

Supplementary Submission to Productivity  
Commission

# Access to Justice Arrangements Inquiry

Community Legal Centre's, Law  
Reform and Policy Advocacy

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## Introduction

This supplementary submission, prepared by the National Association of Community Legal Centres Inc (NACLC),<sup>1</sup> the peak national body of Australia's community legal centres, is provided in response to issues raised by the Productivity Commission at the Public Hearing at which NACLC gave evidence in Sydney on 4 June 2014 as part of the Access to Justice Arrangements Inquiry. It explains the rationale for, and cost effectiveness of, CLCs undertaking law reform and systemic advocacy work. The submission outlines the types of law reform and advocacy work CLCs undertake, highlights its economic and broader value, and provides a number of case studies which demonstrate the intrinsic relationship between frontline legal service delivery and law reform and advocacy work.

This submission supplements the four submissions and two memorandums made by NACLC in response to the Issues Paper and Discussion Paper released as part of this Inquiry.<sup>2</sup>

## Law Reform and Advocacy Work

In its Draft Report the Commission acknowledged that CLCs play a key role in law reform, policy and advocacy and expressed the view that these services should be a 'core activity' of CLCs.<sup>3</sup> NACLC commends the Commission for recognising the value of CLCs and other legal assistance providers undertaking this work.

A range of other inquiries and commentators has also acknowledged the importance of CLCs undertaking this work. For example, the Senate Standing Committee on Legal and Constitutional Affairs expressed the view that:

non-profit organisations that advocate law reform on the basis of their experience are an invaluable source of information for government to make informed and balanced policy decisions. Additionally, community legal centres are closest to areas of community need and their input into policy development is essential to formulate balanced policy and check that its implementation achieves the policy aims.<sup>4</sup>

CLCs undertake a range of work, including individual casework, community legal education and law reform. These activities interrelate. Assisting individual clients through advice and casework enables CLC lawyers to not only assist the individual, but also identify laws, policies and practices that adversely or inequitably impact on disadvantaged people or vulnerable groups in the community. CLCs are in an excellent position to identify recurring causes of legal problems, such as unclear laws, or unlawful or unfair practices.

CLCs have developed a number of preventative and early intervention strategies to respond to these issues. One such strategy is through community legal education (CLE) of targeted groups in the community and other relevant stakeholders (such as community services workers). Such CLE involves accessible and culturally safe dissemination of information and can also include raising awareness

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<sup>1</sup> NACLC's members are the eight State and Territory Associations of Community Legal Centres.

<sup>2</sup> These include: a submission in response to the Issues Paper, *Access to Justice for 'Disadvantaged Parties'* (August 2013); a submission in response to the Issues Paper (November 2013); additional submission in response to the Issues Paper, *Increasing Access to Justice through Alternative Dispute Resolution* (November 2013); a memorandum on disadvantaged and marginalised peoples being turned away from CLCs because centres cannot provide the legal assistance the person needs, or cannot provide it in the timeframe needed (December 2013); and a memorandum on the contributions of volunteers and pro bono workers to CLCs (December 2013); and a submission in response to the Discussion Paper (May 2014).

<sup>3</sup> Productivity Commission, *Access to Justice Arrangements*, Draft Report, (April 2014), 609, 623, 625.

<sup>4</sup> Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Inquiry into Legal Aid and Access to Justice* (2004) 220 [11.58]. See also: N Nheu and H McDonald, *'By the People, for the People? Community Participation in Law Reform: Summary Report'* Law and Justice Foundation of NSW (14 October 2011); N Rich, *'Reclaiming Community Legal Centres: Maximising Our Potential so We Can Help Our Clients Realise Theirs'*, Final Report (April 2009); L Curran, *'Community Legal Centres: A Legitimate Part of the Legal Landscape'* (2007) 25 *Dissent* 19, 21; and L Schetzer, *'Law Reform: Community Legal Centres and the Future of Law Reform'* (1998) 23 *Alternative Law Journal* 243.

about legal issues or consequences, the development of skills to deal with problems arising, and other community development strategies.

