A COMMUNITY LEGAL CENTRE

FOR TASMANIA

Margaret

Alison Mackirdy

Submitted in part-fulfillment of
the requirements for the degree of
Master of Legal Studies in Welfare Law

University of Tasmania

December, 1986.

CONTENTS

ABBREVIATIONS

ABA	American Bar Association
ALAO	Australian Legal Aid Office
CLAC	Commonwealth Legal Aid Council
CEP	Commonwealth Employment Program
CLC	Community Legal Centre
DSS	Department of Social Security
FLS	Fitzroy Legal Service
HP	Hire Purchase
NLF	Neighbourhood Law Firm
OEO	Office of Economic Opportunity
TasCOSS	Tasmanian Council of Social Services

INTRODUCTION

This thesis describes the options for setting up a Tasmanian Community Legal Centre.

One problem for a Tasmanian-based operation is that there is no definitive model that can be followed. There are many community legal centres operating on the mainland but they are diverse heterogeneous entities that differ markedly between states and often even within states. This thesis looks at some of the problems inherent in defining what a Community Legal Centre (CLC) is, how it can relate both philosophically and practically to its surrounding community, and how it sees it role, not only in terms of delivery of legal services but also in terms of a philosophical commitment to changing the agenda for legal service delivery, legal education and access to law.

The first chapter looks at the history of CLCs. It traces the sort of 'law shop' that first started in America and the similarities and differences to the Australian CLC. It also looks at the parallel growth of ALAOs (Australian Legal Aid Offices) and the political consequences of this initiative for all CLCs including a Tasmanian centre. The differences between a CLC and ALAO may in theory seem hard to define because many mainland CLCs are casework-orientated to the same extent as ALAOs (and there are political moves afoot to make this aspect of CLC activity more important as part of a funding equation for CLCs). To confuse the definition still further ALAOs have legal education as one of their goals. However CLCs are a distinct alternative, they offer the chance not only for the client but also for the community to question some of our mainstream legal values, to fight for law reform, to provide a resource for clients who would otherwise be unable to gain satisfaction through other means and also sometimes to provide non-legal alternatives by which clients can obtain their goals without recourse to law at all. The aims of a CLC is the legal empowerment of the client and of the community. This aim is what sets it apart from the other options available.

The history of CLCs and their development is of great importance to a Tasmanian centre as it provides some points of guidance and comparison. From the substantial number of CLCs now operating on the mainland, there are many innovative directions and tried-and-true ways of doing things that can be incorporated into the working methods of a Tasmanian CLC; there are also many mistakes that can hopefully be avoided.

The second chapter looks at the concept of law. One of the objects of a CLC would be to detach the law from its aura of myth and exclusivity and to put people in touch with the law and not just with lawyers. Such an object would include the fostering of an enlightened and positive attitude to the law, the involvement of the population in greater participation in, greater self-reliance with regard to, and a greater knowledge of, the law. In order to do this, the centre would need to do more than just provide access to lawyers.

One of the questions the Tasmanian CLC is likely to have difficulty with is how a centre employing lawyers and using lawyers as volunteers can address the way that the boundaries of legality have traditionally been defined by lawyers and find a way of changing those legal horizons.

In the past the monopoly of lawyers has inhibited the growth of alternative forms of approaching the law. For instance, it has been difficult for people to even imagine what an alternative to the traditional lawyer/client relationship might look like or what a court without lawyers would act like. However recently there have been a proliferation of forums where lawyers have been dispensed with. These include Social Security Appeals Tribunals, small claims courts, etc, and the effect has been that many more people are now participating in the legal process. Many mainland CLCs are evolving other means of encouraging people to become involved in legal activities such as do-it-yourself divorce classes and kits, represent-yourself-in-court classes, motor vehicle accident kits and so on. Also most centres recognize that the traditional way of interviewing a client can be intimidating and they have developed new approaches. Strategies now include sitting outside the barrier of a desk, wearing ordinary (non-expensive non-uniform) street clothes, and trying to explain legal problems with a minimum of legalese and jargon. All of these departures from the 'normal' lawyer/client relationship can be valuable in reducing both parties reliance on a traditional approach where the lawyer is the 'expert' and the client is the 'supplicant'. It will require self-examination and re-education among some lawyers, however, if the centre is to become a self-help resource rather than a collection of legal experts.

Re-education may be needed of clients as well. It can't be assumed that clients will necessarily appreciate an alternative approach. People using the centre may even resent such novelties and wish for a more traditional service, probably because the traditional model is the norm and it is the model best known to the paying public. The centre, in its educational role, is going to have to try to make clients see that the present form of legal service delivery is there by default, because there have been no competing alternatives.

The educational role of the centre is to open up the possibilities of law and legal action so that the community can question the models currently available.

The educational role of the centre must also extend to clarifying for the community what the law means in terms of rights and duties and in what ways and by what methods people in the community can assist themselves or obtain assistance to fulfill their duties or enforce their rights.

The third chapter of the thesis looks at what answers you get when you ask people what they want in terms of legal service delivery and what their actual present patterns of usage are with regard to those legal resources. The importance of this chapter is the divergence between the conventional wisdom which foresees people using lawyers when they are involved in actions having legal consequences and the actual responses of people when engaged in such actions. A survey of a lower-income suburb of Hobart shows that a high level of alternative modes of action are used compared to conventional use of lawyers. Responses given to the survey show that in their actual lives and in several hypothetical situations put to them more than a third of respondents would engage in alternative or self-help modes of action rather than seek the assistance of lawyers.

These results have a significance when planning the formation of a Tasmanian CLC. Ignorance and fear of the cost are the main reasons given for not using lawyers and the centre can provide both education in what's available and a free source of advice to help overcome these reasons. But many other reasons are given and it is possible that, for some people, in certain situations, self-help is the preferred form of action so the centre should be able to offer the sort of resource needed for people to be able to carry out their own actions as effectively as possible.

Chapter 4 looks at the actual operation of 12 - 15 other mainland community legal centres. The information is based on a questionaire that asked a range of questions about premises, funding, staff, clients, work done, constitution and management. The chapter considers the relevance of the mainland experience to Tasmanian conditions and considers the direction that a Tasmanian community legal service might take in the light of such information.

Some of the problems facing mainland centres need to be addressed at the outset. The main problem relates to casework and its ability to 'take over' all the other objectives of the service. It is clear for instance that although a centre may have a philosophical commitment to the resourcing of self-help, this

commitment may become unworkable in practice if the numbers demanding casework are so great that staff have no time to do anything else. Casework can be run in the kind of way that makes it a learning experience but it nevertheless requires the presence of both client and lawyer in a one-to-one relationship and if not actually antithetical to self-help it at least does not encourage a lessening reliance on lawyers.

On the basis of the mainland experience it appears important that the Tasmanian centre should have a philosophy on such problem areas as casework and should also have a workable management structure which could ensure that the philosophy is put into practice. It also appears important to maintain strong links with mainland centres so as to learn from their mistakes, from their solutions to mistakes and (obviously) from their successes.

Many of the issues discussed in Chapter 4 and in the rest of this thesis take it for granted that a Tasmanian CLC will automatically become part of a national movement and that national issues will be important issues for the centre. Issues of national policy direction, funding and expansion of the CLC movement will be concerns of a Tasmanian CLC to the same extent as they are to its mainland counterparts. A future Tasmanian CLC will need to forge close links with mainland centres who have much more experience in the political arena and also bigger lobbying power than Tasmania and whose prior involvement in all these issues will be of benefit to a new Tasmanian centre. The combined experience of the mainland movement will be a rich resource but the Tasmanian centre will also need a separate identity based on the needs of its own community and a realization that what works on the mainland may not necessarily work here. The Tasmanian centre must set its own goals and strive for its own individual voice within the community legal centre movement.

The fifth chapter summarises the recommendations of Chapter 4. It also gives options for the setting up of a workable management structure. The importance of the management model lies in the fact that however well-thought-out the CLCs philosophy and goals may be they will get no further than a theoretical ambience unless there is a dedicated and harmonious management structure working to give them practical value. Ideas by themselves won't effect changes unless there is the will to put them into effect. For this reason the thesis has looked not only at the philosophical ramifications of the community legal centre movement but has also concentrated on those practical aspects of everyday operation which have been the hallmark of a CLCs success or failure to implement the ideas, hopes and dreams of its founders.

CHAPTER ONE

A HISTORY OF COMMUNITY ORIENTATED LEGAL AID CENTRES

A history of community legal centres in Australia cannot be a history in isolation from what goes on in the rest of the world. Community legal centres here did not spring from a void; there were many different models operating world wide, in fact Australia was late on the scene in terms of what was happening in developed countries.

It is not clear, however, how much of this overseas activity actually influenced the early centres. In terms of the written history of these centres[1] it seems that local factors were the impetus that got them started and, although it is clear that in the years immediately following their founding there was a good deal of interest both within the centres themselves and within the Federal Government as to what was going on overseas, it does not appear that the overseas examples were an important factor in the setting up of early Australian centres.[2]

The overseas models were all based to a greater or lesser degree on the American Neighbourhood Law Firms. The NLF's resulted from the War on Poverty, which in turn was the result of a government initiative aimed at changing the social situation of the poor. NLF's were one facet in the overall goal of fighting poverty. The Office of Economic Opportunity (O.E.O) wanted a legal service that was different from anything then being offered by a private practice because the whole structure and base of the War on Poverty program was aimed at social change. The OEO felt that the goal of social change might be subverted by lawyers with entrenched economic motives stepping in and taking the program over. This feeling was not based on any anti-lawyer attitude, in fact the American Bar Association supported the proposed new program; it resulted instead from a realisation that a program based on judicare* would almost by definition become lawyer-centred rather than client-centred. To keep the program client-centred there was a need to incorporate more than just legal representation, there had to be a commitment to legal education and preventative counselling

---

1 D. Neal. "A 'national' movement" 1983 8 Legal Service Bulletin p.180.

2 For a broad overview of the history and current status of CLCs in Australia see D. Neal (Ed) On Tap Not on Top Legal Service Bulletin 1984.

* Judicare is the kind of scheme whereby eligible clients see a private lawyer and the lawyer then recoups the cost of their case from the relevant funding body.

aimed at helping the poor become legally self-sufficient. The program had also to incorporate a 'civilian' or community-orientated perspective so that lawyers were employed by, and thus responsive to, their client community. Finally the NLF's had to be visible, to be housed in store-front locations and no more mysterious in what they had to offer than a fruit shop. In this way the OEO hoped that the policy of the NLF program would be kept upfront, that there would be a constant reiterated commitment to the goals of economic opportunity and the need to change the way the poor saw their lives. The OEO eschewed judicare on the basis that it would displace the social change orientation of the program and achieve "no other goal than the mere resolution of controversies".[3]

The role of the American Bar Association in this was crucial. The initial thrust of the OEO to obtain social change for the poor though legal action and the developing awareness of legal rights was confronted at the outset by the static conservative elements of the local legal profession who demanded a more traditional orientation. The ABA however had few representatives from ordinary private practitioners on its executive; its leadership was made up almost entirely of prestigious corporate lawyers from huge city law firms. These lawyers did not see the legal aid lawyer as a threat and as a result the ABA always took a more altruistic view of legal aid than those who did see such a service as a threat to their livelihood. The ABA's concern was always with image and legitimacy rather than more money for private lawyers. It is interesting, in the Australian context, to note that the ABA was not enthusiastic about a judicare system because a legal aid scheme on the English model (with all legal aid money paid to private practitioners) would in its view have meant putting money in the pockets of marginal lawyers whose calibre and motivation it suspected. In other words the ABA saw judicare as being a means by which poor people provided a livelihood for mediocre lawyers.[4]

The Neighbourhood Law Firms had a strong philosophy which coloured how they operated and how they practiced law. The early community legal centres in Australia achieved a very similar outcome to that of the NLFs although their philosophy was initiated in a less structured way.

Fitzroy Legal Service was the first to start in Australia and it opened on December 17th 1972. Other centres such as Springvale started very shortly after. Springvale seems to have been working towards starting

---

3 E. Johnson Jnr. Justice and Reform: The Formative Years of the OEO Legal Service Program Russell Sage Foundation New York 1974 p.1.

4 Ibid p.119.

before Fitzroy got off the ground, so even though Fitzroy was the trail blazer it would be wrong to see it as the definitive model around which all subsequent centres revolved in a philosophical sense. All of these early centres were responding to local needs, the needs of the poor, the needs of youth, of inner city residents, etcetera. David Neal describes the coming together of a philosophy in the euphoric early days at Fitzroy:

> "The concern for the problems of the poor was accompanied by a departure from older paternalistic charitable models: entitlement not charity was the ethos. Like other social services at the time FLS placed special emphasis on community control and attempted to de-professionalise services in the sense that professionals could not automatically expect to control the service relationship."[5]

Basically these tenets were accepted by all the community legal centres and although philosophy was theoretically a matter for individual centres there was from the beginning a general umbrella under which all the community legal centres sheltered philosophically. This excluded some centres, such as those run by Law Societies, which hardly departed from a charitable model and which had no community input and made no attempt to involve the client in the resolution of his or her problem.

Some months after the opening of Fitzroy the Federal Government became involved in the setting up of legal aid offices and the model the government intended to use was that of the Neighbourhood Law Firm. Although the NLFs were working well in America it seems unfortunate in hindsight that this model was used instead of an Australian evolution of the idea. 'Law shops' similar to the American model started in Australia but not within the same sort of philosophical framework; the NLF model was used only in its external aspects. Although poverty was 'discovered' at about the same time that the ALAOs were started[6] there was no philosophy similar to that which accompanied the setting up of the NLFs. The ALAOs were never part of a program of social change aimed at transforming the lot of the poor. Whatever philosophy the ALAOs had was concomitant with the view that providing legal aid was all that was necessary to ensure that the poor had equal access to the legal system, the idea being that if the poor could enforce their legal rights then they would cease to suffer from injustice.[7]

The formation of ALAOs was never on the ALP party platform and there appears to be no public document throwing any light on the philosophic principles behind their inception. As Tomasic has pointed out, the range of policy-making activities that would normally be the fore-runner to the setting up of such a

---

5 D. Neal "Ten Years After" in On Tap Not on Top Op cit p.7.

6 F. Henderson (Chairman) Poverty in Australia, Australian Government Printing Service, Canberra, 1975.

7 T. Purcell "Legal Aid and Community Need" 1977 51 A.L.J. p.621.

novel program were in fact commissioned and carried out after the announcement heralding their arrival on the legal aid scene.[8]

When addressing the Senate with regard to the formation of ALAOs in December 1973,[9] the Attorney-General Senator Murphy said that "It is the view of the Government that legal assistance to socially disadvantaged persons can most effectively be provided through a salaried legal service. For this reason the Australian Legal Aid Office has been established. The Office will be staffed by salaried lawyers who will work in close co-operation with community welfare organisations, established legal aid schemes, referral centres and the private legal profession".

It is clear from his speech that Senator Murphy did not intend the scheme to run on a judicare model, or for there to be much participation from private lawyers in a Commonwealth scheme. Rather he saw private lawyers continuing to perform the major work in the legal aid field, that of litigation in the various courts but through their State Law Societies or Legal Aid Committees.[10] In other words, ALAOs were intended to provide an additional legal aid scheme to those provided by the states, its difference being that it would provide legal advice through salaried lawyers "on all matters of Federal law, including the Matrimonial Causes Act, to everyone in need, and on matters of both Federal and State law, to persons for whom the Australian Government has a special responsibility".[11]

This is not how ALAOs turned out. It seems in retrospect inevitable that the jurisdiction of the ALAO would expand once expectations were raised by the entry of the Federal Government into the legal aid arena. It also seems inevitable that a judicare component would creep in.

The bulwark that kept judicare out of the American system was constructed from the philosophy that initiated that legal aid system, i.e. a commitment to the War on Poverty. The legal aid scheme was meant to achieve a goal and the method of reaching that goal could best be implemented by using salaried lawyers.[12]

---

8 R. Tomasic Australian Legal Aid Law Foundation of N.S.W. Sydney 1975 p.46.

9 Senate Weekly Hansard No. 26 1973 p.2800-2803.

10 Ibid.

11 Ibid.

12 P. Hanks Evaluating the Effectiveness of Legal Aid Programs Commonwealth Legal Aid Council Canberra 1980 p.35.

The idea that salaried lawyers were best in that instance was not only propounded by OEO but supported by lawyers through their Bar Association.

There was no such underlying philosophy to the structure of the ALAO, there were no goals of social change nor any idea of why the ALAOs were there except to meet a 'legal need'. For this reason the gradual change whereby the bulk of the legal aid money was directed away from the salaried lawyers to aid-paid private lawyers could not be argued against from a philosophical point of view.

Because there is no philosophy that salaried lawyers would be best for the job (as there was for the NLFs on which ALAO was modelled) the status of salaried lawyers has never been seen to be high. In the days when the ALAO was designed purely to meet the needs of "persons to whom the Australian Government has a special responsibility" this was not so much of a problem, there could be no comparison with the work of private lawyers. However, one there was a choice, comparisons inevitable arose.

