

EVALUATION OF EMPLOYMENT RIGHTS LEGAL SERVICE (ERLS)

for Inner City Legal Centre, Kingsford
Legal Centre and Redfern Legal Centre

nsfconsulting

Employment Rights
Legal Service



The Employment Rights Legal Service (ERLS) is funded by the NSW State Attorney General through the Community Legal Centres Program Critical Gaps Funding until 30 June 2025. At the time this report was prepared, there was no certainty of continuing funding, and this is reflected throughout the report. At the time of publication, however, this funding appears to be continuing.

The ERLS service is delivered on Gadigal and Bidjigal lands. This evaluation was conducted and authored by Natalie Fisher of NSF Consulting, on Gadigal land.

RLC, ICLC, RLC and NSF Consulting acknowledge and pay deep respect to those elders past and present for their ongoing care and custodianship of the lands on which we work.

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Abbreviations

| | | | |
|------|---------------------------------|------|---------------------------------------|
| ERLS | Employment Rights Legal Service | CLC | Community Legal Centre |
| RLC | Redfern Legal Centre | CLE | Community Legal Education |
| KLC | Kingsford Legal Centre | LGA | Local Government Area |
| ICLC | Inner City Legal Centre | CALD | Culturally and linguistically diverse |



Contents

| | |
|--|-----------|
| Executive summary | 4 |
| Introduction | 8 |
| Employment Rights Legal Service | 12 |
| Program Logic Model | 16 |
| Evaluation Approach | 19 |
| Evaluation Findings | 22 |
| Findings Summary | 22 |
| Appropriateness | 24 |
| Efficiency | 30 |
| Effectiveness | 48 |
| Impact | 56 |
| Recommendations | 66 |
| Conclusion | 68 |
| Appendices | 69 |
| Individuals consulted | 70 |
| Evaluation Framework | 72 |
| Discussion guide | 74 |



Executive summary

Introduction

Workers experiencing disadvantage across New South Wales are more likely than other employees to have problems at work, including wage theft (being paid incorrectly or not at all), losing their job unfairly, being bullied by their boss, sexually harassed, or discriminated against.

They tend to be migrants, women, employees with disability, international students, young workers, Aboriginal and Torres Strait Islanders, and workers in regional, rural and remote locations.

Recent studies have highlighted the prevalence of wage theft in New South Wales, whereby employers underpay their workers, pay them late, pay cash and don't provide payslips, require deposits to secure jobs, or confiscate passports. Modern slavery is also a significant issue in New South Wales. It includes exploitative practices such as debt bondage, deceptive recruiting and forced labour. Community Legal Centres provide free legal support for people experiencing disadvantage or hardship, although most do not provide specialist employment law support.

Employment Rights Legal Service

The Employment Rights Legal Service (ERLS) is a collaborative legal service that provides state-wide legal services, community education, stakeholder engagement and sector-wide capacity building in employment law issues that typically include underpayments, unfair dismissal and discrimination. ERLS is focused on protecting the employment law rights of migrant and disadvantaged workers across New South Wales.

The service is a collaboration between Redfern Legal Centre (RLC), Inner City Legal Centre (ICLC) and Kingsford Legal Centre (KLC). Each Centre has decades of experience working with marginalised and disadvantaged people and have employed specialist employment lawyers to deliver ERLS.

Purpose and design of this evaluation

This evaluation was conducted to explore how appropriate ERLS is as a support service for people experiencing disadvantage in the workplace, how efficiently it is utilising its funding and resources, how effectively it is delivering statewide services as intended, and its impact on the lives of workers experiencing disadvantage, the CLC sector and society more broadly.

Key evaluation activities include analysis of program data, desk research, and consultation with 32 people, including ERLS staff and volunteers, internal and external stakeholders, and people who have used the service ('clients').

Evaluation findings were synthesised and analysed using an evaluation rubric, aligning findings with the key areas of interest of appropriateness, efficiency, effectiveness and impact.

Evaluation findings

Between 1 July 2021 and 30 June 2024, ERLS has so far assisted more than 2000 people from 82 per cent of LGAs in New South Wales who have experienced workplace issues. The service has provided multilingual resources, education and training for generalist solicitors working in CLCs around the state. ERLS has also made a significant contribution to workplace sector debate and employment law reform.

Appropriateness

ERLS is addressing the unmet legal need of workers experiencing disadvantage across New South Wales. It utilises an appropriate collaborative service model to support and represent workers experiencing disadvantage who would otherwise face multiple barriers to knowing and asserting their legal rights.

Efficiency

ERLS provides excellent value for money. It has serviced approximately 1000 people a year through employment legal support and advice. Along with paid staff, volunteers have played a crucial role in the efficient running of the service, contributing about \$1.5million to the value of ERLS.

An Online Knowledge Hub has been an important online resource for the sector to access current resources, including brochures in multiple languages and a 'Phone a Friend' service for CLC solicitors to call ERLS specialist employment law solicitors for advice.

Education and training has been provided for community workers about employment law and the range of resources and services they can provide their clients.

Law reform activities and advocacy work have been crucial parts of the service, and as a result, ERLS has become a recognised and respected player in broader public discussions about employment rights that often lead to change.

Although offering excellent value for money, ERLS team members are working above and beyond their capacity to service as many clients as possible, with limited resources to support increasing numbers of referrals each year.

Effectiveness

ERLS has been effective in delivering legal advice, assistance and representation to workers experiencing disadvantage in the majority of local government areas in New South Wales. It has built awareness of the service amongst the community sector through collaborative activities with community organisations and the CLC sector more broadly.

Impact

ERLS has made a positive impact on individual clients, the CLC sector and wider society. Ongoing law reform work is likely to have a positive impact on the lives of thousands more disadvantaged workers into the future.

Recommendations

1. ERLS should continue to advocate for secure and increased funding for a period of at least five years, to enable it to service its increasing numbers of referrals. Funding should include wages for additional dedicated employment solicitors, associated administrative funding as well as administrative funding to support its large volunteer workforce.
2. ERLS should keep prioritising service delivery for disadvantaged workers throughout New South Wales, particularly where no generalist CLCs exist.
3. ERLS should maintain delivery of workforce training for the CLC sector. It should particularly focus on those outside the Sydney metropolitan area who are servicing clients in areas of higher rates of unemployment and underpayment and with limited access to employment support services.
4. ERLS should develop a stand-alone website as an important tool in the suite of co-branded materials, with the aim of formalising the discrete nature of the service.

Conclusion

ERLS is an established service that fills a gap in providing employment legal support and advocacy on behalf of those who are most in need, including migrants, international students, women, young people, workers living with disability, and others with unstable employment such as gig economy workers. There was overwhelming support amongst key stakeholders for ERLS to become better supported with strategic scaling of services and more stable and increased funding.





Introduction

Background

Some people are more likely than others to experience exploitation at work due to a range of factors, including gender, age, disability, ethnic or cultural background and language barriers. The impacts of underpayment are heightened for workers falling into more than one of these categories.¹

Certain industries in Australia employ a high proportion of workers for whom underpayment is significant, typically hospitality, childcare, aged care, food services, retail, disability care, cleaning and accommodation services, and higher education. Women are often open to wage theft due to higher participation rates in these industries.

Approximately 11 per cent of the Australian workforce are migrant workers, that is, people born overseas whose usual residence is in Australia. The Australian Government reports that migrant workers have limited knowledge of workplace rights and laws.² When combined with discrimination and exploitation, this leads to high legal need for employment services. This was well established and identified before COVID-19, with the pandemic further exacerbating the systemic and structural barriers to justice.³

In 2016 the Fair Work Ombudsman reported that migrant workers and international students are reluctant to pursue their employment rights. Fewer than 10 per cent of underpaid migrant workers take action to recover lost wages. This was thought to be due to lack of awareness of their rights, as well as fear of losing their jobs or entitlements.

Culturally and linguistically diverse (CALD) workers also face barriers to exercising their legal rights in relation to employment, often working in insecure jobs in the cash economy. They are disproportionately affected by workplace exploitation such as unfair dismissals.

Young workers are more likely to work in casual jobs and have skills that are easily replaced. They are less likely to join a union and tend to be less aware of their workplace rights and obligations, making them susceptible to underpayment.

Workers in regional, rural and remote Australia generally have higher rates of unemployment and limited access to support services, making them potentially more exposed to underpayment than people who work in metropolitan areas. Employers in sectors such as regional horticulture and mining are known to underpay their workers and operate in a system of increasing casualisation.

Aboriginal and Torres Strait Islander people are also likely to experience wage theft for several reasons, including longstanding historical discrimination and difficulty accessing services to assist. It can be more challenging for these workers – particularly women – to assert their rights.⁴

1 The Future Enforcement for Migrant Workers in Australia, p10.

2 Appendix D to the Migrant Worker Taskforce, June 2018, p7

3 Wage Theft in Silence, Why Migrant Workers Do Not Recover Their Unpaid Wages in Australia.

4 https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Underpaymentofwages/Report/section?id=committees%2freportsen%2f024434%2f79506

It is extremely difficult for people to navigate the legal system without access to expert assistance, due to a range of significant barriers. For example, a claim for an unfair dismissal – whether in the Fair Work Commission or the Industrial Relations Commission – needs to be submitted within 21 days of a dismissal taking effect.⁵ Experts believe that most people are unaware of this deadline, other than those who are receiving assistance.

Modern Slavery

Modern slavery is a significant issue for workers experiencing disadvantage. It can be defined as a relationship based on exploitation, characterised by a range of practices that include people trafficking, slavery, servitude, forced labour, debt bondage, deceptive recruiting for labour or services, and the worst form of child labour, as seen in many global supply chains.⁶

The NSW Office of Anti-slavery Commissioner estimates that 16,000 cases of modern slavery are happening in New South Wales at any given time – and increasing – yet they only receive 100-150 formal reports a year. Modern slavery often preys on migrant workers and others susceptible to exploitation, and often intersects with other forms of exploitative practices.⁷

Wage Theft

Wage theft occurs when an employer does not pay a worker the correct wages, does not pay them at all, does not adhere to an applicable modern award, or does not pay correct entitlements.⁸

A 2017 study of 900,000 temporary migrants in Australia revealed widespread wage theft

through underpayments, with almost a third of participants earning \$12 per hour or less, predominantly in the food industry, with fruit or vegetable-picking and farm work paying \$5-\$10 an hour. International students typically earned between \$12 and \$15 per hour, constrained by the 40-hour fortnight visa limitation on working hours during study time, with 38 per cent reporting having breached their visa conditions to make ends meet.

There were also experiences of late payment, failure to provide payslips, cash payback to employers on receipt of payslips, requirements of job deposits of up to \$1,000 to secure employment, and passport confiscation.⁹

In another recent study, Unions NSW audited 7000 job advertisements attracting temporary migrant workers to Australia, across ten industries in five languages. Findings showed that advertised wages in horticulture, retail, cleaning, transport, building and construction, hospitality, and hair and beauty all fell well below the minimum wage. The experiences shared by 1000 migrant workers reported significant insecurity in the horticulture industry due to the prevalence of pay relating to numbers of pieces picked (piece rate wages) rather than hourly rates. These were most prevalent for blueberry, strawberry, apple, raspberry and cherry picking. Forty-two per cent of job advertisements in New South Wales were for piece rate wages, rather than hourly rates; the highest percentage of all states and territories.

There are options available for people to seek support and compensation for these types of exploitative work practices, including through Community Legal Centres (CLCs).

5 Fair Work Commission, 2024. <https://www.fwc.gov.au/timeframe-lodgment-0>

6 <https://www.humanrights.unsw.edu.au/research/modern-slavery>

7 Fact Sheet: NSW Anti-slavery Commissioner,

8 Community Legal Centres NSW

9 Berg, L., Farbendblum, B. Wage Theft in Australia: Findings of the National Temporary Migrant Work Survey, 2017

The role of Community Legal Centres

CLCs provide free legal help and support to people in need, prioritising those who are experiencing financial hardship, migrant workers, including from CALD backgrounds, as well as people living with disability, children and young people, LGBTQI+ people, Aboriginal and Torres Strait Islander people and older workers. Each year, CLCs deliver more than 185,000 front-line legal services to over 54,000 people in New South Wales.

