

Senate Inquiry into the Extent and Nature of Poverty in Australia

Prepared by JusticeNet SA¹

Introduction

JusticeNet SA ('JusticeNet') is an independent, not-for-profit legal service for South Australians who cannot afford a lawyer. We work directly with individuals who have run out of options for legal support, and we provide assistance through three services:

- Pro Bono Connect – a referral service connecting individuals and charitable organisations with private lawyers who can assist pro bono;
- Federal Courts Self-Representation Service – a service providing legal advice and assistance to people representing themselves in the general federal law jurisdiction of the Federal Courts; and
- Homeless Legal – an outreach legal service assisting people who are experiencing or are at risk of homelessness.

JusticeNet welcomes the opportunity to make this submission to the Senate Standing Committee on Community Affairs on the Extent and Nature of Poverty in Australia. The vast majority of people who contact JusticeNet for legal assistance are experiencing or are at risk of poverty, which gives our organisation direct insight into the range and complexity of issues brought on or compounded by poverty.

We focus our response on those who are experiencing chronic disadvantage, as well as those who are ineligible for aid yet cannot afford legal assistance. We refer to the latter cohort as the 'missing majority'. Throughout the course of our work, we have found that legal problems and social problems are closely related, and that we cannot address legal problems without concurrently addressing social ones.

Acknowledgment of Country

JusticeNet SA acknowledges the Traditional Custodians of the lands on which we work, the Kaurna people of the Adelaide Plains, as well as the Traditional Custodians of country throughout Australia and their continued connections to land, sea and community. We pay our respects to their Elders past and present. Always was, always will be.

Key Recommendations

JusticeNet makes the following key recommendations:

- It is critical that any response to reducing poverty acknowledge and target the structural conditions and barriers that create and embed poverty.
- Consultation with and deference to Indigenous communities on the most appropriate responses to issues affecting their respective communities.
- Increased funding for early intervention support to prevent the criminalisation of poverty.

¹ For more information visit <https://justicenet.org.au/>

- Increasing income support payments for all Australians accessing welfare and defer to specialist organisations for their substantive recommendations.
- Appropriate funding for front line community legal services and the legal aid system to service the growing justice gap to avoid future legal, social and health costs.
- Increased funding for technology infrastructure and literacy support for communities facing disadvantage so they can access legal support online and be empowered to advocate for themselves.

Poverty and Structural Inequality

JusticeNet recommends that it is critical that any response to reducing poverty acknowledge and target the structural conditions and barriers that create and embed poverty.

Poverty is most often the result of structural disadvantage and inequitable social and economic institutions. It is the basis of a system of privilege created by institutions that have enabled certain groups to achieve social mobility at the cost of others. As raised by Iris Marion Young in her book 'Responsibility for Justice' (2011), "vulnerability to poverty is a function of complex institutional factors that leave too many people behind".² In essence, these institutions are powerful "socialising agents" that influence what we can and cannot achieve within society.³

In Australia, wealth disparities are growing with over 3 million adults unable to generate an 'acceptable minimum standard of living'.⁴ The experience of poverty is not just economic; it is multidimensional. It is felt through underemployment, lack of education, poor health outcomes, food insecurity, unstable housing, social exclusion and lack of access to justice. Growing up in a family with socioeconomic disadvantages increases risk but does not necessarily mean 'disadvantage' will pass to the next generation. Social and economic policies, institutions, markets and families play a critical role in shaping mobility and curbing intergenerational disadvantage. It is possible to achieve greater economic and social security and to decrease rates of poverty.

Currently, our social welfare institutions do not sufficiently address social and economic inequalities to promote long-term upward social mobility. Our failure to address poverty can be attributed to social support systems that have not kept up with deteriorating social and economic conditions. As warned in the McClure Report (a national review into Australia's welfare system in 2000): "without appropriate action ... Australia may be consigning large numbers of people to an intergenerational cycle of significant joblessness".⁵ This had led to growing inequality of both opportunities and outcomes.

Australia committed to halve the proportion of men, women and children living in poverty by 2030. This was part of our commitment to the UN Sustainable Goals, however we are not on track to achieve this target.⁶ James Toomey, CEO of

² Iris Marion Young, *Responsibility for Justice* (Oxford university Press, 2011).

³ Kimberly Amadeo, 'What Is Structural Inequality?' *The Balance* (Online, 30 June 2021) <www.thebalance.com/structuralinequality-facts-types-causes-solution-4174727>.