A judge described the ALAO as "a giant bureaucratic octopus ... promoting a breed of second or third rate lawyers".[13] The inference is that first-class lawyers are only to be found in private practice. However even if this is true it does not mean that these first-rate lawyers are taking on poor people as clients; they are probably engaged in areas of law more lucrative than those on offer through legal aid. If eulogies and obliquies are to be meted out to one type of lawyer or another, then they have to be directed in a more exact way. If quality control concerns the legal profession, then that concern must focus on the quality of legal aid lawyers as compared to the quality of that finite class of private lawyers who undertake most of the legal aid work.[14]

At the time ALAOs were first announced, there were several community legal centres in existence in Melbourne. It is interesting to speculate on why the NLF model was chosen. It there were issue papers circulating in 1973 which discussed the options, they do not appear to be available to the general public, at least not to the author.

The Attorney-General really had four options:-

---

13 Reported in 1984 June Legal Service Bulletin p.152.

14 M. Cass and T.S. Western Legal Aid and Legal Need Commonwealth Legal Aid Council Canberra 1980 p.6.

1) He had visited the Fitzroy Legal Service and an extension of the community legal centre model was an option.

2) Another option was that of a wholly judicare system on the English model.

3) A third option was the NLF model, with or without accompanying philosophy.

4) The fourth option was that he could have combined some of the models e.g. have had part-judicare and part-NLF.

The Attorney-General opted for the third alternative and that is how the ALAOs started. How the ALAOs ended up is with the fourth alternative; a bit of NLF, a bit of judicare and some funds to community legal centres. The interesting speculation for community legal centres of course focuses on what would have happened if the Attorney-General had opted for the first alternative. In 1974, Fitzroy Legal Service got some funding, but it is not beyond the bounds of possibility that some larger central source of funding could have been set in place (perhaps along the lines of the Australian Assistance Plan) which would have encouraged the wider formation of community legal centres. In fact the Federal Government could itself have set up a Legal Services Program like the OEO and directed the growth of community legal centres. Maybe this last possibility was not considered feasible because of the rather anarchist image of Fitzroy.[15] The ALAO was to be a short-haired cleaned-up version of a community legal centre.

The ALAOs were welcomed by community legal centres because there was seen to be a need for legal services far beyond the resources of community legal centres. However, although centres did not see themselves in competition with ALAOs, in terms of funding they were and still are. At least half of the money now going to community legal centres comes out of the same budget as that for ALAOs (through the State Legal Aid Commissions), and the associated money for aid-paid private lawyers. The reliance on federal funds closes the gap between the centres and the ALAOs.[16]

The submission for and auditing of funds constrains what a community legal centre can do;[17] these activities channel the energies of the centre in the direction that its funders want. If the federal government

---

15 D. Neal "Interviews" On Tap Not on Top Op.cit p.54.

16 D. Neal "A 'national' movement" op.cit p.179.

17 D. Neal "The 1.6% Solution" 1984 Vol. 9 Legal Service Bulletin No. 4 P.169.

wants community legal centres to spend fifty per cent of their time in casework, then all it has to do is make that amount of casework a condition of funding. In this way centres are caught up in the bureaucratic process and may become pale satellites of the ALAOs, filling in gaps perhaps that the ALAO is not able to cover.

Another effect of the funding strait-jacket could be a self-regulated clean up of the community legal centre image. If centres are not only in competition with other legal aid services for funds but also in competition with each other, then the centre that most nearly fulfils the funder's image of what a centre should be doing, will get those funds.[18]

Most community legal centres came into being both post-ALAO and post-funded-Fitzroy. The majority have become full-time and viable as a result of a greater commitment of federal funds to the centres.[19] The amount of money involved is now quite considerable, although it is only a small proportion of the legal aid dollar.

The question of what a community legal centre is becomes more pointed as more centres are funded. A community legal centre is by definition something that is funded as such. A centre like Tasmania's will be defined by the funds it receives, unless it can impose an individualistic definition of its role. If a new centre cannot define the purpose it is to fulfil then the fourth option for legal aid, that of a combination of the various alternatives, becomes the final solution: it takes over all of the first three options. Not only does the legal aid scheme combine judicare and a shop-front salaried service, but it also controls (by defining what they are) community legal centres.

Being directed by a government, as chief funder, it not intrinsically bad in itself for a government may be motivated by a philosophy (such as war on poverty) which may give impetus and cohesion to a collection of legal aid services with differing individual philosophies. However, when a government has no philosophy covering the range of legal aid services, as now seems to be the case,[20] then if community legal centres are to come within its controlling ambit, this will occur by default and not as a policy option. Rather than operate

---

18 D. Neal "A 'national' movement" op.cit p.179.

19 State funds in those states that give substantial funds to CLCs still follow Federal initiatives, giving dollar-for-dollar or a percentage of what the Commonwealth Government gives.

20 J. Gardener "The Relationship between Research and Legal Aid Policy Making" in P. Cashman (Ed). Research and Delivery of Legal Service Law Foundation of N.S.W. Sydney 1981 p.82. See also P. Hanks op.cit pp.26-32.

in this sort of void, it seems essential that the Tasmanian centre should construct its own philosophy. This would mean not only the outward appearances of a community legal centre such as a management structure, constitution, policies regarding the work done at the centre and so on; but also a philosophy that includes a commitment to a particular goal, even something as radical as changing the lot of the poor, and a commitment to particular methods of achieving the goal.

CHAPTER 2

ALTERNATIVE FORMS OF ACCESS TO THE LAW

One of the most difficult tasks for a CLC will be to educate the population in the role of law in society. Many people see law as just a system of power. This idea of law is incorporated into phrases such as "the forces of law and order"; it is visible to the ordinary person in the police car, the court building, the summons and the jail. The law in this sense is backed up with force by the power of the state.

To spread the idea that law is also a system of rights and a source of protection is one task that should be taken up by a Tasmanian CLC. It may be understood by the public that law is a system of ideas, involving a complex of rules for the interpretation of other rules and arguments on subtleties of definition, but what may not be understood is how such complexity may serve to preserve civil liberties. By seeing the law only as force, the citizen may see only half the picture. When people appear in court in a non-civil matter they are usually there as a result of an act of force. But the force that the state uses to uphold the law must be in accordance with a set of rules or ideas of fairness and consistency. 'Law' as a system of ideas keeps 'law' as a system of force within rigid bounds and it is important that the public, through legal education, should recognize the distinction so that law can be made less intimidating and formidable to the average person. It is too easily assumed that ordinary people see the law as a protection whereas it is more likely that those without either legal education or economic or social power see the law first and foremost as a system of power backed up by force and having very little to do with a system of rights.

The opposite view may be held among those with economic advantages who have been described as 'repeat users' of the law.[1] They may see law as a tool primarily for enforcing their own rights and position. Views of lawyers may also differ. Where people have little power in the system lawyers may be seen as just part of the structure of power. For repeat users lawyers may be seen as personal gladiators for thwarting the state's power or for using fine distinctions or obscure wording to enforce their client's own rights at the expense of others.

The middle-class, being better educated and more likely to have had a number of different types of legal experience are also more likely to take a balanced middle view. They can see law as being both a system of rights and also of enforced duties. But the experiences that shape a middle class view of legal

---

1 M. Gallanter "Why the 'Haves' Come Out Ahead" 1974 Law and Society Review 9 pp.97-8.

rights tend to be in limited areas of the law such as property, conveyancing, trusts, wills, white-collar crime, divorce settlements, traffic offences, etc. They may be less likely to be brought forcibly into contact with the legal system and more able to shape the legal experiences they do have to their own advantage by buying legal expertise.[2]

To some extent the experiences of the middle class define the parameters of law and the activities of lawyers. The middle-class can afford to enter the legal arena. On the other hand, those who cannot afford to buy can only window shop and what they see is a product tailored for those that can afford to buy. So those from low-income backgrounds may see the law in an essentially negative way - as a system of force where lawyers are up for hire only to the powerful. At times these people may seek to use the law and to utilize lawyers, but these times may be defined for them by the frequent users. Lawyers may only seem essential in the kind of property-related matters as listed above or for major crime. For those who indulge in minor crime and who are propertyless, the law may be an alienating process. Strange words, strange documents and people in strange clothes remove the law from the everyday realities of street life and inculcate a feeling based on fear and awe. Faced with rituals they do not understand, such people may seek to run their lives as far as possible without recourse to the legal system.

Whatever their conception of the legal system, everybody is nevertheless subject to the forces of law in virtually everything they do. The population expects to be governed by rules and laws become accepted into the general social framework through the publicizing agency of the state. The level of detail that is passed on will depend on the state's choice of selected areas and particular groups. Everyone 'knows' the law relating to driving a car even though they may have never read the Traffic Act and have forgotten the Highway Code. If they are caught for an infringement it is not (or very rarely) because they are ignorant of their duties under the law. As a result any dispute that takes place will be over a question of fact and very rarely over the appropriateness of the law or the liability of the person.

Because a very large percentage of the population accepts that a very large proportion of the laws that affect them are justifiable, the state is able to effect economies by mobilising only enough force to give a facade of surveillance and to catch just enough wrong-doers to make the facade seem real.[3] After which it

---

2 M. Cass and T.S. Western Legal Aid and Legal Need Commonwealth Legal Aid Council Canberra 1980 p.54.

3 M. Gallanter op.cit p.122.

can usually rely on the 'fair cop' syndrome. Those who are caught accept their 'guilt' and can thus be speedily processed through the system,[4] reinforcing the power of the state without draining that power by requiring unnecessary effort in the process.

This does not happen as readily in some areas of the law, e.g. white collar crime. Some white collar crime is not easily definable. Those charged may not accept the law as justifiable nor accept their guilt when apprehended. The law is not 'known' in the same way in white collar areas as it is for traffic.[5] Some of the laws in question are so wonderfully arcane that it takes special policemen, special lawyers and special courts to decide the matter. White collar crime is thus a difficult and expensive problem for the state and an area of the law which is unfamiliar to most people.

The state compounds this situation in the way it disseminates information. Laws relating to the possession of drugs are likely to receive wide publicity and the state is likely to run education campaigns in schools, on TV, etc. Knowledge about laws relating to the possession of large sums of untaxed money does not get disseminated in this way.

The state is selective in its blitzes too. Corporations are not subject to random tax checks or to the early morning invasion of tax detectives body-searching executives for cheque book stubs. Information and enforcement are about social control and the state is mainly interested in passing on to the population a knowledge of its duties. It is not often that the state uses its techniques of knowledge-dissemination to pass on to its citizens an idea of their rights.[6] The state is interested in the orderly processing of people. Also the ideas embodied in the law, such as the requirement of natural justice, have generally developed as a protection of the citizen <u>from</u> the state. So in learning their rights people must shift for themselves. The middle-class tend to be better educated and are thus more likely to view the law as something that can be used to protect them. Those who do not have this idea of their rights may see law only as state force, used against them and for their disadvantage.

---

4 W. Burger "The State and the Judiciary" 1970 56 <u>ABA Journal</u> 929 p.931.

5 D.J. Black "The Mobilization of the Law" 1973 2 <u>Journal of Legal Studies</u> 125 p.141.

6 M. Foley "Nice Points and Barefoot Clients" in B. Boer (Ed) <u>Community Legal Education</u> Commonwealth Legal Aid Council, Canberra 1980, p.161.

There is a need for an outlet (such as a community legal centre) to advertise the law as a system of rights as well as duties. People in disadvantaged positions should be educated in the uses of the law, so that they see how it can help them in solving problems and how it can be used to protect them against abuse.

However, it must be recognized at the same time that there can be a temptation to over-legalize a population[7] - to transform into legal problems some of the difficulties that the population do not currently see as legal. There is a temptation for professionals to redefine the world to fit the parameters of their own particular skills. For instance the medical profession may redefine poverty as malnutrition, the town planner may redefine it as urban decay, the social worker may find dysfunction and the lawyer may see it as legal problems to do with tenancy, debt collection and social security. Clients meanwhile may lose, within this welter of caseworkers, the knowledge they had that all their problems result from never having enough money.[8]

There is a need however, for an outlet like a community legal service to redefine the whole area of law and lawyers. It is important that people know what lawyers do.[9] Very few public role models exist which can explain to the average person what a lawyer does. There are a few TV dramas about lawyers but they generally have rich and/or photogenic clients who are charged with serious crimes of which they are white-as-snow innocent. These crimes are beyond the means and inclinations of people on low-incomes. Murder, political corruption and tax-dodging may make good prime time TV but are not good role-models for people who get nicked for driving unregistered cars, defrauding social security and not being able to make repayments on their lounge suits. Because their own lives tend to be unglamourous, people on low incomes may not see dramas about lawyers as having any relevance to their own experience.

To some extent the irrelevance of lawyers to people on low incomes is tied up with the disadvantaged persons place in the power/economic system. Innovative ideas in the law, new areas of legal argument and legal change have developed largely in areas that are profitable. These tend to be areas where better-off people have been the clients.

---

7 B. Garth Neighbourhood Law Firms for the Poor, Sighoff and Noordhoff, Alpen aan den Rijn 1980 p.xix.

8 F.R. Marks "Some Research Perspectives for Looking at Legal Need and Legal Delivery Systems" in Brickman and Lenpert (Eds) The Role of Research in the Delivery of Legal Services Washington Resource Centre for Consumers of Legal Services Washington 1976 p.4.

9 A. Nicoll "The Benefits that Flow for a Better Informed Community" in B. Boer (Ed) op.cit p.110.

The middle-class tend to set the trends - those with economic power also have the power to promulgate ideas. The result is that the idea of what is 'legal' is imposed on lower-income people by those with the economic power to gain access to the legal system on a more regular basis. What is 'legal' describes the occasions on which a middle-class person requires a lawyer. Poorer people may not see their particular problem as legal because it is not an area that better-off people have defined as such.

The question of what is and what is not 'legal' changes with time. Since the 'discovery' of poverty, problems that require legal solutions are expanding into previously hidden areas (such as debt repayment and bankruptcy, social security law and tenancy) because those who have become concerned (generally middle-class professional carers) have started to re-define the scope of what is legal. However redefining the occasions on which a person should use the law does not alter the times a person with few resources can use a lawyer. This dichotomy creates tension because people come to see their problems as legal but are still without the assistance of lawyers. It was these tensions that probably saw the advent of community legal centres in the early seventies, there was an effort to overcome the gap between the perception of legal problems and their solution. Part of the problem in overcoming this gap has to do with the mystique of lawyers.

The fees that lawyers charge are just one aspect of this mystique. There is now widespread knowledge of ALAO and the fact that it is free to certain groups. But low-income earners can be outside the fairly strict means test and have no means of knowing how much of their scarce resources would be required to pay for a legal action. Such people may fear the economic consequences of approaching a lawyer.

What lawyers do is as much a mystery as what they charge and as a result lawyers are seen as apart from, and probably superfluous to, the needs of low-income groups. This is no longer the case in other professional areas such as medicine. Serious illness as well as serious legal problems have, of course, always resulted in the poor seeking professional help. But for mundane problems, those that do not threaten life or liberty, the reaction of low income groups to both professions was probably the same some years ago. The difference with medicine today is that with the greatly increased access to cheap medical assistance people seek help for a wider variety of ills. Over the last fifty years there has been an increasingly greater input of governments into health provisions and health legislation. But of even more significance there has been a growing scrutiny of doctors, of doctor's practices and doctor's fees. The results of this observation has been a democratization of information which has benefited the better educated initially but now, because of the

demand, has led to a simplification of medical terminology which makes the subject accessible to a wider audience. In the process doctors have became more approachable and less awesome and mysterious.

Why have doctors lost their 'race apart' status and not lawyers? Why has not the information revolution, the right-to-know syndrome, prized lawyers loose from their limpet-gripped monopoly? Why are lawyers still ensconced behind legislated barriers like medieval guilds while doctors, scientists, engineers and planners are probed and questioned out in the glare of public debate?

There is no obvious answer and perhaps their turn is next. Of the various reasons that exist, one reason might be their use of obscure words. The Redfern Legal Centre received the following letter relating to a counsel's opinion that its Greek client had received: "Please ... what these words mean? Non sequitur. Per se. Prima facie. Palpably."[10] But a lot of other professions have hidden a bankrupt vocabulary among a convoluted set of jargon and in the end they have all had to simplify or perish.

Another reason might be that lawyers are less marginal to the middle-class than they are to those who are not well educated and have lower incomes. A possible reason the middle-class have not demanded the same sweeping away of inaccessibilities and complex language as they have demanded in the sciences is that there is some class advantage in depriving those on low incomes of access to the law.

Kafka's image of the law is of a gate beyond which all is dense and unknown. People who wish to use the law consult frequently with the gatekeeper but are too afraid to venture through by themselves. The gatekeeper guards the gate even though the gate is designed for the client to go through.[11]

This gatekeeper role remains intact and is reinforced by governments. Not only do governments legislate a monopoly for gatekeepers but they ensure that the gate opens onto ever more difficult vistas.

Perhaps governments are afraid of that bogeyman of the law - the floodgates - which legal mythmakers say are always in danger of bursting open. It it were to become as natural for the ordinary person to speak to a court as it was for the Roman citizen to speak to a forum, then the fear is that courts will one day grind to a halt in the full flood of citizens participation. Maybe it is to prevent this that Acts of Parliament are

---

10 Redfern Legal Centre Newsletter October 1984.

11 F. Kafka "Before the law" in N. Glatzer (ed) The Complete Stories Schocken Books New York 1946 p.3.

worded in such a way that the ordinary person finds difficulty in making sense of them and thus keeps them outside the gate. The state requires that a complex and largely useless training scheme must be passed by those who wish to be gatekeepers. This training scheme ensures only that the gatekeeper knows roughly what lies beyond the gate but it provides no training which would enable the gate keeper to communicate what he or she knows to others.