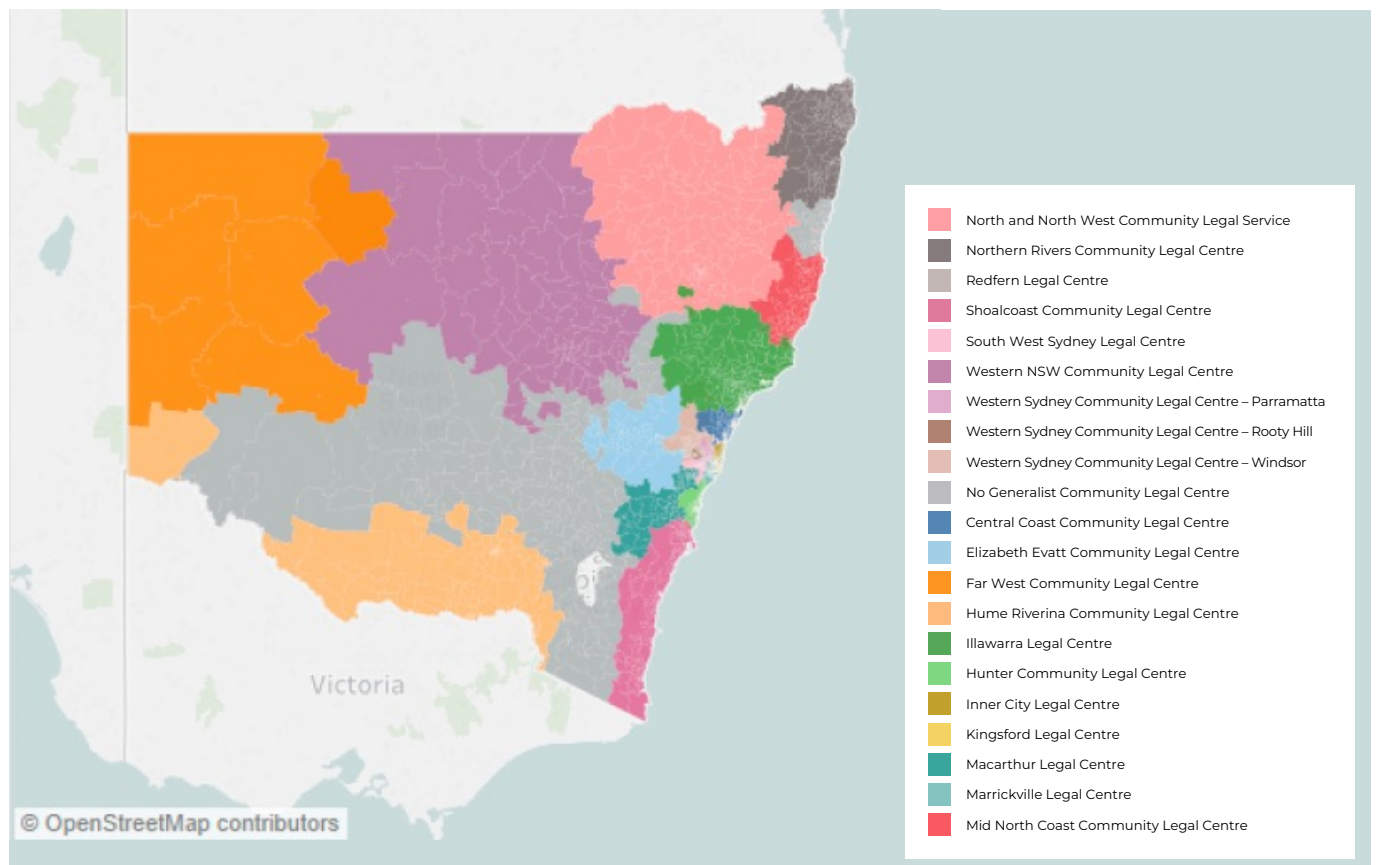
Uniquely placed to identify structural and systematic issues and develop meaningful solutions to these barriers to justice, CLCs provide a safety net to prevent people’s legal problems from escalating. They also advocate for law reform and social justice, so that our society and laws are just, fair and inclusive.

There are 41 CLCs across New South Wales. Of those, approximately 19 offer general legal support services across a range of areas. The remainder offer specialist support in areas including immigration, international social justice, refugee advice, seniors’ rights, welfare rights, financial rights, arts law and animal rights.

At the inception of ERLS, there were no specialist CLCs in New South Wales with a specific focus on employment law issues, although some generalist CLCs employed solicitors who worked primarily on employment law matters. The lack of available employment law advice available at CLCs sometimes occurs because generalist civil lawyers working in CLCs do not necessarily feel equipped to provide this service.

The following map illustrates the wide distribution of generalist CLCs throughout New South Wales.

Generalist Community Legal Centres in NSW



Source: Community Legal Centres NSW



Employment Rights Legal Service

Overview

Employment Rights Legal Service (ERLS) is a state-wide collaborative legal service, designed to increase and enhance access to justice in relation to employment legal needs across New South Wales.

ERLS was developed in response to an identified need for specialist employment law services for migrant and other workers across New South Wales who experience disadvantage and problems at work and are often unable to access free employment law assistance.

ERLS focuses its services on assisting priority client groups including migrant workers, women, international students, CALD workers, young workers, Aboriginal and Torres Strait Islander people, and workers in regional, rural and remote NSW. It supports these people who have been unfairly treated at work, through wage theft, dismissals, discrimination or other types of unlawful actions.

In addition to direct client support, ERLS provides community education, stakeholder engagement and sector-wide capacity building. It also makes important contributions to employment law reform.

The service is delivered by three partnering CLCs: Redfern Legal Centre (RLC), Inner City Legal Centre (ICLC) and Kingsford Legal Centre (KLC), who each bring decades of employment law experience and expertise, as well as expertise in community lawyering.

The core aims of ERLS are to:

1. Deliver legal advice, assistance and representation to workers experiencing disadvantage across New South Wales by solicitors with expertise in employment law;
2. Conduct outreach and community legal education (CLE) to community workers who may be unaware of the law, resources and services for their client;
3. Provide support and capacity building to the broader community legal sector to increase the delivery of employment law services; and
4. Influence employment law reform through advocacy and policy work.

The establishment of ERLS

In August 2021, RLC, KLC and ICLC received funding to deliver ERLS using an innovative collaborative model. The service was operating at full capacity from October 2021.

Together, all partners designed a Memorandum of Understanding (MOU) setting out the purpose and principles of ERLS. The main elements of the MOU include:

- A statement of shared objectives for ERLS, including the shared sense of purpose between the three participating partners;
- Each partner's respective roles and contributions to the partnership, including the provision of staff, logistical support, data collection, and the relationship between the partnering CLCs; and
- The purpose of the service Steering Committee, including how issues would be resolved.

Partners collectively engaged a senior employment solicitor to coordinate the new project, and a new Steering Committee was appointed. A legal needs analysis established gaps in existing service provision and presented strategies as to how ERLS would achieve its purpose and provide appropriate legal service.

The significance of COVID-19 on service establishment

ERLS was a timely service during the COVID-19 pandemic years. Many people experienced radical work-related changes including the introduction of vaccination mandates, lockdowns, work from home orders, the establishment of flexible and casual work arrangements and unexpected redundancies.

As laws were changing and the ongoing impacts of COVID-19 being felt, people's work patterns were hugely disrupted. At the same time, ERLS was establishing itself as a necessary service,

providing much-needed support, particularly for disadvantaged workers, including casual and migrant employees. During this time, the ERLS solicitors developed systems and resources to work flexibly themselves, engaging with clients and stakeholders remotely, whilst addressing this growing demand for support.

Collaborating partners

RLC, ICLC and KLC each bring decades of experience servicing their unique local communities, with specialist solicitors in employment law at each Centre. The three collaborating partners have each employed at least one specialist ERLS lawyer to deliver the service.

Redfern Legal Centre

RLC is a non-profit CLC that provides access to justice. Established in 1977, it was the first CLC in New South Wales and the second in Australia. RLC provides effective and integrated free legal services that are client-focused, collaborative, non-discriminatory and responsive to changing community needs—to the local community as well as state-wide. RLC works to create positive change through policy and law reform work to address inequalities in the legal system, as well as policies and social practices that cause disadvantage.

RLC's specialist legal services focus on tenancy, credit, debt and consumer law, financial abuse, employment law, international students, First Nations justice and police accountability. RLC provides outreach services including through a health justice partnership.

RLC has a long history of assisting people experiencing disadvantage with discrimination and employment matters, having advocated for many years for migrant workers to receive protection from visa cancellations. The Centre was involved in the co-design of the world

first migrant justice visa which allows migrant workers to stay in Australia to address their exploitation and protect them from visa cancellation. RLC is currently the only CLC accredited to certify migrant justice visa applications. Additionally, for over a decade, RLC has run the only state-wide service for international students.

In 2024, RLC launched Let's Talk About Confidentiality, a research report published on 6 March 2024 by Sharmilla Bargon and Regina Featherstone from RLC, also the inaugural Social Justice Practitioners-in-Residence at the University of Sydney. In August 2023, Bargon and Featherstone set out to explore how sexual harassment practitioners were resolving out-of-court settlements and how they approached confidentiality terms. This report has had significant positive impact on the use of non-disclosure agreements in Australia.

Inner City Legal Centre

Located in Kings Cross, ICLC has been working with marginalised populations in and around the inner-Sydney area for more than 40 years. Employment law has always been part of its service offering, and, since its dedicated employment practice was established in 2019, the Centre has developed considerable expertise delivering specialised employment law services. ICLC has developed close relationships with workers and worker organisations across the community.

In addition to substantive employment law expertise, ICLC has demonstrated experience building a service that is accessible to people in the community who would not otherwise access a legal service. The Centre's solicitors are highly experienced in assisting people who face multiple barriers to accessing a legal service, and offer a flexible service that meets the needs of their clients, which include LGBTQI+ communities and sex workers. ICLC solicitors

regularly work with community groups and support workers to effectively reach people experiencing disadvantage. ICLC has two full time employment law specialists.

Kingsford Legal Centre

Founded in 1981, KLC has had a long-standing focus on discrimination, sexual harassment and employment legal service provision, policy and law reform. The Centre provides free legal advice, casework and community legal education for people who live, work or study in the Randwick local government area (LGA) and the Mascot and Port Botany wards of Bayside City Council in Sydney.

With the expertise of specialist employment and discrimination lawyers, KLC provides holistic advice in all areas of employment and discrimination law. This includes dismissals, disciplinary action, underpayments and entitlements, bullying, sexual harassment and all areas of discrimination law. In conjunction with the organisation Asian Women at Work (AWAW), KLC created the 'Women at Work' factsheets in multiple languages to provide vital information for women experiencing challenges in the workplace. KLC's work in discrimination and employment law also informs the role it has played for decades in helping coordinate civil society responses to Australia's reviews under international human rights laws.

KLC also provides advice on matters such as domestic violence, credit and debt, victims' compensation, criminal law, motor vehicle accidents and consumer matters. KLC is part of UNSW's Faculty of Law & Justice and runs a state-wide discrimination law/human rights clinic. KLC staff also deliver experiential learning courses to UNSW's law students.

Program Logic Model

The following Program Logic Model (over page) illustrates how ERLS is intended to work as a statewide employment law service. It shows that ERLS is designed to respond to a societal problem that migrants and other workers across NSW experiencing disadvantage are more likely to have problems at work. It shows how a range of activities can take place with adequate funding, strong partner collaborations, efficient infrastructure, engagement by all stakeholders and the expertise of committed employment lawyers.

With appropriate referrals to the service, an efficient enquiry process, training and education activities, promotion of the service and the collection of stories and program data, the most disadvantaged workers with employment-related issues can be supported.

The sector as a whole also benefits, as generalist CLC lawyers are trained to provide assistance and representation to their own clients with employment issues, or they know when to refer them on the ERLS team if their matters are complex.

Over time, capacity in the broader community legal sector should increase, to better represent workers experiencing disadvantage. The service should reach more people regionally and remotely, particularly to the most disadvantaged areas of the state. Law should be reformed to create systemic change to justice and equality for all future workers.

Ultimately, better outcomes are achieved for workers across NSW experiencing disadvantage.

The Program Logic Model was used to inform the development of the Evaluation Framework and in-depth interview discussion guides for consultation with key internal and external stakeholders.

Program Logic – Employment Rights Legal Service

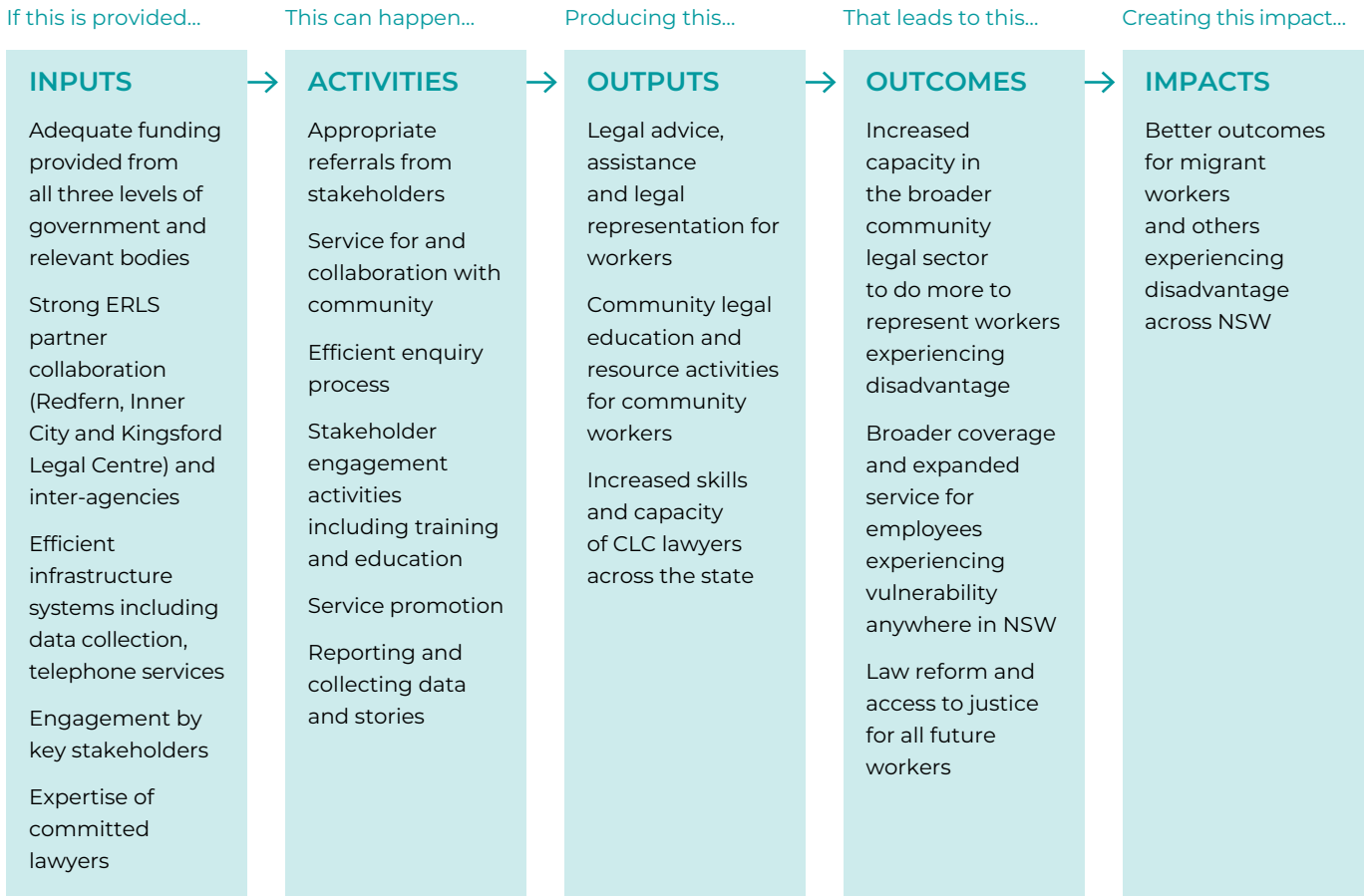
PROBLEM

Migrants and other workers across NSW experiencing disadvantage are more likely to experience problems at work including being paid incorrectly, losing their job unfairly, being bullied by their boss, being sexually harassed, or being discriminated against.



