



8th December 2014

Legal Affairs and Community Safety Committee
Queensland Parliament

Via email: lacsc@parliament.qld.gov.au

Dear Committee,

Justice and Other Legislation Amendment Bill 2014 – Clause 80

I am not a resident of Queensland; nor do I have experience working in the legal assistance sector in your state. However, I believe that my many years experience working in community legal centres (CLCs), as well as with a range of policy bodies and granting bodies, will be useful to you in your consideration of the above Bill – in particular, Clause 80.

Clause 80 removes some purposes for which the Minister can provide grants from the Legal Practitioner Interest on Trust Accounts Fund. The impact of this change is that the Minister will not be able to provide a grant for any purpose that includes “law reform” or the “advancement of law reform”. I assume that, in the main, this will impact on the funding and work of CLCs.

This change to the Legal Profession Act 2007 is likely to:

- Prevent, or severely limit, community legal centres from undertaking valuable and effective law reform, policy and consultation work;
- Reduce the ability of community legal centres to deal efficiently with particular issues that cause legal problems for their clients and others; and
- Deprive Government, law reform bodies, regulators and industry organisations of valuable information and data about the impact of laws, processes and practices.

The vast majority of the work done by community legal centres consists of advice and casework for individuals, and community education activities. However from my personal experience in community legal centres, it is clear that a range of work by CLCs has been successful in addressing issues that lead to problems for disadvantaged people in the first place. Unfortunately my experience is in Victoria, so most of the examples I provide are from Victoria. However, I have no

reason to believe that this type of work would have the same value to the community in Queensland.

Systemic Issues

CLCs become aware of many systemic issues in their casework – that is, a particular law or practice that leads to a significant number of legal problems for disadvantaged people. It is unlikely that many of these issues would be identified by private practitioners or other service providers. In targeting services to disadvantaged people, CLCs often see a high number of people with mental illness, from non-English speaking backgrounds, on low incomes and/or with disabilities. It is often the case that a broader issue causing problems is identified first by a CLC. This was certainly the case in the specialist consumer credit services I worked at, where we often saw problems with a particular lender or debt collector, or we saw businesses taking advantage of a particular ‘loop-hole’ in the law. However many generalist centres, particularly those that target specific disadvantaged groups, can also be first to identify causes of some of the legal problems experienced by their clients that need to be addressed to prevent further problems arising.

What “law reform” work will be affected by Clause 80?

It may be that the type of “law reform” work that is ‘front of mind’ for Governments is campaigning that openly challenges, and possibly embarrasses, Government. This defines a very small amount of the law reform work done by CLCs, but a restriction on funding for “law reform” will also stop work such as:

- Publicising case studies through a report, and possibly media, about the practical impact of a particular law or policy on disadvantaged individuals ,
- Providing information to a law reform body, or Government inquiry on request,
- Providing case studies and recommendations in relation to a proposed law reform,
- Giving verbal evidence before a law reform body or Government inquiry;

However, Clause 80 is likely to prevent more than this

While the work of CLCs has often been broken into four distinct categories (advice, casework, education and law reform), in practice there are a range of valuable activities that fit within a continuum between individual casework and law reform work. The range of activities aimed at addressing systemic problems, that do not clearly fit within the term “law reform”, but are likely to be excluded include:

- Compiling individual case studies or a report for a regulator to enable the regulator to prosecute, or take other action against, a body (such as a finance company, large health provider, debt collector) to prevent further unfair practices;
- Consulting with various bodies whose practices impact on potential CLC clients, for example to influence hardship policies of a local council or electricity company, work with police to improve responses to family violence or consult with a local court to improve access for mentally ill individuals or those who do not speak English;

- Publicising a particular issue using media (for example unfair selling practices by a particular telecommunications or electricity company) with the aim of having an impact on the company;
- Providing a submission to a regulator, or other body, that is seeking views and examples to inform the development of rules or policies (for example ASIC's development of a policy relating to enforcement of responsible consumer lending);
- Producing a report highlighting a specific problem experienced by a CLC's clients (for example a range of problems experienced by disadvantaged taxi drivers) that includes a range of recommendations that may, or may not, include change in a particular law or regulation.

The type of work listed above has often been described broadly as "policy work", although some of it may arguably also be defined as "law reform" work. If funding for "law reform" work is permitted, the type of work above comfortably sits in the continuum between casework and law reform work. However, with the removal of "law reform" work, leaving only advice, casework and community education, many CLCs would believe that there is a risk to their funding if they do any of the above work. My recent experience working with some CLCs nationally, is that in an environment where funding is under threat, many CLCs take a conservative approach and do not wish to put their funding at risk by undertaking work that may be regarded as outside their funding agreement.