This combination of factors may explain why, for many areas of the law, lawyers are under-used by those on low-incomes.[12] In addition lawyers are familiar with the process of enforcing laws. Judges come from the ranks of lawyers, and lawyers are socialised as a group. It thus becomes possible for the state to rely on lawyers to keep the wheels of enforcement turning. When lawyers translate the law for their clients they do so in terms of their own socialised needs and the needs of the law as a system of force. Within these wheels of enforcement all the active participants, the police, the lawyers, the court, speak the same language. The client is not a participant. In fact the process is like a sport engaged in only by the players who know the rules while those that don't, e.g. the clients, sit on the sidelines and watch, uncomprehending spectators. A spectator may not know whether or why the game has been won or lost until the umpire delivers a verdict and then, and only then, does the spectator become a participant. People on the sidelines may thus see lawyers as being just one more among a whole group of state personnel charged with enforcing the state's will upon them.

It is obvious that the perceptions, attitudes and motivation of clients must be changed if low-income earners are to come out from the side lines and learn the rules and participate. In a situation where people do not know what lawyers charge, where they have no way of knowing whether they are getting an expert in a particular field or a raw beginner, where they do not know what the choice is or how to exercise it, then lawyers will probably remain marginal to the existence of most people. As well as an increase in legal information, there is also a need for more legal choices specifically tailored to meet the needs of low-income earners. A variety of options are becoming widespread on the mainland. As well as small claims courts, tenancy tribunals and other people-orientated legal forums, some Legal Aid Commissions and CLCs are running do-it-yourself classes, eg. represent yourself-in-court, do-it-yourself-divorce and other such forms of self-help. As well as direct information face-to-face, kits and videos are being produced aimed at motivating people to become competent in particular legal areas. It is clear (see Chapter 3) that self-help is seen as a real

---

12 See chapter three.

and sometimes preferred alternative by many people and that the options currently available for resourcing this alternative in Tasmania are not sufficient to adequately meet the need.

A community legal centre could encourage new initiatives of this kind and help in tailoring the kind of resources that are developed to the needs of the community. The centre can also make a start in its own operations by providing legal advice and assistance where the 'legal' part of the activity relates not to an awe-inspiring fount of expertise but to a source of information that interprets the law so as to make it easily accessible and comprehensible to those who seek enlightenment. The law must be shown to be a beneficial commodity, protecting and helping low-income earners and not just mystifying them. The community legal centre must be careful to present itself as an alternative sort of legal delivery service, wherein secrecy and the guarding of the legal mystique have no part. There must be a conscious effort to rebut the middle class view that the law is to be found at its most respectable at the lower end of Macquarie Street. People must be shown that there is no main-stream mid-town limit to the idea of law. Ordinary people can be assisted to define those aspects of their daily problems that might be ameliorated by legal means and also shown that 'legal' thus takes on whatever context in their environment that they choose to give it.

But in this sense a community legal centre has to fulfil a number of tasks. One is that of fulfilling a present need. Another is opening up the possibilities of legal service delivery so that the 'law' can be seen to be broader than the previous definition of crime and property. The final task is to find out what form the legal service should take and what sort of legal delivery its community wants. These tasks may be serial or they may contemporaneous.

There is a problem in trying to discover what a community wants. If a Legal Needs Survey is used then such a survey may just reap the past lack of comprehension of the possibilities available. When low income earners are asked what they want they usually specify the same kind of services that high-income earners get, i.e. Macquarie Street, axminster carpet, leather desks and men in grey suits. It is necessary to confront the stranglehold that a middle-class imagination has over the frontiers of the law and the fact that the middle-class have thus established a monopoly on possibilities.

If an individual has no knowledge of alternatives, is there any reality in asking her/him what she/he wants? Does the ALAO, for instance, provide an alternative? It seems likely that people see the ALAO as having only one difference from private practice and that difference is that it is free. A question in order to be a

question has to have a choice of answers and "what sort of legal service would you like?" is not a real question for many people. The answers they would give would really be to the question 'Would you like a legal service?' If the first question is asked then there is the danger of both questioner and answerer believing that the response reflects real preferences. No-one can hold a preference for what is in effect only one option.

A corollary would be if low-income earners were asked what sort of government bureaucracy they would like. The question assumes that they can visualize something different from the types of bureaucracy they know. Choosing what type of bureaucracy they want is an exercise in choosing between the experiences they have already had (the differences between which may be marginal). In any case the word 'bureaucracy' means something to the respondent. It may mean a type of treatment or a mode of communication or a standard of dress or particular sorts of offices. Bureaucracy only operates within particular parameters and therefore 'What type of bureaucracy do you want?' elicits a response whereby the general concept of bureaucracy remains in place but some of the marginal aspects may be changed. For instance, respondents may request more toilets for the public or require that they get attention that is polite and courteous or desire forms that are easier to fill in. There is no magic in foreseeing that all these answers will leave the present model untouched except for cosmetic changes. 'Bureaucracy' has a concrete form like a medieval fortress and if some people demand that it be knocked down and a new structure erected within which the government personnel are client-controlled and where clients have input at all stages of policy and direction, then to many people what is to be built has ceased to be a 'bureaucracy'. It is something new that needs a new word to describe it.

The same is true of 'legal service'. If a legal service is designed that is different to other forms of legal delivery then people may not accept it as a legal service. Initially, it may affront its clients. "Why can't we have real lawyers?" may be a complaint when lawyers seek to diminish the distance between themselves and the client by wearing street clothes, coming round from behind the desk, involving the client in the case. Critics will argue that it is the mystique, the incomprehensibility of the law that makes people respect it. How will ordinary people respect the law when they understand what it all means? This kind of patronising argument is frequently used when one set of people with power is seeking to prevent another set from sharing it. What 'lawyers' are and what 'legal' means may need new words where the old meanings are so bound up with outward appearances and patterns of behaviour. If part of the law is its mystique then what is left when that mystique is removed? As bureaucracy would have to have another name if it were responsive to clients, so

will the law if any old person can ride into town with a Law Handbook and start making a nuisance of her/himself.

A community legal centre in its first phase must therefore expand the possibilities open to its community. Once its community is educated in the range of legal service possibilities, then a community legal centre can become a legal resource responding to the needs of an aware community. Community legal education boils down to putting people in touch with the idea of the law, not just in touch with lawyers and not just Acts of Parliament that the state wants everybody to know about. A community legal centre can show the community what parts of the law they can deal with themselves without the need for lawyers and what parts they need professional help with.

Once members of the community understand the parts of the law they can utilize themselves then self-help becomes more effective. The Victorian Legal Aid Commission already runs represent-yourself-in-court classes and a similar initiative could be encouraged in Tasmania. No doubt a move this way will be criticised because studies have shown that people do better with lawyers when they go to court.[13] No-one has ever questioned why this is so however. All that has happened as a result of these studies is that there has been an increased call for legal representation but no-one has attempted to find out whether the results are because of the natural superiority of lawyers, the prejudice of judges or the ignorance of the accused.

In any event whether one does 'better' with a lawyer may be an external perception, imposed on the accused by the force of statistics. It is not clear whether 'better' means having less then the full rigour of the law applied or whether it means 'better' for the defendant in terms of satisfaction with the result.[14]

The latter may be contra-indicated. Lawyers may seek to win by pursuing a course that the defendant does not understand and which may leave him/her with a negative alienated feeling about the legal system.[15]

Also when it is said that someone does 'better' with a lawyer it is not clear that it is the lawyer that is effective or whether any representative would be equally efficacious. A survey of representation in front of

---

13 L. Newby and M. Martin An Evaluation of the Duty Counsel Scheme W.A. Dept. of Correction, 1975.

14 P. Hanks Evaluating the Effectiveness of Legal Aid Programs Commonwealth Legal Aid Council 1980 Canberra p.16.

15 W. Bacon and R. Lansdowne in P. Cashman (Ed) Research and the Delivery of Legal Services Law Foundation of NSW Sydney 1981 p.206.

Tribunals showed that almost any representative will increase the applicants chances of success and that lawyers are only slightly more likely to ensure success than friends, relations, claimant union reps etc. and less likely to ensure success than social workers.[16]

In other states Small Claims Tribunals, Residential Tenancies Tribunals and Community Justice Centres are taking away from the lawyers their role in some areas of the law. In fact there has been discussion as to whether lawyers should be debarred from Magistrates Courts.[17] Although the latter is unlikely to happen, a move of refusal to grant costs for small matters may have this de facto effect. Where will the client be then? Well, hopefully no worse off than the moment. It is probably true that the present rules of procedure have been developed by lawyers for the benefit of their clients, so that their clients will win. But they also have the effect of creating an arena into which people are afraid to venture on their own. The current situation is a set-up that the players and the umpire are comfortable with, but it is one that may disadvantage someone coming before the court who does not know how to play to the existing rules. For instance the umpire may be used to expensive uniforms and be put out by being addressed in ordinary language by someone in street clothes. There are problems that beset both the umpire and the opposing players when a novice enters the fray. In coping with complicated rules the assumption has always been that both parties will be equal because both parties will be represented.[18]

A future Tasmanian CLC would not accept a position that dismissed the majority of people as being too stupid to play the game. Rather than spend the legal aid dollar in a search for legal equality that consists of more and more lawyers fees spiralling outwards in expansionary curves, the centre could argue that it was more economical to simplify proceedings so that it becomes possible for people to represent themselves.[19]

The community legal service would be there to respond to the needs of the client and of the community. It's role would be to clarify the problems of, and offer choices to, its clients and to engage in a wide-ranging legal education program that would help its clients to understand the issues involved and to

---

16 K. Ross "Welfare Delivery without Lawyers" 1976-7 Legal Services Bulletin p.385.

17 N. Williams "Court Procedures: In Whose Interest?" in Help Yourself to Justice Legal Service Bulletin Co-Operative 1983 p.27.

18 Ibid p.23.

19 P. Hanks "Improved Access to Law - Without Lawyers" in J. Goldring (Ed) Access to Law ANU Press Canberra 1980 p.273.

make informed choices. In the process a re-education of lawyers working and volunteering at the centre would be necessary so that both client and lawyer could address the client's problem in a spirit of co-operation involving both in the selecting of goals and the process of achieving the desired outcomes. In this way, by allowing the client to be part of the process rather than just a spectator, a CLC could go a long way towards laying to rest the fear and mystery that have previously dissuaded ordinary people from taking an active part in the legal life of the community.

CHAPTER 3

ACCESS TO LAWYERS - ASCERTAINING THE UNMET NEED

'Legal need' has been the subject of much research on the basis that it is a quantity that can be measured. This is open to debate.[1] The main problem relates to defining what 'legal need' is. In terms of 'legal need' surveys, the question usually boils down to whether or not the respondent uses or would like to use a lawyer when he or she has a legal problem. As was discussed in Chapter 2, a Tasmanian CLC's brief would extend beyond providing access to lawyers and would include such unquantifiable activities as legal education, law reform and the resourcing of self-help as a response to legal need. However the occasions on which people seek access to or would like to have access to lawyers are also important to know.

One author argues that at least four criteria have to be present to persuade a person to use a lawyer (whatever their economic resources are). These criteria are:-

1) an awareness or recognition that the problem is a legal problem,

2) a willingness to take legal action for the solution of a problem,

3) getting to a lawyer, and

4) actually hiring a lawyer.[2]

Respondents asked about legal needs may under-report. This may be through a reluctance or embarrassment to reveal details about financial transactions such as debt and hire purchase, or it may occur through faulty recollection.[3] On the other hand, once respondents are aware that they are taking part in a legal needs survey they may obligingly translate into legal problems those that they would not previously have considered as requiring legal action, thus leading to over-reporting.

Respondents may see 'legal' in terms of the traditional labelled areas of law such as Family, Criminal, Personal Injury, etc. They may see the lawyers role as the traditional one of protecting established property

---

1 F. Marks "Some Research Perspectives for looking at Legal Need and Legal Delivery Systems" in Brickman and Lenpert (Eds) The Role of Research in the Delivery of Legal Services Washington Resource Centre for Consumers of Legal Services, Washington 1976 p.37.

2 J.E. Carlin and J. Howard "Legal Representation and Class Justice 1965 12 UCLA 381 p.423.

3 R. Tomasic Australian Legal Aid, Law Foundation of N.S.W. Sydney 1975 p.2.

rights.[4] If the authors of a survey want to take a broad view of legal problems and include non-mainstream areas such as tenancy, debt, social security in their analysis they may in the end find a huge gap between what they, the authors, have defined as legal problems requiring legal help and those problems that the poor actually go to a lawyer about.[5]

As previously discussed (Chapter 2) what constitutes 'law' is a middle-class concept because the mainstream legal service has always been paid for by middle-income earners. If respondents are not going to lawyers about hire purchase and debts (cf Cass and Sackville's survey)[6] this may be because this is not within the middle-class complex of legal activity. It may also be because mainstream lawyers do not offer a service that the poor would find relevant. It has been pointed out by one commentator how dangerous it is to assume just because a service exists to meet a particular need that those who have such a need will necessarily see the relevance of what is being offered and will accordingly use it.[7]

The legal need survey often makes the assumption that the poor will channel their problems through existing legal structures even though those existing legal structures may not be meeting their needs.

As already pointed out in Chapter 2, people have to have viable alternatives in order to decide what services are relevant to them. The choices they make may not be for 'legal' services as defined by conventional legal practice but they may solve legal problems just as effectively. For instance, people in Victoria have the opportunity to utilize the Consumer Credit Legal Service for their debt and hire purchase problems. This Legal Service undertakes conventional 'legal' activities but it is also involved in a range of creative and muscular quasi-legal scenarios that would not be available to a client through a mainstream law firm. At its behest clients with chattels covered by Bills of Sale dumped their household furniture on the doorstep of a Finance Company which was threatening to repossess them. The result of this action (and the accompanying blaze of publicity) was that Finance Companies agreed not to repossess essential household

---

4 R. Marks The Legal Needs of the Poor: A Critical Analysis American Bar Foundation Chicago 1971 p.18.

5 Eg. B. Able-Smith, M. Zander and R. Brooke Legal Problems and the Citizen Heineman London 1973.

6 M. Cass and R. Sackville Legal Needs of the Poor Australian Government Printing Service Canberra 1975 p.90.

7 P. Morris, R. White and P. Lewis Social Needs and Legal Action London Robertson 1973.

furniture from defaulting debtors. This kind of action might be more relevant, effective and satisfying to a client than a conventional casework approach.

If respondents are to be asked about legal need, these sorts of alternatives have to be kept in mind because legal need is not necessarily a need for lawyers but a need to overcome problems which may have legal consequences. Legal need surveys often seem to be based on the assumption that access to a lawyer is the indicator of a legal need being met, whereas increased access to means of self-help may be an equally effective solution.

The following legal needs survey was run in Tasmania in 1981 by two final year law students at the University of Tasmania. The author has reservations about the methodology used in running the survey and also the conclusions the authors make about some of their material. Nevertheless the results they produced were interesting and some of their figures have been reworked to show the relevance of the material to a community legal service.

The Bridgewater Survey

"An investigation into the legal needs of Bridgewater" was carried out by McIntosh and McLeod in 1981.[8] They used 20 law students who each interviewed 5 respondents. It is not clear on what basis the respondents were selected but there are indications in the survey's findings that the sample may be insufficiently random and that the respondents were not a representative sample.

Bridgewater is part of a large Housing Department area to the north of Hobart. On 1976 figures there were 690 houses, 578 of which were either rented or being bought from the Housing Department. Statistics on the area show that in terms of gross income it is not the lowest in the greater Hobart area, however in terms of disposable income it is one of the least affluent areas.[9]

Question 1 listed 11 agencies and organisations and asked if the respondent was aware that the agency offered legal advice and referral. The ones most known were the Australian Legal Aid Office and the Family Court. It is not clear to what extent the other organisations were providing legal advice and referral but

---

8 A. McIntosh and C. McCleod An Investigation into the Legal Needs of Bridgewater Unpublished paper Law and Society Unity University of Tasmania 1981.

9 T. Lee A Social Atlas of Hobart University of Tasmania Hobart 1981.

some of these organisations seem superfluous in this context (eg Department of Social Security). Also the omission of the Law Society's Legal Aid Scheme makes the list less than comprehensive. The final-year law students did not know of the scheme at the time they designed the survey. No doubt many of the respondents would have been equally ignorant. It would have been interesting to know however how many did know of it.

Question 2 and 3 asked how frequently respondents had used the services of the organisation listed. In view of the organisation listed (Trade Unions, DSS, TasCoss) it is more than likely that people used these organisations for other than legal purposes and comparing Question 3 and Question 4 reinforces this impression so these questions have been ignored.

