



South Australian Consumer Credit Legal Services: A Scoping Study

Final Report, January 2013

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Summary

With increasing cost of living pressures, cuts to financial counselling services and the rise of payday lending, issues relating to consumer credit are increasingly taking on legal dimensions as people struggle to pay bills. This obviously presents most difficulty to those individuals and families on the lowest of incomes across the community. Enabling people with low incomes to access legal support is crucial to ensuring that they can understand and exercise their rights, they don't unnecessarily incur costs or lose crucial possessions, and to ensuring they get the best resolution of credit issues possible. Some consumer credit legal services are currently provided by different organisations, but there has been a longstanding concern in the community sector that there are critical gaps in the support system and the data presented here suggests significant levels of unmet need.

Consumer credit legal services can be divided into two categories:

- Direct services provided to individual clients (or groups of clients) to assist them with particular issues, and
- Indirect services which assist in other service provision or can address issues at a broader behavioural or legislative level (and therefore prevent legal problems from arising).

Direct services include the provision of legal information and advice, referrals and casework. Indirect services include training and casework support, consumer legal education and systemic advocacy (policy development and advocacy, including strategic litigation).

Using data from the recent Law and Justice Foundation of NSW national survey of legal need, SACOSS calculates that 11.6% of South Australians over 15 years of age, that is, just over 154,000 people, have at least one consumer credit problem in a year. Just under half of those people see this problem as having a moderate or severe impact on their life. Not all these problems require legal assistance, but SACOSS calculates that approximately 84,000 people or 6.3% of the population over the age of 15 have a consumer credit problem in any year which requires legal or related help.

The extent to which this legal need is being met by existing services is difficult to quantify. In many cases it is impossible to know if needs are being met, or whether they are partially met. However, using formulae derived from previous national and overseas legal needs surveys, SACOSS estimates that at least 10,000 South Australians did not have their legal needs met in relation to consumer credit problems.

A review of the existing system of service provision shows particular gaps in service delivery. There is no single consumer credit legal centre in South Australia, but the Legal Services Commission, the network of community legal centres, JusticeNet and the financial counselling services all provide some direct services relevant to consumer credit issues. Most of the players in the system know the system and can refer on clients to a more appropriate service provider if required. The multiple entry points to the system and multiple referral points are messy and there is a high risk that clients will fall through the cracks – especially as the time between the moment of need and the actual contact with the relevant provider grows. However, if a client makes their way into the system in the first place, with time and patience the referral system usually works. Unfortunately, approximately half of those with consumer credit problems do not seek help. This points to a need for early

intervention and service outreach to ensure people know what help and options are available.

However, there are also some clear points of absence of services – for instance, the lack of on-site financial counselling in most courts, the lack of on-site legal assistance in all courts and inability of people in regional areas to attend or get representation in Adelaide courts. There are also gaps in the system created by services not being able to meet the volume of demand at a particular point in time: for example, closure of financial counselling waiting lists, financial counsellors not having the requisite para-legal knowledge because workloads prevented training, the Legal Services Commission's one specialist legal officer being the only position dedicated to providing support and community legal centres not having the resources to provide full representation services.

Beyond this direct service provision, there are also clear structural gaps in indirect services particularly around systemic advocacy. While some of this gap is driven by workload pressures which mean, for instance, that community legal centres do not have the resources to do the policy advocacy they may want, there is actually no organisation with professional policy and campaign staff dedicated to advocacy. Nor is there room for thoughtful policy development to emerge that helps ensure credit providers are operating within a framework protective of consumer interests. The result is that South Australian expertise and experiences are not being applied in both local and national policy processes, and there is little high level campaign presence in this state. Relatedly, there is little strategic litigation to run test-cases that are designed to set precedent or to keep local credit providers honest.

Other areas of indirect services such as community legal education and the provision of broad legal information are better covered. ASIC provides non-state specific materials and programs and the Legal Services Commission has a valuable online handbook, but a number of services are relying on and providing their clients with interstate materials and publications. This is arguably less of a problem with national consumer credit laws, but the enforcement through South Australian courts still has local procedures and some issues may be specific to South Australia or be impacted by other South Australian laws.

With the prevalence of consumer credit legal problems and the level of unmet need in the system, there are potentially huge benefits in a better provision of services. There would be benefits to individuals, particularly vulnerable and disadvantaged people, in being able to get support in understanding and sorting consumer credit legal problems, identifying where debts may not be properly owed, or where there are other options short of bankruptcy or repossession of houses. This would also be a great stress reduction and help prevent credit/debt problems spiralling into mental health problems, homelessness other serious problems. There would also be benefits to the courts with earlier and more effective action potentially leading to fewer cases coming to court, or where they do, having parties better prepared and not clogging court lists with insubstantial or poor arguments.

These outcomes also have direct budget benefits to government and the community, and beyond that, there are the intangible benefits of simply having a fairer justice system.

SACOSS conducted two rounds of formal consultation with consumer credit legal service providers, as well as direct consultations with individual stakeholders, to identify improvements that could be made to the system of legal support. Two specific recommendations emerged from this consultation:

- Amendment of court forms to direct people to legal assistance; and,
- Provision of court clinics to provide legal or financial counselling presence during the relevant court lists.

Both of these are key recommendations of this report. However, much of the consultation focussed on whether a specialist Consumer Credit Legal Centre (CCLC) was required, and if so, how it would work. In developing the service provision model proposed in this report SACOSS has weighed the benefits of a CCLC (public branding and awareness, specialist knowledge, and systemic advocacy capacity) with the challenges of holistic support for consumers with multiple legal (and other) needs, and the need for additional resources in other parts of the system.

The final model proposed here is a combination of the strengthening of some existing consumer credit legal services and the establishment of a small Consumer Credit Legal Centre to fill vital gaps in existing service provision.

Existing services would be enhanced by:

- Co-location of financial counsellors in community legal centres, including running clinics in regional Magistrates Courts;
- Increased funding for the Legal Services Commission hotline;
- Increased funding for non-specialist community legal centres; and,
- Funding for advertising of Doorways and Legal Services Commission legal help lines.

The specialist CCLC would provide:

- Court clinics in metropolitan courts;
- Specialist casework, including receiving briefs from non-metropolitan community legal centres and representing regional clients in Adelaide court hearings, and providing specialist support for financial counsellors and generalist lawyers;
- Policy development and advice; and,
- Strategic litigation potential.

Because each element of the model is designed to meet a different need, and draws on a particular strength of that part of the system, the package proposed needs to be viewed as an integrated whole with a total cost in the order of \$780,000 per year, plus supplementation of 10% of current funding of generalist community legal centres (although SACOSS can't provide an aggregate figure for this at present). It is our recommendation that funding to resource and create a genuinely integrated response to consumer credit legal needs in SA be shared between the state Attorney-General's Department, the Department of Communities and Social Inclusion and the Federal government.

Acknowledgments

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- The South Australian Government Department of Communities and Social Inclusion who funded the research;
- The Law and Justice Foundation of NSW for the provision of consumer credit specific data from their Legal Australia Wide survey¹;
- The Consumer Law Consultative Forum for allowing us to take over their meeting agenda for the formal consultation rounds; and,
- The various solicitors, financial counsellors, government and court officers, and non-government colleagues who provided information, data and feedback for this project.

¹

The Law and Justice Foundation of NSW provided some additional LAW Survey data for this report. The Foundation has had no other involvement in the project and any opinions expressed in this publication are those of the authors and do not necessarily reflect the views of the Law and Justice Foundation.

List of Acronyms

ACCC - *Australian Competition and Consumer Commission* – Commonwealth government regulatory body

ALRM – *Aboriginal Legal Rights Movement* – Community based legal service for Aboriginal and Torres Strait Islander people

ASIC – *Australian Securities and Investments Commission* – Commonwealth government regulatory body

CALC – *Consumer Action Law Centre* – Specialist consumer legal service in Victoria

CCLC – *Consumer Credit Legal Centre* – used here only when referring to a specialist centre (as opposed to all consumer credit legal services)

CCLC (NSW) – *Consumer Credit Legal Centre NSW* – Specialist consumer credit legal centre in NSW

CCLS – *Consumer Credit Legal Services* – generic descriptor of all consumer credit legal services (not just specialist centres)

CCLS (WA) – *Consumer Credit Legal Service WA* – Specialist consumer credit legal centre in WA

CLC – *Community legal centre*

CLE – *Community legal education*

COSL – *Credit Ombudsman Service Ltd* – A national external dispute resolution service

EDR – *External dispute resolution*

FOS – *Financial Ombudsman Service* – A national external dispute resolution service

LSC – *Legal Services Commission of South Australia* – South Australian legal aid body

NACLC – *National Association of Community Legal Centres* – National peak body for community legal centres

OCBS – *Office of Consumer and Business Services* – South Australian government regulatory body

SACCLS – *South Australia Council of Community Legal Services* – South Australian peak body for community legal centres

SAFCA – *South Australian Financial Counsellors Association* - South Australian peak body for financial counsellors

Scope and Methodology

This project had its origins in concerns expressed over a number of years by non-government welfare organisations about the need for more legal support for vulnerable and disadvantaged South Australians who are facing debt and credit issues. Enabling people with low incomes to access legal support was seen as crucial to ensuring that they can understand and exercise their rights, and to reach the best resolution possible. Although some services are currently provided by different organisations, it was believed that there were gaps in the support system. South Australia is the only state that does not have some form of Consumer Credit Legal Centre.

In response to these concerns, the SACOSS 2012-13 State Budget Submission proposed the establishment of a well-funded state-wide Consumer Credit Legal Centre in South Australia (SACOSS, 2012). In March 2012 the State Government agreed to fund a scoping study to assess the extent of current services, demand and potential models to address any unmet needs (including but not limited to establishing a stand-alone centre). SACOSS was funded by the Department for Communities and Social Inclusion for a six-month project to undertake that scoping study.

The research was conducted in three stages as follows:

Stage	Description
Stage 1 Report Delivered: 2 October 2012	Initial research, including: <ul style="list-style-type: none">• Identification of need and gaps in services• Mapping of existing services and consideration the potential roles of a CCLC, with particular regard to:<ul style="list-style-type: none">○ Gaps in current service provision;○ Value adding to and avoidance of duplication of existing services; and○ The roles played by CCLCs in other states.• Summary of the benefits and costs of CCLS.
Stage 2 Report Delivered: 27 November 2012	Roundtable consultation with key stakeholders to brainstorm best models for provision of services, followed by further development of one or more proposed models.
Stage 3 Report Delivered: 7 January 2013	Further consultation on proposed model(s) of service provision, and development of final recommendations.

This is the final report on the project. It is based on a review of relevant literature, previous SACOSS research and policy discussion, data provided specifically for this project from the Law and Justice Foundation of NSW legal needs survey (as adapted by SACOSS), and interviews with relevant peak bodies and a selection of key providers of consumer credit legal services in South Australia.

The organisations and individuals consulted were:

- Department of Communities and Social Inclusion
- Legal Services Commission
- South Australian Financial Counsellors Association
- The Salvation Army
- Uniting Communities
- Uniting Care Wesley Country SA
- South Australian Council of Community Legal Centres
- Northern Community Legal Service
- Central Community Legal Service
- Southern Community Justice Centre
- South East Community Legal Service
- JusticeNet SA
- Australian Securities & Investment Commission
- The Law Society of SA
- Deputy Chief Magistrate Andrew Cannon

A number of other organisations were invited to provide feedback but were unable to do so for various reasons, and obviously the views and recommendations in this report are SACOSS' and are not necessarily endorsed or opposed by any of the individual stakeholders consulted.

1. Introduction

What are “Consumer Credit Issues”

Consumer credit legal issues relate to credit and debt recovery matters arising from the purchase of goods and services by individual consumers. Key problems for consumers relate to home mortgage defaults and repossessions, rising utility prices and debts, unjust debt contracts, high cost loans including payday lending, disputes about debts owed and repossession of personal property.

For the purpose of this report, “consumer credit issues” includes debts in relation to financial and non-financial services such as those just listed, but does not extend to other types of debt such as debts resulting from council fines or tax debts.

Consumer credit issues are a subset of, but do not include, more general consumer issues such as product safety or consumer guarantees. While some consumer law groups and legal centres interstate deal with all consumer issues, the scope of this project relates solely to consumer credit issues.

Relevant Legislation and Government Agencies

From 1 July 2010 the Commonwealth became the national regulator of consumer credit, with the *National Consumer Credit Protection Act 2009* coming into effect and the Australian Consumer Law taking effect 1 January 2011 pursuant to *Competition and Consumer Act 2010* (Cth). These laws replaced the state-based credit and fair trading legislation as a result of voluntary transfer of power by each state to the Australian Government.

The government is currently implementing its second phase of reforms to the consumer credit law, which includes new regulations in relation to consumer leases, small amount credit contracts and caps on costs.

The national regime makes ASIC the primary regulator of consumer credit matters, however in South Australia the law in this area is jointly enforced by:

- Australian Securities and Investments Commission (ASIC) (for financial goods and services)
- Australian Competition and Consumer Commission (ACCC) (for non-financial goods and services)
- SA Office of Consumer and Business Services (OCBS).

Under the national laws, anyone engaging in ‘credit activity’ (defined as activity relating to credit contracts, consumer leases, related mortgages and guarantees, and credit services) must be a member of an ASIC-approved external dispute resolution (EDR) scheme. EDR schemes provide free independent dispute resolution services as an alternative to going to court. There are currently two ASIC-approved EDR schemes operating:

- Financial Ombudsman Service Limited (FOS); and,
- Credit Ombudsman Service Limited (COSL)

Crucially though, while there is now a national regulatory regime, enforcement of debt collection is still through state courts, meaning that the South Australian Government has an

ongoing interest and responsibility (alongside the Commonwealth) in relation to consumer credit and debt issues.

Categories of Consumer Credit Legal Services

Consumer credit legal services can typically be divided into two categories of services:

- Direct services provided to individual clients (or groups of clients) to assist them with particular issues, and
- Indirect services which assist in other service provision or can address issues at a broader behavioural or legislative level (and therefore prevent legal problems from arising).

Direct services include the provision of legal information and advice, referrals and casework. Indirect services include training and casework support, consumer legal education and systemic advocacy (i.e. policy development and advocacy, including strategic litigation).

In South Australia these services are largely provided by the Legal Services Commission (LSC), the 10 community legal centres (CLCs), the Aboriginal Legal Rights Movement, JusticeNet, and a range of general community service organisations that provide financial counselling services. ASIC, OCBS and the Ombudsman services also provide generic legal information in addition to their regulatory role. There is also a range of other organisations that provide advocacy or services to specific vulnerable and disadvantaged groups and may also have roles in the provision of consumer credit legal services, particularly in providing information, education and referrals.

After consideration of the overall level of demand for services and the unmet need generally within the system in South Australia, each of the service provision types will be discussed in detail, with a brief summary of the services provided and any shortfalls or gaps in service provision.

2. The Need for Consumer Credit Legal Services

Background Drivers

The need for consumer credit legal services is driven both by issues arising from the regulation of finance and credit (e.g. good/bad behaviours and the remedies available under law), and by broader economic and social pressures which create the circumstances where credit problems arise. As noted above, the legislative framework has changed markedly in the last few years with the transfer of regulation to the federal sphere, but cost of living pressures on households create a major economic driver of demand for consumer credit services.

The SACOSS quarterly *Cost of Living Updates* have documented the rising prices of basic household goods and services (housing, food, utilities, transport and health). Low income households spend proportionately more of their income on these basic necessities than the average household, and the cost of these necessities is going up faster than their incomes, particularly if they are reliant on Centrelink benefits like Newstart, Youth Allowance and Widow's Pension or low wages which are pegged to the generic inflation rate (CPI). The table below shows the extent of this mismatch between price increases and the CPI.

Table 1: Adelaide Cost of Living Rises June 2002 – 2012

Cost of Living Area	% Rise
Housing Rent	46.1
Utilities	99.9
Food	43.5
Health	65.0
Transport	34.0
CPI	32.5

Source: SACOSS calculation from (ABS, 2012)

These price increases, and particularly the huge increases in utilities prices which come in large, irregular bills, drives a demand for consumer credit as well as increases the difficulty associated with repaying the loans. The result is considerable financial stress in many households. ABS data (2011, Table 30) shows that nearly one-in-three low income households experience four or more indicators of financial stress in a year.

With low income households under such financial stress, there has been increasing demand for financial counselling services over the last few years. This has coincided with Families SA ceasing their provision of financial counselling to the general public following substantial staff cuts in the September 2010 state budget. The result is a system in crisis with the community sector unable to cope with the demand for service (SACOSS, 2012b). This impacts on the provision of consumer credit legal services because as noted above, financial counsellors provide information and referral services. If financial counselling services are not available, the extent of the client's financial problems may be greater when/if they come to be seen by consumer credit lawyers.

The fact that financial pressures are driving increasing consumer credit legal issues is evident in data from the Financial Ombudsman Service (FOS) and the Credit Ombudsman Service (COSL). Both organisations report that nationally the number of consumer credit disputes in the 2010-11 financial year has increased markedly over previous few years.

These increases are in large part due to the changed regulatory environment under the *National Consumer Credit Protection Act 2009* (including the compulsory external dispute resolution scheme membership for credit providers and notifications to clients of the scheme), but it is telling that almost half (47%) of FOS' consumer credit disputes related to financial difficulty. This was an increase from only 28% in the previous year (FOS, 2011). COSL also reported that financial hardship cases were the single largest source of complaints, accounting for 34% of complaints (COSL, 2012). While these are national figures, there is little reason to think that South Australia would be immune from trends which see an increasing number of people in financial difficulty and struggling to pay their mortgages, credit cards and personal loans.

Just over half (52%) of FOS' financial difficulty disputes related to potential legal areas: default notices, failure of a creditor to respond to a request for assistance, and debtor requests to suspend enforcement proceedings (FOS, 2011). This is particularly significant given that some financial counsellors interviewed in the course of this project suggested that creditors were increasingly being represented by lawyers in the ombudsman processes, putting the client and financial counsellor at a further disadvantage.

Also significant is the fact that consumer credit disputes taken to FOS involving non-bank credit providers rose from 5% of disputes in 2009-10 to 20% in the last financial year. Again, this is in part due to regulatory changes, but nearly ¼ of all financial-difficulty disputes involved non-bank credit providers (FOS, 2011). This reflects the rise in payday or "fringe" lending. Fringe lending, which also includes pawn shops, amounts to about \$800 million per annum and is the fastest growing part of Australia's financial sector, with a majority of borrowers on Centrelink benefits and many requiring the loans simply to meet regular weekly expenses (Banks et al, 2012). At best, borrowers pay a premium for these loans, and at worst the lending practices are predatory and exploitative and can lead to spiralling debt (CALC, 2012b). These practices and outcomes in turn lead to increased demand for consumer credit legal services.

