

## NEW ZEALAND

# Community law centres

STEPHEN TURNER discusses the role of community law centres under the Legal Services Act 1992 from a Dunedin and bi-cultural perspective.

The *Legal Services Act* 1992 represents a new recognition for the law centre movement in New Zealand. Under s.155 of the Act statutory functions have been defined for community law centres. Section 154 places a responsibility on the various legal services committees in the country to investigate the establishment of a community law centre in their area within two years of the Act's implementation. Funding for law centres is provided by a fund which draws from interest on solicitors' nominated trust accounts. It is timely to record, in relation to the Dunedin Community Law Centre, a short history of the evolution of our operation.

Currently there are 12 law centres in New Zealand and they come together once a year under the umbrella of the Coalition of Community Law Centres Aotearoa. Each operation has its own unique features drawing on a variety of models of law centres. The diversity of the law centre movement stems from the basic philosophy underpinning the Coalition that each centre is responsive and accountable to its own community. Because of the diversity in the New Zealand movement this article is limited to observations made within the Dunedin context.

With the release of the Advisory Committee on Legal Services report *Te Whaingā i Te Tika (In Search of Justice)* in 1986 came the first report on the New Zealand legal system to

clearly identify a number of unmet legal needs in the community and discuss various initiatives to address the problems of access to justice in this country. Unlike the 1981 and 1982 Department of Justice reports on *Access to the Law* this report focused on the concept of justice.

The report suggested developing a network of law centres throughout the country and emphasised the need for these centres to be born from and accountable to the communities which they serve. Empowerment, the promotion of self-reliance and the development of participatory justice were all aims the report felt law centres should aspire to fulfil.

This community empowerment focus was again discussed in the 1988 Royal Commission on Social Policy. In two papers by Peters and Marshall<sup>1</sup> a community-based approach to social policy was advocated as an alternative to the individualistic, liberal policy advanced by Treasury at the time. The enactment of the *Employment Contracts Act* 1991 and the recent reform of accident compensation indicate the continued dominance of Treasury policy in the 1990s.

The Dunedin Community Law Centre began operation in June 1980. It is New Zealand's second oldest law centre. The impetus behind the centre's establishment was student dissatisfaction with the lack of practical education in the LLB degree structure and initially the centre aimed to remedy this problem. Funding was received through the 1984 Labour Government, and the centre was given the means to move away from its initial law clinic model to one that involved the Dunedin community. Chiefly this change in direction began with the hiring of staff.

A co-ordinator was employed in 1985 and representatives from community groups were sought for the management committee. Regular community accountability days were held, and, eventually, a community worker was employed in 1989. The impetus for this shift in focus was sustained through the release of *Te Whaingā i Te*

*Tika* in 1986 and the subsequent adoption in 1989 of the report's principles of bi-culturalism, empowerment and community focus in the Coalition's Constitution.

Indeed the desire of the Labour Government to fund only one body rather than individual centres led to the development of the Coalition itself. The role of the Coalition under the new *Legal Services Act* has yet to be determined. Certainly it is now more than a funding body, but the concerns noted by the Australian community legal centre movement after ten years of operation need to be heeded.<sup>2</sup>

Currently there is a lack of documentation of the history and direction of the New Zealand law centre movement and, other than a few dissertations, there has been very little discussion on the concept of community. Now that a secure funding base has been established for law centres through statute, it is easy to envisage the legal profession expressing interest in establishing law centres themselves. The reprofessionalisation of the movement is an issue not to be lost sight of and one the Coalition is well aware of. Section 155 of the *Legal Services Act* 1992 reflects the empowerment philosophy espoused in *Te Whaingā i Te Tika* and accepted by the Coalition. Currently the four functions of law centres under this section are:

- the provision of legal advice to the public or any section of the public;
- the provision of legal information to the public or any section of the public;
- the promotion of law-related education for the public or any section of the public;
- such other functions as each community law centre considers necessary to ensure that the needs of the public that it serves for legal services are met.

