

# Access to the Justice System

## PILCH Victorian Election Priorities 2010



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Access to justice is a basic human right. A quality justice system that is available, accessible and acceptable to all Victorians is essential to the exercise and enjoyment of that right.

Access to the justice system, by itself, does not necessarily produce just outcomes. Nonetheless, access to the justice system is an important element of ensuring that Victorians are able to achieve justice.

Individuals' access to the justice system should not be prejudiced by reason of a person's inability to obtain adequate information about the law or legal process, or to afford the costs of accessing the justice system.

*The provision of advice and assistance to people about their legal rights and obligations is an important element of maintaining confidence in the rule of law. The purpose of the justice system and the community's confidence in it are diminished if people are unable to use it because they cannot obtain the necessary assistance* - Attorney-General's Justice Statement (2004)

Important progress has been made in improving access to the justice system in Victoria. However, significant barriers remain, which not only impair individuals' access but also increase the cost to Government of providing justice.

### Barriers to the justice system

Examples of barriers to the justice system include:

- ▶ inadequate availability of interpreters impairs access to courts and early resolution of cases;
- ▶ unmitigated risk of adverse costs orders limits opportunities to litigate public interest cases;
- ▶ pro bono capacity is reduced by restrictive practicing certificate rules that limit the ability of corporate and government lawyers to act pro bono; and
- ▶ pro bono capacity is reduced by uncertainty about recoverability of legal costs in pro bono matters.

#### Nadia's story

A family member, who needed to borrow money, talked me into taking out a mortgage over my home. The relative did not meet the loan repayments and I was unable to make the payments myself, as I am on a pension. The bank threatened to take my home. PILCH referred me to a barrister and law firm for free legal assistance.

To bring a claim for repayment of the loan, my lawyers had to draft an affidavit. I do not speak English, so I needed an interpreter. PILCH had access to up to 1.5 hours of on-site interpreting from the federally funded Translating and Interpreting Service. Because of the matter's complexity, more than one session was required. PILCH also had access to limited interpreter funding through the Federation of Community Legal Centres. However, the amount was small and did not cover all costs.

I again needed an interpreter at mediation. PILCH did not have access to any interpreter funds for this and neither my family nor I could afford the cost. My lawyers had already incurred costs on my behalf. If it were not for PILCH, a not-for-profit organisation with very limited funds, agreeing to pay the cost of an interpreter, I would not have been able to bring my case and might have lost my home.

## Call to action

The Government must take steps to improve access to the justice system in Victoria. Reform is achievable and many of the steps needed to improve access have limited or no cost implications for Government. Moreover, improving access to the justice system and ensuring its effective operation has the benefit of reducing the overall cost of the provision of justice.

### Improve access to interpreters

Extend the provision of free interpreter services for:

- ▶ low income earners in civil matters; and
- ▶ indigenous and hearing impaired persons at all levels of their engagement with the justice system.

### Improve access to free legal assistance

- ▶ Amend the *Legal Profession Practice Act 2004* (Vic) to allow corporate and government lawyers to provide pro bono legal assistance.
- ▶ Lobby COAG to introduce laws under the National Legal Profession Reform to allow corporate and government lawyers to provide pro bono legal assistance.

### Reduce costs associated with accessing the justice system

Introduce legislation under part two of the Victorian Government's civil procedure review to:

- ▶ empower Victorian Courts to grant protective cost orders to shield public interest litigants from adverse costs orders; and
- ▶ abolish the 'indemnity costs principle' in pro bono matters.

### Protect against civil litigation that diminishes public participation

- ▶ Protect against civil litigation that diminishes public participation
- ▶ Introduce legislation to protect the public against litigation that has the effect of constraining legitimate public commentary and debate (SLAPP writs).

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## Background resources

1. PILCH, *Submission to the Senate Legal and Constitutional Affairs Committee on the Inquiry into Access to Justice* (2009), available at: <http://www.pilch.org.au/accesstojustice/framework/>
2. PILCH, *Hits & Misses: Pro Bono Opportunities under the National Legal Profession Reform* (2010), available at: <http://www.pilch.org.au/Assets/Files/PILCH%20submission%20to%20NLPR%20FINAL13aug10.pdf>
3. Federation of Community Legal Centres, Response to "A Strategic Framework for Access to Justice in the Federal Civil Justice System" (2009), available at: [http://www.communitylaw.org.au/public\\_resource\\_details.php?resource\\_id=1435](http://www.communitylaw.org.au/public_resource_details.php?resource_id=1435)