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Community Legal Centres lead on law reform

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On 2 October 2007 the then federal Attorney-General Philip Ruddock was reported as saying: "I am surprised by the audacity of those [legal][1] centres that allocate resources to these partisan political campaigns while complaining they are in dire need of more Commonwealth funding".

Soon after these comments, Mr Ruddock called for an internal departmental review of the Community Legal Centre (CLC) program. There was concern that the review would recommend loading CLCs with casework and limiting their law reform activities. This would be a shame and in the author's view would reduce opportunities for ensuring a more responsive, cost-efficient and just legal system that CLCs have historically facilitated.

On 24 November 2007 a new Labor government was elected and Robert McClelland is now Attorney-General. The Labor Party platform says it "… will continue to support general and specialist community-based legal services, recognise their advocacy role and will further develop collaborative clinical legal education schemes… Law reform is essential to ensure

that the law reflects the traditions, values and aspirations of all Australians. Law reform also ensures that our laws meet the needs of modern democratic society…".[2]

These two quotations present very different views on the perception of law reform activity. Lawyers should monitor the Labor government to see if it sustains its stated commitment to CLCs and law reform, particularly as CLCs in advocating law reform will not always say what governments wish to hear. It is also unclear what the new government's plans are for recommendations arising from the review of CLCs undertaken by the previous government.

Many practitioners have a long history of contributing to CLC law reform through their firm's involvement in pro bono services and individual practitioner work as volunteers. Some private practitioners undertook clinical legal education at legal centres in their undergraduate years where they worked on law reform activities and will understand the vital role played by CLCs.

We are all subject to the laws of the land and how they are administered. If the laws on the ground are problematic or unwieldy, then we all have a stake in trying to fix them. As lawyers we are well placed to observe the experience of clients and to suggest ways that the laws and their administration might be improved. If governments want to remain connected with the public and stay in power, then they need to listen to the public and those who advocate on their behalf who have first-hand experience of the legal system's operation.

This article outlines some of my research into law reform activities of CLCs in Victoria which have led to changes in the law and accordingly improved outcomes for clients. It is based on a report, Making the Legal System More Responsive to Community: A report on the impact of Victorian community legal centre law reform initiatives. Interestingly, very little research has been conducted on law reform in Australia per se and its impact on civil society, so this research is unique.

This article outlines some key aspects of the research and its findings, which are that CLCs' law reform activities have had a demonstrable effect on improving the laws and their administration in Australia.

The research

The research was commissioned by the West Heidelberg Community Legal Service (WHCLS), which has a history in law reform, and was privately funded. The author examined six law reform projects undertaken by CLCs from 1984 to 2005. Effects and outcomes were examined to determine whether they flowed from the law reform project, i.e. by a clear change in law, policy, recognition, media coverage, reference in recommendations, parliamentary/statutory inquiry, the grant of standing or clarification of the position in law in a case by a court or a successful case.

The research revealed that CLCs, through casework experience, have been able to identify problematic laws and policies which negatively affect clients and brought these experiences to the attention of governments, the public and industry and, albeit sometimes slowly, have forged changes that have led to the improvement of the justice system. The six law reform issues selected for the research were: the Penalty Enforcement by Registration of Infringement Notice (PERIN) (i.e. a fines system in Victoria); police treatment and accountability; debt collection practices, including harassment of consumers; energy regulation and oversight; violence against women and children; and deaths in custody in Victoria's prisons and the treatment of prisoners. The law reform activities examined also involved the use of test cases, many of which were supported through pro bono assistance from law firms and members of the Bar. This article will focus on the law reform activities concerning prisoners undertaken by CLCs.

Law reform on prisons which has had a positive impact

In the snapshot period examined from 1997-2003, between seven and 11 CLCs were involved in the Corrections Working Group. This law reform activity also involved the taking of test cases dealing with the availability of prison contracts with a Freedom of Information (FOI) case in the Victorian Civil and Administrative Tribunal (VCAT) in 1999 and involvement in coronial deaths in custody cases on behalf of families of the prisoners.

Client experience which informed the law reform CLCs became involved in the issues because of regular complaints from prisoners to CLC lawyers doing work in the prisons. Prison issues ranged from the loss of property, phone call access, drugs in prison, strip searches of family and small children, classification and assessment of prisoners and access to health services within prisons to the deaths of women prisoners soon after release. Many of these will resonate with LIV members who have undertaken work on behalf of prisoners and their families.