Another strategy is through strategic litigation, specifically running a test case that may clarify the law or draw attention to the need for new law or a change in existing law. Some of these cases are run as representative actions for a much larger group, some may be for an individual but lead to a subsequent mass negotiation and settlement of other similar cases or complaints, and some may resolve a legal issue so the need for further action is removed, sparing others from experiencing the same unfairness in the future. However, not all legal problems are suitable for test cases, and in any event this option is not suitable for many disadvantaged clients, not least because of the time and resilience required to participate.

Another and often more cost effective way is to undertake policy and law reform work to address, at a systemic level, the issues identified through individual advice and casework services, and through CLCs' connections with community.

CLCs have a long and successful history of bringing about systemic change through policy and law reform. The law reform and advocacy work of CLCs includes:

- providing evidence-based information to Government and law reform reviews and inquiries
- working with other legal and non-legal service providers, organisations and institutions to improve processes and increase awareness of the particular needs and perspectives of CLC client groups and where possible avoid legal problems occurring
- strategic litigation
- representing CLCs and CLC client perspectives on committees and boards
- supporting clients and representatives of client groups to participate in government and community forums and other policy and law reform processes
- reporting illegal conduct, for example of debt collectors or door to door salespeople, to relevant authorities and regulators
- writing to and meeting with Members of Parliament about issues affecting CLC client groups, and
- broader advocacy work, including for and with victims/survivors, consumers and others, human rights advocacy, and awareness raising.

The work done by CLCs benefits individual CLC clients, most of who are disadvantaged or vulnerable in multiple ways, and this is the focus of CLCs' work. However, it is also important to recognise the broader benefit generated by law reform and advocacy work to other members of the community. In some instances, the most efficient means of avoiding or resolving civil disputes, particularly those arising from unfair operation or application of a law or policy, is to advocate for legislative, policy or practice reform. Accordingly, this work constitutes a core prevention strategy.

NALC submits that individual casework alone does not address inefficient or discriminatory practices that cause individuals to seek assistance from CLCs and other legal assistance providers. It is more effective to use an integrated model of service delivery that incorporates law reform and advocacy work, than to use direct legal services alone.<sup>5</sup> This issue, which is related to the efficiency of CLCs undertaking this work, is discussed in more detail below.

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<sup>5</sup> N Rich, *'Reclaiming Community Legal Centres: Maximising Our Potential So We Can Help Our Clients Realise Theirs'*, Final Report (April 2009), 10.

## Input into law reform processes and inquiries

CLCs not only proactively identify opportunities for law reform and advocacy arising from client service delivery; they are also often approached by organisations and government to contribute to reviews and inquiries. CLC representatives sit on a range of consultative committees and boards, and make submissions to state, territory and Commonwealth government inquiries and reviews.

To give one example: NALC has a representative (drawn from Women's Legal Services Australia, a national network of specialist CLC family lawyers working with women) on the National Chief Justice's Family Law Forum. The Forum is a national body that includes the Chief Justice, and Deputy Chief Justice of the Family Court, Chief Justice of the Federal Circuit Court, representatives from the Commonwealth Attorney-General's Department, Department of Social Services, the Child Support Agency, Relationships Australia, National Legal Aid and the Family Law Section of the Law Council of Australia, among others – and practising specialist CLC lawyers from Women's Legal Services Victoria.

A range of organisations and bodies undertake and contribute to law reform, and the critical importance of CLCs and NGOs being involved has often been recognised. As Michael Kirby AC, CMG, former Justice of the High Court of Australia and President of the Australian Law Reform Commission has highlighted, law reform must be consultative, and must 'secure information and perspectives from those who are potentially affected by any reform proposals'.<sup>6</sup> CLCs play a crucial role in providing bodies considering law reform and either recommending or implementing reform solutions with evidence-based information and a practical perspective on the current and potential operation of the law. NALC submits that the law reform processes of Australian Parliamentary Committees, all levels of government, as well as individual bodies such as law reform commissions will suffer should CLCs not be funded in such a way that facilitates their undertaking of law reform and advocacy work.

