

THE PASIFIKA PROJECT

A mixed-methods clinic supporting the
Pasifika Community in the Western
suburbs of Melbourne

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Statement by the author:

WEstjustice acknowledges the ancestors, elders and families of the Kulin nations, who are the traditional custodians of western Melbourne, the country on which we are located. As we work to achieve a just and fair society we pay our respects to the deep knowledge embedded within the Aboriginal community and Aboriginal custodianship of Country. We acknowledge this land as a place of age-old ceremonies of celebration, initiation and renewal, and that the Kulin peoples' living culture has a fundamental role in the life of this region.

I am employed by WEstjustice in my capacity as a lawyer and with experience in legal practice, clinical practice, and community development. This paper concerns Pasifika communities in western Melbourne. I am one of the contributors to the overall Pasifika project undertaken by WEstjustice whose employees have approached the project from various standpoints. I am a person of colour, a Muslim, and a settler on First Nations' sovereign land. In this paper, I present various standpoints, including employees of WEstjustice including myself, in addition to an overall organisational perspective. I write this paper in solidarity with the Pasifika communities in Melbourne, but I acknowledge I am an outsider – the terms for which in some Pasifika communities include Pakeha (Māori), Palagi (Samoan), Pālangi (Tongan), and Kaivalagi (Fijian).

Further acknowledgements:

This project has been a collaborative effort that has involved many people who have committed time, effort and dedication.

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1 Executive Summary

This report presents the work that WEstjustice has undertaken in the Pasifika Project since 2016. WEstjustice is a community legal centre in the Western suburbs of Melbourne. In 2016, WEstjustice received specific funding to work with the Pasifika community and has worked with the community since this time on a range of initiatives to identify the social and legal challenges for Pasifika peoples who live in Australia. Those initiatives included:

- Appointing a Pasifika lawyer to support the project and provide mentoring for Pasifika law students and social work students;
- Running a legal clinic specifically open to the Pasifika community over 2018–19;
- Training a group of Pasifika law students in legal practice;
- Running a series of forums using the Talanoa methodology with the Pasifika community to present their concerns;
- Running strategic advocacy including setting up a trans-Tasman network;
- Working with partners and supporting the development of a peak Pasifika body in Victoria; and
- Supporting the training of Pasifika young people to develop radio skills and run a radio show.

In our work we observed the following:

- Pasifika communities have cultures that are rich, diverse, and resilient. Sometimes Pasifika value systems clash with Western ones, which have deleterious impacts on Pasifika communities. Pasifika communities, like all Australian communities, succeed when their cultures and identities are being valued and respected;
- Pasifika peoples who arrive to Melbourne often experience economic stress and have fewer safety nets available to them compared to the general community. This often includes access to welfare, education, legal services, health services, and housing;
- Pasifika peoples on Special Category Visas make up a particular subset of disadvantaged residents in Victoria, with limited access to the social net over an extended period of time;
- The lack of access to the HECS-HELP scheme for most Pasifika people on special category visas locks the community into further disadvantage;
- The risk of deportation for long term residents on special category visas who commit offences causes serious stress to the community.

In response to the work we conducted with the community, we make the following recommendations which are explored through the paper:

- **Recommendation One:** provide an accessible legislative pathway for people on Special Category Visas to become permanent residents;
- **Recommendation Two:** provide full reciprocity of benefits for people who arrive on Special Category Visas;

- **Recommendation Three:** make the HECS-HELP scheme available to all students on Special Category Visas;
- **Recommendation Four:** make Special Category Visa holders eligible for social housing in Victoria;
- **Recommendation Five:** put immigration principles in place that deport people on Special Category Visas only as a last resort;
- **Recommendation Six:** invest in Pasifika-led programs that support the Pasifika community in parenting, child welfare, mental health, and juvenile support in the justice system;
- **Recommendation Seven:** fund a community legal centre or community organisation in Melbourne to provide advocacy, casework, and legal education on immigration matters for Pasifika peoples;
- **Recommendation Eight:** provide funding for a secretariat for the Trans-Tasman Advocacy Network; and
- **Recommendation Nine:** support a permanent forum between government and the community to discuss both the experiences of Pasifika peoples in Victoria, and trans-Tasman experiences.

This report is in five sections:

- First, we offer an introduction to WEstjustice and the Pasifika clinic, we describe our funding, and the methodology through which we did our work;
- Second, we provide an overview of the Pasifika community in Melbourne;
- Third, we describe the various components of the clinic and the community development programs we facilitated as part of the work;
- Fourth, we offer a discussion about our findings and the areas that require systemic reform; and
- Finally, we make some recommendations in the fields of law reform, and systemic reform needed to better support the Pasifika community.

2 Introduction: About WEstjustice and the Pasifika Clinic

Over many years, in the preparation of a number of other pieces of policy and advocacy work, key people in WEstjustice developed relationships with the Pasifika community in the Western suburbs and came to understand some of the fundamental justice issues facing the community. As a result, in 2016 the Director of Policy and Community Development, Shorna Moore, applied to the Victoria Legal Aid Community Legal Centre Grant Funds Program for a project specific to the Pasifika community.

That seed funding was granted alongside a number of other developments. WEstjustice hired Semisi Kailahi, a recently admitted lawyer from a Pasifika background, flagging the potential project as something for Semisi to lead in recognition of the strengths that would emerge from having a practicing lawyer from the community deliver services to the community.

I became involved in my capacity as a Principal of the practice, with experience working in cross-cultural contexts, and initially I provided backbone support for clinic management and community development contexts.

The lawyer and I constituted a Steering Committee for the project which comprised members of the Pasifika community and Pasifika people working in the community sector in the Western suburbs.

In March 2017, WEstjustice launched a Pasifika legal clinic to examine the legal concerns of the Pasifika community in the Western suburbs. The clinic predominantly ran generalist civil legal matters but was also a first point of referral for the community for complex legal matters that were referred out to other WEstjustice clinics or other legal services. As part of the project, and with a longstanding relationship with Victoria University, WEstjustice offered clinical training to Pasifika law students.

The project built relationships with the community through attending community and church events, working with allied organisations such as the Centre for Multicultural Youth ('CMY') — who were running a Pasifika youth project at the time — and working with the emerging peak body for the Pasifika community, the United Pasifika Communities of Victoria ('UPCOV').

In 2019, the project focused on community development and policy work, running a series of focus groups adopting the *Talanoa* methodology (explored below), and working in conjunction with the University of Melbourne and 3CR Community Radio to train young Pasifika people in radio production. The young people produced a show called 'Third Culture Kids', which was broadcast on 3CR's community law show, *Done by Law*, in July 2019.

WEstjustice also undertook a series of advocacy initiatives to address trans-Tasman injustices experienced by the Pasifika community. In June 2018, WEstjustice wrote an open letter to the Prime Minister of New Zealand, Jacinda Ardern, concerning young New Zealanders experiencing homelessness in Australia. Prime Minister Ardern publicly responded and stated that, using diplomatic channels, she would continue to push for young New Zealanders living in Australia to get the financial help they need. In 2019, WEstjustice launched the Trans-Tasman Advocacy Network ('TTAN') as an advocacy group to focus on fundamental trans-Tasman justice issues.

In 2020, WEstjustice was funded again to run a Pasifika program and is in discussion with the Steering Committee about future directions for the clinic.

