Response to Draft Report of the Productivity Commission Inquiry:

Access to Justice Arrangements

Inquiries to Ariel Couchman, Director
Young Peoples Legal Rights Centre
Inc No A0041616E
ABN 12 794 935 230

www.youthlaw.asn.au

Tel 9611 2412 Fax 9620 3622 Email info@youthlaw.asn.au

AT FRONTYARD, 19 KING STREET, MELBOURNE VIC 3000

The Young People's Legal Rights Centre (**Youthlaw**) welcomes this opportunity to comment on the Productivity Commission Draft Report into Access to Justice Arrangements (**Draft Report**).

1. Executive summary

Eligibility criteria	✓ Require active assessment of legal need ✓ Require eligibility criteria for prioritising service delivery ✓ Community Legal Centres' (**CLCs'**) require some flexibility × W do not support a uniform criteria across CLCs and Legal Aid Commissions (**LACs**)
Funding	✓ Requires resources to be targeted ✓ Currently cannot address huge unmet legal need ✓ CLCs require minimum core funding to be stable and active. × Competitive tendering would result in decreased sector productivity, capacity, performance and ability to target vulnerable clients ✓ A collaborative model of funding is required prioritising effective needs assessment, co-located service delivery, effective triage and service guidelines, collaboration with non-legal supports and strategic advocacy and community legal education
Volunteers	✓ Volunteers provide crucial support to CLCs × Without adequate resources / funding CLCs cannot expand existing use of volunteer resources
Referrals	✓ Require multi-disciplinary and integrated referral entry points, processes and referrals × A single entry point for legal services is not responsive to what we know about the way people access legal services ✓ People experiencing disadvantage require multiple entry points for legal assistance ✓ There needs to be Increased awareness of Ombudsmen and complaint mechanisms × Ombudsmen do not replace the role of CLCs
Protective Costs Orders	✓ We support Protective Costs Order regimes or funding that would enable legal assistance providers to engage in strategic litigation that is of public interest
Civil law funding	✓ There needs to be increased funding for civil law matters
Data	✓ CLCs require investment and assistance to collect and analyse data. ✓ CLCs require greater access to LACs , court, police and government agency data ✓ We support a LAW Survey every 5 years ✓ CLCs require dedicated funding to conduct legal needs analysis.

2. Overview of Youthlaw

a. Background

Youthlaw is an independent, not for profit community legal service for Victoria's young people established in 2001.

With a small but dedicated team of 7 paid staff and 20 volunteers we annually assist over 1800 young people and also parents, other family members, youth workers and professionals working with young people.

Youthlaw is based in the Melbourne CBD and co-located with Frontyard Youth Services (**Frontyard**), a youth homelessness hub with a number of support agencies which work together to address the physical, emotional and social needs of homeless and disadvantaged young people aged 12 to 25 years. Our approach is to work closely with other services to provide the integrated range of services needed for young people to take control of their lives.

b. Our impact

The legal assistance we provide makes a difference: empowering young people to use the legal system to protect themselves from abuse and unfair treatment; reducing the impact of a serious criminal record; and dealing with spiralling debt, mounting fines and legal proceedings. We also assist young people in making connections with non-legal services which may assist in preventing legal problems arising in the future.

Young people, particularly those most vulnerable and marginalised, do not readily engage with the legal system. Very few initiate using generalist legal centres or LACs let alone private lawyers. These young people seek advice from those they know and trust. A key role of a specialist youth centre such as Youthlaw is to find ways to reach out to these young people. And we do so through innovative service delivery, secondary consultations with adults assisting them and tailored legal education.

Case study 1: Sarah's access to legal assistance and other support

Sarah,* 18, came to Frontyard looking for a place to stay for the night. Sarah left home due to family conflict and was sleeping on the street or in hostels if she was lucky enough to secure a bed. Homelessness wasn't Sarah's only challenge: she had been a victim of sexual assault and was overwhelmed by a large amount of fines.

Sarah was linked in with Youthlaw to assist with her legal issues, the Young Person's Health Service for referrals to mental health and counselling support and Melbourne Youth Support Service to youth and social workers who found Sarah a safe place to live.

Youthlaw assisted Sarah with a Victims of Crime application for some money, counselling and other expenses so she could talk to a psychologist about how she could feel safe in public again. Youthlaw also assisted Sarah to write to the Infringements Court explaining that her public transport fines were incurred at a time when she was homeless and struggling to pay for her basic survival needs. Sarah is now no longer homeless, seeing her psychologist regularly and hoping to return to school soon.

