

CHAPTER 11

COMMUNITY LEGAL CENTRES

Legal aid commissions and CLCs are barely able to provide a human facade to an inhuman legal system. CLCs and legal aid commissions have struggled to manage under the weight of increased community demand, reduced levels of government support and increased managerial demands. Access to free legal aid has been replaced by myriad conditions, shifting guidelines, financial caveats and exclusions that cover the provision of aid with the thick and sometimes impenetrable veneer of bureaucracy.¹

11.1 This chapter discusses the role of community legal centres (CLCs) and the impact of current legal aid arrangements on their operation.

Introduction

11.2 CLCs are not-for-profit, independent, community-based organisations that provide a range of legal and related services, including legal information and referrals, legal advice and assistance, and some limited casework. CLCs also have a core role in providing community legal education and engage actively in policy and law reform work.² They have also tended to fill identified gaps in legal aid services in places of high need, providing complementary but different services to those provided by LACs and the private legal profession.³

11.3 There are over 207 CLCs in Australia⁴ which provide services to approximately 350,000 clients per year.⁵ For the most part, CLCs assist disadvantaged clients and client groups within the community, namely those persons who cannot afford private legal representation and who are unable to obtain legal aid funding in order to pursue legal avenues available to them.⁶ CLCs are often the first point of contact for people seeking assistance or their last resort when all other attempts to seek legal assistance have failed.⁷

1 Mr Sam Biondo, Fitzroy Legal Service, *Committee Hansard*, 12 November 2003, p. 43.

2 Community Legal Centres Association (WA) Inc, *Submission 93*, p. 4; Legal Aid Commission NSW, *Submission 91*, p. 40.

3 Legal Aid Commission NSW, *Submission 91*, p. 40; Queensland Association of Independent Legal Services Inc (QAILS), *Submission 73*, p. 13.

4 Community Legal Centres Association (WA) Inc, *Submission 93*, p. 5.

5 National Association of Community Legal Centres, *Submission 84*, p. 3.

6 Community Legal Centres Association (WA) Inc, *Submission 93*, p. 4; South West Sydney Legal Centre, *Submission 34*, p. 2.

7 National Association of Community Legal Centres, *Submission 84*, p. 3.

The Third Report

11.4 The Committee's *Third Report* found that CLCs tended to be the "bottom line" in the Australian legal aid system and had to bear the brunt of increased pressures and workloads as they try to pick up cases that are unable to be dealt with by LACs.⁸ The Committee also noted that there were real limits to the capacity of CLCs to manage their increased workloads, given their limited funding and their reliance on volunteer assistance.⁹

The Commonwealth's contribution to community legal centres

11.5 The Attorney-General's Department informed the Committee that the Commonwealth Government will contribute approximately \$20 million towards the Community Legal Services Program (the Program) in 2003-2004.¹⁰ The Program is funded by both the Commonwealth Government and state/territory governments to deliver legal services to the disadvantaged in the community.¹¹ Over 100 CLCs are funded under the Program. The Program was described in the following way:

Organisations are funded under the Program to provide legal advice, casework, information and referrals, community legal information, and to undertake law reform activities. Centres funded under the Program provide both generalist and specialist community legal services. The majority of community legal centres provide general legal advice in areas such as family, civil and criminal law. These organisations provide generalist advice, advocacy and representation across a wide range of legal issues, as well as participating in community legal education and law reform, and encouraging community participation in the legal system. Many centres involve volunteers from their community in the administration, management and delivery of services.¹²

11.6 The Attorney-General's Department submitted that the Commonwealth's support for the community legal sector is driven by three underlying principles:

- community service providers best meet the needs of their own communities;
- harnessing the contribution of volunteers provides community input to the provision of assistance; and

8 *Third Report*, para 8.80, p. 150.

9 *Third Report*, para 8.83, p. 152.

10 Attorney-General's Department, *Submission 78*, p. 8.

11 The NSW and Victorian Governments contribute the highest levels of state funding to the Program, while WA and Tasmania do not provide a state contribution. This has led to inequitable funding levels and access to CLCs across Australia: National Association of Community Legal Centres, *Submission 84*, Attachment D, 'Budget submission to the Commonwealth Government 2004–2007: Community Legal Centres – An investment in value Investing in Community Law', August 2003, p. 14.

