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I feel empowered, I know my rights

Communities empowered by peer educators and paralegals

Jacinta Maloney
St Kilda Legal Service

The Victoria Law Foundation Community Legal Centre (CLC) Fellowship was established in 2003 to coincide with 30 years of CLCs in Victoria. Awarded annually, the fellowship provides a CLC worker with an opportunity to conduct independent research into issues identified in their casework and advocacy.

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Author biography

Jacinta Maloney is a community lawyer who has been working for eighteen years within the community legal sector, seventeen of those years with St Kilda Legal Service. Jacinta's work has had a strong focus on the areas of law reform, advocacy and policy; community development and legal education; and the development and management of legal projects. Jacinta has been responsible for initiating and establishing St Kilda's specialist programs, providing a drug outreach legal service and a family violence legal service.

St Kilda Legal Service (<www.communitylaw.org.au/stkilda>) is a generalist community legal centre, which last year celebrated its fortieth anniversary.

I would like to dedicate this report to my grandma, Jessie Lindsay, and my auntie, Maureen Zandt, who both died while I was undertaking this project. They were independent and determined women, and a great support to me. My grandma, who died at ninety-five years of age, had always been an active member of a small rural Victorian community, and taught me the importance of contributing to your community and helping others.

Permission was given for the use of photos contained within the report, and where participants felt uncomfortable with the taking of photos, none were taken – in marginalised communities, particularly, participants were concerned about disclosure of their identity and status.

Abbreviations

ACT	Australian Capital Territory
AIDS	Acquired Immune Deficiency Syndrome
AIVL	Australian Injecting and Illicit Drug Users League
ALG	Alternative Law Groups
BJMP	Bureau of Jail Management and Penology (Philippines)
CAO	Community Advice Office (South Africa)
CCJD	Centre for Community Justice and Development (South Africa)
CLC	Community Legal Centre
CLE	Community Legal Education
CLEAR	Community Legal Education and Reform Database
CLEC	Community Legal Education Centre (Cambodia)
COTA	Council on the Ageing
CSO	Client Service Officer
ECCV	Ethnic Communities Council of Victoria
ERRC	European Roma Rights Centre
HIV	Human Immunodeficiency Virus
HLAF	Humanitarian Legal Assistance Foundation (Philippines)
HRV	Harm Reduction Victoria
HCLU	Hungarian Civil Liberties Union
IPLC	Inmates' Paralegal Coordinators (Philippines)
KPE	Key Peer Educators (Harm Reduction Victoria)
NACLC	National Association of Community Legal Centres
NADCAO	National Alliance for the Development of Community Advice Offices
NGO	Non-Governmental Organisation
OSF	Open Society Foundation
OSJI	Open Society Justice Initiative
PLC	Positive Living Centre
RHM	Roma Health Mediator
SWEAT	Sex Workers Education & Advocacy Taskforce (South Africa)
UN	United Nations
VALS	Victorian Aboriginal Legal Service
WLC	Women's Legal Centre (South Africa)

Executive summary

From people who use drugs, to sex workers, to people living with HIV/AIDS, members of these communities are being trained as educators, and recognised as an influential and powerful source of information and support for their peers. Likewise, around the world, paralegals are being trained as an effective legal empowerment strategy to improve access to legal services, particularly for marginalised communities. From prisoners and garment workers in the Philippines, villages in Cambodia and the Roma in Europe, to sex workers in Kenya and South Africa, members of these communities are being trained as paralegals, vital in bridging the gap between their communities and lawyers.

While peer education has been effective in communicating harm reduction strategies in Victoria, training peers with paralegal skills has been effective in other jurisdictions in improving access to legal services. While this may be an alternative approach to providing legal assistance, it is not an alternative to lawyers. Examples in this report illustrate that the most effective paralegals are connected to lawyers.

The experience and knowledge of individuals working in a diverse range of peer education and paralegal programs, locally and abroad, is shared in interviews conducted through this project. The benefits and positive impacts of legal empowerment strategies, along with the challenges, are discussed.

This report challenges Community Legal Centres (CLCs) to not only raise legal awareness, but also to improve legal capability within their communities, and to empower their communities to know how to exercise their legal and human rights – translating knowledge into action.

Introduction

1

It is a Wednesday afternoon in Cape Town and about thirty people, mainly women, are gathered in a big tent to learn about their rights if they are subjected to domestic violence. Creative Space is a safe space where they can talk openly, share experiences, ask questions and seek advice. Role-plays are acted out, strategies are discussed and legal information is provided by two paralegals. Afterwards, a hot meal is served, and some women gravitate to a lawyer who is present to give individual legal advice.[1]

Violence is a regular occurrence in these women's lives, and not only domestic violence. They are more vulnerable to experiencing verbal abuse, harassment, robbery, physical assault and rape than the general population, yet these crimes usually go unreported. They are reluctant to report these crimes to police, partially because in many cases police officers are the perpetrators.[2] Under the law these women are criminals – they are sex workers.[3] The paralegals understand their vulnerability, the dangers sex workers encounter on a daily basis, and are trusted by their audience – they too are sex workers.

St Kilda streets. Photo by Albie Colvin taken for 'Shining Light on Workers' Rights: Informing Street Sex Workers of their Legal Rights Project' (funded by Victoria Law Foundation), 2013.

Could this peer paralegal model operating in Cape Town be a model that could be adapted and replicated for sex workers in St Kilda?[4] Would a peer paralegal model

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1 Observed Creative Space legal education session on domestic violence, conducted by two peer paralegals, for about thirty sex workers at Sex Workers Education & Advocacy Taskforce (SWEAT), Cape Town, South Africa, 30 April 2014.

2 Stacey-Leigh Manoek, *Stop Harassing Us! Tackle Real Crime! A Report on Human Rights Violations by Police against Sex Workers in South Africa* (Women's Legal Centre: Cape Town, South Africa, August 2012) 4.

3 In South Africa all sex work is illegal.

4 St Kilda Legal Service has a history of working collaboratively with the former Prostitutes Collective of Victoria and now Resourcing Health & Education in the Sex Industry in providing legal services for street-sex workers in St Kilda. See *Annual Report 2012–2013* (St Kilda Legal Service), 29–31, available at: <http://www.communitylaw.org.au/stkilda/cb_pages/about_annual_reports.php> (last accessed on 22 November 2014).

be beneficial and effective for any other marginalised community? Could other community-based paralegal models be adapted and replicated by Community Legal Centres[5] elsewhere to reach and empower communities?

This report challenges CLCs to consider the legal services they currently provide and how they are delivered within their community. CLCs need to consider adopting new strategic approaches to extend legal service delivery to more effectively reach the marginalised within their communities.[6] New strategic approaches are essential in the current economic and political environment, with CLCs and legal aid in Victoria facing an unprecedented level of demand for legal services from some of the most marginalised members of our community. Resources remain limited and inadequate to meet this growing demand.

Cuts to legal aid services, together with narrowing of eligibility for legal aid grants, are impacting on CLCs facing increased demand for legal services.[7] Community Law Australia[8] has highlighted problems faced by many Australians in accessing the legal system and pointed out that 'unlike the health and education system in Australia, there is no universal safety net for legal help'.[9] It was identified that more accessible legal services are needed to improve access to the legal system.

Recent budget cuts to Commonwealth funding have further impacted on Aboriginal and Torres Strait Islander legal services.[10] Future CLC and legal aid funding arrangements are uncertain following the review of the National Partnership Agreement on Legal Assistance Services.[11] The review found 'there are significant levels of unmet demand for legal assistance services, particularly by the most disadvantaged, across a wide range of areas of law'[12] and identified that the 'challenge facing legal assistance service policy and service delivery is how to

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5 Community Legal Centre (CLC) is defined as an independent community organisation that provides free legal services to the public, with a focus on helping clients who face economic and social disadvantage, are ineligible for legal aid and cannot afford a private lawyer (defined by the Federation of Community Legal Centres, Victoria). CLCs include, for the purposes of this report, Aboriginal and Torres Strait Islander legal services and family violence prevention legal services.

6 Marginalisation is the social process by which a person, or a group of people sharing common features, is pushed to the fringes, or 'margins', of society, and excluded from meaningful participation in that society. See further discussion on page 14.

7 With a reported $3.1 million budget deficit, Victoria Legal Aid faces a funding crisis that not only caused a review of service guidelines, but is impacting on the rest of the legal system, including CLCs, private legal practitioners and courts. Jane Lee, 'What Price Justice?' *The Sunday Age*, 21 April 2013, 15

8 A campaign by a coalition of CLCs led by the National Association of Community Legal Centres.

9 Community Law Australia, *Unaffordable and out of reach: THE PROBLEM OF ACCESS TO THE AUSTRALIAN LEGAL SYSTEM*, A report by Community Law Australia (July 2012) 3 <www.communitylawaustralia.org.au/unaffordable/> (last accessed on 7 October 2014).

10 New Commonwealth funding guidelines for the Indigenous Advancement Strategy began on 1 July 2014. See Australian Government, Department of Prime Minister and Cabinet website <www.dpmc.gov.au/indigenous_affairs/> (last accessed on 7 October 2014). See also NACLC website <www.naclc.org.au/cb_pages/news/NACLCstronglysupportscallsbyNational FVPLSForumforreinstatementofdirectfunding.php> (last accessed on 7 October 2014).

11 Allen Consulting Group, *Review of the National Partnership Agreement on Legal Assistance Services Final Report*, Prepared for the Australian Government's Attorney-General's Department (June 2014) <www.acilallen.com.au/cms_files/NPA%20Review_LAS%20report_final.pdf> (last accessed on 7 October 2014).

12 Ibid, Key Review Findings viii.

effectively meet the legal needs of disadvantaged Australians'.[13] Similarly, a key point of the Productivity Commission's recent *Access to Justice Arrangements* Draft Report is that 'more resources and more efficient and effective practices by legal assistance providers are required to better meet the legal needs of disadvantaged Australians'.[14]

The tension for CLCs, identified by Dr Liz Curran, 'is that as long as demand exceeds resources, CLCs must make decisions about the level of service (if any) which will be provided in defined circumstances'.[15] One strategic approach is to target services to individuals from particular groups. To improve access to legal services CLCs will need to be creative and innovative in their approach to service delivery, including direct client services and Community Legal Education (CLE). Community-based models, like the paralegal programs emerging in developing countries where there is a lack of resources and access to legal services, may need to be considered and adapted in Australia. This is a strategic approach that could provide more accessible legal services and improve access to the legal system, particularly for targeted communities. This report aims to inspire CLCs to explore alternatives to address the ever-present problem of improving access to legal services and community participation in a legal system that often excludes those hardest to reach.

This report is based on the experience and knowledge of people working in a diverse range of peer education and paralegal programs who were interviewed for this project. Participants interviewed worked in organisations supporting, educating and empowering communities in Victoria and overseas: in the Philippines, Cambodia, Eastern Europe and South Africa (see Appendix 1). The power of peers is explored through the use of peers in the community health sector to support, inform and educate others on health issues and harm-reduction strategies. Recent Australian surveys have found peers to be a primary source of advice and support, more likely to be consulted in resolving problems than a lawyer. A focus on peer education programs in three organisations illustrates the effectiveness of peer educators to reach, educate and empower their peers within marginalised communities.

Legal empowerment strategies, such as legal literacy and capability training, community legal education, peer legal education and paralegal programs are considered in this report. A range of paralegal programs operating in diverse communities in Asia, Europe and Africa are examined. The diversity of these programs shows that there is no one-size-fits-all approach when it comes to paralegal models – they must evolve to meet the legal needs of the communities they serve. Common to these programs is improved access to legal services for their communities. This report highlights the positive impacts and strengths of the community paralegal programs examined, as well as the challenges faced

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[13] Ibid, Key Review Findings ix.

[14] Productivity Commission 2014, *Access to Justice Arrangements*, Draft Report Overview, Canberra 2. The inquiry has concluded and the Final Report was released on 3 December 2014. See: <http://www.pc.gov.au/inquiries/completed/access-justice/report> (last accessed on 8 December 2014).

[15] Liz Curran, *Solving problems: a strategic approach Examples, processes & strategies*, Legal Workshop, Australian National University College of Law (March 2013) 15.

in operating such programs, with a discussion of solutions to address them and lessons learnt.

While this report was prepared primarily for the benefit of CLCs, it is just as relevant and applicable to other legal services, such as legal aid commissions and pro bono legal services, and more broadly to other community-based organisations that assist, support and work alongside marginalised communities in Victoria and beyond.

Methodology

Qualitative data was collected through the following methods of inquiry: a basic literature review; semi-structured, face-to-face interviews and focus group discussions with peer educators; and, where possible, by observation. Interviews were conducted between March and early July 2014. A set of questions (Appendix 2) formed the basis of interviews, and the questions started conversations in which participants were free to express their thoughts and ideas based on their knowledge and experience. Participants interviewed were from a range of non-governmental organisations (NGOs), operating a diverse range of community programs in Australian and international environments (see Appendix 1 for a list of organisations visited and interviewees). One person interviewed requested anonymity to protect their identity and status. Interview responses were recorded and analysed, and informed the writing of this report. Secondary sources of data were also reviewed and analysed. A comparative and thematic analysis of program models and practices was also conducted in writing this report.

Scope and limitations

While this report attempts to explore a diverse range of peer education and paralegal programs, it is acknowledged that this is not an in-depth analysis or evaluation of the effectiveness of each program. This report only scratches the surface to reveal just some of the great work being done to empower communities locally and globally. In the course of this project many more paralegal programs were identified overseas, too many to be included in this report. It is also acknowledged that, given the constraints of time and resources, only a few peer education and paralegal programs were able to be visited and observed in action within their community.

Clinical legal education is integral in supporting some paralegal programs, particularly in the Philippines. It is acknowledged that clinical legal education programs have operated in many jurisdictions for decades, however an in-depth analysis of the role such programs can play in paralegal programs is beyond the scope of this report.

It is acknowledged that some non-legal professionals[16] in the community sector provide legal information, legal referrals, legal support and assistance that may be characterised as paralegal work that can empower clients. Although relevant and of interest, they are beyond the scope of this report.

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[16] Examples include health and welfare workers, social workers, youth workers, financial counsellors and family violence counsellors.

Power of peers

2

Need for accessible and accurate legal information

Peers can have a strong influence on our lives, in the choices we make and the things we do. When we have a problem we naturally turn to those closest to us and those we trust, often people we consider our peers, for advice and support. Not only do we know this from our personal experience, but research supports this.

During Community Legal Education (CLE) sessions it is not uncommon for participants to comment 'my neighbour told me …', 'what happened to my friend was …' or 'on a TV program I heard …'. These are often unreliable sources that are being relied on for legal information. As with Chinese whispers, there is a danger that legally inaccurate information or speculation are being relayed and relied upon. We know from the *Legal Australia-Wide (LAW) Survey* that 'despite the high level of legal need in the community, and among various disadvantaged groups in particular, there is no "rush to law" – most people resolve or attempt to resolve their legal problems without using lawyers or the formal justice system'.[17] Respondents to the *LAW Survey* consulted a wide variety of non-legal advisers to try to resolve their problems, as well as friends and family. A legal professional was used for only a minority (16%) of all legal problems.[18]

Likewise, in 2013 the annual national survey of young Australians[19] surveyed 14,461 young people aged 15–19 years and asked where they turn to for advice and support. Once again, 'friends' were the primary support for young people[20] and young people felt most comfortable going to friends for advice[21] ahead of parents or family.[22] Friends were the most highly ranked source of advice and support for young people.[23]

The *LAW Survey* found that age had a strong influence on strategy in most jurisdictions, the youngest group (aged 15–24 years) and the oldest group (aged 65 years or over) tended to have the lowest percentages for taking action.[24] The *LAW Survey* found that taking no action to resolve legal problems was more prevalent among some disadvantaged groups, including people with a non-English main language, people with low education levels and the unemployed. One reason given for doing nothing was not knowing what to do. According to the *LAW Survey*, people who took no action achieved the poorest outcomes.[25]

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17 Christine Coumarelos et al., *Legal Australia-Wide Survey: Legal Need in Australia*, An overview of findings for Australia, Law and Justice Foundation of NSW (August 2012) <www.lawfoundation.net.au/ljf/site/templates/LAW_AUS/$file/LAW_Survey_Summary_FINAL.pdf> (last accessed on 7 October 2014).

18 Christine Coumarelos et al., *Legal Australia-Wide Survey: Legal Need in Australia*, Law and Justice Foundation of NSW (August 2012) Executive summary xiii.

19 Brianna Perrens et al., *Youth Survey 2013*, Mission Australia (2013) <https://www.missionaustralia.com.au/what-we-do-to-help-new/young-people/understanding-young-people/annual-youth-survey> (last accessed on 20 November 2014).

20 70.2% of respondents, Youth Survey 2013.

21 67.9% of respondents, Youth Survey 2013.

22 Ibid 19.

23 Ibid 21.

24 Christine Coumarelos, et al., above n 18, Executive summary xvii.

25 Ibid.

Since we know people are more likely to consult their friends and family about a legal problem than a lawyer, it is crucial the information they receive is accurate and reliable. One strategy to effectively disseminate accurate information in the community health sector has been to use peer education. The use of peers ensures that information is delivered in a way that is likely to be well received, explained in plain English by lay people, free of jargon, timely and responsive to needs within a community as they arise. While peer education is used in the community health sector, it is yet to be fully embraced as a strategy in the provision of community legal information and education in Victoria.

Who is a 'peer'?

No one definition of the term peer is consistently used and in many countries the term is unheard of. Individual programs and organisations use different terms. One definition of a peer is 'a person who belongs to the same social group as another person or group. The social group may be based on age, sex, sexual orientation, occupation or health status'.[26]

Peers are often members of the same community, are accepted and trusted within the community, and share similar life experiences or background. A peer is therefore able to identify with, and show empathy and understanding for, other community members. Connection, acceptance and trust enables peers to be effective communicators, facilitate education, disseminate information and empower others like themselves.

A peer by any other name …

In different programs the description of a peer role is captured in different titles. Some examples include: peer educators,[27] key peer educators,[28] key peer mentors,[29] peer networkers,[30] peer facilitators,[31] peer support facilitators,[32] community guides,[33] community legal guides,[34] community liaison educators,[35] bilingual educators,[36] grassroots facilitators[37] and trusted intermediaries.[38]

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[26] Sex Workers Education & Advocacy Taskforce (SWEAT), *Peer Educator Handbook* (SWEAT, 2013) 8.

[27] SWEAT, South Africa.

[28] Harm Reduction Victoria's (HRV) Dancewize Program.

[29] HRV's North Richmond Project for people who inject drugs (2011).

[30] HRV's Peer Networker Program.

[31] Port Phillip Community Group's Our Voices Program (2012).

[32] Victorian AIDS Council's Positive Living Centre peer support programs.

[33] Adult Multicultural Education Services.

[34] Northern Territory Legal Aid.

[35] Victoria Legal Aid, Settled & Safe Program.

[36] ECCV Culturally Responsive Palliative Care Project.

[37] Term used by Equitable Cambodia.

[38] In Canada: see Community Legal Education Ontario (CLEO), *Public Legal Education and Information in Ontario Communities: Formats and Delivery Channels*, CLEO Centre for Research & Innovation (August 2013) 27.

Peers assist in a diverse range of communities and programs, providing peer support, acting as peer mentors, as contacts within peer networks, and facilitating peer participation and research. Peers can also facilitate consultation to establish peer-based activities, peer learning and peer education.

Below are some examples of the diverse aims of peer-based programs. They are used to:

- reduce drug-related harms[39]
- prevent sexual assault and promote healthy relationships[40]
- support and educate young people about sexual health and relationships[41]
- educate adolescents to make informed choices regarding parenting and health[42]
- assist school students to support each other[43]
- support first-year students settling into university life[44]
- connect people with illnesses, their family members and their carers to share experiences, exchange information and give practical and emotional support[45]
- educate older people about healthy ageing issues[46]
- overcome barriers of language and culture in migrant or refugee communities[47]

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[39] See details of HRV programs later in this report.

[40] Renee Imbesi and Nicole Lees, *Boundaries, Better Friends and Bystanders: Peer Education and the Prevention of Sexual Assault*, A Report on the CASA House Peer Educator Pilot Project (CASA House, 2011); and SECASA's Respect, Protect, Connect Program in schools, using specially trained Peer Educators: <www.secasa.com.au/services/respect-protect-connect/about-the-respect-protect-connect-program/> (last accessed on 7 October 2014).

[41] The Youth Affairs Council of Western Australia Youth Educating Peers Project uses peer education as a youth participation and health promotion strategy with young people (12–15 years old) <www.yacwa.org.au/projects/the-yep-project> (last accessed on 7 October 2014).

[42] Talking Realities … Young Parenting Peer Education Program – based at Adelaide Central Community Health Service, providing accredited peer education and training for young parents, who are employed as parent peer educators: <www.aifs.gov.au/sf/pubs/bull7/realities.html> (last accessed on 7 October 2014).

[43] Peer Support Australia assists school communities to establish Peer Support Programs and trains both primary and secondary students as Peer Leaders <www.peersupport.edu.au> (last accessed on 7 October 2014).