**Not her real name*

The young people Youthlaw assists have usually fled the family home or been removed by the Department of Human Services following family violence, conflict, abuse and neglect. The vast majority of the young people assisted by Youthlaw have dropped out of school and are living precariously day-by-day. About one-fifth of the young people we assist have been through the child protection system. The other four-fifths we assist are generally less visible to the community and authorities. They are often struggling with untreated mental health issues, drug and alcohol abuse, social isolation and homelessness.

c. Common issues

The key legal issues our clients present with are:

- Crime (e.g. thefts, minor assaults, graffiti charges, drug charges, driving and traffic offences, charges relating to interactions with authorities).
- Home and relationships (e.g. family violence, leaving home, treatment in out of home care, intervention orders, family law parent contact, locating parents).
- Compensation (e.g. victims of crime, other personal injury claims).
- Fines (e.g. public transport, street offences, driving offences, toll fines, parking fines, liquor offences and other minor criminal offences for which fines can be issued).
- Consumer contracts (e.g. entering into unconscionable contracts, personal loans, signing contracts under the age of 18).
- Debt (spiralling debts often from unpaid phone bill, unpaid utilities, credit cards, etc.).
- Housing and accommodation (e.g. tenancy, evictions, bond and compensation orders).
- School (e.g. suspensions and expulsions, bullying, cyber-bullying).
- Work (e.g. underpayment, discrimination, workplace bullying, unfair dismissal, unsafe employment and training).

3. The distinct and critical role of Community Legal centres

The Draft Report recognises that CLCs play a distinct and critical role as part of the mixed model of legal assistance services.

a. Flexible and adaptive legal services

Youthlaw supports young people by providing free legal assistance by fully qualified and trained youth lawyers who can talk to young people about their legal problems in a flexible way and on young people's terms.

Our free services are designed to engage with our with our target group and include:

- Legal information by phone, email and Facebook chat.
- Legal advice through our drop in clinic at Frontyard.
- Outreach legal services including:
    - Youthlaw Online: a Skype legal service to 9 regional and rural locations in Victoria (Seymour, Shepparton, Cobram, Rosebud, Hastings, Mt Eliza, Lilydale, Yarra Junction and Barwon);
    - Youth Bus: legal advice at the Salvation Army Youth Bus in the Melbourne CBD; and
    - YSAS Detox: legal advice to young people withdrawing from drug and alcohol addiction in detox.

- Friday Fines Day: a high-volume legal advice clinic targeting increasing numbers of young people struggling with unpaid fines (starting in July 2014).
- Online legal education resources for young people and training resources for teachers, health staff and youth workers.
- Pamphlets, cards and guides for young people and social workers to learn about their rights in relation to a range of legal areas (e.g. graffiti laws, becoming independent, "What do I do when…?" a publication for individuals and organisations working with young people) to assist them to identify youth legal issues and be aware of their legal responsibilities.

Where the issues affecting young people are systemic and re-occurring, our advocacy raises community understanding about these issues and encourages government and public authorities to improve policies, practices and laws in ways that are of long-standing benefit to young people and the community.

b. Community based outreach services

Case study 2: Understanding our target group and designing services to engage them
In 2014, Youthlaw started a legal outreach service to young people struggling with drug and alcohol addiction at youth detox facilities. It is during this period that young people with a history of substance abuse are trying to turn their lives around, learning about harm minimisation and how to manage their addiction that they have an opportunity to talk to a lawyer about their legal matters that they have not been able to deal with previously. Youthlaw provides advice to young people about mounting debt, unpaid fines, outstanding warrants and other legal issues which affect young people attempting to stop using drugs and alcohol.

CLCs are actively engaged with and responsive to their target communities. In the case of Youthlaw this is our relationship with vulnerable and marginalised youth. This 'on the ground' connection and knowledge assists CLCs like Youthlaw to collect information about emerging issues and gaps in legal assistance, and the best way to reach them.

Case study 3: Community engagement as a legal needs analysis tool

In March 2008, Youthlaw worked with local youth workers networks across the state to identify the most suitable location for Youthlaw Online. Host sites (community centres) were identified based not only on examining demographic data but also by identifying community centres that demonstrated high and active engagement with vulnerable and marginalised youth. This resulted in our legal expertise becoming available to young people in a small country town with a busy youth drop-in centre. In another country town where young people increased engagement and interaction with a different centre Youthlaw were flexible and adaptive enough to re-locate our service there.

It assists CLCs to design and position our services and legal resources so they are relevant and accessible to our client group. This close level of connection and engagement with the community enables CLCs to be responsive to legal need and provides opportunities for service development.