⁴ Peter Davidson, Bruce Bradbury and Melissa Wong (2022) *Poverty in Australia 2022: A snapshot*, Australian Council of Social Service (ACOSS) and UNSW Sydney, p. 15 <[Poverty-in-Australia-2020_A-snapshot.pdf \(acoss.org.au\)](https://www.acoss.org.au/Poverty-in-Australia-2020-A-snapshot.pdf)>.

⁵ Australian Commonwealth Government (2000), *Participation Support for a More Equitable Society*, <<http://foi.deewr.gov.au/documents/participation-support-more-equitable-society>>.

⁶ Lourdes Antenor, CEDA: more Australian children condemned to poverty without urgent action, *Third Sector* (Web Page, 2 December 2021) <[CEDA: more Australian children condemned to poverty without action \(thirdsector.com.au\)](https://www.thirdsector.com.au/ceda-more-australian-children-condemned-to-poverty-without-action)>.

Mission Australia, puts inaction down to "...fatigue from hearing about the issue so often, a disbelief that poverty actually exists, or a lack of empathy for those living in poverty".⁷

We note Dr. John Falzon, CEO of St Vincent de Paul Society Australia, who has said:

"The truth is that people who are structurally locked out of jobs and income adequacy are condemned for being excluded, as if it were a perverse and immoral choice. It is primarily the role of good government to reduce inequality".⁸

Through unfair income support myths, such as targeted income programs "incentivise idleness" and encourage a "culture of dependency",⁹ we convince ourselves that poverty results not from gross inequities (in which we might be complicit) but from individuals' own deficiencies. We urge that the focus must shift from policing income support recipients and move to supporting individuals and families with consistent financial assistance that will allow them to make "substantial long-run investments in health and education".¹⁰

The Impacts of the Psychology of Poverty

The unfair and ahistorical myth of 'individual fault' to poverty speaks to an institutional gaslight that many of JusticeNet's clients report. In navigating the complexity of the welfare and legal assistance systems, it is common to feel like one's requests are being denied or minimised. Many report the trauma of having to retell their circumstances because the system seemed determined to prove that they were experiencing poverty because of bad choices or behaviour, rather than acknowledging the many systemic disadvantages that directly cause and embed poverty.

The benefits cliff is an example of this gaslight, where clients experience net loss of income because of an increase in earned wages.¹¹ In short, earning more money, however minimal, may do little to reduce someone's poverty if their income is increased to the point where they lose access to some or all of their benefits. The value of those lost benefits often outweighs their income gains.¹²

Living in poverty is expensive; costs compound when you cannot meet your basic needs. The reality is that being poor imposes conditions that perpetuate costs and losses. Those with low incomes often pay disproportionate costs to get by. This can include service fees for overdrawn bank accounts and making decisions that are costly long-term to survive short-term.

Living in poverty is also exhausting. Ramani Durvasula from the American Psychological Association explains: "The mental energy devoted to dealing with scarcity ... means a chronic, day-after-day, month-after-month, year-after-year loss of mental bandwidth [...] A vicious cycle then sets in whereby more scarcity begets fewer cognitive resources – less

⁷ James Toomey, 'Australia is no place for poverty deniers', Mission Australia (Web Page, 14 October 2019) <<https://www.missionaustralia.com.au/media-centre/opinion/australia-is-no-place-for-poverty-deniers>>.

⁸ St. Vincent de Paul Society (2013), Two Australia's: A Report on Poverty in the Land of Plenty <[257154_169073_Two_Australias_Report_on_Poverty.pdf](https://www.vinnies.org.au/257154_169073_Two_Australias_Report_on_Poverty.pdf) (vinnies.org.au)>.

⁹ Rema Hanna, Dispelling the Myth of Welfare Dependency, *Harvard Kennedy School* (Online, 9 August 2019) <[Dispelling the Myth of Welfare Dependency | Harvard Evidence for Policy Design](https://www.hks.harvard.edu/news/2019/08/09/dispelling-the-myth-of-welfare-dependency)>.

¹⁰ Ibid.

¹¹ Zarin Ahmed and Ashley Garner (2021), Pushed to the Precipice: How Benefits Cliffs and Financial Gaps Undermine the Safety Net for New Yorkers, Federation of Protestant Welfare Agencies, p. 7 <[2104019_FPWA-benefitcliffs-rev2_FINAL_4.19.2021.pdf](https://www.fpwaweb.org/publications/2104019_FPWA-benefitcliffs-rev2_FINAL_4.19.2021.pdf) 2104019_FPWA-benefitcliffs-rev2_FINAL_4.19.2021.pdf>.

