the legal service delivery completed by the SJP from mid-2021 to the end of 2022, and include a breakdown of casework services completed by legal matter type, as well as a summary of demographic information about the clients we assisted. Relevantly, it provides:

- Information on the most frequent countries of origin of our clients (in the pilot's case, Myanmar/ Burma and its adjoining refugee camps, followed by the former Sudan)
- The significant extent to which our clients were reliant on interpreters, but also the near-even split between clients who were in employment and not in employment
- The significant majority of our clients who had children in their care, and who would therefore also benefit from early legal interventions in terms of their health, stability and wellbeing
- The broad spread of years in which our clients had arrived in Australia, indicating that the need for targeted support for positive settlement outcomes consistently extends beyond one's first five years in Australia.

Quantitative survey feedback from both clients and settlement workers about their experience with the SJP is included in Part 10, and qualitative comments from interviewed settlement workers are dispersed throughout the report. This feedback indicates the overwhelmingly positive extent to which:

- Over 90 per cent of our clients were 'happy or very happy' with their legal outcome, felt welcomed by the service, and reported an improved personal situation since engaging with the service
- Over 90 percent of our partner workers found the SJP easy to refer mutual clients into, found our professional development sessions useful, and felt more comfortable 'issue spotting' potential legal issues requiring early intervention since the service began.

In Part 11 of the report, we scrutinise systemic issues faced by our clients in respect of a range of areas of law, as identified through our casework. While we are glad to have been able to assist clients in respect of their individual problems, our work identified glaring failures in legal and commercial systems to provide fair opportunity and treatment of recently-arrived persons.

This occurred in terms of general access to services and support (most pressingly, in the need to resource settlement service to provide their own casework support beyond the first five years of settlement), and more specifically in particular practice areas such as fines, tenancy, consumer law, scams, family violence, and employment. We address specific recommendations to federal government, state government, industry, and others to resolve these inadequacies. A full list of the recommendations is also set out in the appendix to this report.

Finally, in parts 12 and 13 of the report, we turn to the future of the SJP: further areas of law which we hope to deliver, and opportunities for expansion of the project to partnership with further settlement agencies. In particular, we point to our current service delivery gaps in family law and social security, both of which our clients find challenges navigating. We also note how the SJP has already led to one promising partnership with Victoria Legal Aid in the citizenship advice and assistance space, and the possibility of assisting similar agencies to establish these services across Victoria and nationwide based on our experience.

The pilot phase of the SJP commenced service delivery in mid-2021, funded by the Federation of Community Legal Centres' ('FCLC') Integrated Legal Services fund. In mid-2022, the Department of Justice and Community Safety ('DJCS') funded the SJP to continue services over the 2022 – 2023 financial year. We seek ongoing, secure funding to continue to deliver this important service. This will ensure that our client-facing work can be delivered without interruption, and create an opportunity to advance the systemic reforms and recommendations this report outlines in addition to the casework component. The alternative – that funding ceases for the SJP – is a bleak one. This would mean that the wraparound model, that has proven to be so effective to date may not be sustained and (in some cases) would mean there was no alternative service available to this client base in certain areas of law.

"Seeing the legal service changed me a lot, I learned a lot about rules and law. I think I have lot more confidence because when you understand the law, then you have a lot more confidence about what you can do. I felt very supported because I did not speak English and you always used interpreter and reminded me about my appointments. I am still very nervous of the legal system. I just want to say that your service is very good, especially for people who do not speak language or know much about the legal system, it is very helpful."

- Anonymous client feedback



6 | EXECUTIVE SUMMARY



2 ACKNOWLEDGEMENTS

We warmly thank WCEC, MiCare, the FCLC, the DJCS, and Victoria Legal Aid ('VLA') for their assistance with our project's pilot phase, and through the continued delivery of these services to date.

We thank the Melbourne Social Equity Institute for the opportunity to complete this report in furtherance of an honorary fellowship. In particular, we thank Professor Jeannie Paterson for her mentorship during that fellowship.

At Westjustice, we thank our project lawyers, Mary Kozlovski and Paryce Bausch. We also acknowledge the editing and proofing support supplied by Mary Kozlovski and our student volunteer Heavar Arian, as well as Christopher Carr, Cleona Feuerring, and Jennifer Jones.

The groundwork for the SJP, including an initial successful funding application to the Victorian State Government's Integrated Services Fund, was built by Tarni Perkal and Catherine Hemingway. We hope that this report honours their original vision and creativity.

Most of all we thank the settlement workers of WCEC and MiCare who continue to be instrumental in connecting us with our clients, and without whom the pilot could not have succeeded.

It was a great partnership.
We could easily access the service for consultation or make referrals.
Overall, it was a great program and our clients were very appreciative of the assistance provided

- Anonymous worker feedback





3 PROJECT PARTNERS

3.1 Westjustice

Westjustice is a human rights and community legal centre in the Western Suburbs of Melbourne servicing the local government areas of Maribyrnong, Hobsons Bay and Wyndham, and the broader western suburbs community with a collective population of almost a million people. We provide free legal advice, representation, education, community development, advocacy, and systemic reform across four impact areas: people experiencing economic injustice; people experiencing family and gender-based violence; youth; and culturally and linguistically diverse (CALD) communities. Our service area incorporates the fastest growing and most multicultural communities in the country (as at the 2021 Australian Census). But the West is also in crisis by many metrics, comprising areas of significant disadvantage and higher than average youth offending rates, family violence rates, workers in casualised and insecure employment, and COVID cases and COVID deaths. In this environment, we consistently see complex legal issues and the cyclical impact this has on longer term economic, health, and life outcomes. This is why our services and programs focus on prevention and early intervention in the cycle of economic precarity, criminalisation, violence and housing insecurity to produce benefits for the people we work with and save government significant investment in downstream impacts of social problems. Our programs are tested, trialed, evaluated and codified an approach that means the risk for investment is low, but the fiscal and human returns are high. In the post-COVID environment of cost of living and interest rate crises, legal services like ours and related services are more important than ever. However, population growth and service demand in the West is outstripping service growth and funding, meaning people are falling through the cracks of the justice, health and economic systems.

3.2 Micare

MiCare is a multicultural Aged Care and Community Services provider, delivering services across Victoria and Queensland. In the Western Metro Melbourne region, MiCare office locations include Werribee, Sunshine and Melton. From these locations MiCare works with newly arrived Migrant and Refugee individuals and communities to increase Agency, Equity/Access, Education, Employment and Social Inclusion outcomes. MiCare delivers Settlement services including Humanitarian Settlement Program ('HSP'), Settlement Engagement and Transition Support ('SETS'), Afghan-Australian Community and Settlement Support ('AACASS') services, as well as other multicultural community services, including (but not limited to) family violence prevention project: the Safer and Strong Communities Pilot, and Community Employment Connectors ('CEC').

Testimonial from Jane Ashton, Manager – Settlement Services, MiCare

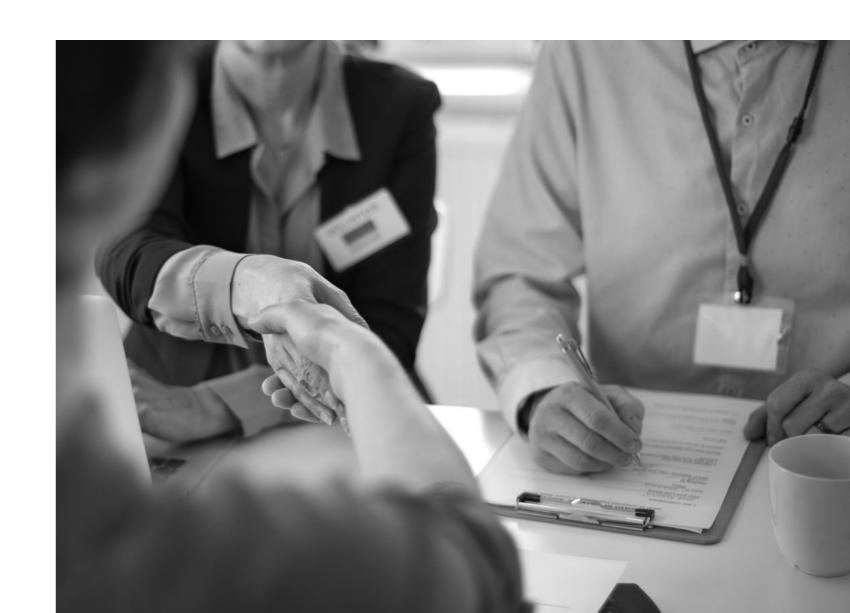
MiCare's involvement in the SJP has led to some great outcomes for MiCare staff, and the community members from migrant and refugee backgrounds that we work with. Staff have had the opportunity to further their knowledge and understanding on a variety of legal topics, and have benefited from the additional support of secondary consultations from the Westjustice team. Overall this has built staff capacity to identify and respond to legal issues, better understand the legal system, and increase support to clients at early stages of inquiry around issues that may have legal ramifications. For the clients we work with, legal advice appointments were timely and more accessible (either via phone and/or appointments from MiCare site locations), building confidence for community members to access and engage with legal services. MiCare would very much support a model such as the Settlement Justice Partnership continuing into the future.

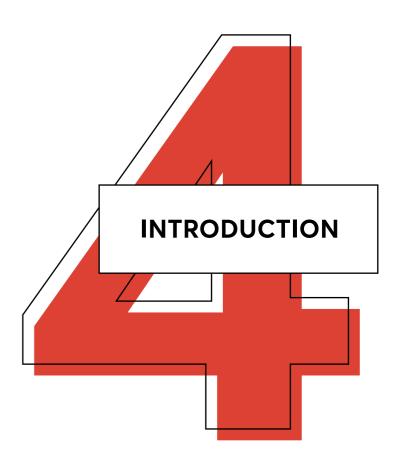
3.3 Wyndham Community and Education Centre

Located in Werribee, WCEC is one of Victoria's largest Adult and Community Education providers. WCEC delivers SETS services, including support for family violence, alongside Adult Migrant English Program ('AMEP'), Skills for Education and Employment ('SEE'), and a range of other education and training and community strengthening programs. WCEC further auspices and houses Junubi Wyndham: a community-led support group offering a range of services and programs to strengthen and empower South Sudanese youth and families in Wyndham. WCEC also has a Jobs Vic employment program and hosts CECs and Victorian African Community Action Plan – Employment Brokers (VACAP-EBs)

Testimonial from Jennie Barrera, CEO of WCEC

WCEC values the SJP as a critical wrap around support for our clients. The SJP has reduced barriers to equitable access to legal services and has delivered these services in a safe and trusted place for newly arrived refugee and humanitarian entrants. This innovative partnership has made a world of difference to clients adjusting to life in a new country and helped them in the important process of settlement.





4 INTRODUCTION

From May 2021 to the present, Westjustice has provided free legal services to recently-arrived communities through the SJP partnership with two local settlement agencies, assisting with legal issues such as fines, residential tenancies, credit and debt, consumer disputes, employment law, family violence and minor criminal matters.

For the first 18 months of the project, the COVID-19 pandemic and the ensuing lockdowns were changing social dynamics in Melbourne's West. Before the pandemic, Westjustice intended to devise a placebased program to see clients from refugee and recently-arrived communities in situ at settlement services which they already trusted and sought for guidance. It was a bitter irony that as we sought to create easier face-to-face legal interactions for our clients, the world temporarily changed to make this much harder. As we began delivering SJP services remotely, with the support of WCEC, MiCare, and their caseworkers, the pandemic and lockdowns illustrated barriers to access to justice and essential services, and the need to dismantle these barriers to enable our clients to resolve their matters fairly.

Many SJP clients worked in frontline jobs across Melbourne, like cleaning, meat processing, and manufacturing, facing daily health risks which other workers could mitigate or avoid. With many services moving online or not offering phone interpreter services, our clients delayed dealing with legal matters, were confused by frequently changing directives, or were isolating without guidance because health information (including test results) was communicated in English only. Some clients fell victim to scams or identity theft and received poor treatment from intermediaries such as banks, insurance companies, and real estate agents. Other clients, who were victims of family violence or serious criminal offending, experienced problematic responses from police officers and court staff, including a lack of interpreter support or assistance to access support and safety services.

Despite these barriers, we observed our clients as resilient, hard-working and enterprising people, who have agency and determination even when confronting inaccessible or convoluted legal and administrative systems.

This project and partnership have made referral and support pathways for community members (and workers) so much easier. Being able to have a central point of contact that is dealt with in a timely matter has been of great assistance and really makes a difference to clients in stressful situations.

- Anonymous worker feedback

We worked to gain the trust of our clients so that we could advise and assist them to try to avoid or limit their exposure to loss, harm, or the justice system. We used platforms such as Teams and Zoom to train approximately two dozen settlement workers to identify renting, family violence, scam prevention, employment law, and other civil law issues.

The SJP helped (and continues to assist) clients and their households to navigate legal, social and financial systems with enhanced confidence toward better life outcomes. This includes better outcomes when participating or interacting in education, training, employment, health and wellbeing, housing, family support, justice and finance. Moreover, our intention at both the casework and systemic level is to facilitate and advocate a rights-based approach for this client base as a matter of equity. A range of legal instruments, including legislation, regulation, and industry codes nominally protect people from refugee backgrounds where they face language, gender or cultural barriers. The systemic recommendations in this report outline where effective policies and practices are falling short and need to change to assert these rights. Access to justice is not merely achieved by overarching principles about equality before the law, but rather to the extent to which these policies and practices give these principles substance and utility.

At the time this report was launched, we were grateful to receive the news that the SJP is to receive a further two years of funding from the State Government. This support, the extent of which has not yet been confirmed will allow us to continue to embed this program into the community and retain our current service provision. Implementation of this report's recommendations (which include additional funding and continued support for the SJP that allows it to expand its service offering and replicate its model) would further social inclusion and economic justice for refugee and recently-arrived communities in Australia.



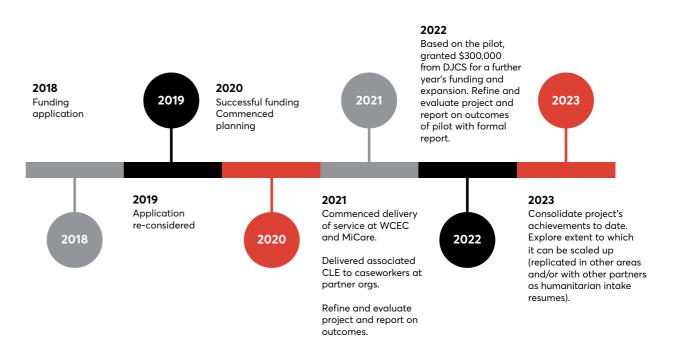




5 PROJECT TIMELINE

Background to the SJP Project

Key dates



This project has been very useful and helped many clients to easily access legal support. The legal team are fantastic! They are very patient with our clients, willing to listen to their side of the story. As a support worker I can easily access the service for consultation, an opportunity that rarely exist in many other services. I therefore plea for such a wonderful service to continue for the wellbeing of our vulnerable client.

- Anonymous worker feedback



6. THE SETTLEMENT JUSTICE PARTNERSHIP – CONTEXT AND PURPOSE

6.1 Recently-arrived communities in Melbourne's western suburbs

In the 21st century, Melbourne's Western Suburbs have become a hub for recently-arrived people on humanitarian visas. From 2010-2015, the Brimbank, Maribyrnong and Wyndham LGAs together received 18 per cent of all humanitarian arrivals in Victoria, and the Brimbank, Maribyrnong, Wyndham and Hobsons Bay LGAs received 44 per cent of all humanitarian arrivals from Burma. From 2001-2011, those same four LGAs received 35 per cent of all arrivals from the former Sudan – now Sudan and South Sudan – at the height of arrivals from those countries.²

There is limited published data on humanitarian arrivals in Melbourne's Western Suburbs from 2016-2023. We note the establishment of communities from:

- Myanmar/Burma, including Burmese, Hakha Chin, and Karen speakers
- Sudan and South Sudan, including Sudanese Arabic, Dinka, and Bari speakers
- Ethiopia and Eritrea, including Tigrinya, Oromo, Amharic, and Somali speakers
- The Democratic Republic of the Congo ('DRC'), including Swahili and French speakers.

Many more have arrived after fleeing war, violence, and persecution in their states of origin, such as individuals from communities of Afghanistan following the Taliban's takeover of the country on 15 August 2021.

Throughout this report, we use the expressions 'recently-arrived humanitarian entrants', 'recently-arrived communities' or 'the recently-arrived' to describe the clients we assisted through the SJP.

The descriptor 'recently-arrived' captures a highly diverse group, and it is appropriate to be wary of generalisations. Where we use have used the expression 'recently-arrived' in this report, we are describing our clients who:

- arrived under Australia's Humanitarian Program as a refugee or other special humanitarian category or arrived on other visa types and by which they are entitled to settlement support; and
- · practically require settlement support.

6.2 Settlement outcomes

The Settlement Council of Australia ('SCoA') defines settlement as "the two-way process of migrants and refugees adjusting to a new life in Australia, and Australia welcoming migrants and refugees".³ Successful settlement is often framed in terms of social and economic inclusion,⁴ focusing on the right of people to participate actively and equitably in society.

The National Settlement Outcome Standards, developed by SCoA in 2015, articulate ten standards to be met for migrants and refugees to be considered 'settled'⁵:

- Education and training
- Employment
- · Health and wellbeing
- Housing
- · Language services
- Transport
- · Civic participation
- Family and social support
- Justice
- Finance

Barriers to equal access or participation in any of these fields indicate social exclusion: the "restriction of access to opportunities and a limitation of the capabilities required to capitalise on these opportunities".⁶

Under the 'Justice' standard, "newly-arrived people need full access to the legal and justice systems, in order to ensure the realisation of their rights and responsibilities". Fair access to justice also contributes to the other nine standards, particularly employment, housing, family and social support, and finance. This is because progressing social and economic inclusion in Australia requires considerable engagement with legal systems. For example, consumer contracts are needed for access to utilities, goods and services; leases for residential tenancies; and contracts for employment. Legal issues may also present or escalate in times of hardship or crisis, including family violence, debt, scams, and fines.

6.3 Settlement services

Government-funded settlement services, such as those provided by MiCare and WCEC, are integral to recently-arrived communities. They deliver:

- · Education and training support and pathways
- English-language programs and practice, including support to remain engaged in programs
- Assistance in employment pathways, including apprenticeships and traineeships
- Establishment assistance in accessing the private rental market, connecting to essential services and utilities, and understanding Australia's institutions and systems of government
- Casework, family support, youth work, and community capacity building projects
- Health and social assistance, including access to appropriate counselling services and activities which foster social inclusion and cohesion.

Settlement services are predominately funded through one or all of three federal programs:

- The HSP, which provides intensive support for humanitarian entrants for the first 6-18 months after arrival in Australia, including sourcing accommodation, initial orientation, enrolment in schools, and linking in with health services
- The SETS program, which provides ongoing support to humanitarian entrants and other eligible migrants for up to five years after arrival in Australia
- The AMEP, which provides English language tuition to eligible migrants and refugees.

6.4 The relationship between Westjustice and settlement services: historic limitations

WCEC and MiCare's Western Suburbs Settlement Services have long referred clients to Westjustice, but some referrals were not effective, or not made, because:

- There was notable attrition of clients of settlement services on being referred (i.e., clients did not always attend their appointment at Westjustice's office)
- Clients were uncomfortable with attending another agency and explaining their problems to a new person

- Some clients who had sensitive matters were heavily reliant on their settlement worker – for example, for emotional support or discreet interpretation in their preferred language – who could not easily accompany them to offsite appointments
- Existing Westjustice programs did not always prioritise recently-arrived clients because (for example) those programs were not specific to recently-arrived clients, had long waiting lists, or mostly provided duty services
- Settlement workers could identify sources of distress and anxiety for their clients, but could not always identify potential legal problems
- SETS services are only funded to support people in their first five years after arrival in Australia, so settlement workers may not have known they could still refer their former clients to Westjustice after the five years had passed when they returned with a new issue with legal aspects.

6.5 Westjustice's multidisciplinary, place-based partnerships

For the past several years, Westjustice has delivered multidisciplinary, place-based partnerships with non-legal services in Melbourne's Western Suburbs, including:

- a Health Justice Partnership at Werribee Mercy Hospital
- a School Lawyer Program in partnership with four local high schools
- the Restoring Financial Safety project, based initially out of McAuley Community Services for Women, and now run in partnership with The Orange Door.⁹

Westjustice has also operated a Communities of Burma Financial Counselling Clinic from our Footscray office for over a decade, in which a trusted community worker and financial counsellor assist and advise members of the Hakha Chin and Burmese-speaking communities. This approach had not yet been replicated, for other refugee communities, or in tandem with the settlement agencies assisting new arrivals due to funding limitations.

6.6 The SJP pilot

The limitations listed at 6.4 above, and the success of the place-based justice partnerships of Westjustice and other CLCs and legal aid commissions, led us to seek support to run the SJP pilot with WCEC and MiCare.

We were particularly encouraged by the reported successes of Legal Aid NSW's partnership with Settlement Services International ('SSI Partnership'), in which Legal Aid NSW provides legal outreach services at Migrant Resource Centres ('MRCs').¹⁰

The SJP was designed as an early intervention project, aiming to mitigate identified barriers to successful settlement and provide access to justice for recently-arrived people. It achieves this by placing lawyers at settlement agencies to deliver legal services that are:

- Accessible: because lawyers deliver legal services from places clients know and trust
- Timely: because settlement workers refer clients directly to lawyers for assistance
- Holistic: because lawyers deliver legal services alongside settlement and social work.
- Integrated: because all disciplines work collaboratively reducing multiple story telling and referral merry-go-rounds
- Place based: because we need to be where our clients and communities are already seeking support and assistance.
- Client led: because clients are the best informants as to their needs and the mode by which this ought to be delivered.