Case study 4: Community engagement enables us to be responsive to emerging need
In November 2008, Youthlaw established an outreach legal service at the Youth Enterprise Hub in Braybrook, in Victoria's socioeconomically disadvantaged western suburbs. Braybrook has a high population of newly arrived young people from refugee backgrounds. We began this outreach in response to concerns held by local youth workers, a large not for profit organisation and council staff that local young men were increasingly getting in trouble with the law and that interactions between police and young people were deteriorating.

The weekly outreach at the Youth Hub fostered strong relationships between Youthlaw and the young people living in the area. We observed over time that they became much more positive and future focused. Those who had previously ignored court dates began attending court and, as a result, received better outcomes. They also used the legal service to address many of their previously unaddressed civil issues including debts, consumer contracts, Centrelink problems and complaints about authorities. Many of the young people accessing the service had traumatic pasts, had lost family members and had few, if any, people in their lives they could rely upon and seek help from.

Young people and their families were also encouraged to get involved in a community development project, 'Project 3019', which aimed to improve interactions with police and inform young people about the law. Police were involved and the project involved lots of activities, outings and the production of a DVD '3019 on the Radar' which features local young people acting out police and arrest scenarios and a Youthlaw lawyer providing information on the law in these situations.

c. Community legal education

The community education, training and development of resources by CLCs provide numerous examples of the distinctive and beneficial features of CLCs. As with legal services, community legal education is designed and presented in response to active engagement with our communities of interest. CLCs are able to develop materials that are highly accessible to our target groups. Resources can be tailored for specific audiences.

Our co-location with youth services and our active involvement in youth services networks enables us to deliver highly effective and targeted community legal education.

Many requests for talks are from programs and services we have developed a relationship with. They support marginalised young people many of whom have learning difficulties and/or challenging behaviours. Through regular delivery of sessions to those groups our lawyers are able to develop a high level of trust as well as strategies and communication styles to effectively engage those young people. Feedback from our evaluation of these sessions consistently indicates that our lawyers are highly skilled at engaging young people and we are frequently invited back to present at the same service for new groups of young people each year.

Another area in which our co-location with youth services and our strong ties with the youth sector have proven highly beneficial is in the development of our community legal education resources. In our experience, most other legal materials tend to be very general and inaccessible for young people with limited educational backgrounds. Our co-location with other youth services and close working relationship with the sector uniquely places us to seek genuine, immediate and ongoing feedback from young people when developing our legal education resources.

Case study 5: Youthlaw Mobile

Youthlaw is currently developing a website for young people called Street Smart, which is designed to be responsive and user-friendly on Smartphones as well as tablets and desktop computers. Working with user-experience experts and developers, the project involved 2 stages of consultation with young people. Our co-location with a crisis housing service meant we were able to recruit young people who may have been otherwise difficult to reach as transience often makes it difficult for those young people to keep appointments or travel to offices for that purpose alone. Their responses during the first phase of consultation were compiled into a report that challenged and altered many of our assumptions about how young people, and particularly homeless young people, use their mobile phones and the internet to solve legal problems. Although the project is still underway, other external services and agencies have already requested copies of the report as many ground-breaking findings were made. The website is currently being developed with the expectation and capacity to develop and add to it in the future to ensure young people understand their rights on the street (i.e. their rights when dealing with authorities such as police officers, protective Service officers (PSOs), ticket inspectors and security guards).

As a small and independent community organisation, we are able to trial innovative and experimental approaches to providing services including legal resources. Many CLCs including Youthlaw have developed education materials which have then been adopted by much larger organisations, such as Victoria Legal Aid.

Case study 6: Street law videos & *what's the Law?*

In 2013, Youthlaw produced 5 animated YouTube videos as part of our "Street Law" series to educate young people about their rights when dealing with police officers and PSOs. We developed the videos by working in collaboration with multi-media students from YouthWorx: an organisation that provides education and support for marginalised young people and one we previously worked with to provide community legal education.

Working with these students, Youthlaw trialled techniques that drew on community development principles as well as story-telling and script-writing activities to develop storylines for the videos based on their real-life experiences. The students were critical to the development and production of the series of short, animated videos, including the narration, and we believe their involvement has been critical to the effectiveness of the videos. The feedback we have received is that the videos hold greater appeal for young people than other legal education videos because they tell stories young people can relate to.

In 2014 Victoria Legal Aid (VLA) will be incorporating the videos into a legal kit that will be widely distributed to Victorian secondary schools, currently titled *what's the Law?* VLA has also requested Youthlaw partner with them in developing greater engagement with young people to assist them to consult on future resources. The project highlighted how, as a community legal centre, our adaptability and close working relationship with the youth sector lead to a highly successful legal education resource that could be developed in a cost-effective and collaborative way. Larger organisation like Victoria Legal Aid, who may not have been as well placed to deliver the product for the same cost and build the same level of trust with young people to be able to engage them effectively, can then incorporate the resource into their larger distribution networks and with other legal resources they are developing.