Another driver of demand for consumer credit legal services is the use of predatory practices used by some credit providers in marketing their products. Door-to-door marketers tend to use emotional manipulation and other techniques to pressure consumers into signing contracts on the spot, taking particular advantage of vulnerable and disadvantaged consumers (CALC, 2007). As a result of widespread concern about such practices, the Australia Consumer Law has brought about increased protections for consumers through further regulation of unsolicited consumer agreements. Consumer Action Law Centre (CALC) in Victoria and others have also launched a national "Do not knock" campaign to promote community awareness around the issue. This has been buttressed by ACCC enforcement actions through the Federal Court which has resulted in an energy retailer and its marketing subcontractor being ordered to pay \$1 million in penalties for their unlawful door to door sales practices (*ACCC v Neighbourhood Energy Pty Ltd and Australian Green Credits Pty Ltd* [2012] FCA 1357).

While unsolicited sales practices are used in many industries, door-to-door sales and telemarketing are now widely used by energy retailers. Data from the Energy Industry Ombudsman SA shows that complaints about sales and marketing of energy products has significantly increased, with the number of complaints increasing by 95.6% in 2010-2011 compared with the previous year (EIOSA, 2011), and increasing by a further 32.2% in 2011-

2012 (EWOSA, 2012). Most of those complaints related to marketing conduct by sales agents and energy contract transfers without the explicit informed consent of the consumer.

The final factor relevant to driving demand for consumer credit legal services, and for free services in particular, is the cost of legal services themselves. Many legal services, particularly those involving casework and representation are expensive and simply beyond many low income earners, leading a coalition of community legal services to brand the system as “unaffordable and out of reach” (CLA, 2012). Even the Federal Attorney-General’s department has noted that:

98 per cent of legal aid recipients [receive] an income that could be considered below the poverty line. This leaves much of Australia unable to afford legal representation but nevertheless ineligible for legal aid (AGD, *Strategic Framework for Access to Justice*, cited in CLA (2012)).

If this is the case for the civil legal system generally, it is particularly the case in the consumer credit area where the driver of many of the cases is the inability to pay a debt. People in such a position are unlikely to be able to afford a lawyer at commercial rates – hence the importance and demand for community consumer credit legal services.

The factors discussed above – increased cost of living, under-resourcing of financial counselling services, the rise of pay day lending and predatory practices and the expense of the legal system all suggest that there are broad economic and societal forces driving increasing demand for community consumer credit legal services. However, the extent of actual demand and unmet need is harder to quantify.

Overall Demand and Unmet Need

Legal Need

A survey of legal needs in Australia conducted by the Law and Justice Foundation of NSW (Coumarelos, 2012) provides the most comprehensive and up to date data to estimate demand for consumer credit legal services for South Australians aged 15 and over. Interviews were conducted between January and November 2008. The Foundation’s survey assesses the prevalence of different types of legal problems over a 12 month period and the responses people take when faced with legal problems.

The published study does not identify “consumer credit” as one of the problem areas, however the writers of the report have provided SACOSS with a further breakdown of the data showing information on consumer credit problems. SACOSS did more adjustments to these figures to refine the categories further and to make estimates of the prevalence of consumer credit issues and responses to experiencing consumer credit problems (see Appendix 1).

SACOSS’ calculations show that approximately **11.6% of South Australian respondents had a consumer credit problem in the year covered by the survey**. Applied to the current South Australian population, this would mean that **154,604 South Australians aged 15 years and over experience a consumer credit problem within a given year**. Just under half of these people (5.3% of respondents – which extrapolates to 70,958 South Australians) rated this problem as “substantial”, meaning that it would have a moderate or severe impact on their everyday life.

However, as the survey highlights, not all people with a problem necessarily need legal assistance. Many are able to resolve the problem on their own or seek informal help, while others may take no action because the problem went away on its own (although as will be seen below, in some instances in all these categories, arguably they should have sought legal advice). The actual responses to consumer credit problems are set out in Table 2 below.

Table 2: Response to Consumer Credit Problems

Response to problem	Consumer credit problems (%)	Other problem types (%)
Sought formal advice	49.0	55.6
Handled problem on their own	35.4	21.2
Took no action	15.6	23.2

Source: Data provided to SACOSS from Law and Justice Foundation of NSW

One thing that clearly stands out from these figures is that compared with people with other legal problems, those with consumer credit problems are less likely either to seek advice or to do nothing, and are significantly more likely to handle issues without advice. While not definitive, these figures should at least raise a question about the adequacy of consumer credit legal service provision. The following pages attempt to provide some quantitative data about the need for those legal services.

There are a number of ways of calculating the number of people who have a need for legal assistance to resolve their problem. One method is set out in a major review of consumer credit legal services commissioned by the Australian Securities and Investment Commission in 2009 (Renouf, 2010). The report remains unpublished but was obtained by SACOSS through an FOI application.

The Renouf report defines legal need as being the sum of those people who already seek advice or assistance and those who do nothing even though their problem remains unresolved. He calculated that 4.5% of Australians had a consumer credit legal problem in a 12 month period for which they had a need for legal or non-legal help (Renouf, 2012, p. 90). This would equate to 60,295 South Australians.

However, Renouf's calculations pre-dated the Law and Justice Foundation survey and were based on limited data about needs. SACOSS has been able to apply the Law Foundation data to the formula used by Renouf to provide a more up-to-date estimate. The basic method is shown in Table 3, but the steps taken to arrive at the baseline figures are set out in Appendix 1.1.

The result is an estimated 86,106 of South Australians aged 15 and over experienced a consumer credit problem in the previous 12 months for which they had a need for legal or non-legal help.

Table 3: Updating Renouf's Calculation of Legal Need

Step	Description	Number	Ref
1	Baseline figures: <ul style="list-style-type: none"> The total number of consumer credit problems in the survey The total number of respondents who experienced at least one consumer credit problem Total number of respondents in the survey Population of South Australians aged 15 years and over 	602 236 2041 1,339,881	A N R P
2	The number of problems for which respondents sought advice: (49% of 602)	295	B
3	The number of problems for which respondents did nothing: (15.6% of 602)	94	C
4	Examining the reasons why people did nothing (C), then calculating the number of problems where nothing was done other than where the problems resolved themselves: (42.1% of 94)	40	D
5	Estimate the number of problems for which legal or non-legal help may be needed: (B + D)	335	E
6	Expressing the number of problems for which legal help may be needed as a percentage of all events: $(E/A * 100 = 327/602 * 100)$	55.6%	F
7	Estimating the number of respondents who experienced at least one consumer credit problem who may need legal or non-legal help in relation to the problem: $(F * N = 55.6\% \text{ of } 236)$	131	G
8	The percentage of overall respondents who had a need for legal or non-legal help in relation to a consumer credit problem: $(G/R = 131/2041 * 100)$	6.4%	H
9	Calculating total demand for whole SA population: $(H * P = 6.4\% \text{ of } 1.3\text{m})$	86,106	

Source: Methodology from Renouf (2010); data sources as set out in Appendix 1.2

However, Renouf's calculation of legal need arising from respondents doing nothing (D) may not be the most accurate definition. He suggests that legal need arises in all matters where no action was taken and where the matter remains unresolved, however it is evident from the Law and Justice Foundation survey that there are other legitimate reasons for taking no action which would not prompt a need for legal assistance. For example, some people took no action because the problem was not very important or because there was no dispute. A more accurate definition of D would be where a person took no action because they thought it would be too stressful, it would cost too much, it would make no difference (i.e. did not know they had a legal issue or options) or they didn't know what to do. SACOSS estimates that 34.2% of those who took no action did in fact have a need for legal assistance. Again, the steps taken to arrive at the 34.2% figure are set out in Appendix 1.2, but the figure is lower than Renouf's 42.1% (D).

Using the SACOSS definition, an estimated 84,156 or 6.3% of South Australians aged 15 and over experienced a consumer credit problem in the previous 12 months for which they had a need for legal or non-legal help.

Unmet Need

Calculating the level of unmet need is more difficult. Neither the Law and Justice Foundation survey nor the Renouf report attempt to calculate it directly.

One rough method of estimating unmet need would be to redo the above calculation, basing it only on those with a substantial consumer credit issue. Using the bold assumption that anyone requiring assistance with a consumer credit issue that could have a substantial impact on their life probably should access legal assistance, the number of people in this category can then be compared to the numbers who actually seek legal assistance. As above, the number of South Australians who experience a substantial consumer credit legal problem in a 12 month period is 70,958. The data provided to SACOSS from Law and Justice Foundation shows that 84.4% of respondents with *any* consumer credit legal problem took some action, but that only 18.3% of them acted with help from a lawyer. That is approximately 15,148 people who sought legal help for any consumer credit problem (154,604 people x 84.4% x 18.3%). Even if it is assumed that all these people were those who had a substantial consumer credit legal issue, there would still be some 55,810 people who had a serious issue and did not seek legal advice.

This obviously says nothing of the reasons they did not seek advice, nor the need for non-legal advice (many may have talked to financial counsellors or advisers), but it does perhaps give an order-of-magnitude to the potential demand for consumer credit legal services if all serious needs were being met.

A more nuanced approach to measuring unmet need is provided in the New Zealand legal needs survey. It filters out the “trivial” problems (defined as where the problem sorted itself out, or where a person didn’t seek help because they couldn’t be bothered) and defines unmet need as where:

- a. a problem is currently being experienced but the person is not trying to do anything to solve it because they don’t know what to do;
- b. the problem ended because the person gave up trying to solve the problem; or
- c. no help or advice was sought/received because of specific barriers (e.g. language barriers, cost, intimidated by legal processes) (Ignite Research, 2006b, p. 13).

Because the Law and Justice Foundation survey does not use the same categories, it is not possible to follow the New Zealand measure exactly. However, it is possible to estimate (a) and some of (c). These are contained in our re-working of Renouf’s “D” figure above, namely where no action was taken because they thought it would be too stressful, would cost too much, would make no difference or they didn’t know what to do. This gives **a base level of unmet need of 8,274 people.**

Added to this are those facing other parts of (c) above (i.e. those facing other specific barriers to accessing help). In the Law and Justice Foundation survey, 37.8% of respondents who experienced a problem of any type reported having 1 or more barriers to seeking advice from a legal, dispute handling or government body (Coumarelos et al, 2012, p. 119). However, it is unknown from the data how many were prevented from getting the advice they needed as a result of the barrier. The New Zealand survey found that 5% of people with a money or debt problem in the category of “people who did not seek help” actually sought help but were unable to get help (Ignite Research, p. 70). This equated to 2.85% of all those who experienced a money or debt problem (whether they sought help or not). Applying this

percentage to South Australia and using the SACOSS figure of 84,156 people with a consumer credit problem, it can be estimated that **2,398 people did not have their legal needs met because they were unable to get the help they sought.**

Added to the previous base level figure, this results in a total of 10,672 South Australians with unmet legal needs in relation to a consumer credit problem.

While this is based on the New Zealand definition, it is nonetheless a limited definition of unmet need. There are other factors which could result in a person's needs not being met, but these are more difficult to calculate without a certain amount of guess work. In particular, it is evident from the Law and Justice Foundation survey that some of the respondents who handled the matter on their own may or may not have had their legal needs met. For example, those who responded to the problem by communicating with the other side may not have known their rights or been given an opportunity to assert them; those who consulted a friend or relative may have been given incorrect advice. As noted in Table 2 above, people were significantly more likely to handle consumer credit problems without advice than they were for other types of problems. This is consistent with the reports made by stakeholders in this study that people with consumer credit problems avoid seeking help.

Another area of unmet need arises from the group of people who sought advice but went to a source who would not be able to help to resolve a consumer credit problem. For example, 23.6% of people with a credit/debt problem sought help from a doctor or psychologist and 10.8% of those with a consumer problem went to their trade or professional association (Coumarelos et al, 2012, p. 112). These may or may not have been useful things to do depending on the individual circumstance, but they do not evidence legal need being met. However, they are outside of the unmet need calculation above.

To give an idea of scale of unmet need and the service provision that may be necessary to meet this demand, Renouf (2010) used data from the Legal Services Commission and community legal centres which suggested that in 2009-10 those organisations provided 14,667 services where consumer issues were raised (Renouf, 2010, p. 56). This number represents services not clients, does not include assistance provided by private lawyers and is a broader category than consumer credit. A better estimate, but in the same order of magnitude can be made from our calculations above which showed some 15,148 South Australians getting legal help with consumer credit legal issue in a year. If there is unmet need for 10,672 people, then that unmet equates to 70% on top of current service provision.

However, the service provision task here may not be as daunting as the 70% or 10,672 figures suggest. The New Zealand survey suggests that 43% of people seeking help on money or debt issues wanted information only so they could sort out the problem themselves, and in 52% of instances these people did actually resolve the issues themselves. That survey also showed that 39% of people seeking help for money or debt issues were seeking only information and basic support (e.g. help filling in forms, contacting third parties to get information) (Ignite Research, 2006, p. 29, 37). This suggests that the provision of good, easily accessible legal information could provide a useful service and assist meeting much of the unmet consumer credit legal need.

Court Cases

Notwithstanding the importance of information provision, an analysis of the level of representation in court and the outcomes achieved suggests that there is currently a great unmet need at this end of the system.

In 2009-10 there were 28,381 civil claims lodged in South Australia's Magistrates Court general claims division (that is, debts ranging from \$6,000-\$40,000). Of those claims, 12,671 matters (45%) resulted in default judgment. A defence was filed in only 3,159 cases (i.e. 11% of all cases). The remaining 12,551 claims (44%) had no outcome information recorded, but it is expected that in most of those cases the debt was paid or some other arrangement was negotiated (Were, 2010, p. 5)

These figures relate to all civil claims heard by the Magistrates Court, which cover a wide range of debts, but it is likely that claims relating to consumer credit would follow a similar trend.

It is a similar story in the Supreme Court Possessions list, where creditors apply for court orders for re-possession of mortgage defaulters' houses. Despite the stakes being higher, defendants are overwhelmingly under-represented in court. Unfortunately, statistics on the Possessions list are not publicly available. SACOSS understands that the Courts Administration Authority (CAA) has statistics on the number of applications lodged and orders for repossession made each year. The CAA has declined to release them for this report. However, from recent listings it would appear that the list currently has around 30 matters each week. SACOSS observed the list hearings one week. The results are outlined in the box below.

“No-one can tell me to the contrary” Mortgage repossessions in the Supreme Court

The hearings for mortgage repossessions are heard in the Supreme Court each Wednesday. On 19 September 2012, 28 matters were listed, with the following outcomes observed:

- In 20 of the matters, no-one appeared in court for the defence. This meant that the court had little choice but to grant whatever the creditor's lawyer asked for (an order for repossession, an adjournment, or to have the matter dismissed) because as the judge repeatedly remarked, “No-one can tell me to the contrary”. In 7 of those matters the creditor sought an order for repossession and it was granted on each occasion.
- In 4 of the matters the defendant appeared unrepresented. Two were able to delay the order for repossession for a couple of weeks to try to sell the house themselves (one defendant stated they had obtained legal advice). The other 2 had orders for repossession made against them despite asking for further time.
- In 4 matters the defendant was represented by a lawyer. Each of those defendants was granted an adjournment to make payment arrangements with the creditor or to file a counterclaim.

These court statistics and experiences, plus the more general estimates above all suggest both a considerable demand for services and a significant level of unmet need.

Other problems

Early action

A significant concern among almost all service providers and practitioners consulted in the course of this study was that people were not acting soon enough. Some service providers suggested that debtors were often embarrassed or took a “head in the sand” approach to debt issues, while for others it was a case of not knowing where to go for help or not recognising that the credit problem was a legal problem. The available data only partly substantiates this. The Law and Justice Foundation figures quoted in Table 2 show that respondents with consumer credit problems are less likely to do nothing than those with other problem types. However, further figures provided by the Foundation suggest that those who do take action are less likely to seek help from a lawyer (18.3% for consumer credit issues, 21% for other issues) and more likely to act without help or with informal help only (32.1% for consumer credit issues, 21.1% for other problems). This suggests that it is less about “sticking their head in the sand” and more about the other issues cited. Therefore, any early intervention strategies need to focus on encouraging people to take action and advertising existing services.

The Magistrates Court has recognised this problem and has a court form (Form 17) in 8 languages which is designed to prompt people to take action in response to claims and summons. However, the design and layout of this form is not user friendly (the first two pages are reproduced in Appendix 2) and it is currently only issued after legal action has begun. Ideally, early intervention would happen long before then, as by this stage issues begin to spiral and the debt is compounded by legal costs – another problem in the system.

Debt Recovery Processes

Many consumer credit contracts have clauses providing that the cost of debt collection is to be paid by the debtor. This is fair enough in principle, but there is a large amount of discretion as to how a creditor will pursue a debt. Creditors will often engage debt collection agencies who add a percentage to the debt simply for taking on the matter and then extra charges for each step of the process. The Magistrates Court rules (r20A) require that a notice of claim be sent to a debtor before proceedings are brought. Currently this can be done by sending a court form or a letter from a lawyer. Depending on the complexity, such a legal letter may cost a couple of hundred dollars. For debts of say \$5,000, the debt collection agency percentage and creditor’s legal fees can easily add up to another \$1000 on the debt. By comparison, the Magistrates Court form (which can be downloaded and sent to a creditor) costs \$18.70. The Court also offers free mediation in an effort to keep debts out of the court lists.

The method of pursuing debts clearly makes a marked difference to the amount of debt ultimately owed, but there is no obligation on creditors to use particular processes. The system creates no incentive for creditors to use the cheapest option to collect debt - this is clearly a failing in the system which simply adds to the level of debt of those least able to pay.

