

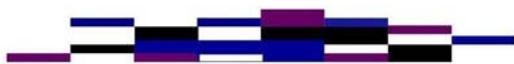
MAKING THE LEGAL  
SYSTEM MORE

RESPONSIVE  
TO COMMUNITY:

A Report on the  
Impact of  
Victorian  
Community  
Legal  
Centre  
Law Reform  
Initiatives



WEST HEIDELBERG  
COMMUNITY  
LEGAL SERVICE



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Lecturer in Law  
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University  
MAY 2007

A REPORT AUSPICED BY THE WEST HEIDELBERG COMMUNITY LEGAL SERVICE AND  
PRIVATELY FUNDED AS A SPECIFIC RESEARCH PROJECT BY A PRIVATE BENEFICIARY  
ISBN 978-0-646-47603-2

# MAKING THE LEGAL SYSTEM MORE RESPONSIVE TO COMMUNITY

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## A Report on the Impact of Victorian Community Legal Centre (CLC) Law Reform Initiatives

By Liz Curran  
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Finally, thanks to Victorian community legal centres for providing information about the advisory bodies on which they participate for Appendix 1 to this Report.

Liz Curran

May 2007

## Executive Summary Report

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MAKING THE LEGAL SYSTEM MORE RESPONSIVE TO COMMUNITY:

A Report on the Impact of Victorian Community Legal Centre (CLC) Law Reform Initiatives

May 2007

By Liz Curran, Lecturer in Law, La Trobe University

A Report auspiced by the West Heidelberg Community Legal Service.

### **Why is this Report is important to the people of Australia?**

This Report looks at work which can affect everyone in Australian society. We are all subject to the laws of the land and how these laws are administered. If the laws on the ground are problematic or unwieldy then we all have a stake in ensuring that these problems can be rectified.

### **Why is this Report is important to governments and the civil service?**

If governments of any political persuasion want to remain connected with the public and stay in power, then they need to listen to their public. On many occasions, politicians claim to be connected to their communities. Often, in reality this is not the case and they rely heavily on community organisations that are truly connected to the concerns of the public, through their service delivery, to tell them what is going on. If governments try to restrain and provide conditions as to what these organisations can and cannot say and how they say it, then governments will create their own disconnect from the community organisations. These organisations are essential if governments are to remain relevant. Why is it that governments expect and request feedback from community organisations, e.g. community legal centres (CLCs), but often fail to realise the ongoing motivation behind the (mostly freely given) feedback? CLCs hold opinions on the solutions too and it is because of their client experience. To expect CLCs and other community organisations to provide the feedback but to not include their genuine suggestions for change is limiting opportunities for governments to be proactive and innovative.

### **The people whom Community Legal Centres help?**

CLCs because they provide legal services for free, see a broad cross section of the Australian community. They see working families; they see people in difficulty with credit providers, energy services and experiencing family law breakdown. That is, people from all walks of life. They also see clients who are on the margins. This gives CLCs a strong vantage point that policy makers can reap many benefits from.

Accordingly, the CLCs valuable and varied work in law reform has a critical role in a democratic civil society. CLCs are a legitimate part of the legal landscape and they can provide an alternative voice.<sup>1</sup> It is easy in a democracy as large as Australia, for government whether Local, State or Federal, Liberal or Labour and their agencies to lose sight of the on-the-ground experiences of members of the public. Bureaucracies and large corporations can be removed from the issues that confront many people for instance: a person with a disability in accessing services, the refusal by a pizza shop to service an Aboriginal person, the difficulties faced by a person who left school aged twelve in understanding complex forms and procedures, the struggles of the farmer who has been the victim of dodgy credit arrangements or the child who has been in State care. These are the people who CLCs have seen over the three decades of their existence and these are the clients they continue to help.

The six selected snapshots of law reform activity analysed for this research report revealed that CLCs have been able, through their casework, to identify client experiences that are problematic, unfair, costly, inefficient or unjust. They have brought these experiences into the view of governments, the public and industry and worked for the improvement of the justice system so that it is responsive to community need. The documents analysed for this research, reveal that CLCs law reform work being based on client experience, has provided the impetus for change on many occasions. The work has had immense value in making laws and their administration more effective and responsive.

Often the issues when first identified and raised by CLCs seem mundane, uninteresting or incredible. CLCs despite this, have kept important issues on the agenda. Their persistence and constructive suggestions have seen the laws and their administration improved, streamlined and more responsive to individuals in society. The reality is, as this research has shown, often CLCs do not get the credit they deserve for their role in law reform. Often, through the process of filtering that occurs at the different levels of decision-making, the source of the initial input for ideas is lost with other agencies and arms of government taking credit for the suggestions which can be tracked back to CLCs.

There is a critical need to ensure that this input on law reform and community education is able to continue unhampered by resource constraints and an overburdening of centres with too much casework. Space for CLCs to think and reflect on the ramifications and trends in their casework and what needs to be examined more systematically is critical. As Rix and Burrows state, “by providing ... Australians with the means to enjoy their legal citizenship, the community legal sector plays a

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<sup>1</sup> S Rice, *Community Legal Centres, Steam trains and Bourgeois Management*, Volume 18 No. 2, *Alternative Law Journal*, April 1993, 86-87.

significant role in preventing social disintegration and disorder and in underwriting the legitimacy of the legal and political systems".<sup>2</sup>

### Key Findings of the Research

- Client experience or the human story of the effect of laws and their administration was facilitated by community legal centre involvement.
- CLC law reform activities have enabled the monitoring of the approaches of industry, government at Federal, State and Local Council level.
- CLCs have often been the sole agency identifying and advocating about a specific problem encountered by clients over many years. On occasion, CLCs' suggested reforms have been adopted at a later stage without any acknowledgment of the role of CLCs in the formulation of these reforms.
- CLC law reform activities have highlighted difficulties, strengths and inconsistencies in the law and its administration. This is keeping industry, government at Federal, State and Local Council accountable to the community.
- CLC law reform activities have enunciated a different perspective in public debates which is grounded in their casework experience and hence reflective of the people to whom they provide legal services.
- CLCs have had their recommendations heeded in Parliamentary, Statutory and other inquiries at Federal and State level. Recommendations of CLCs have been adopted by Government, statutory or industry regulatory bodies. Some recommendations of CLCs whilst being acknowledged have not necessarily been implemented by those bodies. The ability to implement them often lies beyond the power of the CLCs and so cannot be used as a measure of success.
- Training of personnel has been changed often due to CLCs highlighting improvements to training of personnel, operating procedures or requests for CLC involvement in the training itself.

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<sup>2</sup> M Rix and S Burrows, *The Foundations of Legal Citizenship: Community Law, Access to Justice and the Community Legal Sector*, Volume 30 No.3, *Alternative Law Journal*, 126, 130.

- Having viewed the documentation from numerous law reform activities from 1986-2005, these activities have been levelled at Local, State and Federal governments and oppositions, irrespective of the persuasion of the government in power at the time.
- CLCs have been invited by Governments at Local, State and Federal level to inform of their experience and ideas for moving forward, regulation and legislative drafting or problem eradication.
- As the six law reform snapshots demonstrate, some changes in the law, policies and its administration have taken over ten years to occur from when the client experience was first identified and responded to. The process of law reform is very slow to reap results as it often involves a sustained and persistent effort to raise awareness and change often entrenched cultures.

#### Key Recommendations of the Report

1. Casework needs to be balanced with Law Reform and Community Legal Education work of CLCs. Opportunities for reflection on trends in casework, problem identification and solutions need to be properly supported and resourced by the funders of CLCs as it is in the public good.
2. Measurement of outcomes or impacts of law reform activities must reflect that such outcomes may only be reaped in the long term (which can be up to ten years to come to fruition).
3. CLCs could improve their identification of and ownership of reforms initially suggested by them but later claimed by others. This is imperative if CLCs are to gain full recognition of their role in the reforms which are adopted.
4. Improved record-keeping of CLC meetings with decision-makers. The earmarking and tracking of recommendations made by CLCs (which are later adopted) to ensure they are more consistently maintained, monitored and evaluated is required.
5. Attempts to measure law reform and community legal education should be tempered by the recognition that human service outcomes can be invisible, long-term and imprecise. Outcomes contain and involve aspects of well-being and development that cannot be adequately measured with a focus on more immediate cost-benefit analysis.<sup>3</sup>

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<sup>3</sup> L Glanville, *Community Legal Centres: Can CLCs advocate for themselves?*, Volume 24 Issue 3, *Alternative Law Journal* 1999, 154-156.

Enquiries about receiving copies of this report should be directed to Victoria Smith,  
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Enquiries on the content of the research should be directed to Liz Curran, Lecturer in Law,  
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## Rationale

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This Report examines the value and impact of law reform activities of community legal centres on the community and on legislative policy and its administration. It provides information about Victorian Community Legal Centres' (CLCs) law reform activities. It also provides some literature on the role and impact of community education.

The research and report are auspiced by the West Heidelberg Community Legal Service (WHCLS) and were privately funded. The Legal Service has a long history of undertaking law reform and community legal education in conjunction with its partner, La Trobe Law through a student Clinical Legal Education Program based at the WHCLS.<sup>4</sup>

### The aims in undertaking this research are:

1. To document some of the history of legal centre law reform activities in Victoria.
2. To examine the interaction between client experience of the legal system and law reform responses by examining six snapshots of law reform activities undertaken by the community legal service sector in Victoria.
3. To examine the impact and role of law reform and community legal education in improving the justice system and enabling community participation.

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<sup>4</sup> The West Heidelberg Community Legal Service commenced operations in the West Heidelberg Community Centre in 1975. In 1997, a partnership was formed with La Trobe University which employed a Chair in Legal Aid who provided services as a solicitor in conjunction with students at the Legal Centre. This decision emerged from experiences and research into high levels of unmet legal need in West Heidelberg. See Commission of Inquiry Into Poverty, *'A Study of the Heidelberg (Victoria) Community'*, AGPS, Canberra, 15-24 and 75-76; M Noone, *"They all come in one door" The Transformative Potential of an Integrated Service Model: A Study of the West Heidelberg Community Legal Service'*, in P Pleasance, A Buck and N Balmer, (eds), *'Transforming Lives: Law and Social Process'*, United Kingdom Stationary Office, 2007 and L Curran, *'Making Connections: The Benefits of Working Holistically to Resolve People's Legal Problems'*, Volume 12 no. 1, E law Murdoch University Electronic Journal of Law, [http://www.murdoch.edu.au/elaw/issues/v12n1\\_2/Curran12\\_1.html](http://www.murdoch.edu.au/elaw/issues/v12n1_2/Curran12_1.html), 7-8

## Background

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There are 207 community legal centres in Australia which provide legal services to approximately 350,000 clients per year.<sup>5</sup> CLCs assist disadvantaged clients in the community and are often the first point of contact for people seeking assistance or their last resort when all other attempts to obtain legal assistance have failed.<sup>6</sup>

The community can benefit from educational programs designed to inform them of their legal rights, responsibilities and how the law operates. Such legal education can assist members of the public in the prevention or reduction of the escalation of their legal problems.<sup>7</sup> It has the potential to enable early intervention in problem-solving.<sup>8</sup> This can save money later, in terms of court costs and clogging up the system with claims that might be resolved if the parties had more information. If people know about the law, how it can affect them, avenues for advice, assistance and representation that are available; it is then that the system can run more smoothly and access to justice may be more readily attained.

The Senate Legal and Constitutional Affairs Committee have highlighted the importance of the provision of legal aid services effectively, in terms of ensuring adherence to the rule of law, and encouraging community participation in the legal system.<sup>9</sup> It has also acknowledged the important

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<sup>5</sup> National Association of Community Legal Centres, Submission 84, 3 referred to in the Senate Legal and Constitutional References Committee, *Legal Aid and Access to Justice* (Canberra: Senate Printing Unit, Final Report June 2004), Ch 11.

[http://www.aph.gov.au/senate/committee/legcon\\_ctte/completed\\_inquiries](http://www.aph.gov.au/senate/committee/legcon_ctte/completed_inquiries)

<sup>6</sup> *Ibid.*

<sup>7</sup> H. Genn, *Paths to Justice: What People Do and Think about Going to Law ?* (London: Hart, 1999); Pleasence, *ibid.*; P. Pleasence, *Causes of Action: Civil Law and Social Justice*, 2nd ed., LSRC Research Paper No. 14 (Norwich: Stationery Office, 2006); and P. Pleasence, A. Buck, N.J. Balmer, A. O'Grady, & H. Genn, *Causes of Action: Civil Law and Social Justice*, LSRC Research Paper No. 11 (Norwich: The Stationery Office, 2004).

<sup>8</sup> Recent findings from an English and Welsh study revealed that most often young people aged between 18-24 years of age stated that they wished they had received legal advice and had acted sooner. 23% were unable to correctly identify any advisers and did nothing to resolve their problem compared to 9% of those who were able to. 35% of respondents suggested they regretted their problem resolution strategy or lack of one. See N Balmer, T Tam, P Pleasance, *Young People and Civil Justice: Findings from the 2004 English and Welsh Civil and Social Justice Survey* Legal Services Research Centre, February 2007, [www.lsrc.org.au](http://www.lsrc.org.au)

<sup>9</sup> Senate Legal and Constitutional References Committee, *Inquiry into the Australian Legal Aid System: First Report* (Canberra: Senate Printing Unit, March 1997); Senate Legal and Constitutional References Committee, *Inquiry into the Australian Legal Aid System: Second Report* (Canberra: Senate Printing Unit, June 1997); Senate Legal and Constitutional References Committee, *Legal Aid and Access to Justice* (Canberra: Senate Printing Unit, Final Report June) 2004) Ch 11, 206 ; Senate Standing Committee on Legal And Constitutional Affairs, *Cost of Legal Services and Litigation Discussion Papers No 1-7 and Final Reports 1 and 2*

role of community legal education.<sup>10</sup> The Committee stated in 1998, “A lack of effective access to justice leads inevitably to the marginalisation of the law and an increasing irrelevance of the core democratic institutions.”<sup>11</sup>

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(Canberra: Senate Printing Unit, 1991-1994).

[http://www.aph.gov.au/senate/committee/legcon\\_ctte/completed\\_inquiries](http://www.aph.gov.au/senate/committee/legcon_ctte/completed_inquiries)

<sup>10</sup> Senate Legal and Constitutional References Committee, *‘Inquiry into the Australian Legal Aid System’* Third Report (Canberra: Senate Printing Unit, June 1998) Ch 9, 5

[http://www.aph.gov.au/senate/committee/legcon\\_ctte/completed\\_inquiries](http://www.aph.gov.au/senate/committee/legcon_ctte/completed_inquiries)

<sup>11</sup> Senate Legal and Constitutional References Committee, *‘Inquiry into the Australian Legal Aid System: Third Report’* (Canberra: Senate Printing Unit, June 1998) Ch 9, 15;

[http://www.aph.gov.au/senate/committee/legcon\\_ctte/completed\\_inquiries](http://www.aph.gov.au/senate/committee/legcon_ctte/completed_inquiries)

## Limitations Encountered

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The literature search for this research revealed very little has been written about the law reform work undertaken by community legal centres and its impact since the inception of community legal centres in the mid 1970s. Most writing on law reform in the literature examined, related to the particulars of the specific law reform initiative rather than to the phenomena and impact of law reform per se. This makes the research more imperative as it has revealed the gap in the literature. Accordingly, it contributes to the discourse around law reform by documenting law reform activities including test case initiatives undertaken and their value.

A difficulty encountered in the conduct of this research was that a number of community legal centres had, over the years, destroyed their documentation on law reform and community legal education activities.<sup>12</sup> This meant that a considerable amount of documentation about the rationale for instigating law reform and legal education activities, the problems identified and the strategies adopted to resolve the problems was missing. This was presumably due to limited office space and the lack of resources to properly archive such material. This was a pity, not only from the point of view of this research (which is largely based on an examination of documentation) but also from the point of view of ensuring valuable historical documentation is retained. The Federation of Community Legal Centres (The Federation of CLCs) has advised that due to their awareness of a need for improved archiving, they have secured some funding from the Victorian Law Foundation to undertake this task. Ongoing resourcing of the archiving of the documentation and recognition by CLCs that the storing of such information is an important part of their work, may address this problem in future.

The research, which this report will summarise, was commissioned in a short timeframe. The research commenced in February 2007 and a final report was required by the legal service by the end of May 2007. It is a timely decision by the West Heidelberg Community Legal Service to auspice this research as it has discussed the importance of conducting such research for many years. The release of this research project coincides with an Internal Departmental Review of the Community Legal Service Program by the Federal Attorney General being conducted simultaneously.

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<sup>12</sup> Often this was due to limitations on space created by the holding of client file rules for seven years.

## Methodology

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**Part A:** Literature Review on Community Legal Education and Law Reform activities of Community Legal Centres in Australia

**Part B:** Law Reform – The identification of the location of documentation and its analysis

Law reform activities of centres are numerous. In view of the short time frame for this research project, not all law reform activities of CLCs could be examined and evaluated. Accordingly, a snapshot of law reform projects including test cases relevant to those projects was selected on the basis of preset criteria which were as follows:

1. That the law reform project was completed.
2. That the law reform project stemmed from client casework.
3. That the law reform project involved a number of stages including problem identification.
4. That documentation for the law reform project was held or could be located and viewed. This determined the years for the snapshots in most cases.
5. Impacts/Outcomes were examined to determine whether there was an impact or outcome flowing from the law reform project, i.e. by a clear change in law, policy, recognition, media coverage, reference in recommendations, Parliamentary/Statutory inquiry, the grant of standing; or clarification of the position in law in a court case by a court or a successful case.

### Selected Law Reform Campaigns

Using the above criteria, the following six law reform projects of CLCs were selected. These include a number of initiatives of working groups of the Federation of CLCs:

#### 1. PERIN Fines/Infringements (Snapshot 1994-2005)

Minutes reveal that between five and twelve legal centres were actively involved in the PERIN Working Group at various times.

**Test Cases: The Patterson and Mansfield Cases.**

#### 2. Debt Collection (Snapshot 1998-2003)

**Test Case: *Collection House Ltd. V Taylor.***

#### 3. Police Issues Working Group (Snapshot 1984-1996)

Minutes of the group reveal that between seven and fifteen legal centres were actively involved in the Police Issues Working Group at various times.

