

# LAW REFORM

## STRATEGIES FOR COMMUNITY GROUPS<sup>1</sup>

Community legal centres take it as given that where a group or class of clients face similar problems centres should work with their clients to change the laws, administrative practices, or social behaviour which underlies the problem rather than merely offer the more individualised (and sometimes ineffective) solution of casework assistance. Law reform, 'social action' or 'policy work' are all terms used loosely to cover attempts to effect such socio-legal or structural change.

In general, CLCs use a range of strategies and techniques to promote their clients' rights. These strategies are generally grouped under the three broad headings of casework, community legal education and 'law reform'<sup>2</sup> work.<sup>3</sup> It is with the third aspect that this article is concerned.

The article is based on the authors' experiences while working for community legal centres. It contains practical suggestions rather than any theoretical analyses of the process of law reform. The law reform campaigns in which we have been involved have arisen from the demands of the clients of CLCs and the clients of organisations that CLCs work with, such as financial counsellors and Centres Against Sexual Assault. While our experience and the focus of this article is with law reform work from the perspective of CLCs, we feel that many of the strategies outlined and issues discussed will be relevant to other community groups.

While CLCs are involved in an extensive array of law reform activities, these notes and our examples derive principally from two campaigns. The first is the Victorian Real Rape Law Reform Campaign, aimed to redress the appalling treatment meted out to adult victims/survivors of sexual assault by the legal system.<sup>4</sup> The second is the campaign about consumer credit insurance commenced by the Australian Financial Counselling and Credit Reform Association (AFCCRA), CLCs and other consumer organisations which aimed to stop the exploitation of consumers

who are sold consumer credit insurance.<sup>5</sup>

The first part of this article presents some general points about campaigns. The remainder of the article is a brief discussion of practical issues that often arise in the course of using certain strategies. The discussion is not exhaustive; rather we attempt to highlight basic issues that need to be considered.

### General considerations

Obviously, each law reform campaign<sup>6</sup> involves varying political environments. The campaign issue may be one of considerable interest to the general public or may leave them cold. They may be for you or against you, indifferent or divided. It may be that you are not only advocating legislative or procedural reforms but that your aim is to challenge and change enmeshed stereotypes surrounding the issue.

For some campaigns there is an organised commercial opposition (e.g. the finance industry re consumer credit reform, business groups generally re product liability legislation or real estate institutes re tenancy law reform). In other cases the target of the campaign is government policy, government spending (e.g. on legal aid or social security) or the practices of a government department. In yet other situations the campaign will seek to use reform of legislation and administrative procedure to challenge broad social structures (e.g. the Victorian rape law reform campaign). These issues affect the strategies to be adopted and the way they are used. For example, where only the government is the target for change, swaying public opinion is crucial but can sometimes be sufficient. Where there is an organised and powerful commercial opposition you can have 'public opinion' on side, but be unable to persuade government to act.

Despite the particularity of each campaign, a number of themes can be identified. Community based law reform is an on-going and long term process. The momentum for change

has to be built, this momentum needs to be converted into new laws, policies and/or procedures, the implementation of the new rules needs to be ensured, the effectiveness of the solutions achieved needs to be maintained and assessed, and gains need to be defended.

A law reform campaign will often have to be conducted on a number of fronts: you may, for example, need to simultaneously build political support for the general thrust of the campaign, develop your detailed reform proposals in consultation with interest groups and people affected and then persuade the relevant government officials and politicians of the practicalities of your detailed solution. Obviously, different strategies are required for different purposes.

Of course, you may not be able to achieve everything you want. You need to be sensitive to the art of the possible, and so your campaign needs to be flexible and to a certain extent opportunistic in order to respond to unexpected developments. This can include unexpectedly rapid progress towards achieving your ends. For example, your campaign may be aimed at stopping the passage of legislation inimical to your client groups' interests. If successful, you may then be thrown into an inquiry process designed to come up with an alternative. Your victory may be shortlived unless you can keep the campaign going throughout the inquiry and beyond.