The pilot involved:

- Lawyers based at both WCEC and MiCare one day per week to see clients referred by settlement workers for legal advice, assistance, and representation (public health restrictions permitting)
- The delivery of professional development ('PD') modules to settlement workers, which enabled them to identify and understand potential legal issues, urgent limitation periods, and risk factors for common legal problems
- Westjustice staff providing legal and non-legal information and referrals to settlement workers where Westjustice could not assist with an issue
- Stakeholder engagement to raise issues arising from the SJP casework with government, media, and industry.

Notably, access to legal support was not restricted by SETS timeframes, meaning that lawyers could assist clients who had lived in Australia for longer than five years. This allowed former clients of WCEC and MiCare's settlement services to also access free legal services.

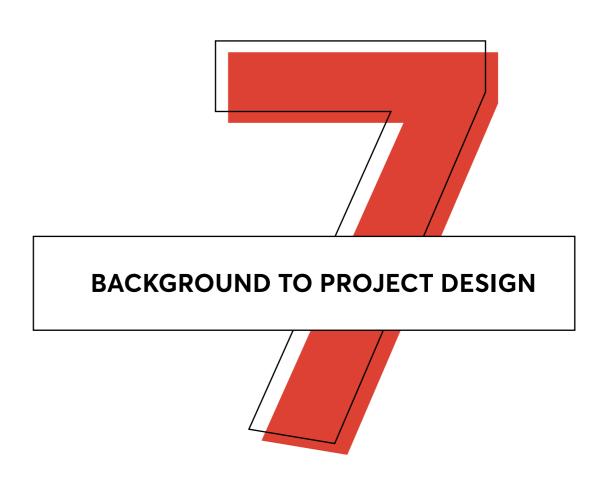
In delivering the SJP pilot, Westjustice aimed to:

- Improve clients' understanding of the law, and of their legal rights and responsibilities
- Improve clients' knowledge of legal services and their confidence in approaching those services for help in the future
- Reduce likelihood of clients experiencing further legal problems
- Resolve clients' existing (often multifaceted) legal problems
- Identify and raise systemic issues affecting recently-arrived people living in Melbourne's Western Suburbs on humanitarian visas, noting that many of these issues would be present elsewhere in Victoria and Australia.

Westjustice is probably the best one to comprehend the client's situation and their circumstances, which makes it so much easier for both parties to work alongside. Thank you for supporting our clients.

- Anonymous worker feedback





7. BACKGROUND TO PROJECT DESIGN

7.1 Barriers to access to justice for recently-arrived people

Recently-arrived people and communities are diverse and can face different barriers to accessing justice. Through our work in Melbourne's West over the past decade we have identified some common barriers that can lead to financial and other disadvantage.¹¹ The barriers we identified were largely consistent with those identified in the Law Council of Australia's 2018 Justice Project.¹²

The descriptor 'recently-arrived' captures a highly diverse group, and it is appropriate to be wary of broad generalisations of legal issues and barriers that group faces. However, addressing the intersectional nature of disadvantage experienced by our clients requires us to interrogate factors which may be compounding for members of recently-arrived communities, even if each of these factors will not always be present for every individual.

Barriers include:

7.1.1 Low English language and literacy levels

Most recently-arrived clients of Westjustice required an interpreter to communicate with their lawyer. Many clients arrived in Australia with no English language capabilities and were undertaking intensive beginner-level AMEP English classes at the time of their appointments. Some clients were preliterate or non-literate – unable to read or write in any language – and had little to no formal education before migrating to Australia as adults.¹³

Australia's legal and financial systems are highly text-based so matters of daily life, such as renting a house and connecting to essential services, require lengthy and complicated contracts prescribing numerous rights and obligations. When disputes arise, courts and tribunals require documents written in English. It is extraordinarily difficult for a non-English speaker, or non-literate English speaker, to self-represent even in jurisdictions where parties often do so, such as the Victorian Civil and Administrative Tribunal ('VCAT') and the Fair Work Commission ('FWC').

The Justice Project noted that:

[L]imited English language skills impact individuals' ability to engage with the justice system at every stage: dealing with police, engaging with support services, completing forms and understanding paperwork, communicating with legal and court staff and participating in proceedings and understanding court orders.¹⁴

Most legal referral information is also written in English. Translations are rarely available in the languages spoken by our clients, and even where translated are not useful to clients who cannot read in any language.

7.1.2 Unfamiliarity with Australian laws and legal systems

There is a lot of 'Australian law' to learn. It must not only must be learnt very quickly upon arriving in Australia, but typically in conjunction with learning English, adjusting to life in a new country, forming new community connections, and, for many humanitarian entrants, the ongoing trauma of displacement.

The ramifications of unfamiliarity with law and legal systems have several dimensions.

Firstly, failure to understand the law not only results in the obvious risk of breach of law (and the resulting consequences), but also a failure to recognise the seriousness of disputes, and the risks of non-action.

Secondly, members of recently-arrived communities are less likely to recognise legal disputes as such, resulting in a lower likelihood of asserting legal rights, as well as a lower likelihood of seeking legal assistance.

Thirdly, and perhaps as a combined result of lack of access to in-language information about legal referral options, and a distrust of authorities, when a legal problem is identified, recently-arrived migrants are more likely to seek legal assistance from informal sources, such as community leaders, settlement agencies, or migrant resource centres.¹⁵

Fourthly, a lack of familiarity with Australian law and legal systems may be weaponised against victim-survivors of family violence by perpetrators, to create an (inaccurate) impression of an absence of legal rights, or of risk of deportation or loss of child custody, should the victim seek legal help.¹⁶

Finally, these issues, in isolation or in combination, compromise positive life outcomes and increase costs to government through interfaces such as involvement of child protection services, escalations in family violence and use of the family violence courts, and increased risk of homelessness.

7.1.3 Distrust of authorities

People who have entered Australia on humanitarian visas have fled persecution either perpetrated by the authorities in their country of origin, or from which the authorities of their country of origin were unable, or unwilling, to protect them.¹⁷

Recently-arrived humanitarian entrants may not trust the police, the judiciary, government employees, or lawyers in Australia. They may avoid the justice system because previous interactions with police or courts have traumatised them, and further interactions may trigger that trauma. Recently-arrived people may also fear visa cancellation or deportation if they interact with the justice system, even where neither is likely to occur. ¹⁸

7.1.4 Limited financial resources

For most recently-arrived people, the justice system is almost inaccessible without legal assistance. Where free legal assistance is unavailable, people must retain a private lawyer at cost. A person who does not speak English will generally pay for the cost of interpreters when they speak with their lawyer. These costs are prohibitive to most recently-arrived humanitarian entrants, who typically arrive with no savings and are at least initially reliant on Centrelink supports.

7.1.5 Cultural isolation and lack of cultural competency within the Australian legal system

Cultural isolation and limited networks in Australia and a lack of cultural competency within the Australian justice system, especially in family violence matters, can also affect access to justice for recently-arrived people.

This may mean, for example, that a person does not have a significant group of people from their cultural background with whom to share an understanding of local services, supports and economic and social opportunities. It can also lead to misunderstandings and mistrust about which problems have clear legal remedies, those situations in which it is okay to raise these (eg; the misconduct of an employer) and a failure to realise and capitalise on one's full social and economic entitlements (including supports which may be available).

7.1.6 The digital divide

Even prior to the COVID pandemic, there was an increasing reliance on digital provision of services across a range of business, consumer and institutional interactions. This presupposes that users have both consistent access to personal digital equipment and that they have a reasonable level of competency doing so. Unfortunately, the reality for many refugee arrivals in Australia is that they will have reached adulthood without having achieved either and may not be confident in (or have the means to afford) the mobile application environment, completing web-forms or managing processes to access essential services online, such as two-factor authentication.

Access to justice issues emerge where digital forms or processes become a preferred or encouraged way to access rights – for example, needing to digitally register with a Court to access a duty lawyer service.

Inequitable knowledge and access in the digital space was a recurring issue for our clients and is discussed in further detail in the Discussion and Recommendations portion of this report.

7.2 Importance of early intervention in legal problems

Unresolved or recurring legal problems can disrupt successful settlement, and may result in:

- · personal shame and stress
- a criminal conviction which undermines future employment prospects
- loss of a driving licence, which can be a crisis in outer-metropolitan areas where public transport is scarce or unavailable
- debt leading to financial insecurity and bankruptcy
- · eviction and homelessness
- a lack of physical or psychological safety.

An unresolved legal problem can trigger additional legal problems. These, in turn, can result in multiple simultaneous or sequential issues. Early intervention is therefore valuable in resolving legal problems before they reach crisis point, by minimising escalation, avoiding additional compounding legal issues, and reducing the risk of expensive court proceedings. In addition, research shows that addressing (rather than avoiding) legal issues results in direct and indirect positive health and social outcomes, particularly where there is early intervention.²⁰

32 | BACKGROUND TO PROJECT DESIGN 33

As identified by The Justice Project:

[Unresolved legal issues] clearly have broader cost implications – such as health, housing, social services and welfare, child protection, families, corrections, policing and justice portfolios. They also entrench individuals' disadvantage and the likelihood of this occurring as part of an intergenerational cycle of poverty, violence and harm – with opportunity costs to all Australians given the loss of healthy, productive and vibrant communities. ²¹

7.3 Importance of positive interactions with the justice system

The experience of recently-arrived people on their first interaction with the justice system is significant. A negative interaction may result in the individual and their community losing trust in Australian authorities, as news of the experience spreads by word of mouth.

In its 2013 submission to the Productivity Commission's Access to Justice Inquiry, the Judicial Council on Diversity and Inclusion pointed to concerning statistics indicating that mistrust of the Australian legal system among migrants increased over time – that is, migrants who had spent considerable time in Australia had lower levels of trust than very recent arrivals. This may stem from migrants having negative initial experiences when attempting to enforce their rights.²³

7.4 Co-location, accessibility and trust

Justice system actors that deliver culturally competent services and outreach are more likely to succeed in reaching individuals experiencing cultural isolation.²⁴

Benefits of multidisciplinary co-location of services include that:

- People experience disadvantage and vulnerability in various and overlapping ways: often clients who are seeking support from health, social or welfare agencies will also require assistance with legal and financial problems²⁵
- People are more likely to attend healthcare, allied health premises, school or education services, and/or social and welfare services than seek legal support²⁶
- People are often unaware that their problems require legal solutions, and even when they are aware, they will rarely consult lawyers because of access to justice barriers, negative perceptions about lawyers and other issues such as concerns as to costs²⁷

- Barriers such as difficulties with transport, costs and travelling time to reach multiple sites, language barriers, and waiting times, are easily addressed by co-location of services²⁸
- Practitioners in non-legal disciplines can act as 'gateways' to legal services, as they are ideally placed to identify legal problems, and will often have the client's trust²⁹
- Service provision that helps to prevent individuals with both legal and non-legal needs from 'falling through the cracks'.³⁰

Westjustice has observed these benefits in its multidisciplinary, place-based partnerships with non-legal services in Melbourne's Western Suburbs,³¹ and in the successes of the SSI Partnership.³² We were also encouraged by the achievements of the Communities of Burma Financial Counselling Clinic at our Footscray Office, which showcased the advantages of a trusted community connection leading into legal and financial counselling services.

7.5 Identification of systemic issues

In our experience recently-arrived people encounter a range of legal issues, but there is limited research in this area.³³ Part of the SJP's purpose was to identify the most pressing and prevalent legal issues for recently-arrived people, and to advocate for systemic reforms, where appropriate. The SJP is therefore a 'generalist' legal service with a flexible approach to client bookings.

7.6 Relationship and capacity building – professional development for settlement workers

In 2015, the Judicial Council on Diversity and Inclusion reported that:

...[I]t would be beneficial if there was greater interaction between legal, settlement and domestic violence services to share expertise. This would ensure the highest level of support for migrant and refugee women experiencing family violence or family breakdown. In particular, [...] case workers need to be trained to understand the operation of the legal system to assist them to make appropriate referrals and better support women through the court process.³⁴

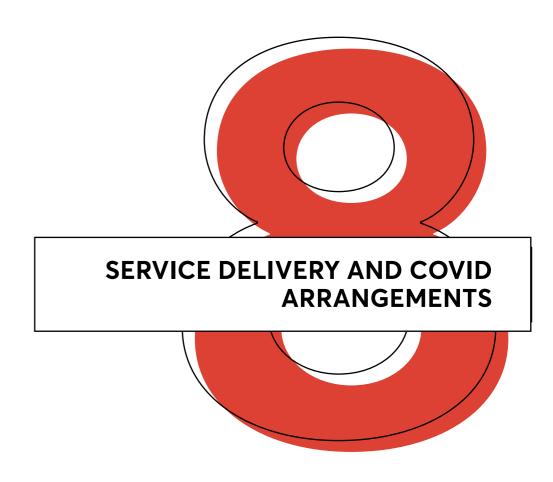
Westjustice sought to earn the trust of our partner organisations, particularly the settlement workers who would provide non-legal support to our clients and refer them to the SJP. We proposed to build relationships with settlement workers by:

- providing workers with a direct phone line to the SJP program manager to discuss possible referrals, book client appointments, and consult on legal and administrative matters, where appropriate
- delivering a series of professional development seminars to settlement workers on a range of common legal issues to assist workers to identify legal 'red flags', limitation dates, and matters appropriate for legal referral.

"From a personal experience,
I think right now [getting legal
help for a client] is very easy
compared to before. When I'm
calling reception I'm not quite sure
and sometimes I feel like I'm a
delayed but when I email [the SJP
caseworkers] then I get a response
quicker...I think it's very useful
that, very good that we have that
flexibility capacity."

- Eh Su, Settlement Worker, WCEC







8. SERVICE DELIVERY AND COVID ARRANGEMENTS

Given the in-situ design of the SJP, it was ironic that, for almost the entire pilot, government health restrictions required that our legal services – and MiCare and WCEC's settlement services – were delivered largely by phone.

We focused initially on building our relationships with settlement workers through phone consultations and training sessions on Teams and Zoom. The results were rewarding. Despite our clients' difficulties with accessing services under COVID restrictions, we received a steady stream of referrals from settlement workers.

We collaborated with settlement workers to ensure clients were briefed before legal appointments and had multiple options for providing important documents – for example, by post, or physical collection or drop off, where the client was unable to provide documents electronically. Lawyers and settlement workers shared administrative tasks like facilitating warm referrals³⁵ for medical or counselling appointments and contacting practitioners to request reports.

In mid-2022, we were thrilled to commence attending both MiCare and WCEC in person for one day per week. Our physical presence correlated with an immediate and significant increase in both client bookings and settlement workers approaching lawyers for secondary consults and/or triaging of issues relating to mutual clients.

As 2022 concluded, lawyers were present at both outreach locations, and has established productive relationships with settlement workers, with a growing list of requests for professional development sessions for settlement workers and Community Legal Education and Information ('CLEI') events.

"Something that could be improved is that if maybe if Westjustice had more capacity... maybe even two days [a week] or something like that to increase, or something like that in that way. If it's available, it would be good for the community... to easily access."

- Eh Su, Settlement Worker, WCEC



9. THE MY NAME PROJECT

From mid-2022, the My Name Project formed part of our core SJP service.

The My Name Project is the continuation of a previously funded Westjustice pilot. In a second iteration of the project, we collaborated and shared funding with WCEC. From the commencement of SJP funding from DJCS, the My Name project has been incorporated into the SJP.

The My Name Project provides targeted administrative assistance to members of the Burmese community. The Karen, Karenni and Chin ethnic groups from Burma have cultural naming practices that differ from the 'first name, family name' structure used in Australia. In these groups, people often have a single personal name. If that name is recorded on official identity documents as a first and a family name, it leads to misunderstanding and error.

EXAMPLE:

A person has the name "Phyo Thant Kyaw". Phyo Thant Kyaw is forced to flee his town of birth and temporarily live in a refugee camp before being resettled in Australia through the United Nations High Commissioner for Refugees.

On his ImmiCard for legal passage to Australia, his name is recorded as Family Name: "Phyo Thant Kyaw", with no first name.

In Australia, the real estate agent managing the first house Phyo Thant Kyaw rents records his name as First Name: Phyo, Last Name: Thant Kyaw, with the Residential Tenancies Bond Authority ('RTBA'). This later causes difficulty when he is trying to get his bond back. When he goes to fill a prescription, his driver licence (First name: "Phyo Thant", Last Name "Kyaw") does not match the way his name has been recorded in his prescription, and the pharmacy turns him away. His energy provider will not honour his healthcare card rebate because the card's details do not match the name structure on his energy bills.

Phyo Thant Kyaw and his family decide they want a common family name as a way to deal with inconsistent documentation, as well as to feel a shared sense of belonging in their new country. Phyo Thant Kyaw would also like to resolve the name change before applying for citizenship and an Australian passport.

To add a family name, Phyo Thant Kyaw needs to lodge a Change of Name application with the Victorian Registry of Births, Deaths and Marriages ('VicRBDM'). He has no idea where to start with the online application, and the process requires him to lodge documents that he no longer has access to.

After feedback from our My Name pilot, the Victorian government and the VicRBDM have allowed refugee arrivals and their families to make free name-change applications.

The process can involve gathering extensive documentation and preparing legal documents such as statutory declarations, and many recently-arrived applicants require considerable practical assistance.

Westjustice and WCEC worked collaboratively with the VicRBDM to lodge applications during the early stages of the COVID-19 pandemic to ensure that clients could better access essential services and navigate systems with confidence.

We will continue to assist families with name change applications within our SJP work in 2023, and will review options to do this on a larger scale, such as at an in-person event.





10. SJP OUTCOMES

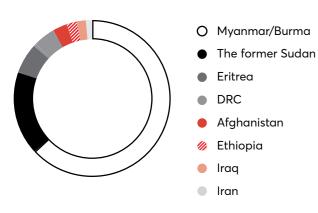
10.1 Legal casework statistics

From May 2021 to December 2022 (inclusive),³⁶ the SJP assisted 96 clients with 117 legal matters. Most casework consisted either of ongoing representation for a client, or of multiple, discrete legal advices and tasks to assist a client to resolve their legal matter. A smaller proportion of clients were assisted with a 'one-off' legal advice or information.

In addition to our legal assistances to clients, we made 34 referrals, including referrals:

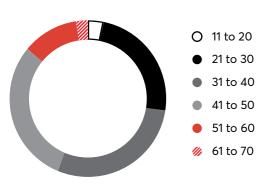
- to other legal services, where a client could not see a Westjustice lawyer due to conflict of interest or lack of subject matter expertise
- to non-legal organisations, such as counselling or housing services.

Client Country of Origin

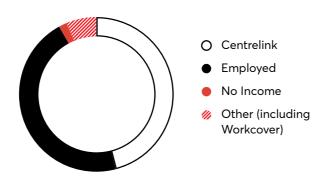


Note: For country of origin, we have combined refugees from the Communities of Burma who were born in refugee camps in either India or Thailand in the Myanmar/Burma figures.

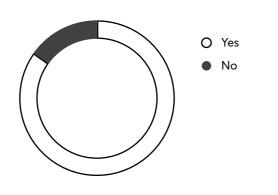
Age Range



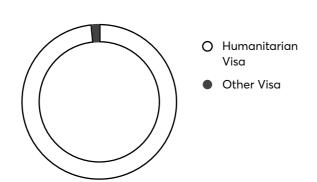
Income Source



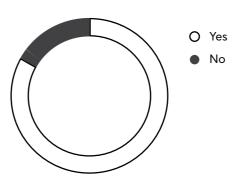
Was an Interpreter required?



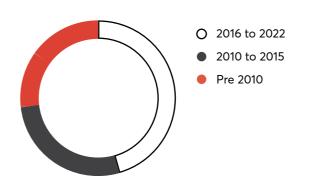
Visa Type



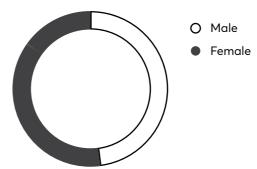
Parents or caregivers of children? (either solo or jointly)



Year of arrival to Australia



Gender



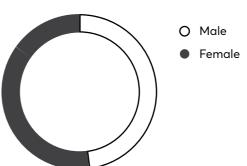
10.1.1 Breakdowns of types of legal problem:

Type of Legal Issue



* Other - included assisting people who had been victims of scams, administrative matters such as advice regarding Working with Children Checks, and clients who needed practical support understanding or completing complex administrative processes that did not involve a legal dispute (e.g. identity requirements for Centrelink and Medicare benefits, or applying for a new ImmiCard).





10.2 Client surveys

The SJP not only aims to assist clients to resolve their legal problems, but also breaks down barriers to justice, increases trust in seeking legal assistance, and holistically improves settlement outcomes. We measure our clients' views on our assistance through an optional, anonymous post-assistance survey, which is completed through interpreters where necessary.

As at end-December 2022 our survey results were:



of clients were 'happy' or 'very happy' with the outcome of their legal matter



per cent of clients felt 'very welcomed and supported' by the service



of clients felt 'a lot' more confident about how Australia's legal system works, with a further 27 per cent feeling 'a little' more confident



of clients felt 'a lot' more confident that they would know what to do if the same situation happened to them again, with a further 27 per cent feeling 'a little' more confident



of the clients who received ongoing legal representation had an improved personal situation after being assisted by the SJP.