#### 4. Energy Regulation and the Development of Regulations and Oversight Mechanisms (Snapshot 1993–2006)

#### 5. Violence Against Women and Children Working Group (Snapshot 1994–1998)

Minutes of the group from 1994-1997 reveal between seven and twelve legal centres were actively involved in the Violence Against Women and Children Working Group at various times.

#### 6. Corrections Working Group (Snapshot 1997-2002)

Minutes of the group from 1997-2002 reveal between seven and eleven legal centres were actively involved in the Corrections Working Group at various times.

Test Cases: Prison Contracts and the FOI Case, VCAT 1999, Coronial Deaths in Custody in Prisons

#### Examination of documentation

The following questions were considered in relation to the selected law reform activities:

- a) What was the experience of legal centre clients that led to the need for the law reform activity?
- b) What was the problem identified that needed to be resolved, changed or have its status maintained?
- c) What were the various strategies or methods utilised by the CLCs to bring attention to the problem with the public and relevant decision-makers?
- d) Did the law reform activity of legal centres gain recognition, have an impact or an outcome? For example, were the CLCs' recommendations referred to or acknowledged in a Parliamentary or Statutory Report? Did they lead to changes in the law, policies or the administration of the laws, protocols, guidelines or training? Or did the recommendations lead to clarification of laws or procedures that were unclear or uncertain? Did the test case gain recognition? For example, were legal centres recognised as having an important role through permission to act as amicus curie? Did they win the case? Did the case lead to a clarification of the legal position or clarify the law? Were there useful observations made by the court or outcomes by the media in later policy-making? Did the case lead to changes in the law, policies or the administration of the laws, protocols, guidelines and/or training?

## The Research

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### Part A: Literature Review on Community Legal Education and Law Reform activities of Community Legal Centres in Australia

There are very few academic articles in the Australian context analysing and critiquing the general role or impact of community legal education and law reform work undertaken by community legal centres, the private profession, legal aid commissions or other legal services in Australia. There is significant material on specific topics where law reform submissions, changes or examinations are being undertaken, but not on the phenomenon of law reform itself.

In 1992, Giddings described how legal centres use casework to achieve a range of legal and social changes. He stresses that their work in this area is not unconnected to individual cases which inform the processes that lead to the law reform activity.<sup>13</sup> He observes that the CLC work is not very often at superior court level but is more often directed at grass roots cases. Giddings states that "Casework needs to be viewed as only one mechanism which may assist CLCs in achieving their objectives."<sup>14</sup> Giddings reflected that it is the casework of CLCs that is attractive to funders, but argues that casework can be structured in such a way as to "stretch the benefits beyond the individual assisted."<sup>15</sup> Such benefit sharing he stated includes changing existing interpretations of particular laws, amendments of Statutes, maintaining or increasing the accountability of groups or individuals in positions of power and/or changing the practices adopted by particular industries.

Giddings also examined a series of test cases that CLCs had been involved in: Housing in 1982,<sup>16</sup> Credit in 1989<sup>17</sup>, Violence Against Women and Children (VAWC) in 1991<sup>18</sup>, Employment in 1991<sup>19</sup>

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<sup>13</sup> J Giddings, 'Casework, Bloody Casework', Volume 17 No. 6 Alternative Law Journal, 261-265.

<sup>14</sup> Ibid, 261.

<sup>15</sup> Ibid, 261.

<sup>16</sup> The CLCs in a case secured the release from prison of squatters, See M Noone and others, 'Bona Vista: A Large Attractive Property' Volume 8 No.6, Legal Service Bulletin, 1983, 152-157, Ministry of Consumer Affairs, Annual Report, 1991, 43

<sup>17</sup> In 1989, HFC Financial Services was taken to court by CLCs and financial counsellors for failing to comply with certain conditions in their dealings with clients. HFC Financial Services was ordered by the Victoria Court of Appeal to pay over 3 million dollars to a fund to establish the Consumer Law Centre. As a consequence of this case, credit providers licenses would only be provided in future where certain conditions were met that protected consumers. J Giddings, 'Casework, Bloody Casework', Volume 17 No. 6 Alternative Law Journal, 261, 262

<sup>18</sup> In 1991 the Women's Legal Resource Group in Queensland gave support to a woman charged with murder after 22 years of domestic violence against her by her partner. In the Queensland Supreme Court she was found not guilty on the basis of self defence. J Giddings, 'Casework, Bloody Casework', Volume 17 No. 6 Alternative Law Journal, 26, 262.

<sup>19</sup> The Public Interest Advocacy Centre (PIAC) was involved in a High Court Case, Australian Iron and Steel v Banovic (1989) EOC 92-271. In this case by a 3-2 majority the High Court upheld the

and Police<sup>20</sup> in 1989. Giddings states that often CLCs do the work neglected by the private profession as clients do not have the capacity to pay for a private lawyer. He observes that therefore, CLCs often represent groups in the community who traditionally have little opportunity to exert their legal rights. He argues that change can be brought about not only by challenges in the courts (which is often not a feasible opportunity for impecunious clients or CLCs) but through improving the process to make it more just.<sup>21</sup> He notes that collectively legal centres through their casework have been able to identify trends and respond.

Rix and Burrows<sup>22</sup> argue that “CLCs should be seen as having a broader role beyond community law, one that encompasses legal citizenship. This concept of a broader role for CLCs is alien to the way most government funding authorities, CLC clients and CLCs view themselves.”<sup>23</sup> Like Giddings, they note that often the work undertaken by CLCs is mundane, unglamorous and routine but argue that such matters are still important for cohesiveness and inclusiveness in that they are based on rights that individuals have in common as citizens and human beings. Rix and Burrows argue that peoples’ knowledge of these rights (which can be enhanced through community legal education)<sup>24</sup> and their ability to exercise them effectively can play an important part in sustaining this cohesiveness and the inclusiveness of Australian society and its democratic institutions.

Similarly, Giddings and Robertson have stated “Community legal centres have been politically committed to delivering community legal education designed to empower people and enable them to make effective choices about legal issues.”<sup>25</sup> For this reason, they argue the justice system has an obligation to provide access to justice and prevent fragmentation.<sup>26</sup>

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claims of eight women over their retrenchment as it was deemed to be discriminatory. J Giddings, ‘Casework, Bloody Casework’, Volume 17 No. 6 *Alternative Law Journal*, 261, 262.

<sup>20</sup> Giddings notes that CLCs were granted standing to appear in Coronial inquiries into police shootings. This recognised that they had something worthwhile to submit. He also notes that concern about the treatment by police of young people led to the establishment of Alphaline by the Fitzroy Legal Service. This was a twenty four hour telephone advice line for young people facing police questioning which received funding. J Giddings, ‘Casework, Bloody Casework’, Volume 17 No. 6 *Alternative Law Journal*, 261, 263

<sup>21</sup> J Giddings, ‘Casework, Bloody Casework’, Volume 17 No. 6 *Alternative Law Journal*, 261.

<sup>22</sup> M Rix and S Burrows, ‘The Foundations of Legal Citizenship: Community Law, Access to Justice and the Community Legal Sector’, Volume 30 No.3, *Alternative Law Journal*, 126.

<sup>23</sup> *Ibid*, 126.

<sup>24</sup> Brackets inserted by the author.

<sup>25</sup> J Giddings and M Robertson, *Informed Litigants with Nowhere to Go*, Volume 26 No. 4 *Alternative Law Journal*, 184.

<sup>26</sup> M Rix and S Burrows, ‘The Foundations of Legal Citizenship: Community Law, Access to Justice and the Community Legal Sector’, Volume 30 No.3, *Alternative Law Journal*, 126 and 130.

Giddings warns of the dangers of overloading legal centres with caseloads and the need to ensure the individual work does not swamp legal centres and detract from their policy related cases and research.<sup>27</sup> This author notes that the law reform work which is examined in this report has led to greater efficiency and a reduction in unnecessary court cases as clarification around problematic processes can often result in less cost overall to the legal system.

Schetzer also observes that the State has limited capacity to respond to those who are disadvantaged and that community legal centres are well placed to ensure that feedback on policies and how they operate on the ground is provided to governments.<sup>28</sup>

Glanville has stated that the history of CLCs has “recognised the connections between direct service work with individuals and the need for legal education and law reform if any change is to be sustained in the longer term.”<sup>29</sup> She argues that CLCs, whilst being able to challenge the status quo for clients, when they themselves as legal services are threatened, are not so good at working towards ensuring their own future work can be continued and sustained into the future. Glanville, in recognising the immense value of legal centres casework, legal education and law reform work as pivotal for individuals and communities observes that it is this very work which opens CLCs up for immense criticism. As the push towards outputs in the form of service delivery and market mechanisms around user pays and competing resources gain prominence, governments can lose sight of the results of law reform work. This includes lower cost and better quality outcomes for individuals, communities and clients at large. She observes that determining an unambiguous service, service relationship can be complicated and unclear when examining community legal education and law reform and notes that human service outcomes can be invisible, intangible, imprecise, indeterminate and not apparent over the short term. She questions therefore, how they can be adequately measured “particularly in a policy context dominated by a focus on immediate cost-benefit.”<sup>30</sup> Kerr has stated that in order to retain and restore faith in the justice system, the Commonwealth and State government need to cooperate on law reform and work to simplify court procedures and laws.<sup>31</sup>

CLCs, according to the literature examined, would appear to be one important method of assisting governments in remaining relevant, connected to their public and in ensuring the responsiveness of the justice system in Australia.

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<sup>27</sup> J Giddings, ‘Casework, Bloody Casework’, Volume 17 No. 6 *Alternative Law Journal*, 261, 265

<sup>28</sup> L Schetzer, ‘Community Legal Centres: Resilience and Diversity in the Face of a Changing Policy Environment’, Volume 31 No.3 *Alternative Law Journal* 159.

<sup>29</sup> L Glanville, ‘Community Legal Centres: Can CLCs advocate for themselves?’, Volume 24 Issue 3 *Alternative Law Journal* 1999, 154-156

<sup>30</sup> *Ibid*, 156.

<sup>31</sup> D Kerr, *Reclaiming Justice*, Volume 18 No. 6 *Alternative Law Journal*, December 1993, 293-295

### 1. PERIN Fines/Infringements (Snapshot 1994-2005)

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#### BACKGROUND

There are two main stages in the Penalty Enforcement by Registration of Infringement Notice (PERIN) Working Group's (PWG) law reform activities in the period of the snapshot. The first stage pertained to the situation before 2002, when there was a limited capacity for the special circumstances of client to be considered in penalty and where the imprisonment of indigent fine defaulters was permitted without the fine defaulters ever appearing before the courts. The second stage relates to a period after legislative reforms in 2002, on where the remaining problems for clients with PERIN fines, but after a 'special circumstances' category was included in legislative reform.

#### A. CLIENT INPUT

Clients of CLCs were presenting with significant confusion and distress around unpaid fines. Many were unaware of the requirements placed on them and the consequences of not paying.

Clients in the initial stages of the law reform project from 1994-2002 were unable to pay by instalments or to substitute the fines with community work due to being poor, homeless, or having a mental or intellectual incapacity or all three combined. This meant that if they could not pay often significant fines, the only option was imprisonment. In stage one under the PERIN Court Scheme in Victoria, a person arrested with outstanding fines could be arrested by the Sheriff and imprisoned without being required to be bought before a Magistrate. It should be noted that this was a system of administration of fines which most often did not in reality involve a court process. Many CLCs found clients imprisoned for their fines in stage one of the PWG without ever having appeared before a court.

Many of the CLC clients presented with significant fines. This was largely due to clients being impecunious, being unable to see private lawyers and being people with significant mental health, disability and other issues. Often the fines emerged from these very circumstances. Clients with brain acquired injury, mental illness, homelessness, intellectual disability, low levels of schooling and/or low levels of literacy; or a combination of all of these factors.

In the documents inspected for this research, clients in these circumstances had accumulated thousands of dollars, mostly in fees added to the initial fine. Many of these clients had no capacity to understand the complicated procedures and various bodies involved.

In stage one of the project, there were a number of private collection agencies involved and later Civic Compliance. In addition, fines could relate to different enforcement agencies and if contested, would be set down in various courts all over Victoria rather than being consolidated into one court case in one region. This saw clients and their lawyers required to travel all over Victoria, even though the arguments in each case were the same. This left many clients stranded if they had no transport, confused and made them give up.<sup>32</sup>

The PERIN Court (unless a matter was contested) in fact was not in substance a court, but rather an administrative system. This also caused misunderstandings for clients who were waiting and expecting a court case.

Many clients were not in receipt of the documentation either because of their homelessness or because they had moved. In one case, a lady had moved to escape domestic violence. Upon calling the police to remove her threatening husband, the police in fact arrested and imprisoned her due to a list of outstanding fines, which came up when she called them for protection. These fines were later found not to be her responsibility. She was jailed for some time without being brought before a court and her children were taken into care during this time.

## **B. PROBLEM IDENTIFICATION**

The Public Interest Law Clearing House (PILCH), a CLC, convened the PWG in 1994 to examine PERIN due to experiences of clients emerging consistently in casework. The group comprised representatives from CLCs, the Legal Aid Commission, financial counsellors and the Victorian Council of Social Services and some other welfare agencies.<sup>33</sup>

CLCs met and exchanged case histories about clients from 1996-2005 (the PERIN Working Group still meets). These were documented and exchanged on a regular basis in PERIN Working Group meetings and in the exchange of case histories, collected over the period of documents inspected. It revealed that many of the fines were:

1. For very minor offences;

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<sup>32</sup> This multiplicity of court dates and locations is still a problem in 2007.

<sup>33</sup> Annual Report, Public Interest Law Clearing House, 1994-1995, 10.

2. A large proportion of the money claimed was for additional fees where the enforcement and administrative bodies associated with the fines had not followed proper procedure;
3. Where documentation was unduly complex and confusing, clients had limited options for payment and had limited capacity to take into account the personal circumstances of people.

In the early days of the work of CLCs, the nature of the work was chaotic and often urgent. Clients came after the seven day notice that the Sheriff had served and it was difficult to get the matter back before the court. People would therefore be detained in the police cells with no documentation.

Many fines issued where there were significant amounts outstanding, involving homeless people and the fines themselves related to their homeless status. It was noted that there was a lack of scrutiny of the process by the courts and that the system operated in a significantly unfair way in relation to the impecunious. CLCs concerns were about the fairness of the system and a concern about the impact of PERIN on those who were poor and disadvantaged, rather than people who had a capacity to pay and who were just avoiding their obligation to pay. This point was made consistently in submissions and correspondence with government over the period of the law reform snapshot.

The CLC lawyers became involved on behalf of clients and they themselves found the system unduly bureaucratic, uncompromising and difficult to navigate. They observed continuously that if legally trained practitioners were confused by the system and were regularly being advised of inconsistent options, that for clients with minimal literacy and skill the system was even more complicated. Some CLCs decided to regularly represent clients, not only in negotiation with enforcement agencies and Civic Compliance, but tried to have matters referred to open court where they could demonstrate how the fine enforcement process had been badly handled. The CLC lawyers regularly wrote up the outcomes of cases and their experiences of the process and would later write to relevant officials, the Magistrates' Court, Department of Justice, and governments.

Accordingly, CLCs (as many private practitioners would not represent people who were unlikely to pay) developed expertise in the dull and complex area of PERIN because of the impact it was having on clients. This increasingly meant that financial counsellors referred clients to CLCs.

Over the years of this snapshot, although problems identified by CLCs were incrementally rectified, many remained and other issues emerged from casework which meant that strategies differed. For example, at one point a man who was his family's sole social support was imprisoned in the police lock-up because he was barred from making an application for instalments to pay his fine. He had no ability to pay the amount in full and had four dependent children. In jail he only received visits one day per week from his children; who were distressed about this. The CLCs tried to negotiate his

conditions, the number of visits with the family and provide additional links to supports to ease the family stress.

### C. STRATEGIES ADOPTED

It was decided that as the process and paperwork surrounding the PERIN system was so complex, voluminous and confusing, the first step would be to endeavour to explain the complex system in simplified form; in a booklet. This could be used by service providers and handed to clients. The documentation revealed that this process was long and difficult and that even in its final form the booklet was very complex as the system was difficult to explain. A booklet was produced in by VLA in consultation with CLCs in 1998.

The second major concern in the early days of the project was the issue of people being imprisoned who, because of their inability to pay, did not have the options of instalments, which were refused; or of community work. After a legal analysis of the position by CLCs, it was concluded that, because people were being imprisoned without ever appearing before the court, this was a breach of Article 14 of the *International Covenant on Civil and Political Rights* and probably unconstitutional. It was noted that as a civil law incursion the penalties seemed greater and with less protections than in the criminal justice system. Representations were made in correspondence on this point in meetings with members of the Department of Justice and the Attorney General. In the late 1990s media attention was used by the Fitzroy Legal Service to highlight a case where a man had been imprisoned for non-payment of fines and had been badly beaten in prison with a resultant brain injury. This case highlighted the harshness of the PERIN system.

#### *Test case: Patterson*

In 1996, the Public Interest Law Clearing House (PILCH), a CLC, took on a test case where they briefed pro bono barristers to apply for a writ of habeas corpus.<sup>34</sup> The facts of the case were that Lynette Patterson who was 49 years of age and a mother of three children had been imprisoned for a period of six weeks on 22nd February 1996 without having an opportunity of being brought before a court. She had defaulted in the payment of fines and fees for non-payment (the latter made up a large proportion of the amount) for traffic and parking fines under the PERIN system. Ms Patterson had served almost four weeks in Fairlea Prison without being brought before a court. PILCH's Manager, Caitlin English acted as instructing solicitor, with Maureen Hickey QC, as pro bono Counsel, in the case against the Director General of Corrections. Balmford J in the Supreme Court of Victoria granted an interim order for release of Ms Patterson from prison. In the court hearing, Balmford J questioned the Director General as to why the refusal to issue community orders for people who were unable to pay their fines and were facing imprisonment.

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<sup>34</sup> *Patterson v the Director General of Corrections*, VC 96 (07082 19 March 1996).

The case was able to be settled with the woman's later release. The case led to a change in policy within the Director General of Corrections soon after the court case.

