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# Encouraging Good Practice in Measuring Effectiveness in the Legal Service Sector

**Author – Dr Liz Curran**

Legal Workshop, ANU College of Law

May 2013





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The Australian National University

Acton ACT 0200 Australia

E [lwsa@law.anu.edu.au](mailto:lwsa@law.anu.edu.au)

[law.anu.edu.au/anu-college-law/anu-legal-workshop](http://law.anu.edu.au/anu-college-law/anu-legal-workshop)



# ENCOURAGING GOOD PRACTICE IN MEASURING EFFECTIVENESS IN THE LEGAL SERVICE SECTOR

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## ENCOURAGING GOOD PRACTICE IN MEASURING EFFECTIVENESS IN THE LEGAL SERVICE SECTOR

# Definitions

### Language

How things are defined can be critical in shaping any debate. For many years, the community legal centre movement has been using terminologies that have gradually been co-opted and re-defined by government.<sup>1</sup> However, to promote discussion it is important to ensure that people are speaking the same language, which is why this report includes a section on definitions.

**Community Legal Centres:** Independently operated, not-for-profit community organisations that provide legal and related services to the public, focussing on disadvantaged people and those with special needs.

**Community Legal Education:** Providing information and education to the community, individually or in groups, concerning the law and legal processes and their place in society. The community may be defined geographically, by issue or by specific need. CLE helps communities understand and critically assess how the legal system affects them and helps them use it more effectively.<sup>2</sup>

**Early Intervention:** Early Intervention is defined in the National Partnership Agreement on Legal Assistance Services (**NPA**) as legal services provided by Legal Aid Commissions to help people resolve their legal problems before they escalate. This includes providing legal advice, minor assistance and advocacy other than that provided under a grant of legal assistance.

Early intervention, as it is used in this report, applies more broadly than that which has been defined in the NPA and some other government documents such as the 'Strategic Framework on Access to Justice in the Federal Civil Justice'.<sup>3</sup> We seek to reclaim the language that sees it within the broader context of interventions. It is defined as any intervention that resolves or prevents a person's problems from emerging or escalating. This may involve the option of going to a court or a tribunal to ensure the protection or adherence of the person's rights. However, the term is commonly used by government to imply an action that reduces people's use of the court system. This report maintains that early intervention operates more broadly than this.

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<sup>1</sup> D Watson, 'Watson's Dictionary of Weasel Words', Knopf Australia, (Sydney, 2004).

<sup>2</sup> CLEWS Working Group, Guidelines for the Management of Community Legal Education (National Association of Community Legal Centres, 2009), see [http://www.naclc.org.au/cb\\_pages/files/13%20National%20CLE%20Guidelines%20%28Oct%202009%29%282%29.pdf](http://www.naclc.org.au/cb_pages/files/13%20National%20CLE%20Guidelines%20%28Oct%202009%29%282%29.pdf).

<sup>3</sup> See Attorney-General's 'Strategic Framework on Access to Justice in the Federal Civil Justice System', <<http://ag.gov.au/a2>>



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One of the fundamental tenets of a liberal democracy is the right of people to seek redress or have their rights protected through the rule of law. It may sometimes be appropriate for a matter to be resolved through alternative dispute resolution, diverting matters from the expensive and time-consuming court process—but not always.

*One of the fundamental tenets of a liberal democracy is the right of people to seek redress or have their rights protected through the rule of law.*

In fact, diverting the disadvantaged and poor from the courts can risk the courts and tribunals becoming a forum for repeat players and those corporations and government that have the resources to use them. It is the experience of Consumer Action that often corporations will use the courts to target unsuspecting and uninformed consumers to their detriment. Often the defendants are not represented at all (see the debt collection and bulk debt campaign examples below). If those who are poor or disadvantaged are being tracked out of the courts when there is a right to establish a precedent or stop poor and unlawful practices and seek a remedy this is a poor outcome for the community. Therefore, in some cases assisting a person in taking or defending their matter in court can be necessary and can provide a court/tribunal-made precedent which deters or makes certain acts unlawful. In this way, it can be early intervention as it deters certain conduct from re-occurring which the court/tribunal has condemned.

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This broader concept of early intervention means that rather than keeping people out of the courts, such intervention may enable them to actually go to the courts and tribunals because they have a right to that protection. In some cases, early intervention has meant that a client has been able to resolve their problem through the court or tribunal process, while in other cases early intervention has meant they have been able to avoid it, if it was not warranted or wise.

*The benefits of early intervention are not limited to one-to-one case work. In some instances, as the campaign examples in Part Four will illustrate, it can prevent others from having to go through the same problem, if it resolves a matter so that the law or its administration is changed to prevent poor practise. This helps put an end to the 'revolving door'.*

The benefits of early intervention are not limited to one-to-one case work. In some instances, as the campaign examples in Part Four will illustrate, it can prevent others from having to go through the same problem, if it resolves a matter so that the law or its administration is changed to prevent poor practise. This helps put an end to the 'revolving door'. Early intervention may involve giving advice, information sharing, community legal education, community development, law or policy-reform case work and public-interest case work--or a combination of all of these and more.

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**Holistic Service:** A service that looks at the client as a whole to assist with their legal and non-legal issues, well-being and empowerment. The service is tailored to assist the person with their specific issues in connection, rather than in a fragmented or piecemeal way which ignores their circumstances or other factors that may be affecting their lives. It may also involve working with legal and non-legal agencies and other people whose rights are being affected. (See example of the 'Do Not Knock' campaign).

**Legal assistance services:** In the National Partnership Agreement this is defined as legal services provided by Legal Aid Commissions, community legal centres, Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention Services.

**National Partnership Agreement on Legal Assistance Services:** An agreement signed by the Commonwealth and each state and territory government for the funding Legal Aid Commissions, and which came into effect on 1 July 2010.

**Prevention:** Preventative legal services are defined in the National Partnership Agreement as legal services provided by Legal Aid Commissions that inform and build individual and community resilience through community legal education, legal information and referral. A broader definition of prevention would include legal aid services and other relevant non-legal services that assist and might work in tandem so that people can resolve their legal problem before it escalates. This can occur through a combination of referral, information, community legal education or community development, legal advice, campaigning, policy and law reform, representation, minor assistance and advocacy.

**Impact:** This is Consumer Action Law Centre and Footscray Community Legal Centres' preferred term instead of 'successful outcome', but it may have a similar meaning. Impact occurs when the intervention/s by the service results in a change that improves the situation or understanding.

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# Part One: Introduction

### Background

This report is a joint project of the Consumer Action Law Centre (Consumer Action) and the Footscray Community Legal Centre (FCLC), who have asked Dr Curran of the Australian National University to undertake a research report which examines an approach to solving legal problems which is strategic. An earlier Exposure Draft version of this report (Version One) was sent to Allen's Consulting in early February 2013 to inform the review being commissioned by the Attorney General's Department into Legal Assistance Services which is being conducted by Allen's Consulting. The emphasis of the earlier draft was different to this Report as it was tailored for the Review and examined issues of measurement and evaluation. This Final Report entitled ***Encouraging Good Practice in Measuring Effectiveness in the Legal Service Sector*** builds on the earlier submission to Allens. (Version One of this Report) and a 'Version Two' of the Report which uses the same case studies but examines more specifically the opportunities for strategic approaches to legal problem solving and some hints to incorporate such approaches into the practice of community legal centres. The Version Two Report is entitled, ***Solving Legal Problems: A Strategic Approach—examples, processes and strategies, a report examining issues in community legal practice*** (<http://www.law.anu.edu.au/legalworkshop-gdip/publications>). It was launched at the Annual Ruby Hutchison Memorial Lecture on 14 March 2013 in Sydney.<sup>4</sup> All of these reports/submissions have been undertaken in the hope that this will promote further dialogue and discussion around ways of solving clients' legal problems which can work to address and improve systemic issues that create such problems.

It is also hoped that this Report, ***Encouraging Good Practice in Measuring Effectiveness in the Legal Service Sector***, may be useful to those delivering non-legal services to who are also being measured by funding bodies.

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<sup>4</sup> <http://www.law.anu.edu.au/legalworkshop-gdip/publications>

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### Aims of the Report

This report aims to examine issues and approaches to measuring and providing an effective service.

This report builds on the work of Nicole Rich who with the assistance of a Victorian Law Foundation Fellowship provided some international contexts, research and discussion.<sup>5</sup> This report takes her study further by examining her work in the context of two community legal centres' work. One centre is a specialist legal centre and the other is a generalist community legal centre. The report will set out a rationale for why the two centres approach work in this way.

One of the problems with required funder reporting in the legal services sector is that it has often been limited to listing the number of 'informations' or referrals, case work, representation, law reform or community legal education matters handled by the service. Such an approach ignores the reality, namely that people's problems do not come in silos or in neat pigeon holes that are limited to these discreet activities. Consumer Action and FCLC's purpose in producing this report is to illustrate that such an approach, whilst meeting funder targets, may not be the best use of resources for community legal centres and may not lead to any lasting changes in the lives of a client nor for others in the community who may be experiencing similar problems.

This Report seeks to share ways in which processes within centres can encourage and be open to innovative and opportunistic ways of bringing about change for community that moves beyond discreet activities. It demonstrates that through strategic and integrated approaches which amalgamate and develop multi-pronged strategies (at the same time or at pertinent times in a continuum) momentum can be gained and collaboration can be harnessed to drive change. This change can operate not just for an individual but can benefit others in the community who experience the problems that are identified.

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<sup>5</sup> N Rich, 'Reclaiming Community Legal Centres: Maximising our potential so we can help our clients realise theirs', Victoria Law Foundation Community Legal Centre Fellowship Final Report, April 2009.

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This report illustrates the importance of going beyond an individual approach to casework to benefit individuals, groups and the broader community. It argues that a strategic approach to problem solving can better ensure that a service is effective, efficient and targeted, with a broader and long lasting impact or as government says—a “successful outcome”. It also proposes that community legal centres should be given more support to encourage and foster an environment where strategic thought and planning about service mix approaches are used to make the service more outcome-focused. This would lead to service being more effective and mindful of what interventions are needed to achieve the best outcomes rather than merely providing case work, information and referral in isolation from a broader strategy that improves clients’ lives.

*The fact that people’s legal problems do not fit conveniently into silos has been the subject of now plentiful and significant Australian and International research over the past decade. It makes sense therefore that a number of integrated approaches rather than a one size fits all advice or referral might need to be contemplated.*

The fact that people’s legal problems do not fit conveniently into silos has been the subject of now plentiful and significant Australian and International research over the past decade.<sup>6</sup>

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<sup>6</sup> A Buck, N Balmer and P Pleasence, ‘Social Exclusion and Civil Law: Experience of Civil Justice Problems among Vulnerable Groups’, *Journal of Social Policy and Administration* vol. 39, no.3 (2005), 302, 318-20; R Moorhead, M Sefton and G F Douglas, ‘The Advice Needs of Lone-parents’, *Family Law*, vol. 34 (2004), 667; A Buck, P Pleasence, N Balmer, A O’Grady and H Genn, ‘Lone-parents and Civil Law: An Experience of Problems and Advice-seeking Behaviour’, *Journal of Social Policy and Administration* vol. 38, no. 3 (2004), 253-69; S Ellison, L Schetzer, J Mullins, J Perry and K Wong, *Access to Justice and Legal Needs: The Legal Needs of Older People* (Sydney: New South Wales Law and Justice Foundation, 2004), <http://www.lawfoundation.net.au/report/older>; C Coumarelos, Z Wei and A Zhou, *Justice Made to Measure: New South Wales Legal Needs Survey in Disadvantaged Areas* (Sydney: New South Wales Law and Justice Foundation, 2006), <http://www.lawfoundation.net.au/report/survey>; M Karras, E McCarron, A Gray and S Ardasinski, *On the Edge of Justice: the Legal Needs of People with a Mental Illness in New South Wales* (Sydney: New South Wales Law and Justice Foundation, 2006); S Forell, E McCarron and L Schetzer, *No Home, No Justice? The Legal Needs of Homeless People in New South Wales* (Sydney: New South Wales Law and Justice Foundation, 2005); New South Wales Law and Justice Foundation, *New South Wales Law and Justice Foundation, ‘Access to Justice and Legal Needs, Stage 1, Public Consultations’, 2003 and New South Wales Law and Justice Foundation, ‘Qualitative Legal Needs Survey: Bega Valley (Pilot)’, New South Wales Law and Justice Foundation 2003*, see <https://www.lawfoundation.net.au/publications>; P Pleasence, N J Balmer, A Buck, A O’Grady and H Genn, ‘Multiple Justiciable Problems: Common Clusters and their Social and Demographic Indicators’, *Journal of Empirical Legal Studies* vol. 1, no. 2, 2004, 301-29; L Curran, *Ensuring Justice and Enhancing Human Rights: A Report on Improving Legal Aid Service Delivery to Reach Vulnerable and Disadvantaged People*, (Melbourne: La Trobe University and Victoria Law Foundation, 2007), 4; A Buck, P Pleasence and N J Balmer, ‘Education Implications from the English and Welsh Civil and Social Justice Survey’, *Annexe to the PLEAS Taskforce Report* (London: PLEAS Taskforce, 2007); A Buck and L Curran, ‘Delivery of Advice to Marginalised and

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It makes sense therefore that a number of integrated approaches rather than a one size fits all advice or referral might need to be contemplated.

This report provides real-life examples of how strategic approaches have resulted in real changes, going beyond the immediate client's problem and reforming the system to prevent further cases, raise community awareness and empower community members to take action or improving the administration of codes of conduct and regulation to better protect citizen's rights.

This is not to devalue or downgrade the importance of individually tailored legal service delivery. This is necessary, for example, when the State is prosecuting an alleged defendant who is entitled to due process and the rule of law and individual representation. This is a critical feature in any liberal democracy. Rather, this report argues that in many instances, more can be achieved by taking a strategic approach.

*...strategic approaches have resulted in real changes, going beyond the immediate client's problem and reforming the system to prevent further cases, raise community awareness and empower community members to take action or improving the administration of codes of conduct and regulation to better protect citizen's rights.*

**Part Two** explains why a strategic approach is desirable.

**Part Three** specifically examines the internal processes of the two centres that make a strategic approach possible, and comments on the challenges in measuring effectiveness, efficiency and outcomes of legal assistance services which take a strategic approach.

**Part Four** of the report examines seven campaign examples which illustrate how the strategic approach to client problem solving has been utilised by the two different centres, often in collaboration with other agencies.

**Part Five** provides conclusions around the methods of measurement which assist and do not assist in the effective measurement of legal assistance services. .

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Vulnerable People: the Need for Innovative Approaches', Public Space: The Journal of Law and Social Justice vol. 3, art. 7 (2009), 1-29; M Smith and A Patel, 'Using Monitoring Data: Examining Community Legal Advice Centres Delivery', Legal Services Commission, London, June 2010; L Curran, "I can now see there's light at the end of the tunnel", Legal Aid ACT: Demonstrating and Ensuring Quality Service to Clients", Legal Aid ACT, (Canberra, 2012); L Curran, 'Literature Review- A Literature review examining the literature on how to measure the 'successful outcomes': quality, effectiveness and efficiency of legal assistance services', February 2012, Attorney General's Department (Canberra, 2011)  
<http://www.ag.gov.au/LegalSystem/Legalaid/Documents/Literature%20review%20of%20legal%20assistance%20by%20Dr%20Liz%20Curran.pdf> (accessed 30 January 2013); C Coumarelos, D MacCourt, J People, H.M. McDonald, Z Wei, R Iriana and S Ramsey, 'Access to Justice and Legal Needs: Legal Australia Wide Survey Legal need in Australia, Law and Justice Foundation of New South Wales, (Sydney, August 2012).

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What are community legal centres and how do they differ from others who deliver legal services?

Community Legal Centres are independently operating not-for-profit community organisations that provide legal and related services to the public, focusing on the disadvantaged and people with special needs.<sup>7</sup> They are distinct from private lawyers whose main focus is as a business delivering professional legal advice and representation for a fee. They are different from Legal Aid Commissions which have a statutory mandate. Community legal centres whilst providing a professional legal service have a community focus and are ideally informed by their local community or experiences of the client group they aim to assist. For example, some community legal centres have advisory bodies formed from the client groups they represent such as the Homeless Person's Clinic in Melbourne.<sup>8</sup>

Due to the ways that community legal centres are structured they are a critical but often under-acknowledged part of participatory democracy in Australia. They engage in advocacy that is broader than just legal advice, information and representation. Community legal centres recognise the importance of addressing the underlying structural and systemic issues that cause, contribute and prolong disadvantage and undertake law reform and public policy advocacy.<sup>9</sup>

*Due to the ways that community legal centres are structured they are a critical but often under-acknowledged part of participatory democracy in Australia.*

This is seen as fundamental to their work. Case work is not regarded as the sole driver of community legal centres but rather as an important way of informing work that addresses systemic issues and can actually prevent the revolving door of multiple problems. By identifying these underlying problems and highlighting the individual impacts on the ground, community legal centres seek to rectify them. Community legal centres advocate for changes to laws and policies that impact disproportionately on disadvantaged community members.

