"Local, Regional or Super?"
Australian Community Legal Centres in the Purchaser-Provider Age

By Jeff Giddings* & Mary Anne Noone•

Introduction

Australian community legal centres (CLCs) have not been immune from many of the developments that have impacted on the broader Australian legal aid system.[1] But simultaneously the Federal government has enhanced their role within the legal aid system. Funding to CLCs continues to increase both in real dollars and proportionate to other legal aid funding. In 2001/2002, payments to CLCs accounted for 9.24% of total payments made by Legal Aid Commissions (LACs).[2]

In the last decade the Federal Government's approach to CLCs has become more directive. Prior to 1994, most CLCs originated from a community development model. This was one of their distinguishing features. But the concern of government for demonstrated community support prior to the establishment of centres is no longer as strong. The Federal government now purchases *Community Legal Services* rather than funding *Community Legal Centres.* Each of the 11 new CLCs funded by the Federal government since 1998 has been established in regional (non-metropolitan) areas. A tender process has been used to select the service provider.

This paper explores why these trends may be occurring and why CLCs remain appealing to governments. The development of Australian CLCs over the past decade is reviewed with a particular emphasis on the changes which have occurred since the election of the current conservative federal government elected in 1996.

The title of this paper suggests that CLCs are developing in different ways across the country. Many continue to use a model focussed on local concerns, benefiting from close links to their community and to other local agencies. Those established during the life of the current federal government are expected to operate on a regional basis and often have less input from volunteers than their metropolitan counterparts. There are also a small number of 'super' centres which have expanded to offer a range of services in different locations. Additionally we examine the changing nature of relationships between CLCs, LACs and the private profession; the importance

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[1] Noone, M.A., (2001) 'The State of Australian Legal Aid' 29(1) *Federal Law Review* 37
[2] $29,501,910 out of total expenditures of $319,056,729. Figures accessed from Legal Aid Commission Annual Reports.

of volunteers to CLCs; the impact of changes in governance and the work performed by CLCs.

Australian legal aid system
Community legal centres are an integral part of the Australian `mixed model' legal aid system. Salaried lawyers are employed by LACs and CLCs and the private profession provides services through `judicare' arrangements. Funding for LACs is provided by both the Federal and State governments. Federal funds are targeted predominantly towards family law matters whilst the States have responsibility for criminal law.

CLCs are funded by both State and Federal governments and provide legal advice and advocacy to individuals and groups in the community disadvantaged in their access to justice. This work includes individual legal advice and assistance as well as law reform, test case litigation, referrals and community legal education activities aimed at addressing systemic problems.[3]

CLCs are independent non-statutory bodies. In contrast, LACs are statutory bodies, each constituted by a board of commissioners prescribed by State legislation.

A network of Aboriginal Legal Services[4] also exists throughout Australia. Aboriginal Legal Services are funded through the Aboriginal and Torres Strait Islander Commission and provide individual legal services to the indigenous population as well as pursuing test cases and land rights issues.[5]

In addition to government-funded legal aid, there are a growing number of pro bono schemes and contingency legal assistance schemes.[6]

Distinguishing features of community legal centres
The development of the first CLCs represented a departure from previous pro bono activities of lawyers. The distinctive aspects of the involvement of lawyers in the early CLCs were a collective rather than individualistic approach; the greater emphasis on social reform rather than a case by case approach to assistance; and the partnership with non-lawyers, approaching legal problems in the context of the total needs of the disadvantaged.[7] Those involved in CLCs came from an activist background. They saw access to legal information, advice and representation as a right. They were working to

[3] http://www.naclc.org.au
[4] For a discussion of the history of Aboriginal Legal Services see Chapman, M, "Aboriginal Legal Service - A Black Perspective" in Neal, D., (Ed) *On Tap, not on Top - Legal Centres in Australia 1972-1982* (1984) at 35 and Lyons, G., "Aboriginal Legal Services" in Hanks, P. & Keon-Cohen, B.(eds), *Aborigines and the Law* (1984).
[5] http://www.atsic.gov.au
[6] Regan, F., `Legal Aid without the State: Assessing the rise of Pro Bono Schemes' in Reilly, J., Paterson.A., & Pue W., *Legal Aid in the New Millennium: Papers presented at the International Legal Aid Conference* June 1999
[7] Robertson, D, (2001) `Pro Bono as a Professional Legacy' 19 *Law in Context* 97

enforce and extend this right and were not involved out of a sense of professional responsibility. There was a belief that people had a right to 'equality before the law' and those working in centres wanted to enforce this right. [8]

More specifically, the features that distinguished the early CLCs from the services provided by the private profession or other legal aid providers were

- free legal assistance was provided to anyone who walked in the door;
- centres were staffed by both lawyer and non lawyer volunteers working on an equal footing;
- centres were open out of normal office hours, usually in the evenings;
- the physical surrounds of the offices and the clothing of the lawyers were informal;
- there was often no formal organisational or administrative systems; and
- clear explanations of their legal situation was given to clients and clients were involved in their own problem solving.[9]

Such a mode of operation was said to reflect community aspirations, the focus being on empowerment of the local community. There was a strong emphasis on community control and participation in the running of the organisations and in the provision of services.[10] Lawyers, law students and others who volunteered on a regular basis became involved in the running of the Services. Originally, community legal centres were called 'voluntary legal centres'.[11]

Often the volunteers, together with the few paid staff, coalesced as a cohesive group. As Neal comments, the real community at Fitzroy Legal Service (the first non-Aboriginal CLC in Australia - opened in December 1972) was the volunteers and paid staff:

> A community of legal workers, disaffected from traditional forms of legal practice and the existing professional organisations who held a belief in the efficacy of law and law reform in ameliorating the situation of the poor.[12]

The nature of this community of legal workers is important, as it was the beginnings of a new kind of grouping within the legal profession which would influence the development of Australian legal aid policy and practice in the future [13]

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[8] Noone, M.A., (2001) `The Activist Origins of Australian Community Legal Centres' 19 *Law in Context* 128

[9] Neal D.,(1984) *On Tap not On Top-Legal Centres in Australia 1972-1982* Legal Service Bulletin Co-operative Ltd, 6-7; Chesterman, J., (1996) *Poverty Law and Social Change- the Story of the Fitzroy Legal Service* Melbourne Uni Press p 73)

[10] Chesterman, above, note 9, 45

[11] Basten, J.(1980) *Neighbourhood Legal Centres in Australia: a Legacy of the Vietnam War?,* Paper delivered at Law and Society Conference, University of Wisconsin-Madison p 2.

[12] Neal, above, note 9, 6.

[13] Tomsen, 1992: 316; Basten, Graycar and Neal, 1983: 183.

The ethos of the time was for legal aid to produce structural change and achieve real justice for the poor. The traditional practices of the legal profession were seen as part of the problem in limiting access to justice. A lawyer, who volunteered at FLS in the early 1970s (now a Victorian Supreme Court judge), reflected that 'lawyers were characterised as tools of the establishment hell bent on preserving the status quo'. Many young graduates, the former volunteer continued, `saw law as a socially parasitic profession unable to satisfy their own idealism' [14]

The work done by community legal centres was different from that performed by the private profession. Not only was the way it was delivered different but new areas of law were given attention. In 1975 Sackville detailed examples of how the poor were treated unequally before the law. He identified social security, debt, tenancy and institutionalisation (eg mental health, prison), as areas of legal need.[15] CLCs focussed on these areas and eventually specialist services (eg Consumer Credit Legal Service, Mental Health Legal Service, Welfare Rights Legal Service) were established to address this work.

Probably the most unusual feature of the early CLCs was the commitment to making legal information accessible and reforming unjust laws. This commitment is exemplified by the publication in 1977 of the *Legal Resources Book* - a plain English guide to law and the mounting of the social security test case *Green v Daniels*.[16] The *Legal Resources Book* (now called *The Law Handbook*) was Australia's first book on the law written for an audience including non-lawyers. Fitzroy Legal Service took the financial risk of getting this unknown quantity on to bookstore shelves and all concerned were obviously delighted when it took only 8 days to sell the 4000 copies required for the project to break even.[17]

As Chesterman points out, the way FLS and other early CLCs operated represented an implicit critique of the profession, both in the types of cases handled and in the refusal to concentrate solely on casework as a means of achieving reform.[18] By the end of 1983, CLCs were an accepted part of the Australian legal aid system. Thirty-five centres were in receipt of Federal Government legal aid funding.[19] Governments at both the Federal and State levels recognised the role of CLCs indicated by the presence of CLC nominees on LACs.

