LAW REFORM

Community legal centres and the future of law reform

History and philosophy

There are now some 160 Community Legal Centres (CLCs) nationwide in Australia — 26 years after the first CLC was established. CLCs can quite legitimately refer to themselves as a 'movement', as they are much more than a loose collection of community based organisations involved in legal service delivery. The term 'a movement' implies a shared evolutionary experience and philosophical base.

When we look at the philosophical base of CLCs, we see some essential core values that go to the very essence of what a CLC is:

- they are independent of government;
- they are not only legal organisations, but also human rights based advocacy organisations;
- they are committed to being accessible in terms of location, language, affordability, and atmosphere;
- they are innovative, solution-oriented, activist, responsive and progressive;
- they are global in their approach in that casework, community legal education (CLE), law reform, community development, and lobbying are inter-related and feed off each other;
- they are community based;
- they involve service users in resolution of their issues;
- they do not see clients' legal issues in isolation, and make appropriate referrals where necessary.

Accordingly, the work of CLCs in the area of law reform cannot be separated from the basis of their existence — the motivation of addressing issues of human rights and access to justice requires CLCs to vigorously advocate for systemic change, and not just work from a casework delivery model.

Current obstructions to pursuing law reform activities

CLCs face huge challenges to ensure that law reform remains not only a focus but a recognisably essential ingredient of their service delivery. The most pressing challenges include the following:

- inadequate resources in the face of increased demand for casework services and administrative accountability;
- greater emphasis by governments and funding bodies on casework delivery to clients;
- the threat of output-based funding;
- the threat of competitive tendering and contracting for CLC services;
- the threat of CLCs being forced to regionalise or amalgamate.

Inadequate resources and increased demand

CLCs continue to face the issue that casework is demanding on resources and can potentially divert energy away from the underlying reason for the existence of CLCs. With greater restrictions on the availability of legal aid, particularly as a result of Commonwealth cuts and changes to Commonwealth Guidelines, there is a greater expectation on CLCs to 'fill the gap', and be the 'last stop shop' for people seeking legal representation. This, combined with the attacks in other sectors, including funding cuts to public housing, loss of public housing advocacy centres, financial counsellors, amalgamations of community health centres, cuts to neighbourhood houses, community-based advocacy centres, changes to social security restricting availability, particularly in the area of the Common Youth Allowance, cuts to youth support services — all of these result, either directly by the loss of advocacy services, or indirectly through their social cost, in increased demand for CLC casework service delivery. The pressure of increased demand for services comes from both attacks on the legal aid system, and attacks on the community and welfare sector. CLCs were inadequately resourced to meet casework demands even before these attacks took place.

CLCs have also had to deal with increases in accountability and reporting requirements by governments and funding bodies. The move to require annual and quarterly workplans, assessments of performance indicators, more detailed and regular financial reporting, recording statistics for NIS, maintenance of other statistics for mandatory quantitative performance indicator data (as part of CLC service agreements), and client satisfaction surveys — not to mention monthly reporting to community-based management committees — all of this is a drain on the limited resources available to CLCs, and potentially limits the capacity of CLCs to undertake extensive law reform campaigns and initiatives. The accountability bar for CLCs has been raised higher and higher in recent years, with this trend looking certain to continue.

Greater emphasis by governments and funding bodies on casework delivery

As stated earlier, the result of government cuts to legal aid has seen greater expectation by governments, funding bodies, and consumers that CLCs will fill the gap left by the underfunded legal aid system. CLCs have literally become the safety net for the legal system, with an expectation that they will devote more resources to meet an increased demand for casework. The natural consequence is that fewer resources will then be available to devote to the underlying reason for the existence of CLCs.

The threat of output-based funding

Many would see as the logical progression from the above factors that funding of CLCs be directly related to their output in terms of casework delivery, whether it be in terms of numbers of clients represented, numbers of people advised, numbers of advice appointments, numbers of people attending CLE workshops. The consequent danger is that there will be little incentive for CLCs to undertake law reform initiatives, as it will be seen as a diversion of resources away from the 'funded work' of centres.

The threat of competitive tendering and contracting of CLC services

Competitive tendering and contracting (CTC) has clearly been put on the agenda in Victoria in light of the recent review of CLCs in that State. CTC has as its basis the increasing focus on

national competitiveness. Its cornerstone is the premise that the private sector, as judged by market forces, is more efficient in allocating resources and benefits than the public sector, and that competition will produce more productive, efficient organisations in delivering services. The threat posed by CTC goes to the very heart of what CLCs stand for. The work of CLCs in the areas of prevention, development and advocacy may well be ignored and overlooked in the CTC process. The importance of such pre requisites as being community based and directed, independent from government and committed to systemic change are all up for grabs in the economic rationalists' brave new world.

