



The Research Director
Legal Affairs and Community Safety Committee
Parliament of Queensland

By Email lasc@parliament.qld.gov.au

23 December 2014

Dear Research Director

Justice and Other Legislation Amendment Bill 2014 (Qld)

The Federation of Community Legal Centres (Victoria) Inc (the Federation) welcomes the opportunity to make a submission to the Queensland Legal Affairs and Community Safety Committee regarding the proposed amendment to the *Legal Profession Act 2007* (Qld) as provided for in the *Justice and Other Legislation Amendment Bill 2014* (Qld).

The Federation is the peak body for Victoria's 49 community legal centres (CLCs) which assist over 60,000 people each year, providing around 100,000 instances of legal advice and information and representing people in around 23,500 cases.

Victorian CLCs have been working to provide legal services and improve access to justice to some of the most disadvantaged members of the community for over forty years. While the proposed amendments to the *Legal Profession Act 2007* (Qld) will not directly affect Victorian CLCs and the communities they assist, we believe the proposed restriction on community legal centres' capacity to obtain funding for law reform and systemic work has broader implications for good public policy and access to justice. This submission seeks to provide the Legal Affairs and Community Safety Committee with the Federation's perspective on the importance of law reform and systemic work, as well as several examples of law reform activity by Victorian centres.

Proposed Amendment to the *Legal Profession Act 2007* (Qld)

The Federation is concerned by the proposed amendment to subsection 289(1)(h) of the *Legal Profession Act 2007* (Qld) contained in clause 80 of the *Justice and Other Legislation Amendment Bill 2014* (Qld) (the Bill). The Bill proposes to remove subsections 289(1)(h)(i) and (ii), thereby removing the power of the Minister to approve grants from the Legal Practitioner Interest on Trust Accounts Fund (LPITAF) for the purposes of:

- (i) the advancement of law reform
- (ii) the collection, assessment and dissemination of information

Level 3
225 Bourke Street
Melbourne
Victoria 3000

Tel: 03-9652 1500
Fax: 03-9654 5204
administration@fclc.org.au
www.communitylaw.org.au

Federation of
Community Legal Centres
(Victoria) Inc
Registration A0013713H
ABN 30 036 539 902

concerning legal education, the law, the legal system, law reform, the legal profession and legal services.

The Explanatory Notes to the Bill state that this proposed change is to 'facilitate the implementation of recommendations resulting from the *Review of the allocation of funds from the Legal Practitioner Interest on Trust Accounts Fund*. Subclause (1) amends section 289(1)(h) to reflect that most payments are now made [sic] legal assistance service providers.'

The *Review of the allocation of funds from the Legal Practitioner Interest on Trust Accounts Fund* recommends that the Act should be amended to 'broadly reflect the new strategic objectives for the allocation of LPITAF funds'. These strategic objectives for the allocation of LPITAF funds were 'frontline services' and 'accountability'. The Federation believes that these strategic objectives are best met by retaining LPITAF as a funding stream for law reform and policy work by CLCs.

Law reform as a core - and cost effective - CLC service

Currently, demand for frontline justice services is unmet across Australia. This has been most recently confirmed by the Productivity Commission in its *Access to Justice Arrangements* report, released on 3 December 2014. While noting the growing 'justice gap' and that legal assistance services including CLCs are inadequately resourced, the Productivity Commission recommended (at Recommendation 21.1) that

[t]he Australian, State and Territory Governments should provide funding for strategic advocacy and law reform activities that seek to identify and remedy systemic issues and so reduce demand for frontline services.

Systemic advocacy enhances access to justice and reduces legal need. We have attached some examples that illustrate the social benefit of law reform and advocacy by CLCs. Often, the social impact is accompanied by a clear economic benefit, for example where law reform efforts result in legal or regulatory changes that reduce the number of individuals seeking help with the same problem in the future.

Law reform and systemic advocacy, driven by CLC clients' experiences, is an essential aspect of CLC service delivery. Systemic work:

- prevents future legal or social problems and in many cases is the only means by which future problems can be prevented
- is often the most efficient use of scarce legal assistance resources
- usually creates broader cost savings and social benefits well beyond future savings to legal assistance services, and
- enables CLCs' knowledge about the 'on the ground' impact of laws and policies, acquired through their contact with thousands of disadvantaged community members weekly, to inform public policy.

Not only is law reform and systemic work a core service for CLCs, but by identifying and working to remove systemic issues, CLCs reduce demand for legal advice, representation and other forms of frontline service.

CLC law reform and policy input is vital for good public policy

As the Productivity Commission found, CLCs' contact with communities means that they 'are uniquely placed to identify systemic issues, particularly those affecting disadvantaged Australians.'