12 Attorney-General's Department, *Submission 78*, p. 8.

- providing services early in a dispute helps keep people out of court.¹³

11.7 The Department's submission also stated that after consultation with stakeholders and peak representative bodies, CLCs funded by the Commonwealth have moved from annual arrangements to three-year service agreements. According to the Department, the new agreements give CLCs the stability they need to plan for their futures and put long-term strategies in place.¹⁴

11.8 Departmental representatives, when questioned about decisions relating to the location of CLCs¹⁵ and unmet legal need in certain areas, told the Committee:

The department, together with the relevant state government and legal aid commissions, has undertaken a series of reviews on a state-by-state basis in relation to community legal centres. The New South Wales review is about to get under way. Those sorts of issues of location of new centres are ones that have been dealt with in those reviews on a state-by-state basis.

...

Essentially, the review has Commonwealth and state representatives and community legal service representatives. In some cases it also has what we would see as a public interest representative. I think New South Wales has got that ... The review looks at a range of issues, including demographics, and tries to identify areas of need in that way but also takes submissions and is a public process from the point of view of taking submissions.¹⁶

11.9 The representatives advised that Victoria, Queensland, SA and WA have completed their reviews, and these reviews were supplied to the Committee. For example, the Victorian review stated that some areas of metropolitan Melbourne and in regional and rural Victoria have little or no access to community legal services.¹⁷ The WA review found that while CLCs are appropriately located and services are aligned to need, key gaps in coverage exist in four regional areas and in outer-metropolitan Perth.¹⁸

11.10 In relation to unmet legal need, the Department told the Committee that:

The reviews have been the mechanism in the last few years, although I think there is also a general concern about regional areas. I think the

13 *ibid*, p. 9.

14 *ibid*, p. 10.

15 For example, there are no CLCs funded under the Program between Nowra, NSW and the Victorian border.

16 Ms Philippa Lynch & Ms Sue Pidgeon, *Committee Hansard*, 9 February 2004, p. 22.

17 Attorney-General's Department, *Submission 78I*, Implementation Advisory Group, *Review of Commonwealth and State Government Community Legal Centre Funding Program, Final Report to the Commonwealth and State Attorneys General – May 2001*, p. 7.

18 Attorney-General's Department, *Submission 78E*, Community Legal Centre Review Steering Committee, *Joint Review of Community Legal Centres*, p. i.

committee has expressed similar concerns today. So overarching the specific state-by-state reviews, which of course happen at different times, there is an overall concern to look at where there needs to be perhaps more regional support for community legal services.¹⁹

Impact of current legal aid arrangements on community legal centres

11.11 Evidence presented to the Committee indicates that current legal aid arrangements are having a serious adverse affect on CLCs. As Mr Sam Biondo of the Fitzroy Legal Service told the Committee at the Melbourne hearing:

The recent waves of CLC reviews and Legal aid reviews have done little to contribute to a planned and orderly approach to meet community need for legal services. They have been squandered opportunities. Opportunities have existed in which planning and policy could have been developed, which would have enhanced existing services, and considered ways of going forward, in meeting legal needs in areas where there has been little or no service provision.²⁰

11.12 Particular problems experienced by CLCs are discussed below:

- increased pressure due to reduced availability of legal aid;
- lack of funding; and
- staffing and operational issues.

Increased pressure due to reduced availability of legal aid

11.13 The Committee received evidence that, while CLCs form an important and unique part of legal service delivery within the legal aid system, they are not alternatives to a properly funded legal aid system.²¹ Rather, CLCs should complement the broad range of legal aid services provided through formal legal aid structures and the private legal profession to address legal needs that might otherwise remain unfulfilled.²² The South West Sydney Legal Centre argued that CLCs have a vital role to play:

... there is no doubt that CLC's constitute the most significant vehicle to achieving national equity and uniformity through a network of "branches" highly attuned to their respective community's needs. Accordingly ... any consideration of current arrangements must protect the integrity and enhance the capacity of CLC's.²³

19 Ms Sue Pidgeon, Attorney-General's Department, *Committee Hansard*, 9 February 2004, p. 24.

20 Fitzroy Legal Service, *Submission 48*, p. 32.

21 Queensland Association of Independent Legal Services Inc (QAILS), *Submission 73*, p. 21.

22 *ibid*, pp. 13-14.

