

**QUEENSLAND PUBLIC INTEREST LAW CLEARING HOUSE
INCORPORATED**



**SUBMISSION TO THE PRODUCTIVITY COMMISSION
ON THE
CONTRIBUTION OF THE NOT FOR PROFIT SECTOR**

29 MAY 2009

Prepared by the Queensland Public Interest Law Clearing House Incorporated

PO Box 3631
SOUTH BRISBANE BC QLD 4101

T: 07 3846 6317

F: 07 3846 6311

E: contact@qpilch.org.au

W: www.qpilch.org.au

About QPILCH

QPILCH is an independent, not-for-profit incorporated association bringing together private law firms, barristers, community legal centres, law schools, legal professional associations, corporate legal units and government legal units to provide free and low cost legal services to people who cannot afford private legal assistance or obtain legal aid. QPILCH coordinates the following services:

- Public interest referral service** facilitates legal referrals to member law firms and barristers for free legal assistance in *public interest* civil law cases.
- QLS and Bar Pro Bono Schemes** – QPILCH manages these schemes and refers appropriate cases to participating law firms and barristers for legal assistance in eligible civil law cases.
- Homeless Persons' Legal Clinic** (HPLC) provides free legal advice and assistance to people experiencing homelessness or who are at risk of homelessness.
- Refugee Civil Law Clinic** provides free legal advice and assistance on matters other than immigration law to refugees and asylum seekers experiencing financial hardship.
- Administrative Law Clinic** provides legal advice and ongoing minor assistance in administrative law matters.
- Self-Representation Civil Law Service** (SRCLS) provides free discrete task legal assistance to eligible applicants without legal representation in the civil trial jurisdictions of the Brisbane Supreme and District Courts.
- Court of Appeal Self-Representation Civil Law Service** (CA SRCLS) provides free discrete task legal assistance to eligible applicants without legal representation in the civil jurisdiction of the Queensland Court of Appeal.

For more information about QPILCH services, please see the QPILCH website at www.qpilch.org.au under Services.

QPILCH was established in June 2001 as an initiative of the legal profession and commenced services in January 2002.

QPILCH is a member of the Queensland Association of Independent Legal Services, affiliated with the National Association of Community Legal Centres, and is a member of the PILCH network.

INTRODUCTION

QPILCH does not receive any funding from the Commonwealth Government. However, some of the Queensland Government funds it receives are provided under the national Community Legal Service Program (**CLSP**). Accordingly, some of the issues we raise in this submission are relevant to Commonwealth funded organisations, while some may only be peculiar to Queensland funded Community Legal Centres (**CLCs**).

In summary, it is our experience that:

- community legal services have improved significantly since their inception in the 1970s as the result of growing sophistication, the participation of more experienced practitioners, better organisation and improved funding;
- the services provided by community legal services are as good as those provided by government service providers, despite the latter having considerably better resourcing levels;
- the low level of funding significantly hampers community legal services in devising and providing innovative services to the community; and
- the level of accountability expected of community legal services has increased exponentially, but this extra accountability has had very limited impact on the improvement of services, while adding significant administrative burden.

This submission will address the terms of reference of the Commission's study by commenting on the scoped issues under the following headings contained in the Commission's Issues Paper:

- measuring the contribution of the not-for-profit sector;
- ways of enhancing the efficiency and effectiveness of the sector;
- the sector's provision of government-funded services (no comment is made under this heading); and
- trends and developments impacting on the sector.

MEASURING THE CONTRIBUTION

CLSP reports (such as strategic planning and service targets, monthly work data entry, quarterly financial data entry, half-year reports and annual reporting) are designed to ensure accountability by measuring a CLC's performance. Data is entered through the CLC reporting system CLSIS.

This reporting system is also designed to obtain data that may be useful in assessing legal need and identifying legal problems.

QPILCH has only been on the CLSIS system since 2008. However, it is our experience that CLSIS data input is

- non-intuitive;
- does not take account of all service types, and
- does not appear to enhance accountability.

We also consider data retrieval to not be usable on local and global levels.

- We have had a lot of trouble using the system, despite our administrative assistant attending several training sessions. The system does not permit retention of the reports sent and has other problems, least of which is that as it was not designed with our type of service in mind and does not accommodate our referral data. For example, a referral is assumed to be a minor activity, whereas QPILCH opens files for all applications and can spend considerable time assessing the merit of a case. We prepare detailed reasons in unmeritorious cases to explain to a client why they cannot be assisted. This is also an access to justice issue and has reduced the number of people who continue with hopeless cases.