EMPLOYMENT RIGHTS LEGAL SERVICE (ERLS)

A statewide employment law service offering free advice and representation to migrants and workers across NSW experiencing disadvantage, backed up by community education, training and law reform.



TARGET POPULATION

Migrants and other workers experiencing disadvantage across NSW who have had problems at work and cannot afford legal support





Evaluation approach

Purpose of this evaluation

The purpose of this evaluation is to measure the success of ERLS for the clients, communities and stakeholders it supports.

The evaluation questions that guided this evaluation are as follows.

Evaluation questions

1. To what extent does ERLS meet an unmet legal need by reaching its target client cohort? (appropriateness);
2. How well is ERLS utilising its funding and resources to deliver its service? (efficiency);
3. How effectively is ERLS delivering statewide service as intended? (effectiveness); and
4. What impact is ERLS having on the lives of workers experiencing disadvantage? (impact).

Approach to the evaluation

A combined Process and Impact evaluation was conducted, to explore both the inner workings of ERLS and its efficiency, as well as the outcomes and impacts for its client cohort and other beneficiaries.

The evaluation is predominantly qualitative in nature, utilising in-depth interviews, with the incorporation of program data and client surveys where appropriate.

Key components of the evaluation

1. Program Logic Model

A Program Logic Model was developed with the ERLS Steering Committee. Its aim is to articulate and illustrate how ERLS is intended to work and the chain of events necessary to produce its intended outcomes and impacts. This helped to inform the design of an Evaluation Framework and discussion guides for consultation.



2. Evaluation Framework

An Evaluation Framework was developed to identify the key areas of interest, their alignment with evaluation questions and indicators of success to allow for evaluative judgements to be made. The Evaluation Framework is shown in the Appendix of this report.

3. Document and program data review

Program data and background documents were reviewed to better understand ERLS within its broader context and to analyse outcomes over the duration of its delivery.

4. Consultation

Consultation was conducted with 32 people, comprising:

- Six (6) people who had used the ERLS service (ERLS clients);
- Six (6) representatives of the three partnering CLCs;
- Three (3) volunteer ERLS solicitors; and
- 17 external stakeholders, including partner training organisations and representatives of CLCs who had received training.

Interviews were conducted via telephone or Teams between August and November, 2024.

A full list of individuals consulted is shown in the Appendix of this report.

5. Analysis/synthesis

Research findings were grouped and coded under key focus areas, incorporating evidence from all sources. Evaluative judgements were made by analysing evidence under each focus area and synthesising the collecting findings against performance indicators.

The following rubric defines the difference between various levels of performance for each focus area.

Evaluative rubric

| | |
|----------------|--|
| Excellent | All indicators of success were realised, very positive outcomes, few, if any, negative comments. |
| Good | Most indicators of success were realised, evidence of noticeable positive outcomes, some neutral or negative outcomes. |
| Unsatisfactory | Some indicators of success were realised, some negative outcomes, a mix of comments, not noticeably positive. |
| Poor | Few indicators of success were realised with comments skewed towards the negative. |

Limitations of this approach

There are limitations associated with any evaluation approach.

In this case, program data and client survey data was not standardised across the three partner CLCs. There are also some small gaps and inconsistencies in client feedback and program data due to transition to a new client management system during the service delivery period.

Evaluation findings

Summary

✓ Excellent

Appropriateness

Broad indicator of success

ERLS in an appropriate legal service for workers experiencing disadvantage.

Explanation

ERLS is meeting the unmet legal need of workers experiencing disadvantage across New South Wales. It utilises an appropriate collaborative service model to support and represent workers experiencing disadvantage who would otherwise face multiple barriers to knowing and asserting their legal rights.

✓ Excellent

Efficiency

Broad indicator of success

ERLS is utilising its funding and resources to deliver its service.

Explanation

ERLS provides excellent value for money. It has serviced approximately 1000 people a year through employment legal support and advice. Along with paid staff, volunteers have played a crucial role in the efficient running of the service, contributing about \$1.5million to the value of the service.

An Online Knowledge Hub has been an important online resource for the sector to access current resources, including brochures in multiple languages and a 'Phone a Friend' service for CLC solicitors to call ERLS' specialist employment law solicitors for advice.

Education and training has been delivered for community workers about employment law and the range of resources and services they can provide their clients.

Law reform activities and advocacy work have been crucial parts of the service, and as a result, ERLS has become a recognised and respected player in broader public discussions about employment rights that often lead to change.

Although offering excellent value for money, ERLS team members are working above and beyond their capacity to service as many clients as possible, with limited resources to support increasing numbers of referrals each year.

✓ Excellent

Effectiveness

Broad indicator of success

ERLS in delivering an effective statewide service.

Explanation

ERLS has been effective in delivering legal advice, assistance and representation to workers experiencing disadvantage in the majority of local government areas of New South Wales. It has built awareness of the service amongst the community sector through collaborative activities with community organisations and the CLC sector more broadly.

✓ Excellent

Impact

Broad indicator of success

ERLS having a positive impact on its client base and stakeholders.

Explanation

ERLS has made a positive impact on individual clients, the CLC sector and wider society. Ongoing law reform work is likely to have a positive impact on the lives of thousands more disadvantaged workers into the future.

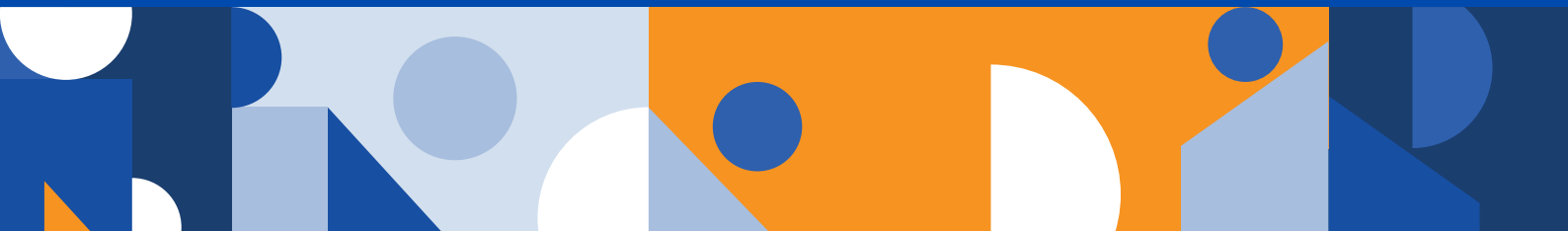


Key focus area one

Appropriateness

The extent to which the ERLS addresses unmet legal need and reaches its target client cohort.

01



ERLS addresses the unmet legal need of workers experiencing disadvantage across New South Wales. Though an appropriate collaborative service model it supports and represents workers experiencing disadvantage who would otherwise be unaware of their workplace entitlements and face multiple barriers to asserting their legal rights.

Supporting workers experiencing disadvantage in New South Wales

A recent Commonwealth Government report into job insecurity concluded that employment insecurity is at a crisis point in Australia, accelerated by the COVID-19 pandemic. Four key indicators were said to be part-time jobs, the outsourcing of labour, on-demand and 'independent' contractor jobs and fixed term contract roles. Job insecurity is said to be damaging the physical and mental health of Australian workers and holding back Australian wages and the economy.¹⁰

Operating as a state-wide service, ERLS meets the legal needs of workers experiencing disadvantage in metropolitan areas, as well as regional workers who would otherwise not be supported. These tend to be people who experience high levels of employment insecurity, higher levels of underpayment than workers in metropolitan centres¹¹, and working in higher than average contract-based jobs. Almost one in five (16.6%) people in Coffs Harbour, Bellingen and Nambucca are experiencing financial disadvantage, and are significantly more likely to be older than the NSW average.¹² There is also a large CALD population, as the region is a refugee and migrant settlement area.

Employment issues are prevalent in the South Coast and Southern Tablelands, according to a representative of Shoalcoast CLC, who also reported that solicitors in the region support many people with debt issues, yet often without making the necessary link with their experiences at work.

ERLS has offered an appropriate and necessary service in response to these issues, offering holistic support to clients throughout New South Wales.

Addressing low levels of union membership

ERLS is operating in a time in which union membership has remained low after two years of the pandemic, sitting at just 13 per cent of employees.¹³ A Grattan Institute study from 2022 shows significantly lower rates of trade union membership in workers of all ages who arrived in Australia less than five years ago.¹⁴ More recently, preliminary findings from a 2024 Migrant Justice Institute survey of over 10,500 temporary visa holders show that only four per cent of temporary visa holders have been members of a union in Australia.¹⁵

10 The Senate Committee on Job Security: The Job insecurity report. February 2022

11 Regional inequality in Australia and the Future of Work, ACTU Submission, June 2018

12 Law and Justice Foundation of NSW

13 <https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/trade-union-membership/latest-release>

14 <https://grattan.edu.au/wp-content/uploads/2023/05/Briefing=pack-Short-changed-migrant-exploitation.pdf>, p33

15 Private correspondence between ERLS and the Migrant Justice Institute

The reasons for low union membership are considered complex. According to ACTU assistant secretary, Scott Connelly, corrosion of the workforce bargaining system over the years has resulted in limited access to collective action.¹⁶ Workers experiencing disadvantage often work in the 'informal' gig economy or cash-in-hand jobs. Migrant workers may not possess resident work visas and may be fearful of seeking protection from formal institutions.¹⁷

There is also the issue of lack of awareness. Some workers do not know that unions exist or what they offer. The Australian Government reports that migrant workers in particular have limited knowledge of their workplace rights and relevant laws.¹⁸ Inevitably, this can lead to exploitation, often either unrecognised or underreported. At the same time, not all industries are protected by unions.

Additionally, there is the issue of cost. Anecdotal evidence from KLC and a number of external stakeholders suggest that some people cannot afford union membership in a cost-of-living crisis.

ERLS solicitors support unions and union membership. They recommend clients join their union at every opportunity, as a safeguard for potential future employment issues.

Low levels of union membership leaves a significant majority of working people in need of an employment law service like ERLS.

Responding to a growing need for employment legal support

ERLS is operating during a time when the need for employment law support is increasing across New South Wales, as seen in the referral process from LawAccess NSW: the most common source of client referrals to ERLS and the main contact point for people seeking legal assistance in New South Wales. Staff at LawAccess NSW make referrals to appropriate legal assistance services for anyone in the state who is deemed eligible.

The numbers of employment law inquiries are significantly increasing each year, according to a representative of LawAccess NSW. In the 2023-24 financial year, LawAccess NSW received 160,958 calls from people seeking some form of legal advice. Of those, employment was the third largest matter group, with eight per cent (12,289 calls) relating to employment issues. The two higher inquiry matters related to driving/traffic and children.

Of the 12,289 employment-related calls to LawAccess NSW in 2023-24, close to half (43%) were referred to ERLS or another CLC. This constitutes 3,014 referrals to the ERLS service, up from 2,305 in the previous financial year. However, ERLS only has the capacity to service approximately 1000 people a year¹⁹, and has not had sufficient staff to meet the growing number of referrals.

An ERLS volunteer solicitor confirmed the growing demand for the service year upon year, citing her experience with more people presenting with cases of underpayment, bullying and victimisation. At the same time, fewer people were thought to be accessing their entitlements, suggesting a growing need for employment legal support.

This was also reported by the Accessibility Diversity Services Initiative (ADSI); a community-based not-for-profit organisation dedicated to empowering individuals and communities through a wide range of support services. A representative of

¹⁶ Australian Financial Review, 14 Dec 2022

¹⁷ Migrant Workers and Trade Unions, Institute for Human Rights and Business, IHBR Briefing February 2019

¹⁸ Appendix D to the Migrant Worker Taskforce, June 2018, p7

¹⁹ ERLS program records

ADSI, who works closely with the ERLS solicitors, reported working with more than 20 clients on employment-related legal issues over the past two years, with numbers increasing each year.

There is also evidence for the need for employment legal support for people who have experienced modern slavery in New South Wales. According to the New South Wales Office of the Anti-Slavery Commissioner, there are 16,000 people in New South Wales at any given time experiencing modern slavery, yet only 100 to 150 formal reports are received.

An appropriate service model

ERLS provides an appropriate service model centred around formalised collaboration. It involves the right partners, is in keeping with CLC values and utilises the skills of dedicated employment law specialists.

A formalised collaborative service

ERLS adopts a collaborative service model in a formalised three-way partnership between RLC, ICLC and KLC.

The collaborative nature of the service is exemplified by the following:

- If capacity is low at a particular time, partner Centres can draw on solicitors from one of the other two to accommodate immediate client needs;
- Each Centre can utilise broader experience and expertise from partnering Centres, providing broader, tailored client assistance;
- Plans can be formulated quickly about how to divide the different claimants between the three Centres when assisting a group of workers from a large company or chain such as within the gambling or hospitality industries. This enables the service to support up to 30 people or more at a given time; and

- Law reform work is carried out collaboratively, which is more efficient and comprehensive due to the combined knowledge of the three partnering Centres.

Through the use of a central phone line and webform, workers in New South Wales can reach any one of the participating CLCs on any given weekday. Given the statewide nature of the service, the collaborative service model allows ERLS solicitors to share capacity and workload amongst each other, including referring clients to one another. This ensures clients have greater access to timely assistance, particularly for urgent matters, which is critical when providing employment legal support.

This model also allows for ERLS to expand its reach throughout New South Wales and develop close links with other legal assistance providers, front line community organisations and additional strategic stakeholders. ERLS delivers training to workers in these organisations, which enables them to help identify legal issues in their client base and facilitate contact between their clients and ERLS. This is conducted with early intervention in mind, as well as capacity building across the sector in employment law issues.

The right partners

ERLS is delivered by employment law specialists from three CLCs that have, combined, more than 120 years of experience providing employment-related legal support.