23 *Submission 34*, p. 2.

11.14 However, increasingly it appears that CLCs are expected to pick up the shortcomings in the legal aid system where, for example, people have reached their legal aid "cap", where they have a legal matter for which legal aid is not available, or where they do not meet the means test despite being unable to afford a private solicitor.²⁴ The demand appears to be overwhelming many CLCs.

11.15 As the Federation of Community Legal Centres (Vic) Inc argued:

Centres report an overwhelming level of demand for legal services from people who are no longer eligible for legal aid, can not afford a private solicitor, or have exhausted legal aid funding prior to their matter being resolved. There is nowhere else for these people to go. The pressure on centres results in them undertaking work that they are not resourced to do, often to the detriment of legal education and policy work. Even then, centres are unable to meet the demand for legal assistance.²⁵

11.16 The Fitzroy Legal Service presented similar evidence:

The gaps in service provision arising from the inadequate coverage of Victoria Legal Aid have over recent years been increasingly filled by generalist and specialist community legal centres, the courts, private practitioners doing pro bono work and self represented litigants. Because of resource constraints, which include physical, human and financial, CLCs don't have the necessary capacity to provide a comprehensive casework service. Centres are unable to always provide representation in court or tribunal proceedings and can only do so in a fraction of cases.²⁶

11.17 The Legal Aid Commission NSW agreed:

There is no doubt that the decline in legal aid funding has resulted in stark regional variations in the availability of legal aid, and a corresponding increased burden on community legal centres and other community organisations. Burnout is a serious issue for staff. The poor salaries paid to CLC staff, which also impacts on the ability of CLCs to retain experienced staff, only exacerbates this situation.²⁷

11.18 The Hobart Community Legal Service noted that:

It has experienced significant increases in the number of people presenting to [it] who have been denied legal aid. This results in enormous pressure on those staff and volunteers who already have extremely high workloads.²⁸

24 Mr Sam Biondo, Fitzroy Legal Service, *Committee Hansard*, 12 November 2003, p. 45.

25 *Submission 50*, p. 12.

26 *Submission 48*, p. 32.

27 *Submission 91*, p. 40.

28 *Submission 49*, p. 2.

11.19 The Cairns Community Legal Centre argued that such a situation would ultimately lead to reduced access to justice for a greater number of people:

In the event that legal aid is not increased even greater demands will be placed on already stretched CLCs to provide more services across a broader range of areas of law, which in turn requires more staff, more time for professional development and more funds. If these requirements are not met, as is currently the situation, the service provided by CLCs will ultimately become narrower and more reliant on referring clients to private solicitors. If clients are unable to obtain legal aid and cannot afford private solicitors their avenue to justice thus becomes extremely limited, if not non-existent.²⁹

11.20 The Committee also heard evidence that coverage areas serviced by individual CLCs are ever-expanding due to lack of legal services generally:

Our office was originally set up to cover the Blue Mountains greater government area but in fact our area of influence has had to expand to cover Lithgow, which is a town of about 5,000 people near the Blue Mountains, and as far as Bathurst, which is a major centre about two hours west of the upper Blue Mountains. Bathurst is a town of about 20,000 people that does not have a Legal Aid office, does not have a community legal centre and does not even have a Women's Domestic Violence Court Assistance Scheme. So our area of influence has had to expand because of a lack of services.³⁰

11.21 The Committee received evidence that since changes by the Commonwealth Government to family law funding arrangements in the late 1990's, CLCs have experienced an increase in demand for family law services.³¹ Queensland, for example, has 'experienced massive increases in the number of family law clients presenting for legal help, clients who, in the view of CLC workers, would previously have received assistance from Legal Aid Queensland.³² Further:

... people with family law matters who now find themselves ineligible for legal aid are presenting at community legal centres with increasingly complex issues and problems. Such problems require significantly greater resources than can be brought to bear by a CLC which previously would have been able to provide an initial level of assistance before referring the client to legal aid for ongoing assistance.³³

11.22 CLCs are experiencing an increasing demand for individual casework services from within the community, specifically in the area of family law:

29 *Submission 14*, p. 3.