3. Service Provision in South Australia

Direct Services

Legal Information

Both legal information and advice are provided direct to clients about their particular situation, although it is important to distinguish the two because legal advice can only be given by a qualified legal practitioner. Information tends to be more generalised and might comprise the general options available or what the law says on a topic. It might include, for example, the options available to the consumer upon receiving a claim of debt, the consequences of not responding to a claim, the circumstances in which a debt might be disputed or the possibility of seeking a hardship variation. Information can be provided in written form through online resources, booklets, factsheets and self-help resources such as sample letters and forms. It can also be given by telephone or face to face and be provided by financial counsellors, solicitors or other service providers

There are a number of printed resources published within SA and distributed to legal service providers, financial counsellors and other welfare workers. The available resources either online or in hard copy include:

- “Homeowners and pensioners beware” (2007) pamphlet published by Central Community Legal Service warning about reverse mortgages and acting as a guarantor;
- “Going to court for a debt” (2012) booklet published by Uniting Communities on how to deal with debt and going to court over a debt.
- “Debt” chapter of the *Law Handbook* produced by the Legal Services Commission, available online only;
- “Beware door to door sales: What you need to know” (2012) factsheet published by the Legal Services Commission;
- “Do not knock” (2012) stickers published by LSC;
- “Bankruptcy” (2012) factsheet published by LSC;
- Debts (2010) factsheet published by LSC;
- Magistrates Court information on going to court, civil claims and court processes; and,
- OCBS website information on acting as a guarantor, reverse mortgages and referral to ASIC’s credit information.

In addition, the following non-state specific national information is available:

- ASIC’s MoneySmart website has a range of financial literacy resources including information on how to deal with credit/debt problems;
- The FOS and COSL websites have information about their EDR processes.

Although a range of information resources are available, a number of service providers have complained about the lack of up to date, easy to understand publications. In the absence of South Australian guides, service providers are handing out interstate publications to consumers. For example, *The Mortgage Stress Handbook* co-produced by CCLC (NSW) and CALC (Victoria) is being distributed by community legal centres and the Legal Services Commission. Although the guide is quite comprehensive and much of the information applies across the country, some of it is state-specific and does not address the South Australian position.

By contrast, specialist consumer credit legal centres in other states provide extensive information and procedural guides. CALC in Victoria has published 29 fact sheets on consumer law issues to assist consumers.

Case study

South Eastern Community Legal Service reported that it relies on fact sheets and sample letters produced by CALC (Victoria) and CCLC (NSW) as sources of information provision to clients.

The fact sheets are very good but the legal procedures are different in SA. We provide our clients with fact sheets from these Interstate services during appointments so we can discuss local procedures with them. We do not leave the fact sheets out for clients to pick up themselves, otherwise they could become quite confused. We would really like to have SA specific fact sheets and sample letters for our clients (and for SA financial counsellors to use).

As well as concerns about a lack of written information, there is a question of whether this information is being distributed as widely as it could be. Uniting Communities' debt handbook, for example, was intended to be available at the courts but this has not occurred. Published information is generally only accessible to those who contact a community service for help. This is problematic because of the trend for people with debt problems to avoid seeking help or not realising that their problem might be a legal problem. It suggests that there is a need for greater cooperation with the courts and other welfare agencies.

Written resources can be an efficient way of getting information out to as many consumers as possible. However, consumers are bound to have varying levels of understanding, particularly when it comes to vulnerable and disadvantaged individuals. Written information risks being either too complicated for the consumer to understand or too simplistic to provide real assistance. In this sense, there is still a real need for one-on-one provision of information.

All current legal service organisations provide telephone and/or face to face information. In addition, financial counsellors and other welfare agencies give legal information to clients when a simple or minor legal problem arises. There is a concern, however, that financial counsellors may not always recognise legal issues when they arise. As was expressed by Central Community Legal Service, when someone goes to a financial counselling service with a debt financial counsellors ask, "How are you going to pay?". When the person goes to a legal advice service, the lawyer considers whether there are legal reasons why the consumer should not pay. If the financial counsellor does not identify the legal issue, the problem can be missed altogether, or it may be let go amid the other issues the counsellor has to deal with.

Obviously, relying on financial counsellors and welfare workers to provide legal information also requires that they have a good understanding of the information they are giving out. Some financial counsellors have reported that this has become more complex with the introduction of the national reforms.

Legal Advice

Legal advice is more specific than legal information and may only be provided by a qualified legal practitioner. It involves advising the consumer how the law applies to their situation and what they should do next. Advice may be given over the phone or by email, but face to face interviews are often necessary so that the issues can be discussed in more detail and the adviser can go through any relevant contracts or other documents with the consumer.

As legal advice can only be given by qualified lawyers, there are fewer services providing advice. The services that do provide advice to consumers do so without applying any eligibility criteria. That is, all consumers can obtain first instance legal advice regardless of their income or other personal attributes. This advice is given by generalist lawyers who work at community legal centres, Legal Services Commission and ALRM.

The demand for advice services appears to be managed well by the services, within the limited resources available to them. However, there remains a problem of consumers not seeking advice or not being able find an appropriate service before the legal process has gone too far and any legal options are closed to them. Also problematic is that advice is being given by non-specialist lawyers. This may limit the depth of knowledge of consumer credit law, although it does have an advantage for clients presenting with multiple issues because the one lawyer tends to deal with all issues. The Law and Justice Foundation data provided to SACOSS suggests that 73.9% of South Australians with consumer credit problems have at least one other problem (with housing, crime, government or consumer issues being the most prevalent).

In any case, as will be highlighted below, provision of legal representation is limited. In most cases the provision of advice is not a complete answer to consumer credit legal problems.

Casework

Casework refers to practical assistance given to a client beyond the giving of legal advice. Casework services vary in degree from minor assistance offered to individuals who are self-representing, such as drafting letters or complaints, to more intensive or ongoing assistance such as involvement in EDR disputes, assisting in complex negotiations or mentoring self-represented clients. Casework can also include formal representation and litigation in appropriate circumstances, such as those matters involving more complex legal problems or where significant assets are at risk.

Most clients in SA only receive minor assistance. The Legal Services Commission system is set up only for minor assistance and does not provide any representation. Community legal centres may represent clients, but owing to the need to balance tight resources and meet the high demand for advice, services cannot always give clients the level of assistance they would like to. For instance, Northern Community Legal Service reported that around one third of advices lead to further casework assistance being given while South Eastern Community Legal Service provides casework services to about half those seeking advice on consumer credit matters.

Overall, the number of consumers benefiting from full casework services, including representation in courts and tribunals, is minimal. Most casework is directed toward assisting clients to pursue or resolve the issues themselves.

Some financial counsellors also take on casework, including negotiating with creditors, making complaints to EDR schemes and working with clients through EDR disputes. However, they complain that even the EDR processes are now often utilising lawyers, which makes it more difficult for them to assist.

Case study: Central Community Legal Service: Balancing resources

Central CLS has regular staff “file meetings” to discuss whether a matter warrants casework assistance and to what extent. Usually if they agree to take on a case, it involves simple letter drafting, negotiations with credit providers and assistance with EDR. Only a small percentage of their consumer credit lawyers’ time is taken up by casework because of the high demand for advice. The service does not represent clients in court because it is too difficult and resource intensive. Some years ago their sole consumer credit lawyer attempted to take on a litigation file, but the case took almost 2 years to resolve and exhausted most of the lawyer’s time.

The other major casework services in South Australia are provided through JusticeNet, which refers clients to a pro-bono law firm or solicitor where they are potentially offered a full range of casework services, up to and including representation in legal proceedings. However, JusticeNet is intended to be a service of last resort and individuals will only be eligible if there is no other reasonably available avenue of assistance.

JusticeNet is a triage and referral service, but is included in the casework section here because it maintains case files, tracks the cases it has referred and the services ultimately provided by the pro bono lawyer, are casework. JusticeNet receives around 500 queries each year and 70 of those queries result in pro-bono referrals. In 2011, 13 per cent of referrals were for debt and consumer credit matters. This equates to just 9 consumers being offered full casework assistance in a year.

Despite the work of JusticeNet, one of the obvious and major gaps in the current system is representation and support for consumers in courts and tribunals. As noted above, much casework involves assisting self-representation, and the level of self or non-representation in consumer credit matters is high. None of the service providers in Adelaide go to possessions hearings in the Supreme Court and attendances at the Magistrates Court for debt hearings are rare. Lawyers at South Eastern Community Legal Service reported that they go to court for their clients in Magistrates Court matters but cannot attend Supreme Court matters because the hearings are based in Adelaide. Only 4 of South Australia’s Magistrates Courts have financial counsellors present to assist even with the basic preparation of income and expenditure statements for debtor/defendants, and 2 of them had only partial coverage (Were, 2010, p. 11).

University student legal assistance clinics are held at some metropolitan Magistrates Courts where students give assistance (under the supervision of a qualified legal practitioner) on a range of minor civil matters potentially including consumer credit matters. The joint Adelaide and Flinders University clinic runs at the Adelaide Magistrates Court on Thursdays and every second Tuesday morning, and at Holden Hill Magistrates Court fortnightly on Tuesdays. The University of South Australia runs a clinic from its City West Campus and on Fridays at the

Port Adelaide Magistrates court. However, the clinics do not cover all courts (they are metropolitan courts only) nor all court sittings. Further, a number of the stakeholders SACOSS consulted warned that these clinics should not be considered as fulfilling the demand for expert legal advice. They are first and foremost a training centre for students with a secondary role of providing legal advice services. There is no equivalent of a duty solicitor or community legal service permanently present at the relevant courts.

This lack of representation is particularly important given that Were's (2010) report cited various cases demonstrating the anxiety people experience from court processes and their struggle to understand what is happening. Moreover his survey data suggested that financial counsellors and community legal practitioners rated most of their clients as having poor or very poor capacity to manage the process (Were, 2010, p. 22). Of course, promoting early action by consumers will greatly reduce the need for court representation because legal and financial counsellors can help to resolve matters before they get to court.

Referral

Referral is the ability to assess clients' needs and refer them to where they can access relevant services. This requires knowledge of what services are available, but also often a personal relationship with other agencies to ensure a smooth client transfer. It sometimes includes making bookings and following up to ensure a client does not "drop out" along the way.

Consumers are referred to legal service providers from a range of sources including other community legal service providers, private lawyers, welfare organisations, EDR schemes, courts, ASIC, Consumer and Business Services and creditors themselves. However, referrals in this system are not always to lawyers. Some problems presenting as legal issues require purely financial counselling assistance or basic information about rights and obligations in a given situation, or referral to an ombudsman or government agency.

The Northern Community Legal Service has a unique referral situation because it has an in-house financial counsellor as part of the service. Not only can the lawyers and financial counsellors refer matters to one another, they often work together to give clients a fuller range of services.

Overall, our survey suggests that the current referral model functions reasonably smoothly, with each service knowing where it can refer consumers depending on their situation and with strong referral relationships between the organisations.

However, even where organisations have good referral relationships, there are a number of problems. The absence of a clear primary entry point is one of the major concerns reported. Clients may present in the first instance to community service organisations, community legal centres, the Legal Services Commission or to the court or private solicitors. There are two relevant telephone help lines: the Salvation Army Doorways financial counselling service and the Legal Service Commission legal helpline. However, neither offers a comprehensive service. The Salvation Army has to refer on legal issues and the LSC has to refer on financial counselling issues. This is problematic because the more times clients get referred from one organisation to another, the more likely they are to become discouraged and "drop out".

In Were's survey of financial counsellors, community legal practitioners and court staff, there was overwhelming (91%) support for an "1800# Statewide free Debtline phone service, providing information about the debt recovery process and providing financial counselling information and referral services" (Were, 2010, p. 22).

Hypothetical referral pathway

Jenny is struggling to repay a debt and has received a default notice from the creditor. She looks at the ASIC website, which says she should ring a financial counsellor for help with her debts. She talks to the financial counsellor about how she might be able to repay the debts, but the financial counsellor identifies that there are potential legal issues and refers her to the Legal Services Commission advice helpline. After giving her initial advice, the LSC adviser considers that Jenny would benefit from ongoing legal representation. The legal adviser refers her to the local CLC, which does casework. However, as the creditor is aggressive and there are a number of complicating issues, the case ends up going to court and it is beyond the resources of the CLC to represent Jenny. She is then referred to JusticeNet which arranges pro bono representation from a private law firm.

At one level, the system works because there is a relevant service for each stage of the case, but at another level, Jenny has had to deal with 5 different agencies to get the support she needs. This is frustrating at best, and at worst, leads her to give up.

Another problem encountered in referrals from financial counsellors or other welfare providers to legal services is a loss of holistic assistance (integration of service delivery). This is partly the nature of any referral, but there is a particular problem in that financial counsellors complain that once they refer a client to a legal service they often lose touch with the client and are unable to address other needs. Part of the problem here is around issues of legal privilege which lawyers need to deal with and protect, but the issues are not insurmountable and there is clearly a need for different forms of co-operation between the different services.

There are additional concerns and gaps in the system for regional community legal centres and financial counsellors. In smaller communities, legal centres sometimes find they have a conflict of interest with respect to a client, and there are few or no alternative places to refer them. There is a further problem when clients need representation in Adelaide (where creditors may bring cases). Video linking is often unavailable so in this situation representation is not possible. The Legal Services Commission does not appear in court for clients, and other community legal centres cannot assist because they have geographic catchment zones. One financial counselling office in Port Pirie has referral links with the Homelessness Legal Service in Adelaide, but this is only available because of relationships that have developed between organisers. A more consistent approach to reaching marginalised consumers is necessary.

Indirect Services

Training and Casework Support

Training and casework support refers to services provided to financial counsellors, generalist legal advisers and other welfare workers. This assists non-lawyers to identify and deal with

legal issues, make referrals or take on lower level casework. Given the changing nature of the law and the variety of circumstances that can present, this requires both regular training sessions and easy access to ongoing assistance from specialist lawyers when, inevitably, questions arise.

The Legal Services Commission runs formal training courses for community workers and employs one full-time specialist legal advisor dedicated exclusively to consumer law. She does not have any direct contact with consumers, but works with financial counsellors and in-house staff helping to provide them with specialist advice, education and up-skilling on consumer credit and other consumer issues. All of the community legal centres SACOSS spoke with also reported that they regularly assist financial counsellors with education and training.

Nonetheless, financial counsellors still report having nowhere to go for help, particularly when they need answers on the spot while working with a client. This puts the financial counsellor in a difficult position because the quality of their assistance suffers. Doorways Financial Counselling Service stated, "Sometimes we just have to ignore the legal issue and sort it out ourselves."

Community Legal Education

Community Legal Education (CLE) refers to activities aimed at informing the public of their rights, powers, privileges and duties in relation to consumer credit issues. This may include the production and dissemination of written information such as fact sheets and online information, media campaigns and public talks. These tools are also used to provide legal information, but in this report the two are distinguished on a number of grounds. CLE is broader more rights based information, while legal information may be more specific to particular situations and processes. The former may be more proactive (assisting consumers to recognise they have a legal problem) and preventative (assisting consumers to avoid problems), while the latter can be more reactive to situations and processes already in train. Another distinction may be the scale of delivery – when information is provided to one person who has a particular issue it is referred to as the provision of legal information; when the publication is made to the community at large, it is commonly described as legal education – although there are lots of grey areas in between.

There are some significant CLE campaigns in South Australia. The Office of Consumer and Business Services and the Legal Services Commission have been involved with the national "Do Not Knock" campaign to educate the community about door-to-door sales and other unsolicited consumer agreements and are distributing the "Do Not Knock" stickers to deter unwanted door-to-door sellers. Further, the Commission's specialist consumer law adviser has a regular radio spot targeted at the Riverland area where she discusses consumer issues. Community legal centres also undertake community outreach activities such as speaking at community groups and forums. For instance, the Northern Community Legal Service recently conducted a financial literacy program for the African community in the area.

ASIC also has a strong community education focus. It carries out financial literacy programs across the country including but not limited to consumer credit matters. It also has its MoneySmart website, with over 400 pages of content and information available in 26

languages. It recently launched a new website to help teachers to deliver financial literacy in schools. However, the content of ASIC's programs are not state-specific.

The success of such CLE is hard to gauge or quantify. The Uniting Communities *Going to Court for a Debt* guide was well received, with a particularly strong interest from financial counsellors and those agencies providing financial literacy training. However, Uniting Communities received feedback that the booklet is too complicated for consumers so is instead using it to assist financial counsellors in providing information to clients. As legal information it remains a useful resource, but as a community legal education tool its application is limited.

Some of the success of CLE is reflected in the subsequent actions of consumers (although direct causality may be hard to establish). For instance, the Legal Services Commission *Law Handbook* is an online resource that gives basic legal information on an extensive range of topics including areas relating to consumer credit such as "the National Credit Code", "consumers and contracts", "unfair contract terms" and "false and misleading practices". Data provided to SACOSS by the Legal Services Commission showed that some of these topic pages had more than 6000 unique viewers in 2011-2012 and the pages had more than 60,000 views across all consumer credit topics. From our calculations, this represents an overall increase of 71% from the previous year. This increase might reflect the community education work of the specialist consumer lawyer and the LSC generally but other factors may also have contributed.

ASIC's community education initiatives are evaluated through a variety of qualitative and quantitative means. For example, a measure of traffic to the MoneySmart website showed that the site received 1.9 million unique visitors during 2011-2012 (ASIC, 2012, p. 4). The success of some of its promotional campaigns is evident from significant spikes in visits to the website during campaign periods. ASIC also undertakes regular surveys of internet users to determine the reach and impact of its website. Their April 2012 survey found that 7% of adult Australian internet users had visited the website at some stage and that 91% of those who visited the site took some specific action as a result (ASIC, p. 4).

There are also considerable gaps in CLE in South Australia. Much of the effort "piggy-backs" on initiatives being driven from elsewhere and overall there is less activity here than interstate. For instance, Consumer Affairs Victoria has been more proactive in consumer legal education than OCBS here. Victoria also has CALC, which has a strong systemic advocacy and CLE focus. CALC takes a hands-on approach to attracting media (and hence community attention) including holding meetings, protests/pickets and other forms of direct communication with consumers (CALC, 2012). However, the South Australian effort has increased considerably over recent years (since the LSC resourced the consumer credit specialist lawyer).

Systemic Advocacy

Systemic advocacy seeks to identify the underlying cause of problems faced by vulnerable and disadvantaged consumers and to change the law or the legal environment to prevent problems or to better balance the scales within the legal system. It includes:

- Input into government policy – providing submissions and advice to government on policies which may impact on vulnerable and disadvantaged consumers;

- Advocacy for and input into industry codes and practices in the interests of vulnerable and disadvantaged consumers;
- Law reform advocacy – researching and presenting ideas for pro-active legislative change; and,
- Strategic litigation – taking test-cases to establish precedents or set rules which will apply to particular situations.

Systemic advocacy can often be the most efficient way to provide benefits to a wide range of people because it prevents issues arising, or is simply cheaper than providing casework assistance to a large number of individuals faced with the same issue. However, systemic advocacy is a major gap in the South Australian system in both policy advocacy and litigation.

