

WEstjustice

15 October 2017

By email: justiceproject@lawcouncil.asn.au

To the Law Council of Australia

RE: WEstjustice submission to the Justice Project

WEstjustice welcomes the opportunity to contribute to the Law Council of Australia's Justice Project. We applaud the Law Council of Australia's work to identify and improve social justice outcomes for those facing significant barriers to access to justice.

WEstjustice focus' on a number of disadvantaged priority groups to improve access to justice, including youth, those experiencing significant economic disadvantage, homeless persons or those at risk of homelessness, those experiencing family violence, newly arrived (including refugee and asylum seeker) clients and the intersections between these groups.

This submission is limited to providing a brief overview of observations from our WEstjustice's work with newly arrived communities in the western suburbs of Melbourne. Following-up from our recent meeting with the Law Council of Australia representatives in August 2017, we thought it would be useful to provide a short submission to highlight the effective work of WEstjustice's work with newly arrived communities group, and the systemic legal and policy issues affecting this client group.

About WEstjustice

WEstjustice provides free legal advice and financial counselling to people who live, work or study in the cities of Wyndham, Maribyrnong and Hobsons Bay, in Melbourne's Western suburbs. We have offices in Werribee and Footscray as well as a youth legal branch in Sunshine and outreach across the West. We provide a range of legal services including legal information, advice and casework, duty lawyer services, community legal education, community projects, law reform and advocacy.

WEstjustice has a long history of working with newly arrived communities. Over the past five years, more than 53% of our clients spoke a language other than English as their first language. Overall, approximately one quarter of our clients are newly arrived (having arrived in Australia in the last five years). As such, we are keenly aware of the barriers to accessing justice faced by newly arrived communities set out in the Justice Project's Recent Arrivals to Australia Consultation Paper August 2017.

Newly arrived clients often face limited legal capacity along with significant communication barriers. Many newly arrived people, in particular refugees and asylum seekers, have experienced a background of torture and/or trauma in their home countries and on their pathway to Australia. As a result, many have a predisposition to, or are suffering from mental health issues. Furthermore, their experiences may have resulted in a lack of trust toward Government, and Government bodies, and potentially also community organisations (like community legal centres) that are available to assist with legal problems.

To counter these barriers, WEstjustice has developed specialty advisory services and education programs that address the particular legal and social problems faced by newly arrived and refugee communities. For example, our Refugee Legal Clinic and the Employment Law Project.

Effectively working with newly arrived communities in a social justice context

We note the four overarching strategies for services, namely appropriate and accessible, targeted, joined-up and timely, that are set out in the Justice Project Consultation Paper August 2017. These strategies are all crucial to providing effective services to newly arrived clients.

Complementary to these, and also supporting those listed in the Justice Project Recent Arrivals to Australia Consultation Paper August 2017, we set out below some of the strategies WEstjustice has adopted, and found to be effective, in working with newly arrived communities.

1. Willingness to be adaptable

- Building a comprehensive understanding of legal needs by meeting and consulting with newly arrived communities and community leaders and other service providers to learn about the common legal problems faced by newly arrived persons and specific communities.
- Altering service models to accommodate newly arrived clients, for example ensuring access to interpreters, providing tailored face-to-face advice and allowing for drop-in appointments.
- Utilising monitoring and evaluation frameworks which collect relevant data, evaluate social impact and feed into service model improvements.

2. Creating community linkages and building trust

- Employing community workers from newly arrived communities. As discussed in more detail at our recent meeting with the Law Council of Australia, this model allows us to build strong referral pathways, trust within newly arrived communities and organisational cultural competency. This model also ensures clients from newly arrived communities gain a better experience of the justice process, as community workers can support clients by attending appointments, hearings and generally being the first point of contact for any client questions in-language etc.
- Training and supporting community workers from settlement agencies and other community organisations that work with newly arrived communities. This leverages the reach of our educational and engagement processes, and allows some of the initial triage, information and evidence collection work to be undertaken by a community worker.

- Providing joined-up and holistic services through partnerships, warm referrals and internal financial counselling support and participating in broader settlement agency networks.

3. *Focus on empowerment of newly arrived clients and communities*

- Ensuring culturally appropriate face-to-face services, including access to interpreters and support services.
- Developing client understanding and engagement with the legal process. Including using individual outcomes to advocate for systemic change and empowering clients to participate in this process (for example making complaints to regulators, case studies and telling their story to government bodies, media and other stakeholders etc.).
- Training community leaders in specialist areas of law. In our experience, by upskilling community leaders, they are better able to share their knowledge with their communities and facilitate warm referrals to the legal centre and other related services.

