

# LEGAL CENTRES

## Community Legal Centres: A Statutory Definition

Buried in the much publicised *Legal Profession Reform Act 1993* (NSW) is section 48H: Community Legal Centres. CLCs, fringe dwellers of the structure of the legal profession, are now a part of that structure in NSW.

For many years the Law Society has sensibly permitted CLCs to operate without always strictly complying with the *Legal Profession Act 1987* and its predecessor the *Legal Practitioners Act 1898*. In brief, the anomalies in CLCs' legal practice stemmed from a legal centre being a corporation. The problem was, arguably, not with the novel, useful and effective way in which CLCs are structured, but with the outdated notions of legal practice enshrined in the Acts. The quality and integrity of legal service provision by CLCs was such that the anomalies in their compliance with the Acts were tolerated.

As some indication of that tolerance, the New South Wales Court of Appeal said in relation to the work of barristers with CLCs that:

because of the need which these centres meet, and of the limited funds which are available to them, it is necessary to relax strict compliance with some of the rules which regulate the conduct of barristers ... the court should be reasonably flexible in the adaptation of rules established in a different context.<sup>1</sup>

It has not been in anybody's interests to apply the strict letter of outmoded legal practice requirements to the novel but effective structures adopted by CLCs. Nevertheless, it seemed desirable to clarify the situation, and for a couple of years CLCs and the Law Society discussed the best way of doing so. It was timely and appropriate for the special nature of CLCs to be recognised in the context of reforms to the profession, even though it is recognition of a 'reform' that was initiated by CLCs over 15 years ago.

### The definition

The effect of s.48H is to define a CLC and then to exempt such an organisa-

tion from the relevant prohibition sections of the Act. The difficult part of the exercise was the defining of a community legal centre, at least for those centres that conduct a legal practice. The definition is intended to encompass CLCs that give legal advice and/or representation to clients.

The definition was based on advice given to the Law Society by senior counsel, and was developed in consultation with all NSW community legal centres. The definition is sufficiently

#### Section 48H(1) – Legal Profession Reform Act 1993 (NSW)

An organisation, whether incorporated or not, is a community legal centre which complies with this section if:

- (a) it is held out or holds itself out as being a community legal centre (or a centre or establishment of a similar description); and
- (b) it provides legal services:
  - (i) which are directed generally to persons or organisations who or which lack the financial means to obtain privately funded legal services or whose cases are expected to raise issues of public interest or of general concern to disadvantaged groups in the community; and
  - (ii) which are made available to persons or organisations who or which have a special need arising from their location or the nature of the legal matter to be addressed or have a significant physical or social disability; and
  - (iii) which are not intended, or likely, to be provided at a profit to the community legal centre and the income (if any) from which cannot or will not be distributed to any member or employee of the centre otherwise than by way of reasonable remuneration under a contract of service or for services; and
  - (iv) which are funded or expected to be funded to a significant level by donations or by grants from government, charitable or other organisations; and
- (c) at least one of the persons who is employed or otherwise used by it to provide those legal services is a barrister or solicitor with a current practising certificate and is generally responsible for the provision of those legal services (whether or not the person has an unrestricted practising certificate).

broad to encompass the various structures, goals, funding arrangements and target communities of CLCs in NSW, whether generalist or specialist centres. It does so by identifying the basic features common to centres, and avoids reference to criteria used by other organisations when defining CLCs, for example, funding or umbrella organisation criteria. This is so because not all existing CLCs will satisfy all of these many other 'tests'.

CLCs have developed a reputation and an identity of their own. A consultative process leads to considerable

homogeneity among CLCs in key areas of policy and principle. The definition is intended to maintain this identity, and to preclude organisations not otherwise seen as CLCs from claiming to be so pursuant to the *Legal Profession Act*.

### A new identity?

But does the legislative provision indicate a merging of identity, previously unthinkable, between the private profession and community legal centres? It would be naive to say so: CLCs have not altered their practice to accord with the traditional structures of private legal service. They have formally been exempted from the less relevant aspects of that structure, and are now recognised as having a unique and valid method of operation.

Basten, Graycar and Neal noted that 'the primary role of legal centres has been played within, or in relation to, legal institutions', and that 'they are part of the established legal aid structure'.<sup>2</sup> CLCs in NSW are now more a part of the established legal service structures, but still a distinct part. Their independence is confirmed, and they remain an 'illustration of the gap between the ideology and the practice of the private profession';<sup>3</sup> perhaps this is to an extent the 'effect on the structure of the profession' that Basten, Graycar and Neal hoped for in 1983. At the very least it is part of the 'stabilisation, adaptation ... period of levelling off and maintaining the *status quo* over a long period of time' that is a feature of organisational development.<sup>4</sup>

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### REFERENCES

1. *Bar Association v Livesy* [1992] 2 NSWLR 231 at 237, 246; discussed in Basten, Graycar, Neal, 'Legal Centres in Australia' (1983) 6 UNSWL 163 at 184.
2. Basten, Graycar, Neal, above, p.186.
3. Basten, Graycar, Neal, above, p.184.
4. Scott, David, 'An Outsider's View of Legal Centres' in *On Tap Not on Top*, Legal Service Bulletin Co-op., Melbourne, 1982, 32 at 34.