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[14] Chesterman, above, note 9, 5.
[15] Sackville, R.(1975) *Law and Poverty in Australia: Second Main Report of the Australian Government Commission of Inquiry into Poverty* Canberra: AGPS
[16] (1977) 13 ALR 1 See Chesterman, above, note 9, 98-100 & Giddings, 'Casework, Bloody Casework' (1992) 17 (6) *Alternative Law Journal* 261, 262-3
[17] Chesterman, above, note 9, 101
[18] Chesterman, above, note 9, 168
[19] Totalling $505,000.

During this period of expansion, CLCs struggled with their role as `gadfly'[20] whilst also seeking acceptance and funding from governments.[21] The relationship between CLCs and other legal service providers improved markedly during the 1980's, but centres still actively criticised and put the spotlight on inadequate legal aid schemes, the legal profession and unjust laws.[22].

The formal inclusion of CLCs in the legal aid framework could be construed positively as recognition of the importance of the unique approach taken by centres. But whilst paying lip service to centres' special features, governments noted, early on, the `value for money' aspect of centres.[23] As government funding to CLCs increased, pressure also increased on centres to do more traditional legal work. The tension between traditional casework and broader preventative and social change work pervaded policy discussions once CLCs received government funding.

Current State of Australian CLCs

It is difficult to generalise across the more than 170 CLCs currently operating across Australia. [24.] There are significant differences in terms of matters such as funding, hours of operations, service delivery methods, use of volunteers, catchment areas and work priorities.[25] The Federal government's expenditure on the Community Legal Services Program is over $20 million. Centres continue to perform a variety of innovative and challenging legal and related work. But they are overwhelmed with an increasing demand for traditional individual legal services resulting from funding cutbacks to legal aid.[26] Government funding (both State and Federal) usually provides a CLC with between three and five full time positions with volunteers still performing the bulk of community legal centre work.

The range of legal problems addressed in centres is diverse and there are strong regional variations. The most common are family law (25%), credit and debt (10%), criminal charges (8%), consumer issues (8%), tenancy and housing (8%), motor vehicle accidents (6%), personal injuries (5%), and employment related matters (5%). [27]

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[20] Basten, J (1987) 'Legal aid and community legal centres' (1987) 61 (11) *Australian Law Journal* 714-724, 724

[21] Noone, M.A. (1992), `Imperatives for Community legal centres', 17 *Alternative Law Journal* 121

[22] J. Soren, 'A thorn in the side becomes a healthy branch of the legal profession'. (1987) *Law Institute Journal* 14, R. Banks and L. Corbett, 'Costs of justice'. (1991) 65 (6) *Law Institute Journal* 464; Giddings, above note 16,

[23] See comments of Senator Michael Tate, Minister for Justice *Senate* 8/11/88, 2183

[24] National Association of Community Legal Centres, *Community Legal Centres: The Australian New Zealand Directory* February 2003

[25] Williams (1992) article

[26] Full discussion of impact of funding reductions see Senate Legal and Constitutional References Committee, *Inquiry into the Australian Legal Aid System –Third Report,* June 1998

[27] `Legal Centres: Efficient, innovative, effective' (2002) 27 (2) *Alternative Law Journal* 98

In 1998, Lou Schetzer described various values as essential to CLCs.[28] Schetzer depicts CLCs as independent, community-based, multi-disciplinary, accessible, activist and solution-oriented. Such CLCs are human rights based advocacy organisations rather than being concerned only with legal matters. CLCs also appreciate the links between their casework, community legal education, law reform, community development and lobbying. To function in such a manner, CLCs need to be part of a network of community organisations. Whether it is possible for small CLCs (those with three workers or less) in particular to fulfil Schetzer's description is in our view uncertain.

Funding

Government funding for CLCs has continued to increase whilst other legal aid funding has been reduced. The Federal government's expenditure on the Community Legal Services Program in 2001-2002 budget was around $21.8 million. Other sources of revenue including the State and Territory government were in excess of $8milllion.[29] Eleven new rural centres have been established in the last two years. This follows the trend set by the Keating Labor government in the *Justice Statement* when five new regional community legal services were proposed.[30]

In the most recent Federal budget (2003/04) funding for an `outreach community legal service' in a regional area of Queensland was allocated.[31] The amount specified ($75,000) is less than half the amounts previously granted to new centres. This approach could indicate a further shift in the Commonwealth's approach to the provision of services, one likely to see rural legal service providers funded to operate within larger organisations. This initiative involves the reallocation of federal funding of a lawyer position at the Financial Counselling Service in Queensland which closed its doors in 2002. This position, originally funded as part of the Justice Statement, became unviable in the view of the Financial Counselling Service when the long-term holder of the position left the organisation. The service considered it would not be possible to hire and provide support to a sufficiently experienced consumer lawyer given the level of funding available.

Some state governments are also increasing their funding of CLCs. In 2001, a landmark agreement between Legal Aid Queensland and the Queensland Association of Independent Legal Services guaranteed levels of funding for the next four years. This included an additional $2million over this period. For the first time CLCs were given stability and certainty about their funding.[32]

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[28] L. Schetzer, 'Community legal centres and the future of law reform' (1998) 23 (5) *Alternative Law Journal* 254.

[29] Above, note 27, 99

[30] Attorney-General's Department, *The Justice Statement* May 1995 110; four new metropolitan community legal centres were also proposed.

[31] Attorney-General, D.Williams, *New Release* 12 May 2004 No 51/03

[32] *Head Note – Legal Aid Queensland Newsletter* August 2001, 11

In Victoria, the Attorney-General in the Labor government has been keen to increase funding and additional funds have been allocated since 2001. In the latest budget (2003/04) CLCs received an extra $1.4million. This funding is targeted to providing services in the outer metropolitan growth corridors and provide funds to various specialist centres.[33]

By contrast, the West Australian State Government provides only $31,000 to CLCs while the Tasmanian State Government provides no funding. Likewise, the Northern Territory and Australian Capital Territory Governments provide no CLC funding.

Important areas of work

Many areas of work have been important to Australian CLCs. The focus has often been on areas of law that have traditionally received little attention from the private legal profession. The emergence of CLCs saw legal attention focussed on certain groups that had previously been denied the opportunity to assert their legal rights.[34] Important test cases were run by CLCs in areas such as discrimination, housing, prisons, consumer credit, domestic violence, social security and police powers. Other strategic casework, focussed on the pursuit of law reform agendas, has also been a strong focus of CLCs. Issues such as accountability of the legal profession and the need for more effective motor vehicle insurance arrangements are examples of such work on what has been described as 'collectively important cases'.[35]

The National Association of Community Legal Centres supports 16 specialist networks across Australia. They include disability discrimination, environment, consumer credit, indigenous women, mental health, rural, regional and remote, tenants, welfare rights, women and youth.[36] It is not possible to consider all of these areas in detail in this paper. As such, three areas have been selected as case studies of some of the issues which have shaped the work of CLCs under the Howard Government. These areas are domestic violence and family law, environmental law and consumer issues. All of these are, in quite different ways, important issues for the Federal Government.

Domestic Violence

Issues related to women and family law, with a particular focus on the impact and prevalence of domestic violence, continue to be important to CLCs. Generalist, rural and indigenous CLCs have treated family law as a priority. Domestic violence remains a core issue for so many of the people who require formal institutionalised assistance to address family-related issues. Women's

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[33] Total legal aid funding increased $14 million over four years with the majority of funds going to increase fees to private profession in criminal law matters. Attorney-General, *$45.9million to get on with Justice Reforms* Media Release Tuesday May 6 2003.

[34] J. Giddings, above, note 16

[35] *Ibid*, 263

[36] `Legal Centres: Network Work' (2002)7(4) *Alternative Law Journal* 189; National Association of Community Legal Centres, *Community Legal Centres: The Australian New Zealand Directory* February 2003 p 6; www.naclc.org.au

CLCs have worked closely with the National Women's Justice Network[37] which convened a `Legal Needs of Remote, Regional and Rural Women' conference in 2001.[38]

There is a National Network of Women's Legal Services which provides a focus for coordinating reform-related activities across services. Priority areas for the network have focussed on the Family Court and its handling of allegations of child abuse and issues presented by self-represented litigants.[39] The more established services (Victoria, New South Wales and Queensland) developed principally through the efforts of activists[40] while other services were established following the allocation of funds by the Keating Labour Government in the *Justice Statement* released in 1995.[41]

The *Justice Statement* also promoted the development of a network of legal services for Indigenous women, designed in part to address the difficulties faced by women in accessing other indigenous legal services that have traditionally focussed heavily on criminal law issues.[42] These national networks are seen as important in giving women's legal services a more significant role in relation to policy-making.