### Correspondence

Letters seeking to clarify matters were sent throughout the snapshot period on issues such as:

- how the fines were administered, the confusion created to consumers by various contracted-out services which provided different and often inconsistent advice;
- misleading information to clients;
- outlining unjust and unfair outcomes in particular cases without naming clients.<sup>35</sup>

### Submissions

Submissions on PERIN included client case histories. These detailed client disability and the respective impacts upon their ability to pay fines; threats of prison given by officers (at a time when there would have been no authority to imprison); defective cameras at the time of fine imposition; and a case where fines were \$5,967 and the most serious fine was smoking in a railway station.<sup>36</sup>

These submissions made suggestions for improvements to the PERIN system many of which were adopted (See Outcomes/Impact section below). These included:

- Enabling extensions of time to pay;
- Instalment options for payment;
- Improved documentation;
- Consumer Protections;
- Improved training of enforcement officers and sheriffs;
- 'Special circumstances' should be added and be available and include things such as severe financial hardship, mental illness (adopted) social dysfunction, intellectual disability (adopted), homelessness (adopted), chronic alcoholism and drug dependency;

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<sup>35</sup> See letter G Sullivan to Attorney General 25 October 2004, letter from the Director of Enforcement Management. Department of Justice, 8 September 2004, letter from G Sullivan to Attorney General raising issues around PERIN client experiences and concerns eg misleading and confusing documentation, Registrar's discretion and the imprisonment of impecunious persons, letter P Lynch and G Sullivan to Attorney general, 18 June 2003.

<sup>36</sup> Submission of the Federation of Community Legal Services to the Victorian Parliamentary Law Reform Committee Inquiry into Warrant Powers and Procedures, August 2004, Submission to the Public Accounts and Estimates Committee Report on Outstanding Fines and Executed Warrants, September 1997, Submission of the Federation of Community Legal Services and Public Interest Law Clearing House to the Public Accounts and Estimates Committee Into Unpaid Fines and Unexecuted Warrants, January 1997, Submission Review of the PERIN Court, May – June –July 2004

- Protocols with the issuing agencies (adopted);
- Requirements to accept instalment payments where reasonable to do so(adopted);
- Commissioning of a Review of the operation and coordination of Civic Compliance, PERIN Court and the sheriffs office to ensure best practice (adopted);
- Expansion of Schedule 7 of the Act (adopted);
- The provision of a Special Circumstances List (adopted);
- The provision of more options for a Magistrate before a person is sent to prison (adopted).

### Meetings

Over the snapshot period numerous meetings were held with Attorneys General Jan Wade and Rob Hulls to raise the concerns of clients and recommend changes. Similar meetings were held with the Department of Justice, the Review of PERIN team, magistrates, registrars, Sheriff's Office and enforcement agencies during the period of the snapshot.

A sub-group of the PWG met with representatives of the Attorney General's Department, the Attorney General Jan Wade, the Court Registrar, the Sheriff to discuss problems with the system.<sup>37</sup> At these meetings, the PWG suggested the system would be fairer, more efficient and less costly if it had more capacity to take into account special circumstances of individual clients (of CLCs and legal aid), such as poverty, mental illness, homelessness, intellectual disability, alcohol abuse, low literacy and homelessness.

### Legal Research and Analysis

The PWG and CLCs regularly analysed the law in relation to powers of enforcement agencies, the Sheriff's Office and potential litigation against such agencies when they acted inappropriately.

### Legal Advice and Support to non legal service agencies acting for clients

Lawyers on the PWG also gave legal advice and legal support to financial counsellors in many court cases; the most notable was in the *Mansfield Case*.<sup>38</sup> The documents revealed that legal centres were involved as there was a lack of clarity around whether PERIN fines were provable in bankruptcy. Although no legal service was noted on the court record at the time, the case went to the High Court; CLC lawyers were involved in advice and strategy in the lead up to and after the court decision. Although the High Court held that they were not provable in bankruptcy, the High Court decision did clarify the legal position for future clients who were entering bankruptcy. Though CLCs and members

<sup>37</sup> Annual Report, Public Interest Law Clearing House, 1995-1996, 19 and Minutes of the July 1995 PERIN Working Group.

<sup>38</sup> *State of Victoria v Mansfield* [2003] FCAC 154 (18 July 2003).

of the PWG were not directly involved in the case of *Zaffiro*<sup>39</sup>, CLCs were involved in raising the case publicly in the media and putting additional pressure on to ensure a change in the law during 1996-1997.

### Media, journal articles and publicity

Media were utilised both in a context of responding to comments made about fines with a view to presenting client experiences of the system and with suggestions for change to improve the operation of the system for poor and vulnerable citizens.<sup>40</sup> Articles about the problem were written by CLCs in journals.<sup>41</sup>

### Discussion Paper and Reports

A Discussion Paper was prepared in October 2004 by the PWG on Warrant Powers and Procedures detailing case histories and problems with the law and procedures and how these could be remedied. In addition, law students on clinical placement at the West Heidelberg Community Legal Service wrote a report entitled '*The PERIN Court: A Discussion Paper*' released in July 2004, outlining the experiences of clients, the need for simpler and fairer processes and recommending changes. This was acknowledged as a factor in the decision to hold a review<sup>42</sup> by the Department of Justice in addition to the earlier recommendations made by the PWG mentioned earlier.

### Community Legal Education

An education pack was developed by the St Kilda Legal Service in 1996 entitled, '*The PERIN Pack: A Community Workers Guide on On-the-Spot Fines*'. The aim of the pack was to equip community workers in how to deal with clients in relation to PERIN fines and direct them to advice centres. In addition, in November 1995, PILCH launched four pamphlets produced by the Carlton Fitzroy Financial Counselling Service, St Kilda Legal Service and Victoria's Legal Aid Commission.<sup>43</sup>

## D. OUTCOMES/IMPACT

The involvement of CLCs in the PERIN law reform work led to an increase in the expertise of the community legal sector. People who were impecunious had little capacity to afford private representation. As community lawyers saw more clients in difficulty and decided to take on their cases in the interests of justice, the awareness of the problem increased often by virtue of the

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<sup>39</sup> *Zaffiro v Springvale City Council v the Magistrates Court Sitting at Dandenong*, Byrne J, Unreported 28 March 1996 no 8746 of 1994.

<sup>40</sup> See G Bunn, *The Heidelberg Leader*, 31 August 2004, 5.

<sup>41</sup> See L Curran, *Viewpoint, Journal of St Vincent de Paul*, Winter, 2003, 6-7.

<sup>42</sup> Letter from Attorney General Mr Hulls dated 24 December 2004 on Student Discussion Paper on the PERIN system.

<sup>43</sup> Annual Report, Public Interest Law Clearing House, 1995-1996, 19.

arguments raised before the judiciary in the courts and in the media/community information drives. This in turn led to larger cases being run in courts of the large law firms and members of the Bar who acted pro bono with PILCH.

The Public Accounts and Estimates Committee report on *'Outstanding Fines and Executed Warrants'*<sup>44</sup> notes in Appendix I that the public hearing heard submissions from G Sullivan and S Burchfield of The Federation of Community Legal Centres (VIC) Inc; the peak body for Victorian CLCs. It notes in Appendix II that written submissions were received by PILCH which is also a member of the PWG and a CLC.

The PWG made submissions directly recommending the subject matter which was later recommended in the Committee 21<sup>st</sup> Report to Parliament (September 1997).<sup>45</sup> The Government's response was it "broadly accepts the Committees recommendations" and "welcomes the new fines Act."<sup>46</sup>

In 2000, the Correctional policy was changed as a result of Patterson's Case, discussed earlier in this report, with the relaxing of stringent policies around the availability of options after an arrest and the development of protocols with the Sheriff's Office.

Countless times since 1994 (in meetings, letters, submissions to a wide range of Statutory and Parliamentary bodies, the courts and the Office of the Sheriff), CLCs had raised the need for the 'special circumstances' of the fine defaulter to be taken into account, with the provision of a range of options and the consideration of matters such as mental illness, intellectual disability, homelessness etc. Despite this, little official recognition of the role of CLCS in the changes has occurred. CLCs and financial counsellors first placed the issues of the disadvantaged and their dealings with the PERIN system on the agenda in 1994, if not earlier. CLCs sustained the pressure on this boring and mundane issue and presented practical solutions in submissions. However, other agencies appear to have taken full credit for the changes.<sup>47</sup>

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<sup>44</sup> 'The Public Accounts and Estimates Committee, Report on Outstanding Fines and Executed Warrants, Report September', 1997. Their input is acknowledged in the body of the Committee Report in footnote 137.

<sup>45</sup> Recommendations 1,2,4,5,6,10,31,32 and 37 were directly referable to CLC suggestions that were made for law reform.

<sup>46</sup> Annual Report, Public Interest Law Clearing House, 1997-1998, 20

<sup>47</sup> See A Condon and A Marinakas, *'The Enforcement Review Program'*, 12 Journal of Judicial Administration (ed. G Reinhardt) 2003, 226 where the Magistrates Court and Office of the Sheriff take credit for the "alternative resolution to this problem" through a special circumstances list for people who have defaulted on fines and who had outstanding warrants at enforcement stage due to homelessness, mental illness, intellectual disability, psychiatric illness and so on. There had been many agencies involved in such a reform over a long time most especially the community

In 2006, following the Review of the PERIN system in 2004 – 2005, which received numerous submissions from the PWG and its member CLCs, a new Act was introduced which implemented many changes to the PERIN system. This included a name change, as it became an infringement system with the introduction of the *Infringement Act 2006 (Vic)*. Many of the submissions and recommendations made by CLCs over many years were adopted. Although, other agencies could also be attributed with their introduction; the sustained raising and identification of the issues can be sourced through the work of CLCs and financial counsellors. One illustration of this impact was the suggestion by CLCs that the phraseology of “PERIN Court system” was confusing for the public, as it led the public to believe that there was some form of court engagement in the process whereas in reality most of the administration of the PERIN Court system involved Civic Compliance and was administrative only. As stated, this saw a change of name of the legislation to the *Infringement Act 2006*.<sup>48</sup>

### Commentary

PERIN was boring and mundane work but it affected a large number of people on low incomes and people with disabilities. CLCs took on the work and campaigned vigorously over many years developing expertise and a voice on an issue that was uninspiring and neglected by the private profession

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legal centres that represented clients in the courts, in negotiations with enforcement agencies and in their law reform and community legal education activities. This is not acknowledged in the article even though the proposals by CLCs in exactly the same terms (as those the authors of the article describe as the Court and Sheriff’s ideas) can be tracked back as early as 1994.

<sup>48</sup> ‘*The PERIN Court: A Discussion Paper*’, La Trobe Law Students and the West Heidelberg Community Legal Service, July 2004.

## 2. Debt Collection (Snapshot 1998 – 2003)

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Test Case: *Taylor v Collection House*

### A. CLIENT INPUT

Since 1984, clients of CLCs and financial counsellors (some CLCs are co-located with financial counselling services) had been pursued for alleged debts. Many of these debts were unenforceable, not owed, or statute barred. Clients reported to their community legal service and financial counsellors that they were being harassed, intimidated and coerced into paying money often unaware of their legal rights. They had been threatened with consequences for not paying by debt collectors, which included acts which would have been contrary to the law. For example, that their children's toys, their saucepans, their television, clothes or furniture in their homes would be taken from them if they did not pay. The debt collectors would ring the clients constantly at all times of the day and night and knock on their door, talk to their children, their neighbours and park their car outside the clients home. They did all this in the hope that the client would pay the amounts claimed sometimes when they were not legally entitled to. The clients would pay, due to this intimidation and in many circumstances where they were not required to do so; or in some cases where the debts were in fact not owed.

### B. PROBLEM IDENTIFICATION

The cases were numerous and so legal centres and financial counsellors decided to record these in case histories. Again, in 1998, similar cases were reported and the Consumer Credit Legal Service (a specialist legal centre on credit and debt issues) with the help of Credit Helpline, financial counsellors and community legal centres, compiled case histories to examine and gauge the extent of the problems.

The problem appeared to result from lack of effective remedies for clients who complained of the conduct of debt collection agencies. The Consumer Credit Legal Service (CCLS) examined the consumer protection and enforcement laws and the level of prosecution and follow-up of complaints. The CLC discovered that no one had been prosecuted under either State or Federal laws for the prohibitions on harassment. CCLS discovered practices such as debt collectors claiming they had judgement against clients when they did not. In addition, casework revealed that many clients did not understand their legal rights and where to go for help at the early phase of the debt collection practices.

Debt collection agencies seemed to be unaware of the laws and would view intimidation as the most effective method for extracting money from members of the public. As the laws did not appear to be being enforced, debt collectors were not bothered, especially as there were no consequences for breaching the law.

### C. STRATEGIES ADOPTED

- i. The legal analysis of the laws including the *Trade Practices Act 1975 (Cth)* and their application;
- ii. The compilation of the case histories collected to identify the trends and practices used by debt collectors in client experience;
- iii. An examination of the practices adopted by the debt collectors, their conduct, the form of letters of demand and other documentation used to intimidate. This included documents which looked like and purported to be court documents when they were not;
- iv. An examination of mechanisms to ensure compliance with the law and enforcement with recommendations for the improvement;
- v. The compilation of items i-iv above and their inclusion in a Report;
- vi. The launch of the Report with a media release and follow-up media interviews;
- vii. Letters to bodies responsible for compliance by debt collection agencies and the forwarding of the Report;
- viii. Response from the Australian Consumer and Competition Commission (ACCC) and follow up meetings to discuss the problem and solutions;
- viii. Liaison by CLC with the ACCC on Guidelines on Harassment;
- vi. Formal submissions on the Fair Trading Act (Vic.) and the Trade Practices Act;
- x. When client cases occurred and with client instructions to proceed, the reporting of further breaches to the regulator. Sometimes there were gaps of six to twelve months in any response from the regulator;
- xi. Test case;
- xii. Lobbying of influential banks who were giving offending agencies their work about the practices of the agency;
- xiii. Decision to name the largest company which had the biggest market share and which was trading on its reputation as collecting debt but not disclosing its use of aggressive practices.

### Commentary

It is evident in the documentation on file, that this law reform activity saw Consumer Credit Legal Service responding to and taking up opportunities as they arose, as well as identifying how to bring into the public arena the experiences of clients. The CCLS never actively seemed to consider they were running a campaign. The documents over time reveal they tended to take one step at a time

and then determine where they could go to next. Key success was awareness by CCLS of external factors such as government reviews of legislation and the forming of constructive relationships with personnel in regulatory bodies. These bodies interested and concerned, would listen to client experience and then identify the need for tighter regulation and responsible practices.

The provision of support by the CLCs and CCLS when clients were proceeding through the complaints process was also critical to ensuring breaches were revealed and so could be acted upon. Debt collection practices were not initially on the public agenda. CCLS raised it in 1984 and kept raising it. They also ensure that it is still on the agenda today.

#### *Test Case: Collection House Ltd. v Taylor*

Lawyers' clients were receiving letters from Collection House in Queensland of a threatening and intimidating nature. When the CCLS made inquiries across the country it seemed that other clients had been receiving similar correspondence. CCLS asked to be forwarded such correspondence with details deleted. The CCLS started to document the range and content of these letters. Case studies about Collection House were collated and a report written in relation to their pursuit of debtors when the debt was statute barred. Collection House sought legal advice and tried to make CCLS cease its activities. CCLS had discussions with major banks, who were clients of Collection House, about the correspondence and practices identified. As this was occurring a client came to get help about an alleged debt and their practices.

Although from the files it appears CCLS never viewed *Taylor v Collection House*<sup>49</sup> as a 'test case'; with hindsight this is what it became. It was seen as a court case which would help the client clarify her rights, hold Collection House to account and seek to ascertain what an appropriate and lawful way to collect debts was. The facts of the case were that Collection House Ltd had been pursuing Ms Taylor for debts which were in fact statute barred. CCLS took on the case. The court held that this practice was unlawful. The decision led to a change in practice by Collection House and the development of guidelines for bad debts by the Australian Securities and Investments Commission (ASIC).

#### **D. OUTCOMES/IMPACT**

1. In Victoria, after a review during 1997-1998 of the *Fair Trading Act*, the wording which was suggested by CCLS in a submission on the Fair Trading Act in relation to the harassment sections was adopted.

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<sup>49</sup> *Collection House Ltd. V Taylor* [2004] VSC 49 (3 March 2004)

2. CCLS's requirement that debt collectors were not to have discussions with children of debtors was adopted in the Fair Trading Act.
3. The Victorian Consumer Affairs Office developed their own debt collection code based on the experiences identified by CCLS. During 2003-2004, CCLS invited other stakeholders into the consultation.
4. Until CCLS highlighted problems in debt collection and harassment in 1998, there was little compliance enforcement. The ACCC<sup>50</sup> consulted CCLS and publicly acknowledged CCLS's important role in putting the issue on the agenda and its preparedness to action this input in its approach to enforcing the law and regulations in the area relating to harassment.<sup>51</sup> This was realised with the publication of the following joint publications of the ASIC and ACCC entitled Debt Collection Guidelines for Collectors and Creditors and Dealing with Debt: Your Rights and Responsibilities.<sup>52</sup>
5. After the CCLS took on the *Taylor's Case*, with its accompanying public attention by the media<sup>53</sup> both ASIC<sup>54</sup> and the ACCC refined their guidelines in conjunction with the CCLS. ASIC asked CCLS to advise on what steps were needed to ensure that what happened to Mrs Taylor never happened again. ASIC called for debt collectors to improve their practices in dealing with old debts.<sup>55</sup> On the same day as the decision in *Taylor's Case*, Collection House Ltd notified the stock exchange that it would cease the practice of pursuing statute barred debts.
6. Subsequently the CCLS has been invited to join the ASIC Consumer Advisory Panel.
7. CCLS is a member of the Consumer Victoria Working Together Forum.
8. Collection House Ltd since the test case of *Taylor*, regularly rings the Consumer Action Law Centre to advise of claimed 'improvements' in their practices.

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<sup>50</sup> Section 60 Trade Practices Act 1975 (Cth).

<sup>51</sup> A Asher, 'Enforcement Issues – a Regulator's Perspective', Consumer Rights Journal, May/June 1998, 11, 12.