Question 4 asked how often the respondents used a lawyer. This revealed that 21% had seen a lawyer more than twice in the past year, that 12% had seen one once in the year and that a further 15% had seen one in the past five years. This makes 48% of samples as having some recourse to lawyers. In Cass and Sackville's survey 44% of the respondents had used a lawyer in the past five years.[10]

Question 5 asked the respondents if they had had experiences of 9 situations. The results were:-

1)	Purchasing a house or land	-	54	experienced
2)	Leasing a property	-	34	"
3)	Making a will	-	18	"
4)	Executing a will	-	8	"
5)	Involved in a car accident	-	29	"
6)	Family disputes	-	18	"
7)	Work injuries	-	19	"
8)	Criminal proceedings	-	12	"
9)	Entered into financial arrangements of more than $100	-	63	"

Question 6 asked if the respondent had consulted a lawyer, or consulted some other organisation or person, with regard to the above situations.

---

10 M. Cass and R. Sackville op.cit p.75.

With reference to this question it is the author's opinion that situation 9 (about financial arrangements) puts too low a figure to realistically expect people to be seeking legal advice. This fault was reproduced in Question 7 when respondents were asked to comment on faulty products worth $25 and loans defaulted on of $25 and rent increases of $5. The law students may have thought that in an area where every dollar had to be stretched, it was necessary to use these low sums. However, it is obvious from the answers that, even if their incomes were low (and there is no data to show that they were) the respondents nevertheless had a realistic idea of the value of money. Only a very small percentage of the respondents saw a lawyer about financial arrangements of $100 and over. This may be because this is not seen traditionally as an area requiring legal counselling but it is also likely that the limit was so low that some of the sums involved may have been insubstantial.

There have been several surveys along the same sort of lines as this one, however comparisons are difficult because of the restricted number of legal situations asked in this survey. In Cass and Sackville's survey 24 different situations were given.[11] Also in Cass and Sackville the questions related to recent experiences, in the last five years, whereas in the Bridgewater survey there was no limit to how long ago the situation might have been experienced. The Bridgewater survey thus has a problem in that selective recollections of the respondents may over-represent the situations that respondents like to remember such as buying a house and under represent situations that the respondent would like to forget like criminal proceedings.

The 100 respondents experienced 255 of the above situations. In 80 cases (32%) they obtained legal advice, in 100 cases (40%) they obtained help from other sources and in 75 cases (28%) they received no help with the situation.

The following is a breakdown of the 100 occasions when respondents sought help and advice other than from a lawyer and shows the sources actually used.

Housing Department	24%
Finance Cos.	23%
Insurance Cos.	16%
Unions	6%

11 Ibid p.95.

Banks	5%
Public Trustees	4%
Police	4%
Employers	4%
Miscellaneous	6%
Don't know	8%

What is rather disturbing is the number of times the source of the advice also had an interest in the matter that the advice was given on. In 69% of the occasions the advice was given by a source with an interest in the transaction (92% of the advice given about hire purchase and financial arrangements was given by Banks or Finance Companies). Similarly, the advice given by the Housing Department over purchase or leases saved the respondents from obtaining a lawyer but it also meant that the respondent had no independent advice.

Question 7 asked what the respondent would do in 9 hypothetical situations. They were:-

A(i) a defective product worth $25 that the shop refused to refund

and A(ii) a defective product worth $500 that the shop refused to refund

B problems with an HP agreement (eg the car was stolen)

C(i) an acquaintance refused to repay a loan of $25 because it was not in writing and

C(ii) an acquaintance refused to pay a loan of $500 because it was not in writing

D(1) problems with a landlord who failed to carry out repairs etc. and

D(ii) problems with a landlord who increased the rent by $5 and

D(iii) problems with a landlord who threatened eviction.

E refusal by DSS to grant benefit to someone who thinks they have an entitlement.

It is hard to imagine what the law students had in mind by constructing questions about such small sums in questions A(i), C (i) and D(ii). However interestingly in both A(i) and C(i) 18% of the respondents said they would go and see a lawyer. It is hard to believe that in real life they would do so over sum of $25. Also 12% said they would go to a lawyer about $5 a week rent rise.

The unreality of these responses makes it at least arguable that respondents were reacting to the fact the survey was about lawyers and legal need rather than giving factual answers as to how they would really react in those situations.

It also seem unnecessary to complicate a question about hire purchase with the suggested example of a stolen car. The question ceased to be about hire purchase. Because of the 'stolen car' 49% would use a lawyer, whereas only 13% did so in response to the financial arrangements asked about in Question 5.

The avenues of redress that respondents would taken can be broken up into 3 categories:-

a) Legal agencies

b) Self help, and

c) Passivity

'Legal agencies' consist of 96% lawyers and 4% police. 'Self help includes organising other forms of action, seeking other sources of advice, or doing something about their problems themselves such as collecting their own debt or doing their own repairs. 'Passivity' has been used to include those who would do nothing about the situation, would try to forget it and also includes the 'don't knows' as these are only a minor category (except in those situations dealing with small amounts and tenancy matters).

The three questions dealing with small amounts were excluded because they heavily skew the results towards passivity.

Of the 600 replies to the other six question, 40% would seek the advice of a lawyer (slightly higher than Question 4), 38% would engage in self help activities (about the same as Question 4) and 22% would do nothing (rather lower than Question 4).

Using the above percentages as the norm, the following table shows the movements away from the norm for particular situations:-

	40%	38%	22%
	Legal Agencies	Self Help	Passivity
Product $500	29 (-11)	69 (+31)	2 (-20)
HP stolen car	55 (+15)	24 (-14)	21 (-1)
Loan $500	53 (+13)	14 (-24)	33 (+11)

No repairs	26 (-14)	38	36 (+14)
Eviction	40	30 (-8)	30 (+8)
DSS	35 (-5)	53 (+15)	12 (-10)

For the product of $500 there is a strong move to self help (largely because of the existence of the Consumer Affairs Council). For the HP stolen car there is a strong move towards legal agencies. For the loan of $500 there is a strong move away from self help towards equally legal agencies or passivity. For no repairs there is a move away from self-help into passivity. For Social Security there is a move away from passivity to self help and to a lesser degree away from legal action to self help.

In only 2 instances is the move from the norm greater towards a legal agency than to any other option and that is in the HP stolen car and for the loan of $500. In both cases the move is at the expense of self help. In the case of the loan there is also a strong move towards passivity.

In 2 cases there is a move towards self help, a strong move in the case of the $500 product and a smaller one in the case of DSS.

In both the tenancy matters there are moves towards passivity.

For those three questions dealing with the small amounts, over half the answers would fall into the 'do nothing' or passivity category. For the product of $25 there was a large move towards self help, again because of the existence of the Consumer Affairs Council. If there was a Tenancy Tribunal or a Small Claims Tribunal this move might presumably also be seen for the other small amounts

These results show that in many cases people are willing to take, or have no other option in taking, self help measures.

Question 8 asked why legal services were not utilized by some members of the community. Respondents were asked to give 3 preferences to 7 possibilities. The replies have been weighted by giving first preferences three times the weight and second preferences twice the weight of the third preference.

Lack of knowledge of the availability of legal services	168
Cost of service	137

Reluctance to get involved in legal proceedings	109
Fear of retaliation	43
Legal services too hard to get to	31
Legal services don't provide a good service	32
Not worth the effort	10
Don't know	89

This is different to the Cass and Sackville finding where cost was the main barrier to people using legal services.[12]

Question 9 and 10 asked if lawyers provided adequately for all the legal needs of the community and if not, why not. 52% said no and gave a variety of answers as to why not. 30% of these reasons related to the cost and exclusivity of lawyers (along the lines of, 'they only provide services for the rich'). The remainder of these reasons came under a heading like 'they're not interested in the problems of people like us'.

The survey was useful from an information gathering point of view. Some of the information, such as that on self-help, could be taken up by a community legal service and ways examined of how to resource that kind of action.[13] Also surveys of this kind usually shout warnings to the mainstream legal profession because they show up the narrow margins of relevance that lawyers have to people living in areas like Bridgewater.[14]

The problem remains however as to what is a 'legal need' and how the alternatives can be extended so that people can make more informed responses to this kind of survey.

---

12 Ibid p.72.

13 P. Hanks Evaluating the Effectiveness of Legal Aid Programs Commonwealth Legal Aid Council Canberra 1980 p.269-71.

14 Ibid p.273.

CHAPTER 4

AUSTRALIAN COMMUNITY LEGAL CENTRES

The main source of the information for this chapter was obtained from a questionnaire* that was circulated to all participants at the National Conference of Community Legal Centres in June 1984. Duplicates were later sent to all those that had not returned the questionnaire. In June 1984 the author visited 10 community legal centres on the mainland.

In 1984 there were 25 generalist community legal centres operating full-time (which for the purpose of this survey means more than 30 hours per week). Some information was gathered from specialist centres (i.e. those specialising in particular areas of law such as consumer credit or tenancy) but this information was not particularly relevant to the proposed operation in Tasmania and it was decided not to use any specialist centres in this survey.

In all 12 generalist full-time community legal centres returned the questionnaire. Of the 10 visited, 3 did not return a questionnaire but some information was obtained which could be used in the discussion of certain areas covered by the questionnaire. These areas covered the Constitution and Management section (which was an area of information the author was anxious to expand beyond the information required by the questionnaire) and the Premises and Equipment section of which first-hand visual experience was obtained.

The questionaire was an information gathering exercise and there has been no attempt to test the statistical significance of any of the material. Some of the questions have serious flaws in that they do not allow for a complete range of alternatives and some are irrelevant because they are based on Tasmanian conditions which do not apply on the mainland.

The returned questionnaire represent nearly half of full-time community legal centres but they only represent centres from NSW, Victoria and SA. 3 returns were received from SA (75% of the total centres in that state), 7 from Victoria (54% of total centres) and 2 from NSW (40% of the total centres).

An Eyewitness Report

Having read a great deal about shop-front law centres - a concept that neighbourhood law firms in America originated and community legal centres and the ALAOs in Australia advocated - the author was surprised at how few centres visited were actually shop-front. Only 2 - Fitzroy and Inner City - could be so

described from the ones visited. Apart from Redfern (which is hard to classify) all the other were either in suburban houses or in community centres.

As regards community centres, up until this mainland visit the possibility of combining a legal centre with a diverse range of community groups had not been discussed in the Tasmanian context. Until then community legal centres had always been discussed as if they existed valiantly alone. It became clear that the value of a community legal centre could be increased if it were located with sympathetic and similarly minded groups. This value would not be just because of economies of scale but also because the interchange of resources and interests (interpreters, lawyers, social workers, information, ideas, mutual support) could prevent some of the frequently discussed problems that many legal centres experience such as burn-out of staff, worker control and the tendency to be overly concerned with casework to the detriment of community education.

It is expected that the Tasmanian centre will end up in premises that will reasonably tatty. Most of the centres seen on the mainland did not look anything like an average Reserve Bank Building law practice. However in June 1984 at least half were streets ahead of the Hobart ALAO (which has now moved into better premises). Using the Hobart ALAO premises as they then were as a reference point, 2 of the centres visited were in even more depressing and overcrowded conditions, 2 were about equal and the other 6 infinitely more pleasant and cheerful. However one visual problem identified in nearly all of them was the problem of escalating filing cabinets. Some centres seemed to be building a fortress (prison?) around themselves with dead files. This is one future problem a Tasmanian centre should address its mind to before it starts.

As far as atmosphere goes, it is expected that the Tasmanian centre will be like the Tasmanian Aboriginal Legal Centre where staff wear casual clothes and there is a general air of informality. This was a model widely used on the mainland. For instance Coburg requests its volunteers to avoid the "lawyer in uniform" look and replace formal jackets, etc., with sweaters when conducting interviews.

Quite a few of the centres had initiated flexible interview situations, in the belief that a client should not be confronted by a lawyer behind a desk but that the lawyer should come out from behind such barriers and sit face to face with the client.

There were various other ideas being used to break down the lawyer-on-top syndrome. Coburg uses a team interview approach where, with the client's consent, the client is interviewed by a lawyer and a

layperson. This model is used by at least one specialist centre and the idea is to make sure that the legalese is kept to a level where an ordinary person can understand it. Also many so-called legal problems have social origins or consequences that may be better solved by someone with a grasp of welfare matters.

Many centres allow law students to sit in on interviews if the client consents, however although this is good training for the student it doesn't particularly help the client unless the student is involved in initial interviews and follow-up.

All these ideas open up a range of possible combinations for a Tasmanian centre.

The atmosphere and the premises do make a difference. In Bothmann and Gordon's survey of Fitzroy Legal Service clients (when the service was still located in the Fitzroy Town Hall) 15% of the clients found the atmosphere unpleasant and 47% thought the set up could be improved.[1] Bothmann and Gordon noted that clients did not want 'flash' luxurious offices but would prefer conditions that maintained a friendly homely atmosphere that did not smack of squalour.

The Questionnaire

A full text of the questionnaire is contained in Appendix A. The following is a summary of information gained from answers to the questionnaire.

Questions 1 and 2: Ascertaining Unmet Legal Need

The problems associated with surveys on unmet legal need have already been discussed (see Chapter 3) in relation to a Tasmanian survey.

There are a number of problems in ascertaining what the legal need in a community is and then assessing how much of that legal need is unmet by the existing legal service deliverers.

The problems associated with legal need surveys are:-

(a) Who to ask?

(b) What to ask?

---

1 S. Bothmann and R. Gordon Practising Poverty Law Fitzroy Legal Service Melbourne 1979 p.88-89.

(c) How is the person being asked likely to interpret the question?

(d) How to interpret the answers they give?

(e) Are the answers - factual?

- estimates?

- wishful thinking?

It all boils down to whether the right people are being asked the right questions and if it is possible to define legal need let alone estimate/ascertain whether it is unmet.

From the replies received, 4 centres had conducted formal attempts to ascertain unmet legal need (e.g. through conducting surveys of community groups), 4 commenced operations after unmet legal need had become obvious through informal means (e.g. through requests for legal advice addressed to community workers), 3 indicated that they had attempted to assess legal needs but did not state how and 1 centre replied that it had not made an attempt to ascertain legal need.

These answers are of value but some problems with them do spring to mind. Fitzroy was founded by workers in the community field who could not find any other way to obtain legal aid for their clients.

Immediately it opened Fitzroy was very busy. Other centres opened and they were also very busy. New centres opening did not make the old centres less busy, nor did ALAO's make community legal centres less busy. Ascertaining legal need may thus be a low priority when everyone is talking about a bottomless pit syndrome[2] and discussing ways of reducing the work load.

A project/experiment in the USA attempted to find out if there was indeed a bottomless pit by increasing the number of lawyers in the neighbourhood law firm until saturation was reached. The project had to be abandoned because there appeared to be no end to the number of lawyers that were needed.[3] However this experiment is not conclusive evidence of the bottomless pit. Although only limited information

---

2 In his speech to the Senate on 13th December 1973 Senator Murphy referred to Lord Widgery's comment on the 'bottomess pit' of legal aid and the need to avoid it.

3 Reported on by I. Muir "Law Centres in New Zealand" 1976 N.Z.L.R. p.394.ts

about the project is available it is likely that the lawyers were all doing purely casework. It also seems likely that a seemingly infinite demand would level off then die away once the public's fear and ignorance of the legal system was overcome. This would happen when access to lawyers became commonplace and when education made what lawyers do common knowledge in the community.

Nevertheless although there is no real evidence for a bottomless pit yet there is an expectation of a bottomless pit of legal need and attempts by legal workers to discover specifically whether this is so will almost certainly come up with a large YES answer, especially if they ask community workers who are likely to be subscribers to the same sorts of expectations as community lawyers.

Attempts to Ascertain Legal Need in Tasmania

There have been four surveys carried out in Tasmania that have some bearing on ascertaining legal need. The first was a 1977 survey of lawyers.[4] Although it is an interesting survey of problems with legal aid it has the drawback as a source of reference for determining unmet legal need because the lawyers interviewed were only able to comment on the people who were actually going to see a lawyer and to a large extent they were commenting on the 'met' legal need.

The second survey was a survey of youth groups carried out by a youth organisation.[5] It asked the groups to respond to questions relating to unmet legal need among young people. From the estimates of the number of young people attending their group who needed legal advice they extrapolated the volume of use for a legal service catering for young people. The drawback to these sorts of inference is that they may not convert into a 'real' client population.

In the questionnaire to legal centres one question asked what percentage of clients were referred to that centre from other agencies. Overall 46% were referred from other agencies but where a breakdown of referrals from these other agencies was available (through annual reports, etc) it became clear that community groups, government welfare agencies/councils, etc only account for about 28% of referrals. Another 14% or so were from legal agencies. (Legal Aid Commissions, etc.). By far the largest percentage of clients found their way to the community legal centre without any outside assistance.

---

4 E. Dean and D. Quarmby Legal Aid Services for Tasmania Dept. Social Work T.C.A.E. Hobart 1977.

5 Unpublished submission to C.L.A.C. by St. Monica's Community, Hobart, in 1983.

Therefore asking community groups for their estimates is only going to uncover less that one-quarter of the likely unmet legal need and there is no guarantee that young people who frequent youth centres are representative of young people who don't.

A third survey[6] was run by another youth group which attempted to research legal need among potential young clients. However this survey had some of the drawbacks of the other youth survey. It sought to interview young people and discover their past experiences with the legal system and their future legal needs. But all the respondents were interviewed while attending the youth groups which had been approached in the first youth survey and these young people represented potential referrals from these organisations to a legal service and not the large population of potential clients 'out there' in the community.