30 Mr Michael Crozier, Blue Mountains Community Legal Centre Inc, *Committee Hansard*, 13 November 2003, p. 92.

31 See also Chapter 4.

32 Queensland Association of Independent Legal Services Inc (QAILS), *Submission 73*, p. 26.

33 *ibid*, p. 28.

The demands are particularly high for representation in courts and tribunals, where people have been rejected for a grant of legal aid, or aid is not available in the area of need. Family law representation in general and family law property matters have been cited as areas of increasing demand.³⁴

11.23 This has serious flow-on consequences:

Because of the increased pressure on CLCs to meet family law needs, there is now a reduced capacity for individual centres to choose to work in other areas of law (for example, in consumer law) and therefore limited or no opportunity for staff to develop competence in other areas of practice. For staff of generalist CLCs there are particular concerns about the potential “de-skilling” of staff and the effect that has on both professional development and employee satisfaction levels. Such centres are now providing unprecedented levels of assistance in family law matters but the assistance (by virtue of resources) is limited to the provision of advice and, in some cases basic document preparation. The work is intense and time consuming and leaves little time for staff to focus upon other areas of law in which staff members might have particular skills.³⁵

11.24 There are also problems in relation to criminal matters. For example, QAILS contended that:

At a practical level, Queensland community legal centres are daily called upon by clients to provide guidance as to their criminal matters in circumstances where they are ineligible for legal aid or have been refused assistance. Again, community legal centres are not in a position to fill the void created by inadequate funding of legal aid in criminal law matters.³⁶

11.25 QAILS also commented on the lack of legal services in relation to administrative law matters:

Many Queensland CLCs undertake some level of administrative law work ... Several CLCs work almost exclusively within the province of administrative law, notably in relation to immigration, social security and prison issues. Without exception, these specialist services are grossly underfunded ... Each is mandated to provide "state-wide" services but is barely funded to provide assistance to those in need within the south-east corner of Queensland.³⁷

34 Community Legal Centres Association (WA) Inc, *Submission 93*, p. 27.

35 Queensland Association of Independent Legal Services Inc (QAILS), *Submission 73*, p. 30.

36 *Submission 73*, p. 38.

37 *ibid*, p. 41.

Lack of funding

11.26 The Committee heard evidence of the funding crisis CLCs face. The Fitzroy Legal Service argued that despite overall increases in the Program's funding, existing CLCs 'have experienced significant erosion in real funding levels over the last decade.'³⁸ The National Association of Community Legal Centres (NACLC) noted that:

Almost all of the growth in the total quantum of funds for the Commonwealth CLC program has been directed towards Program enhancements. While conferring benefits on previously poorly-serviced groups and regions, and contributing to better program management, these measures have not increased the capacity of most centres to undertake their core work.

...

After adjustments for new activities have been made, Commonwealth funding for community legal centres has increased by 2.45% per annum over the five years from 1997 to 2002. During this same period, Average Weekly Earnings rose by 4.5%. This discrepancy translates into 10.25% cumulative shortfall in the already low base line staffing budgets of CLCs.³⁹

11.27 At the Sydney hearing, Ms Elizabeth O'Brien from the National Association of Community Legal Centres said:

We have a number of innovative programs throughout the community legal sector in Australia. We provide, as you will hear from all of the states as you go around, a varying number of programs designed to ensure that people can maximise the very small legal aid dollar. However, we have arrived at a point where nobody in this sector—legal aid commissions or community legal centres—can do any more without further resources. We are now absolutely maximised. For all the things we may put forward as possible solutions—new ways of doing things and new ways of seeing things—the basic problem is that there is not enough money. The basic requirement is for more money.⁴⁰

11.28 In Melbourne, Mr Sam Biondo from the Fitzroy Legal Service told the Committee that CLCs were facing a funding crisis:

While the Commonwealth has allocated some new funds to CLCs, almost all of this has gone to new activities, leaving existing centres to fall further and further behind. In 2001-02 almost half the community legal centres in Victoria received less than the level of funding accepted as equivalent to

38 *Submission 48*, p. 28.