[44] For example, Peer Mentoring Programs at University of NSW since 2002 <https://student.unsw.edu.au/peer-mentoring> (last accessed on 7 October 2014) and the Peer Network of 350 students at the University of Technology, Sydney, since 1998 <http://www.uts.edu.au/current-students/opportunities/community-and-leadership-programs/peer-network> (last accessed on 20 November 2014).

[45] For example, MS Society coordinates Peer Support Groups and Volunteers to provide peer support by telephone, face-to-face and online <www.mssociety.org.au/peer-support-program.asp> (last accessed on 7 October 2014).

[46] COTA Australia develops national peer education programs that are delivered by trained volunteer peer educators in each state providing education for other older people. For example, in Victoria programs for seniors include Beyond Maturity Blues, Be Active Your Way, and Need to Know Information Sessions such as Demystifying Social Media and Dying to Know <www.cotavic.org.au/education> (last accessed on 7 October 2014).

[47] The Adult Multicultural Education Service Community Guides program is one such example, along with other ethno-specific peer-based projects in this report – see page 13.

- facilitate participation in community training and research[48]
- provide a safe and supportive environment to explore issues about living with HIV/AIDs.[49]

Peer education

As with the term 'peer', there are varied definitions of peer education. Definitions focus on the similarity between group members and on the act of educating other group members. Peer education is defined by the Council on the Ageing (COTA) Australia as the process of people who share common ground learning from one another.[50] This notion of peer education is reflected in COTA's programs, training older persons as volunteer peer educators to present information sessions to seniors' groups. Older educators are likely to be received by other seniors as a more credible and reliable source of information, sharing stage-of-life experiences at a similar age.

Peer education is recognised as empowering and beneficial for those involved.[51] For some, 'peer education needs to be an empowering process … empowerment is key to the definition'.[52] Peer education is commonly used in the context of alcohol and other drug education; prevention of sexually transmitted infections and blood-borne viruses; and sexual and reproductive health promotion. 'Peer education is considered an effective health promotion and education strategy, particularly to populations traditionally resistant to conventional forms of health information dissemination … where those who are affected or at risk are often the most vulnerable in society.'[53] Examples of peer education in health and harm reduction to reach people who use drugs, sex workers and those living with HIV/AIDS are provided below.

The Australian Injecting and Illicit Drug Users League (AIVL) defines peer educators as 'equals working with equals. Good peer educators accept themselves as the moral equals of those with whom they work. They may be in a position to offer knowledge and information, opportunities for learning; they will also be aware they themselves are in a position to learn'.[54]

Peer education is often used as an alternative to formal education to reach those with a low level of literacy and education, using interactive and hands-on

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[48] Peer facilitators supported participants battling homelessness, drug abuse and mental illness to participate in Community Leadership Training in the Port Phillip Community Group's Our Voices Program (2012). The HIV Stigma Audit (2012) used peer interviewers to survey people living with HIV (see page 18 of this report).

[49] Human Immunodeficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS). The Victorian AIDS Council's Positive Living Centre provides peer support programs run by Peer Support Facilitators who are also HIV positive (see pages 18–19 of this report).

[50] <www.cota.org.au> (last accessed on 7 October 2014).

[51] Netzach Goren and Karen Wright, 'Peer education as a drug prevention strategy' (March 2006) *Prevention Research Quarterly: current evidence evaluated*, DrugInfo Clearinghouse 4.

[52] Interview with Jenny Kelsall, HRV's Executive Officer, and HRV staff, North Melbourne, 12 May 2014.

[53] Steven M Lambert et al., 'Effective peer education in HIV: defining factors that maximise success' (2013) 10(4) *Sexual Health* 325.

[54] S Q Wye, *A Framework for Peer Education by Drug-User Organisations*, Australian Injecting & Illicit Drug Users League (2006) 25.

strategies based on adult learning principles. Peer education can facilitate direct access to educate a community, overcoming well-intentioned gatekeepers.[55]

Peer education has been used in communities where language and culture is a barrier, such as with migrant or refugee communities. There are obvious benefits to using staff or volunteers who speak the same language and who are culturally aware of and sensitive to the beliefs and practices of a particular ethnic community, but it is even more important that they are accepted and trusted by that community as one of their own. The projects outlined below illustrate the use of bilingual peer education to reach and educate culturally and linguistically diverse communities.

Culturally responsive palliative care

Trained bilingual educators are delivering peer education sessions in the relevant community language to five migrant communities,[56] to raise awareness of and improve access to palliative care services.[57] Five key culturally and linguistically diverse aging communities were identified as not accessing palliative care services. This project aims to address and overcome any cultural or religious misperceptions or taboos about palliative care and end-of-life processes. The bilingual educators use a community-specific peer education resource, which has been developed by a community reference group and tailored to suit the particular community, taking into account community stigmas, perceptions and beliefs. A peer education model was chosen for this project because 'previous experience and evidence suggests that with culturally and linguistically diverse communities this is one of the most effective information dissemination methods'.[58]

Community Guides

The Adult Multicultural Education Service currently employs 300 Community Guides,[59] to assist newly arrived refugees to resettle in Australia. Community Guides are former refugees who have the same cultural background and language as refugees arriving in Victoria. After intensive training, they are able to help new arrivals from their home country to settle more effectively into their new environment by providing vital information and education in their first language. A shared experience of resettlement means that, in addition to language, Community Guides bring compassion, understanding and empathy to their work. The United Nations (UN) has recognised this model, which is being replicated in other countries.[60]

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55 Intermediaries, such as health workers, social/community workers or interpreters, may act as gatekeepers, hindering access to community members because of a paternalistic or overprotective approach.

56 Maltese, Turkish, Vietnamese, Chinese and Italian.

57 A project of the Ethnic Communities' Council of Victoria (ECCV) in partnership with Palliative Care Victoria and the Multicultural Centre for Women's Health.

58 Interview with Elena Petreska, ECCV Project Coordinator, and Susan Timmins, Culturally Responsive Palliative Care Project Officer, EECV Carlton office, 3 March 2014.

59 They represent thirty countries, speaking approximately seventy languages and dialects. Introduced in 2005, the initiative also provides employment experience for the guides themselves.

60 Interview with Melika Sheikh-Eldin, Manager, Settlement Delivery Support Services, Adult Multicultural Education Service, Melbourne Office, 6 March 2014.

3 Peer educators empowering their communities

The peer education programs considered below were chosen because of their ability to effectively reach, educate and empower peers within marginalised communities – peers using drugs, peers living with HIV/AIDS and peers who are sex workers. Interviews were conducted with staff from Harm Reduction Victoria (HRV), Positive Living Centre in Victoria, Sex Workers Education & Advocacy Taskforce (SWEAT) in South Africa, the Hungarian Civil Liberties Union in Budapest about the Drugreporter website, and a group of HRV DanceWize Key Peer Educators. SWEAT peer educators were accompanied and observed while on evening outreach to sex workers in Cape Town.

Reaching peers within marginalised communities

To treat a person or group as insignificant or peripheral is to *marginalise* them.[61] Marginalisation is the social process by which a person, or a group of people sharing common features, are pushed to the fringes or 'margins' of society and excluded from meaningful participation in that society. This usually results in members of marginalised communities facing stigma and discrimination, and feeling alone and excluded within the broader society.

Social exclusion and isolation means that members of marginalised communities often have less contact with the usual sources of advice and support, such as family, thus increasing reliance on their peer network. HRV Executive Officer Jenny Kelsall explains that 'the usual sources of information are cut off to you, the very people you can't approach are family members – only people you have recourse to are friends and other users because of the stigma and illegal nature of drug use, it's isolating and alienating, it cuts off information and engagement'.[62] In these circumstances, peers can be influential and effective in reaching and educating their peers in areas such as harm reduction.

Harm reduction education by peers within drug using communities

Harm reduction programs aim to improve the quality of life and promote health, while focusing on reducing the risks and adverse health consequences of unsafe drug use. Harm reduction strategies have been shown to lower the risk of HIV (Human Immunodeficiency Virus) and hepatitis transmission.[63] A harm reduction approach recognises abstinence is not realistic for everyone. HRV, a peer-based not-for-profit organisation in Victoria, is a member of AIVL, the national network of drug-user organisations. HRV's membership, staff, volunteers and supporters include people who currently use drugs or have previously used drugs. HRV's peer education programs provide people using drugs with accurate, up-to-date information using a non-judgemental approach to empower them to make informed decisions and reduce drug-related harms. Peer education can dispel myths of drug use by providing trusted information. Answering questions of

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[61] As defined in *Oxford Dictionaries, Language matters*, Oxford University Press 2014 <http://www.oxforddictionaries.com/definition/english/marginalize> (last accessed on 20 November 2014).

[62] Interview with Jenny Kelsall, above n 52.

[63] *Harm Reduction*, Harm Reduction Victoria website <http://hrvic.org.au/safer-drug-use/harm-reduction/> (last accessed on 7 October 2014).

'why' is essential to the effectiveness of peer education, as is avoiding lists of 'dos' and 'don'ts' and 'shoulds' and 'shouldn'ts'.[64] HRV currently operates two peer education programs, DanceWize and the Peer Networker Program.

DanceWize Key Peer Educators

DanceWize[65] uses a peer education model to reach people using drugs at dance parties, festivals and nightclubs in Victoria, with the aim of reducing drug-related harm. DanceWize hosts a chill-out space at fifteen indoor and outdoor dance events each year, which may last for a single day or night or up to five days, with attendances of up to fifty thousand people. The chill-out space is where peers are engaged and provided with accurate and credible information through discussion of safer drug use and the dissemination of health resources.

Voluntary Key Peer Educators (KPEs) are recruited from dance party, festival and nightclub communities, and trained with knowledge and skills so they can answer questions from peers and provide appropriate referrals. Induction of KPEs involves undertaking ongoing training that covers: first aid, overdose prevention, dealing with people experiencing challenging psychedelic experiences (such as delusions or hallucinations), drug classifications, safe disposal practices for needles and syringes, substance-specific harm reduction, blood borne virus prevention, sexually transmitted infections prevention, mental health first aid and basic legal issues.[66]

In a group meeting with KPEs,[67] they viewed their role as vital in educating peers, because people seek reliable, accurate and trusted information about drugs. The group believed there was mistrust of government-published information and even scepticism of some published academic material. This mistrust was attributed to a government message of 'just say no to drugs' and an expectation of abstinence, with no equivalent to 'safe sex education' offered in drug education. KPEs suggested that without the availability of reliable and accurate information, people using drugs would rely on anecdotal information from friends, who may not have any experience or knowledge about a particular drug.[68] KPEs have input into the design and content of materials on drugs produced by HRV.

Approximately forty KPE volunteers meet fortnightly with DanceWize program coordinators for ongoing training and peer support. Meetings are an opportunity to share information and knowledge and raise issues of concern. Some issues are of a legal nature, such as the powers of security staff at events and police use of sniffer dogs. The group of KPEs thought it was important to have sufficient knowledge and resources on these issues. Most KPEs expressed interest in being better equipped to support and advocate for their peers on legal issues and said they would welcome any opportunity for paralegal skills training.[69]

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64 Interview with Jenny Kelsall, above n 52.

65 Formerly known as RaveSafe.

66 Legal education provided by Fitzroy Legal Service.

67 Group meeting with HRV DanceWize Key Peer Educators, North Melbourne, 8 May 2014.

68 Ibid.

69 Ibid.

Peer Networkers

The Peer Networker Program, a new peer education program for people who inject drugs, focuses on providing education when needles and syringes are distributed to peers. The program aims to reach people injecting drugs not currently accessing needle and syringe programs in Melbourne, particularly young women, Aboriginal people and people from culturally and linguistically diverse backgrounds. This program aims to improve access to sterile needles and syringes, therefore reducing the spread of hepatitis B and C and other blood borne viruses. HRV has actively recruited voluntary Peer Networkers from these groups to provide needles and syringes to their peers within their social and friendship networks. It is anticipated Peer Networkers will reach and improve access to these communities. 'The issue of access is a key one in some communities, sometimes no-one can reach people who have been so disadvantaged, victimised, demonised, to be regarded as unworthy, people who have been so disempowered.'[70]

HRV requires Peer Networkers to attend an initial intense training program over five days within two weeks, followed by monthly ongoing training. Education is provided about safer drug use and the modelling of safer injecting practices when distributing injecting equipment.[71] A statewide peer network is being established across metropolitan and regional sites in partnership with community health organisations.[72]

Peer naloxone program in the ACT

In the Australian Capital Territory (ACT), a new program is training opioid injectors, peers of opioid injectors and peers who are potential overdose witnesses on how to administer naloxone to reverse opiate overdoses. Naloxone is widely used by paramedics. This program is expanding availability of naloxone to opiate users through peer distribution, using a harm reduction approach. More likely to be present during a drug overdose, peers can more effectively administer naloxone to prevent a lethal overdose and save a life.[73]

Drugreporter

Drugreporter, a drug policy website of the Hungarian Civil Liberties Union (HCLU),[74] encourages digital video storytelling for harm reduction advocacy, activism and education. HCLU, founded in 1994, was one of the first independent NGOs established in Hungary after the end of the communist system. Drugreporter is primarily aimed at educating and supporting young people

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[70] Interview with Jenny Kelsall, above n 52.

[71] Peer Networkers are registered as HRV volunteers and authorised NSP Outreach Workers once they have completed the training.

[72] There will be 4–6 Peer Networkers in each area – Braybrook, Richmond, Footscray, Geelong and Ballarat.

[73] For more information on the Implementing Expanded Naloxone Availability in the ACT Program, see <www.atoda.org.au/policy/naloxone/> (last accessed on 7 October 2014).

[74] HCLU has programs on freedom of information and speech, political freedom, Roma rights, mental health, HIV/AIDS, drug policy and a legal service for vulnerable individuals and harm reduction service providers. HCLU employs four lawyers. Its legal services expanded in 1998, beyond individual client assistance to outpatient drug treatment clinics, arrested methadone doctors, street outreach workers and needle exchange program operators.

who use drugs. The HCLU also trains and equips people using drugs, as well as activists, to produce their own videos to be posted online. The HCLU's video advocacy program has produced more than five hundred films since 2007, mostly on drug policy.[75] In 2012 and 2013, the HCLU won five prizes for their films. The videos can be viewed on the Drugreporter website.[76]

Educational and well respected, the videos form part of an online toolkit that is used internationally by university academics in lectures.[77] Drugreporter provides updated, reliable drug facts sourced from evidence-based data and the latest drug-related research. The research is used to educate and debunk myths about drug use and to advocate for harm reduction strategies, such as needle and syringe programs and other global initiatives. The website presents facts and information in a simple and accessible way that is easily understood, for example by using visual diagrams or graphs. Drugreporter aims to reach an international network of people using drugs and encourages them to support awareness-raising campaigns by sharing information with their peers through social media to help spread messages about harm reduction, such as:

> There are an estimated 16 million injecting drug users (IDUs) in the world – three million of them living with HIV/AIDS. Providing IDUs with clean needles and syringes saves lives and money. Help us to spread this message by sharing our infograph![78]

HCLU Drug Policy Program Director Peter Sarosi says that 'at the end of [the] videos we have a message of action – to sign a petition, write to or email an MP'.[79] Peter gave an example of one video that went viral – attracting more than 25,000 views on YouTube within days and now watched by over 100,000 people.

The video was of Dr Frederik Polak, a Dutch psychiatrist, who in 2008 at a meeting of the UN Commission on Narcotic Drugs, asked a simple question of Mr Antonio Maria Costa, Executive Director of the UN Office on Drugs and Crime – 'How do you explain that less young people have tried cannabis in Holland, where cannabis is available in coffee shops, than in some neighbouring countries with restrictive drug policies?' Mr Costa failed to answer the question. The video was successful in mobilising viewers, who were encouraged to circulate the video and to ask this very same question of Mr Costa, who was in turn flooded with emails.[80] The video was then circulated with evidence to demonstrate that criminalisation of drug use does not lead to fewer drug users. This example highlights the power of online networks in mobilising peers to have a voice, question drug laws and policy, and to be heard by those in powerful positions.

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[75] In 2012, 154 videos were produced (seventy-six in foreign languages and seventy-eight in Hungarian) and last year sixty-four (sixteen in Hungarian and forty-eight in other languages).

[76] See <http://drogriporter.hu/en> (last accessed on 7 October 2014).

[77] For example, at the Central European University. Interview with Peter Sarosi, Drug Policy Program Director, HCLU, Budapest, 25 April 2014.

[78] Drugreporter, Needle and Syringe Programs Save Lives and Money: Infograph (4 February 2014) Drugreporter <http://drogriporter.hu/en/Needle_and_syringe_exchange_info_graph> (last accessed on 7 October 2014).

[79] Interview with Peter Sarosi, above n 77.

[80] Drug Reporter *Mr. Costa's Mailbox* (2 April 2008) Drugreporter <http://drogriporter.hu/en/node/946> (last accessed on 7 October 2014).

Online peer networks are using technology to educate and support people using drugs, reaching those who may not access mainstream services. The internet offers anonymous, non-judgemental and safe space in which to seek information and advice. Through videos posted online, people using drugs can share their stories and experience, and spread messages encouraging harm reduction strategies to their peers. Websites like the Drugreporter not only facilitate peer education but also provide an online platform for advocacy on policy issues.

Positive peers – education and support within HIV/AIDS communities

HIV positive populations in Australia

The World Health Organization estimates that in 2012 between 18,000 and 27,000 people were living with HIV in Australia.[81] Victoria has the second-largest HIV positive population in Australia, behind New South Wales. 5722 people were living with HIV in Victoria in 2010, and, in 2011, 280 new HIV diagnoses were made, of which 259 were men, 20 women and 1 transgender. The majority of infections (223) occurred through homosexual contact.[82]

The stigma of living with HIV/AIDs

People living with HIV commonly experience stigma and discrimination. In 2011, the National Association of People Living with HIV/AIDS conducted an online survey and interviewed people living with HIV to try to understand stigma in an Australian context.[83] Twenty-seven people were interviewed by peers and 697 people completed the online survey.[84] Respondents agreed that 'telling someone I have HIV is risky' (77%), and 'I work hard to keep my HIV a secret' (42%).[85]

The study concluded that HIV-positive people avoid facing stigma by carefully choosing the contexts in which they make disclosures about it. Stigma not only affects the human rights, health and wellbeing of people living with HIV, it also affects prevention efforts because people are less likely to get tested.

Peer education and support for HIV positive men in Victoria

Support services for all people living with HIV, including peer education and support, are provided in a safe environment at the Positive Living Centre (PLC).[86] Peer support groups for HIV positive men meet weekly over eight weeks at the PLC to explore and discuss issues such as stigma, disclosure, sexual health, safe

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[81] See World Health Organization Data on the size of the HIV/AIDS epidemic. Data by country available: World Health Organization, *Number of People (All Ages) Living with HIV Data by Country* (2014) World Health Organization <http://apps.who.int/gho/data/view.main.22100?lang=en> (last accessed on 7 October 2014).

[82] Victorian AIDS Council, *HIV Factsheet* <www.vac.org.au/hiv-fact-sheet> (last accessed on 7 October 2014).

[83] Sean Slavin, 'Results from the Stigma Audit' (2012) 10(1) *HIV Australia*, Australian Federation of AIDS Organisations 27–28.

[84] Ibid 27: 662 were men, 32 women and 3 transgender, with 85% identifying as gay men.

[85] Ibid.

[86] Established and operated by the Victorian AIDS Council/Gay Men's Health Centre, a community organisation formed in 1983 in response to the HIV epidemic.

sex and relationships. Peer support groups of eight to twelve participants are facilitated by two trained volunteers, known as Peer Support Facilitators, who are also HIV positive. Suitable Peer Support Facilitators are identified and recruited by the Peer Support and Health Promotion Officer from existing PLC clients, who may have attended a previous support group and demonstrated they have the skills required. New Peer Support Facilitators attend three-hour training sessions once a week, over a period of four weeks. Training focuses on skills for facilitating groups, how to deal with issues that may arise, use of role-plays, health promotion, safe sex education and legal issues, such as the laws of disclosure in each state. Individual support and debriefing for the volunteer Peer Support Facilitators is provided as needed by the Peer Support and Health Promotion Officer, Simon.[87]

An issue frequently raised in groups is stigma and blame – commonly expressed as 'it's your fault'. Simon suggested stigma is often experienced in employment and in the provision of health care. 'If someone discloses their status to an employer they may feel stigmatised. Identifying as HIV positive in a medical situation, many people feel they are treated differently by health care professionals, such as being isolated.'[88] This has an even greater impact on people living with HIV in rural areas. PLC refers clients to local medical clinics where they are confident their clients will be treated with respect and dignity.

Peer education goes hand in hand with peer support, the groups providing a safe forum in which to facilitate education on issues relating to health, medications and the law. A non-judgemental, confidential and supportive environment promotes the sharing of knowledge and experience between peers. The issue of disclosure is one that usually arises in groups, and peers often share similar fears and anxieties – who you need to tell, who you want to tell, when and how you tell – for which they gain reassurance and comfort from the group. It is also reassuring for people to be educated on 'facts and fallacy', particularly education about safe sex and the transmission of HIV.[89]

Peer support groups cater for men newly diagnosed with HIV, along with those who have been living with HIV for some time, who seek support years or even decades later. Simon gives an example of one person who was diagnosed as HIV positive in Victoria in the 1980s, who only recently contacted the PLC and joined a peer support group. For many years only his GP knew, and he had, also, eventually told one friend. According to Simon, 'a lot of guys that come to the peer support groups have never spoken to anyone about it apart from their GP'.[90]

Support groups offer an opportunity for participants to speak with others as peers with the shared experience of living with HIV. Through the groups, bonds of friendship are formed, often resulting in participants continuing to meet up and support each other after the eight-week facilitated meetings have ended. Simon considers the peer support groups 'a successful model of empowerment, where participants gain confidence and reduce anxiety through the sharing of knowledge and experience'.[91]

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87 Note: a false name has been used to protect the identity and status of the officer interviewed.