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<sup>7</sup> <http://www.naclc.org.au/>

<sup>8</sup> <http://www.pilch.org.au/hplcpolicy/>

<sup>9</sup> <http://www.pilch.org.au/hplcpolicy/>

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### About the Consumer Action Law Centre (Consumer Action)

The Consumer Action Law Centre is a nationally recognised, specialist community legal centre based in Melbourne, Australia. It provides services to Victorian consumers. Consumer Action was formed in 2006 by the merger of the Consumer Law Centre Victoria and the Consumer Credit Legal Service. The merger was supported by Victoria Legal Aid and Consumer Affairs Victoria, which had provided funding to both centres.

The centre currently has almost 25 FTE positions. Services provided include legal advice (by telephone and email), ongoing legal assistance, legal representation, telephone financial counselling and training and advice to community workers. Consumer Action operates MoneyHelp, an email and telephone financial counselling service providing free advice to Victorians experiencing financial difficulty. This is nationally-recognised as the first point of telephone contact in Victoria for anyone with financial counselling issues. Clients can be referred between the legal practice and financial counselling service, and financial counsellors identify and report potential systemic issues faced by their clients. Policy and campaign work is undertaken on a wide range of issues. Priority is given to vulnerable and disadvantaged consumers both for legal assistance (through a triage process and application of a "case intake" policy) and in the types of issues taken on for the centre's policy and campaign work.

Consumer Action continued the approach of integrating casework and non-casework, which had been adopted by the two former centres, and which Consumer Action regards as one of its strategic strengths. Consumer Action believes that this requires more than simply doing casework, education, policy and campaigning--it requires active integration of these elements. This is achieved by Consumer Action in various ways, including internal processes that ensure that the broader impacts of individual cases are identified, and through position descriptions that formalise the duty of legal and financial counselling staff to identify and follow-up potential systemic issues.

Consumer Action's main sources of funding are the CLSP program (Victoria Legal Aid and Commonwealth Attorney General), and Consumer Affairs Victoria (CAV) to undertake policy, campaign and media work.<sup>10</sup> While some of the centre's policy work is undertaken within its CLSP funding, the additional resources provided by CAV enable the centre to focus on more systemic issues, and undertake more in-depth policy and campaign work, including maintaining a high media profile.

Consumer Action accepts funding from other sources for services or projects that fit within its strategic plan.

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<sup>10</sup> Consumer Affairs Victoria funding also covers services such as training of financial counsellors and the provision of legal advice to community workers.

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### About the Footscray Community Legal Service (FCLC)

FCLC is a generalist legal centre based in a low-income suburb in Melbourne. With a high population of refugees and individuals from non-English speaking backgrounds it has had to develop ways to effectively target those most in need.

With more demand for legal services than could be met by the legal centre, and requests for assistance coming from the less disadvantaged residents, FCLC decided some years ago to target particular groups in the community focussing on the types of legal problems that were experienced by those groups. Establishing two recent programs, an African Clinic and the 'Bring Your Bills Days' increased the proportion of clients who fell within the FCLC's target group.

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# Part Two: The Strategic Approach to Legal Problem Solving

### Why a Strategic Approach?

A strategic approach to problem solving helps address some of the challenges of providing an efficient service. Firstly, who should the centres help? It's simple to suggest that this should be whoever walks through the door, but if it is clear that there are other victims of a particular illegal practice, can it be justified to focus public resources only on one person and ignore the pressing problems of others with similar problems.

Some civil matters may involve a relatively small amount of money, in some cases less than the value of the legal resources required to resolve the dispute. Resolving the dispute in a way that benefits other individuals who have not sought assistance, or which prevents future exploitative behaviour, is an efficient use of community legal centre resources.

The campaign examples on linked credit outlined in Part Four of this report, particularly the Kleenmaid action, can highlight that whilst it may be time, cost and resource-intensive to assist one couple being pursued by a finance company, if assistance is given as a part of strategic litigation, community education and awareness-raising, then this work can create a precedent to compensate other consumers, prevent poor practices and inform other debtors. In these circumstances, the overall resources and efficiencies of taking the initial action can be justified and far reaching.<sup>11</sup>

### Why is it important to link campaign work with casework?

Running cases often provides information about a particular issue that can help in the design of a response. In some cases, it is necessary to examine contracts in detail and negotiate with other parties before the actual problem is clarified. This was the case with the Taxi Driver Legal Service, which was started because a number of CLCs, including FCLC, saw taxi drivers who were being sued, and who often claimed that their insurance would not pay. It was only by running a number of cases, perusing contracts, negotiating and issuing proceedings that the real issues came to light. The problem lay with the operation of taxi clubs, the type of insurance they provided, and the fact that it was actually the taxi clubs who were failing to indemnify their own members and drivers.<sup>12</sup>

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<sup>11</sup> N Rich, 'Reclaiming Community Legal Centres: Maximising our potential so we can help our clients realise theirs', Victoria Law Foundation Community Legal Centre Fellowship Final Report (Melbourne, April 2009) 62-68.

<sup>12</sup> L O'Brien, *In the driver's seat*, Federation of Community Legal Centres and Footscray Community Legal Centre, 2012 <http://www.footscrayclc.org.au/brochures-publications/>

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Government has also now explicitly called for holistic approaches in the National Partnership Agreement between the Commonwealth, States and Territories and Legal Assistance Services in response to some of the international research. A holistic approach which calls upon relationships and partnerships with other services or consumers to address systemic problems can be a way of achieving this.

As many of the campaign examples in this report highlight, outcomes often occur through joint actions with other agencies, whether these are other peak bodies or non-legal services, Royal Commissions, law reform bodies or regulators such as they ACCC or ASIC. Without such relationships and holistic approaches, there would be fewer impacts and fewer systemic changes. As this author noted in 2007, community legal centres have often identified and lobbied for changes to policies for decades. However, by the time the change is made the credit is often taken by others.

*As many of the campaign examples in this report highlight, outcomes often occur through joint actions with other agencies, whether these are other peak bodies or non-legal services...*

Given that community legal centres are interested in making a difference, they have historically been more concerned about effecting that change than trying to receive credit for their hard work. In the increasingly outcome-oriented funding regime, it may be time for community legal centres to stand up and start claiming this credit.<sup>13</sup>

The ‘Bring Your Bills’ campaign example, in Part Four, exemplifies how blending a number of approaches, thinking strategically about who the key players might be and bringing them all together in a room to deal with matters on the spot can have significantly better results than one-to-one individual case work which can also be resource intensive and more costly to the range of agencies involved and more stressful for the clients. These activities are not simply a community education “add on”, but ought be integral to the overall work of community legal centres if what they aim to do is make a difference for their clients and at times, the community.

The early intervention campaign examples highlight how difficult it can be to isolate actions or activities when they are taken within a broader strategy. These approaches often integrate a range of actions to affect the whole outcome, resulting in multiple outcomes and impacts. Different actions may be required at different times for different reasons to deal with changing circumstances (for example, maximising ‘tipping points’). These can benefit the client and often the broader community, which might also be harmed if the strategy is not adopted.

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<sup>13</sup> L Curran, ‘Making the Legal System More Responsive to Community: A Report on the Impact of Victorian Community Legal centre Law Reform’, La Trobe University and the Reichstein Foundation (Melbourne May 2007).

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The campaign examples also demonstrate that the work of community legal centres involves constant monitoring of issues arising for their client group and ongoing law reform. Some legislative and policy changes can be made but often these do not go far enough and so ongoing campaigning is needed to ensure reform. This takes time.<sup>14</sup> When change involves moving resistant legislators or companies, creating a shift in culture is not easy.<sup>15</sup>

*When change involves moving resistant legislators or companies, creating a shift in culture is not easy.*

It takes time to have an impact, but also to develop a service that has its head above the parapet and can identify opportunities for reform. The casework on taxi driver experiences that informed the Fels Inquiry into the Taxi Industry is one example of where this can lead. Giving these inquiries access to research and raw data from a community legal centre to inform their deliberations is likely to have significant impacts that would be easily missed in an evaluation not crafted to examine integrated and strategic legal service delivery.

*It takes time to have an impact, but also to develop a service that has its head above the parapet and can identify opportunities for reform.*

This is critical if real change and solutions to legal problems is to occur.

Consumer Action has had feedback that this process provides useful information to the regulators, and enables them to do their work.

Delia Rickard, Deputy Chair of ACCC, formerly of ASIC states:

*'Community Legal Centres such as the Consumer Action Law Centre are a critical ingredient if regulators like ASIC and the ACCC are to do our work well. Such services are often the first place disadvantaged consumers go to with their problems. Consequently these centres are frequently the first to identify emerging issues causing real detriment to vulnerable sectors of our community. This is particularly the case where centres combine financial counselling and legal services and integrate case work, research and policy development so that they can promote long term reforms.'*

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<sup>14</sup> See also discussion on international literature on the challenges of measuring policy and law reform in L Curran, 'Literature Review- A Literature review examining the literature on how to measure the 'successful outcomes': quality, effectiveness and efficiency of legal assistance services', February 2012, Attorney General's Department (Canberra, 2011)  
<http://www.ag.gov.au/LegalSystem/Legalaid/Documents/Literature%20review%20of%20legal%20assistance%20by%20Dr%20Liz%20Curran.pdf> (accessed 30 January 2013);

<sup>15</sup> L Curran, 'Making the Legal System More Responsive to Community: A Report on, (La Trobe University and the Reichstein Foundation (Melbourne, May 2007).

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*Centres such as Consumer Action that combine these skills are in a position to analyse their cases, identify systemic conduct (such as poor practices by debt collectors or equity stripping by fringe mortgage brokers) and present the necessary information to regulators, industry and governments. Their work regularly results in regulators taking on major litigation (such as the ACCC's current actions dealing with Door to Door sales in the energy sector) as well as real changes to industry conduct and significant law reform. In short, such centres are essential part of our consumer protection regime.'*

This quote suggests that external agencies not only see the value of Consumer Action's work but that there is merit in an integrated, multi-pronged and strategic approach that can lead to regulators being informed in matters that Consumer Action and potentially other community legal centres are well placed to inform on. The quote is illustrative of the fact that the work of Consumer Action and others is used to assist those statutorily charged with regulating activities and that the valuable work and information gathered by community legal centres at the 'coal face' can assist such regulators in achieving their legislative aims.

Many other statutory bodies have been the beneficiaries of the work done for clients by community legal centres. This is a role of community legal centres that has not really been named explicitly before. The Royal Commission into the Victorian Bushfires and the then Human Rights and Equal Opportunity Commission in their Inquiry the Stolen Generations relied on community legal centre support in gathering clients experiences and enabling them to be heard and which enabled these bodies to learn of their experiences on the nature and extent of client problems. For example, it was the work done by the legal assistance services sector which exposed the systemic problems with insurers in responding in a timely manner to claims for many people whose homes were destroyed by bushfires that brought this issue to the attention of the Royal Commission and informed recommendations for the insurance industry made by the Commission.<sup>16</sup>

Nicole Rich has warned that community legal centres need to be careful that they are not tempted by the attraction of funding for bulk service delivery into becoming 'case work on the cheap' rather than allowing legal aid offices with decently trained, salaried staff and proper office conditions to continue to do the work.<sup>17</sup> The danger is that community legal centres become enticed by further, but inadequate, funding (given their lack of adequate resources)

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<sup>16</sup> National Association of Community Legal centres, 'Why Community legal centres are Good Value

[http://www.naclc.org.au/resources/NACLC\\_value\\_web.pdf](http://www.naclc.org.au/resources/NACLC_value_web.pdf)

and The Royal Commission Into the Victorian Bushfires, Transcript 2009,

<http://www.royalcommission.vic.gov.au/getdoc/4b29289e-4036-4ac1-a613-c47e77f28d5f/RESP-7510-001-0001>

<sup>17</sup> N Rich, 'Reclaiming Community Legal Centres: Maximising our potential so we can help our clients realise theirs', Victoria Law Foundation Community Legal Centre Fellowship Final Report, (Melbourne, April 2009) 32- 34, 42-41, 46.

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into becoming slaves to the provision of one on one 'en masse' services at the funders' bidding leaving them with little capacity to be strategic and fulfil their critical role in improving the system and reducing injustice. If this occurs they become beholden to their funders and thus less independent and less able to respond to the community need which they need to be free to observe, analyse and address in, as this report suggests, a strategic and proactive way that makes a real difference to the clients and community.

Such strategic multi-pronged work is also critical in a democracy as it places a 'torchlight' on the real impact of laws and policies on members of the community who community legal centres work for and holds governments, officials and corporations with poor practices to account. Previous governments have explicitly expressed reticence about funding law reform and legal education work, perhaps because it holds policy-makers accountable for the impacts of their policies. Such endeavours strike at the very core of participatory democracy and do not make sense if there is a genuine commitment from government to effective and efficient service delivery and the rule of law.

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# Part three: Measurement— consideration of the strategic approach to legal problem solving

### Introduction

This report illustrates the importance of going beyond an individual approach to casework to benefit individuals, groups and the broader community. It argues that a strategic approach to problem solving can better ensure that a service is effective, efficient and targeted, with a broader and long lasting impact or as government says—a “successful outcome”.

One of the problems with required funder reporting in the legal services sector is that it has often been limited to listing the number of 'informations' or referrals, case work, representation law reform or community legal education handled by the service. Such an approach ignores the reality, namely, that people's problems do not come in silos or in neat pigeon holes that are limited to just providing information, referrals or case work, community legal education and law reform. More commonly they require an amalgam of approaches, depending on the circumstances or opportunities. The fact that people's legal problems do not fit conveniently into silos has been the subject of now plentiful and significant Australian and International research over the past decade.<sup>18</sup>

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<sup>18</sup> A Buck, N Balmer and P Pleasence, 'Social Exclusion and Civil Law: Experience of Civil Justice Problems among Vulnerable Groups', *Journal of Social Policy and Administration* vol. 39, no.3 (2005), 302, 318-20; R Moorhead, M Sefton and G F Douglas, 'The Advice Needs of Lone-parents', *Family Law*, vol. 34 (2004), 667; A Buck, P Pleasence, N Balmer, A O'Grady and H Genn, 'Lone-parents and Civil Law: An Experience of Problems and Advice-seeking Behaviour', *Journal of Social Policy and Administration* vol. 38, no. 3 (2004), 253-69; S Ellison, L Schetzer, J Mullins, J Perry and K Wong, *Access to Justice and Legal Needs: The Legal Needs of Older People* (Sydney: New South Wales Law and Justice Foundation, 2004), <http://www.lawfoundation.net.au/report/older>; C Coumarelos, Z Wei and A Zhou, *Justice Made to Measure: New South Wales Legal Needs Survey in Disadvantaged Areas* (Sydney: New South Wales Law and Justice Foundation, 2006), <http://www.lawfoundation.net.au/report/survey2006>; M Karras, E McCarron, A Gray and S Ardasinski, *On the Edge of Justice: the Legal Needs of People with a Mental Illness in New South Wales* (Sydney: New South Wales Law and Justice Foundation, 2006); S Forell, E McCarron and L Schetzer, *No Home, No Justice? The Legal Needs of Homeless People in New South Wales* (Sydney: New South Wales Law and Justice Foundation, 2005); New South Wales Law and Justice Foundation, *New South Wales Law and Justice Foundation, 'Access to Justice and Legal Needs, Stage 1, Public Consultations', 2003* and New South Wales Law and Justice Foundation, 'Qualitative Legal Needs Survey: Bega Valley (Pilot)', New South Wales Law and Justice Foundation 2003, see <https://www.lawfoundation.net.au/publications>; P Pleasence, N J Balmer, A Buck, A O'Grady and H Genn, 'Multiple Justiciable Problems: Common Clusters and their Social and Demographic

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Diguisto, in a Discussion Paper for the New South Wales Law and Justice Foundation<sup>19</sup>, suggests an approach to measuring of legal assistance service effectiveness which is concerning because the method proposed seems to assume clients are in the main heterogeneous and reduces legal service delivery to transaction based measurements. In addition, suggestions that control groups can be used and that such groups are comparable is dangerous, given the diversity and difference between cases and clients in the legal assistance service sphere. This also presents some ethical issues for those undertaking the research, for example, in not giving one group a service, so as to measure the other group's level of effective service. Concern about the use of control groups in such legal aid research has been the subject of some discussion.<sup>20</sup> The author is not sure that legal aid and community legal centre clients can be so easily compared in view of their multiple and complex problems and needs. These include addictions, poverty, and mental health issues.<sup>21</sup>

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Indicators', *Journal of Empirical Legal Studies* vol. 1, no. 2, 2004, 301-29; L Curran, *Ensuring Justice and Enhancing Human Rights: A Report on Improving Legal Aid Service Delivery to Reach Vulnerable and Disadvantaged People*, (Melbourne: La Trobe University and Victoria Law Foundation, 2007), 4; A Buck, P Pleasence and N J Balmer, 'Education Implications from the English and Welsh Civil and Social Justice Survey', *Annexe to the PLEAS Taskforce Report* (London: PLEAS Taskforce, 2007); A Buck and L Curran, 'Delivery of Advice to Marginalised and Vulnerable People: the Need for Innovative Approaches', *Public Space: The Journal of Law and Social Justice* vol. 3, art. 7 (2009), 1-29; M Smith and A Patel, 'Using Monitoring Data: Examining Community Legal Advice Centres Delivery', *Legal Services Commission*, London, June 2010; L Curran, "I can now see there's light at the end of the tunnel", *Legal Aid ACT: Demonstrating and Ensuring Quality Service to Clients*, *Legal Aid ACT*, (Canberra, 2012); L Curran, 'Literature Review- A Literature review examining the literature on how to measure the 'successful outcomes': quality, effectiveness and efficiency of legal assistance services', February 2012, Attorney General's Department (Canberra, 2011)  
<http://www.ag.gov.au/LegalSystem/Legalaid/Documents/Literature%20review%20of%20legal%20assistance%20by%20Dr%20Liz%20Curran.pdf> (accessed 30 January 2013); C Coumarelos, D MacCourt, J People, H.M. McDonald, Z Wei, R Iriana and S Ramsey, 'Access to Justice and Legal Needs: Legal Australia Wide Survey Legal need in Australia', *Law and Justice Foundation of New South Wales*, (Sydney, August 2012).