On closer investigation, instances of a lack of clarity about disciplinary processes in prison and parole concerns came to light.

Concerns about boredom and the lack of educational opportunities in prison were raised by clients and people working in the prison system. For instance, one prisoner had done the same computer course four times to alleviate boredom. Clients voiced concern about the use of teargas in prison.

Some lawyers also received mail from prisoners seeking help on a range of day-to-day matters concerning the running of prisons. These included the loss of personal items in transfers between prisons and concerns about prisoners' inability to access legal services in matters not relating to their prison sentence, e.g. family debt, privacy and family law.

Concerns were raised by family members about suicidal relatives in prison, self-harm in prison and lack of clarity about processes regarding treatment and appropriate responses. In the 1990s, families raised questions about deaths of relatives held in prison custody. Regular complaints were received by CLC clients who were family members of prisoners. The complaints were about visits, access to prisons and invasive strip searches. At different times in the snapshot period, the Corrections Working Group tried to clarify policies, raise concerns of prisoners with the Office of Corrections, in the media and with the relevant MPs, and seek clarification about the procedures and levels of service inside prisons to deal with issues raised by clients.

Strategies adopted by CLCs

The minutes of the Working Group from 1997-2003 examined for the research revealed CLCs had gauged the frequency of problems for clients by polling other centres and law firms to see if trends in the client experiences of other lawyers or community development workers at the CLCs were consistent.

In this way the CLCs were able to harness the experience not just of legal aid services, but also those of private law firms. Where there was a consistent pattern CLCs would try to convey the problems or difficulties to decision-makers, often with suggestions about how the problem might be rectified.

FOI requests were made to gain internal data on complaints or receipt of data from the Ombudsman's office. The gathering of statistical data covered such areas as the rates of deaths in custody, deaths on release from prison, incidences of suicide and selfharm in prison, and numbers of people with a mental illness assessment.

Test cases

Coronial inquests into deaths in custody in Victoria

The following CLCs were involved in coronial inquiries:

1. Coburg/Brunswick Community Legal and Financial Counselling Centre and the Fitzroy Legal Service – Port Phillip Prison inquests.
2. North Melbourne Legal Service and Villamanta Legal Service (the latter is a specialist legal service for people with an intellectual disability) – inquest on Cheryl Black (the first Indigenous woman to die at the Deer Park Prison and hence also relevant to the Royal Commission into Aboriginal Deaths in Custody).
3. Brimbank Melton Community Legal Centre on the files of Paula Richardson and Ruby Henare (a post-release death).

4. Brimbank Community Legal Centre (Amanda George and Charandev Singh, January 2002) – submission to the Cor oner on behalf of the family of Paula Richardson. All submissions presented to the coroners contained suggestions that were included in final recommendations made by the coroners concerning:
    - risk assessment of prisoners
    - self-harm and suicide
    - strip searches
    - use and appropriateness of segregation and isolation; and the potential links to suicide and self-harm
    - gender specificity
    - previous coronial recommendations

Cases for the release of prison procedure and operational information

Coburg/Brunswick Community Legal and Financial Counselling Centre sought, through FOI, the private prison contracts and operating procedures for the operation of the prisons. The CLC was successful before VCAT in 1999, gaining a decision for release of prison documents (initial access to this information was refused by the Department of Justice and Prisons).[3] On appeal, CLCs were successful in the Victorian Court of Appeal on 17 September 1999 and were granted access to this information.

Impact or outcome of the CLCs' work on prisons in the law and its administration

There were significant inroads made by the CLCs into changes in policy, laws and their administration. There are many references to the Federation of CLCs in Hansard debates, e.g. concerns about home detention;[4] the parliamentary committee report on the Coroner's Act;[5] the Correctional Services Commissioner's report on management and operations of Victoria's private prisons;[6] and regular responses from the Department of Justice to issues raised by CLCs about prisoners.[7] Prisons responded to suggestions made about reducing the hanging points in prisons and other design suggestions.

As a result of the test cases, the release of the operating procedures and requirements regarding services in private prisons were now in the public arena and standards of care could be gauged externally. An initial decision by VCAT in favour of the Coburg/Brunswick Community Legal and Financial Counselling Centre said:

"It is inherent in the democratic system that important issues of the nature of prisons and their management be publicly transparent so that there can be the best possible public understanding, awareness and if need be, debate". The later decision by the Victorian Court of Appeal in the case defended by CLCs reinforced the VCAT decision.[8]

This decision has created an important precedent for public access to information.