As far as law reform is concerned, the most direct threat that CTC poses relates to the independence of CLCs from government. This independence has allowed CLCs to be vigorous in advocating for systemic change, and has also engendered trust from disadvantaged groups and individuals. It is their independence that has prevented the CLC movement from being silenced.

However, there are legitimate concerns that CTC will see CLCs being silenced, either overtly through the defunding of CLCs that do speak out, through secrecy clauses in service contracts, or through the purchase of casework legal services *only* as distinct from law reform and community development.

Related to the problem of secrecy clauses is the threat of funding restrictions, such as those currently imposed on EDO (not to undertake litigation) or like the Job Watch CLC in Victoria, which is forbidden from making comment publicly on the principal legislation effecting their work without prior approval of the relevant Minister.

The threat of CLCs being forced to amalgamate or regionalise

Such a threat also puts at risk the level at which CLCs will remain community based and directed. The capacity for CLCs to identify local issues and groups within the community for whom justice is inaccessible, and to respond and develop strategies for local issues by networking with other community-based agencies and organisations will be severely compromised by being forced to regionalise.

The prevailing political climate forces CLCs to be reactive in their public campaign initiatives rather than proactive on behalf of their communities

In recent years, the work of CLCs in law reform campaigns has mostly been reactive to government proposals to erode basic rights and freedoms that have previously been won. While this is a vital role for CLCs, and one that is directly relevant to their respective communities, it does mean that the essential role of CLCs in advocating for positive initiatives for systemic change that will benefit their communities has essentially been eroded. The emphasis seems now to be on protecting what we have (or even recovering what has been lost) rather than on lobbying for more human rights.

The future?

Time to question ourselves

Given the realities of the prevailing political and economic climate, it is timely to question the extent to which CLCs are successfully carrying out their core functions in the area of law reform. We need to ask if, after 26 years, CLCs have become so much a part of the system, that they are now part of the very structure they once sought to change? Do we still hold true to the ideal that we are trying to do ourselves out of business, or has job security become a factor in our decision making? To what extent are CLCs making compromises on their core values to safeguard their survival? Are CLCs still capable of challenging the fundamental structures preventing access to justice? Do we still have the sense of political purpose necessary to cause fundamental change to the advancement of the marginalised and disadvantaged in the community?

Given that the threats to law reform have the capacity to push CLCs along the path of pure casework service delivery, what questions should CLCs ask of themselves in terms of casework priorities? CLCs need to resist the push to become welfare service providers, or a safety net for the legal system. Unless we strongly set limits on casework services, given the limited resources and extensive need, CLCs risk becoming 'a sponge sucking up the overflow from legal aid'.

Given the current climate, it may be appropriate to assert that CLCs should only undertake casework which has impact beyond the individual client. Essentially, where issues in casework regularly reappear, the basis for a law reform campaign becomes apparent. The compilation of anonymous case studies on those issues, based on the casework examples, can become the basis for a report to be publicly released, and a corresponding media campaign, or a submission.

In terms of representing people who are ineligible for legal aid because of funding cuts, CLCs need to ask themselves should they undertake such casework if it does not form part of a calculated campaign to reverse those funding cuts. By filling the gaps with disbursement-only grants of aid, or pro bono appearances, CLCs may well be undermining the fundamental human right of equal access to justice, and an adequately funded legal aid system.

If CLCs do undertake legal representation in cases left unfunded by the legal aid system, perhaps priority should be given to significant public interest cases and test cases. CLCs have a long history of law reform based test casework, which has had significant long-term benefits for CLC service users.

Networking and information sharing with other CLCs and other States and Territories

As a movement with common experiences and underlying philosophies, it is essential in the current climate, that CLCs work with other CLCs, and other community and welfare agencies on issues of common concern. In an increasingly globalised world with a monopolised and controlled media, it is increasingly difficult for small individual CLCs with inadequate resources to mount large scale campaigns.

The Victorian experience of having campaign and issue-focused working groups allows centres which have particular issues in common in terms of their casework trends, to pool resources, energies and talents, and casework experiences, which can then become the basis for campaigns, reports, submissions or media attention.

However, networking should not just be confined to CLCs. Alliances with other community-based organisations and peak bodies form a powerful base from which to mount successful media campaigns. Recently in Victoria, as part of the Inquiry into the Right to Silence, the Federation convened a

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notions of what it means to be German. Kohl himself did not ever press for reform. A stance that arguably was consistent with his failure to denounce with any particular vigour the rising incidence of racist violence in Germany in the 1990s. This failure included his refusal several years ago to attend the funeral of Turkish children killed in racially motivated firebombings, on the basis that he did not want to indulge in 'graveyard tourism'.