<sup>19</sup> E Diguisto, 'Effectiveness of Public Legal Assistance Services: A Discussion Paper', *Justice Issues*, Paper 16, October 2012, *Law and Justice Foundation of New South Wales*, (Sydney, 2012).

<sup>20</sup> See discussion in L Curran, 'Literature Review- A Literature review examining the literature on how to measure the 'successful outcomes': quality, effectiveness and efficiency of legal assistance services', February 2012, Attorney General's Department (Canberra, 2011):<http://www.ag.gov.au/LegalSystem/Legalaid/Documents/Literature%20review%20of%20legal%20assistance%20by%20Dr%20Liz%20Curran.pdf> (accessed 30 January 2013);

<sup>21</sup> C Coumarelos, D MacCourt, J People, H.M. McDonald, Z Wei, R Iriana and S Ramsey, 'Access to Justice and Legal Needs: Legal Australia Wide Survey Legal need in Australia', *Law and Justice Foundation of New South Wales*, (Sydney, August 2012).

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### Why is it important to link campaign work with casework?

Most non-casework undertaken by FCLC and Consumer Action is based on the casework of the centres. Running cases can often provide information about a particular issue that can help in the design of a response. In some cases it is necessary to examine contracts in detail and negotiate with other parties before the actual problem is clarified. This was the case with the Taxi Driver Legal Service, which was started because a number of CLCs, including FCLC, saw taxi drivers who were being sued, and who often claimed that their insurance would not pay. It was only by running a number of cases, perusing contracts, negotiating and issuing proceedings that the real issues came to light. The problem lay with the operation of taxi clubs, the type of insurance they provided, and the fact that it was actually the taxi clubs who were suing the drivers.

### Internal Processes that lead to Strategic Approaches

#### **Consumer Action Law Centre**

Consumer Action Law centre (Consumer Action) has funding from CAV to undertake policy, campaign and media work<sup>22</sup> in relation to consumer issues. While some of the centre's policy work is undertaken within its CLSP funding, the additional resources provided by CAV enable the centre to focus on more systemic issues, and undertake more in-depth policy and campaign work, including maintaining a high media profile.

Consumer Action integrates its casework, policy and campaign work because this approach achieves the best outcomes, both for individual clients and the centre's broader client group (disadvantaged consumers). The centre focuses its resources on vulnerable and disadvantaged consumers by prioritising these consumers for higher levels of legal assistance, and by prioritising issues which are more likely to affect disadvantaged consumers. While any consumer can access the centre's legal advice service via telephone or email, the calls are triaged on the basis of the individual's circumstances and the type of problem. The telephone financial counselling service, discussed earlier, also identifies consumers who may need legal assistance.

Both policy staff and legal staff contribute to decisions about which matters receive extended assistance (which usually means that legal representation is provided rather than legal advice and assistance). These decisions are based on the Consumer Action's case-intake policy, which considers a range of factors, including the individual's circumstances (disadvantage and vulnerability), the impact of the case on the individual and whether the circumstances of the case are likely to have an impact on a number of consumers or whether the case may contribute to a current strategic response to an issue. If a less disadvantaged individual has a problem that is likely to affect disadvantaged consumers, Consumer Action may offer to take on the case if it is likely to have a broader impact. If

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<sup>22</sup> Consumer Affairs Victoria funding also covers services such as training of financial counsellors and the provision of legal advice to community workers.

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Consumer Action can only take on one or two cases involving a particular issue, it may choose to act for the individual who is willing to publicise their case, on the basis that this would increase the likelihood that the Centre's resources would have the greatest impact.

Identifying potential systemic issues starts as soon as advice is provided. Legal and financial counselling staff are aware of the importance of reporting any particular issues that may arise from advice calls, and can place particular cases on a list for consideration for legal representation. Staff are also able to tick a box on the Consumer Action's client database, indicating that a matter may have broader implications. All flagged records are then examined regularly, and anonymous details of the type of problem are sent in a batch to the relevant regulator—usually the Australian Competition and Consumer Commission, Australian Securities or Investments Commission or Consumer Affairs Victoria. Consumer Action has had feedback that this process provides useful information to the regulators, and enables them to request further information on any particular issues.

While in all cases the client's interests are paramount a broader approach may be discussed with the client. This may include the use of media (which may, or may not, identify the individual), or whether the client is prepared to give evidence to a regulator. In some cases it is the individual client who wants to "take a stand" and do publicity to "warn others".

Considerations at this stage may include whether the issue will be publicised, whether there may be consumers in a similar situation who Consumer Action may seek (for example by contacting financial counsellors and other community legal centres), and whether there may be a way of undertaking legal action which will benefit the individual and consumers broadly.

One recent example involved systemic conduct by Motor Finance Wizard, which has been subject of significant action by Consumer Action in the past (see case study in this report). Recent legislation means that VCAT can no longer hear credit matters, and that these matters must be taken to a court or an industry ombudsman scheme. While the centre had obtained a damning VCAT decision involving a number of MFW's practices, Consumer Action believed that the Credit Ombudsman Ltd (COSL) should take into account the issues raised by the VCAT decision.

The centre was concerned that COSL might deal with each case one by one, thereby failing to include systemic practices into its dispute resolution. Having received constant calls about this company, which have been a focus for Consumer Action for some years, it was decided to take on 10 of these matters and lodge them with COSL at the same time, asking that COSL consider its approach to the common issues that arose in all cases. It was hoped that COSL might be able to develop a consistent approach to particular common issues with these disputes, which would not only assist Consumer Action's clients but future clients and others who might go directly to COSL.

While increased access to informal dispute resolution processes can benefit individual consumers, it can reduce the likelihood of outcomes that have broader impact. Consumer Action continues to consider innovative approaches to its casework.

As particular issues arise or continue to involve legal and policy staff, fortnightly strategy meetings are held that focus on one or two current issues. These meetings involve the

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specific legal and policy staff who are working on the issue, as well as the staff member responsible for media.

Strategic responses can include a particular legal response, targeted media/publicity, compiling information and case studies for regulators, or law reform submissions. There is no uniform approach to issues, but a response is planned based on a range of factors and assessment of which approaches are likely to have an impact. Consumer Action is always thinking about innovative approaches. For example, the Do Not Knock campaign started with an innovative approach to an ongoing problem.

A small number of issues finally become a key policy focus for the centre. The issues chosen for more in-depth work are based on a range of considerations, including the seriousness and breadth of the problem, whether there are current opportunities for regulator action or law reform, and whether other organisations are already working on the issue. The Centre is sometimes able to compliment the work of others and in some cases a joint and collaborative approach is needed which also reduces any duplication of services.

### **Footscray Community Legal Centre**

The Footscray Community Legal Service (FCLC) is a generalist legal centre based in a low-income suburb in Melbourne. With a high population of refugees and individuals from non-English speaking backgrounds it has had to develop ways to target those most in need effectively.

With more demand for legal services than could be met by the legal centre, and requests for assistance coming from the less disadvantaged residents, FCLC decided some years ago to target particular groups in the community focussing on the types of legal problems that were experienced by those groups.

To this end, FCLC opened an African Legal Clinic at a local settlement agency. Over time that clinic was the model for the developing the separate in-house refugee clinics targeting fines, tenancy and general legal problems. FCLC also developed 'Bring Your Bills' outreach clinics (see case study discussed later in this report) as an introduction to a refugee financial counselling clinic, targeting debt and energy problems.

The success of these clinics, and the expertise developed in assisting newly arrived communities helped FCLC to obtain significant project funding to expand its range of services.

The additional funding enabled FCLC to produce policy papers that identified the issues faced by its clients and to develop education tools to help clients to overcome their problems.

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The papers produced include:

- Out of Africa and into Court - the Legal Problems of African Refugees<sup>23</sup>;
- Prevention is Better than Cure - Can Education Prevent Refugees' Legal Problems?<sup>24</sup>
- Making it Home - Refugee Housing in Melbourne's West<sup>25</sup>

Such papers have been widely used in various sectors and are often cited. They have been used for judicial education and to inform various inquiries. The benefits of this awareness-raising continue to flow. An example is a National Education Campaign for newly arrived African communities that emerged from the 'Out of Africa Project' and that is now being distributed through National Legal Aid as a nation-wide education campaign. This is one illustration of the ripple effect and ongoing impact of small projects started by FCLC.

FCLC has also partnered with other agencies, including AMES and Victoria Legal Aid, to develop and distribute education materials targeting newly arrived communities who have legal problems involving energy, housing and telecommunications.

This strategy of targeting client groups and problems was extended beyond newly arrived communities. In recent years, FCLC has been funded to assist court debtors, residents with land rates arrears and taxi drivers. Some of the projects developed by the FCLC had been identified as best practice at a national level by Legal Aid, community legal centres and financial counselling peak bodies.

### Making a Difference - The Dangers in Funders Being Too Prescriptive

If funders and the community want the legal assistance sector to make a difference in solving people's problems and advancing and protecting community rights then they must recognise the need to approach problems strategically and use various approaches to obtain results. To achieve this, organisations must be given a level of autonomy that frees them up to be able to use their skills, experience and knowledge of the system as well as the clients' actual circumstances to decide the best strategy.

One of the difficulties with reporting (in particular the focus on quantitative data) is that the services can become slaves to reporting what the funders want rather than taking a step back and asking what is the most effective and strategic way of actually helping the client/clients resolve or prevent the problem, not only for this client, but for future clients. It may be better to ask whether the service should address the systemic issues that the case reveals. It might also be better to ask whether it is possible to change policy or legislative settings or encourage corporate responsibility and good practice, take on a case, raise awareness, enter into a dialogue or a combination of these and consider which ones combined are likely to create a difference.

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<sup>23</sup> June 2009, Katie Fraser, published by FCLC

<sup>24</sup> 2011, Katie Fraser and FCLC, Published by Victorian Law Foundation

<sup>25</sup> March 2012, Laura Berta, published by FCLC

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There is also a problem with activity reporting, where the focus can become the number of tasks completed, which may have little bearing on the actual effect of the intervention. To reduce things to tasks or activities can, lead to significant inefficiencies or over-servicing as services become obsessed with the number of the activities they are doing so that they can report positively and not lose their funding, rather than strategically approaching client problems to achieve real results.

This Report is not arguing for a reduction in accountability, but rather that the measures introduced to encourage or report on accountability are relevant, useful, meaningful and do not unnecessarily increase the burden on services leading to a focus on reporting rather than quality service delivery. The challenge is to identify ways in which the real value of such service provision can be measured.

This report provides real-life examples in Part Four of how a more thoughtful and strategic approach to service delivery and problem solving for clients can be more useful than merely providing a service based around the number of activities.

The report shows some of these strategic approaches that have resulted in real changes, often going beyond the immediate client's problem and actually reforming the system to prevent further cases, raise community awareness and empower community members to take action or improving the administration of codes of conduct and regulation to better protect citizen's rights.

By examining some early intervention case studies of work undertaken by Consumer Action and FLC, often in partnership with a range of agencies, this report shows how such strategic thinking and integrating different approaches has had extensive and often far-reaching outcomes that extend well beyond merely giving advice or information being provided. The approach can be far more successful in reducing the revolving door than taking an individual approach. This is not to devalue or downgrade the importance of individually tailored legal service delivery. This is necessary, for example, when the State is prosecuting an alleged defendant who is entitled to due process and the rule of law and individual representation. This is a critical feature in any liberal democracy. Rather, this report argues that in appropriate instances, more can be achieved by taking a strategic approach.

This report also argues that it may be sensible to identify whether a centre has the structure and appropriate processes to identify problems, target its services and respond strategically. Once this is established, it is vital that there is confidence in the judgement and expertise of the people who deliver services every day to clients. While governments and funders may have a genuine desire to ensure transparency, the efficient use of taxpayer funds and accountability, if they are not careful, they can overlook the role that trust in expertise on the ground and in dealing with the specific circumstances of each issue can play. By being too prescriptive funders can unwittingly stifle innovation.. This can also lead to distortions and inefficiencies in service delivery which hamper the responsiveness of a service to the contexts of the client situation or the community or client groups they service.

Funders are removed from the day to day imperatives and complexities or vulnerabilities and the specific situations encountered which the service is more suited to identifying and actioning.

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### Issues around Measuring Legal Assistance Services for Effectiveness, Efficiency, Outcomes

This report strongly endorses the need for services to be evaluated. However this should go beyond the impact of services on individual clients. Evaluating individual casework in the legal assistance sector presents challenges, but evaluating advocacy work even more so.<sup>26</sup> As some of these case studies show, the link between particular advocacy and the outcome may often be unclear. There may be years between the advocacy activities and a measurable outcome.<sup>27</sup> Legal assistance services need appropriate evaluation tools and resources to better incorporate evaluation processes in their work.<sup>28</sup> It is critical that the tools are relevant, practical and based on information about what is actually occurring. They should also be accurate and measurable, and inform and encourage effective practice. In order to be able to evaluate effectively however, services need to be appropriately resourced to undertake this task.

The National Partnership Agreement (NPA) between the Commonwealth, State and Territory Governments and Legal Aid Commissions and Community Legal Centres, Aboriginal and Torres Strait Islanders and Family Violence Prevention Services expires on 30 June 2014. Services funded by the Commonwealth are currently being reviewed by the Attorney General's Department by Allen's Consulting. The NPA requires the demonstration of six aspects of legal assistance services:

- Increase their focus on early intervention and prevention services
- Encourage greater collaboration among legal and other service providers
- Find better ways to help people resolve their legal problems
- Address social exclusion including Indigenous disadvantage
- Adopt a more holistic approach to resolving people's legal problems
- Improve targeting of services to disadvantaged communities and the wider community
- Support the principles of the Australian Government's 'Strategic Framework for Access to Justice in the Federal Civil Justice System'.

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<sup>26</sup> L Curran, 'Making the Legal System More Responsive to Community: A Report on the Impact of Victorian Community Legal Centre Law Reform Initiatives', La Trobe University and the Reichstein Foundation, (Melbourne, May 2007).

<sup>27</sup> See also discussion on international literature on the challenges of measuring policy and law reform in L Curran, 'Literature Review- A Literature review examining the literature on how to measure the 'successful outcomes': quality, effectiveness and efficiency of legal assistance services', February 2012, Attorney General's Department (Canberra, 2011)  
<http://www.ag.gov.au/LegalSystem/Legalaid/Documents/Literature%20review%20of%20legal%20assistance%20by%20Dr%20Liz%20Curran.pdf> (accessed 30 January 2013);

<sup>28</sup> N Rich, 'Reclaiming Community Legal Centres: Maximising our potential so we can help our clients realise theirs', Victoria Law Foundation Community Legal Centre Fellowship Final Report, (Melbourne April 2009) 104-107.