Those involved in a campaign need to understand the relevant political processes. Who has the power to make the decision you want? What are their agendas and motivations? Who can influence them in your favour or against? What events are coming up (most obviously elections, but also international events, party conferences, budgets, etc.)? If it is the Commonwealth Parliament which needs to enact your desired reforms, bear in mind its considerable workload. Legislation proposed by a Department or Minister must go through a number of processes includ-

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ing Cabinet approval. At any one time there is a substantial queue of Bills waiting to be brought before the Parliament. If a Bill is pushed out of the queue it may mean a substantial delay before it can be dealt with by Parliament.

## Particular strategies

The following are some methods of work or strategies that might be employed in a law reform campaign:

1. Working with the media.
2. Taking part in consultative processes/government inquiries.
3. Preparing and launching a report.
4. Running a phone-in.
5. Lobbying decision-makers.
6. Working with other groups.
7. Community education.
8. Litigation and test cases.
9. Direct action.
10. Miscellaneous: merchandise/raffles/stalls/street theatre.

As can be seen there is no clear division between these strategies. Nor are they alternatives. Rather, any given campaign may be faced with the option or necessity of being involved in these processes. We briefly consider the first four strategies from the list.

### 1. Working with the media

The media are essential tools in law reform in that they provide an area in which to tout your cause. However, you need to use the media in a strategic way. In law reform it is not true that any publicity is good publicity. Even the most sympathetic story can be counter-productive if it comes at the wrong time.

The adage of never trusting the media remains true. Even if the journalists concerned seem sympathetic they have their own agendas which may marginalise or trivialise the issue you want to promote.<sup>7</sup>

In general, it is wise to learn how the media works and how to work it. There are various sources and conference workshops on this topic covering issues such as drafting and timing of press releases, exclusives and embar-

gos, follow up, building a relationship with journalists, etc.

### 2. A government inquiry

Frequently, the issues of your campaign will be made the subject of some form of inquiry or other review or consultative process by a government agency or a specially constituted 'independent' body. While there is of course no need for a government to act on the report of the inquiry they nevertheless often do. Moreover, if the inquiry comes up with an unsatisfactory analysis of the problem, or unsatisfactory proposals for change it will remain a stumbling block to your cause for some time. On the other hand, a good analysis of the problem by the inquiry will be a resource available to your campaign in the future.

At the outset it is important to consider the advantages and disadvantages of being involved in the inquiry at all, particularly in relation to your long-term credibility. It will not assist your cause at all if you are disgruntled at the end of the consultative process despite initially agreeing to the methodology proposed. You need to find the right balance between making your views known to the inquiry without being so inextricably a part of the process that you cannot disagree with the results.

Before you agree to be involved in the inquiry process, ensure that the agency chosen for the inquiry, the focus of the inquiry and the proposed methodology is appropriate. Be proactive about informing and/or taking control of the agenda, devise strategies to ensure that you are being heard, do not be predictable. Do not be afraid to (threaten to) walk out of a process, especially where the government or inquiry agency needs you to ensure its report has credibility.

### 3. A successful report

Preparing a report or discussion paper may be used for a number of purposes: to promote understanding of the issues within the community, as a document on which to base your lobbying of the government and as a lever to create political support for your reforms through gaining media attention.

The style of the document will vary according to the purposes. Ideally you would produce separate documents to meet each purpose, but cost or time considerations may mean you have to be satisfied with one document to deal with all. If so, you will need to compromise, for example, by striking a balance between emotive and factual writing, between sober research and headline material.

The title of the report is the first thing that comes to the reader's attention, especially if it is heard about second-hand (e.g. in the media). The title should include your message if possible. For example, *31c in the Dollar* reflected the main finding of the report on consumer credit insurance – that consumers got poor value for money on that product. *No real justice* was the message about the legal system's response to sexual assault victims and came from the words of a victim/survivor quoted in the report.

### 4. Phone-ins

A well organised and resourced phone-in can provide your campaign with an invaluable source of information in a relatively short time-frame and can be a very cost-effective way of obtaining a lot of information. It is also a mechanism to consult directly and widely with your target group, providing that it is clear what kind of information is being sought and how it is to be used. A phone-in can also be good publicity for the cause.