The fourth survey was a survey of legal needs in the Bridgewater area which has already been discussed.[7] It was conducted door to door and sought to survey people in a multi-problem housing department area. The main problem with this survey is that the sampling techniques used would not give a truly representative picture. Nevertheless if legal needs surveys on Sackville and West lines have any validity (and many critics say they don't)[8] then the Bridgewater survey throws some light on potential areas of unmet legal need.

Question 2 asked whether any attempt had been made to discover if the centre is presently meeting a need. 7 centres said they attempted to find out if they were meeting a need. 3 said they hadn't. However of those that said they had tried to find out, some seemed to rely on increasing statistics of casework to demonstrate that they were meeting a need.

It doesn't seem an entirely satisfactory extrapolation to use casework figures as evidence of meeting a legal need. If casework is all that is being done then that centre is assisting in meeting the casework need. However that begs the question as to what other needs are being left unmet.

How a centre goes about trying to meet legal need is a policy question. The first option for the Tasmanian centre is to put all its resources into one aspect of legal work such as casework. Choosing case

---

6 Unpublished Report to the Law Foundation of Tasmania on the Legal Education and Awareness Programme in 1983.

7 See Chapter 3.

8 B. Garth Neighbourhood Law Firm for the Poor Sijhoff & Noordhoff Alfpen aan den Rijn 1980 p.2.

work means that the centre's work is quantifiable and even though it is only part of the legal needs picture it is the part that is the most numerically ascertainable and concrete. The second policy option is to run the gamut of the legal needs spectrum and meet needs other than casework. This second policy option has a disadvantage in that, although it may be more effective in the long run than just concentrating on one area, it relies on unquantifiable changes for achieving success. Law reform, legal education, community group work are long term activities that are not amenable to statistical measures of effectiveness.

With casework it is possible to at least ask clients whether their needs have been met. Bothmann and Gordon asked clients at Fitzroy a series of questions from which it could be ascertained whether the client was satisfied with his/her treatment and how alienated or comfortable the clients had been with the conduct of their cases.[9] Such a survey can throw up immediate sources of need that are not being met, for instance 55% of Fitzroy's day clients had not fully understood what was being done in their case (though most of these had not expected to understand). Other questions Bothmann and Gordon asked were aimed at finding out whether clients would like to become involved in their own cases and how they thought they could help.[10] This kind of survey, suitably modified, might highlight any residual unmet legal needs among existing clients (such as a lack of comprehension about what was going on or other legal problems that had not been raised). However it has limited application, for instance it cannot give information about unmet legal needs among those who are not clients. Nor can it approach the question of how much need the centre is failing to meet in non-casework areas such as law reform, education in legal rights, etc.

Keeping statistics is of course important and the Victorian centres have a useful statistical form that could be adopted for Tasmanian use. However such a form should be modified so that time spent on things other than casework can be recorded. It will be hard to quantify the more amorphous activities of education, law reform, etc.; however if this information is not kept as part of the normal data collection then there is a danger that only casework will be taken seriously and - even more dangerous - only casework will be required by funders.

Nevertheless it is important to know whether the centre is meeting a need in those areas that are quantifiable. It should be possible to devise an on-going survey of clients to find out:-

---

9 S. Bothmann and R. Gordon op.cit p.33-37.

10 Ibid pp.45-49.

(a) If they were satisfied with the action taken?

(b) If they understood what was done in their case?

(c) If they would like to have been more involved in the conduct of their case and how?

(d) If there are things about the law in general that they would like to learn more about, and in what areas?

(e) If there are laws or aspects of the legal system that they would like to see changed?

(f) If they would like to become involved in getting these laws changed?

(g) If there are things about the community legal service that they would like to see changed?

(h) If they would like to get involved in running the legal service?

(i) If they have other legal problems apart from the main one they came about?

(j) If there are people they know who have legal problems or who have problems with hire purchase contracts, landlords, etc., who haven't been getting help with their problems? How many do they know? Do they know why they haven't had any help?

It would also be possible to construct a survey of welfare and community groups, government agencies, legal aid agencies, etc., along the same lines. The Inner City Legal Service in Sydney has a short survey that could be adapted.

In this way the centre should be able to get an idea of how far it is meeting legal needs among two-thirds to three-quarters of actual and potential clients.

Question 3 - 8: Premises and Equipment

The main reason for the questionnaire was to find out what was usual or 'average' in centres on the mainland. On visiting the centres it was found that they were all so different in size, lay-out and accommodation that there was no real average.

However from a budgeting point of view it was useful to find out what other centres were spending on operating costs.

'Rent varied' so much, depending on size, location, council subsidy etc., that this information wasn't much use. Rents ranged from nil up to nearly $200 per week.

Other costs varied widely depending on size. Many of the centres had nil expenditure for all or some items because 6 of the centres were either part of a community centre that sponsored them or shared certain expenses or they had other sponsors such as councils or universities.

Of the 9 small centres who had the equivalent of 3 full-time staff or less, only 4 paid for their phones and the cost here ranged from $500 - $2,000. The average expenditure was $1,244. Of the 3 centres who paid for their own power the cost ranged from $80 to $1,000 with the average being $555. 6 centres paid for their own postage and this ranged from $350 - $1,000, the average cost being $720. Insurance costs were very low compared to what the Tasmanian centre will have to pay. 6 paid insurance and only 1, at $2,682, came close to what the Tasmanian centre is expecting to pay for indemnity insurance, practicing certificate, trust account insurance, workers compensation, volunteers insurance etc. Victoria has worked out a deal so that they pay quite minimum premiums for indemnity insurance at all centres. This is based on the low-risk type of cases they take (no workers compensation, conveyancing, trusts, wills, etc) and all centres have a stake in keeping claims to a minimum. The cost alone of indemnity insurance in Tasmania in mid - 1984 was $1,600.

5 centres paid for publicity materials including printing, photocopying etc, and costs ranged from $150 to $2,500 with an average cost of $840. This may seem high but in the initial year of setting up, printing letterheads, posters, etc. it is likely that the Tasmanian centre would want to spend at least that much.

Thus the average operating costs of small centres in August 1984 was $3,395, not including rent and insurance.

As at June 1984 the operating costs of the Tasmanian centre including rent and insurance should be $7,000 per annum. Estimates of costs would need to have a component built into them for inflation which, as generally agreed among the centres, would be in order of 15% p.a.

Questions 10 - 14: Funding

The problem with Question 10 is that at the time the questionnaire was composed it was not understood that the rest of the world (excluding Tasmania) had Legal Aid Commissions. There is no split up of funds between State government and Commonwealth Government in most other states so the information wasn't much good for comparing how much Tasmania is getting with how much those states are getting.

As far as control by funders goes, all centres were required to provide statistics and audited accounts and also provide an Annual Report if available. At 2 centres the State Government required representation on the Management Committee.

4 centres said their funding was sufficient though they tailored their activities to their funding rather than the other way round. 5 centres said their funding was not sufficient. 3 said nothing.

6 centres had abandoned programmes through insufficient funds. 4 said they hadn't, though in one case programmes were cut down in scope.

In 2 centres staff had to be put off through insufficient funding, though in both cases it seems that what that answer meant was that staff lost hours rather than losing their jobs. 8 centres had not had to put staff off though 1 commented that the centre's typist had not been paid for 2 months in order for the centre to keep going.

Of the respondents that answered the question on the sufficiency of funding 7 were from states with virtually dollar for dollar funding from State and Commonwealth and 3 from a state with no across-the-board state contribution. The answers broke down in the following way:- 6 of the centres from states with dollar-for-dollar funding had other sources of funding and 5 of these said their funding was sufficient.

- 1 centre received no funding from the Legal Aid Commission in its state and was wholly reliant on other sources. This centre said its funding was insufficient.
- 3 centres were from a state without joint State/Commonwealth funding but 1 of these centres did get State as well as Commonwealth funding. This centre said its funding was sufficient. The other 2 centres said their funding was insufficient.

The most usual source of other funding sources (cash or kind) was local government. It is clear that a happy funding situation comes from having a State as well as a Commonwealth commitment and that nirvana is found when local government chips in as well. The problem in Tasmania with local government is that the progressive service-orientated councils are located in areas of high need outside the central metropolitan area, but the lay-out of Hobart and the centralisation of the public transport system makes it difficult for people in one out-lying municipality to get to another. In other words if the centre was located in Glenorchy people in housing department areas on the Eastern Shore and in Kingborough would be disadvantaged. The likelihood of southern Tasmania ever having more than one centre is virtually nil so the centre would best be located in the most central area, in a municipality that is not particularly service orientated. The centre should seek

assistance from the Tasmanian State Government which presently makes no contribution at all to legal aid (the Law Society's Legal Aid scheme is paid for by the interest on solicitors' trust account funds).

Questions 15 - 17: Staffing

Staff numbers have proved difficult to calculate. About half the centres visited had workers funded by CEP. In some cases these have been included in staff numbers and in others they haven't.

There were also many part-time staff employed by mainland centres. One problem with employing part-time legal staff at the Tasmanian centre is that the pool of lawyers in Tasmania is small and there would be very few experienced lawyers looking solely for part-time work, and in fact very few unemployed and willing to undertake it even on an interim basis. It is more likely that applications would be received from lawyers self-employed in private practice seeking extra income. The centre needs a full commitment to its ideals and goals because it will be hard enough to get a community legal service going in Tasmania against the various conservative pressures. There would probably be conflicts associated with that commitment where a lawyer was continuing to do his/her own work within the legal mainstream.

As far as part-time office staff goes, the questionnaire was designed on the assumption that no-one would have any because they would all be employing people under CEP. At the time the questionnaire was being prepared there was a mad drive going on for Tasmania to spend all its CEP money before the end of the financial year. It seemed obvious to anyone who made the calculations that it was cheaper to put a down-payment on a CEP person than to employ someone part-time. However the questionnaire was designed over a year ago and at present there is a shortage of office workers eligible for the scheme.

In a post-CEP era it would be interesting to know the amount of hours that the average part-timer puts in at other centres. 5 centres gave the information gratuitously and of the 9 part-time staff thus covered the lowest number of hours was 8 and the highest 32 with an average of 22 hours.

Of the 13 centres for which information is available, there were 40 full-time staff and 16 part-time staff, a ratio of 5 full-time to 2 part-time. The occupation of 14 of the part-timers is known - 6 were lawyers, 1 was a community worker and 7 were administration staff.

The change in CEP guidelines will lead inevitably to considering the employment of part-time staff at the Tasmanian centre.

The centre should ideally attempt to acquire secure funding for a full-time office worker from CLAC and the State Government but in the event that it is unable to get a full salary, then it should employ a permanent part-timer rather than attempt to use CEP.

In the event of future funding allowing the centre to take on new staff and in the event that the positions created may be suitable for part-time staffing the centre may wish to employ part-time lawyers. However part-time legal work should only be offered to lawyers where the work done for the centre is the only professional legal work being undertaken by that person.

1984 was the first year everyone in Victoria got on to a living wage. Before that centres had paid what they could, and that was very little. South Australia was still holding the record for the lowest wages, ranging from $12,000 to $16,000, but they were all expecting increases. The norm was $19,000 per annum in Victoria which was paid to all staff, though some were on higher wages because of formal links with universities. In NSW there was a move towards the Victorian model although Redfern ran its own graded salary system.

The Tasmanian centre should consider adopting a philosophical commitment to parity of wages for all staff in line with the Victorian model. The basis for this philosophy is that community legal centre staff should work as a team and not with a model that has a lawyer 'on top' with the lion's share of the salary money and 'lesser' staff being paid poorly in comparison.

Commitment to such a philosophy will not be easy. There is a built-in value system as regards the worth of different work. There is a strong tendency to denigrate certain types of work such as office work (perhaps because it is usually done by women). On the other hand the professional expects and is granted a great deal more money than office workers on the somewhat dubious assumption that a lawyer or social worker will add twice as much to the common weal as an office worker, without regard to their individual experience, attributes or ability.

The philosophy that Victoria advocates is that any centre should work as a team and no member of that team is more intrinsically worthy than another. All should therefore get paid the same.

Redfern runs its own salary structure. Instead of paying everyone equally, each is paid according to experience useful to the organisation. Thus as office worker and lawyer with equal experience of this kind

would be paid equally but an experience office worker would get paid more than an inexperienced lawyer and vice versa.

Redfern's model would be hard to operate in Tasmania because of the smallness of the centre and the difficulty in working out such a ratio when there is likely to be only 2 staff.

There are other problems with parity in Tasmania. The main one is the cost differential. If the centre pays a lawyer's wage of $20,000 in 1985 in line with Victorian centres, some people may see paying the same to an office worker as excessive. People who think this is a fair wage for professional 'expertise' often denigrate office work as requiring little skill. The disparity is enshrined within the award system. Quality office workers can be had for as low as $16,000 or even lower - $14,000 all-in for a competent adult clerk-typist, $10,000 all-in for an 18 year old junior.

As some point the centre may have to justify (to funders, committee members, etc) what might be seen by some as expensive philosophical tastes which are contrary to the duty to maximize funds. If for instance the centre manages to find $10,000 in funds for an office worker and with those funds seek to employ a part-timer it is sure to be asked why it doesn't employ a junior full-time for the same money. The answer seem obvious. It would have two full-time staff working together to develop a service which seeks to propagate the message that law is for the people and anyone can get involved in it. Meanwhile one of these staff is paid exactly twice as much as the other on the very reasoning of professional elitism that the centre is trying to negate in the community.

This is not to say that it will be 'over-paying' an office worker on a matter of principle. An experienced office worker can be just as productive as a lawyer and can be equally important in putting a positive image of the legal service across to the public.

Question 17 on the mix of staff was asked because the question was likely to arise whether the centre should employ a lawyer or a community worker where funds only permitted one of these and what level of secretarial support it should employ. It seems that for the immediate future staffing will consist of one full-time person and one part-time person. The question thus arises as to what 'mix' this staffing should be.

The experience of other centres that started with a similar basic model was that they took on a legal worker first and added other staff as funding permitted and as the work load dictated.

Several centres said the mix of staff was arrived at 'by accident' and a majority of these expressed regret that their staffing had grown in such an ad hoc way without thought as to what would be an ideal mix. 1 centre said it was currently trying to change the legal/community/officer worker ratio by redefining the duties of one of the positions to take it out of a strictly legal role into a more community-oriented position.

Questions 18 - 21: The Legal Advice Service

All but 1 of the centres opened 5 days a week. Hours for day-opening ranged from 32 to 45 with the average being 39 hours a week. All of the centres gave advice sessions at night:-

- 4 centres gave one session a week and the average time per week for these sessions was 2½ hours
- 4 centres gave two sessions a week averaging 4½ hours a week
- 2 centres gave three sessions a week averaging 7½ hours a week
- 2 opened every night and averaged 16¼ hours a week

On the basis of this information, each centre provided an average of 6 hours every week of free legal advice in the evening. The questionnaire failed to enquire how many centres provided legal advice sessions during the day. Redfern and Springvale both indicated that they did. Redfern ran 2 afternoons a week, Springvale 5 mornings a week.

5 centres offered the same service at night as they offered during the day. 7 offered different services at night. The differences included the following:-

- 2 centres had special nights for migrants and 1 of these had different nights for different languages.
- 1 centre was the opposite and only had translating services during the day.
- 2 centres only offered legal advice at night and during the day were involved in law reform, legal education, liaison with community groups, etc.
- 3 centres used their day staff to do follow-ups from referrals made to them by night staff.

Questions 19 and 20 are ambiguous in the way they are worded and the information should really be discarded. However there is other information available from Annual Reports etc. that makes it possible to make some guesses about the usability of the answers.

In Question 19 the information wanted was how many clients each centre saw in an average week, divided into day clients and night clients. However the question might be taken to mean this, or it may be taken to mean how many clients each centre saw on an average day (divided into day and night).

After some cross-checking the answers range as follows:- for day clients the range was from nil to 100 in an average week and for night clients from 2 to 80 in an average week. The 12 centres combined saw an average of 29 day clients in any week and an average of 31 night clients in any week.

A large proportion of these clients would be seen during free legal advice sessions (unfortunately the questionnaire didn't ask for a break-down between clients seen at these sessions and clients assisted at other times). These free legal advice sessions were in most cases run with the aid of volunteers. The number and extent of the sessions depended on the number of volunteer lawyers available to a centre. Question 20 showed that the number of volunteers varied from 80 to 1. The 11 centres who answered this question had a total of 217 lawyer volunteers between them, or an average of 20 each.

The number of volunteers who were not lawyers was not asked, again through ignorance of how mainland centres operate. Many centres had a substantial number of volunteers who were social or welfare workers, typists etc. and nearly all centres had a large input from law students during part of the year.

From the information given in Questions 18, 20 and 21, calculations have been attempted on the number of volunteers hours available to the 11 centres who gave information. The calculations are largely conjectural because Questions 20 and 21 do not collate, one refers to volunteer lawyers and the other to just volunteers. For some centres more detailed information on volunteers is available through annual reports. The results are the minimum amount of volunteer hours being worked, the actual amount might have been much higher where law students, etc., were counted in. It is estimated that 508 volunteers hours were worked at 11 centres during night time sessions each week. It is not possible to estimate the hours for day-time sessions in most cases and so volunteer hours during the day are not included. The amount for each centre ranged from nil to 175 hours per week. The average was 42 volunteer hours per centre.

