Funding Cuts to Community Legal Centres: The Bigger Picture

When the Abbott government announced massive funding cuts to already under-resourced community legal centres earlier this year, the move was met with backlash from Community Legal Centres (CLCs) and the wider community.

Most members of the public understand the important role that these centres play in promoting social justice and equal access to legal representation for disadvantaged persons within the justice system.

However, many are unaware of the broader duties that these centres have in the wider community.

Recommending Reform

A key function of community legal centres such as Legal Aid, the Aboriginal Legal Service and Women's Legal Services NSW is their role in shaping policy and law reform by making submissions on new legislation and proposed changes to the law.

Through working within some of the most socioeconomically disadvantaged communities in the country, CLCs possess a unique insight into the social and legal issues which most affect these people.

Unlike policy makers, who often lack first-hand experience with those affected by proposed legislative changes, lawyers and other persons employed by CLCs understand the motivating factors behind social issues and have experience applying the law in complex legal cases.

This gives them an advantage over other bodies when it comes to advising policy makers of the advantages or dangers posed by changes to the law.

So how do they do this?

Generally, when changes to the law are proposed, the government will launch an inquiry or committee to review the proposed changes and determine how they should be implemented.

An integral step in the review process is obtaining submissions from the general public to ensure that persons affected by the legislation can have their say.

Submissions are essentially a means by which the public can communicate their concerns or recommendations about a proposed change to the law to policymakers.

Usually, they consist of a written document which highlights the factors affecting the proposed changes, as well as opinions and arguments for or against the reforms.

Submissions may also contain recommendations about how a proposed reform can be improved, and may specify examples of how the changes will affect members and clients of that organisation.

While any member of the public is able to make a submission, organisations such as CLCs who have a specialist understanding of how the law applies in a wide variety of situations are often able to provide an in-depth and valuable insight into how the reforms will affect the wider community.

In recent times, CLCs have made submissions on a wide variety of legal and social issues, including legal personhood legislation (better known as *Zoe's law*), child protection laws and victims' compensation.

While CLCs are predominantly known for playing an integral role in the criminal law system, they have also been

instrumental in bringing about change in civil law, including tenancy law and even regulation of the financial services industry.

Besides making submissions, CLCs may also incite parliamentary action on a particular social issue by making recommendations for reform or calling for an inquiry into an area where the law is not operating effectively.

Testing the Boundaries

An often overlooked function of community legal centres is their ability to clarify existing laws under the Constitution where there is a public interest dimension.

One means by which this is done is through the running of ‘test cases.’

A ‘test case’ is essentially a case which concerns unsettled legal principles under Commonwealth law, and which is deemed to have national importance.

These cases generally centre upon complex areas of constitutional law which may be heard in the High Court, and often require the expertise of highly experienced lawyers and barristers, as well as significant preparation time and other resources.

As such, test cases are often very expensive to run and individuals often lack the financial capacity to fight a test case on their own.

This means that taxpayer funded community legal centres are often tasked with conducting these cases through grants provided by the Attorney-General.

It also means that publically funded test cases are confined to issues of Commonwealth law – in other words, you cannot obtain funding from the government to run a test case

concerning a State or Territory law.

The outcomes of test cases often have far-reaching and lasting effects on how the law is applied in the future – perhaps the most famous test case in Australia is *Mabo*, which gave recognition to Indigenous native title rights.

More recently, the case of *Bugmy v The Queen*, which was backed by the Aboriginal Legal Service found that the effects of social disadvantage as a result of being Aboriginal does not diminish over time, and can still be considered as a factor in sentencing.

Cases such as these illustrate the long-term benefits that test cases provide to the wider community in defining legal rights and obligations.

How will funding cuts affect CLCs?

In the Federal budget, the Abbott government announced funding cuts to CLCs totalling $43.1m across four years.

This represents a significant proportion of CLC funding – in 2013 alone, the Federal government provided a total of $36.7m to 140 legal centres.

Considering CLCs already suffer from extremely limited funding, many are wondering how these cuts will impact the way CLCs deliver invaluable services to the community.

Some CLCs have already expressed concerns about the viability of existing services under the new cuts, while prominent legal professionals have foreshadowed an increase in the number of unrepresented litigants coming before the courts.

The full effects of the cuts are yet to be seen, but given the important role that CLCs play in preserving access to justice for some of the most disadvantaged persons in the community, they have been criticised as a threat to democracy and

equality before the law.