A number of members of both state and Federal Parliament have emphasised this, including for example the Hon Mark Dreyfus QC MP who has expressed the view that 'the expertise CLCs have from practising in particular areas of law makes them uniquely placed to advise governments in those areas' and that 'CLC advice is valued by those who take policymaking processes and informed debate seriously'.<sup>7</sup> The Hon Niall Blair, MLC who is the Chair of the Parliament of NSW Standing Committee on Social Issues has commented that:

we need to have contact with people who are impacted by decisions or changes within government. We don't have the resources or the ability to understand how a particular piece of policy will impact every industry or community group ... I think that it's a very useful process for different industry or community groups to be able to come in and present their case on either side of an argument.<sup>8</sup>

Further, the Deputy Chair of the Australian Competition and Consumer Commission (ACCC), Delia Rickard commented in 2013 that CLCs are

critical ingredients if regulators like ASIC and ACCC are to do our work well ... [CLCs] are in a position to analyse their cases, identify system conduct (such as poor practices by debt collectors or equity stripping by mortgage brokers) and present the necessary information to regulators, industry and governments. Their work regularly results in regulators taking on major litigation (such as the ACCC's current actions dealing with Door to Door sales in the energy sector) as well as real changes to industry conduct and significant law reform. In short, such centres are an essential part of our consumer protection regime.<sup>9</sup>

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<sup>6</sup> M Kirby, 'Law Reform—Ten Attributes for Success' (Speech delivered to the Law Reform Commission of Ireland, Dublin, Ireland, 17 July 2007) 7.

<sup>7</sup> Commonwealth, Parliamentary Debates, *House of Representatives*, 27 May 2014, 89 (Mark Dreyfus QC, Manger of Opposition Business).

<sup>8</sup> N Blair in 'Using Front Line Experience to Solve the Bigger Issues', *PIAC Bulletin Journal of the Public Interest Advocacy Centre*, (Autumn 2014) 38, 8.

<sup>9</sup> D Rickard in L Curran, 'Solving Problems—A Strategic Approach' (March 2013).

Finally, as the Productivity Commission noted in its 2010 Research Report, *Contribution of the Not-for-Profit Sector*, limiting consultation with Not-For-Profit Organisations (such as CLCs) may ‘impede the efficient and effective delivery’ of government services, and ‘reduce the government’s ability to develop the evidence base needed to effectively identify problems and assess the relative merits of alternative policy proposals’.<sup>10</sup>

CLCs also provide an important voice for CLC clients and communities. CLCs perform a highly useful social policy function in developing law reform proposals that are based on their accumulated experience with clients and often with the involvement of and input from many clients and groups, people who are often not in a position to speak of their experiences in these forums themselves, and not able to identify or articulate what reform is required, or how proposed reform might operate.

### Translating the experiences of individual clients

The law reform and advocacy work CLCs do is directly related to the legal problems and experiences of individual clients. In the course of undertaking individual advice or casework, CLC employees may become aware of a specific policy, practice or law that is disproportionately or unfairly affecting a particular group within the community, is not working efficiently, or is not operating as intended. CLCs are uniquely placed to translate these issues and the experiences of individual clients into positive outcomes more broadly.

Below are two case studies that illustrate the way in which direct client service delivery work informs the law reform and advocacy work of CLCs.

#### Case Studies

**Missing Persons:** In 2009, David and Julie Rosewall’s son Daniel went missing. At the time, there were no provisions in the relevant state’s guardianship and administration legislation enabling them to act on behalf of Daniel as a missing person, where Daniel had not appointed a guardian or power of attorney. As a direct result of systemic advocacy and law reform work done by Loddon Campaspe Community Legal Centre to assist David and Julie, the legislation was amended to enable the effective protection and administration of the affairs of missing persons. In particular, the amendments permitted the Victorian Civil and Administrative Tribunal to appoint David and Julie as administrators to manage Daniel’s affairs in circumstances where they hadn’t been able to redirect his mail, resolve his lease, or otherwise deal with his legal and financial affairs. As a result, families in this position in the future will not encounter the same difficulties that David and Julie experienced.

**Bicycle Helmets:** Jeff has physical and an intellectual disability and is unable to wear a bicycle helmet. As a result, Jeff received over 26 penalty notices and \$4000 worth of fines. A CLC in NSW worked with Jeff and police to ensure the charges against him were dropped and prepared a submission to the NSW Attorney General seeking amendment of the *Road Rules 2008* (NSW) to include an exemption where the rider is unable to wear a bicycle helmet due to a medical reason.

### Addressing systemic issues

CLCs also play a key role in addressing systemic issues by drawing on the experiences of individual clients to identify patterns or systemic discrimination, or other systemic issues. This identification of, and response to, systemic discrimination serves a widespread protective function for many vulnerable and disadvantaged Australians. It is an important aspect of the work CLCs do, as individual casework alone does not address discriminatory practices that result in individuals seeking assistance from CLCs.

