
SUBMISSION TO STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS'

INQUIRY INTO ACCESS TO JUSTICE

By

SCALES Community Legal Centre

April 2009

While we welcome the opportunity to contribute to your inquiry, given the work we are asked to do within our existing resources, a comprehensive and lengthy submission is not possible. However we would like to bring to your attention two major issues which we think need immediate attention.

1. The funding and sustainability of Community Legal Centres (CLC's)
2. The funding and sustainability of Clinical Legal Education (CLEd)

You will no doubt receive submissions more broadly from the community legal sector, however, we hoped that it would be helpful to the Standing Committee for us to address some of the most important of those issues with local context and specific illustrations drawing on the casework undertaken by the staff and students of SCALES Community Legal Centre.

We would then like to turn our attention to clinical legal education and again drawing on our own experiences demonstrate the far reaching benefits of clinical legal education and therefore the reason it should be a central tenant of any strategy to increase access to justice.

In addressing these two major issues we are responding to terms of reference e) alternative means of delivering justice, in so far as clinical legal education is an alternative means and f) the adequacy of funding and resource arrangements for community legal centres.

BACKGROUND ON SCALES

The Southern Communities Advocacy, Legal and Education Service Inc. (SCALES) is an independent not for profit community legal centre (CLC) and the site of the Murdoch University Law Clinic. SCALES is a Community Legal Centre and a Clinical Legal Education Program through Murdoch University. Founded in April 1997, SCALES was established by Murdoch University in partnership with the local community. The main office is located in Rockingham, with staff offices in the Law School building at Murdoch University's South Street campus.

SCALES was initially funded as a pilot project by both Murdoch University and the Federal Attorney Generals Department under the Community Legal Services Program. Funding in that first year was from 3 sources – Federal Attorney Generals Department and Murdoch University matched funds and \$80,000 was provided for office fitout from the Lotteries Commission. Funding covered the cost of employment of two Supervising Solicitors who had control of the legal practice and teaching clinic and an Administrator who managed the running of the office and administrative support to the solicitors and students.

From a staff of 3 people in 1997, SCALES now employs 11 people in 15 positions with the equivalent full time staff level of 8.5 staff members. In the current financial year of 2008/2009 SCALES is funded by 8 recurrent sources. Most funding at SCALES is utilised to ensure that the Law Clinic is adequately resourced to be able to offer the best learning opportunities for our law students while still offering a comprehensive service to the community. Direct client services outside of the Law Clinic are offered to victims of Family Violence and to tenants attending the Magistrates Court Tenancy jurisdiction.

The innovative work of the SCALES staff has been recognised by a number of awards including a National Human Rights and Equal Opportunity Human Rights Law Award in 2002, Premiers Award for Community Services 2002, Department of Consumer and Employment Protection Consumer Awards for Consumer Protection by an Organisation 2007, Murdoch University Vice Chancellors Award for Teaching and Learning as well as a National Carrick Institute Award for Outstanding Contribution to Student Learning.

SCALES helps people with a variety of legal problems by providing free information, referrals, advice, casework, representation, community legal education, policy and law reform to low income people living in the Kwinana and Rockingham areas. SCALES provides legal services to a geographical area that covers a

population of over 100,000 people. This south west coastal population area is one of high need of legal services due to socio- economic indicators of disadvantage and its future population growth.

Client services are provided in a number of areas of law including Civil law matters, Consumer credit and debt, Criminal (Children's Court and Magistrates Court), Domestic Violence (restraining orders, criminal injuries compensation, child protection, liaison with Police), Equal Opportunity matters, Family Law in matters relating to children, Immigration (refugee and asylum seeker matters), Motor Vehicle Accidents (property damage and infringements), Tenancy (public and private tenants), Welfare Rights (Centrelink matters) and Victims of Crime.

SCALES is a clinical teaching facility in conjunction with the Murdoch University School of Law. Supervisors teach Clinical Legal Education (CLEd) and Advanced Clinical Legal Education as elective units in the Bachelor of Laws Degree. SCALES was the first legal clinic in Western Australia, staff from the clinic have assisted and mentored clinical courses other law schools in Western Australia. SCALES is currently the only CLEd program of this kind in Western Australia and accepts cross enrolments from other universities. Law students work at SCALES and are responsible initially for providing legal services to individual clients under the supervision of the centre's legal practitioners.