<sup>52</sup> <http://www.asic.gov.au/asic/asic.nsf/byheadline/05-313+ASIC,+ACCC+promote+fair+debt+collection+practices?openDocument>

<sup>53</sup> The Push is On to Pull Bad Loans, *The Age*, 30 August 2003.  
<http://www.theage.com.au/articles/2003/08/29/1062050670582.html?from=storyrhs>

<sup>54</sup> <http://www.asic.gov.au/asic/asic.nsf/byheadline/05-289+ASIC+calls+for+debt+collectors+to+improve+practices+on+old+debts?openDocument>, 14 May 2007

<sup>55</sup> <http://www.asic.gov.au/asic/asic.nsf/byheadline/05-289+ASIC+calls+for+debt+collectors+to+improve+practices+on+old+debts?openDocument>, 14 May 2007

### 3. Police Issues Working Group (Snapshot 1984-1996)

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#### A. CLIENT INPUT

Clients were coming to see community lawyers and telling them of their mistreatment by police in public and private situations, and during questioning. Particular concern was raised about how children were being questioned by police. Experience by CLC clients of police mistreatment was noted in the first minutes of the Police Issues Working Group in 1983 and in the subsequent minutes up until 1996.

In 1988, a number of clients raised issues with their community lawyers around how they were being processed by police, particularly in relation to drunk and disorderly offences.

The CLCs became involved in the issues of the police shootings expressing concern about the way in which lethal force was being used; resulting in fatalities. In Victoria, there were 11 shootings by police in the four year period prior to the 4 fatal killings between 1987 and 1989. Between March 1987 and April 1989, four men who had close ties with the Flemington area were shot by police. The families of the deceased came to the Flemington and Kensington Legal Service for help to understand the rationale of the police shootings. The reasons the legal centre became involved in the police shootings were because they were acting for families of those shot but also “in order to explain the impact on the community of these shootings”.

Instances of clients reporting police violence against gay men and lesbians were noted in minutes in 1992 and 1994. There were concerns raised about a girl who had been beaten in a South Melbourne police station in 1992.

Finger printing problems emerged in 1993. Clients were giving their fingerprints, not being aware of their rights or the consequences. Instances of police corruption were reported by clients in 1993, 1994 and 1995.

The St Kilda Legal Service became involved in a coronial inquiry involving Ms Colleen Richman, a woman who was killed in a police shooting.

A number of police shootings of people with a mental illness saw the involvement of the Mental Health Legal Service in assisting the families and people who did not die as a result of a shooting. Concerns were raised about how police were dealing with people who had a mental illness when called to assist and the increasing reluctance of families to seek assistance for fear of the outcome.

In 1996 there were allegations by clients and police to community lawyers about the police's own involvement in the use and selling of drugs. The Federation of CLCs became involved in the examining the health risks involved in the use of capsicum spray, in particular pregnant women and people with high blood pressure.

CLCs acted for a number of young girls during 1995-1996. Their clients alleged that they were sexually assaulted by police. These girls were deemed as 'at risk' young girls by the Department of Human Services. Police had been asked to escort the girls to hotel accommodation as the girls were deemed 'at risk' in their own homes. Some police started relationships with the young girls. Legal services were involved in representing the girls and their social workers. The Federation of CLCs, acted as spokesperson for the girls and social workers. The girls and their social workers wanted the issue made public and instructed the Federation of CLCs to advocate on their behalf but not to reveal which legal centres were acting for them. Adhering to legal professional privilege, the Federation of CLCs came under attack and sustained heavy criticism by the police for not revealing their 'spurious' sources when they made comment on the alleged police assaults on the under age girls.<sup>56</sup>

## B. PROBLEM IDENTIFICATION

As a result of many clients indicating police mistreatment, in 1986 the Federation of CLCs commenced a '*Police Complaints Survey*'. The survey was issued to all CLCs. It sought to determine the nature and number of complaints against police and what individuals could do about them. The Federation of CLCs' research required both workers and volunteers of community legal centres to complete a survey after assisting a client who had a complaint about police behaviour, even if though it may not have been the primary reason for seeking legal assistance.

The completed surveys were centrally collated by the Police Issues Working Group and data collected on such matters as:

- The nature of complaints made  
e.g. Police abuse of the use of strip search
- The kind of police behaviour  
e.g. Whether it was fair, bad or good.
- The place and frequency of incident types  
e.g. At the police station, while driving, or walking in the street

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<sup>56</sup> *ABC Four Corners* and the *Sunday Program* later covered the sexual activities of police in relation to the 'at risk' teenagers, 1999. This was not available on the internet but was also covered on ABC Radio National, *Law Report*, 9 December 1999. <http://www.abc.net.au/rn/talks/8.30/lawrpt/stories/lr971209.htm>

- Whether the individual reported the incident
  - If not, why not?
  - If yes, to whom?
  - Whether clients' complaints were actioned by the police?
- Whether the person was subsequently charged or summonsed
- The age, sex, occupation and postcode of the person.

In the minutes of 3rd April 1996 of Police Issues Working Group, it was recorded that the Fitzroy Legal Service was still conducting the survey into police treatment. This reflects the fact that ongoing data of client experience was being maintained to verify that the problems were ongoing. As a result of the Police Issues Working Group survey, it was discussed during a meeting of the group that a police complaints hotline be considered by the Federation of CLCs. There was no documentation to confirm this was ever established.

In 1988, the North Melbourne Legal Service made a Freedom of Information (FOI) application to ascertain the number of people being processed by police and how they were processed, particularly in relation to drunk and disorderly offences.

From 1991-1996, FOI applications were made to find out information about accountability of the police. For example, what was the policy on interaction with the news media (January 1989).

The legal centres analysed previous coronial inquiries which criticised police tactics that contributed towards fatal police shootings and tried to assess whether the same tactics were still being used. For example, an unarmed man was shot five times; including a number of times in the back.

Legal centres particularly the Peninsular Legal Service applied to the AAT under FOI for information in relation to high speed police pursuits during 1995 and 1996.

## **C. STRATEGIES ADOPTED**

### **Regular meetings to monitor police and client experiences and plan responses**

The Police Issues Working Group first met on 24th May 1983. One of its first activities was a meeting with Minister Hayden Ray Smith. The minutes note client concerns and that the police were the only body where community representation was absent and yet where the Force had immense powers over the public. The Police Issues Working Group saw its role as representing the community interests and participation; and putting forward the experience of its clients in order to make police accountable.

## Submissions

On a regular basis the Police Issues Working Group made submissions to a range of public inquiries, legislation and bills. It was asked to have input into a range of Statutory, Parliamentary, Government and Police inquiries over a ten year period in relation to policing.

From October 1984, CLCs participated in meetings of a Police Community Liaison Committee. The meetings involved legal centres, police, the Church of all Nations, youth workers and youth clubs. The aim of the meeting was to improve the relationship between local young people and police. It met monthly.

The Police Issues Working Group made submissions into the Coldrey Committee Report on fingerprinting (December 1987). Chris Richards of the Federation of CLCs made a submission into the inquiry on police powers and investigations and the *Public Intoxication Act* (1984).

The Police Issues Working Group responded to requests for submissions by parliamentary bodies in response to changes in the law, in that sense it was reactive to policy initiative of others e.g. In 1986 it commented upon request on the s460 *Crimes Act*. Similarly, the Police Issues Working Group submitted a report to the Neesham Inquiry into the Victorian Police Force (1983-1984 minutes).

## Community Legal Education

Mr Sam Biondo (Member of the Police Issues Working Group) was heavily involved in programs of police training at the Victorian Police Academy from the early to mid 1990s.

CLCs conducted public education campaigns in relation to their rights and responsibilities and in making complaints to the police and educating the public about the sort of things individuals would need to do to corroborate their case.

In relation to the development of a program about police in schools, in November 1988, there was liaison with Bob Shore, (Coordinator of the '*Police in Schools Program*'). As part of the consultation process the Police were seeking the opinions of members of the Federation of CLCs. From minutes of meetings, the Federation of CLCs was involved in providing police with information such as:

- The extent of single parent families in schools;
- Highlighted the need to have a young person involved in the program;
- Identified problems the Police may encounter such as public apathy, entrenched views about Police, lack of power by participants;

- Input into more effective lesson plans such as: drug education (alcohol and tobacco), personal safety peer group pressure and teacher support.

From this consultative process, the *'Police in Schools Program'* developed. Many of the CLCs' suggestions were adopted in the program as a result of this consultation. A memo dated September 1988 to the Police highlighted the danger in overstating the role of abstinence in drug education as this message would have "a sense of unreality in the classroom".

On the 20<sup>th</sup> of September 1988, the Federation of CLCs acknowledged in a RSVP their attendance at a seminar to look at how the *'Police In Schools Program'* could be run. (Jude McCulloch a CLC representative had a significant role in this). In this instance, the Police sought the Federation of CLCs' views on the development of this program and in response, the CLCs gave concrete strategies that were taken on board by the Police. The key principles still form part of the *'Police In Schools Program'* today.

A public education program about police powers under *Crimes (Finger Printing Act)* (1988) and the *Crimes (Custody and investigations Act)* (1988) was undertaken.

On the front cover of the education leaflet there is artwork and cartoon designs that show a little boy, a girl and a group of children. In the brochure there is an explanation in plain English directed to the public about the nature of police questioning such as;

- What happens during a police interview?
- The use of a tape recorder during interview
- What happens to you if you are aged between 10 and 16 years?
- The indication of the needs of children in police interviews

Posters about the education campaign were also distributed.

### **Information Campaigns**

The Flemington and Kensington Legal Service published a *'Youth Rights with Police'* credit card sized document in a blue and white format. It told the community what their rights are in relation to police and where to go if their rights are abused. It utilised artwork to communicate this information.

The Flemington and Kensington Legal Service produced community newsletters supported by the Legal Aid Commission, the Law Foundation of Victoria and Melbourne City Council. In the March No. 4 1991 bulletin titled *'Inquests: Flemington and Kensington Community Voice'* it explained that the

Bulletin would inform the local community about the progress of the inquests, what happened during the inquests and how the Coroner's Court came to its conclusions. It was also a community tool that increased the accountability of the Coroner's Court and put pressure on the Coroner's Court to assist in the process of getting to the truth.

### Correcting Statements

The Victorian Police Force Association issued a statement about the rising crime rate and in responding to a media release, CLCs put across the other side of the story, using statistics which highlighted the low rate of crime in Victoria in comparison to other States. Sources for the Federation of CLCs' information and statistics were the Australian Bureau of Statistics and the Australian Institute of Criminology.

Throughout the 1984-1996 documents examined, there were regular press statements issued by the Federation of CLCs correcting information.

For example, a press release dated 6th July 1995 by the Federation of CLCs picked up inconsistencies and accountability issues that may have been lost without scrutiny; i.e. that the police's own task force was being ignored by senior police. The head of the special operations group Inspector Doug O'Loughlin told the AAT that he had not read Task Force Victor and did not have a copy, had not sought a copy of it and was not familiar with its recommendations. The legal services' involvement highlighted the lack of police accountability. On the 12th August 1995, a further press release reported a police shooting (the twenty-third shooting in Victoria) that occurred the previous day. In the press release, Convener of the Police Issues Group, Gary Sullivan asks, "How many more deaths must occur before Force Command reviews their strategy?"

### Conference Papers

On 23<sup>rd</sup> June 1988, Chris Richards Project Worker submitted a paper '*The Politics of Law and Disorder*' to the second international Criminal Law Conference in QLD. The paper examined the manipulation of crime statistics and its connection to an increase in police numbers. It incorporated a police survey conducted by the CLCs concerning the public's experience of policing. The paper also discussed a survey that examined Victorian public attitudes to crime that revealed that public perceptions of the crime rate were actually higher than it was in reality. The paper called for public policy to reflect reality rather than the manipulation of statistics and the need for politicians to be mindful of this practice.

## Research

The documents revealed that CLCs often researched policing in other countries, new regulations, laws and the use of new weaponry internationally. It also examined different policies and responses in policing. Research was undertaken into preventative programs including:

- diversion;
- school based policing programs;
- consultation of community groups who work with people 'on the ground'.

## Freedom of Information (FOI)

An FOI requests were utilised to seek information about accountability of the police. For example, what is the policy was for interaction with the news media (January 1989).

Of course each campaign was different because of the different client issues that presented; and so different strategies and issues required flexibility and a multi-faceted approach.

## Academic articles

The writing of articles in journals and magazines on the use of deadly force e.g. an article by Jude McCulloch, '*Police Killings Deadly Force*' in the Legal Service Bulletin Vol 13 No. 2 April 1988, 56-57.

The article discussed how there had been an alarming increase in the number of shootings by Victorian Police and made reference to the internal investigations department.

Another article, '*Police Investigating Police*' had concerns over the number of police shootings. It also discusses the escalation of the use of guns, the need for more controls and to see the police present without guns.<sup>57</sup>

## Public Meetings

In 1989 there was a meeting at the Kensington Town Hall. It was a well attended meeting by the public who expressed their concerns about the extent of police shootings.

## Working with other organisations

- Coalition against police violence 1992/93
- In 1993, a strategy to hold a Stop Police Violence rally and a Festival occurred as a response to a girl who was beaten in a South Melbourne police station in April 1992.

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<sup>57</sup> J McCulloch '*Blue Murder Press Coverage of Fatal Shootings in Victoria*', Volume 29, Australian and New Zealand Journal of Criminology, 1986 102-120.

There was street theatre, open microphone, drums, music, jams and food to twilight.

Presenters at the event included:

Peter Bancroft	VCCL
Greg Connellan	Fitzroy Legal service
Sarah Fair	Prostitutes Collective Victoria
Geoff Lapidos	Prison Reform Group
Gary Foley	Koori Community
Jude McCulloch	Western Suburbs Legal Service

Publicly, diverse community and professional organisations such as the Victorian Bar Association, Victorian Council of Social Services, Youth Affairs Council of Victoria, Council of Multicultural Affairs, Father Peter Norden from the Catholic Church and the Victorian Council for Civil Liberties called for a judicial inquiry.

A joint Letter to the Editor from three organisations VCCL, Federation of CLCs and the Criminal Justice Coordination was published in The Age and Herald Sun newspapers.<sup>58</sup>

### **Inquests**

The Federation of CLCs became involved in an inquiry by State Coroner Hallenstein into the investigation of seven fatal shootings. CLCs also conducted an analysis of previous coronial inquiries and called for a public meeting. They gave a lot of support for their families of clients who had been victims of police shootings in an area characterised by a high level of public housing.

The legal centres analysis of previous coronial inquiries criticised police tactics. There were concerns raised in two years after the coronial findings there were still police shootings. CLCs inquired into the costs of a new inquiry, in which the daily legal bill was in excess of \$20,000. This was costing huge amounts of money and resources often at the tax payer's expense. There were calls for a systemic inquiry by way of a Royal Commission which would be independent.

### **Use of Media**

Letters to the Editor were utilised extensively through the period of the snapshot. For example, in The Age, 28th March 1991 (p12) L. Schetzer, a solicitor employed by the North Melbourne Legal Service,

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<sup>58</sup> The documents on file did not record the date or page number of the photocopied letter which was published in the newspapers. An internet search failed to reveal these details.

expressed both community and police concern that justice be done and that appropriate independent police investigations be carried out to prevent further killings.

After each police shooting a media release was sent out by the Federation of CLCs.<sup>59</sup> E.g. On 10th May 1994, in the Herald Sun newspaper there were calls from the Federation of CLCs to learn from other jurisdictions and their policing practises, which would reduce fatalities.<sup>60</sup>

As there were more police shootings, there was another press release from the Federation of CLCs on 17th May 1994, calling again for a Royal Commission into the police shootings.

Media attention culminated in a four page article in the Herald Sun. This was a result of ten years' constant attention to Victorian policing by community legal centres and a whole range of organisations that were able to speak out publicly about their views. This included police members themselves, police commissioners across Australia and New Zealand, the Human Rights Commissioner, Brian Burdekin; CLCs, the Psychological Fellowship of Victoria through to the then Health Minister, Marie Tehan.

#### **Use of international rights bodies to scrutinise policy**

Amnesty International in its report of July 1995 noted concern over the high number of police shootings. In the Amnesty Report, during 1988-1995 it documents 22 fatal police shootings.

On 15th November 1995, the Federation of CLCs wrote a letter to Amnesty International which detailed further police shootings. During 1984-1995 Victorian police shot and killed 33 people. The two most recent were a mentally ill Indigenous person and a teenager. It noted that some of the police shootings over time did occur as a result of unlawful activity, but not all.

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<sup>59</sup> Editorial in the *Herald Sun* calling for independent inquiry undated and no page no. Civil Liberties and the Federation: *Impact*. 20/11/95 published in *The Age*. Editorial Opinion 16/11/95 calling for independent police inquiry.

*The Age* 20/05/94 -Range of political parties calling for a Royal Commission for example Sid Spindler.

<sup>60</sup> Fatalities from police shootings of the time were as follows: 28 March 1994 in Knoxfield Jason Southey

A critique of shootings occurred on January 2<sup>nd</sup> 1994.

In Shepparton a fatal police shooting of Alison Raye Tulley (38) 'had a mental illness'

In Elwood Jan 3<sup>rd</sup> 1994 Edward Hulls man 23

In Hampton May 16 1994 Raymond Crome and Paul Ronald Skewes - 35 (police fired 17 shots killing both men).

In Wodonga 26 March 1994 Brian McKay (34)

In Cheltenham 18 May 1994 Gerald McGrath (29)

In this letter to Amnesty, the Federation of CLCs drew attention to the fact that the Victorian Government had refused to conduct a full and independent inquiry despite calls from CLCs since the late 1980s. Amnesty considered appointing an international arbiter to meet with parties in Australia.

On 28th August 1995, the Federation of CLCs received a response from Amnesty requesting further information from the Federation of CLCs about client experiences.

On 15th November 1995, there were 2 shootings in four days.

The Federation of CLCs in scrutinising the shootings observed repeatedly that the Police Task Force Victor's guidelines contained a need to avoid confrontational situations and this had not been followed. On 16th November 1995, there were seven calls from media asking for comment from the Federation of CLCs in one day.

#### **The researching, compilation of case studies and making of recommendations in publicly released reports**

- Legal Centres who were representing families of people shot by police published a book in 1996 titled '*Police Shootings in Victoria 1987-1989*'.
- The report, '*Brute Force: The Need for Affirmative Action in the Police Force*' was published in 1994.
- In March 1996, the report by the Police Issues Working Group, '*Victorians under Siege: The Case for an Inquiry into the Victorian Police*', was published and released.

Chapters included:

1. List of Events in the last Six Months
2. Excessive Force
3. Government response to police killings
4. Oleoresin capsicum spray
5. Rubber Bullets
6. Demonstrations
7. Police Personnel
8. Increases in Police powers

It was a 41 page report with recommendations on police accountability, police training, the need for independent oversight and a Royal Commission investigation into the role of police.

The report looked at developments in Victoria from October 1992-1996 and the 34 police shootings since 1984.