CLCs therefore provide a vital public service by collecting, assessing and disseminating information about how policy and legislation impact on communities. This means recurring issues, such as unclear laws or unfair practices, can be identified and CLCs can work with governments, industry groups and other organisations to address the source of the problems. Ultimately, this makes for better public policy.

Legislators and policy makers rely on CLCs to provide this information to inform all levels of government at all stages of the policy cycle, and routinely call on either individual CLCs or their peak bodies for research, comment and consultation. These requests for input have continued despite changes to CLC service agreements, effected in July 2014, that restrict the use of government funding for law reform and policy work.

Conclusion

As detailed above, systemic work including policy advocacy and law reform is a critical component of CLC service provision. It can reduce demand for other frontline services and improves public policy and the operation of public institutions, not just for CLC clients but for the wider community. We therefore submit that subsection 289(1)(h) of the Act should be retained in its current form for the benefit of the Queensland community, including those experiencing disadvantage.

Please do not hesitate to contact me if you have any questions.

Yours sincerely

A handwritten signature in black ink, appearing to read 'L. Buchanan', with a stylized flourish at the end.

Liana Buchanan
Executive Officer

Attachment

Examples of law reform and systemic advocacy by Victorian community legal centres

Consumer Action Law Centre – stopping irresponsible marketing of credit

The Consumer Action Law Centre (Consumer Action) financial counselling team regularly heard from families burdened by credit card debts of more than \$20,000. While customers have a responsibility not to take out credit they cannot afford, banks are also required to assess what a customer can afford before extending credit.

However, before July 2012, banks would commonly make unsolicited offers of increased credit limits to customers who would not normally have asked for such an increase and in some cases could not afford it.

Research by Deakin University showed that banks were using sophisticated psychological techniques to encourage people to agree to increases on impulse and without thinking about whether or not they were in a financially sound position to do so.

Consumer Action and other CLCs compiled case studies and briefed Parliamentarians across the country. These discussions led to legislation that banned unsolicited credit limit increase offers, but allowed customers to opt in to receive them. The new law recognises that credit should not be bought on impulse.

Peninsula Community Legal Centre - Volunteer Practising Certificates

Advocacy by Peninsula Community Legal Centre (PCLC) is an example of an initiative that successfully sought legislative change to boost efficiency in centre capacity to legally assist clients by enabling more lawyers to volunteer in community legal centres.

In 2004, PCLC raised concerns about the requirement for volunteer lawyers who did not otherwise hold practising certificates to pay \$200 a year for a corporate practising certificate. This affected volunteers who had retired or who worked for government and were exempt in their employment from the requirement to hold a practising certificate. That year, four lawyer volunteers resigned from Peninsula CLC as they were unable or unwilling to pay \$200 for a practising certificate for the sole purpose of volunteering.

After discussing with other CLCs, PCLC wrote to the Attorney-General, the Law Institute of Victoria and the Legal Services Board. The Department of Justice liaised with the Federation and officers from the Legal Profession Project and took these concerns into account in drafting legislation.

The *Legal Profession (Consequential Amendments) Act 2005 (Vic)* was subsequently introduced and provided that no fee or surcharge was payable for a practising certificate if the solicitor only volunteered in a CLC. Those

volunteers are now also supported by free membership of the Law Institute of Victoria and are eligible to attend free continuing professional development training provided by Victoria Legal Aid.

In the 2013-14 financial year, PCLC had 19 volunteer lawyers who held a CLC volunteer practising certificate. These lawyers collectively provided more than 900 free legal advices to vulnerable and disadvantaged clients. Further, in the 2013-14 financial year, 751 lawyers held a CLC volunteer practising certificate in Victoria.

Footscray Community Legal Centre – Changing the way the insurance industry deals with debts owed by uninsured drivers

CLCs' casework on behalf of a few individuals can lead to changes in systems that affect large numbers of people on low incomes. Sometimes that systemic change does not involve reform of any laws or regulations. For example, in 2008 Footscray CLC started an innovative case work and advocacy project that sought to change the way insurers deal with judgment-proof debtors.

Footscray CLC had often provided advice to low-income clients who had caused damage in motor vehicle accidents and did not have third party property damage insurance. Because these clients were not insured, insurers or debt collectors were pursuing clients individually. The majority of clients were judgment proof, meaning that they had no assets and their only income was derived from Centrelink. It was standard practice for CLC lawyers to send a letter to the insurer setting out the client's financial hardship. Usually the insurer would not respond. Months or years later the client would hear from debt collection agency still seeking to recover the debt. Footscray CLC developed a casework/advocacy plan to stop this absurd process, where clients who could not pay were pursued by debt collectors who would never recover the money owed.