That community legal centres rely heavily on volunteers is obvious. The imput by volunteers is not unique to the legal sphere - the Social Research Centre found in 1982 that 10% of the over-15 population was engaged in voluntary activity in some non-government welfare organisation in Australia. This makes volunteerism the largest single form of leisure activity and probably enables the whole "welfare" state to stay afloat.[11]

---

11 C. Chappell Volunteerism in Tasmania, Tasmanian Council of Social Services 1984.

What does concern some community legal centres though is that this situation is being entrenched and their funders virtually demand an input by volunteers. No doubt the government is enthusiastic about a service that taps a vein of altruism in the legal profession and enables it to get a cheap form of legal aid. But this is the result of lawyers turning up on cold winters nights after a hard day at the office on the assumption that it is the only way a need can be met. If governments insist on this participation in order for centres to get funding then it may be that the voluntary work by lawyers is being counter-productive in not forcing the governments to face up to their own responsibilities in legal aid.

A Tasmanian centre will certainly have to rely on volunteers, because of its slender day-time resources. Most of the centres visited had very organised systems of working for volunteers and many produced handbooks setting out these procedures. This is a difficult organisational area and one where lines of communication between all workers, paid and voluntary, needs to be carefully worked out at an early stage. A Tasmanian centre should give this the highest priority.

The centre should hold a forum at an early stage of all those involved or interested in being involved in voluntary work at the centre and work out:

(a) Appropriate methods of work for all participants

(b) Lines of communication between volunteers and between volunteers and day staff

(c) Information and training needs

Question 23: Staff Training

The training aspect is of importance when setting up a community legal centre because if the centre is to offer an alternative kind of legal service delivery then some of the practices it will want to see implemented may differ from those of the day time practices of volunteers.

The questionnaire therefore asked centres to comment on their own training activities.

8 centres said they gave staff training and 2 replied in the negative. Of the 8 who said they did, some meant that staff went to outside work-related seminars, etc. However quite a few did undertake training in their centres and the topics covered were:

- interviewing skills
- public speaking

- philosophy of the particular centre
- legal service procedures
- orientation day for volunteers
- induction for new staff
- seminars on various topics, including credit/debt and tenancy

These subjects cover the range that a Tasmanian centre would probably need. However because it is unlikely to be able to run more than a few, it must consider its priorities and then plan training accordingly.[12]

Questions 24 - 30: Eligibility of Clients

Questions 24 and 25 asked what eligibility criteria for clients the centres used when (a) giving legal assistance and (b) giving free legal advice.

3 centres had no eligibility criteria for the assistance of clients but these included 2 centres which did not do day-time casework and whose only casework was done at free legal advice sessions at night. For the others there were often 2 or 3 grounds of eligibility for legal assistance. In 7 centres residence was a factor, in 7 centres income was taken into account and 5 centres gave assistance depending on the problem area e.g. whether it had political/social significance, if it had potential for law reform or whether it was an outstanding case of injustice.

All but 1 centre gave free legal advice to all regardless of any eligibility criteria for further assistance.

Question 26 asked about clients that the centre would not help even if they were eligible for assistance. There were 8 centres who would refuse to assist certain categories of clients, 2 would not refuse to assist any eligible client and 1 which was flexible on the issue.

Question 27 asked if centres had the same or different eligibility criteria for assisting groups. 3 of the centres said they had the same and 7 said they had similar eligibility criteria. However many centres based their answers on the type of group rather than strict eligibility criteria. For instance community groups and issue groups were the only kinds of groups some centres would assist. Some answers indicate that it was the type of case for which assistance was sought which would determine whether the group received help.

---

12 Fitzroy ran a training course specifically for non-lawyers to emphasize their role and to get them to act as a corrective to bad habits learned by lawyers in private practice and carried into the CLCs. See D. Neal "A 'national' movement" 1983 8 Legal Service Bulletin 4 p.180.

These answers were similar to those given to Questions 28 and 29 which related to the membership of groups. 7 centres said they would assist groups with some non-poor members and 4 said they would sometimes assist them. 4 centres said they would assist groups with mainly non-poor members, 2 said they would not assist such groups and 5 said they would sometimes assist. However many of the centres stressed the same provisos existed for these groups as were set out in the answers to Question 27 and that it was the nature of the group or the nature of the legal problem which would determine whether the group received assistance. Some centres would assist such groups as resident action groups and civil liberties groups even if they were comprised of non-poor members.

Question 30 asked about who exercised discretion with regard to eligibility. For 6 centres it was generally left up to the worker who interviewed the client. In 3 cases the management committee, board or general members might be required to exercise this discretion.

As far as client eligibility for a Tasmanian centre, Southern Tasmania or the greater Hobart area are the only real choices for residential requirement. The paid lawyer of the centre could concentrate at first on those areas of law mainly affecting low-income earners. However eligibility may need to also be introduced on the basis of income as the centre will not wish to use up scarce resources giving legal assistance in such areas when the recipient can afford to go elsewhere. Also it may need to exclude some types of clients. It may not wish to help landlords or to be involved in collecting debts as a general rule, though this must be flexible so as to allow members of the target groups who are genuinely in need of assistance to receive help.

As far as groups are concerned, the practice of other centres seems appropriate for the Tasmanian centre. Community groups and issue groups should receive help within the constraints of time and resources of the centre and the resources of the group involved. The centre may also wish to help with certain types of issues even where the members of the group who will benefit may not be low-income earners (resident action groups, handicapped-child parents association, etc.)

As regards the discretion to make decisions about eligibility, a general eligibility criteria should be arrived at fixing the income group and the type of case where assistance can be given but staff should be given discretion to go outside such guidelines where the justice of the case demands it. The management committee should be the final arbiter as to whether cases should be assisted and difficult decisions should be referred to it.

Questions 31 - 35: Client Referrals

Question 31 asked what percentage of clients were referred from other agencies. Of the 8 centres that had figures, the answers ranged from 28% to 70%. The average was a referral rate from other agencies of 42%.

3 of the centres have annual reports which refine the referral process and 1 of the questionnaire respondents also broke down the referrals into sources. The 2 main sources of referrals are (a) community and government agencies and (b) legal agencies. The 4 centres had an average of 28% of clients referred from community and government agencies and an average of 14% of their clients were referred from the legal profession and legal agencies. However the vast majority of clients did not come from agency referrals but had either been to the centre before or had found out about it through friends, relatives or miscellaneous sources of information.

Question 33 asked about referrals out of the centre to other agencies. Of the 7 centres that gave a figure for the percentage of clients they referred out, there was a range of 8% to 35% with an average of 28% of the total number of their clients being referred out to other agencies. From the annual reports it is possible to see that the majority of these were to other legal agencies and private lawyers.

From the figures available in the reports it is obvious that the centres refer a great many more clients to private lawyers than are referred to them from that source. The claim made by some legal associations that centres are taking business away from private lawyers is therefore a nonsense; in fact in most cases centres are increasing business for private lawyers as they are referring people who have not previously gone to a lawyer.

The statistics sheet used by Victorian community legal centres has a section on previous contact with lawyers and this could usefully be incorporated into the Tasmanian centre's statistics. This along with referrals out will allow the Tasmanian centre to show that it is catering to an unmet legal need and not taking clients that would otherwise have gone to private lawyers. The statistics required might be in the following form:-

Previous contact with lawyers in the last 5 years

- with a private lawyer
- with ALAO

- with any organisation offering legal assistance e.g. Debt Help, Tenants Union, etc.
- with a community legal centre.

Question 34 asked what percentage of clients were eligible for legal aid. The 7 centres that answered had, on average, 50% of their clients eligible for legal aid.

Question 35 asked if those who were eligible for legal aid were automatically referred on to Legal Aid Offices or private lawyers. 8 of the 10 centres that answered this, said there was no automatic referral. However not all the people who were eligible for legal aid in terms of a means test would be eligible for aid in terms of the merit of the case or the guidelines of the legal aid scheme. Some centres associated with Universities had a teaching role and these referred very few clients on but most centres did not duplicate where possible. Some said they almost always referred on the clients when they were eligible for aid. Most were unable to give percentage figures of clients referred on. Of the 3 that did, the average referral out for those eligible for legal aid was 47%, but in view of the comments of those who did not give figures this is probably too low. The Tasmanian centre would probably neither want to, nor have the resources to, duplicate services available elsewhere and the only clients not referred on might have problems in an area of law where the centre had built up special expertise or whose case would have a test case or law reform element.

Question 36 -39: Limits on Legal Services

Question 36 asked what sorts of cases the centres did not handle. There were 3 main areas of law where a majority of the centres did not provide assistance. Nearly all said they did not assist with property or commercial cases. This presumable resulted from the philosophy of the centres which was to provide services to low income groups.

Also high on the list of other matters not handled were personal injury and workers compensation. Probably a high proportion of the clients with such problems would have been low income earners, however it was also a high risk area for indemnity insurance. The Victorian centres had a group insurance scheme and got cheap cover (only $210 a centre) covering advice from legal and non-legally trained personnel. It was one policy that all centres bought into. If a claim was made then all centres experienced a rise in premiums. As a result the centres did not undertake workers compensation or personal injury because they were too risky and there was pressure on them to cut down on other high risk areas while still providing worthwhile services to low-income groups.

Another area of assistance that was not given in half the centres was assistance with protracted family matters such as custody and maintenance. This was probably because of the problems of resourcing this time-consuming area. However some of the centres ran self-help Divorce Classes for those seeking a simple dissolution.

Once the Tasmanian centre has decided what areas of law it will cover and which it will not cover, then it must ensure that all staff and volunteers are aware of the areas not to be covered.

Question 37 asked if centres represented clients in court and 11 centres did, 1 didn't. The percentage that got that far (Question 38) would be small. The 6 that provided figures had a percentage of cases reaching court ranging from 5% to 30% with an average of 12%. This may be on the high side as some centres didn't have figures but wrote 'small' for this question. 6 of the 8 centres that replied to Question 39 did have eligibility criteria for taking cases to court and the other 2 didn't. Eligibility criteria fell into 3 groups:-

(a) where the case was urgent e.g. domestic violence,

(b) where no legal aid assistance was available elsewhere,

(c) where the case was of a particular type e.g. involving clients the centre had a special interest in or cases in which the centre had particular expertise or where the case had a test case or law reform element.

A Tasmanian centre would want to have the capacity to represent clients in court but because it will have slender resources it may only be able to do court work in very restricted areas of the law. It would probably be more productive to have its staff engage in running self-help classes for those that wish to represent themselves in court (like those run by the Legal Aid Commission of Victoria) or to have the centre engage in mediation work for bringing about dispute settlement (like that being carried out in South Australia).

Questions 40 - 41: Client Involvement in the Centre

Question 40 asked if clients were encouraged to become involved in the Centre. 3 said yes unequivocally. 3 said they were not actively encouraged, and 2 said yes, they were encouraged to attend the Annual General Meeting. All the other questionnaires left this blank.

The author's orientation is towards a participatory model and the recommendations made on a management structure for the centre reflect this. The Tasmanian centre will have to decide whether it wants a participatory model. If it does then a philosophic commitment to such a model is not enough; the centre must

find active ways to encourage its clients to become involved and it must solicit their help not only in volunteer activities but in the actual running of the centre.

For Question 41, the 9 centres who answered this all said they encouraged clients to be involved in their own cases.

Question 42 - 44: Law Society

Questions 42 asked if centres required permission from their Law Society to advertise. All said no although some added the rider 'If we do we ignore it'.

A problem arose at the outset in setting up a community legal centre in Tasmania; people involved in the project were told by the Law Society that it was unlikely the Centre could publicize itself because it would be in breach of s2 of the Legal Practitioners Practice Statutory Rules which prohibits legal practitioners directly or indirectly applying for or seeking instructions for professional business or doing anything that could be reasonably regarded as touting, advertising or calculated to attract business unfairly.

In the context of the legislation all of these prohibited activities appear to be orientated to a situation where money changes hands. Both 'touting' and 'business' have dictionary definitions which include the notion of buying and selling. The only problem lies in whether s.2 also includes a prohibition on advertising per se and whether posters, pamphlets, newspaper reports on the existence of the centre will constitute 'advertising'. Advertising in this context also seems to have a commercial aspect and as such the section would not prohibit the information dissemination activities of the centre.

Question 44 asked if centres had any other problems with Law Societies. One problem that affected 2 centres (from different states) was a problem with recognizing legal centre experience for practising certificate purposes. Other problems related to Law Societies having representatives on Management Committees or trying to get representatives on Management Committees.

Questions 45-53: Activities of the Centre

Question 45 asked for the percentage of time spent by legal staff in various specified areas. In designing the questionnaire the author wrongly believed that all the areas listed, including community education and group work, would be done by the legal staff. It was also not realized that legal staff would be

involved in administration, that non-legal staff would be involved in the various specified areas and that often different staff covered different specified areas so some centres had to give the work loads for their various staff members. Some distributions of time did not add up to 100% (one said this was because case work and community education were often integrated e.g. it used casework to determine where the community education need was).

Despite all these problems the answers give some insight into the work distribution of the centres. 12 centres replied, some of which had more than 1 lawyer and others had no legal staff. Of the 12, 3 just indicated that most of their legal staff's time was spent on casework. Of the 9 who provided figures, the break up of time spent of casework ranged from nil to 98% with an average being 58%. For community education, the range was from 2% to 60% with an average of 34% of time spent on this area. 6 replies for group work ranged from 5% to 20% with an average of 12% of time spent on this. 5 replies for law reform ranged from 5% to 30% with an average of 15% of time. Test cases were only mentioned 3 times, with answers ranging from 2% to 5% with an average of 3%.

2 replies mentioned administration and the average time spent was 30%. The category seems valid although that percentage seems too high if a management committee is working well and there is office support.

Reducing the figures obtained down to 100% the following break-up of legal staff's time was obtained:-

48% casework

29% community education

9% group work

12% law reform

2% test cases

Rounded off, this gives 50% of time on casework, 30% on community education and 20% on other work. How the Tasmanian centre divides its lawyer's time is a policy question. All the mainland centres testified how easy it was to be overrun with case work and the Tasmanian centre is going to have to decide how to avoid this and what proportion of time should ideally be spent on casework. As suggested already, it may be possible to hold back casework by restricting the kind of cases the centre will assist with. The centre

should not start off by trying to fit other work into the space left after casework is taken care of but instead adopt a planned approach to the whole area.

In Question 46 asked centres to divide up their casework into what the author thought would be the main areas dealt with. A number of major areas were missed out such as motor vehicle accident and property damage, traffic offences, immigration, etc. Not all centres were able to supply the information and for some it was a rough estimate. The answers are given as average percentage of casework time and the main areas of law covered are as follows:

Family	20% - 8 replies ranging from nil to 50%
Consumer	15% - 7 replies ranging from 2% to 50%
Tenancy	9% - 7 replies ranging from 5% to 20%
Work related	8% - 8 replies ranging from nil to 15%
Social Security	7% - 6 replies ranging from 1% to 20%
* Criminal	22% - 8 replies ranging from 2% to 60%

* For 'Criminal' some centres had added traffic, some hadn't.

These areas only account for 81% of casework time on average, the other 19% being areas of law not listed.

The object of getting a split-up of casework was in order to find out how community legal centres compared with the ALAO in terms of the sort of casework both were involved with - so that a Tasmanian centre could combat any argument that it was doing the same as the ALAO. Unfortunately the ALAO in Hobart keeps no information of this kind and in any case to compare mainland states, which may have different criteria for legal aid, to Tasmania is not a valid exercise. It is clear from Question 35 that there would be some overlap in mainland states between Legal Aid Commissions and community legal centres. However people at the centres visited gave the impression that this was not thought to be a problem, either by the centres or their funders. There was a feeling that there was more than enough casework need (the bottomless pit syndrome) to overwork everybody providing such a service. Also some centres believed that even when doing similar casework they were providing either a different kind of service or a more specialised service than legal aid agencies or aid-paid private lawyers.

Question 47 asked centres to divide their community education into public contact work with regard to legal rights and time preparing written work on the same subject. It was thought this would be the two main areas into which the Tasmanian centre's educational activities would fall. Only 5 centres gave replies to this and 1 of these answered nil to both sections but this is not surprising in terms of the small amount of time (if any) that centres gave to this activity as shown in Question 45. Of the 4 centres that gave positive replies to Question 47, between 20% to 80% of the time was spent on public contact work giving an average of 62% of the total time. Between 10% to 60% was spent on preparing written material, with an average time of 30%. The totals do not add up to 100% as the options given do not cover the field.

Public contact work is a good way of increasing awareness about legal rights but the centre should be careful not to spend too much of it giving talks to schools. Often these talks are for the wrong kids listening for the wrong reasons and the information could be better delivered in written form to the more literate, more 'advantaged' kids. Written material of this kind would often be a better way of expending the small amount of time available so that more was left for talking to disadvantaged people.

Question 48 asked centres how many groups they regularly assisted. The question was aimed at discovering how many community groups they assisted but the range of involvements of some mainland centres goes beyond community groups. Those that queried the meaning of 'group' generally did so because they were involved with many entities such as law reform committees, task forces, etc. 1 centre answered 'thousands'; however of the 7 that answered with figures the answers ranged from 2 to 35. The 7 centres regularly assisted 100 groups between them, that is an average of 14 groups per centre.