CLCs can respond flexibly and quickly to emerging issues and new environments (e.g. the use of new technology). They are also flexible and dynamic in changing services and resources according to need and feedback.

Legal needs research and our own research findings as part of our Street Smart project (see above) indicates that young people are more likely to approach youth workers or other support figures rather than lawyers for help with their legal problems. These findings challenge traditional notions of the lawyer-client relationship and suggest lawyers must build the capacity of youth workers to better assist young people to identify legal issues and seek appropriate legal assistance.

Case study 7: *What do I do when…?* Booklet for youth workers

Youthlaw first published a practical guide to the law for youth workers and other professionals working with young people called *what do I do when?* In 2007. The resource has proven highly popular, with a new edition published in 2012. Given the demand, Youthlaw could not sustain continued printing and distribution of the resource independently. Youthlaw sought assistance from VLA to distribute the resource however VLA recommended Youthlaw continue to distribute the booklet because of its extensive connections with youth services whereas VLA was better placed to provide resources for the general public rather than specific professionals.

There continues to be a high demand for this booklet from youth workers and other professionals so Youthlaw has continued to offer the publication but for a fee to cover our administrative and printing costs. However, the example illustrates that without CLCs such as Youthlaw, youth workers would not be able to access legal resources tailored to their needs, despite playing a critical part in young people's access to legal information.

d. Law reform and policy work

Youthlaw and many CLCs engage in broad law reform and advocacy work about issues affecting our communities of interest. This work sometimes includes legal test cases but also can be draw on the experiences of our clients and the shared experiences of other service providers. This work often includes a component of generating public debate through forums and through media. It involves engaging with key stakeholders and decision-makers to raise issues of concern and to bring about changes in policies, practices and laws.

Examples of this include:

- Drawing on the experiences of our clients in child protection and out of home care to bring about improvements in practices and laws such as transitional support beyond 18 and a Charter of Rights and responsibilities for those in out of home care.
- Drawing on our experience (and that of other legal service providers and the youth sector) of the gaps in, and disparity in provision of youth diversion we have worked closely with other legal providers (including VLA and the Law Institute of Victoria) to engage and inform key stakeholders and decision-makers of this issue.
- Drawing attention to Centrelink issues for a significant and growing population of homeless young people and a significant growing number who are 'couch surfing', one step away from homelessness

- Drawing on our experience of our clients receiving substantial numbers of fines and the disproportionate impacts these have on vulnerable and marginalised young people we have contributed to government inquiries and committees about improvements to the child and adult fines systems.

e. Strategic litigation

Currently Youthlaw has a test case on foot in the Supreme Court of Victoria, Court of Appeal and we have been provided substantial legal assistance to conduct this by the law firm Maddocks and 3 senior barristers. We have also received pro bono assistance from counsel to assist with coronial hearings that raise systemic issues for vulnerable and marginalised young people. In the Magistrates Court we have appealed and challenge decisions that have paved the way for procedural and legal changes that will benefit many young people.

f. Community development partnerships

Youthlaw has very strong relationships with youth organisations and all our services have been developed in partnership with co-located youth services.

We enjoy a very strong relationship with the legal sector including the other 3 legal assistance providers referred to in the Draft Report (VLA, the Victorian Aboriginal Legal Service and the Aboriginal Family Violence Prevention Legal Service) as well as private lawyers and barristers. Youthlaw receives pro bono assistance from Ashurst as a priority client and many other private lawyers provide pro bono assistance, including court representation.

Case study 8: Integrated multi disciplinary intake &assessment for young people experiencing homelessness

In 2013 Youthlaw collaborated with representatives from across the services at Frontyard to develop a new Intake System for Frontyard. The new Frontyard Intake System was designed to significantly strengthen integration and collaboration between all services at Frontyard. The system also aimed to provide a more responsive and coordinated service to young people.

Previously, when a young person attended Frontyard they were asked which service they would like to see and were then linked in with that service. The new system was designed to include an intake questionnaire to assist with identification of a range issues that a young person may need to address, including legal matters. The introduction of this customised assessment tool has seen the referrals from Frontyard to Youthlaw increase significantly since its implementation.