¹² Susan Crandall, 'Getting poorer while working harder: The 'cliff effect'', *The Conversation* (Online, 3 June 2019) <[Getting poorer while working harder: The 'cliff effect' \(theconversation.com\)](https://www.theconversation.com/2019/06/03/getting-poorer-while-working-harder)>.

bandwidth – and less ability to attend to all aspects of life”.¹³ The World Health Organisation has found that the poorest population quintiles in rich countries – like Australia – exhibit a depression and anxiety disorder prevalence that is 1.5-2 times as high as that of the richest quintiles due to the mental load of poverty.¹⁴

At JusticeNet, we witness the system-induced cycle that embeds low-income earners in chronic poverty. Individuals are forced into deeper poverty to qualify for funded legal assistance. Often these services only have sufficient funding for the most critical of matters, leaving other matters to fester. At that point, their needs have become so great that they are labelled ‘too complex’ to manage. Clients who get to this stage have such deeply compounding social and health issues that their capacity can be affected, which risks their ability to instruct. Early intervention avoids traumatising clients further and encourages a more stable and settled approach.

This inability to control one’s life creates a situation where institutions keep those experiencing poverty in a chokehold. There is a stripping of personal agency. Of the welfare system in America, Ramani Durvasula has said: “[Our] safety net programs often work on a gatekeeping model. And what ends up happening is that gatekeeping ends up becoming a punishment. A punishment to even access the programs for those who most need them and in essence, preying on the most vulnerable”.¹⁵

Throughout our work, we have come across many clients who demonstrate to us first-hand the impacts of systemic poverty raised above, and the difficulties individuals face in attempting to lift themselves out of poverty.

One example is that of JusticeNet client Maria*¹⁶, who lives in public housing in Adelaide. Her public housing landlord notified her that she is in breach of her tenancy agreement because she has an interest in another property. The property is a modest one located in regional South Australia and is being tenanted to friends at well-below market rates with rental income being just enough to cover the mortgage. Maria is unable to live in this regional property because her essential health supports are in Adelaide, where she is unable to afford private rentals. She is prepared to sell the property to keep her tenancy, however she is unable to do so because she is involved in family law proceedings and there is a statutory charge over the property.

Maria was put in the difficult and stressful position of choosing between her legal assistance or her tenancy. To maintain existing legal assistance, she must keep the regional property and face eviction for breaching her tenancy. To maintain the tenancy, she needs to sell the property (potentially making those tenants homeless in the process) and will then lose legal assistance as any minimal proceeds of the sale will quickly be consumed in retaining lawyers.

In Maria’s case, our legal and social institutions are sending the message that social mobility is out of reach as even a modest asset is weaponised by our system to deprive someone of accessing legal and social benefits.

Poverty Prevalence Amongst Marginalised Groups

¹³ American Psychological Association (2017), The psychology of poverty: how scarce resources affect our behaviours and decisions, and what we can do about it, Seminar, pp.1- 2 < [poverty-briefing-transcript.pdf \(apa.org\)](#)>.

¹⁴ World Health Organisation (2001), World Health Report 2001: Mental Health: New Understanding, New Hope (WHO: Geneva) in Johannes Haushofer and Ernst Fehr (2014), On the Psychology of Poverty, *Science Magazine*, Vol. 344(6186), p. 864.

* Names and details changed to protect privacy.

¹⁵ American Psychological Association (2017), as above n 13.

¹⁶ A variation of this case study also appears in Dharani Rana and Rebecca Ross (2022), ‘Contemporary housing case studies from South Australia’, *Parity*, Vol. 35(10), pp. 31-32.

JusticeNet recommends consultation with and deference to Indigenous communities on the most appropriate responses to issues affecting their respective communities.

Those living on the margins with limited access to resources and social mobility are more likely to experience extreme poverty. It is well known that children living in poverty are from households that experience some form of marginalisation such as having a disability (20%) or being of Indigenous descent or from a culturally and linguistically diverse background (over 25%).¹⁷

The nature and extent of poverty amongst Indigenous communities is consistent with many key indicators of disadvantage experienced by Aboriginal and Torres Strait Islander peoples. The United Nations has acknowledged that “continued socio-economic vulnerability of minorities is frequently the result of historical legacies, such as the impact of slavery and colonisation, and state-sponsored discrimination. These historical imbalances continue to profoundly affect discriminated groups, causing successive generations to inherit the disadvantages of their predecessors”.¹⁸ Discrimination (including racism) causes poverty because it leads to social, economic and legal exclusion.