CLCs and legal agencies have become increasingly important in the domestic violence sector. Their role has included making a more substantial contribution through policy-related work. The experience of Women's Legal Service (WLS) in Queensland provides an interesting case study on the policy contribution of women's legal services. Staff from the service produced important reports highlighting injustices facing women in the operation of various aspects of family and criminal law. Zoe Rathus, long-time coordinator of WLS, produced *Rougher than Usual Handling*, a landmark report on the treatment of women by criminal justice processes.[43] The report was particularly critical of the treatment of complainants in sexual assault matters. WLS staff made important contributions to the report, *An Unacceptable Risk*[44] which addressed difficulties caused by the ordering of contact between children and their fathers in circumstances where domestic violence was significant in the relationship.

Zoe Rathus considers that, in the past, CLCs have had only a limited influence on legal aid policy in this area although this appears to be changing. WLS has recently assisted Legal Aid Queensland with creating a set of guidelines for

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[37] S. Armstrong, '"We Told You So": Women's Legal Groups and the *Family Law Reform Act* 1995' (2001) 15 *Australian Journal of Family Law* 129, 135
[38] K. Eaton, 'One Size Does Not Fit All' (2001) 26 (2) *Alternative Law Journal* 64
[39] National Association of Community Legal Centres, *Annual Report 2001/2002*, 13
[40] Armstrong, 132-135
[41] Attorney-General's Department, *The Justice Statement*, 1995, 78-9
[42] *Ibid*, 81
[43] Z. Rathus, *Rougher Than Usual Handling: Women and the Criminal Justice System* (1993) Women's Legal Service
[44] Abuse Free Contact Group, *An Unacceptable Risk: A Report on Child Contact Arrangements Where There is Violence in the Family*, (2000)

working with people affected by domestic violence.[45] These guidelines are designed for use by legal aid preferred suppliers, family report writers, and lawyers representing children in family law proceedings. Their influence is viewed as having been more substantial on other policy makers. Rathus notes that the *An Unacceptable Risk* report had significant influence on members of the Family Court.

There are interesting differences between states in terms of the influence of CLCs on other agencies working in the domestic violence field. In Victoria, the Domestic Violence and Incest Resource Centre is a CLC and in New South Wales the Domestic Violence Advocacy Service is a CLC. These centres have taken a more law-focussed approach to domestic violence issues with working groups involving lawyers and other people within a CLC framework. In Queensland, the Domestic Violence Resource Centre is not a CLC.

Women's Legal Resource Group in Victoria now has a stronger casework orientation than in the past.[46] Three years ago, the service moved from a collective model to a governance model and began to develop a casework focus on relationship breakdown and violence against women. This change of emphasis came about from a realisation that the service needed a casework service in order to establish credibility with policymakers. WLRG was also concerned with the relationship breakdown referral loop with agencies focussing on finding other agencies to take on cases while limiting their own casework. Casework has included working with women whose children no longer reside with them, varying contact orders due to continued family violence and seeking to have certain members of men's rights groups declared vexatious litigants on the basis of their persistence in making applications to the Family Court.

In New South Wales, Women's Legal Service has been closely involved in legal issues related to the issue of subpoenaing by defence lawyers of files kept by sexual assault counsellors. After a case involving the jailing of a counsellor who refused to hand over her file, the service coordinated a successful campaign for the introduction of a privilege to attach to certain work of sexual assault counsellors. The campaign continues after several legal challenges limited the scope of the privilege.

In terms of policy-related casework, there has been a strong emphasis on assisting women who have killed violent partners. An important recent example is the work done by Victorian CLCs (both specialist women's services and generalist CLCs) in preparing the High Court appeal of Heather Osland. [1998] HCA 75. The ultimately unsuccessful appeal involved the first consideration by the High Court of Australia of the Battered Woman Syndrome defence.

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[45] *Ibid*, 9-10

[46] This outline of the work of Women's Legal Resources Group derives from an interview with Allyson Foster

Considerable controversy was generated in mid-2001 when the Federal Government decided not to renew its funding agreement with the Women's Legal Service in Western Australia. The government expressed concerns about management practices, inability to retain staff and the fact that the service had been the subject of 'numerous complaints'.[47] Concerns were also raised by government regarding the financial practices of the service. As would have been expected, this decision was met with strong opposition from many in the CLC network. Some CLC workers expressed the view that the government was reaping a harvest it had sown in seeking to establish both the Women's Legal Service and a project to provide services to Indigenous women at the same time. The government then called for tenders to deliver specialist legal advice and assistance to women in Western Australia. CLC workers were very concerned at the possibility of church groups successfully tendering to run the services. Ultimately, the tender was won in late-September 2001 by a group of 6 existing Western Australian CLCs.[48]

Environmental Protection[49]

The expansion of the network of Environmental Defenders Offices which was facilitated by the *Justice Statement*, released by the Keating Labor Government in 1995, saw 9 EDOs able to operate across the country. Previously, there had been 3 EDOs with salaried staff (Melbourne, Sydney, Brisbane) and volunteer-based offices in Adelaide and Cairns.[50] Bates notes that 'Some of the most important and significant cases in Australian environmental litigation have progressed through the involvement of EDOs.[51]

Very often, at least one tier of government, be it federal, state or local, will be a party to environmental litigation. For this reason, the condition placed on EDOs by the Howard Government that they must not use any of their federal funding for litigation work represents a serious limitation on their work. This restriction impacts most heavily on those EDOS that do not receive state funding, for example the Northern Territory EDO in Darwin and the Australian Capital Territory EDO in Canberra. The Victorian EDO has had to look elsewhere for funds to support litigation work and has concentrated on non-litigious areas of advocacy and advice.

Interestingly, EDO staff we liaised with in preparing this paper advised that the Federal Attorney-General's Department had not been particularly active in

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[47] Attorney-General's Department Media Release, 'Women's Legal Service WA', 29 June 2001. Accessible at http://www.ag.gov.au/www/attorneygeneralHome.nsf/Web+Pages/87F4B8AC2BE797…

[48] Attorney-General's Department Media Release, 'Women's Legal Service in Western Australia', 27 September 2001. Accessible at http://www.ag.gov.au/www/attorneygeneralHome.nsf/Web+Pages/D2971606D8E53B…

[49] Special thanks to the staff of EDOs, especially Jo Bragg, who provided details of the recent work of EDOs

[50] M. Comino, 'Improving Access to Justice for the Environment' (1996) *Environmental and Planning Law Journal* 225

[51] G. Bates, *Environmental Law in Australia* (2002) Butterworths, Sydney, 18

monitoring compliance with this restriction. The South Australian EDO was involved in discussions with the Federal Attorney-General's Department in 1998 regarding its use of federal funding. The matter concerned the highly politicised Hindmarsh Island Bridge issue and the involvement of EDO staff in a workshop on defamation law delivered to environmental groups.

EDOs have also worked to influence the form of new pieces of environmental legislation. In Queensland, the *Water Act* 2000 includes a provision (s784) providing legal standing to any person in relation to a wide range of enforcement proceedings and also limits the ability of courts to order parties to pay the legal costs of other parties to proceedings (s792). These important provisions were included through the lobbying efforts of the EDO.

The New South Wales EDO has noted that it faces an increasingly complex environmental landscape which has been completely restructured with the Commonwealth *Environmental Protection and Biodiversity Conservation Act* 1999. EDO (NSW) Director, Jeff Smith notes the EDO has used public participation provisions in environmental legislation to good effect to ensure lawful implementation of environmental laws.[52] Smith refers to an action to prevent a land sub-division on the NSW North Coast.[53] The breaches of the development consent were found to be so serious that the consent was rendered null and void and the Land and Environment Court ordered a full restoration of the site upon which substantial works had been done.