4. Eligibility criteria for CLCs

a. Young people we assist

Youthlaw assists vulnerable and marginalised young people. By this we mean not only socio-economically disadvantaged young people but also young people who are particularly vulnerable due to:

- homelessness or an unstable home life;
- mental illness;
- drug and alcohol abuse and addiction;

- intellectual disability, cognitive impairment, acquired brain injury or a learning disability;
- recent arrival as a refugee and marginalisation as a member of CALD communities;
- Aboriginal or Torres Strait Islander status;
- Identifying as gay, lesbian, bisexual, transgender, intersex and queer;
- out of home care and involvement with the child protection system; and
- being located in a regional, remote or rural location.

From surveys we have conducted, we know that many of these young people who first present to Frontyard Youth Services:

- don't know where to go with their legal problems;
- don't think anyone can help;
- don't understand the law; and
- don't trust the legal system to help them.

b. Effectively targeting legal need

The Draft Report considers how effective CLCs target their resources to meet unmet legal need. The Draft Report makes a number of suggestions about eligibility criteria, including the possibility of standardising the eligibility criteria between LACs and CLCs

The Draft report states on page 647 that "[t]he commission considers that the LACs financial eligibility test is probably too tight and the CLCs criteria is possibly too lax, although it is hard to know given the lack of transparency."

Youthlaw has detailed assistance guidelines that are consistently applied by our lawyers to target young people with the highest levels of need and where we assess it will have the greatest impact.

Before deciding whether to take on a new case, all Youthlaw lawyers must consider the following eligibility criteria:

- We target and provide our services to the most vulnerable and marginalised young people (i.e. young people experiencing homelessness, poverty, mental health issues, substance abuse, child abuse and family violence and/or from marginalised CALD communities).
- We do not assist young people who are eligible for VLA assistance except where our assessment is that they do not have the capacity to access VLA through a referral (e.g. they are a longstanding client who we have developed a trusted relationship with, and we assess that they will not attend an appointment with legal aid).
- We target cases that align with key legal issues of concern, and which are related to our broader advocacy initiatives (i.e. police powers, infringements, youth diversion).
- We provide more court representation than most CLCs in recognition of the barriers vulnerable young people face in representing themselves at court.
- We provide information and advice by phone, email and Facebook chat to young people and adults assisting a young person within our client group (e.g. family, friends, workers and other professionals).

In response to draft recommendations 21.2, 21.3 and 21.5, Youthlaw agrees that it is appropriate that the eligibility tests of different legal assistance services operate in accordance with a high level framework, noting that services must also retain flexibility to develop their own criteria that respond to priority groups and legal issues in particular communities.

In addition to the factors referred to above, we suggest that eligibility tests for certain types of services should also reference whether the legal matter or case under consideration has potential to have an impact in relation to broader policy issues beyond the impact on individual parties involved in the matter.

We agree that CLCs and LACs should work together to ensure that services' eligibility criteria are complementary and operate together to provide maximum access to justice for the community or relevant client groups.

However, uniform criteria across CLCs and LACs are not supported as this would remove CLCs' capacity to:

- Focus on community-specific needs or variations in the legal issues affecting a CLC's client group or community.
- Respond to emerging issues and needs within a CLC's client group or community.
- Assist people who do not meet the means test elements of legal aid eligibility criteria but who experience various forms or disadvantage and marginalisation and would face severe injustice if excluded from all legal service assistance.

5. Distribution of funding

a. Our funding

In its first year of operation Youthlaw received $51,000 recurrent funding through the Community Legal Service Program (**CLSP**). As at 2013 this had increased to $301,000 per annum. We operate on an average total income of about $500,000 per annum.

From its establishment up to the current day, Youthlaw has had to secure over 60% of its revenue from sources other than CLSP to remain a viable and sustainable legal service. A significant contributor has been the law firm Ashurst (previously Blake Dawson) who have provided a full-time secondee lawyer on a 6 month rotating basis since 2002 and a number of years of financial donation.

About 40% of our revenue comprises one-off short term project grants. This can be very challenging because we must direct project grants to new projects and often new staff, when in fact our core services are constantly underfunded. The further impact noticed by many CLCs including ours is that projects draw on core staff time, further reducing core capacity.

We cross-subsidise our core service to vulnerable and marginalised young people by tendering for contracts and consultancies for a broader youth cohort. This includes a contract to provide a legal service at RMIT (to University, TAFE and secondary students) and paid consultancies such as to develop legal content for the ASIC youth and money website and legal content for victims of domestic violence about online abuse.

In 2001 Youthlaw had staff consisting of 1 paid lawyer and 1 secondee lawyer paid by Ashurst. Today we have 5 lawyers (3.4 EFT lawyers and 1 secondee lawyer). In addition we have a full-time Director, a part-time policy officer and a finance officer working one day per fortnight.