88 Interview with Peer Support and Health Promotion Officer, Positive Living Centre, 4 July 2014.

89 Ibid.

90 Ibid.

91 Ibid.

Peer education within sex worker communities

Sex workers vulnerable to violence

Laws criminalising sex work force 'sex workers to the margins of South African society, where they are an easy target for abuse at the hands of police and clients'.[92] Voices of more than three hundred sex workers in South Africa who made complaints to the Women's Legal Centre (WLC) were the basis of a report concluding that the main violators of the human rights of sex workers in South Africa are the police. A high proportion of sex workers (70%) who approached WLC between September 2009 and July 2011 to report a violation had experienced some form of abuse by the police.[93] The most common types of police abuse documented were assault and harassment, arbitrary arrest, violations of procedures and standing orders, inhumane conditions of detention, unlawful profiling, exploitation and bribery, and denial of access to justice.[94] Sex worker accounts of police brutality are recorded in the WLC report, including being pepper-sprayed during arrest and assaulted at the police station.[95] The criminal and marginalised status of sex workers in South Africa prevents them from seeking protection, redress or recourse through the criminal justice system.

Two-thirds of the sex workers in the WLC study worked outdoors, finding clients on the street, while those working indoors worked in brothels and from hotels, with 90% of sex workers being female, 6% male and 4% transgender.[96] The diversity of sex workers in South Africa includes urban and rural workers; South Africans and foreigners; and sex workers who work at border posts, truck stops and 'shebeens.' In South Africa shebeens are mostly located in townships as an alternative to pubs and bars.[97] Despite their diversity, as sex workers they share common experiences of routine violence and abuse from clients and police. The benefits of peer-based assistance are an understanding of 'the difficulties and obstacles that sex workers encounter on a daily basis. We personally know how violent police can be towards sex workers, so we can offer advice'.[98]

National network of Peer Educators in South Africa

A network of 560 sex worker Peer Educators is employed throughout South Africa, with a team of Peer Educators and two paralegals per province. The national network comprises seventeen organisations that each employ, fund and support the Peer Educators and paralegals in their province. Johannesburg has

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92 Stacey-Leigh Manoek, above n 2, 4.

93 Ibid.

94 Ibid 9.

95 Female sex workers from Johannesburg give accounts of being pepper-sprayed in the eyes and ears, and even in the vagina, before being beaten; sex workers also give accounts of being shot with rubber bullets. Ibid 9–10.

96 Ibid 8.

97 In South Africa, under apartheid indigenous Africans were barred from entering pubs or bars. Originally shebeens were operated illegally, but are now legal. See 'Shebeen' Wikipedia <http://en.wikipedia.org/wiki/Shebeen> (last accessed on 7 October 2014).

98 Anita, Women's Legal Centre peer paralegal. David Scamell *Legal Help for Sex Workers: from Sex Workers*, Open Society Foundation Public Health Program (5 March 2013) <www.opensocietyfoundations.org/voices/legal-help-sex-workers-sex-workers> (last accessed on 7 October 2014). Sadly for her colleagues, Anita recently passed away.

the greatest number of Peer Educators and paralegals, as it also has the highest concentration of sex workers.

Training for Peer Educators

The Sex Workers Education & Advocacy Taskforce (SWEAT) is a South African NGO that was established in 1997, initially to focus on safe sex education for sex workers, arising out of a HIV context. SWEAT now employs ninety staff across three offices in Cape Town, North West Province and Western Cape and provides nationwide training for Peer Educators. Intensive training over five consecutive days is conducted by SWEAT staff for Peer Educators when first recruited. Current sex workers or those with previous experience in the sex industry are recruited as Peer Educators. Accommodation is arranged by SWEAT so that Peer Educators do not need to travel and can stay where the training is held. A *Peer Educator Handbook*, produced by SWEAT, is given to Peer Educators, with space for notes and activities on each section. The training manual covers information about human rights, the law and decriminalisation, reproductive health, sexuality and the role of a Peer Educator, including tips like 'S/he is a peer and not a parent'.[99] SWEAT also actively advocates for the decriminalisation of sex work.

Hey Sista, we're here for you – whatever the problem. Sex Workers Education & Advocacy Taskforce (SWEAT) poster.

Role of Peer Educators

The main role of Peer Educators is to mobilise and facilitate sex workers accessing services that provide for their health, human rights and psychosocial needs. Peer Educators are responsible for providing sex workers with basic information about their health and human rights, with a focus on HIV prevention, with the highest rate of HIV prevalent among sex workers. Peer Educators must be able to communicate effectively, be a reliable team member and prepared to work flexible hours.[100]

The peer education program enables sex workers to be at the forefront of service provision through outreach. SWEAT, in partnership with other organisations such as WLC, train and equip Peer Educators with skills to function as human rights

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[99] SWEAT, *Peer Educator Handbook* (SWEAT, 2013), 10.

[100] Job advertisement for Peer Educators on SWEAT website. See: SWEAT, Job Offer: Peer Educators for Atlantis, Mamre, Malmesbury, Saldanha, Vredenburg (17 January 2014) <www.sweat.org.za/index.php/item/507-job-offer-peer-educators-for-atlantis-mamre-malmesbury-saldanha-vredenburg> (last accessed on 7 October 2014).

defenders exposing human rights violations. Peer Educators are able to create an environment in which sex workers feel safe and supported to come forward and report human rights abuses.

Multidisciplinary outreach with Peer Educators

SWEAT currently employs thirteen full-time, paid Peer Educators. Two to three of these paid Peer Educators join an outreach team consisting of a nurse, a counsellor and a driver to reach sex workers on the streets and in brothels. The outreach service is a collaborative partnership between SWEAT and TB/HIV Care Association, and demonstrates the value of a multidisciplinary approach and the benefits of 'holistic' practice as highlighted in the *LAW Survey*, which recognised the need to use integrated strategies and targeted intensive assistance for people with complex legal and non-legal needs.[101]

While the nurse provides testing for HIV, tuberculosis, STIs and pap-smear tests for sex workers, the Peer Educators use the opportunity to engage those sex workers awaiting testing. Peer Educators provide safe sex education and reproductive health education, distribute condoms and femidoms, assist with referrals and, where appropriate, link sex workers with WLC peer paralegals for legal assistance. Peer Educators are a trusted source of information and education. In some environments, such as brothels, opportunities to provide information are limited and cannot be done openly, especially if a sex worker wishes to discuss an issue related to their workplace and a madam is present.[102] The trust and rapport developed with the Peer Educators facilitates follow-up of such issues at another time.

According to SWEAT Executive Director Sally Shackleton, having Peer Educators 'changes the nature of your organisation … provides current information on "hot spots" … Peer Educators have an ear and eye to the ground … [and are] a great source of current information'.[103]

Supervision and support of Peer Educators

Weekly group supervision with Peer Educators is facilitated by a social worker employed by SWEAT. Peer Educators also have monthly supervision on an individual basis with a SWEAT staff member. When issues arise, SWEAT uses a solution circle, which is an opportunity for all staff, including Peer Educators, to come together to discuss issues and resolve any problems.

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[101] Christine Coumarelos, above n 18, Executive summary xx–xxiv.

[102] Observed on 30 April 2014 on evening outreach with SWEAT Peer Educators and the TB/HIV Care outreach team in Cape Town.

[103] Interview with Sally Shackleton, Executive Director, SWEAT, Cape Town, 30 April 2014.

Challenges of using Peer Educators

Some of the challenges of using peer education in this context, as identified by Sally, include:

- Peer Educators grappling with their own traumatic experiences
- the combination of workplace and personal issues
- Peer Educators adjusting to a different kind of workplace
- other sex workers sometimes seeing Peer Educators as 'better than' them
- conflicts of interest between friends
- the difficulty of providing support to Peer Educators with various levels of education.

While SWEAT does not require a particular level of formal education, Peer Educators do need a certain level of literacy. To overcome these challenges, SWEAT has policies in place such as random drug and alcohol testing of staff, and has put in place quality assurance standards for its peer education.[104]

Organisations employing Peer Educators need to be mindful of health issues associated with at-risk population groups, such as HIV, drug and alcohol use and hepatitis C. Sally stressed it was 'important to support staff members [and] Peer Educators with HIV or other illnesses to take time off work to attend clinic days. Most importantly, you need to integrate them within your organisation as part of a staff team, inclusive of Peer Educators'.[105]

Pressures and power of Peer Educators

Pressures on Peer Educators

Pressures experienced by Peer Educators include adjusting to a structured work environment, often for the first time. They may find that their contributions and experience is not as highly regarded as other staff or professionals, and they may feel less respected. This can make it difficult for people in these roles to identify themselves as peers for fear of how they will be treated by others within an organisation or workplace, or by others within the broader community. Peer Educators are often volunteers, which also places financial pressures on them.

Power of Peer Educators

Connection, acceptance and trust enable peers to be effective communicators. With these skills, they are well placed to facilitate peer participation, consultation and involvement in the design and implementation of programs to reach a target community, particularly marginalised communities.

Peer education ensures that accurate and reliable information is available and accessible within peer networks. Peer education programs included in this report demonstrate the effectiveness of education that is timely and responsive to the needs of people using drugs, to reach those people so marginalised and disempowered that they are not accessing mainstream services.

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[104] Ibid.

[105] Ibid.

The power of peer-based education programs to effectively reach and empower marginalised communities, like those outlined above, comes from a shared experience, being trusted, accepted and connected with a community, and creating a non-judgemental and safe space in which their peers can seek information, advice and support.

This report proposes that CLCs use their connection with community to design peer-based initiatives as a tool for the delivery of targeted legal education. To encourage this it is recommended that the Federation of Community Legal Centre's Community Development & Legal Education Working Group include an information sheet on peer education and the use of peer-based initiatives in the toolkit Community Legal Education Made Easy (see Recommendation 1 of this report, page 70).

Legal empowerment

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'Legal empowerment can be characterised as the use of rights and laws specifically to increase disadvantaged populations' control over their lives.'[106] Legal empowerment has also been defined as 'the transfer of power from the usual gatekeepers of the law – lawyers, judges, police and state officials – to ordinary people who make the law meaningful on a local level and enhance the agency of disadvantaged populations'.[107] A broader definition is: 'legal empowerment is about giving people the power to understand and use the law'.[108] Vivek Maru argues that, wherever possible, legal empowerment efforts should seek to cultivate the agency and power of the people with whom they work. Not 'I will solve this problem for you', but, rather, 'I will work with you to solve this problem and give you tools with which to better face such problems in the future'.[109] Essentially, legal empowerment is ordinary or disadvantaged people understanding the law and using it to enhance their agency, control and power in their lives.

A range of legal empowerment approaches are used in communities. A recent paper[110] has reviewed 199 studies of a broad range of legal empowerment programs around the globe and found the most frequent approach was legal literacy, the next most common approaches were community mobilisation and advocacy, followed by participation in governance mechanisms, mediation and alternative dispute resolution, and community paralegals. More than one approach (with a median of three) was used in most programs, sometimes with an overlap between the approaches.

An increasing demand for legal services, yet limited resources and a lack of access to existing legal services, as outlined earlier in this report, means legal empowerment strategies are all the more important. Strategies that can educate and empower people to know and understand their legal and human rights are essential in communities where direct legal service provision and access to lawyers is inadequately resourced and limited. Legal empowerment strategies such as legal literacy and capability training, community legal education and community paralegals play a crucial role in educating and empowering community members.

Legal literacy and capability training

Capacity building along a spectrum

Michele Leering suggests there is a 'spectrum of legal literacy and capability training' (see Figure 1), which she describes as being 'a continuum that begins

[106] Stephen Golub, *Legal Empowerment's Approaches and Importance*, Justice Initiatives: Legal Empowerment, Open Society Justice Initiative (Autumn, 2013) 5.

[107] Emma Day and Ryan Quinn, *Bringing Justice to Health: The Impact of Legal Empowerment Projects on Public Health* (Open Society Foundations, 2013) 1.

[108] Laura Goodwin and Vivek Maru, *What do we know about legal empowerment? Mapping the Evidence*, Namati Working Paper (March 2014) 8.

[109] Vivek Maru, 'Allies Unknown: Social Accountability and Legal Empowerment' (2010) 12(1) *Health and Human Rights* 83, 85.

[110] Laura Goodwin and Vivek Maru, above n 108, 22–3.

with developing basic legal awareness and moves through to more complex training for those that wish to build some skills in legal advocacy'.[111]

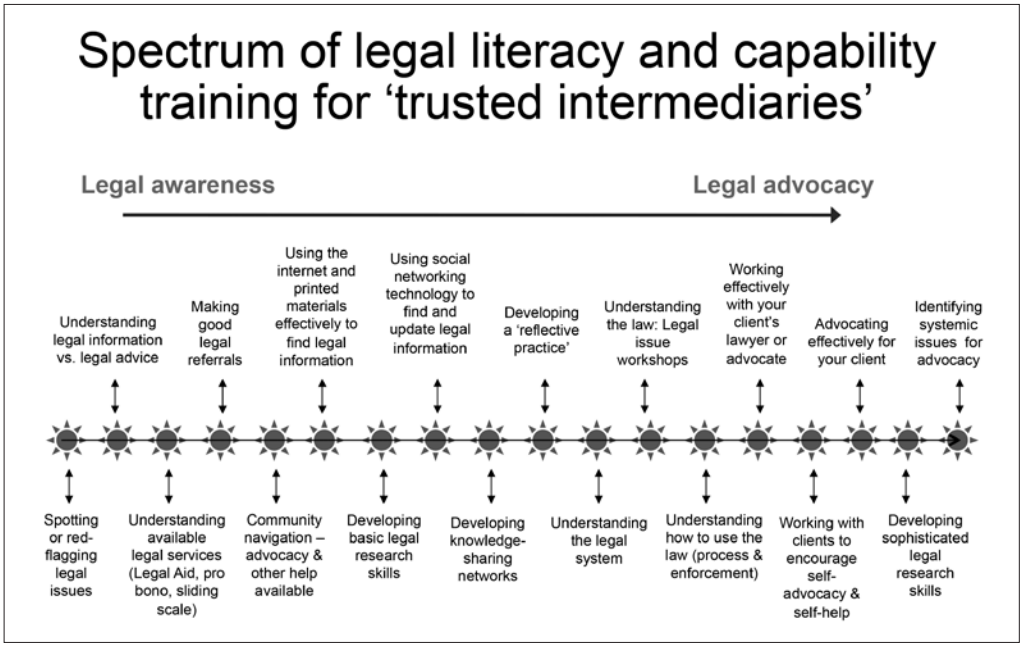

Figure 1 Spectrum of legal literacy and capability training.
Source: Michele Leering, Presi Presentation: International Legal Aid Group in The Hague, The Netherlands in 2013.[112]

This approach considers learning as a graduated capacity-building process, starting with raising legal awareness, identifying legal issues and understanding basic legal information. Understanding of the law and the legal system builds, and eventually legal advocacy skills are developed, as well as the ability to identify systemic issues.

In Tasmania, trained legal literacy volunteers are helping to increase legal literacy in their community by assisting others to identify when they should seek legal advice before signing a document, such as a family law or Centrelink form.[113]

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[111] Meeting with Michele Leering (Executive Director and Lawyer, Community Advocacy & Legal Centre, Ontario, Canada), Melbourne, 12 March 2014. See also M Leering and A Currie, *Navigating with the Wandering Lost: The Critical Role of Trusted Intermediaries in Increasing Access to Justice* (forthcoming). The continuum is discussed in the context of increasing capacity of service providers, however it is just as applicable to other community members and peers, who are included in the definition of trusted intermediaries.

[112] For a link to the Presi Presentation and examples of training tools and resources created to support the learning needs on the continuum, go to: Prezi, ILAG Presentation – For ILAG Website – 14 June 2013 <http://prezi.com/3vt4ni2zmez1/ilag-presentation-for-ilag-website-june-14-2013/> (last accessed on 7 October 2014).

[113] Launceston Community Legal Centre's Legal Literacy Volunteer Program has fifty-two volunteers available at different venues, such as community health centres and Centrelink offices. Community Legal Centres and Volunteers, *Increasing Legal Literacy In Communities: Working Collaboratively* (NACLC, Sydney South, NSW, 2014) 5. Also see Launceston CLC website: <www.lclc.net.au/services/legal-literacy.html> (last accessed on 7 October 2014).

Legal capability

In 2012, the Legal Capability for Everyday Life Project aimed to improve the legal capability of individuals through participation in a public legal education course in London. The course ran over six weeks and covered making sense of the law, getting help and finding out about the law, and increasing community engagement, as well as more specific law-related issues, such as housing, employment, discrimination and welfare benefits. The project objective was to enable participants to cope with the law in their everyday lives by educating them about common law-related issues and situations.

The evaluation results showed a strong improvement in the legal capability of individuals participating in the course. An evaluation comparing the legal capability of project participants and non-participants showed that people who took part in the course were more confident that they understood their legal rights and obligations, that they knew when to get expert legal help, and that they could get the best results out of a legal situation. Course participants also became better able to recognise the legal dimensions of everyday issues and considered themselves far better able than non-participants to deal with law-related issues in the future.[114]

'Knowledge, capacity, capability and understanding are the key prerequisites to access to justice.'[115] Peer legal education requires individuals to have a higher legal capability: to not only recognise the legal dimensions of everyday issues, understand legal rights and obligations, and to know when to refer to expert legal help, but also to be capable of sharing this knowledge with their peers.

Community legal education

An approach commonly used by CLCs to empower members of their community with legal knowledge is Community Legal Education (CLE). CLE has long been regarded as a core component of work undertaken by CLCs, within community development practice.[116] CLE is also undertaken as a statutory function by other bodies such as some government departments, law foundations and legal aid commissions.[117]

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[114] Liz Mackie, *Legal Capability for Everyday Life*, Evaluation Report commissioned by Law for Life (January 2013) 19–20. During the project three courses were held and thirty people took part in six sessions: <www.lawforlife.org.uk/index.php/law-for-life-projects/legal-capability-for-everyday-life/> (last accessed on 7 October 2014).

[115] L Curran and M Noone, 'The Challenge of Defining Unmet Legal Need' (2007) 63 *Journal of Law and Social Policy* 63–4.

[116] Community Development & Legal Education Working Group of the Federation of Community Legal Centres Victoria, *Community Legal Education Made Easy*, Federation of Community Legal Centres, Victoria (2nd ed, 2010) Information Sheet 1, 5. CLE is acknowledged as a core activity of CLCs within CLC funding agreements with State and Commonwealth governments under the Commonwealth Legal Services Program, which funds forty-one CLCs in Victoria.

[117] *Legal Aid Act 1978* (Vic) Part II s 6(2)(d): 'Victoria Legal Aid may initiate and carry out educational programs designed to promote an understanding by the public, and by sections of the public who have special needs in this respect, of their rights, powers, privileges and duties under the laws in force in the State.' *Victoria Law Foundation Act 2009* (Vic) Part 2, s 5: 'Functions of the foundation are (a) to promote or undertake community education within Victoria, including school programs, in relation to the law and the legal system; (b) to disseminate knowledge relating to the law to assist persons in accessing the law …'

Guidelines for the Management of CLE Practice in Australia defines CLE as the 'provision of information and education to members of the community, on an individual or group basis, concerning the law and legal processes, and the place of these in the structure of society. The community may be defined geographically or by issue'.[118] CLE is further defined by the guidelines as comprising:

> legal information and legal education, both of which have a legitimate role in the delivery of CLE, but should not be confused. Legal information is important because many people are powerless in particular situations primarily through lack of knowledge – knowledge is power … Legal education encourages a critical understanding of the law and the legal system and allows an assessment of its impact or usefulness. It is contended that education must be a mechanism for consciousness-raising, not simply an unquestioning acceptance of the status quo.[119]

CLCs are recognised as having 'experience and expertise in the design and delivery of CLE. The connection with community makes centres very well placed to continue and to develop this area of work'.[120] The National Association of Community Legal Centres's (NACLC) online Community Legal Education and Reform Database (CLEAR)[121] is an example of how CLCs and legal aid commissions share their experience and expertise in CLE to learn from, extend and build on existing CLE projects in order to design and develop new projects. There are currently more than four hundred and fifty projects in the CLEAR database.

CLE activities undertaken by CLCs – raising basic legal awareness of community members and their understanding of basic legal information – would be placed at the beginning of Leering's spectrum of legal literacy and capability training.

The Federation of Community Legal Centre's toolkit *Community Legal Education Made Easy* encourages CLCs to have an understanding of how people learn to assist in the design and delivery of effective CLE.[122]

Adult learning principles

Adult learning principles recognise that traditional teaching methods, such as lecturing or the use of dense text, are often not effective, particularly for adult learners.[123] Adult learning principles recognise that individuals have life experience and encourage building on past experience. Interactive teaching methods are more effective to engage participants and encourage active learning.