Question 50 asked if centres involved themselves in setting up groups. The reason this question was asked was because of a discussion, in Garth's book on neighbourhood law firms, on the boundaries between the legal and the political.[13] There is a feeling that legal activities do not include becoming actively involved with causes or groups - involvement is a political activity, and compromises a lawyer's independence. This artificial separation has led to a situation where "poverty attorneys ... have constituted the highest paid, best educated, least effective organisational force in history".[14]

---

13 B. Garth op.cit p.130.

14 E. Johnson Jnr. Justice and Reform: The Formative Years of the OEO Legal Service Program Russell Sage Foundation New York 1974 p.130.

The taboo on involvement, if there is one, does not appear to apply to community legal centres and of the 10 that answered this question 9 said that they involved themselves in the organisation of groups where none existed before. As Garth points out, the way neighbourhood law firms are set up and funded makes them political institutions regardless of what they do and any "political" work done by them is also in a real sense "legal" if it is an appropriate activity to make legal rights effective.[15]

However as Garth also points out, "political" activity is not necessarily radical but may have a conservative effect. The organising of status groups, e.g. pensioners, for the purposes of legal change can also serve to "discipline their members and create integrative symbols".[16] Some commentators believe it is only by disruptive protest that the poor influence politics[17] whereas a group strategy inhibits some forms of mass protest by diverting it into more regular channels. However this is true only if poor people have individual access to information about the injustice of laws relating to their situation and are likely to protest. Often the only way to achieve legal headway is through activity from an organisation set up to assert the rights of a particular group of people e.g. tenants, who may have nothing else in common except their status as tenants.

Questions 51 and 52 asked about the law reform activities of individual centres but it was found that centres often integrated their activities in each state, so the same areas were being mentioned. The areas covered were very wide but could be grouped into three main areas:- reform of welfare law, reform of the legal system and reform of legal institutions.

Question 53 asked about test cases. 6 centres said they had undertaken 10 test cases. Of these 4 were successful, 2 unsuccessful and 4 were still running.

Test cases are not as effective a means of changing the law as they are in America. Some of the test cases that have been won in the US Supreme Court have changed the fabric of American society.[18] Australia does not have a Bill of Rights nor does it allow class action cases so the test cases that are fought affect only

---

15 B. Garth op.cit p.192.

16 Ibid p.192.

17 F. Piven and R. Cloward Poor People's Movements: Why they succeed, How they Fail Pantheon New York 1977 p.37.

18 Eg. Brown v Board of Education 347 US483 (1954) which stopped school segregation.

individuals. The case of Karen Green is a case in point;[19] it resulted only in a reassessment of Karen Green's application for social security benefit. Other school leavers who wanted a reassessment would have had to have taken their cases to the High Court. The problems associated with test cases are (a) that they can be very time consuming and (b) that legal aid agencies have to be persuaded that they are worth fighting (not from the point of view of whether they contain injustices but whether they are 'winnable'). However the winning of such cases by otherwise powerless people can have positive social effects whatever the real legal effect may be.

Questions 53-54: Relationships with private lawyers

8 centres said they had good relationships with private lawyers in their area though 2 said only with some. 1 had poor relationships and 2 said their relationships were neither good nor poor.

Question 55 asked if there was any cross referral and 10 centres said there was but some commented that it was nearly all one way - from the centre to the private lawyers. 1 centre provided figures of a 1% referral of clients from private lawyers and a 25% referral to private lawyers. 1 centre did not cross refer.

Constitution and Management

During the visit to mainland centre the author asked a lot of questions about the management set-up of each centre and information about some aspects dealt with by the questionnaire thus became available from 3 centres that did not return a questionnaire.

Question 9, which is relocated in this section, asked about incorporation

7 were incorporated

3 were about to become incorporated

1 was part of a community centre that was incorporated

1 was a co-operative

1 was a private practice

2 were not incorporated or anything else.

Question 57 asked if the Constitution required the centre to have a Management Committee. 11 had constitutions requiring management committees of one sort or another. 2 had constitutions which gave

---

19 Green v Daniels (1977) 13 ALR 1. See also P. Hanks op.cit p.26-32.

official power to a board of directors who then devolved power to a management committee. 1 was part of a community centre whose constitution required a management committee for the whole centre. 1 was run by a law faculty which was supposed to take notice of an Advisory Committee but didn't.

Questions 58 - 60: Members of the Management Committee

In 9 centres members of the management committees were elected. In 3 centres they were not elected and in 1 centre some were elected and some were not.

In those centres where members were not wholly elected to the management committee, 1 had a management committee open to all, 1 was made up of members appointed by local community organisations and by appointments made by those already on the committee and 1 was open to all those with a commitment to the centre. 1 had a committee made up partly of those who were elected as its Annual General Meeting and partly by those who were invited on to the committee because of their expertise, status, etc.

In those centres where members of the committee were wholly elected, 7 had members who were elected at general meetings, in 1 members were elected by residents of the community centre and in 1 they were elected by community representatives etc.

Question 59 asked about quotas for various groups to be represented on the management committee. In 5 centres there was a quota for various groups to be represented on the committee and in 7 centres that was not the case. Where there was this quota, 3 had fixed positions for representatives from various groups, 1 specified that there could not be more than 2 lawyers and required there must be representatives from clients and a representative of the staff and 1 centre restricted the number of paid staff that could be on the committee.

Centres were asked why this quota system was used and were given suggestions such as to bring about community control etc. 4 took up the suggestion of community control and 2 of these also added the need to preserve legal independence. The fifth stated boldly that the mix was to prevent worker control.

Those centres which did not have quotas for their management committee were asked to give an indication of the occupations of those who were elected to the committee. The 7 centres listed between them 39 people or groups and their occupations. Of these 4 were from potential client groups, 11 were from welfare

or other professions and 24 were legal workers, either named singly or as a plural entity. It is possible to conclude that management committees without quotas tend to naturally gravitate towards a preponderance of legal workers and for that reason the Tasmanian centre might wish to introduce a quota system so that there is more of a balanced range of interests on its management committee.

Questions 61 - 62: Requirements of the Constitution

Only 1 centre had a sponsor (local government) who required as a condition of funding that there be a representative on the management committee. The question was asked because during initial discussions about possible assistance from the Glenorchy City Council, the City Manager thought that the council would require a representative on the committee. It seemed to follow logically that if all the other possible funders felt the same e.g. Commonwealth Government, State Government, Law Foundation, etc. then the centre could easily be swamped by 'institutionals' and the direction of the centre might take an entirely different direction to the one envisaged.

Questions 63 - 67: Committee Meetings

Question 63 asked how often the committee met. All of the centres had management committees that met monthly. 1 centre indicated that it might meet more frequently.

Question 64 asked if staff could attend. In every centre staff could attend but in some cases this was only theoretically the case as they would have to have been elected like other members. In 2 centres they were required to attend.

As far as voting goes, in 6 centres staff could vote on policy issues, in 2 centres a staff representative could vote and in 4 centres staff could not vote.

Question 65 asked what percentage of committee time was taken up with various matters. There were 8 replies.

Policy Matters - range from 20% to 50% with an average of 35% of time

Day to day Administration - range from 20% to 80% with an average of 45% of time

Fund raising and other - range from 5% to 40% with an average of 20%.

Question 66 asked about hiring and firing. 2 centres had selection committees. In 8 cases the management committee or board would be responsible and in 1 case it was either the board or the university depending on which position was in question.

Question 67 asked about other committees. 9 centres had other committees, 3 didn't. Apart from committees dealing with particular issues, the ones most often mentioned were staff meetings and finance committees.

Question 68: Policy

Question 68 asked about the centre's policy and gave examples (e.g. get away from casework and concentrate of community legal education etc., concentrate of casework until all the need is met, try to do both, try to do both with different sets of staff).

Most centres gave an answer that nominated more than one objective or policy, and the answer depended a great deal on the resources of the centre. The objective of 2 centres was to get away from a total casework commitment without eliminating it and to be able to concentrate on other thinks as well (though changing directions was seen to be a problem for one centre). 4 centres were trying to do both casework and other areas such as legal education though some centres saw casework and community work as overlapping. 3 centres were trying to do both casework and community legal education with different sets of staff. 2 centres were mainly committed to casework.

* See Appendix A.

CHAPTER FIVE

SUMMARY OF RECOMMENDATIONS

The philosophy on which a future Tasmanian CLC is based will be of great importance. Without a commitment to legal education, law reform and the provision of an alternative form of legal service delivery, a CLC could be merely duplicating what is already available. The direction of legal education and law reform will depend to some extent on the expressed wishes and perceived needs among the community once the service is running.

However there are practical procedures that a CLC can inaugurate from the start that will ensure that the form of its legal service delivery provides an alternative to that offered by, say, the ALAO.

The following practical recommendations are a summary of recommendations included in Chapter 4 and are based on experiences of mainland CLCs.

1. Premises however cheap should if possible look as pleasant and inviting as possible and not be crowded out with filing cabinets and similar evidence of moribund casework. Staff should wear casual clothes and there should be a general air of informality. When interviewing, desks should not be used as barriers and consideration should be given to 'team' interviewing, with welfare workers being involved.

2. If resources allow, a survey of clients could be taken periodically to find out whether the centre is effectively meeting their needs. A parallel survey of referral agencies (once these have been ascertained) could be run to find out if their feed-back on the centre is positive or negative.

3. Staff numbers will depend on funding and constant pressure should be applied to the State Government to try to obtain a percentage of funding from them. If all that the centre can afford is part-time legal staff then care should be taken to ensure that other legal work done by that staff is not in conflict with the aims and values of the CLC. In addition the CLC should give consideration to the appropriate salary scale for workers and avoid giving greater financial emphasis to a lawyer over a co-ordinator or other office staff. The tenor of all these recommendations is that staff should work as a team and the lawyer would contribute skills that make up only part of what the CLC has to offer. The centre should also try to arrive at the ideal 'mix' of staff early on, i.e. the proportion of the budget allotted to lawyer hours, co-ordinator hours, office worker hours, rather than arrive at the mix by default. It may be that in the early stages the centre will find its needs

different in staffing terms to its needs later on. So a decision in principle at the beginning is necessary otherwise early staffing decisions can easily become entrenched.

4. The centre will run substantially on volunteer power. This will mean that thought must be given to volunteer training, instructional handbooks, lines of communication and so on. In addition specialist topics on particular aspects of the law which both staff and volunteers might be unfamiliar with (e.g. tenancy law, social security law etc.) might usefully be organised if resources allow.

5. Some thought will need to be given to eligibility of clients (for instance, whether a means test should be introduced) and the types of advice to be offered (i.e. whether the centre should give advice on property and business matters). These decisions perhaps will need to be made separately, first of all for the work that paid staff undertake and secondly regarding the areas of assistance given by volunteers in the advice sessions. These decisions can best be made by a management committee once the workload of the centre and the needs of the clients and community become evident.

6. A statistics sheet should be devised which provides the sort of information that could help a management committee in deciding questions such as the above. Referrals from and referral to other agencies should be included as well as personal and demographic details and the type of legal question involved.

7. Giving policy directions to staff will require important decisions at an early stage i.e. before the centre opens. Depending on resources, decisions will need to be made on case work, legal education, law reform etc. and how staff should be deployed over these areas. This is not a decision that can be taken further down the track as mainland experience has shown that left to itself a centre will rapidly become bogged down in casework. Decisions of this nature will need to be taken as soon as staff resources can be gauged.

8. Thought should be given as to the most effective way of running a legal education campaign. The centre should beware of the easy options such as giving talks to schools and should look for the most effective ways, given the resources available, of reaching that part of the community most in need of this information. One option might be resourcing community groups to educate their own members.

These are recommendations embodied within Chapter 4. Several of them refer to a management committee and the final part of this chapter gives some of the options for such a committee based on the

experiences of mainland centres and also offers a recommendation, not specifically for one of the options but rather for the kind of spirit in which this and all other decisions should be taken for the setting up of a Tasmanian CLC.

Options for a CLC Management Committee

Before deciding on a structure it is first necessary to decide what priorities the community legal centre should have i.e. whether the centre should lay most stress on the 'community' part or on the 'legal'. If it is to be legal service first and foremost with the'community' only denoting the watershed of its clients, then the structure need not extend to include any community input at all but should rather include the widest cross-section of legal interests. If on the other hand the centre is going to be mainly a community service with 'legal' denoting the type of service it is engaged in, then the opposite is the case and it is a wide range of people from the community rather than a wide range of people from the legal profession who should be the guiding force.

On visits to other community legal centres the author noticed that although the structure of each centre tended to be similar and to be based on Fitzroy's original model, in actual fact how each centre interpreted that model has led to several different styles of management.

There seems to be 5 main types of management structure.

(a) Community Control

This model is the original Fitzroy ideal with hundreds attending meetings and input from all sections of the community. The structure that eventually took constitutional form is one where a general meeting is held quarterly and there are two groups that meet more frequently - an implementation group concerned with policy and a management group.

Only members can participate at the general meeting but anyone can become a member and the membership fee is very low ($2 per annum). Participation in the two groups is fluid and there is no strict idea of election to the groups.

This model is far removed from two of the other models; the worker-controlled model (which is very prevalent among centres) and the executive committee model (which is not so prevalent). The advantages of

a community-controlled model are firstly that it is the most democratic form of control and secondly that a great range of people may be involved and its organisational structure is likely to reflect the diverse aims of those people by being more flexible and less conventional.

The main disadvantage to this model relates to the fact that at the time Fitzroy was visited it appeared to be on the point of breaking down. Staff were resigning and among those that remained the morale was low. The problem seemed to revolve around a lack of day-to-day management which meant that there was no-one to whom the workers could turn for endorsement of decisions and as a result those decisions were often overturned or disapproved of at management group meetings. There was a feeling among some staff that a traditional structure would be better with Annual General Meetings and someone in day-to-day control making decisions on such things as statements to the press, beyond budget expenditures, etc. There was a feeling among the staff that the function of the organisation was not well understood by all the members.

It is easy to see that the executive committee model, which is probably on the extreme right of a spectrum of democratic control would be seductive to those who are working within a less-ordered system on the extreme left.

However Fitzroy has always been experimental and up to now has flourished so this is not a model that should be rejected by the Tasmanian centre because of current difficulties.

(b) Worker Control

Other centres have a Fitzroy type approach to the running of their centre but instead of the excitement of all-in community verbal wrestling most of these centres had evolved a much cosier system.

Getting people to participate is not easy, it has to be worked at. Places like Fitzroy were lucky perhaps in that they put down their roots in the 'age of commitment'. Newer centres don't have that tradition of involvement and have to work harder at getting participation. What happens in most centres is that this effort is not made and the centre becomes, by default, worker controlled (worker meaning both paid staff and volunteers). This is generally not intended but by failing to advertise their meetings widely, by failing to exhort each individual client and each local community group to join in, worker control is almost inevitable. Thus two exactly opposite effects can be achieved under the same sort of constitutional form; one culminating in worker control and the other doing everything possible to nullify the worker as a participant. So it can be seen that

the difference in a centre's management is not in its constitution but in the policy it adopts towards its role of management.

The advantage of the worker-controlled model is that staff morale tends to be high because the centres are virtually self-run. The disadvantage of having such a narrow base of involvement is that these centres tend to concentrate on legal needs on an individual (case-work) basis without any broader view of the overall legal needs of the community.

(c) Executive Committee

This model is wide spread in community groups generally. There is an Annual General Meeting at which an executive is elected. From then on the executive runs the show. This model reflects the current political system - once people have voted that's it, that's the limit of their participation. If they made a mistake, if they don't like what their elected representatives do, that's tough. They will know to use their vote differently next time round.

The advantage of this model is that, if the general membership is not really committed to the project, this is a great way to get someone else to do all the work. It has the other advantage that everyone knows who the bosses are and if things are going well there should be a strong sense of direction and management.

However for people who want to get involved in a project this is the worst model in the world.

For a start it is only democratic, not participatory. It prevents the person who comes in off the street once a year for an Annual General Meeting from really participating. These kind of people don't get elected if they don't have the 'numbers' or they are not known among the circle of people who are currently running the show. This is a model that allows power cliques to grow and flourish because of the difficulties outsiders have in breaking into the inner circle against the weight of present incumbents who are both 'known' and have the 'numbers'. The rituals associated with this marginal democratic process can be alienating also. Meeting procedures may be incomprehensible to the uninitiated and reinforce the powerlessness of the person off the street because those who understand how meeting procedures work are usually those who end up running meetings.

(d) Community Group Representatives

Many of the mainland centres are associated with or located in a larger community group and their management committees are already made up of representative from these other groups.

Another way control by community group representatives has come about is where centres have made a conscious attempt to get community groups involved in a centre by encouraging or inviting representatives to become associated with the centre or by fixing quotas on a management committee for such groups.