Over 560 students have completed the course since it began in early April 1997. Students learn what lawyers do by doing it themselves under the careful supervision of the clinic teaching staff. The students also undertake a seminar program that addresses practical and interpersonal skills, ethical and professional issues and analysis and reflection upon law and the role of law in a broader social context.

Through the clinical process students become aware of the importance of ethical legal practice and a human rights approach to the practice of law in the community. In addition students develop communication skills, learn the importance of ethical practice, realise the importance of law reform and community development and improve their proficiency in practical skills. The staff-student ratio is low – no more than 1:8 which allows for close supervision of the students' performance.¹

¹ More information can be found at the SCALES website: <http://www.law.murdoch.edu.au/scales> and in the Murdoch University Handbook, which can be viewed online at: <http://handbook.murdoch.edu.au/>

COMMUNITY LEGAL CENTRES

Community legal centres (CLCs) are independent, community organisations providing equitable and accessible legal services. They are of their communities and responsive to their communities.

“Communities” may be geographic communities as for generalist CLCs or communities of interest as for specialist CLCs that may target a group (e.g. children) or a particular area of law.

CLCs are able to offer appropriate, effective and creative solutions based on their experience within their community. It is this community relationship that distinguishes community legal centres from other legal services. It is this community relationship that makes community legal centres essential and vital organisations.

While providing legal services to individuals, CLCs also work beyond the individual. Community legal centres initiate community development, community legal education and law reform projects that are preventative in outcome and that strengthen the community.

The clients of community legal centres are those who are facing injustice, whose legal problem is not profitable, and whose life circumstances are affected by their legal problem.

Community legal centres harness the energy and expertise of thousands of volunteers across the country. Centres are committed to collaboration with government, legal aid, the private legal profession and community partners to ensure the best outcomes for their clients and the system of justice in Australia.

Community legal centres are about Justice and not simply the Law.

It is essential that CLC's be funded in a sustainable and reliable manner, allowing them to achieve their goals. One of the main strategies of CLC's is to provide people with information on the law and teach them through workshops and other programs to use that information for their own and their communities use in the future or to prevent them from falling into a position of disadvantage within the legal system². Through the use of these strategies, CLC's are combating social exclusion. They are promoting social inclusion for communities by providing them with information on the law and how to navigate themselves around the

² NACLC, 'why are community legal centres good value?' (2008) *National Association of Community legal Centres* at pg. 4

legal institutions. CLC's deliver more than the individual benefit but also a broader public benefit, every time CLC's prevent clients from interacting with the judicial system or having to resort to governmental institutions for their problems, costs for the government in those bodies were decreased³.

SCALES' Tenant Advice and Court Service (TACS) program is a very good example of this in practice. In February 2007, SCALES set up a "duty lawyer" system to assist tenants in tenancy court. We noticed that tenants rarely attended court or responded to notices, and that it was often only after an eviction notice was served that tenants sought advice. After discussions with Registrar at the Rockingham Magistrates Court, a trial service was developed and provided each Tuesday morning when the local Magistrates Court heard tenant's matters. TACS paralegals with the assistance and supervision of SCALES' lawyers offered assistance to those tenants attending the court. At first the numbers we assisted were low, as many tenants did not even attend court due anxiety associated with having to appear themselves and work through sometimes complex legal issues. But over time, as the word got around that our service was available and willing to assist tenants even appearing for them in Court, our numbers grew.

TACS has assisted 132 tenants over the 2 years it has been operating. This is approximately ¼ of our tenancy matters for that period. Many of these tenants would not have bothered to attend court at all before TACS commenced. Most importantly, this assistance has prevented many other legal and wider social issues. Take for example the case of a young man who told us that without our help he would not have appeared in court. His landlord was seeking an order for over two thousand dollars to cover what they described as necessary cleaning and repairs to the property. When asked to provide evidence of these costs, it became clear that most of what they were claiming was for repairs that were needed before our client even moved in. By calling his youth worker, who had inspected the property with him when he first took the house, we were able to prove this and the order was not given. Had that young man not attended court, or presented the evidence, the order sought by the landlord in his absence would most likely have been granted. This then would have resulted in a debt which would have plunged this young man into more legal difficulties. It most probably would have also resulted in his listing on a tenant database making it impossible for him to get other accommodation. With TACS assistance he was able to ensure that the landlord did not place him on a tenant database.