Youthlaw has no paid administrative or secretarial staff. We have a highly developed volunteer program that trains and supervises law students to provide administrative and paralegal support to our staff.

We do not have funds to backfill any positions. We have had staff go off on extended leave including long service leave and have been unable to backfill these positions.

Youthlaw like so many CLCs operates as an extremely cost effective legal provider. Most of income is used to pay salaries. There is very little in the way of operational expenditure. Salaries at Youthlaw are above the SCHADS Award but are well below VLA salaries for an equivalent position. The Director position is expected to be an executive officer, administrative service manager, human resource manager and service development officer. The Principal lawyer has over 25 years criminal court experience and yet is paid the equivalent of a relatively junior lawyer position at Victoria Legal Aid. The Principal lawyer conducts and oversees complex legal cases without paid administrative support.

b. Distribution of funding across CLCs

The Commission seeks feedback on how CLC funds should be distributed across providers.

In response to information request 21.3 and draft recommendation 21.4, Youthlaw strongly urges adequate funding of CLCs to ensure they are viable, stable and proactive entities to undertake the important work that we do. We believe that each CLC requires a minimum core annual government funding of at least $ 500,000, as has been repeatedly recommended by the Federation of Community Legal Centres and the National Association of Community Legal Centres.

Regardless of the approach used to allocate CLC funds, it is clear that, on its own, redistribution of CLC funds will not enable services to meet even the most pressing civil law issues of disadvantaged Victorians. Redistribution of current funds to meet gaps in services, with no increased resources overall, will unacceptably reduce access to justice for many disadvantaged Victorians.

We encourage the Commission to conduct or commission detailed analysis on the extent of resourcing required to reach a reasonable and necessary level of assistance.

Any changes to the legal assistance system should not lead to reduced access to disadvantaged people currently receiving assistance. It is incorrect and unsafe to assume low or no legal need in particular areas, including areas with higher overall SEIFA index.

However, we agree that:

- Resources should be targeted to meet highest need.
- There remain areas of significant unmet need and serious gaps in service.

- Further work is warranted to ensure CLC resources are being applied in a way consistent with changing legal need.
- There is some potential for CLCs to work together to improve coordination of legal needs analysis, service planning and service delivery.

We note these issues are most effectively addressed by legal assistance services and that a number of Victorian CLCs are already leading this work.

Youthlaw has undertaken some formal legal needs analysis utilising available data such as the ABS and SEIFA index as well as local government data. As do all CLCs we pride ourselves on being well connected with our community of interest through our partnerships and relationships with other services, being on the ground providing services and obtaining feedback and participation in our service from our target group.

In regard to competitive tendering we are of the view that this would result in a decline in service quality to users of legal assistance services. From our experience in the non-government sector competitive tendering would be costly and not yield sufficient benefit for the legal assistance sector as a whole or for legal service users.

The recent experience in Victoria of rationalising many welfare organisation areas has been that small providers with strong community connection have inevitably been replaced by larger not for profit organisations with little expertise or demonstrated connection with the vulnerable and disadvantaged communities they will be expected to work with. These larger organisations are largely service arms of government. If this is to be the future of a competitive tendering process it would seem little different to having LACs take over the work of CLCs

Furthermore competitive tendering would be extremely damaging to the legal assistance sector that relies heavily on collaboration between all legal assistance providers including efficient and smooth referral pathways for the benefit of our clients.

The process would also undoubtedly negatively impact sector morale and we would hazard would negatively impact on the good will of the private legal sector, financial donors, prospective volunteers and sector partnerships.

A great concern we have is about the impact of competitive tendering on the skills and knowledge of the staff that will provide services. At Youthlaw our staff are trained and expected to deliver legal services in a way that meets the needs of our target group. This includes dealing with young people who have a range of risk factors such as being substance affected, survivors of violence and at risk of self-harm and suicide.

We are of the view that a collaborative model involving CLCs in the decision making process is a more appropriate and effective approach. There are already examples of Victorian CLCs working either with other CLCs or with Victoria Legal Aid and other CLCs to jointly map legal need, plan and coordinate services and maximise efficiency and effectiveness.

We support funding criteria that requires all legal assistance providers to effectively target their services to need, including through:

- effective local legal needs assessment and planning (additional funding to be provided for these activities);

- co-location of services in health and other settings;
- triage using clearly articulated service guidelines, which give priority to priority clients;
- collaboration and coordination with other legal assistance providers; and
- Undertaking effective strategic advocacy and legal education work targeted to legal need in their community, rather than just advice services.