An example of interactive activities often used by CLCs in CLE is the use of case studies, scenarios and stories to inform points; debates; mock interviews;

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[118] Produced by the National Community Legal Education Committee (August 1995) 1.

[119] Ibid.

[120] *Community Legal Education Made Easy*, above n 116, Information Sheet 1, 8.

[121] CLEAR is accessible on NACLC's website: <www.naclc.org.au/cle_database.php> (last accessed on 7 October 2014).

[122] *Community Legal Education Made Easy*, above n 116, Information Sheet 7.

[123] For more on Adult Learning Theory and Principles, see the Clinical Educator's Resource Kit: <www.qotfc.edu.au/resource/?page=65375> (last accessed on 7 October 2014). For more on Principles of Adult Education, see: *Community Legal Education Made Easy*, above n 116, Information Sheet 7.

and role-plays. Interactive CLE games include Legal Lingo Bingo[124] and Human Rights are Aussie Rules.[125] An interactive teaching approach designed to bring law to ordinary people that is used in more than forty countries is Street Law.[126] Street Law programs are designed to be accessible, engaging and interactive to empower students and grassroots communities to become active participants in society through education about the law, democracy and human rights.[127]

Plain language resources and materials, such as factsheets, hand-outs and manuals that can be referred to later are useful tools to support the retention of information.

To effectively communicate with adult learners, different learning styles also need to be taken into account in the design and delivery of education initiatives. Effective education initiatives need to be culturally appropriate, responsive to the needs – and tailored to suit the learning style of – particular communities, such as traditional Aboriginal learning styles or bilingual education and intercultural communication in culturally and linguistically diverse communities.[128]

Education and training methods used also need to take account of the literacy level of the target audience. Where literacy levels are low, such as with farmers from rural provinces in the Philippines, training may use games and pictures to explain the law.[129]

'Train-the-trainer' sessions often use interactive teaching methods to communicate information to be delivered to other members of the trainer's community. It is crucial that information is accurately retained by trainers to ensure that it is reliably passed on. Unfortunately, train-the-trainer sessions are often one-off or short-term, with little ongoing training and support for trainers. In contrast, peer education and paralegal programs require a longer-term commitment with ongoing training, supervision and support to sustain the programs over time.

The programs visited in this project highlighted the importance of recognising an individual's life experience, taking account of different learning styles, and tailoring training to be culturally appropriate. Leering's spectrum of legal literacy

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[124] A game produced by Eastern CLC in Victoria, exploring common legal issues through a variation of the traditional bingo format.

[125] A schools-based education resource developed by Eastern CLC that uses sport to teach children about human rights (see the CLEAR database for details).

[126] Street Law began in 1972 as a program developed by Georgetown University Law Center for law students sent into high schools in Washington, DC. It is now used in United States, Central and South America, Europe, Africa, Asia and the Middle East.

[127] For more information, see Street Law Website <www.streetlaw.org/en/about/who_we_are> (last accessed on 7 October 2014). Professor David McQuoid-Mason, of the University of KwaZulu-Natal, Durban, South Africa, presented at the National CLC Conference in 2013 on the Street Law Program in South Africa. Also see: <www.streetlaw.org.za> (last accessed on 7 October 2014).

[128] Ben Grimes, *Strong Foundations for Community Based Legal Education in Remote Aboriginal Communities*, North Australian Aboriginal Justice Agency (December 2011). A summary of key principles necessary for the development of high quality CLE initiatives is at 3–8. See also, for a discussion about CLE strategies most effective in providing legal information to refugee communities, Katie Fraser, *Prevention Is Better Than Cure: Can Education Prevent Refugees' Legal Problems?* CLC Fellowship Report (Victoria Law Foundation, 2011) 18–20.

[129] Interview with Marie Hazel Lavitoria, Executive Director, SALIGAN, Ateneo de Manila University, Quezon City, 8 April 2014.

and capability takes a graduated approach to capacity building and learning along a continuum. Individuals given the opportunity to participate in legal education have improved their confidence and capability to better deal with everyday legal issues. Knowledge is power. Legal education and training that is accessible, engaging and interactive is more effective in empowering community members.

Peer legal education within communities?

'Peer legal education' is a term that describes the use of peer educators to spread legal information and educate their peers about legal issues. CLE strategies sometimes involve CLCs training community members, representatives or leaders to pass on training and legal information to others in their community. Where those individuals are accepted and trusted as peers by others in the community, this work may be characterised as peer legal education.

As an outsider it may be difficult to identify who is a trusted peer within a community. This is an area open to discussion and dependent on the relationship between the trained educator and the community recipients. It is therefore recommended that the Federation of Community Legal Centres' Community Development & Legal Education Working Group hold a forum to open dialogue and explore the use of peer-based initiatives to deliver legal education to empower targeted communities, particularly marginalised communities (see Recommendation 2 in this report, page 70).

A number of CLE initiatives that could be characterised as peer legal education are outlined below, even though they are not identified or labelled as such.

Newly arrived and refugee communities

Adult Multicultural Education Services Community Guides were trained by Footscray CLC in November 2011 to equip them to recognise and deal with legal issues, and to provide information and legal referrals. Areas covered in the basic Introduction to Australian Law included family violence, divorce, child protection, driving, consumer contracts and police powers.[130]

In a current project, Footscray CLC will run a short-term train-the-trainer program for community workers from key, newly arrived and refugee communities in the west. Footscray CLC will train the trainers in employment rights and responsibilities and then work with them to develop an education event and resource for their community.[131]

Community Legal Guides

Community Legal Guides from the Karen and Bhutanese emerging refugee communities in the Northern Territory were trained by the Legal Aid Commission in 2012–2013. Community Legal Guides selected for training included two adult and two youth representatives from each community, one male and one female

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[130] Community Guides Training: Introduction to Australian Law. For more information, see resource details on the NACLC CLEAR database <www.naclc.org.au/resource_details.php?resource_id=331> (last accessed on 7 October 2014). For a discussion about CLE strategies most effective in providing legal information to refugee communities, see: Katie Fraser, above n 128, 18–20.

[131] For further details, see Footscray CLC website: <www.footscrayclc.org.au/images/stories/Footscray_CLC_Employment_Law_Service_and_CLE_Program_Update.pdf> (last accessed on 7 October 2014).

of each. The program was designed to ensure there was a choice of legal guides for community members to approach for information and referral and that 'guides understand their peers' experiences'.[132]

Community Legal Guides participated in an eight-week training program on a range of legal areas, such as 'know your rights', police, consumer issues, renting, work and family matters, with an emphasis on problem-solving and identifying appropriate referrals. Guides indicated that the information would assist their peers to improve their experience of settlement in Australia. Once trained, Community Legal Guides are involved in organising community education sessions for new arrivals, including public information stalls, drama presentations, facilitating group discussions and informal information-sharing among their peers.

Community Legal Guides at final training session, Casuarina Library, Northern Territory, on 4 May 2013.

Settled and Safe

Victoria Legal Aid employed Community Liaison Educators based in metropolitan and regional areas of Victoria[133] to deliver legal education sessions for newly emerging culturally and linguistically diverse communities for two years, commencing in February 2012. While Victoria Legal Aid sought to recruit educators from within the targeted communities, this was not possible with all educators employed. The Settled and Safe project aimed to prevent family violence in these communities by exploring legal issues such as post-separation parenting disputes, child protection and family violence intervention orders through storytelling and discussion.[134]

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[132] Community Legal Guides Program outline provided to the author by John Jablonka, Multicultural Educator, Northern Territory Legal Aid Commission. It is a collaborative program of Northern Territory Legal Aid and Anglicare Northern Territory's Refugee and Migrant Settlement Services.

[133] Victoria Legal Aid offices in Ringwood, Dandenong, Shepparton, Morwell and Melbourne.

[134] For more details on the Settled and Safe Project see: <www.legalaid.vic.gov.au/about-us/community-education-and-projects/settled-and-safe> (last accessed on 7 October 2014). Victoria Legal Aid has since developed training packages for organisations engaging with newly arrived communities.

Seniors rights and elder abuse

Seniors Rights Victoria recruits seniors as volunteers to speak publicly to raise awareness of elder abuse, rights of older people, legal issues and related topics with other seniors within the community. Seniors Rights Victoria adopts a peer education model as 'one of the most effective and powerful methods for raising awareness and providing information'.[135] The volunteers bring life experience and an understanding of ageing and issues raised by other seniors, who can relate to them as one of their own.[136] It is acknowledged that this model is limited in its capacity to reach those isolated older persons not connected with seniors groups, a major issue for older people.[137] An induction program is completed by Volunteer Public Speakers, who are provided with a speaker's kit and other resources to use when preparing to give talks to seniors groups. Volunteer Public Speakers are supported with six-weekly meetings to share issues that have arisen and to debrief. The Community Education Coordinator also provides individual support and debriefing.

Peer legal education by paralegals

The distinction between peer paralegals and community paralegals is dependent on how other community members relate to and perceive the person in the paralegal role. If a person is identified as and considered a peer (as defined earlier), then they may be described as a peer paralegal. Peer paralegal programs involve educating peers on the law, so peer education is necessarily a component of these programs.

The rise of paralegal movements

The history and political background of a country and its people impact on the social and legal context in which community paralegal programs emerge and operate. It is beyond the scope of this project to undertake a thorough historical or political analysis for each country. In countries like South Africa and the Philippines, it has been after the end of repressive regimes, in a transition towards democracy – when new constitutions are adopted, giving hope of future freedoms – that community paralegal programs have emerged. Injustices of the past are frequently the catalyst for a paralegal movement to protect and advocate for human rights.

Paralegals active against apartheid

Community paralegals have a long history in South Africa, active since the 1950s, when they began assisting black South Africans to navigate and resist the unjust laws of apartheid. While politically active organisations were banned by the apartheid regime in 1960, and leaders such as Nelson Mandela and Oliver Tambo rallied support for the struggle against apartheid, at a grassroots level paralegals were advising and advocating for those whose human rights were being violated.

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[135] Senior Rights Victoria, *Education* <http://seniorsrights.org.au/services/education/> (last accessed on 7 October 2014).

[136] Interview with Gary Ferguson, Community Education Coordinator, Seniors Rights Victoria, Melbourne, 25 June 2014.

[137] Ibid.

Human rights organisations like Black Sash were instrumental in providing paralegal assistance for black South Africans who broke oppressive apartheid laws. Black Sash began in 1955 with six middle-class white women opposing constitutional amendments aimed at removing 'coloured' people from the voters' roll.[138] A black sash was worn by the women during protests and represented the mourning of the loss of constitutional rights. The firsthand knowledge gained, and daily experience of providing paralegal assistance in advice offices, gave Black Sash a basis from which to speak out against injustices and play a role in public education. Today Black Sash continues to provide free paralegal advice and assistance through a helpline and its regional advice offices, and has produced a paralegal manual.[139]

Alternative lawyering in the Philippines

Community paralegals have been active in the Philippines for over thirty years. Paralegals provided legal assistance for activists who were arbitrarily arrested, detained and tortured under the martial law regime of President Ferdinand Marcos.[140] In 1989, in the post-Marcos era, a new generation of activist lawyers and alternative law groups emerged.

The Alternative Law Groups (ALG) is a coalition of twenty-one NGOs, with about one hundred lawyers (including lawyers working in ALG member organisations) engaging in alternative law practice in the Philippines. According to ALG's Coordinator, Marlon J. Manuel, alternative lawyering employs legal knowledge and skills through the legal system and legal processes, and employs the law as a tool for social justice, social change and social development.[141] While ALG member organisations have different priority areas directing their practice and programs, they share a commitment to a human-rights based approach using similar strategies. Many ALGs operate community paralegal programs, including the largest and oldest member, SALIGAN,[142] the Ateneo Human Rights Center, and the Humanitarian Legal Assistance Foundation.

The emergence of community paralegalism has been attributed to a 'scarcity of public interest lawyers'.[143] The national legal aid program provided by the Bar Association in the Philippines is not considered responsive or effective by the ALGs. Very few lawyers are willing to work on issues of fundamental justice, with no monetary benefit for representing poor and vulnerable clients, and a reluctance

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[138] For more on the history of Black Sash, go to: <www.blacksash.org.za/index.php/our-legacy/our-history> (last accessed on 7 October 2014).

[139] Paralegal Advice Website, based on the paralegal manual published by The Black Sash and the Education and Training Unit, South Africa (November 2011) <www.paralegaladvice.org.za/> (last accessed on 7 October 2014).

[140] Jennifer Franco et al., *Community Based Paralegalism in the Philippines: From Social Movements to Democratization*, The World Bank Justice & Development Working Paper Series [27/2014] 5. Established in 1974, The Free Legal Assistance Group (FLAG) was one of the first NGOs training paralegals.

[141] Defined by Marlon J. Manuel in Ateneo Human Rights Center, *Training Manual for Paralegals* (Ateneo Human Rights Center, 2010) 6–9. Marlon has a long history with ALGs since undertaking an ALG legal internship.

[142] Translates as: 'alternative legal assistance centre.' Interview with Marie Hazel Lavitoria, above n 129.

[143] Jennifer Franco et al., above n 140, 13.

to represent clients against powerful companies and government. In this context, community paralegals are vital in improving access to the legal system.[144]

Global legal empowerment networks

The Open Society Foundation through its Justice Initiative has helped establish legal empowerment programs overseas, and it continues to support their operation. The Open Society Foundation is an NGO working with communities in over one hundred countries, providing funding grants to community-based organisations to advance the health and human rights of marginalised and vulnerable groups worldwide.[145] The Justice Initiative has developed a practitioners' guide to community-based paralegal programs to encourage the establishment of more initiatives.[146] A global legal empowerment network has emerged with the Namati website.[147] The website invites members from the international community of grassroots justice organisations to join and share their experiences of operating community-based paralegal programs. Reinventing the Rules is another website which shares the latest lessons learnt about the rule of law and legal empowerment.[148] Online communities are having conversations as well – discussing and sharing their experiences, challenges and ideas about expanding access to justice through community paralegals, and exploring how the community paralegal model might be applied to new issues and places.[149]

Impact of legal empowerment strategies

Legal empowerment strategies used around the world have resulted in a range of positive impacts.[150] Evidence has shown that legal empowerment strategies can increase legal knowledge and community participation, help resolve disputes, improve health, strengthen education, and bring about positive changes in institutional policy and practice.[151]

Impact of community paralegals

A review of forty-five studies of community-based paralegal programs concluded that 'evidence suggests paralegals have significant potential as intermediaries who can help people bring good laws to life'.[152] In contrast to the body of

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[144] Interview with Marlon J. Manuel, Coordinator, ALG, at Ateneo de Manila University, Quezon City, 8 April 2014.

[145] For more about Open Society Foundation, see: <www.opensocietyfoundations.org/about> (last accessed on 7 October 2014).

[146] Open Society Justice Initiative, *Community-based Paralegals: A Practitioner's Guide* (Open Society Institute, 2010).

[147] For more information, see: <www.namati.org/> (last accessed on 7 October 2014).

[148] See: <http://reinventingtherules.com/> (last accessed on 7 October 2014).

[149] New Tactics in Human Rights (a program of the Centre for Victims of Torture) facilitates online conversations on their website. For an example of a recent conversation on community paralegals in August 2014, see: <www.newtactics.org/conversation/expanding-access-justice-through-community-based-paralegals> (last accessed on 7 October 2014).

[150] Laura Goodwin and Vivek Maru, *What do we know about legal empowerment? Mapping the Evidence*, above n 108, 4.

[151] Ibid 50.

[152] Ibid 28.

research on community health, many international paralegal efforts are not yet documented, and it is recognised that more can be learned about how paralegals work across diverse issues and contexts from existing or completed programs. Longitudinal studies are needed to capture the medium-term and long-term effects of legal empowerment programs as well as the sustainability of positive impacts over time.[153]

Across Asia, Europe and Africa, the paralegal programs explored later in this report have in common an improvement in access to legal services for their communities. Impacts include the reporting of human rights abuses and their exposure at an international level, earlier intervention for inmates in pretrial detention, provision of information on legal rights at time of arrest, improved access to health care and the resolution of disputes locally without the need to litigate. The impact of paralegal efforts and their advocacy is to give a voice to communities that can be heard within the legal system.

Bridging the gap – improving access to legal services

Community paralegals are vital to grassroots communities in improving their access to legal services and the legal system, complementary to the work of lawyers. This is especially the case in remote or rural areas where there are only a few lawyers, if any, or where, as in the Philippines, there are few lawyers willing to act for poor and vulnerable clients because of a lack of financial incentives. In Cambodia, community paralegals have demonstrated they can be effective in bridging the gap by improving access to dispute resolution mechanisms as an alternative to an inaccessible court system (see page 57).

A recent study by the World Bank, which evaluated the impact of Community Advice Offices (CAOs) on clients and communities, highlighted the 'critical contribution that South African paralegals make in advancing access to justice'.[154] The research also highlighted that

> the formal justice system clearly cannot provide the kind of assistance required by poor people to fully recognise their human rights without the support of community-based paralegals … particularly in rural areas where non-lawyers remain the only conduit for indigent and marginalised communities to afford equal access to justice.[155]

Bilingual peer educators and paralegals can make the law more accessible to people. In the Philippines all legislation is written in English. While English is an official language of the Philippines along with Tagalog (Filipino), many indigenous and rural communities do not speak English. Another 165 languages are spoken across the 7000-island archipelago of the Philippines. Just to have the law translated into a language spoken by the local community makes the law more accessible.[156] Bilingual paralegals not only translate but also explain the law.

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[153] Ibid 51.

[154] Jackie Dugard and Katherine Drage, *To Whom Do the People Take Their Issues? The Contribution of Community-Based Paralegals to Access to Justice in South Africa*, The World Bank Justice & Development Working Paper Series [21/2013] 41. The evaluation was based on twelve case-tracking interviews with current and former clients of six CAOs (at 24).

[155] Ibid 41.

[156] Observed Labor Paralegal Training conducted in English and Tagalog by a bilingual lawyer, Cavite, the Philippines, 13 April 2014.

Examples were given earlier of programs employing and training guides to deliver legal information and educate members of newly arrived refugee and culturally and linguistically diverse communities.

Accessible legal services that can advise, support and empower individuals, particularly from marginalised communities, to know their rights, make complaints about discriminatory treatment and seek remedies can help to avoid negative impacts on health and the broader community. A VicHealth report in 2009, for example, highlighted the negative impact discrimination has on individuals and communities. The report revealed that

> evidence from many studies suggests that exposure to discrimination is a factor in poor health, in particular poor mental health. It also has negative impacts on productivity, community cohesion, social inclusion and the attainment of human rights. At its worst, it leads to individual and community level violence.[157]

Communities empowered to act

Paralegals can help empower members of their community to not only know their rights, but also to take action to enforce their rights. Research has shown the value of community paralegals in the Philippines. A survey found, by comparing different provinces in the Philippines with and without paralegals, that communities with paralegals are able to act when their rights are violated and have the ability to translate knowledge into action.[158]

A research project in Tanzania and Mozambique found that women were more likely to pursue legal claims after legal education on land rights, but that this alone was not sufficient to achieve change in agency. Women in villages where paralegals were connected to lawyers were most effective in bringing their case to court and in translating the claim into a remedy.[159]

Empowered communities advocate for change

Advocating law reform

Training and awareness of the law means community paralegals can critically analyse the law and then seek to change it. For example, SALIGAN paralegals identified that the law relating to marital infidelity in the Philippines had a discriminatory impact on women. After identifying this gender inequality, the paralegals initiated advocacy, together with SALIGAN staff, for law reform. This law is currently being reviewed by the Department of Justice, along with other legislation.[160] This is an example of advocacy for law reform being based on personal daily experience by the affected community.

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[157] Victorian Health Promotion Foundation (VicHealth), *Building on Our Strengths. A Framework to Reduce Race-Based Discrimination and Support Diversity in Victoria, Addressing the Social and Economic Determinants of Mental and Physical Health* (November 2009) Victorian Health Promotion Foundation.

[158] Social Weather Stations, *Research on the Poor Accessing Justice and the ALG as Justice Reform Advocate* (2008) Inroads ALG Study Series 4, Alternative Law Group, Quezon City, Philippines 83, 85.

[159] Laura Goodwin and Vivek Maru, above n 108, 26.

[160] Interview with Marie Hazel Lavitoria, above n 129.

Legal empowerment strategies and community advocacy

Empowered communities are not only better informed about how to act to protect individual rights but become more vocal in advocating for their community's interest. Community paralegals at a grassroots level are well placed to work alongside such community mobilisation efforts.

Legal empowerment strategies can overcome barriers and improve the health of a community. The benefit of developing advocacy skills within communities is felt not only in the improved health and wellbeing of individuals, but also for the whole community. An example given later in this report is in Macedonia where Roma paralegals have not only empowered Roma citizens to enforce their individual legal, health and human rights, but have also improved access to health care and contributed to systemic change for the benefit of the whole community. Assistance from Roma paralegals has even been sought from non-Roma in the community. The *Bringing Justice to Health* report recognises that, 'the impact of legal empowerment on public health cannot be overstated. Human rights violations compromise the health of marginalised communities, impeding their access to health care and undermining the underlying factors affecting their health.'[161]

Partnerships between paralegal programs and strong NGOs that can coordinate community campaigns are often formed not only to seek legal remedies but also to raise public awareness of issues and to gain public support. This approach by ALGs in the Philippines sees them partner with strong community-based organisations, which can organise their members to collectively campaign for legal and human rights, and broader societal change. For example, SALIGAN-trained Labor Paralegals provide individual advocacy and legal assistance for other garment workers, while their partner, the garment workers' labour union PIGLAS, can mobilise workers to take collective action such as strikes or community rallies.