³ Ibid at 8

Another client of TACS was a mother of four, who was facing eviction due to some damage caused by a person who had visited her house. Despite having reported the incident to police and in fact asking the police to come and remove the person from her house, the landlord still tried to hold her responsible for the damage that was done. With the help of TACS, this client was able to negotiate remaining in the property and was able to resolve all of her issues with her landlord. Had this client been evicted, it is highly likely that her children would have come to the attention of the Department of Child Protection. She had no other housing options and planned to live in her car with her children until she could get another house. Even if she had been assisted as in need of priority public housing

Community legal centres also work with aboriginal Australians. Through specifically tailored programs for aboriginal Australians, CLC's collaborate with aboriginal community leaders, employ aboriginal workers and take heed from aboriginal experiences with the law in formulating new strategies⁴. By gaining an experience in Aboriginal issues, CLC's learn to properly allocate their resources and learn to be more sensitive to Aboriginal clients needs. Since CLC's are community based organisations, they cater for people that other legal service providers may neglect due to their inability to understand their special needs, such as: people with mental health issues, people from diverse ethnicities, the underprivileged and those with disabilities. Their experience of CLCs in dealing with these people for many years allows them to provide the necessary facilities in helping them overcome their problems⁵. CLC's also engage in areas of law that other service providers such as law firms would not accommodate. In areas such as housing, social security, credit and debts, criminal injuries compensation, CLC's have a range of services and experience in dealing with these non profitable areas of law. Most importantly, CLC's are easily accessible to the community. Services are usually provided free of charge and if the CLC is unable to assist the client they provide the necessary referral, often in the form of a 'warm' referral where the service the client is being referred to is contacted to ensure their capacity and availability.

SCALES' own experience once again illustrates this point. We have worked with many clients with mental health issues, clients that have been turned away from other legal services as being 'too problematic'. We have assisted them with claims for criminal Injuries compensation or family law matters, the results of which

⁴ Ibid at 5

⁵ NAALC, 'Internal Review of the Commonwealth Community Legal Service Program- CCLSP, (2007) *National Association of Community legal Centres* at 36.

have positively impacted on their mental health issues. One example of this was a young father who had, due to substance abuse, had a psychotic episode which resulted in the break-up of his young family. After extensive treatment and medication he came to us when he had had two years without a reoccurrence of his mental illness. He simply wanted to have some time with his young son, something that his ex-partner was blocking due to his previous condition. We assisted this client in getting supervised time with his son with a view to increasing it over time.

Another young man came to SCALES through a referral from a local mental health support service and had been homeless for a number of years. He had recently engaged with support services and was getting his life back on track with their support. He came to SCALES for assistance with a number of outstanding fines, the nature and amount meant that he was at risk of being imprisoned as he could not pay them. When he came to SCALES he had been notified that his name had finally come to the top of the list for accommodation with Homeswest and he was likely to be housed in the next few weeks. SCALES negotiated on his behalf and was able to have some of the fines discharged and arrange time to pay for the others. Without SCALE's assistance this man would have been jailed; he would have lost his place in the public housing and further compromised his mental health. Instead he was able to continue on his road to recovery and move into his new home, his first in over 6 years.

Another example of SCALES ability to assist clients 'turned away' from other legal services is the case of a young aboriginal man who had been charged with a range of charges including disorderly conduct and hindering police. This young man had no criminal record at all and had simply been in the wrong place, where the police and mistaken him for another person. He was ineligible for legal aid and was faced with the prospect of running his own trial against experienced police prosecutors. The likely outcome would have been a conviction of an innocent young man who had always been a law abiding citizen. SCALES assistance allowed this young man to prove to the court that it had not been him. His delight was obvious as he explained that he was happily surprised that justice had in fact been delivered in his case.