All three CLCs are sector leaders in employment law and have experience delivering culturally appropriate legal services to migrant and other workers who experience disadvantage. ERLS clients are able to access a 'one stop shop' service that can provide holistic support. This is made available through ERLS' access to employment law specialist volunteers, their partnership with pro bono services and large law firms, and their strong relationship with referral partners such as LawAccess NSW and the Fair Work Ombudsman.

A service model in keeping with CLC values

CLCs in New South Wales have a long history of working together in a range of ways. However, this is the first time multiple CLCs have been funded to work together in a formalised partnership arrangement to deliver a discrete service. This arrangement reinforces the CLC values of working together for a common purpose, rather than competing for limited resources. Through this service model, resources are shared, collaboration increased and relationships strengthened.

The service brings a range of shared values from each of the three partner CLCs, including prioritising unmet legal need from migrant and other low income workers, a commitment to ensuring sustainability of the service, flexible and cooperative working arrangements, a willingness to learn and grow together in non-competitive way, and commitment to be accountable for all aspects of the service.

The formal collaboration is valued highly by all three partner CLCs for the way in which it has encouraged staff to think about service delivery from a range of perspectives and bring together different skills and experience. It incorporates various areas of employment law, typically disaggregated in Australia. It enables people to access holistic advice and assistance through a targeted pathway. For example, for Shoalcoast CLC in Nowra, the collaborative service model means solicitors from that Centre are in regular contact with ERLS specialist employment solicitors. They said this gave them the confidence they needed to support clients with workplace issues rather than referring them on to other services.

Mid North Coast Community Legal Centre has also worked with ERLS, reporting that the service makes it easier for their clients to access a single service wherever they happen to be. This is particularly important when supporting fruit pickers, for example, who are typically itinerant, and in need of employment law support. These people can access ERLS through any CLC in the state that is closest to where they are working at the time.

Dedicated employment law specialists

Utilising dedicated employment law specialists is an important component of ERLS, as employment law requires specialisation and response to societal changes.

ERLS employment lawyers have additional skills in networking and advocacy, which they bring to important law reform tasks and the advancement of workplace rights. They understand the practical effect of employment law on employees and, in particular, their issues in accessing justice. ERLS solicitors have the skills to prioritise clients so that the most disadvantaged people are assisted with a good chance of obtaining a favourable outcome.

Branded identity

The three-way partnership has been formalised with a discrete identity by way of co-branded materials, a single ERLS phone line and webform and aligned positioning and marketing.

However, a stand-alone, dedicated website does not yet exist due to limited funding. Instead, an ERLS page sits on each website of the three participating Centres, each varying in style and content. The ERLS partners agree that a stand-alone dedicated website would be beneficial and could be developed with secure, ongoing funding.

Enabling pro bono support

Volunteers are an inherent and valuable part of the history of service delivery by CLCs. As such, they form an essential part of the ERLS service delivery model. The efficient running of ERLS can be attributed to the work of hundreds of volunteers, in the roles of solicitors, training students and intake officers.

Volunteer Solicitors

Volunteer employment law solicitors provide direct client support, enabling ERLS to service more people. They bring their own professional expertise, knowledge and resources to client support cases.

In return, volunteers obtain value and enjoy benefits from donating their time to the service. Three volunteer solicitors interviewed for this evaluation identified a range of personal benefits to them in providing their time for ERLS, namely:

- They are able to provide support without giving up their own work or life commitments;
- They are able to give back to the community by doing meaningful work; and
- They experience continual professional lifelong learning, despite bringing many years of employment law practice to the role.

Volunteer Practical Legal Training Students

Practical Legal Training (PLT) students have finished their law degree but are required to undertake further study to be admitted as a lawyer. A component of that study includes work experience of up to 75 days. Quite a few students choose to obtain that experience by working in a CLC. In this case, PLT students are working with ERLS.

Volunteer Intake Officers

Student volunteers help with client intake, triage and essential coordination and administrative tasks, across a number of practice areas in each Centre. Volunteering with ERLS, in return, provides them with their first opportunity to see real legal work get done and develop beneficial, client-facing skills that they take with them into their future legal careers.

Such an extensive voluntary workforce is not a replacement for a professional workforce, yet remains an important part of ERLS service delivery. However, management of this number of volunteers requires dedicated administrative support, not currently funded as part of the ERLS funding model.

‘That experience makes me a better lawyer. I’m always going to learn, no matter how many years of legal practice I’ve had.’

Volunteer ERLS solicitor

‘Being a solicitor for over 30 years, I always thought that when my children left school I wanted to give back to the community in some way. I felt that this was a great way to do community service with the skills I had.’

Volunteer ERLS solicitor

Key focus area two

Efficiency

The extent to which ERLS is utilising its funding and resources to deliver the service.

02



ERLS provides excellent value for money through the delivery of a range of client and non-client employment legal services. Paid staff work above and beyond their capacity to support high numbers of referrals. Volunteers have played a crucial role in the efficient running of ERLS, contributing about \$1.5million to its value.

Excellent value for money

ERLS has used its funding and resources to efficiently service approximately 1,000 people a year throughout New South Wales. The foundations of the service are now well established, offering excellent value for money.

ERLS has delivered a range of important and diverse employment law services and provided additional support, legal education and training, law reform and advocacy work which has impacted individual clients and led to wider systemic change. It leverages established legal services through well-established processes and service delivery. It also harnesses the volunteer and pro bono workforce of each Centre, cultivated over their long histories, providing excellent value for money, detailed over the page.

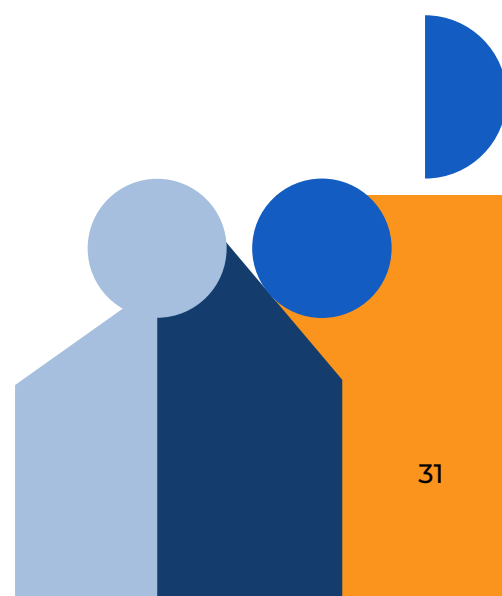
ERLS is roughly funded on the basis of one full-time solicitor per Centre. Each Centre allocates staffing resources and workload according to their own needs, dividing the work between them or allocating it to just one lawyer.

Current funding covers the costs of wages, translation of factsheets, a central phone line and maintenance of a Knowledge Hub (detailed on p23). Demand is high and triage is complicated, within an area of law that has short deadlines. For that reason, the funding is insufficient to cover the level of triage and intake work to run a comprehensive and effective service.

Delivery of client and non-client services

Between July 2022 and July 2024, ERLS used program funding and resources to deliver:

- 1142 referrals;
- 264 information services;
- 2363 legal advices;
- 410 legal tasks;
- 200 case files opened;
- 64 stakeholder engagement activities;
- 29 Community Legal Education activities;
- 15 Community Legal Education resources; and
- 24 law and legal services reform activities.





Community Legal Education resources

ERLS staff have developed, updated and translated a range of resources for community organisations and individuals, including fact sheets and self-help guides. The service recently published an ERLS brochure in 22 languages, available online via the Knowledge Hub, and publicised throughout state-wide networks. Brochures are available on the following topics:

- ERLS general services; (in 28 languages);
- Underpaid at Work (available in five languages);
- Flexible Work (in Chinese language);
- Discrimination (in Chinese language);
- Help for international students (in 12 languages);
- Factsheet: Crashed your car while working? (English only); and
- Workplace Justice Visa factsheet (English only).

The value of ERLS volunteers

ERLS volunteers have so far contributed \$1.5million worth of support to the service through flexible and varied support across all three Centres.

Since its inception, ERLS has utilised 140 Volunteer Solicitors – worth \$1.3 million to the service; 5-10 Practical Legal Training Students, valued at \$69,000; and 50-86 Intake Officers who have brought an estimated \$153,000 to the value of the service. This is shown, below.

The value of ERLS volunteers

| Volunteer type | Volunteer numbers* | Value to ERLS |
|----------------|--------------------|---------------|
| Solicitors | 140 | \$1.3 million |
| PLTs | 5-10 | \$69,000 |
| Intake Officer | 50-86 | \$153,000 |
| Total | 195-236 | \$1.5 million |

* The number of people providing pro bono and volunteer services are at best an estimate, as the volunteers often assist across a number of practice areas in each Centre.

Case Study

Compensation for First Nations woman fired by text

Rachel* had been working in a café for over 12 months. At the end of 2023 the café was sold and came under new management. Rachel completed three shifts with the new management then received a text informing her she was no longer employed.

Rachel is a First Nations woman and faced homelessness as a result of the dismissal. Living in such financial stress and housing instability took a major toll on Rachel's wellbeing and mental health. Rachel approached ERLS and was provided ongoing pro bono representation.

ERLS represented Rachel in a conciliation for an unfair dismissal claim at the Fair Work Commission with the new employer. The parties agreed to settle the unfair dismissal claim with the new employer to pay a settlement payment for general damages and wages. Rachel had also been underpaid while working in her role with the previous employer. ERLS calculated the underpayment over the 16-month period of employment on the basis that Rachel was a regular casual who was employed on a regular and systematic basis.

The previous employer had legal representation and were claiming that Rachel was a part time employee. ERLS drafted and lodged a small claim in the Federal Circuit and Family Court of Australia, alleging underpayment.

Ultimately a considerable settlement figure was agreed upon for the previous employer to pay Rachel, without having to proceed to court.

** Name changed for confidentiality*

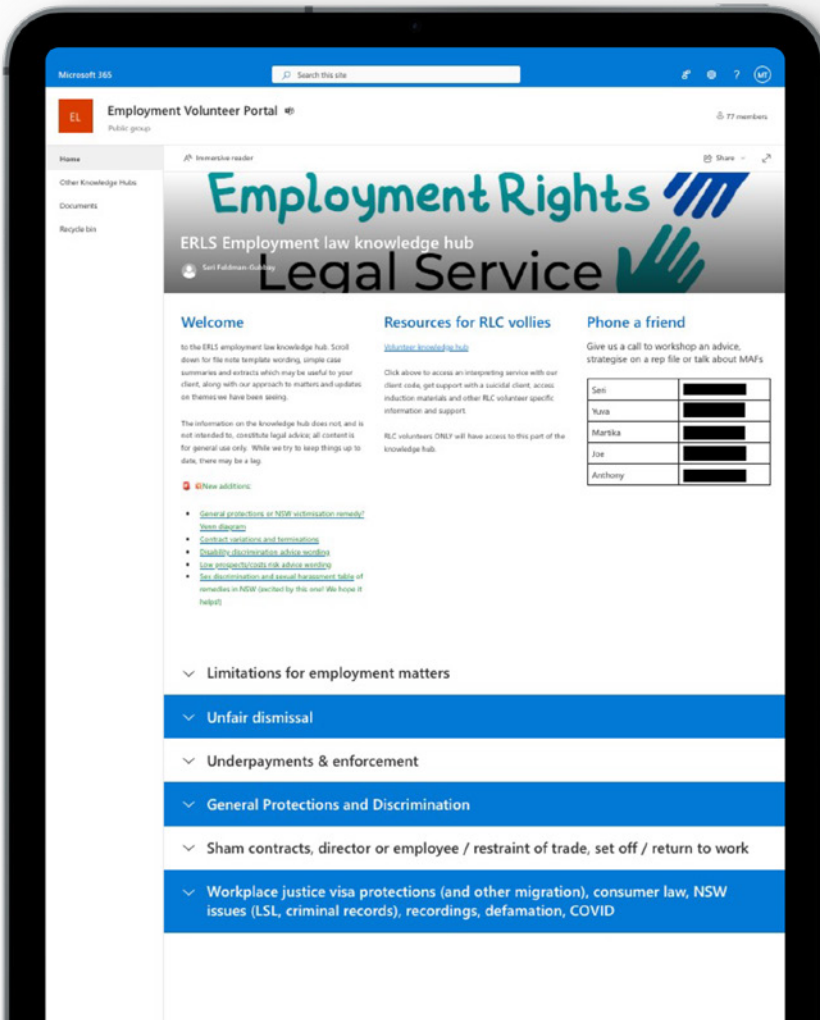
ERLS Employment Law Knowledge Hub

Funding and resources were used to create an online Knowledge Hub, a repository of online resources made available for community legal staff to help them provide employment law support in their communities. The Knowledge Hub includes information and templates on a range of topics including:

- Limitations for employment matters;
- Unfair dismissal;
- Underpayment and enforcement;
- General Protections and Discrimination;
- Sham contracts, director or employee/ restraint of trade/ set off/ return to work;
- Workplace justice visa protections (and other migration), consumer law, NSW issues, (long service leave, criminal records), recordings, defamation, COVID-19;
- Contract variations and terminations;
- Disability discrimination advice wording;
- Low prospects/costs risk advice wording; and
- Sex discrimination and sexual harassment table of remedies in New South Wales.

Information uploaded to the Knowledge Hub is updated regularly to maintain its currency and relevance.

ERLS Knowledge Hub interface



At the time of writing, the ERLS Knowledge Hub had been accessed by 71 solicitors and individuals from 11 community legal centres and other community organisations. The home page had been visited almost 3,000 times, by 186 people.



The Knowledge Hub was valued by its users for:

- its relevance and currency, particularly given how frequently employment law changes;
- template letters and examples of cases;
- sample letters when dealing with complicated matters;
- tables outlining different discrimination issues;
- Excel spreadsheets to help calculate underpayments; and
- background information to help with drafting.

One volunteer solicitor suggested it would be ideal if the Knowledge Hub also provided additional resources such as specialist resources from large publishing houses, legal resources only available by paid subscriptions and other high quality practical law materials that were otherwise restricted due to cost or limited access.