39 National Association of Community Legal Centres, *Submission 84*, Attachment D, 'Budget submission to the Commonwealth Government 2004–2007: Community Legal Centres – An investment in value Investing in Community Law', August 2003, pp. 5 & 6.

40 Ms Elizabeth O'Brien, National Association of Community Legal Centres, *Committee Hansard*, 13 November 2003, p. 32.

three full-time positions. This is despite the high level of demand and the need for centres to provide a range of legal services to disadvantaged communities and to provide legal advice and information, community legal education, community development and law reform.⁴¹

11.29 Mr Bill Mitchell from QAILS told the Committee that there are fundamental deficiencies in the consultation process when the Commonwealth Government and state/territory governments negotiate legal aid funding agreements. This has an inevitable flow-on effect on CLCs:

It seemed to me and to many others in our sector that, once the Commonwealth and the states could no longer agree on the way in which legal aid funds should be spent in a kind of combined or holistic manner, the actual way in which clients were dealt with by a legal aid commission changed quite dramatically. One of the serious flow-on effects of that was the widespread move or referral of clients from legal aid commissions, where they would normally have been dealt with, to community legal centres as a first point of call, rather than, as they had been in most cases up until that point, a last point of call.⁴²

11.30 Mr Mitchell argued that CLCs needed to be included in consultations:

One of our real concerns is that, when large-scale agreements such as legal aid agreements between Commonwealth and state governments are being renegotiated or, in fact, reconceptualised at any level, there needs to be very widespread consultation with the stakeholders who are most likely to feel the real brunt and effect of the changes ... certainly the impact of the changes on community legal centres has been, in my view, quite dramatic. However, because we are not really a part of that system, we do not have particular knowledge about the way that worked and the way that continues to work. We cannot really describe it in a way that is accurate. We cannot really describe what exactly happened at that time or what is happening now. We simply know that a very large increase in demand for those sorts of services has been placed on community legal centres and that demand was not as significant prior to the agreement breaking down.⁴³

11.31 Mr David McKinnon of the Petrie Legal Service referred to a perceived lack of foresight in the application of the service agreement between the Commonwealth, the states and CLCs:

... [T]he lack of administrative funding for both the implementation of and ongoing compliance with the new regime—have placed undue hardship on us. It needs to be borne in mind that the new service agreement applies equally to all community legal centres that receive Commonwealth funding. Petrie receive \$6,000 from the Commonwealth, yet we must comply to the

41 *Committee Hansard*, 12 November 2003, p. 45.

42 *Committee Hansard*, 10 March 2004, p. 16.

43 *ibid.*

same standards as a centre receiving \$100,000. Such a centre would undoubtedly have an existing administrative structure.⁴⁴

11.32 The NACLC's August 2003 budget submission to the Commonwealth Government for 2004-2007 recommended an increase of \$23.561 million over three years to CLCs. The submission stated that this is to increase funds to existing CLCs across Australia, target rural and remote services and the poorest-funded urban CLCs, and to direct the rest of the money to the remainder of the CLCs in the Program.⁴⁵

Staffing and operational issues

11.33 Several submissions and witnesses submitted that current legal aid funding arrangements heavily impact upon CLCs in their day-to-day operation. The Community Legal Centres Association (WA) submitted that, since CLCs are funded at a range of levels depending on the funding model or formula used for each particular CLC, staffing and overall operations of individual CLCs are affected in different ways. Consequently:

... any consideration of adequate funding of CLCs to ensure equity of service to communities in different areas needs to take these funding models into account.⁴⁶