For every funding dollar, CLC's offer more than double the dollar in legal assistance. This is because CLC's are sustainable bodies that take their own initiative in seeking volunteers to assist with the work. Community legal centres have a total of over 2000 lawyers acting as volunteers throughout their operation. In 2006, over 300,000 individuals acted as volunteers for CLC's including 68,000 Lawyers. These figures do not include the pro bono work done in collaboration with law firms which amounts to 25,000 hours

annually⁶. This illustrates that CLC's are attracting more than \$25 million dollars worth of free legal advice from their volunteers.

Yet, over the last 10 years, CLCs experienced an 18% reduction in funding⁷. This did not only result in a direct effect on staff retention but also their ability to give advice to clients and an almost crippling effect on the facility needed to assist the clients. In regards to staff salaries, CLCs experience a 30% wage disparity compared to government institutions⁸. This number rises starkly when comparing it to private firms. As a consequence CLCs experience a great difficulty in the retention of their human capital. Some of the short term effects of unsustainable funding may be that office hours of the CLC are reduced, contact times for the clients initial and subsequent meetings reduced and a reduction of representation for the client. This would also lead to an increase in the amount of self represented litigants in court without the advice or assistance from a CLC. In the long run, the general community's confidence in the government's ability to provide a fair access to the justice system would be undermined substantially.

Legal Aid and community legal centres are aligned significantly and when there is a shortfall of funds in one of them, there is likelihood that the shortfall would impact the other one. For instance when legal aid funding is reduced, then legal aid bodies are forced to cut down on the level of their services to keep in line with the new budget. As a consequence, some of the clients that would have been offered legal aid prior to the funding changes would not meet the legal aid criteria. These clients then seek assistance from already stretched community legal centres⁹. This compromises access to justice and is inconsistent with the aims of the commonwealth government legal aid funding programs.

⁶ NACLC, 'why are community legal centres good value?' (2008) *National Association of Community legal Centres* at pg. 6

⁷ NACLC, 'Community legal centres across Australia: An investment worth protecting' (2008) *National Association of Community legal Centres* at pg 2 also see ⁷ NACLC, 'Internal Review of the Commonwealth Community Legal Service Program- CCLSP, (2007) *National Association of Community legal Centres* at pg 11

⁸ *ibid*

⁹ *Ibid* at pg 38

CLINICAL LEGAL EDUCATION

Clinical legal education is a legal practice based method of legal education. It is a form of experiential learning. The general educational aim is to provide students with the opportunity to link theory with practice. This is done by placing students in the role of a lawyer in legal practice or a lawyer in a policy environment. In this they are guided by supervision to use their personal experience of legal work to analyse the legal principles they have learnt in the classroom and to critique the operation, effectiveness and values of the legal system. SCALES runs a clinical legal education program which is based in the work of the CLC and exposes students to legal practice across its busy and varied legal practice.

The term clinical legal education is used to describe a range of educational undertakings. At SCALES students interact directly with real clients in a lawyer/client relationship under the supervision of our solicitors. Through the Clinical Legal Education program

- Students utilise the knowledge they have acquired in law school, applying it to assisting clients.
- Students develop a deep understanding of the ethical and professional responsibilities of legal practitioners
- Substantial practical legal skills are acquired but skills training is not the primary focus
- Students' clinical work is complemented and informed by classroom learning.

A key feature of many Australian Clinical Legal Education Programs is that the legal education occurs in partnership with a range of organisations to provide service to disadvantaged members of the community. Assisting people who do not have the resources to access the legal system has been a longstanding characteristic of clinical legal education programs in Australia.

Clinical Legal Education play a key role in access to justice throughout Australia and worldwide. The clinical experience develops a range of skills by exposing law students to legal practice including a number of alternative methods of conflict resolution. It also allows students to 'experience' legal practice in an area

where it is most needed encouraging a sense of greater ethical accountability¹⁰. This develops within law students a sense of social responsibility and a commitment to pro bono and social justice work which lasts throughout their career.