2.1 About WEstjustice

WEstjustice is a community legal centre that was incorporated through the amalgamation of three community legal centres in the Western suburbs in 2015. WEstjustice and its progenitors have extensive experience in working with newly arrived immigrants, and in a range of practice areas including fines, debts, infringements, consumer law, tenancy, family violence, family law, employment, and youth law.

WEstjustice offers direct service provision in four local government areas: the City of Wyndham, the City of Maribyrnong, the City of Hobson's Bay, and the City of Brimbank. It also offers some services in the City of Melton, and the City of Melbourne.

2.2 Methodologies

The Pasifika project worked as a meta project inside and outside of WEstjustice. A range of people, organisations, and stakeholders have been involved and the values that drove the project have been diverse. We have therefore used a mixed methods approach. The work has involved over three years of research, including case work and data analysis from the case work, semi-structured interviews from community forums, action research where we supported young Pasifika people in receiving media training and producing a radio show, and the development of the Pasifika peak body. This paper triangulates discourse analysis and interviews with participant observation of Pasifika people living in the Western suburbs. Observations were made through my supervision of the Pasifika clinic, through supporting the radio project, and through guiding the Pasifika lawyer through community development initiatives.

It is difficult to describe one methodology given the range of people who have driven the work at various points, and perhaps this is a reflection of how community projects manifest. A useful methodology that describes some of our processes is participatory action. Participatory action is a research methodology that places researchers as active participants in the phenomena they are researching. In our example, we appointed a Pasifika lawyer, we ran a legal clinic and a series of forums and conducted our work with a Pasifika Steering Committee. We were active participants in our advocacy and worked with our community as we did our work. We were not neutral bystanders.

Further, we founded our work on principles of self-determination as espoused in both the International Covenant for Civic and Political Rights and the International Covenant on Civil, Economic and Social Rights, meaning that we aimed to be led by the Pasifika communities in Western Melbourne. To do this, we employed a Pasifika lawyer to lead the work. We also set up a Steering Committee comprising Pasifika leaders and community workers in Western Melbourne. This included holding community consultation meetings, and drafting the Steering Committee documents. Some of our methods specifically attempted to adopt the Talanoa process, which is described in the following way:

Superficially, Talanoa can be referred to as a conversation, a talk, an exchange of ideas or thinking, whether formal or informal. It is almost always carried out face-to-face. Tala means to inform, tell, relate, and commence, as well as to ask or apply. Noa means of any kind, ordinary, nothing in particular, purely imaginary or void...Talanoa, then, literally means talking about nothing in particular, and interacting without a rigid framework.¹

¹ Timote M Vaioleti, 'Talanoa Research Methodology: a Developing position on Pacific Research' (2006) 12(1) *Waikato Journal of Education* 21, 23.

Talanoa is a methodology designed and created by Pasifika peoples and acts as a postcolonial response to Western research methods which, through their underlying assumptions, often repeat the oppressive practice they seek to overcome. Talanoa is ontological:

In a good Talanoa encounter, noa creates the space and conditions. Tala holistically intermingles researchers' and participants' emotions, knowing, and experiences. This synergy leads to an energising and uplifting of the spirits, and to a positive state of connectedness and enlightenment.²

In Talanoa, it is the sum of noa and tala that adds to the total concept. It requires researchers to partake deeply in the research experience rather than stand back and analyse. Talanoa, then, is subjective mostly oral and collaborative, and is resistant to rigid, institutional, hegemonic control.³

In the forums that we ran, we specifically aimed to use a Talanoa approach and we stated:

We chose to use the Talanoa method of storytelling as a way to listen to insights from Pasifika participants. Talanoa is a traditional word that incorporates a process of inclusivity, participation and transparency. Engaging in Talanoa is to engage with empathy and build experiences through storytelling. The Talanoa method allowed the researchers to engage in deep conversations in a culturally responsive and respectful way, breaking down any barriers between the participants and researchers.⁴

2.3 The Funding Grants

Victoria Legal Aid administers the Community Legal Centre Assistance Fund, a recent iteration of which was announced by the current Victorian Labor Government in 2017 to support certain critical programs.⁵ Victoria Legal Aid awarded a grant to WEstjustice to work with the Pasifika community. The grant described the project in the following terms:

The Project aims to engage with the Pacific Islander and Māori communities living in Wyndham, and Melbourne's west in general, in order to increase access to and build the confidence of that community to effectively engage with the justice system. The project will also seek to identify and document the social and cultural issues experienced by Pacific Islander and Māori communities that result in common or recurring legal problems. The project will identify the root causes of the common legal problems, in order to identify ways in which these problems can be prevented, and/or addressed within the legal system. The project will partner with key public and community agencies working with the Pacific Islander and Māori communities in Wyndham, and the Western suburbs of Melbourne in general, in order to improve access and referral to legal and other support services, including family violence, welfare and housing services.⁶

The grant amount was \$50,000 per year for two years.

² Ibid.

³ Ibid.

⁴ April Kailahi and Semisi Kailahi, *Pasifika Talanoa: A Snapshot Report* (Report, 2019) 8.

⁵ Tim Pallas, 'Werribee CLCs Encouraged to Apply for \$7.1m in Grants' (Media Release, 14 August 2017).

⁶ Legal Aid for the Community Legal Centre Grant Funds Program 2017-2019.

In 2016, we partnered with the University of Melbourne on a project to deliver legal education to the Pasifika and African communities in the Western suburbs. This became a second source of support for the project and in liaison with the University of Melbourne, we supported a group of young Pasifika people to learn podcast and broadcast radio skills with 3CR, an activist community radio program based in Fitzroy, Melbourne. In July 2019, they took over the community law show, *Done by Law*, and delivered a radio show called 'Third Culture Kids' about the experience of being between Pasifika and Australian cultures.

In 2018, a third grant was obtained in partnership with the Uniting Church of Australia, Synod of Victoria and Tasmania. This funding was from the Department of Premier and Cabinet (Vic) and aimed 'to engage Pasifika and African communities across metropolitan Melbourne in a culturally competent way to build community capacity and connectedness with one another through sharing stories'.⁷

⁷ Kailahi and Kailahi (n 4) 7.

3 About the Pasifika Community, and the Pasifika Community in Melbourne

3.1 The Term Pasifika

As with most categorisations since colonisation, the nomenclature defining people who come from various Pacific Islands is polysemic and problematic. Traditional European definitions of people in the Pacific Islands created categorisations around Polynesia, Melanesia, and Micronesia. There are many and significant differences between First Nations communities in New Zealand, Fiji, Samoa and Tonga, who comprise the majority of the Pasifika community in Melbourne. However, there are also significant cultural similarities, and there are some shared experiences around colonisation, migration, and resettlement. In part because of the similarities, there has been significant cultural integration between these communities, which has forged further cultural parallels. In some spaces, Pasifika is a term that has come to refer to First Nations people from the Pacific Islands, and in other spaces it has come to include First Nations people from New Zealand.

Further, many Pacific Islanders and Māori people have similar experiences in their relationality with their residency status in Australia and the impacts of that status.