Be clear about what you want to achieve from the phone-in. Use your statement of aims in designing the process, publicity and questionnaire. Before going ahead consider whether there is a risk that the phone-in will be a flop and thus damage the campaign.

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A fuller version of this article is available from Donna Stuart, tel (03) 479 2469

*References on p. 253*

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Units. I commend them all.

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## MAKING AND BREAKING THE LAW The Legal System and the Attainment of Justice

by Jules Aldous and Dianne Levy;  
VCTA Publishing, Melbourne, 1991;  
\$34.00.

Victoria has a reputation for producing some of the most useful and interesting legal studies textbooks for high schools in the country. *Making and Breaking the Law* is no exception to this broad trend.

The book takes the view that 'our

legal system is a dynamic network that both responds to the needs and demands of the community as well as shaping relationships between individuals and groups in society'. It focuses on exploring the role of the law for individuals, the community and legal institutions. It does this by examining first, the role of law, law-making institutions and law-making processes; and second, dispute settlement, institutions, and process and procedures evaluation.

The book provides a useful description of the main institutions and issues relating to the law in society and the uses and processes of the law in Victoria. Each chapter has a particular theme (e.g. role of Parliament, civil procedure, the jury). Work requirements – such as analytical exercises, case studies, investigation and research projects – accompany each area. A liberal use of subheadings, margin notes, figures, cartoons and recent newspaper reports also break up the text. The book covers a comprehensive range of ideas and informa-

tion, and while it is well written, would certainly challenge intellectually more than a few of its student readers.

*Making and Breaking the Law* takes a relatively uncritical perspective on the social function and position of law in society, although it covers particular legal problems such as access to justice. Its main strength is that it provides a very useful reference point for high school students to develop their understanding of the law and legal processes, and to gain a substantial knowledge of its many different facets. Books such as this are valuable in another way: they can serve as models for the legal studies resources in other States, such as Western Australia, where the process of producing similar material is still in its initial stages.

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*References continued from p. 241*

### References

1. This article is based on a workshop conducted by the authors at the 14th Annual Conference of Community Legal Centres in May 1992.
2. See, for example, Combined Community Legal Centres Group (NSW) *Submission to the Costs of Justice Inquiry by the Senate Standing Committee on Legal and Constitutional Affairs* (1989), Office of Legal Aid and Family Services *Community*

*Legal Centres: A Study of Four Centres in New South Wales and Victoria* (1991).

3. There are, of course, obvious overlaps between each, and even disagreements as to whether a particular activity is, for example, undertaken because of its educative or reform aspect.
4. Details of the campaign can be found in Real Rape Law Coalition *No Real Justice. Interim Report of a Confidential Phone In on Sexual Assault* (1991).
5. See Australian Financial Counselling and Credit Reform Association *Need or Greed: A Study of Consumer Credit Insurance*

(1987) and *37c in the Dollar* (1991) and Trade Practices Commission *The Market for Consumer Credit Insurance* (1991).

6. We have used the word campaign loosely. While CLC law reform work includes (and is sometimes dominated by) reactive responses to an unsavoury government proposal, the strategies are essentially similar to a premeditated and thoroughly planned 'campaign'.
7. A recent example was an early 1992 7.30 *Report* which surrounded a story on WA juvenile legislation with sensational car chases and police sirens.

## FURTHER NOTICES CONFERENCES

### LAW AND SOCIETY CONFERENCE 1992

Sponsored by Legal Studies Department and National Centre for Socio-Legal Studies, La Trobe University.

Dates: 4, 5, 6, December, 1992

Venue: Bundoora Campus, La Trobe University

Contact: The Convenor, NCSLS, fax (03) 479 1607

### AUSTRALIAN FAMILY RESEARCH CONFERENCE

The Australian Institute of Family Studies is holding its fourth research and policy-related conference. The

conference will provide an opportunity for public discussion of both Institute and wider research.

Date: 17-19 February 1993

Venue: Manly Pacific Parkroyal, Sydney

Contact: tel (03) 608 6888 or fax (03) 600 0886