To have a greater range of resources available via free or open access was said to be an attractive incentive for volunteers to continue to offer their time pro bono, as they would receive the personal benefit of expanding their knowledge base. However, additional funding would be required for these resources to be included in the Knowledge Hub.

Phone a Friend

The 'Phone a Friend' service is a way for the dedicated ERLS solicitors to offer advice and support for generalist solicitors located at CLCs throughout the state. Phone numbers of the specialist ERLS solicitors are provided to enable anyone with access to the Knowledge Hub to call to discuss a challenging legal problem on the best approach to take in representation matters.



Case Study

Positive feedback from CLC partner

Mid North Coast Legal Centre (MNCLC) offers generalist legal support to people living anywhere between Taree and Coffs Harbour. Twelve solicitors provide support services from two office locations.

ERLS has provided meaningful support for MNCLC staff and solicitors in the past 18 months in the following ways:

1. Delivered about six community legal education presentations for solicitors and other staff;
2. Met with the team face to face to deliver on-site personalised education about employment law;
3. Answered specialist questions on various employment law matters through the 'Phone a Friend' service;
4. Provided access to resources on the Online Knowledge Hub, including templates, letters, examples of cases, and forms to help complete payment information; and
5. Took referrals for matters too specific or complex for MNCLC.

Staff at MNCLC strongly value ERLS as an important source of education for employment law matters. The service was said to have helped upskill solicitors or take on occasional matters when they have been unable to service them.



CLC worker training session

Stakeholder Engagement and Awareness-building

Since its inception, ERLS staff and volunteers have delivered a number of stakeholder engagement activities amongst people in organisations with direct contact with people experiencing disadvantage, designed to increase their awareness about their clients' work rights.

Key activities have included mail outs, presentations, convening and co-convening information sessions, meetings and emails, are detailed as follows (right).

Key stakeholder engagement activities

| Audience | Activity |
|---|---|
| Community workers | Mail out to 1580 regional community workers and 1439 metropolitan community workers about the ERLS service |
| Community organisations | Emails about ERLS service sent to major medical centres, major hostels, Women's Legal Service, Red Cross, Salvation Army, St George Multicultural Network |
| Culturally and linguistically diverse (CALD) students | Presentation to 60 CALD students at TAFE ultimo 'Your rights at work' |
| National Employment Law Network | Presentation about ERLS to 70 members of this network |
| ACOSS | Delivery of information to 30 people at an ACOSS meeting about Job Summit |
| CLCNSW | Convened a session to 40 members of CLCNSW as part of the Quarterlies about provisional agreements and release clauses and provided update about ERLS |
| Fair Work Organisation | Attended FWO community engagement meeting (50 people) |
| NSW Discrimination Communities of Practice | Presentation to 60 people |

Community Legal education and training

CLE and training have been delivered to educate community workers about employment law and the range of resources and services that are available for their clients. A significant proportion is delivered for staff at LawAccess NSW who field calls from people with employment issues. The benefits of this training for the CLC sector are discussed in the Impact section of this report.

Training for LawAccess NSW agents

LawAccess NSW is a government telephone service run by Legal Aid NSW that provides legal information and referrals for anyone in the state with a legal problem. There are some 50 agents working in LawAccess NSW on the front line, acting as the first point of contact for callers. They are trained to source relevant information to assist callers with employment issues and to identify appropriate referrals for ERLS.

LawAccess NSW worked with ERLS to deliver training for its front line telephone staff. A LawAccess NSW representative reported that the training delivered by the ERLS solicitor was valued very highly for the commitment, confidence and knowledge brought to the sessions. The ERLS solicitor was said to have helped telephone staff better field the high volume of calls they receive and identify appropriate referrals for ERLS.

ERLS solicitors went to considerable effort to deliver each of the following topics four times, to ensure the training reached all LawAccess InfoLine telephone hotline staff.

- 'Employment Law 101', October 2021;
- 'Sexual Harassment in the Workplace, May 2023; and
- "Employment Law 101', May and October 2024, delivered online to all (approximately 50) LawAccess front line staff, with slides also distributed to other staff.

Training through Employment Discrimination Law Network

The Employment and Discrimination Law Network (EDLN) is a forum for CLC lawyers across the state who have an interest in employment and discrimination law to ask questions, build networks and share knowledge and experiences. The meetings are co-convened by the ERLS coordinator, with ERLS solicitors also regularly attending and often providing training to CLC lawyers in these meetings.

This training allows ERLS to work closely and build relationships with other CLCs, supporting their lawyers and the sector in general to develop greater expertise in employment law, with the aim of assisting them to better meet the needs of their own communities.

Education sessions for community organisations

ERLS also provides training for community organisations. Those who have received the training are varied, and include MNGlegal, CLCNSW, TAFE ESL teachers, Mid North Coast CLC, St George Multicultural Network Interagency, Cumberland Community Exchange Network, Wollongong Refugee Forum and Shoalcoast CLC.

Training sessions have covered a range of topics including sham contracting, small claims processes, human rights, updates to the Fair Work Act, unreasonable working hours, taxation settlements, and employment law risks that may arise at work Christmas parties.

The sessions often included guest speakers, such as the Fair Work Ombudsman, solicitors from private law firms and representatives from other organisations.



Law reform activities and advocacy

Law reform activities and advocacy work are considered by ERLS solicitors as crucial aspects of the service to ensure workers' rights are improved and protected. Any advocacy or law reform activities carried out by any of the three partner centres benefit the ERLS service as a whole. There was widespread agreement among all key stakeholders interviewed for this evaluation that law reform is what brings about systemic legislative change and is therefore so important.

When a law changes, it can take many years for impacts to be evident, but immediate changes can be seen in the ways in which workers' rights are protected. For example, as a result of ERLS' advocacy work, more avenues have opened up for people to pursue employment law matters. This, in turn, has increased demand for ERLS.

However, not all advocacy work directly leads to law reform. Through its important work, ERLS has become a recognised and respected player in broader public discussion, helping intensify broader conversations that can lead to change. For example, ERLS is being called upon by government to participate in job summits where conversations and debates about employment rights are being held. ERLS is playing an influential part in these discussions, including putting forward tangible recommendations for strengthening aspects of employment legislation.

Recent significant law reform activities carried out by ERLS are shown, right, with three law reform activities detailed on the following pages.

Recent significant law reform activities

| | |
|---------------------------------------|--|
| November 2024 | Submission to the Secure Jobs, Better Pay Review Panel |
| April 2024 | Face to face and written submissions to FWC paid agent consultation* |
| March 2024 | Submission to FWC paid agent consultation |
| March 2024 | Discussion and case studies to Treasury Competition Taskforce* |
| June 2023 | ERLS small claims review submission to DEWR |
| May 2023 | Scrap the Cap endorsement |
| May 2023 | Discussion with Migrant Justice Institute about small claims review* |
| February 2023 | Small claims review tripartite roundtable with DEWR |
| February 2023 | Interview with the Grattan Institute about migrant worker exploitation |
| August 2022 | Signed open letter to government about issues to consider at the job summit with CLC Australia and other CLCs. |
| Prior to 2021 federal election | ERLS organised an open letter with migrant worker organisations to force migrant worker exploitation as an election issue. |

*detailed on the following page

3 ERLS law reform activities in detail

Paid Agent Conduct

ERLS played a major role in the Fair Work Commission's recent work to crack down on challenging conduct from paid agents, who are not lawyers, yet still charge or receive a fee to represent a person in the Fair Work Commission.

ERLS provided a submission to the Fair Work Commission's Paid Agents Working Group highlighting further issues based on its experience advising employees who had previously been represented by paid agents. Recommendations were set out to protect consumers, identifying additional protections that should be considered for workers bringing sexual harassment disputes in the Fair Work Commission to avoid re-traumatisation. They also focused on forming regulation and registration of paid agents.

The Working Group's recommendations at the conclusion of the review were largely consistent with ERLS recommendations. Significantly, the Working Group has recommended that applications for representation by a paid agent be determined prior to any conciliation, conference or hearing, which will be implemented through a pilot program in the Fair Work Commission, as well as enhanced referral arrangements with community legal centres and other pro bono legal services, and the establishment of a scheme of registration of paid agents.

In addition, the Fair Work Commission will form a Legal Assistance Sector stakeholder user group to provide a forum of communication between themselves and the legal assistance sector, of which ERLS is a part.

Small Claims Review

ERLS provided feedback for the Federal Government's review of the effectiveness of the current small claims procedure at the Federal Circuit & Family Court of Australia through the Fair Work Act 2009 (Cth). The submission identified and highlighted the difficulties faced by disadvantaged and migrant workers, including complicated and time-consuming processes, the confusing nature of the court process for CALD workers in particular, concerns regarding visa cancellation felt amongst temporary visa holders, and employers going insolvent.

In order to combat these difficulties, ERLS' recommendations included:

- a new, simplified and expedited wage theft recovery process through the Fair Work Commission;
- capacity for workers to seek penalties from employers and respondents in small claims proceedings;
- electronic 'service' of documents in small claims proceedings;
- virtual small claims proceedings if requested by a worker;
- accessibility to the Fair Entitlements Guarantee for workers on temporary visas; and
- increased funding for the Fair Work Ombudsman and community legal services to assist workers in calculating underpayments of wages and delivering community legal education to disadvantaged workers.

Treasury Competition Review

ERLS contributed to the review of non-compete clauses and related clauses in employment contracts, run by the Treasury in April 2024. Non-compete clauses are conditions in employment contracts that may restrict an employee from changing their employment or starting their own business, for example, including a geographical area and a time period in which the restriction will apply following an employee leaving their employer.

In practice, however, such clauses are frequently found in employment contracts of lower-income workers, workers in industries or roles where such restrictions are unsuitable, or part-time, casual and gig economy workers. They often have the effect of preventing workers from freely moving onto other employment, staying in jobs where they may be facing bullying or discrimination, or paying money to employers to avoid the risk of being pursued through court proceedings.

ERLS' submission advocated for federal legislative reform to limit the use of non-compete and other restraint of trade clauses, particularly in relation to low and middle-income workers. Specifically, for the total ban of non-compete clauses in employment contracts in Australia, at a minimum for these workers, as well as further reform to ensure these clauses are only operating to the extent that they are reasonable and proportionate.

Most recently, ERLS' recommendations were echoed in a study issued by the Productivity Commission, which acknowledged the need for limiting the unreasonable use of restraint of trade clauses in employment contracts in order to improve job mobility, seen here.

Case Study

Labour hire employee successfully claims wages

Marina* was employed by a labour hire company. After she had been with the company for about a year, there were signs that the employer's business was in trouble. Staff were told their hours would be cut, then there was a restructure and employees were again asked to reduce their hours. Finally, Marina's employer told staff that the business had struggled to find clients and as a result, there would be a pause on wages until the business was in a better position.

Marina initially believed the situation would be temporary. She wrote to her employer several times seeking updates and asking to cash out annual leave entitlements, since she was struggling to make ends meet and support her children. Months passed, but Marina finally reached out to ERLS to better understand her rights.

ERLS advised Marina that her employer could not simply tell staff it was pausing wages – if the employer wanted to terminate its workers' employment, it had to give appropriate notice and other entitlements. ERLS helped Marina send her employer a letter of demand for the amounts it should have paid her during the wage pause, and Marina's employer then ended her employment. ERLS also helped Marina identify underpayment of wages, because she was covered under an industry award. ERLS prepared calculations to determine the true extent of the underpayment, and drafted court documents so that Marina could bring a small claim under the Fair Work Act 2009 (Cth) in the Federal Circuit and Family Court of Australia.

Within weeks, and after receiving a draft claim, Marina's former employer agreed to resolve the matter out of court and pay a five-figure settlement to Marina.

** Name changed for confidentiality*

Internal systems to enable ERLS to achieve its goals

Efficient governance and established referral pathways are two features of internal systems that enable ERLS to achieve its goals.

Efficient governance

There is evidence that ERLS has efficient and effective governance structures in place to facilitate good service delivery. The service is overseen by a Steering Committee comprising one representative from each of the three partnering CLCs. The Steering Committee meets at least monthly and more frequently as required. An MOU detailing the responsibilities of each participating CLC is another component of this efficient governance.

Feedback from representatives of all three CLCs suggest that the Steering Committee has been working well, with open communication between all three parties. They also reported improvements across other areas of their services as a result, as Steering Committee members regularly discuss the quality of systems, processes and client experiences.

Referral pathways

Referral pathways are the connections made for individuals to come into contact with the ERLS service. LawAccess NSW and the Fair Work Ombudsman are the main referral pathways for ERLS. A small number of additional referrals come through Youth Law Australia, the NSW Office of the Anti-slavery Commissioner and other sources.

The majority of all referrals are deemed appropriate, yet a great number are turned away due to lack of capacity to service them all. This is the key challenge to efficient service delivery.

Challenge to efficient service delivery

The main issue with efficient service delivery is the lack of capacity to service the volume of clients eligible for the service.

Although offering excellent value for money by servicing approximately 1,000 people a year and offering a range of additional non-client services, the ERLS team and voluntary staff are working above and beyond their capacity to service as many clients as possible, with limited resources. There is insufficient funding for administration of the service, with the ERLS coordinator and solicitors required to carry out administrative tasks in addition to servicing clients and carrying out all other non-client activities. This takes them away from servicing the increasing volume of clients.

With more than 3,014 referrals to ERLS in the last financial year and approximately 2,000 unable to be supported, many calls are left unanswered. This high demand for the service is particularly challenging when dealing with unfair dismissal cases.

The majority of ERLS clients come to the service after being dismissed from their jobs. The impact of being dismissed means that many only reach ERLS towards the end of their limitation. Combined with the 21-day limitation period that applies to these matters, this makes it difficult for ERLS to accommodate timeframes and lodge unfair dismissal claims. In situations like this, ERLS lawyers are required to prioritise these claims, which is an unsustainable practice, given the demand for the service. This places considerable pressure on ERLS solicitors and volunteers, particularly on ICLC; the smallest of the three Centres.



Case Study

Flexible working arrangements achieved for worker with family care responsibilities

Quynh* requested flexible work arrangements from her employer after returning from a period of unpaid parental leave, specifically to reduce her working hours to part-time work so that she could care for her child. Her employer refused her request on the basis that it would be too costly to accommodate her request. Her employer also offered Quynh a choice of either resigning from her job or returning to work on a full-time basis.