6. Volunteers in CLCs

The Draft Report discusses the contribution of volunteers in Chapter 23 and asks whether volunteer contributions can be expanded.

Youthlaw has a highly developed volunteer program that attracts over 200 applicants annually of which 30 are selected for our program. They are generally 2nd or 3rd year law students and after extensive training provide paralegal and administrative support to all our staff. The benefits of the program are significant for Youthlaw as they provide administrative and paralegal support in the absence of any paid administrative staff.

Youthlaw's volunteer program also provides students with invaluable legal and general employment type experience. We also provide training and mentoring to develop the volunteers' understanding of broader social justice issues our client group experience and the different career paths they may choose to pursue.

We receive a large number of applicants in one annual intake, yet we do not have the resources to administer, train and supervise any greater number than we do. Our volunteers are very reliable and committed however we are unable to rely on them as we would an employee and we can only keep them for as long as they commit themselves (usually 6 to 9 months).

We are currently establishing a specialist youth fines clinic that is staffed by selected volunteer law students. They receive additional training and undertake fines casework supervised by one of our lawyers. One of the aims of the project is to refer much of our fines work to appropriately trained volunteers to free up our lawyers to undertake more complex legal work.

7. Effective referrals

a. Identifying legal need

In response to Information requests 5.2 and 5.3, while we cannot comment specifically on the training module mentioned, we are experienced in the development of tools to be used by non-legal services to identify legal need.

Frontyard utilises a customised version of a government standard youth at risk assessment tool based. This has been customised by the youth services co-located at Frontyard including Youthlaw to include questions that will assist with identification of a range issues, including legal matters. The introduction of this customised assessment tool in late 2013 had the effect of increasing the referrals from Frontyard to Youthlaw by threefold.

Youthlaw Online also incorporates a 'legal heath check' assessment tool for non legal staff. This tool was developed by Youthlaw to assist in identifying legal problems. We often find that if a young person is asked if they have a legal problem they will answer "[n]o", however, if they are asked a more general question, such as "[d]o you need to go to court for anything?, their answer will make it clear that they do have a legal problem for which they require assistance.

We are also familiar medical legal partnerships throughout the USA including in hospitals, which rely on a highly developed identification process through health services. The potential to implement medico-legal partnerships is something that Youthlaw is open to developing.

b. Single entry point

In response to draft recommendation 5.1, we do not support 'rationalisation' of entry points and referral or single entry points of referral. Currently the problem is that all legal assistance providers are overwhelmed by demand and much referral takes place because of inadequate funding of services in the first instance.

We do support existing well known public entry points to be adequately informed to make appropriate referrals to all legal and non-legal organisations. This includes the Victoria Legal Aid Legal Help Line. It has been reviewed and developed over the past 2 years so that it highly capable of identifying legal issues, screening for levels of vulnerability and disadvantage, providing warm referrals and referring appropriately to CLCs.

However, we also strongly urge recognition that vulnerable and marginalised persons seeking legal assistance require a number of different entry points to assistance.

Youthlaw has over 12 years experience of providing legal services to vulnerable and marginalised young people. It is quite evident from our experience (and that of other legal service providers including generalist CLCs and VLA) that young people in this client group rarely initiate contacting a legal assistance provider. Youthlaw has designed services to engage with this hard to reach group and we deliberately integrate our legal service provision with other services these young people access.

We note the conclusion reached on page 10 that a "lack of coordination among providers means that information and advice services (including those that attract government funding) are often duplicated and lack visibility". Our experience of the legal assistance sector is that a much more serious issue is the lack of adequate funding of legal assistance providers, and in particular CLCs. This creates far greater barriers to referral than any wastage due to duplication or lack of visibility.

Similarly, the identification of the problem as a lack of a centralised and co-ordinated referral system does not address the more fundamental underlying issue that fuels referral fatigue, which is the inadequate funding of legal assistance providers. Most recently VLA has severely restricted the eligibility guidelines for young people accessing criminal law services. Young people are being turned away and referred to Youthlaw. In the civil law area our experience is that there are very few providers who can provide any depth of legal assistance in regard to many key legal problems facing disadvantaged people, such as employment law, debt problems, immigration and tenancy. One service may provide 'only'

advice, another may take on cases to a certain level of capacity, and others refuse assistance in relation to specific types of issues (e.g. co-tenant to co-tenant disputes) and some CLCs have repeatedly busy phone lines.

Ombudsmen and complaint mechanisms

We refer to draft recommendation 9.1 The Draft Report notes at page 13 that:

> "Better directing people to ombudsmen (and other low cost and informal dispute resolution mechanisms), could significantly reduce the level of unmet legal need. But many ombudsmen (in particular those with specialised functions) tend not to be visible to those who might require their services. Creating a common registry, and requiring industry and government to inform dissatisfied complainants of their availability, would help to improve the visibility of these services."