A collective of Indigenous-controlled organisations responded to the Senate Committee on Poverty in 2002 noting:

“It is etched on the collective psyche of Aboriginal and Torres Strait Islander people today that social and economic exclusion was arbitrarily enforced upon us. The ramifications of this exclusion has set the platform for the tragic circumstances experienced by [Indigenous] people[s] in Australia. Some continue to live in absolute forms of poverty”.¹⁹

It is well understood that community-controlled services and community led initiatives are the most effective at supporting Indigenous peoples and communities. Indigenous Elders and Leaders are the experts for their communities, understanding the drivers of poverty and the solutions, and their direction must be prioritised.

The Criminalisation of Poverty

JusticeNet recommends increased funding for early intervention support to prevent the criminalisation of survival crimes.

Poverty is criminalised as it forces people to engage in survival crimes to meet basic needs. The criminalisation of these necessary actions drives unfairness in communities already targeted by over-policing. Current ‘justice system’ responses criminalise mental illness, substance use disorders and trauma.²⁰ People experiencing homelessness and mental health issues require the support of various services. Although beyond the scope of this submission, this requires a deeper exploration of who is responding to the homeless cohort and how they can be diverted from the criminal justice system through decriminalisation of archaic laws and increased use of warnings by transport/enforcement officers, police and magistrates.

¹⁷ Gerry Edmond, ‘One in six children in Australia live in poverty’, *Mama Mag* (17 March 2022) < [One in six children in Australia live in poverty - MamaMag](#)>.

¹⁸ United Nations Office of the High Commissioner, ‘Poverty inextricably linked to discrimination and racism – UN Special Rapporteur’, *United Nations News* (Online, 4 November 2013) < [Poverty inextricably linked to discrimination and racism – UN Special Rapporteur | OHCHR](#)>.

¹⁹ National Statement on Poverty by 13 major community service organisations, dated 31 January 2002 in Senate Standing Committee on Poverty (2002-04), Chapter 13 – Indigenous Australians, Parliament of Australia < [Chapter 13 - Indigenous Australians – Parliament of Australia \(aph.gov.au\)](#)>.

²⁰ Tamara Walsh et. al., (2022), Criminalisation of homelessness in Australia: A national study, The University of Queensland, p. 9 < [WS 2 Walsh.pdf \(feantsaresearch.org\)](#)>.

Our clients include, amongst others, those caught driving to work or essential services on an expired or suspended licence and those charged with trespass as they are forced to sleep outside or fined for petty public nuisance offences. They are then unable to pay fines and are faced with a court system that seems wilfully blind to socioeconomic inequities and realities, leaving a number of them to face the threat of incarceration. As recently as 2020, an individual could be jailed in Western Australia for failing to pay a fine as low as \$250.²¹ We are aware that unemployed women and First Nations women were overrepresented in statistics on 'fine defaulters'; between 2006-16, 73% of female fine defaulters in Western Australia were unemployed and 64% were First Nations.²² Fines disproportionately affect people experiencing disadvantage; such that, the impact of accumulated debt only reinforces the poverty trap. It is futile to maintain a system that penalises poor and discourages social mobility. It only embeds social exclusion and emotional distress.

Decriminalising poverty requires funding of early intervention services (legal and non-legal) that prevent legal issues escalating to the point of crisis. JusticeNet's Homeless Legal Service grew by 28% in the 2021-22 financial year.²³ With one part time staff member working on the program we assisted 110 clients over 119 matters ranging from tenancy, eviction, immigration, criminal law, family law, consumer rights, eligibility for benefits and more.²⁴ We have much more demand for our services we are unable to meet.

Community lawyers report that people who access homeless legal services and/or are at risk of homelessness require intensive, client-centred and inter-agency support.²⁵ In this context, service models need to be responsive to the range of needs presented by people experiencing homelessness. Legal services cannot exist alone. Investment is needed in health-justice preventative models. Justice Connect has recorded a 100% success rate on clients avoiding warrants (e.g., for unpaid fines arising from public space offences) when they are assisted by a Homeless Persons Liaison Officer and a lawyer.²⁶ The Mental Health Legal Centre has noted similar success in their health-justice partnership with the Bolton Clarke Homeless Persons Program in Victoria. Over four years, 332 clients were serviced across 526 legal matters ranging from control guardianship and regaining control of finances to having debts exceeding \$20,000 (for a homeless client) being written off.²⁷

Income Support

JusticeNet recommends increasing income support payments for all Australians accessing welfare and defer to specialist organisations for their substantive recommendations.