In recent years the growth of informal Tribunals and the increased use of mediation for dispute resolution has seen the role of the traditional lawyer in 'poverty law' diminish. An increasing acceptance of the empowerment

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philosophy espoused by the reports previously mentioned can be seen in this area. The *Disputes Tribunal Act 1989* and *Residential Tenancy Act 1987* have very little scope for lawyers to act within the forums created. Indeed these two Tribunals are empowered to consider justice and need not give effect to strict legal rights.<sup>3</sup> The recently enacted *Employment Contracts Act 1991*, *Children, Young Persons and their Families Act 1989* and *Accident Rehabilitation and Compensation Insurance Act 1992* allow room for lay advocates to operate, while the concept of the Family Group Conference in the *Children, Young Persons and their Families Act* has meant that many of the problems relating to young people are solved by the families themselves without the need for lawyers or the court system. The role law centres have in providing access to these forums is axiomatic and is clearly one reason for the recognition of our operation by the *Legal Services Act*. Increasingly an unmet legal need is being met by the Dunedin Community Law Centre for those criminal cases where legal aid is denied due to the perceived lack of seriousness of the offence by the Registrar. In such cases representation is provided by the law centre. We attempt to find a balance between providing representation so that the system works and our longer term goal of empowerment to ensure that true participatory justice can be achieved.

The attack on lawyers' monopoly of the legal system is continued under the *Legal Services Act 1992* where the various statutory bodies responsible for the provision of legal services in New Zealand have places for non-lawyer/community involvement at a policy level. The *Consumer Guarantees Bill 1992* currently before the House continues this trend through defining the protections for those consuming services sufficiently broadly to encompass the legal profession.

The importance of the Treaty of Waitangi in influencing the development of the law centre movement and indeed the shape of the New Zealand

legal system itself should not be under-estimated. The development of a bi-cultural legal service was discussed in *Te Whainga i Te Tika* and in a 1988 report by Moana Jackson *Maori and the Criminal Justice System*.<sup>4</sup> The growth in Treaty jurisprudence has influenced the access to justice debate.<sup>5</sup>

The Treaty of Waitangi is set as the ridge pole to the Coalition's Constitution. This places an immense responsibility on Coalition members in terms of influencing the current mono-cultural legal system and focusing their operations on the local community. The recent release of the three-volume decision of the Waitangi Tribunal on the Ngai Tahu land claim, which details the history of land purchases/procurement in the South Island and the growing amount of reference in New Zealand legislation to the Treaty has also contributed to the Dunedin operation looking for guidance from and developing closer ties with local Ngai Tahu. In practical terms this has also meant the Dunedin operation making a clear division between case work and education/reform work.

The effect the *Legal Services Act 1992* will have on the development of the law centre movement is unknown. Many issues will require resolution as the centralised board (through its local committees) and individual law centres (through the Coalition) develop a working relationship under the Act. The movement needs to address itself to the practical implementation of the concepts of the 'Treaty', 'empowerment' and 'community' in its operations for these concepts are still alive and well within the rhetoric of the New Zealand law centre movement. A forum for debate and frank discussion is badly needed within the movement. Such a forum would give the New Zealand access to justice movement a sense of where it has been and where it is heading. It would also provide the potential for the movement to influence the current provision of legal services.

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## References

1. Peters and Marshall, *Social Policy and the Move to Community*, Royal Commission on Social Policy, 1988, p.657; *Social Policy and the Movement to Community: Practical Implications for Service Delivery*, Royal Commission on Social Policy, 1988, p.679.
2. Neal, David (ed.), 'On Tap Not On Top: Legal Centres in Australia 1972-1982', *Legal Service Bulletin Co-operative*, Clayton, 1982.
3. See s.19(6) *Disputes Tribunal Act 1989*; s.85(2) *Residential Tenancies Act 1986*.
4. Department of Justice, *Maori and the Criminal Justice System He Whapaanga Hou — a New Perspective*, Department of Justice, 1988.
5. See, for example, Durie and Orr, *The Role of the Waitangi Tribunal and the Development of a Bi-cultural Jurisprudence*, (1990) 14 *NZULR*; Jackson, M., *Criminality and the Exclusion of Maori*, (1990) 20(2) *VUWLR*.

## MABO DECISION

# Fast tracking to a 'lawyers' picnic'?

**SANDY TOUSSAINT reports on a recent Perth Conference convened to look at the implications of the Mabo High Court decision.**

The setting is the Parmelia Hilton Hotel in Perth and the date is 28 August 1992. A conference, organised by the Centre for Commercial and Resources Law of the University of Western Australia and Murdoch