EDO Western Australia has been involved in a range of significant litigation. Most of these cases involve acting for community-based environment groups in legal actions taken against government departments or statutory authorities. A series of actions have been taken in relation to establishing the responsibility of the Mining Warden to consider environmental objections to mining arrangements. A 1997 decision of the Full Court of the WA Supreme Court held that the Mining Warden had a general discretion to hear public interest objections to mining leases and did not have to apply a strict standing test in relation to hearing objections.[54] Subsequently, the Supreme Court has confirmed that the Mining Warden may hear environmental objections to mining leases.[55]

In Queensland, important actions have been run by the EDO in relation to the protection of endangered species of wildlife. Several actions were taken to prevent the use by fruit farmers of electrified grids to protect their crops from bats[56] as well as to prevent culling of dingos on Fraser Island[57]. An action is

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[52] Email sent by Jeff Smith to Jeff Giddings, 9 April 2003

[53] *Oshlack v Iron Gates Pty Ltd* [1997] NSWLEC 89

[54] *Re Warden Heaney: ex parte Serpentine Jarrahdale Residents and Ratepayers Association (Inc)* (1997) 18 WAR 320

[55] *Re Calder; ex parte Cable Sands (WA) Pty Ltd* (1998) 20 WAR 343 & *Serpentine-Jarrahdale Ratepayers and Residents Association Inc v Minister for Mines* [2001] WASC 203

[56] *Booth v Bosworth*, [2001] FCA 1543, *Humane Society International Inc. v The Minister for the Environment and Heritage* [2003] FCA 64

currently being taken for the World Wide Fund for Nature challenging the environmental impact assessment undertaken for a major dam development.

The Victorian EDO applied to the Federal Court to review a decision to construct a road by-pass as part of a freeway development. The application concerned the impact on endangered wildlife which could be avoided through implementation of an alternative development plan.[58]

The South Australian EDO has been involved in a range of litigation including appeals relating to the operation of feedlots for tuna fisheries[59] (the longest running environmental law trial in the states history) and vegetation clearance controls.[60] The EDO has also been pursued civil enforcement matters against unauthorised development projects and pollution. In one instance, the EDO was asked to assure the State Environment Minister that the EDO was not using any of its $14,000 state government grant in a case involving allegations of illegally obtained video tapes of battery hen farms. Interestingly, the legislation in question (*Prevention of Cruelty to Animals Act*) was the responsibility of the Environment Minister.

Jeff Smith refers to the need for EDOs to engage with the challenges of ensuring sustainable development. He notes several recent important cases in which the EDO has worked closely with a range of experts across a range of disciplines to develop and then negotiate the acceptance of conditions which ensure that developments, when they go ahead, reflect 'best practice'.[61]

Given the very wide range of issues which could be addressed by EDOs and the limitations created by the Federal Government 'no litigation' funding condition, the ability of EDOs to work with environmental groups and advocate effectively on their behalf illustrates the importance of CLCs working closely with other agencies, groups and activists.

Consumer Advocacy[62]

Consumer issues have been of particular importance during the life of the Howard Government due to the strong ideological views of the government on business and related regulation. Don Fleming notes a range of factors that have contributed to expectations that consumer-citizens will assume greater responsibility for their personal well-being, including the enforcement of their

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[57] Schneiders v State of Queensland [2001] FCA 553

[58] *Friends of Merri Creek v Judith Anne Manakins & Minister for Transport and Regional Services* See EDO (Victoria) Annual Report 2001/2002, 12 accessible at http://www.edo.org.au/edovic/Publications/AnnualReport/AnnualReport2001-2002.pdf

[59] *Conservation Council of SA Inc. v Development Assessment Commission & Tuna Boat Owners Association of Australia (No.2)* [1999] SAERDC Judgement No. 86, 16 December 1999.

[60] *McShane & Ors v DC Lower Eyre Peninsula & Crossman* [2003] SAERDC 45

[61] Above, Note 54

[62] Special thanks to Chris Field for his assistance in preparing this commentary on consumer law issues.

economic rights and interests in an increasingly diverse and complex legal regulatory system.[63]

CLCs, in particular specialist consumer and credit centres, have been involved in a range of important issues in the areas of consumer credit and protection.[64] The best example of effective impact litigation in this area involved objections by the Consumer Credit Legal Service in Victoria to the renewal of the credit provider's licence of HFC Financial Services Ltd. Following a 14-month hearing process, the Victorian Credit Licensing Authority refused HFC's licence renewal application. The successful objection prompted other credit providers to make 'appropriate changes to contracts, manuals and internal training schemes to overcome similar problems within their own operations'.[65] Subsequent negotiations resulted in HFC being granted a credit provider's licence subject to a series of conditions including payment of more than $3 Million over ten years for the establishment of a Consumer Law Centre.

Chris Field, Director of the Consumer Law Centre (Victoria) refers to the majority of positive public policy change for consumers achieved by CLCs during the life of the Howard Government as having been achieved through means other than litigation.

Specialist consumer CLCs have worked with other consumer organisations including the Australian Consumers Association and the Financial Services Consumer Policy Centre on major issues relevant across the economy. These have included the new tax system implemented in mid-2001 and the increasing prominence of superannuation arrangements. CLCs have published reports on issues including regulation of mortgage brokers[66] and debt collectors.[67]

CLCs worked with a range of community-based financial counsellors, consumer support workers and other NGOs nationally to address the emerging problem of pay-day lending (short-term money-lenders lending to low-income people at annual rates, on average, of 650%). Grave concerns were expressed that the US industry experience would be repeated in Australia. A range of campaign strategies were used with a view to engaging politicians and creating regulatory uncertainty for incumbent and prospective businesses. Cases seen by workers in both specialist and general CLCs were important in this process. A national day of protest involved CLCs in most

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[63] D. Fleming, 'Australian Legal Aid Under the First Howard Government (2000) 33 (2) *U.B.C. Law Review* 343, 377

[64] See Giddings, above, note 16, 262

[65] D. Nelthorpe, 'Another Consumer Victory' (1989) 14 (5) *Legal Service Bulletin* 234, 235

[66] Consumer Credit Legal Centre (NSW), *A Report to ASIC on the Finance and Mortgage Broker Industry*, March 2003

[67] C. Bond, 'Justice for Debtors: When Law Reform is not Enough' (1997) 2 (1) *Consumer Rights Journal* 8

states. A major research report was published[68] and is now being used as the basis for similar reports in other countries. As Chris Field has noted, 'The pay day lending campaign is a reminder of the power of the national consumer movement when unified against an industry (or industry practice) that it believes is harmful to consumers, especially low-income and vulnerable consumers.'[69]

The Public Interest Advocacy Centre in New South Wales ran an important class action claim for compensation against the New South Wales government in relation to the New South Wales HomeFund Scheme. The government and a number of private institutions had marketed the scheme which provided home loans to low income earners in the late 1980s and early 1990s. The misconceived and ill-managed scheme left many of its 57,000 borrowers trapped with escalating debts.[70] After the New South Wales government legislated to prevent borrowers seeking damages under State law, PIAC commenced class actions relying on the Federal *Trade Practices Act*.[71]

The Consumer Law Centre in Victoria has pursued issues of price discrimination against women. The centre conducted a comprehensive review of price discrimination which found that women were paying more for certain services.[72] The centre then pursued the issue through litigation. The launch and subsequent settlement of an action against a leading hairdressing chain resulted in changes to practices across a range of hairdressers and some other retailers. It also directly led to a Parliamentary Inquiry.

Specialist CLCs have played a very significant role in the development of industry-operated dispute resolution schemes, including the Australian Banking Industry Ombudsman and the Insurance Enquiries and Complaints Service. These schemes are now the most significant of all dispute resolution mechanisms for consumer disputes. CLCs were involved in writing the benchmarks that underpin the schemes and have also been involved in their governance through directorships.

Increasing Prominence of Specialist Centres

Specialist centres have become more significant in the law reform and policy work of CLCs. This increasing prominence of specialist CLCs may well have been assisted by the proliferation of specialist courts and tribunals, both at the Commonwealth and State levels. Robinson suggests that the idea of a specialist environmental advocacy group in New South Wales sprang from the passage of legislation establishing the Land and Environment Court and the need to give teeth to the community involvement objects of recently passed

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[68] Consumer Law Centre (Victoria), *Payday Lending in Victoria – A Research Report*

[69] C. Field, 'Pay Day Lending – an Exploitative Market Practice' (2002) 27 (1) *Alternative Law Journal* 36, 37

[70] J. Giddings, 'Stirring the Possum: Legal Aid and the Consumer Interest' in S. Smith (ed), *In the Consumer Interest*, (2000) Society of Consumer Affairs Professionals, Melbourne

[71] See http://piac.asn.au/litigation/homefund.html

[72] A. Foster, 'Do Women Pay More?' (1997) Consumer Law Centre, Victoria

planning laws.[73] With the growing casework demands placed on generalist CLCs and restrictions on the services available from other legal aid providers, it has become increasingly difficult for such centres to run major cases. Specialist centres appear better placed to engage with people from a range of other disciplines in order to address the diversity of issues raised by major, complex matters.