The Chair of our Steering Committee stated:

So there is always a debate about the word Pasifika. And I'll clarify why we use it. Those of us from New Zealand use Pasifika because it's a term that we use back in New Zealand...it's an important definition as to who is Pasifika and who is Māori, we're all Polynesian, we all come from the Pacific Ocean and from the triangle – Melanesia, Micronesia and Polynesia. We are all of the Polynesian island, Pacific Ocean and yet back in New Zealand there was that clear definition, so depending on where I am, I will use the term Māori and Pacific Island Communities rather than Māori and Pacific and...and I think that's the key, is actually knowing your audience.⁸

In our work, and in consultation with our Steering Committee, we came to an Australian understanding of the term Pasifika to refer to First Nations communities in the Pacific Islands and New Zealand, as an act of solidarity with the shared cultural experiences, as well as the shared experiences of otherness. Our usage was guided by the Steering Committee, which sought to have the term described in the following way:

Pasifika has different meanings for many people. We take Pasifika to include all those who identify as indigenous in the Māori or Pacific Islander context and are identified as such by that community. Identifying as indigenous as Māori and Pasifika is to refer to someone acknowledging that [they] are from that first nation community — with background and descent and being capable of receiving recognition as such from community leaders.⁹

⁸ Interview with Marie Pewhairangi, 28 July 2020.

⁹ WEstjustice, 'Pasifika Steering Group: Terms of Reference' (24 May 2018) cl 1.2.

3.2 The Pasifika Community in Australia, Victoria & the Western Suburbs of Melbourne

Compiled from the 2011 Census, we have the following indications of the Pasifika communities in Australia:

- The total population in 2011 was 279,228, about 1.3% of the nation's population;
- In Victoria, that number was 43,055, or 0.8% of the state's population; and
- The largest communities of the Pacific are: Māori (128,430), Samoan (55,843), Tongan (25,096), and Fijian (23,770).¹⁰
- 46% of Pasifika people in Australia are not citizens'.¹¹

The age of the data set is one issue, but further, the Māori community may well be under-reported in data collection. The numbers of Māori people in Australia are almost certainly higher, with researchers estimating the number to be at least 150,000 (and likely 170,000) at the time of the 2011 Census. This represents about 26.5% of the total cohort of 483,398 New Zealanders in Australia¹² (which is a much higher representation than that in New Zealand itself, at over 15%):¹³

[U]ndercounting, 'lost' ancestry responses (due to the limit of two counted and the bias towards the tick-box options), and the tendency of some Māori in Australia to describe their ancestry simply as 'New Zealander' or 'Australian', all mean that the potential number of Māori in Australia is much higher.¹⁴

There is a substantial and increasing population of Pacific Islander and Māori people in and around the Wyndham area. According to the 2016 Census data for ancestry by birthplace of parents, there are close to 10,000 people (9,834) who have Pacific Islander or Māori ancestry in the Wyndham area, with a majority of them coming from the five countries of New Zealand, Fiji, Samoa, Tonga and the Cook Islands.¹⁵

There are multiple social barriers for the Pasifika community in Australia. *The Le Mana (Empower) Project: Pasifika Youth and Communities report* noted that:

An estimated 76% of Pasifika youth speak languages other than English at home. Pasifika Youth unemployment rates are almost double the State average while Pasifika youth make up 14% of Victorians in juvenile detention. 17% of Pasifika young people in

¹⁰ Jiojo Ravulo, *Pacific Communities in Australia* (Paper, Faculty of Social Sciences, University of Western Sydney) 4.

¹¹ Helen Stokes and Malcolm Turnbull, *The Le Mana (Empower) Project: Pasifika Youth and Communities* (Interim Report, December 2018) 14.

¹² Paul Hamer, 'Māori in Australia: An Update from the 2011 Australian Census and the 2011 New Zealand General Election' (Paper, 27 October 2012) 2–3, 25.

¹³ 'New Zealand's Population Reflects Growing Diversity', *Stats NZ* (Web Page, 23 September 2019) <<https://www.stats.govt.nz/news/new-zealands-population-reflects-growing-diversity>>.

¹⁴ Hamer (n 12) 2.

¹⁵ Australian Bureau of Statistics, 'Census 2016, Country of Birth of Person by Sex (LGA)', *ABS.Stat* (Web Page, 4 July 2017) <http://stat.data.abs.gov.au/Index.aspx?DataSetCode=ABS_C16_T06_LGA> (selecting 'Victoria' and 'Wyndham (C)').

Melbourne are early school leavers (compared with 9.8% of young people across the general population). On the employment front, there is higher than average Pasifika participation in blue collar jobs and 50% less (than the average) representation in professions, or technical and scientific industries.¹⁶

The report also notes barriers to higher education and high levels of contact with the juvenile justice system. Almost one in four Pasifika secondary students will not finish Year 12, and Pasifika young people comprise 14% of the juvenile justice population while being only 2% of the Victorian population.¹⁷

People from the Pacific Islander and Māori communities in Australia face a high risk of marginalisation, financial stress, homelessness, disengagement from school, and higher than average involvement in justice systems. This carries long-term implications for their ability to participate fully in community life. This also has particular impacts on young Pasifika peoples:

Pasifika young people frequently find difficulty in integrating aspects of Australian youth culture with traditional familial taboos against debate, discussion around sexual and mental health, individual aspiration or overt expressions of thoughts and feelings. Transience, related to both cost of living and the practice of accommodating larger than average households, a lack of role models in the professions, ineligibility (in many cases) for HECS or other student loans, a lack of parental understanding about educational pathways (and the challenge of being 'first in family' to tackle university) have all been cited as factors in perpetuating Pasifika youth under-achievement and disengagement from education.¹⁸

Further, according to the Crime Statistics Agency Victoria, incidents of offending committed by people born in New Zealand and the Pacific Islands of Samoa, Fiji, Tonga and the Cook Islands rose by 53% from 2010-2020, while for the general Victorian population the rise was 36%.¹⁹ While, like so much data we worked with in this research, it does not separate Māori from Pākehā in the New Zealand data, it shows some evidence of disproportionate contact with the criminal justice system.

3.3 Melbourne's Western Suburbs

Melbourne's Western suburbs encompass six local government areas and a population of over 800,000 people.²⁰ It has and continues to be a working class region in Melbourne, which is highly industrialised, with poor public transport infrastructure, inconsistent road infrastructure, and poor air quality and environmental protections in comparison to other parts of Melbourne. It is one of the most diverse regions in Australia with significant representations of communities from Asia, Africa and the Pacific Islands. In the south-western suburbs, the Pasifika community is most concentrated in the Wyndham community.

¹⁶ Stokes and Turnbull (n 11) 14.

¹⁷ Ibid 19.

¹⁸ Stokes and Turnbull (n 11) 15.

¹⁹ Data provided by Crime Statistic Agency Victoria to Sarouche Razi on 24 August 2020.

²⁰ Department of Jobs, Precincts and Regions (Vic), 'Western Region', *Suburban Development* (Web Page, 5 April 2019) <<https://www.suburbandevlopment.vic.gov.au/regions/western-region>>.

