



**National Association of Community Legal Centres  
Conference 2016**

*The Role of CLCs in the Justice System of Australia -  
Achieving through targeted intervention, volunteers and  
innovation*

**address**

**by**

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Fremantle  
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I am greatly honoured to have been invited to address the 2016 National Conference of the Community Legal Centres of Australia. For reasons which I will develop during this address, it is I think impossible to overstate the importance of the role played by community legal centres in the provision of access to justice for many Australians. I am grateful for the opportunity to acknowledge that important contribution and to pay tribute to the many whose tireless efforts to provide legal assistance to others often go unsung, under-remunerated, or not remunerated at all.

Before going any further I would like to acknowledge the traditional owners of the land on which we meet, the Whadjuk people who form part of the great Noongar clan of south-western Australia, to pay my respects to their Elders past and present and acknowledge their continuing stewardship of these lands. Visitors to Perth may not be aware that this particular area of land is of special importance to the Whadjuk people as it is near the point at which the river known to the Whadjuk as the Derbarl Yerrigan, and which we call the Swan River, enters the sea. Prior to colonisation it was an important meeting place of the Whadjuk people and many important cultural ceremonies were conducted on or near this site. To that extent, this gathering of people from all around Australia is consistent with the ancient traditions of the original owners.

### **Unmet legal need**

I have used a number of metaphors to describe unmet legal need. Some time before my appointment, while Chair of the Law Reform Commission of WA, I used the metaphor of the Rolls Royce to describe Australia's excellent civil justice system in a commission report. For

those with the resources to utilise the opportunities which it provides, it is a system that leaves no stone unturned, no possibility excluded from consideration, however remote, in the search for an outcome in which there can be complete confidence. To that extent, it can be described as the Rolls Royce of justice systems. However, as I have previously observed, there is not much point in having a Rolls Royce in the garage if you cannot afford the fuel to drive it anywhere. You can sit in it, polish it, admire it, boast about it, lend it to rich friends or hire it out to people who can afford to drive it, but you cannot use it for its basic purpose, which is to get you from one place to another. The problem with our Rolls Royce justice system is that a significant proportion of our community simply cannot afford the cost of using that vehicle to resolve their disputes or solve their legal problems – returning to my metaphor, to get from one place to another.

Of course, significant business enterprises, assisted by the tax deductibility of legal fees have the financial capacity to utilise the justice system to resolve their disputes if they choose to do so despite the practical barriers of complexity, unpredictability and delay. A relatively small proportion of our population also has that financial capacity.

At the other end of the socio economic spectrum, there is another relatively small proportion of our population who are so financially disadvantaged as to qualify for legal aid. In its 2014 report on access to justice arrangements, the Productivity Commission estimated that only 8% of households qualified for legal aid.<sup>1</sup> By comparison, 14% of Australians live below the OECD's poverty line.<sup>2</sup>

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<sup>1</sup> Productivity Commission, *Access to Justice Arrangements* Inquiry Report No 72) (2014) 20.

<sup>2</sup> Australian Council of Social Service, *Poverty in Australia* [2014] 46.

The yawning gap between the very rich who can afford to open the doors of the courts, and the very poor, who qualify for legal assistance, was described by the Productivity Commission in its report<sup>3</sup> as the 'missing middle' and comprises the majority of low and middle income earners and their households. I have used the metaphor of the sandwich to describe the same group, although because of the size of that group relative to the very rich and the very poor, I have suggested that the club sandwich is the more appropriate metaphor.

The Legal Australia-Wide Survey<sup>4</sup> has provided very important information with respect to the extent of unmet legal need. The survey revealed that 50% of Australians aged 15 years and over need legal help every year.<sup>5</sup> Some 22% of those surveyed across Australia experienced three or more legal problems within the past 12 months.<sup>6</sup> The Indigenous Legal Needs Project has also demonstrated that access to legal assistance for indigenous Australians is particularly limited.<sup>7</sup> The Centre of Innovative Justice at RMIT University in Melbourne has also provided very important information with respect to unmet legal need in Australia in a report published in 2013.<sup>8</sup> Drawing upon these various sources of information helps us to identify the major areas of unmet legal need, other than in crime. They will be well known to the representatives of CLCs at this conference. The areas in which unresolved legal problems commonly arise include:

- Family law

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<sup>3</sup>Note 1 above, at 20.