²¹ Rangī Hirini, WA fine default laws finally pass through parliament, *SBS NITV* (Online, 17 June 2020) <[WA fine default laws finally pass through parliament | SBS NITV](#)>.

²² Elyse Methven, 'We need evidence-based law reform to reduce rates of Indigenous incarceration', *The Conversation* (Online, 8 April 2018) <[We need evidence-based law reform to reduce rates of Indigenous incarceration \(theconversation.com\)](#)>.

²³ JusticeNet South Australia (2022), Annual Report 2021-22, p. 10 <<https://www.justicenet.org.au/JusticeNet%20SA%20Annual%20Report%202021-22%20FINAL.pdf>>.

²⁴ *Ibid.*

²⁵ See: Justice Connect Homeless Law (2021), Closing the revolving door between the justice system, prison and homelessness, Submission to Victoria's Criminal Justice System Inquiry, Justice Connect, p. 26 <<https://justiceconnect.org.au/about/our-impact/submissions-archive/>>.

²⁶ *Ibid.*, p. 27.

²⁷ Mental Health Legal Centre Inc. (2020), Submission on Mental Health to the Productivity Commission Report, pp. 17-19 <https://www.pc.gov.au/_data/assets/pdf_file/0015/252123/sub1222-mental-health.pdf>.

There is an undeniable role for income support payments and social security to lift people out of poverty or, at the very least, help support some measure of dignity. A relief system that “barely keeps people alive [only] perpetuates rather than eliminates poverty and the pervading sense of hopelessness”.²⁸

A recent study by UNSW and the Australian Council of Social Service (**ACOSS**) confirms that the Coronavirus Supplement introduced by the Government in March 2020 helped reduce poverty by half.²⁹ By June 2020, 9.9% of people were below the poverty line, compared with 11.8% in 2019 and 22.7% who would have been in poverty in June 2020 without the income support.³⁰ Similarly, a study by the Australian National University found that child poverty within single-parent families reliant on JobSeeker decreased markedly because of the Coronavirus Supplement – from 39% to 17% respectively.³¹ Both are evidence of the impact that appropriate supplementation can have. However, when they lack permanency, the system is fragile.

Access to Legal Help is a Social Need

JusticeNet recommends that front line community legal services and the legal aid system are appropriately funded to service the growing justice gap to avoid future legal, social and health costs.

When poverty and exclusion from legal processes compound, they entrench further disadvantage. The Organisation for Economic Cooperation and Development (**OECD**) has said that “law underlies nearly every aspect of people’s lives, including health, employment, education, housing, and entrepreneurship. ... Providing people access to justice enables them to tackle these inequalities, and to participate in legal processes that promote inclusive growth”.³²

It is not just those experiencing poverty who are vulnerable to the absence of legal support. Traditional models of law are exacerbating the justice gap. The legal profession is a monopoly with a rising disconnect between traditional legal service and general social affordability. This is creating a broader group of individuals who cannot afford legal support despite not living below the poverty line. As noted in our introduction, we refer to this cohort as the missing majority which is estimated to be 20 million Australians (or 80% of the population).³³ Behind these numbers are confronting stories of people being challenged with accumulating legal problems and experiencing simultaneous health and social problems.

The missing majority often report that they feel silenced and ignored in the hierarchy and bureaucracy of the legal system.³⁴ One example is that of JusticeNet client Paul*. Paul’s combined household income puts him ever so slightly above the means threshold for most free legal services, suggesting many organisations should undertake a review of and update their means tests. Paul was frustrated that the legal system did not see him as ‘poor enough’. He noted that

²⁸ Oscar Lewis (1966), ‘The Culture of Poverty’ in Don Arthur (2021), ‘Welfare dependency: the history of an idea’, Social Policy Section, Parliament of Australia, p. 23 <[8259859.pdf \(aph.gov.au\)](#)>.

²⁹ Peter Davidson (2022), as above n 3, p. 11.

³⁰ Ben Phillips and Matthew Grey et. al., (2020), ‘COVID-19, JobKeeper and JobSeeker impacts on poverty and housing stress under current and alternative economic and policy scenarios’ in Peter Davidson (2022), as above n 3, p. 11.

³¹ Ben Phillips and Vivikth Narayanan (2021), Financial Stress and Social Security Settings in Australia, ANU Centre for Social Research and Methods, p. 26 <[Making a difference to children and families in financial stress and poverty \(socialventures.com.au\)](#)>.