While it is sometimes possible for CLCs to source funds from other sources to undertake policy or law reform work (for example through philanthropic funds), it has been my experience that in order to receive philanthropic grants, an applicant often has to show some experience and ability to undertake this type of work. An organisation that has focused solely on individual casework is likely to have difficulty in showing it has the ability to undertake policy work, and also to shift the culture of a casework focus which is important, because successful policy or law reform projects often rely strongly on the co-operation of casework staff.

Examples of policy and law reform work of CLCs

The following examples (and other examples) of law reform and policy work are described in more detail in the appendix:

- Receiving over 100 client contacts about the conduct of one large debt collector, Consumer Action Law Centre submitted a report to the regulator (ASIC) based on the centre's experiences. This contributed to enforcement action taken against the debt collector, which was found guilty of misleading and deceptive conduct by the Federal Court. The debt collector was collecting accounts from about half a million people who were all at risk because the conduct was based on the collector's standard procedures.
- In the ACT, the laws applying to payment of fines was changed as the result of a report released by a CLC. The report highlighted the fact that people who couldn't pay fines in full were losing their driving licences and as a result, often losing their jobs. A year after the law changed, the ACT Attorney General announced the benefits of the change, to disadvantaged people and to the Government in fines collected;

- A Victorian CLC is consulting with local councils about developing appropriate hardship policies for residents who are having difficulty paying land rates. The aim is to reduce the number of court matters issued in relation to land rates (which outnumber all other types of matters issued in the Magistrates' Court).
- After being involved in a project that achieved 'write offs' of about \$30 million of debt owing to banks and insurers by severely disadvantaged people, a CLC consulted with some of the financial services providers in relation to policies regarding recovery of these types of debts. At least one bank has adopted new procedures, and others may follow.

Conclusion


I am aware that the Federal Government and the Queensland Government have removed "law reform" work from the funding agreements of CLCs. I believe this is short-sighted, and will not lead to an efficient use of public funds – quite the contrary. In fact it will limit CLCs to providing individual assistance to client after client, even when there are some common problems that could be addressed. Work to address systemic issues is a vital part of the work CLCs do. While I personally believe that the advantages of allowing publicly funded organisations to speak out against Government provides balance to debates that may not take disadvantaged people into account, the changes to the funding agreements, and this proposed law reform, will prevent much of the valuable and efficient work that, in the main, does not involve direct criticism of Government.

Embedding this restriction in legislation will make it more difficult for current and future governments to fund services based on what is most effective for clients and the community.

I urge you to reject proposed Clause 80.

Do not hesitate to contact me if you would require any further information.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Carolyn Bond', written in a cursive style.

Carolyn Bond AO

APPENDIX

Debt Collection

Consumer Action Law Centre received over 100 contacts from consumers who were concerned about the conduct of a particular debt collector. The centre lodged over 100 complaints with ASIC, who took the matter to the Federal Court, which [found that the debt collector had engaged in misleading and deceptive conduct](#). The debt collector held half a million accounts, and the court found that the conduct was systemic, and based on the company's procedures. It is likely that the conduct (which gradually changed once ASIC issued proceedings) could potentially impact on up to half a million people.

Delia Rickard is the Deputy Chair of the Australian Competition and Consumer Commission (ACCC), and formerly from the Australian Securities and Investments Commission (ASIC) was quoted in a report by Liz Curran, Ms Rickard said:

“Centres such as Consumer Action that combine these skills are in a position to analyse their cases, identify systemic conduct (such as poor practices by debt collectors or equity stripping by fringe mortgage brokers) and present the necessary information to regulators, industry and governments. Their work regularly results in regulators taking on major litigation (such as the ACCC's current actions dealing with Door to Door sales in the energy sector) as well as real changes to industry conduct and significant law reform. In short, such centres are an essential part of our consumer protection regime.”

http://law.anu.edu.au/sites/all/files/legalworkshop/final_report_solving_legal_problems_curran_calc_13_march_2013.pdf

Payday Lending

Consumer Action Law Centre took part in federal government consultations in relation to credit laws, but we were concerned about the cases it saw where low income borrowers were trapped in high-cost loans. Lobbyists for the payday lending industry were in Canberra, putting their clients' views to politicians. Our staff spoke to the media about the need for strong laws, and together with other community workers met with MPs and their advisers to explain the need for tough reforms. This involved a trip to Canberra to meet with MPs about the payday lending issue.

Fines and loss of cars in ACT

In the ACT, a law was having detrimental effects – causing some people to lose their jobs because of immediate confiscation of their driver’s license if they didn’t pay a fine in full. The local CLC released a report recommending changes that allowed fines to be paid by installments, and the law was changed – ensuring that people were once again able to drive to work if they weren’t able to pay the fine all at once.

In a recent [media release](#), the ACT Attorney General said “More than 3,000 vulnerable Canberrans have been able to keep their drivers licences since the introduction of Infringement Notice Management Plans last year, Attorney-General, Simon Corbell, announced today.”