<sup>4</sup>Coumarelos C, Macourt D, People J, McDonald HM, Wei Z, Iriana R and Ramsay S, *Legal Australia-Wide Survey: Legal need in Australia* (2012)

<sup>5</sup>Ibid, at 161.

<sup>6</sup>Ibid, at xiv.

<sup>7</sup>[Indigenous Legal Needs Project](#), James Cook University (accessed 1 August 2016).

<sup>8</sup>Centre for Innovative Justice, *Affordable justice – a pragmatic path to greater flexibility and access in the private legal services market* (October 2013).

- Employment law
- Personal injury law
- Consumer rights law
- Welfare law
- Housing and tenancy law
- Migration law.

It will immediately be observed that these areas of legal need correspond closely to activities and characteristics that are at the very core of our human existence including our familial relationships, employment, the capacity to reside in the country of our choice, the dwelling in which we live and the wherewithal we need to put food on the table.

Analysis of the data obtained through the surveys to which I have referred has shed further light upon particular characteristics of the large area of unmet legal need in Australia. The data has shown, as we might perhaps have expected, that an unresolved legal problem can trigger other legal problems, so that it is very common for people to have multiple simultaneous or perhaps sequential legal problems. To take an obvious example, an unresolved problem in the area of employment, perhaps triggered by a physical injury, or an unresolved problem in relation to welfare entitlement can generate a problem with respect to housing and tenancy.

The Legal Australia-Wide Survey reported that just 9% of survey respondents accounted for 65% of reported legal problems. The same data showed that those most vulnerable to legal problems tended to have less of the knowledge, self-help skills, motivation and resources required to deal with their legal problems without assistance, and may also face additional barriers associated with geography (living in remote areas)

and the availability of accessible low cost legal services. A combination of those factors leads to unresolved legal issues that contribute to ongoing and persistent disadvantage.<sup>9</sup>

The data has also revealed a correlation between the extent of disadvantage and the likelihood of an unresolved legal problem. Those identified as suffering more than one form of social disadvantage were more likely to take no action when confronted with a legal problem or problems and were less aware of not-for-profit legal services. When they do try to resolve their legal problems, they were less likely to use self-help, non-legal professionals and private lawyers as their highest-level strategy. They were, however, more likely to utilise a not-for-profit legal service.<sup>10</sup>

### **The Rule of Law**

Australians rightly take great pride in the fact that we collectively subscribe to the rule of law as a fundamental component of our governance structures. However, the data to which I have just referred raises a serious question as to whether many Australians do in fact have practical access to the courts, and therefore to the rule of law. The data also shows that those who are most disadvantaged in our community are likely to have the greatest need for assistance in the resolution of legal problems with which they are confronted, but are the least likely to obtain access to that assistance, thus perpetuating and, very probably, exacerbating the extent of their disadvantage.

As a community we subscribe to the rule of law because we believe it to be the best way of providing order, stability and justice for all in our

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<sup>9</sup> Suzie Forell, 'Is early intervention timely?' *Justice Issues* (Paper 20) (August 2015) 3.

<sup>10</sup> McDonald HM and Wei Z, 'How people solve legal problems: level of disadvantage and legal capability', *Justice Issues* (Paper 23) (March 2016).

liberal democratic society. It follows that there is an important constitutional dimension to the provision of practical access to the rule of law to the largest possible sector of our community. The importance of that constitutional dimension is magnified if, as is the case, the most disadvantaged in our community are over-represented amongst those who lack practical access to justice. It further follows that it is difficult to overstate the importance of the various measures which are taken to improve practical access to justice for all, of which the CLCs are a very significant component.

### **The role of the CLCs in addressing unmet legal need**

#### **Collaboration**

Community legal centres have been created around Australia in response to the important areas of unmet legal need to which I have referred. So, there are CLCs specialising in family law, consumer law, welfare law, housing and tenancy law (and homelessness), employment law, refugee law, migration law and so on. Other CLCs have developed specifically to address geographical barriers to access to justice experienced by those living in remote and regional Australia. In this way, not only are the CLCs targeted to specific areas of unmet legal need, but they are also able to develop expertise in their particular field. However, because people commonly experience more than one legal problem at a time, or perhaps in sequence, it is vitally important that the CLCs collaborate effectively with each other with a view to providing services as seamlessly as possible, especially given the practical difficulty which many of those experiencing multiple legal problems have in identifying an appropriate source of advice or assistance. That is why I am very

pleased to see that collaboration is one of the key topics to be addressed by this conference.