10.3 Professional development sessions for settlement workers

Over 2021 and 2022, we delivered ten training sessions to WCEC and MiCare staff on topics including: tenancy law, family violence and intervention orders, scams, employment law and discrimination. VLA delivered a further session on child support and spousal maintenance. In total, there were 185 attendances at these ten events.

10.4 Settlement worker surveys

We have conducted two rounds of anonymous short answer surveys with settlement workers in March and November 2022, respectively.

In March 2022:



of workers found it 'easy' or 'very easy' to refer clients to an SJP lawyer



of workers found the SJP had helped the clients 'a lot',



WITH

WITH

waiting on final outcomes for their clients



of attendees found the PD sessions useful and informative



of workers felt more confident about issue spotting for clients and directing them toward legal help.

In November 2022:



of workers found it 'easy' or 'very easy' to refer into the project



of workers found the project had helped the clients 'a lot' to date,



either finding it helped 'a little bit', or waiting on final outcomes for their clients



of attendees found the PD sessions useful and informative



of workers felt more confident about issue spotting for clients and directing them toward legal help.

The slight variation in feedback from March 2022 to November 2022 may reflect personnel changes at all partners, including Westjustice, over that period. We will hold another introduction to the SJP for settlement workers in early 2023, as well as further professional development sessions to ensure workers are confident with the service.

We collected anonymous verbatim feedback from settlement workers in both surveys, which is dispersed throughout this report.

10.4.1 Qualitative surveying

Two settlement workers: Eh Su from WCEC, and Poni Peter from MiCare, provided further feedback to Westjustice by participating in longform qualitative surveys conducted in December 2022. Comments from Eh Su and Poni Peter are dispersed throughout this report.

48 I SJP OUTCOMES 49



11. DISCUSSION AND RECOMMENDATIONS

Through our representation of our clients, we have also identified systemic issues and barriers which are beyond our power as a CLC to resolve. This section identifies key issues and addresses the decision makers who have the power to resolve them. Although they are made based on the experience of our SJP clients, we believe a number of these recommendations would also benefit other people in Victoria who currently face barriers to social and economic inclusion.

11.1 Adequate support for settlement

The SJP did not confine client eligibility to people still receiving the five years of settlement support available through SETS. Though 44 per cent of our clients had been in Australia for five or fewer years, 29 per cent had been in Australia for between 6 and 11 years, and 27 per cent for more than 11 years.

These clients were usually still reliant on settlement workers. Many had experienced long-term isolation which was exacerbated by the pandemic, and despite living in Australia for more than five years, they often struggled to understand and exercise their legal rights. This was particularly the case where their legal issues were 'novel' to them, such as:

- family violence (where this had not occurred before, or had escalated)
- · family breakdown, separation, or divorce
- · encountering mistreatment at work for the first time
- being the victim of sophisticated scams or financial crimes (including identity theft)
- complex interactions with insurers following events which individuals had not anticipated or previously navigated (motor vehicle accidents or flooding).

This data is consistent with commentary and recommendations by several peak bodies and other settlement organisations to the Department of Home Affairs' ('DHA') 2022 discussion paper, Next Steps to Improve Australia's Settlement and Integration of Refugees, 37 which highlighted the problems of time limits on access to settlement support.

Settlement is a non-linear process, and settlement needs can arise over the course of life in Australia, ³⁸ particularly in areas where people face systemic barriers and unequal access, such as housing, health, and the justice system. ³⁹ Criteria limiting settlement support, such as length of time since arrival, are arbitrary and take an inappropriate one-size-fits-all approach. ⁴⁰

Consistent with our experience, the Ethnic Communities Council of Queensland ('ECCQ') has observed that, many years after their formalised exit from settlement support, recent arrivals continued to request support from SETS providers and community alike, often returning to settlement providers for support in areas that were addressed during the orientation program.⁴¹ This results in negative effects for communities, including a lack of comprehensive support for recently-arrived people at the community level and an additional burden on other community members to fill the gaps in settlement support.⁴²

We support the calls of SCoA, ECCQ, the Refugee Council of Australia, and Western Melbourne services including WCEC and the Western Settlement Outcomes Network, to redesign settlement services as holistic, flexible, and tailored to individual needs. Under this approach, people would receive settlement services based on their circumstances and needs, rather than rigid criteria such as visa category and length of time since arrival. In addition there would be a significant amount of avoided costs that result from the short and long term impacts of family violence, housing insecurity, financial insecurity and avoidable monetary loss, workplace abuse and exploitation.

Recommendation 1: Eligibility for settlement services should be needs-based and not time bound. HSP should be extended beyond the current 18 months, and SETS extended beyond five years.⁴³

11.2 Digital divide

There is a continuing and severe digital divide impacting many recently-arrived people and communities, which was exacerbated by the COVID-19 pandemic.

Recently-arrived people have often spent several years in a refugee camp with basic phones at best and no internet access before coming to Australia,44 where many government services and processes are digitised and presume technological competency. Some people may be preliterate due to disruption and denial of cultural and educational opportunities from a young age, and will depend on oral communication to understand everyday situations.

Common barriers for SJP clients included:

 Limited competency with using smartphones, computers, and other devices, and with specific functions of those devices. For example, clients may have had smartphones but could not take photographs or video, could not send photographs or video to other people, and could not forward emails. This made it difficult for clients to instruct their lawyers and to communicate with agencies and service providers, such as real estate agents, police, and insurers, particularly in the remote environment

- Limited competency with using the internet and navigating predominantly English-language websites, including government websites such as the RTBA, the VicRBDM, and Services Australia. Even when there where non-English speaking resources available, they were only obtainable via the English speaking websites and failed to consider that many new arrived people are illiterate in their first language
- Difficulty following up-to-date public health information during COVID lockdowns, which was not always translated or available physically in their language
- Inability to read or receive information about COVID-19 vaccination, test results, or exposure, sent via digital applications ('apps') or short messaging service ('SMS'). For example, many agencies, including Westjustice, initially asked to see a client's vaccination certificate on the Services Australia app for in-person appointments. Yet many clients were carrying original paper vaccination records that were easily lost or damaged, because they could not use the app. Westjustice quickly allowed these clients to present legible photographs of their physical certificates, but other organisations were not as flexible
- Some clients were less attuned to subtle tactics by scammers. For example, they would not check whether a private seller had a record of positive feedback before sending money on eBay or Gumtree, did not identify misspellings or poor website design indicating a scam, or fell victim to well-known and established scams.

CASE STUDY: BRIAN

Brian arrived from the DRC in 2019 and was due to attend Westjustice's office to complete and lodge an urgent application online with his lawyer. When he did not attend his appointment, Brian told his lawyer that he and his family had been exposed to COVID-19. They had now been isolating for more than two weeks, and were not sure if they were allowed to leave the house. They had not received a call from the Department of Health. Brian's young child had to read Brian's SMS messages to the lawyer so that the lawyer could explain that the family had in fact tested negative.

Later, Brian's Family Tax Benefit ('FTB') was sharply reduced. He could no longer access his Services Australia app, and his family members could not help him. Brian spent a long time on the phone with a Westjustice lawyer, unsuccessfully trying to speak to a Centrelink staff member. Brian ultimately had to queue in person at a Centrelink office with a written explanation of his situation from the lawyer where, fortunately, his previous FTB was restored.

Recommendation 2: State and Federal Government agencies should have a strategy to retain and promote targeted phone and in-person services for people who are unable to interact easily or safely

We suggest one method of prioritising clients who need this could be to base priority access on possession of a Health Care Card, ImmiCard, or Asylum Seeker Concession Card.

"Through proper support with an interpreter and a settlement case worker supporting [clients] along the way...they feel more confident, or they feel sure what they need to do. We are very happy that the service is available in Wyndham...instead of going to other places. This is also some of the feedback that we keep receiving from the community."

- Eh Su, Settlement Worker, WCEC

11.2.1 The court system during the COVID-19 pandemic

During the COVID-19-pandemic, courts and tribunals moved to 'remote' online proceedings, which created barriers for SJP clients trying to access them.

CASE STUDY: MENG

Meng is a recently-arrived refugee from Myanmar. He is unable to speak English, has had very limited formal education, and is non-literate. He does not know how to use a computer and does not know how to use his phone to take photos, send text messages, or connect to video calls – he only uses his phone to make and answer phone calls.

Meng was charged with a criminal offence in early 2021. Police did not use an interpreter when they arrested Meng, and he did not know the details of his charges. He attended the Magistrates' Court of Victoria ('Magistrates' Court') in person on his first court date, but his matter was adjourned as no interpreter had been booked or was available. This happened again on Meng's next court date. Meng asked his settlement worker for help, and they referred him to Westjustice.

A further adjournment occurred after Westjustice sought a copy of the preliminary brief relating to Meng's case, but police failed to provide this in time for Meng's next court date. The matter was adjourned again after resolving to a plea, because the Magistrates' Court did not have time to accommodate a plea requiring an interpreter. The Magistrates Court had by then moved to online hearings only and an interpreter plea would take twice the time of a non-interpreter matter over video link.

Meng's matter was finally listed for an online plea hearing. Westjustice advised the Registry that Meng lacked the digital skills and equipment to join by video. The Registry advised Westjustice that Meng could join the hearing by telephone. Meng joined by telephone, but the Magistrate did not want to sentence him if she could not see his face and adjourned the hearing once again.

Westjustice decided to allow Meng to attend our office for the next hearing so that we could assist him to join a video conference, but the hearing was adjourned after Meng tested positive for COVID-19 and could not leave his house to receive technological assistance from Westjustice.

By the next hearing date, the Magistrates' Court had returned to in-person hearings, but Meng's matter was adjourned as the Court was again too busy to accommodate an interpreter plea. Meng had waited at court for four hours with his lawyer and interpreter before he was told that his matter could not be heard.

By the time Meng's matter finally proceeded as a plea, it had been adjourned seven times over more than one year, despite Meng instructing Westjustice to enter a plea shortly after we received his preliminary brief. This process was extremely stressful for Meng, who feared attending court. He had psychologically prepared for his matter to proceed before each hearing, only for it to be adjourned repeatedly and remain unresolved.

Recommendation 3: Because digitisation of public and private services is likely to increase, the Federal Government should fund settlement services to deliver increased digital literacy courses and supports to recently-arrived people.

Westjustice is by no means the first to identify these barriers. We note the joint December 2020 report of Good Things Foundation Australia and the SCoA, "Supporting the Digital Inclusion of New Migrants and Refugees". It founded its recommendations directly on consultation with settlement agencies and direct work with people who have been digitally excluded, calling for funded provision of digital devices to AMEP students, improved regional ICT infrastructure, and inclusion of digital technology in the Basic Households Goods Package new arrivals receive.

Recommendation 4: We endorse the recommendations made throughout the joint report of the SCoA and Good Things Foundation, 'Supporting the Digital Inclusion of New Migrants and Refugees',⁴⁵ and call on Federal and State Governments to act on them.

11.3 Scams

In 2021-2022 Westjustice saw many clients from refugee backgrounds who were victims of scams, both in the SJP and in our Consumer Law Clinic, which is funded by Consumer Affairs Victoria ('CAV'). While our casework statistics on the Consumer Law Clinic matters are not set out in this report, the experiences of those clients support Recommendations 5, 6, 7 and 8.

People who are culturally and linguistically diverse are disproportionately impacted by scams. In the 2021-2022 financial year, members of culturally and linguistically diverse communities made up 5 per cent of all scam reports to the Australian Competition and Consumer Commission ('ACCC') but almost 13 per cent of the total losses. Members of these groups were likely to lose an average of \$1,200, compared to an average loss of \$845 across all scam victims.

The ACCC further suggests that scams are likely under-reported by members of culturally and linguistically diverse communities.⁴⁷

The story of the Hope Business App Scam and Gewa is representative of many of our clients who face predation from criminals targeting Australians with scams.

"Watching the discrimination training and also renters' rights... something like that I think is very useful, that's why every time I saw that opportunity I always tried to make myself available and join, because whatever I receive from the training...is always useful. I'm able to deliver or pass the message or share the spread the message to the community once available."

- Eh Su, Settlement Worker, WCEC

CASE STUDY - GEWA

Gewa is a middle-aged woman from a community of Burma. She is on a disability support pension due to several complex medical issues which went untreated during her time in a refugee camp. Gewa had savings of \$4,000, which she hoped to use to travel overseas to see her elderly mother one day.

In late April 2021, word began to spread in Gewa's close-knit community of the 'Hope Business App': an application you could install on your phone which invested your money and produced financial returns. It could be downloaded from the usual app stores, like Apple and Google, on a smartphone or installed by sharing a link over a messaging service. People who used the app could see their balance increasing and even withdraw small amounts of money from it.

Gewa was not confident with her phone and needed help from a younger friend to access the app and make online banking deposits totalling \$4,000. She was hoping to modestly increase her savings and secure the money she needed to travel.

Overnight, the app stopped working for Gewa and everyone else in her community. The money was gone, and she quickly realised she had been the victim of a scam.

With the assistance of a friend, Gewa initially tried to contact her bank. The bank asked complicated questions about the scam that Gewa could not understand. She believed she had lost the money forever. She was depressed and felt hopeless.

Gewa and many other members of her community soon reached out to Westjustice's Communities of Burma Clinic in Footscray and a number of Hope scam clients were then triaged through the SJP. Westjustice:

- Assisted clients to report scam losses to their banks
- Assisted clients to seek refunds of lost money, particularly where they had put all of their relatively small savings into the Hope scam
- Prepared and distributed guides on calling Australia's four major banks – Westpac, ANZ, Commonwealth Bank and NAB – to report a scam, which were translated into two Burmese languages
- Liaised with bodies, including the ACCC and the Australian Banking Association ('ABA'), about their responses to the Hope Business App scam.

Westjustice recovered Gewa's life savings after advocating for her to the Australian Financial Complaints Authority, a dispute resolution scheme for financial services.

While services like the SJP can assist people like Gewa, both the banking sector and its regulations should operate to prevent customers from being scammed in the first place and respond quickly if scams occur. A number of members of Gewa's community told Westjustice they were vigilant and knowledgeable about more well-established scams – like fake doorto-door salespeople and spam emails – but had been caught out by newer app-based 'investment scams'.

The ACCC's long-circulated community scam prevention guide:⁴⁸

- Does not specify that more investment scams were based in the mobile app environment and could often be downloaded from legitimate app stores like Apple and Google
- Does not warn that mobile app investment scams are a significant risk
- Is not available in any of the first languages SJP clients spoke apart from Arabic, suggesting that it is not reflecting current migration profiles.

Westjustice used a Thriving Communities Partnership Grant to work with Scope Australia to publish an Easy English guide on avoiding scams in late 2022, which was distributed through our settlement agency partners.⁴⁹

Government must continue to play the chief role in monitoring and regulating the scams landscape and coordinating preventative responses. We are encouraged by the Federal Government's establishment of a National Anti-Scams Centre in November 2022, and its early engagement with consumer and community stakeholders. Its success will depend in part on the extent to which it assists recently-arrived and culturally and linguistically diverse communities.

Recommendation 5: The new National Anti-Scams Centre should have a specialist division that focuses on prevention of scams targeting at-risk culturally and linguistically diverse communities. This should include the preparation of appropriate materials and engagement with peak community bodies.

Scams are urgent matters for both consumers and financial service providers. Several banks have provided ready access to interpreters for our clients. In some matters, however, banks did not respond appropriately to clients who had been scammed and were urgently trying to report it. Some clients were told no interpreter was available in their language, and others had to answer security questions in English to be given an interpreter. These issues occurred during COVID-19 lockdowns and following the closure of local bank branches, making accessible phone centres even more important.

Under the Banking Code of Practice, banks must commit to "providing banking services which are inclusive of all people...including people with limited English" and "take reasonable measures to enhance their access to those services".⁵¹ We believe the Banking Code of Practice should be amended to include explicit requirements for interpreters, like those which appear in other industry codes.⁵²

Recommendation 6: The Banking Code of Practice should be amended at its next review to specify that "reasonable measures" to enhance access to services for people with limited English includes access to an interpreter in all urgent banking matters.

While telecommunications companies and digital media platforms must manage scam risks, the Federal Government should prioritise regulating scam prevention at banks, as the institutions that scammers seek to access.

The United Kingdom's ('UK') Contingent Reimbursement Model has strong merit. It requires participants to meet certain prevention indicators, including name-matching of automated push payment ('APP') recipients, plain English cautions before making a new third-party payment, and proactive identification of red-flags, as well as appropriate aftercare for scam victims.⁵³ Contrary to misunderstandings repeated in the Australian media⁵⁴, the Model only guarantees partial or full compensation to victims where a bank's processes fall short.

Scam prevention regulations should also cover remittance service providers, which our clients use to send money home to friends and family in locations with less developed banking services. The United States ('US') Federal Trade Commission has identified remittance service providers as a major potential vector for fraud, and prosecuted companies that fail to implement proper controls and oversight to prevent it.⁵⁵

We believe the social and public costs of recentlyarrived people being scammed are likely to be significant. While Westjustice will continue to assist individual scam victims, the Federal Government should better regulate scam prevention and responses to scam reports.

Recommendation 7: The Federal Government should introduce regulation for how banks and other financial providers should handle scams, including enforceable expectations around plain-English prevention requirements and appropriate aftercare. In the alternative, it should require industry to develop and adopt a binding code.

Recommendation 8: The Federal Government should investigate whether the current obligations on Remittance Service Providers are adequate for scam prevention and aftercare and then implement a response to its findings.

11.4 Consumer and motor vehicle accident matters

Consumer relationships are a central form of social and economic participation in Australia. Basic economic inclusion requires participation in contracts with private providers of essential services such as electricity, gas, water, telecommunications, and banking. The systems delivering these services are complex. For example, the Victorian energy market has over 20 different providers from which a consumer must 'choose' in order to turn on the lights in their home.

Many SJP clients came from agricultural, cash-based societies in their countries of origin and/or in the refugee camps in which they lived for years prior to migration. They typically lack experience interacting in a competitive, privatised market for essential goods and services, and some expressed frustration and distress at the market obstacles to accessing an adequate standard of living in Australia.

Aside from clients losing money through 'bad deals', negative early experiences in consumer contracting may affect peoples' emotional wellbeing, causing them to feel ashamed, or to feel manipulated or cheated by practices that were often unscrupulous but rarely met the threshold of being unlawful.

The mantra to 'never sign anything you can't understand' rings hollow for a recently-arrived consumer who is unable to speak or read in English. Essentially, their choice is either to have access to a service via a contract they don't understand, or decline to sign the contract and be precluded from access. Further, they are often encouraged to sign forms that are filled out on their behalf, further building a disempowerment model. This is common practice in many health and educational settings, presenting a challenge to well-established concepts such as informed consent.

11.4.1 Failure to use interpreters

Many regulated essential services which have access to interpreters and code of conduct requirements for appropriate use of interpreters,⁵⁶ frequently failed to offer, or declined access to, interpreters for our clients. A lack of access to interpreters resulted in:

- · clients being confused and distressed
- clients being precluded from reporting scam losses at the earliest opportunity
- clients failing to understand the insurance claims process, or their rights and obligations under their insurance policies
- · delays in resolving insurance claims
- clients having difficulty advocating for hardship entitlements, such as those under the National Consumer Credit Protection Act 2009 or the Energy Retail Code
- services failing to apply concession rates to utility accounts.

Large corporate service providers, such as banks, insurers, and debt collectors, sometimes relied on family members to interpret, this often included children. It is inappropriate and distressing for minors to be used as interpreters, particularly in debt collection or other matters where they might be asked to convey threats of litigation to their parents.

Contractual and legal language is different to conversational English, and there is a high risk that a minor may not properly interpret unfamiliar financial concepts like interest accruals or insurance exclusions. Equally, young children should not have to advocate for their parents in communicating traumatic experiences of family violence or ill-health back to creditors.

The practice also creates a considerable risk of elder abuse.⁵⁷ In one SJP matter, an insurer used an adult child to interpret a discussion about a claim where the child's interests were at-odds with the policyholder parent for whom they were interpreting, in circumstances where the insurer was on notice of this conflict.

It can be difficult for staff at service providers to identify when a customer requires an interpreter, particularly as we move away from face-to-face consumer interaction. Many service providers may hesitate to assume a person's language ability is limited to avoid offence or discrimination.⁵⁸ Reliance on customer self-identification of need is also problematic, as many customers are not aware that interpreting services are available for free, or at all.

For these reasons, we suggest that the codes for the energy, water, telecommunications, insurance and banking sectors require service providers to proactively offer an interpreter to all customers at the outset of any interaction. A universal approach – offered to every customer of the service – is appropriately 'rights-based' (compared to 'vulnerability' or 'deficits' based).

Recommendation 9: The energy, water, telecommunications, insurance, and banking codes should be amended to require service providers to proactively offer an interpreter to all customers at the outset of any interaction.

11.4.2 Energy and water concession rates

The SJP did not receive referrals specifically for failure to apply a concession rate to a utility bill, but we identified this issue when working with clients on their utility bills. Recently-arrived people who attended Westjustice's stall at the Wyndham Humanitarian Network's 'Bring Your Bills Day' in May 2021 also had this issue.