11.34 Many submissions argued that CLCs experience particular difficulties in recruiting and retaining staff, particularly legal staff.⁴⁷ This is directly attributable to inadequate funding levels:

The staffing quality and retention of staff at CLCs is also affected by funding levels and the resultant salaries and conditions that CLCs are able to offer their staff. The increasing demands on staff to do more and more casework but still continue their CLE and law reform objectives, also take their toll, leading to worker stress and potentially worker burnout.⁴⁸

11.35 Low salaries are a genuine concern to CLCs:

Centres report enormous difficulties in attracting and retaining qualified staff, in particular solicitors. This is due to the poor wages, lack of resources, overwhelming demand for legal assistance and work pressure. At full-time rates, a principal solicitor with at least 5 years experience earns on average \$46,200 in a CLC compared to \$75,000-\$110,000 and increasing to \$180,000 in private practice. However in reality few centres

44 *Committee Hansard*, 10 March 2004, p. 21.

45 National Association of Community Legal Centres, *Submission 84*, Attachment D, 'Budget submission to the Commonwealth Government 2004-2007: Community Legal Centres – An investment in value Investing in Community Law', August 2003, p. 14.

46 *Submission 93*, p. 27.

47 National Network of Women's Legal Services, *Submission 86*, p. 36.

48 Community Legal Centres Association (WA) Inc, *Submission 93*, p. 28.

can afford to employ solicitors full-time resulting in most solicitors being employed part-time and earning well below \$46,200.⁴⁹

11.36 Ms Julie Bishop of the NACLCLC told the Committee:

There are a number of career paths, if you like, for people in CLCs. One of the submissions you have received talks about the impact of the increased HECS obligation on CLCs to recruit staff. That is because we regularly get fresh graduates. So fresh graduates who have large HECS debts are not able to accept our wages, because they want to pay off their HECS debts more quickly. However, there are some who work with us anyhow. They stay for a few years: generally, the work is exciting for them, it is interesting and they feel they are making a difference. They know they are not making money, but they feel their work is worthwhile—but then they have children or want to buy a house.⁵⁰

11.37 Ms Bishop continued:

It is as simple as that: there comes a point at which either they have a partner who earns a lot of money and subsidises them or, if they are the major breadwinner, they have to leave. A lot of our staff are at Legal Aid commissions in New South Wales, or they will go to tribunals, or they will go into the private profession. Often they will then become volunteer solicitors, so they will stay ... there is a very strong volunteer culture in legal centres, and those who cannot afford to stay are regularly committed and come back as volunteers. But as to coming back to work again: maybe if they won the lottery they would. I do not know.⁵¹

11.38 The Legal Aid Commission NSW argued that rates of pay for CLC lawyers should at least parallel those offered in the Commonwealth Public Service.⁵²

11.39 While it may be true that 'many people choose to work at community legal centres because they prefer the diversity of work and the philosophies that underpin the centres',⁵³ the Combined Community Legal Centres' Group NSW argued that the fact that lower salaries are generally on offer 'can only discourage people from staying in the sector, particularly where they have family or other major financial responsibilities.'⁵⁴ The NNWLS agreed that the long hours that CLC staff need to

49 Federation of Community Legal Centres (Vic) Inc, *Submission 50*, p. 12.

50 Ms Julie Bishop, National Association of Community Legal Centres, *Committee Hansard*, 13 November 2003, p. 40.

51 *ibid.*

52 Legal Aid Commission NSW, *Submission 91*, p. 40.

53 Combined Community Legal Centres' Group NSW, *Submission 60*, p. 44.

54 *ibid.*

work to maximise the capacity of their CLC to provide services often comes 'at the expense (financial and emotional) of the family of the workers.'⁵⁵

11.40 The CCLCG submitted that:

Having attracted staff, CLCs then often face difficulties retaining those staff members. High demands caused by a never-ending caseload, and a lack of funding for paralegal support (the one-to-one administrative support which is taken for granted in private practice) mean that many solicitors face burn-out within a few years. In rural areas, travel to outreaches or to visit isolated clients or courts, can also take its toll.⁵⁶