Those generalist CLCs which were previously most likely to be involved in major testcase litigation tended to be the larger well-established centres and those with strong links to university law schools. In Victoria, Fitzroy Legal Service had close links with legal academics at Melbourne and La Trobe Universities while much of the impetus for creation of the Springvale Legal Service came from students and staff of the Monash Law School. In Queensland, Caxton Street Legal Service was closely linked in its early years to the University of Queensland Law School. Staff of the Law School at the University of New South Wales (UNSW) were heavily involved in the establishment and early operation of the Redfern Legal Centre while Kingsford Legal Centre was created by UNSW as the site for its clinical legal education program.

The move of generalist CLCs to focus on advice work may also have been prompted by the impact of professional indemnity insurance changes. Premiums have increased and generalist CLCs also appear increasingly concerned to avoid providing advice in complex areas which are more likely to attract negligence claims. There have also been legislative changes which are pushing generalist CLCs away from ongoing casework towards a greater advice focus. See for example the *Personal Injuries Proceedings Act* 2002 in Queensland that requires claimants to advise their intention to commence proceedings within one month of seeking legal advice.

Reviews of community legal centres

Despite the number of CLCs expanding and a general acceptance of their worth, centres were relatively immune from government scrutiny and evaluation until the late-1990s. A rare exception was a study of four centres conducted in 1991. This study was conducted specifically to provide documentation to the Department of Finance and substantiate the allocation of substantial additional funding to CLCs.[74]

In the second half of the 1990s the Commonwealth government together with the support of the states conducted major reviews of community legal centres in Queensland, Victoria and South Australia.[75] The outcomes in the various

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[73] D. Robinson, 'The Environmental Defender's Office, NSW, 1985-1995' (1996) *Environmental and Planning Law Journal* 155.

[74] *Community legal centres – A Study of four centres in New South Wales and Victoria* July 1991 Canberra; Giddings, J., `From little things, big things grow' (1991) 16 (5) *Legal Service Bulletin* 246 details increase in funding from 2.7m to 5.2m together with further increases the following years.

[75] A review has been mooted in New South Wales but has not yet occurred.

states have differed significantly despite strong similarities between the respective terms of reference and review recommendations.[76] Each of the reviews operated on the basis that additional funding for existing CLCs was not available. The issue was whether the CLCs were efficient and whether funding could be more effectively allocated. Interestingly, extra state funding has become available in both Victoria and Queensland since the conduct of the reviews in those states.

In Queensland the review affirmed that the CLC system of legal service delivery be continued and noted the key strength of the system as `its ability to marshal substantial volunteer assistance'.[77] The Report recommended the continuation of the principles of funding as they supported a `solution oriented model of service delivery'.[78] There were no recommendations to change the current arrangements except to increase funding and to fund those centres not funded. It was noted that the work of CLCs complemented the work of Legal Aid Queensland. The outcome of the Queensland review is partly explained by the presence of completely unfunded centres delivering substantial voluntary services which could not be directed by the Federal Government. Additionally there were only 2 funded generalist CLCs in Brisbane. The remaining 20 centres were either specialist or regional centres.

In contrast, the South Australian review resulted in the CLC landscape changing dramatically. All of the South Australian CLCs at the time of the review were located in and around the state capital, Adelaide. The outcome of the review process was that seven centres were reduced to 4 'super centres'. When the existing centres could not agree on amalgamation, it was achieved through a tendering process (one centre for each of north, south, east and west). Longstanding and influential centres such as Bowden-Brompton have closed while Norwood is now a volunteer centre. There were also 3 regional centres established.

A review of Victorian CLCs was first mooted in 1995, but did not get underway until 1997. The Review report was released in July 1998[79] and an implementation committee appointed. CLCs mounted a strong campaign against any amalgamations and the use of a tender process. This was in the context of a State government that was vigorous in its application of competition policy and had already substantially decimated the community sector (see below). However with the unexpected election of the Bracks Labor Government in Victoria in 1999 the CLC review process was stalled. The new Attorney-General had indicated that no CLC would be forced to close and

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[76] Keys Young report (SA),; Implementation Advisory Group, *Community Legal Centres in South Australia – a Fabric for the Future* May 1998;Impact consulting Group, *Review of Victorian CLC Funding Program, Final Report* July 1998; Implementation Advisory Group, *Review of Community Legal Centres Draft Report* 16 February 2001

[77] Review Report (QLD) p 6.

[78] For further discussion of this concept see National Legal Aid Advisory Committee, *Legal Aid for the Australian Community* 1990 pp 126-128

[79] Impact consulting Group, *Review of Victorian CLC Funding Program, Final Report* July 1998

there would be no amalgamations. The direction of Victorian CLCs had also become enmeshed in disagreements between the Commonwealth and Victorian governments over legal aid, particularly the Commonwealth insistence that Commonwealth funds be spent on Commonwealth matters.

The review process in Victoria significantly affected the relationship between Victoria Legal Aid (the LAC) and the CLCs. CLCs viewed Victoria Legal Aid as the opponent and focussed their lobbying activities on the new state Government. They were successful in having the review process abandoned in 2001 and additional monies allocated to CLCs in successive years. The long term effect on the CLC relationship with Victoria Legal Aid remains an issue. Equally the overall efficiency, effectiveness and equity of the current arrangements for funding CLCs in Victoria remains questionable.

Influential factors

Key factors influencing the recent development of Australian CLCs in different states have included more general political trends (especially the federal system of government), the nature of the independent community sector in different states, the changing nature of the 'legal aid partnership' between LACs, the private profession and CLCs (in particular the relationship of CLCs with LACs) and the resistance of the legal profession to reductions in legal aid. The Howard Government has made major changes to Australia's legal aid system but CLCs in some states have been shielded by the presence of these other factors.

Federal System of Government

The dynamics of Australia's federal system of government have been very significant in shaping the concerns and prospects of Australia's CLC movement. The potential (indeed tendency) for there to be governments formed by different parties at federal and state levels has increased the potential for policy regarding CLCs to be disjointed and difficult to implement.

Reform of local government provides an interesting example of how different states can take quite different approaches to reform issues with the state government being important in either resisting or reinforcing the political agenda of the federal government. Differences in emphases with respect to implementation of national competition policy have resulted in a polarisation of local government systems.[80] While some state governments have remained strongly committed to local democracy, for others 'economic efficiency has supplanted local democracy as a key value'.[81]

The starkest example of the move away from a tradition of collaborative reform comes from Victoria where the conservative Kennett government amalgamated 210 local councils into 78 units and mandated competitive

[80] C. Aulich, 'From Convergence to Divergence: Reforming Australian Local Government' (1999) 58 (2) *Australian Journal of Public Administration* 12, 16-17
[81] *Ibid*, 17

tendering within strict timeframes.[82] In Tasmania, an exhaustive and collaborative approach to modernisation of local government was then followed by a unilateral state government decision to proceed with a second round of amalgamations. Aulich notes that 'the rhetoric that accompanied these recent reforms in the "structural efficiency" states was remarkably similar and related to the parlous condition of state finances.'[83]

Aulich also describes the alternative, local democracy model of local government as valuing local differences and system diversity because a council has both the capacity and the legitimacy for local choice and local voice.'[84] CLCs, as a diverse group of independent organisations would obviously support such a model.

Different Community Networks

The nature and work of CLCs in different states has been influenced by their place in community sector networks. Victoria, home of many early CLCs, has traditionally had a very strong independent community sector. This was important in generating the impetus for the establishment of CLCs, in promoting and sustaining a strong volunteer ethos and also in the efforts of CLCs to defend their positions in the face of the review of CLCs in that state.

In Queensland, the independent community sector has had very strong links with the Australian Labor Party. As an illustration, Caxton Street Legal Service initially operated from a hall owned by the local branch of the Labor Party and for some years had as its patron the State Labor Party leader and Premier. Queensland has the most decentralised population of any Australian state and this may have contributed to the significance of trade unions and the Australian Labor Party in community-based activities. In South Australia, the relative strength of the Legal Services Commission and a limited tradition of volunteering appear, from an outsider's perspective, to have made it difficult for South Australian CLCs to withstand the reform agenda outlined in the report of the review of centres in that state.

Relationship with Legal Aid Commissions

The nature of the relationship between CLCs and LACs has varied from state to state and over time. In Victoria the LAC was extremely supportive of CLCs but in recent times, during and since the course of the review, the relationship has been strained.[85] In contrast the Queensland Commission had an openly hostile relationship with the first CLCs in that state but it now appears that both work together. In South Australia, the Legal Services Commission developed an expertise in community legal education and use of paralegals that challenged the CLCs model of operation.