Policy advocacy is not one of the functions of the Legal Services Commission set out in s10 of the *Legal Services Commission Act 1997*, so while they may support and provide input into others' advocacy, it is beyond its mandate to lead advocacy campaigns. Such advocacy is the mandate of peak bodies, and there are two relevant peaks in the area: the SA Financial Counselling Association and SA Council of Community Legal Services. However, while they may feed into submissions of their respective national peak bodies, neither have the funds to employ professional policy researchers or campaigners. Similarly, the individual community legal centres have limited resources to deal with casework, let alone to employ or develop the necessary policy advocacy expertise.

There are a number of stark examples of the gaps in policy advocacy in South Australia. One of the biggest consumer credit legal issues in the last year has been proposed changes to the regulation of pay day lending. While pay day lenders like Cash Converters mounted a public campaign to defend their interests, South Australian legal voices advocating on behalf of vulnerable consumers were largely absent from the formal processes. For instance, the Treasury Inquiry into strategies for reducing reliance on payday lending in June 2012 had the major consumer submissions put together and signed by relevant interstate consumer credit legal centres (CALC et al, 2012c); the only South Australian signatories were SACOSS and SAFCA – neither of which have legal expertise. SACOSS signed on as a matter of principle, and in trust of the work done interstate, but was acutely aware that any South Australian specific issues or practices would have been missed. There was no South Australian submission to the subsequent inquiry into the Consumer Credit and Corporations Legislation Amendments Enhancement Bill (Treasury, 2012a).

This repeats earlier trends. There were no South Australian consumer advocate submissions on the Exposure Draft of the national bill to amend credit laws and ban unsolicited credit limit extensions by credit providers (Treasury, 2012b). The inquiry by the Productivity Commission on Consumer Policy Framework which led to the Australian Consumer Law received submissions from SACOSS, the Energy Industry Ombudsman SA and the Minister for Consumer Affairs SA, but none from organisations providing consumer credit legal services. And again, the Australian government Green Paper that led to the National Consumer Credit Protection Act in July 2008 received no SA submissions, whereas the NSW, VIC and ACT consumer credit legal centres all made submissions (Treasury, 2012c).

The picture is the same outside of formal policy processes. For example, the only South Australian organisations that signed up as supporters of the “debt trap” campaign on payday lending are SACOSS and SAFCA (CALC, 2012b). There is simply no South Australian

organisation engaging in ongoing media commentary, political protest and advocacy on consumer issues in the way that CALC in Victoria does. CALC has published more than 50 media releases since August 2011 and made more than 1500 media appearances in the last 5 years – although these were spread across the range of consumer issues, not just relating to consumer credit (CALC, 2012).

Case Study: CALC's Pay Day Lending Campaign

In September 2010 CALC published 'Payday loans: Helping Hand or Quicksand?' which provided a detailed examination of the high-cost, short term lending industry in Australia, assessed the international experiences, discussed the policy and regulatory debates around the issue, and concluded that the most effective consumer protection tool is a comprehensive interest rate cap.

The report, funded by the Victorian Consumer Credit Fund, was launched by the Royal Society of Victoria with Tim Costello of World Vision Australia and Lisa Gray of NAB speaking at the launch. It generated significant media, including on national television and radio and in various newspapers.

CALC worked closely with financial counselling agencies that see the damage done by high-cost short-term loans on a day-to-day basis. Using that experience of the clients, CALC published a case study report 'Mission Incomplete' that examined how responsible lending provisions (part 1 of the Phase 1 credit reforms) had failed to prevent detriment suffered by consumers stuck in debt traps.

The ongoing advocacy and publicity around these research reports helped get high-cost short-term lending onto the government's agenda. Other advocacy strategies included street theatre on "toxic debt", establishing a network of financial counsellors interested in the issue across Australia and regular Treasury consultation meetings and formal submissions.

As noted above, the fact that many South Australian creditors utilise expensive private debt collection processes rather than cheaper Magistrates Court processes is an area which could also benefit from strategic advocacy to inform and change industry practices.

The other aspect of systemic advocacy that is largely absent in South Australia is strategic litigation. The extent of representation and litigation support by SA service providers is limited in any case, let alone having resources and a mandate to identify and run cases that can proactively seek to set precedents, clarify the law or pressure industry members to change their practices. One community legal centre made the following observation:

We do not have the resources to be litigating in superior courts on a regular basis and therefore are not able to assist all clients. Any serious litigation usually requires the assistance of counsel. We do not have the funds to engage counsel and the clients also have no means to do so. In all cases the lenders are in the more powerful position and are significantly better resourced and usually use the largest commercial law firms. (Central Legal Service SA) [Renouf, pg. 21]

SACOSS consultation processes with service providers have not revealed any examples of consumer credit strategic litigation. Again, this is a contrast to the services provided interstate (see box below on Motor Finance Wizard case).

CALC v Motor Finance Wizard – the South Australian Gap

Consumers Action has campaigned against poor sales practices in motor car trading both to the Victorian Government and to the industry. It received ongoing complaints from consumers about a particular trader, Motor Finance Wizard, including issues about excessive fees and charges on sale of contract and sales being targeted at low-income and vulnerable consumers. It had concerns that the 'leases' used by this and other traders were actually loans and should therefore be covered by consumer credit regulation.

In 2007, Consumer Action notified ASIC and Consumer Affairs Victoria of the level of complaints and suggested enforcement options against the company, as well as notifying the South Australian OCBA (as it was then) in relation to the trader's application to become a licenced motor car trader in this state. It held protests outside Motor Finance Wizard dealerships, drawing significant media attention.

CALC commenced legal proceedings against the trader in the Victorian Civil and Administrative Tribunal on behalf of one of its clients. In 2011 the tribunal ruled in favour of CALC's client, finding that the contract was unjust, that Motor Finance Wizard's conduct was unconscionable and that its "entire leasing process was seriously flawed".

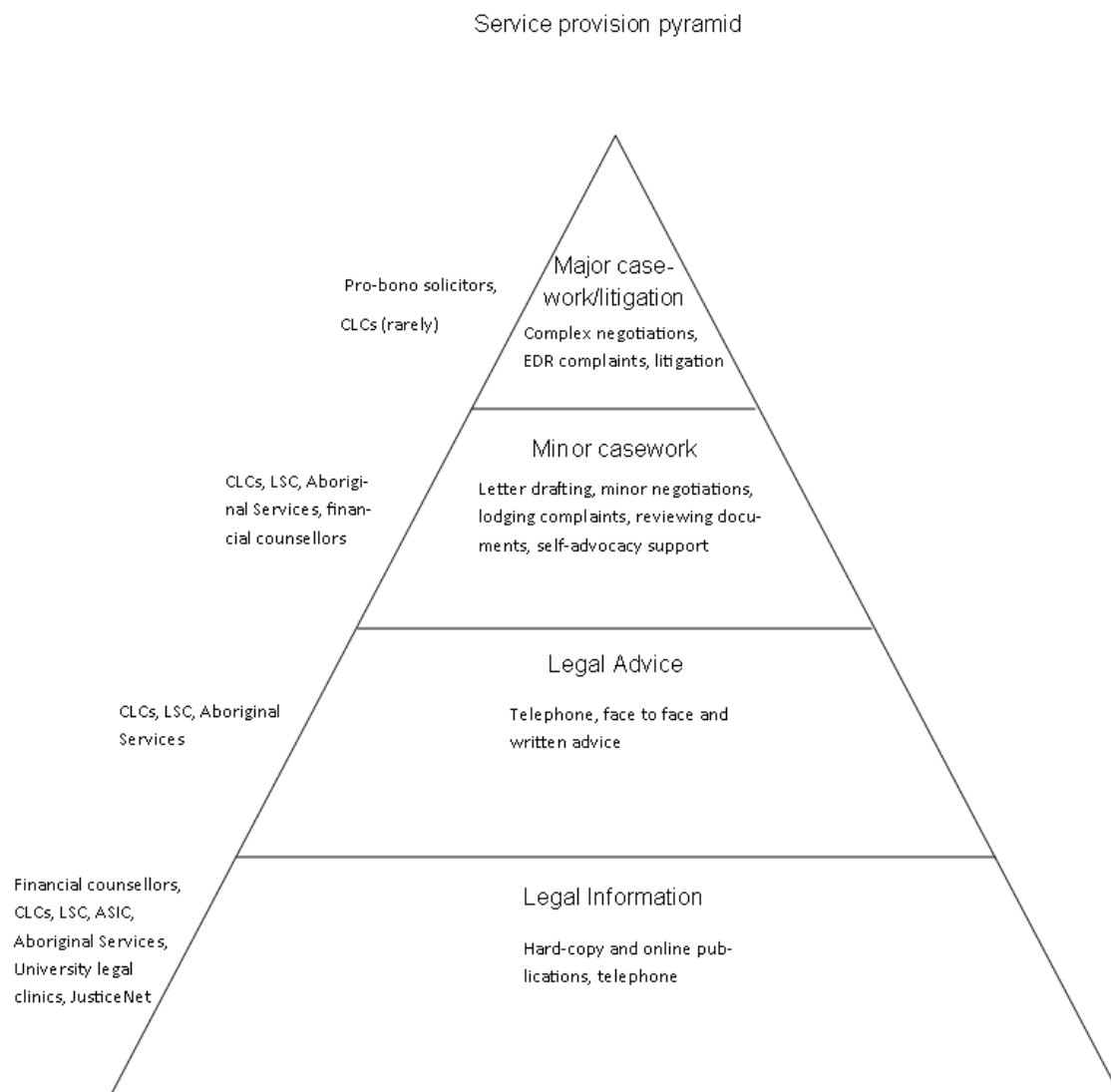
CALC's advocacy work for the lease-type contracts used by Motor Finance Wizard to be subject to consumer protection laws came to fruition with the passing of the Consumer Credit Protection Act 2009. CALC made extensive submissions to government during the consultation process which led to such improvements to the law.

Importantly, in the absence of a South Australian consumer credit legal centre, it was through CALC's actions that South Australian regulators knew about the problematic practices of a company that was seeking to set up here. This was fortunate, but similar practices may not come to light for entities based only in South Australia.

Summary and Gaps

The following diagram summarises who provides which consumer credit legal services in South Australia. It is drawn as a triangle to highlight that as you move up the pyramid, the services become fewer in number, but more intensive, specialised and less able to be provided by non-lawyers.

Figure 1: Service Provision Types



The main gaps in this system of service provision discussed have been in relation to lack of resourcing in critical parts of the system, particularly further up the pyramid in the more intensive services. However, a range of specific gaps have also been identified at different levels of the system. These include gaps in, or a lack of:

- South Australian legal information resources, including information about where to get help;

- Presence in relevant courts of financial counsellors, consumer credit lawyers and basic legal information;
- Integration of financial and legal aspects of a client's problem with only one service co-locating financial counsellors and lawyers (the others getting by with referrals and relying on non-lawyers to pick up legal issues);
- Clear and coordinated entry points to the system
- Early identification of problems by consumers themselves;
- Casework referral options for regional community legal centres; and,
- Representation of clients.

However, this list and the diagram above only refer to direct service provision. Some of the major gaps are in indirect service provision. Training and casework support was limited (only one person in SA with a formal consumer credit training role) and gaps in South Australian content and context for some community legal education materials. However, the biggest gap was in systemic advocacy and litigation, where there were few resources and no specialist staff to undertake this work – despite it arguably being a more cost-effective way of providing assistance in the long run.

4. Costs and Benefits of Better Service Provision

The discussion above has clearly identified a level of unmet need within the provision of consumer credit legal services, as well as a number of gaps within the current system. The benefits of greater service provision would variously accrue to individuals, government and to the community more broadly.

Benefits for Individuals

The Were report (2010) found that individuals facing debtor's court were characterised by multiple levels of disadvantage, a lack of understanding of the system and feelings of intimidation by the processes. Debtors often agreed to terms they could not afford or should not have been required to pay, which may have been avoidable had they been able to get their debt properly assessed (Were, 2010). Clearly any services which provided information and support would be of benefit to those individuals. Further, given that the New Zealand statistics discussed earlier (Ignite Research, 2006) suggest that many people wanted information so that they could assist themselves, then the provision of such information is likely to lead to less stress, more informed/decision making and potentially better outcomes for individuals concerned.

Ultimately, the benefits to individuals of increased services and filling the service gaps are an extension of the benefits of existing provision of financial counselling and community legal services. These were identified in the SACOSS "Just One Day Without" project which hypothesised where people would be without such services. The conclusions were obvious, but worth stating:

Without a place to seek help, clients would have limited options. They may seek pay day loans, borrow from family or friends or accept unrealistic payment arrangements, all of which would worsen their situation in the long term. No one would be there to advocate on their behalf and they would not be able to access their rights, such as hardship policies, consumer laws and insurance. There would be an increase in unnecessary and even illegal repossessions, disconnected utilities, foreclosure on homes and evictions. ... For families in financial crisis there would be a huge strain on relationships, and an increase in family breakdowns. For some, children would be removed. The increase in stress could also lead to an increase in family violence (SACOSS, 2011).

Benefits for the Courts and the Legal System

The courts, legal system and the government (as the major funder of the court system) would also get direct benefit from filling the gaps in consumer credit legal services. These benefits accrue largely from the greater efficiencies in the court system when there is less self-representation, or where defendants better know their rights, the processes and range of possible outcomes. Equipped with such information, those with consumer credit issues may not bring claims with little merit or tie up the courts with convoluted or unprepared cases. In this context, Were (2010) provides examples of defendants being unprepared and being sent to financial counselling - a good thing for the individual but an inefficient use of court time.

There may also be a benefit from advocacy which leads to systemic changes (either in legislation or corporate behaviour) which prevents issues ending up in court. The Motor

Finance Wizard case noted earlier is one specific example of this, where systemic advocacy and one court case may have prevented a number of victims of the scheme ending up in court.

Benefits for the Community

Beyond the court system, there are savings from not having to provide services to people whose consumer credit problems have caused or exacerbated stress and mental health problems, or in worst case scenarios, have spiralled into homelessness, breakdown of relationship or violence. In this context, while consumer credit legal services are in some ways crisis interventions, they also serve preventative functions and save the government the money and effort of providing more intensive services.

A cost-benefit analysis of community legal centres by Stubbs (2012) found that, on average, for every dollar spent by government community legal centres return a benefit to society that is 18 times the cost (cost benefit ratio of 1:18). The ratio for the NSW Consumer Credit Legal Centre benefits exceeded costs by a factor of 33 (cost benefit ratio of 1:33). This figure included not only the direct costs and benefits, but also the indirect costs and benefits to the wider community.

Beyond dollar values, there are also intangible benefits of having a fairer justice system. Given that the court system is built on an adversarial model, ensuring both sides have at least a basic minimum of resources is crucial to justice being served.

5. Developing Service Delivery Options

Methodology

Having identified significant unmet need in consumer credit legal services in South Australia, SACOSS undertook consultation with a range of stakeholders and service providers to identify the best way to provide services and meet this need. Stakeholders were consulted through a roundtable discussion on 9 October 2012 at the Consumer Law Consultative Forum. Participants were provided with a copy of the Stage 1 report which contained (an earlier version of) estimates of the extent of need and identified the range of existing services and gaps in the service system. A brainstorm resulted in the following list of service options:

1. Stand-alone specialised Consumer Credit Legal Centre
2. Court clinics
3. Co-location of lawyers and financial counsellors
4. Enhanced Legal Services Commission role
5. Funding for a Consumer Credit peak body to address the identified gap in systemic advocacy
6. Increased role for Office of Consumer and Business Services in community legal education
7. Gateway funding to create a clearly visible entry point into the system
8. Little gateways – funding to increase public awareness of current services
9. University Community Legal Education partnership, including the inclusion of consumer credit law coursework
10. Enhanced ASIC role in providing support for gateways, doing strategic litigation and CLE
11. A branch or subsidiary of an interstate Consumer Credit Legal Centre
12. Package of targeted services (2+3+5 above)

The meeting then considered this list, key priorities and how the various options fitted together. On the basis of this discussion, SACOSS then undertook to develop more detailed proposals around options 1 and 12.

In the course of the subsequent consultation and research, SACOSS developed a third model which is a variation of number 11 above. The proposal for a service unit housed within or auspiced by an existing service was originally subsumed as a variation of the stand-alone specialist Consumer Credit Legal Centre, but after consideration SACOSS believed that, with a smaller scale and narrower mandate, it was sufficiently different to the stand-alone service that it was worth consideration as a model in its own right. Accordingly, the report from the second stage of the process presented three models for providing enhanced consumer credit legal services in SA:

1. A stand-alone specialist Consumer Credit Legal Centre which would provide a full range of direct and indirect services and would have a broad mandate to act on behalf of all consumers.
2. A specialist consumer credit legal unit within or auspiced by an existing organisation. This would essentially perform the same role as the stand-alone service but at a smaller scale and with a mandate limited to vulnerable and disadvantaged consumers.

3. A package of targeted services to meet key needs including court clinics, co-location of lawyers and financial counsellors through employing a financial counsellor at community legal centres or a lawyer at financial counselling offices, and funding for policy advocacy through a host organisation.

The Stage 2 report (which contained an extended explanation of these models) was presented to a subsequent meeting of the Consumer Law Consultative Forum on 4 December 2012. The meeting discussed the options put forward and the relative strengths and weaknesses of each model. During the course of the discussion, it became clear that, while all participants believed any of the models would enhance current service provision and would be welcome, there was no clear preference. Each of the models had advantages and limitations, and the group was fairly evenly split between all three as to which was the preferred model.

SACOSS' reflection on the discussion led us to conclude that the problem was not that the sector did not know what it wanted, but rather that there was not really one model or solution which would deliver a perfect service provision. There were a variety of needs which had to be met in different ways, and crucially, as will be seen below, some of these were contradictory. By definition, none of the models could do everything. This led to a change in focus from looking for the best single service model which would do everything, to developing a model which would fill the existing gaps that had been identified. SACOSS then picked out the parts of the various options proposed which would fill the biggest gaps in the system and combined them into a hybrid proposal which is the model which is finally recommended here.

Given the time constraints for this project, SACOSS has not been able to consult widely on this model, but it combines aspects of the proposals considered in the consultation process and its logic and direction draws directly from the discussion of those earlier proposals. However, it is also important to outline two other proposals which were put in the Stage 2 report and common to all models:

- Amendment of court forms to direct people to legal assistance; and,
- Court clinics to provide legal or financial counselling presence during the relevant court lists.

These remain part of the final proposals here, and form a necessary background and context for consideration of the various models.

Proposals Common to all Models

Amendment of Court Forms

As noted above, there is an overwhelming concern that consumers delay seeking help with debt problems, often avoiding the problem altogether until it is too late. One early intervention strategy proposed to address this is to include clear information about where to go for free legal assistance with the bundle of court documents served on the debtor at each stage throughout the court process. This would include attaching the information to any pre-claim notice, the formal court claim and the enforcement (investigations or examination) summons.