11.41 High staff turnover has adverse consequences:

[It] is costly for an organisation in terms of the recruitment process and possibly locum costs. Staff loss is also detrimental to the communities serviced by the centre. Clients lose continuity, and relationships of trust and confidence built up between disadvantaged communities and particular workers are likely to be lost.⁵⁷

11.42 The Committee also received evidence in relation to the inadequacy of premises and resources for CLCs, in terms of space requirements, basic facilities and research tools. For example, QAILS submitted that in the experience of its members:

The stereotypical image of community legal centres as operating from overcrowded and run-down premises using second rate office equipment is regrettably not far from the truth ...⁵⁸

11.43 QAILS submitted further that, in as many as half of the CLCs in Queensland, lawyers are required to share office space and utilise space such as storage rooms and gardens to conduct interviews with clients. QAILS also noted that in most CLCs, basic heating and air-conditioning does not exist:

I've interviewed clients in their cars because there's no room in the office. In the summer it's better anyway because they have air-conditioning.⁵⁹

11.44 Mr Sam Biondo of the Fitzroy Legal Service informed the Committee that:

The condition of centres' offices is so notoriously bad that in 2002 a competition for the worst office was held.⁶⁰

55 *Submission 86*, p. 36.

56 Combined Community Legal Centres' Group NSW, *Submission 60*, p. 44.

57 *ibid.*

58 *Submission 73*, p. 63.

59 Queensland CLC staff member, quoted in Queensland Association of Independent Legal Services Inc (QAILS), *Submission 73*, p. 63.

60 *Committee Hansard*, 12 November 2003, p. 45.

11.45 QAILS argued that '... reasonable working conditions are a necessary precondition to sustained delivery of high quality, accessible community legal services.'⁶¹

Committee view

11.46 The Committee strongly believes that CLCs have a vital role to play in helping to achieve a fairer and more effective legal aid system that is available and accessible to all Australians. It is important that CLCs are properly funded to enable them to provide services that can be responsive to community need. The Committee considers the difficulties CLCs are experiencing to be unacceptable. These difficulties appear to be a direct result of inadequate levels of funding and increased demand on CLCs, caused by restricted LAC funding. It is imperative that the Commonwealth and state/territory governments acknowledge existing shortfalls in funding and accept that a continuing deterioration in circumstances will inevitably lead to a severe crisis for CLCs.

11.47 The Commonwealth Government and state/territory governments should act to ensure adequate baseline funding for CLCs to enable them to attract and retain suitable staff, and to have appropriate facilities and resources to adequately perform their functions. There should also be an allocation of additional funding for new CLCs in designated areas of need. The Commonwealth Government and state/territory governments should engage in ongoing consultation with LACs and CLCs in order to accurately ascertain the particular problems experienced by CLCs and in order to identify areas where improved service provision is most needed.

11.48 The Committee acknowledges and endorses the 27 recommendations contained in the submission from QAILS⁶² in relation to how CLC funding should be enhanced. The Committee supports such recommendations as, for example, recognition that there are increased costs associated with CLCs providing legal services to people living in RRR areas;⁶³ acknowledgment that CLCs are unable to provide their staff with basic and necessary training to upgrade skills and remain abreast of legal changes;⁶⁴ and the provision of funding for a study to be conducted by the National Association of Independent Legal Services into the levels and types of workplace stress and burnout for staff, and potential methods of reducing or alleviating such conditions.⁶⁵

61 *Submission 73*, p. 11.

62 *ibid*, pp. 4-8.

63 Recommendation 6, p. 4.

64 Recommendation 20, p. 7.

65 Recommendation 23, p. 7.

Recommendation 58

11.49 The Committee recommends that the Commonwealth Government, state/territory governments, legal aid commissions and community legal centres should engage in collaborative research to accurately determine the extent to which current legal aid funding arrangements impact upon the work and operations of individual community legal centres.

Recommendation 59

11.50 The Committee recommends that the Commonwealth Government urgently consult with state/territory governments, legal aid commissions and community legal centres to determine the needs of individual community legal centres and develop strategies for addressing these needs.