Footscray CLC determined that all the major insurers are members of the Insurance Council and voluntarily agree to abide by the Insurance Code of Practice. Footscray CLC created a series of standard letters that caseworkers could send when assisting judgment proof clients, designed to force insurers to treat these matters as disputes and refer them to internal dispute resolution (IDR). If insurers did not use IDR, then the matter would be referred to the Insurance Council's Code Compliance Committee. Insurers were required to pay the Insurance Council every time the Committee intervened, providing a financial incentive for them to resolve the matter. Footscray CLC also met with the managers of insurers' IDR schemes, to persuade them that it was more cost-effective for them to write off a debt at an early stage rather than spend time and money pursuing a judgment-proof client.

As a result of this casework strategy, insurers changed their internal processes to ensure that matters involving low-income debtors were referred to their IDR schemes. On 1 July 2014 a new Insurance Code of Practice included detailed provisions about how insurers must treat debtors in financial hardship and

options they can consider, including waiver. A comparison of the Insurance Codes of Practice of 2006 and 2014 shows the impact of Footscray CLC's advocacy.

These changes collectively mean that lawyers no longer have to undertake time-consuming, ineffective negotiations with insurers and/or debt collectors, but are able to pursue a streamlined process to seek write-off of debts.

Footscray Community Legal Centre and the Federation of Community Legal Centres – Improving conditions and reducing future legal need among taxi drivers

Footscray CLC established the Taxi Driver Legal Service in 2011, having recognised that many taxi drivers were being assisted by CLCs and they experienced unique, complex and unusual legal problems. Casework in the Taxi Driver Legal Service identified a number of systemic issues in the taxi driver industry.

Among the issues apparent through Footscray CLC's casework was that taxi drivers were exposing themselves to serious financial risk every time they drove because most taxis were not properly insured. Taxi drivers' status as bailees, rather than employees, also meant they were subject to a range of serious problems associated with poor pay, legal entitlements and safety at work.

Footscray CLC and the Federation worked together to document the legal and financial problems affecting taxi drivers and set out recommendations for reform in a report published in August 2012. This policy work was used to make submissions to the Victorian Government inquiry into the taxi industry and many of the recommendations were included in the inquiry's final report. The majority of these recommendations were accepted by the Victorian Government and have recently been implemented as 'implied terms' in taxi driver's agreements.

Most recently, Footscray CLC and the Federation made a submission in response to the Regulatory Impact Statement on driver's agreement 'implied terms' in June 2014, specifically in relation to insurance. They expressed their concern in regard to the proposal that taxi operators be permitted to charge drivers for excess (which is against normal insurance practice, where employers commonly pay excess). This submission was accepted and the recommendation that excess be paid by taxi operators has also been implemented.

Unless Footscray CLC had noted systemic problems in the taxi industry through interactions with clients, established the Clinic and worked to record and raise these issues in joint law reform work with the Federation, these issues would not have been raised in the Fels inquiry and would not have been brought to the attention of government.

Footscray CLC estimates that, over time, the changes to insurance arrangements alone will protect drivers and owner drivers in up to 1,000 motor vehicle accidents per year and will remove up to 100 civil debt cases per year from the courts and the Taxi Driver Legal Service.

Systemic work by the Federation and member CLCs on family violence legislation and policy reform

Many Victorian CLCs provide specialist duty lawyer services in Magistrates' Courts to assist victims of family violence to obtain a family violence intervention order. For the financial year 2013-2014, 'family or domestic violence order' was again the top legal problem type for CLC work across Victoria, comprising 14% of all problem types. Greater than 1 in every 3 new cases for CLC lawyers were about family violence.

CLC duty lawyer work provides CLCs and the Federation with a unique understanding of the issues for victims of family violence encountering the justice system. Victorian CLCs have been instrumental in shaping family violence systems reform in Victoria, particularly justice responses to family violence.

In the early 2000s, the Federation and specialist CLCs worked with government and community organisations, police and courts to develop an integrated response to family violence. With others, we advocated for a review of family violence legal responses in Victoria. This led to the Victorian Law Reform Commission (VLRC) review of family violence laws, which the Federation worked on as a member of the VLRC Advisory Committee and which was shaped by the input of CLC lawyers, who were uniquely placed to inform the review about women's experience of the current system.

Overall, the *Family Violence Protection Act 2008* (Vic) is widely regarded as a best practice model of legislation. In November 2007 then Attorney-General, Rob Hulls, wrote to the Federation describing the collaboration between community participants in the law reform process as 'unprecedented', and congratulating us for making 'significant' and 'valuable' contributions to the family violence law reform process.

The Federation and individual CLCs continue to advise government, courts and police on the justice system's response to family violence, and are regularly consulted by Government, Opposition, academics and media on systemic family violence issues.