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The current Community Legal Service Information System (CLISIS) data collection processes, and the proposed remodelling of CLISIS reporting around numbers of activities and tasks do not collect data that has relevance or which is useful in terms of explaining what are the quality and impact of the service. In addition, the survey instruments' questions in the current Allen's Consulting Review of Legal Assistance Services miss the mark as what is asked does not necessarily connect with or specifically relate to the NPA outcomes that these tools are purportedly designed to measure.

Care needs to be taken to ensure that the 'dog does not wag the tail', which can occur when reporting requirements take over from sensible decision-making. There is also a danger in governments and funders relying on the responses to questions in the evaluation/reporting requirements which do not directly relate to or address the objectives they are seeking to measure. Decisions should be based on the best response to the client or community's legal situation, rather than the provision of numbers of, for example client advices or referrals. This ends up emphasising the activity rather than the positive outcome. It may be that taking time to approach a client problem strategically may have a better outcome for that client. To do this may take more time and mean less numbers of activities but (as Part Four case examples demonstrate) have more impact. A holistic approach can sometimes be needed integrating a number of ways of operating and that calls upon relationships and partnerships with other services or consumers (see below 'Do Not Knock' Campaign). Working with other agencies and building and sustaining effective relationships also takes time. The pressure is that a service may look bad simply because the numbers of activities are down. If numbers of activities is relied on as the measurement of effectiveness, it may come at the cost of a service which is in fact making a difference for the client/s or community in which it works by being more thoughtful about how to respond effectively to the given situation. Activity reporting or reporting on 'number of cases finalised' may only reveal the number of tasks done rather than the quality or effect of this work and can be misleading. Also use of an effective strategy may be lost in such a narrow mode of reporting. For example, a case may be deemed finalised because the client failed to get in contact with the service. This does not tell us anything about the quality of the service provided nor its impact. Activity reporting also contradicts the NPA's stated aims of providing holistic and joined up services by continuously requiring that the reporting is about actions taken in isolation from other integrated and often more effective approaches that may be interconnected.

Although government has now explicitly called for holistic approaches in response to some of the international research, it can still end up forcing agencies to work in silos by demanding that the number of certain activities remain high and by insisting on reporting activities in high numbers.

A blend of community legal education, information sharing, complaints handling, advocacy, policy work and case work can all contribute to ensure clients have money to live on rather than be pursued unnecessarily by debt collectors. It can put pressure on recalcitrant businesses that aim to exploit the vulnerable or uninformed. The 'Bring Your Bills' case study, below, exemplifies how blending a number of approaches and thinking strategically about who the key players might be and bringing them all together in a room to deal with matters on the spot can have significantly better results than one-to-one individual case work which can also be resource intensive and more costly to the range of agencies involved and

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more stressful for the clients. These activities are not simply a community education “add on”, but are integral to the overall work of the FCLC.

This report aims to show that pigeon holing things into activities and 'informations,' 'referrals' and 'casework' ' representation' or various other tasks, may not actually end up measuring anything relevant. Nor does it necessarily reflect effectiveness, efficiency, targeting, quality or impact. Alone, these measures may not be helpful in showing what some centres are actually doing and whether this has made any difference to clients.<sup>29</sup> The case studies below show how activities that are integrated and flexible can all work together to form a strategic approach to problem solving which has been effective and enable interventions which prevent early future cases arising.

### A strategic approach to problem solving

A strategic approach to problem solving helps address some of the challenges of providing an efficient service. Firstly, who should the centres help? It's simple to suggest that this should be whoever walks through the door, but if it is clear that there are other victims of a particular illegal practice, can it be justified to focus public resources only on one person and ignore the pressing problems of others with similar problems.

Some civil matters may involve a relatively small amount of money, in some cases less than the value of the legal resources required to resolve the dispute. Resolving the dispute in a way that benefits other individuals who have not sought assistance, or which prevents future exploitative behaviour, is an efficient use of community legal centre resources. The case studies on linked credit, particularly the Kleenmaid action, can highlight that whilst it may be time, cost and resource-intensive to assist one couple being pursued by a finance company, if assistance is given as a part of strategic litigation, community education and awareness-raising, then this work can create a precedent to compensate other consumers, prevent poor practices and inform other debtors. In these circumstances the overall resources and efficiencies of taking the initial action can be justified and far reaching.<sup>30</sup>

In some case studies, a decision has been made to undertake a particular project. Other case studies simply illustrate how a strategic approach influences all work done by a centre. This may include providing advice and targeting particular client groups, determining which

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<sup>29</sup> For a detailed discussion of the risks of not measuring legal assistance services with great care, L Curran, 'Literature Review- A Literature review examining the literature on how to measure the 'successful outcomes': quality, effectiveness and efficiency of legal assistance services', Attorney General's Department, (Canberra, February 2012)  
<http://www.ag.gov.au/LegalSystem/Legalaid/Documents/Literature%20review%20of%20legal%20assistance%20by%20Dr%20Liz%20Curran.pdf> (accessed 30 January 2013).

<sup>30</sup> N Rich, 'Reclaiming Community Legal Centres: Maximising our potential so we can help our clients realise theirs', Victoria Law Foundation Community Legal Centre Fellowship Final Report (Melbourne, April 2009) 62-88.

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cases are taken on, considering strategic approaches to the individual case and to addressing the problem more broadly.

This model may not be appropriate for all community legal centres but for some this provides the optimum outcomes for the resources available. In reviewing the work of CLCs, it is important to consider ways that relevant data and information can be collected and analysed that acknowledges the value of a broader strategic approach, and which doesn't discourage innovative approaches.

### The Australian Legal Landscape and Reality of Providing Legal Assistance Services

It is well-documented that legal aid and community legal centres work with the disadvantaged and that such work is complex and often in the context of very few resources and chronic underfunding.<sup>31</sup> The recent and worthy requirement by funders and community legal centres in ensuring that they target those most in need and those experiencing social exclusion is laudable but they also need to reflect on the fact that such work will take more time and effort than delivering services to people who are articulate and have less barriers and the multiple and often compounding problems that those experiencing disadvantage will encounter. This aspect of such work is largely misunderstood by some who fund legal assistance services.

The recent Australia Wide Legal Need Survey was conducted on behalf of National Legal Aid by the New South Wales Law and Justice Foundation.<sup>32</sup> The study examines the nature of legal problems, the pathways to their resolution and the demographic groups that struggle with them.

It provides valuable evidence-based data to inform debate and policy directions about legal service provision and access to justice across Australia. The study consists of 20716 telephone interviews with household residents aged 15 years or over across Australia. There were 2000 respondents in each of the eight Australian states/territories. The respondents' awareness of some public legal services was low.

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<sup>31</sup> The Senate Legal and Constitutional Affairs Committee, 'Inquiry into Access to Justice', Chapter 8. <[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate\\_Committees?url=legcon\\_ctt/e/completed\\_inquiries/2002-04/legalaidjustice/index.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctt/e/completed_inquiries/2002-04/legalaidjustice/index.htm)>

<sup>32</sup> C Coumarelos, D MacCourt, J People, H.M. McDonald, Z Wei, R Iriana and S Ramsey, 'Access to Justice and Legal Needs: Legal Australia Wide Survey Legal need in Australia, Law and Justice Foundation of New South Wales, (Sydney, August 2012).

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Some of the key findings in the report on the study were as follows:

- Legal problems are widespread and often have adverse impacts on many life circumstances
- Some people, most notably the disadvantaged, are particularly vulnerable to legal problems, and may have substantial and multiple problems
- A sizeable proportion of people take no action to resolve their legal problems and consequently achieve poor outcomes
- Most people who seek advice do not consult legal advisers and resolve their legal problems outside the formal justice system.

Across jurisdictions, approximately half (49–53 per cent of the legal problems resulted in respondents seeking advice, about three-tenths (27–32 per cent) were handled without advice and close to one-fifth (16–21 per cent) resulted in no action. Respondents sought advice for 51 per cent of legal problems, handled 31 per cent of legal problems without advice and took no action for 18 per cent of legal problems.

The results of the study (the most extensive ever conducted in Australia) suggested that ignoring legal problems often resulted in unmet legal need. Respondents often reported multiple reasons for ignoring legal problems. In many cases, failure to take action was due to poor legal knowledge, other personal constraints or possible systemic constraints.

It may not always be a question of resources, but rather one of changing approaches and modes of service delivery, or even changing the targets of some of these services. This CALC and FCLC report presents ways in which this might be actioned by the adoption of strategic and integrated approaches to legal problem solving.

The Australia-wide Legal Needs study noted that there was considerable diversity in the experience, handling and outcome of legal problems. Some people were resilient, while others experienced multiple, severe legal problems. Some people achieved good outcomes by capably using self-help strategies, while others relied on expert advice. In some cases, people appeared to have poor legal knowledge and poor legal capability, with some people left their legal problems unresolved. This diversity means that no single strategy will successfully achieve justice for all people. Rather, the approach to justice must be multifaceted and must integrate a raft of strategies to cater for different needs. This report supports this proposition.

The Australia-wide Legal Need Survey report's authors suggest that integrated service delivery across legal and broader human services is critical, given that legal needs are often interconnected with non-legal needs. Non-legal professionals are routinely consulted by people with legal needs. This is supported by the experience of Consumer Action and FCLC.

The Law Survey authors' findings reveal that legal problems can cause a broad range of non-legal problems. Many people, most notably disadvantaged people (the target group of community legal centres), experience multiple interrelated legal and non-legal problems.

This report also suggests that strategic thinking and integrated approaches are required and that any measurements of a service's effectiveness need to consider the many challenges and differences that may be needed to achieve the most impact.

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Given that services work every day in their own locality or within a particular area of law, they should be expected to have the skills and experience to determine the strategies that will work “on the ground”. This should be supported and enabled through adequate resources, funding and autonomy, with accountabilities but ones that are not too onerous and which do not deflect from doing the very work that they are charged to do. This author has also recently written about the many and diverse challenges that face the range of legal assistance agencies given their clients and localities.<sup>33</sup>

### Unmet Legal Need a Complex Area for Measurement

It may be a controversial statement but the reality can be that those services that better target services are less likely to see evidence of unmet need. This isn't always so, but in targeting and prioritising, a community legal centre can ensure that matters they decide not to handle, don't get to their door--or that demand is handled in a way that doesn't disadvantage staff, the client or the community by taking action early to preventing the revolving door. Another challenge which has been identified is that members of the community be they clients or non-legal workers may not be able to identify legal need as they may not necessarily be able to identify a problem as legal in nature when it arises.<sup>34</sup>

At Consumer Action for example, the aim is to provide a balance of information, advice and casework. For example, ongoing advice may be provided or letters and other documents may be drafted for the client or Consumer Action lawyers may advocate on behalf of consumers. Responding to all calls throughout the day would not allow Consumer Action to do anything other than provide information and some advice, which is effectively Band-Aid assistance. Consumer Action would rather offer effective assistance that is more likely to have an effective impact.

Reducing the hours that Consumer Action's telephones are "open", reduces the evidence of unmet need. Introducing a more efficient queuing system almost doubled the number of calls, which was unmanageable. The number of calls returned to the previous number when the available hours were halved. When the service is unavailable callers receive information

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<sup>33</sup> L Curran, “I can now see there's light at the end of the tunnel”, Legal Aid ACT: Demonstrating and Ensuring Quality Service to Clients”, Legal Aid ACT, (Canberra, 2012); L Curran, 'Literature Review- A Literature review examining the literature on how to measure the 'successful outcomes': quality, effectiveness and efficiency of legal assistance services', February 2012, Attorney General's Department (Canberra, 2011)  
<http://www.ag.gov.au/LegalSystem/Legalaid/Documents/Literature%20review%20of%20legal%20assistance%20by%20Dr%20Liz%20Curran.pdf> (accessed 30 January 2013); C Coumarelos, D MacCourt, J People, H.M. McDonald, Z Wei, R Iriana and S Ramsey, 'Access to Justice and Legal Needs: Legal Australia Wide Survey Legal need in Australia, Law and Justice Foundation of New South Wales, (Sydney, August 2012).

<sup>34</sup> M Noone and K Digney, “It's Hard to Open up to Strangers” ‘Improving Access to Justice: The Key Features of an Integrated Legal Services Delivery Model’, Research Report, Legal Services Board and La Trobe University, (Melbourne, September 2010).

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about fact-sheets and kits on Consumer Action's website relating to particular consumer problems. Consumer Action has several processes that help it to better target those who are disadvantaged, and provide the appropriate balance of advice and legal representation. In addition, Consumer Action has a regular process of gaining feedback from clients who have received legal advice by 'call backs' to ascertain the outcomes for clients of the advice given and provide feedback to the service so that it can continuously improve its service.

Consumer Action has recently implemented a more refined "triage" process, where it aims to identify those who are disadvantaged, the urgency of their situation, and whether it can assist at an early point. This also includes refusing assistance (all but basic information and referral to the website or other service) to some individuals who are not as disadvantaged, but may still be unable to afford legal assistance.

While Consumer Action is aware of unmet need, the better systems are at meeting the needs of the target group (disadvantaged consumers), the less apparent unmet need is staff from day to day. It is Consumer Action's view that daily reminders to staff of unmet need (for example, messages which cannot be returned or too many clients to deal with appropriately) could suggest inadequate systems, and would lead to staff stress and be unproductive. It does recognise however, that some services that accept "drop in" clients may find it more difficult to do this. While unmet legal need is not always easy to assess, Consumer Action believes this could be done in a range of ways. For example, Consumer Affairs Victoria received about 135,000 calls to their phones in 2011-12 in relation to general consumer issues. While many of these calls may not involve a need for legal assistance, Consumer Action understands that many involve legal issues. Consumer Action is able to assist about 5,000 consumers per year with legal advice and representation. It is also aware that the Australia Wide Law Survey mentioned above<sup>35</sup>, provides extremely valuable information about legal needs in Australia, which should inform any evaluation to ensure its instruments and measurements are informed and to reduce the risk of responses that distort the reality of what services do daily and in the long term to achieve an impact/outcome.

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<sup>35</sup> C Coumarelos, D MacCourt, J People, H.M. McDonald, Z Wei, R Iriana and S Ramsey, 'Access to Justice and Legal Needs: Legal Australia Wide Survey Legal need in Australia, Law and Justice Foundation of New South Wales, (Sydney, August 2012).

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# Part four: campaign examples

### Actual Examples

These campaign examples explain the factors that influenced and informed the strategic approach that was taken in cases that often came to Consumer Action and FCLC as a result of clients telling their stories to the services.

They reveal the often diverse, but circumstance-informed reasons as to the way the action was taken. They show that there was no single approach that led to an outcome/impact but more often an integrated use of the best approach in a given circumstance and at a given time. Being responsive to the situation, having the space for innovative thought and an understanding of the broader picture ("helicopter vision") leads to an impact.

### Linked Credit

#### Case Study

A couple had ordered appliances for their kitchen from Kleenmaid Pty Ltd, paying the full \$9,000 by obtaining a loan through Lombard Finance. When Kleenmaid went into liquidation in May 2009, and failed to deliver the goods, the couple called Consumer Action for legal advice. Based on that advice, the couple advised Lombard that the finance contract was terminated because it was a "tied-loan agreement" pursuant to the Consumer Credit Code. However, Lombard rejected the termination, and threatened action against the couple if they didn't pay. The couple then sought further assistance from Consumer Action.

Consumer Action issued legal proceedings on the couple's behalf in VCAT, on the basis that the termination of the loan contract was valid.

VCAT found that the contract had been lawfully rescinded by the clients and ordered that \$9153.00 be credited to them by Lombard.

The outcome had the potential to benefit up to 7,000 Australian consumers, in relation to debts totally \$6.5 million.

#### Thinking strategically from the start by integrating policy with casework

A media release at this initial stage ensures that other consumers are made aware of the issues which may affect them.

Even when providing the initial advice, the legal staff were aware that the one call received may indicate a broader problem affecting other consumers. Discussion had begun about how Consumer Action might respond. A key element in being strategic at Consumer Action is the good communication that exists between those doing case work and those engaged in the policy and campaign work. Structured meetings to explore trends in case work and to identify systemic issues occur weekly.

While Lombard's initial failure to agree to the clients' request was disappointing, it did provide an opportunity for Consumer Action to potentially achieve a broader outcome from the case.

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When proceedings were issued in Victorian Civil and Administrative Tribunal (VCAT), Consumer Action issued a media release <sup>36</sup> (with the clients' permission) about the VCAT claim, noting that a decision could establish a precedent that would apply to other consumers. Consumer Action's clients are often offered a favourable settlement on the condition the settlement (and sometimes details of the case) remain confidential. The problem with this can be that the misconduct or behaviour of the offending party can be concealed and it makes it difficult to raise community awareness as to the pitfalls or a particular provider or contract. A media release at this initial stage ensures that other consumers are made aware that they may have legal rights.

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In this instance, the case resulted in a hearing and a successful outcome for the clients.

