

Acting together to make a difference

AN EXTRACT:

The National Association of Community Legal Centres (NACLC) serves a network of around 207 free and (mostly) neighbourhood-based community legal centres (CLCs) located throughout Australia in urban, regional and remote locations. This means that we have daily contact with a wider range of people, service providers and organisations than any other part of the legal system.

We practice 'community law' that responds in a unique and effective way to community needs – whether that community is a geographical area or a group of people with similar needs and interests. As such, CLCs have developed an in-depth understanding of how the law and the legal system impact on specific communities within Australia but also on our society as a whole.

The 'Doing Justice' paper sets out our views about some of the main fault lines in the contemporary justice system, and suggests some ways to move forward in tackling them more effectively. It quite deliberately maps out only broad directions for future change in a few key areas because we wish this paper to be a conversation-starter, not a debate-closer.

Our goal is to begin the process of developing more vigorous partnerships based on shared understandings and joint action to build a fairer and more effective system of justice in Australia – one that is capable of delivering better outcomes for more people.

NACLC believes that it is critically important that the law and justice system operates fairly and well given that it permeates almost every aspect of individual and collective life.

The law affects the little things of everyday life as well as the larger things. However, most people only really notice or think about the law and its personal impact on

their current and future lives when more momentous events occur.

And despite the public emphasis on criminal law, most direct interactions with the legal system occur in the areas of family law, civil law and administrative law. Many, if not most, of the dealings that people have with the law occur across counters or in ordinary rooms, rather than in formal court settings.

But the law operates on a much larger canvas too. In a very fundamental way, it establishes the shape of a society and its character. The major operational assumption of our democracy – the checks and balances embodied in the separation of the powers of parliament, executive and judiciary – mostly goes unremarked and unchallenged in Australia. In recent years, however, debates around issues such as native title and asylum seekers, border protection and territorial law, and detention with or without trial, have highlighted the importance of this basic principle within Australian society.

Similarly there have been difficult public debates over criminal sentencing regimes, and mandatory sentencing in both the criminal and immigration jurisdictions. They have provided a powerful reminder of the high stakes involved for any democracy in the handling of these issues. They have also been a reminder of the balancing act that is central to the system of justice.

A new approach

These debates have generated intense public interest but this has not translated into a similar level of public concern about all parts of the legal system charged with ensuring that 'justice is done'. Yet there are serious inadequacies in many areas that urgently require attention and that NACLC believes should be a strong focus of a new 'justice partnership'.

doing justice

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- There has been a failure of the part of all governments (State, Territory and Commonwealth) over successive periods of office to acknowledge the importance of legal citizenship in modern society. They have failed to produce the policies and resources required to facilitate fair and effective access for all citizens to the justice system.
- Since 1972 the legal system in Australia has expanded dramatically. There are now more laws governing the lives of citizens, and every day seems to bring a new demand for additional laws to be enacted in areas such as child or environmental protection. The need of ordinary people to understand the law, and the difficulties they face in using or following the law, has also grown substantially.
- At the same time as this growth in the legal system, citizens are increasingly required to expertly manage their own legal obligations, for example, to interpret and comply with taxation self-assessment, to estimate and declare their anticipated family income, and to enter into complex contractual obligations.
- The number of people who need assistance to meet these legal requirements tends to be seriously under-estimated. On the other side of the coin, people's capacity to self-finance their need for legal assistance tends to be seriously over-estimated. As a result, the public funds directed to legal aid and other free legal support services fall far short of what is required to guarantee equality before the law and equal justice for all.
- In this context of financial restraints, the more common non-criminal legal needs do not get their fair share of resources (despite their high personal and social significance) because of the legitimate requirement to protect the rights of those accused of serious crimes.
- Community legal centres are also being placed under greater stress as a result of various changes in their operating

environments including more complex management requirements, increased operating costs in areas such as rent and insurance, new industrial awards, and higher levels of community demand. CLCs desperately need relief .

- The Australian Law Reform Commission's 1994 report on Equality Before the Law identified Indigenous women as the single most legally disadvantaged group in our society. Some progress has been made since the mid-1990s in tackling this severe and unacceptable level of legal disadvantage. As often happens, this progress has only served to emphasise just how much further there is to go in terms of achieving equality.
- Australia's federal structure of government can create both gaps and overlaps in responsibilities between the Commonwealth and the States and Territories. In areas such as health and education, the resulting problems are being widely acknowledged and attempts made to address them. Unfortunately, the same attention has not been paid to these interface tensions in the legal system. Yet, if the 'jurisdictional divide' is not managed well, it increases the difficulties of responding in an effective and holistic way to people's real legal needs.

A new justice partnership

This is only a partial listing of problem areas in the legal system. The National Association of Community Legal Centres believes that there is an urgent need for a renewed commitment to the development of more appropriate policies and partnerships so that better justice outcomes can be delivered – both for individuals and our society as a whole.

With the release of this paper, NACLC signals our desire and willingness to be part of building a new partnership for justice aimed at delivering better outcomes for all Australians.

We invite you to join with us – so that together we can make a real difference.