The Consumer Policy Research Centre ('CPRC') suggests that among households with a concession card in Victoria, 7 per cent do not receive their concession on their electricity bill, 12 per cent on their gas bill, and 22 per cent on their water bill. The CPRC observed that "language barriers, particularly around English literacy are common issues for Victorians with low English proficiency", and cited research indicating that households that speak a language other than English were significantly less likely to have received an electricity concession (25 per cent compared to 37 per cent for all billing respondents)."⁶⁰

In Victoria, concession card holders must tell their gas, energy or water provider that they hold a Low-Income Health Care Card or other valid concession card, and provide details of that card to their utility provider. We understand that other states and territories generally impose similar requirements. This is problematic for recently-arrived people, who are often unaware of this entitlement, lack familiarity with the privatised energy market, and face language barriers when communicating with their utility companies. As a result, many have missed out on receiving the full (albeit limited) entitlements associated with their social security recipient status. This is particularly concerning given the current cost of utilities.

We consider that both Federal and State governments have a responsibility to proactively assist social security recipients to ensure that they receive their concession rate entitlements.

Recommendation 10: As recommended by the CPRC, state and Federal Government departments should work with regulators and utility companies to implement systems to automatically apply and revalidate concessions for energy and water bills. This should occur as part of a Commonwealth review of the concessions framework.

11.4.3 Motor vehicle accidents and insurance

In the SJP, 50 per cent of consumer cases involved motor vehicle accidents. Early resolution of these matters out of court avoids the stress and costs of Magistrates' Court proceedings for clients and reduces the burden on the justice system. During the period covered in this report, 12 motor vehicle accident and insurance matters in the SJP were resolved out of court where there was a risk of escalating to litigation.

Repeated issues included:

11.4.3.1 Underinsurance

The concept of motor vehicle accident insurance was foreign to many SJP clients. Most clients who sought our assistance following motor vehicle accidents were driving vehicles that either had no insurance, or third-party cover only, which left them liable for damages when they were at fault or unable to easily meet the repair costs of damage to their own vehicle.

A significant number of SJP clients were driving vehicles they did not own. Sharing of vehicles is a generous practice reflecting wider patterns of mutual aid in recently-arrived communities. However, it becomes problematic when a shared vehicle is uninsured, and the driver is involved in an accident. In these SJP matters, the driver was often unaware of the insurance status of the vehicle prior to driving it, and neither the driver nor the owner had considered what would happen if an accident occurred.

11.4.3.2 Understanding insurance policies and processes

SJP clients who held insurance sometimes experienced adverse outcomes because they did not understand their rights and obligations under their policies. For example, we saw clients who paid for their own repairs immediately after a car accident – putting themselves in financial hardship – when it could have been covered by their insurer, and clients who did not report events to insurers because they did not understand that they needed to do so or how to do so.

An insurer's customer service representative gave one SJP client and their settlement worker information about their rights that contravened the wording of the client's policy, in a situation where they had been without their car for over three months.

Clients were rarely aware of insurance exclusions or limits on their cover, particularly in matters involving home and contents insurance. It was our experience both with SJP clients, and clients from non-English speaking backgrounds that approached Westjustice through our Consumer Law Clinic, that clients' understanding of their home and contents policy was typically that the policy would cover damage to the property without limitation.

For clients affected by exclusions, the distress associated with the discovery that certain damage would not be covered was frequently exacerbated by delays in updates from the insurer to the client, and delays in insurers providing decisions or policy documents to Westjustice so that we could explain these to our clients.

The SJP has now developed a CLEI module on driving, insurance, and the risks of driving uninsured, which we have been delivering to community groups since the start of 2023.

11.4.3.3 Car napping

In 2022, Westjustice saw an increase in matters involving 'car napping' across both the SJP and our general access Motor Vehicle Accident Clinic.

'Car napping' describes a co-ordinated practice orchestrated by unscrupulous businesses – at various times involving car hire, smash repairs, tow truck companies, and debt recovery lawyers ('legal recoveries firms') – which takes advantage of drivers' limited legal, insurance, and mechanical knowledge following motor vehicle accidents.

A typical 'car napping' matter involves roadside referral by an attending tow truck driver directing the 'not-at-fault' driver to specific car hire, smash repairs, and recoveries firms. The driver often signs documents at the scene of the accident when they are very stressed. For not-at-fault drivers with comprehensive insurance, or where the at-fault driver was insured, there is arguably no value in these services, which prolong disputes by claiming disproportionate repair, storage, and car hire costs from the at-fault driver or their insurer.

CASE STUDY: MARGO'S STORY

Margo came to Australia as a refugee from South Sudan. She had been in Australia for several years, held an Australian driver licence, owned a car, and had comprehensive insurance for that vehicle. She had never been involved in a car accident in Australia before. In early 2021 Margo's vehicle was struck by another driver. The other driver admitted they were at-fault, told Margo they had insurance, and provided her with their insurance policy number.

Margo was able to drive her car home from the scene of the accident. From her home, she searched online for the other driver's insurance company, which was a large and well-known Australian insurer. She called the phone number associated with the first link in her search results and spoke to someone on the phone who she understood to be a representative of the insurer. Margo explained that she was not at fault for the car accident and provided the other driver's policy number.

The phone operator told Margo that they would send someone from a car hire company to her house to provide a hire car while her car was being fixed, and that this cost would be covered by the insurer.

Some days later, a person attended Margo's house, briefly inspected her car, and gave her paperwork to sign. Margo believed the paperwork was related to the hire car she would be given. Soon after, a hire car was brought to Margo's house. Margo was then sent further lengthy documentation by email, which she understood to be from the other driver's insurer and required to progress her claim. Margo signed this paperwork as well.

For several months, no one came to collect, fix, or inspect Margo's car. Margo made several calls to the phone number on the paperwork she was sent by email. Margo believed the person to whom she was speaking was the other driver's insurer. They repeatedly reassured her that she would not need to pay any money to anyone because she was not-at-fault for the accident, and she could just keep using the hire car.

Margo eventually became very frustrated with the delays and asked her settlement worker for help.
The settlement worker referred Margo to Westjustice.

Westjustice's investigations revealed that:

- The phone number Margo called which she believed to be the other driver's insurer was in fact the phone number for a legal recoveries firm that was not affiliated with the insurer, but had taken out search result advertisements to appear at the top of web searches for motor vehicle accident
- The person who attended Margo's property and spoke to her about car hire was from a car hire company that was not affiliated with the other driver's insurer
- The documents Margo signed purported to give full rights to the car hire company and legal recoveries firm to pursue a claim for car hire costs and repairs to Margo's car against the other driver
- Margo would be indemnified for legal costs against her only if she 'fully cooperated' with the car hire company and legal recoveries firm
- Margo's case had not resolved because the legal recoveries firm was claiming excessive car hire costs and the other driver's insurer was not prepared to pay them.

Westjustice helped Margo to remove herself from the arrangement with the legal recoveries firm so that she could have her car repaired. This process took several months, and was highly stressful for Margo, who felt deceived by the legal firm, which she had believed to be the other driver's insurer.

Some uninsured clients who were at-fault in an accident where the not-at-fault 'other driver' was represented by a legal recoveries firm also received damages claims that dramatically exceeded the market value of the damaged vehicle. In one SJP client's case, the costs were calculated without any physical inspection of the damaged vehicle.

Disputing quantum of loss following motor vehicle accidents is arduous, requiring inspection of the other driver's car by an independent expert and the production of a 'court standard' expert report. Typically, the costs of such a report would exceed \$2,000 as a legal disbursement.⁶³ Unlike a dispute with an insurer of another driver, no industry ombudsman scheme exists, and matters that are not resolved by negotiation must be settled in court.

There is little incentive for a legal recoveries firm, whose business model is premised on recovering court costs from the opposing party, to settle such disputes out of court. Accordingly, affected drivers – both atfault and not-at-fault – experience undue stress as they are pulled into a protracted litigation, and the court system must expend considerable resources for these matters to progress.

Car napping is an example of the type of predatory business model that could be addressed by a prohibition on unfair trading,⁶⁴ a position that we strongly support and outline below.

11.4.4 A prohibition on unfair trading?

Beyond 'car napping', our clients experienced various 'unfair' practices as consumers, such as blatant price gouging on home repairs or from private unaccredited training courses.

As a result of their recent arrival, and limited established communities, many of our clients are still developing the market knowledge needed to assess whether proposed prices are reasonable by Australian standards. Combined with limited English language proficiency, it is common for our clients to feel 'ripped off' following consumer transactions.

Such matters are profoundly difficult to litigate under current laws. Unconscionable conduct in relation to the provision of goods and services – the conceptually closest existing consumer protection provision to 'unfairness' – has been interpreted narrowly by the courts. 65 High Court precedent now resembles the restrictive equitable standard of 'taking knowing advantage of special disadvantage', 66 despite a clear statutory intention that the written law is not so confined. 67

Bringing almost any consumer claim, including for unconscionable conduct, requires:

- A harm to have already occurred, meaning it is reactive, not preventative
- A proactive complaint and/or litigation by the consumer, which is:
- o onerous, particularly for consumers who are anxious about the prospect of going to court, giving evidence and enduring cross examination
- o time-consuming, as applicants in the VCAT Civil Claims list are currently waiting over six months for their hearings
- o expensive, if no free legal service is available
- Establishing the burden of proof, which usually falls on the consumer. This can be particularly difficult for recently-arrived and non-English speaking communities, as most trader interactions occur orally and in person, instead of via written correspondence which creates a chain of evidence.

In response to examples of unfair conduct that have not been effectively deterred under Australia's current laws, the ACCC recently recommended the introduction of a prohibition on unfair trading to complement the existing consumer protections in the Australian Consumer Law.⁶⁸ Unfair trading provisions already exist in comparable international jurisdictions, including the US and the UK.⁶⁹ An international provision could be effectively 'transplanted' into Australian legislation to complement existing consumer protections.⁷⁰

A prohibition on unfair trading could improve consumer outcomes and promote economic inclusion for recently-arrived communities. A provision focusing on conduct of a trader that 'is likely to' to cause harm, as in the US and UK, would enable regulators to disrupt businesses engaging in unfair practices before consumers are harmed.

Any unfair trading provision should also be enforceable directly by consumers who have suffered a loss. Regulator intervention is ideal, but there is often significant delay between consumers reporting a loss to a regulator and the regulator determining what action, if any, it will take.

The digital divide makes many of our recently-arrived clients particularly vulnerable to unfair practices in the evolving digital economy, including unfair data collection and data driven targeting, and interface design strategies that undermine consumer autonomy (for example, websites that make it laborious and confusing to cancel a service). A provision prohibiting unfair trading must be drafted broadly enough to respond to developing industries and technologies, including those arriving from overseas markets.

We would not support a provision that only prohibits practices likely to harm the 'average' consumer. Basic economic inclusion, particularly in a market which includes privatised essential services, is a right for all, not just those deemed to be 'average'. Many unfair business practices prey on people experiencing barriers to understanding the true nature of an economic relationship. It is precisely these practices that the provision must seek to catch.

Moreover, a distinction between 'average' and 'vulnerable' consumers is at odds with contemporary vulnerability theories, which recognise that 'vulnerability' does not describe a category of people, but rather a state or experience that could occur to any person, such as an extreme weather event, or the COVID-19 pandemic.

Rather than describing inherent individual deficits, 'vulnerability' – if the term is to be used at all – describes the temporary or permanent experience of various external barriers to effective economic participation. Creating a fair and equitable marketplace and society involves mitigating those barriers, not reinforcing them with regulation that distinguishes between the 'average' and the 'vulnerable' consumer.

Recommendation 11: The Federal Government should introduce an unfair trading prohibition that creates a duty on businesses to treat people fairly and is flexible enough to account for emerging forms of unfair conduct.

11.4.5 The value of early intervention in consumer matters

In our general access Consumer Law and Motor Vehicle Accident clinics, clients who seek our assistance often have already been served with a Magistrates' Court complaint, or had vehicles repossessed or utilities disconnected. The SJP, however, saw a high volume of consumer disputes at very early stages – for example, on receipt of a letter of demand from an insurer or an unexpectedly high utility bill. We were able to assist many clients before these matters escalated. We attribute this success to excellent early referrals from MiCare and WCEC settlement workers, who appropriately identified 'emerging' legal matters.

11.4.6 Other recommendations arising from our consumer casework

Beyond changes to consumer-specific laws or industry codes, we believe that increased funding for financial literacy programs should be part of enhanced overall support to settlement services, to make clients aware of services like financial counselling and no-interest loan schemes, and to encourage people to seek these services early.

Recommendation 12: The Federal Government should increase funding to HSP and SETS providers to facilitate financial literacy education in conjunction with settlement services.

Above all else, the precariousness that influences suboptimal arrangements with fringe lenders, panicked or impulsive consumer decisions, and avoidable debts is in no small part due to Australia having one of the lowest unemployment benefit rates in the Organization for Economic Co-operation and Development (OECD). We join multiple community groups and legal and financial services in calling for the Federal Government to raise JobSeeker rates and associated supplements to ensure households can cover basic living costs.

Recommendation 13: The Federal Government should immediately increase the rate of JobSeeker to sit above the Henderson poverty line, with commensurate increases to other supplement payments.

11.5 Tenancy

Tenancy matters were one of the most common presentations to the SJP. Recent humanitarian arrivals rarely, if ever, move directly into home ownership; thus making the securing of rental accommodation a keystone to building a life upon arrival in Victoria.

Recently-arrived people who are unable to get timely assistance about their rights as a renter in Victoria are more likely to be rendered homeless in circumstances that could have been prevented. Common causes of preventable homeless included illegal and improper evictions, family violence, or such significant delays in rental providers carrying out repairs that the property consequentially became unhealthy and unsafe.

We were pleased to receive a high volume of 'early referrals' of rental matters from settlement workers. These included matters such as where a client had identified a repair issue and wanted help advocating with their landlord for rectification, where a client had received a notice to vacate from their real estate agent but was still living at the property, and matters referred prior to landlords initiating VCAT proceedings for bonds or possession orders.

Renters who came through the SJP were often fastidious about paying their rent and at pains to maintain their rental property. While several reforms have recently been made to the *Residential Tenancies Act 1997* (Vic) ('RTA') to improve security of tenure, a number of finer points of the legislation remain confusing to renters, particularly multi-step processes such as those for termination, repairs, compensation, and bond retrieval.

As in other practice areas outlined in this report, a significant challenge came with language and literacy barriers.

11.5.1 Better help for renters communicating their needs

While both the RTA and CAV's online presence have modernised in recent years, it is common for recently-arrived people to either struggle to make use of technology (such as the RentRight application and downloading and completing prescribed forms) or alternatively to communicate in writing with their rental providers or agents.

Many obligations and rights of a renter under the RTA must be initiated in writing, including:

- Giving initial notice to a rental provider that repairs are needed⁷²
- Requesting that the Director of Consumer Affairs investigate a breach of duty to perform repairs and prepare a report⁷³
- Requesting that the Director investigate a potentially excessive rent rise⁷⁴
- Notifying the rental provider of one's intention to vacate a property⁷⁵
- Notifying the rental provider of damage to the property in line with one's duties under the RTA.⁷⁶

In practice, we saw incidents where:

- Clients lived with a mix of non-urgent and extremely urgent repairs for a long time and were unsure how to progress these
- Clients thought they had notified rental providers or their agents of when they intended to leave but were unable to substantiate this if it was later suggested they had given insufficient notice

 Clients were accused of having caused loss to the rental provider through failing to notify of damage in writing but had tried to communicate the problem verbally during routine inspections.

We believe that beneficial consumer legislation for something as commonplace as renting should not impose prescriptive written requirements on the renter, and that the RTA should be reviewed and amended to remove written notice requirements for renters.

As an alternative or in the interim, CAV could take an active role in facilitating renter communication for renters unable to write to their providers. In practice this would mean:

- Renters from a non-English speaking background could easily contact CAV and receive interpreter assistance (as a number of prescribed documents, such as a Notice to Vacate and Notice of Rent Increase, currently encourage)
- CAV frontline staff could draft a written notice for the renter
- CAV staff could forward the notice to the rental provider or process it internally if relevant (such as for challenges to the excessiveness of rent increases and repairs inspections and reports), thereby complying with the written notice requirements of the RTA.

We note that VCAT can currently assist people who need help completing written applications over the phone.⁷⁷ An analogous service could assist consumers at the CAV level with documentation only (thereby maintaining impartiality) while referring renters who need further advice and assistance to a tenancy advocacy service.

The SJP also saw cases where clients exiting a rental property needed to retrieve their bonds and experienced confusion at the RTBA process.

The following situations resulted in significant delays in bond recovery:

- Clients could not retrieve or process bond returns because they did not use or have an email account
- The email addresses of clients' settlement workers

 initially supplied as contact details to residential
 rental providers had been recorded as the email
 address of the client with the RTBA at the time of
 lodgement of bond
- The client's name had been incorrectly recorded at the RTBA because it did not adhere to Western naming conventions (i.e. one name being incorrectly recorded as a first and last name).

The RTBA has in recent years strongly emphasised the online return and resolution of bonds for users, to the point that it may not always be obvious for a person experiencing difficulty in the online environment to find a telephone contact number for assistance on the RTBA website. Acknowledging RTBA resource constraints, we believe a dedicated number should be available for people who are non-English speakers or speakers of English as an additional language to receive assistance from a real person to resolve basic bond enquiries.

Recommendation 14: The RTA should be reviewed to remedy any accessibility issues which unnecessarily require written correspondence from renters to either residential rental providers or the Director of Consumer Affairs.

Recommendation 15: In the alternative, CAV should provide and promote frontline support for people with literacy barriers, including refugees, which has a focus on helping renters complete basic written notification requirements under the RTA. Complex and disputed matters should continue to be referred to tenancy advocacy services.

Recommendation 16: The RTBA should create and promote a phone service to help people with accessibility issues resolve basic bond processes and enquiries.

11.5.2 Setting expectations for how providers communicate with renters

The Translating and Interpreting Service ('TIS') allows free access for real estate agents to discuss any private residential property matters with their clients.

TIS's website aptly sets out the basis for this service:

Australia has a rich cultural diversity. The 2016 census revealed that Australians were born in almost 200 different countries and speak more than 300 languages.

Real estate agents are obliged to make sure that clients properly understand details of transactions, particularly when entering into legally binding agreements, such as tenancies and sales contracts, or when explaining tenancy obligations.

Real estate agents can use credentialed interpreters to communicate technical or complex information and to establish a relationship with clients who have limited or no English language proficiency.⁷⁸

Despite this complementary service, Westjustice encountered no real estate agents or property managers during the pilot year of the project who were using interpreters. Instead, renters frequently relied on either lawyers or settlement workers to do the transactional work of communicating with agents about repairs or mandatory inspections – a poor use of time for matters property managers could relay for free and that do not need the involvement of other professionals.

"I think the main difference for me is having this program is that we can access the workers for secondary consultation. I think that has been really, really very helpful ...sometimes as workers we just want to know whether this issue is legal or not, or whether there is any other support elsewhere. In this project it has really been very wonderful that we can access you guys [Westjustice] to consult, discuss issues, or follow up easily."

– Poni Peter, Settlement Worker, Micare

CASE STUDY: ADEGBENGA

Adegbenga is a single parent in his middle age. He spent many years in a refugee camp and, because of care responsibilities and health issues, has never become confident using email, smartphones, or reading and writing in English.

Adegbenga was leasing a very old property that would frequently develop problems. Prior to the lockdown, he would either come into his property manager's office and try to make an issue understood in person or indicate repair issues at his routine inspections.

Throughout the lockdowns of 2020 and 2021, the real estate agency closed its offices to the public and ceased carrying out inspections. Adegbenga tried to ring a couple times but could not make himself understood. What began as minor tap and pipe leaks in the kitchen and bathroom soon caused water to pour onto the ground and pool under cabinets and walls each time a tap had to be used, causing further damage. The front door's lock also broke and so Adegbenga constantly worried about being burgled. The property became increasingly unhygienic, insecure, and undignified to live in.

Although Adegbenga had been in Australia for approximately ten years, he still had the number of his former settlement worker who spoke the same language. She wrote to the property managers outlining the problems but received no response.

When an SJP lawyer became involved, they were able to persuade Adegbenga that taking his rental provider to VCAT was both safe and appropriate in these circumstances, and lodged a successful application for urgent repairs.

Even once this order was obtained, the lawyer had to liaise between the property manager and Adegbenga several times a day for tradespeople to attend as the property manager showed no understanding or interest in accessing TIS themselves. Because of the lawyer's intervention, Adegbenga felt much happier and more secure in the home.

While wholly avoidable communication barriers were the main recurring aspect in SJP residential tenancy matters that presented, other reported conduct of rental providers' agents gave us cause for concern as this behaviour seemed to be predicated on an assumption that people from refugee backgrounds would not be aware of their rights as renters and would not seek to enforce them.

Two issues gave us particular alarm and arose in multiple instances recounted by SJP clients and their workers. These were:

- The failure of real estate agents to comply with the mandatory notice of entry requirements in the RTA relating to inspections, in some cases simply entering the premises with no warning to inspect or show around prospective buyers; and
- Conduct which had the effect of compelling or attempting to compel a renter to vacate the property otherwise than in accordance with law.
 We saw instances where there had been serious misstatements as to the operation of the law to clients (for example, as to the effect of a Notice to Vacate with the suggestion that a renter who remains on the property beyond the termination date does so unlawfully and could be evicted by police). Settlement workers also informed us of situations where renters were being constantly called and pressured to 'find somewhere' and leave the property with weeks remaining before the termination date of the lease agreement.

While this conduct is currently unlawful per se, we believe that it primarily reflects an absence of appropriate practice and oversight of parts of the property management sector.