### Policy follow-up

A further media release (August 10 2009)<sup>37</sup> was issued about the VCAT result, and its implications for many Kleenmaid customers throughout Australia. This resulted in significant media coverage.

Consumer Action also ensured that Offices of Fair Trading/Consumer Affairs throughout Australia were aware of the result. With access to the list of Kleenmaid's creditors, those offices were able to deal directly with Kleenmaid in relation to consumers in each state.

### Outcomes

The case had the potential to benefit 7,000 consumers to the total sum of \$6.5 million. While the Centre doesn't know the total financial benefit to consumers, the decision had a national impact.

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For example, the Commissioner for Consumer Protection in Western Australia, Anne Driscoll, welcomed the VCAT decision in a case that she had been monitoring with interest.

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<sup>36</sup> 21 October 2009, <http://consumeraction.org.au/media-release-consumer-win-sets-up-precedent-for-others-burnt-by-kleenmaid-collapse/>

<sup>37</sup> <http://consumeraction.org.au/landmark-case-consumer-action-to-present-customer-stung-by-kleenmaid-collapse/>

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She said the outcome was important to the many Western Australian consumers who were disputing the validity of their loan contracts relating to their Kleenmaid purchases.<sup>38</sup> Driscoll stated that 'Consumer Protection is currently reviewing complaints from a number of WA consumers who are in a similar position and are questioning the validity of contracts totalling more than \$90,000.'

### Broader Issue and Ongoing/Future Work

Linked credit laws are important to consumers, not only because they terminate some credit agreements when goods or services aren't provided, but because they force lenders to undertake appropriate research into the financial viability and reputation of a business before a referral relationship is established between the business and the lender. This lender behaviour means consumers are less likely to find themselves in debt for goods or services they don't receive. Without such laws, lenders could enforce contracts against consumers even when it should have been clear that the goods or services purchased would not have been delivered or provided to an appropriate standard.

Over the years, it has become increasingly difficult for less reputable businesses to enter into such relationships with lenders. However, lenders will only continue to act responsibly if they believe that there is an actual risk that consumers will enforce these rights. Consumer Action must therefore monitor the situation constantly and adapting and testing its approaches so that they remain relevant and effective. This reflective process is often undertaken through strategic planning meetings at Consumer Action, which are a regular office practice. It encourages discussion, debate and reflection, while testing ideas and encouraging new ones. While publicity and individual case outcomes have an impact, Consumer Action believes lenders should have a greater obligation to be proactive in these cases, rather than waiting for individual consumers to take action. Consumer Action therefore maintains its relationships with a range of regulators, industry peak bodies and serves on many bodies in order to advance the rights of consumers and educate these providers about their responsibilities. Again, this illustrates the multi-pronged nature of the work on an ongoing rather than case-

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<sup>38</sup>[http://www.commerce.wa.gov.au/corporate/media/statements/2009/October/Legal\\_victory\\_important\\_for\\_WA.html](http://www.commerce.wa.gov.au/corporate/media/statements/2009/October/Legal_victory_important_for_WA.html)

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by-case basis. This requires more effort but can lead to results that can be measured more tangibly.

Consumer Action has worked on other similar linked credit cases in the past year, but unlike the Kleenmaid case, some matters have been resolved by confidential settlements. While these may be in the best interests of the Centre's clients, such settlements can act against the public interest. In one case, a settlement offer was made on condition of confidentiality. However, the Consumer Action managed to negotiate with the lender to ensure that it would contact other affected borrowers and advise them that their contracts were terminated. It is also noted that Consumer Action has also argued "linked credit" in many individual matters that are more complex, such as those based on misleading/deceptive conduct.

These cases continue to arise from time to time, and it is unclear whether a lender has any obligation to inform such borrowers that they may have rights under linked credit provisions. In some other areas, there is a licensing obligation for lenders to advise consumers of any systemic issue. At this stage, Consumer Action is continuing to follow up the broader issue of lenders' responses to linked credit rights with the relevant regulators. This is an example of its strategy to continuously monitor situations and its efforts to continuously improve the system.

### **Blending of education, casework, strategic approaches to achieve outcome, efficiencies and reduce the revolving door**

The Kleenmaid case raised awareness amongst consumers, many of whom mistakenly believed or were told that they remained bound to linked finance contracts when the goods had not been delivered. Using media releases (one at the time proceedings were issued and one following the decision) and media coverage, consumers were informed that they were not bound by the contracts after all.<sup>39</sup> More importantly, state-based agencies were able to provide this information directly to consumers (from the list of creditors) and negotiate with Lombard.

This case involved a significant amount of money, and it is highly likely that it caused a number of lenders to review their arrangements with various businesses, and to audit the viability of those businesses more closely. This demonstrates the importance of persistence and that over time systemic issues can be addressed. It also highlights that measuring impacts can sometimes be imprecise as it is not always evident how widely the work of Consumer Action has actually affected industry practice.

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<sup>39</sup> See for example ABC coverage <http://www.abc.net.au/news/2009-10-23/hope-yet-for-kleenmaid-customers/1114748>

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### **Motor Finance Wizard**

Consumer Action's consumer legal practice received a very high level of consumer complaints about the practices of Motor Finance Wizard (and their related financiers) during 2007 and 2008. Motor Finance Wizard also featured strongly in the casework of financial counsellors and other legal centres. While Consumer Action's legal practice resolved numerous consumers' disputes individually, and raised complaints with consumer regulators, complaints continued to be received about Motor Finance Wizard, resulting in significant consumer detriment.

Motor Finance Wizard provided car finance in circumstances where other lenders would regard the borrower as not creditworthy--such as those who were unemployed, had a bad credit history or were recently bankrupt.

There are a number of unfair elements in the Motor Finance Wizard sale process and credit agreements that, as far as Consumer Action was aware, were unique to Motor Finance Wizard but are now being emulated by other credit providers and this in itself underlines the need to be vigilant and responsive.

Cars are sold for two or three times their actual value—sometimes more. The costs are increased by a requirement that consumers pay around \$1,500 to Motor Finance Wizard for extended warranty cover.

Credit arrangements were “interest free”, with the cost covered by the extra sale price. This means Motor Finance Wizard avoids complying with consumer credit laws; as such laws only apply when interest is charged. When this practice was closed with legislative changes in 2009, Motor Finance Wizard changed to a leasing model.

Because of its avoidance practices, consumers who buy vehicles from Motor Finance Wizard miss out on some key areas of protection, including:

- Disclosure of the interest rate and total cost of the credit;
- Specific written notice prior to repossession or legal action (lessors can only repossess if they have the consumer's consent or a court order);
- Hardship provisions that allow a court or tribunal to vary payments on a contract (although this does apply to leasing)

Consumer Action also received complaints about poor quality vehicles that broke down or were in very poor condition. Further, when consumers attempt to have the car repaired pursuant to the warranty, they found that services were not provided or that repairs were unsatisfactory.

Many consumers also said that, after waiting hours (sometimes up to five) at the Motor Finance Wizard yard they were told that they had been approved for credit, but were then offered only one vehicle. While some consumers were prepared to ignore the high price and unfair conditions because they were in desperate circumstances, Consumer Action was concerned that a wait of many hours would cause them to be even less able to reject the car offered.

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### Strategy and outcomes/impact

Given the significant problems, Consumer Action developed a multi-pronged strategy. This means that different strategies were employed at different stages, depending on the opportunities and circumstances. Actions included:

- casework, providing advice to consumers and negotiating individual outcomes;
- developing a "tool kit" for consumers and other workers to take action against MFW. More than 100 consumer have now received this;
- complaining to regulators about the practices of MFW;
- identifying specific cases to take further court action;
- warning about the practices of MFW in the media and online;
- undertaking "direct action", including providing information to consumers in front of MFW outlets and raising profile of MFW conduct;
- objecting to credit licensing;
- making bulk complaints to the Credit Ombudsman Service

*Given the significant problems, Consumer Action developed a multi-pronged strategy. This means that different strategies were employed at different stages, depending on the opportunities and circumstances.*

The direct action included working with other agencies in other states where MFW operated, and organising a "national day of action", where concurrent demonstrations were held outside MFW outlets. This direct action occurred in May and June of 2008.

Several legislative changes resulted from raising the profile of consumer detriment caused by practices of MFW during 2008. This included the addition of "tiny terms" contracts in consumer credit legislation (that is, contracts which were supposedly interest free but where the cost of credit was included in the sale price).

In late 2008, the then Uniform Consumer Credit Code was amended by the *Justice Legislation Amendment Act 2008* (Qld), which ensured that such agreements were caught by the code, where the credit contract exceeded the cash price of the goods. MFW then amended its business model to provide consumer leases, rather than loans, which meant that it could still disguise the cost of credit as this was not required under the consumer lease provisions of the code.

A successful action was brought against MFW in VCAT in 2010, with findings handed down in May 2011 (*Walker v DGTGTV1 Pty Ltd*)<sup>40</sup>. The decision formally found that the company's contract was unjust, its conduct was misleading and deceptive and unconscionable, and its entire leasing process was seriously flawed. This was a significant decision, in which Consumer Action's costs were taxed to be \$60,000.

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<sup>40</sup> *Walker v DGTGTV1 Pty Ltd trading as V1 Leasing* [2011] VCAT 880 (12 May 2011).

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Consumer Action used this decision and other complaints to object to MFW being provided with an Australian credit licence. With the transition to the new national consumer credit protection laws, all lenders were required to get a licence in 2011. Despite our objections, a licence was granted in July 2011. Consumer Action issued a press release raising concerns with the licensing process.<sup>41</sup> ASIC did impose licence conditions requiring MFW not to represent that it was providing a loan, when it was providing a lease; and for MFW to provide compliance reports to ASIC. Consumer Action's attempts to FOI these reports were rejected.

Consumer Action has recently developed a new strategy related to making bulk complaints to Credit Ombudsman Service Ltd (COSL) – with the aim of having a systemic impact about how COSL resolve complaints about MFW and its view of the relevant law. A particular concern was that COSL did not make determinations or delayed doing so, with many complainants giving up in the process.<sup>42</sup>

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### **Bulk Debt Negotiation**

The National Bulk Debt Project aims to protect the income of those who are the most disadvantaged and vulnerable in our community who are experiencing long-term financial hardship.

The project was initially funded by the West Heidelberg Community Legal Service by the Victoria Law Foundation<sup>44</sup> to assist judgment-proof debtors, who had debts with financial institutions that they were struggling to repay. The term “judgment-proof debtor” describes people who have no assets and low incomes. They are “judgement proof” in the sense that there is little point in a creditor pursuing legal action against them, as there is no real likelihood that the debtor can pay--they need all their income just to pay for food, rent and utilities. In addition, in Victoria, people in this category have legislative protection from being sued.

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<sup>41</sup> <http://consumeraction.org.au/asic-grants-licence-to-misleading-deceptive-and-unconscionable-trader/>

<sup>42</sup> <http://consumeraction.org.au/media-release-bulk-complaint-made-against-motor-finance-wizard-to-the-credit-ombudsman-service/>

<sup>43</sup> <http://consumeraction.org.au/media-release-bulk-complaint-made-against-motor-finance-wizard-to-the-credit-ombudsman-service/>

<sup>44</sup> The author discloses that at this time she was Director of the West Heidelberg Community Legal Service.

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In 2011, Legal Aid NSW and Victoria Legal Aid joined with West Heidelberg Community Legal Service for the National Bulk Debt Project. Midway through 2012 the project moved from West Heidelberg to FCLC.

### Impact, Outcome, Effectiveness

To date, the project has negotiated waiver or closure of debts worth more than **\$15 million** with creditors such as major banks, insurance companies, credit providers, debt collectors and utility providers.

The project has directly assisted about 2500 debtors. Instead of negotiations taking place for Each client separately, they were bundled together into a “bulk negotiation”. All cases involved clients on a low income, with most receiving some form of Social Security payment. Many clients had multiple debts. Most clients also had other significant indicators of disadvantage, such as mental illness, disability, ill health or were full-time carers.

### How the clients came to the project

The referral criteria for clients of financial counsellors, State Trustees and legal aid and legal centre lawyers required the client to have:

- income from a Centrelink benefit, or no income at all
- no assets of value
- no housing asset
- no mortgage
- no prospects of returning to paid employment in the short-to- medium term
- too few debts for bankruptcy to be a better option
- they are unable to meet repayments on the debt (if your client is up to date with repayments and can afford to continue making repayments without hardship, then they are not suitable for the project).

Clients are required to provide a signed project authority before the project will negotiate on their behalf.

### Efficiencies

There are significant costs in terms of staff resources and time in dealing with individual debtors—for very little gain. The effects are similar in external dispute resolution (EDR) schemes and financial counselling and legal aid agencies, which are also investing significant time and resources into helping judgment-proof clients.

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counselling and legal aid agencies, allowing staff to concentrate on helping debtors with some assets—usually the family home—and some disposable income.

A successful waiver process also significantly reduces the number of referrals by financial counselling and legal aid agencies to the external dispute resolution schemes.

The results suggest that the sheer volume of clients, and the relentless nature of processes employed by creditors, may lead some advocates to agree to negotiate outcomes for low-income debtors to reduce stress rather than because of the debtor's capacity to pay. This is only a short-term fix and is clearly unsustainable. In this case everyone is worse off in the longer term.

### Systemic Issues

The key premise for the project was that: the financial services regulatory framework for the management of financial hardship was flawed; the processes provided by the financial services corporations and external disputes resolution schemes were inadequate; and that the services of the financial counselling and legal aid agencies were failing to adequately protect these low-income debtors.<sup>45</sup>

The project highlights the need for legislation, industry codes, IDR and the Terms of Reference of EDR schemes to be reformed so that they more accurately reflect and consider the life circumstance of people are significantly disadvantaged and, who, find themselves with long term debt problems as a result.<sup>46</sup>

All cases in the Bulk Debt Negotiation Project demonstrate that financial hardship schemes need to be expanded to address longer-term financial hardship and to recognise the broader social issues affecting debtors and the causes of debt.<sup>47</sup> The success of the project in negotiating outcomes for clients with the financial institutions involved shows these institutions understood the futility, and the unfairness of pursuing such cases, where for some people debt issues were the least of their worries. It remains to be seen however whether the financial institutions will offer similar relief to other debtors in similar circumstances.<sup>48</sup>

*The success of the project in negotiating outcomes for clients with the financial institutions involved shows these institutions understood the futility, and the unfairness of pursuing such cases, where for some people debt issues were the least of their worries.*

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<sup>45</sup> D Nelthorpe and K Digney, 'The Bulk Negotiation Project: Client Profiles and Client Outcomes', West Heidelberg Community Legal Service and Victoria Law Foundation (Melbourne March 2011) 3.

<sup>46</sup>Ibid, 31.

<sup>47</sup>Ibid,22.

<sup>48</sup>Ibid, 23.

## ENCOURAGING GOOD PRACTICE IN MEASURING EFFECTIVENESS IN THE LEGAL SERVICE SECTOR

The policy work flowing from the bulk negotiations work has pursued a number of long term reforms including:

- Submissions to ASIC to amend the ACCC/ASIC Debt Collection Guidelines to include a specific reference to long term financial hardship. ASIC has announced a review of the guidelines which will consider this issue.
- A working party of industry, Legal Aid and financial counselling representatives are to reach an agreement on how to deal with long term hardship. In late 2012 the parties agreed to jointly fund a report to examine this issue.
- Discussions with the Financial Ombudsman Service about changes to operating guidelines for debtors in long-term hardship. Discussions are ongoing.
- A working party to establish a national hardship register. As a concept, the NHR is a real-time database listing customers identified as experiencing extended and severe hardship, as confirmed by submissions from financial counsellors. By using a nationally-based framework with an ongoing and consistent approach to defining hardship, the register would form a virtual “do not buy/collect/sell” list of customers for reference by creditor in the debt collection and debt-purchasing sector.

### **Holistic Approaches**

The success of bulk debt negotiation came through working in partnership with NSW and Victorian Legal Aid and financial counsellors who have an advocacy approach to assisting clients. The National and State Financial Counselling Associations adopted standards that made it clear that in Australia the preferred model was advocacy based and that advocacy for the debtor was fundamental to the services offered by their members.<sup>49</sup> It is very hard to gauge how effective and efficient and easy it would have been to find and target the relevant clients if not for this collaboration and communication. Working with other is often integrated and so it is difficult to determine which agencies are responsible for what outcomes, as it is a joint effort. Accordingly, any attempts at specific attribution for the project’s effectiveness would be artificial and could be misleading.

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<sup>49</sup>Ibid, 26.