The current process requires that, every time a claim or an enforcement summons is sent to a debtor, Form 17 be attached. As noted previously, Form 17 is in 8 languages and encourages the debtor to take action and explains the impact of doing nothing. It also provides a list of places the debtor can go for information, including the Legal Services Commission. It does not, however, make clear that the Legal Services Commission can give free legal advice.

Current procedure also requires the creditor to send a notice to the debtor stating their intention to sue at least 21 days before lodging the formal claim. The notice may be in a form prescribed by the court (Form 1A) or be a letter of demand containing certain information. The Magistrates Court is currently reviewing their procedures and are considering making use of the prescribed court form mandatory. Given the costs of legal letters and that this cost will be passed on to debtors, SACOSS supports the mandatory use of Form 1A, and following from that, disallowing costs of legal notice letters to be passed on to debtors. It is also proposed that there be a requirement to send information on where to go for help at this stage also.

SACOSS proposes that all relevant notices of action, claims and summons forms contain clear information with wording to the effect of:

For free legal help contact the Legal Services Commission Legal Help Line
on 1300 366 424

Such information (in 17 languages) is included on the NSW "Possession of Land Coversheet", which is the equivalent of our Supreme Court form for making a claim to repossess a property. A copy of the NSW form is included in Appendix 4.

This proposal is strongly recommended regardless of whether any other recommendations in this report are accepted and funded. This minor procedural change is an extremely cost effective way of promoting awareness of available legal assistance and targets people before the matter has progressed too far.

Court Clinics

A number of stakeholders during the Stage 1 consultation process suggested that legal and financial counselling assistance needed to be available at the court precinct to assist with consumer credit matters. The court clinic model is aimed at providing basic support for debtors arriving at court without having sought assistance, having no or little understanding of court procedures and feeling intimidated by the process. Given the reluctance of many debtors to seek help early and/or the lack of community awareness of the services that are available, the court clinics are an opportunity to reach vulnerable debtors who would not otherwise have sought help.

The court clinic model proposed here is that there be:

- a. A lawyer present at the Supreme Court during the Possessions List; and
- b. An experienced financial counsellor present at every Magistrates Court during the debt list following an investigations summons for minor and general civil claims.

These are in addition to, and would complement, the existing University run clinics which do not cover the Supreme Court and do not offer financial counselling services.

Supreme Court Possessions List

The possessions list is held each Wednesday morning from 10am in the Supreme Court building. The area outside the courtrooms contains a narrow corridor and 2 interview rooms. A lawyer could potentially obtain permission to be stationed in one of the interview rooms during the possessions list.

The role of the lawyer would be to provide basic legal advice, explain court procedures and ascertain whether there might be a solution other than repossession. They would advise the debtor to seek an adjournment where appropriate to obtain more extensive legal assistance. It is not expected that the legal officer would represent consumers in court, except perhaps in exceptional circumstances.

There are some concerns about how well the court clinic would function in practice. Currently very few debtors actually appear at the hearing so potential reach is limited and it would obviously be preferable to provide advice at an earlier stage. The court form amendment proposal above is directed at this, but even if a court clinic only helps one or two debtors each week it would be worthwhile given the high stakes involved.

To make court clinics operate effectively would require cooperation from the court. The list contains around 30 matters, with each matter only lasting a couple of minutes. Communication between the clinic and the court would be essential to ensure that the court knows when a debtor is in the clinic so that their matter is not called on and default judgment granted in their absence. There is also a danger that the list may be delayed while the debtor is seeking advice, although a potential solution might be to amend the court forms to inform debtors to arrive half an hour prior to the hearing. This would give the lawyer sufficient time to speak with the debtors without impacting on the list.

Magistrates Court Debt Lists

Once a claim to recover a debt is commenced in the Magistrates Court, either in the court's minor or general jurisdiction, the debtor has 21 days to respond in writing by lodging a defence or counterclaim with the court. If they do not respond, the creditor can file a document with the Registrar requesting that default judgment be entered. No notice is required to be sent to the debtor about the request, so it will usually occur without the debtor knowing. Once judgment is entered, the debtor then receives an "investigations summons" telling them to appear at a court hearing at a certain date and time (in a 'debt list'). The purpose of the debt list is to determine whether the debtor can afford to pay the debt and work out a payment plan. It is not an opportunity for the debtor to raise a defence. For this reason provision of financial counselling services are the priority rather than legal advice.

Debt lists are organised so that they occur on a certain day in a particular court, staggered so that they occur on different days across the metropolitan courts. It would therefore be possible for one financial counsellor to service a number of courts. Currently, financial counsellors are only available at 4 of the Magistrates courts in SA: Elizabeth, Christies Beach, Port Augusta and Whyalla (Were, 2010).

The role of the financial counsellor at the court is to help the consumer prepare income and expenditure statements and give advice about how much they should agree to pay per fortnight. Although financial counsellors are not qualified or permitted to give legal advice, an experienced financial counsellor with appropriate training on consumer credit issues would be alert to matters where a defence should have been raised (for example, the debtor

presents with an obvious vulnerability which would have made it unconscionable for the creditor to give them credit). In such a situation they can suggest that the debtor ask for an adjournment to seek legal advice.

The assistance of a financial counsellor in court is particularly important for vulnerable consumers. Anecdotal evidence from stakeholders suggests that debtors are often pressured into agreeing to unreasonable payment plans that they simply cannot afford. They are pressured by the court and the creditor to make payments as quickly as possible, including being cross-examined on their financial position. This is a concern because serious consequences can result from falling behind on payments, including the court issuing a warrant of commitment (that is, a prison term for up to 40 days).

It should be noted that SACOSS is *not* proposing stationing lawyers in the Magistrates Court clinics. This is despite strong support for the idea in the consultations and previous survey data suggesting that 100% of respondents agreed a “duty solicitor” should be made available to debtors in the debt court (Were, 2010). However, this would not be cost efficient given that judgment has already been entered and can only be set aside in exceptional circumstances where the consumer has a defence and there is good reason the defence wasn’t put before the court within the time limit. Hence, a lawyer would benefit only a small number of debtors whereas a financial counsellor can provide more relevant assistance.

Discussion of the Stage 2 Models

Against the background of the above two general proposals, the consultation in Stage 2 considered the different models that were then put forward. It is worth highlighting some of the key issues considered then as they show the problems with the models proposed at that stage and why the final recommendations in this paper take the form they do.

A proposal for a stand-alone specialist Consumer Credit Legal Centre is widely supported by a number of stakeholders consulted in this project. The Renouf report (2010) also strongly advocates for a specialist consumer credit legal centre in each state to complement an existing network of CLCs. As noted previously, South Australia is currently the only state without a consumer credit legal centre of some kind. A brief description of the various interstate services is contained in Appendix 3 of this report, but their functions variously include:

- Telephone information, advice, referral and casework services including litigation;
- Extensive web-based resources and other publications;
- Online self-help tools such as sample letters and complaints;
- Training and casework support to financial counsellors and welfare workers, including a dedicated community worker hotline;
- In-house financial counselling services;
- Telephone triage whereby either a financial counsellor or lawyer speaks with consumers in the first instance, referring consumers to the other where appropriate;
- Active involvement in CLE with strong media presence; and,
- Strong advocacy voice including making submissions to public processes, public campaigns promoting fairer industry practice, making complaints to ASIC on recurring problems and strategic litigation.

The specialist services have a clearly recognisable name and publically branded role. This is important given that one of the widely reported obstacles to consumer credit legal needs being met is the lack of recognition by consumers that their debt problems are potential legal problems and a lack of knowledge of the available services.

A specialist centre could also more easily develop and maintain consumer credit legal expertise which would enhance other services. Financial counsellors have pressed the need for a service with which they can develop a long-term relationship, seek advice and casework support from and work towards service delivery partnership. The appointment of a specialist consumer law legal officer at the Legal Services Commission has been an important step in establishing these relationships, but it does not fulfil the need for all collaborative approaches as the LSC lawyer does not represent clients, nor do the in-house lawyers she helps to up-skill.

Specialised services also have advantages in relation to policy and systemic change advocacy. A specialist service has such advocacy as part of its mandate. Given that policy advocacy requires specialist skills, knowledge and resources, an advocacy based organisation is probably going to be a more supportive and effective vehicle than simply having a policy officer in a non-policy oriented organisation. The housing of front-line service delivery and advocacy in one organisation also provides a good structure for identifying key issues and for basing policy in current casework concerns. This is partly because a specialised service that deals only with consumer credit matters has a greater volume of cases and over a wider area or population group than would be seen by any one CLC or charity. Further, given that there are different cultures and priorities in policy advocacy and legal representation, there may be tension around issues such as the selection and merits of cases, approach to cases, and publicity surrounding cases (if any) (Renouf, 2010, p. 24). This tension would be much easier to manage within one organisation/unit than if the advocacy and representation/advice was done in separate organisations (as was envisaged in Model 3 of Stage 2).

However, despite all the advantages of establishing a specialist service, there is one major disadvantage, and crucially it stems from the very idea of a specialised service. A specialist service is less well equipped to deal with clients presenting with multiple issues. As noted earlier, approximately three-quarters of those with consumer credit issues also have at least one other legal problem. This suggests a need for holistic services as opposed to grouping services by problem type. A specialist service may leave clients' multi-layered legal needs unaddressed, or alternatively require referral to another service to deal with the non-consumer-credit problems. This complicates the service delivery model, increases the chances of a client dropping out of the system, and undermines a holistic approach to a client.

By contrast, as generalist legal services, CLCs are well-placed to deliver one-stop-shop legal services, particularly if sufficiently funded and enhanced by co-located financial counsellors. For this reason, SACCLS, as the peak body representing community legal centres, opposed the funding of any additional CLC while existing services are not yet at a core level of funding. However, simply putting more resources into CLCs, while a necessary part of the addressing the unmet need for consumer credit legal services, is not a total solution. As Renouf (2010) points out, consumers may also present with other straight welfare issues which would remain outside of the legal service model, so a true "one stop shop" may simply

not be possible. More importantly, this approach does not get many of the unique benefits noted above which come from a specialist service, particularly in relation to having a base of specialist knowledge and a platform for systemic policy advocacy and strategic litigation. For these reasons, SACOSS and many in the sector did not support Model 3 when it was proposed in the consultation, notwithstanding the fact that we accept the critique of the problems of a specialist service in dealing with co-morbidity issues.

The overarching problem is that there is a fundamental contradiction in all the models proposed in Stage 2 in that each model's strength is also its weakness. Accordingly, SACOSS is not putting forward any one of the models originally proposed, but has attempted to combine key elements from each into a hybrid proposal that would see *both* the strengthening of CLCs *and* the establishment of a (more modest) specialist consumer credit legal centre/unit.

7. The Proposed Model

The model proposed by SACOSS in this report is for an integrated package of measures including the establishment of a “scaled-down” stand-alone Consumer Credit Legal Centre and a strengthening of support for existing services. In order to accommodate provision of resources to other services in a tight funding environment, and so as not to duplicate existing functions, the specialist Consumer Credit Legal Centre proposed here would not fulfill all the roles and functions that specialist centres do in other states. Specifically, rather than establishing a large centre with a significant public presence that sought to channel all consumer credit legal issues through it, the proposal is to recognise that there will always be many gateways into the system, and that the existing service providers will continue to be primary service providers. The role of the proposed CCLC would be primarily to fill the specialty gaps not being serviced by existing providers.

This model recognises that nearly three-quarters of those with a consumer credit legal issue also have other legal problems and that generalist services like the CLCs are best placed to deliver services to these people. Given this, and the evidence in this report of unmet need for services and the problems of service breaks between financial counselling and legal services, it is clear that extra resources are needed to boost the existing services – particularly through the co-location of financial counsellors and lawyers in services. However, this model also recognises that there are some needs which can’t be met just by topping up existing services, specifically the specialty case work, strategic litigation and the political advocacy – hence the need for a specialist service.

The details of the proposals are outlined below, and obviously the extent of the services provided will depend on the funding available, but it should be emphasised that these proposals are in addition to current service provision. This is justified by the extent of unmet need highlighted in Section 2 of this report and is necessary because the proposals have been formulated to fill gaps identified in the existing system. Robbing other areas of the system to pay for these proposals would simply move the gaps from one place to another.

Given the nature of the services proposed it is envisaged that funding could and should come from a variety of sources. The Department of Communities and Social Inclusion currently funds financial counselling and has a mandate to support vulnerable and disadvantaged South Australians. The SA Attorney-General’s Department provides funding to the LSC and some CLCs and is responsible for the justice system in this state, while the Federal Attorney-General’s Department and Department of FaHCSIA are primary funders of CLCs and also fund financial counselling. All have responsibilities in the area of consumer credit and accordingly all should be part of the funding of the proposals.

Establishing a Specialist CCLC

A key part of the model proposed here is the establishment of a Consumer Credit Legal Centre. South Australia currently has a number of specialist community legal services, including the Women’s Legal Service, Environmental Defenders Office, and the Welfare Rights Centre. The Consumer Credit Legal Centre proposed here would add to this list (provided it is accredited as a community legal centre, although as noted in the Stage 2 report, while this is desirable, it is not strictly necessary for the operation of the centre). The key roles are outlined below.

Court Clinics

The function of the court clinics has already been described. It is proposed that the half day a week clinic at the Supreme Court possessions list be run by the CCLC solicitor who may also be able to provide support and advice in relevant matters in the University-run Magistrates Court clinics. The CCLC would also employ a financial counsellor who would provide the clinic in metropolitan Magistrates Courts where no financial counseling services are currently available. The financial counsellor may also be able to provide support for non-metropolitan court clinics, although the proposal here is where required these would be staffed by financial counselors located in regional CLCs.

Specialist Casework

The specialist casework role would be driven by referral from the court clinics, from other service providers (e.g. LSC, CLCs, financial counselling services), and from self-referred “walk-ups”, but again the casework load would largely be limited to approximately 25% of cases where there are no other legal issues. Again, triage and referral from other services will be crucial, but there will also be a role in providing specialist advice to generalist lawyers dealing with the other 75% of cases. This advice will largely be lawyer-to-lawyer advice rather than direct client servicing, but may also include appearing in metropolitan courts for regional clients – a need clearly identified in consultation with regional CLCs. The centre may also provide casework support or advice to financial counselors, for example, where an issue arises leading to a financial counsellor to ask the CCLC lawyer to look at a contract, case notes or a draft correspondence. This type of assistance is not provided by the Legal Services Commission specialist lawyer.

Policy Development and Advocacy

Policy development and advocacy was a clearly identified gap in the current services. It is proposed that the CCLC would employ a professional policy officer/campaigner (as these are different skills from the direct service provision and legal advocacy). The role would include:

- tracking the issues arising in the CCLC casework to identify trends and emerging issues;
- developing appropriate policy responses and proposals responding to government proposals and consultations;
- engaging with consumer credit providers to better inform industry standards and practices; and,
- initiating proactive advocacy to change laws in the consumer credit area to better protect consumers, and particularly vulnerable and disadvantaged consumers.

Some of these roles are nationally focused (e.g. law reform), others are SA specific (e.g. engaging with consumer credit providers) or have elements of both, including crucially to ensure that South Australian practices and experience is reflected in national policy debates. Inevitably such advocacy would entail a significant communications capacity, including a campaign-based website and social media, and much of the public profile of the CCLC would be advocacy oriented (as the casework is largely sourced from referrals).

An example of a useful policy development and advocacy role that has arisen in the course of the consultation is in relation to the creditors’ debt collection practices. We have recommended the mandating of Court Form (1A) as a less expensive way of notifying of

potential legal action. This may or may not take further advocacy, but beyond that a CCLC would also be able to identify from casework files which credit companies are using more expensive processes, approach them directly to ensure that they know about the cheaper options and, if necessary, publicly highlight poor practices or welcome changes to better practices. The CCLC could also work with industry groups to promote the use of less expensive practices.

Strategic Litigation

The policy advocacy roles above could include or lead to identifying issues where litigation could be strategic in clarifying the law or changing poor practices beyond specific cases. Such strategic litigation was another clearly identified gap in current services as the LSC does not represent clients and the CLCs are unlikely to have the resources or priority on consumer credit issues to engage in such litigation. However, strategic litigation remains an important tool for changing laws and practices both directly and indirectly (where the potential threat of litigation supports other advocacy as it provides leverage in dealing with 'rogue' traders or hard-line credit providers).

SACOSS recognises that litigation is expensive and risky, and it is not envisaged that running such cases would be a major part of the proposed CCLC's role. However, identifying issues and cases is important and it may be that this (plus basic case preparation) is a key role even where the actual litigation is referred to pro bono law firms (via Justicenet or direct referral) or referred to the ACCC or ASIC for action.

Limitations

As noted above, to cut down on costs and avoid duplication, the proposed centre would not undertake all the functions of other CCLCs. Specifically, casework roles would be scaled back so it was only the primary case work provider in which there were no other legal issues for clients (approximately 25% of cases) or where there was a particular reason for referring cases there (most casework load would fall to the LSC and CLCs).

The proposed CCLC would not have a community education focus or primary role in providing generic legal information as this work is already being done by ASIC and LSC. Its role here would simply be to value-add to this existing work by providing another contact/distribution point. For instance, its website could provide targeted links to the ASIC MoneySmart website and to the LSC online Law Handbook, and it would stock and distribute ASIC and LSC materials in its face-to-face interactions. However, it would not have primary role in development and publication of such legal information and CLE materials.

The combination of not having a primary role in providing CLE and legal information, and being only one among a number of service providers means that the proposed CCLC would not need a strong public presence to attract people to its services. As a result of the CCLC not being a "big gateway", it would be not provide a free-call telephone number. This removes potential duplication with the LSC 1300 legal helpline and the Salvation Army's 1800 Doorways financial counseling hotline. However, to make this system work it would be important that the services triage effectively and refer clients to the CCLC in appropriate cases (i.e. where there is a discrete consumer credit legal issue). To assist a smooth referral here, it is hoped that the CCLC phone system could be linked to the LSC and Doorways service to allow an 'internal' call transfer from both services. This needs further investigation

and support from those organisations, but it would be important in limiting the drop-out of clients not following-through on the referral.

Such close linkages would also help facilitate the provision of specialist advice to those services. Given that the LSC has one specialist consumer credit lawyer, the proposed CCLC and the LSC would need to cooperate and coordinate functions such as advice and provision of training for financial counselors and non-specialist lawyers. It is not anticipated that this would be a problem, but even if cooperation faltered, the worst outcome would be a minor duplication of services and a choice for other service providers as to where to get advice and support.