In South Africa, WLC paralegals support and assist individual sex workers to report and make complaints about human rights abuses. Documented cases of human rights violations of sex workers have led to a complaint being lodged by WLC with the United Nations. Partner organisations SWEAT and Sisonke organise and mobilise sex workers to march for their legal and human rights, publicly campaigning to have sex work decriminalised.

An approach that uses the law in support of an organising effort, such as in mobilising a community, in conjunction with more conventional legal strategies such as litigation, is *law and organising*, which 'places an emphasis on community organising and empowerment over legal strategies'.[162]

Filipino farmer associations have been active in organising themselves to raise public awareness of their campaign to protect their land rights under agrarian reform law in the Philippines, while at the same time pursuing strategic litigation. In 2007, a group of Filipino farmers walked from Mindanao to Manila, talking to communities along the way, gathering public support and building a community campaign in support of their land rights: 'The farmers lost their case in the

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[161] Emma Day and Ryan Quinn, above n 107, 3.

[162] Nicole Rich, *Reclaiming Community Legal Centres: Maximising Our Potential So We Can Help Our Clients Realise Theirs* (Victoria Law Foundation and the Consumer Action Law Centre, 2009). For a comprehensive discussion on 'law and organising', refer to 88–100.

Supreme Court years back, but were able to use another remedy provided by law to get back their lands.'[163]

Legal empowerment initiatives seek to make the law meaningful and accessible for ordinary people. Global online networks share ideas and experiences of legal empowerment approaches to improve access to justice for communities around the world. A scarcity of lawyers willing to assist the poor and vulnerable has resulted in community paralegals emerging to bridge the gap. Community paralegals not only work directly with their communities to raise awareness of legal rights, they are translating knowledge into action, assessing and acting on legal problems. Community paralegals are vital links between their community, lawyers and legal services.

[163] Interview with Marie Hazel Lavitoria, above n 129.

Paralegals empowering their communities

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Legal empowerment initiatives are being established in developing countries using community paralegal programs. These programs are community-driven, with a human-rights based approach to address community legal needs. Some examples are explored below. 'Community-based paralegals usually live among the people they work with – often in rural or marginalised areas – and offer a holistic set of strategies for addressing client problems … which focuses on structural causes of injustice and the empowerment of communities to address them.'[164]

A diverse range of paralegal programs were explored during this project. A broad range of community-based organisations, mostly overseas, was visited, and people working within these programs generously shared their time, knowledge and experience during interviews to inform the examples provided within this report (see Appendix 1). Participants interviewed were asked questions about their selection and recruitment process; training, support and supervision provided for paralegals; and the services delivered by, and paralegal work undertaken, in their program (see Appendix 2).

The only programs in Victoria that resemble a community paralegal program are in Aboriginal communities. While the Victorian Aboriginal Legal Service (VALS) employs three paralegals, they perform a conventional role assisting lawyers. Client Service Officers (CSOs) employed by VALS provide what might be described as paralegal support to members of their communities.

Below are examples of programs using paralegal approaches to empower communities. From prisoners and garment workers in the Philippines, villages in Cambodia and the Roma in Europe, to sex workers in Kenya and South Africa, members of these communities are being trained as paralegals, a vital bridge between their communities and lawyers.

There is no one-size-fits-all model when it comes to paralegal programs (see Appendix 3 for a quick-guide summary). Programs evolve and develop to meet the legal needs and address issues of the communities served by the program.

Defining the role of paralegals

In Western legal practice, the conventional notion of paralegals is assisting a lawyer. There is no formal recognition of paralegals within the Australian legal system and no acknowledgement or classification of paralegals as a specific profession. Mary Anne Noone defines paralegals as:

> Workers who, although not admitted to practice, often perform legal tasks which are also performed by lawyers. They may work beside lawyers; in the stead of lawyers or be supplementary to lawyers. The term paralegal is often used interchangeably with the terms legal assistant, law clerk, lay advocate,

[164] Open Society Justice Initiative, *Community-based Paralegals: A Practitioner's Guide*, above n 146, 13–14.

> non-lawyer and community legal worker … [I]t is important to make a clear distinction between those paralegals who act under the supervision and control of lawyers and those who do not.[165]

Tasks performed by paralegals working in a conventional sense by assisting a lawyer within private practice or a commercial law firm, such as doing conveyancing or drafting simple legal documents, should be distinguished from the work of community paralegals.[166] 'Community paralegals are different from conventional paralegals – their primary role is not to assist lawyers, but rather to work directly with the communities they serve.'[167]

The work of community-based paralegals is described as encompassing work that can be categorised as:

> building rights awareness; settling private disputes; and increasing state and corporate accountability. The most elemental task of paralegals is building awareness of the rights of the poor and other marginalised groups … Paralegal training today makes a clear distinction between legal literacy (know[ing] your rights) and skills training (taking action to enforce and implement your rights).[168]

Paralegal training programs typically cover not only the substantive law (legislation and case law), but also provide practical skills and capacity development, including the tools of advocacy, how to draft legal documents such as affidavits, how to represent clients before tribunals, and how to lobby and advocate for legislative change at local and national levels of government. In the Philippines, community groups with trained paralegals are able to assess and act on a legal problem by translating knowledge into action.[169]

Vivek Maru defines the essence of the paralegal approach:

> Paralegals are laypeople working directly with the poor or otherwise disadvantaged to address issues of justice and human rights … paralegals strive to achieve concrete solutions to people's justice problems ... paralegals make use of the law … paralegals are connected to lawyers.[170]

The role of paralegals can vary greatly between programs. This is illustrated by the range of tasks performed in different environments and communities by a paralegal. The WLC in South Africa explains the role of a paralegal:

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[165] Mary Anne Noone, 'Paralegals in the Community's Interest?' (Paper presented at the Australian Institute of Criminology's conference Improving Access to Justice: the Future of Paralegal Professionals Conference, 19–20 February 1990) <www.aic.gov.au/publications/previous%20series/proceedings/1-27/03.html> (last accessed on 20 November 2014) 26.

[166] Note, some CLCs use paralegals in a conventional sense to assist lawyers, such as the Victorian Aboriginal Legal Service (VALS), which employs paralegals in their criminal and civil law sections. Also, the Employment Law Centre of Western Australia, where paralegals give telephone advice supervised by the Principal Solicitor. Community Legal Centres and Volunteers, *Volunteers Bringing Expertise to CLCs: Working Collaboratively* (National Association of Community Legal Centres, Sydney South, NSW, 2014) 16.

[167] Laura Goodwin, *What is a Community Paralegal?* Namati (August,2014) <www.namati.org/publications/what-is-a-community-paralegal/> (last accessed on 7 October 2014).

[168] Jennifer Franco et al., above n 140, 21–2.

[169] Social Weather Stations, above n 157, 83.

[170] Vivek Maru, 'Between Law and Society: Paralegals in the Provision of Justice Services in Sierra Leone and World Wide' (2006) 31 *Yale Journal of International Law* 427, 469.

> To provide advice and assistance to members of their community. To do this, they are trained in basic law and human rights. As a paralegal, you are not a lawyer but someone who works in the legal profession assisting lawyers in all aspects of the practice of law.[171]

A common feature is the connection paralegals have to lawyers, also recognised by Noone: 'paralegals can form an important role in making links between the individual and the legal system'.[172]

Paralegal education and training

The level of education and training provided for paralegals differs between programs. While some provide an intensive induction, in others paralegals learn through on-the-job training. Paralegal education and training would be considered more advanced along Leering's spectrum of legal literacy and capability training, as paralegals develop their capacity to undertake individual legal advocacy and, for some, even the capacity to advocate more broadly on systemic issues.

Most programs examined in this report required a time commitment, usually three to four days, for initial intensive training and induction. In some communities this was unrealistic given members' other commitments, so training needed to be flexible and accessible. For example, an alternative law group in the Philippines, SALIGAN, in partnership with a union, PIGLAS,[173] held training for workers to become labour paralegals every Sunday afternoon over fourteen weeks. For these workers in the garment industry who worked six days a week, Sunday was their only day of rest to spend with family, undertake home chores and attend church, yet they dedicated Sunday afternoons to paralegal training. SALIGAN lawyers travelled three hours (return) to the province, Cavite, each week, where the garment workers lived to ensure the training was accessible.

Labor Paralegals and SALIGAN lawyers at training, Cavite, the Philippines, on 13 April 2014.

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[171] Stacey-Leigh Manoek et al., *Paralegal Manual* (Women's Legal Centre, Cape Town, South Africa, 1st ed, 2013) 21 <www.wlce.co.za/index.php/2013-04-30-11-53-09/2013-05-08-11-48-14/violence-against-women/267-paralegal-manual> (last accessed on 7 October 2014).

[172] Mary Anne Noone, above n 165, 34.

[173] Translates as: 'united worker's voice'. Training was observed at PIGLAS premises, Cavite, the Philippines, on Sunday 13 April 2014.

Some programs required not only a time commitment, but potential paralegals or peer educators also needed to travel long distances to attend training, resulting in substantial time away from family. The SWEAT peer education program often arranged a venue with accommodation at which to hold intensive induction training to enable peer educators to attend over consecutive days without the need for travel.

Currently, there are very few accredited training courses for paralegals and few providers of paralegal education in Australia. Southern Cross University offers an Associate Degree in Law (Paralegal Studies).[174] The Diploma in National Indigenous Legal Advocacy was developed by the Australian Human Rights and Equal Opportunity Commission (HREOC) in response to one of the recommendations of the Royal Commission into Aboriginal Deaths in Custody. There are two training providers in Far North Queensland and New South Wales.[175] The course is practical, related to the needs of Indigenous communities, and covers civil and criminal law, including how to work with courts and police. All Client Service Officers (CSOs) at the Victorian Aboriginal Legal Service (VALS) have undertaken the program.[176] VALS's lawyers working in different areas of law – such as criminal law, civil law, and family law and child protection – provide in-house training for CSOs. The Victorian Equal Opportunity and Human Rights Commission also provides regular training for all VALS staff.

Paralegal support within Aboriginal communities

Despite Indigenous Australians having the oldest continuing culture in human history,[177] and despite their customs and traditional connection with ancestral lands, native title was not recognised until 1992, in the landmark Mabo case.[178] Government policy and legislation implementing schemes of racial segregation and assimilation resulted in Aboriginal missions and reserves and the stolen generations of Aboriginal children.[179] Aboriginal Australians have endured human

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[174] See: <http://courses.scu.edu.au/courses/associate-degree-in-law-paralegal-studies> (last accessed on 7 October 2014).

[175] See: <www.tranby.edu.au/index.php?page=Diploma-of-National-Indigenous-Legal-Advocacy> (last accessed on 7 October 2014).

[176] Interview with Wayne Muir, Chief Executive Officer, and Peter Rotumah, Manager, Community Justice Programs at VALS, Preston Office, 23 June 2014. Three CSOs are also currently studying for a law degree.

[177] Scientists have discovered artefacts of this ancient culture dating back over fifty thousand years at Mungo National Park in New South Wales – one of the oldest places outside of Africa to have been occupied by humans since ancient times: <www.visitmungo.com.au/> (last accessed on 7 October 2014).

[178] *Mabo and Others v Queensland (No. 2)* (1992) 175 CLR 1.

[179] The Stolen Generations were the children of Australian Aboriginal and Torres Strait Islander descent who were forcibly removed from their families by the Australian federal and state government agencies, under legislative authority, between approximately 1909 and 1969. Australian Human Rights Commission, *Bringing Them Home Report*, National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (1997) <www.humanrights.gov.au/publications/bringing-them-home-report-1997> (last accessed on 7 October 2014).

rights violations and injustices, intergenerational discrimination and racism.[180] These are not my stories to tell, but they are stories that should be heard by all Australians, as they have shaped the social, cultural, legal and political landscape of this country. Aboriginal people have told their stories before Royal Commissions, parliamentary inquiries and courts of law, and their testimonials have been recorded in documents such as court transcripts and reports.[181]

Disproportionate incarceration rates for Aboriginal people

The Royal Commission into Aboriginal Deaths in Custody was established by the Hawke Government in 1987 as a result of Aboriginal deaths in custody being unacceptably high, due partly to the gross disproportion in incarceration rates for Aboriginal people. The Royal Commission's final report released in 1991 made 339 recommendations, mainly concerned with procedures for persons in custody, liaison with Aboriginal groups, police education and improved accessibility to information.[182]

Over two decades later Aboriginal people remain over-represented in Australian prisons. Over one quarter (27%) of the total prisoner population in 2013 identified as Aboriginal or Torres Strait Islander.[183] In 2013, the rate of imprisonment for Aboriginal and Torres Strait Islander prisoners was fifteen times higher than the rate for non-indigenous prisoners, consistent with the previous year.[184]

CSOs supporting Aboriginal people through the criminal justice system in Victoria

Within an hour of an Aboriginal person or Torres Strait Islander being arrested, Victoria Police is required to notify VALS that they have been taken into custody.[185] This practice ensures that all Aboriginal people who are arrested are informed of their legal rights and offered representation.

VALS employs CSOs to work with members of the Aboriginal community to assist and support them through the criminal justice system. CSOs can be contacted any

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[180] For example, the *Northern Territory National Emergency Response Act 2007* (Cth), introducing what was known as 'The Intervention' in s 132, which excluded the operation of the *Racial Discrimination Act 1975* (Cth).

[181] Examples include: Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, *"Little Children Are Sacred"* (2007), available at: <www.inquirysaac.nt.gov.au/> (last accessed on 20 November 2014); *Bringing Them Home* (April 1997), above n 179; *Mabo and Others v Queensland* (No. 2) (1992) 175 CLR 1.

[182] National Archives of Australia, 'Royal Commission into Aboriginal Deaths in Custody', Fact Sheet 112 <www.naa.gov.au/collection/fact-sheets/fs112.aspx> (last accessed on 7 October 2014).

[183] 8430 prisoners identified as Aboriginal or Torres Strait Islander of the total prison population of 30,775. Australian Bureau of Statistics, 4517.0 - *Prisoners in Australia*, 2013, Commonwealth of Australia <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4517.0~2013~Main%20Features~Aboriginal%20and%20Torres%20Strait%20Islander%20prisoner%20characteristics~6> (last accessed 20 November 2014).

[184] The age-standardised imprisonment rate was 1,959 Aboriginal and Torres Strait Islander prisoners per 100,000 adult Aboriginal Torres Strait Islander population. The equivalent rate for non-indigenous prisoners was 131 prisoners per 100,000 adult non-indigenous population: Australian Bureau of Statistics, 4517.0 - *Prisoners in Australia*, 2013, Commonwealth of Australia <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4517.0~2013~Main%20Features~Imprisonment%20Rates~32> (last accessed on 20 November).

[185] Known as an E*Justice Notification. Victoria Police Manual - VPM Instruction, section 1.9 – Taking a Person into Custody, Par 4.3.5 Indigenous Australians and Torres Strait Islanders.

time of the day, seven days a week, on weekends and public holidays. CSOs work on the frontline as the first point of contact. After initial contact with the client, the CSO will follow up with police, the client's family and support services. In rural areas, the CSOs also provide court support for clients and solicitors.

'One of the key strengths of our CSOs, we refer to them as the "translators", is they translate what's going on in the judicial system into Koori or plain English … this role is critical to the success of the program', according to VALS Chief Executive Officer, Wayne Muir.[186] CSOs work alongside lawyers and paralegals, providing an important link between lawyer and client, as Aboriginal clients often distrust lawyers, police, courts and the legal system. This is a unique role not provided by any other legal service in Victoria.[187] In other states, similar roles within Aboriginal legal services are often referred to as field officers. The only challenge identified by Wayne is the lack of resources to provide enough CSOs across the state.

CSOs are members of the local Aboriginal and Torres Strait Islander communities and are paid employees. Selection criteria for CSOs require that they are Aboriginal or Torres Strait Islander; have a cultural connection, life experience and good self-esteem; and be confident enough to advocate to the police, the sheriff and other authorities. Some CSOs have a wealth of knowledge and experience, and, because of their Aboriginality, understand the community. They are also able to raise cultural awareness within the criminal justice system, giving police and court staff a better understanding of the Aboriginal community.

Peter Rotumah, VALS's Manager of Community Justice Programs, believes that their 'CSOs are more akin to mentor[s] … it's more than just a job, it's looking after your mob or community'.[188] As Peter explained, working within small communities CSOs are known within the community, and people will seek their help outside office hours if needed. Peter compares it to helping out a neighbour: 'if a neighbour knocks on your door you wouldn't slam the door in their face'.[189] The CSO's connection with their Aboriginal community – their accessibility at any time, and being trusted as one of their mob – explains why Aboriginal people continue to seek legal assistance from VALS.

National network of community paralegals in South Africa

A national network of 320 Community Advice Offices (CAOs) operates in nine provinces, including urban townships and rural villages throughout South Africa, with about five hundred community-based paralegals across the country.[190] CAOs offer free advice services in predominantly impoverished communities – 'the detrimental legacy of apartheid'.[191] CAOs, like CLCs, differ in size and operate

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[186] Interview with Wayne Muir and Peter Rotumah, above n 176.

[187] Note: in Victoria, Aboriginal Paralegal Support Workers are employed by the Aboriginal Family Violence Prevention and Legal Service to assist Aboriginal survivors of family violence or sexual assault. See: <www.fvpls.org/Legal-Services.php> (last accessed on 7 October 2014).

[188] Interview with Wayne Muir and Peter Rotumah, above n 176.

[189] Interview with Wayne Muir and Peter Rotumah, above n 176.

[190] Interview with Nomboniso Nangu Maqubela, Interim Director, NADCAO, Bellville, South Africa, 1 May 2014.

[191] Jackie Dugard and Katherine Drage, above n 154, 17.

independently, with staff accountable to their management committees, which are elected from the local community. CAOs usually employ at least one paralegal, who is paid if funding is available – otherwise they volunteer. Advice officers have initial contact with clients and then if there is a legal issue refer them to the paralegal. Paralegals will advocate on behalf of clients to government departments, assist with resolving disputes, educate people about their human rights and, where necessary, refer clients to lawyers.

The main strengths of the paralegal model used in CAOs were identified by the National Alliance for the Development of Community Advice Offices (NADCAO) Interim Director, Nomboniso Nangu Maqubela, as playing a role in resolving disputes without the need to litigate. NADCAO is a non-profit NGO committed to the development and long-term sustainability of CAOs in South Africa. NADCAO currently plays a secretarial role to help establish the national peak body, the Association of CAOs of South Africa.

Nomboniso considers community paralegals as improving access to justice:

> sometimes laws are unjust and these are the areas of focus for paralegals as they are activists first. They primarily engage in resolving matters utilising alternative dispute resolution mechanisms, a skill that is not utilised liberally by lawyers, who are mostly experienced in matters of litigation and focus on advancing their role as officers of the court. Paralegals work at the coalface of communities and are accountable to the communities they serve.[192]

The two main challenges Nomboniso identified as facing CAOs were replacing older volunteers and staff, when they leave, with younger people, and funding the work of CAOs, which currently attracts no government funding.

Paralegal recognition and training

A set of minimum standards and a quality assurance model of self-regulation are being developed for CAOs by their peak body. NADCAO has been vocal in advocating for formal recognition of paralegals in the Legal Practice Bill. NADCAO was one of fifty African organisations to sign the Kampala Declaration on Community Paralegals in Uganda in July 2012, seeking recognition, regulation and resourcing of community paralegals by African governments.[193]

In South Africa, there are two national qualifications for paralegals – the National Paralegal Certificate (one year) and the Diploma in Paralegal Studies (three years). One of the leading providers of community paralegal training is the Centre for Community Justice and Development (CCJD). The CCJD is a non-profit organisation that provides training, research and support to fifteen community-advice offices, with twenty paralegals providing free legal assistance to rural communities in KwaZulu-Natal, South Africa. CCJD provides legal training for paralegals on legislation affecting the rights of women and children. Paralegals then use this information to conduct workshops to educate traditional leaders in their areas. This year CCJD is providing basic and advanced paralegal training, through the University of KwaZulu-Natal, for community paralegals from outside

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[192] Interview with Nomboniso Nangu Maqubela, above n 190.

[193] To view the list of signatories to the Kampala Declaration, go to: <www.namati.org/news/newsfeed/kampala-declaration/> (last accessed on 7 October 2014).

the organisation. CCJD is seeking accreditation of their training course and registration as a training provider.

'Every Sex Worker, A Human Rights Defender' in South Africa

The WLC in Cape Town, South Africa, provides legal services for sex workers in collaboration with SWEAT. The WLC noticed they were not reaching the full sex-worker community, and that there was mistrust between sex workers and anyone involved in the legal field. WLC found that it was most effective to train people from the sex-worker community to provide paralegal services to sex workers. These services are intended to make justice more accessible for sex workers. The peer paralegal program 'Every Sex Worker, A Human Rights Defender' commenced in 2010 with four paralegals.[194] The WLC currently employs two paralegals in full-time, paid positions in Cape Town, and is recruiting another two. The WLC has also recruited two paralegals for a new office opening in Johannesburg.