Why this law reform work was important

People in prison are out of sight. Conditions in prison are not meant to be the punishment; it is the loss of liberty that forms the punishment (see Sentencing Act 1991 (Vic) and the Corrections Act 1986 (Vic)). Taxpayers pay for prisons. Accordingly, how prisons operate and the manner in which people are treated are matters that need to be monitored.

The success of CLCs in getting information about the standards applied in private prisons, as well as the work done to reduce suicide and self-harm in prisons, has been critical in ensuring lives are not lost unnecessarily and that there is greater accountability.

The author's overall research has revealed that:

1. CLCs have consistently had recommendations adopted by parliamentary, statutory and other inquiries at national and state level, and by industry, that have changed practices.

2. CLCs have often been the sole agency identifying and advocating on a specific problem encountered by clients over many years. This has opened up CLCs to criticism. Despite this, CLCs have continued to advocate for clients. In most cases issues later became popular and were taken up by other agencies which often claimed credit for the changes suggested initially by CLCs.
3. Law reform activities were levelled at local, state and federal governments and oppositions, irrespective of the persuasion of the parties in power at the time.

Conclusion

CLCs in Australia continue to be active on law reform because there are still areas to be improved. Recent work has been done on the proposals for "indefinite detention" in Victoria and on articulating the effect of recent social welfare reforms on the poor and on the rights of victims in the legal process. CLCs are still seeking to improve conditions for asylum seekers in detention, to improve the regulation of loan sharks, to ensure the rights of those in public housing and to monitor energy regulation.

The role of CLCs in law reform is important because they often represent those in the community who are poor and have little or no power to generate change. The relationship between CLCs and members of the broader legal profession in terms of complementing CLCs' work with volunteer and pro bono services (in view of the limited resources of CLCs) and the expertise in the often specialised areas of law that can be called on are critical if this work to continue. These relationships are valued by CLCs but also should be acknowledged and nurtured.

Governments – local, state or federal, Liberal or Labor – and their agencies can lose sight of the on-the-ground experiences of members of the public. Bureaucracies and large corporations can be removed from the issues that confront many people: a person with a disability in accessing services, the refusal by a pizza shop to service an Aborigine, the difficulties faced by a person who left school aged 12 in understanding complex forms and procedures, the struggles of the farmer who has been the victim of dodgy credit arrangements or the child who has been in state care. These are the people who CLCs have seen over the three decades of their existence and these are the clients they continue to help.

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1. Brackets inserted by author.
2. ALP National Platform and Constitution, Chapter 12, Ensuring Community Security and Access to Justice, paras 33 and 56: http://alp.org.au/platform/chapter_12.php#12access_to_justice.
3. S Findlay, "Order to release prison contracts", The Age, 21 May 1999: 81 FoI Review, 1999.
4. Kim Wells MP, Hansard, Legislative Assembly, 29 May 2001, Victorian Parliament, 8 (Appendix).
5. Inquiry into the Coroner's Act, Victorian Parliamentary Law Reform Committee Report, 20 September 2005: www.parliament.vic.gov.au/LAWREFORM/coroner/Hansard/19September%202005.
6. Victorian Office of the Correctional Services Commissioner, Independent Investigation into the Management and Operation of Victoria's Private Prisons, October 2000, Appendix 1, 119 and Appendix II, 121-123 and Appendix III; Status Report – Implementation of Recommendations from Inquiries and Reviews: Inquest into Five Deaths at Port Philip Prison OSC – Activities in Response to Coroner's Recommendations, 125-127. Bibliography, 135, 136 and 138 acknowledging submissions made by Fitzroy Legal Service Inc. and Michael Hennessey of counsel; 1999 Submission on Behalf of the Families of the Deceased, Inquests into the Deaths of George Drinken, Rodney Koers and Michael Filips, Coburg/Brunswick Community Legal and Financial Counselling Centre; Coronial Inquest into the Death of Adam Courtney Irwin, Submissions on behalf of the Irwin Family, September 1999.
7. Brendan Murphy, CORE, Department of Justice, dated 25 October 2002 noting that CORE would "take on board" the issues raised by CLCs (Appendix 1).

8. Secretary, Department of Justice v Coburg/Brunswick Community Legal and Financial Counselling Centre (Phillip, Charles JJA), 17 September 1999, (1999-2000) 16 VAR 1.

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