- Before obtaining CLSP funding, QPILCH's reporting requirements were three reports per year – an annual financial report to a short-term government funder, audited financial statements and an annual report. CLSP funding has increased those requirements to eleven different reports, some of which are outlined above. QPILCH has always prided itself on its high work standards. Since inception in 2002, it has integrated service standards and casework performance oversight measures into its operations. Since the new level of reporting, these actions and the high work standards have not changed. We have not worked any less or less hard. The targets we provide were initially based on the volume of casework we were doing and have been increased incrementally by estimating natural growth. All the new reporting has meant is that we now spend considerably more time on reporting, something that is increasingly hard to do without more administrative assistance and less time on casework. We accept we are accountable for the public funds we receive. The problem lies in the number of new reports which do not seem to improve our level of accountability. For example, monthly casework statistics and quarterly financial reports are superfluous and could easily be replaced without a reduction in accountability. Centre reports could be staggered to give central staff the opportunity to closely review quantitative data provided. Later we suggest a better approach to qualitative review.
- An example of the shortcomings of CLSIS occurred in 2007. In that year, QPILCH embarked on a review of civil law services in Queensland. We asked CLSIS for some comprehensive statistics of services provided by Queensland CLCs over several years. The information that was provided after several months was a range of relatively superficial data such as number of advices, minor assistance and casework without the ability to drill down into more fundamental information regarding locality, employment levels etc. Unless CLSIS is able to provide useful information to the community legal sector to assist in the identification of issues and to government to use in the development of policies and programs that encourage targeted innovative services, its ongoing utility must be questioned.
- Government seemingly make onerous reporting demands to justify the funding it provides, demands that would rarely be put on government services (see under funding below).

It is notoriously difficult to measure performance, particularly of legal services. Outcome measures in some areas (particularly general litigation) are not a useful guide because great legal work can be undertaken for a client but the client is ultimately unsuccessful. Using client feedback does not help, again because a client may have had a good service but feel disgruntled because their case failed. In the type of work undertaken by QPILCH, we find that no matter how and when we ask a client to complete a survey, few do so.

Funders are now considering new ways to measure performance, such as using case studies – a client's story – to understand the way the service was performed and its success or appropriateness. This will raise another level of administrative work because it is time consuming to prepare such stories.

It is our submission that the reporting architecture should be reviewed to improve measurement of the CLC contribution while at the same time reducing onerous reporting requirements:

- The Federal Attorney-General's Department should report back to CLCs on the data provided to it - How does it use the data? Does it help in the identification of legal need? Does it give the department a picture of what CLCs are doing or not doing? How does it pick up data from centres like QPILCH which have a service delivery model which does not fit neatly into the parameters of the CLSIS? Only that information that can realistically and meaningfully be used should be collected.
- The number of reports should be reviewed with a view to being rationalised. It is considered six-monthly casework and financial reporting is sufficient to ensure that CLCs are working to meet their targets; otherwise sufficient administrative staff should be funded to assist with data entry and reporting.
- CLSIS software should be improved to make it easier to enter and retrieve data, particularly obtaining reports for internal use.

- National, state and local CLSIS data should be easily obtained and other socio-economic data should be made available for matching by post code for mapping purposes.
- The number of reports should be reduced.

WAYS OF ENHANCING THE EFFICIENCY AND EFFECTIVENESS OF THE SECTOR

Reporting

Improving data reporting and reducing the volume of reporting will improve the efficiency of services. At the present time reporting involves the considerable input of staff time, the majority of which could be better spent on casework and casework support. We are of the view that by reducing the volume of reporting will not result in a decrease of transparency and accountability, rather, only the frequency in which reports are provided. Casework and financial reports could also be combined, giving greater meaning to and understanding of, the costs of the relevant services.

Put succinctly, we consider the current level of reporting unnecessary. QPILCH is no more accountable now than it was in 2007 before joining the CLSIS reporting system but with added costs related to the additional reporting required under CLSIS.

Like most other CLCs, QPILCH has a structured internal accountability system. Casework staff meet fortnightly with a list of all current files to discuss difficult files and matters that have not been progressed expeditiously, the coordinator signs all correspondence and monitors the progress of files, and two senior members of the profession who are members of the management committee conduct an annual file review, assessing a random sample of files to ensure compliance with casework standards. In addition, CLC staff members conduct an annual cross-check of the casework of other centres.

We submit that the proper accountability of CLCs would be satisfied by ensuring that this system is followed. A simple report, signed by senior lawyers who conduct the internal review against determined criteria on an annual basis and by the external cross-check, along with a simple six-monthly report of casework numbers to check on the flow of work would ensure that a service was fulfilling its charter at an acceptable level.