Paralegal recruitment and training

In recruiting paralegals the WLC looks for people who have basic human rights knowledge, are respected within the sex worker community, are former or current sex workers, have a history of helping other sex workers, speak more than one African language, and are literate and passionate.

Initial training for paralegals is over two to three weeks. Ongoing training is held for half a day, once a month, on different areas of law according to paralegal needs, including theory and practical skills. WLC developed a paralegal manual providing detailed information and practical examples of legal remedies to assist paralegals when giving advice or assistance. Areas of law covered in the *Paralegal Manual* are based on areas about which sex workers have approached WLC for legal advice in the past, along with general legal knowledge that should assist paralegals when faced with related issues.[195] A comprehensive 422-page document, the manual gives an introduction to the South African legal system, the constitution, courts and tribunals, ethics, human rights and substantive law across a broad range of areas including criminal procedure, family law, domestic violence, labour law, sexual violence and rape, social welfare, refugees, human trafficking, and HIV/AIDS and the law. It also contains practical tips and guidelines, such as techniques for running successful training sessions, keeping client records and file notes, tips when interviewing clients, and guidelines when interviewing a person who may have been trafficked.

The program aims to defend the human rights of sex workers, prevent further abuses, and support and empower sex workers to exercise their legal and constitutional rights. The WLC provides legal support in documenting human rights abuses, and in training and equipping sex workers to respond to human

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[194] For more information about the WLC's peer paralegal program, view the short video entitled 'In South Africa, Sex Workers Arm Themselves with the Law' (15 September, 2014): <www.opensocietyfoundations.org/voices/south-africa-sex-workers-make-law-work-them> (last accessed on 7 October 2014).

[195] Stacey-Leigh Manoek et al., *Paralegal Manual*, above n 171.

rights abuses. The WLC manual deals with documenting human rights violations of sex workers by completing a questionnaire, taking a client statement and drafting this information into a statement of complaint and affidavit.[196] The documented abuse of sex workers' human rights has led to WLC lodging a complaint to the UN Special Rapporteur on violence against women.

Paralegal tasks

Paralegals undertake four outreach sessions per month with Sisonke[197] volunteer peer educators, who focus on mobilising sex workers. WLC paralegals also respond to a twenty-four hour helpline for sex workers. Calls are mostly made when sex workers are arrested by police. Paralegals clarify charges with police and assist with bail applications. The matters that sex-worker clients most frequently seek paralegal advice and assistance about are criminal matters, police harassment and abuse. The paralegals have been successful in having matters withdrawn by negotiating with police prosecutors, and, where a matter proceeds, by supporting the client at court.

WLC paralegals present Creative Space every fortnight at SWEAT premises, hosting two-hour training sessions on legal issues for sex workers. Paralegals use interactive methods, such as brainstorming ideas, sharing experiences, drawing diagrams and acting out role-plays to communicate human-rights based information to other sex workers on issues such as domestic violence and labour rights.[198] A WLC lawyer is present at the sessions, and is available to provide individual legal advice afterwards. Usually four to five sex workers seek legal advice at the end of each session.

Ncumisa Sonandi (paralegal) at Creative Space, Sex Workers & Advocacy Taskforce (SWEAT), Cape Town, South Africa, on 19 February 2014.

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196 Ibid 73.

197 Sisonke means 'togetherness'. It is South Africa's national sex-worker movement.

198 Observed Creative Space legal education session at SWEAT, above n 1.

Paralegal supervision and support

Paralegals are supervised by WLC lawyers. A questionnaire is completed by a paralegal, a client statement is taken and notes are recorded on advice given, which is then checked by a WLC lawyer. Paralegals provide monthly work reports to their supervisor, as well as undergoing a performance assessment every three months. Weekly supervision and debriefing takes place at WLC's office with paralegals and lawyers. Following this, the paralegals and a lawyer attend SWEAT's debriefing. All WLC staff, including paralegals, are provided with individual counselling from an external therapist twice a month.[199]

Strengths and challenges of a peer-based paralegal model

WLC lawyer, Sithuthukile, identifies the strength of using a peer-based model as 'better access to sex workers and trust'.[200] The paralegal program has been effective in increasing sex workers' access to WLC. Paralegals are trusted, know the industry hotspots and help to get the voices of sex workers heard. Ncumisa, who has been a WLC paralegal for two years, stated that: 'I feel empowered, I know my rights … and have got to know the police, police prosecutor, court staff, they respect paralegals, I'm not just a sex worker'.[201] Paralegals have been well received in courtrooms and police stations and regularly interact with court staff and police. WLC has designed paralegal cards so that paralegals can prove their credentials, after some paralegals were asked to produce identity cards on a couple of occasions. WLC and SWEAT will be providing training for magistrates throughout South Africa, and hope it will change magistrates' attitudes towards sex workers.

Sithuthukile identified that some of the challenges of using a peer-based model are integrating paralegals into a formal working environment with responsibilities when often it is their first time in formal employment, and that some of them may have issues with drug and alcohol use.[202] Sometimes, tensions between paralegals and peer educators exist. Therefore paralegals and peer educators both need to be clear about their role, duties and what is expected of them. Open communication is facilitated by paralegals having shared debriefing sessions with peer educators.

WLC considers the factors critical to the success of their paralegal program being supervision, ongoing training and networks. WLC has found it important to clarify roles and responsibilities of partner organisations such as SWEAT, to put in place open communication channels and to manage expectations. WLC also emphasised team building between paralegals and other staff as a key aspect of building a cohesive team.

This model has been successful in reaching sex workers; whereas before the use of paralegals sex workers were reluctant to seek legal assistance, now more sex workers are accessing legal advice and getting help with their court cases. The WLC's paralegal model has been successful in building a trust relationship with sex workers.

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[199] Interview with WLC lawyer, Sithuthukile Mkhize, and WLC paralegal, Ncumisa Sonandi, at WLC, Cape Town, 2 May 2014.

[200] Ibid.

[201] Ibid.

[202] Examples were given of two former paralegals who had been dismissed for drug use that interfered with their ability to perform their role.

Peer paralegals in Kenya

A unique peer education model has been developed in Kenya to monitor and improve interactions between sex workers and police. A combination of police officers and sex workers were selected and trained as peer educators to provide education within their respective peer groups. Strategies to address abuse were discussed at monthly meetings of peer educators. An organisation called Keeping Alive Society's Hope trained the peer educators. Initial training was later followed by additional paralegal training providing practical legal skills for the sex-worker peer educators, such as seeking bond (bail) for release from detention.

The peer paralegals provide emergency response for sex workers who are arrested, face abuse or need legal support. The paralegals are a vital link, responding to calls or mobile phone text messages from other sex workers, called the Frontline SMS system, by attending police stations, contacting police peer educators or the organisation's lawyer.[203] The program has reached more than four thousand sex workers between 2011 and 2013, and 'reduced the kind of violence and marginalisation that has been shown to facilitate the transmission of HIV … [S]ex workers are more empowered now by knowing their human rights and seeing that they have police allies behind them when their rights are violated'.[204]

A key element of this program is the opportunity for informal interaction between police and sex workers, outside law enforcement. Promoting understanding by including sex workers in police training, and police participating in community or sporting events, is breaking down barriers, and more police are treating sex workers as people.[205] This model not only uses a peer-based approach to reach and educate sex workers, but also uses the power of peer influence to educate police officers to change behaviour, attitudes and treatment of sex workers.

Peer education and paralegal programs have effectively improved sex workers' access to legal services and helped their voices be heard. At the forefront of service provision to other sex workers, peer educators and paralegals have an ear to the ground and are a trusted source of information. When integrated into an organisation's staff team, peer educators and paralegals can facilitate a 'holistic' approach to justice. Peer paralegals feel empowered and know their rights. They are promoting mutual understanding with police to change perceptions and behaviours.

As peers they know just how vulnerable sex workers are to routine violence and abuse. They create a safe and supported environment in which sex workers can report human rights abuses. As human rights defenders they are exposing human rights violations against sex workers at an international level.

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[203] Rachel Thomas et al., *To Protect and Serve: How Police, Sex Workers and People Who Use Drugs Are Joining Forces to Improve Health and Human Rights* (Open Society Foundations, 2014) 14. Report launched on 20 July 2014 in Melbourne during the International AIDS Conference.

[204] Ibid 15.

[205] Ibid 7, 15, 17. Examples include volleyball competitions for mixed teams of police and sex workers, clinics for HIV testing and counselling run by both communities.

Paralegal prisoners and inmates' rights in the Philippines

Court delays and jail congestion

In the Philippines, the average wait to have a criminal case heard, no matter how minor the matter, is two to three years. More serious cases can take up to six years, while the most serious cases take over a decade to be heard.[206]

An Alternative Law Group (ALG) member seeking to advance the rights, welfare and wellbeing of those imprisoned in Manila jails is the Humanitarian Legal Assistance Foundation (HLAF). HLAF aims to improve the law and criminal justice system to respect and protect the rights of persons in detention, and to ultimately end arbitrary, unjust and inhumane detention.

On average fifty new inmates enter each Manila jail each week, greater than the number of inmates released.[207] HLAF estimates 70%–90% of inmates are in Manila jails because of drug offences. The Bureau of Jail Management and Penology (BJMP) is responsible for management, operation and control of all district, city and municipal jails in the Philippines. BJMP statistics show that, as at September 2012, the total BJMP jail population was more than seventy-two thousand.[208]

In 2008, inmate volunteers trained as paralegals by HLAF conducted a survey of their fellow inmates in Quezon City Jail and Mandaluyong City Jail to determine how long the criminal process takes from the time of arrest to a court judgment.[209] The survey found the average length of time awaiting trial was way beyond the legal time limit of thirty days. On average, inmates waited eight months for arraignment and pretrial processes, and in some cases the process took three years.[210] On average, from arrest to judgment, cases were dealt with in five to six years.[211] This is a long time to be detained, particularly for an accused who is eventually acquitted. HLAF argues that not only are the delays in process outrageous, and not within the periods set by law, they are even worse given the congested conditions of jails.[212]

HLAF staff member Jun Tumamao identified the criminal justice system in the Philippines as one of the main challenges for HLAF, describing an inefficient and slow court system causing continuous delays. The Public Attorney's Office and prosecutors are constantly having cases deferred without objection because they are overloaded and not prepared. Jun gave an example of one client that had eleven court dates listed for his matter, with only three proceeding.[213] HLAF

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[206] Interview with Jun Tumamao, Social Worker, HLAF, Pasig City, the Philippines, 14 April 2014.

[207] HLAF Internal Statistics, updated as at January 2014, provided to the author by HLAF.

[208] BJMP Jail Population Data available at: <www.bjmp.gov.ph/data/jail_population.html> (last accessed 7 October 2014).

[209] R Abitria, *How Speedy Are Philippine Criminal Cases Disposed of? A Survey of the Cases in Quezon City Jail and Mandaluyong City Jail* (Humanitarian Legal Assistance Foundation: Pasig City, 2008).

[210] Ibid 7.

[211] Ibid 14. The shortest period of time to have a criminal case determined was eight to ten months, with the longest time up to eighteen years.

[212] Ibid. For example, Mandaluyong City Jail has capacity for 400 persons, with an actual population of 900 persons, and Quezon City Jail has capacity for 800 persons, with an actual population of around three thousand persons.

[213] Interview with Jun Tumamao, above n 206.

coordinates different agencies, such as the Public Attorney's Office, to help speed up court cases for their clients. HLAF is active in doing case follow-up with courts. In an attempt to record and monitor court delays and improve efficiency, HLAF has produced a Detainee's Notebook in which detainees can keep track of court hearing dates and appearances at every stage of their matter and note reasons for hearings being adjourned.

Inmates' Paralegal Coordinators

Since 2003, HLAF has been training inmates known as Inmates' Paralegal Coordinators (IPLCs) in Manila jails to understand the criminal process and procedures, the criminal law and the rights of the accused. HLAF conducts training inside the jails and empowers inmates who volunteer to become paralegals to provide other inmates with knowledge of their rights and the law regarding their cases. The paralegal training is only for accused persons who are being detained in city jails and are waiting to have their case heard by a court. If convicted, prisoners are transferred to other jails outside metropolitan Manila to serve their sentence. Sustainability is a challenge for HLAF, which continually needs to train new IPLCs when the existing ones are released or transferred.

BJMP employs paralegal officers that rotate between the jails and are overloaded with work, and therefore BJMP willingly support the IPLC system. They work closely with HLAF to facilitate the program, improving access to jails and inmates so that HLAF can provide regular training and follow-ups. This partnership between HLAF and BJMP was recognised in 2007 in a Memorandum of Understanding. HLAF and BJMP have recently produced a paralegal manual.

Selection and training of Inmates' Paralegal Coordinators

In selecting IPLCs, HLAF considers the type of offence for which the inmate has been charged, and their level of education and literacy, and conducts an interview to assess their suitability. BJMP approves the selection of all IPLCs. At least one IPLC is in each cell. There is a basic orientation for IPLCs involving a four to six hour session, once a week over four weeks, conducted by two HLAF staff. Law students of the Ateneo Human Rights Center are assigned to HLAF as part of their internship, and assist with paralegal training for inmates.

The orientation training is comprehensive, including an introduction to law, the legal system and constitution, criminal law, the criminal process, sentencing and penalties, and modes of release and bail. IPLCs are provided with booklets covering these areas, produced by HLAF in English and Tagalog (Filipino), which they can later refer to. IPLCs present a legal information session each week for new inmates. HLAF staff support new IPLCs by attending to assist with their initial sessions. Monthly training is also held by HLAF to provide IPLCs with updates and an opportunity to raise any issues of concern.

IPLCs also give other inmates advice, which is recorded on a client information form to enable HLAF staff to check the accuracy of advice and follow up with inmates if further assistance is required. Inmates are also assisted by IPLCs with pre-trial preparation and seeking provisional dismissal. *Talakayau* (a conference)

held annually gives IPLCs an opportunity to raise issues, using role-plays, with public officials and government departments.[214]

Since the program started in Quezon City Jail in 2003, IPLCs have been trained by HLAF in nine jails. This year the program has expanded and more than tripled its reach to thirty-two jails throughout metropolitan Manila, with a pilot program in a province outside of Manila, Cebu, since May 2014.

IPLCs are a vital link between other inmates and BJMP paralegal officers and HLAF. The program is successful in reaching and empowering inmates because 'HLAF is independent, uses a rights-based approach and IPLC are trusted by the other inmates, so will tell them of concerns which they wouldn't tell BJMP paralegal officers'.[215] Access to legal assistance provided by IPLCs and HLAF is crucial for inmates, who are among the most stigmatised and socially excluded groups in society, behind not only closed but locked doors.

Early intervention by paralegals

The HLAF survey of inmates revealed that, due to a lack of access to legal advice and representation after arrest, many detainees suffer abuse and human rights violations while being held in police stations, and 'many inmates do not even know that their rights are being violated'.[216] Given the delays in pretrial process, the accused's first day in court is likely to be their first opportunity to have access to a lawyer and legal advice, which is likely to be eight months after a case is filed against the accused.

The importance of access to lawyers and paralegals at the earliest possible time in the criminal process, and the positive impact of early intervention by lawyers and paralegals in reducing abuse and ill-treatment of accused persons in pretrial detention, is demonstrated in the report *Improving Pretrial Justice: The Role of Lawyers and Paralegals*:[217]

> the early involvement of lawyers and paralegals can reduce the number of people held in pretrial detention, the time spent in pretrial detention, the number of custodial sentences imposed, the length of custodial sentences, the impact of the court process on victims and witnesses, and the amount of time and resources required of criminal justice agencies.[218]

In a criminal justice system that is inefficient and slow, with an overloaded court system and outrageously lengthy delays in process, resulting in jails congested way beyond capacity, IPLCs are reaching inmates behind locked doors. Access to legal services at the earliest possible time in the criminal process can reduce abuse and ill-treatment of inmates in pretrial detention. IPLC are trusted by fellow inmates and crucial to improving access to legal advice and assistance.

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[214] Including the Public Attorney's Office, Inmates' Welfare Department, Department of Justice, Philippine National Police and Judges.

[215] Interview with Jun Tumamao, above n 206.

[216] R Abitria, above note 209, 12.

[217] Open Society Justice Initiative, *Improving Pretrial Justice: The Role of Lawyers and Paralegals* (Open Society Foundations, 2012).

[218] Ibid 51.

Paralegals and legal empowerment in Roma communities

Roma rights are human rights

The Roma are Europe's largest ethnic minority, with about 8–10 million Roma people living in Europe. 'Roma people have faced stigmatisation, discrimination and marginalisation for centuries in Europe, enduring wars, a lack of cultural understanding, prejudice and hardship.'[219]

Anca Sandescu, Human Rights Trainer with the European Roma Rights Centre (ERRC) since 2010, identifies the main areas of discrimination against Roma as being segregation in education, police brutality, housing and forced evictions. Anca advocates that Roma rights and discrimination should be seen as human rights issues, rather than as poverty-related issues, which is often how they are treated.[220]

A recent local government decree in Miskolc (Eastern Hungary) foresees demolition of social housing, almost exclusively inhabited by impoverished Roma. In effect, forced evictions will push the local Roma community to live on the fringes of the city, at risk of homelessness. The ERRC considers this not only an example of systemic discrimination and racism, but in violation of fundamental human rights.[221] The fundamental right to freedom of movement afforded to citizens within the European Union is denied to Roma. Western European countries, such as France, apply discriminatory policy to forcibly evict Roma. More than seven thousand Roma migrants were forcibly evicted by French authorities in 2014.[222]

Roma people are more likely to be stopped and searched by police as a result of ethnic profiling. Research in 2005 found Roma pedestrians in Hungary and Bulgaria were more likely to be stopped by police and have an unpleasant experience than other members of the population.[223]

Young Roma people face segregation in education, whether in separate schools, separation within classrooms, or being placed in special education schools with disabled children. This results in Roma children with poor literacy leaving school early to undertake vocational training.[224]

Discrimination against Roma people is so entrenched that prejudicial perceptions of Roma are reinforced publicly by political leaders. During a news conference in Slovenia in 2010, the Romanian President Traian Basescu stated that 'very few of

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[219] Edmund Rice Centre, 'Roma People: Stigmatised, Discriminated against and Still No Homeland', (2014) *Just Comment* 17(1) 1.

[220] Interview with Anca Sandescu, ERRC Human Rights Trainer, Budapest Office, 24 April 2014.

[221] 'Hungarian City Set to "Expel" Its Roma', 25 June 2014. ERRC website: <www.errc.org/article/hungarian-city-set-to-expel-its-roma/4293> (last accessed 7 October 2014).

[222] 'France Continues to Evict Roma on a Massive Scale', 10 July 2014. ERRC website: <www.errc.org/article/france-continues-to-evict-roma-on-a-massive-scale/4299> (last accessed on 7 October 2014).

[223] Open Society Justice Initiative, *Ethnic Profiling in the European Union: A Handbook of Good Practices* (Open Society Foundations, 2012) 96. Police officers' decisions about whom to stop were based on 'intuition', 'past experience', or a person appearing 'nervous', 'out of place' or 'strange'.

[224] Interview with Anca Sandescu, above n 220.

them [Roma] want to work', and 'traditionally many of them live off stealing'.[225] Roma people have not only endured discrimination and human rights abuses, they have also been victims of racially motivated violence. Last year a Hungarian court found four men guilty of killing six Roma people in racist attacks.[226]

Roma human rights activists

The ERRC aims to empower Roma activists, through education and training, to promote their human rights and equality for their people. ERRC trains community activists in Roma rights workshops with an expectation these activists will pass on their knowledge to other community members at the grassroots level. Training recognises the 'level of empowerment at the community level is very low; there is internalised acceptance of discrimination', explains Anca.[227] ERRC focuses on working with young Roma. 'Young people want to be active and hope for a better future – more young people are not hiding who they are', says Anca.[228] While the ERRC identifies cases of human rights abuses and seeks to fight anti-Roma racism through the use of strategic litigation, Anca points out that 'there is a big gap between implementing decisions in human rights cases and everyday life experience of discrimination within the community of Roma people'.[229]

Roma Health Mediators

Roma Health Mediator (RHM) programs operate in Eastern Europe to improve access to the public health system for excluded Roma communities.[230] Many Roma are unable to prove their citizenship, residency or identity. Roma births are often unregistered; therefore no birth certificate is issued. National identity documents can be a prerequisite for accessing health care and other social services. RHMs assist Roma to obtain documents by helping them to complete forms and navigate the bureaucratic procedures, with knowledge of regulations and requirements. RHM training can include communications skills, relevant legislation, human rights and patients' rights. However, RHMs have a limited capacity for individual patient advocacy, being powerless to address systemic issues in the public health system. But RHMs can provide legal referrals for patients who have experienced discrimination or violation of their human rights in the provision of health care. 'As a result of the Roma Health Mediation Program, individuals now have the right to access free health care and other services.'[231]

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[225] Shaun Turton, 'Romanian President Fined for Discriminating Comments against Roma' *Romania Insider*, 11 February 2014 <www.romania-insider.com/romanian-president-fined-for-discriminating-comments-against-roma/114927/> (last accessed on 7 October 2014). Romania is a country with 620,000 Roma. President Basescu was fined by the National Council for Combating Discrimination for making discriminatory comments in public.