We note that residential property management is presently unregulated in Victoria, but that other jurisdictions such as Aotearoa New Zealand, Wales, Scotland, and Northern Ireland have introduced or are introducing registration schemes and associated regulatory frameworks.⁷⁹

Comprehensive regulation of property managers in Victoria should be introduced and tailored for the benefit of all renters. Such regulation must include an emphasis on communicating appropriately with non-English speakers or speakers of English as an additional language. This would bring any code of conduct for the management of residential tenancies in line with the baseline expectations set for the provision of other essential services such as energy, insurance, and banking.⁸⁰

Recommendation 17: The Victorian Government should introduce an enforceable code of conduct for residential property management. The code should include provisions requiring appropriate communication with renters who do not speak English or speak English as an additional language. including mandating the use of interpreters where needed.

Lastly, we believe an effective way to ensure the responsible provision of accommodation by rental providers would involve the provision of documents such as the Victorian Renters Guide and written notices under the RTA in the renter's first language wherever possible.⁸¹

CAV currently offers an impressive range of translated information on key consumer topics, including rental rights and responsibilities (including in Arabic, Burmese, Chin Haka, Dinka, Farsi and Karen).⁸² Given this commitment to date, CAV could consider also translating versions of other written notices and documents (i.e. Notice to Vacate, Notice of Rent Increase, Standard Form Tenancy Agreement etc) into these languages. The RTA should then be amended to:

- Provide in the standard-form rental agreement which is prescribed under the RTA to include the renter's first or preferred language; and
- Require that where a renter indicates a first language other than English on the rental agreement, that a provider or their agent take reasonable steps to communicate with the renter in that language (for example by utilising telephone interpreting services). This should include the responsibility to provide a copy of an information statement of the renter's rights and responsibilities to the renter in that preferred language, and provide translated copies of written notices given under the RTA when and if CAV have produced a translation of the document in that language.

Recommendation 18: The RTA should be reformed to allow a renter to indicate their preferred language on the standard form lease agreement, and require a rental provider or their agent to take reasonable steps to communicate in that language with the renter where this is indicated. CAV should review or develop translations of the Renters' Guide, Statement of Information, Standard Lease Agreement, and other key written notices under the RTA in common languages spoken in Victoria as part of such a reform Where such a translation existed in a language that was indicated by a renter on their lease agreement as their preferred language, it should be a requirement that the rental provider or agent provide a copy of the translation along with the English form of the document or notice.

11.6 Fines

As with consumer and tenancy matters, the SJP's early intervention in fines led to positive outcomes. SJP clients took fines and infringements seriously, particularly driving fines. Clients did not want matters proceeding to court and potentially affecting their criminal records, migration outcomes, and ability to drive for employment or childcare.

Clients mostly sought assistance from their settlement workers early in a fine's life-cycle (ie. upon receiving the original infringement or when they receive a penalty reminder notice) and often for single infringements, which workers then quickly referred to Westjustice. We were therefore able to avoid many fines escalating to the enforcement stage (where a person owing the fine may have property or a vehicle seized, be arrested, or even imprisoned), and to educate clients on their responsibilities. This early intervention also saved the Victorian government the costs of administering and enforcing the fines.

While clients were keen to resolve fines early and manage their costs, they often found the fines system labyrinthine and inconsistent.

11.6.1 Resolving deficiencies in the fines system for innocent people

In the past decade, Victoria has introduced legislative provisions which enhance protections for owners of registered vehicles who were not driving at the time an infringement was issued, or in cases of family violence. However, Westjustice has observed continued ambiguities which unfairly penalise some drivers, including drivers from culturally and linguistically diverse backgrounds.

For example, family violence victim-survivors who had a perpetrator incur demerit points in their name, then paid the fine on time themselves because they feared legal consequences or further violence, could not access the Family Violence Scheme or any other pathway to remove those demerits⁸³. Meanwhile, excess speeding could not be dealt with under any statutory scheme if the registered owner of a vehicle had not nominated the driver within 28 days of the fine being issued, which is problematic in cases of family violence or identity theft.

CASE STUDY: TAYLOR

Taylor arrived in Australia as a teenager with her family in 2017. In late 2020, after learning to drive, she purchased her first car in a private sale. She provided transfer of registration documents and identity documents to the seller, including a photocopy of her driver licence.

In January 2022, Victoria Police pulled Taylor over while she was dropping her sister off at work. The police checked her licence and told her that she had committed several serious driving offences, that her licence was currently suspended, and that she would shortly face a court summons for driving while suspended.

Taylor was shocked and devastated. After initially being told the police could not do anything, Taylor was referred into the SJP. Westjustice identified over 100 closed fines in her name for a range of parking and excessive speeding offences, and over \$15,000 alleged as owing for 22 fines which were open and unpaid. Beyond Victoria, someone had also used her licence details to incur fines in her name in locations across New South Wales.

Taylor was not very confident using online logins or forms, preferring to attend VicRoads in person when required. Westjustice inspected Taylor's VicRoads records, and found that an unknown person had used her details to set up a VicRoads online account. The thief had then changed Taylor's VicRoads contact details to an unknown PO Box number and nominated or transferred fines for dozens of different vehicles into her name. These infringement notices were sent to the PO Box, where Taylor would never see them.

Westjustice was successful in advocating to the police to open a criminal complaint based on information we had supplied, rather than treating it as a matter to be resolved with Fines Victoria and VicRoads. Evidence of the police investigation was sufficient to get VicRoads to agree to change Taylor's licence number to prevent further identity theft.

Unfortunately, there was no scheme to waive the excess speeding fines in Taylor's name. Westjustice had to make an exceptional request through Fines Victoria outlining all the circumstances for the Traffic Camera Office to withdraw these infringements. We are not confident that Taylor, or any unrepresented person, could have done this themselves.

VicRoads restored Taylor's right to drive, and the police withdrew her charges for driving while suspended. She is able to work and support herself and her family again.

Recommendation 19: Fines Victoria should expand its Family Violence Scheme to cover excess speeding offences and enable a person who paid a fine incurred by a perpetrator to avoid resulting demerit points.

Recommendation 20: Fines Victoria should introduce a new ground of identity theft on which to seek withdrawal of fines and demerit points. This should also encompass excess speeding offences which are fraudulently registered or nominated to an innocent party.

11.6.2 Inconsistent fines practice across councils.

Fines issued by Victoria Police appear in the Fines Victoria system a couple of days after they are issued. A person who owes a fine can then engage with Fines Victoria and choose from a range of options to deal with that fine, including payment arrangements or extensions of time. By comparison, the fines process is inconsistent across local councils.

In the Western Suburbs of Melbourne:

- Brimbank,⁸⁴ Hobsons Bay,⁸⁵ Maribyrnong⁸⁶ councils offered an extension of time to pay, but not a payment plan, for fines at their initial stages prior to being referred to Fines Victoria (the initial infringement notice stage and the penalty reminder notice stage, at which stage a further \$26.60 is added to a fine). Brimbank Council was also sending Letters of Demand following the penalty reminder notice stage inaccurately indicating that 'court action would commence' if the fine remained unpaid.
- Wyndham City Council only offered payment plans for infringements of more than \$100 each, and at a rate of \$40 per fine per month.

The conduct of all four councils poses a problem for people on low incomes from a refugee background, and those who are otherwise financially precarious. Clients often preferred to place themselves in financial difficulty by paying a fine off in full rather than letting it escalate to Fines Victoria where they could apply for an appropriate payment plan for their needs.

Councils also imposed barriers for people seeking more time to pay or respond to fines. For example, while Brimbank Council requires debtors to fill out a basic one-page form before the infringement due date, Wyndham Council required people to lodge requests for an extension of time at least five days before the due date and supply a statutory declaration in some circumstances. This was onerous for recent arrivals who were unfamiliar with the process, often unable to read or write in English, and struggled to find qualified statutory declaration witnesses.

These LGAs will continue to welcome new arrivals to Victoria and should offer clear and fair options early in the fines process.

Recommendation 21: Fines Victoria should partner with local governments to implement a consistent approach to infringement payment plans and payment extensions.

Recommendation 22: Enforcement agencies, including councils, should have specialised training and options to assist recent humanitarian arrivals who have infringements, which may include making it easier for people to obtain payment plans or extensions of time.

11.6.3 Resolving the risk of prosecution in the event of internal review

One of the most significant challenges for the SJP's clients was the anxiety associated with having broken the law and its potential ramifications on either obtaining citizenship or a permanent visa.

Fine recipients may ordinarily choose to object to a fine by filing a Notice of Objection within 28 days of the infringement and electing to have the matter heard before a Court. They can also seek an internal review with an enforcement agency at the infringement notice or penalty reminder notice stage, based on "exceptional circumstances". Exceptional circumstances are not defined in the legislation, although some agencies may include examples of what may constitute an exceptional circumstance on their websites. However, on review, the enforcement agency may elect to withdraw the infringement notice and instead have the matter heard in Court.⁸⁷

While many summary offences may be treated as spent convictions for the purposes of Victorian or Commonwealth police records, these offences will be available on a person's record when decisions are made under the *Migration Act 1958* (Cth) ('Migration Act') and the *Australian Citizenship Act 2007* (Cth). This means that SJP clients often had to consider getting migration advice before raising extenuating circumstances.

Circumstances raised by SJP clients included:

- Medical emergency
- Error in transfer of registration by the seller of a vehicle
- Reasonable basis for the possession of restricted objects.

The time, complexity and cost associated with getting migration advice, and understandable concern about visa cancellation or refusal of citizenship, frequently led our clients to pay fines in minor parking, driving and police matters where internal review would likely have led to the agency withdrawing the fine, but theoretically could have resulted in the agency referring the fine to court. The internal review process therefore has a chilling effect on recently-arrived people who are not citizens or hold temporary visas and deprives them of rights and remedies accessible to other debtors.

While infringements and minor summary matters should not be considered in the 'character test' or decision-making generally under the Migration Act, the Victorian government should also reform fines legislation to prevent internal reviews from escalating to court prosecutions.

Recommendation 23: The Infringements Act 2006 should be amended to remove the right of an enforcement agency to withdraw an infringement and refer the matter to court where a person applies for an internal review.

Recommendation 24: In the alternative to recommendation 23, the Infringements Act 2006 should be amended to add an exhaustive set of circumstances under which an internal review may lead to referral to court, so that people have some certainty about the process.

11.6.4 Better work and development permit options for humanitarian visa arrivals

The Work and Development Permit ('WDP') scheme is a relatively recent initiative from Fines Victoria that allows eligible people to 'work off' unpaid fines by engaging with health practitioners and other organisations, known as sponsors. Sponsors can provide treatment, vocational courses, and/or other activities to reduce these debts, which benefits people from refugee backgrounds who may lack means to easily pay off a fine and hope to develop personal and professional skills in the Australian context. WCEC is a WDP sponsor.

Recently-arrived humanitarian visa holders are not automatically eligible for the WDP scheme. Given the economic challenges of arriving as a refugee, the language and cultural barriers that may lead to incurring a fine and the benefits of early engagement with treatment or education, individuals who have arrived in Australia on humanitarian visas in the past five years should be automatically eligible for the WDP scheme.

Recommendation 25: The Victorian Government should create a new class of WDP scheme eligibility for people who have arrived on humanitarian visas within the past five years.

Currently, Fines Victoria does not share WDP sponsor details.⁸⁸ Given that those eligible for WDPs often struggle to access information, details about sponsors and their specialties – for example, working with trauma or substance abuse, or running vocational courses – should be publicly accessible, as in an equivalent Western Australian scheme.⁸⁹

Recommendation 26: Fines Victoria should make information about WDP sponsors publicly available, with their consent, including details about their specialisations, offerings, and present capacity.

"The other thing from the client's perspective... some of our clients just think that if they're going to court or it's a legal matter – even going to any legal service, they're very nervous. So the fact that you come to our office where they're used to, makes it even more comfortable for them...I know lawyers sometimes they look very tough and serious you know, they don't smile, they're not soft. But for your case you guys [Westjustice] the stuff it's a little bit different ...[the clients] feel more comfortable and relaxed to attend the service."

- Poni Peter, Settlement Worker, Micare

11.7 Family violence

The SJP collaborates with other teams at Westjustice, including family violence duty lawyers, our Early Resolution Service ('ERS'), and our Werribee Mercy Hospital and Restoring Financial Safety partnerships, to intervene early in family violence matters.

11.7.1 Value and insights from early intervention in family violence matters

The majority of SJP clients with family violence matters were referred for legal assistance prior to any Family Violence Intervention Order ('FVIO') application being lodged. These referrals came from settlement workers in response to:

- direct reports from clients that they were experiencing family violence
- family violence 'red-flags' observed while doing settlement work on other matters.

It was invaluable for settlement workers to make warm referrals to an in-situ service in these circumstances. Clients could then return to a trusted location for legal advice and assistance, knowing their settlement worker was in the next room.

Rather than immediately requesting assistance to lodge a FVIO application, SJP clients typically sought to confidentially receive information and advice about how the Australian legal system worked in relation to family violence, and its interactions with separation, divorce, parenting and property. Clients were often guarded in the background they were willing to disclose to their lawyer in a first appointment, and

instead wanted to receive information about the operation of the law generally, which they could reflect upon prior to determining whether to provide further specific instructions.

The jurisdictional separation of, and interactions between, 'family violence' (FVIOs and/or criminal law proceedings), 'family law' (divorce, chid contact, property division, spousal maintenance) and other areas of law concerning the family (child support, child protection) were baffling for many of our clients, who reasonably expected that these matters would be dealt with in a single legal process.

Lawyers spent considerable time with clients explaining concepts such as:

- the difference between separation and divorce
- · 'no fault' divorce
- the right to leave the family home and/or relationship prior to divorce
- police or child protection services becoming involved with a family even if both parents did not want state involvement in family matters.

Some family violence matters involved acute instances of physical abuse, while others involved more subtly controlling behaviour, such as prolonged social isolation and economic abuse. Multiple clients seeking family violence advice and assistance reported that, at least initially on arrival in Australia, they:

- had no control of their own finances
- · did not have their own bank account
- · did not know how to use a bank card or ATM
- did not know their rights in relation to money.

Many of our clients come from cultures with different norms around control of finances within a relationship, and it is not inherently violent or abusive for money to be managed by a single member of a relationship if this is what both parties desire. However, where control of finances is enforced against a person's will, used to prevent a person from leaving a relationship, used to prevent a person seeking legal or other support, or used to otherwise control or socially isolate them, this is economic abuse: a recognised form of family violence in Victoria.⁹⁰

Yet Westjustice's experience in the SJP and other family violence programs is that applications based solely on economic abuse are difficult to litigate. Some Magistrates seemed to consider that claims of economic abuse were more appropriately dealt with by the Federal Circuit and Family Court of Australia as a property proceeding under the Family Law Act 1975 (Cth): a protracted and prohibitively expensive process that does not provide interim protection from continuing or escalating family violence. This is deeply concerning, given the dramatic escalation to serious physical violence in some of our clients' cases.

Recommendation 27: The Judicial College of Victoria should provide increased training for judicial officers on the existence and harms of economic abuse as a form of family violence, with a particular focus on economic abuse as a means of control and social isolation in recently-arrived communities.

Because of the complex history of family violence in many instances and the time it takes to earn a client's trust, SJP lawyers often needed multiple, lengthy appointments to obtain the necessary instructions to help a client to lodge a FVIO application that accurately and appropriately represented their experience. This contrasts with the 'standard' entry into the family violence legal system for most victim-survivors, which occurs by either:

- a victim-survivor lodging an online application, which is inaccessible for most SJP clients who lacked the technological and/or English language skills to locate and complete the relevant form
- a Registrar helping a victim-survivor to lodge an application at a busy court building
- Victoria Police lodging an application following a police report or attendance, with the victimsurvivor an 'affected family member' ('AFM') on the application, rather than the applicant.

SJP lawyers also represented clients from the outset of an application through to the resulting court attendances.⁹¹ This continuity was important to clients who were already extremely anxious about attending court and engaging in the legal process.

11.7.2 Issues with Victoria Police in family violence matters

The SJP observed several problems when police made FVIO applications on behalf of our clients.

CASE STUDY: MEENA'S STORY

Meena and her husband and children arrived in Australia as refugees in 2020. Before they came to Australia, their relationship was good, but once they arrived, Meena's husband became very controlling about money. He would not let Meena know how much money was in their joint bank account and would not let her use the bank card.

This led to an argument in late 2020, when Meena asked to use the bank card to access her Centrelink payment. Meena's husband was angry at this request. He smashed furniture in the house and grabbed Meena around the throat, choking her.

Police attended the house after a neighbour called about the noise. The police did not use an interpreter to speak to Meena, who struggled to explain her situation with just a few months of English classes. Police issued a Family Violence Safety Notice ('FVSN') to protect Meena and the children that described the family violence as 'a fight involving damage to property' and noting that police couldn't get further information about the fight as there was no interpreter. The FVSN did not mention the strangulation or the economic abuse. A final 12-month FVIO was ultimately made at court based on the limited information in the FVSN.

After the 12-month FVIO expired in 2021, Meena's husband returned to the family. Things quickly deteriorated, and another family violence incident involving economic abuse occurred. Meena called the police, and they again took a statement from her without using an interpreter. The police made a FVSN describing a 'fight about money', but did not identify or refer to the previous FVIO or the history of family violence inflicted by Meena's husband.

The police told Meena that she would not need to come to court in relation to the FVSN, and the police would work to obtain an FVIO for her. However, when the matter was brought to court a few days later, police prosecutions withdrew their application for an FVIO because they did not consider the application was strong. They did not inform Meena of this decision or seek her views on withdrawal.

Meena only found out her application had been withdrawn when she was referred to Westjustice by her settlement worker and Westjustice contacted the court on her behalf.

Westjustice has since assisted Meena to lodge a new FVIO application in her own name, which included details of the strangulation, the escalation in circumstances of economic abuse, and the existence of the previous FVIO. The court has now made a further FVIO protecting Meena and her children.

A failure to use interpreters results in key information being missed in victim-survivors' statements, and creates a high risk of misidentification of the perpetrator or 'predominant aggressor' of violence where only one party speaks English well enough to be comprehensively interviewed by police. While luckily this did not happen in Meena's case, it is a common issue reported throughout our family violence clinics. Moreover, research has shown that misidentification of the perpetrator appears to be an issue faced primarily by 'marginalised populations', including culturally and linguistically diverse women.⁹²

Interpreters are not always available after hours or in an emergency, which are often the circumstances in which a FVSN is issued. However, in such cases, our SJP clients relate that Victoria Police rarely contacted the client in the following days to obtain a further statement using a qualified interpreter.

Failure to use qualified interpreters constitutes clear non-compliance by Victoria Police with the Victoria Police: Code of Practice for the Investigation of Family Violence,⁹³ and the Victoria Police Manual ('VPM') chapters on both Family Violence and Interviews and Statements.⁹⁴ These variously provide:

- Police should obtain an interpreter for any person who appears or claims to have difficulty understanding English⁹⁵
- Where any party in a family violence incident does not speak English as their first language, Victoria Police members must seek an interpreter from an approved interpreter service as soon as possible to ensure they can tell their story⁹⁶
- Police may only use neighbours or other persons present – except perpetrators, family members and friends – in an emergency. An accredited interpreter must be used as soon as practicable.⁹⁷

Additionally, Victoria Police must complete the 'L17' risk assessment form when responding to family violence events, which itemises and assigns 'points' to 39 indicative 'risk factors'. This form includes check boxes to indicate whether the AFM or respondent requires an interpreter, but does not clearly indicate whether checking this box confirms that the police officer used an interpreter when completing the risk assessment. It also includes an option to select 'info not available' for each risk factor, in addition to 'yes' or 'no'. When 'info not available' is selected, no points are recorded.

The purpose of the points on the L17 is to flag 'high risk' matters – four or more points – for referral to the specialist Family Violence Investigation Unit. Had the attending police officer used an interpreter with Meena and taken instructions from her consistent with those she gave to our office, we are confident she would have scored at least four points on the L17.

Recommendation 28: Victoria Police should amend the VPM Chapter on Interviews and Statements to include a direction that police ask all persons whether they require an interpreter prior to taking any statements or conducting any interview, rather than relying on the discretion of the interviewing officer as to whether an interpreter is 'required'.

Recommendation 29: Victoria Police should amend the L17 form so it clarifies whether a police officer used an interpreter to complete the form. Police officers who required an interpreter but did not, or could not, access an interpreter when they took initial statements, must contact relevant persons – victim-survivors, suspects and/or witnesses – with a suitably qualified interpreter and conduct a full review of all L17 risk factors at a later time.

After Victoria Police issued the FVSN, Meena was not contacted prior to withdrawal of the FVIO application. Had Meena been contacted with a qualified interpreter, she may have provided police with the information about her circumstances which was missed at the original call out. Meena told Westjustice she lost faith that the police were taking her seriously and protecting her from violence.

Failure by police to use interpreters is also highly problematic for all parties once an order has been made. If victim-survivors do not know the meaning and effects of the FVIO conditions, they will not be alert to breaches which are reportable to the police. This is particularly the case for conditions such as '200 metre exclusions' from places like the family home, which would not constitute a criminal offence save for the existence of the FVIO.

Equally, a failure by police to use interpreters when serving FVIOs on respondents creates a risk that respondents inadvertently commit criminal offences by breaching the FVIO, particularly by conduct that would not have constituted a criminal offence prior to the FVIO, such as calling an AFM or returning to the family home upon reconciliation of the parties.