4 Westjustice's Pasifika Clinic

4.1 The Steering Group

In its early stage, WEStjustice worked to appoint a Steering Group to guide the project. The initial group comprised: Semisi Kailahi (WEStjustice), Lio Afe (Victorian Samoan Advisory Group), Anthony Sofe (Executive Board of Directors for the Seventh-Day Adventist Church), Feke Kamitoni (Tongan Victorian Association), Jason Kioa (Chair Tongan National Conference), James Henry (Cook Islands Association), Von Tawase (Fiji Association), Maria Kumar (Victoria Māori Wardens & Iwi N Aus), Marie Pewhairangi (Senior Youth Support Officer, Wyndham Council), Tapu Teuhema (Youth leader, Hoppers Crossing Uniting Church), Talei Richards (Senior Policy Officer, Department of Premier and Cabinet), Taua Suemai (Managing Director, Charis Mentoring), Temese Leilua (Pasifika Community Project Coordinator, Centre for Multicultural Youth), and Denis Nelthorpe (WEStjustice). Clause 4.1.2 of the Terms of Reference required the majority of the group to be from the Pasifika community,²¹ and at all times there were no more than two non-Pasifika members of the group. This was decided to accord with principles of self-determination. The role of the group was described, 'in the context of the [Pasifika] project and its many facets', as the 'primary body guiding the delivery of the project'.²²

4.2 The Legal Practice Clinic

The Pasifika clinic commenced in April 2018 with four fortnightly appointments on a Tuesday evening from 4:30pm–7:30pm. This time was chosen to be family-friendly for people who needed access to services both before and after work hours. After the summer break, the clinic relaunched in February 2019 as three weekly appointments on a Tuesday afternoon.

In hiring a lawyer from a Pasifika background, the intention was to take a self-determination approach and have a member of the community do the advocacy and representation. Semisi was to take casework to understand the legal issues the community was facing, and where WEStjustice had specialist expertise, an internal referral to the relevant clinic would be made.

4.2.1 The Volunteers

My time volunteering in the program has definitely helped me in my professional development. I can say that learning the theory of basic law and then coming into the clinic and applying that theory into a practical field has helped me grow and maintain a professional mindset when working in this particular field.²³

We added a clinical component to our legal practice clinic and reached out to students through our longstanding relationship with Victoria University. We ran a program to train and support Pasifika law students to be paralegals and obtain legal experience within the clinic.

In its Preamble, the *Victoria University Act 2010* (Vic) states a commitment to equity and social justice in the Western Metropolitan region of Melbourne, which aligns well with WEStjustice's aims:

²¹ WEStjustice (n 9).

²² Ibid cl 1.8.

²³ Interview with student volunteer (Email, 24 July 2020) ('24 July 2020 Volunteer Interview').

Victoria University focuses on the development and provision of educational, cultural, research and related services to build social, cultural and economic capital particularly in the Western Metropolitan region of Melbourne, and in ways which reflect principles of equity and social justice.²⁴

WEstjustice has a longstanding relationship with Victoria University, which has grown into the provision of clinical supervision across our offices for student interns and volunteers. In discussions about resourcing the Pasifika clinic with student volunteers, we considered a self-determination approach would support finding places for Pasifika tertiary students to act under instruction of our Pasifika lawyer.

Accordingly, an advertisement was placed on the Facebook page for Victoria University law students which offered clinical placements to Pasifika volunteers. Over the course of the year over 10 students applied and were supported to volunteer. The model allowed the students to shadow and observe the lawyer. The student would take notes for the lawyer during the client interview, and also assist in drafting letters and conducting research. After an interview, the lawyer would debrief with the student about the matter and the potential legal remedies. When work was completed, feedback would also be offered to the students. In addition, another student sat on the front desk and assisted in reception and intake duties. At the end of the evening, the clinic would have a shared meal and discuss the cultural, personal, and legal issues that arose from the work. A volunteer stated:

The experience of the Pasifika Clinic was more than what I initially had thought or expected. It was hands on from the start which proved itself to be a challenge however it turned into being a major learning curve for me as it provided me with the experience to gain confidence in working in an environment like that and partaking in paperwork/liasing with third parties.

All of the above was a good experience in itself to be able to work in the environment of others that also wanted to help those who needed it the most in the community. One particular matter that stands out to me was participating in a Skype call with other law firms/legal clinics in an event where I got to share my experience as a volunteer and what we do and what our goals are.²⁵

It allowed for the students to learn from a Pasifika lawyer, and work with clients from a Pasifika background, again using self-determination as a basis for the volunteer program. Because the clinic ran after-hours, student volunteers worked in teams, and everyone (except the author) was from a Pasifika community, a deep sense of camaraderie was formed. In particular, given the difficulties people had experienced in order to study, working with a Pasifika lawyer was affirming to the students. One student noted:

It felt really special in a way — to be able to advertise and help those in my own community with issues from fines/debts to other matters. I felt like a program like this was what was needed for my community so to be a part of it and be able to speak about it and refer those who I knew privately was rewarding.²⁶

As a result of the clinic, a couple of students requested that the Pasifika lawyer be the person to move their admission into the profession.

²⁴ *Victoria University Act 2010* (Vic) Preamble.

²⁵ 24 July 2020 Volunteer Interview (n 36).

²⁶ *Ibid.*

4.2.2 Results from the Clinic

All of our clients who attended the clinic and were provided with legal advice were asked to complete a survey form, but this was not mandatory.

Of our clients who responded to the survey:

- 72% had Special Category Visas (SCVs), while 27.8% were either Australian citizens or permanent residents.
- By matter type, we assisted on the following matters:
 - Consumer/debt/insurance — 34%;
 - Fines — 18%;
 - Family law and child protection — 18%;
 - Criminal law— 21%; and
 - Employment— 5%.
- By country of birth, our clients were from:
 - New Zealand—62%;
 - Samoa—10%;
 - Tonga—8%;
 - Cook—Islands 5%;
 - Fiji—5%; and
 - Australia—5%.
- Of the participants born in New Zealand, 70% had at least one parent born in another Pacific Island country.
- In terms of education:
 - 76% had secondary level qualifications; and
 - 24% had some tertiary level qualifications.
- In terms of living situation:
 - 59% were renting;
 - 10% were boarding or in situations of secondary homelessness;
 - 28% owned their homes, the majority with mortgages; and
 - 3% were in public housing;
 - an average of 5.13 people were in each household (the state average is 2.6).
- In terms of welfare:
 - 59% had no access to welfare of any kind; and
 - 41% received some kind of Australian Government support.

The following is a case study of a financial services matter in which WEstjustice offered assistance:

Our client is a single mum with three children and is a survivor of serious family violence. Our family violence team assisted her to obtain an intervention order for her and her children as affected parties. In taking instructions, we understood that the client was suffering serious financial stress because of her changed circumstances.

Our client was in arrears of her mortgage with a bank. We assisted her in entering into hardship negotiations with the mortgagee.

Further, our client had two credit cards with balances of approximately \$35,000 and \$2,500 owing on each respectively, and we assisted her in entering into hardship negotiations with both banks by requesting a waiver of each alleged credit card debt.

Our client was also in arrears on her council rates, and we requested the council place her rates account on a six-month hold. Our client also had an interstate ambulance invoice for a medical emergency that her family had experienced.

In relation to the mortgage, the bank granted a 12-month hardship arrangement on the mortgage whereby her repayment amounts were reduced to give her time to manage her finances to be able to afford her repayments again.

In relation to one credit card, the bank did not accept our request for a waiver of the alleged debt. However, they agreed to a 12-month deferral on payments for her credit card account. In relation to the second credit card, the bank granted a waiver of the alleged debt.

In relation to the council rates, we were successful in negotiating a six-month deferral on payments for her.

In relation to the ambulance debt, we assisted in having it waived because the client had a health care card.