## ENCOURAGING GOOD PRACTICE IN MEASURING EFFECTIVENESS IN THE LEGAL SERVICE SECTOR

### **Blending of education, casework, strategic approaches to achieve outcome, efficiencies and reduction of revolving door**

The project developed a template letter for services to deliver to creditors on behalf of clients. Client cases were collected from legal aid offices, legal centres and financial counselling agencies throughout Australia. Training lawyers and financial counsellors and some non-legal agencies, such as health service workers was critical to its success. This training included how to identify clients and refer them and how to deal with creditors by developing and sharing templates and including clients in the bulk debt negotiations. One approach without the other would not have worked and so they were inter-dependent.

The provision of template letters meant that many lawyers were able to simply engage with the project and is a good tool.

*Training lawyers and financial counsellors and some non-legal agencies, such as health service workers was critical to its success. This training included how to identify clients and refer them and how to deal with creditors by developing and sharing templates and including clients in the bulk debt*

Usually these agencies would have contacted financial institutions separately for each client, attempting to negotiate a hardship arrangement or possibly asking for a debt waiver. The one-off nature of this assistance meant these approaches were extremely time-consuming. By comparison, across the five completed negotiations approximately 85 per cent of matters were resolved by waiver of the debt.

### **Do Not Knock Campaign**

For many years, Consumer Action and its predecessors had received complaints about door-to-door sales. With the deregulation of the Victorian energy market in the early 2000s, and the opening up to competition, complaints about door-to-door sales increased, particularly from financial counsellors and other community sector advocates. While door-knocking was most common in the energy industry, it was also common across a range of other industries, including telecommunications, subscriptions, and home maintenance and food deliveries.

In 2007, regulators reviewed the effectiveness of competition in the retail energy market in Victoria. As part of this review, consumer advocates wanted the reviewers to understand the impact of "competition" for many Victorians. Consumer Action collected campaign examples and published a report, *Coercion and Harassment at the Door*.<sup>50</sup>

The report was launched with the release of the first Do Not Knock sticker.<sup>51</sup> The campaign was an immediate hit with consumers, and a number of print runs were over-subscribed.

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<sup>50</sup> <http://www.advocacypanel.com.au/documents/Applic270.pdf>

<sup>51</sup> <http://consumeraction.org.au/media-release-dont-harass-us-at-home-say-consumers/>

## ENCOURAGING GOOD PRACTICE IN MEASURING EFFECTIVENESS IN THE LEGAL SERVICE SECTOR

### 2011 campaign and strategies

By 2011, door-to-door marketing and in-home sales remained an ongoing cause of consumer angst. Regular complaints included:

- High pressure techniques, which relied on various psychological techniques and social pressures to increase the likelihood that certain consumers would sign up to contracts, including manipulating emotions;
- Misleading and deceptive conduct, including overstating benefits or savings, retailers switching customers without consent, and marketing to non-account holders;
- Goods and services that didn't live up to the promises. Due to the cost, this was often combined with debt problems, particularly for disadvantaged and vulnerable consumers; and
- Targeting vulnerable groups who for any reason were not equipped to resist the hard sell.

Consumer Action decided to re-launch the Do Not Knock campaign with a number of strategies, including:

- providing consumers with information about their rights, though a stand-alone consumer website: [www.donotknock.org.au](http://www.donotknock.org.au);
- providing a simple portal through which consumers could make complaints about door-to-door practices;
- providing complaints to regulators to encourage them to take enforcement action;
- engaging in advocacy to improve consumer protections regarding door-knocking;
- raising the profile of consumer problems caused by door-to-door marketers through the media (including social media).

The campaign worked collaboratively with other organisations that had also identified door-to-door sales as detrimental and had taken some actions:

- providing community legal education (Victoria Legal Aid)<sup>52</sup>,
- short films and plays (Victoria Legal Aid)<sup>53</sup>
- developing indigenous specific materials, including stickers (Financial Counselling Australia, Centacare Wilcannia-Forbes)<sup>54</sup>

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<sup>52</sup> <http://donotknock.org.au/take-action/1114-2/>

<sup>53</sup> <http://donotknock.org.au/useful-stuff/tips-to-avoid-high-pressure-sales/>

<sup>54</sup> <http://donotknock.org.au/2012/05/18/launch-of-aboriginal-and-torres-straight-islander-%E2%80%98do-not-knock%E2%80%99-sticker/>

## ENCOURAGING GOOD PRACTICE IN MEASURING EFFECTIVENESS IN THE LEGAL SERVICE SECTOR

### Outcomes/impact

Not only has the sticker had impact for the many individuals that have used it to dissuade door-to-door marketers from knocking, the campaign's activities have had a significant impact on the conduct of the industry. The media coverage and community interest particularly encouraged the industry, regulators and politicians to take note and encouraged interest in improving protections and the conduct of the industry.

The sticker has become increasingly recognised, firstly in industry codes, but then, following legal action initiated by the Australian Competition & Consumer Commission (ACCC), in law. The ACCC made door-to-door sales as a priority following community complaints, and took action against two energy retailers in early 2012. By late 2012, it had a finding against Neighbourhood Energy and its marketing company, with the effect that ignoring a Do Not Knock sticker was considered a breach of the requirement in the Australian Consumer Law that marketers leave premises when requested.

Ignoring a sticker can now risk a fine of \$50,000.<sup>55</sup> ACCC issued a press release<sup>56</sup> as did Consumer Action.<sup>57</sup>

The campaign also garnered interest for law reform. In mid-2012, a Federal backbencher proposed a Do Not Knock register that would operate similarly to the Do Not Call register. This proposal garnered a lot of community support, but industry opposition meant that a parliamentary committee ultimately recommended against the proposal, arguing that the Australian Consumer Law was relatively new and that it should be given an opportunity to protect consumers before further law reform.

*Not only has the sticker had impact for the many individuals that have used it to dissuade door-to-door marketers from knocking, the campaign's activities have had a significant impact on the conduct of the industry.*

*...a finding against Neighbourhood Energy and its marketing company, with the effect that ignoring a Do Not Knock sticker was considered a breach of the requirement in the Australian Consumer Law that marketers leave premises when requested.*

*Ignoring a sticker can now risk a fine of \$50,000.*

*An important aspect of the Australian Consumer Law (ACL) is that the consumer has the right to ask the seller to leave, and the seller must leave immediately when requested.*

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<sup>55</sup> ACCC v Neighbourhood Energy Pty Ltd, FCA 2012 1357, <http://www.austlii.edu.au/au/cases/cth/FCA/2012/1357.html>

<sup>56</sup> <http://www.accc.gov.au/content/index.phtml/itemId/1081110>

<sup>57</sup> [landmark-federal-court-decision-a-ringing-endorsement-of-the-do-not-knock-sticker](#)

## ENCOURAGING GOOD PRACTICE IN MEASURING EFFECTIVENESS IN THE LEGAL SERVICE SECTOR

### Why the Project was needed and the approach explained

Door-to-door sellers often exploit the vulnerability of the elderly, migrants who might struggle with English, and full-time carers at home during the day. An important aspect of the Australian Consumer Law (ACL) is that the consumer has the right to ask the seller to leave, and the seller must leave immediately when requested. Unfortunately, elderly members of the community may be too polite, or migrants may be trying hard to fit into a new culture, and so may find it hard to be assertive enough to tell the seller to leave. With the introduction of full retail contestability in the Victorian energy market there have been numerous complaints about the marketing practices of energy retailers.

On its website, Victoria Legal Aid notes that dealing with door-to-door salespeople can be stressful. People can feel pressured into entering into contracts without fully understanding the consequences. Older people and culturally and linguistically diverse (CALD) communities are particularly vulnerable.<sup>58</sup>

As part of a nationwide Do Not Knock campaign, the Legal Services Commission of South Australian has, in conjunction with Victoria Legal Aid and the Victorian Consumer Action Law Centre, produced a Do Not Knock sticker to deter unwanted door-to-door sellers. These send the simple message that door knockers are unwelcome at the address.

### Holistic approaches

A number of agencies working together are promoting awareness and actions that can be taken, combined as discussed above. These have led to some changes and awareness of consumer rights. Consumer Action also worked with Deakin University to explore the psychological aspects of the in-home sales techniques used by the sellers of educational software. These were detailed in a publication, *Shutting the Gates an Analysis of the Psychology of In-home Sales of Educational Software*.<sup>59</sup>

*A number of agencies working together are promoting awareness and actions that can be taken...*

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<sup>58</sup> <http://www.legalaid.vic.gov.au/3068.htm>

<sup>59</sup> P Harrison and K Chalmers – Shutting the Gates: an Analysis of the Psychology of In-home Sales of Educational Software - Deakin University and Lumsa University, (Melbourne,2010).

## ENCOURAGING GOOD PRACTICE IN MEASURING EFFECTIVENESS IN THE LEGAL SERVICE SECTOR

### **Blending of education, casework, strategic approaches to achieve outcome, efficiencies and reduction of revolving door and empowering Individuals**

#### Do not knock sticker

This sticker can be put on a person's door to warn sales people that they are breaking the law if they knock on your door. People keen to stop this practice can sign the Consumer Action Law Centre's online petition.<sup>60</sup>

#### Do not knock flyer

This flyer explains your rights, what you can do to stop this problem and where to get help if you have signed a contract from a door salesperson.

#### Community legal education

The educational film, 'Dealing with Door-to-Door Sales', is ideal for legal education sessions.

The film is in two parts. Part One tells the story of Marcello and his encounter with a door-to-door salesperson. In Part Two, a Victoria Legal Aid lawyer talks about Marcello's experience and what he might have done differently.

The film supports a wider Do Not Knock campaign started by the Consumer Action Law Centre, then developed further by the Footscray Community Legal Centre and other legal centres. The campaign aims to stop people from entering into contracts that are not in their financial interests. It empowers people to report breaches of the rules that govern door-to-door sales.

#### Training Sessions

VLA produced a "how to" guide that covers the basic steps required to deliver effective and engaging sessions that can be tailored to target groups, including:

- older people
- disability groups
- culturally diverse groups and newly arrived communities
- other vulnerable community members; and
- people who work with these various communities.

The guide includes resources and speakers' notes.

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<sup>60</sup> <http://www.change.org/donotknock>

## ENCOURAGING GOOD PRACTICE IN MEASURING EFFECTIVENESS IN THE LEGAL SERVICE SECTOR

### Information

Pamphlets are available on-line and in hard copy, for example - Door-to-door sales: consumer rights explained.<sup>61</sup>

The website<sup>62</sup> also gives consumers information about the problem, their rights and what they can do about it, as follows:

#### 'Think twice before signing that contract'

'Door-to-door sales have come under more scrutiny lately for their aggressive campaigns by energy retailers and other service providers to persuade consumers to switch contracts. The days when sellers hawked encyclopaedias and vacuum cleaners at the door have almost disappeared.' Nowadays, it is the promise of potentially saving money on energy or phone bills. Unfortunately, consumers often end up worse off as a result of signing up to a contract at the door or agreeing to something over the phone.

#### Unsolicited consumer agreements

The ACL began on 1 January 2011, and gathers diverse State laws into a national regime for controlling "unsolicited consumer agreements", which includes door-to-door sales and telemarketing.

Whilst regulation of door-to-door sales is not a new idea, a consistent and simplified national regime helps consumers to understand their basic rights.

#### Free 'Do Not Knock' resources

The stickers and a pamphlet outlining consumers' rights are available for free from any Legal Services Commission office or via the website mentioned earlier.

#### You DON'T have to:

- change your gas, electricity or telephone supplier
- sign any contracts
- give out personal information
- let the person into your home
- show anyone your bills.

#### You CAN:

- Put the DO NOT KNOCK sticker on your door

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<sup>61</sup> [http://www.lsc.sa.gov.au/cb\\_pages/news/Do\\_Not\\_Knock\\_campaign\\_wn2012.php](http://www.lsc.sa.gov.au/cb_pages/news/Do_Not_Knock_campaign_wn2012.php)

<sup>62</sup> [http://www.lsc.sa.gov.au/cb\\_pages/news/Do\\_Not\\_Knock\\_campaign\\_wn2012.php](http://www.lsc.sa.gov.au/cb_pages/news/Do_Not_Knock_campaign_wn2012.php)

## ENCOURAGING GOOD PRACTICE IN MEASURING EFFECTIVENESS IN THE LEGAL SERVICE SECTOR

- Ask the salesperson to go away
- Take your time to decide. Look at the prices and services offered by other suppliers
- Ask for a copy of the contract
- Get free advice before signing anything

### What to DO

Even over the phone, you need to be very careful of scams relating to repairs to computers or subscriptions to publications. Do not, under any circumstances, give any payment or credit card details over the phone, and don't agree to buy anything either. It's best to avoid companies calling you to try to sell you things by contacting the *Do Not Call register* on 1300 792 958 or going to [www.donotcall.gov.au](http://www.donotcall.gov.au)

Consumers who sign up at the door or agree to buy something over the phone do have further rights, the most important being the right to “cool off”. The ACL requires sellers to give consumers information about their cooling-off rights, and consumers have at least 10 business days to change their mind (if the total price paid is under \$100). That period can be extended to up to six months in certain circumstances, which means it pays to get advice quickly if a consumer has been persuaded to buy something that they later decide they do not want or which turns out to be a bad deal.

### Case work

More than 200 complaints about door-to-door salespeople have now been lodged with the Australian Competition and Consumer Commission (ACCC) since the national Do Not Knock campaign was launched in November. The most recent round of 18 complaints tells a familiar story, with households complaining about pressure selling, misleading conduct and salespeople ignoring Do Not Knock stickers. The complaints show that energy retailers comprise more than 60 percent of complaints. See also the discussion of the Federal Court case above.

### Law Reform

In 2007 Consumer Action published *Coercion and Harassment at the Door: Consumer Experiences with Energy Direct Marketers*. By revealing 28 stories about consumers and how they had been misled, Consumer Action drew attention to the problem.

Energy retailers introduced their own marketing code of conduct back in January and Consumer Action hoped that it would lead to an improvement in their door-to-door selling practices, but early signs suggest that problems are still rife. To address this, Consumer Action, along with its other Do Not Knock partners, is monitoring and keeping the pressure on to reform the practices of door-to-door sales. This illustrates how long it can take to get results on such issues where money is to be made by exploiting the most susceptible, and how critical it is for Consumer Action to maintain its vigilance and monitor development and shifts in tactics to target consumers.

Consumer Action, which invented the Do Not Knock sticker as part of the national Do Not Knock campaign, has made a submission to a Federal Parliamentary inquiry into the Do Not Knock Register Bill 2012.

## ENCOURAGING GOOD PRACTICE IN MEASURING EFFECTIVENESS IN THE LEGAL SERVICE SECTOR

### Debt Collection

Debt collection has been an ongoing policy focus for Consumer Action and financial counsellors, although the specific issues have changed over the years. As a high proportion of calls relate to consumer credit and debt issues, the conduct of debt collectors (and more recently debt purchasers) is an issue that significantly affects consumers who are in financial hardship.

As well as monitoring the conduct of the industry and the effectiveness of regulation through calls from consumers, Consumer Action has responded to debt collection issues in a range of other ways. These include lodging complaints with regulators, using the media, and meeting with members of the debt collection industry and with creditors who use debt collectors or sell debts.

### Outcomes and effectiveness

The conduct of some lawyers who undertake debt collection has been raised with the Legal Services Commissioner, resulting in at least two solicitors receiving a reprimand for debt collection conduct.

Consumer Action has had ongoing input into debt-collection regulation, including the ACCC and ASIC Debt Collection Guidelines.

Consumer Action has obtained positive outcomes for individual clients. Using provisions in Victoria's Australian Consumer Law and Fair Trading Act 2012, some clients have claimed and received compensation for debt collectors' breaches of the Act.

*The conduct of some lawyers who undertake debt collection has been raised with the Legal Services Commissioner, resulting in at least two solicitors receiving a reprimand for debt collection conduct.*

### Recognising complexity and the need for persistence as key in the strategy

While informing regulators about all complaints of misconduct by debt collectors, for some years Consumer Action focussed on the conduct of Accounts Control Management Services Pty Ltd and ACM Group Pty Ltd (ACM), which had purchased large numbers of debts from major institutions. Despite voicing our concerns with major creditors who used the company, and meeting with representatives of ACM, the company denied poor practices and individuals continued to call us about issues with ACM. While many of these individuals required legal assistance in relation to inability to repay, or a dispute relating to the debt, they often reported being frightened by telephone calls from ACM, or concerned that employers, family and even neighbours were being called about their personal debt.