[226] Between 2008 and 2009, the men used guns, grenades and petrol bombs to attack Roma families in villages in north-east Hungary. Victims included a five-year-old boy and his father, who were shot when fleeing their house, which was set ablaze by the gang. 'Hungarian Gang Jailed for Racist Roma Killings' 6 August 2013, *BBC News Europe*: <www.bbc.com/news/world-europe-23586440> (last accessed on 7 October 2014).

[227] Interview with Anca Sandescu, above n 220.

[228] Ibid.

[229] Ibid.

[230] RHM programs operate in Bulgaria, Macedonia, Romania, Serbia, Slovakia and Ukraine.

[231] Open Society Public Health Program, *Roma Health Mediators: Successes and Challenges* (Open Society Foundations, 2011) 31.

Roma Paralegals in Macedonia

Human rights abuses and violations by health care providers are commonly reported by Roma communities, including outright denial of health care services, provision of substandard medical care, abusive and degrading treatment, segregation and extortion.[232] In Macedonia, Roma paralegals have been able to contribute to systemic change.

Skopje, the capital of Macedonia, has the largest Roma settlement (Suto Orizari) in the country. Since 2011, six paralegals have been trained and hosted by three Roma organisations in Macedonia. Paralegals are recruited from their communities. 'Their understanding of local issues and the trust they have within their communities allow them to establish strong relationships with clients.'[233]

The paralegal program empowers Roma citizens to advocate for and enforce their own health rights. Lawyers provide ongoing training for paralegals, every six months, in the areas of communication skills, the health system and the law. Training materials are also provided. Paralegals are mentored by a lawyer, who is available to answer questions or provide assistance and support.

Roma paralegals are employed in full-time paid positions. The paralegal role involves holding community education sessions on human rights, assisting Roma people to make complaints about discrimination in treatment, monitoring health care provision, and outreach to homes through door-to-door visits. According to Alina Covaci, a Program Officer with the Roma Health Program, there are three types of Roma community: traditional Roma communities, closed off from the broader community; semi-integrated communities; and integrated Roma communities, where children attend schools and members work and live within the broader community.[234]

Alina gives an example of the type of assistance being provided in Macedonia by Roma paralegals. While all women have the right to free medical check-ups during pregnancy, doctors were asking pregnant Roma women to pay. Identity documents were confiscated and held until they paid. When Roma women reported this to paralegals, they advocated for the women's rights with the support of lawyers. Where doctors resisted, paralegals and lawyers took action to lodge complaints with the Ombudsman and in court where necessary.[235]

A recent report on Roma health rights suggests that while 'there is very little accountability in place for Roma rights violations in health care settings ... preliminary results show that the availability of legal services and education can substantially increase Roma ability to pursue legal claims. Particularly promising are community-based paralegal programs'.[236]

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[232] Open Society Public Health Program, *Roma Health Rights in Macedonia, Romania, and Serbia: A Baseline for Legal Advocacy* (Open Society Foundations, 2013) 11.

[233] Sebastian Kohn, 'For Roma, Justice is Sometimes the Best Medicine', 12 November 2013, Open Society Foundation website: <www.opensocietyfoundations.org/voices/roma-justice-sometimes-best-medicine> (last accessed on 7 October 2014).

[234] Interview with Alina Covaci, Program Officer, Roma Health Program, Open Society Foundations, Budapest Office, 25 April 2014.

[235] Ibid.

[236] Open Society Public Health Program *Roma Health Rights in Macedonia, Romania, and Serbia* above n 232, 5.

Alina says 'community members are finding paralegals so helpful that even non-Roma people from the Suto Orizari/Skopje community have sought assistance from Roma paralegals'.[237] The pilot program has been well received by health care providers and the National Government in Macedonia. The Macedonian Government is being lobbied to fund a scaled up program. With the success of the Macedonian paralegal model it is anticipated it will expand to other countries.[238]

Roma activists, health mediators and paralegals are improving Roma access to health care and educating Roma to understand and enforce their health rights, legal rights and human rights. Recruited from within Roma communities, within which they are trusted and accepted, they can effectively reach, educate and advocate for other Roma. Paralegal assistance and support provided in individual cases, combined with educational workshops, contribute to a better understanding of the importance of patients' rights. Increased awareness and understanding has resulted in resolving problems related to health care and health insurance provision, essential for fulfilling the right to health.

Paralegals improving access to justice in Cambodia

Cambodian context

In 1993, Cambodia adopted a new Constitution based on liberal democratic values, in the wake of human rights abuses and atrocities during the late 1970s. During this period, the Khmer Rouge under Pol Pot was responsible for the oppression, torture and executions of Cambodians. It is estimated 1.7 million people lost their lives.[239] Since 2007, a Khmer Rouge Tribunal[240] has been prosecuting perpetrators of alleged crimes and violations of international law committed between 1975 and 1979 in Cambodia. The UN Special Rapporteur, reporting on the human rights situation in Cambodia last year, concluded that 'tolerance is a bedrock of democracy. However, the degree of tolerance on the part of the Government and the ability to listen to constructive criticism of its policy decisions and shortcomings seems to be decreasing'.[241]

A demonstration ban was imposed in Phnom Penh and Freedom Park was closed in January 2014, following protests by striking garment workers.[242] The Special Rapporteur recently publicly commented that the 'shrinking of democratic space in Cambodia since January is having negative effects on the enjoyment of

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[237] Interview with Alina Covaci, above n 234.

[238] Note: there was a Roma paralegal program in Hungary in 2004, which provided legal training for paralegals. The program ended following the departure of a law professor from the University's Faculty of Law. Meeting with Marguerite Angelari, Open Society Foundation Budapest Office, 28 April 2014.

[239] Approximately twenty per cent of the country's population. For more on the history and killing fields, see: <www.cekillingfield.org/index.php/en/history/summary-history.html> (last accessed on 7 October 2014).

[240] The official name is The Extraordinary Chambers in the Courts of Cambodia. For a timeline of matters before the court go to: <www.eccc.gov.kh/en/keyevents> (last accessed on 7 October 2014).

[241] Surya P Subedi, *Report of the Special Rapporteur on the situation of human rights in Cambodia* (United Nations Human Rights Council (UNHRC), August 2013) 17.

[242] For more on the January protests, see page 64 of this report.

human rights for all'.[243] It is within this political environment that paralegals in Cambodia work.

Access to justice

In Cambodia, courts only operate in the capital city Phnom Penh, while over eighty-five per cent of the nation's poor live in provincial towns. To improve access to justice, the Community Legal Education Centre (CLEC) in Cambodia organised local area panels that attempt to resolve legal matters within local communities. The commune chief is the head of the panel, and the other panel members are chosen by the community. Panel members may include retired teachers, police officers, women or other representatives of the community. CLEC's Access to Justice Program provides legal training for panel members, including alternative dispute resolution.

Nationwide network of paralegals

Paralegals at feedback meeting, Community Legal Education Centre Cambodia (CLEC), Phnom Penh, Cambodia, 13 December 2013.

CLEC established a paralegal program in 2006. Paralegals are attached to panels, and are also chosen by the local community, coming from different backgrounds. The Access to Justice Program coordinates, trains and mentors a nationwide network of fifty-eight paralegals. This program raises awareness about legal rights and enhances legal services provided to target groups through paralegals. CLEC provides three-day intensive training to upgrade the capacity of existing paralegals in alternative dispute resolution skills, conflict management, legal writing and assistance, legal case analysis and judicial process. A manual in Khmer is given to paralegals in their intensive training, and is updated as the law changes. CLEC lawyers provide advice and support to paralegals. Feedback meetings with paralegals are held two to three times a year to share experiences and discuss challenges.

CLEC staff also conduct training for selected paralegals, who then present workshops for their community members. In 2013, paralegals conducted fifteen legal awareness sessions in village communities, and 567 community members

[243] 'UN Rights Expert Urges Cambodia to Lift Protest Ban and Appeals for Calm amidst Violence' (16 July 2014) Geneva <www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14876&LangID=E> (last accessed on 7 October 2014).

participated.[244] Thyro Tek, Senior Program Officer in the Access to Justice Program, says, 'people within the community want to know their rights'.[245]

Paralegals need to be neutral to play the role of mediator in some disputes. Agreements reached through mediation with a paralegal are signed voluntarily by both parties. Thyro identifies that one of the advantages of this model is that 'local people can resolve problems to keep good relations without spending lots of money going to court'.[246] According to Thyro, about 80% of matters are resolved at the local level through panels, with the 20% that are unhappy with the result proceeding through the formal court system. In 2013, fifty-eight paralegals assisted disadvantaged clients in 609 disputes, of which 475 were successfully resolved through mediation, and another 134 were resolved through consultation provided by paralegals.[247]

In the absence of an accessible legal system in Cambodia, CLEC has sought to ensure improved access to local alternative dispute resolution mechanisms, through paralegal services to the most vulnerable and remote communities in provincial areas.

Trialling community paralegal programs in an Australian context

The only way we will know whether or not community paralegal programs can be adapted, replicated and successfully implemented in an Australian context is to trial a pilot project. A small-scale initiative like the WLC model in Cape Town – with just four trained paralegals, with close legal supervision and non-legal support – would be a manageable model to trial. If a trial proved effective through evaluation, and additional resources were available, it could be scaled up.

Leering's spectrum of legal literacy and capability training (outlined earlier) suggests that paralegals in training would need to attain a certain standard of legal literacy and capability before progressing to more advanced advocacy training. A pilot project may seek to provide paralegal skills training for a selection of existing peer educators. Alternatively, a model may be developed where individuals are recruited and trained as peer legal educators in stage one, and then, in stage two, once capability improves and experience is gained, in paralegal skills.

It is therefore recommended that a small-scale, pilot community paralegal project be developed and trialled in a targeted community, including evaluation of the costs and benefits (see Recommendation 3 in this report, page 70).

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[244] CLEC statistics contained in an Internal Report dated February 2014, provided to the author by CLEC.

[245] Interview with Thyro Tek, Senior Program Officer, Access to Justice Program, Community Legal Education Centre, Phnom Penh, 3 April 2014.

[246] Ibid.

[247] CLEC Internal statistics, above n 244.

Challenges and lessons learnt

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The organisations visited during this project all identified not only the great benefits of their programs, but also the challenges they faced and how they managed to overcome them. These challenges, the solutions used to address them and the lessons learnt are discussed below.

Legal help provided by non-lawyers

The use of non-lawyers to provide legal help is a departure from the traditional lawyer–client relationship, and challenges the notion that legal help must be provided exclusively by lawyers. We know from the *LAW Survey* (discussed earlier) that Australians consult a range of non-legal advisers for legal help and legal professionals are only used to resolve a minority (16%) of all legal problems.[248] The Productivity Commission's *Access to Justice Arrangements* Draft Report Overview, asks the questions 'in what areas of law could non-lawyers with specific training, or "limited licences" be used to best effect? What role could paralegals play in delivering unbundled services?'[249]

The provision of community-based legal help by non-lawyers raises additional potential risks and challenges in areas such as literacy, capability and competency, ensuring ethical practice, the level of training, supervision and support required, and a lack of recognition within most legal systems. But potential risks, concerns and challenges should not be barriers to exploring innovative options for providing community-based legal help. Minimising risks and taking steps to address challenges should be considered. Potential issues are discussed below, along with possible solutions.

Selection and recruitment

The selection process in identifying the most suitable and appropriate members from within a community is crucial to the effectiveness and success of a peer education or paralegal program. The selection and recruitment process can be time consuming and resource intense.

For example, when Harm Reduction Victoria (HRV) was recruiting Key Peer Mentors (KPMs) for its North Richmond Project, fifty people who inject drugs agreed to participate in six peer-education workshops at local services. Only thirty-eight participants attended the workshops facilitated by an HRV project worker. From this pool of participants only five people were selected for KPM training, and in the end only three KPMs met HRV's eligibility criteria. HRV's selection criteria and the attributes sought were: a person currently using drugs living on the North Richmond Housing Estate who has natural leadership skills, good connections, status in the community, community spirit and the time to be involved.[250]

Organisations develop selection or filtering processes to ascertain who is suitable in a peer educator or paralegal role, in much the same way as organisations would recruit staff or volunteers. The attributes sought in individuals often include:

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[248] Christine Coumarelos et al., above n 18, Executive summary xiii.

[249] Productivity Commission 2014, *Access to Justice Arrangements*, Draft Report Overview, Canberra, Chapter 7: A responsive legal profession, Information Request 7.5, 51.

[250] Interview with Jenny Kelsall, above n 52.

literacy and capability; availability and willingness to commit the time, especially if a volunteer; language, communication skills and ability to share knowledge; connection with the community; and the willingness and ability to advocate on behalf of others. It is expected that people will drop out throughout selection processes, so more individuals than are required are recruited.

The qualities of a successful paralegal are outlined in *Community-based Paralegals: A Practitioner's Guide*, including: motivation to serve their communities and being respected within their communities; literacy, at least secondary school education; comfort and skill interacting with community members; good judgement in problem-solving; willingness to learn; and the ability to travel.[251]

The guide also suggests that:

> Choosing appropriate paralegals will be essential to your program's success in a community. Successful paralegals have to be accepted by the community and not seen as serving those in power. Otherwise, in certain circumstances, the paralegal could be seen as a 'friend of the oppressors'.[252]

The level of education and literacy within a community will affect the availability of literate individuals for selection. Most programs examined for this report had policies requiring a minimum literacy level, yet most also stated that they would not reject a potential recruit for poor literacy alone. Staff at HRV and SWEAT suggested that if potential peer educators had other qualities and attributes that would make them ideal for role, and they were accepted and respected within their peer group, they would adapt their administrative requirements to cater for their poor literacy. In such a circumstance, alternative methods of recording statistics or reporting, such as verbal reports, would be used.

Supervision and support

A feature of most paralegal programs was providing legal supervision and mentoring. Backup support for a paralegal was essential – the ability to contact a lawyer and seek guidance. The ability to refer a community member to a lawyer to seek further advice and assistance was a vital link, particularly if a case was beyond the scope of the paralegal's role or capability, such as in more complex matters. Victorian Aboriginal Legal Service CSOs are able to contact staff lawyers, after hours if required, for advice and guidance. In more serious or complex matters, they link clients directly with the lawyer for legal advice and representation.[253]

Supervision and management of paralegals is time consuming and requires a commitment of human resources. For some paralegals, this is their first time in formal employment and they may require additional support. For example, as discussed earlier, in South Africa the WLC lawyers provide close legal supervision, follow-up and monitoring of advice and assistance provided to sex workers by paralegals. The paralegal records advice given and steps taken to assist a sex worker client, and the record is later checked by a WLC lawyer, who will follow

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[251] Open Society Justice Initiative, *Community-Based Paralegals: A Practitioner's Guid*e, above n 146, 49.

[252] Ibid 50–51.

[253] Interview with Wayne Muir and Peter Rotumah, above n 176.

up with the client if necessary. WLC commits significant human resources to regular reporting and performance assessment of paralegals, weekly supervision and debriefing with paralegals and lawyers, weekly debriefing with SWEAT and individual counselling from an external therapist twice a month.[254]

The provision of non-legal support, such as opportunities for debriefing with a staff member or external counselling, and regular group meetings or peer support networks, was an important feature of most programs. All organisations visited recognised the importance of providing support for peer roles, whether undertaken by volunteers or paid employees.

Recognition within the legal system

Perceptions that only lawyers can know the law and that legal help must be exclusively provided by lawyers deter lay people from accessing the law. 'Scepticism of paralegals' abilities' makes it difficult for paralegals to gain effective recognition.[255]

As mentioned earlier, there is no formal recognition of paralegals within the Australian legal system and no acknowledgement or classification of paralegals as a specific profession. In Victoria, the *Legal Profession Act* provides that a person must not engage in legal practice in this jurisdiction unless the person is an Australian legal practitioner.[256] However, subsection 2 lists exceptions, including for a CLC that engages in legal practice where a supervising legal practitioner is responsible for the provision of legal services at the CLC; as well as for a person who represents another person in a proceeding before a court or tribunal, or in arbitration proceedings if they have leave of the court or tribunal or the arbitrator or umpire.[257] This would enable a community paralegal to provide legal services as long as they are supervised by a responsible legal practitioner at a CLC.[258] While CLCs have engaged in legal practice for over forty years, with their legal practitioners regulated by legislation, it has only been since 2004 that CLCs and CLC volunteer practising certificates are now specifically referred to and recognised under the Act.[259]

In the Philippines, paralegals are recognised in some legal tribunals and are able to appear in the lower courts: Farmer Courts and Labor Courts. In South Africa, despite a long history of paralegal practice, the role is not yet formally recognised by law, but when the Legal Practice Bill is enacted, paralegals will be recognised within legislation. The Kampala Declaration on Community Paralegals was signed and adopted by fifty African organisations in July 2012 in Kampala, Uganda,

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[254] Interview with WLC lawyer and paralegal, above n 199.

[255] Jennifer Franco et al., above n 140, 18.

[256] *Legal Profession Act 2004* (Vic) Division 2, 2.2.2 (1) Prohibition on engaging in legal practice when not entitled.

[257] Ibid, in accordance with Part 2.9; and 2.2.2 (2)(f). Under common law unrepresented litigants are entitled to assistance (professional or lay) in conducting their case, known as a McKenzie friend (the term originated from the English case of *McKenzie v McKenzie* [1970] 3 All ER 1034, CA).

[258] This is current practice for CLCs with law students supervised in clinical legal education programs.

[259] With the introduction of the *Legal Profession Act 2004* (Vic). Part 2.9 regulates CLCs and Part 2.4.3(3)(b)(iii) provides for CLC volunteer certificates.

seeking support from African governments to recognise the role of community paralegals, and to regulate and resource them.[260]

Ethics

Given there is no formal recognition of paralegals within the Australian legal system, there is no legislation setting out the ethical standards required of paralegal work.

Similar standards and professional conduct rules such as those regulating and governing the practice of legal practitioners could be expected and required of community paralegals. While ethical issues or dilemmas could arise for community paralegals, just as they do for legal practitioners, it is how the issues are managed when they arise that is crucial. As long as there are clear policies and procedures relating to the handling of these issues, and close supervision and support for community paralegals to deal with them, they should not present barriers to providing community-based legal help.

The WLC in South Africa has addressed these concerns regarding ethical issues when dealing with clients in a chapter dedicated to ethics in their paralegal manual, a topic which is also covered in the initial paralegal training with WLC lawyers. The ethical issues covered include:

- duties paralegals may perform under the supervision of a lawyer
- competence (only taking cases they can competently handle)
- understanding the role and not claiming to be a lawyer
- the rules against charging or accepting fees from clients
- independence
- obtaining client consent
- client confidentiality
- conflict of interest
- treating clients with respect and dignity.

Paralegals are not only strongly encouraged to take responsibility for their actions, they are required to enter an agreement to respect and abide by the Code of Conduct at all times.[261]

Acting beyond the role

The duty of competence and care of legal practitioners requires competence to accept a client's instructions, the skills to competently perform the work required, and, where the complexity of the matter is beyond their capacity, to refer the matter to another practitioner with the relevant expertise.[262] Likewise, community paralegals need to know the scope and limitations of their role and capacity, so

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[260] The Kampala Declaration is available at: <www.namati.org/news/newsfeed/kampala-declaration/> (last accessed on 7 October 2014).

[261] Stacey-Leigh Manoek et al., above n 171, 71.

[262] *Legal Profession Act 2004* (Vic), ss 4.4.17–4.4.19.

that where a matter is complex or beyond their capacity, they can refer the matter to their supervising legal practitioner.

There is always the risk that, once trained, a paralegal will act beyond their defined role. In the Philippines, for instance, paralegals have been known to ask for payment from community members for advice and services provided, acting as quasi-lawyers. This is why, according to Marie Hazel Lavitoria, Executive Director of SALIGAN, paralegal programs need to be closely monitored.[263] SALIGAN hold regular monitoring conferences in order to supervise the progress of the paralegals.

In Victoria, Division 4 of the *Legal Profession Act* imposes prohibitions and restrictions on legal work. Legal practices must ensure that legal services provided are under the direct control and supervision of a responsible supervising legal practitioner.[264] Risk management would involve applying policies and procedures and case management systems, together with adequate and appropriate supervision, to minimise the risk of all staff or volunteers acting beyond their authorised capacity.

Employing peers

Paid employees or volunteers?

While many peer education and paralegal programs recruit and train volunteer peer educators or paralegals, all organisations visited and interviewed expressed frustration that there was no funding available to pay volunteers in these roles. Most organisations provided reimbursement of out-of-pocket expenses, such as travel costs. It was acknowledged that in some programs trained volunteers were lost when offered paid employment elsewhere. The time and availability that volunteers could commit was also limited by competing demands, particularly for those with family responsibilities. The WLC in South Africa employ peer paralegals as paid staff members in recognition of the value of their role to the organisation. The WLC questioned why peer paralegals should be expected to serve their communities without remuneration.