ERLS assisted Quynh by commencing negotiations with her employer with the aim of resolving the situation. But after countless, unsuccessful discussions, ERLS drafted and lodged an application to resolve a dispute about flexible working arrangements in the Fair Work Commission on Quynh's behalf. ERLS represented Quynh at a conference with the Fair Work Commission and further negotiated for her.

Ultimately, a mutually acceptable agreement was reached between Quynh and her employer, and since then, Quynh has been able to return to work on a part-time basis, which accommodates her caring responsibilities and growing family.

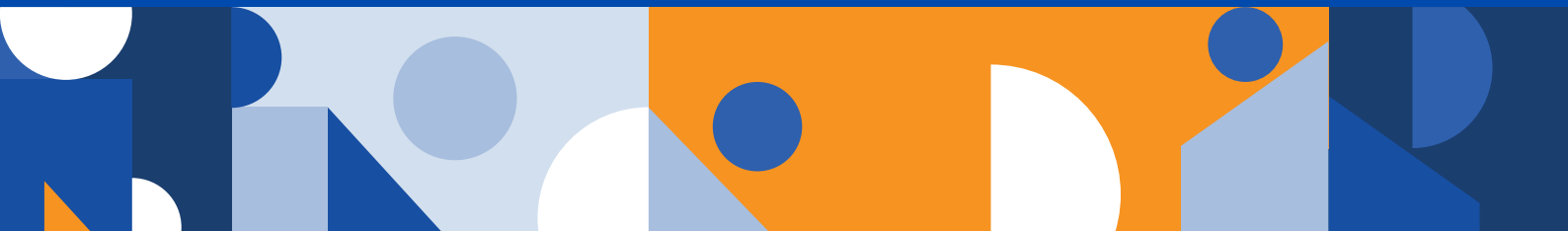
** Name changed for confidentiality*

Key focus area three

Effectiveness

How well ERLS is delivering on its aims as a statewide service.

03



ERLS has been effectively delivering legal advice, assistance and representation to migrant and other workers experiencing disadvantage in the majority of local government areas of New South Wales. It has effectively built awareness of the service amongst the community sector through collaborative activities with community organisations and the CLC sector more broadly.

Successfully supporting disadvantaged workers throughout NSW

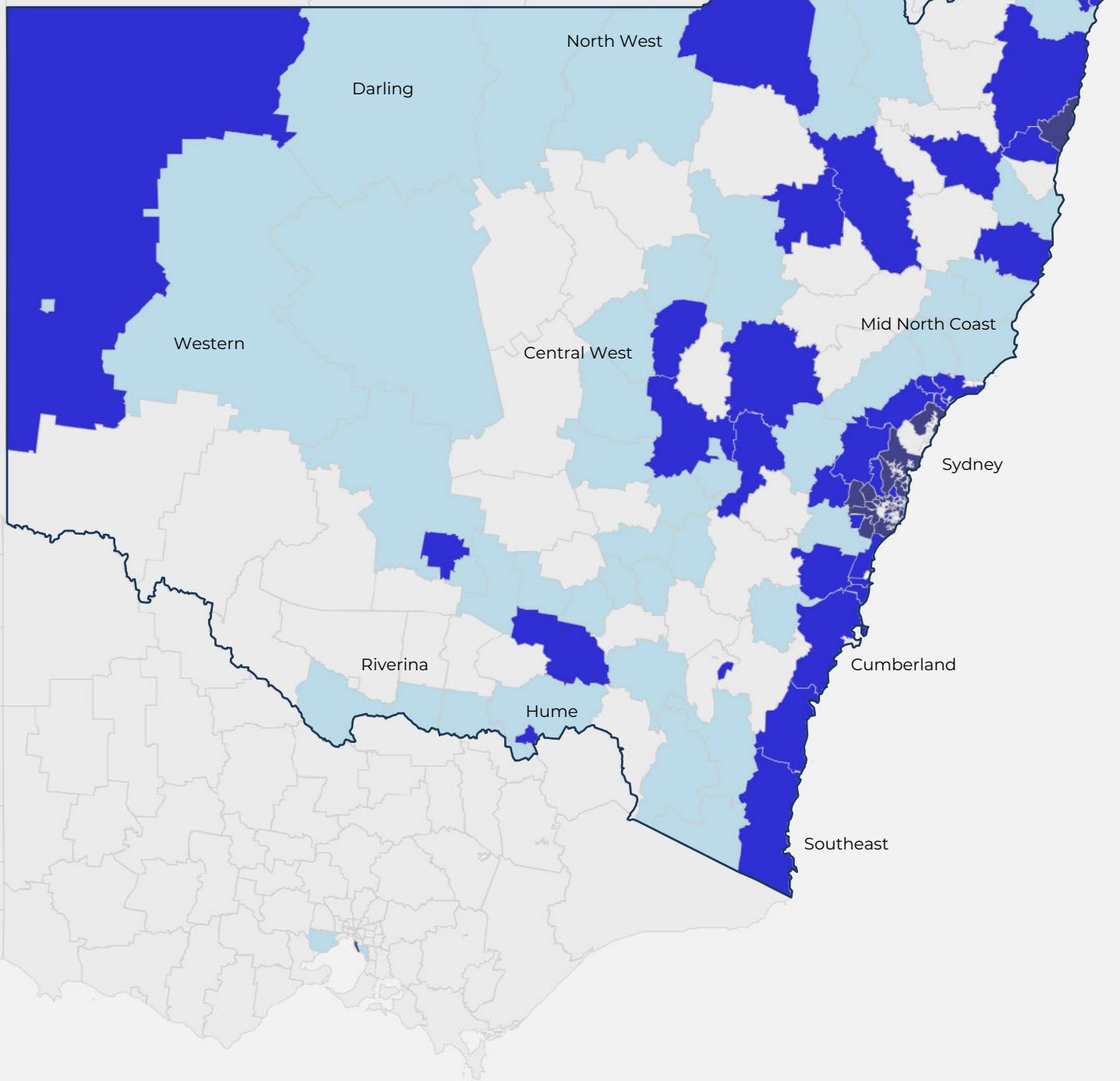
ERLS has used its funding and resources to efficiently support approximately 1,000 people a year throughout New South Wales who would otherwise not be able to access legal advice. The foundations of the service are now well established, offering excellent value for money.

Through its National Legal Assistance Partnerships (NLAP), the Australian Government prioritises the delivery of free legal assistance to identified priority groups, including Aboriginal and Torres Strait Islanders, people with a disability, people with low education levels, single parents and children and young people up to 24 years. ERLS has successfully supported many of these priority groups, particularly people who speak a language other than English at home, as discussed on pp51-52.

Despite being a Sydney metropolitan-based partnership, ERLS has supported clients from 82 per cent of all local government areas across the state, their distribution shown on the map over the page. A further 158 people have been serviced by ERLS but their location is unknown and therefore not located on the map. It is likely that some of these people live in additional LGAs.

The number of clients serviced across New South Wales broadly correlates with population density. The highest numbers of clients are in the more urban areas. This suggests ERLS is doing its job in finding disadvantaged workers where they happen to be.

ERLS state-wide coverage (2022-24)



Based on 2016 LGA boundaries, before some council amalgamations across NSW. As such, some current LGAs data had to spill into the previous LGAs with results spread evenly across the original LGAs.

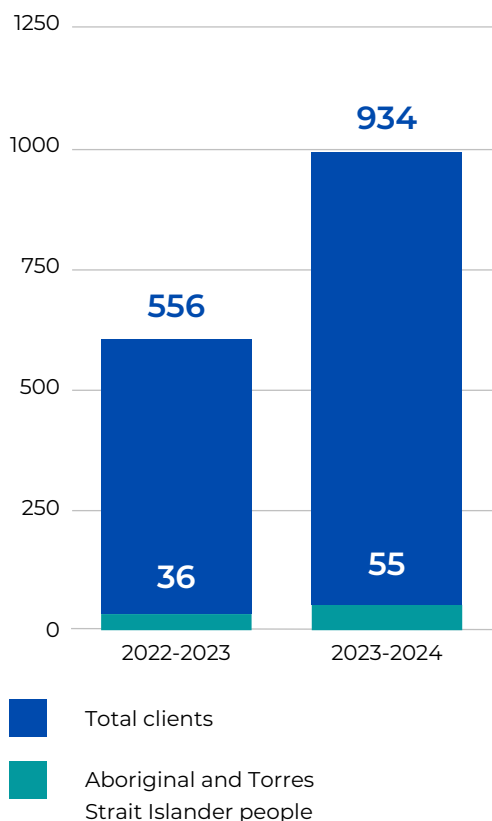


Supporting Aboriginal and Torres Strait Islander people

Aboriginal and Torres Strait Islander people have made up six (6) per cent of all ERLS clients in last past two years when this data was collected. Given Aboriginal and Torres Strait Islander people make up 3.6 per cent of the total New South Wales population, this suggests that ERLS is reaching this relatively small cohort of clients.

The actual numbers increased in Year Two (shown below), in parallel with the increase in the total number of clients.

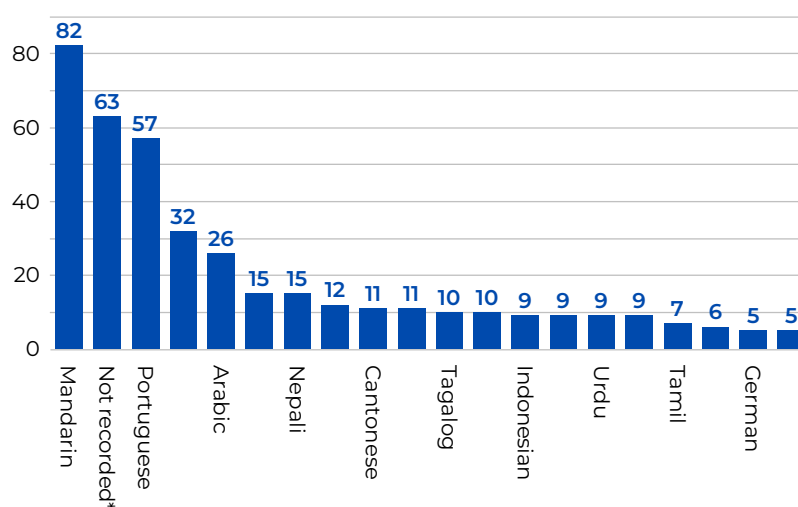
Assisting Aboriginal and Torres Strait Islander people 2022-24



Supporting people for whom English is not their first language

Almost a third (30 per cent) of ERLS clients speak a language other than English at home; the main languages being Mandarin and Portuguese, followed by Spanish and Arabic. Other main languages have been Hindi, Nepali, Punjabi, Cantonese, French, Vietnamese, Persian, Korean, German, and Italian. However, the service has supported people from a considerable number of language groups, with the top 20 languages spoken shown in the following diagram.

Top 20 languages other than English spoken by ERLS clients (2021-24)



*According to ERLS lawyers it is highly likely that the client's main language spoken was not English, or they did not present as a native English speaker, but the appointment proceeded in English without the use of an interpreter due to the level of English proficiency exhibited by the client.

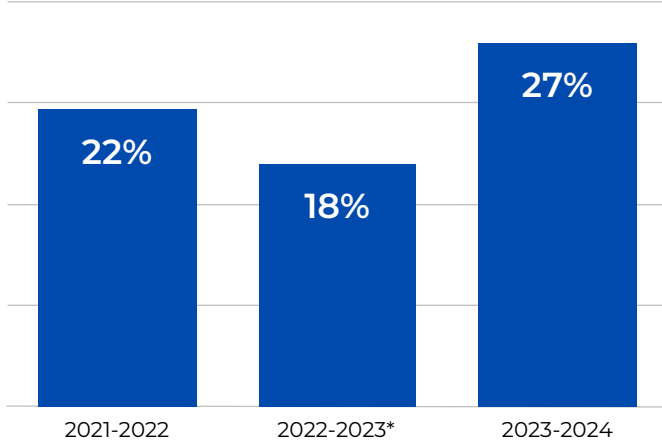
Supporting people with disability or mental illness

In the two financial years 2022-23 and 2023-24, 14 per cent of all ERLS clients identified as living with disability. It is highly likely that the true number is much higher, as many people do not disclose disability unless it is relevant to their employment law problem.

Consistently supporting people on temporary visas

ERLS has consistently supported clients on temporary visas over the years. An average of 22 per cent of ERLS clients each year are on temporary visas, ranging from 18 to 27 per cent over the reporting period, as shown below.

ERLS clients on temporary visas (2021-24)



*2022-2023 based on six months' data.

Servicing people experiencing financial hardship

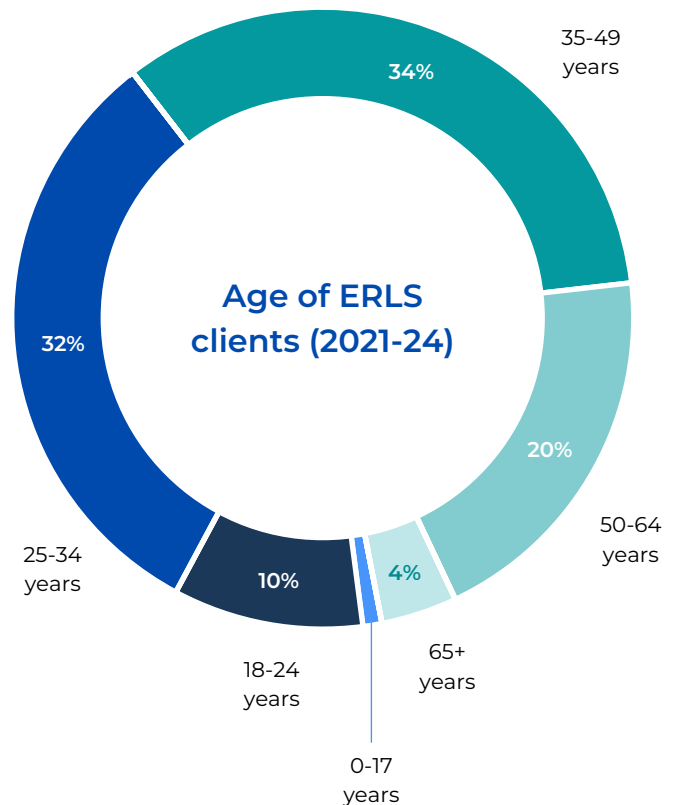
ERLS is currently working beyond capacity in an attempt to support the volume of people being referred to the service. Currently, only the most disadvantaged people on incomes of up to \$70,000 a year are eligible for support through ERLS.