*In 2007 Consumer Action provided 40 complaints to ASIC and more in subsequent years. It was most unlikely that ASIC could have collected this number of complaints itself, or obtained the amount of detail, therefore Consumer Action was able to act as a channel through which the*

Significant work was involved in compiling the complaints, researching the law and lodging complaints from individuals for the regulator (ASIC). While Consumer Action was able to

## ENCOURAGING GOOD PRACTICE IN MEASURING EFFECTIVENESS IN THE LEGAL SERVICE SECTOR

assist the clients, these complaints were unlikely to lead to any benefits for the individual clients, however Consumer Action hoped this would force a change in ACM's conduct. In 2007 Consumer Action provided 40 complaints to ASIC and more in subsequent years. It was most unlikely that ASIC could have collected this number of complaints itself, or obtained the amount of detail, therefore Consumer Action was able to act as a channel through which the information could be provided.

Further complaints were made and Consumer Action continued to act for individual consumers and voice its concerns in the media.

In October 2012, in a case brought by ASIC that presented details of some of Consumer Action's clients' cases in evidence, the Federal Court found the ACM Group had engaged in misleading and deceptive conduct as well as undue harassment and coercion<sup>63</sup>. The conduct, which the court found to be "widespread" and "systemic" included unfairly threatening bankruptcy, failing to provide information about debts, inappropriately contacting employers and family members in relation to personal debts and threatening legal action where there was no intention to take legal action and where, due to the debtor's circumstances, enforcement wouldn't be possible through the courts.

*In October 2012, in a case brought by ASIC that presented details of some of Consumer Action's clients' cases in evidence, the Federal Court found the ACM group had engaged in misleading and deceptive conduct as well as undue harassment and coercion.*

### Outcomes of Regulatory Complaints

The court found that particular practices ceased after ASIC's intervention. While the company had made changes to its practices before the Federal Court decision, it appears that material provided to ASIC by Consumer Action was the driver for changing the conduct, where other strategies had not been successful. ACM had about half a million open accounts at any one time, so the action taken by Consumer Action and ASIC, has significantly reduced the likelihood that hundreds of thousands of debtors would be subject to unfair, and illegal, conduct.

However, the impact of a case such as this is broader than the conduct of one debt collector. All debt collection and debt-purchase businesses throughout Australia would be aware of the case, as would major lenders. While Consumer Action doesn't believe this will be the end of bad debt-collection conduct, the levels of complaints relating to debt collection are not as high, or serious, as they were in 1997. It is likely that lenders and the debt collection industry will take action to prevent this type of conduct occurring again.

*...the impact of a case such as this is broader than the conduct of one debt collector. All debt collection and debt-purchase businesses throughout Australia would be aware of the case, as would major lenders.*

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<sup>63</sup> <http://www.austlii.edu.au/au/cases/cth/FCA/2012/1164.html>

## ENCOURAGING GOOD PRACTICE IN MEASURING EFFECTIVENESS IN THE LEGAL SERVICE SECTOR

### The Taxi Driver Legal Clinic

#### Case Study

'Most of our clients are young Indian or African men aged between twenty and thirty. Many of these drivers are studying full time, and driving taxis at nights and on the weekend. Few have been granted permanent residency to live in Australia which means they don't qualify for Centrelink benefits. These drivers are desperate for income and are very reluctant to complain about their working conditions. Most of these drivers don't own the taxis they drive – instead they drive taxis that belong to other people. Sometimes the taxis belong to individual operators, sometimes to large depots or fleets. The drivers keep only fifty per cent of the fares they collect – sometimes even less. They usually have to pay for fuel, uniforms and other expenses such as 'insurance' – which we'll come to in a minute. On quiet days, a taxi driver can earn as little as \$8 an hour, before tax. These drivers aren't entitled to sick leave, holiday leave or superannuation.'<sup>64</sup>

The Taxi Driver Legal Clinic has been operating every Wednesday night, with a staff of volunteer lawyers and law students. In many ways it's like any other community legal centre, but it is unique in focusing entirely on taxi-related legal problems.

FCLC set up the clinic with a Project Grant from the Legal Services Board (LSB). FCLC sought the grant on the basis of our long-term research into the taxi industry, insurance and the pseudo-insurers known as taxi clubs. The LSB funded the FCLC for 12 months, and from January 2011 to January 2012 FCLC gathered campaign examples and evidence of problems with taxi clubs and the need for industry-wide reform. FCLC continued the clinic voluntarily during 2012 and has recently received LSB funding for a further year.

The reasons for setting up a specialist clinic for taxi drivers, and why the specialist service is different from a normal, mixed-purpose CLC night service are complicated. The insurance arrangements for the taxi industry were unusual and complex and often left taxi drivers in a vulnerable position with exposure to large debts. Many drivers had approached community legal centres seeking advice on this issue only to find that the legal centre lacked the knowledge of the taxi industry or the expertise in insurance law to provide appropriate assistance.<sup>65</sup>

Most community legal centre clients are receiving Newstart, or an old age, disability or carer's pension. At the Taxi Driver Legal Clinic, our client profile is very different. Our clients are almost always full-time workers. They drive taxis up to six days a week, in 12-hour shifts. Despite these long hours, our clients are often very poor. They represent a growing category of 'working poor' in Victoria.

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<sup>64</sup> L O'Brien, *In the driver's seat*, Federation of Community Legal Centres and Footscray Community Legal Centre, <http://www.footscrayclc.org.au/brochures-publications/>

<sup>65</sup> *Ibid.*

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In Victoria, taxi drivers have very few rights and safeguards. They are classified as ‘bailees’ rather than ‘employees’. The industry is regulated by the Victorian Taxi Directorate. It’s probably no coincidence that as wages and conditions decline, more and more immigrants are working in the taxi industry. At the clinic, most of FCLC clients are young Indian or African men aged between 20 and 30. Many of these drivers are studying full time and driving taxis at nights and on the weekend. Few have been granted permanent residency to live in Australia, which means they don’t qualify for Centrelink benefits. These drivers are desperate for income and are very reluctant to complain about their working conditions.

Most of these drivers don’t own the taxis they drive – instead they drive taxis that belong to other people. Sometimes the taxis belong to individual operators, sometimes to large depots or fleets. The drivers keep only 50 per cent of the fares they collect – sometimes even less. They usually have to pay for fuel, uniforms and other expenses such as ‘insurance’. On quiet days, a taxi driver can earn as little as \$8 an hour - before tax. These drivers aren’t entitled to sick leave, holiday leave or superannuation.

### **‘Insurance’ and taxi clubs**

Drivers take a huge financial risk every time they drive. They are personally liable for damage they inflict on other cars, but they have no insurance to cover them in the event of an accident. Under Victorian law, taxi operators are not required to take out insurance. Of course, bailee drivers can’t take out insurance on taxis that don’t belong to them.

This means that community legal centres are often approached by taxi drivers who are being sued for damages as a result of a car accident. If the accident causes damage to another driver’s car, the driver will be liable for the cost of repairing that car as well. Depending on the type of car, this can mean debts of \$20,000 or even more. Sometimes, drivers come to us with a judgment debt already entered against them, adding thousands of dollars in legal fees to the initial debt. Many drivers in this situation ended up declaring bankruptcy.

Most taxi drivers have no idea that they face this enormous risk every time they drive. Some believe they are insured, because they make regular contributions to taxi clubs, for something called ‘insurance’. In fact, these taxi clubs don’t provide insurance at all. Taxi clubs are discretionary mutuals, meaning that they have no legal obligation to pay any member’s claims. When they do pay, they might cover repairs to the taxi itself, but not the damages claimed by third parties.

If a driver has an accident, he is usually asked to pay ‘excess’ to the taxi club. This is usually around \$1,500. The driver believes that by paying this ‘excess’, he will be covered for any damage, including third-party claims. In our experience, this money is used to repair the taxi. None of it goes towards third-party claims. Several months or even years later, the driver will receive a summons and face court action for thousands and thousands of dollars more.

FCLC were able to persuade the two largest insurers, IAG and Suncorp not to pursue taxi drivers or owners without assets in these circumstances (even after judgment). FCLC made a joint submission to the Victorian Taxi Inquiry with Suncorp which stated that ‘Suncorp has an internal policy (which was developed with Mr Dennis Nelthorpe as part of his Bulk Debt Negotiations and ensures the Suncorp complies with financial hardship provisions in the

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General Insurance Code of Practice) not to pursue the driver. Principally the driver rarely has any assets or income that would allow this to ethically occur.’ Unfortunately, this does not protect all owners and drivers—only a requirement for compulsory third party insurance from an ASIC licensed insurer will achieve that goal.

### Policy Work

Since late 2009, FCLC has been raising our concerns with the Victorian Tax Directorate and the various members of Parliament. Very early in his term, the former Premier of Victoria, Ted Baillieu, announced an inquiry into the Victorian taxi industry, and appointed Allan Fels, the former ACCC chairman, to lead it. Professor Fels has publicly stated that the taxi industry needs drastic reform, and that too much power is held by license owners, and large operators, at the expense of ordinary drivers and the public.

FCLC have made detailed submissions to Professor Fels and his staff based on their casework.

### Outcomes and effectiveness

Many FCLC recommendations, especially those relating to insurance, were adopted in the final report of the inquiry. Much of the material before the inquiry would have not have been available to it but for the work on the topic by FCLC.

Consumer Affairs Victoria also investigated and acted on FCLC complaints about the abuse of the Associations Incorporation Act 1981 by a number of Victorian Taxi Clubs.

*Many FCLC recommendations, especially those relating to insurance, were adopted in the final report of the inquiry. Much of the material before the inquiry would have not have been available to it but for the work on the topic by FCLC.*

### Running a specialist clinic – a strategic approach

One problem of working in a generalist centre is that caseworkers see many cases in many jurisdictions but get few opportunities to specialise in any one area of law. This means lawyers do not see repeat cases, get opportunities to become familiar with documents, legislation or a particular jurisdiction. This lack of familiarity with particular cases makes each individual case more difficult.

The taxi legal service provided an unusual opportunity to examine one industry and one type of legal problem in great detail. The service focused on the “insurance” paid for by drivers and owners to cover the cost of motor vehicle accidents. The solicitors were able to see many clients with similar complaints about misleading, deceptive and unconscionable behaviour. The solicitors became familiar with the names and practices of the taxi clubs, their documentation and their practices. The solicitors were also able to identify the lawyers and debt collectors acting for the general insurance industry in proceedings for recovery of damages from owners and drivers. FCLC was able to become familiar with the rules and operations of the Victorian Tax Directorate - the industry regulator.

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Ultimately, this access to information enabled the service to “connect the dots”, and identify the villains, the causes of problems, the weaknesses in the system and possible solutions that might assist clients.

In less than 12 months FCLC has been able to:

- Provide detailed submissions to the Victorian Taxi Industry Inquiry, which sought advice about breaches of legislation by taxi clubs, solicitors
- Prepare complaints to regulators and make representations to major insurers on behalf of drivers to change insurers’ responses to motor vehicle accidents

The key question for generalist centres is whether night services targeted at specific problems could yield similar benefits in relation to other types of legal problems presenting at community legal centres and that may involve small numbers at any one centre but larger numbers spread across many centres? Funding is available, volunteer lawyers will attend but do community legal centres have the ability and imagination to identify other issues that could be addressed in this way?

Worthy of consideration for community legal centres is whether staff and volunteers take the time to identify systemic issues and liaise with other centres and the Federation of Community Legal Centres to identify those problems that could be tackled by this process. Community legal centres could really make a difference through targeted services that provide opportunities for volunteer students and lawyers to address systemic issues. It is hoped that this report will promote such discussions and problem identification with collaborative actions to have a positive impact on systemic problems that member of the community are facing.

### **Bring Your Bills**

#### **Case Study**

K's story

*She didn't explain. She just pointed to parts and say sign here. I didn't understand everything - there was no interpreter. After I sign, they made a phone call and I spoke. It was too many questions, and I told them it's too many questions! I don't understand, but she just say yes. There was a man then and he didn't ask me if I understand. Understanding English, that is the problem – they should ask me do you need an interpreter? How can I sign forms if I don't understand? I told them I don't understand. But they say it's okay, it's better, just sign.*

### **Working with people in the community who face barriers and do not who know their rights and the law**

The FCLC has provided targeted legal and financial counselling services to refugee and newly arrived communities in the past five years. During that time FCLC staff identified the need for early intervention and quick and effective advice to these clients in their dealings with energy, water and telecommunications retailers. However, such assistance had to overcome the clients’ lack of knowledge, fear of authority and a lack of trust in dispute resolution processes.

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The 'Bring Your Bills' Program is an advocacy process that brings appropriate community, government and dispute resolution agencies together at a central location for one day to assist low-income disadvantaged customers to deal with problems arising from energy, water and telecommunications services. Other services and problems, such as housing, could be added depending on community need.

The program seeks to encourage low income and disadvantaged consumers to bring their contracts, statements and bills to the event without the need to identify a legal problem or dispute. The agencies in attendance will listen to clients, review their documents and assess their need for assistance.

FCLC obtained funding to produce a soon-to-be published report *A Stranger is Calling – the experiences of door-to-door sales in Melbourne's refugee community*. This will build on the project's ability to inform and empower.

### Targeting

The target audience are those clients identified by FCLC and project partners as having most difficulty understanding utility contracts, bills and dispute resolution processes. FCLC identified refugee and recently arrived communities, particularly from the Horn of Africa and Burma, and Office of Housing tenants as most needing our assistance. FCLC noted that these communities were targeted by door-to-door sales teams employed by energy retailers, and that they lacked the necessary language skills to assess offers and contracts, and had difficulties resolving problems within the available dispute resolution processes.

Once the date and location have been decided, the project partners engage in a community advertising campaign. This ongoing campaign targets information about the event to those communities in a geographic location such as an Office of Housing estate, to a refugee or recently arrived community (Burmese and Sudanese), and church or ethnic community organisations in the local area.

Where possible, community leaders from refugee and recently arrived communities are employed to promote and assist with the organisation of the event. A manual has been created (available on request) to assist with organisation of similar events.

The intervention is that the participating agencies will take responsibility for assisting the clients. For this reason FCLC or the organising agency keeps advice and referral records, but the participating agencies open a file on the day upon acceptance of a referral. FCLC or the organising agency is responsible for follow-up after the event to ensure that resolution has occurred or is in progress.

### Benefits for clients

The clinics are designed to encourage clients to seek assistance in a free, safe environment with the support of their community leaders. The clients are not required to identify specific legal problems or customer service issues and do not have to worry about making appointments or arranging interpreters.

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The clinics enable FCLC and project partners to arrange early access to dispute resolution schemes for vulnerable clients. This encourages resolution before the problem has reached a crisis point, and which would require urgent and time-consuming assistance. In this way, it is an early intervention strategy which prevents problems escalating. Its multi-pronged approach includes providing information, checking bills, referring people on the spot in the same room to regulators and also checking documents to see if there is any relating to case work issues that may emerge.

Such strategies are integrated and inseparable. Critical to this is getting a range of stakeholders in the room at once and getting them to talk face to face without the obstacles and barriers of call centres and people in agencies who are often unprepared to take responsibility and action for the consumers' confusion or problems.

### **The importance of partners**

The following agencies have been regular attendees at these events:

- Energy and Water Ombudsman Victoria
- Telecommunications Industry Ombudsman
- City West Water
- Department of Human Services - Concessions Unit

FCLC has also had assistance from Brotherhood Green (energy audits); Centrelink; Consumer Affairs Victoria; and the Public Transport Ombudsman. FCLC has teams of financial counsellors and community lawyers from local agencies.

### **Multi-pronged approach**

FCLC has extended the project and will partner with a leading community agency with access to an appropriate space, such as a community or church hall. The participating agencies will be booked to attend well in advance of the date chosen for the event. Again this, actual example demonstrates that the key to gaining an effective outcome is pooling resources and collaborating in a 'joined-up' way with other agencies.

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### Strategic Policy Outcomes

The project has three strategic outcomes:

- The model has been recognised throughout Australia as a new and innovative model for service delivery to low-income and disadvantaged clients and especially newly arrived and refugee communities. This is evidenced by discussions at national conferences.
- Industry Ombudsman schemes, especially the EWOV, have amended their intake processes so as to provide more effective access for refugee and newly arrived communities.
- The Bring Your Bills process highlighted many cases of inappropriate door knocking and door-to-door sales involving refugee and newly arrived communities. This highlights how, different campaigns can also cross over and work to inform community and build on gains and not working in isolation from other good work being done. FCLC used this evidence to establish education programs based on the 'Do Not Knock' Sticker with the Maribyrnong Council, Victoria Legal Aid and local settlement agencies. The centre also helped clients make complaints to the ACCC, including one used in the recent successful ACCC Federal Court prosecution mentioned earlier in this report.

### Law reform and research

A report about the project is being used to show state and federal regulators the need for greater consumer protection for newly arrived and refugee communities and that silo policy-making can have adverse consequences for important government strategies in other departments.