More silence on race

Neither Kohl nor Schröder revisited these matters in the leadup to the German election. Schröder did not recant from the SDP's promise to reform German citizenship laws, but nor did he push the issue. When 5000 neo-Nazis demonstrated on the streets in the German city of Rostock a week before the election, neither party leader took the obvious political opportunity to unroll any hidden blueprint for a multicultural, tolerant Germany. Instead, they both chose to talk of other things.

Specifically, their focus was on 'bringing Germany together'. This was not a reference to matters of citizenship or racism. Rather, it was to the need to bridge the continuing political, social and economic divide between *Ossis* and *Wessis*, the inhabitants of former East and West Germany. Were both leaders blissfully unaware that their attacks on the evil of unemployment, combined with their explicit commitments to law and order and to dealing with the 'problem' of 'foreign criminals', could in fact have encouraged rather than defused support for the claims of the extreme racist right?

The German President, Roman Herzog (like Kohl, a member of the CDU), certainly seemed aware of this potential risk when he spoke out on the subject in the middle of the Federal election campaign. He chastised both Kohl and Schröder for their failure to be sufficiently 'courageous' in attacking right-wing radicalism. His criticism had little public effect on either politician.

The past, the future

The future of race politics in both Germany and Australia remains to be seen. It is to be hoped that in neither country will parties advocating explicitly racist agendas gain — or, in Australia's case increase — Federal parliamentary representation. It is also to be hoped that the major parties in both nations will resist allowing parties of One Nation's ilk to set any part of the agenda for debates about immigration, citizenship and national identity. In Germany, the presence of the Greens as coalition partners in this new federal government should prevent any temptation on the part of the SDP to backslide on race matters for 'pragmatic' reasons. In Australia, as yet it is less clear where the equivalent political checks and balances might lie, to ensure that advancing racial tolerance is a non-negotiable aim of our own new federal government.

My visit to Berlin was sobering and educative. Partly because of the powerful similarities and differences between the contemporary political scenes in Germany and Australia. Partly, too, because Berlin itself is an overwhelming city. Of course, what any city is, changes with time and with the political climate. But one of the many things that Berlin still is — and shall always be — is the metropolis that was the cultivated centrepiece of Adolf Hitler's world order. The 1936 Olympic Stadium still stands, next to a huge field used for Nazi rallies. Both are still regularly used for sporting events. The elegant villa that housed the Wannsee Conference in January 1942, where a group of elite Nazi officials planned the detailed execution of the Final Solution, still sits in an affluent, leafy Berlin suburb on the edge of a lake. The area around Oranienburger Strasse, in the former East Berlin, still contains a wealth of buildings that commemorate the long Jewish history of Berlin. Quite rightly, no amount of Allied bombings, Communist walls, groovy bars, even groovier art galleries, or feverishly busy post-unification construction sites (gleaming stainless steel cranes sponsored by Mercedes-Benz) have, or will ever, eradicate the moral stain of Nazism from Berlin.

But the enduring political and moral lessons of Nazism shouldn't just be for Germans. They should be for Australians too.

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series of roundtable discussions with various peak bodies and community groups, and culminating in a joint media conference, with groups including Victorian Trades Hall Council, VCOSS, the Law Institute, the Criminal Bar Association, Youth Affairs Council, Ethnic Communities Council, Environmental Groups and the National Union of Students. The resource sharing that occurred through this process resulted in a large number and variety of community and peak organisations putting submissions to the Parliamentary inquiry.

And likewise, networking and information sharing should not be confined to one State or Territory. Many of the issues that CLCs are concerned about are common across the State and Territory borders. The introduction of the electronic bulletin board, the use of computer conferences on particular issues, and the formation of national networks on particular issues, allows for a far greater exchange of information on a more regular basis. This will assist in preventing the 'reinvention of the wheel' on various law reform issues, as they repeat themselves across the country.

Conclusion

The current political and economic climate presents a significant challenge to CLCs in ensuring that the essential elements which formed part of their establishment do not get left behind in the age of National Competition Policy. We need to carefully strategise our law reform initiatives in this environment, rather than compromise them in an effort to safeguard the survival of CLCs — which at the end of the day can't be guaranteed in the current political and economic environment anyway. We need to remember that the survival of CLCs depends on their integrity and not on whether they can escape government cuts by foregoing the essential and definitive part of their work practices.

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