In general, Youthlaw notes that CLCs provide different assistance to Ombudsmen:

- Ombudsmen cannot provide legal advice.
- Complaint resolution through Ombudsmen is very limited (e.g. if voluntary mediation fails or is refused by one party, the Ombudsman cannot provide any further assistance).
- Many people experiencing disadvantage do not know they can access or how to access Ombudsmen.
- Even informal complaint mechanisms disadvantage young people and people with an intellectual disability, limited English skills or with minimal education.

More specifically, in our experience the various Ombudsmen services can be valuable in assisting our client's to resolve their disputes, particularly in circumstances where their vulnerability has been taken advantage of by the opposing party to the dispute. A benefit of an Ombudsman service in this particular circumstance is that it is a body independent to parties to the dispute, as opposed to the internal dispute resolution services than many organisations offer.

However, being an independent service an Ombudsman is unable to advocate on behalf of a vulnerable and disadvantaged client. Accordingly, the vast majority of Youthlaw clients require an advocate to act on their behalf to be able to utilise the benefits of an Ombudsman service. If our clients were left to advocate on their own behalf, against the very organisation that they may be claiming has taken advantage of their particular vulnerabilities, they would immediate lose the advantage of having an independent Ombudsman intervene in their matter and potentially be denied access to justice.

Many clients of Youthlaw and CLCs in general, experience various vulnerabilities and disadvantages, and often lack formal education, which makes it extremely difficult for them to advocate on their own behalf in a disputed claim.

Accordingly, although we recognise that Ombudsmen services can be valuable in the dispute resolution process, and Youthlaw regularly refers matters to Ombudsmen when acting on behalf of our clients, we believe that their effect is largely nullified if one party enters the Ombudsman's dispute resolution process at a disadvantage.

We believe that the Ombudsmen process is best utilised with the assistance of an advocate from a CLC to address any power imbalance between the parties and to assist in ensuring that the individual client is able to obtain access to justice.

8. Protective costs orders

Youthlaw strongly supports draft recommendation 13.6. In August 2013, Youthlaw successfully obtained a court ordered protective cost order. The protective cost order minimising costs to our client of $5,000 has enabled him to continue with his appeal.

This was a landmark decision by the Court of Appeal and signalled support from this court for the application of a broad but clear set of criteria for PCOs in relation to cases of public interest. The decision largely relied on well accepted key Australian and international cases.

This case highlighted the enormous barrier that prospective costs represent to cases of clear public interest. There is great uncertainty in the courts about protective cost orders which is also a massive disincentive to a plaintiff to seek such an order.

We strongly support national legislation that would set out clear criteria for public interest costs. We would also urge consideration of a public interest cost regime similar to those adopted in South Africa and Northern Ireland where public interest cases that raise questions of governance and human rights are funded by the government in the interest of good and clear governance by the state and its institutions.

Short of this we support exploration of a funding framework that would make funding available to legal assistance providers conducting public interest cases.

9. Funding civil and criminal law matters

In response to Chapter 21 and draft recommendation 21.1, CLCs have long recognised that civil law needs are critical and directly impact people's livelihood, housing, safety and welfare. While we do not have a position on whether civil law funding should be determined and managed separately from funding for other matters, we agree with the Commission's finding that civil law funding has historically been inadequate and that some mechanism to ensure adequate allocation of funding for civil law matters is required.

10. Data and evidence

In response to draft recommendations 24.1 and 24.3, Youthlaw supports a more useful database being set up for CLCs to enter their data and statistics. The current database (CLSIS) lacks the ability to provide meaningful data on legal problem types. It does not capture the services provided to, needs of vulnerable and disadvantaged people or allow for easily dissecting disaggregated data.

We would also like to have more ready access to comprehensive analysis of court, police and LACs data, particularly with reference to vulnerable and disadvantaged cohorts of people.

We strongly support a survey of similar scope to the LAW Survey be undertaken every 5 years.

Legal assistance providers such as CLCs have very limited capacity to undertake legal needs research. We recommend that this research and needs analysis is funded and provided externally to legal assistance providers to enable planning of our services.

We also recommend funds be made available to CLCs to conduct community based and informed legal needs projects. Youthlaw has undertaken a number of legal needs projects that have consulted with young people about the best ways to provide legal information, provide services, and to test new technologies (e.g. Youthlaw Mobile). We have found that these legal needs projects are invaluable and provide quite a distinct type of analysis that cannot be provided by statutory and government bodies.