4. *Constant view to systemic change*

- Focusing on ensuring voices of newly arrived are heard at all levels of decision making. For example, by including case studies in our submissions, giving clients the opportunity to speak to government officials, media and stakeholders.
- Tackling legal problems in bulk to assist large numbers of clients affected by the same legal problem, for example the 'My Name Project'.
- Regular participation in relevant networks, committee, campaigns, steering groups, practice groups, consultations, inquiries, reviews etc.

See **Appendix A** for some recent case examples which highlight some successes of using our model to assist clients from newly arrived communities.

Systemic issues in access to justice for newly arrived communities

As can be seen from the above, WEStjustice's priority is not only to provide best practice legal and financial counselling services to individual clients, but to utilise evidence from casework, community education and project work to undertake informed advocacy for improvements to laws and processes.

Of specific relevance to the Justice Project, WEStjustice has produced a number of reports that highlight systemic issues and gaps in the system that affect newly arrived communities including reports on court processes, housing, energy and telecommunications markets and employment, as well as reports on particular communities or newly arrived communities' experiences.

Over the last decade WEStjustice's policy reports on newly arrived communities include:

- 2008 The African Consumer Experience of the Contestable Energy Market in the West of Melbourne
- 2009 Out of Africa and Into Court: The Legal Problems of African Refugees
- 2010 The Burmese Community and the Legal System - A Study in Confusion
- 2010 Energy, Environment and Education: Refugee Women's Sewing Groups

- 2011 Taking Advantage of Disadvantage: Case Studies of Refugee and New Migrant Experiences in the Communications Market
- 2011 Prevention is Better than Cure - Can Education Prevent Refugees' Legal Problems? (Victoria Law Foundation CLC Fellowship Report)
- 2012 Making it Home: Refugee Housing in Melbourne's West
- 2013 Strangers Are Calling! The Experience of Door to Door Sales in Melbourne's Refugee Communities, and
- 2016 Not Just Work Report.

In addition, we have completed a number of relevant law reform submissions. Of particular note is our 2016 Access to Justice Review: A submission to the Department of Justice and Regulation.

All of these policy reports and law reform submissions can be found at www.westjustice.org.au/legal-training.

The WEstjustice policy and law reform work highlights a number of specific issues faced by newly arrived communities in accessing justice, many of which have been picked up in the Justice Project's Recent Arrivals to Australia Consultation Paper August 2017. WEstjustice supports all of the priority actions to start to deal with the systemic issues set out on pages 40-44 of this Consultation Paper.

In particular, we hope to draw the Justice Project's attention to a couple of entrenched issues facing legal services for newly arrived communities, which based on our experience, have proven difficult to gain traction on:

1. *Laws policies and practices – additional issue of structural vulnerability due to immigration system*

Those who have temporary or precarious places in our society are more vulnerable to exploitation. Particularly where they are reliant on employers to extend, renew or continue visa arrangements.

Changes to the visa system to make it more difficult to gain pathways to permanent residency, along with expanded visa cancellation powers, have increased this vulnerability.

The vulnerability that comes with not being a permanent resident makes people fearful of exercising their legal rights. This is the case even if they know about their rights, there are free services that can help them, and they engage with those free services. For example, many temporary visa holder clients that attend WEstjustice for legal advice often choose not to pursue their legal rights, out of fear it may affect their permanent stay in Australia (even where they have had immigration advice). WEstjustice has assisted a small number of temporary visa holder clients to take legal action to enforce their rights, where the clients have removed from the country before meritorious legal claims have been finalised, making it extremely difficult to get a just outcome.

Unless we address the systemic drivers of inequality, like precarious visa arrangements, many newly arrived clients will continue to have difficulty exercising and enforcing their legal rights even if we remove other barriers to access to justice.

2. *Lack of funding for free legal assistance services*

Community legal centres are ideally placed to support vulnerable clients in their local communities. However, as noted in the Justice Project Consultation Paper August 2017 there is a lack of funding for free legal assistance services.

Some of the effective policy and project work undertaken by WEstjustice to support newly arrived communities, has been done with funding through philanthropic organisations. While this is helpful, often this funding is only available for pilot work. It is often difficult to fund successful pilots to continue to provide these services even though the legal need has been proven, and continues, after the pilot project has concluded.