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<sup>10</sup> Productivity Commission, *Contribution of the Not-for-Profit Sector*, Research Report (2010), 12.17-12.18.

By way of example, anti-discrimination law in Australia is premised on an individual complaints-based system. The onus is on the person experiencing discrimination to seek to enforce their rights under state, territory or Commonwealth anti-discrimination legislation. The role of CLCs in identifying systemic discrimination and working proactively to address the root causes of such discrimination, in addition to assisting individual clients, is crucial because it can prevent discrimination from occurring in the first place.

Two case studies that illustrate the way in which CLCs are able to address systemic discrimination or unfairness, based at first instance on the experiences of an individual or group of individuals, are outlined below.

### Case Studies

**Disability Discrimination:** The Public Interest Advocacy Centre in NSW represented Graeme Innes AM, who is blind, in a disability discrimination claim in response to the failure by Sydney Trains (formerly RailCorp NSW) to provide reliable audible 'next stop' announcements on trains. The announcements are crucial because they allow passengers with vision impairment to know when they have reached the right station. This case tested the Disability Standards for Accessible Public Transport. The litigation funder, IMF (Australia) Ltd, agreed to indemnify Mr Innes against an adverse costs order. Following several unsuccessful attempts at mediation, the matter was heard before the Federal Circuit Court in October and November 2012. On 1 February 2013, the Court found RailCorp had breached federal disability discrimination law by failing to make audible announcements on 36 train journeys undertaken by Mr Innes in 2011. Sydney Trains agreed to take specific steps to continue monitoring and improving on-train announcements and Mr Innes is now 'satisfied with measures that have been put in place to make on-train announcements clear, consistent and audible.' This case has benefited all blind train travellers in NSW now and into the future.

**Debt Collector Conduct:** A CLC specialising in consumer law lodged 100 complaints with ASIC about harassing and misleading conduct by one debt collector, resulting in a prosecution for 'systemic conduct' which protected up to half a million people who were on the collector's 'books'.

### Working collaboratively with other organisations, regulators and government

CLCs often work behind the scenes with industry, regulators and government departments to improve processes in order to prevent or address legal problems. This work is vital in terms of collaborative approaches to service delivery, as well as in ensuring the effective operation of law and policy.

### Case Study: Work and Development Orders

A key example of CLCs working collaboratively with other organisations and with government to affect positive change was the development of work and development orders under the *Fines Act 1996* (NSW). Prior to its amendment the *Fines Act* was having a disproportionate effect on people experiencing homelessness, young people and other disadvantaged groups who had difficulty paying fines. CLCs including the Public Interest Advocacy Centre and the Illawarra Legal Centre, as well as others, worked collaboratively with other community organisations and the NSW Attorney General's Department to find a positive solution to these issues, and in 2009 the Act was amended to incorporate WDOs. A WDO allows a person to work off fines at an early stage, including through unpaid work, training, counselling or drug and alcohol treatment. To date, approximately 16,000 WDOs have been approved, \$2 million worth of unpaid work has been carried out and \$18 million in outstanding debt has been cleared, while reducing the administrative and system costs associated with debt collection, Sheriff's and court costs, licence cancellations and community service order hearings.

## An Efficient Use of Funds

While the contribution made by CLCs undertaking law reform and advocacy work can be difficult to quantify, in the Draft Report the Commission expressed the view that: ‘advocacy can ... be an efficient way to use limited taxpayer dollars’ and stated that

strategic advocacy can benefit those people affected by a particular systemic issue, but, by clarifying the law, it can also benefit the community more broadly and improve access to justice (known as positive spill-overs or externalities). Advocacy can also be an efficient use of limited resources. It can be an important part of a strategy for maximising the impact of LAC and CLC work.<sup>11</sup>

Face-to-face services delivered alone are not the most effective approach to addressing legal need in Australia. It is more effective to use an integrated model of service delivery that incorporates law reform and advocacy work, than to use direct legal service delivery alone. As Bruce, van Moorst and Panagiotidis have noted:

isolated solutions to problems remain just that – isolated; and an isolated problem-solving process, while important for a particular service user or group of service users, cannot in itself change the structural and socio-economic circumstances which gave rise to the problem.<sup>12</sup>

The work done by CLCs provides clear private benefits to individual CLC clients, most of whom are disadvantaged. However, it is also important to recognise the broader public benefits which arise from CLC work, often through law reform and advocacy. This is an important consideration in measuring the total economic and social value generated by CLCs undertaking law reform and policy advocacy work.