Size, Funding and Mandate

Given the functions outlined above, it is envisaged that the proposed CCLC would employ about 4 people with an annual operating budget of about \$400,000. This is well below the NACLC recommendation of core-funding for CLCs of 5 positions with a budget of \$593,000 (NACLC, 2012), but the wage levels in that document are aspirational and the scaled down role and staffing configuration proposed here are significantly different. An indicative budget is as follows:

Solicitor	\$100,000
Policy Advocate	\$ 70,000
Financial Counsellor	\$ 70,000
Admin Support	\$ 70,000
Non-wage Operating Expenses	<u>\$100,000</u>
Total	\$410,000

In addition, there would be a one-off establishment cost of approximately \$50,000 to cover basic centre infrastructure (computers, furniture, office set-up, etc).

The wages figures are SACOSS estimates and include on-costs of Superannuation and WorkCover, and non-wage costs are based on the NACLC (2012) funding principles which suggest a ratio of wages to operating expenses with wages being approximately 75% of all operating costs. The budget assumes all positions are full-time and relatively senior, though in practice different balances between the positions may be possible. It also assumes that the solicitor is also the manager of the service. Obviously, if another staff member were the manager, the individual wages would be adjusted, but this should have little impact on the bottom line.

In this model, it is envisaged that the solicitor would provide the Supreme Court clinic, specialist legal advice and casework, and support for litigation and law reform advocacy. The financial counsellor would administer the metropolitan Magistrates Court clinics, provide support to CCLC casework clients, and possibly for LSC clients as the LSC has no in-house financial counsellor. The Policy Advocate would be responsible for the systemic advocacy functions. The administration support person would be front-of-house, handle initial triage and keep the Centre running.

The mandate for the Centre will depend on its source(s) of funding. If funding is provided in part or in full from the Attorney-General's Department (state or federal) then, as with other CLCs, its mandate would be to provide support all clients – in this case, all consumers.

However, if the CCLC is funded by DCSI or by DCSI and FAHCSIA, then its mandate would reflect that narrower focus and be limited to vulnerable and disadvantaged South Australians.

In practice, this may not make a huge difference to much of the casework as CLCs tend to limit the more extensive casework and representation to vulnerable and disadvantaged clients. It may, however, be relevant to choices made around strategic litigation and the policy issues and positions being advocated.

Auspiced or Stand-Alone?

The proposal here is for the Centre to be a “stand-alone” organisation, rather than a unit within a broader organisation. While it is acknowledged that this imposes some extra administrative requirements and costs in running a new organisation, there are several reasons why the stand-alone model is preferred.

Firstly, it is difficult to identify a completely suitable auspicing organisation. The Legal Services Commission has limitations on policy advocacy and the CLCs are geographically-focused rather than state-wide services. Financial counselling agencies tend to be charities rather than legal service providers, which means there would be extra costs in establishing lawyers there and some “brand recognition” issues because debtors may be reluctant to go to a charitable organisation for help or may simply might not think to contact a charity for legal advice. In all potential auspicing organisations the host organisation will inevitably have its own values, style, policies and political frameworks, and views as to where the greatest need lies. Given the auspiced unit is only one part of a larger organisation, there is a risk that the objectives of the existing organisation are prioritised over the needs of the sector as a whole. This is the case particularly in relation to policy advocacy and the risks associated with strategic litigation. A stand-alone centre, on the other hand, may determine its own objectives and priorities and could be tailored in a way that best meets the needs of the community and existing service providers across the state.

Finally, there may also be logistical issues in an auspiced agency providing support or seamless transitions for clients if the host organisation already has its own systems in place, whereas a stand-alone centre is smaller and more able to be flexible.

While the above reasons suggest that a stand-alone centre is preferable, SACOSS acknowledges that it would be possible to offer most key services from an auspiced unit within an existing organisation.

Strengthening the Existing Service Providers

A crucial part of the service delivery model proposed here, but separate from and in addition to the establishment of a CCLC, is the strengthening of existing services. This recognises the extent of unmet need, the prevalence of co-morbidity. It also recognises that no matter how well-funded a specialist CCLC might be, it will not be able to deal with all cases of consumer credit legal problems.

One part of strengthening existing services would be to provide funding for advertising and outreach activities for the Doorways and LSC telephone free-call helplines. The promotion of these public gateways to services goes toward addressing the problem of people leaving it

too late when seeking assistance, and as such it is a potentially useful early intervention strategy. It is also anticipated that changes to the Court Forms recommended here will increase demand for the LSC hotline, so additional staffing may be required at the LSC.

The other service area requiring increased funding is the CLCs. Most CLCs are poorly funded and struggle with existing client workloads. Data from the ACOSS Community Sector Survey suggests that (nationally) 73% of legal service providers have difficulty in meeting demand and the average turn-away rate (i.e. unmet demand at the doorstep) was 14% (ACOSS, 2012, p. 20). While most CLCs report that only about 10-15% of their workload relates to consumer credit issues, these are intertwined with other issues and it is not sensible to suggest funding their consumer credit services separately. Additionally, SACOSS notes that potential increased demand for services resulting from the proposed changes to the court forms may flow through to casework for CLCs. It is hoped that the introduction of a CCLC to deal with some caseload will assist load management for the generalist CLCs, but more funding for these services is still needed. Balancing all these factors, SACOSS recommends a 10% increase in current funding for the generalist CLCs. This still would not bring all CLCs to the NACLC recommended core funding discussed earlier, but it is a contribution to that goal based on consumer credit issues. While SACOSS generally supports the broader goal, it is beyond the scope of this paper.

Beyond simply additional general funds, we are also proposing co-location of financial counselling and legal service providers. This was a core part of Model 3 as it was proposed in Stage 2 of this project, but in consultation it was not clear what this would look like. In one view it was putting a financial counsellor in each CLC (Northern Community Legal Service is currently the only one with a financial counsellor on staff), but it would also be possible to place solicitors in key financial counselling centres. However, the cost of this would be prohibitive, and what was envisaged by some stakeholders was more modest.

It is also important to note that existing financial counselling services can't simply be uprooted and co-located within CLCs because most are based in charities providing emergency relief and other services. The on-site financial counselling is important to their integrated welfare service delivery. Thus, part of the proposal here is to encourage closer ties between CLCs and existing financial counselling services. Noting the challenges of financial counsellors or welfare providers losing touch with the client, greater co-operation may also involve financial counsellors running their service one day per week in a CLC, or CLC lawyers running clinics from financial counselling centres.

In this vein, part of the proposal for the operation of the CCLC would be for the lawyer in the CCLC to have weekly meetings with Doorways financial counselling staff, or operate a day a week from the Doorways financial counselling centre. The recommendation here is based on the principle of closer ties and is focused on Doorways, as both Doorways and the CCLC have a state-wide mandate. It should be noted that there has not been time to consult the Salvation Army or other financial counselling providers on this recommendation.

Beyond such co-operative measures though, funding for financial counselling should be provided for co-location in key CLCs. While it would not be possible to fund co-location in all CLCs, SACOSS proposes 3.5 financial counselling positions be spread between the CLCs with the priority being regional CLCs providing court clinics in the Magistrates Court.

The cost of the proposals for strengthening existing services is as follows:

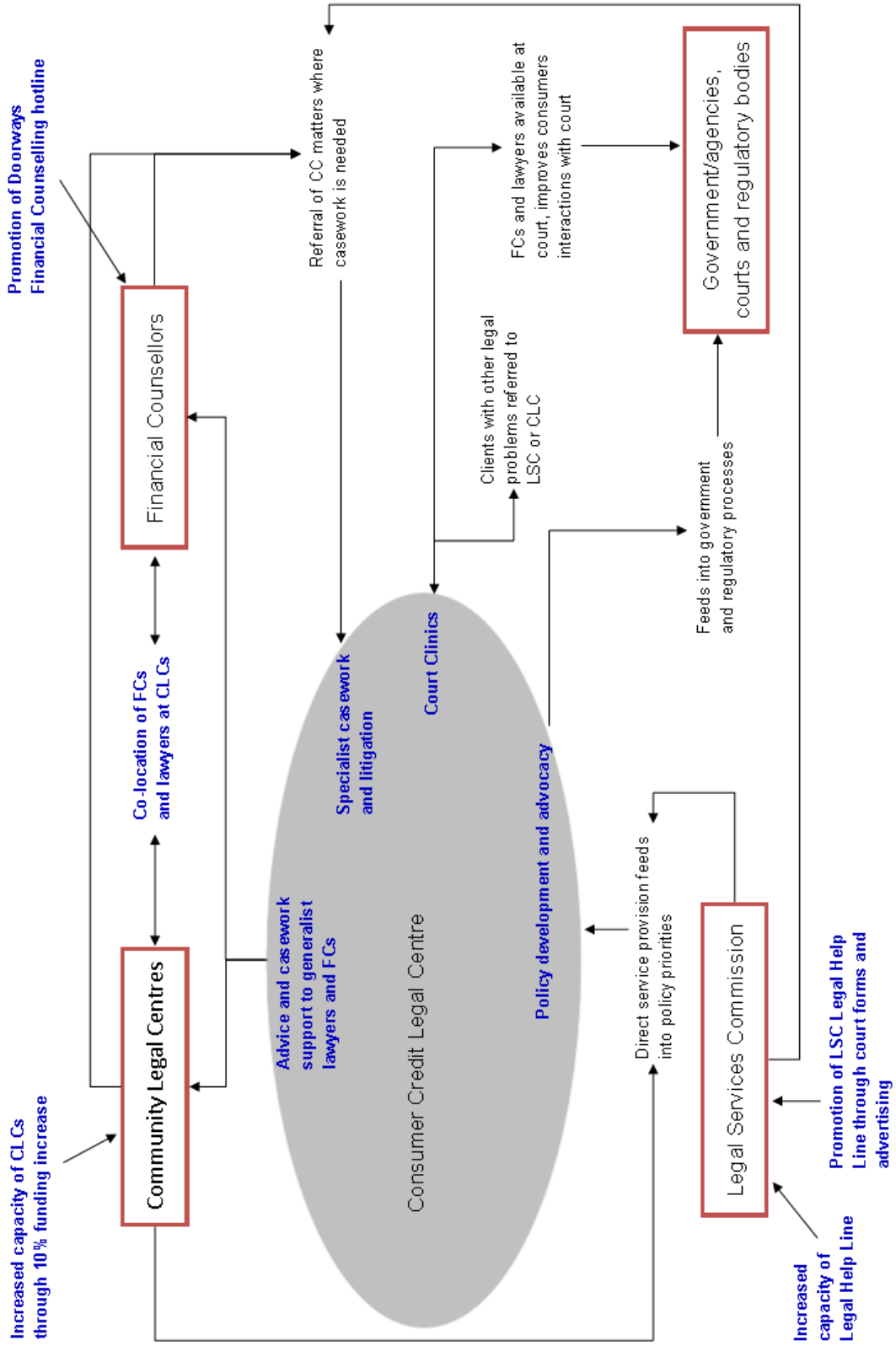
Financial Counsellors for CLCs (3.5FTEs)	\$240,000
Increased funding for LSC hotline	\$ 80,000
Increased funding for non-specialist CLCs	+ 10% of current funding
Increased advertising for Doorways and LSC	<u>\$ 50,000</u>
Total	\$370,000 +

Linking the Proposed New Services to Existing Services

In summary, the service provision model proposed here is a combination of the strengthening of some existing consumer credit legal services and the establishment of a small Consumer Credit Legal Centre to fill gaps in service provision. As noted above, the proposals are inter-dependent in that they are based on filling gaps in existing services, balancing the strengths of the different service types and avoiding the disadvantages. In this sense, the proposals are designed to link with and complement existing services.

Figure 1 is a concept map of how the proposals link to existing services. The text in blue is the proposed new initiatives. The existing service provision and referral arrangements between agencies are not shown on the diagram but will remain in place. There will be additional referrals from the CCLC to other agencies where multiple legal issues arise (although to keep the diagram simpler, these are also not shown).

Figure 2: Map of Proposed New Services and Service Links



Assessment against Key Criteria

The report from Stage 2 of this project identified a number of criteria which could be used to assess the various models under consideration, namely:

- Quality of service for vulnerable and disadvantaged clients
 - Ability to provide adequate legal support for clients
 - Ability to provide adequate non-legal consumer credit support for clients;
- Simplicity of service model (easy to find/access, maximise coordination and minimise referrals);
- Reach of service delivery (number of people reached, access for non-metropolitan consumers);
- Systemic Advocacy potential
 - Ability to identify, resource and run policy change campaigns
 - Ability to undertake or support strategic litigation;
- Efficiency (avoiding duplication, multiple referrals, etc);
- Cost;
- Political possibility (likelihood of it being funded).

The following considers the model now proposed against each of those criteria.²

Quality of Service for Vulnerable and Disadvantaged Clients

The model proposed provides quality services to vulnerable and disadvantaged South Australians through the provision of court clinics, co-located financial counselling services and through the specialist casework provided by the CCLC. All of these are in addition to current services and the model is designed to enhance the strengths of particular service types: multi-issue general legal services provided by the LSC and CLCs, and specialist services provided by a dedicated CCLC. The model also provides for early intervention strategies like the changes to court forms, as well as providing for systemic advocacy on behalf of vulnerable and disadvantaged consumers. Importantly, this advocacy combines professional policy skills with the base in a consumer credit legal practice.

Simplicity of Service Model

Because it builds on existing services and proposes only a modest new centre rather than a complete reorganisation of services provision, the model is relatively simple to introduce. Similarly, because it recognises the existing entry points to the system rather than trying to build one central gateway, the referral system should work regardless of where or how a client first enters the system. While some measures like co-location of financial counsellors and CLCs are designed to minimise referrals, the model is still very referral based – with all the incumbent possibilities of clients dropping out or falling through gaps. Good triage at points of entry will therefore be essential in making the system work as simply as possible, but the proposal also adds a simple entry point for those who identify their own consumer credit problem and self-refer to the CCLC. Presumably filling gaps in the existing model also makes the overall system easier to navigate.

² The final criteria is not addressed in this report because, while it was a relevant “reality check” in the Stage 2 consultations, it is not relevant to the final proposal which, in part, is a request for funding.

Reach of Service Delivery

The proposed model is set up to reach a larger number of people than currently receive services. As noted above, this recognises existing unmet need, but it also anticipates an increase in demand arising from the proposed changes to court forms, as well as the “last minute” reach of the court clinics. The model achieves state-wide reach through increased promotion of the Doorways financial counselling hotline and the LSC legal help line, as well as through extra support for the network of local CLCs and the ability of the centralised CCLC to represent regional clients in Adelaide courts. This is in addition to existing information and outreach programs being run by ASIC and the LSC.

Systemic Advocacy Potential

One of the strengths of the model is the resourcing of systemic advocacy. This is achieved through what SACOSS believes to be a structure conducive to good policy development and advocacy, namely with professional advocacy components co-located with service delivery in an advocacy oriented organisation.

Efficiency (avoiding duplication, multiple referrals, etc)

As noted, the proposed model is still very referral based, but proposals for co-locating services and having the LSC and CLCs remain the lead service providers where there are multiple legal issues are attempts to limit the referrals. Given the issues discussed in balancing the costs and benefits of specialist verse generalist service provision, we believe the model to be the *least inefficient*. The proposal for the central CCLC has also been crafted primarily to fill service gaps and therefore avoid duplication of services.

Cost

The cost of the proposed model is relatively modest given the level of need identified and the gaps in the current system. It also pales in comparison to the dollars involved in consumer credit legal issues. In 2012, SACOSS estimated the extent of unresolved debt of clients of just one financial counselling service provider to be \$250,000 (SACOSS, 2012b, p. 7). This figure would not be entirely consumer credit related debt, but the provider was only one of five large financial counselling service providers in South Australia. Added to this unresolved debt is the cost involved in repossession of houses arising from the approximately 30 cases a week in the Supreme Court, the 30,000 or so debts in the Magistrates Court general claims division each year and further debts in the minor claims division (as well as the cost to the taxpayer of running the courts for those cases). Finally, there are also the savings to government and the community from intervening before consumer debt issues escalate into mental health, relationship or potentially criminal issues. The sums here quickly add up to many millions of dollars in costs, debts or losses at stake: certainly enough to justify the expense of less than \$1m per year for legal services.

The proposed CCLC is relatively small scale and is certainly less costly than the full-function model first proposed. Similarly, the financial counsellor co-location proposal does not require a full-time counsellor in each CLC and in some ways should be supportable from existing state budget allocations. As previously noted, the September 2010 state budget cut government financial counselling services. This cut was meant to be offset by provision of funds for 3.5 financial counsellors in the non-government sector. In the circumstances of the time, this funding was not taken up, but the proposal in this report is of the same magnitude.

8. Conclusion and Final Recommendations

In making the proposals in this paper, SACOSS has looked at the roles played by consumer credit legal centres in other states and utilised data on legal needs which has not been previously available. We have conducted two rounds of formal consultation with the consumer credit legal services sector, as well as a range of one-on-one consultations with key stakeholders.

We believe that the proposed model represents a coherent approach to meeting the unmet consumer credit legal needs of vulnerable and disadvantaged South Australians, and that the new services proposed would provide good value for money enhancement of current service provision.

Accordingly, we make the following recommendations and look forward to further discussion with the South Australian and federal governments on the funding and provision of such services.

Recommendation 1:

That the court forms for all relevant notices of actions, claims and summonses should contain clear information about where to go for free legal assistance and include the relevant contact details.

Recommendation 2:

That it should be mandatory to serve the standard court form (currently Form 1A) as a notice of intention to bring an action, and that recovery of the costs of any additional solicitor's letters giving such notice be disallowed.

Recommendation 3:

That state and federal governments fund the package of measures proposed in this report for the enhancement of existing services and the establishment of a Consumer Credit Legal Centre, namely:

Existing services to be enhanced by:

- co-location of financial counsellors in community legal centres, including running clinics in regional Magistrates Courts;
- increased funding for the LSC hotline;
- increased funding for non-specialist CLCs; and,
- funding for advertising of Doorways and LSC legal help lines.

A specialist CCLC to provide:

- Court clinics in metropolitan courts;
- Specialist casework, including receiving briefs from non-metropolitan CLCs and representing regional clients in Adelaide court hearings, and providing specialist support for financial counsellors and generalist lawyers;
- Policy development and advice; and,
- Strategic litigation potential.

The discussion in Section 7 of this report also contains details and a number of specific recommendations about how the proposed model might operate.