³² Press in Organisation for Economic Cooperation and Development (2016), Leveraging the SDG’s for Inclusive Growth: Delivering Access to Justice For All, Organisation for Economic Cooperation and Development and Open Society Issues Brief, p. 16 <Microsoft Word - OECD Issues 2016 - Delivering Access to Justice For All - 092016 VERSION FINALE.docx>.

³³ Margaret Castles and Alice Rolls, Justice must not be reserved for those who can afford it, *InDaily* (Online, 7 November 2022) <[Justice must not be reserved for those who can afford it \(indaily.com.au\)](#)>.

³⁴ *Ibid.*

even getting 'low bono' assistance at discounted rates means that he would still be a couple of hundred dollars out-of-pocket per week, which impacts his family's weekly grocery budget.

There is an economic case for addressing this growing justice gap. The World Bank and International Bar Association estimate that unsolved legal problems can cost an economy 2.35 times more than would be spent on providing legal assistance services.³⁵ Unresolved legal problems will result in Government expenditure in the areas of health care, child protection and child services, housing and the criminal justice system.³⁶

On the provision of legal assistance as a means of avoiding poverty, Murray Gleeson, former Chief Justice of the High Court of Australia has said:

"The expense which governments incur in funding legal aid is obvious and measurable. What is not so obvious, and not so easily measurable, but what is real and substantial, is the cost of the delay, disruption and inefficiency, which results from absence or denial of legal representation. Much of that cost is also borne, directly or indirectly, by governments. Providing legal aid is costly. So is not providing legal aid".³⁷

There is a growing queue for free legal assistance in Australia whilst not-for-profit legal services remain underfunded. It was reported by the ABC in 2017 that Community Legal Centres were turning away 160,000 people a year due to lack of resources.³⁸ What is particularly concerning is that such people often already have compounding legal needs.³⁹ Those who are unable to get assistance from legal aid or community legal services are left with the option to self-represent should they want to seek justice.

The Productivity Commission has previously estimated that less than 10% of households across Australia would be eligible for legal aid without having to contribute further towards their legal costs.⁴⁰ In South Australia, a household would have to make less than \$342 per week to meet the disposable income threshold for aid. This is an income well below the poverty line.⁴¹ The income threshold is even more stringent in New South Wales, Victoria, Western Australia and the Northern Territory, where demand is greater.⁴² Despite the growing need for legal aid, Commonwealth funding for it has fallen by 22% in the past 25 years.⁴³ Legal aid funding per capita has been found to be half that of comparable countries like the United Kingdom.⁴⁴

Recent research also confirms that legal aid funding is skewed towards criminal law matters at the expense of civil and family law matters.⁴⁵ For the 2020-21 financial year, 83,499 people received legal aid grants for criminal law matters,

³⁵ International Bar Association and World Bank Group (2019), A Tool for Justice: A Cost Benefit Analysis of Legal Aid, p. 2 <<https://www.ibanet.org/Document/Default.aspx?DocumentUid=DB027287-2352-4269-8D0FC1446B1023B>>.

³⁶ Ibid.

³⁷ Law Council of Australia, Submission No. 96, p. 114, quoting State of Judicature, speech delivered at the Australian Legal Convention, 10 October 1999 in Productivity Commission (2014), 'Access to Justice Arrangements', p. 31 <[Volume 1 - Inquiry report - Access to Justice Arrangements \(pc.gov.au\)](#)>.

³⁸ Fiona McLeod, 160,000 people turned away: How the justice system is failing vulnerable Australians, ABC News (Online, 3 August 2017) <[160,000 people turned away: How the justice system is failing vulnerable Australians - ABC News](#)>.

³⁹ National Association of Community Legal Centres (2008), Submission No. 99 to the Productivity Inquiry on the 'Not for Profit Sector', p.3 <[untitled \(pc.gov.au\)](#)>.

⁴⁰ Productivity Commission, Access to Justice Arrangements: Eligibility for legal aid and the cost of extending it, p. 1016 <[Eligibility for legal aid and the cost of extending it \(pc.gov.au\)](#)>.

⁴¹ Ibid, p. 1014.

⁴² Ibid.

⁴³ Law Council of Australia, 'The long-term costs of underfunding legal aid' (Media Release, 3 December 2021) <[The long-term costs of underfunding legal aid - Law Council of Australia](#)>.