Funding

Alan Milburn, the former UK Cabinet Office Minister, has identified the real problem for funding of community services as a:

“vicious cycle that limits the voluntary sector’s ability to deliver as the sector ends up chasing dozens of short-term funding streams, rather than investing in staff development and service improvement”, thus in turn government agencies become “nervous about contracts with organisations that lack capacity. They then want voluntary organisations and charities to account for every penny, micro-managing the relationship and clawing back resources whenever they can. In turn, this keeps capacity in the sector down, preventing it from moving up.”¹

While accountability is essential, and public funds are not bottomless, there are adverse consequences of government attempts to micro-manage and other policy approaches adopted over the last decade by government. Service providers have become, by necessity, competitive instead of actively cooperative. They have become constrained and inward looking, focused on delivering services with ever increasing demands and tied resources. They have been hindered in their ability to respond to new demands and challenges as policies have swung with the pendulum of new managerialism.

QPILCH could do a lot more with minimal additional funding, but it is extremely difficult to obtain even minimal funds to meet demands for legal services:

¹ Citizens Advice Bureau, 2005 *Lord Carter of Cole's review of legal aid procurement*, www.citizensadvice.org.uk.

- When QPILCH applied for non-recurrent funding for a new service assisting self-represented litigants in 2007, it requested funds for a full-time solicitor and because it was a pilot project, a three day per week paralegal, as it was not known what demand the service would experience in its early days. The first application flagged this situation and the second application sought a full-time paralegal position but funding was not increased as requested. The paralegal position is pivotal to the success of the service and it soon became apparent that the position would need to be full time to meet the growing demand. In 2008, QPILCH applied for funding of \$12,000 to increase the paralegal position to full-time until 30 June 2009. The department requested information to justify the increase, all of which was provided except for a requested cost-benefit analysis of the service. We explained in our response that it was difficult to provide cost-benefit analysis on just 9 months operation and because QPILCH has neither the resources nor expertise to undertake such an exercise. We were subsequently informed that our application was unsuccessful.

Later we asked the department why it briefed against the request and was advised that we needed “to explain further new case files (i.e. what services did you perform? How many have been cleared? Time spent on each case? Approximate court time savings? Etc) ... best formulated into a table.”

This level of detail was not previously requested. Putting aside the difficulty of obtaining and providing information of ‘cleared cases’ and approximate court time savings (it is impossible for QPILCH to monitor the progress of all the clients who come for help in various stages of their proceedings and most unlikely that even the court would be able to calculate what savings have been made through our services), it is also a request for detail that is very difficult to gather with the current level of funding we receive.

It should be noted that while the department briefed against the application the funding was eventually approved.

- In 2008, the Commonwealth Government made a one-off \$10M grant to CLCs and it has just done the same in May 2009 allocating \$4M in grants. This money goes to existing Commonwealth funded centres and some has gone for funding of services that has not been requested. Other centres, including QPILCH have had no opportunity to put a case for sharing in this funding. After the first discretionary grant, the Queensland government also made a one-off extra allocation. At no time did the two governments appear to coordinate these important decisions. In our view, such funding should be developed on the basis of:
 - evidence-based need
 - as far as possible involve multiple partners such as universities and the private sector in devising and implementing the programs
 - promoting innovative approaches to stimulate new ways of delivering services
 - be project based with the ability to convert to recurrent programs
 - full evaluation of the services provided.
- It is very difficult to obtain funds for projects that can enhance access to justice. There are few funding sources for legal programs, unlike medical research for example. As far as possible, government should work with available charitable and professional organisations to increase funding into the sector. In 2007 QPILCH suggested to the Queensland Government that it establish a self-sustaining fund, managed by a community based but responsible group, to fund civil law services in Queensland. If this had occurred when times were good, the difficulties in finding funds now for civil law services would be ameliorated. QPILCH has established its own gift fund which is able to pay disbursements in pro bono cases. This fund has been built by fundraising and comprises funds we could use to fund our own needs but due to a lack of other sources of funding and our clients’ inability to find the money themselves, we hold this money separately for them.

It is also difficult to obtain small amounts of money for innovative projects. For example, QPILCH has been unable to obtain funds to purchase a desk, chair and computer for retired practitioners to volunteer their services. We have greater priorities for funding from our usual and major sources, so attempts to get a few thousand dollars for this purpose from a range of funders have so far been unsuccessful. Retired practitioners are an important resource not only for clients but for the next generation of lawyers. This strategy is similar in many respects to the Golden Guru initiative which was proposed and to which the Australian Government committed to at the 2020 Summit. Mentoring by retired legal practitioners will not only facilitate the passing of knowledge between experienced practitioners and junior lawyers but also to self-represented litigants and others who cannot afford legal services.