Importantly, we assisted the client in a multidisciplinary way — offering legal case work and financial counselling work in-house, and referring her to a social worker. As a result of our negotiation and advocacy, the client had a mechanism that offered her some protection from family violence, and financially she avoided foreclosure, had some debt waived, and had time to get back into a position where she could meet her repayments.

The legal matters represented a typical cross-section of WEstjustice work, but there were some trends we observed:

- **Increased poverty:** although we predominantly see clients in difficult financial circumstances, it was clear from the casework that our clients were particularly vulnerable to debt and predatory loan arrangements because of an inability to rely on the welfare system.
- **Turning away immigration matters:** our clinic did not offer immigration services, but in the majority of matters we saw, clients asked us about immigration matters. These concerned various matters, including pathways to permanent residency and deportation concerns for people with a criminal record.
- **Employment matters:** since there was an inability to rely on the welfare system, larger household sizes, and a lack of access to the government deferred loan scheme, there was innate pressure for young people to work and fewer options for higher education and professional work. As this work was more casual and insecure, we saw more employment matters come through the clinic.
- **Increased interaction for Pasifika people with the child protection system:** in comparison with our generalist clinics, we saw more child protection matters referred into the clinic. In understanding these matters, we saw a difference in parenting values

between a Pasifika worldview and a Western one. We observed a number of matters where the Department of Health and Human Services (Vic) had made an intervention because of the way a parent or parents had disciplined their children. From some of our clients' perspective, discipline was sometimes a way to protect their families. Their approach allowed them to keep children safe from external risks, ensure children were attending cultural/religious/spiritual activities, and ensure children respected elders.

We saw a number of different family law matters as a result of the pressures on Pasifika peoples in Australia. For example, we saw a number of matters where grandparents were the primary carers for their children. This was often due to the nature of migration – with generations of families spread across Australia, New Zealand, and other Pacific countries – and the lack of enough social (familial), and economic support to sustain the family during difficult times.

4.3 Community Legal Education

We provided community legal education using the 'train the trainer model' on issues in which Pasifika service providers requested support. This model provides legal education to people who work in the sector, which then gives them the tools to provide training to their clients and people in their networks. We provided a range of sessions, including police accountability and law relating to young people, and we facilitated a number of immigration sessions for the Pasifika community with Victoria Legal Aid.

4.4 Community Engagement

We provided monthly newsletters to a mailing list, a copy of which is annexed to this report.

We attended key community events in Western Melbourne to raise awareness of the clinic and build relationships, including the Pacific Connections Expo 2018. We were invited by the Melbourne Storm rugby league team to attend a game and discuss potential partnership opportunities. We were also invited on a number of community radio programs to discuss the work of the clinic, including 3RRR.

In addition to the networks established through our Steering Group, we built relationships with stakeholders in the community and government, for example, the Māori Wardens, local government areas, Victoria University, and sports teams, through the means described above.

In particular, we conducted work to strengthen the community's ability to self-advocate. We did this by taking concrete steps to support the development of a peak body to represent the Pasifika communities in Victoria. This association is called the United Pasifika Communities of Victoria, and we provided both pro bono representation, as well as referrals to pro bono partners who assisted the association with regulatory frameworks and requirements.

4.5 Community Development: Talanoa and the Justice Forums

In 2018, WEstjustice partnered with the United Church of Australia, Synod of Victoria and Tasmania, to work with Pasifika communities to build capacity through sharing stories and using the Talanoa methodology. Funding for this work was obtained from the Department of Premier and Cabinet (Vic). In consultation, the Steering Group advised the project that they wished for forums to be held on the following themes: youth and education, family violence, and access to services. Participants were contacted through acquaintances and were given a \$50 gift card as thanks for their participation. The forums were held from August–October 2019. The forums

were divided into older and younger groups, and for the family violence discussion, men's and women's groups.

From the forum a snapshot report was produced, which is annexed to this report. The following themes emerged.

4.5.1 Youth and Education

Participants reflected on a range of cultural barriers in engaging with the education system. These included:

- **A lack of cultural safety:** the school system was often not a safe space for young Pasifika people or their parents. For example, names are incorrectly pronounced, leading to feelings of trauma, rejection, and humiliation. A participant stated:

A lot of them their names are not said properly. You know something as simple as that. We had teachers in that forum (youth forum) and they asked, what is one thing that we could do to make a difference and we put their name...that means a lot especially to us because that's our identity...our names come from our tikanga...²⁷

- **Financial stress:** participants reflected on the impacts of financial stress on the engagement of young people in the education system. With a lack of access to the welfare system, and the job market being predominantly in the area of low-paid work, people bore the economic and emotional stress that resulted. This had impacts on learning including things such as aiming to go on to tertiary education and attentiveness in class.
- **Racialising Pasifika people:** participants discussed the archotyping of Pasifika peoples into orientalist and racialised subjectivities connected with physical talents, and invariably disconnected from intellectual ones:

When you listen to the young people, there are two things that they're labelled with. One, they can all [play] rugby and two, they can all dance. For our Māori kids, they can all sing. They don't want to be known for that. They want to be known for these entrepreneurial things, that they have these ideas in their heads.

That's what they want to be known for. Those are the opportunities that they want. Our kids are burdened with a lot of barriers coming from our home, coming from our cultural backgrounds. Stepping out the door, into the schools, into the church, into the wider community, there are things before they even walk out of our door...²⁸

- **Being in-between cultural value systems:** participants spoke of the tensions of being caught in-between two different cultural value systems:

So, the confusion is, who am I? Where do I belong? Where do I fit in? And where is my voice? So, our young people have a whole lot to contend with, just from home to school. And that school has a huge impact on what happens to our young people moving forward.²⁹

²⁷ Kailahi and Kailahi (n 4) 9.

²⁸ Ibid 13.

²⁹ Ibid 11.

Another stated:

With the pressures...no wonder there's a high rate of suicide for young people. Particularly in New Zealand and now in Australia and we have to be real about that...³⁰

4.5.2 Family Violence

Participants reflected on the dissonance between Western and Pasifika perspectives on family violence. The forums found that services were not tailored to the needs of Pasifika communities. For example, there is stigma and shame around mental health and seeking mental health support. Also, in the space of parenting, there are values in disciplining which can be at odds with the system in Australia. For example, one participant noted:

We've heard lots of people that I've worked with have said, man, I've got a boot up the arse when I was younger and I'm okay. They don't realise they're not. This is what we're talking about before...³¹

In respect of culturally specific services, a participant noted:

I was speaking to Legal Aid about this, and I was asking whether or not there's a programme out there that exists that's culturally sensitive? Like there'll be parenting programmes, there are, but are there ones which are culturally sensitive for Pasifika people? So that's something that, I think, would be good to take advantage of and needs to be made available...³²

4.5.3 Access to Services

The forums found a serious gap in service provision for Pasifika peoples:

- **Lack of access to higher education:** because of a lack of access to the tertiary loan scheme, people were not in a position to consider tertiary education seriously:

To be able to go to university, we had to send her home. Because we're not eligible for any funding support. Her father...not eligible. So, we sent her back and she's now attending Auckland university as we speak. But it's separated the family now, just so she can have access to good education. Now that's a big barrier for us as a family that's very closely knit. But like everything else in Australia, we work around that. That's my barrier.