⁴⁴ Stuart Clark, 'Can't afford a lawyer? You're out of luck', *The Sydney Morning Herald* (Online, 14 May 2016) <<https://www.smh.com.au/opinion/cant-afford-a-lawyer-youre-out-of-luck-20160513-goug7v.html>>.

⁴⁵ National Legal Aid, Gender for Financial Year 2022-2023 as at January 2023, National Legal Aid Statistics <[NLA Statistics Report \(nsw.gov.au\)](#)>.

42,298 for family law matters and only 3,808 for civil law matters.⁴⁶ Greater funding for criminal law matters also means that men receive twice as many legal aid grants compared to women; 66% versus 34% of legal aid grants between July 2020 and March 2021.⁴⁷

The referral backlog for community legal services is particularly pronounced in regional, rural, remote and very remote (RRRR) communities, with underfunding exacerbating legal problems and poverty in these communities. Many community legal services are not adequately staffed to deal with the demand; outreach costs are either too high or not available and referral points are weak.⁴⁸ This means that vulnerable groups cannot obtain legal services, let alone access to holistic social, financial and health supports.

Community legal services in RRRR communities contribute to community development and empowerment by helping people understand their legal rights, sharing knowledge and information and providing legal assistance where possible.⁴⁹ JusticeNet has long been advocating for an increase in funding for community legal services outside the greater Adelaide area. Community Legal Centres New South Wales estimates that an additional \$698,000 in funding is needed to cover geographic service gaps (in NSW alone).⁵⁰ Addressing the service gap will prove critical for an effective response to access justice in RRRR communities.

The Use of Technology in Access to Justice

JusticeNet recommends increase in funding for technology infrastructure and literacy support for communities facing disadvantage so they can access legal support online and be empowered to advocate for themselves.

JusticeNet calls for the shift towards technological innovation as a means of bridging the access gap through cost efficiencies and scale.⁵¹ There have been numerous sector requests for increased funding towards technology innovation for the delivery of legal service, however, benefits are limited if low income and vulnerable groups do not have access to, or literacy in, technology.⁵²

The Australian Digital Inclusion Index for 2021 shows that while overall digital inclusion in Australia is growing, the gaps between digitally included and excluded Australians remain substantial among low-income households, single person households, people with disability and unemployed persons.⁵³ There is a clear need to ensure that base line access to technology (and technology literacy) is provided before we can feel confident that technology will respond to the access to justice crisis. Even then, we are acutely aware that increased funding into telecommunication and internet services in RRRR communities are part of the broader 'access to justice' picture that must include better funding for front line, face-

⁴⁶ National Legal Aid, Applications – Status for Financial Year 2020-2021 as at January 2023, National Legal Aid Statistics < <https://nla.legalaid.nsw.gov.au/nlareports/reportviewer.aspx?reportname=ApplicationStatus>>.

⁴⁷ National Legal Aid, Gender for Financial Year 2022-2023 as at January 2023, National Legal Aid Statistics < [NLA Statistics Report \(nsw.gov.au\)](https://nla.legalaid.nsw.gov.au/nlareports/reportviewer.aspx?reportname=NLA_Statistics_Report)>.

⁴⁸ Combined Community Legal Centres' Group NSW, Submission 60, p. 15 to The Senate Legal and Constitutional References Committee (2004), Legal aid and access to justice, Commonwealth of Australia, p. 115 < [Inquiry into Legal Aid and Access to Justice – Parliament of Australia \(aph.gov.au\)](https://www.inquiry.gov.au/inquiry-into-legal-aid-and-access-to-justice)> and NSW Department of Justice (2017), Review of NSW Community Legal Services, p. 7 and 61. <<https://www.justice.nsw.gov.au/Documents/publications-research/Final-Report-CLC-Services.pdf>>.

⁴⁹ Dharani Rana, Bridging Community and Law: The Role of the Community Lawyer, *JusticeNet SA News* (Online, 14 July 2022) < [Bridging community and law \(justicenetwork.org.au\)](https://www.justicenetwork.org.au/bridging-community-and-law)>.

⁵⁰ Community Legal Centres NSW, NSW Budget Submission 2021-22, 12 February 2021, p. 6 < [210212 CLCNSW pre-budget submission](https://www.clcnsw.org.au/210212-CLCNSW-pre-budget-submission)>.