It is our submission that it is unrealistic and oppressive for government to make unrealistic demands to justify funding, particularly in view of the level of funding provided. Few constraints like this would be put on any government department (unlike the private profession, how many government lawyers must account for time spent on each case), yet it is expected of under-resourced community agencies and highlights the difficulties in obtaining funding and real accountability of our services.

It is also our submission that government has a major role in facilitating services, not by merely handing out funds, but by encouraging the most effective and innovative responses to community legal needs – ensuring that applications for funding are well researched, evidence based, involve partners to enhance formulation and implementation, and continue services that are positively evaluated.

TRENDS AND DEVELOPMENTS IMPACTING ON THE SECTOR

Legal policy issues

PILCHs are a good example of community and profession based initiatives that are exploring new and innovative ways to deliver civil law services. Drawing on the resources of the private legal profession, professional bodies, government legal units and corporate units, and working in partnerships with universities and the welfare sector, the PILCHs are creating services such as the homeless persons' legal clinics that are recognised for their beneficial impact on homelessness.

Despite community legal services being recognised for providing efficient and effective services, being more cost-effective and flexible than legal aid and frequently working in areas where legal aid is unavailable, they are provided with inferior resourcing and are treated not as part of the solution but as an add-on, a bit player. Only recently have attempts been made to coordinate the various parts of the sector – legal aid, CLCs and pro bono providers.

By encouraging partnerships and acknowledging CLCs as equal partners and as partners which do things differently and effectively, constraints on innovation can be removed, new funding arrangements can be found and better services provided. This however will need government leadership to ensure that programs are properly devised and coordinated.

In addition, existing policies construct legal services in silos for criminal law, family law and civil law. And from 1992, civil law clients were left to fend for themselves. While there has been some retreat from this position, there has been little consideration by government of the ramifications of its policies and how best to meet community need.

It should first be recognised that funding civil law services can have a flow on and preventative effect in other problem areas and reduce overall community costs.

As an example, we see this in QPILCH's Homeless Persons' Legal Clinic, where initial legal problems, often civil issues like debt, relate to family breakdown and crime, all compounding into homelessness. However, it is the civil issue that is the last to be addressed, as the crime and family issues take precedence. Early intervention in these civil problems may prevent other more serious problems from developing. We are not suggesting that there is a single cause or

necessarily an initiating problem, only that people under pressure are likely to have a range of problems requiring a range of interventions, and the failure to address them all can continue or exacerbate their conditions and behaviour. NSW research shows that of people seeking assistance from free legal services in that state, almost 50% had multiple problems.²

The lack of legal services in civil law has resulted also in increases in self-representation in courts and tribunals, creating problems for the courts and represented litigants, particularly in increasing costs and reducing opportunities for early settlement. Lack of effective legal services for litigants in person can also mean that unmeritorious cases are not diverted from the system at the appropriate time and meritorious cases are not given sufficient attention.

Justice is not divisible, so a system that fosters criminal defence and not civil justice ignores the fact that many people experience problems across a range of legal areas that operate often simultaneously and are not mutually exclusive. Multiple problems are best dealt with in a holistic way, using partnerships and different, well-developed and practical service delivery models. Current policies are not conducive to this approach.

We are not suggesting here that government funding should be diverted from crime or family law to civil law. Rather, we suggest that minimal funding which does not draw heavily on the public purse could be used to target problems in innovative ways.

Tax issues

The Commonwealth Government should in our view be generous with the tax exemptions it provides law firms which volunteer their staff to undertake pro bono work with accredited agencies. Extra encouragement should be provided to firms which agree to second staff to remote, rural and regional (**RRR**) areas, particularly those who are disadvantaged and struggle in obtaining pro bono services. This will not compete with local service providers because it is our experience that people in RRR areas are not accessing those services. QPILCH is currently working on a RRR project to partner small local rural firms with metropolitan firms to resource the smaller firms to undertake more pro bono work, but this short-term project cannot hope to meet the enormous needs across RRR Queensland.

In addition, as outlined above, it is very difficult for CLCs to obtain resources. As a consequence, it is hard to attract and retain qualified staff. Salary sacrifice has been a useful way to attract staff and there are some legal centres in Queensland, particularly in RRR areas, which have had difficulty in attracting stable levels of staff for years. Yet governments have wound back salary sacrifice arrangements that make it less attractive, particularly for people who have families and receive other benefits such as child assistance.

CONCLUSION

QPILCH does not think that a compact will address these issues. It is likely to create just another bureaucratic process. What is needed are active federal and state governments willing to work with CLCs, the private sector, legal professional bodies and other governments to coordinate funding and service formulation and to develop realistic and practical reporting requirements that are easy to satisfy, which provide useful information on which decisions are made and do not require additional resources in order to comply with the requirements.

² NSW Law and Justice Foundation.