Copies of the Report were sent to The Age and Herald Sun newspapers; ABC News, ABC TV's '7.30 Report', the Minister for Police, Shadow Minister for Police and the Office of Police Prosecutions. Copies were requested by Project Guardian, the police's own inquiry initiative. The Herald Sun and The Age covered the report as well as community radio station 3CR's law program; Radio National and ABC TV's '4 Corners'.

### **Involvement in Police, Government and Statutory Inquiries**

- CLCs were invited to numerous consultations regarding Taskforce Police and Racism in 1992-1993.
- CLCs participated in the Coalition against police violence from 1992-1993.
- Task Force Victor consulted with the Police Issues Working Group in 1994 about the Special Operations Group police shootings.
- Project Guardian, a new initiative of the police looking at police corruption, invited the Federation of CLCs to be involved in a response and feedback on the recommendations.
- The Police Issues Working Group was invited by Department of Justice to present views at a task force inquiry on 28th June 1994.
- The Police Issues Working Group was invited to have input and in discussions with police about issues at local level during 1983-1996.
- The Police Issues Working Group was invited to have input into the Parliamentary Scrutiny of Acts and Regulations Committee's examination of legislation around policing.
- On 21st May 1993, Victor Perton MP invited the Mental Health Legal Service to meet to advise in relation to a bill on sentencing and police regulations.

### **Commentary**

This snapshot of a law reform campaign highlights how the issues have gained momentum over time. When the CLCs first became involved, little was known about police interaction with the public. If CLCs had not consistently kept issues in the media and in the public domain, Parliamentary interest would not have been stimulated, leading to change in police protocols and legislation. Often it was CLCs who first brought issues into the public arena and kept them on the public agenda despite criticism and disinterest. Later, other organisations became involved with more status and often took credit for the outcomes.

The role of CLCs was critical in bringing issues to the attention of the public. The Police Issues Working Group with the Violence Against Women and Children (VAWC) Working Group represented a range of clients. Legal services spoke on behalf of families who had asked for help, as they were

frightened of reprisals by police. CLCs as the peak body in protecting clients' anonymity, played a critical role in advocacy.

Informed by client experience and due to clients' inability to advocate, the role of legal centres was important, even though it often 'fell on deaf ears.'

#### D. OUTCOMES/IMPACT

A press release on the 22nd December 1988 by Chief Commissioner Glare (although not directly acknowledging the input from CLCs) reveals that the police had taken on board almost all suggestions given by the CLCs in the joint meeting held on 2<sup>nd</sup> November, between the Police Coordinator and representatives from CLCs.

Many of the CLCs' suggestions to the '*Police in Schools Program*' were also taken on board.

There were regular media requests for CLCs' comments, in particular, the Mental Health Legal Service, in response to a fatal police shooting of a person with a mental illness.<sup>61</sup>

Task Force Victor's recommendations in 1994<sup>62</sup> picked up on submissions made by the Federation of CLCs in relation to the police force and their training. In 1994, Task Force Victor presented a report to Victorian Parliament '*Police Shootings a Question of Balance*'. Were it not for the persistence of CLCs it is arguable that the changes in policy suggested by Task Force Victor may not have had such impetus. In addition, there was another police project, *Project Beacon* (1985) which was designed to address the use of police force. CLCs were invited to closed meetings to discuss the options and make suggestions on police processes and training.

#### Conclusion

CLCs, throughout the mid to late 1980s, indicated that there was a problem with police use of force and firearms. The coverage of events in 1994 illustrates the importance of CLCs, in highlighting the issues to prevent further problems in the community. The Victorian Labour Government has not responded to calls for a Royal Commission, but other concerns of CLCs have been noted e.g. the responses to the cause of fatal police shootings as outlined above. The high numbers of police shootings has re-emerged in recent times after a period where there were relatively few in Victoria. This is an ongoing issue of concern for CLCs. Although there has still been no Royal Commission into police shootings in Victoria, an Office of Police Integrity (OPI) was established in November 2004

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<sup>61</sup> '*Police Misconduct*', The Law Report, 9 December, 1997, <http://www.abc.net.au/rn/talks/8.30/lawrpt/lstories/lr971209.htm>.

<sup>62</sup> Task Force Victor, '*Police Shootings: A Question of Balance*', October, 1994.

by the Victorian Government to “ensure that the highest ethical and professional standards are maintained within the Victoria Police at all times. Its role is also to ensure that police corruption and serious misconduct is detected, investigated and prevented and to ensure that members of Victoria Police have regard to the human rights set out in the new Charter of Human Rights and Responsibilities.”<sup>63</sup>

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<sup>63</sup> See <http://www.opi.vic.gov.au>

## 4. Energy Regulation and the Development of Regulations and Oversight Mechanisms (Snapshot 1993 – 2006)

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### A. CLIENT INPUT

Legal Centre clients had experience of having disconnections of their essential services supplies due to non-payment of utility bills. Often these issues emerged for clients who were in financial crisis and who had children. In addition, clients sought advice on power surges which caused damage to homes and/or home appliances.

### B. PROBLEM IDENTIFICATION

Arrangements around extensions in payment and alternative options to disconnection were seen as issues which the CLCs could work on to improve the situation for clients who were in dire financial straits. Negotiations with power companies on the impact of power surges on households also occurred.

With the restructuring, deregulation and reform of Victoria's energy and water industries in the 1990s it, again, became important work of the CLCs to ensure that changes to arrangements led to the maintenance of access to fair and affordable utilities services.

### C. STRATEGIES ADOPTED

In the early 1990s the Consumer Law Centre, (in 2006 the Consumer Action Law Centre formed from an amalgamation of the Consumer Credit Legal Service and the Consumer Law Centre), worked to assist CLCs and financial counsellors' clients by seeking additional funding for projects which examined the services and regulation of the utilities industries. The Consumer Law Centre realised that as individuals, many consumers struggled to gain responses from the industry that failed to take into account individual client's circumstances.

#### **Advocacy**

Advocacy and suggestions for reform in the context of the restructuring of utilities industries was identified as an opportunity to ensure that responsible service provision was possible to poorer members of the community.

#### **Project Funding to extend knowledge**

The Consumer Law Centre sought additional funding from a range of resources to gather data, to research industry practice and provide some academic analysis of both the industry and regulatory schemes and approaches which might be adopted.

## Collaborations

Critical to the activity of the Consumer Law Centre was a preparedness to work collaboratively with CLCs, financial counsellors, universities, Environment Victoria, the Department of Sustainability and Environment, the Australian Council of Social Services, the Victorian Council of Social Services and the various companies that made up the utilities industry in collaboration.

The Consumer Law Centre actively sought funding for the commissioning of reports, research and analysis on utility regulation as early as 1993.<sup>64</sup> These reports test assumptions and transcended the rhetoric of the industry to examine consumer impact and experience.<sup>65</sup> These reports were released publicly and often received significant media coverage and response from industry participants keen to meet and discuss a range of policy responses with the Consumer Law Centre.

## Development of Expertise in the Field

Over time, as a clear recognition of the expertise of the Consumer Law Centre which had developed, the Consumer Law Centre was invited onto advisory committees, regulatory bodies and called upon to make submissions on the form and substance of the regulatory framework.<sup>66</sup> The expertise was not specific to Victoria, but extended to incorporate national approaches to the regulation and consumer protection of utilities nationally.<sup>67</sup> The Consumer Law Centre and now the Consumer Action Law Centre's involvement with these various bodies have enabled ongoing input into policy development and industry practice.

The stated aims of both CLCs, financial counsellors and the Consumer Law Centre, the latter as one of the lead agencies in the reform process, was to suggest good hardship policies and flexible

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<sup>64</sup> D Walker, *'Consumer Benchmarks for Energy and Water: A Consumer Perspective of Regulation and the Service Industry, Public Utilities Reform Project'*, Consumer Law Centre Ltd. November 1996

<sup>65</sup> D Walker, *'Consumer Benchmarks for Energy and Water: A Consumer Perspective of Regulation and the Service Industry, Public Utilities Reform Project'*, Consumer Law Centre Ltd. November 1996; *'An Analysis of the Protection of Consumers and Public Interest'*, Consumer Law Centre, Melbourne May 1995; T Benson (ed.) *'Voices in the Market: Consumer Consultation and Advocacy in an Era of Competition'*, Consumer Law Centre, October 1995; *'Electricity Reform in Victoria: Outcomes for Consumers, Consumer Law Centre and the Centre for Study of Privatisation and Public Accountability'*, February 2006; N Rich and M Mausell, *'Access to Energy and water in Victoria- A Research Report'*, Consumer Law Centre and Consumer Utilities Advocacy Centre, November, 2004; *'The Implementation of Residential Hardship Policies by Victorian Water Businesses: A Research Report'*, Consumer Law Centre, Victoria 2006;

<sup>66</sup> *'Water, Access, Affordability and Sustainability Issues Paper'*, Consumer Law Centre and Environment Victoria Response to Victorian Government White Paper Securing Our Water Future Together, June 2004

<sup>67</sup> *'Consumer protection in the National Energy Market – The Need for Comprehensive Energy – Specific Consumer Protections'*, November 2006, Consumer Action Law Centre.

payment options for those on a low income; and to highlight the day to day impact upon consumers of disconnections and restrictions on their access to essential services.

### Community Legal Education

Community Legal Education activities included the development with others of a 'VESCAP Kit' which provided information for consumer and community workers whose clients are on low income or might be vulnerable consumers. The Kit assisted workers in their handling of consumer inquiries or problems following the introduction of full retail competition in the Victorian gas and electricity markets.

### Commentary

The specialist consumer legal centres developed expertise which has been and is still called upon to provide input on client experiences, regulations, codes, legislation, practices and their development.

### D. OUTCOMES/IMPACT

The Office of the Regulator General and more recently, the Essential Services Commission have always included representatives of the Consumer Law Centre Victoria and the Consumer Action Law Centre on joint industry/consumer committees established to advise and negotiate the terms of energy regulation in Victoria.

The energy regulator and the Victorian government have frequently accepted advice from legal centres in relation to regulatory change.

Three recent examples illustrate this work:

- The Consumer Law Centre Victoria '*Submission to the Essential Services Commission Review of the Effectiveness of Retail Competition and the Consumer Safety Net for Electricity and Gas*', February 2004 was a key submission that led the regulator to determine that the Victorian energy market was not sufficiently competitive or mature enough to justify a reduction in either price regulation or consumer protection.
- The Tenants Union of Victoria, '*Submission to the Essential Services Commission Review of the Effectiveness of Retail Competition and the Consumer Safety Net for Electricity and Gas*', January 2004 argued that the competitive energy market, in the first two years, had designed products that were contradictory rather than complementary to the fundamental characteristics of the tenancy market. The submission highlighted the mismatch in contract periods between three tier energy market contracts and twelve month lease agreements as evidence that tenants were unlikely to benefit from the more competitive market in the short to medium term. This argument

was acknowledged at pages 63 & 105 of the 2004 Draft decision and contributed to the Essential Services Commission finding that is a continuing need for an energy industry-specific safety net after 31st December 2004.

- The 2005 Consumer Law Centre Victoria Submission to the Victorian Essential Services Commission's *'End-to-End Project Issues Paper'* persuaded the Commission that a proposed policy change on consumer transfers within the electricity market should not proceed on the public interest ground that the change could be damaging to the policy objectives of the direct sales provisions of the *Fair Trading Act 1984 (Vic)*.

Wendy Heath, Regulatory Manager for the Essential Services Commission Victoria, can confirm the impact of the CLCV work on the regulatory framework in Victoria over the past decade.

The Consumer Law Centre through its reports and constant lobbying and discussion has highlighted the impact on low income consumers of disconnection and restriction from gas and water services. In the early 1990s, there was a dearth of information until the Consumer Law Centre Victoria (CLCV) co-produced a report on the experiences of these consumers. The *'Access to Energy and Water in Victoria – A Research Report'* by Nicole Rich and May Mauseth for CLCV and the Consumer Utilities Advocacy Centre (CUAC) was published in November 2004, and together with the *'Utility Debt Spiral Project'* by the Committee for Melbourne (published in April 2005) was largely responsible for the decision of the Victorian Government to introduce legislation imposing penalties on retailers for wrongful disconnections.

The Energy and Water Ombudsman and the Essential Services Commission attribute the significant reduction in disconnections of domestic customers in recent years and the consequent improvement in access to energy supply of low income consumers to the effect of this legislation. Other reports and submissions by the CLCV have increased consumer protection and access to Alternative Dispute Resolution Processes and enhanced regulatory oversight of energy and water industries. The current Energy and Water Ombudsman, Ms Fiona McLeod can confirm the role of the CLCV in seeking further regulation of disconnection practices and the impact of the regulation in decreasing the numbers of consumers disconnected for non payment of energy bills.

The Consumer Law Centre has been invited onto the following and as a result, has had an ongoing impact on the regulation and policies around the provision of utilities:

1. Member, Customer Consultative Committee, Essential Services Commission;
2. Member, Regulatory Sub Committees for drafting Energy Retail Code and related regulatory documents;

3. Drafting Committee Victorian Energy Marketing Code of Conduct and member of Marketing Code Compliance Committee;
4. Drafting Committee for Constitution and Terms of Reference for Energy Ombudsman Victoria and Board member Energy Ombudsman Victoria;
5. The Steering Committee of Consumer Utilities Advocacy Centre;
6. The National Energy Consumers Advocacy Panel (suggestions by the CLC on access to energy supply, consumer protection have been adopted by this body;
7. Hosts through its NEM project the National Consumers Roundtable on Energy.

## 5. Violence Against Women and Children Working Group (VAWC) (Snapshot 1994-1998)

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### A. CLIENT INPUT

Clients sought assistance from legal centres on a range of issues. These included as victims of sexual assault, incest, domestic violence and stalking. Clients also sought advice and in some cases representation relating to acts of violence, incest and sexual abuse involving their children or their guardians whilst wards of the State.

In addition, in the period 1994-1997, CLCs reported that clients had encountered difficulties with court and tribunal processes. Clients relayed instances of unsympathetic or alienating responses they were receiving in court and tribunal hearings. These complaints related to the Crimes Compensation Tribunal and to criminal prosecutions in which clients were witnesses; or where the clients were the victim of crimes who had pressed charges. Examples provided to CLCs, were of cases where relevant evidence was excluded. Some of these clients also had significant disabilities and there were questions around how victims of sexual abuse with an intellectual disability were treated by the system when a complaint was lodged. One client had been raped whilst in hospital. The prosecution did not prosecute on the basis of the unreliability of the client as a witness. The concern of the CLCs was the manner in which this case and others were handled; the victim had been belittled even further and there were now implications around the safety of other patients in hospitals.

In addition, CLCs saw clients on matters involving Family Court proceedings where they felt powerless, threatened or had difficulty in obtaining court representation. CLCs also received letters from members of the public about their experiences of the legal system. There is confidential correspondence in the documentation inspected from the public asking for assistance and help from the Federation or CLCs.

CLCs used a support service for the referral of clients who were distressed and in need of additional support to their legal needs. In November 1998, VAWC wrote to the Attorney General detailing the problems that would be caused by the closure of domestic violence referral centres and telephone counselling services. VAWC also highlighted the impact of the closure on clients and CLCs in trying to refer clients in crisis. In addition to this, VAWC also wrote to State Minister for Youth Affairs.

The period 1996, 1997 and 1998 (with new legal aid guidelines introducing caps on clients who were legally aided in family law cases) saw clients come to legal centres in crisis often, at the point where their case was coming to court and where they had reached the monetary cap set by legal aid. CLCs

had a limited capacity to represent these clients in court. This was due to the urgent nature of the client need and the lack of staff to run the court cases which often could take weeks. CLCs had to try to locate barristers who might act pro bono and often at short notice. Clients presented at CLCs in distress. CLCs raised concerns about the changes to children's separate representatives, the cross examination of witnesses and children, and what would happen if funding were to run out. Cuts to legal aid in sexual abuse cases caused CLCs further concern around client safety, as clients would be more likely to self-represent. CLCs raised publicly in the media questions such as: What will happen to a victim of domestic violence who is self-representing if they are cross-examined directly by their violent partner or a barrister?

## **B. PROBLEM IDENTIFICATION**

VAWC had clients who had been victims of crime with cases in the Crime's Compensation Tribunal. Difficulties of clients in the tribunal process led the VAWC to gather further case studies regarding clients' experiences.

To establish the extent of the problems, a questionnaire was developed between the Federation of CLCs and circulated to: Centres Against Sexual Assault, women's refuges, the Domestic Violence and Incest Resource Centre (which is also a CLC), Vicspan, a number of criminal law practitioners at the Bar; and the Law Institute of Victoria. Case studies were also collected.

CLCs fed clients' experiences of domestic violence, and how police responded, to Force Command of Victoria Police during 1994-1998.

## **C. STRATEGIES ADOPTED**

### **Liaison with other service providers**

The law reform work around the Crimes Compensation Tribunal emerged from a meeting with Crisis Centres, sexual assault agencies and CLCs. The agencies present asked for assistance from the CLCs in understanding why the process was so weighted against clients.

At a Forum in 1997, organised by CLCs with other services providers for improved intervention order support, three sub-groups were formed:

- Education training and resourcing
- Data collection
- Legal issues

It was a common strategy for CLCs to divide up work tasks in VAWC, a State network formed to meet three times per year.

A group was formed by VAWC called '*Justice for All*' during 1997-1998, in order to bring all CLCs together on 'access to justice' issues. Access to justice and the legal profession organised forum and focus groups. A Chair was appointed to bring together all community groups to raise awareness and pass information and experiences onto the Federal Government and the broader community about the impacts being experienced on the ground by clients of CLCs and others.

VAWC was invited to participate in the Family Violence Protocols Committee of Family Court of Australia. Members included Vivien Wiles from Women's Resource Group and Judy Cox, Essendon Community Legal Centre, who were also members of VAWC.

### **Community Legal Education**

During 1994-1996, VAWC produced and distributed three editions of a '*Domestic Violence Guide to Intervention Orders*' and other remedies. This was a precursor to the later Victorian Legal Aid publications. The publication was in conjunction with a State-wide network. A resource manual to assist lawyers and family violence cases was also produced.

In December 1995, legal centres were asked by the Legal Aid Commission of Victoria to participate in a working group to look at evaluating information and developing self help strategies, in order to improve information and service provision to clients and their workers.