Given the limited resources available to CLCs, they have been extraordinarily effective in delivering services to those most in need. In 2014-15, according to the database used by CLCs in the community legal services programme, CLCs assisted 216,876 clients by providing 271,695 advices and 252,894 referrals, and opening 54,917 new cases.<sup>11</sup> So, the services provided by CLCs are a vital component of the measures which are being taken to address unmet legal need and thereby provide practical access to justice and to the rule of law.

## **Resources**

Despite the importance of the contribution made by the CLCs to the achievement of these important objectives, and despite an independent economic cost benefit analysis of CLCs finding that CLCs return a benefit to society that is 18 times the value of every dollar spent by government on funding CLCs,<sup>12</sup> and despite the Productivity Commission recommending an immediate injection of \$200,000,000 into the public funds available for the provision of assistance with civil law matters in Australia, with recurrent annual increases of a similar magnitude,<sup>13</sup> the National Partnership Agreement on Legal Assistance Services includes a provision which will reduce Commonwealth government funding for CLCs by 30% with effect from 1 July 2017.<sup>14</sup> Despite the best efforts of the Law Council of Australia to place this important issue of public policy into the mix of contentious issues in the

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<sup>11</sup> National Association of Community Legal Centres (NACLC), *Annual Report 2014/15* (2015) 2.

<sup>12</sup> Judith Stubbs & Associates, *Economic Cost Benefit Analysis of Community Legal Centres* (June 2012) 17.

<sup>13</sup> Note 1 above, 703.

<sup>14</sup> NACLC, 'Media release: One year until crippling cuts to legal assistance sector' (1 July 2016).

context of the recent federal election,<sup>15</sup> and although the present government did commit to providing \$30 million for legal assistance services as part of its National Plan to Reduce Violence against Women<sup>16</sup> it did not match the Opposition's commitment to provide \$43million for CLCs.<sup>17</sup>

Although the funding sources for particular CLCs vary widely from CLC to CLC, and contributions by the Commonwealth, states and territories have changed over time,<sup>18</sup> across the sector, Commonwealth funding constitutes an important component of the public funding available. Obviously a 30% reduction will have a significant impact upon the financial resources available to the CLCs to perform their important work. That is why the theme of this conference, which focuses upon innovation and collaboration, is so timely. CLCs must collaborate effectively with each other, and continue to develop the various innovative means of service delivery which have been developed over recent years in order to avoid a significant reduction in the level of services provided.

Although most of the people at this conference are more experienced and better equipped than I to speak of the techniques which CLCs can adopt in order to improve the efficiency of service delivery, it seems to me, as an observer of this important sector, that there are three main areas which merit attention:

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<sup>15</sup> See for example, Law Council of Australia, 'Media release: Lawyers to rally over legal aid crisis in election campaign' (10 May 2016).

<sup>16</sup> Law Council of Australia, 'Media release: \$30m family violence commitment puts dent in legal aid crisis' (12 May 2016).

<sup>17</sup> Law Council of Australia, 'Media release: Labor's plan to restore funding to Aboriginal legal services a commendable step' (12 May 2016). The Opposition also committed to increasing funding for Aboriginal legal services by \$20.4m.

<sup>18</sup> Legal and Constitutional Affairs References Committee, *Access to Justice* (December 2009) [7.12], [7.25] Figure 7.1.

- Early intervention and prevention
- Continuing and hopefully increasing use of volunteers
- Innovation and technology.

### **Early intervention and prevention**

The 2010 National Partnership Agreement on Legal Assistance Services defined "early intervention services" as legal services that were provided:

... to assist people to resolve their problem before it escalates [including] legal advice, minor assistance and advocacy other than advocacy provided under a grant of legal assistance.<sup>19</sup>

The same agreement described "preventative legal services" as services:

... that inform and build individual and community resilience through community legal education, legal information and referral.<sup>20</sup>

The Partnership Agreement properly reflects the importance of these kinds of targeted interventions in improving outcomes while at the same time reducing the cost of service delivery.

As I have already noted, the data confirms what we would expect - namely, an unresolved legal problem can trigger further legal problems. Early intervention therefore has the capacity to reduce the number and scope of the legal problems that need to be addressed. It is also clear that the earlier a legal problem is addressed, the more likely it is to be resolved by conferral and agreement, and the less likely it is to escalate

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<sup>19</sup> Note 9 above, at 2.