In at least one frustrating case, police served an interim FVIO on a respondent without an interpreter while COVID-19 public health restrictions were in force. The respondent returned to stay with our client, the AFM, after testing positive to COVID-19 and speaking to the Coronavirus Hotline (which also did not provide an interpreter), apparently believing he would be breaking the law if he did not quarantine at his usual abode.

The police accused both the AFM and respondent of ignoring the order and notified Child Protection to conduct a risk assessment. Child Protection – one of the only services, along with Westjustice, to engage professional interpreters to speak to the couple – subsequently established that the risk was low and that an FVIO that allowed the AFM and respondent to live together would be acceptable.

70 I DISCUSSION AND RECOMMENDATIONS 71



11.7.3 Inconsistent court processes for interim order applications

Prior to the COVID-19 pandemic, after lodgement of an FVIO application in Sunshine and Werribee Magistrates' Courts, the applicant would be given a time to appear in person before a Magistrate to apply for an interim order. With the advent of the Online Magistrates' Court and resulting backlogs, Magistrates moved to determining interim applications 'on the papers' without hearing oral evidence from the applicant.

Court registries took different approaches to this process, with varying results. For one SJP client with a particularly serious application, the Dandenong Magistrates' Court registry determined that the matter was not of sufficient risk to be put before a Magistrate for consideration. When Westjustice sought review of this decision, we were advised that no review was available. When the matter was finally listed for a first mention hearing, the Magistrate expressed shock that no interim order was in place given the gravity of the allegations. A final FVIO was eventually granted.

There seems to be inconsistency between, and even within, registries as to what is required to progress an interim application. Our recent experience with Werribee Magistrates' Court Registry has been variable. Some online applications were immediately listed for interim order application, when the representing lawyer contacted Registry, while in other cases Registry has advised that no application can be listed until a Registry clerk speaks directly with the applicant. This latter requirement has proven frustrating for clients who have missed calls from Registry and made multiple attempts to return calls, only to find the line engaged or ringing out.

FVIO processes must be straightforward, transparent, accessible, and consistent, especially for applicants, AFMs, and respondents who are unfamiliar with, and often distrustful or fearful of, the legal system.

Recommendation 30: The Magistrates' Court should issue a Practice Direction requiring all registries to take a uniform approach to the FVIO process, including listing of interim order applications and assistance to parties with accessibility issues.

11.7.4 Lack of culturally and linguistically appropriate programs for respondents

While the SJP mostly assisted victim-survivors in family violence matters, we also assisted a small number of respondents. This assistance was particularly important where respondents were unable to read or understand the FVIO with which they had been served, and were at considerable risk of inadvertently breaching the order.

Some clients were deeply remorseful for their actions and were taking positive steps towards change, but faced difficulties in accessing appropriate services.

CASE STUDY: MYINT'S STORY

Myint came to Australia as a refugee from Myanmar. He spoke no English, had no formal education, and was unable to read or write in any language. He had spent many years in a refugee camp before coming to Australia. In the camp Myint began drinking homemade rice wine to pass the time and to cope with the trauma of displacement, and he developed a drinking problem.

Myint committed an act of family violence while intoxicated. He was profoundly regretful for this act and sought help. Myint had previously tried alcohol counselling in Australia, but struggled to understand or retain information, including about the effects of alcohol on the body and mind, as materials were usually provided in English and in writing.

This time, Myint was referred to an organisation that provided alcohol counselling delivered concurrently by a counsellor and bicultural worker from Myint's community. The worker understood the barriers Myint faced in retaining information, like not being able to write things down to remember them. As time went on, Myint's counsellor also started working through parts of the Men's Behavioural Change syllabus with Myint, again facilitated by the bicultural worker.

Myint was lucky to access a service that provided support in a culturally and linguistically appropriate manner, with the aid of a bicultural worker. Such services are extraordinarily rare. The Migration Council of Australia identified that many 'mainstream' men's programs are delivered in English and do not engage interpreters, and are therefore unsuitable for SETS clients.98 Mainstream programs, such as the Men's Behavioural Change program, have also been criticised as 'very Western in theory and delivery', and ineffective in providing therapy that addresses intersecting trauma, loss of connection to country of origin, compounding economic and social marginalisation in Australia, and differing cultural gender roles.99

Recommendation 31: The Victorian Government should significantly increase in funding for culturally-specific alcohol and drug, and men's, programs, co-designed and led by members of recently-arrived communities, and for bicultural workers attached to existing community sector counselling bodies.

11.8 Employment law

In contrast to other practice areas, our SJP employment cases were not typically referred at 'an early stage', as it appeared clients were not approaching their settlement workers for assistance until situations were serious. Some clients had gone several months without pay before seeking assistance. Others had already voluntarily left the place of employment at which the legal problem had arisen and were out of time to seek any redress.

Employment law remedies rely on wronged parties to personally identify and litigate their legal claim. This is extraordinarily difficult for recently-arrived people, who come from countries with fundamentally different industrial systems to those in Australia. Even people born and educated in Australia are confounded by the complex interaction of our many industrial instruments and anti-discrimination acts.

For example, to calculate a possible underpayment, a worker must determine:

- whether they are an employee or an independent contractor¹⁰⁰
- whether their employment is permanent or casual $^{\!101}$
- whether they are covered by a modern award and, if so, at what classification
- whether their workplace is party to an enterprise agreement¹⁰²
- any prescribed penalty rates or allowances that might apply to the work performed.

Most SJP clients referred for employment matters did not have a written contract of employment with their employer. Several were unable to name the person or company that they had performed work for. Some had been directed to create an Australian Business Number ('ABN') but did not understand its purpose or function. What seemed universal was the expression of dejection and frustration at having been ripped off in the workplace: an important avenue for establishing themselves in their settlement in Australia.

72 I DISCUSSION AND RECOMMENDATIONS 73

11.8.1 Improving community knowledge of work rights

Westjustice has found that community-based education and information campaigns are highly effective in raising early awareness of employment rights and identification of employment law issues. Recently, Westjustice and South-East Monash Legal Service partnered over 2021 and 2022 to establish the Work Rights and Responsibilities Legal Support Service ('WRARLSS'), which provided legal information, education and advice directly to CECs and VACAP-EBs, and the community members and job seekers that they help.¹⁰³ WRARLSS also delivered a 'train the trainer' capacity building program to various CEC and VACAP-EB hosting organisations around Victoria, including our SJP partners MiCare and WCEC.

The achievements of WRARLSS included:

- Design and delivery of four rounds of three-day online training sessions to 36 CECs and VACAP-EBs
- Co-delivery of 15 'Getting Ready for Work' modules to 240 attendees around Victoria, including inperson sessions in Albury, Horsham, Geelong, Noble Park, Springvale, Footscray and Werribee
- WRARLSS program graduates independently delivering a further 26 sessions to 108 attendees.

Unfortunately, the WRARLSS program was only funded for 12 months and has now ended. WEstjustice regularly receives requests to repeat the training and co-deliver sessions with multicultural communities, including recently-arrived migrants, but does not currently have the capacity to meet this demand.

As Westjustice and other CLCs have repeatedly recommended, further funding for 'train the trainer' programs, or for training of community leaders in employment law, would embed community knowledge of employment law rights and entitlements in recently-arrived communities, and promote the availability of free legal advice and assistance. This includes beneficial state-based initiatives which build on the National Employment Standards, such as the Victorian Government's Sick Pay Guarantee.

Recommendation 32: The Federal Government and/or Fair Work Ombudsman through its community engagement grants program, should provide greater funding to CLCs for the delivery of further community education and information campaigns designed to inform culturally and linguistically diverse workers about their rights.

11.8.2 Employment law reform proposals

The employment law problems encountered by SJP clients were consistent with those identified in Westjustice's Not Just Work report in 2016. Of the many recommendations Westjustice made to combat the systemic unfairness experienced by migrant workers in that report, few have been adopted by decision makers to date. Given this limited progress, we have extracted several of those recommendations, which Westjustice and our partners have repeatedly made, ¹⁰⁴ in this report. The implementation of these recommendations would have life-changing outcomes for our SJP clients.

11.8.2.1 Narrow limitation period for dismissal matters: an access to justice issue

The strict 21-day timeframe to bring an unfair dismissal or general protections dismissal claim prejudices persons who are unaware of their rights and unfamiliar with the Australian legal system. It can be difficult for workers to access urgent legal advice, as CLCs have eligibility requirements and limited resources, and their services are in high demand. A person who has lost their employment may also be experiencing tenancy or mortgage stress, homelessness, family or other kinds of interpersonal violence, discrimination, illness, or injury. These issues can affect their ability to assess their options and seek legal advice in a timely way.

A longer timeframe would give a worker who has been dismissed adequate time to seek legal advice, consider the most appropriate action, and protect their legal interests. It will ensure the needs of employees facing barriers to access to justice, such as our SJP clients, are accommodated.

Recommendation 33: The Federal Government reform the Fair Work Act 2009 (Cth) to remove the 21-day timeframe for unfair dismissal and general protections dismissal claims and replace it with a 12-month discretionary limit, except where the employee seeks reinstatement. This would be based on the model in the Equal Opportunity Act 2010 (Vic).

11.8.2.2 Sham contracting

Sham contracting is the incorrect, typically intentional, misclassification of a worker as an independent contractor rather than an employee. It is an offence under the Fair Work Act. Sham contracting was a recurring issue for SJP clients.

While there can be benefits to working as an independent contractor under an ABN, contractors have significantly fewer rights and protections than employees. Many of our clients did not understand their legal status or obligations as a contractor, and had little choice but to accept 'contracting' arrangements.

It must be clear from both the terms of the agreement between contractor and principal, and the true nature of the relationship, that a worker is an independent contractor – for example, the worker might:

- have a high degree of control over the work
- not present as part of the principal's business
- invoice for hours performed
- be able to subcontract or delegate work without permission
- be able to refuse work.

While the Fair Work Act notionally prohibits sham contracting, 105 employers are presently not liable for misrepresenting employment as independent contracting if they can prove that, at the time of the representation, they did not know, and were not reckless as to whether, the contract was an employment contract. 106 This defence fails to place sufficient onus on employers to prevent sham contracting.

Recommendation 34: To tackle sham contracting, the Federal Government should amend the Fair Work Act to include a statutory definition of 'employee'

- presumes that workers are employees, unless they are genuinely running their own business or are on a vocational placement
- covers gig economy workers, unless the employer principal can establish the worker was genuinely running their own business.

Recommendation 35: The Federal Government should amend s 357 of the Fair Work Act, to the effect that employers who misrepresent their employees as contractors are liable under that section if they have failed to take reasonable steps to determine whether their workers are employees.

Several SJP clients were 'contractors' insofar as their business and work arrangements operated, but they still struggled to obtain fair and appropriate terms on which to be engaged and paid for their services. This could be addressed through amendments to the *Independent Contractors Act 2006* (Cth).

Recommendation 36: The Federal Government should amend the *Independent Contractors Act 2006* (Cth) to:

- Make it an offence for principals to pay contractors, whose work is otherwise covered by an award, a rate of pay that is below the minimum wage under the award
- Introduce an accessible forum, such as a tribunal, for contractors to challenge unfair terms in contracts.

11.8.2.3 Underpayments

Underpayment or non-payment was a factor in almost all our SJP employment matters. Westjustice refer to our 2020 joint submission to the Commonwealth Senate Economics References Committee on these issues, ¹⁰⁷ and to the resulting recommendations of that Committee.

Recommendation 37: The Federal Government should implement the 19 recommendations of the Commonwealth Senate Economics References Committee Report: 'Systemic, sustained and shameful: Unlawful underpayment of employees' remuneration'.

74 I DISCUSSION AND RECOMMENDATIONS 75

11.9 My name project – ongoing issues

WCEC and Westjustice partnered to assist members of the Communities of Burma to apply for name changes with the financial assistance of DJCS in 2021 and the first half of 2022.

The majority of name change applications to the VicRBDM were handled by our colleagues at WCEC at a time when Westjustice was unable to arrange face-to-face appointments. Both centres eventually applied for a total of 81 families and 358 individuals.¹⁰⁸

WCEC and Westjustice are grateful to the VicRBDM for running an information session for workers helping with name change applications, for its responses to complex application questions, and for its flexibility in dealing with evidentiary requirements that challenged our clients, such as expired ImmiCards and the preparation of statutory declarations.

WCEC and Westjustice's assistance ensured that My Name clients did not have to deal directly with multiple service providers, including essential services, educational institutions and health providers, to obtain proof of their residence in Australia. It is also typical for households to seek name changes for all family members prior to applying for citizenship and obtaining an Australian passport, both of which have long-term social and economic benefits for our clients.

The My Name work highlighted administrative and financial barriers for recently-arrived people at the federal and state level, including:

- ImmiCards are only valid for five years and, at \$30 per person, are expensive for large families to replace. Applicants also have to gather three forms of proof of continuous residence in Australia since arrival, which makes it needlessly difficult for permanent visa holders to travel in and out of Australia to see family members overseas
- Since 2018, Victorian statutory declarations must be annotated by any person who assists with translating them. This is despite most qualified translating and interpreting happening by phone, especially after the declaration of the COVID-19 pandemic. This makes the preparation of a statutory declaration for a non-English reader time and resource-intensive. Commonwealth statutory declarations do not include this witnessing requirement.

Recommendation 38: DHA should make ImmiCards valid for 10 years and make the identity requirements for replacement ImmiCards the same as those for renewing or replacing an Australian passport.

Recommendation 39: DJCS should remove its requirement for an interpreter to sign/witness a statutory declaration, noting the logistical and time constraints involved in doing so. This will require amendments to the *Oaths and Affirmations Act 2018* (Vic).

"You guys [Westjustice] are easily accessible whether by email or by telephone. You guys are quick in responding back and that [helps us] to make client decisions more quickly. Then we...can tell the same to the clients because...they're always very reluctant, you can see that they're nervous or they worried and we can say 'no, you go with this they're going to help you, we know them and work with them. They're there to help you'-all those kind of things."

- Poni Peter, Settlement Worker, Micare





12. IDENTIFIED ISSUES AND GAPS IN OUR DELIVERY

12.1 Length and complexity of appointments and matters

The Law Council's Justice Project noted that:

[The language] barrier prompts the need for interpreters...It also means that significantly more time is often needed to explain, understand and negotiate the justice system, with flow-on effects for recent arrivals, communities, lawyers and courts... ¹¹⁰

In the SJP, it was common for:

- Appointments to take considerably longer than those for other Westjustice clinics and for clients to have to return another day to complete an interview
- Clients, interpreters, and lawyers to experience fatigue during long appointments
- Due to clients' language and other barriers, lawyers were required to assist with a range of basic nonlegal tasks in order to progress matters

CASE STUDY: JENNY

Jenny was born in Burma and arrived in Australia in 2014. She is unemployed and is the sole carer of her elderly mother and father. Jenny's settlement worker referred her to the SJP after she received a water bill for over \$2,000 that was making her very stressed.

To understand the issue, negotiate effectively on Jenny's behalf, and ensure the problem would not recur, Jenny's lawyer provided considerable practical assistance to Jenny, including:

- Assisted her to conduct a series of leak tests to identify the source of the high bill
- Assisted her to understand how to use her water meter
- Found a grant program to cover the cost of a plumber
- Organised a plumber's attendance
- Disputed liability for the debt with her water provider based on the provider's failure to comply with back-billing limitations under the relevant water code.

Westjustice got the bill reduced to about \$750, and ensured Jenny was more confident to navigate the situation in future so she would not face the same problem. However, this wrap-around service took over ten hours of the lawyer's time.

As demand increases for the SJP, the SJP will need either to hire additional lawyers or financial counsellors, or temporarily suspend its services from time to time to continue to provide holistic wraparound services to clients.

12.2 Effective use of interpreters

The SJP could not operate without the work of interpreters, the majority of whom we accessed through the Translating and Interpreting Services ('TIS') National Phoneline. On multiple occasions, Westjustice caseworkers commended an interpreter to TIS for their patience and accuracy in relaying complex information.

Interpreters proved essential in legal matters even for some SJP clients who could speak English conversationally, due to the more complex and technical nature of these discussions. When interpreters were not available, our clients were often dependent on community or family members, including high-school-aged children, to assist them with various tasks and communications, such as dealing with an essential services provider, insurer or real estate agent.

There appears to be a shortage of interpreters certified by the National Accreditation Authority for Translators and Interpreters in many emerging languages, notably Burmese and Central and East African languages. This can lead to delays when no suitable interpreter is available, but a client needs urgent or timely assistance.

Westjustice is one of thousands of community services and institutions that rely – or, in some cases, should rely more – on interpreters.

Federal and state Governments should continue to incentivise more recently-arrived community members to consider this career, particularly by way of scholarships and/or bursaries. We note Victoria currently offers these through Multicultural Affairs and recommend that this have flexibility (such as an open category) to include less common languages which may be spoken by recently-arrived cohorts (e.g., Karenni, Zomi, Bari, Kituba).

12.3 Gaps in our SJP legal practice offerings

The SJP identified areas of legal practice where it did not have the expertise or resources to assist clients. These gaps were:

12.3.1 Family law

The SJP provided advice and assistance to clients on the family violence intervention order process, but clients also often needed family law advice and support, particularly in divorce, child custody and child support. Our SJP work, and research in this area, highlights how family law advice and support can combat misunderstanding and misinformation about no-fault divorce, who children may see and live with, and what happens to shared property.¹¹¹

The SJP could make limited warm referrals to Westjustice's Family Law Clinic, but we often had to give clients 'information only' because that clinic's services are in such high demand. It is unlikely this unmet need will be able to be addressed under the SJP without greater funding.

12.3.2 Migration advice for clients who are not citizens

The SJP could not give migration advice to clients who were permanent residents or on temporary visas, on the consequences of particular actions. Urgent migration advice can be difficult to access when an individual needs urgent action on a legal matter that may have migration implications, such as family violence, infringement, or criminal matters.

Additionally, there is high community demand for support to apply for citizenship. Prior to the SJP commencing, Westjustice heard accounts of community members who had provided citizenship application information to the DHA that differed from the information provided at the time of the grant of a permanent visa. Although these differences tended to be because of language barriers, or because incorrect information was recorded by the United Nations High Commissioner for Refugees on intake in refugee camps, they were then issued 'show cause' notices for providing inaccurate information under the Migration Act.

There is an urgent need for appropriate legal assistance and education about migration and citizenship. In 2023, VLA, in partnership with Westjustice, commenced a Citizenship Project aimed at addressing unmet need in the Western Suburbs, especially for young people. Westjustice hopes to continue this work over coming years, in the event we are able to secure sufficient funding.

12.3.3 Social security and the National Disability and Insurance Scheme ('NDIS')

The SJP does not currently have expertise in social security and the NDIS, and therefore did not assist clients with these matters.

However, as recently-arrived people are likely to depend on Commonwealth pensions at least for the initial period after they arrive in Australia, they need access to clear and timely information about their rights and responsibilities to prevent mistakes or hardship from jeopardising successful settlement.

Additionally, the National Disability Insurance Agency ('NDIA') projected a 20 per cent participation rate by culturally and linguistically diverse communities in its 2018 Culturally and Linguistically Diverse strategy, but the actual rate as at May 2021 was only 9.5 per cent. This indicates that the NDIS may not always be accessible to people who are culturally and linguistically diverse.

Westjustice therefore hopes in future to be able to advise and educate clients on social security and NDIS matters. Again, this will be subject to having the staffing to build our capacity in this area.

"[In terms of practice gaps] family law and child support issues. It is still a...very delicate problem navigating what's the right of the client. I don't know whether we need to empower these families more for them to understand their rights and then also options if things don't work out after the relationship is not working."

- Poni Peter, Settlement Worker, Micare

80 | IDENTIFIED ISSUES AND GAPS IN OUR DELIVERY 81



13. NEXT STEPS FOR THE SJP

13.1 Increasing community legal education and information

While our professional development sessions for settlement workers were well-received and effective, the SJP pilot did not provide for CLEI.

The next phase of the SJP requires WEstjustice to deliver CLEI. Significant post-lockdown demand in 2022 meant that SJP lawyers were asked to provide sessions on scams, buying a car, fines, tenancy, and infringements to groups facilitated by WCEC and MiCare or other Western Suburbs settlement organisations.

It is almost certain that all future iterations of the SJP will include CLEI, noting its importance both in the initial settlement phase and in the ongoing education of recently-arrived people.¹¹³

13.2 Securing ongoing resourcing

The value of the SJP is evidenced by:

- feedback from WCEC and MiCare
- survey responses from SJP clients
- · the systemic issues we have identified
- the potential savings to government through early intervention in legal matters.

The SJP should receive recurring funding in order to:

- Provide some certainty to Westjustice's partners and employees of the SJP, making it easier to retain staff
- Avoid Westjustice having to pause or suspend service delivery in advance of funding 'cliffs', as occurred in mid-2022
- Allow the program manager to focus on improvements to, and expansion of, the SJP.

Westjustice's Communities of Burma Financial Counselling Clinic is currently unfunded, and reaches a number of clients or former clients of other settlement agencies that are not current partners of the SJP, and therefore ineligible for SJP assistance. Both the community work and financial counselling expertise could be brought into the SJP to enhance its range and capability. Appropriate future funding and resourcing for the SJP should therefore extend to this project and allow our multicultural outreach to be delivered as one cohesive program.