CLCs’ law reform and advocacy work can prevent the occurrence of similar legal issues in the future, helps to ensure that the law is current, fair and effective, and sets valuable precedents, all of which ultimately reduces demand for legal assistance services. It can also divert matters from the court and prison system and produce savings and benefits in other areas of government, such as social security and health. By assisting individuals and building the capacity of individuals and communities, it also contributes positively to the wellbeing of society as a whole. As a result, it is a highly effective, efficient and appropriate use of limited resources.

## Data on law reform and advocacy work

Briefly, NACLAC notes that there are a number of difficulties with data on law reform and policy advocacy work of CLCs which impact on any consideration of the efficiency of CLCs undertaking law reform and advocacy work.

The Commonwealth’s Community Legal Service Information System (CLSIS) database records only those services provided with Community Legal Services Program funding. As a result, it does not provide an entire picture of CLC services. There are also a number of counting peculiarities in CLSIS relevant to law reform and advocacy work. For example, CLSIS records law reform work when the file is closed. As a result, while law reform work may span a long period and involve many actions and extensive work, it will only ‘count’ when the file is closed, and may only count the many activities as ‘one’. The amount of time, or complexity of work involved, will likely not be evident.

NACLAC and CLCs have been advocating for some years to AGD that CLSIS be updated to improve its facility for recording community development including community legal education, law reform and policy advocacy. Only with better and consistent data can CLCs be in a better position to ‘measure’ and

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<sup>11</sup> Productivity Commission, *Access to Justice Arrangements*, Draft Report (April 2014), 623.

<sup>12</sup> S Bruce, E van Moorst and S Panagiotidis, ‘Community Legal Education: Access to Justice’ (1992) 17(6) *Alternative Law Journal* 278, 279.



demonstrate the value of this work. At present, CLCs do this in different ways for their own purposes, such as reporting to Boards, and on occasions to funders or in funding submissions, most often by case studies and other qualitative methods. Government support and encouragement for consistent recording method that allows CLCs to show the time and complexity involved would be of benefit to the organisations, government and other stakeholders – and form evidence for funding that in turn assists clients.

### **Ongoing Funding for Law Reform and Advocacy Work**

In May 2014, the Australian Government Attorney-General's Department confirmed that the Commonwealth is 'working towards a one year extension of current CLSP service agreements' which will also serve to implement 'the Government's policy in relation to the use of Commonwealth legal assistance funding for front line service delivery' by varying the agreements to include clauses which will 'provide that, in relation to Commonwealth funding, the definition of core service activities is: information, advice, casework and community legal education activities'.<sup>13</sup>

The change is intended to amend the definition of 'core legal services' to make clear that services funded by the Commonwealth will not, for the period of the extension of the Agreement, include law reform or policy advocacy.

While not explicitly preventing CLCs from undertaking this work, failure to provide Commonwealth funding for these activities would have a significant impact on the ability of CLCs to engage in law reform and advocacy. It is likely to result in the capacity of CLCs to undertake this work being significantly reduced, and in some circumstances, removed entirely.

It is also likely to have a number of broader effects, including on the number of individual CLC clients seeking assistance in relation to the same issue, or issues which may have been prevented with law reform or advocacy work; and more broadly by diminishing the evidence-base utilised by government in developing policy and the variety of voices heard in relation to important policy and legislative developments.

Accordingly, NACLC urges the Commission to confirm in its Final Report, the importance and value, both in economic and social justice policy terms, of CLCs and other legal assistance providers undertaking law reform and policy advocacy.

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<sup>13</sup> Email Correspondence from Director CLSP (Commonwealth AGD) to Executive Director (NACLC), *Extension of Tripartite Service Agreement*, 19 May 2014.

*NACLC acknowledges the traditional owners of the lands across Australia and particularly the Gadigal people of the Eora Nation, traditional owners of the land on which the NACLC office is situated. We pay deep respect to Elders past and present.*