It is crucial that funding models allow sufficient scope and security to provide effective ongoing services that improve access to justice for particularly vulnerable client groups. This includes sufficient funds to:

- Gain a comprehensive understanding of legal needs, undertake an establishment phase for projects including consultation, scoping and setting up a monitoring and evaluation framework
- Employ sufficiently skilled staff or, upskill current staff with complementary skills to legal practitioners (for example, research and policy skills, social work, financial counselling skills and communications skills), and community workers from newly arrived communities or workers from other specific priority groups as appropriate
- Deliver intensive, joined-up, holistic, engaged and embedded services which deliver on systemic outcomes (which requires additional staff time and resources)
- Fund interpreters and translators where required, and
- Undertake monitoring and evaluation.

In addition, part of the success of WEstjustice in delivering effective services to newly arrived communities in the Western suburbs of Melbourne has been due to its organisational focus and leadership. Strong organisations and leadership, skilled staff and structural capability are also crucial to delivering effective outcomes and therefore need to be supported and funded appropriately.

Finally, it is necessary to continue to support and develop a common and shared understanding across the community legal sector and justice sector more broadly, (including by funders), of the unique role of community legal centers' to effectively deliver access to justice on both an individual and systemic scale.

Summary

The Law Council of Australia's Justice Project usefully identifies 13 priority client groups that have particular difficulty accessing justice in Australia and documents the issues that these particular client groups face.

We hope that the Final Report of the Justice Project will assist the legal community to learn more about the effective work others are doing in their respective areas of law and with particular client groups, as well as provide some focus for priority actions to close the gap in access to justice for these 13 groups.

This submission provides some additional information and case studies around one of those priority groups, newly arrived communities.

Again, we thank the Law Council of Australia for the opportunity to be involved in the Justice Project and would be happy to expand on any parts of this submission where this would be useful.

Kind regards

A handwritten signature in black ink that reads "Tarni Perkal". The signature is written in a cursive style with a light beige background behind it.

Tarni Perkal
Employment Project Senior Solicitor
WEstjustice

Appendix A: Recent case examples of WEstjustice's work with newly arrived clients

Case study 1- Employment discrimination

Abbas is a refugee from Iran. He came to Australia six years ago and has not seen his family since. He worked as a driver for his employer for over 1 year. One day he was injured at work. He took a few days off to help recover. When Abbas returned to work, he was terminated by his employer. He was not given a reason. With the help of his settlement workers at the local settlement agency, Abbas came to the WEstjustice Employment Law Service (**ELS**) for assistance. The ELS advised Abbas with the help of the WEstjustice Persian community worker, and assisted Abbas to make a claim for unlawful discrimination. Abbas was struggling to cope with the many stressors losing his job had caused. He was struggling financially; he was at risk of eviction and was also suffering from mental illness. With the help of the ELS and Abbas' settlement workers, Abbas was able to get assistance from the WEstjustice financial counselor, gain access to rent-assist to pay his rent and continue his discrimination claim to settlement.

Case study 2- Employment general protections

Dao is a young woman from Thailand. Dao worked at a dry cleaning business as a full time cleaner. Dao was not paid the correct hourly rate for her work, or superannuation. Dao raised her concerns with a friend at her English language school, as she did not know about employment law in Australia and did not know if her concerns were valid. Dao's employer found out she had been talking about work at school, and when she returned to work the next day, he yelled at her and told her to find another job. Dao came to the ELS for help. The ELS assisted Dao by calculating her entitlements as an employee under the relevant modern award, and writing a letter of demand to her former employer. The ELS also assisted Dao to make an application to the Fair Work Commission in relation to her termination. After receiving the Fair Work application, the employer made an offer to pay Dao to settle all claims. Dao agreed to the settlement offer and the matter was resolved before it went before the Commission.

Case study 3- Sham contracting

Behzad came to Australia as a refugee from Iran. He worked as a delivery driver and was not paid several outstanding invoices by his employer. He came to the ELS for help. Behzad was told by his employer that he was a contractor, but when he came to the ELS we advised him that really he was an employee at law and he had been tricked by his employer. The ELS advised Behzad about sham contracting, and wrote a letter of demand to his former employer for the outstanding invoice amounts. The ELS wrote to the employer a number of times on Behzad's behalf, and eventually he was paid everything he was owed. Behzad was so happy that he had enforced his rights, and now knows the difference between an employee and an independent contractor.

Case study 4- Independent contracting

Abdul came to Australia as a refugee from Iran. He works as a genuine independent contractor performing tiling work. He came to the ELS in relation to two matters; both relating to unpaid invoices. Abdul had recently fallen off a ladder at work, and suffered significant injuries to one side of his body. He was the sole income earner in his

household, supporting four children and his wife. He did not know where to go for help or what his rights were. He was not able to represent himself at court due to his limited English and The ELS assisted Abdul to bring his matters to VCAT. Abdul was paid his outstanding invoices, which helped him and his family financially until he was able to return to work. Abdul has since referred some of his friends from the Persian community to the ELS for assistance.