In the worst case scenario in which funding were to cease, Westjustice would not be able to otherwise deliver the service to settlement agencies. We would not have a warm referral relationship on an outreach basis. Extremely marginalised clients would have to rely on intakes into our other general access public services in services like tenancy, consumer and motor vehicle accident law but would face significant waiting times in which to do so without wrap-around assistance.

In specialised services such as fines and non-duty family violence advice and assistance, we would have no equivalent service for this client group and it is more likely than not these legal needs would go wholly unmet.

13.3 Project expansion opportunities

Westjustice wishes to work with WCEC and MiCare for as long as the SJP continues to operate. We could not have asked for two more engaged and supportive partners on a new and ambitious project.

However, Westjustice works alongside other Western Suburbs settlement agencies, and we see an opportunity with additional funding to:

- Extend client support to new partners that provide settlement services in the west, such as Catholic Care and AMES
- Develop the SJP's legal practice to cover its gaps, including greater in-situ availability at our partners, and with assistance in a broader range of matters
- Develop a legal needs tool kit which could be implemented for settlement agencies state-wide, including a template for Legal Health Checks for settlement clients¹¹⁴
- Offer establishment and evaluative support to likeminded programs in Victoria.





14. CONCLUSION

Melbourne's Western Suburbs have been enriched in recent years by successive and continuing humanitarian arrivals who are seeking a new life free from the fear of persecution or violence. Successful settlement is dependent on a range of indicators of social and economic inclusion, including full access to the legal and justice systems in order to ensure the realisation of recently-arrived people's rights and responsibilities.

Through the SJP, Westjustice sought to fulfil this aspect of successful settlement by working directly alongside two of the settlement agencies that deliver core education, health, employment and social assistance to people in their first five years after arrival in Australia. We hoped to contribute to improved settlement outcomes by enhancing recently-arrived peoples' understanding of the Australian legal system, their awareness of where to obtain assistance when problems arose, and their sense of overall wellbeing.

The project assisted nearly 100 clients with timely and effective interventions in legal matters, and helped settlement workers to identify problems that might require legal advice and solutions. Our hope that this partnership would be a meaningful intervention was borne out by the overwhelmingly positive responses of clients and settlement workers, with both indicating that the quality and care of the service was of a very high standard and facilitated much improved access to legal help.

Part of the purpose of the SJP pilot was to identify systemic issues and make recommendations. Of our 39 recommendations, some require greater financial commitment from government to effective settlement overall, particularly by taking a nuanced approach to the longer-term funding of settlement services, while others involve legislative, regulatory, and administrative changes that prioritise the accessibility of essential services and the justice system. In all instances, we believe that implementing these recommendations goes some why to substantively enlivening the rights-based settlement outcomes that these clients often have on paper but lack in practice.

Further, given the avoided costs/cost benefits of an early interventionist program such as this, the costs to run this project longer term are far exceeded by those recovered. It is therefore justifiable both in terms of positive life outcomes for our clients and communities but also in terms of costs savings to government.

Westjustice intends to deliver the SJP on an ongoing basis, but depends on further funding to do so. We hope that in time and with adequate support, the SJP can increase its assistance to recently-arrived people and set a successful example that can be replicated elsewhere in Victoria and Australia.

"It's a great support program and I hope really the funding is still there for such situations [in the future]."

- Poni Peter, Settlement Worker, Micare





15. APPENDIX: LIST OF RECOMMENDATIONS

Recommendation 1: Eligibility for settlement services should be needs-based and not time bound. HSP should be extended beyond the current 18 months, and SETS extended beyond five years.

Recommendation 2: State and Federal Government agencies should have a strategy to retain and promote targeted phone and in-person services for people who are unable to interact easily or safely online.

We suggest one method of prioritising clients who need this could be to base priority access on possession of a Health Care Card, ImmiCard, or Asylum Seeker Concession Card.

Recommendation 3: Because digitisation of public and private services is likely to increase, the Federal Government should fund settlement services to deliver increased digital literacy courses and supports to recently-arrived people.

Recommendation 4: We endorse the recommendations made throughout the joint report of the SCoA and Good Things Foundation, 'Supporting the Digital Inclusion of New Migrants and Refugees' and call on Federal and State Governments to act on them.

Recommendation 5: The new National Anti-Scams Centre should have a specialist division that focuses on prevention of scams targeting at-risk culturally and linguistically diverse communities. This should include the preparation of appropriate materials and engagement with peak community bodies.

Recommendation 6: The Banking Code of Practice should be amended at its next review to specify that "reasonable measures" to enhance access to services for people with limited English includes access to an interpreter in all urgent banking matters.

Recommendation 7: The Federal Government should introduce regulation for how banks and other financial providers should handle scams, including enforceable expectations around plain-English prevention requirements and appropriate aftercare. In the alternative, it should require industry to develop and adopt a binding code.

Recommendation 8: The Federal Government should investigate whether the current obligations on Remittance Service Providers are adequate for scam prevention and aftercare and then implement a response to its findings.

Recommendation 9: The energy, water, telecommunications, insurance, and banking codes should be amended to require service providers to proactively offer an interpreter to all customers at the outset of any interaction.

Recommendation 10: As recommended by the CPRC, Government departments should work with regulators and utility companies to implement systems to automatically apply and re-validate concessions for energy and water bills. This should occur as part of a Commonwealth review of the concessions framework.

Recommendation 11: The Federal Government should introduce an unfair trading prohibition that creates a duty on businesses to treat people fairly and is flexible enough to account for emerging forms of unfair conduct.

Recommendation 12: The Federal Government should increase funding to HSP and SETS providers to facilitate financial literacy education in conjunction with settlement services.

Recommendation 13: The Federal Government should immediately increase the rate of JobSeeker to sit above the Henderson poverty line, with commensurate increases to other supplement payments.

Recommendation 14: The RTA should be reviewed to remedy any accessibility issues which unnecessarily require written correspondence from renters to either residential rental providers or the Director of Consumer Affairs.

Recommendation 15: In the alternative, CAV should provide and promote frontline support for people with literacy barriers, including refugees, which has a focus on helping renters complete basic written notification requirements under the RTA. Complex and dispute matters should continue to be referred to tenancy advocacy services.

Recommendation 16: The RTBA should create and promote a phone service to help people with accessibility issues resolve basic bond processes and enquiries.

Recommendation 17: Government should introduce an enforceable Code of Conduct should be introduced for residential property management and should include provisions addressing appropriate communication with renters who are non-English speakers or speakers of English as an additional language, including mandating the use of interpreters where needed.

Recommendation 18: The RTA should be reformed to allow a renter to indicate their preferred language on the standard form lease agreement, and require a rental provider or their agent to take reasonable steps to communicate in that language with the renter where this is indicated. CAV should review or develop translations of the Renters' Guide, Statement of Information, Standard Lease Agreement, and other key written notices under the RTA in common languages spoken in Victoria as part of such a reform. Where such a translation existed in a language that was indicated by a renter on their lease agreement as their preferred language, it should be a requirement that the rental provider or agent provide a copy of the translation along with the English form of the document or notice.

Recommendation 19: Fines Victoria should expand its Family Violence Scheme to cover excess speeding offences and enable a person who paid a fine incurred by a perpetrator to avoid resulting demerit points.

Recommendation 20: Fines Victoria should introduce a new ground of identity theft on which to seek withdrawal of fines and demerit points. This should also encompass excess speeding offences which are fraudulently registered or nominated to an innocent party.

Recommendation 21: Fines Victoria should partner with local governments to implement a consistent approach to infringement payment plans and payment extensions.

Recommendation 22: Enforcement agencies, including councils, should have specialised training and options to assist recent humanitarian arrivals who have infringements, which may include making it easier for people to obtain payment plans or extensions of time.

Recommendation 23: The Infringements Act 2006 should be amended to remove the right of an enforcement agency to withdraw an infringement and refer the matter to court where a person applies for an internal review.

Recommendation 24: In the alternative to recommendation 23, the Infringements Act 2006 should be amended to add an exhaustive set of circumstances under which an internal review may lead to referral to court, so that people have some certainty about the process.

Recommendation 25: The Victorian Government should create a new class of WDP scheme eligibility for people who have arrived on humanitarian visas within the past five years.

Recommendation 26: Fines Victoria should make information about WDP sponsors publicly available, with their consent, including details about their specialisations, offerings, and present capacity.

Recommendation 27: The Judicial College of Victoria should provide increased training for judicial officers on the existence and harms of economic abuse as a form of family violence, with a particular focus on economic abuse as a means of control and social isolation in recently-arrived communities.

92 I APPENDIX

Recommendation 28: Victoria Police should amend the VPM Chapter on Interviews and Statements to include a direction that police ask all persons whether they require an interpreter prior to taking any statements or conducting any interview, rather than relying on the discretion of the interviewing officer as to whether an interpreter is 'required'.

Recommendation 29: Victoria Police should amend the L17 form so it clarifies whether a police officer used an interpreter to complete the form. Police officers who required an interpreter but did not, or could not, access an interpreter when they took initial statements, must contact relevant persons – victim-survivors, suspects and/or witnesses – with a suitably qualified interpreter and conduct a full review of all L17 risk factors at a later time

Recommendation 30: The Magistrates' Court should issue a Practice Direction requiring all registries to take a uniform approach to the FVIO process, including listing of interim order applications and assistance to parties with accessibility issues.

Recommendation 31: The Victorian Government should significantly increase in funding for culturally- specific alcohol and drug, and men's, programs, co-designed and led by members of recently-arrived communities, and for bicultural workers attached to existing community sector counselling bodies.

Recommendation 32: The Federal Government and/or Fair Work Ombudsman through its community engagement grants program, should provide greater funding to CLCs for the delivery of further community education and information campaigns designed to inform culturally and linguistically diverse workers about their rights.

Recommendation 33: The Federal Government reform the Fair Work Act 2009 (Cth) to remove the 21-day timeframe for unfair dismissal and general protections dismissal claims, and replace it with a 12-month discretionary limit, except where the employee seeks reinstatement. This would be based on the model in the Equal Opportunity Act 2010 (Vic).

Recommendation 34: To tackle sham contracting, the Federal Government should amend the Fair Work Act to include a statutory definition of 'employee' which:

- presumes that workers are employees, unless they are genuinely running their own business or are on a vocational placement
- covers gig economy workers, unless the employer principal can establish the worker was genuinely running their own business.

Recommendation 35: The Federal Government should amend s 357 of the Fair Work Act, to the effect that employers who misrepresent their employees as contractors are liable under that section if they have failing to take reasonable steps to determine whether their workers are employees.

Recommendation 36: The Federal Government should amend the Independent Contractors Act 2006 (Cth) to:

- Make it an offence for principals to pay contractors, whose work is otherwise covered by an award, a rate of pay that is below the minimum wage under the award
- $\bullet \ \ \text{Introduce an accessible forum, such as a tribunal, for contractors to challenge unfair terms in contracts.}$

Recommendation 37: The Federal Government should implement the 19 recommendations of the Commonwealth Senate Economics References Committee Report: 'Systemic, sustained and shameful: Unlawful underpayment of employees' remuneration'.

Recommendation 38: DHA should make ImmiCards valid for 10 years and make the identity requirements for replacement ImmiCards the same as those for renewing or replacing an Australian passport.

Recommendation 39: DJCS should remove its requirement for an interpreter to sign/witness a statutory declaration, noting the logistical and time constraints involved in doing so. This will require amendments to the Oaths and Affirmations Act 2018 (Vic).

ENDNOTES

- Justice Ronald Sackville, 'Access to Justice: Assumptions and Reality Checks' (Paper, Access to Justice Roundtable, Law and Justice Foundation of New South Wales, 10 July 2002)
- ² Davern, M., Warr, D., Block, K., La Brooy, C., Taylor, E. & Hosseini, A. (2016). Humanitarian Arrivals in Melbourne: A spatial analysis of population distribution and health service needs. Extended Report. University of Melbourne: Melbourne, Victoria. Accessed at https://apo.org.au/sites/default/files/resource-files/2016-07/apo-nid69843.pdf on 8 December 2022.
- ³ Settlement Council of Australia, "State of the Sector 2020", March 2021, p 7. Accessed at http://scoa.org.au/wp-content-uploads/2021/03/State-of-the-Sector-2020-FINAL-REPORT.pdf on 17 January 2023.
- See for example, Australian Human Rights Commission, "In our own words – African Australians: A review of human rights and social inclusion issues (2010)", 1 June 2010. Accessed at in our own words.pdf (humanrights.gov.au) on 17 January 2023.
- Settlement Council of Australia, "Submission: Next Steps to improve Australia's settlement and integration of refugees", June 2022, p. 7. Accessed at https://scoa.org.au/wp-content/uploads/2022/06/SCOASU1.pdf on 17 January 2023.
- Hayes, A, Gray, M, and Edwards B., "Social inclusion: Origins, concepts and key themes", Australian Institute of Family Studies prepared for the Social Inclusion Unit, Department of the Prime Minister and Cabinet, October 2008, p 6. Accessed at https://apo.org.au/sites/default/files/resource-files/2008-10/apo-nid8799.pdf on 17 January 2023.
- Australian Government, "Settlement Engagement and Transition Support (Sets) - Client Services", May 26, 2022. Accessed at https://immi.homeaffairs.gov.au/settling-in-australia/sets-program/sets-client-services on 17 January 2023
- 8 Settlement Council of Australia (n 3) p. 7
- ⁹ See, for example Westjustice's 2021 report: 'Restoring Financial Safety: The Transforming Financial Security Project', Accessed at https://www.westjustice.org.au/publications on 17 January 2023.
- See evaluation report: Hugh M. McDonald, Suzie Forell, Zhigang Wei and Sarah A. Williams, Reaching in by joiningup: Evaluation of the legal assistance partnership between Legal Aid NSW and Settlement Services International", Law and Justice Foundation of NSW, September2014. Accessed at https://www.legalaid.nsw.gov.au/_data/assets/pdf_file/0017/21743/SSI-Report_Web.pdf on 17 January 2023.
- 11 Westiustice is an amalgamation of the former Footscray. Western Suburbs and Wyndham CLCs. Relevantly, Wyndham Legal Service's Outer Sight Out of Justice: Finding Pathways to Justice for Melbourne's Outer-Metropolitan Areas February 2014. Accessed at https://westjustice. org.au/cms_uploads/docs/westjustice-outer-sight-out-ofjustice-report.pdf on 17 January 2023; Westjustice's Not Just Work: Ending the Exploitation of Refugee and Migrant Workers, November 2016. Accessed at https://westjustice. org.au/cms_uploads/docs/westjustice-report--not-just-work--overview-(electronic).pdf on 17 January 2023; Footscray Community Legal Centre's Refugees (June 2009) and The Burmese Community and the Legal System - A Study in Confusion (August 2010): The Legal Problems of African Refugees, June 2009. Accessed at https://westjustice.org.au/ cms_uploads/docs/westjustice-out-of-africa-and-into-courtreport.pdf on 17 January 2023 and The Burmese Community and the Legal System - A Study in Confusion August 2010. Accessed at westjustice-burmese-community-and-the-legalsystem-report.pdf on 17 January 2023

- Law Council of Australia The Justice Project, Final Report Part 1: "Recent Arrivals to Australia", August 2018. Accessed at https://www.lawcouncil.asn.au/files/web-pdf/Justice%20 Project/Final%20Report/Recent%20Arrivals%20to%20
 https://www.lawcouncil.asn.au/files/web-pdf/Justice%20 Project/Final%20Report/Recent%20Arrivals%20to%20
 https://www.lawcouncil.asn.au/files/web-pdf/Justice%20 Project/Final%20Report/Recent%20Arrivals%20to%20
 https://www.lawcouncil.asn.au/files/web-pdf/Justice%20 Project/Final%20Report/Recent%20Arrivals%20to%20
 https://www.lawcouncil.asn.au/files/web-pdf/Justice%20 Project/Final%20Report/Recent%20Arrivals%20to%20 Australia%20%28Part%201%29.pdf on 20 December 2022.
- This report uses 'preliterate' to mean people who speak a language whose written form is rare or does not exist, and 'non-literate' to mean people who speak a language that has a written form but which they have not learned to read or write themselves.
- ¹⁴ Law Council of Australia The Justice Project, "Final Report Introduction and Overview", August 2018, p 30. Accessed at https://www.lawcouncil.asn.au/files/web-pdf/Justice%20 Project/Final%20Report/Justice%20Project%20 %20 Final%20Report%20in%20full.pdf on 17 January 2023.
- 15 ibid.
- ¹⁶ Judicial Council on Cultural Diversity, The Path to Justice: Migrant and Refugee Women's Experience of the Courts, 2016, p. 15-16. Accessed at https://jccd.org.au/wp-content/uploads/2021/06/JCCD Consultation Report - Migrant and Refugee Women.pdf on 20 December 2022.
- ¹⁷ This is reflected in the criteria set out to engage Australia's protection obligations, summarised by the Department of Home Affairs, "Refugee and Humanitarian program", 21 August 2020. Accessed at https://immi.homeaffairs.gov.au/what-we-do/refugee-and-humanitarian-program/about-the-program/seek-protection-in-australia/australia-protection-obligations on 20 December 2022.
- ¹⁸ The cancellation provisions can be found in sections 116 and 501 of the *Migration Act 1958* (Cth). Further discussion about the effect of these on SJP clients is set out in Part 10-F of this report (Fines and Infringements).
- ¹⁹ Christine Coumarelos et al, Law and Justice Foundation of New South Wales, "Legal Australia-Wide Survey: Legal Need in Australia", 2012, p 15. Accessed at http://www. lawfoundation.net.au/ljf/site/templates/LAW_AUS/\$file/LAW Survey Australia.pdf on 17 January 2023.
- ²⁰ See Virginia Lewis, Lauren Adamson and Faith Hawthorne, 'Health Justice Partnerships: A Promising Model for Increasing Access to Justice in Health Services' (2019) 43 Australian Health Review 636, 637. Accessed at https://www. publish.csiro.au/ah/AH18101 on 17 January 2023; Tishra Beeson, Brittany Dawn McCallister and Marsha Regenstein, 'Making the Case for Medical-Legal Partnerships: A Review of the Evidence' (Research Paper, The National Center for Medical-Legal Partnership, Department of Health Policy, School of Public Health and Health Services, George Washington University, February 2013 Beeson, McCallister and Regenstein (n 4) 6. Accessed at https:// medical-legalpartnership.org/wp-content/uploads/2014/03/ Medical-Legal-Partnership-Literature-Review-February-2013. pdf on 17 January 2023; Elizabeth Tobin Tyler, 'Aligning Public Health, Health Care, Law and Policy: Medical-Legal Partnership as a Multilevel Response to the Social Determinants of Health' (2012) 8(2) Journal of Health & Biomedical Law 211. Accessed at https://www.researchgate. net/publication/256021007 Aligning Public Health Health Care Law and Policy Medical-Legal Partnership as a Multilevel Response to the Social Determinants of Health on 17 January 2023.
- ²¹ Law Council of Australia (n 14) p.18

94 I APPENDIX 95

ENDNOTES CONT...

- The Judicial Council on Diversity and Inclusion was formerly called the Judicial Council on Cultural Diversity: Judicial Council on Cultural Diversity, "Submission to the Productivity Commission Inquiry into Access to Justice Arrangements", 2013, p 1. Accessed at https://www.pc.gov.au/inquiries/completed/access-justice/submissions/submissions-test/submission-counter/sub120-access-justice.pdf on 17 January 2023.
- ²³ Law Council of Australia, The Justice Project: Consultation Paper - Recent Arrivals to Australia, August 2017, p 14. Accessed at https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Consultation%20Papers/Recent%20 Arrivals%20to%20Australia.pdf on 17 January 2023.
- ²⁴ Ibid, p. 30-31
- ²⁵ See Mary Anne Noone and Kate Digney, "It's Hard to Open Up to Strangers": Improving Access to Justice (Research Report, September 2010) 20.
- ²⁶ Liz Curran, 'Lawyer Secondary Consultations: Improving Access to Justice' (2017) 8(1) *Journal of Social Inclusion* 46, 48 ('Secondary Consultations'). (n 6) 48
- Liz Curran, A Research and Evaluation Report for the Bendigo Health–Justice Partnership: A Partnership Between Loddon Campaspe Community Legal Centre and Bendigo Community Health Services (Report, October 2016) 68 ('Bendigo Health-Justice Partnership Report'); Kirsty Forsdike et al, 'An Australian Hospital's Training Program and Referral Pathway within a Multi-Disciplinary Health-Justice Partnership Addressing Family Violence' (2018) 42(3) Australian and New Zealand Journal of Public Health 284, 284; Megan Sandel et al, 'The MLP Vital Sign: Assessing and Managing Legal Needs in the Healthcare Setting' (2014) 35(1) Journal of Legal Medicine 41, 50. Curran, Bendigo Health–Justice Partnership Report (n 7) 68; Forsdike et al (n 9) 284; Sandel et al (n 4) 50.
- ²⁸ Settlement Council of Australia, Submission: Next Steps to improve Australia's settlement and integration of refugees (June 2022), p 11, citing The Royal Australian College of General Practice (2015), Rites of passage: improving refugee access to general practice services, available online at: https://www.racgp.org.au/getattachment/f59dc867-992a-4cf8-a759-b7f134259212/Rites-of-passage-improving-refugee-access-to-gener aspx
- See Curran, Bendigo Health–Justice Partnership Report, October 2016, 23. Accessed at https://arcjustice.org.au/wp-content/uploads/2020/08/Bendigo-health-justice-partnership.pdf on 17 January 2023; Christine; Coumarelos et al, Legal Australia-Wide LAW Survey: Legal Need in Australia (Report, August 2012) 220 ('LAW Survey' (n 11) 217–19. Accessed at http://www.lawfoundation.net.au/lif/site/templates/LAW_AUS/\$file/LAW_Survey_Australia.pdf on 17 January 2023.
- ³⁰ Law Council of Australia (n 23), p. 40 Accessed at https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/ Consultation%20Papers/Recent%20Arrivals%20to%20 Australia.pdf on 17 January 2023.
- ³¹ See, for example Westjustice (n 9)
- 32 McDonald, Forell, Wei and Williams (n 10)
- 33 Law Council of Australia (n 23), p. 6
- ³⁴ JCCD (n 16) p. 21
- ³⁵ Also known as an 'assisted referral', this is a practice in the health and community sector by which a service completes the process of referring a client to other complementary service, in some cases providing a summary of their situation, needs and desired outcomes.
- ³⁶A period encompassing both the pilot phase and the first five months of the DJCS funded period of the project.