She ended up working, but it just wasn't for her. So, as a result, she now lives in NZ and she studie[s] there. So, it's kind of like separated our family in a way and now that I'm reaching my final days of year 12 it's a barrier. I no longer feel like that strong to go to uni just because of the financial thing.³³
- **Unfamiliarity with the system and an under-resourced system:** the forums discussed the complexity of the processes in the system and the difficulty for people in following those processes:

³⁰ Ibid.

³¹ Ibid 15.

³² Ibid 14.

³³ Ibid 17.

Our people, our women, our men are not sure how to...navigate through those systems particularly the legal one. The words and everything is just over top of their head so they will sit there and obediently follow what the lawyers say.³⁴

The forums also heard participants discuss the under-resourcing of support services more generally.

4.6 Third Culture Kids and the Radio Project

Interviewer: 'Why do you call yourself third culture kids?'

Participant 1: 'I'm a third culture kid because I don't know where I stand...like which side do I stand on? Do I stand on my cultural Māori side, or am I part of white culture? And it's a confusing place to be in, when you don't know where you are and where you belong'.³⁵

Participant 2: 'Yep, I second that. I also don't know where I stand because from both sides I'm told different things...so that's [where] I guess the third culture comes from because it refers to another category'.³⁶

Participant 3: 'well for me growing up, it was evident from school that I was the only brown girl in my class or the only Samoan in my class and there was only two other fobs in prep and there were only two guys. And I saw the difference from home, the culture at home, the culture of my parents, and the culture from school, and the culture for these kids, it's just different'.³⁷

A third tranche of support was a partnership with the law school at the University of Melbourne, which was focused on providing legal education to young people from the Pasifika community. After much consideration, the community radio station 3CR was approached with the intention of working with a group of young Pasifika people to have them trained in radio skills and podcasting. 3CR is a not-for-profit community radio station that broadcasts at 855 kHz AM in Melbourne, and describes its purpose as being 'to provide a voice for those denied access to the mass media, particularly the working class, women, Indigenous people and the many community groups and community issues discriminated against in and by the mass media'.³⁸ 3CR has a long history of community activism and engagement, and one of its shows, *Done by Law*, is a show led by community lawyers to discuss social justice issues. I am one of the presenters and I considered the potential of having the participants take over the show for a week.

To progress this, WEstjustice approached 3CR and also the Centre for Multicultural Youth (CMY), who run *Le Mana*, a Melbourne-wide Pasifika Youth Program which is described as 'helping to build connected communities and a sense of belonging for Pasifika young people in Victoria'.³⁹ 3CR was keen to support the initiative, and arranged for volunteer trainers to support and instruct the participants over the month of June 2019. CMY's *Le Mana* program is facilitated by young Pasifika people, and so the program had relationships that were important to finding and selecting participants. Training was facilitated in June by 3CR volunteer broadcasters, and included First Nations women and women of colour to support their Pasifika peers.

³⁴ Ibid 16.

³⁵ 'Pasifika Youth', *Done By Law* (3CR Community Radio, 30 July 2019) 00:03:19–40 ('Pasifika Youth').

³⁶ Ibid 00:03:40–58.

³⁷ Ibid 00:04:05–26.

³⁸ 'Who We Are', *3CR 855 AM* (Web Page) <<https://www.3cr.org.au/whoweare>>.

³⁹ 'Le Mana Pasifika', Centre for Multicultural Youth (Web Page, 2019) <<https://www.cmy.net.au/young-people-community/community-connections/le-mana-pasifika/>>.

A group of Pasifika women volunteered and formally took over *Done by Law* as a special episode in July 2019. The program is a moving and insightful perspective of the experience of ‘third culture kids’, which was described in the following terms:

Participant: ‘We live in a society where our cultural backgrounds aren’t part of the white culture...it was obvious to me from a young age I was part of a minority and kind of understanding where I stand between being born and raised in Australia and my parents migrating to Australia, and the values that they taught me.’⁴⁰

Participant: ‘It’s very confusing isn’t it...being just young and you don’t know where you fit in.’⁴¹

Participant: ‘Put myself in groups where they can teach me other things, or get me connected to people who are more engaged...culture...just so I know...coz growing up in Australia, obviously my mum and stuff was listening to all these fobby jams and that’s who I’ve been listening to, like all this hip hop mostly American artists or whatever...but if I ...from there it’s just the fact that knowing that at the end of the day what makes me Samoan is the fact that my bloodline is from Samoa and no one can take that away from me. And on the other hand, the other culture is the fact that I was born and raised in Melbourne and Australia and having to be raised within the white society. And having those two merge obviously, still a learning process, but where I’m at I’m fine with who I am right now.’⁴²

A participant stated that the radio project ‘really just gives us a great opportunity...it gives us a voice especially for the Pasifika community...it’s something that our people can relate to’⁴³ and a participant described the radio show to be ‘*about the struggles, accomplishments, the dreams that we go through. We’re really just wanting to create a space where others are others out there that relate and belong.*’⁴⁴

4.7 Trans-Tasman Advocacy Network

Another tranche of this work was the development of trans-Tasman advocacy. Shorna Moore, the former Director of Policy and Community Development at WEstjustice, built a network of contacts in the advocacy space in Australia and New Zealand over the period of the project.

Much of the work was triggered by the campaigning around an open letter written by WEstjustice to New Zealand Prime Minister Jacinda Ardern in May 2018. The letter was also sent to the New Zealand Children’s Commissioner, the Australian Prime Minister at the time (Malcolm Turnbull), and the Australian Minister for Social Services at the time (Dan Tehan). The letter states:

We acknowledge that your government supports Australian young people living in New Zealand who are homeless, via the provision of the Youth Payment. Unfortunately, this generosity is not reciprocated.

The cohorts in both countries are relatively small, but are arguably the most vulnerable members of our society. As at the end of September 2017, 6,506 young Australians aged

⁴⁰ Pasifika Youth (n 35) 00:04:26–54.

⁴¹ Ibid 00:04:54–05:06.

⁴² Ibid 00:12:02–43.

⁴³ Ibid 00:01:46–52.

⁴⁴ Ibid 00:01:37–42.

between 15 and 17 years were receiving the benefit given to homeless young people in Australia. According to the Australian Bureau of Statistics, 2.5% of Australia's estimated resident population was born in New Zealand. If New Zealand teenagers living in Australia received a similar payment at the same rate as their Australian counterparts, about 160 young people would be expected to receive the benefit.⁴⁵

In the letter we urged the Prime Minister 'to formally raise the issue with the Australian Government and pursue a joint solution'.⁴⁶

Although the formal response did not achieve progress on the issue, media across New Zealand covered the issue,⁴⁷ including on the Network Ten show *The Project*,⁴⁸ and it raised awareness of the circumstances of vulnerable New Zealanders in Australia and New Zealand. Most importantly, it laid the foundations to set up a trans-Tasman advocacy roundtable, which formally met on 6 and 7 November 2019. The roundtable sought to advocate for two positions:

- All New Zealanders who live in Australia should have a realistic and achievable pathway to citizenship to have a secure future for themselves and their families; and
- New Zealand citizen SCV holders who are long-term residents of Australia should only be deported as a measure of last resort.

The roundtable agreed to form an advocacy network — but no funds were available to mobilise a secretariat for the network. In the period since, the pandemic has begun and while the issues continue to be pressing, the network has not met again.

⁴⁵ Letter from WEstjustice et al to Jacinda Ardern, 17 May 2018.

⁴⁶ Ibid.