Land Rates

In Victoria, CLCs and other community organisations were seeing many people who were being sued for payment of land rates who were in financial hardship. The CLC found that local councils were the most common issuer of legal proceedings in the Magistrates’ Court. A report was released publicly about the problems experienced by individuals, and recommending changes in local government practices. (The report was launched by Robert Clark MP the Victorian Attorney General). The CLC continues to engage with local councils, to encourage the development of a code of practice in relation to collecting rates debts.

Bulk Debt

The Bulk Debt Project assists severely disadvantaged clients in long term financial hardship by negotiating with creditors for waiver of their debts (some that result from irresponsible lending in the first place). Instead of negotiating for individual clients, lawyers negotiate for clients in bulk by informing the creditors of the individuals’ circumstances and advising that there is no commercial value in pursuing those debts. To date almost \$30m of debts has been waived by banks, insurance companies and utility companies. As well as assisting the individuals with debt, the project has encouraged financial institutions to implement better processes for individuals who are in long-term hardship. To date one major bank has developed its own web page to enable those in long term financial hardship (or their advisors) to ‘fast track’ assessments and decisions. The project was started by a CLC, but VLA and Legal Aid NSW are both involved.

Do Not Knock

The “Do Not Knock” campaign helped to inform the public of their rights in dealing with door to door sellers, by providing information and “do not knock” stickers. Consumers were invited to share their experiences on the website, and these experiences, and those of the CLC’s (Consumer Action’s) clients, were used in submissions, and also in complaints to regulators in relation to breaches of the law. ACCC was successful in the Federal Court against two utility companies, leading to fines and clarification that ignoring a ‘do not knock’ sticker was a breach of the Australian Consumer Law. The CLC believes the campaign was

behind the decision of 3 large energy providers to stop selling door to door. While it was not a major thrust of the campaign, it provided input on a number of law reform proposals.

Finance brokers

In 2000-2001 the Consumer Credit Legal Centre (CCLC) gave advice and/or ongoing legal assistance to a number of clients who had disputes with finance brokers. These cases included clients being sued in the Local Court for brokerage in relation to loans they had not proceeded with (because they were completely unsuitable to their needs and circumstances); caveats being placed over homes to prevent clients being able to sell or refinance until they paid disputed brokerage, unauthorised amounts of thousands of dollars being deducted as brokerage on settlement, and brokers who took up front fees and failed to provide any service at all. Falsification of loan application details was also a frequent problem, with borrowers being told to leave it to the broker who knew what to say to secure the loan. Brokers were lightly regulated in some states and not at all in others. Only WA had a compulsory licensing system.

CCLC then worked (at times in cooperation with other consumer organisations) to raise this issue on the state, and subsequently national, agenda with considerable success (see for example **Report 19: A report to ASIC on Mortgage & Finance Broking Industry, Consumer Credit Legal Centre, 2003** available at [http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/Finance_mortgagebrokers_report.pdf/\\$file/Finance_mortgagebrokers_report.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/Finance_mortgagebrokers_report.pdf/$file/Finance_mortgagebrokers_report.pdf)). This set processes in motion which led to the *National Finance Broking Bill 2007* which was ultimately subsumed into the Commonwealth legislation below.

The *National Consumer Protection Act 2009* ("NCCP Act", which came into effect in 2010/11) regulates all entities in the consumer credit market including credit providers, intermediaries and importantly brokers (referred to as credit assistants). It includes substantive obligations, offences, and importantly, access to free, independent dispute resolution (EDR) for consumers. In our experience **problems** in the finance broker industry are **now less widespread**; those that do occur can **be resolved far more quickly and effectively** than through EDR than through the court system (and often without the need for legal representation) and ASIC takes regular enforcement action **to exclude players involved in fraudulent conduct** from the market (a course of action which had not simply not been available previously as it was unlicensed).

Taxi Driver Legal Service (Victoria)

This service was established by a CLC in a low income area in Melbourne, in response to the number and type of legal issues being experienced by taxi drivers, predominantly from non-English speaking backgrounds. It appeared that some problems were arising as a result of taxi clubs providing limited indemnity in case of accident, the lack of availability of insurance to cover taxi drivers. In some cases drivers were facing bankruptcy as the result of a car accident when they believed they were covered by insurance.

A report was released publicly which highlighted the problems seen by the service, and the issues raised – and the report recommended some changes in the law. A representative from the CLC gave

evidence at the Victorian Tax Inquiry. A number of concerns raised specifically by the centre were reflected in recommendations of the Inquiry and subsequently amendments to the law.

The CLC believed that the problems had not been fully understood outside the tax industry, and it identified misconduct by a number of lawyers acting for tax clubs, which had led to some tax drivers incurring large court judgment debts. Following complaints from the CLC, disciplinary action has been taken against two lawyers and others are under investigation. The service continues to help individuals and to raise concerns with government.