<sup>20</sup> Ibid.

to a problem which requires resolution by a court and therefore much more expensive and intensive service delivery.

My grandmother used to say that an ounce of prevention is worth a pound of cure, and this adage is obviously applicable to legal problems. The data to which I have referred shows the over-representation of those who have limited access to information and the practical skills to avoid disputes amongst those who experience unresolved legal problems. Any systems or techniques which can improve the delivery of basic information in a readily comprehensible form through a medium which is readily available to a large sector of the community is very likely to assist more people to avoid legal problems and thereby reduce the need for legal services.

As Forell<sup>21</sup> observes, it is also important to remember that solutions other than legal assistance may be the most effective way of addressing problems which have a legal manifestation. So, as she notes, the most effective way of assisting a homeless man with a legal problem may not be by directly addressing his legal problem, but rather by referring the person to an agency which can assist him to find a place to live and a place in which he can put his affairs in order and thereby resolve the legal problem.

### **Volunteers**

Earlier this year I spoke on the importance of the services provided by volunteers and pro bono support in providing the resources which CLCs need to perform their important work.<sup>22</sup> Volunteer paralegals and

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<sup>21</sup>Ibid, at 8.

<sup>22</sup> 'Volunteers & Social Justice' address given 16 May 2016, available at the [Supreme Court's website](#).

interpreters augment the services provided by trained lawyers and enable those services to be utilised more efficiently.

As I noted in that address, in 2012 a survey conducted by the National Association of CLCs showed that over 95% of the CLCs surveyed used volunteers, and of those CLCs, over 3637 volunteers contributed 8369 volunteer hours per week. In 2013, the same survey reported that 131 CLCs were using 4588 volunteers who contributed 24113 volunteer hours per week. Although the report for the following year showed a reduction in reported volunteer hours (to 15000 hours per week), the National Association of Community Legal Centres (NACLC) suggests that the reduction may be attributable to changes in the sample reporting between the years, and it is significant that the survey showed a significant increase in the number of volunteers providing services, to 6543.

Given the reduced funding to which I have referred, continuing growth in the use of volunteers, and in the provision of pro bono legal services will be essential if the CLCs are to avoid a significant reduction in the level of services provided.

### **Innovation and technology**

I am very pleased to note that Australia's CLCs have been quick to recognise the opportunities for efficiency and innovation provided by the recent development in information technology. The innovative response of the CLCs to the opportunities provided by that technology is well reflected in a recent report published by the NACLC, from which much of what follows has been drawn.<sup>23</sup>

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<sup>23</sup> NACLC, Working smarter: Community Legal Centres using innovation and technology [2015].

## **Radio**

Radio would not be described as cutting edge technology, but remains an important medium of communication to a broad audience, particularly for those who may not themselves be comfortable with more recent forms of technology. A number of CLCs have used regular radio programmes to raise awareness of their services and to provide information to the communities which they serve in relation to legal issues and potential legal problems. This appears to be a particularly effective way of providing information in regional and remote areas where local audiences can be reached through local radio stations. However, the use of radio as a means of communication is not limited to regional and remote areas, and the Federation of Community Legal Centres (Victoria) presents a weekly programme, *Done by Law* on a Melbourne community radio station, which is also available as a podcast.

## **Web-based legal information**

Australians have now become accustomed to obtaining information and communicating with organisations through their websites. Websites can be constructed and maintained inexpensively and can provide almost unlimited amounts of information. In the case of CLCs, that information can include information with respect to the services provided by the CLC, legal information in relation to specific issues, tool kits for addressing particular legal problems, and guides to the use of courts by self-represented litigants.

There are additional advantages to web-based information. Many Australians, even older Australians like me, regularly receive a wide range of information through their smartphones or other mobile devices.

For younger Australians, this is an important means of accessing information; it is also an important means of communication for disadvantaged groups such as homeless people. If information is accessible using mobile devices, clients will be able to access that information at a time of their choosing and whenever they need that information, whatever time of day or night that might be. A number of CLCs have developed specific websites targeted at particular audiences, such as young people or young women in particular which can be used to provide legal information in a simple, comprehensible and up-to-date format. Topics addressed include respectful relationships, staying safe online, living with friends or a partner, workplace harassment and managing money. A particularly important initiative in this area has been the development of an app (application) developed by the Domestic Violence Resource Centre in Victoria called "SmartSafe+". It uses smart phones to help women gather information and evidence in such a way that it assists them prove a breach of an intervention order or seek an intervention order from court.<sup>24</sup>

### **Online portals**

A number of CLCs have also utilised online portals to facilitate the provision of advice. This means of communication is particularly valuable to people in regional and remote areas, or others who might have practical difficulty attending a CLC in person – such as vulnerable women, or those with reduced mobility. Participants can also be connected to a solicitor via telephone or video conference in appropriate cases.