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APPENDIX 1: SACOSS Calculations of Legal Needs

The following data and calculations show the steps that were taken in reaching figures for consumer credit legal need and unmet need.

1.1 Calculating the Prevalence of Consumer Credit Problems

The published Law and Justice Foundation survey does not include 'consumer credit' as a problem category in its own right. SACOSS used the definition of consumer credit from this paper and then examined the questions in the survey that related wholly or partly to consumer credit issues. These came from the housing, credit/debt and consumer problem groups (Coumarelos, 2012, Appendix 1). SACOSS then requested a breakdown of data from the Foundation in relation to these questions. The results are set out in Table 4 below. The difference between the number of problems recorded and the number of respondents with a problem arises because many people had more than one problem.

Table 4: Prevalence of consumer credit problems from raw data

Qu	Consumer credit problem type	Total number of problems recorded in survey	Number of Respondents with at least one problem	Number of Respondents with a substantial problem
	Housing			
P4.1	Home owner, mortgage payment	16	8	6
	Credit/Debt			
P16.1	Guarantor or paying a loan	23	14	12
P16.2	Creditor's threats or actions	133	61	29
P16.4	Credit rating or refusal	62	33	13
P17	Actual/possible bankruptcy	3	3	1
	Consumer			
P24.1	Services from a bank etc	92	41	20
P24.2	Services/contracts-water, electricity or gas	100	72	30
P24.3	Services/contracts-phone, internet or TV	411	197	83
	All consumer credit problems	841	329	151
	All problems	4882		
	Total respondents		2041	2041

SACOSS believes that this raw data may be an overrepresentation of consumer credit issues. In particular, the 'services/contracts – water, electricity or gas' and the 'services/contracts – phone, internet or TV' questions are likely to contain some problems that do not relate to consumer credit (e.g. problems relating to product quality or customer service). Accordingly, SACOSS has adjusted the Law and Justice Foundation figures using the complaint rates to the relevant Ombudsmen as the basis for determining the proportion of those categories which were consumer credit issues. As approximately two-thirds of cases received by the Energy and Water Ombudsman SA in 2011-2012 were consumer credit related (EWOSA, 2012, p 2), we have adjusted the Foundation's figures for 'water, gas and electricity' issues down by a third. Similarly, in relation to 'phone, internet or TV', approximately half of the complaints received by the Telecommunications Industry

Ombudsman during 2011-2012 related to consumer credit matters (TIO, 2012, p. 17), so we have taken only half of the Foundation figure.

Total Consumer Credit Problems (Adjusted)

The adjusted figures for the number of consumer credit problems are set out in Table 5 below.

Table 5: Total consumer credit problems

Qu	Consumer credit problem type	No. of problems
	Housing	
P4.1	Home owner, mortgage payment	16
	Credit/Debt	
P16.1	Guarantor or paying a loan	23
P16.2	Creditor's threats or actions	133
P16.4	Credit rating or refusal	62
P17	Actual/possible bankruptcy	3
	Consumer	
P24.1	Services from a bank etc	92
P24.2	Services/contracts-water, electricity or gas	67
P24.3	Services/contracts-phone, internet or TV	206
	All consumer credit problems	602
	All problems	4882

This shows that a total of **602 consumer credit problems were experienced by South Australian respondents in the previous 12 months** and that **consumer credit problems made up approximately 12.3% of all problems experienced.**

Respondents with Consumer Credit Problems (Adjusted)

Because some respondents had more than one consumer credit problem, we cannot simply apply the same reductions to the number of respondents with a problem. However, from the raw data, there was a mean of 2.56 problems per respondent (that is, 841 legal problems among 329 respondents). When this average is applied to the adjusted figure of 602 problems, it can be estimated that **236 respondents experienced a consumer credit problem. This equates to approximately 11.6% of all respondents.** When this percentage is applied to the SA population of 1,339,881 people aged 15 and over (ABS, 2012b), this gives the SACOSS estimate of 154,604 South Australians experiencing at least one consumer credit problem per year.³

Respondents with a Substantial Consumer Credit Problem (Adjusted)

As we do not have a figure for the total number of substantial consumer credit problems, we cannot apply the above calculation in respect of the number of people with a substantial problem. However, it can be estimated that the figure should be reduced by approximately the same proportion as was the figure for the number of respondents with a general problem

³ The figures presented here at each stage of the calculation are rounded numbers, but the calculations are done using the real numbers so using the above numbers in a simple calculation will give a slightly different (less accurate) answer.

(that is, by multiplying the 151 people with a substantial problem by 236/329). This results in **108 respondents with at least one substantial consumer credit problem, which equates to 5.3% of all respondents.**

1.2 Calculating Legal Need

The sources of the data in Table 3 in the main text updating Renouf’s calculations are as follows.

Table 6: Sources for updating Renouf’s calculations

Step	Description
1	The derivation of the baselines numbers A and N are explained above; the P figure for the population 15 years and over is from separate ABS figures (2012b); and R is direct from Coumarelos (2012, p. 52).
2	The 49% used for the calculation of Figure B is from the Law Foundation data provided to SACOSS.
3	The 15.6% used for the calculation of Figure C is from the Law Foundation data provided to SACOSS.
4	The 42.1% figure used to derive Figure D is a SACOSS calculation based on the inverse of the Law Foundation data that the reason that 57.9% of people did not take action was that the problem resolved quickly (Coumarelos, 2012, p. 96). This 57.9% figure is not specific to consumer credit, but is the general figure for all problems.
5-9	Figures are based on the data derived as above.

However, as discussed in the body of the report, SACOSS used a different definition in relation to the calculation of figure D and the reasons people took no action. Echoing the New Zealand approach, SACOSS considers that a person who took no action would be considered as having a legal need where the reason for taking no action was that it would be too stressful, it would cost too much, it would make no difference or the person didn’t know what to do.

Table 7 below sets out the reasons why respondents in the Law and Justice Foundation survey took no action in relation to their problems. The figures relate to all problems experienced, not just consumer credit problems, but as some respondents gave more than one reason for taking no action the percentages add up to more than 100. Therefore, if we want to find the number of respondents who fit within our definition, we cannot simply add up the percentages from each of the relevant reasons (this would equate to 116%).

We know that, on average, respondents gave 3.96 reasons per problem (i.e. 1338/338). Therefore, the percentages corresponding to each response can be divided by 3.96 so that they add up to 100% (set out in the % adjusted column).

Table 7: Reason for taking no action in respect of all problems

Reason	N	%	% (adjusted)
Problem not very important	148	44.0	11.1
Problem resolved quickly	195	57.9	14.6
Would take too long	129	38.3	9.6
Would be too stressful	104	30.9	7.8
Would cost too much	81	23.9	6.1
Would damage relationship with other side	46	13.6	3.4
Would make no difference	194	57.5	14.5
Had bigger problems	109	32.3	8.1
Was at fault/there was no dispute	85	25.1	6.4
Didn't know what to do	78	23.0	5.8
Didn't need information/advice	120	35.6	9.0
Other reason	49	14.6	3.7
Total responses	1338		
All problems where took no action	338		100

By adding together the adjusted percentages for the categories of “would be too stressful”, “would cost too much”, “would make no difference” and “did not know what to do”, it can be estimated that there was a need for legal assistance in relation to 34.2% of problems. While the number of *respondents* with a legal need is less than the number of *problems* giving rise to a legal need (due to people having multiple problems), we could see no reason to believe that the percentages would be very different whether measuring responses or respondents. In the absence of any data to the contrary, SACOSS has used the figure derived from the number of problems to apply also to the number of respondents, hence **we estimate that 34.2% of respondents who took no action had a need for legal assistance.**

APPENDIX 2: SA Magistrate's Court Form 17

**PLEASE READ CAREFULLY
IMPORTANT NOTICE**

The enclosed document is from the MAGISTRATES COURT [CIVIL DIVISION].

If it is a CLAIM and if you do nothing the other side may get a judgment against you which can be enforced against **YOU**, your **HOUSE** and your **POSSESSIONS**.

If you want to defend the claim [**DEFENCE**] or blame someone else [**THIRD PARTY CLAIM**], or [**COUNTER CLAIM**] you only have 21 days to go to the MAGISTRATES COURT and file the necessary documents.

If it is a SUMMONS you must go to the NOMINATED COURT WHEN IT SAYS OR YOU MAY BE ARRESTED.

If it is any other document you must find out what it says because your house, possessions or yourself may be affected by it if you do nothing.

FOR INFORMATION go to:

- * A Magistrates Court – the staff will explain it to you. See the address for “TRIAL COURT” on the other paper or go to the 1st Floor, 260-280 Victoria Square, Adelaide SA 5000.
- * Interpreter Service – Interpreting and Translating Centre, 24 Flinders Street, Adelaide SA 5000.
Telephone: (08) 8226 1990 – (This service is not free).
- * Legal Services Commission – 82 Wakefield Street, Adelaide SA 5000
Telephone: (08) 8463 3555 or see under “L” in Telephone Book.
- * A solicitor or the Law Society of South Australia.
Telephone (Law Society): (08) 8231 9972.

TAKE THE ENCLOSED DOCUMENT WITH YOU

第17号表

CHINESE

**请认真阅读
重要通知**

后附文件由初级[民事]法庭送发。

如果当事人在收到诉讼文书后没有采取任何行动，对方当事人则有可能获得不利于当事人本人、房产和财产的判决。

如果当事人决定答辩[抗辩]或起诉其他人[第三方诉讼请求]或进行[反诉]，当事人应于二十一日内向初级法庭提交相关文件材料。

当事人收到传票后，必须于规定之日期前往指定法庭应诉，如缺席不到者，有可能会被刑事拘留。

如果随信还附有其他文件，当事人应了解文件的内容。因为如果当事人没有采取任何行动，其房产、财产或个人有可能会受到影响。

如需详情，请联系：

- * 阿得雷德初级法庭—工作人员将会为您解释有关信息。法庭地址：1st Floor, 260-280 Victoria Square, Adelaide SA 5000或在报纸上寻找“审判庭”地址。
- * 翻译服务—口译和笔译中心 地址：24 Flinders Street, Adelaide SA 5000
联系电话：(08) 8226 1990 (有偿服务)
- * 法律援助委员会—委员会地址：82 Wakefield Street, Adelaide SA 5000
联系电话：(08) 8463 3555或查询电话簿“L”栏。
- * 事务律师或南澳州法律协会
联系电话：(08) 8231 9972

请随身携带后附文件

**MOLIMO PAŽLJIVO PROČITAJTE
VAŽNA OBAVIJEST**

Priloženi dokument je iz SUDA ZA PREKRŠAJE (MAGISTRATES COURT) [CIVIL DIVISION (GRADANSKI ODJEL)].

Ukoliko se radi o ZAHTJEVU (CLAIM) i ukoliko ne učinite ništa druga strana može dobiti presudu protiv vas koja će biti gonjena protiv VAS, vaše KUĆE i vaše IMOVINE.

Ukoliko se želite braniti od zahtjeva [OBRANA] ili optužiti nekog drugog [ZAHTJEV OD TREĆE OSOBE (THIRD PARTY CLAIM)], ili [PROTUZAHTJEV (COUNTER CLAIM)] imate samo 21 dan da idete na SUD ZA PREKRŠAJE (MAGISTRATES COURT) i da podnesete neophodne dokumente.

Ukoliko se radi o SUDSKOM POZIVU (SUMMONS) morate pristupiti NAVEDENOM SUDU U ZAKAZANO VRIJEME ILI MOŽETE BITI PRIVEDENI.

Ukoliko se radi o bilo kojem drugom dokumentu morate pronaći što tamo piše jer vaša kuća, imovina ili vi sami možete biti u opasnosti ako ništa ne učinite.

ZA INFORMACIJU idite na:

- * SUD za prekršaje (Magistrates Court) – osoblje će vam sve objasniti. Vidite adresu za “TRIAL COURT (SUDSKI POSTUPAK)” na drugom listu ili idite na 1st Floor, 260-280 Victoria Square, Adelaide SA 5000.
- * Služba Tumačenja – Interpreting and Translating Centre, 24 Flinders Street, Adelaide SA 5000. Telefon: (08) 8226 1990 – (Ova usluga nije besplatna).
- * Komisija za pravne usluge (Legal Services Commission) – 82 Wakefield Street, Adelaide SA 5000. Telefon: (08) 8463 3555 ili vidite pod “L” u telefonskom imeniku.
- * Pravnik ili Pravno Društvo u Južnoj Australiji (Law Society of South Australia). Telefon (Law Society): (08) 8231 9972.

MOLIMO DONESITE PRILOŽENI DOKUMENT SA VAMA

ΠΑΡΑΚΑΛΟΥΜΕ ΔΙΑΒΑΣΤΕ ΠΡΟΣΕΚΤΙΚΑ

ΣΗΜΑΝΤΙΚΗ ΕΙΔΟΠΟΙΗΣΗ

Το εσώκλειστο έγγραφο είναι από το ΕΙΡΗΝΟΔΙΚΕΙΟ [ΠΟΛΙΤΙΚΗ ΔΙΚΑΙΟΔΟΣΙΑ] [MAGISTRATES COURT (CIVIL DIVISION)].

Αν είναι ΑΠΑΙΤΗΣΗ και αν δεν κάνετε κάτι η άλλη πλευρά μπορεί να κερδίσει απόφαση εναντίον σας η οποία μπορεί να επιβληθεί εναντίον ΣΑΣ, του ΣΠΙΤΙΟΥ σας και των ΥΠΑΡΧΟΝΤΩΝ σας.

Αν θέλετε να υπερασπίσετε την απαίτηση (ΥΠΕΡΑΣΠΙΣΗ) ή να πείτε ότι φταίει κάποιος άλλος [ΑΠΑΙΤΗΣΗ ΤΡΙΤΟΥ ΜΕΡΟΥΣ], ή να καταχωρήσετε [ΑΝΤΑΠΑΙΤΗΣΗ] έχετε μόνο 21 ημέρες για να πάτε στο ΕΙΡΗΝΟΔΙΚΕΙΟ (MAGISTRATES COURT) και να καταθέσετε τα αναγκαία έγγραφα.

Αν είναι ΚΛΗΣΗ πρέπει να πάτε στο ΟΝΟΜΑΖΟΜΕΝΟ ΔΙΚΑΣΤΗΡΙΟ ΟΤΑΝ ΛΕΕΙ Ή ΜΠΟΡΕΙ ΝΑ ΣΥΛΛΗΦΘΕΙΤΕ.

Αν είναι οποιοδήποτε άλλο έγγραφο πρέπει να μάθετε τι λέει γιατί το σπίτι σας, τα υπάρχοντά σας ή εσείς μπορεί να επηρεαστήτε από αυτό αν δεν κάνετε κάτι.

ΓΙΑ ΠΛΗΡΟΦΟΡΙΕΣ ΝΑ ΠΑΤΕ:

- * Σε Ειρηνοδικείο – το προσωπικό θα σας εξηγήσει. Δείτε τη διεύθυνση για το «ΔΙΚΑΣΤΗΡΙΟ ΟΠΟΥ ΘΑ ΓΙΝΕΙ Η ΔΙΚΗ» (TRIAL COURT) στην άλλη σελίδα ή να πάτε στο 1^ο Όροφο, 260-280 Victoria Square, Adelaide SA 5000.
- * Στην Υπηρεσία Διερμηνείας – Κέντρο Διερμηνείας και Μετάφρασης (Interpreting and Translating Centre), 24 Flinders Street, Adelaide SA 5000. Τηλέφωνο: (08) 8226 1990 – (Η υπηρεσία αυτή δεν είναι δωρεάν).
- * Στην Επιτροπή Νομικών Υπηρεσιών (Legal Services Commission) – 82 Wakefield Street, Adelaide SA 5000. Τηλέφωνο: (08) 8463 3555 ή κοιτάξτε στο “L” στον Τηλεφωνικό Κατάλογο. .
- * Σε Δικηγόρο ή στο Σύλλογο Δικηγόρων Νότιας Αυστραλίας (Law Society). Τηλέφωνο (Law Society): (08) 8231 9972.

ΣΑΣ ΠΑΡΑΚΑΛΟΥΜΕ ΝΑ ΦΕΡΕΤΕ ΜΑΖΙ ΣΑΣ ΤΟ ΕΣΩΚΛΕΙΩΜΕΝΟ ΕΓΓΡΑΦΟ

APPENDIX 3: Consumer Credit Legal Centres in Other States/Territories

This appendix provides a rough snapshot of the size, structure and functions of consumer credit legal centres around Australia.

NSW Consumer Credit Legal Centre

The NSW Consumer Credit Legal Centre deals with debt, credit and banking matters. The service offers telephone and face to face advice as well as some minor casework assistance. The service does not provide court representation except in exceptional circumstances where an important legal question is raised. Sample letters and forms (17 in total) can be accessed through its website, along with a range of fact sheets (around 30 relating to consumer credit).

In-house financial counsellors work closely with solicitors to meet the individual needs of the consumer. Other external financial counsellors can call a dedicated Financial Counsellor Hotline during weekdays for advice, assistance and support from in-house financial counsellors or, where necessary, from a solicitor. The NSW CCLC also offers assistance to solicitors who represent a client. It may also accept referral of the client and ask the solicitor to obtain documents and statements on their instructions.

The service presents workshops and forums on a range of consumer issues to financial counsellors, community workers, legal aid and community lawyers and other relevant government employees. In addition, it conducts community legal education and develops and disseminates resources such as kits and factsheets to different target groups.

The service also performs a policy advocacy role via submissions to government and industry, participates in working groups, comments on draft legislation, understakes research, refers unfair practices and systematic issues to regulators and/or industry groups for investigation, and raises awareness through the media.

Consumer Action Law Centre (Victoria)

The Victorian Consumer Action Law Centre was formed in 2006 by the merger of the Consumer Law Centre Victoria and the Consumer Credit Legal Service. It provides a full range of direct and indirect services and has in-house financial counsellors working closely with lawyers. It employs 22.4 FTE solicitors.

The centre performs a strong advocacy role and pursues a law reform agenda on consumer issues at a governmental level, in the media, and throughout the community. Between August 2011 and August 2012 it made more than 50 policy submissions to government on a range of consumer issues. It published more than 50 media releases in the same time frame. To date it has published 29 factsheets to assist consumers to self-advocate.

In its first 5 years of operation from 2007-2011, the Consumer Action Law Group delivered 12,762 advices to individual consumers, 2887 advices to community workers, 1378 ongoing advices to community workers, 947 litigation files, made 1500 media appearances and 150 submissions to public processes.

Its income and expenditure for the 2010-2011 financial year was approximately \$2.5 million (CALC, 2011).