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[82] Aulich, 17; Alford J. &O'Neill, D., (eds) *The Contract State: Public Management and the Kennett Government* (1994)

[83] Aulich, above, note 80, 17

[84] *Ibid*, 19

[85] The first director of Legal Aid Commission of Victoria had worked at the Fitzroy Legal Service for 6 years.

Some of the factors that impact on the working relationship of LACs and CLCs relate to the introduction of competitive tendering, the changed nature of work performed by both organisations, the Federal funding arrangements and the reduced input from CLCs into LACs decision making

CLCs are now more directly competing with LACs for funds. The Federal government has increased the number of CLCs at the same time as LACs funding has declined. Additionally the Federal government has not sought the advice of the LACs about the location of new centres. This does not engender a co-operative approach to the provision of legal aid services.

The relationships between CLCs and LACs are also being affected by shifts in the focus of legal aid service delivery. The volunteer involvement in CLCs, combined with a focus on community legal education and the availability of only limited salaried staff resources, saw CLCs develop a strong focus on advice services rather than more substantial casework services. LACs have now moved towards a stronger focus on the provision of generic legal information and advice to larger numbers of people. In particular, LACs are developing various approaches to provide `self-help' legal services. This area was pioneered by CLCs. In effect, the groups accessing LACs and CLCs may have more in common than before and this has the potential to create tension between CLCs and LACs. This is a move from complementarity of services towards greater competition between LACs and CLCs.

In the tender documentation for new community legal centres it states:

> Organisations are encouraged to be innovative in improving access for clients from a wide range of demographic and needs groups, through the development of high quality community legal education and self-help projects, outreach programs and telephone services. Organisations focus on helping clients who are unable to afford a private lawyer, but are ineligible for assistance through a Legal Aid Commission.[86]

Given the range of services which LACs now provide, what the definition of `ineligible for assistance' might mean has the potential to further accentuate the competitive elements of the relationship

A further factor that impacts on the nature of the relationship between LACs and CLCs is the role of the CLC nominee on LACs boards. However in both Queensland and Victoria, the board has been reduced in size and no longer includes a CLC nominee.[87] These changes were meant to reflect a corporate

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[86] Attorney-General's Department, *General Background paper for Community Legal Services Purchased by the Commonwealth* Documentation attached to tender documents July 1998.

[87] Legal Aid Queensland Act 1997 (Qld) and Legal Aid Commission (Amendment) Act 1995 (Vic)

ethos. The changes limit the scope for input from CLCs and users of the system. It further distances CLCs from the management of LACs.

One of the concerns with deteriorating relationships between LACs and CLCs and the move away from complementarity, is that the health of the legal aid system as a whole is likely to suffer, especially with the greater emphasis on organised pro bono from the profession. LACs may need to take a more strategic view towards CLCs. CLCs are receiving an increased share of the legal aid pie. If LACs compete too directly with established CLCs, it is by no means certain that LACs will come out the victors. CLCs have strong backbench political support (in particular those which we would describe as local) and generally well honed lobbying skills.

The Importance of Volunteers

Government funding (both State and Federal) usually provides a CLC with between one to five full time positions.[88] But volunteers perform the bulk of advice and referral work done at CLCs. Volunteers are drawn from students (law and non-law), private practitioners, both solicitors and barristers and others in the legal sector.

Since the 1970s, governments have recognised the cost-effectiveness of CLCs, primarily, because of the reliance on volunteer labour.[89] Hundreds of thousands of dollars worth of volunteer labour are contributed yearly by legal practitioners to the legal aid system via community legal centres.[90] This is a significant contribution by the private legal profession to the provision of legal aid services.

A 2002 survey of New South Wales CLC volunteers found that people volunteered regularly and that more than half had been volunteering for over 2 years.[91] Volunteers expressed concerns that 'increased bureaucratic control would compromise the ability of CLCs to be both critical and independent of government policies'.[92]

Volunteers have also been important in CLC efforts to counter arguments that inner-suburban CLCs should be re-located to areas of greater need, namely outer-suburban areas. As part of the 1996-97 review of Queensland CLC

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[88] Some NSW centres have five full time positions. Centres may obtain funding from other sources to employ more workers.

[89] Attorney-General Durack, *Commonwealth Record* 19-25 October 1981, 1360 as quoted in Tomsen (1992) p.320.

[90] A survey of Victorian community legal centres conducted in 1998 found there were 745 volunteers contributing an equivalent of 69.95 effective full time positions and community legal centres estimated the contribution of volunteers to be worth $5m per annum. Coulson-Barr (1999).

[91] R. Melville, *"My Time is not a Gift to Government": An Exploratory Study of New South Wales Community Legal Centre Volunteers*, (2002) University of Wollongong, 7

[92] R. Melville, 'Competitive tendering and NSW community legal center volunteers: An Exploratory Study' (2003) 28 (1) *Alternative Law Journal* 27, 29

funding, Caxton Legal Centre[93] gathered information from volunteers in relation to their work. In particular, volunteers were asked if they would continue their work with the centre if it were relocated.

The December 1999 report of the CLC Advisory Group in Queensland identified that location 'plays an important role in being able to recruit and maintain a successful pool of volunteers'.[94] Other significant volunteer-related findings of the Queensland study included that volunteers are important to both specialist and generalist CLCs and that both students and private practitioners are important sources of CLC volunteers but not legal aid solicitors. Further, it was emphasised that 'Volunteers are a community resource and not a cheap form of labour'.

The focus on volunteers in the Queensland review implementation report together with concern that the Victorian CLC Review had paid insufficient attention to the value of volunteers prompted Victorian CLCs[95] to conduct a survey of volunteers in late-1999.[96] The Victorian volunteer research identified that 'CLCs are unique amongst community-based organisations – the extent to which professionally trained individuals are giving freely of their time and expertise bears witness to this. There is no other professional sector where such a degree of pro bono work is easily identifiable. This survey confirms what has long been known: volunteers (both legal and non-legal) are subsidising the paucity of funding traditionally available to this sector.'[97]

In their response to the Victorian review, the Federation of Community Legal Centres emphasised the importance of the contribution of volunteers. Arguments were made regarding the value of the social capital generated by CLCs as significant community organisations. CLC workers told us that the Review Implementation Committee did not attach great weight to the value of such social capital. Perhaps this is in part explained by the fact that the ability to attract and involve volunteers is one of the key differences between CLCs and LACs.

The Victorian volunteer study also made reference to that state having a 'very strong volunteer and CLC history and a strong non-government sector'.[98] Victoria was contrasted with South Australia where the input of volunteers to CLCs was not as substantial. Reference was made to a 1997 consultants report which quantified the contribution of Victorian CLC volunteers as the

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[93] A leading inner-suburban generalist CLC with a large volunteer base located 3 kms from the CBD

[94] CLC Advisory Group, *Report of Community Legal Centres in Queensland*, December 1999, 23

[95] Specifically, Fitzroy Legal Service on behalf of the Federation of Community Legal Centres (Victoria)

[96] S. Biondo, *Community Legal Centres and Their Volunteers: A Study of Dedication and Commitment*, May 2002

[97] *Ibid*, 8

[98] *Ibid*, 7

equivalent of 60 full-time staff while the corresponding figure for South Australian CLCs is 12 full-time staff.[99]

The survey conducted by the Federation of Community Legal Centres (Vic) indicated that most volunteers live within a 8 km of the centre where they work; most volunteer for altruistic reasons and not just work experience; and most would not volunteer for a for-profit organisation. Legal volunteers cite the ethos of the Centre and the opportunity to do work which is different to work in a corporate firm or their normal field of work as important motivating factors. A common motivation for volunteers is a commitment to the particular work of community legal centres.[100]

It is arguable the current approach of government to increasingly specify to CLCs what funds are to be used for and to focus on the numbers of services delivered rather than the preventative and law reform work of centres may jeopardise the `pro bono' contribution of practitioner volunteers in community legal centres.[101]

The possibility of declining volunteer support is supported by recent trends in volunteerism. In particular volunteers from professional backgrounds are less likely to volunteer or unable to devote a lot of time to volunteer work. CLCs have to date been relatively immune from this trend.[102] But as the research into the flight of legal practitioners from legal aid work suggests, the private profession can react adversely under pressure. This experience should suggest caution in tampering with the operating structures of community legal centres to prevent the exit of volunteer legal practitioners from community legal centres.