### **Webinars**

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<sup>24</sup> Available for download from the SmartSafe website (accessed 1 August 2016) and see ABC online, '[The SmartSafe+ App](#)', Law Report, (12 July 2016) (accessed 1 August 2016).

Webinars provide a convenient and cost effective way of conducting online seminars in which people who are in different locations can effectively participate. Obviously these seminars reduce the cost of time and travel which would otherwise be required.

### **Online training**

I have already referred to the extensive use which CLCs make of volunteer services. The use of those services creates a significant need for training which can deflect the resources available for direct service delivery. The development of online training tools and programmes enables training to be delivered to volunteers without depleting the human resources available for service delivery.

### **Social media**

Social media, such as Facebook, Twitter and LinkedIn provide very effective mechanisms for the delivery of information to a broad audience. That information can relate to the services available from particular CLCs or legal information relating to particular areas of prospective dispute.

### **Video conferencing**

I am old enough to remember a time when video conferencing was technologically difficult and extremely expensive. I realised those times had passed almost 10 years ago when I saw my then 4-year-old daughter engaging in what were, in effect, video conferences with her chums of the same age using a Smartphone. Programmes like Skype enable video conferencing to be performed at negligible cost, and improved internet access through the roll-out of the NBN will mean that large numbers of people in regional and remote Australia will be able to communicate

face-to-face with legal service providers anywhere in Australia or, indeed, the world. This facility obviously improves access and reduces the time and cost of travel that would otherwise be involved in the provision of those services.

### **Public video sites**

Sites upon which members of the public post their own videos, such as YouTube, offer another means of providing information to a broad audience. Some CLCs have utilised this opportunity to provide information to the communities which they serve in a form which is familiar to many, particularly the younger members of those communities.

### **Internet-based ADR**

Internet-based systems for dispute resolution are now well established. The internet-based system offered by eBay for the resolution of disputes between vendors and purchasers has facilitated the resolution of literally millions of such disputes. Such techniques and software have now been applied in a variety of areas, and are to be applied on a trial basis by courts in the United Kingdom and are being utilised by administrative tribunals in Canada. A dispute resolution platform named *Rechtwijzer*, which translates as "sign posts to justice", has been developed in the Netherlands in conjunction with the Dutch Legal Aid Board. It helps divorcing couples resolve their disputes without resort to the courts, and since late 2014, over 1000 divorce settlements in the Netherlands have been successfully completed using that platform. The programme has

been successfully piloted in England and also in Canada.<sup>25</sup> Given the innovation which CLCs have displayed in utilising other technologies, I have no doubt that we will see programmes of this kind available in Australia in the not-too-distant future, hopefully as a consequence of collaborative effort by the CLCs represented at this conference.

### **Summary and conclusion**

In this paper I have endeavoured to achieve two objectives. First, I have drawn attention to the vital work performed by the CLCs of Australia, and the very significant contribution which they make in addressing the needs of those who lack any other means of resolving the legal problems with which they are confronted from time to time. My second objective has been to draw attention to the ways in which Australia's CLCs are utilising targeted intervention, volunteers and innovation, in particular the innovative techniques offered by developments in information technology, to improve the efficiency and reduce the cost of delivering these important services. The continued achievement of that second objective is vital in a world of diminishing public resources available to CLCs.

By addressing these two objectives I have endeavoured to provide something of a curtain raiser for your important conference. I am confident that you will address many of the matters that I have raised in this paper in much more detail over the next three days and, by your collaborative efforts, improve the extent and quality of the services which you provide to the Australian community, and thereby improve the quality of justice available to that community.

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<sup>25</sup> ABC online, '[Negotiating your divorce online](#)', Law Report, (12 July 2016) (accessed 1 August 2016); Rachel Brown, '[Robot lawyers could make time-consuming, expensive court conflict thing of the past](#)' ABC online AM (6 July 2016).(accessed 1 August 2016).