VAWC was invited to nominate representatives to run briefing sessions to train people on the taskforces on violence against women.

A legal education mock-trial of court proceedings occurred. It gave workers an opportunity to get involved in role plays and experience the court from a client's perspective.

During 1997-1998 community legal education was undertaken around the *Family Law Act* as it had been identified through casework that little information had been targeted to non-English speaking background communities. Very few people were aware of the impact on the community. Women were paying \$200 for their parenting plans and were not aware of other options.

## Submissions to Government and or Parliamentary Inquiries

In October 1994, VAWC made submissions in relation to the proposed stalking prevention legislation in Victoria.

In 1997, CLCs sent position papers on family law violence and mutual consent orders to the Magistrates' Family Law Crimes Family Violence Committee of the Melbourne Magistrates' Court. VAWC also supported an application for the Deer Park Hand-Over Access Service for non custodial parents so they could have access to children in a safe environment.

On 30th September 1994, the Policing and Executive Services Branch of the Department of Justice wrote to the Federation of CLCs seeking their input on how police dealt with sexual assault cases. VAWC it responded later the same year.

The Federation of CLCs made a submission to the Department of Justice arguing that stalking was serious enough to require being dealt with as a separate offence and making suggestions, such as this one, was implemented in the *Crimes (Amendment) Bill 1994*.

A submission was made by the North Melbourne Legal Service on 10th October 1994, in relation to the *Crimes (Amendment) Bill 1994*. In the submission, a range of recommendations about the technical aspects of the legislation were presented. The Legal Service highlighted some of the injustices that might occur both to the victim of stalking and stalker. This submission contained client case experiences in appearing before the courts in quite some detail to highlight some of the anomalies that might result if the legislation was enacted. It was suggested that any problems with the legislation should be addressed before the law is enacted as it would be unfair to test provisions in the courts.

The Federation made a submission to the Department of Justice arguing that stalking was serious enough for it to be dealt with as a separate offence. This suggestion was implemented in the final Bill.

The Federal Attorney General's Department wrote to the Federation of CLCs on 29th September 1995, asking for its view on submissions proposed regulations for private mediations. The Women's Legal Resource Group, a member of VAWC made a submission in October 1995. This was in the early days of mediation in Australia. In the submission it was highlighted that mediation is not appropriate in instances of violence, child abuse and power imbalance; that candidates should be screened, guidelines should be put in place and mediators should have relevant skills.

The Federal Attorney General's Department wrote a letter to Cathy McCarthy of the Coburg and Brunswick Legal Service, as member of VAWC, asking for comment on the *Family Law Act*. There was also a submission regarding a Parliamentary Joint Select Committee on the operations of the *Family Law Act*. The Federation of CLCs responded with a position paper as was requested by the Attorney General.

The Attorney General's Department, Civil Law Division, in correspondence on 18th July 1995 asked for submissions from the Federation of CLCs on the Australian Law Reform Commission's inquiry on '*For the Sake of Kids*'. In July 1995, the Family Law Council wrote to the Federation of CLCs seeking their assistance into an inquiry by the Family Law Council on the way violence was dealt in family law. Both were submitted by CLCs.

At the end of 1998, VAWC worked on a taskforce on provocation.

In February 1997, oral submissions were made by the Federation of CLCs and VAWC to the Senate and Legal Affairs Constitutional Committee on legal aid funding.

A submission to the Managing Director of Victoria Legal Aid, Robert Cornall, was made on 21 January 1998. It discussed the issue of clients who had been victims of sexual abuse and violence (by their partner) being cross examined by a barrister or their violent partner.

On 29th May 1996, the Federation of CLCs attended the Melbourne hearings of the Australian Law Reform Commission and Human Rights and Equal Opportunity Commission; and made submissions on '*Children and the Legal System*'.

In 1998, VAWC made a submission to Federal Government's Inquiry on a Model Criminal Code after being invited to do so.

### **Compilation of case histories based on client's instructions**

#### **The writing of and publication of Reports**

VAWC produced a position paper in November 1995 which summarised findings of questionnaire, these included case studies based on client experience (the details of clients were changed to protect anonymity).

## Public Forums

The VAWC held a public forum on crimes compensation at the Royal Melbourne Hospital on 5th December 1995. It was chaired by the Federation of CLCs Law Reform Officer.

The presenters included:

Helen Driscoll	Clinical Psychologist
Kristen Densley	Private Practitioner
Yvonne Pilatowicz	Counsellor and Advocate
Maria Dimipolous	Domestic Violence Resource Centre

The forum commenced with a true account of a client's experience as a victim of crime using the Crimes Compensation Tribunal. At the forum, further issues were highlighted. Experts described other legal models for victims of crime used around the world. Magistrates who worked on the Tribunal noted the limitations of legislation and restrictions placed on them.

To highlight the forum, media were invited to attend the forum and a press release was issued on 3rd December 1995. The media release covered current procedures and noted that the process re-victimised clients and discouraged them from applying for compensation.

The '*Violence Against Women and Children: Where is the Justice?*' Forum was held on 3rd November 1994 in the Brunswick Town Hall; it was one of many different strategies used to draw attention to the relevant issues.

The morning session was presented by Michael Fogarty of the Family Court of Australia and the afternoon session by Judy Cox of Essendon Legal Centre.

It was attended by Youth Affairs, Legal Aid Commission, Magistrates, Aboriginal Child Care Agency, Centres Against Sexual Assault, Victorian Council of Social Services and immigrant women.

On 19th February 1997, VAWC held a YWCA Forum on women who kill in self defence. Case histories of four women local context were presented.

## Research

Legal centres analysed the law on the impact of childhood sexual assault on survivors seeking compensation and looked at different schemes around the world. As mentioned earlier, this formed part of position paper.

The VAWC in 1995 looked at and examined the police code of practice regarding reports of client sexual assault, as a result of this being raised consistently by clients.

VAWCWG supported the sponsoring of a research proposal on '*Women who Kill*'. This project was about women and children in domestic homicide situations. The main source of quantitative data was interviews with women offenders. There was a steering committee and a report launched in February 1997.

In June 1996, a survey on crime compensation was compiled and the VAWC devised an improved model for crimes compensation. In 2004, a similar model was adopted in legislative reform.

At the time there was also analysis of police statistics on family violence incidents and a collection of case studies of women who committed homicide in the last 10 years.

### **Providing a voice for clients**

Examples include:

- A letter to editor of The Age (28th April, 1995) highlighting shift in practice in the Crimes Compensation Tribunal and its impact on victims and other community groups.
- A letter to Attorney General Jan Wade by Ms Maggie Troop and Kate Lawrence of VAWC on 1st May 1995. It outlined the reticence of victims of crime to make applications to the Tribunals..

### **Media Coverage**

- Cath McCarthy, on behalf of VAWC, wrote an article in The Age (6th December, 1995) covering the crimes compensation forum. Paul Conroy, a journalist at The Age newspaper reported the concerns raised at the forum.
- There have been many contributions made to a long running community law radio program on law and justice issues.

### **Conference Papers**

Cath McCarthy of VAWC presented a paper entitled, '*Bringing it Together: a Victim Support Strategy*' for the conference held 18th-19<sup>th</sup> May, 1995.

### **Monitoring Situation for Clients**

VAWC monitored the impact of family law amendments with the new emphasis on primary dispute resolution and its impact on clients VAWC wrote these cases up during 1996-1997.

## Commentary

The activities of the VAWC in the snapshot period reveal many examples at a Federal and State Government levels seeking views from community legal centres on legislative drafting and policy issues. For example, North Melbourne Legal Service made submissions in October 1994 on the *Crimes (Amendment) Bill 1994* which included a range of recommendations about the technical complications presented by the wording of the legislation. This demonstrates how CLCs can provide input on potential problems that loose drafting can cause.

The forum held on 5th December 1995, demonstrates CLCs providing a voice for those with experiences of how the system did or did not work for them.

In viewing the law reform activities overall, the VAWC tended to mainly respond to requests from Government Departments and Parliamentary or Statutory Inquiries to make submissions to various policy and legislative reviews. This meant that VAWC in its law reform activities tended to respond to requests for input rather than initiating its own law reform activities, as the other snapshots of this research revealed. The exception to this was its involvement, based on client difficulties, in the reforming the processes and legislative requirements of the Crimes Compensation Tribunal.

## D. OUTCOMES /IMPACT

In October 1994, VAWC made a submission to the Department of Justice arguing that stalking was serious enough to require being dealt with as a separate offence. The suggestion was implemented in the final *Crimes (Amendment) Bill 1994* by the Government.

The position paper of VAWC and The Federation of CLCs on the Crimes Compensation Tribunal in November 1995 contained fourteen recommendations, eight of the recommendations were enacted in the amendments to the *Crimes Family Violence Act 1987* which came into force in 2004.<sup>68</sup>

On 27th June 1996, Victoria Police wrote to Judy Cox a member of VAWC. In this letter the Senior Legal Research Officer with the Legal Research and Review Branch of Victoria Police noted the changes in police protocols and policy had been implemented as a result of discussions from meetings with VAWC. He noted that CLCs' changes to the original text had also been adopted.

Judith Dixon, the Director of the Victorian Council Against Violence, thanked Cath McCarthy who presented a paper at a conference on behalf of VAWC for her contribution and noted the enormous

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<sup>68</sup> *Crimes (Family Violence) Act 1987* amendments No. 77 of 2004.

professional and community response to the paper; additionally the response of victims of crime to the paper had been overwhelming.

There was correspondence from the Shadow Attorney General Amanda Vanstone on 29th September 1995 thanking the VAWC for its recent correspondence and help in relation to the law reform bill as part of the broader submission it had made with the National Women's Justice Coalition.

On 26th September 1995, the Parliamentary Secretary to the Attorney General Peter Duncan MP in a letter to the convenor of VAWC and noted "the changes recommended by the Senate committee in the second report pick upon concerns put in previous submission of the NWJC...the government signalled its interest to make two changes in addition made by the Senate Committee of which arises directly out of submission made by NWJC..."

A suggestion from the Director of Victorian Council of Violence was made for VWC to nominate itself for an award in recognition of their hard work.

VAWC and CLCs sponsored and supported other organisations to gain funding for programs to help minimise risk to children. The Deer Park Community Education Centre still continues this program, making access easier for partners and their children.

## 6. Corrections Working Group (Snapshot 1997-2003)

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### Test Cases: Prison Contracts and the FOI Case, VCAT 1999, Coronial Deaths in Custody in Prisons

#### A. CLIENT INPUT

There were regular complaints from prisoners to community legal centre lawyers doing work in the prisons, ranging from the loss of their property, to phone call access, drugs in prison, strip searches of family and small children, classification and assessment of prisoners, access to health services within prisons and the deaths of women prisoners shortly after release from prisons.

Instances of a lack of clarity about disciplinary processes in prison, and parole concerns were raised by community lawyers. Concerns about boredom and the lack of educational opportunities in prison were raised by clients and people working in the prison system e.g. one prisoner had done the same computer course four times to alleviate boredom. Clients raised concern about use of tear gas in prison. Some lawyers also received mail from prisoners seeking help on a range of other day to day matters concerning the running of prisons. These ranged from the loss of their personal items in transfers between prisons and concerns about prisoners' legal issues and their inability to access legal services were raised in matters not relating to their prison sentence i.e. family debt, privacy, family law.

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

#### B. PROBLEM IDENTIFICATION

There were sometimes attempts noted in minutes and later feedback to gauge the frequency of problems of client. Polling of other centres to see if trends in the client experiences of other lawyers or community development workers at the CLCs were consistent and undertaken from time to time by the Corrections Working Group.

Freedom of Information requests were made to gain internal data on complaints; or receipt of data from the Ombudsman's office.

The gathering of statistical data at various times occurred by CLCs e.g. rates of deaths in custody, deaths upon release from prison, incidences of suicide and self harm in prison, and numbers of people with a mental illness assessment.

The Corrections Working Group sought clarity from the Office of the Correctional Services Commissioner and the Department of Justice on the nature of educational programs and health service offerings in prisons; and policies in relation to strip searched of prisoners, family, children and incidences of the searches. Sometimes it was discovered that statistics were not kept or information sought was not publicly available due to 'commercial-in-confidence'.

### **C. STRATEGIES ADOPTED**

#### **Use of freedom of Information processes to establish data and policy and practice**

Freedom of Information requests were made by CLCs for policy and procedures manuals, statistical data, new prison facilities were an important tool, in view of prisoners being behind closed doors: e.g. the discovery by CLCs in 2001 that there had been 29 miscarriages at Deer Park Prison. This raised questions about the treatment of prisoners; the questions were raised with the Department of Justice and the Minister in 2001. FOI requests were made for the training manual for prison officers on 10th July, 2002 by Amanda George of the Corrections Working Group.

#### **Input into prison design**

CLCs over a period of three years were invited to inspections of both old and new prison grounds to provide input on new prison designs, hanging points; services and facilities.

#### **Case Histories**

CLCs held ongoing discussions with prisoners and their families about their experiences and wrote up some of the case histories explored.

#### **Letters**

There was correspondence to decision-makers such as the Minister for Corrections (Office of the Correctional Services Commissioner) raising concerns, e.g. a letter in 2000 regarding double-bunking of prisoners at Loddon prison and impacts upon prison inmates a result of this. There were separate letters in the same year on the issues of overcrowding of prisons. The issue was also raised at the Correctional Commissioner's Prisoners Stakeholder Forum.

## Participation in Government Forums

The membership of Prison Forums e.g. the Correctional Commissioner's Prisoners' Stakeholder Forum to feed client experience and concerns and positive developments during the period 1999-2007.

## Data collection and monitoring of situation

Data collection and monitoring of situations in prison or upon inmate release were maintained throughout the snapshot period, e.g. high levels of assaults at Deer Park Prison reported by prisoners in protection. These were documented in 2000 and a report of the outcomes was made to the Department of Justice. The amount of time people were held in police cells and the number of breaches under regulation and Act of Parliament were raised with Government. Concerns were raised by the CLCs about the lack of incident reports being kept within the prison system.

CLCs kept abreast of deaths in custody figures and publicised these through media outlets to keep the issue in the public consciousness e.g. As at October 2000, there had been 16 deaths in custody in Victoria in under three years.

## Journal Articles and Reports

- '*Victorian Community Legal Centres vs. The Prison Industrial Complex*', Framed – Quarterly Magazine of Justice Actions, Issue No 37, 1999.
- '*Hanging Points at the Fulham Correctional Centre and Port Philip Prison and the Victorian Government's Implementation of Recommendation 165 of the Royal Commission into Aboriginal Deaths in Custody*', Federation of Community Legal Centres Inc, 2000.

## Submissions to formal inquiries

Submissions in the snapshot period from the Corrections Working Group of the Federation of Community Legal Services to various bodies included:

- The Review of Education and Training in Prisons, 2001;
- Submission to the Review of Legal Services in Rural and Regional Victoria, 2001 Response to Chapter 10, 23rd November 2001;
- Submission on Review of the Sentencing Act, November 2000;
- Audit of the Victorian Government into Prison Contracts requested by Government in 2000;
- Submissions on Home Detention 2001, 2002;
- And a request by Government to participate in the submissions to the Secretary of the Department of Justice in the 2000 Review of Community Correctional Services.

## **Meetings**

Meetings were held with the Attorney General, the Minister of Corrections and the Shadow Ministry from 1997 and 2002 to raise issues emerging from client casework and data collection; and also to obtain information on policies and procedures within the prison system. E.g. on sentencing changes.

Meetings were held with prison contract monitors; Ministers in areas of Health, Corrections and Education and the Attorney General during the period 1999-2002; and Shadow Ministers e.g. Kim Wells MP, on a range of issues including home detention (during period of 2001-2002).

## **Liaison**

There was liaison with service providers both inside and outside of prisons by CLCs and the relaying in many instances of prison employee concerns in regard to their strong reluctance in speaking out about lapses in prison care, for fear of reprisals (noted in minutes 1999, 2000 and 2001).

Advice was provided by CLCs on prison specifications, provided by both public and private prison operators during 1999-2002.

## **Media requests for comment by media outlets**

The media constantly sought clarifications of the level of services provided, or not provided to, prisoners; and were seeking clarification of the relevant requirements during 1999-2002.

## **Fundraising**

Fundraising activities occurred to raise money for CLC 'test cases' undertaken on behalf of families of deceased prisoners during 1999.

## **Test cases**

### **Background**

The Corrections Working Group of the Federation of CLCs undertook the following cases on behalf of the families who were the clients of CLCs. These involved significant collection of detail from clients; available research and legal analysis of documentation, the law, common law, standards of care and causation. Complex details on contribution were collected along with, available self harm research from around the world; methods of procedures and policies application; and finally information on incidents occurring on the relevant dates leading to the deaths of the subject prisoners. The documentation that was involved and the administrative and legal services required to conduct these cases involved significant after-hours work, lots of pro bono assistance and cooperation and support

from other legal services. Noted on documents inspected were appreciative comments by the relevant families/clients involved.

### Coronial Inquests into Deaths in Custody in Victoria

1. Port Phillip Prison Inquests by Coburg Brunswick Community Legal and Financial Counselling Centre and the Fitzroy Legal Service.
2. North Melbourne Legal Service and Villamanta Legal Service (the latter is a specialist legal service for people with an intellectual disability) inquest into the death of Cheryl Black (the first Indigenous woman to die at the Deer Park Prison and hence also relevant to the RCIADIC).
3. Brimbank Melton Community Legal Centre Inquest on the files of Paula Richardson and Ruby Henare (a post release death).
4. Submission to the Coroner on behalf of the family of Paula Richardson, Brimbank Community Legal Centre (Amanda George and Charandev Singh, January 2002).

All contained recommendations around:

- risk assessment of prisoners
- self harm and suicide
- strip searches
- use and appropriateness of segregation and isolation; and the potential links to suicide and self-harm
- gender specificity
- previous coronial recommendations

### Cases for the Release of Prison Procedure and Operational Information

Coburg Brunswick Community Legal and Financial Counselling Centre sought, through Freedom of Information, the private prison contracts and operating procedures for the operation of the prisons. The CLC was successful before the Victorian Civil and Administrative Tribunal (VCAT) in 1999; thus gaining a decision for release of prison documents (initial access to this information was refused by the Department of Justice and Prisons).<sup>69</sup> On appeal, CLCs were successful in the Victorian Court of Appeal on 17th September 1999 for access to this information.