The actual structure of management will take one of the constitutional forms already mentioned. However an executive committee does not become more participatory because it has community representatives on it. Nor does a centre become community controlled where, instead of just workers from the legal centre, it also has workers from an associated community group involved in its management. Having community group representatives involved is a good thing but it is only partly the answer. Some of these representatives are for instance social or welfare workers, who are employed by such groups but who are not necessarily characteristic of the membership they present. There should be a capacity in the centre to involve individuals who are not connected with any group. These sorts of people will represent most of the clients of a centre and may be truer representatives of a client community than group representatives. These people should be encouraged to get involved if the management model is to be both participatory and representative of the whole community.

(e) Two-tiered Structure

This model is used by a couple of the centres visited. Basically, at an administrative level it can have any of the above models but above that there is superimposed a 'Big Guns' committee made up of social luminaries (bishops, judges, etc.) whose sole function is to look good when confronting funders and to instil respect for the responsibility with which they intend to handle the money.

The advantage is that one has all the benefit of big names without any of the interference. All of the 'real' management is constitutionally devolved to a lower level which gets on with the job of spending the money thus raised.

There are certainly advantages in having a separate finance committee dedicated to the art of raising money. Too often this gets left to the paid worker so that the money raised is spent trying to raise the next lot.

There are also advantages in inviting onto a finance committee people with solid reputations for financial management.

The two-tiered structure may be impressive to funders as it gives the impression of power resting in the Big Name tier; however it seems a rather artificial construct and a management system with a separate finance committee could work just as well.

The Tasmanian Management Model

The Tasmanian centre may adopt one of the above management models or it may evolve its own model, possibly an amalgam of the above examples. Ideally it should be based on a participatory system, but there are many people who believe that a participatory management model won't work - its hard to get people involved and nothing gets done unless there is an executive. Whether this is true or not, if any of the management models are to work then there has to be a commitment and willingness of members to work together and the centre should spend as much time as possible at the beginning setting up the kind of management environment where the spirit of compromise can flourish. The Tasmanian model should be based on a shared desire by participants to run, in a harmonious and democratic way, a community legal service for the benefit of low-income earners and the structure of its management committee should be designed to give maximum expression to that goal.

BIBLIOGRAPHY

CHAPTER ONE

1. D Neal. "A 'national' movement" 1983 8 Legal Service Bulletin p.180.

2. For a broad overview of the history and current status of CLCs in Australia see D Neal (Ed) On Tap Not on Top Legal Service Bulletin 1984.

3. E Johnson Jnr. Justice and Reform: The Formative Years of the OEO Legal Service Program Russell Sage Foundation New York 1974 p 119.

4. ibid p.119.

5. D Neal "Ten Years After" in On Tap Not on Top op. cit p.7.

6. F Henderson (Chairman) Poverty in Australia, Australian Government Printing Service, Canberra, 1975.

7. T Purcell "Legal Aid and Community Need" 1977 51 A.L.J. p.621.

8. R Tomasic Australian Legal Aid Law Foundation of N.S.W. Sydney 1975 p 46.

9. Senate Weekly Hansard No 26 1973 p. 2800-2803.

10. ibid

11. ibid

12. P Hanks Evaluating the Effectiveness of Legal Aid Programs Commonwealth Legal Aid Council Canberra 1980 p 35.

13. Reported in 1984 June Legal Service Bulletin p 152.

14. M Cass and T S Western Legal Aid and Legal Need Commonwealth Legal Aid Council Canberra 1980 p 6.

15. D Neal "Interviews" On Tap Not on Top op.cit p 54.

16. D Neal "A 'national' movement" op cit p 179.

17. D Neal "The 1.6% Solution" 1984 Vol 9 Legal Service Bulletin No 4 p 169.

18. D Neal "A 'national' movement" op cit p 179.

19. State funds in those states that give substantial funds to CLCs still follow federal initiatives, giving dollar-for-dollar or a percentage of what the Commonwealth Government gives.

20. J Gardner "The Relationship between Research and Legal Aid Policy Making" in P. Cashman (Ed.) Research and Delivery of Legal Service Law Foundation of N.S.W. Sydney p 82. See also P Hanks op cit p 26-32.

CHAPTER TWO

1. M Gallanter "Why the 'Haves' Come Out Ahead" 1974 Law and Society Review 9 pp 97-8.

2. M Cass and T S Western Legal Aid and Legal Need Commonwealth Legal Aid Council Canberra 1980 p 54.

3. M Gallanter op cit p 122.

4. W Burger "The State and the Judiciary" 1970 56 ABA Journal 929 p 931.

5. D J Black "The Mobilization of the Law" 1973 2 Journal of Legal Studies 125 p 141.

6. M Foley "Nice Points and Barefoot Clients" in B Boer (Ed) Community Legal Education Commonwealth Legal Aid Council Canberra 1980 p 161.

7. B. Garth Neighbourhood Law Firms for the Poor Sighoff & Noordhoff Alpen aan den Rijn 1980 p xix.

8. F R Marks "Some Research Perspectives for Looking at Legal Need and Legal Delivery Systems" in Brickman and Lenpert (Eds) The Role of Research in the Delivery of Legal Services Washington Resource Centre for Consumers of Legal Services Washington 1976 p 4.

9. A Nicoll "The Benefits that Flow for a Better Informed Community" in B Boer (Ed) op cit p 110.

10. Redfern Legal Centre Newsletter October 1984.

11. F Kafka "Before the Law' in N Glatzer (Ed) The Complete Stories Schocken Books New York 1946 p 3.

12. See Chapter three.

13. L Newbury and M Martin An Evaluation of the Duty Counsel Scheme W.A. Department of Correction, 1985.

14. P Hanks Evaluating the Effectiveness of Legal Aid Programs Commonwealth Legal Aid Council Canberra 1980 p.16.

15. W Bacon and R Lansdowne in P Cashman (Ed) Research and the Delivery of Legal Services Law Foundation of N.S.W. Sydney 1981 p 206.

16. K Ross "Welfare Delivery without Lawyers" 1976-7 Legal Service Bulletin p 385.

17. N. Williams "Court Procedures: In Whose Interest?" in Help Yourself to Justice Legal Service Bulletin Co-operative 1983 p 27.

18. ibid p 23.

19. P Hanks "Improved Access to Law - Without Lawyers" in J Goldring (Ed) Access to Law ANU Press Canberra 1980 p 273.

CHAPTER THREE

1. F Marks "Some Research Perspectives for looking at Legal Need and Legal Delivery Systems" in Brickman and Lenpert (Eds) The Role of Research in the Delivery of Legal Services Washington Resource Centre for Consumers of Legal Services, Washington 1976 p 37.

2. J E Carlin and J Howard "Legal Representation and Class Justice 1965 12 U.C.L.A. 381 p 423.

3. R Tomasic Australian Legal Aid Law Foundation of N.S.W. Sydney 1975 p 2.

4. R Marks The Legal Needs of the Poor: A Critical Analysis American Bar Foundation Chicago 1971 p 18.

5. Eg. B Abel-Smith, M Zander and R Brooke Legal Problems and the Citizen Heineman London 1973.

6. M Cass and R Sackville Legal Needs of the Poor Australian Government Printing Service Canberra 1975 p 90.

7. P Morris, R White and P Lewis Social Needs and Legal Action London Robertson, 1973.

8. A McIntosh and C McLeod An Investigation into the Legal Needs of Bridgewater Unpublished paper. Law and Society Unit University of Tasmania 1981.

9. T Lee A Social Atlas of Hobart University of Tasmania 1981.

10. M Cass and R Sackville op cit p 75.

11. ibid p 95.

12. ibid p 72.

13. P Hanks Evaluating the Effectiveness of Legal Aid Programs Commonwealth Legal Aid Council Canberra 1980 p 269-71.

14. ibid p 273.

CHAPTER FOUR

1. S Bothmann and R Gordon Practising Poverty Law Fitzroy Legal Service Melbourne 1979 p 88-89.

2. In his speech to the Senate on 13th December 1973 Senator Murphy referred to Lord Widgery's comment on the 'bottomless pit' of legal aid and the need to avoid it. Senate Weekly Hansard No. 26 1973 p 2800-2803.

3. Reported on by I Muir "Law Centres in New Zealand" 1976 N.Z.L.J. p 394.

4. E Dean and D Quarmby Legal Aid Services for Tasmania Dept. Social Work T.C.A.E. Hobart 1977.

5. Unpublished submission to C.L.A.C. by St. Monica's Community, Hobart, in 1983.

6. Unpublished Report to the Law Foundation of Tasmania on the Legal Education and Awareness Programme in 1983.

7. Chapter 3.

8. B Garth Neighbourhood Law Firm for the Poor Sijhoff & Noordhoff Alfpen aan den Rijn 1980 p 2.

9. S Bothmann and R Gordon op cit p 33-37.

10. ibid p 45-49.

11. C Chappell Volunteerism in Tasmania Tasmanian Council of Social Services 1984.

12. Fitzroy ran a training course specifically for non-lawyers to emphasize their role and to get them to act as a corrective to bad habits learned by lawyers in private practice and carried into the CLCs. See D Neal "A 'national' movement" 1983 8 Legal Service Bulletin 4 p 180.

13. B Garth op cit p 130.

14. E Johnson Jnr. Justice and Reform: The Formative Years of the OEO Legal Service Program Russell Sage Foundation New York 1974 p 130.

15. B Garth op cit p 192.

16. ibid p 192.

17. F Piven and R Cloward Poor People's Movements: Why they succeed, How they Fail Pantheon New York 1977 p 37.

18. Eg Brown v Board of Education 347 U.S. 483 (1954) which stopped school segregation.

19. Green v Daniels (1977) 13 A.L.R.1. See also P Hank op cit p 26-32.

APPENDIX A

Name of Centre .....

Date of Commencement 19 ....

1. Before you opened, was there an attempt made to assess legal need in your locality? YES ..... NO .....

   If YES, how was this done? .....

2. Has any attempt been made since you commenced to discover whether a need is being met by your Centre? YES ..... NO .....

   If YES, please describe .....

Premises and Equipment

3. How many rooms in your Centre? .....

4. Who owns the premises you occupy? (Private, Council, Government etc) .....

5. How much rent do you pay? .....

6. If your premises are rent-free from a sponsoring organisation, are there any conditions attached to the use of the premises? Yes .... No ....

   If YES, please specify .....

   .....

7. Do you own or have access to the following equipment:

	Number
Private switchboard (Commander T etc)	.....
Photocopier	.....
Electric Typewriter	.....
Computer	.....

Answering machine .....

Dictaphone .....

Duplicating machine .....

Printing Press .....

Please list any other major items of equipment you may have or have access to .....

.....

8. Could you give your annual expenditure on the following:

Phone $ .....

Power $ .....

Postage $ .....

Stationery $ .....

Insurance $ .....

Publicity Material eg. posters Leaflets, etc. $ .....

9. Is your Centre an incorporated body? YES ..... NO .....

Funding

10. Could you please list your current sources of funds and the amounts received:-

.....

.....

.....

.....

11. What sort of control do funders exercise?

	Funding Source
Statistical data?	.....
Representation on Committee of Management	.....
Audited Accounts	.....
Yearly Report	.....
Other	.....

12. Are the funds you received in 1983/4 sufficient for your basic needs for that year? YES ..... NO .....

13. Have any programmes had to be abandoned because of lack of funds?

YES ..... NO .....

If YES, what programmes? .....

14. Have any staff had to be put off because of lack of funds?

YES ..... NO .....

If YES, how many? .....

Staffing

15. How many staff at the Centre? ..... Designations

Paid Part-time	.....	.....
Paid Full-time	.....	.....
Volunteers	.....	.....

16. Could you give the average annual salary for:

Legal Staff	$ .....
Welfare/Social workers	$ .....
Admin. staff	$ .....

17. How was the Legal / Welfare / Administration mix of staff arrived at?

.....

.....

18. Do you offer a different service at night to that offered during the day? YES ..... NO .....

If YES, please specify .....

19. How many clients would you see during the day in an average week? .....

20. How many (if any) volunteer lawyers are involved in giving free legal advice? .....

How many would attend at the Centre during the day? .....

How many at night? .....

21. How often would an individual volunteer attend? .....

.....

22. Is there any problem with indemnity insurance? YES ..... NO .....

23. Do staff receive any training while working at the Centre?

YES ..... NO .....

If YES, what form does this training take? .....

.....

On what subjects or areas does the Centre train its staff?

.....

.....

Clients

24. What eligibility criteria is used to assess whether clients should be assisted?

Residence? .....

Income? ..... Below what income? .....

Both? .....

Other? .....

None? .....

25. Is there a different eligibility criteria operating for clients wanting just advice from that seeking assistance? YES .....

NO .....

If YES, what is the criteria for advice? .....

26. Are there any clients you wont assist even if eligible (eg Landlords)? YES ..... NO .....

27. What criteria is used in assessing eligibility of groups?

Same as above .....

Different? Please specify? .....

28. Would your Centre assist groups containing non-poor as well as poor members? YES ..... NO ..... SOMETIMES .....

29. Would you assist groups containing only non-poor members? YES .....

NO ..... SOMETIMES .....

In what circumstances would assistance to these groups be given?

.....

.....

30. If there is a discretion regarding eligibility, who exercises this discretion? .....

31. What percentage of clients are referred to you from other agencies?

.....

32. Do any particular agencies stand out in referring clients to you?

YES ..... NO .....

If YES, please specify .....

.....

33. What percentage of your clients do you refer to other agencies?

.....

Which are the main agencies they are referred to? .....

.....

34. What percentage of the clients you see are eligible for Legal Aid?

.....

35. Are those who are qualified to receive Legal Aid automatically referred to a Legal Aid Office or private lawyer? YES .....

NO .....

If NO, what percentage of those seen are referred? .....

36. Are there any types of cases you don't assist clients with?

YES ..... NO .....

If YES, please specify .....

.....

37. Do your lawyers represent clients in court? YES ..... NO .....

38. What percentage of cases would go that far? .....

39. Is there any criteria used when deciding whether to take cases to court? YES ..... NO .....

If YES, please specify .....

40. Are clients encouraged to become involved in the Centre (eg. join Committees)? YES ..... NO .....

41. Are clients encouraged to become involved in the running of their own cases? YES ..... NO .....

<u>Lawyers</u>

42. Do you require permission from your Law Society to advertise?

YES ..... NO .....

43. Has there been any difficulties with your Law Society over advertising? YES ..... NO .....

If YES, have these difficulties been resolved? YES ..... NO .....

44. Have you had any other problems with your Law Society? YES ..... NO .....

If YES, please speicfy .....

.....

45. Could you please give the percentage of your legal staffs time that is taken up with the following matters:-

Case work .....

Community Education .....

Group Work .....

Law Reform .....

Test Cases .....

46. Of case work time, what percentage of this time is taken up by the following areas:-

Family and Divorce .....

Consumer and debt .....

Landlord/Tenant .....

Social Security .....

Work related .....

Criminal .....

47. Of time given to Community Education, what percentage of time is taken up with:-

Public speaking about legal rights .....

Preparing written material about legal rights .....

48. Group work.

How many groups does your Centre regularly assist? .....

49. What are the areas of interest of the groups you assist?

.....

.....

50. Does your centre involve itself in the organisation of groups where none exists (eg for law reform or where the rights of a group of people are being infringed)? YES ..... NO .....

51. Law Reform and Test Cases

What ares of law reform are you involved in .....

.....

52. Have any of your law reform activities born any legislative fruit?

YES ..... NO .....

If YES, please describe .....

53. Have you undertaken any test cases in the past year?

YES ..... NO .....

If YES, how many .....

What areas of law .....

Were they successful? .....

54. Relationship Private Lawyers

Is your relationship with private lawyers in your area:-

generally good .....

generally poor .....

neither one nor other .....

55. Are there any cross referral between you and private lawyers in your area? YES ..... NO .....

Constitution and Management

56. Who drew up your Constitution? .....

.....

57. Does the Constitution require the Centre to have a Management Committee? YES ..... NO .....

58. Are members of the Management Committee elected? YES .....
NO .....
If YES, who has a vote? .....
If NO, how are members appointed? .....
.....

59. Is there a quota for various groups to be represented on the Management Committee? YES ..... NO .....
If YES, what is the makeup of your Committee? .....
.....
.....
Was this mix designed:-
To bring about community control .....
To foster social reform .....
To preserve legal independence .....
Other (specify) .....

60. If there is no quota for various groups on your Management Committee, could you please give an indication of the occupations or group-origins of the members? .....
.....
.....

61. Do any sponsors require, as a condition of funding, that they have a representative on the Management Committee? YES ..... NO .....

62. Does the Law Society have a representative on the Management Committee? YES ..... NO .....
If YES, is this required by the Constitution? YES ..... NO .....

63. How often does the Committee meet? .....

64. Can staff attend Management Committee meetings? YES ..... NO .....

If YES, can they vote on policy issues? YES ..... NO .....

65. What percentage of Committee time is taken up with the following activities:-

Policy Matters (the direction the Centre should be taking)

.....

Day-to-day administration .....

Fund raising .....

Other (please specify) .....

66. Who is responsible for hiring and firing? .....

.....

67. Do you have other Committees besides a Management Committee?

YES ..... NO .....

If YES, please describe? .....

.....

Policy

68. Could you describe the policy that your Centre has towards its role:-

(eg. - get away from casework and concentrate on group work, law reform and community legal education.

- concentrate on casework until all the need is met.

- try to do both

- try to do both with different sets of staff, etc.)

.....

.....

.....

.....

Thank you for helping.