⁵¹ Jacqueline So, 'The law doesn't belong to lawyers, says Immediation's justice partnerships lead', *Australasian Lawyer* (Online, 2 September 2021) < [The law doesn't belong to lawyers, says Immediation's justice partnerships lead | Australasian Lawyer \(thelawyer.com.au\)](https://www.thelawyer.com.au/news/the-law-doesnt-belong-to-lawyers-says-immediation-s-justice-partnerships-lead)>.

⁵² See for example: Law Council of Australia (2018), The Justice Project – Final Report Part 2: Legal Services, Law Council of Australia, p. 36 < [18 - 2018 09 - Final - Legal Services \(Part 2\).pdf \(lawcouncil.asn.au\)](https://www.lawcouncil.gov.au/2018-09-final-legal-services-part-2)>.

⁵³ Thomas Barraket et. al (2021), Measuring Australia's Digital Divide: The Australian Digital Inclusion Index 2021, Melbourne: RMIT, Swinburne University of Technology and Telstra, p. 5 < [ADII 2021 Summary-report_V1.pdf \(rocketcdn.me\)](https://www.adii.gov.au/ADII_2021_Summary-report_V1.pdf)>.

to-face, legal services. The Law Society of NSW has warned that technological innovation “cannot make up for a shortfall in core funding of the legal assistance sector” nor should it.⁵⁴

It remains imperative that appropriate funding is given to increase face-to-face services in the community to establish trust and cooperative relationships with other human serviced organisations.⁵⁵ Online self-help resources should be designed to augment, not replace, in-person legal services.

Many countries are now well ahead of Australia when it comes to the benefits technology can have in the dissemination and navigation of legal information in order to empower citizens to find early resolution without need for the formal legal system.⁵⁶

Conclusion

Poverty response has historically focused on large-scale social and economic policies and monitoring against poverty indicators and lines. Many of these measures are developed without understanding the views of those with lived experience. As a result, most of these measures have failed.

These blanket solutions fail to respond to the reality of poverty from a social, financial, health and legal perspective. For Indigenous peoples, women and other marginalised groups, there is also little understanding of how oppressive structures such as colonialism, racism and patriarchy interact with each other to set the context in which these groups experience impoverishment and legal crisis.

As this submission argues, for the majority of those who cannot afford legal assistance, access to justice is being significantly delayed or denied. The legal assistance sector is under resourced and unable to address the legal problems of the growing missing majority, let alone the most marginalised, impoverished communities. Legal services (where given) are also designed to be discrete and support someone to ‘overcome’ a particular issue. After the issue is ‘solved’, support is withdrawn, and the person is expected to self-manage. This approach does not work for people in poverty. The result is that we are seeing a system plagued by relapse, recidivism and ultimately despair.⁵⁷

As the complexities of poverty are so deeply embedded it must address from both an individual and structural perspective. The OECD has recommended that “participation of the poor in policymaking [would] imply their recognition as fully-fledged citizens ... [and] also contribute to designing more effective policies against poverty and social exclusion”.⁵⁸

Access to legal help is not a luxury item that is not part of the conversation around poverty, it is a social need. It is not a position of neutrality. While those experiencing or at risk of poverty continue to be unassisted by the justice system, yet those with wealth have the advantage of the justice system, poverty and inequality will increase.

⁵⁴ The Law Society of NSW (2017), ‘The Future of Law and Innovation in the Profession’, The Law Society of NSW Commission of Inquiry, p. 57 <[1272952.pdf \(lawsociety.com.au\)](https://www.lawsociety.com.au/1272952.pdf)>.

⁵⁵ Jeff Giddings, Barbara Hook and Jennifer Nielsen (2001), Legal Services in Rural Communities: Issues for clients and lawyers, *Alternative Law Journal*, Vol. 26(2), p. 6 cited in Legal and Constitutional References Committee Report June 2004, paragraph 6.31.

⁵⁶ Hague Institution for Innovation in Law (2023), ‘Innovating Justice: Highlighting projects from the Justice Accelerator’, <https://www.hiil.org/programmes/the-justice-accelerator/>

⁵⁷ Stand Together Against Poverty, ‘How to escape the poverty trap for good’, *The Guardian* (Online) <[Advertiser content hosted by the Guardian: How to escape the poverty trap for good | The Guardian](https://www.theguardian.com/australia-news/2023/jun/28/how-to-escape-the-poverty-trap-for-good)>.

⁵⁸ Anja Claeys (2001), Engaging the Poor in Policy-Making on Poverty and Social Exclusion in Flanders (Belgium), the Organisation for Economic Cooperation and Development, p. 125 <<https://www.oecd.org/gov/digital-government/2537007.pdf>>.