Expected standards of behaviour

There is a range of issues that could affect the employment of peers, whether paid or voluntary. Some marginalised communities face issues that may affect their capacity and ability to perform a role within a structured workplace. For instance, drug use and health issues are more prevalent in sex worker and drug-using communities. Peer staff employed by Sisonke and WLC acknowledged it had been difficult at first for some peer workers to adapt to a structured workplace, to be at work on time and to work regular hours.[265] As mentioned earlier in this report, WLC identified one challenge of using a peer-based model as integrating paralegals into a formal working environment with responsibilities when it

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[263] Interview with Marie Hazel Lavitoria, above n 129.

[264] *The Legal Profession Act 2004* (Vic), section 2.2.10, provides that a law practice must not permit or assist a person who is not an Australian lawyer to engage in legal practice in Victoria.

[265] Interview with Sisonke Peer Educator, Pamela Chakuvinga, SWEAT, Cape Town, 30 April 2014; interview with WLC paralegal, Ncumisa, above n 199.

was their first time in formal employment or there were issues of drug and alcohol use.[266]

Obviously these are issues that may affect staff members or volunteers in any workplace, and they are not unique to peer workers from marginalised communities. Most organisations expect their staff to adhere to conditions of employment with reference to expected standards of behaviour found in the organisation's policies and procedures. Likewise, organisations have sought to overcome these issues by requiring peer volunteers to enter contracts agreeing to comply with the organisation's policies and procedures. For example, HRV requires DanceWize volunteers to sign a Volunteer Contract of Agreement, which stipulates that volunteers are subject to HRV's Policies and Procedures, including the disciplinary procedure.

Risks to personal safety

To speak out for legal or human rights in Cambodia is courageous. It is not uncommon for community activists, paralegals, or anyone outspoken against the government, or powerful parties such as wealthy families, corporations, landowners and manufacturers, to be intimidated, threatened, harassed, assaulted, subjected to arbitrary arrest and detention, kidnapped and even murdered. These tactics, used by the powerful, are designed to instil fear in activists. As a result, a *Guide to Personal Security for Human Rights Defenders* was produced, in English and Khmer, for NGOs about how to support and protect activists, and how to raise the awareness of activists to appreciate the personal security risks they may be exposed to.[267]

A current example of the risk taken by activists is the disappearance of Khem Sophath, a sixteen-year-old boy, missing since striking with garment workers on 3 January 2014 in Phnom Penh. The industrial strike resulted in a violent crackdown by Cambodian security forces. The Cambodian Community Legal Education Centre and Equitable Cambodia are among fifty-four NGOs calling on the Royal Government of Cambodia to investigate Khem Sophath's disappearance.[268] The centre has provided legal defence to human rights defenders and at-risk paralegals in at least five high-profile cases during 2013. Likewise, in the Philippines, threats to the personal safety of paralegals are still made, and some have even been murdered.[269]

The problem of unequal resources between powerful companies, families and landowners, and paralegals and their clients is not only a challenge of the paralegal model, but one that exists within most adversarial legal systems. However, in most democratic countries, human rights activists would not expect their lives to be at risk.

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[266] Interview with WLC lawyer, Sithuthukile, above n 199.

[267] Interview with Eang Vuthy, Executive Director, Equitable Cambodia, in Phnom Penh on 5 April 2014; Mark Grimsditch, *Guide to Personal Security for Human Rights Defenders* (Bridges Across Borders Cambodia, 1st ed, 2010) <www.babcambodia.org/securityguide/docs/Security%20for%20HRD%20and%20Activists_Facilitator_ENG%20%28revised%29.pdf> (last accessed on 7 October 2014).

[268] <www.clec.org.kh/clecnews.php?cnsID=94> (last accessed on 7 October 2014).

[269] Interview with Marlon J. Manuel, above n 144.

Sustainability

Interviewees in all organisations identified sustainability of community-based programs as the main challenge. While peer education programs in Australia often receive funding (even if considered inadequate) from different levels of government, all the community paralegal programs of organisations visited overseas relied primarily on funding from international donors, private donors and the international aid programs of developed countries. Interviewees all expressed a hope that their government would recognise the value of their work through these programs and would one day provide funding. A view that it was the government's responsibility to support the programs was expressed by all.

Resourcing of community paralegal programs

Clinical legal education in the Philippines

In many countries, such as Australia, opportunities are available for law students to gain clinical legal education, usually offered as an optional subject within the course of a law degree, and including time volunteering within a CLC.

One strategy to improve sustainability of community paralegal programs in the Philippines has been for ALGs to enter partnerships with university law schools. In the Philippines, clinical legal education is an intrinsic part of some community empowerment and paralegal programs. Many community paralegal programs operating in the Philippines are partnerships between an ALG, another NGO and a university law school's student internship programs.

Law students participating in community paralegal programs as educators are not just exposed to the legal issues of a community, but also experience 'immersion' in marginalised communities in rural provinces as part of their summer internship. University interns not only help to resource the training programs for community paralegals, but their experience is also essential to their education and learning in the practice of alternative law. For instance, the Internship Program of the Ateneo Human Rights Center 'acquaints them [law students] in the field of alternative law practice. It introduces law students to grassroots life and human rights advocacy in the Philippines'.[270]

Considerable resources and commitment are required to establish and maintain such programs, without any guarantee that it will impact on the legal practice of students when they graduate to become members of the legal profession. The commitment needs to be more than an interest or priority of an individual academic, as programs can suffer or cease operation when that individual is no longer employed by the university. University law schools also need to be willing to make a long-term commitment to the communities being served by the program. The cost-benefit of these arrangements is an issue being researched by Open Society Justice Initiative staff.[271]

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[270] Ateneo Human Rights Center, *Training Manual for Paralegals* (Ateneo Human Rights Center, 2010) 95.

[271] Meeting with Marguerite Angelari, Senior Attorney, Legal Capacity Development and Christina Marian, Research Assistant, Open Society Foundation, Budapest Office, 28 April 2014.

Collaborative partnerships

The need for strong collaborative partnerships with other grassroots NGOs, such as labour unions and human rights organisations, was identified by all community paralegal programs visited overseas as crucial in supporting their work. Often these partner organisations would provide valuable practical assistance and non-legal support. For example, a union in the Philippines, PIGLAS, organised the venue and lunch, and communicated with garment workers for regular labour paralegal training in partnership with SALIGAN lawyers.[272]

Another tactic used in Kenya is engaging pro bono lawyers from law firms who offer litigation services to train and assist prisoners with their cases in Kituo Cha Sheria's (legal advice centre) prison program.[273] Following training, prisoners then share their legal knowledge and empower other prisoners.

Investing in early intervention

An investment of time and resources is required before the benefits of legal empowerment strategies are seen in communities. Human resources and time need to be dedicated by an organisation to provide adequate training, supervision, support and financial resources to employ paralegal staff and cover operational expenses. While a range of funding sources and strategies to improve sustainability can be explored – such as private donors, philanthropic trusts, pro bono assistance and partnerships with university clinical legal education programs – the primary responsibility lies with government to fund early intervention strategies that effectively improve access to legal services.

Community paralegal programs are strategies of early intervention, communicating accurate and reliable legal information and providing access to advice and assistance when a legal problem first arises, before the problem escalates. The earlier legal problems are resolved, the less likely they are to result in more costly disputes or litigation. Put another way, it is more cost-effective to deal with legal problems 'upstream' rather than 'downstream'. As discussed earlier in this report, we know from the *LAW Survey* that disadvantaged groups are less likely to take action to resolve legal problems, and, as a result, they achieve the poorest outcomes. Early intervention strategies improving access to legal services should be resourced by Australian governments as a priority to avoid more costly consequences.

From little things big things grow

Most paralegal programs in organisations visited during this project began as small-scale initiatives, and, then, when they proved to be effective and, if additional resources were available, they were scaled up. An example is HLAF's training of detainees as Inmates' Paralegal Coordinators, which has this year expanded from nine jails to thirty-two jails throughout metropolitan Manila, with a pilot program in a province outside of Manila. Similarly, WLC in South Africa started by training four paralegals in Cape Town in 2010 and in 2014 recruited another two paralegals to expand the program into Johannesburg. With the success of the Macedonian paralegal model, the Macedonian government is being

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[272] Observed Labor Paralegal Training, above n 156.

[273] New Tactics in Human Rights website: <www.newtactics.org/tactic/engaging-pro-bono-lawyers-and-peer-legal-counselors-expanding-access-justice> (last accessed on 7 October 2014).

lobbied to fund a scaled up program throughout the country, and it is hoped the program will also expand to other European countries.

Community paralegals – a cheap option?

Community paralegal programs may at first seem attractive as a cheap way to deliver legal services. This would be a dangerous assumption, as this report has shown that a commitment of adequate resources for training, monitoring, supervision and support are necessary in any paralegal program. Intensive initial and ongoing training, legal supervision and non-legal debriefing and support on a regular basis need to be taken into account. Successful paralegal programs also require a long-term commitment to the legal empowerment of a community.

In the absence of funding and lawyers, some organisations engage volunteer paralegals. However, these organisations find it difficult to retain volunteer paralegals when they are offered paid employment elsewhere and need to support their families. Significant time and resources invested in training and supporting a volunteer paralegal are then lost by the organisation and the community. A valid point was raised by WLC in South Africa – why should peer paralegals be expected to take on this important role serving their community without remuneration?

Community paralegals should not be considered a cheaper alternative to lawyers, but rather as complementary to lawyers. The implementation of a paralegal model should be motivated by the potential to improve access to legal services and effectively reach, educate and empower communities, especially marginalised communities, above any perceived cost savings or other financial benefits.

Issues and potential risks may arise when establishing a peer education or paralegal program, but these can be overcome with selective recruitment and proper training and supervision, as well as by having policies and procedures in place, such as codes of conduct and disciplinary procedures, minimising risk through case management systems, and the allocation of adequate resources. Challenges that may arise should not be a deterrent to exploring and trialling innovative initiatives, through which we can reach, educate and empower our communities.

7 Conclusion

While legal education can be empowering, for most paralegal programs education was only the first step in empowering a community. The skills and ability to translate knowledge into action is essential to empower individuals and communities.

This report gives some instances where CLCs and legal aid have already initiated training for community members (some of whom may be described as peers) to provide legal information and education to their communities. The challenge is for more CLCs to investigate whether this approach would be a viable way of engaging with the most marginalised of their target communities. Peer-based programs are effective in establishing *trust* – the key to reaching members of the most marginalised communities.

While there are plenty of examples of peer-based education and support programs in Australia, there are fewer examples of peers facilitating legal education within their community, and even fewer examples of community paralegal support. A global perspective provides examples of legal empowerment strategies, such as paralegal programs, being used to reach members of marginalised communities – to not only educate them, but also to empower them to advocate for and defend their legal and human rights. Some of these overseas programs have been operating for decades. With so few local examples, CLCs need to look beyond their local patch and consider alternative law practices being developed further afield, abroad.

A diverse range of peer education and paralegal programs have been explored in this report, operating within diverse communities, locally and globally, in different legal and political landscapes. While programs share many characteristics, there are just as many differences. Programs evolve and develop to meet the needs of communities. There is no one-size-fits-all model when it comes to peer education and paralegal programs.

Could community paralegal programs be adapted, replicated and implemented in Australia? It is not difficult to envisage examples of where pilot community paralegal projects could be initiated by CLCs to reach marginalised communities. For instance, a small-scale model, based on the WLC paralegal model operating in South Africa, could be adapted to suit local conditions, and piloted in a project partnership between St Kilda Legal Service and the organisation supporting sex workers (Resourcing Health and Education in the Sex Industry) to reach, educate and empower street sex workers in St Kilda.

Another example would be CLC drug outreach programs[274] that could train a small selection of existing peer educators with Harm Reduction Victoria to extend their role beyond providing basic legal information to a more active paralegal role. Likewise, more advanced training for a small selection of existing community guides within newly arrived and refugee communities could be provided to take on a paralegal role, particularly for those groups subjected to ethnic profiling by police. Just as selected Peer Support Facilitators could extend their role to a paralegal one if provided with paralegal skills training and supervision by the HIV/AIDS Legal Centre.

[274] St Kilda Legal Service and Fitzroy Legal Service in Victoria both operate community-based programs employing a Drug Outreach Lawyer.

Legal service providers are being encouraged to better meet the legal needs of disadvantaged Australians through more efficient and effective practices. Australian CLCs can learn from international experience and use their resourcefulness, innovation and connection with their community to trial similar paralegal programs, to empower and more effectively meet the legal needs of marginalised Australians.

Recommendations

It is recommended that:

1. the Federation of Community Legal Centres' Community Development & Legal Education Working Group include in the toolkit Community Legal Education Made Easy an information sheet on peer education and the use of peer-based initiatives to design and deliver targeted legal education.
2. the Federation of Community Legal Centres' Community Development & Legal Education Working Group hold a forum to open dialogue and explore the use of peer-based initiatives to deliver legal education to target and empower communities, particularly marginalised communities.
3. a small-scale, pilot community paralegal project be developed and trialled to reach a targeted community, including evaluation of the costs and benefits of the project.

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Namati Tools Database of the Global Legal Empowerment Network: <www.namati.org/network/>

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Appendix 1: Organisations visited and people interviewed

Adult Multicultural Education Services (Melbourne)	Melika Sheikh-Eldin *Manager, Settlement Delivery Support Services*
Alternative Law Groups (Quezon City, Philippines)	Marlon J Manuel *Coordinator*
Ateneo Human Rights Center (Makati City, Philippines)	Klarise Estorninos *Deputy Director* Jaymie Reyes *Communications Officer*
Cambodian Community Legal Education Centre (Phnom Penh, Cambodia)	Thyro Tek *Senior Program Officer, Access to Justice Program*
COTA Victoria (Melbourne)	Karen Ivanka *Community Liaison*
Equitable Cambodia (Phnom Penh, Cambodia)	Eang Vuthy *Executive Director*
Ethnic Communities Council of Victoria (Carlton)	Susan Timmins *Culturally Responsive Palliative Care Project Officer* Elena Petreska *ECCV Project Coordinator* Fiona York *Elder Abuse Community Awareness Project Officer*
European Roma Rights Centre (Budapest, Hungary)	Anca Sandescu *Human Rights Trainer*
Harm Reduction Victoria (North Melbourne)	Jenny Kelsall *Executive Officer* Stephanie Tzanetis and Dan Burns *DanceWize Program Coordinators* Martin, Colleen, Yoshi, Laura, Simon, Kate, Nick and David *DanceWize Volunteer Peer Educators* Nadia Gavin and Sharyn Marshall *Peer Health Educators* Leora Robertson, Sean Lockhart and Jane Dicka *Other HRV Staff*

Humanitarian Legal Assistance Foundation (Pasig City, Philippines)	Jun Tumamao *Social worker* Freddie Alaras *Assistant Jail Decongestion Officer* Tess Cabarle *Finance Administrative and Personnel Officer*
Hungarian Civil Liberties Union (Budapest, Hungary)	Peter Sarosi *Drug Policy Program Director*
National Alliance for the Development of Community Advice Offices (South Africa)	Nomboniso Nangu Maqubela *Interim Director*
Open Society Foundation (Budapest Office, Hungary)	Zaza Namoradze *Director, Open Society Justice Initiative* Alina Covaci *Program Officer, Roma Health Program*
SALIGAN (Quezon City, Philippines)	Marie Hazel Lavitoria *Executive Director*
Seniors Rights Victoria (Melbourne)	Gary Ferguson *Community Education Coordinator*
Sex Workers Education & Advocacy Taskforce (Cape Town, South Africa)	Sally Shackleton *Director* Eunice and Joyce *Peer educators*
Sisonke (South Africa's National Sex Worker movement)	Pamela Chakuvinga *Peer educator*
Victorian Aboriginal Legal Service (Preston, Victoria)	Wayne Muir *Chief Executive Officer* Peter Rotumah *Manager, Community Justice Programs*
Victorian AIDS Council (Positive Living Centre, Prahran)	Anonymous *Peer Support and Health Promotion Officer*
Women's Legal Centre (Cape Town, South Africa)	Sithuthukile Mkhize *Lawyer* Ncumisa Sonandi *Peer paralegal*

Appendix 2: Interview questions

Victoria Law Foundation CLC Fellowship Research 2014

I feel empowered, I know my rights – communities empowered by peer educators and paralegals

Interview Questions

Interview Date:

Interview Location:

Organisational Details

Name:

Position/title:

Contact details

Email: Ph.:

Name of organisation:

Type of organisation:

Program/project Details – Preliminary information

Name of program/project:

Duration of program/project:

1. What is your role in the program/project?
2. What are the aims of the program/project?
3. Does your program/project use 'peers'? Why or why not?
4. If so, how do you define 'peer'?
5. Do you use the term 'peer'? If not, what term do you use?
   (Title/term used e.g. 'peer educator' 'community legal guide', etc.)
   Note: adopt use of term used by the organisation in the remaining questions.
6. How did you reach potential 'peer' educators?
7. What is the process for recruiting 'peers'?
8. How do you select 'peers'? Are there any prerequisite attributes or skills?
   For example, background, age, gender, language spoken, life experience.
9. How many 'peer educators' do you select and recruit at a time?
10. Are your 'peer educators' paid employees or volunteers? Why/why not?
11. What initial training do you provide your 'peer educators'?

12. What initial resources do you provide your 'peer educators'? Are you able to provide resources used for training?
13. Is there follow-up training and ongoing support provided? What form does it take?
14. Why did you choose to use a 'peer education' model for your program/project? *(As opposed to other educational methods?)*
15. What do you think are the *advantages* of this model?
16. What do you think are the *disadvantages* of this model?

Service delivery through the program/project

17. What is the subject content of the program/project? What are the relevant areas of law?
18. Are you able to provide a program outline? Has your organisation produced resource materials/paralegal manuals, etc.?
19. What is the method of service delivery or paralegal work undertaken by 'peer educators' to reach the affected or at-risk/marginalised community members? *(e.g. community education workshops)*
20. Do you provide supervision for your 'peer educators'?
    If so, what form does it take? *(e.g. legal supervision)*
21. How many 'peers' or 'community members' are or have been reached and assisted through this program/project?

Evaluation of program/project

22. Have you monitored or evaluated your program/project? Yes/No
23. What feedback have you received from 'peer educators'?
24. What feedback have you received from 'community members' or peers reached through the project?
25. Is there an evaluation report? Yes/No Can you provide a copy? Yes/No
26. What have been the outcomes?
27. How do you measure the effectiveness of the program/project?
28. What factors (approaches, practices, and strategies) were in place in your program/project that were critical for successful processes and/or outcomes? *(What has worked well? Why?)*
29. What have been the challenges within your program/project? How have you overcome these challenges?
    (What has not worked well? Why not?)

Appendix 3: Quick guide to a community paralegal program

Common features, approaches and practices were identified across the range of programs explored, and from participant interviews, to highlight what could be considered good practices and key elements when embarking on developing a community paralegal program. There is no one-size-fits-all model when it comes to paralegal programs. Programs evolve and develop to meet the needs and address issues of the communities served by the program.

Selective recruitment

The key to effective and successful programs is identifying the most suitable and appropriate community members to be trained as paralegals. Attributes sought usually include the following:

- literacy and capability – able to learn and share knowledge
- time and availability – able to commit the time required
- community connection – accepted, trusted and respected by the community
- willingness to serve the community – to advocate for others
- communication skills.

Adequate training, supervision and support

Support for community members to undertake a paralegal role is essential and should include:

- initial intensive legal training, providing a paralegal manual and commitment to regular ongoing training
- close supervision, follow-up and monitoring of legal assistance provided by a responsible supervising legal practitioner
- connection to lawyers, who provide backup support and guidance for paralegals, and are able to take referrals in complex matters
- non-legal support, providing debriefing and counselling services and regular group meetings or peer support networks.

Policies and procedures

Organisations need to have clear policies and procedures in place applying to all staff and volunteers, including paralegals, which include:

- standards of behaviour expected, including ethical standards
- disciplinary procedures
- risk management practices.

Organisations may require staff and volunteers to enter an agreement to abide by a code of conduct.

Strong partnerships

Collaborative relationships developed and established with strong grassroots NGOs as project partners are needed to:

- assist with paralegal selection, recruitment and training
- provide non-legal support, such as individual debriefing and counselling
- organise and mobilise communities, and coordinate collective social action, such as rallies, protests or strikes, to complement legal assistance and strategies by paralegals and lawyers.

Commitment to sustainability

A long-term commitment to adequately resource programs is essential. Program budgets need to include human resources and finances to employ and support paralegal staff and cover operational and evaluation costs. A long-term commitment to the legal empowerment of a community is also required.

"Victoria Law Foundation recognised a need in the community legal sector for staff to reflect on their practice, conduct research or improve or renew their skills. The foundation provided the necessary funds via their Community Legal Centre Fellowship to address this need. They then provided excellent support to help me create a useful resource manual for the sector."

Rachna Muddagouni
2006/2007 CLC Fellow

Victoria Law Foundation helps Victorians understand the law and their legal system. We are a not-for-profit organisation funded by the Legal Services Board Public Purpose Fund.

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Cover photo: Sithuthukile Mkhize (lawyer) and Ncumisa Sonandi (paralegal) at Women's Legal Centre, Cape Town, South Africa on 2 May 2014.

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