### Commentary

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

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<sup>69</sup> S Findlay, 'Order to Release Prison Contracts', *The Age*, 21 May 1999: 81 *Fol Review*, 1999.

in which people are treated, these are matters that need to be monitored in view of the difficulties in scrutinising closed facilities.

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

#### D. OUTCOMES/IMPACT

There were media requests for input and analysis.<sup>70</sup>

References to the Federation of CLCs were made in Hansard debates e.g. concerns on Home Detention in Parliament<sup>71</sup>; the Parliamentary Committee Report on the Coroner's Act<sup>72</sup> and the Management and Operations of Victoria's Private Prisons.<sup>73</sup>

Responses were made by Department of Justice to issues raised by CLCs on prisoners.<sup>74</sup>

The release of the operating procedures and requirements around services in private prisons were made so that the standards of care required and delivered, could be gauged for the taxpayers. An initial decision in favour of the Coburg Brunswick Community Legal and Financial Counselling Centre by VCAT stated:

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<sup>70</sup> ABC Radio National Breakfast, 16 January 2002, 7.35am Compare C Roberston, Letters to the Editor published 30 May 2001, *'Damning Report into Victoria's Privatised Prisons'*, 7.30 Report, 27 April 2000 see [www.abc.net.au/7.30/stories/s121210.htm](http://www.abc.net.au/7.30/stories/s121210.htm) and Kennett Government Condemned for Secret Dealings with Private Prisons, 27 May 1999 <http://www.abc.net.au/7.30/stories/s26883.htm>, *'The Brave New World of Contracting Out, Privatisation and Outsourcing'* 29 September 1999, The Law Report, <http://www.abc.net.au/rn/talks/8.30/lawrpt/stories/s55464.htm>, page 5.

<sup>71</sup> Kim Wells MP, Hansard, House of Legislative Assembly, 29 May, 2001, Victorian Parliament, 8 (Appendix).

<sup>72</sup> Inquiry into the Coroner's Act, Victorian Parliamentary Law Reform Committee Report, 20 September, 2005 [www.parliament.vic.gov.au/LAREFORM/coroner/Hansard/19%20September%202005](http://www.parliament.vic.gov.au/LAREFORM/coroner/Hansard/19%20September%202005).

<sup>73</sup> *'Independent Investigation into the Management and Operation of Victoria's Private Prisons'*, Victorian Office of the Correctional Services Commissioner, October 2000, Appendix 1, 119 and Appendix II, 121-123 and Appendix III, Status Report – Implementation of Recommendations from Inquiries and Reviews: Inquest into Five Deaths at Port Philip Prison OSC – Activities in Response to Coroner's Recommendations, 125-127. Bibliography, 135, 136 and 138 acknowledging submissions made by Fitzroy Legal Service Inc and Michael Hennessey of Counsel, 1999 Submission on Behalf of the Families of the Deceased, Inquests into the Deaths of George Drinken, Rodney Koers and Michael Filips, Coburg Brunswick Community Legal and Financial Counselling Centre, Coronial Inquest into the Death of Adam Courtney Irwin, Submissions on behalf of the Irwin Family, September, 1999.

<sup>74</sup> Brendan Murphy, CORE, Department of Justice dated 25 October 2002 noting that CORE would 'take on board' the issues raised by CLCs (Appendix 1)

“It is inherent in the democratic system that important issues of the nature of prisons and their management be publicly transparent so that there can be the best possible public understanding, awareness and if need be, debate.” The later decision taken by the Victorian Court of Appeal in the case defended by CLCs, reinforced the VCAT decision”.<sup>75</sup>

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<sup>75</sup> *Secretary, Department of Justice v Coburg Brunswick Community Legal and Financial Counselling Centre* (Phillip, Charles JJA), 17 September 1999, (1999-2000) 16 VAR 1.

## Findings of the Research

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The findings of this research are:

1. In the law reform projects of community legal centres (based on the projects and documents considered) the strategies identified were often dictated by client imperatives, rather than on a planned strategic basis. Whilst on the surface it might appear that the law reform activities of CLCs were calculated and planned, on closer scrutiny of the documentation held by CLCs, it was revealed that it was in fact the duty to the client/s which would dictate the direction and approach in the law reform activities undertaken. This is not to imply that some strategic thinking did not occur in relation to activities such as legal education, media attention and meetings with decision-makers, but often CLCs decisions emerged from casework imperatives.
2. Client experience or the human story of the effect of laws and their administration was facilitated by community legal centre involvement.
3. Community legal centre casework, over lengthy periods of time on specific issues, meant that legal centres have been able to ensure that often mundane, grass roots experiences of law and its administration were identified, highlighted and publicised to the community, policy makers and legislators. Otherwise, the issues would have been ignored or forgotten. This ongoing monitoring of a situation enabled, in many cases, a growth of awareness of the problem and a need for change. This was sometimes taken up by other organisations with greater profile. This has often meant that the community legal centres initial work in the identification of the problem and ongoing pressure exerted by the centres has been lost, unacknowledged and unarticulated in the public realm.
4. Any attempts to measure outcomes or impacts of law reform activities must reflect that such outcomes may only be reaped in the long term. As the six law reform snapshots demonstrate, some changes in the law, policies and its administration have taken over ten years to occur from when the client experience was first identified and responded to. The process of law reform is very slow to reap results as it often involves a sustained and persistent effort to raise awareness and change often entrenched cultures.
5. CLC law reform activities have enabled the monitoring of the approaches of industry and government at Federal, State and Local Council level.

6. CLC law reform activities have highlighted difficulties, strengths and inconsistencies in the law and its administration, keeping industry and government at Federal, State and Local Council levels accountable to the community.
7. CLC law reform activities have enunciated a different perspective in public debates which is grounded in their casework experience and reflective of the people to whom they provide legal services.
8. CLC law reform activities have given voice to members of the community whose experiences of the laws and their administration would go otherwise unheard.
9. CLC law reform activities have emerged (based in the documentation considered for this research and selected on the basis of the criteria outlined above) out of client experience and identified trends in casework which have been pursued on an issue basis rather than along party political lines. Having viewed the documentation from numerous law reform activities from 1986 to 2005, these activities have been levelled at Local, State and Federal governments and oppositions; irrespective of the political persuasion of the government in power at the time.
10. The CLC law reform activities examined for this research have had a positive impact in creating changes to the laws and their administration. At times, CLC law reform work has produced and maintained 'a flashlight' on issues which were not in the public realm and which are often mundane and uninteresting, but problematical.
11. CLCs have often been the sole agency identifying and advocating about a specific problem encountered by clients over many years. On occasion, CLCs' suggested reforms have been adopted at a later stage without any acknowledgment of the role of CLCs in the formulation of these reforms.
12. As the six law reform snapshots demonstrate, some changes in the law, policies and its administration have taken over ten years to occur from when the client experience was first identified and responded to. The process of law reform is very slow to reap results as it often involves a sustained and persistent effort to raise awareness and change often entrenched cultures.
13. CLCs have had their recommendations heeded in Parliamentary, Statutory and other inquiries at National and State level. Recommendations of CLCs have been adopted by Government,

statutory or industry regulatory bodies. Some recommendations of CLCs whilst being acknowledged have not necessarily been implemented by those bodies. The ability to implement them often lies beyond the power of the CLCs and so cannot be used as a measure of success.

14. Resources should be given to community legal centres to support the ongoing archiving, both at peak body level and at community legal centre level, in order to retain documentation relating to their law reform and community legal education undertakings. This research revealed problems for CLCs with document retention. Document management should be resourced by funders in the future and CLCs need to see that the storing of documents on law reform and community legal education is important to their work.
15. Training of personnel has been changed due to CLCs suggestions for improvements in training of personnel, operating procedures or requests for CLC involvement in the training itself.
16. CLCs have been invited by Governments at Local, State and Federal level to share their experience and ideas on regulation, legislative drafting or problem eradication. Such requests highlight that CLCs are a valuable source of data and ideas. Regular and sustained requests have been made by government over a long period of time for CLC representation on advisory committees or in public consultations.
17. CLC law reform and CLE work is critical to the notion of participatory democracy. It has enabled clients to be informed of their rights and responsibilities and to make informed decisions based on having their options explained. The experience of clients (many of whom have no voice for a range of reasons including a limited education, disability or fear) conveyed through the client lawyer relationship has placed CLCs in a prime position over many years to inform government and industry of the impacts on the ground of the law. This has led to the clarification of laws which are uncertain, has led to early problem identification and prevention where trends exist. Accordingly, it has reduced the burden of increased costs in terms of the court process and created greater efficiency by suggestions and the adoption of remedies for deficiencies in the laws and their administration.
18. CLCs engage significantly in law reform work through their extensive involvement in formal State, Federal or Local Government; and industry consultative groups, informing these bodies of client experience and how policies might work 'on the ground', through the provision of policy suggestions. (See Appendix I)

## Recommendations

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1. The casework of CLCs needs to be balanced with Law Reform and Community Legal Education work of CLCs. Opportunities for reflection on trends in casework, problem identification and solutions need to be properly supported and resourced by funders of CLCs as it is in the public good.
2. Measurement of outcomes or impacts of law reform activities must reflect that such outcomes may only be reaped in the long-term (This can mean reforms can take up to ten years to come to fruition).
3. CLCs need to improve their identification of and ownership of reforms initially suggested by them, but later claimed by others. This is imperative if they are to be able to gain full recognition of their role in the reforms which are adopted.
4. Improved record-keeping of CLC meetings with decision-makers, the earmarking and tracking of recommendations made by CLCs (which are later adopted) are required to ensure that they are consistently maintained, monitored and evaluated.
5. Attempts to measure law reform and community legal education should be tempered by the recognition that human service outcomes can be invisible, long term, imprecise and involve aspects of well-being and development that cannot be adequately measured due to a focus on more immediate cost benefit analysis.<sup>76</sup>

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<sup>76</sup> L Glanville, *Community Legal Centres: Can CLCs advocate for themselves?*, Volume 24 Issue 3 *Alternative Law Journal* 1999, 154-156

## Conclusion

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CLCs because of their direct client involvement and their community base provide an effective mechanism for enabling the voice and experiences of the community to be heard. Clients come to legal centres (with their legal and other problems) seeking solutions, strategies to move forward, information, advice and representation. In the course of delivering this service, legal centres are ideally placed to see how the legal system's operation impacts upon clients; as well as having the ability to identify a trend that creates difficulties or which enhances the legal systems operation when informing their decision-makers. Legal centres see a broad range of members of the community but they also represent sections of the community who are on the margins, or who might be too timid or frightened to participate or complain in a more formal way. The support of community legal centres in informing decision-makers of client experience and suggesting how the law might be improved can be critical. This has been evidenced in the documented law reform initiatives undertaken by community legal centres that were examined during the course of this research.

The ability of casework informed law reform and community education enables people to know how the laws operate and what their rights and responsibilities are within the legal system. This is integrally linked to sustaining the relevance of core democratic institutions to the community. Similarly, by providing government, its instrumentalities and the courts with an opportunity to learn of the impact of the law in operation, assists these bodies to identify aspects that are working efficiently and those could be improved. Such information enables governments, whatever their political persuasion, to ensure that the law is responsive to community experience, thus sustaining their relevance in a manner consistent with a system of participatory democracy that exists in Australia<sup>77</sup> and ensuring that governments remain relevant to their community.

The work of CLCs in law reform is based on the experiences of their clients and can lead to the improvement of the law, by informing key decision-makers of the impact of laws often drafted in isolation from the experiences of grass roots community. This makes for a more 'socially-just' society. It enables decision-makers to have the information about the impacts of their laws so that they can refine and improve the laws and their administration. It can also impact on how legal services can be delivered in a more effective way to enable citizens to have an awareness of their rights and responsibilities within the legal system and other administrative processes that can affect them and their families.<sup>78</sup>

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<sup>77</sup> *Lange v Australian Broadcasting Corporation*, 1994 HCA and *Theophanis v Herald and Weekly Times* (1994) 124 ALR 1

<sup>78</sup> P. Pleasence, 'Causes of Action: Civil Law and Social Justice', 2nd ed., LSRC Research Paper No. 14 (Norwich: Stationery Office, 2006); and P. Pleasence, A. Buck, N.J. Balmer, A. O'Grady, &

**Having examined the selected law reform projects and test cases, the main reasons identified as to why community legal centres engaged in law reform<sup>79</sup> are client-based reasons.**

CLCs have an important role in a democratic civil society and they are a legitimate part of the legal landscape in that they provide an alternative voice.<sup>80</sup> It is easy in a democracy as large as Australia, for government whether Local, State or Federal, Liberal or Labour and their agencies to lose sight of the on-the-ground experiences of members of the public. Bureaucracies and large corporations can be removed from the issues that confront many people. For instance: a person with a disability in accessing services, the refusal by a pizza shop to service an Aboriginal person, the difficulties faced by a person who left school aged twelve in understanding complex forms and procedures, the struggles of the farmer who has been the victim of dodgy credit arrangements or the child who has been in State care. These are the people who CLCs have seen over the three decades of their existence and these are the clients they continue to help.

The six selected snapshots analysed for this report, illustrate the CLCs have a unique role in identifying through their casework, clients' experiences that are problematic, unfair, costly, inefficient or unjust. CLCs bring these experiences into the view of governments, the public, media and industry and work for the improvement of the justice system so that it is responsive to community need. CLCs are often unpopular for doing this and such a role is not an easy one. Often the issues when first identified and raised by CLCs seemed mundane, uninteresting or incredible. CLCs despite this have kept important issues on the agenda. They have maintained their persistence when matters slipped off the agenda and through their constructive suggestions the laws and their administration have

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H. Genn, *Causes of Action: Civil Law and Social Justice*, LSRC Research Paper No. 11 (Norwich: The Stationery Office, 2004) Curran L, *Responsive Law Reform Initiatives by Students on Clinical Placement at La Trobe*, The Flinders Journal of Law Reform, July 2004, Volume 7, Issue 2, Flinders University and Curran L *Innovations in an Australian Clinical Legal Education Program: Students Making a Difference in Generating Positive Change*, International Journal of Clinical Legal Education, December 2004

<sup>79</sup> C. Coumarelos, Z. Wei, & A. Zhou, *Justice Made to Measure: NSW Legal Needs Survey in Disadvantaged Areas* (Sydney: Law and Justice Foundation of New South Wales, 2006); S. Forell, E. McCarron, & L. Schetzer, *No Home, No Justice? The Legal Needs of Homeless People in NSW* (Sydney: Law and Justice Foundation of New South Wales, 2005); Law and Justice Foundation of New South Wales, *Access to Justice and Legal Needs: Stage 1: Data Digest* (Sydney: Law & Justice Foundation, 2003); Law and Justice Foundation of New South Wales, *Access to Justice and Legal Needs; Stage 2: Quantitative Legal Needs Survey Bega Valley (Pilot)* (Sydney: Law & Justice Foundation, 2003); Law and Justice Foundation of New South Wales, *The Legal Needs of Older People in NSW* (Sydney: Law & Justice Foundation, 2004).

<sup>80</sup> S Rice, *Community Legal Centres, Steam trains and Bourgeois Management*, Volume 18 No. 2, Alternative Law Journal, April 1993, 86-87.

been improved, streamlined and become more responsive to individuals in society. The reality is, as this research has shown, often CLCs do not get the credit they deserve for their role in law reform.

There is a critical need to ensure that this input on law reform and community education is able to continue unhampered by resource constraints, an overburdening of centres with too much casework and by allowing them the space to think and reflect on the ramifications and trends in their casework, that need to be examined more systematically. As Rix and Burrows state, “by providing...Australians with the means to enjoy their legal citizenship, the community legal sector plays a significant role in preventing social disintegration and disorder and in underwriting the legitimacy of the legal and political systems”.<sup>81</sup>

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<sup>81</sup> M Rix and S Burrows, *The Foundations of Legal Citizenship: Community Law, Access to Justice and the Community Legal Sector*, Volume 30 No.3, *Alternative Law Journal*, 126, 130

## Appendix I

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### Formal CLC Involvement by Invitation on Statutory/Parliamentary/Government and Industry Consultative Bodies

#### Community Legal Service Wodonga

- Albury Court Users Forum
- BIG for Youth
- Cooperative Service Delivery Model
- Criminal Justice Support Network
- Family Violence Network
- Koori Interagency Network Group
- Multicultural Interagency Network Group
- Wodonga Court Users Forums

#### Consumer Action Law Centre

- AGL Customer Council
- Australian Competition and Consumer Commission Consumer Consultative Committee
- Australian Securities and Investments Commission Consumer Advisory Panel
- Australian Bankers Association Consumer and Community Consultative Committee
- City West Water Customer Consultative and Engagement Committee
- Consumer Affairs Victoria - Working Together Forum
- Energy Water Ombudsman Victoria Case Handling Advisory Committee
- Essential Services Commission Consumer Consultative Committee
- Healthy Credit Project Advisory Group - Multicultural Centre for Women's Health Project
- Low Income People and General Insurance Working Group
- Westpac (Internal) Customer Issues Committee

#### Darebin Community Legal Centre

- Women's Correctional Services Advisory Committee

#### Disability Discrimination Legal Service

- Department of Justice - Early Intervention Program for Adolescents (15-18years) who sexually abuse.
- Law Institute of Victoria - Disability Committee
- Yooralla/Victorian Women's Disability Network - Support for Parents with Disabilities

#### Peninsula Community Legal Centre

- Benton Square Management Committee
- City of Casey Healthy Families Taskforce
- Consumer Affairs Victoria - Working Together Forum
- Cranbourne & District Community Services Group
- Family Relationship Centre Reference Group
- Frankston City Council CALD Reference Group
- Frankston North Community Renewal Steering Group
- Frankston & Peninsula Family Violence Network
- Frankston Magistrates Court Specialist Family Violence Service - Local Management Group
- Mahogany Neighbourhood Centre Management Committee
- SECASA Advisory Group

#### **West Heidelberg Community Legal Service**

- Ministerial (Community Services) Advisory, Juvenile Justice Roundtable
- The Infringements Act Steering Committee (Department of Justice)
- Victorian Corrections Commissioner's Prisons Stakeholder Forum
- Victorian Legal Services Commissioner's Reference Group

#### **Women's Legal Service Victoria**

- Department of Justice (DOJ) Family Violence Stakeholders Reference Group
- Family Law Forum, Chaired by Chief Justice Diana Bryant - representing the National Association of Community Legal Centres
- Family Violence Court Evaluation Steering Committee
- Family Violence Death Review Committee
- State-wide Family Violence Advisory Committee - previously known as the State-wide Steering Committee to Reduce Family Violence

#### **Youthlaw**

- Department for Victorian Communities Public Transport Enforcement Forum
- Ethical Standards Community Consultative Committee
- Inner City Regional Youth Affairs Network
- Ministerial (Community Services) Advisory, Juvenile Justice Roundtable
- Department of Infrastructure Volatile Substance Abuse Protocols Advisory Committee

### **Aboriginal Family Violence Prevention Legal Service**

- The Victorian Indigenous Family Violence Partnerships Forum
- The Victorian Aboriginal Justice Forum, Reference Groups as follows:
  - Corrections
  - Police
  - Family Violence
  - Courts
  - Ethical Standards Division Committee Meeting
- The Women in Corrections Advisory Committee
- The Victims of Crime Committee

### **Family Mediation Centre**

Family Services Australia Working Group Reference Groups as follows:

- Establishment of Family Relationship Centres
- Legal Issues
- Departmental database
- Certificate System Family Law Act

### **Welfare Rights Unit**

- Centrelink Disability Customer Reference Group

### **Public Interest Law Clearing House**

- Energy Rights (Chaired by Financial Consumer Rights Council) – currently on hold
- VCOSS Manuals for Community Organisations – Reference Group
- Anti-Capital punishment Round Table

### **Homeless Persons' Legal Clinic (PILCH)**

- Standing Advisory Committee for Infringement System Oversight Unit (ISOU) (DOJ)
- Social Status Discriminatory Committee (Department of Justice)
- Standing Advisory Committee for the Neighbourhood Justice Centre (a Court)
- Women's Housing Board

### **Human Rights Legal Resource Centre (PILCH)**

- Human Rights Education Advisory Committee (VEOHRC)

## Appendix II

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### List (Non-Exhaustive) of Feedback from Government, Parliament and Statutory Bodies<sup>82</sup>

**March 1, 2007**

Letter from The Hon Chris Pearce MP, Parliamentary Secretary to the Treasurer, Federal Member for Aston, in response to the Research Paper entitled '*Electronic Commerce and Cyber Scams*':

"I would like to thank you for providing me with a copy of your research into what I consider to be an important area of consumer policy."