In early 2024 the ERLS Steering Committee decided to reduce the income threshold for ERLS advice appointments from \$80,000, in an attempt to manage allocation of available appointments. This measure had no discernible impact on the demand for appointments. Otherwise, eligible people were still turned away because of a lack of available appointments. However, some of these people either drop off the referral system, don't come through to ERLS, or don't meet the criteria to be eligible for support.

Supporting people of all ages

ERLS is supporting people of all ages, including those under 25 and over 65; priority age groups for support. Just over one in 10 (11 per cent) of clients were 24 years or younger, with four per cent over 65 years of age.

Two thirds of all clients (65 per cent) were between 25 and 49 years of age, with a further 20 per cent between 50 and 65 years of age. This is shown below.



Effectively building awareness through collaboration

Collaboration is a major feature contributing to the effective delivery of ERLS. The number of referrals to ERLS rises each year as the ERLS team continues to collaborate well as partner CLCs, sharing knowledge and resources with others, and collaborating with community organisations. This suggests stakeholder engagement strategies have been effective in building awareness of the service.

Collaboration between the three CLCs

The three CLCs have been working together in three-way partnership, harnessing the skills and expertise of their well-established Centres to provide accurate, accessible and timely legal advice for clients. This has been strengthened by the fact that all three Centres are sector leaders in employment law, with experience and expertise delivering legal services to disadvantaged, CALD and migrant workers across NSW.

Collaborative activities have included:

- Developing of an online Knowledge Hub for the broader CLC network to allow more solicitors to provide specialist high-quality employment law advice;
- Promoting the service under a common umbrella brand and identity;
- Educating community workers on how to prevent legal problems from escalating and keeping workers employed where possible;
- Establishing and maintaining strong relationships with CLCs and providing regular, tailored capacity-building assistance; and
- Building and servicing a central, shared phone line and webform, giving clients greater access to timely casework assistance, which can be critical in meeting application deadlines.

Sharing knowledge and resources

Activities conducted between ERLS, government, the private sector and not-for-profit organisations have been effective in sharing and leveraging resources. ERLS has developed close links with front line community organisations, allied services providers and peak bodies. Through these networks, ERLS staff delivered training to key workers, to help them support their clients in identifying their legal issues and accessing the service. ERLS also delivers Community Legal Education directly to workers who may be unaware of their rights.

Collaboration with community organisations

In recent years, ERLS has prioritised building stakeholder partnerships with front line community organisations, allied service providers and peak bodies that serve its target client base. Collaborative activities have included the following.

Migrant Justice Institute has worked with ERLS in a number of areas relating to justice for migrant workers. Redfern Legal Centre Senior Solicitor Sharmilla Bargon and Migrant Justice Institute's Co-Executive Director featured on Radio National's Law Report on 10 September, 2024, in the program 'New justice visa for exploited migrant workers'. They have also collaborated in other ways, including on a government review of the small claims procedures.

ERLS worked with the Anti-slavery Commissioner and team on complex slavery-type referrals. They provided urgent advice and coordinated multiple government organisations, support services and legal services, including Anti-Slavery Australia, specialist lawyers and pro bono lawyers.

Youth Law Australia is a community legal service dedicated to addressing human rights abuses of children and young people in Australia,

supporting them to find legal solutions to their problems. Youth Law Australia co-convened the Employment Discrimination Law Network (EDLN) with Redfern Legal Centre's senior solicitor. ERLS and EDLN also collaborated to advocate for the removal of post-employment restraints of trade, which prevents people from working for competitive organisations for at least 12 months after leaving a job.

Redfern Legal Centre's senior solicitor worked with the Aboriginal Legal Service to provide legal support on at least five matters for 'Phone a Friend' since November 2023, providing access to resources through the Knowledge Hub, facilitating links to pro bono assistance and offering general support.

ERLS has delivered training sessions to staff at a range of community organisations including Shoalcoast Legal Centre, Mid North Coast Legal Centre, Advanced Diversity Services (ADS) and Accessible Diversity Services Initiative Limited (ADSI).

ERLS has worked with Community Legal Centres Australia to identify gaps and systemic issues and agitate for law reform on behalf of clients and CLC networks more broadly. For example in 2023, Community Legal Centres Australia (CLCA) invited ERLS and JobWatch to attend a roundtable with the Department of Employment and Workplace Relations (DEWR) on how tripartite approaches could be better utilised to address the issues of unpaid employee entitlements. This culminated in ERLS making a submission to the Small Claims Review in June 2023.

JobWatch and ERLS also attended an Australia Council of Social Service (ACOSS) briefing for CLCs to discuss at the upcoming Job Summit in August 2022. They also partnered to send an open letter to ensure issues relevant to their client bases were considered at this summit.



Case Study

Tibetan workers succeed in unfair dismissal case

Amrita, Choden and Dawa* came to Australia as refugees from Tibet and had been working for a cleaning contractor in the aged care sector on Sydney's northern beaches.

In 2023, the three women were dismissed from their jobs and faced financial strain. They approached LocalKind Northern Beaches, which offers vital drop in support for disadvantaged people including refugees and asylum seekers.

A Tibetan Service Settlement worker looked for ways to find support for them by searching online, making contact with a solicitor from ERLS.

The three women were successfully represented by the ERLS solicitor for an unfair dismissal matter and continue to be assisted regarding historic underpayment issues.

According to the service settlement worker, the key has been the in-person consultation with the three women, crucial when representing people from refugee backgrounds. The ERLS solicitor met the women face to face at the community centre, and the ensuing accessibility of an in-person interaction allowed the clients and the solicitor to communicate effectively with each other, even with language barriers.

In addition to the assistance they received from ERLS, they are now better educated about their rights as employees and are currently gainfully employed with another contractor.

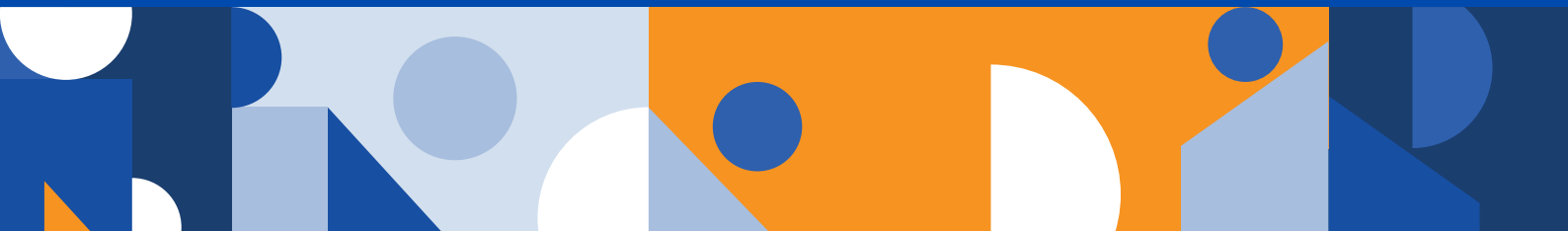
** Name changed for confidentiality*

Key focus area four

Impact

ERLS is impacting its client base and stakeholders in a positive way.

04



ERLS has made a positive impact on individual clients, the CLC sector and the wider society. Ongoing law reform work is likely to have a positive impact on the lives of thousands more disadvantaged workers into the future.

Positive impact on individuals

There is evidence that ERLS has made a positive impact on the lives on hundreds, if not thousands of people from across NSW who have received support, with more than 2,000 people having so far received representation, advice, legal tasks, dispute resolution or education.

Client surveys revealed very high satisfaction levels amongst people who have received support from ERLS. Almost all felt they were listened to, they understood their rights and responsibilities, and knew where to get help. Almost all clients would recommend ERLS to others.

All six ERLS clients interviewed in depth for this evaluation were satisfied or more than satisfied with the support they received from ERLS and the outcomes of their cases. They worked in a range of sectors, including accounting, cleaning, hospitality, finance and IT, and had experienced a range of workplace issues, namely exploitation, disability discrimination, sexual harassment, unfair dismissal and underpayment.

Key survey findings are shown below.

High client satisfaction levels

| Agree + Strongly Agree | % n = 88 |
|--|-------------|
| ERLS solicitors listened to my legal problem | 100% |
| They were easy to contact | 97% |
| I now know where to get help in the future | 97% |
| I would recommend the service | 94% |
| The solicitor helped me understand how to deal with my problem | 93% |
| I know more about my rights and responsibilities | 93% |
| ERLS support helped to make a difference to my stress levels | 73% |



Case Study

Cleaner receives full unpaid entitlements for unfair dismissal

Richard* was a cleaner who had been employed at a cleaning company for 15 years; currently a full-time staff member. Richard was informed by his employer in April that his role was being made redundant. Richard obtained legal advice from ERLS more than 21 days after he was made redundant.

ERLS advised Richard that the termination of his employment may not have been a genuine redundancy and informed him of the option to make an unfair dismissal claim. ERLS advised Richard to negotiate with his employer for the payment of unpaid entitlements and provided advice on the processes in the Fair Work Commission.

At a conference facilitated by the Fair Work Commission, Richard's employer agreed to pay Richard all his unpaid entitlements, including pay for redundancy, long service leave, and payment in lieu of notice of termination totalling \$31,860.00.

** Name changed for confidentiality*

Positive financial outcomes

Clients have received substantial financial support through receipt of payment of damages following employers' unlawful withdrawal of job offers, unfair dismissals and underpayments or unlawful pause on wages. Some said their positive financial outcomes have reduced their risk of homelessness or lessened their financial hardship.

Depending on the type of claim, ERLS has recovered amounts of between \$1000 and \$100,000. Some clients have had opportunities to resolve workplace issues in dispute without having to escalate matters to external bodies or complaint mechanisms.

Five out of six clients interviewed in depth for this evaluation were satisfied or extremely satisfied with their financial outcomes. One client, however, felt ERLS could have been more aggressive and expeditious in the support he was offered during case that became protracted. His financial outcome was lower than he'd expected, his savings depleted, and he was unable to pay his student fees. He was, however, grateful for the free legal advice offered by ERLS.

**'It's good that it's out there.
I'll be promoting it to my clients.'**

Representative, Accessible Diversity Services Initiative (ADSI)

'It was a big life lesson: people take you lightly if sending letter. They take you seriously as soon as you send court papers.'

ERLS client

Increased awareness of rights and responsibilities

Following the support they received from ERLS, the vast majority of clients were more aware of their rights and responsibilities, better understood how to deal with their workplace problem and knew where to get help in the future. This included all six clients interviewed for this evaluation.

Representatives of service providers working with refugee or migrant workers reported that ERLS played an important role in educating migrant workers about what to look for in a potentially exploitative workplace situation and where to turn for support.

Improved wellbeing

Clients interviewed for this evaluation reported feeling supported, heard and well understood by the ERLS solicitors. For one client, ERLS directly helped stabilise their mental health, following a period of mental ill health and stress associated with their workplace issue.





‘It was quite amazing.
I received all monies owed
within a week. I didn’t
expect that outcome.’

ERLS client

Case Study

IT worker receives settlement of close to \$9,000 for unfair dismissal

Allison* was working five days per week as a sales representative for seven years for an IT company. She came to ERLS in February 2023 stating that she had been terminated for performance issues without warning or discussion. Allison had been given one week's notice of termination.

Prior to Allison's employment being terminated, her employer had told her that they could not afford to keep her role. Allison asked her employer if she was being made redundant (which would entitle Allison to a redundancy payment of 13-weeks' pay plus entitlements). ERLS represented Allison at an unfair dismissal conciliation in the Fair Work Commission and assisted to obtain a settlement including three weeks compensation, three additional weeks for notice, and six weeks of long service leave totalling \$8,825.85.

** Name changed for confidentiality*



Case Study

Disability support worker receives payment of damages following unlawful withdrawal of job offer

Fatima* applied for a position as a disability support worker for an agency. They went through the different stages of the recruitment process, including a formal interview for the role. At the final stage, the agency requested for Fatima to attend a pre-employment medical check prior to offering them the position formally.

Fatima attended the pre-employment medical check and the doctor performing the medical check confirmed with them that they had no concerns. Following this, the agency made a formal offer of employment to Fatima, which they accepted. But within a few days, they received a phone call from the agency, who told them that their medical issues meant they were unable to perform the inherent requirements of the job, and as a result, the agency was withdrawing their offer.

As a result, Fatima was left without the gainful employment she was expecting and had struggled to find employment since. ERLS assisted Fatima by writing to the agency, alleging that they had engaged in disability discrimination without a lawful or reasonable basis.

The matter settled by way of deed of release for the payment of damages, which ERLS negotiated for Fatima.

** Name changed for confidentiality*

Positive impact on the Community Legal Centre sector

ERLS has positively impacted the CLC sector in a number of ways, particularly in supporting CLC workers to develop professional skills, helping to strengthen sector relationships and delivering cost savings for CLCs.

Skills development

Generalist CLC solicitors have developed new professional skills to better equip them directly support their clients with employment matters.

Through the 'Phone a Friend' service, the ERLS Knowledge Hub, training and education, generalist lawyers are supported and advised on how to offer legal support for their clients with employment issues. If still unconfident or feeling ill-equipped, they are encouraged to refer their clients to the ERLS team of specialist employment lawyers and volunteers to consider their case.

'ERLS gives us more confidence to deal with clients in an ongoing manner rather than just giving them advice and referring them on.'

Representative, Shoalcoast Legal Centre

Strengthened sector relationships

ERLS operates under a service model that reinforces CLC sector values of working together for a common purpose. This is particularly important in these current times of scarce funding and resources. Rather than competing, ERLS' innovate partnership model leads to greater collaboration between the three partner CLCs,

which, in turn, brings cost savings through the sharing of intellectual property, resources and clients. This provides a positive example to the broader CLC sector of what can come from entering the spirit of sharing and committing to working together for a common purpose.