Significant Developments

More heat than light. CLCs & competitive tendering

The use of competitive tendering arrangements has been an issue of concern for CLCs for more than a decade. Competitive tendering has been adopted for some service funding, most notably in South Australia where most services are tendered. While the structure to introduce further competitive tendering exists in the form of the service agreements now used by the Federal Government, the government has not as yet moved to comprehensively implement such arrangements across CLCs.

In 2002, the National Association of CLCs expressed concern that a particular danger of competitive tendering was that funding would decline for those

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[99] *Ibid*, 8

[100] L. Coulson-Barr *Volunteers in Community Legal Centres – Discussion Paper Prepared for the Review of Victorian Community Legal Centre Funding Program Implementation Group* (1999), 7.

[101] Jukes and Spencer, "Buying and Selling Justice - the future of CLCs". (1998) (73) *Reform* 5

[102] Coulson-Barr, above, note 100, 16.

services for which it is more difficult to measure performance, most obviously community development and law reform. Schetzer refers to the likelihood of the work of CLCs in the areas of prevention, development and advocacy being ignored and overlooked in competitive tendering processes.[103] There would also be a greater involvement of government in seeking to measure the need for services and to define and measure those services.

The limited application of competitive tendering processes to the work of CLCs is well described by Jukes and Spencer. '[M]ost CLC clients do not have choices. Many services provided by CLCs are not available elsewhere. In fact, CLCs grew out of the failure of the market to provide an adequate level of access to legal advice and representation, particularly for those disadvantaged by their circumstances.'[104]

Commonwealth Support for New Regional CLCs

Since 1996, the Community Legal Service Program of the Federal Attorney-General's Department has established 11 new legal centres in rural and regional Australia. Ongoing funding of $200,000 per year has been provided. Many of these centres have been established in very remote, sparsely populated regions where there are few legal service providers and very limited legal aid infrastructure[105]

The Federal Government announced an $11.4 Million 'Rural and Regional Network Enhancement Initiative in the 1998/1999 Federal Budget.[106] This initiative included the establishment of 6 new community legal centres in rural Australia[107] and the development of a national service to provide phone and Internet advice on family law and child support matters.[108] Funds were also allocated for the development of four Clinical Legal Education projects 'with the aim of maximising both legal service delivery to disadvantaged clients and cooperation with universities'.[109] A further five new CLCs were announced in the 1999/2000 Federal Budget.[110]

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[103] Schetzer, 255

[104] J. Jukes & P. Spencer, 'Buying and Selling Justice: The Future of CLCs' (1998) 73 *Reform* 5, 6

[105] Neilsen, J., `Bringing legal services to the bush' (2001) 26(2) *Alternative Law Journal* 90

[106] D. Williams, 17 December 1998, 'Making Community Legal Services More Accessible to South Australians', accessed at http://law.gov.au/aghome/agnews/1998newsag/508_98.htm

[107] Kimberley and South West regions of Western Australia, the Iron Triangle region of South Australia, the Centre-West region of Queensland, the New South Wales South Coast and the cross-border region of New South Wales and Victoria centred in Albury-Wodonga.

[108] D. Williams, 11 May 1999, 'National Family Law Telecommunication Advice and Information Service', accessed at http://law.gov.au/aghome/agnews/1999newsag/telephone_99.htm

[109]D. Williams, 17 December 1998, 'Making Community Legal Services More Accessible to South Australians', accessed at http://law.gov.au/aghome/agnews/1998newsag/508_98.htm; Giddings J., `The Circle Game: Issues in Australian Clinical Legal Education'"(1999) 10(1) *Legal Education Review* 33

[110] Far West of New South Wales, Gippsland in Victoria, the Goldfields region of Western Australia and the South East and Riverland regions of South Australia. See D. Williams, 7

The Commonwealth conducted the tender process without input from the state legal aid commissions. The tender documentation indicated that `value for money' was the basis for comparing alternatives. The six selection criteria were: targeting of needs of disadvantaged client groups; best practice provision of legal services; attracting quality personnel[111]; effective management; acceptance of accountability requirements; and integrated legal aid delivery-cooperation.[112]

Given the location of the most of the new services in sparsely populated areas, the number of tenderers was low. In the Western Queensland case the successful tender was from Legal Aid Queensland.[113] In other locations, the tenderers included private practitioners (none were successful). In contrast Victoria Legal Aid took a decision in principle not to participate in the community legal services tender process for the Gippsland service the following year.

As mentioned above, the Commonwealth government recently announced funding for outreach community legal services in the Wide Bay area of Queensland. This will be open to tender. Interestingly, the Victorian Federation of Community Legal Centres, in their submission to the Victorian Review Implementation Group, suggested that a way to extend services to those in need was for established centres to provide outreach services.[114] This approach has worked in suburban areas. However the logistics of providing outreach to a location hundreds of kilometres away might present unexpected hurdles and costs for an existing community legal centre. This is the model now being used by West Side Lawyers, the Adelaide-based service which now has the tender to deliver community legal services in the Streaky Bay region west of Adelaide and has been used by the Peninsula Community Legal Centre in Victoria.[115] The tenderers are more likely to be larger organisations like church based welfare organisations or, in Queensland, the legal aid commission.

Greater Commonwealth Control of CLC Activities

The approach taken to the establishment of the new regional/rural centres is indicative of the current government's general attitude to legal aid funding. The Attorney-General has stated on numerous occasions that the government

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February 2000, 'Community Legal Services Boosted in Regional and Rural Australia', accessed at http://law.gov.au/aghome/agnews/2000newsag/689_00.htm

[111] A dot point for this criteria was 'strategies to maximise the effective use of volunteers'.

[112] *Tenders for the Provision of Community Legal Services in Regional and Rural Areas – Selection Criteria* July 1998

[113] 'Community Legal Services Boosted in Queensland' ,Attorney-General's Media Release, 22 April 1999

[114] Biondo, S., *A Vision for the Development of CLC's in Victoria* November 2000; Federation of Community Legal Centres , *IAG Draft Options Paper: a Critique and Some Alternatives* March 2001

[115] Mullings, V., `Reaching out to the community from the Mornington Peninsula' (2001) 26 (2) *Alternative Law Journal* 94

wants to control and direct its expenditure in this area.[116] The new Commonwealth-State agreements in 1997 encapsulated this policy[117] and the placement of new community legal services without regard to input from the state-based legal aid commissions is another example.

Equally, the introduction of service agreements with community legal centres to reflect a purchaser/provider model has enabled the government to be more directive. In particular, the inclusion in current service agreements of requirements that all funds received by CLCs, including donations, be spent on work outlined in the Service Agreement Strategic Plan is considered by some CLCs to be a problematic control over the work of centres.

The services being purchased by the Federal Government are: advice, advocacy, community legal education and casework, with a limited litigation focus.[118] Ironically, in the 1980's community legal centres were concerned that they would be forced to do predominantly casework.

This paper has already noted the 'no litigation' funding restriction placed on Environmental Defenders Offices by the Federal Government. Another instance of a similar control being exerted over CLC work relates to the involvement of Caxton Legal Centre in the co-ordination of legal support for people wishing to protest at the Commonwealth Heads of Government meeting originally scheduled to take place in Brisbane in October 2001. The Federal Attorney-General wrote to Caxton Legal Centre advising that the centre was not permitted to spend any federal funds on such activities.

Involvement of Church Groups

A significant development has been the success of church-affiliated groups in tendering for Commonwealth funds to establish and operate new legal services. The considerable public debate regarding the involvement of church-affiliated organisations in successfully tendering to deliver government-funded welfare services has concentrated on employment services.[119]

Little attention has been paid to church links and involvement in groups which have successfully tendered to operate newly funded legal services. Services established by church-affiliated groups run the risk of operating, or at least appearing to operate, as satellites of larger community organisations with priorities which may not fit with the law reform and access to justice agendas

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[116] Williams, D., *A Modern Legal Aid Framework- the Commonwealth Government's Strategy for Reform of Legal Aid Services in Australia* Keynote Address, Legal Aid Forum April 1999

[117] For a discussion of the policy issues related to this change see Fleming, D., "Australian Legal Aid under the first Howard Government" in O'Reilly J., Paterson, A. & Pue, W. (Eds), *Legal Aid in the New Millennium* (1999); Attorney-General's Department, *Renegotiation of the Commonwealth-/Territory Legal Aid Agreement's*- Discussion paper (1996) at 1

[118] Attorney-General's Department, *General Background paper for community legal Services purchased by the Commonwealth* Documentation attached to tender documents July 1998.