"I therefore agree that consumer education in relation to Internet commerce and scams is crucial to preventing unscrupulous fraudsters from taking advantage of Australian consumers."

**February 15, 2006**

Letter from the Attorney General, The Hon Philip Ruddock responding to the Joint Discussion Paper entitled '*The Impact of the Law and Social Policy on Credit Consumers of Victoria: A Report on Reckless Lending*':

"I appreciate the time you've taken to provide me with a copy of the discussion paper. The report should prove to be a useful tool for consumers and people working with credit and debt issues."

**January 13, 2006**

Letter from the Australian Government, Attorney General's Department, Indigenous Justice and Legal Assistance Division responding to the Discussion Paper entitled '*The Impact of the Law and Social Policy on the Credit Consumers of Victoria: A Report on Reckless Lending*':

"The Attorney General's Department appreciates the time you've taken to provide a copy of the discussion paper, and I note that the report covers a range of issues relating to the provision of personal finance which can have serious consequences for consumers."

"I trust that the insights gained by the students through authoring the paper will inspire them to continue their efforts to assist disadvantaged people in accessing the justice system."

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<sup>82</sup> Copies of these letters are available, on request, for inspection at the West Heidelberg Community Legal Service.

**December 28, 2005**

Letter from Chief Magistrate Ian Gray, Magistrates' Court Victoria responding to the '*Control of Weapons Legislation*' Discussion Paper and Report on '*The Impact of the Law and Social Policy on Credit Consumers of Victoria: A Report on Reckless Lending*':

"Thank you for sending me the above reports which I will read with great interest and circulate within the Magistracy."

**October 10, 2005**

Letter from the Australian Government, Department of Immigration and Multicultural and Indigenous Affairs, responding to Discussion Paper '*The Impact of the Law and Social Policy on the Newly Arrived Somali Community: Crossing the Cultural Divide*':

"The paper raises a number of issues and provides some very useful insights."

**September 15, 2005**

Letter from the Attorney General, The Hon Philip Ruddock, responding to Discussion Paper entitled '*The Impact of the Law and Social Policy on the Newly Arrived Somali Community: Crossing the Cultural Divide*':

"I'm impressed that the clinical placement students are exposed to such a broad range of issues impacting the community, they may one day serve as graduate lawyers."

"Documenting some of the core issues of communication and transport, housing and family violence is a useful way to raise awareness and promote understanding in the wider community about both the perceived and real difficulties the Somali Community experiences in accessing the justice system."

**September 7, 2005**

Letter from the Victorian Government, Department of Justice responding to Discussion Paper, '*The Impact of the Law and Social Policy on the Newly Arrived Somali Community: Crossing the Cultural Divide*':

"I have passed your paper on to the Diversity Issues Unit in my Department and have asked them to consider the paper in policy work in relation to the justice system's responsiveness to newly arrived communities. The chapters on family violence and access to justice are particularly relevant to the

work of my Department. Please congratulate the students on the high standard of their research and writing.”

**August 17, 2005**

Letter from Chief Magistrate Ian Gray, Magistrates’ Court Victoria, responding to, *‘Another Poke at the Pokies’*, and Discussion Paper *‘The Impact of the Law and Social Policy on the Newly Arrived Somali Community: Crossing the Cultural Divide’*:

“Thank you very much for both the above reports which I will read with great interest and circulate within the court.”

**June 6, 2005**

Letter from Auditor General of Victoria, responding to: *‘The PERIN Court: A Discussion Paper’*:

“The document makes very interesting reading and touches on some issues which could make for a performance audit on the subject for fines administration.”

**March, 2005**

Senate Committee Report: Community Affairs References Committee: *‘Protecting Vulnerable Children: A National Challenge - Second Report on Inquiry into Children in Institutional or Out of Home Care’* referenced the West Heidelberg Community Legal Service submission 127, throughout the Senate Committee Report. (See footnotes 103 and 38):

**October 31, 2003**

Letter from the Department for Victorian Communities, Acting Director, Office for Youth, responding to Law Reform Report, *‘He that goes a borrowing goes a sorrowing: A Report into Youth Debt’*, January 2001:

“I commend you and your colleagues on choosing youth debt as your topic for your law reform project. It is important that communities work together to ensure that young people are appropriately protected from the negative consequences of accruing debt.”

“The Office for Youth is also interested in strategies that improve young people's awareness of how to avoid the pitfalls of debt and as such I would be interested in receiving a copy of your final report.”

**October 8, 2003**

Letter from the Victorian Department of Justice, Director of Legal Policy, responding to report entitled, *'To Breach or not to Breach: Confidentiality and the Care and Protection of Children'*:

"The recommendations for legislative amendments contained in the report have been noted and will be considered in the context of future reform of the children and Young Persons act 1989."

**September 29, 2003**

Letter from Department of Justice, Executive Director of Court Services, responding to the report entitled *'Treatment and Sentencing Initiatives for Drug Dependent Young People in Victoria'*:

"I commend all those involved in the production and presentation of this well researched and detailed report on the treatment and sentencing initiatives being exercised by Victorian courts in order to achieve better and lasting outcomes for our drug dependent young people."

"This report provides the Department with valuable insight into how members of the broader community and indeed young people themselves see this program as working and how they might be improved in the future."

"Please pass on my gratitude to all those responsible for the production of this excellent report."

**June 18, 2003**

Letter from the Department of Justice, Assistant Director of Legal Policy, Criminal Law, in response to a recent article published in Viewpoint, a journal of St Vincent De Paul:

"The government is constantly seeking to improve the operation of the criminal justice system and ensure that it does not impact adversely on disadvantaged groups in the community. Your comments are appreciated and will inform future developments in this area."

**October 25, 2002**

Letter from Brendon Money, General Manager Women's Prison Region to Amanda George, Brimbank Community Legal Centre, regarding the Public Correctional Enterprise Policy acknowledges the input of CLCs on the use on Muirhead cells and video tapes and the issue of co-accommodation of children with their parent while in custody.

**October 15, 2002**

Letter from Minister for Community Services and Housing, The Hon Bronwyn Pike MP, in response to report entitled '*Comparative Analysis of the Profiles and Outcomes for Young Offenders 17-20 Years of Age in the Adult and the Juvenile Justice Custodial Systems*':

"Once again I would like to thank you for your commitment and valuable contribution to the development of best practice and policy in the area of juvenile justice. I look forward to your continuing participation in the round table."

"I concur with your suggestion that qualitative information in such a study is important."

**September 9, 2002**

Letter from the Regional Coordinating Magistrate, Magistrates' Court of Victoria, in response to a Report, '*Comparative Analysis of the Profiles and Outcomes for Young Offenders 17-20 Years of Age in the Adult and the Juvenile Justice Custodial Systems*':

"We in the courts agree that this is a difficult issue and one that needs constant scrutiny to achieve better outcomes for all concerned with it. Please keep us informed of your excellent initiatives in this area."

**August 16, 2002**

Letter from the Manager of Legal Services, Department of Infrastructure, in response to the report entitled '*Citizens and their Rights: A Report into the Public Transport System and CityLink*':

"The report makes a positive and timely contribution to the improvement of the public transport system in Victoria."

"The recommendations of the report in relation to authorised officers are noted."

**August 5, 2002**

Letter from the Assistant Commissioner, Department of Justice, Office of Correctional Services, in response to the report entitled '*Comparative Analysis of the Profiles and Outcomes for Young Offenders 17-20 Years of Age in the Adult and the Juvenile Justice Custodial Systems*':

"I thoroughly commend the West Heidelberg Community Legal Service for enabling clinical placement students to undertake a review processes of this nature and in encouraging them to examine contemporary corrections issues. As the corrections system continues to grow, it is important that students have the opportunity to examine the impact of change, as well as the processes and trends that a match. It is also as equally important that the corrections system acknowledges those views and seeks to make use of the data and analysis that is produced."

"...I can attest firsthand to the great value and skill enhancement opportunities that these placements can provide to students."

**June 25, 2002**

Letter from the Director of Projects, Legal policy, Department of Justice, in response to Sentencing Review:

"Your comments will be given consideration in the context of the government's response to the review."

"Thank you for your contribution to and interest in this important area of the law."

**December 24, 1998**

Letter from Jan Wade MP Minister for Women's Affairs, to Mr Louis Schetzer policy worker of the Federation of CLCs regarding the Federation's concern about the reallocation of funding from the telephone counselling service operated by the Domestic Violence and Incest Resource Centre:

"The issue of violence against women remains a high priority for the government and the needs of the community will continue to inform policy and program development."

**October 5, 1995**

Letter from Judith Dixon, Director Victorian Community Council against Violence, to Ms Kath McCarthy of Coburg and Brunswick Community Legal and Financial Counselling Centre, thanking her for her attendance and contribution to the conference *Bringing it Together: A Victim Support Strategy*:

"Once again, thank you for your contribution and participation. The enormous professional and community response we have received to this issue of support the victims of crime has been overwhelming."

### **September 29, 1995**

Letter received from Senator Amanda Vanstone, Shadow Attorney General and Shadow Minister for Justice Parliament of Australia, to Ms Kath McCarthy of the Community Legal and Financial Counselling Centre, regarding her correspondence. This included recommendations regarding the *Family Law Reform Bill 1994* (with VAWC being members of the National Women's Justice Coalition) to be considered by the Senator, with a view to finalising the Liberal/Nationals party position on the Bill:

"The Government has, this week, provided us with copies of the amendments it intends to move in response to both the committee's recommendations and the initiatives of the National Women's Justice Coalition (NWJC)".

"You can be assured that your support of the NWJC's position will (be) taken into consideration in making a determination."

### **September 26, 1995**

Letter from Peter Duncan MP, Parliamentary Secretary to the Attorney General, to the Coordinator of the Coburg Brunswick Community Legal & Financial Counselling Centre, who was a member of the National Women's Justice Coalition, acknowledges their submission to the Senate Legal Constitutional Legislation Committee. In response to their submission, the proposed *Family Law Reform Bill (No 2) – Exposure Draft* is being redrafted and they will be given the opportunity for further input into the law reform process:

"The changes recommended by the Senate Committee in its second report pick up on the concerns put in previous submissions of the NWJC. The Government responded to the Committee's Report by endorsing all recommendations and accepting all legislative changes recommended."

"The Government also signalled its intention to make two changes in addition to those recommended by the Senate Committee, one of which arises directly out of the submissions put by the NWJC and the other from the Law Reform Commission."

### **March 27, 1995**

Letter from Ms Vivienne Wiles from Women's Resource Group Member of the Violence Against Women and Children Working Group (Federation of CLCs) to the Hon. Justice Sally Brown advising of her resignation and her new replacement on the Family Violence Protocols Committee of the Family Law Court:

"I would like to take this opportunity to thank yourself and the FVPC for the opportunity to participate in the Committee's work and wish it well for the future."

**June 28, 1994**

Letter received from Mr Mark Cowie, Social Researcher of Task Force Victor from the Department of Justice Victoria, inviting representatives from the Police Issues Group to formally present their views on the issues of police shootings in Victoria.

**June 4, 1993**

Summary of letter received from Mr Neil Comrie, Chief Commissioner of Victoria Police to Mr S. Biondo and Mr D. Palmer of the Federation of CLCs, responding to the release of a Federation report *'Report into Mistreatment by Police, 1991-92'*:

Mr Neil Comrie is critical of the findings in the report regarding them as "unbalanced" however he suggests further dialogue between the Federation of CLCs and the Assistant Commissioner of the Internal Investigations Department. This letter is included in this Appendix as although resistant to the suggestions of CLCs, it has now been confirmed that the CLCs concerns raised in the report were valid. The Office of Police Integrity (OPI) was established in November 2004 by the Victorian Government to ensure that the highest ethical and professional standards are maintained within the Victoria Police at all times. Its role is also to ensure that police corruption and serious misconduct is detected, investigated and prevented and to ensure that members of Victoria Police have regard to the human rights set out in the new Charter of Human Rights and Responsibilities.

**May 13, 1993**

Letter from Mr John Young, Chairman of the Police Board of Victoria to Mr Lu Schetzer, Convenor of Police Issues Group of the Federation of CLCs, acknowledges the receipt of the report *"Brute Force"* and that the report would be retained for future reference should the board commence enquiries into police administration:

"The Board does not presently have a reference on the matters discussed in this report. However, the materials you have provided will be retained for future reference should the board commence inquiries into this area of police administration."

**July 7, 1992**

Letter from Mr Kelvin Glare, the Chief Commissioner to the Federation of CLCs responding to correspondence received regarding the appropriate nature of police member's equipment. In

response the Commissioner agreed to remove pointed studs from police equipment as suggested by CLCs:

“However, in my usual spirit of goodwill, I have ordered the point studs depicted, are removed from the equipment.”

#### **January 24, 1990**

Letter from Julie Dawson, Assistant Director of the Justice Branch of the Department of Premier and Cabinet to Ms J. McCulloch Project Officer Federation of CLCs, confirming that the Federation of Legal Centres views on police search powers have been forwarded to the Minister for Police and Emergency Services for consideration prior to the next parliamentary sitting for the Control of Weapons Bill:

“As a part of this process, the contents of the Victorian Law Reform Commission's report on offensive weapons, together with the comments of other organisations such as the Federation of CLCs, will be taken into account.”

#### **February 5, 1990**

Letter from Mr Andrew McCutcheon, the Victorian Attorney General to Ms J. McCulloch Project Officer Federation of CLCs, responding to the Federation's query as to the reasons why Queens Counsel were no longer necessary to represent the public interest during the Police Shooting Inquest:

“I agree with you that there will be times when Queen's Counsel representing the Attorney General will be necessary to ensure that the public interest is properly protected. Thank you for your interest in this important issue.”

#### **September 14, 1988**

Invitation from Inspector R.A. Shaw, Coordinator of the *'Police in Schools Involvement Program'* to the Coordinator of the Police Issues Group; inviting them to attend a seminar seeking their views on the newly proposed *'Police /Schools Involvement Program'*. Other notable speakers included Deputy Commissioner (Administration) Noel Newnham, Ms Jude Wallace Commissioner Law Reform Commission of Victoria, Superintendent Mick Smith, NT Police.

## **SUMMARY**

Only a miniscule proportion of the correspondence inspected (this proportion was mainly from the Victorian Police) revealed a criticism of submissions or matters raised by CLCs. The overwhelming majority of correspondence received from Statutory and Parliamentary members was complimentary and considered the contribution by the CLCs as positive.

## Appendix III

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### References to other Law Reform Activities of CLCs (non-exhaustive)

- HFC Financial Services, Consumer Credit Legal Centre<sup>83</sup>
- Wheelchair Pedestrian Railway Crossing Inquests, Public Interest Law Clearing House, 2001.<sup>84</sup>
- Friends of *Merri Creek Inc v Meakins*, Environment Defenders Office, December 2002

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<sup>83</sup> The Consumer Credit Legal Centre, The Victorian Director of Consumer Affairs reached a settlement where \$3 million was to be used to establish a consumer fund. This was later used to establish the Consumer Law Centre of Victoria Limited. See Consuming Interest: No 51, Australian Consumers' Association, April- May-June 1992.

<sup>84</sup> The investigation into wheelchair access led to a number of safety reviews by government and other interested agencies with recommendations for the improvement of safety. Submissions made to the Coroner by CLCs have been kept on file for coronial files for future reference. Safety Reviews contain lessons for infrastructure managers in other areas of disability. Source: State Coroner Victoria, Case No 3293/01.

## Further References

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P Lynch, *'Human Rights Lawyering for People Experiencing Homelessness'* Volume 10 No.2 Australian Journal of Human Rights, 2004 59.

C Parker, *'The Logic of Professionalism: Stages of Domination in Legal Service Delivery to the Disadvantaged'*, Volume 22 No.2, International Journal of the Sociology of Law, June 1994, 145-167.

L F Smith, *'Why Clinical Programs Should Embrace Civic Engagement, Service Learning and Community Based Research'*, Volume 10, Clinical Law Review, Spring, 2004, 723.

M Noone and S A Tomsen, *'Lawyers in Conflict: Australian Lawyers and Legal Aid'*, Federation Press, 2006.

Edited by A Sarat and S Scheingold, *'Cause Lawyering: Political Commitments and Professional Responsibilities'*, Oxford University Press, 1999.

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