Recommendation 60

11.51 The Committee recommends that the Commonwealth Government should take a lead role in recognising and overcoming the diminishing capacity of community legal centres by, for example, providing increased levels of funding to enable community legal centres to better perform their core functions, and establishing new community legal centres to ease some of the burden on existing community legal centres and to address unmet legal need.

Recommendation 61

11.52 The Committee recommends that the Commonwealth Government and state/territory governments should provide additional funding to enable community legal centres to recruit, train and retain staff, through adequate remuneration, skill development programs and improved employment conditions.

Recommendation 62

11.53 The Committee recommends that the Commonwealth Government and state/territory governments should provide additional funding to enable community legal centres to overcome existing operational difficulties, such as inadequate premises, facilities and resources, and enable them to better plan for such requirements in the future.

Policy advocacy

11.54 A final issue raised with the Committee was the impact of the exposure draft of the Charities Bill. The draft, released on 22 July 2003, is intended to codify the existing common law meaning of a charity and expand it to encompass certain child

care organisations, self-help bodies and, closed or contemplative religious orders.⁶⁶ Sub-clause 8(2) of the bill provides that a body will not be considered as a charity if it were to undertake activities that 'seek to change the law or government policy'.

11.55 The CCLCG was concerned that if the exposure draft were to become law, community legal centres who advocate policy change on behalf of their clients or members would not be considered a "charity", would lose taxation concessions and therefore may not be able to function:

Loss of [fringe benefit tax and income-tax exemptions] would have a devastating impact on the already under-resourced state of community legal centres.⁶⁷

11.56 The CCLCG argued that:

Peak organisations such as the Combined Community Legal Centres Group are most at-risk under this proposed legislation. If CCLCG lost charitable status, the reduction in funding would seriously undermine our capacity to contribute to Senate Inquiries such as this one...

Systemic advocacy, including law reform initiatives and lobbying of governments on behalf of our client groups, is part of the core business of community legal centres. Indeed, advocacy and lobbying for law reform are essential elements of any democracy.⁶⁸

11.57 The Committee notes that the Board of Taxation's report on the consultation on the definition of a charity was submitted to the Treasurer on 19 December 2003. The report was released publicly on 11 May 2004 when the government announced its response.⁶⁹ The Government's response indicated that it had taken advice from the Board of Taxation that the draft legislation did not achieve the level of clarity and certainty that was intended to be brought to the charitable sector. As a result, the Government announced that it had decided not to proceed with the draft Charities Bill. The response indicated that, rather than introducing a legislative definition of a 'charity', the common law meaning would continue to apply, but the definition would be extended by statute to include certain child care and self-help groups, and closed or contemplative religious orders. The Government stated that it intended to introduce legislation to give effect to this proposal as soon as practicable.⁷⁰

66 The Hon Peter Costello, Treasurer, *Press Release 59 of 2003 Release of Charities Definition Exposure Draft*, 22 July 2003.

67 *Submission 60*, p. 49.

68 *ibid.*

69 See <http://www.taxboard.gov.au>, accessed on 17 May 2004.

70 The Hon Peter Costello, Treasurer, *Press Release 31 of 2004 Final Response to the Charities Definition Inquiry*, 11 May 2004, available at <http://www.treasurer.gov.au/tsr/content/pressreleases/2004/031.asp>

Committee view

11.58 The Committee notes that the Government has decided not to proceed with the draft Charities Bill. However, the Committee is nevertheless concerned that community legal centres should not be prevented from providing advocacy policy services. Non-profit organisations that advocate law reform on the basis of their experience are an invaluable source of information for government to make informed and balanced policy decisions. Additionally, community legal centres are closest to areas of community need and their input into policy development is essential to formulate balanced policy and check that its implementation achieves the policy aims.

Recommendation 63

11.59 The Committee recommends that any legislation in relation to the definition of charities ensure that organisations involved in the provision of pro bono legal services are not prevented from providing advocacy policy services.

**Senator the Hon. Nick Bolkus
Chair**