Solicitors at CLCs who had received community legal education reported strengthened relationships within their practice as a result, through such sharing and collaboration.

Cost savings

As a collaborative model of service, RLC, ICLC and KLC have pooled resources to achieve cost savings, including reduced overheads and savings achieved from cross-referencing clients to each other to help manage individual workloads.

Positive impact on the broader community

Increased access to employment law services across New South Wales

Given few solicitors working in CLCs throughout New South Wales have felt confident to take on employment law matters, it has traditionally been challenging for people to access free employment law services. ERLS has filled that void, providing a state-wide service in supporting people with employment matters.

Acting as a voice for disadvantaged workers

Through its law reform activities and advocacy work, ERLS is contributing to longer-term positive impacts on disadvantaged workers across New South Wales into the future. It has been a voice for people when employment laws are being considered or reviewed, or when other broader policy positions are changing.

ERLS has already made a positive longer-term impact on the wider community through its considerable contribution to debate in the workplace sector. Most significantly, ERLS' work in forcing migrant worker exploitation as a federal election issue in 2021 demonstrated that the issue resonated with the Australian community, bringing about the new Workplace Justice Visa, 2024. This was a timely change, given there were 2.7million temporary visa holders in Australia at the time.

The advocacy and law reform work ERLS has undertaken has the potential to positively impact millions of people's lives in the following ways:

- Under the protection of the Migration Amendment Act, 2024, a person's migration status will not be able to be used to exploit them;
- People who bring discrimination or sexual harassment claims will be at limited risk of paying their employer's or perpetrator's costs if they're unsuccessful; and
- The Fair Work Commission will have greater oversight into inappropriate and dangerous conduct by paid agents with the recommendations suggested by the Paid Agents Working Group.

'If they're being exploited they don't tell us. Within that community they feel it's normal. Until we mention something and empower them, they don't know. It's an unknown quantity of people who need support.'

Representative, Accessible Diversity Services Initiative



ERLS solicitors Yuvashri Harish and Martika Trpenovska

Without ERLS

All key stakeholders were asked how they would envisage society without ERLS, summarised as follows.

1. Without ERLS, the community legal sector would be overwhelmed with employment law matters they cannot support or service, as generalist solicitors would be required to provide specialised employment law advice without sufficient experience or expertise.
2. Without ERLS, LegalAid NSW would likely be inundated with additional clients they are unable to refer to ERLS, and be ill-equipped to provide expert employment law advice or support.
3. Without ERLS, clients would need to present to the Fair Work Commission independently, with limited or no knowledge of their rights or relevant processes. This would likely be experienced as confronting, challenging and intimidating.
4. Without ERLS, disadvantaged workers are less likely to seek support for their employment issues, remaining in exploitative situations. This would be particularly the case for migrant workers in regional NSW.
5. Without ERLS, employment law reform would be less likely to reflect the issues faced by workers experiencing disadvantage.

‘We’d be at a real loss if ERLS were not available to help us. In more than two decades of working with vulnerable groups, it can take time to build up trust and rapport with service providers. We’ve built it up rapidly with ERLS. If not available, we’d be going back to Legal Aid, Anti-Slavery Australia or pro bono firms. They don’t have the institutional knowledge that ERLS has.’

Representative, Office of NSW Anti Slavery Commissioner



Recommendations

The following recommendations are for ERLS to consider, following evidence derived from this evaluation. The first three recommendations support the strengthening of initiatives already being undertaken by ERLS, with an additional recommendation for a new discrete project.

01

Continue to advocate for secure and increased funding for a period of at least 5 years

Given the considerable demand for assistance from ERLS, it is recommended that funding for at least two solicitors and additional part time administrative support be made available, ideally secured for a period of at least five years. This would enable ERLS to provide free legal advice to meet the growing rate of referrals, helping to ensure that dedicated specialists are spending their time assisting clients and engaging in community legal education and service delivery.

Importantly, administrative support should also include funding necessary to support an extensive voluntary workforce associated with growing numbers of referrals from LawAccess NSW and other sources.


The ERLS team and close partners should continue to advocate for this increased and secured funding.

02

ERLS to continue its work to prioritise and expand service delivery for disadvantaged workers across New South Wales

ERLS is already making significant efforts to assist people from regional, rural and remote communities throughout the state, currently supporting clients from the majority of LGAs. It should focus on providing services in regional, rural and remote areas with a large number of migrant workers, and where no generalist CLCs exist. Support should also prioritise parts of metropolitan Sydney demonstrating a need for employment law support for priority client groups.

As clients are assisted throughout the state, every effort should be made by ERLS to accurately record their location, for reliable ongoing monitoring of service delivery.



We have built a strong reputation of the ERLS service and doing good work, yet we are still turning people away. We need further government commitment to allow us to continue to do incredible work with the partnering CLCs.

CEO, Redfern Legal Centre

03

ERLS to continue supporting and educating the workforce outside the Sydney metropolitan area

ERLS should continue to provide legal assistance service to other CLCs, Aboriginal Legal Service and generalist services supporting migrant and disadvantaged workers. Support should focus on those from outside the Sydney metropolitan area who are servicing clients in areas of higher rates of unemployment and underpayment and with limited access to employment support services.

ERLS should aim to acquire the necessary funding to travel to regional, rural and remote CLCs to deliver training. Technology and telephone support should be utilised to strengthen the 'Phone a Friend' service. The ERLS Knowledge Hub should be maintained, with fact sheets updated regularly.

Ongoing and strengthened workforce training will enable generalist CLC solicitors and others to become better equipped to play an integral role in supporting their local clients with employment issues.

04

ERLS to develop a stand-alone ERLS website

A stand-alone dedicated ERLS website should be developed.

An ERLS website will play an important role in contributing to the suite of co-branded tools that formalise ERLS as a discrete service. It would complement the existing ERLS phone line and webform and help to align the positions and marketing of the service in its branded identity. The stand-alone, discrete new ERLS website would be linked to each of the three Centres' websites, eliminating the need for their existing individual web pages dedicated to ERLS, which currently vary in appearance and content.

Website development and improvement will require additional funding, either as part of increased and sustained service funding as a whole, or for this discrete project.

Conclusion

ERLS is an established service with strong pathways to reach disadvantaged clients. Importantly, it fills a gap in providing employment legal support and advocacy on behalf of those who are most disadvantaged, including migrants, people living with disability, Aboriginal and Torres Strait Islander workers, people working in regional and remote Australia, young workers, international students and women.

These workers are most likely to be in unstable work such as in the gig economy and are least likely to join unions or be in a position to pay private solicitors if they have been exploited or mistreated at work.

ERLS has been operating in an extremely cost-effective way, servicing thousands of clients a year, from all over New South Wales, with considerable support from a large voluntary workforce and pro bono services. However, the service is still unable to meet the growing need from the community. Although ERLS is funded for intake/administration, supervision and training, ERLS is a statewide service with more inquiries and referrals of clients than their capacity to assist. They have complex triage mechanisms to take this into account, including lawyers considering any potential limitation dates, as employment law involves complex and short limitation dates. For this reason, the service requires significantly more intake and administrative assistance to determine which clients ERLS can best assist and provide adequate legal assistance to those who most need the assistance.

There was overwhelming support amongst key stakeholders for ERLS to become embedded into the legal and community services sector. However, scaling up would need to be done strategically, and with more stable and increased funding.

This evaluation provided evidence for the need for ongoing increased and secure funding for ERLS to continue to provide a service that others cannot, and to be available to support people in increasing numbers, as the impact of advocacy and law reform work becomes evident in years to come, opening up pathways for people to come forward and challenge exploitative or illegal workplace practices.



Appendices

1. Individuals consulted
2. Evaluation Framework
3. Discussion guide

1. Individuals consulted

Internal stakeholders

| Name | Position | Organisation |
|--------------------|---|---|
| Sharmilla Bargon | Former ERLS Coordinator | Redfern Legal Centre |
| Camilla Pandolfini | CEO | Redfern Legal Centre |
| Yuvashri Harish | Current ERLS Coordinator, Senior Employment Lawyer | Inner City Legal Centre |
| Katie Green | CEO | Inner City Legal Centre |
| Emma Golledge | Director | Kingsford Legal Centre |
| Dianne Anagnos | Deputy Director | Kingsford Legal Centre |
| Patrick Hourigan | Assistant Principal Solicitor | Mid North Coast Legal Centre |
| Josh Martin | Administration and Client Services Assistant | Mid North Coast Legal Centre |
| Zac Keizer | Solicitor | Mid North Coast Legal Centre |
| Matthew Taylor | Solicitor | Mid North Coast Legal Centre |
| Amanda Templeman | Principal Manager Customer Experience and Contract Centre | LawAccess NSW |
| Anastasia Coroneo | Senior Solicitor, Employment Law | Youth Law Australia |
| Louisa Stewart | Principal Solicitor | Shoalcoast Community Legal Centre |
| Dr James Cockayne | Anti Slavery Commissioner for NSW | Office of NSW Anti-Slavery Commissioner |
| Emily Cascarino | Senior Policy and Projects Officer | Office of NSW Anti-Slavery Commissioner |

| Name | Position | Organisation |
|------------------|--|---|
| Leigh Gordon | Solicitor, Civil Law (and former ERLS volunteer) | Aboriginal Legal Service |
| Melissa Jóźwiak | Assistant Principal Solicitor | MacArthur Legal Centre |
| Kelly Swann | Volunteer ERLS Solicitor | Redfern Legal Centre |
| Annette Van Gent | Volunteer ERLS Solicitor | Inner City Legal Centre |
| Mary O'Connell | Volunteer ERLS Solicitor | Kingsford Legal Centre |
| David Hillard | Pro Bono Partner | Clayton Utz |
| Jessica Morath | Partner | Clayton Utz |
| Sahar Siddiqi | Settlement Specialist Worker-English, Education and Employment | Accessible Diversity Services Initiative (ADSI) |
| Tim Leach | CEO | Community Legal Centres Australia (CLCA) |
| Laurie Berg | Co-Executive Director and Academic | Migrant Justice Institute, UTS |
| Dhondup Yultse | Settlement Services worker | LocalKind Community Centre |
| Anonymous | ERLS client | |
| Anonymous | ERLS client | |
| Anonymous | ERLS client | |
| Anonymous | ERLS client | |
| Anonymous | ERLS client | |
| Anonymous | ERLS client | |

2. Evaluation Framework

| Key focus area | Evaluation questions | Research questions |
|---------------------------|---|--|
| 1. Appropriateness | To what extent does ERLS meet an unmet legal need by reaching its target client cohort? | <p>What unmet legal need does ERLS address?</p> <p>How appropriate is the design of ERLS in meeting the identified legal need?</p> |
| 2. Efficiency | How well is ERLS utilising its funding and resources to deliver its service? | <p>What services and activities are being conducted within the given budget?</p> <p>What additional funding or resources are required for ERLS to deliver its service more efficiently?</p> |
| 3. Effectiveness | How effective is ERLS in delivering a statewide service? | <p>How successfully is ERLS delivering legal advice, assistance and representation to migrant and other works experiencing disadvantage in NSW?</p> <p>How effective has the promotion and stakeholder engagement strategy been?</p> <p>How effective is ERLS's community legal education and resource activities?</p> <p>How well does ERLS work to collaboratively share knowledge and resources?</p> <p>To what extent has capacity-building work through ERLS assisted and referred clients with employment law issues?</p> <p>How effective have activities between ERLS, government, the private sector and NFPs been in collaborating and leveraging resources?</p> |
| 4. Impact | What impact is ERLS having on its client base and stakeholders? | <p>What changes are evident in the lives of clients who have received ERLS services?</p> <p>Ideally, what other ways could ERLS be designed or expanded to increased its impact on the broader community legal sector?</p> |

Indicators of success

ERLS is appropriately designed to fill a service gap otherwise unavailable to its client cohort.

ERLS is successfully reaching workers across NSW who require assistance with their employment rights.

Appropriate referrals are coming from stakeholders.

Even though limited, budget and resources are being used efficiently to deliver the service.

ERLS demonstrates it has successfully:

- Advocated to improve employment laws, processes and structures for workers to seek assistance
- Increased awareness amongst workers about their rights; and
- Increased access to lawyers for workers experiencing disadvantage.

Knowledge and resources are being gathered and shared.

There is evidence of increased capacity in the broader community legal sector to do more to represent workers experiencing disadvantage.

There is evidence of better legal outcomes for workers experiencing disadvantage across NSW as a result of ERLS.

There is an identified need for ERLS to expand and become a more permanent service for workers across NSW experiencing disadvantage.

3. Discussion Guide

The following general discussion guide was modified for each stakeholder, as appropriate.

ERLS stakeholder discussion guide

Appropriateness

What unmet legal need does ERLS address?

How appropriate is the design of ERLS in meeting the identified legal need, when benchmarked against other available services?

Efficiency

Are appropriate referrals coming from stakeholders? Where do they come from?

Do you think budget and resources are used efficiently and in the right areas to deliver the service?

What additional funding or resources are required for ERLS to deliver its service more efficiently?

How well does ERLS work to collaboratively share knowledge and resources?

Effectiveness

How successfully is ERLS delivering legal advice, assistance and representation to migrant and other works experiencing disadvantage in NSW?

How effective has the promotion and stakeholder engagement strategy been?

How effective is ERLS's community legal education and resource activities?

To what extent has capacity-building work through ERLS assisted and referred clients with employment law issues?

How effective have activities between ERLS, government, the private sector and NFPs been in collaborating and leveraging resources?

Impact

What changes are evident in the lives of clients who have received ERLS services? (probe: There is evidence of better legal outcomes for disadvantaged workers across NSW as a result of ERLS.)

Ideally, what other ways could ERLS be designed or expanded to increase its impact on the broader community legal sector? (probe: There is an identified need for ERLS to expand and become a more permanent service for disadvantaged workers across NSW.)

Recommendations

What recommendations would you make for the future of ERLS





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