⁴⁷ See, eg, 'Govt Won't Pick Up the Tab in OZ — PM', *RNZ* (News Report, 22 May 2018)

<<https://www.rnz.co.nz/news/political/357943/govt-won-t-pick-up-the-tab-in-oz-pm>>; 'NZ Teens in Australia Unable to Get Benefit Turning to Sex Work', *RNZ* (News Report, 22 May 2018)

<<https://www.rnz.co.nz/national/programmes/morningreport/audio/2018645924/nz-teens-in-australia-unable-to-get-benefit-turning-to-sex-work>>; "'We Don't Favour Mega-Prisons" — Jacinda Ardern', *RNZ* (News Report, 22 May 2018) <<https://www.rnz.co.nz/national/programmes/morningreport/audio/2018645926/we-don-t-favour-mega-prisons-jacinda-ardern>>; 'Ardern Rules Out Welfare for Kiwi Teens in Australia', *The New Zealand Herald* (online, 22 May 2018)

<https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12056191>; Jordan Bond, 'PM Rules Out Welfare for Homeless Kiwi Teens in Australia', *NewstalkZB* (News Report, 22 May 2018)

<<http://www.newstalkzb.co.nz/news/national/pm-rules-out-welfare-for-homeless-kiwi-teens-in-australia/>>.

⁴⁸ See 'Struggling Kiwis Left Without Safety Net in Australia Plead for Govt Help', *NewsHub* (News Report, 30 May 2018) <https://www.newshub.co.nz/home/new-zealand/2018/05/struggling-kiwis-left-without-safety-net-in-australia-plead-for-govt-help.html?fbclid=IwAR3qVam2-zla39uzWj9zBZZe_X-dFNIN9cT2JWwY6p8vACAzVE6zmCXi_SI>.

5 Trans-Tasman Migration to Australia, Access to Justice & Equal Opportunity for Pasifika Peoples in Australia

There are a range of justice issues affecting Pasifika people in Australia. Like many communities in Australia, these issues relate to the experiences of migration, racism and class. In those ways, the experiences, while unique, are not isolated. However, there are particular issues that a large cohort of Pasifika people experience. A large proportion of Pasifika people arrive in Australia from New Zealand and as New Zealand passport holders.

The majority of New Zealand passport holders enter Australia on Special Category Visas ('SCV'). A large proportion of Pasifika people also enter Australia on SCVs and over half of our clients in the Pasifika clinic were on SCVs. These were introduced in 1994 and are categorised as temporary visas. SCV holders do not enjoy the same rights and benefits as Australian citizens or permanent residents, but like permanent residence visa holders are allowed to remain in Australia permanently.

Before 2001, all New Zealand citizens in Australia who held SCVs could access social security and obtain Australian citizenship without first becoming permanent residents. In 2001, the Howard Government changed its social security arrangement with New Zealand meaning that SCV holders would be required to obtain permanent residency status or citizenship status to obtain these benefits. Under these changes, to be eligible for Australia's social security system, one must be deemed to be an Australian resident. A person can be deemed to be an Australian resident if one holds a permanent visa or holds a SCV and is considered a 'protected SCV holder'.⁴⁹ Protected SCV holders need to have arrived in Australia before February 2001 and to have been in Australia for at least 12 months for the two years before 2001.⁵⁰ New Zealanders who arrived after this time were considered 'non-protected SCV holders' and had limited access to the social security system:

- **Allowance payments:** non-protected SCV holders do not have access to allowance payments. These include Newstart, Youth Allowance, Sickness Allowance, and so on. Some limited benefits may be available for those who have resided in Australia continuously for 10 years.⁵¹
- **Carer payments:** the Age Pension, Disability Support Pension, and Carer Payment are all accessible with some qualifications.⁵²
- **Health care card:** a Low-Income Health Care Card is not available for the first four years of residence.⁵³ A Health Care Card is available without the need to serve a waiting period if the non-protected SCV holder receives certain payments.⁵⁴
- **NDIS:** the National Disability Insurance Scheme is not available to non-protected SCV holders.⁵⁵

⁴⁹ Social Security Act 1991 (Cth) s 7(2) (definition of 'Australian resident') ('Social Security Act'). See also Susan Love and Michael Klapdor, 'New Zealanders in Australia: A Quick Guide' (Research Paper, Parliamentary Library, Parliament of Australia, 13 February 2020) 4.

⁵⁰ Social Security Act (n 49) ss 7(2A)–(2B). See also Love and Klapdor (n 49) 4.

⁵¹ Love and Klapdor (n 49) 6.

⁵² Ibid 6.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid 7.

- **Tertiary education:** with respect to tertiary education, '[a]ll New Zealand citizens are considered domestic students for the purpose of taking up [a] Commonwealth supported [place]'.⁵⁶ However, until 2016, Australia's deferred student loan repayment scheme (HECS-HELP) – which is what makes university affordable for most students by deferring payment until the person earns a reasonable income – was only open to permanent residents and Australian citizens. After 2016, SCV holders could qualify if they had entered Australia under 18 years of age and had resided permanently in Australia for the last 10 years (and were physically present eight of those years), and for 18 months of the last two years.⁵⁷
- **Social Housing:** in Victoria, social housing is only available to Australian citizens and permanent residents.⁵⁸

In addition to this class of residents, there is another class of Pasifika people who experience particular disadvantage in Australia. The Pacific Labour Scheme commenced in July 2018 to offer citizens of partner countries 'low and semi-skilled work opportunities in rural and regional Australia for up to three years'.⁵⁹ The Pacific Labour Scheme is a complement to the Seasonal Worker Programme which allows visa holders to work up to nine months in selected areas within Australia.⁶⁰ They must return to their home country for the remaining three months.⁶¹ Under these schemes, family members are not able to accompany the worker, and the schemes generally restrict visa holders to their employment, and by virtue of their employment being regional and remote, to their regional communities.⁶² The impacts of this can include isolation and depression, and predatory practices by employers.

The above visa classes create the conditions for there to be a substantial group of Pasifika people who reside in Australia for substantial periods of time with little or no state support. Through our research, we encountered people who were here through their adolescent years and who no longer had substantive relationships in their country of citizenship to return to without serious negative consequences in their lives. This vulnerability has serious impacts, including:

- **Driving poor people further into poverty:** with no reliable safety net there is a serious lack of support for people on SCVs, who can spiral into debt traps, poverty, and interactions with the justice system. Some of our Steering Group suggested creating alternative safety nets like informal housing registers and food hampers to step in for the failures of government.
- **Negative health outcomes:** although there are reciprocal public health benefits so that people on SCVs have access to Medicare, the lack of access to a Health Care Card under certain conditions and to dental health support has negative physical health consequences for SCV holders. As our research discusses, the insecurity of people's conditions causes serious emotional stress.

⁵⁶ Ibid.

⁵⁷ Ibid 8.

⁵⁸ Department of Health and Human Services (Vic), 'Social Housing Eligibility', Housing Vic (Web Page, 1 April 2020) <<https://www.housing.vic.gov.au/social-housing-eligibility>>.

⁵⁹ Department of Foreign Affairs and Trade (Cth), 'Pacific Labour Scheme' (Policy Handbook, November 2019) 3.

⁶⁰ Ibid 3–4.

⁶¹ Note that Minister Michaelia Cash has announced that visa holders for both schemes will be able to extend their conditions for up to one year: <https://ministers.dese.gov.au/cash/new-visa-support-australian-farmers>.