[119] See for example, N. Ormerod, 'Drawing the Line' (March 2000) *Eureka Street* 14; Church based groups are now involved in the provision of many welfare services in Victoria as a result of the competitive tendering processes put in place by the Kennett government.

traditionally run by CLCs. It should be noted that law reform is not one of services being purchased.

In several states, Anglicare, a social welfare mission of the Anglican Church, has been successful in tendering for funds to establish new regional legal centres funded by the Commonwealth government. In Victoria, Anglicare now operates the Gippsland Community Legal Service following a tender process which was administered by the Commonwealth without involvement from VLA.

All 3 groups which tendered for the Gippsland service were affiliated with the Anglican church and based in different towns. Concerns regarding the coordination of legal aid services are raised by the locating of the Gippsland Community Legal Service in the same town as the Gippsland Regional Office of Victoria Legal Aid. A region with a population of more 70,000 has its 2 main legal aid services both located in the same town with a population of 20,000. The tenders to operate the 2 other Federally-funded services created in regional Victoria were won by major regional welfare organisations with historical links to major churches.[120]

In South Australia, church groups have become involved in CLCs in several ways. In May 1998 when the report of the review of CLCs in South Australia was released, CLCs in the Adelaide area found themselves facing the prospect of their number falling from 7 to 4. A tender process was initiated to determine which CLCs would operate in the west, south and east of Adelaide, each of which contained 2 existing CLCs. In preparing their tender for the service to cover the west of Adelaide, the Parks Community Legal Service developed strong links with Anglicare South Australia. Anglicare would be paid to provide the CLC with support in relation to information technology and employment matters and links to financial counselling services. Anglicare would also nominate 3 members to the board of directors of the new organisation. The Parks-Anglicare tender was successful and led to the establishment of West Side Lawyers. Coordinator of West Side Lawyers, David Bulloch considers this arrangement to have worked well in terms of providing the service with expertise it would otherwise not have had.

Church groups were also involved in the tender process for the 3 regional legal services funded by the Commonwealth in South Australia. The tender to establish and operate a community legal service in the Iron Triangle Region of South Australia was won by the Port Pirie Central Mission of the United Church in December 1998.[121] By mid-2002, the service had ceased operating

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[120] Mallee Family Care for the Murray Mallee Community Legal Service based in Mildura and Upper Murray Family Care for the Albury-Wodonga Community Legal Service based in Wodonga.

[121] See Attorney-General's Media Release, 'Making Community Legal Services More Accessible to South Australians', 17 December 1998, Accessible at http://www.ag.gov.au/attorneygeneralHome.nsf/Web+Pages/F792719DB1B8BE

and West Side Lawyers had commenced an interim outreach service to the region which has since received funding for 3 years.[122]

Specialist women's legal services have been amongst those CLCs most strongly opposed to the involvement of church groups in the management and operation of CLCs. This relates to the concerns regarding the conservatism of churches in relation to sexuality issues. The strong focus of churches on saving marriages is viewed as likely to lead to the promotion of primary dispute resolution services in inappropriate circumstances. Further, concerns have been expressed at the lack of understanding on the part of church organisations regarding the need to keep themselves distant from the operation of the legal practice and to respect the independence and ethical responsibilities of CLC lawyers.

Support of the Legal Profession

When CLCs were first established in the 1970s they encountered strong opposition from the organised private legal profession. The mode of operation of CLCs was anathema to traditional legal practice. Centres advertised, they were `free', informal and irreverent, and they talked explicitly about injustice and social change. The practices of the legal profession were viewed as part of the problem in limiting access to justice. [123]

This hostility between CLCS and the legal profession has substantially gone and been replaced by strong organisational support for community legal centres and legal aid generally. The Law Council of Australia and local state Law Societies regularly come to the defence of declining legal aid funds and support CLCs and their activities.

In addition, a range of different arrangements have developed between community legal centres and large city legal firms. This reflects the general increased focus on pro bono activities within the legal profession, limited government funding and ethos of `partnerships'/`social coalitions' that pervades commercial activities. The nature of the relationships between the CLCs and the profession varies but examples include the secondment of a firm's solicitors to a community legal centre, funding the employment of an articled clerk in a community legal centre, assistance with legal research and the development of precedents, office management and provision of in-kind assistance such as furniture. In one case a large firm agreed to provide funding and support the establishment of a Youth Legal Service[124]

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[122] See Attorney-General's Media Release, 'Community Legal Services For Iron Triangle', 9 October 2002, Accessible at http://www.ag.gov.au/attorneygeneralHome.nsf/Web+Pages/5276ECA05BB1A

[123] Noone M.A. & Tomsen S.,(2001) `Service beyond self-interest? Australian lawyers, legal aid and professionalism' (8) 3 *International Journal of the Legal Profession* 251

[124] Fitzroy Legal Service Inc (2000), *Annual Report 1999-2000* p 19; *PIAC Bulletin* December 2000 p 8, The young arm of the law' (2001) 11 *Law Institute of Victoria News* 4

An additional related development is government's involvement and the formalisation of secondments from large legal firms to legal aid commissions and community legal centres. A number of community legal centres have established secondment programs but recently Victoria's Attorney-General has provided funds to formalise such a program. This proposal includes placing seconded solicitors within salaried lawyers' sections at Victoria Legal Aid and Community Legal Centres. An interesting twist to this proposal is that firms tendering for the Government's legal work have to show a commitment to pro bono work.

Conclusion

This paper has outlined some of the different forces impacting on CLCs and highlighted the lack of a cohesive, national approach to their continuing development.

The Federal government's focus appears to be on the development of CLCs in regional Australia as well as on exerting greater influence over the nature of the work done by CLCs. This is a response to the unquantified unmet need for legal services in these rural, remote and regional areas.[125] But the question remains what is the level of this need, what legal services are actually required and how best to provide these legal services. There has been no research conducted on whether this need is best meet by a CLC, a regional LAC office or some other alternative[126]. CLCs operate most effectively when there is a pool of volunteers and private legal practitioners to refer casework to. In most rural and remote areas there are few legal practitioners. The capacity of a regional CLCs to conduct law reform or community legal education may be severely compromised if they are the only legal services provider in town. The model of a CLC may not be the most appropriate to service these areas, even if is it the cheapest.

The relationships between CLCs and LACs are continuing to change, improving in some states while deteriorating in others. The Federal approach to funding CLCs is exacerbating these changes whilst also introducing a new competitive aspect to the relationships. The Federal government now makes policy and decisions about CLCs without input from the LACs. The tender process creates an environment of competition between CLCs, LACs and the private profession rather than one of working together to improve access to justice.

These factors all impact on how LACs and CLCs work together. In the past there has been a strong emphasis on the complementarity between the two. The trends towards competitive tendering, growth in LACs doing advice and community legal education (DIY kits) and Federal government bypassing the LACs suggest that the nature of the relationship between the LACs and CLCs is in transition.

A key aspect of CLCs continues to be their ability to attract volunteer workers. The involvement of the private legal profession in the work of CLCs has strengthened the legal aid partnership in Australia. Volunteers have also made CLCs attractive to government as relatively cheap, cost-effective services. The importance of continuing involvement of volunteers was emphasised in the CLCs review reports in Queensland and Victoria.

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[125] Independent and effective definition and assessment of legal needs is required. LACs, CLCs and the private profession have recognised the need for this research but to date funds have been available for the research to undertaken.

[126] There have been some programs delivering legal services by video conferencing and advice and information by the Internet.

But the substantial changes occurring to the way CLCs operate and are managed has the potential to jeopardise this volunteer commitment. The current approach of government to increasingly specify the work of community legal centres particularly threatens the `pro bono' contribution of practitioner volunteers in community legal centres. Tampering with the operating structures of community legal centres could negatively effect of the involvement of CLCs volunteers

The tension for CLCs on how to prioritise between general casework, testcase work, community legal education and law reform is not new. But in the current environment the task for CLCs is all the more difficult. Particularly as the capacity of LACs to provide representation and assistance declines. CLCs have become the safety net of legal aid which makes finding time for non-individual services more unlikely. This dilemma is heightened in the smaller (one-lawyer) centres. The specialist centres are however able to maintain an impressive array of work.

CLCs remain an integral component of the Australian legal aid system. Their numbers continue to expand when others aspects of the system are retracting. They continue to garner significant government support. But concurrently the variations in form of operations and nature of work is growing. The distinguishing features are less precise. As the range of `local, regional or super' CLCs grows, the challenge to find a common definition becomes harder.