SCALES has seen this effect first hand. For example, following an influx of asylum seekers fleeing the Taliban in Afghanistan and Saddam Hussein in Iraq arrived and the Howard government refused to offer them any form of legal assistance. SCALES along with church and other social justice organisations founded a community legal centre designed to assist them. This centre called Centre for Advocacy Support and Education (CASE) for Refugees relied on a large volunteer base and many people from a wide cross section of the community came forward, the number of volunteers reaching almost 200 within the first year. Of the legal volunteers (over 80 people), the majority were current law students or alumni of the SCALES clinical legal education program. We have also seen many of our students who have gone into private practice keep a commitment to pro bono and join or initiate pro bono committees or initiatives within their firms. Former students are also well represented as employees and board members of Western Australian community legal centres.

However, these longer term benefits of our clinical program are only possible if it is properly resourced and able to provide support and parallel pedagogical guidance for our students. Clinical programs need the support of both Universities and government to ensure adequate funding and realistic benchmarks, or they fall *prey to the demands of casework that can swamp and compromise clinical supervision*¹¹. They should not be seen as a cheaper form of legal service delivery.

Resource issues are often paramount to those who would consider establishing clinical teaching methods within universities. Providing a productive clinical experience for students needs to be balanced with making such experiences available to as many students as possible. This needs to be considered against the supervision loads, research and professional responsibilities faced by clinical solicitors¹². Developing an environment in which students feel both supported and challenged is a key aspect of the clinic. It is also

¹⁰ Adrian Evans and , 'Independent Evaluations of Clinical Legal Education Programs' (2008) 17 *Griffith Law Review* 52

¹¹ Jeff Giddings, 'Contemplating the Future of Clinical Legal Education' (2008) 17 *Griffith Law Review* 1

¹² *ibid*

what makes clinical teaching more expensive than lecture based programs. In SCALES's case the reduction in Commonwealth funding is evident; when we opened our doors in 1997 it was with a funding agreement that the funding from the University would be matched by Commonwealth funding, however over the years the Commonwealth funding has not kept pace and now represents barely half of what the University contributes. In addition, when we began we had only two lawyers and one administrator, we now have the equivalent of 4 fulltime lawyers, three administration staff, one manager and two paralegals as well as numerous volunteers. In real terms while we have attracted specific funding targeted to certain services we already provide, the base funding we receive from the Commonwealth to run a Centre like ours and ensure that it is sustainable has in real terms dropped year by year. These specifically funded services and projects should 'add value' to a sustainable service, providing additional staff and expertise available to the community and the clinic. In SCALES case, these additionally services ensure that the service is able to provide the base service that should be funded by the Commonwealth. If these specialist services do not maintain services, the entire service is challenged, not simply the additional specialist service.

This situation is not confined to SCALES and their clinical legal program, clinical programs across the country often have to struggle for their survival within the budgets of Law Schools as well as attracting funds externally. While clinical legal education has many benefits both short and long term, most notably strengthening and retaining good lawyers for the community, it is seen by many law schools as too expensive. The complexity of academic staff supervision, the management of student reflection and the analysis of theory in context is relatively expensive when compared with lecture and tutorial delivery to a large class. This is also due to the fact that law studies are funded at a relatively low band, meaning that while law students are charged HECS at a relatively high rate, Universities offering law courses receive funding per student at a lower rate than other courses such as medicine or education. The result is that many Law Schools retain the more cost effective teaching methods which are often delivered in bulk and deny their students the benefits of clinical legal education.

Recommendations:

1. Funding for Community Legal Centres must be increased
 - i) A minimum core funding for key personnel must be guaranteed for each community legal service. This includes sufficient funding for a coordinator, principal solicitor, admin worker,

- solicitor and community worker¹³. Staff salaries need to be increase and should be on par with other service providers such as legal aid.
- ii) Sufficient funding for infrastructure and support must be guaranteed, many of the external funding sources that CLC's attract do not fund items such as rent, administration, telecommunications or postage. These must be properly funded by government.
2. The funding band for law schools must be increased as the currently funding band acts to discourage development of clinical legal education programs
 3. Law schools should be actively encouraged to develop clinical programs through funding arrangements and resourcing
 4. Governments support community legal centres and legal aid commissions to enable staff to partner with universities to establish clinical legal education programs

¹³ This is outlined in the NALCs submission on the Revised Funding Formula for Community Legal centres made to the Attorney General's Department in October 2007.