WA Consumer Credit Legal Service

The WA Consumer Credit Legal Service is a specialist community legal centre providing legal advice to consumers in the area of banking and financial services. The service employs 7 solicitors, 1 paralegal and an administrative support officer.

It offers telephone and face to face advice and casework including representation in courts and tribunals. Its website contains 4 factsheets on consumer credit issues and 7 sample letters. The service also provides telephone advice to financial counsellors as well as ongoing training to financial counsellors, non-government organisations and generalist CLCs.

The service is active in the area of community legal education through the use of the media, seminars and publications, and school talks. It has also provided a consumer voice in relation to policy issues such as proposed reforms of Western Australian legislation, and nationally on reforms to the Consumer Credit Code. Other key policy activities are directed at lobbying for changes to unfair industry practices.

ACT Consumer Law Centre

The Consumer Law Centre of the ACT is a specialist community legal centre. It is hosted by Care Inc, a community organisation that offers a range of information and financial counselling services. The Centre's area of expertise includes consumer credit but also extends to consumer protection and fair trading more generally. Lawyers at the centre work closely with the in-house financial counsellors to offer clients a range of financial counselling, legal advice and casework services.

The Centre currently has 2 solicitors and 3 part-time paralegal volunteers. It has developed pro-bono relationships with some large private law firms, whereby secondees from the firms assist at the service one day per week and the firms have taken on some of their litigation cases. (Care Inc, 2011)

As stated on its website, the Centre "works towards improving legal protection for consumers, and raising awareness and understanding of consumers' rights in the ACT". The website contains a number of factsheets on financial matters, but none specifically relating to consumer credit legal matters.

Queensland Legal Aid Consumer Protection Unit

Legal Aid Queensland has a Consumer Protection Unit, which provides specialist advice and casework services to consumers on a range of consumer law matters. It also offers advice to lawyers and financial counsellors within Queensland. It provides online guides about how to deal with money and debt problems. It has made 8 policy submissions on consumer and debt matters since 2008.

Redfern Legal Centre - Specialist Credit and Debt Service (NSW)

Redfern Legal Centre is a generalist community legal centre with a specialist credit and debt service. They offer a credit and debt advice service to consumers one evening per week and provide telephone advice to financial counsellors during business hours. It has published a number of legal factsheets (available online) to assist financial counsellors to properly advise their clients on credit and debt matters. It has 10 credit and debt factsheets for consumers. Since 2011 it has made 5 submissions to address government papers and enquiries relating to consumer credit and debt matters.

Hobart Community Legal Service Consumer Credit Helpline

The Hobart Community Legal Service offers a free call Consumer Credit helpline, available during business hours. No other information about the service was available in the timeframe of this report.

Caxton Legal Centre Consumer Law Service (QLD)

Caxton Legal Centre is a generalist CLC with a specialist consumer law service. It offers telephone and face to face advice to consumers. It has also taken on litigation cases for consumers against banks. It offers education and training to community groups and professional associations. It undertook extensive client consultation to make a submission on the conduct of insurers to the Queensland Floods Commission of Inquiry in 2011. The Consumer Law Service has also used the media to advocate for stronger regulation of payday lenders.

Appendix 4: NSW Court Form 93 – Possession of Land Coversheet

POSSESSION OF LAND COVERSHEET

ENGLISH

This is an **IMPORTANT NOTICE** issued by Supreme Court of NSW

If you do not respond to this Statement of Claim you may be evicted from your property and the lender may take action to sell your property.

You have **28 DAYS ONLY** from the date you receive this document to file a defence in the Supreme Court. You may need legal advice.

If you want free legal information or referral for further assistance you may ring LawAccess NSW on 1300 888 529 from anywhere in NSW for the cost of a local call. If you need the assistance of an interpreter you may ring the free Translating and Interpreting Service NOW on 1300 131 450 and ask them to call LawAccess NSW. LawAccess is a joint initiative of the Attorney General/s Department of NSW and Legal Aid NSW.

ARABIC

هذا إشعار هام أصدرته المحكمة العليا بنيو ساوث ويلز.

إذا لم تستجب إلى بيان المطالبة، قد يتم طردك من عقارك وقد يأخذ المقرض خطوات تجاه بيع العقار. لديك **28 يوماً فقط** من تاريخ استلامك هذه الوثيقة لتتقدم بدفاع في المحكمة العليا. قد تحتاج إلى مشورة قانونية. يمكنك الاتصال بخدمة الترجمة الخطية والشفوية المجانية الآن على الرقم

1300 131 450 واطلب منهم الاتصال بلو أكسس نيو ساوث ويلز (LawAccess NSW) على الرقم 1300 888 529. لو أكسس هي خدمة مجانية يمكن أن تقدم لك المعلومات القانونية أو توجهك إلى هيئات يمكنك منها الحصول على مساعدة إضافية.

CHINESE

這是由新州最高法院發出的重要通知

如果你不對聲請書作出回應，你或會被逐出你的物業，而貸款公司或會採取行動出售你的物業。由收到這份文件起計，你只有**28天**向最高法院提出答辯。你或需要法律意見。你或馬上致電免費的翻譯及傳譯服務，電話1300 131 450，要求他們代致電

1300 888 529聯絡新州法律諮詢服務(LawAccess NSW)。法律諮詢服務是一項免費服務，能為你提供法律資料或轉介求助。

CROATIAN

Ovo je **VAŽNO OBAVJEŠTENJE** koje je izdao Vrhovni sud Novog Južnog Velsa (Supreme Court of NSW)

Ako ne odgovorite na tvrdnju (Statement of Claim), možete biti izbačeni iz stana/kuće i zajmodavac može pokrenuti postupak za prodaju vaše imovine. Imate **SAMO 28 DANA** od dana prijema ovog dokumenta za predaju svoje obrane Vrhovnom sudu (Supreme Court). Možda ćete trebati dobiti pravni savjet. Možete **ODMAH** nazvati **besplatnu** Službu prevoditelja i tumača (Translating and Interpreting Service) na 1300 131 450 i zamoliti ih da vam nazovu Pristup zakonu Novog Južnog Velsa (LawAccess NSW) na 1300 888 529. Služba Pristup zakonu pruža **besplatne** pravne informacije ili vas upućuje na drugu vrstu pomoći.

GREEK

Αυτή είναι ΣΗΜΑΝΤΙΚΗ ΑΝΑΚΟΙΝΩΣΗ του Ανωτάτου Δικαστηρίου της ΝΝΟ

Εάν δεν ανταποκριθείτε στην Δήλωση Αξίωσης, μπορεί να σας γίνει έξωση από την περιουσία σας και ο δανειστής μπορεί να αναλάβει δράση για την πώλησή της. Έχετε **28 ΗΜΕΡΕΣ ΜΟΝΟ** από την ημερομηνία που λάβατε αυτό το έγγραφο για να υποβάλλετε την υπεράσπισή σας στο Ανώτατο Δικαστήριο. Μπορεί να χρειάζεστε νομική βοήθεια. Μπορείτε να τηλεφωνήσετε την δωρεάν Υπηρεσία Μεταφραστών και Διερμηνέων ΩΓΡΑ στο 1300 131 450 και να τους ζητήσετε να καλέσουν την Νομική Υπηρεσία ΝΝΟ (LawAccess NSW) στο 1300 888 529. Η Νομική Υπηρεσία (LawAccess) είναι δωρεάν και μπορεί να σας παράσχει νομικές πληροφορίες ή παραπομπές για περαιτέρω βοήθεια.

INDONESIAN

PENGUMUMAN PENTING dikeluarkan oleh Mahkamah Agung (Supreme Court) NSW

Jika Anda tidak memberikan tanggapan atas Pernyataan Klaim (Statement of Claim) ini, Anda dapat diusir dari properti Anda, dan yang memberi pinjaman dapat melakukan tindakan untuk menjual properti Anda. Anda **HANYA MEMILIKI 28 HARI SAJA** mulai dari tanggal Anda menerima dokumen ini untuk mengajukan bantahan di Mahkamah Agung. Anda mungkin memerlukan nasihat hukum. Anda dapat menelepon Layanan Terjemahan dan Juru Bahasa (Translating and Interpreting Service) **gratis** SEKARANG di 1300 131 450 dan minta mereka menelponkan ke LawAccess NSW di 1300 888 529. LawAccess adalah layanan **gratis** yang dapat memberi Anda informasi hukum atau rujukan untuk bantuan lebih lanjut.

ITALIAN

Questo è un **IMPORTANTE AVVISO** emesso dalla Supreme Court of NSW

Se Lei non deposita le Sue eccezioni alla domanda giudiziale (Statement of Claim), potrebbe essere sfrattato/a dal Suo immobile e l'ente finanziatore potrebbe intraprendere le opportune azioni per vendere il Suo immobile. Lei ha a disposizione **SOLO 28 GIORNI** dalla data in cui riceve il presente documento per depositare le Sue eccezioni (defence) presso la Supreme Court. A tal fine potrebbe avere bisogno di consulenza legale. Può telefonare **ADESSO** al Servizio Traduzioni e Interpreti (un servizio **gratuito**) al numero 1300 131 450 chiedendo che chiami per Suo conto LawAccess NSW al numero 1300 888 529. LawAccess è un servizio **gratuito** che può offrirLe informazioni legali o indirizzarla ad altri enti per ulteriore assistenza.

JAPANESE

NSW州最高裁判所からの重要なお知らせ

訴状に答えない場合、地所から立ち退きを命じられ、貸し方が地所を売る措置を取る可能性があります。最高裁判所に抗弁を提出できる期間は、この書類を受け取った日から**28日間**に限られています。法律家の意見を求める必要があるかもしれません。翻訳通訳サービスのフリーコール番号(1300 131 450)に電話し、ローアクセスNSW (LawAccess NSW)、電話番号1300 888 529に連絡を取り次いでもらうこともできます。ローアクセスは法律の情報を提供したり、法律的な援助を紹介する無料サービスです。

KOREAN

이것은 뉴사우스웨일즈주 고등법원에 의해 발급된 중요한 통지입니다.

귀하가 청구 진술서에 응하지 않는다면, 귀하의 주택으로부터 퇴거당하고 은행은 귀하의 주택을 매매하기 위한 조치를 취할 수 있습니다. 귀하는 이 서류를 받은 날로부터 반드시 **28일 내로** 고등법원으로 변호서류를 접수하십시오. 이에 대해 귀하는 법률 자문을 받으실 필요가 있을 것입니다. 귀하는 무료 번역 및 통역 서비스 (TIS) 1300 131 450번으로 지금 전화해서 NSW 법률자문 서비스인 LawAccess NSW (전화 1300 888 529)번으로 연결해 달라고 요청하십시오. 이 법률자문 서비스는 무료 서비스로서 귀하께 법률 정보와 추가 서비스에 대한 안내를 해 드릴 것입니다.

LAO

ນີ້ແມ່ນ ແຈ້ງການອັນສໍາຄັນ ຈາກ ສານສູງສຸດ ແຈ້ງຮັບ ນິຄເຊີນແອອ໌

ຖ້າຫາກວ່າທ່ານບໍ່ຕອບຕໍ່ ຄໍາຟ້ອງຮ້ອງ, ທ່ານ ອາດຈະຖືກຕັດສິນໂດຍອົງຕາມສິນບັດຂອງທ່ານ ແລະຜູ້ທີ່ໄດ້ຮູ້ອາດຈະໄດ້ຈັດການຂາຍສິນບັດຂອງທ່ານ.

ນັບແຕ່ນີ້ອີງທ່ານໄດ້ ຮັບເອກະສານນີ້ເປັນຕົ້ນໄປ ທ່ານມີເວລາແຕ່ 28 ມື້ເທົ່ານັ້ນ ເມື່ອປະກອບເອກະສານໂຕ້ຖືກໃນສານສູງສຸດ. ທ່ານອາດຈໍາເປັນທີ່ຕ້ອງ ໄດ້ຊອກຫາຄໍາປຶກສາໃດຄືນກັບທ່ານ.

ທ່ານສາມາດໂທໄປຫາ ບໍລິການ ການແປພາສາ ທີ່ບໍ່ຄິດຄ່າ ດຽວນີ້ໂລດ ໂທ 1300 131 450 ແລ້ວຫາ ເພີມໂກທ ລ໌ ອັກເຊີສ ແຈ້ງຮັບນິຄເຊີນແອອ໌ (LawAccess NSW) ໃຫ້ ເວີໂທ 1300 888 529. ລ໌ ອັກເຊີສ ແມ່ນບໍລິການ ທີ່ບໍ່ຄິດຄ່າ ທີ່ສາມາດໃຫ້ຂໍ້ມູນກ່ຽວກັບກົດໝາຍແກ່ທ່ານໄດ້ ຫຼືເຮັດບັງຄັບສິນທ່ານໄປຍັດອາໄສຊ່ວຍເຫຼືອ ອື່ນໆ ຕໍ່ໄປໄດ້.

MACEDONIAN

Ова е ВАЖНО ИЗВЕСТУВАЊЕ издадено од Врховниот суд на Нов Јужен Велс

Ако не одговорите на Изјавата за барање (Statement of Claim), може да бидете истерани од вашиот имот, а работодавачот може да преземе постапка за продавање на вашиот имот. Имате **САМО 28 ДЕНА** од датумот кога ќе го примите овој документ за да истапите со одбрана пред Врховниот суд. Можеби ќе ви треба правен совет. Може да телефонирате на **бесплатната** Преведувачка служба (Translating and Interpreting Service) СЕГА на 1300 131 450 и да ги замолиште да се јават во правната служба LawAccess NSW на 1300 888 529. LawAccess е **бесплатна** служба што може да ви даде правни информации или да ве упати каде да побарате натамошна помош.

PORTUGUESE

Esta é uma NOTIFICAÇÃO IMPORTANTE do Supremo Tribunal de NSW

Se não responder à Petição Inicial, poderá ser despejado da sua propriedade e o emprestador poderá tomar medidas para vender a sua propriedade. Você tem **APENAS 28 DIAS** a partir da data da recepção deste documento para apresentar a sua defesa no Supremo Tribunal. Poderá precisar de assistência jurídica. Pode ligar para o serviço **grátis** do Translating and Interpreting Service AGORA no 1300 131 450 e pedir-lhes para contactarem o LawAccess NSW no 1300 888 529. LawAccess é um serviço **grátis** que lhe pode dar informações legais ou encaminhá-lo para mais assistência.

RUSSIAN

Это ВАЖНОЕ УВЕДОМЛЕНИЕ Верховного Суда Нового Южного Уэльса

Если вы не ответите на исковое заявление, суд может лишить вас права собственности, а кредитор принять меры по продаже вашей собственности. В вашем распоряжении только **28 ДНЕЙ** с момента получения настоящего документа для подачи возражения по иску в Верховный Суд. Вам может понадобиться консультация юриста. Вы можете обратиться в **бесплатную** службу устного перевода по телефону 1300 131 450 и попросить их связаться с LawAccess NSW по номеру 1300 888 529. LawAccess – это **бесплатная** служба, где вам предоставят необходимую юридическую информацию и дальнейшую правовую помощь.

SERBIAN

Ovo je ВАЖНО ОБАВЕШТЕЊЕ koje je издао Врховни суд Новог Јужног Велса (Supreme Court of NSW)

Ако не одговорите на тврдњу (Statement of Claim), можете да budete избачени из стана/куће и зајмодавац може да покрене поступак за продају ваше имовине. Имате **САМО 28 ДАНА** од дана пријема овог документа да предате своју одбрану Врховном суду (Supreme Court). Можда ћете требати да добијете правни совет. Можете **ОДМАХ** да назовете бесплатну Службу преводилаца и тумача (Translating and Interpreting Service) на 1300 131 450 и замолиште их да вам назову Приступ закону Новог Јужног Велса (LawAccess NSW) на 1300 888 529. Служба Приступ закону пружа **бесплатне** правне информације или вас упућује на другу врсту помоћи.

SPANISH

Este es un AVISO IMPORTANTE emitido por la Corte Suprema de NSW

Si no responde a la Demanda (Statement of Claim), podría ser desalojado de su propiedad y la entidad crediticia iniciarle una demanda para venderla. Tiene **SOLAMENTE 28 DÍAS** desde la fecha de recibido este documento para presentar una defensa en la Corte Suprema. Podría necesitar de asesoramiento legal. Puede llamar **AHORA** al Servicio de Traducción e Interpretación **gratuito** al 1300 131 450, y pedirles que llamen a AccesoLegal NSW (LawAccess NSW) al 1300 888 529. AccesoLegal es un servicio **gratuito** que puede brindarle asesoramiento legal, o derivarle para más ayuda.

TURKISH

Bu, NSW Yüksek Mahkemesi tarafından yayımlanmış ÖNEMLİ BİR İLANDIR

Talep Bildirimi'ne yanıt vermezseniz, mülkünüzden çıkarılabilirsiniz ve alacaklı, mülkünüzü satmak için harekete geçebilir. Yüksek Mahkeme'ye savunmanızı vermeniz için, bu belgeyi aldığımız tarihten itibaren, **SADECE 28 GÜNÜNÜZ** vardır. Ücretsiz Yazılı ve Sözlü Çeviri Servisi'ne **ŞİMDİ** 1300 131 450'den telefon edip onlardan Hukuk Erişim NSW'ı (LawAccess NSW) 1300 888 529 numaralı telefonda aramalarınızı isteyebilirsiniz. Hukuk Erişim, hukuksal bilgiler veya daha fazla yardım için size havale sağlayabilecek **ücretsiz** bir servistir.

VIETNAMESE

Đây là một THÔNG-BÁO QUAN-TRỌNG do Tòa Thượng-thẩm NSW công-bố

Nếu quý-vị không trả lời Đơn Khiếu-kiện, thì quý-vị có thể bị đuổi ra khỏi cơ-ngôi của mình và người cho vay có thể bắt đầu bán bất-động-sản của quý-vị. Quý-vị **CHỈ CÓ 28 NGÀY** kể từ ngày quý-vị nhận được văn-kiện này để đệ-nộp lời biện-hệ tại Tòa Thượng-thẩm. Quý-vị có thể cần sự trợ-giúp về pháp-lý. **NGAY BÂY GIỜ** quý-vị có thể gọi cho Dịch-vụ Thông-ngôn và Phiên-dịch **miễn-phi** qua số 1300 131 450 và nhờ họ gọi cho cơ-quan Cố-vấn và Giúp-đỡ về Luật-pháp NSW (LawAccess NSW) qua số 1300 888 529. LawAccess là một dịch-vụ **miễn-phi** có thể cung-cấp cho quý-vị những thông-tin pháp-lý hoặc giới-thiệu để được giúp-đỡ thêm.