⁶² Ibid 17.

- **Insecure housing:** with no public housing support, reliance on family members who are working, and cultural systems that are based on larger families, overcrowding is a consequence.
- **Difficult education pathways:** with limited access to deferred loan schemes, higher education is impossible for many people, and puts parents in a situation where they encourage their children to leave school early to support their family. This makes social mobility much more difficult.

6 Future Steps, Recommendations, and Conclusion

This paper presents a snapshot of the complexity of issues that Pasifika peoples face in the Western suburbs of Melbourne. It presents the work that WEstjustice has undertaken over the last few years, and describes a multi-methods approach to working with communities. The project has been funded by Victoria Legal Aid with a view to deepening our engagement with the community. From our work to date we make the following recommendations:

- **Recommendation One:** provide a pathway for people on SCVs to become permanent residents;
- **Recommendation Two:** provide full reciprocity of benefits for people who arrive on SCVs;
- **Recommendation Three:** make the HECS-HELP scheme available to all students on SCVs;
- **Recommendation Four:** make SCV holders eligible for social housing in Victoria;
- **Recommendation Five:** have immigration principles in place that deport people on SCVs only as a last resort;
- **Recommendation Six:** invest in Pasifika specific programs that support the community in parenting and child welfare support in the juvenile court system;
- **Recommendation Seven:** fund a community legal centre in Melbourne to provide advocacy, casework, and legal education on immigration matters;
- **Recommendation Eight:** provide funding for a secretariat for the Trans-Tasman Advocacy Network; and
- **Recommendation Nine:** support a permanent forum between government and the community to discuss both the experiences of Pasifika people in Victoria, and trans-Tasman experiences.

Absent these reforms, our view is that the circumstances for Pasifika peoples in Victoria will remain very difficult. With little by way of a safety net and with little support that is culturally specific, Pasifika Victorians are experiencing financial hardship, poor health, difficult pathways for social mobility, and poor social and emotional wellbeing.

Our Steering Group Chair stated in interview:

I'd like us to continue on the pathway that we started with the with the clinic and the *Talanoa* and bring in more community members to get this legal clinic pumping. Making it sustainable so that it moves from being a pilot to an actual clinic. That's, you know for now, that's what I would like to see happen. Cause we put a lot of work into that clinic and we put a lot of work into that *Talanoa* and this is the other thing that's disheartening for a lot of us in community.. It's that, we put a lot of work and energy into programs that are being funded as short term programs and poof, then they're gone. You know, and we actually believe in these programs and we want them to continue. And you know, if we continue this legal clinic, it's gonna be a better thing for justice.⁶³

⁶³ Interview with Marie Pewhairangi, 28 July 2020.

7 Bibliography

7.1 Articles/Books/Reports

Hamer, Paul, 'Māori in Australia: An Update from the 2011 Australian Census and the 2011 New Zealand General Election' (Paper, 27 October 2012)

Kailahi, April and Semisi Kailahi, *Pasifika Talanoa: A Snapshot Report* (Report, 2019)

Love, Susan and Michael Klapdor, 'New Zealanders in Australia: A Quick Guide' (Research Paper, Parliamentary Library, Parliament of Australia, 13 February 2020)

Ravulo, Jiojo, *Pacific Communities in Australia*, (Paper, Faculty of Social Sciences, University of Western Sydney)

Stokes, Helen and Malcolm Turnbull, 'The Le Mana (Empower) Project: Pasifika Youth and Communities' (Interim Report, December 2018)

Vaiotele, Timote M, 'Talanoa Research Methodology: a Developing position on Pacific Research' (2006) 12(1) *Waikato Journal of Education* 21

7.2 Legislation

Social Security Act 1991 (Cth)

Victoria University Act 2010 (Vic)

7.3 Internal Documents

Interview with student volunteer (Email, 24 July 2020)

Letter from WEstjustice et al to Jacinda Ardern, 17 May 2018

WEstjustice, 'Pasifika Steering Group: Terms of Reference' (24 May 2018)

Interview with Marie Pewhairangi, (Zoom, 28 July 2020)

Data provided by email from Crime Statistics Agency Victoria to Sarouche Razi (24 August 2020)

7.4 Other

'Ardern Rules Out Welfare for Kiwi Teens in Australia', *The New Zealand Herald* (online, 22 May 2018) <https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12056191>

Australian Bureau of Statistics, 'Census 2016, Country of Birth of Person by Sex (LGA)', ABS.Stat (Web Page, 4 July 2017) <http://stat.data.abs.gov.au/Index.aspx?DataSetCode=ABS_C16_T06_LGA>

Bond, Jordan, 'PM Rules Out Welfare for Homeless Kiwi Teens in Australia', *NewstalkZB* (News Report, 22 May 2018) <<http://www.newstalkzb.co.nz/news/national/pm-rules-out-welfare-for-homeless-kiwi-teens-in-australia/>>

Department of Foreign Affairs and Trade (Cth), 'Pacific Labour Scheme' (Policy Handbook, November 2019)

Department of Health and Human Services (Vic), 'Social Housing Eligibility', Housing Vic (Web Page, 1 April 2020) <<https://www.housing.vic.gov.au/social-housing-eligibility>>

Department of Jobs, Precincts and Regions (Vic), 'Western Region', Suburban Development (Web Page, 5 April 2019) <<https://www.suburbandevlopment.vic.gov.au/regions/western-region>>

'Govt Won't Pick Up the Tab in OZ — PM', RNZ (News Report, 22 May 2018) <<https://www.rnz.co.nz/news/political/357943/govt-won-t-pick-up-the-tab-in-oz-pm>>

'Le Mana Pasifika', Centre for Multicultural Youth (Web Page, 2019) <<https://www.cmy.net.au/young-people-community/community-connections/le-mana-pasifika/>>

'New Zealand's Population Reflects Growing Diversity', Stats NZ (Web Page, 23 September 2019) <<https://www.stats.govt.nz/news/new-zealands-population-reflects-growing-diversity>>

'NZ Teens in Australia Unable to Get Benefit Turning to Sex Work', RNZ (News Report, 22 May 2018) <<https://www.rnz.co.nz/national/programmes/morningreport/audio/2018645924/nz-teens-in-australia-unable-to-get-benefit-turning-to-sex-work>>

'Pasifika Youth', Done By Law (3CR Community Radio, 30 July 2019)

Pallas, Tim, 'Werribee CLCs Encouraged to Apply for \$7.1m in Grants' (Media Release, 14 August 2017)

'Struggling Kiwis Left Without Safety Net in Australia Plead for Govt Help', NewsHub (Web Page, 30 May 2018) <https://www.newshub.co.nz/home/new-zealand/2018/05/struggling-kiwis-left-without-safety-net-in-australia-plead-for-govt-help.html?fbclid=IwAR3qVam2-zla39uzWj9zBZZe_X-dFNIN9cT2JWwY6p8vACAzVE6zmCXi_SI>.

'Who We Are', 3CR 855 AM (Web Page) <<https://www.3cr.org.au/whoweare>>

"'We Don't Favour Mega-Prisons' — Jacinda Ardern", RNZ (News Report, 22 May 2018) <<https://www.rnz.co.nz/national/programmes/morningreport/audio/2018645926/we-don-t-favour-mega-prisons-jacinda-ardern>>