### Impact

The project is starting to have an impact. Now some councils, on their rates bills, notify people that they have a right to seek legal help. This demonstrates how with strategic approaches changes can happen. Below is an example of one such breakthrough:

Council taking action is revealed by the following email (with identifying details removed):

*'Dear Sir/ Madam,*

*This is to inform you all that ... Council have included your organisation contact details in the letters to our ratepayers, who are currently scheduled to receive Demand letters from our Debt Collection Agency for overdue rates. Council have taken this step as per the recommendation included in the recently published report titled COUNCIL DEBT COLLECTION: Alternatives to suing ratepayers in hardship by Federation of Community Legal Centres.*

*We have attached a copy of the letter for your information as you may start receiving calls from our ratepayers seeking advice.*

*Please feel free to contact the undersigned if you need further details regarding this matter*

*Thank You*

*Revenue Collections Co-ordinator'*

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# Part Five: Conclusion

Strategic approaches as early intervention work that is effective, efficient and critical

The strategic approach examples in the early intervention case examples in Part Four of this report using Linked Credit, Debt Collection, Bulk Debt Negotiation and ‘Bring Your Bills’ and MFW highlight how difficult it can be to isolate actions or activities when they are taken within a broader strategy. These approaches often integrate a range of actions to affect the whole outcome, resulting in multiple outcomes and impacts. Different actions may be required at different times for different reasons to deal with changing circumstances (for example, maximising ‘tipping points’). These can benefit the client and often the broader community, which might also be harmed if the strategy is not adopted.

Such strategic approaches may involve a coordinated campaign involving advice, trend identification, research and further investigation, direct action, community education, awareness, advocacy, media, policy and lobbying and the use of regulators and established relationships – all amassed to achieve the most effective result.

Trying somewhat artificially to take legal services out of context by separating a specific action from the broader range of strategies in order to measure its effectiveness is likely to lead to distortions and inaccuracy. Measuring activities does not necessarily reflect or inform us about their actual impact, which means it is an imprecise measure.

This report argues that any good evaluation must ask the right questions to ensure that the answers actually address the issues that are being measured, and from which the conclusions will be drawn. Asking people questions about aspects of a service that they may have no knowledge of is also dangerous. These are just some of Consumer Action, FCLC and the author’s concerns about the questions and identified participants in the current surveys in the Allen’s review. The absence of qualitative information to explain the more quantitative type of survey responses is also a concern. This means that the reasons behind the statistics are often ignored or overlooked—significantly some of the systemic barriers and resource issues confronting clients and services. There is little chance that the complex and diverse legal services to the vulnerable and disadvantaged will be accounted for in the often broad questioning of many of the surveys.

As many of the case studies in this report highlight, outcomes also occur through joint actions with other agencies, whether these are other peak bodies or non-legal services, Royal Commissions, law reform bodies or regulators such as they ACCC or ASIC. Without such relationships and holistic approaches, there would be fewer impacts and fewer systemic changes. Digiusto<sup>66</sup>, problematically in the author’s view, argues that

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<sup>66</sup> E Digiusto, ‘Effectiveness of Public Legal Assistance Services: A Discussion Paper’, Justice Issues, Paper 16, October 2012, Law and Justice Foundation of New South Wales, (Sydney, 2012)

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measurements for effectiveness ought to be specific activity-based or transaction based. This is problematic as it assumes that legal services are focussed on transactions rather than problem solving. Further, he suggests that outcomes that cannot be directly attributed to the specific service should be 'subtracted' from the equation on their effectiveness. The fact that service agencies cannot be wholly attributed with the full causal connection of any change is a reality. The case studies reveal that legal services will often deliberately work with partner agencies to target clients more efficiently and effectively and to gain more traction and have an impact. This also applies when delivering holistic services, which government has clearly indicated is critical. To then try to subtract the range of parts in the overall outcome attributable to others seems counter-productive.

As this author noted in 2007, community legal centres have often identified and lobbied for changes to policies for decades. However, by the time the change is made the credit is often taken by others. Given that community legal centres are interested in making a difference, they have historically been more concerned effecting that change rather than with trying to receive credit for their hard work. In the increasingly outcome-oriented funding regime, it may be time for community legal centres to stand up and start claiming this credit.<sup>67</sup>

This report highlights that it is dangerous for governments to force a mode of measurements on the legal assistance service if those measurements are not tailored to the clients' circumstances and the dynamics of the legal system. The research demonstrates that for disadvantaged clients (usually the main client group for community legal centres) this can result in significant, multiple and cascading legal problems.<sup>68</sup> We know that the government would not want to deliberately do this. As those in the international context have noted,<sup>69</sup>

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<sup>67</sup> L Curran, 'Making the Legal System More Responsive to Community: A Report on the Impact of Victorian Community Legal Centre Law Reform Initiatives', La Trobe University and the Reichstein Foundation, (Melbourne, May 2007).

<sup>68</sup> C Coumarelos, D MacCourt, J People, H.M. McDonald, Z Wei, R Iriana and S Ramsey, 'Access to Justice and Legal Needs: Legal Australia Wide Survey Legal need in Australia, Law and Justice Foundation of New South Wales, (Sydney, August 2012); P Pleasence, N J Balmer, A Buck, A O'Grady and H Genn, 'Multiple Justiciable Problems: Common Clusters and their Social and Demographic Indicators', *Journal of Empirical Legal Studies* vol. 1, no. 2, 2004, 301-29; L Curran, *Ensuring Justice and Enhancing Human Rights: A Report on Improving Legal Aid Service Delivery to Reach Vulnerable and Disadvantaged People*, (Melbourne: La Trobe University and Victoria Law Foundation, 2007), 4; A Buck, P Pleasence and N J Balmer, 'Education Implications from the English and Welsh Civil and Social Justice Survey', *Annexe to the PLEAS Taskforce Report* (London: PLEAS Taskforce, 2007); A Buck and L Curran, 'Delivery of Advice to Marginalised and Vulnerable People: the Need for Innovative Approaches', *Public Space: The Journal of Law and Social Justice* vol. 3, art. 7 (2009).

<sup>69</sup> For a detailed discussion of the challenges of such measurement in other human services and humanitarian spheres including by the World Bank and the United Nations Development Agency, see L Curran, 'Literature Review- A Literature review examining the literature on how to measure the 'successful outcomes': quality, effectiveness and efficiency of legal assistance services', February 2012, Attorney General's Department (Canberra, 2011)

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effectiveness and outcome measurement is not easy, **however taking a simplistic approach to measuring complicated service delivery is not an answer.**

It is hoped this report, whilst highlighting some of the problems, can also provide some ideas on ways forward (see recommendations) for both the Government and for Allen's Consulting, which has the difficult task of conducting the Review of Legal Assistance Services.

This report notes a concern that the current review of Legal Assistance Services in Australia is not asking the right questions, which means that the answers will not be that helpful and could in fact lead to distortions.

Measurement approaches that separate out the various aspects of providing a legal service ignore the research.<sup>70</sup> This shows that problems are connected and that a holistic approach that integrates various responses is needed, rather than one that separates them out. This separation ignores the reality of the lives of the people whom community legal centres seek to help. Case work, social action, awareness-raising, direct action, advocacy and strategic public-interest case work can all come into play at times or within a continuum of a services response.

It takes time to have an impact and to develop a service that has its head above the parapet and that can look around for opportunities where reform can occur. The case work on taxi driver experiences that informed the Fels Inquiry into the Taxi Industry is an example of where this can lead. Giving these inquiries access to research and raw data from a community legal centre to inform their deliberations is likely to have significant impacts that would be easily missed in an evaluation not crafted to examine integrated and strategic legal service delivery. This is critical if real change and solutions to legal problems is to occur.

One fact that needs to be noted, as evidenced by the case studies in Part Four, is that the work of community legal centres involves constant monitoring of issues arising for their client group and ongoing law reform. Some legislative and policy changes can be made but often these do not go far enough and so ongoing campaigning is needed to ensure reform. This takes time, which means policy change cannot be measured in a short-term way or it will set services up to fail. When change involves moving resistant legislators or companies, creating a shift in culture is not easy. Any impact or outcome measurement which fails to recognise this is highly problematic.<sup>71</sup>

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<http://www.ag.gov.au/LegalSystem/Legalaid/Documents/Literature%20review%20of%20legal%20assistance%20by%20Dr%20Liz%20Curran.pdf> (accessed 30 January 2013);

<sup>70</sup> C Coumarelos, D MacCourt, J People, H.M. McDonald, Z Wei, R Iriana and S Ramsey, 'Access to Justice and Legal Needs: Legal Australia Wide Survey Legal need in Australia, Law and Justice Foundation of New South Wales, (Sydney, August 2012);

<sup>71</sup> L Curran, 'Making the Legal System More Responsive to Community: A Report on the Impact of Victorian Community Legal Centre Law Reform Initiatives', La Trobe University and the Reichstein Foundation, May 2007.

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The best kind of measurement is measurement that is relevant, practical, which makes sense to those providing the service and gathering the data, and which is realistic. To achieve this,<sup>72</sup> the author argues that measures need to be informed heavily by those who deliver the legal services on the ground and ought not burdensome in an under resourced sector. Instead, all the efforts should be on actually delivering the services to the community who need them most.

The author accepts that some level of reporting of quantitative data is needed where Government commits significant funding. However, this should be kept to a minimum to reduce the resource burden on centres, and to ensure that the data required doesn't encourage less effective services. It also ought to be complimented by qualitative research that can explain the statistics and which is done in a way which supports the services in its work.

In addition to providing data, it may be appropriate to support centres with the resources to enable them to demonstrate that they have an understanding of the legal issues in their particular region (or area of law for specialist centres), that they target their services appropriately, and that they have processes to target client groups and to respond strategically to legal problems. Once this is established, centres should then be encouraged, funded and supported to analyse and evaluate their work (both individual assistance and broader advocacy) in a way which can inform the service about their impacts, and determine what works well and why, so it can inform the service's development and help it improve its services. This would foster an environment where strategic thought and planning about service mix approaches are used to make the service more outcome-focused. This would lead to services being more effective and mindful of what interventions are needed to achieve the best outcomes rather than merely providing case work, information and referral in isolation from a broader strategy that improves clients' lives. As an example, Consumer Action is currently undertaking its own evaluation of its advice-line with the assistance of the author, shaped by its knowledge of the barriers clients can face, along with international research and knowledge of the consumer area. It would be happy to work with other community legal centres and share the process in designing the evaluation.

The author accepts that this is not a simple task, and that it would require some expert work with centres focussed on evaluating broader advocacy activities, and the integration of those activities with legal casework.

This report illustrates that by adopting a strategic approach (where appropriate) to assisting clients, opportunities can be maximised and taken advantage of and the revolving door can be averted for others. These strategic approaches, which are in effect early intervention and prevention strategies, should be included in any definitions and attempts to examine early

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<sup>72</sup> L Curran, "I can now see there's light at the end of the tunnel", Legal Aid ACT: Demonstrating and Ensuring Quality Service to Clients", Legal Aid ACT, 2012.  
[http://www.legalaidact.org.au/pdf/Light\\_at\\_the\\_end\\_of\\_the\\_Tunnel\\_Legal\\_Aid\\_Services\\_Quality\\_and\\_Outcomes.pdf](http://www.legalaidact.org.au/pdf/Light_at_the_end_of_the_Tunnel_Legal_Aid_Services_Quality_and_Outcomes.pdf)

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intervention/prevention approaches Measurement instruments which incorporate work of legal services that is likely to prevent the sorts of behaviours that harm clients need to be investigated.

That a service conducts 20 per cent law reform and 50 per cent case work tells us nothing about the actual impact or effectiveness of the service delivered. Consumer Action, FCLC and the author all support measurement and evaluation that actually work towards discovering whether the interventions of the services are making a difference. However, it is debatable whether merely reporting such numbers reveals much about the actual impact of the service. As this report has argued, tasks of themselves do not actually tell us what is actually going on within the frenzy of activity that such reporting mechanism are likely to encourage.

It has been suggested by Digiusto<sup>73</sup>, that the best way to measure effectiveness is to subtract other players or contributors to the outcome and measure individualised activities and their impact rather than looking at the whole. Such an approach ignores the complexities and multi-layered issues that the Australia-wide Law Survey has identified to exist and that organisations are effective because they work in partnership and collaboration with other services to be effective.<sup>74</sup> To subtract outcomes which result due to such collaborations and partnerships would actually undervalue these relationships exclude outcomes that rely on the work of agencies in conjunction which is so key to the work of legal assistance services. It also is something explicitly required of services by the NPA. By divorcing this work it leads to a level of artificiality and would see many outcomes which occur because of services uniting being discounted from the measure of the services effectiveness. Many factors can affect whether a client has a good outcome and these may be incapable of being separated from the advice given because there is a strategic approach that depends upon the integration of a number of actions to be effective.

Consumer Action will not have success at VCAT if their client is too depressed to attend. Getting help for the client through a good relationship with a mental health provider who can support the client so that he is able to attend the VCAT hearing is one illustration of how this works. Digiusto's methodology would insist that the role of the health service provider be 'subtracted' from the equation in how the service has been effective because it is not wholly attributable to the service. This approach to the measurement of effectiveness would undermine the whole notion of holistic and collaborative service that community legal centres, government and much of the international research supports. More importantly such a holistic approach is more likely to lead to demonstrable, ongoing and significant change in the communities that community legal centres aim to represent. As one lawyer at Consumer

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<sup>73</sup> E Digiusto, 'Effectiveness of Public Legal Assistance Services: A Discussion Paper', Justice Issues, Paper 16, October 2012, Law and Justice Foundation of New South Wales, (Sydney, 2012).

<sup>74</sup> C Coumarelos, D MacCourt, J People, H.M. McDonald, Z Wei, R Iriana and S Ramsey, 'Access to Justice and Legal Needs: Legal Australia Wide Survey Legal need in Australia, Law and Justice Foundation of New South Wales, (Sydney, August 2012).

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Action described the centre's work, "We help the client, (but) we also ask the question 'how many other people can we help by helping this client'. Such an analysis means that we are always working out the way we can efficiently get a good outcome and at the same time reduce the unmet legal need." This mindset also sets up a framework where examining each client within a prism of how many others may have the same problem results in early intervention and prevention.

This report argues is that the Commonwealth Government and other funders should resource, enable and encourage community legal centres to develop their own evaluation tools best suited to the nature of the service, its role in responding to community need and rights and the legislative and policy settings and contexts in which it operates, whether rural, regional, indigenous, consumer, criminal law, family violence, family law, discrimination, or refugees and immigration law.

Based on the work of Consumer Action and FCLC, this report also makes a case for including and broadening the understanding of early intervention and prevention so that they now include strategic approaches to problem solving. It is the view of Consumer Action, FCLC and this author that by developing a more inclusive approach that recognises the importance of tailoring and responding with a range of strategies, the sector will be encouraged to be innovative in its approach to problem solving.

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# Recommendations

1. The Commonwealth Government and other funders should resource, enable and encourage community legal centres to develop their own evaluation tools best suited to the nature of the service, its role in responding to community need and rights and the legislative and policy settings and contexts.
2. The understanding/definition of 'early intervention' and 'prevention' should be broadened to include strategic approaches to problem solving that can integrate a wide and holistic range of strategies that stop a 'revolving door' of individual cases.
3. Output-based reporting should be considered similar to that developed between CAV and Consumer Action to enable the service to select from a wide menu of items based on the client's circumstances. For example, in the energy industry the system works on the basis of incentive-based reporting rather than punitive based reporting. Consumer Action is happy to elaborate further on what this might look like.
4. Any measurements of service effectiveness, efficiency, outcomes or quality need to be relevant, practical, informative, accurate and measurable and not lend themselves to distortions due to inappropriate phraseology.
5. Rather than having restrictive reporting requirements, which can inhibit innovations and responsiveness to client/community need, there should be room for determinations by the services about how best to proceed and use the best methods for the situation. This means that organisations must have the capacity to use their skills, experience and knowledge of the practical working of the system and the clients' actual circumstances to determine which approach might be strategic to pursue.
6. Acknowledge that activity reporting can lead to inefficiencies and ineffectiveness and consider contexts where such reporting may be relevant and usefully indicative and where other measurements might be more appropriate. This is especially important given the often integrated and holistic nature of effective service delivery, which contradicts the notion that activity-based reporting may necessarily lead to an outcome.
7. Consider ways that data and information can be collected and analysed to acknowledge the value of a broader strategic approach, and that doesn't discourage innovative approaches.
8. Encourage, fund and support community legal centres to undertake evaluation in a way which analyses their work and can inform the service about their impacts, this can inform the service's development and help it to improve its service delivery continuously. 'Bottom up' evaluations should be considered, where services are provided with support, capacity and resources to design evaluation tools and use them when they are appropriate. The evaluation of the client advice line now being undertaken by Consumer Action with the assistance of the author is an example of this.