Case Study 5 – Family Law

Poe is a refugee from Myanmar who came to Australia in 2011 with his wife and four children. He does not speak English. He is illiterate in both English and his native language, Karen. He has little understanding of the Australian legal system. Poe's wife applied for a Family Violence Intervention Order ("FVIO") against him in 2016. The two separated. The FVIO mandated a written request to schedule visitations with his children. WEstjustice successfully represented Poe with an application to vary to allow a friend to write to Poe's wife on his behalf for child visitation scheduling. WEstjustice further assisted Poe by aiding his case manager in drafting a potential parenting plan and arranging mediation for Poe and his wife. Poe is now allowed to see his children twice a week as a result of the mediation's finalised parenting plan.

Case Study 6 – Infringements and Fines (Elections & Voting)

Minh Chau is a 66 year old refugee from Vietnam whose sole source of income is his retirement pension of \$650 paid fortnightly. He moved house in the midst of the 2016 postal county election. He does not speak English. He requires an interpreter. He does not understand the Australian political system. He voted in the general election, believing he had completed his duties as a voter. He received an infringement fine totaling \$207.10 for failing to vote. He came to WEstjustice to see what he could do about the fine. WEstjustice sent an application for revocation on his behalf to the Infringements Registrar of the Infringements Court in Melbourne. Citing the *Infringements Act 2006*, WEstjustice explained the situation and succeeded with the application for revocation. The infringement matter was withdrawn.

Case Study 7 – Consumer Protections

Ashai is a 36 year old refugee who is a single parent of three children who had a fourth child on the way at the time of her legal issue. She attempted to purchase a second-hand vehicle at a dealership using a linked-credit contract. She understood the total loan amount to be \$16,904. The loan was approved for a total of \$18,155.80, in addition to a \$2,000 warranty. She was not aware of the increase in the agreed upon price, nor the additional warranty costs. Had she been aware of the difference in costs, she would not have gone through with the transaction. WEstjustice submitted the dispute to the Financial Ombudsman Service ("FOS"). After the refusal of a settlement offer, WEstjustice challenged with a follow-up submission to the FOS arguing dealership agency and breach liability. The FOS made a final determination in favour of our client. The debt (\$27,375.60) under the loan was cleared. Our client was compensated for her financial loss (\$2,227.26) as well as for stress and inconvenience suffered. The vehicle was collected from her premises.

Case Study 8 – Consumer Protections

Siang is a Burmese refugee with two children who suffers under financial hardship. The client paid a carpet cleaning company \$10,500.00 to secure work offers for carpet cleanings as well as to pay for job training. Siang commenced a ten-day training period. After three days, the company informed him that there was no work for him, and their

arrangement would not continue. The company agreed to return the money. The client had received \$7,500.00 prior to seeking assistance from WEStjustice but never received any more. WEStjustice wrote a letter of demand citing to the *Consumer Act 2010* for the remaining \$3,000.00 in funds. The company claimed a breach of contract. They agreed to settle the matter for \$1,500.00. WEStjustice remained in contact with the two parties until payment was confirmed to have been received. WEStjustice assisted the client through a negotiation that led to settlement.

Case Study 9 – Consumer Protections

Awdia is a 38 year old Sudanese refugee who came to Australia in 2009. She is a single mother with two dependent children. She does not speak English. She is illiterate in both English and her native language, Anuak. She has never attended formal schooling. A man approached her in her AMES English classes, where he convinced her to partner with him in purchasing a vehicle. He took her to a car dealership. He negotiated the deal while acting as her interpreter. At no point in the conversation did the salesperson speak to Awdia about the sale of the vehicle. The salesperson did not ask about her financial circumstances. She did not know what she was signing. The man then took Awdia to a finance broker where he had her co-sign a loan. Again, she did not understand the documents she signed. The broker did not speak directly to Awdia. Awdia never possessed the car. The man who said he was acting as her partner took the vehicle. She was left with the resulting debt and debt payments amounting to \$150.20 fortnightly. WEStjustice wrote a letter of demand to the loan company arguing that there were multiple breaches of legal obligations under Australian consumer and credit laws. As a result, the financial company cancelled the loan contract without applying any credit penalties. They provided the client with a full refund of all payments totaling \$4,950.66. Awdia had no responsibility to return the car as she never had possession of the vehicle.