- ³⁷ Ethnic Communities Council of Queensland, "Response to Discussion Paper: Next Steps to Improve Settlement and Integration of Refugees", 27 May2022, p. 17. Accessed at https://eccq.com.au/publications/response-next-steps-improve-australias-settlement-integration-refugees/ on 17 January 2023.
- ³⁸ Settlement Council of Australia, Response to 'Next Steps' discussion paper," Submission: Next steps to improve Australia's settlement and integration of refugees", June 2022. Accessed at https://scoa.org.au/wp-content/uploads/2022/06/SCOASU1.pdf on 17 January 2023.
- Ethnic Communities Council of Queensland, "Response to Discussion Paper: Next Steps to Improve Settlement and Integration of Refugees", 27 May2022, p. 17. Accessed at https://eccq.com.au/publications/response-next-steps-improve-australias-settlement-integration-refugees/ on 17 January 2023.
- ⁴⁰ Settlement Council of Australia, Response to 'Next Steps' discussion paper, " Submission: Next steps to improve Australia's settlement and integration of refugees", June 2022. Accessed at https://scoa.org.au/wp-content/uploads/2022/06/SCOASU1.pdf on 17 January 2023.
- ⁴¹ ECCoQ (n 39) p. 17.
- 42 Settlement Council of Australia (n 40), p. 27-28.
- ⁴³ This recommendation has been adopted from the response of the Refugee Council of Australia and the National Refugee-led advisory and advocacy group to the Discussion Paper: Next Steps to Improve Settlement and Integration of Refugees, (2022), p 6. Accessed at https://www.refugeecouncil.org.au/wp-content/uploads/2022/07/Settlement-Services-Discussion-Paper-2022.pdf on 17 January 2023.
- ⁴⁴ United Nations High Commissioner for Refugees, "Connected Education for Refugees: Addressing the Digital Divide", December 2021, p.8. Accessed at https://reliefweb.int/report/world/connected-education-refugees-addressing-digital-divide on 20 December 2022.
- ⁴⁵ SCoA and Good Things Foundation, 'Supporting the Digital Inclusion of New Migrants and Refugees', December 2020. Accessed at https://www.goodthingsfoundation.org.au/the-digital-divide/cald-communities/ on 5 January 2023.
- ⁴⁶ ACCC," Targeting Scams: Report of the ACCC on Scams Activity 2021", July 2022. Accessed at https://www.accc. gov.au/system/files/Targeting%20scams%20-%20report%20 of%20the%20ACCC%20on%20scams%20activity%202021. pdf on 19 December 2022.
- In 2019, the ACCC's review of the decade's progress in combatting scams estimated that around 13% of victims make a report to Scamwatch, and that 33 percent of people who lost money to scams between 2014 and 2019 did not report the loss to any organisation. Source: ACCC, "Targeting Scams 2019: A Review of Scam Activity since 2009", June 2020. Accessed at https://www.accc.gov.au/system/files/1657RPT_Targeting%20scams%202019_FA.pdf on 24 January 2022.
- ⁴⁸ ACCC, The Little Black Book of Scams, December 2021. Accessed at https://www.accc.gov.au/system/files/Little%20 Black%20Book%20of%20Scams%202021.pdf on 19 December 2022.
- ⁴⁹ Westjustice, "How to Be Safe From Scams", November 2022. Accessed at https://www.westjustice.org.au/cms_uploads/docs/west-justice.scams_easy-english_final_print_web-accessible.pdf on 19 December 2022.
- 50 "Transcript: Assistant Treasurer launches National Anti-Scams Centre", 7 November 2022. Accessed at https://www.ausbanking.org.au/transcript-the-hon-stephen-jones-mp-assistant-treasurer-and-minister-for-financial-services/ on 17 January 2023.

- 51 Clauses 32-34, ABA Banking Code of Practice, 1 March 2020 Release (Revised 5 October 2021). Accessed at https://www.ausbanking.org.au/wp-content/uploads/2021/10/2021-5-Oct-Banking-Code-WEB.pdf on 17 January 2023.
- ⁵² See for example Part 9 of the General Insurance Code of Practice, and clause 12 of the Victorian Essential Services Commission's Energy Retail Code of Practice.
- Lending Standards Board UK, "Contingent Reimbursement Model Code for Authorised Push Payment Scams", 28 April 2022. Accessed at https://www.lendingstandardsboard.org.uk/wp-content/uploads/2022/04/LSB-CRM-Code-V3.0-28-April-2022.pdf on 19 December 2022.
- See for example, The Age, "You can't be responsible for everyone's decisions: Westpac boss pushes back on scam reimbursement", 30 November 2022. Accessed at https://www.smh.com.au/business/banking-and-finance/westpac-boss-pushes-back-on-scam-reimbursement-20221129-p5c2ak.html on 25 January 2023.
- Federal Trade Commission, "Western Union Admits Anti-Money Laundering Violations and Settles Consumer Fraud Charges, Forfeits \$586 Million in Settlement with FTC and Justice Department", 19 January 2017. Accessed at https://www.ftc.gov/news-events/news/press-releases/2017/01/western-union-admits-anti-money-laundering-violations-settles-consumer-fraud-charges-forfeits-586 on 19 December 2022
- Part 9 of the General Insurance Code of Practice, Clause 12 of the Victorian Essential Services Commission's Energy Retail Code of Practice, Chapter 13 of the Banking Code of Practice, Part 3.4 of the Telecommunications Consumer Protections Code, Clause 12.9 of the Victorian ESC's Customer Service Code for Urban Water Businesses.
- ⁵⁷ As also identified by Bourova, E, Ramsey, I and Ali, P, 'It's Easy to say 'Don't sign anything': debt problems among recent migrants from a non-English- speaking background', Alternative Law Journal, Vol 44, No. 2, 2019, p 127. Accessed at https://journals.sagepub.com/doi/epub/10.1177/1037969X18817875 on 17 January 2023.
- Analogously argued in relation to assumptions about cognitive disability in Yvette Maker et al, 'From Safety Nets to Support Networks: Beyond 'Vulnerability' in Protection for Consumer with Cognitive Disabilities' (2018) 41(3) University of New South Wales Law Journal, 818 (829). Accessed at https://www.unswlawjournal.unsw.edu.au/wp-content/uploads/2018/09/Maker-et-al.pdf on 17 January 2023.
- ⁵⁹ 'Mind the Gap: Identifying the gap between energy concession eligibility and concessions received', CPRC, November 2022. Accessed at https://cprc.org.au/mindthegap/ on 21 December 2022.
- 60 Ibid, p. 16.
- ⁶¹ Pensioner Concession Card or Veterans' Affairs Gold Card
- ⁶² We classified MVAs as consumer matters because these disputes involved either an insurer – our client's, the owner of our client's car or the other driver's – or a recoveries organisation.
- ⁶³ A 'disbursement' is a cost associated with legal action.
- 64 See for example, Brody, G and Temple K, 'Unfair but not illegal: Are Australia's consumer protection laws allowing predatory businesses to flourish?', Alternative Law Journal, 41(3), 2016, 169, 169 170. Accessed at https://journals.sagepub.com/doi/epdf/10.1177/1037969X1604100306 on 17 January 2023.

- ⁶⁵ Competition and Consumer Act 2010 (Cth), Sch 2 'The Australian Consumer Law', s 21. See for example, the decision of the High Court in ASIC v Kobelt [2019] HCA 18. Accessed at http://www8.austlii.edu.au/cgi-bin/viewdoc/au/ cases/cth/HCA/2019/18.html on 5 January 2023.
- ⁶⁶ See Kiefel CJ and Bell J in Kobelt at [14-15], Gaegler J at [81-89]. Note that the full Federal Court recently held that neither special disadvantage nor exploitation or predation upon some vulnerability or disadvantage of a person or class of persons is a necessary feature of statutory unconscionability in ACCC v Quantum Housing Group Pty Ltd [2021] FCAFC 40, but that the High Court's decision in Kobelt remains the most recent superior court consideration of this area.
- ⁶⁷ Competition and Consumer Act 2010 (Cth), Sch 2 'The Australian Consumer Law', s 21 (4)(a) explicitly provides: "It is the intention of the Parliament that this section is not limited by the unwritten law relating to unconscionable conduct".
- ⁶⁸ See ACCC Digital Platforms Inquiry (2019) recommendation 21; ACCC Perishable Agricultural Goods Inquiry (2020) recommendation 2.
- ⁶⁹ See Federal Trade Commission Act (US), Section 5: "An act or practice may be found to be unfair where it causes or is likely to cause substantial injury to consumers which is not reasonably avoided by consumers themselves and not outweighed by countervailing benefits to consumers or to competition"; Consumer Protection from Unfair Trading Regulations 2008 (UK), Section 3(3): "A commercial practice is unfair if (a) it contravenes the requirements of professional diligence; and (b) it materially distorts or is likely to materially distort the economic behaviour of the average consumer with regard to the product."
- Paterson, J M and Bant, E, 'Should Australia Introduce a Prohibition on Unfair Trading? Responding to Exploitative Business Systems in Person and Online', *Journal of Consumer Policy, March* 2021, 44.Accessed at https://link.springer.com/article/10.1007/s10603-020-09467-9 on 5 January 2023.
- ⁷¹ For further examples of this kind of conduct, see in particular 'How Australia can stop unfair business practices: a comparative analysis of unfair trading laws in international jurisdictions', CPRC, September 2022. Accessed at https://cprc.org.au/stopping-unfair-practices/ on 21 December 2022
- 72 Residential Tenancies Act 1997 (Vic), s 74(1)(a).
- 73 Residential Tenancies Act 1997 (Vic), s 74(2)(a).
- ⁷⁴ Residential Tenancies Act 1997 (Vic), s 45(2).

96 I ENDNOTES 97

ENDNOTES CONT...

- ⁷⁵ Residential Tenancies Act 1997 (Vic), s 91Z. Note that the wording of this section is ambiguous - while it does not clearly say a notice of intention to vacate must be in writing, neither does it indicate this can be communicated verbally.
- ⁷⁶ Residential Tenancies Act 1997, s 62."
- 77 From the Tribunal's website (https://www.vcat.vic.gov.au/ help-and-support/application-help) Retrieved 5 December
- ⁷⁸ Translating and Interpreting Service (TIS), <u>"Free interpreting</u> service for real estate agencies". Accessed at Free Interpreting Service for real estate agencies | Translating and Interpreting Service (TIS National) on 6 January 2023.
- ⁷⁹ For examples, see Te Tuapapa Kura Kainga, Ministry of Housing and Urban Development, "Regulating residential property managers". Accessed at https://www.hud.govt. nz/our-work/regulating-residential-property-managers/ on 17 January 2023 (the proposed Aotearoa New Zealand regime); Llywodraeth Cymru Welsh Government, "Landlord and Agent Licensing". Accessed at https://rentsmart.gov. wales/en/licensing/#:~:text=What%20next%3F-,Landlord%20 and%20agent%20licensing%20requirements%20in%20 Wales, in%20their%20rights%20and%20obligations on 17 January 2023 (the Welsh agent licensing regime); Scottish Government (Riaghaltas na h-alba), "Letting agent code of practice", 31 January 2018. Accessed at https://www.gov. scot/publications/letting-agent-code-practice/ on 17 January 2023 (Scotland's Letting Agent Code of Practice).
- 80 Relevantly, see clause 12 of the Victorian Energy Retail Code of Practice (https://www.esc.vic.gov.au/electricityand-gas/codes-guidelines-and-policies/energy-retail-codepractice, accessed 5 December 2022), Part 9 of the General Insurance Code of Practice (https://insurancecouncil.com. au/wp-content/uploads/2021/10/ICA007_COP_Report_2021-Updates 2.1 LR.pdf, accessed 5 December 2022), Chapter 13 of the Banking Code of Practice (https://www.ausbanking. org.au/wp-content/uploads/2021/10/2021-5-Oct-Banking-Code-WEB.pdf, accessed 5 December 2022). Note our further recommendations around banks and interpreters in this report's section on Scams.
- 81 The Renters Guide, a written summary of the rights and duties of rental providers and renters approved by the Director of Consumer Affairs, can be found in electronic form here: https://www.consumer.vic.gov.au/housing/renting/ starting-and-changing-rental-agreements/resources-andguides-for-renters/renters-guide. Under section 66 of the Residential Tenancies Act 1997 (Vic), rental providers have a duty to provide incoming renters with the guide before or on the occupation day of the rental property.
- 82 CAV, "Resources and tools other languages". Accessed at https://www.consumer.vic.gov.au/resources-and-tools/otherlanguages on 25 January 2022.
- 83 Fines Victoria's Family Violence Scheme provides a basis on which certain infringements incurred by victim-survivors may be withdrawn where there is a link between the family violence and the circumstances of the fine. More information about the scheme can be found at https://online.fines.vic gov.au/Support/Family-Violence-Scheme (accessed on 31 January 2023).
- https://www.brimbank.vic.gov.au/payments-and-rates/ infringements-pay-fine
- 85 https://www.hobsonsbay.vic.gov.au/Services/Payments-Permits/Infringements
- 86 https://www.maribyrnong.vic.gov.au/Residents/Transport-Parking-and-Road-Safety/Pay-an-infringement
- 87 Infringements Act 2006 (Vic), s 25(1)(d).
- 88 This is based on multiple enquiries by Westjustice since 2018 to Fines Victoria

- 89 Government of Western Australia, 'Register of Approved Sponsors - WDPS'. Accessed at https://www.wa.gov.au/ organisation/department-of-justice/register-of-approvedsponsors-wdps on 6 January 2023.
- 90 See Family Violence Protection Act 2008 (Vic),s 5(1)(a)(iii). 91 To date, all SJP FVIO matters have resolved at mention or
- directions hearing. Should a matter proceed to contested hearing we would assist the client to apply for a grant of legal aid, and endeavour to warm refer the client to another legal service for representation.
- 92 See Reeves, Ellen --- "I'm Not at All Protected and I Think Other Women Should Know That, That They're Not Protected Either': Victim-Survivors' Experiences of 'Misidentification' in Victoria's Family Violence System" (2021) 10(4) International Journal for Crime, Justice and Social Democracy 39, citing: Mansour J (2014) Women defendants to AVOs: What is their experience of the justice system? Sydney: Women's Legal Service NSW; Reeves E (2020) Family violence, protection orders and systems abuse: Views of legal practitioners Current Issues in Criminal Justice 32(1): 91-110; and Ulbrick M and Jago M (2018) "Officer she's psychotic and I need protection": Police misidentification of the 'primary aggressor' in family violence incidents in Victoria. Policy Paper 1. Melbourne: Women's Legal Service Victoria.
- 93 Victoria Police: Code of Practice for the investigation of family violence (Ed 4; version 2) (accessed on 4 January 2023 via: Code of Practice for the investigation of family violence (police.vic.gov.au)
- ⁹⁴ The VPM is issued under the authority of the Chief Commissioner of Police in s.60. Victoria Police Act 2013. It available for access to non-police entities by subscription
- 95 VMP Interviews and Statements, cl 14.2
- 96 VPM Family Violence, cl 3.4
- 97 VPM Family Violence, cl 3.4
- 98 'Domestic and Family Violence Support in Settlement: Sector needs analysis'; SETSCoP, June 2022, p 23. Accessed at https://setscop.org.au/submissions-and-reports/ on 4
- 99 Akuch Kuol Anyieth, 'South Sudanese Manhood and Family Crisis in the Diaspora', Africa World Books, 2021, p 86.
- ¹⁰⁰A complicated legal test, subject to high court clarification as recently as Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd [2022] HCA 1 and ZG Operations Australia Pty Ltd v Jamsek [2022] HCA 2.
- ¹⁰¹Another complicated legal test, clarified by the High Court 2021 in WorkPac Pty Ltd v Rossato [2021] HCA 23
- 102 Which may include an enterprise agreement well past its nominal expiry date
- 103 WRARLSS was funded by the Victorian Department of Families, Fairness and Housing, separately to the SJP
- ¹⁰⁴See variously: 'Not Just Work', Westjustice, November 2016. Accessed at https://www.westjustice.org.au/cms_uploads/ docs/westjustice-report--not-just-work--overview-(electronic). pdf on 17 January 20]]]23; Ignorance is NOT Bliss Report, Westjustice, September 2021. Accessed at https://www. westjustice.org.au/cms_uploads/docs/youth_employment project_final.pdf on 17 January 2023; Joint Submission by Westjustice, SMLS and JobWatch on the Exposure Draft of the draft Migration Amendment (Protecting Migrant Workers) Bill 2021, 16 August 2021. Accessed at https://jobwatch.org. au/wp-content/uploads/WJ-SMLS-JW-Submission_Migrationbill_16-August-2021.pdf on 17 January 2023; Westjustice submission to the Senate Select Committee on Job Security, 30 March 2021. Accessed at https://www.westjustice.org. au/cms_uploads/docs/wj_submission_senate_-jobsecurity_ mar2021.pdf on 17 January 2023; Joint submission by Westjustice, SMLS and JobWatch to the Senate Select Committee Inquiry on Temporary Migration, 30 July 2020. Accessed at https://www.westjustice.org.au/cms_uploads/ docs/200730-wj-smls-jw-submission-temporary-migrationfinal.pdf on 17 January 2023; Joint submission by Westjustice, Migrant Employment Legal Service and

- Redfern Legal Centre to the Senate Standing Committee on Economics Inquiry into unlawful underpayments of employees' remuneration, March 2020. Accessed at https:// rlc.org.au/sites/default/files/attachments/WEstjustice_MELS_ RLCISS_CLC_JointSubmission.pdf on 17 January 2023; Westiustice submission to the Inquiry into the Victorian On-Demand Workforce, February 2019. Accessed at https:// www.westjustice.org.au/cms_uploads/docs/westjusticesubmission--inquiry-into-the-victorian-on-demand-workforcefinal.pdf on 17 January 2023; SMLS Submission Federal to the Senate on the Inquiry into the impact of insecure or precarious employment on the economy, wages, social cohesion and workplace rights and conditions, dated 31 March 2021. Accessed at https://www.smls.com.au/ wp-content/uploads/2021/04/SMLS-Select-Committee-on-Job-Security.pdf on 17 January 2023; Joint Submission by Westjustice and SMLS to the Victorian Legislative Assembly Economy and Infrastructure Committee on the 2019 Inquiry into Sustainable Employment for Disadvantaged Jobseekers. Accessed at WEstjustice-and-SMLS-Submission-to-Victorian-Inquiry-in-Sustainable-Employment.pdf on 17 January 2023.
- ¹⁰⁵Fair Work Act 2009 (Cth), s 357(1).
- 106 Fair Work Act 2009 (Cth), s 357(2).
- ¹⁰⁷Joint submission by Westjustice, Migrant Employment Legal Service and Redfern Legal Centre to the Senate Standing Committee on Economics Inquiry into unlawful underpayments of employees' remuneration, March 2020. Accessed at www.westjustice.org.au/publications on 17 January 2023.
- 108 Name change applications have varying and significant turnaround times. We were unable to confirm how many individuals and families have received change of name certificates at time of publication.
- 109 Oaths and Affirmations Act 2018 (Vic) s32(1): "...any person who assists a person to make a statutory declaration must on the face of the document legibly— (a) write or stamp the name and address of the assistant; and (b) explain the nature of the assistance provided to the person making the
- ¹¹⁰Law Council of Australia The Justice Project, "Consultation Paper: Recent Arrivals to Australia" August 2017, p 6. Accessed at https://www.lawcouncil.asn.au/files/web-pdf/ Justice%20Project/Final%20Report/Recent%20Arrivals%20 to%20Australia%20%28Part%201%29.pdf on 20 December
- 111By way of example in the NSW settlement context, see Mc Donald et al, Reaching In By Joining-Up, p. 52-3.
- ¹¹²ABC News Online, "National Disability Insurance Scheme 'too complex' for people from diverse backgrounds, agencies warn", 16 August 2021. Accessed at https://www.abc.net.au/ news/2021-08-16/ndis-participation-among-culturally-andlinguistically-diverse/100375824 on 23 December 2022.
- ¹¹³Law Council of Australia, The Justice Project: Consultation Paper - Recent Arrivals to Australia, August 2017, p 4 – 5. Accessed at https://www.lawcouncil.asn.au/files/web-pdf/ Justice%20Project/Final%20Report/Recent%20Arrivals%20 to%20Australia%20%28Part%201%29.pdf on 17 January
- 114 For more information on Legal Health Checks, please visit the National Association of Community Legal Centre's website explaining their usage and value: http://legalhealthcheck.org. au/. Accessed on 19 April 2023.

98 I ENDNOTES

