

# **How lawyers can support and empower communities to achieve change**

Winston Churchill Memorial Trust of Australia

FINAL REPORT

April 2015

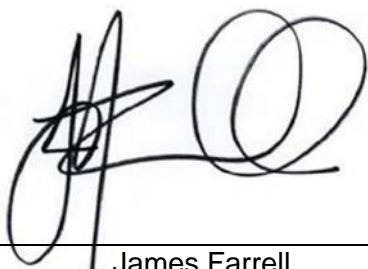


Queensland Association of  
Independent Legal Services Inc

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A handwritten signature in black ink, consisting of a stylized 'J' and 'F' followed by a large, loopy 'O' and 'E'.

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James Farrell

5 June 2015

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Date

**The first thing we do, let's kill all the lawyers**

Henry VI, Part 2 Act 4, scene 2

**Disadvantaged Australians are more  
susceptible to, and less equipped to deal with,  
legal disputes**

Productivity Commission's final report into Access to Justice Arrangements

**Legal empowerment is about making the  
protections of the law accessible to ordinary  
people**

Open Society Foundations

# Introduction

In 2010, I was asked to give evidence to a parliamentary committee investigating the sustainability of Victoria's public housing system. I was representing the Homeless Persons Legal Clinic,<sup>1</sup> where I worked at the time, and was accompanied by a colleague<sup>2</sup> and two members of the Clinic's Consumer Advisory Group. My colleague and I gave evidence about the experience of Clinic clients and suggested improvements to social housing. However, the stories told by our two consumer advocates were far more powerful; they spoke of their traumatic experiences of homelessness and the vital role of secure housing in their lives. One of the parliamentarians on the committee was in tears and hugged both of these people after they gave their evidence.

Given their fear of retribution and victimisation by homelessness agencies, the consumers chose to tell their stories *in camera*. I am in no doubt, though, that their testimony to this parliamentary inquiry was a powerful and effective contribution that resulted in meaningful change to government policy and priorities.

People with legal problems come to see lawyers like me, and if they're disadvantaged enough to qualify for free legal help, then legal assistance services can help them with their legal problem. Those that aren't so disadvantaged (what the Productivity Commission recently called the 'missing middle'<sup>3</sup>) are left to fend for themselves, with some basic information and advice.

For those people that qualify for government-funded legal help, lawyers hold and use knowledge of the legal system, and provide advice or ongoing assistance to help individuals with their legal problems. We then use this information to increase community understanding of legal problems through education activities (producing publications or sage-on-a-stage face-to-face training). We might also use our clients' experiences to advocate for systemic change or reforms to laws and policies. Rarely, though, do we support communities to do this work themselves.

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<sup>1</sup> More details about the clinic are available at [www.justiceconnect.org.au](http://www.justiceconnect.org.au); I note that the Clinic was established following a Churchill Fellowship completed by then-director of the Public Interest Law Clearing House: see Caitlin English, *A report on the delivery of pro bono legal services in the United States and England* (2000, Churchill Trust) available at [https://www.churchilltrust.com.au/media/fellows/English\\_Caitlin\\_1999.pdf](https://www.churchilltrust.com.au/media/fellows/English_Caitlin_1999.pdf).

<sup>2</sup> Chris Povey, who undertook a Churchill Fellowship 'To investigate programs for sustaining the tenancies of high risk tenants - UK, USA, Canada' in 2010: <https://www.churchilltrust.com.au/fellows/detail/3454/christopher+povey>.

<sup>3</sup> Productivity Commission, *Access to Justice Arrangements: Inquiry Report* (No. 72, 5 September 2014). Available at <http://www.pc.gov.au/inquiries/completed/access-justice/report>.

This project sought to examine if our work could be made more effective using community organising techniques. Formalised community organising is relatively new in Australia, but well established in other countries, particularly the USA. This project attempts to investigate how community organisers partner with legal advocates in countries with similar legal traditions but stronger community organizing histories to achieve change, with lessons for Australian advocates.

The project set out to investigate the following themes:

- Advice and casework
- Research, advocacy and reform
- Community education
- Community organising

I hope that this project identifies tools and shares techniques that will allow Australian public interest lawyers to support and empower communities to achieve meaningful change, with a mix of legal and organising approaches.

## Thanks

Firstly and most importantly, I acknowledge the support of my wonderful wife. Amanda and our two young children joined me on the first half of my Fellowship travels, and it was incredible to share this experience with Amanda, Jack and Georgie. I missed them terribly when they went home, and I thank Amanda for her unwavering support, in this project and always.

The project was funded by the **Winston Churchill Memorial Trust**; I thank the team at the Trust, the Queensland committee, the Churchill Fellows Association of Queensland and the other members of the Trust family for their support.

Thanks to my employer, the **Queensland Association of Independent Legal Services**; as a micro NGO, six weeks of leave is difficult to cover, so I thank my colleagues Cristy Dieckmann, Cathy Baker, Jude Clarkin and Bill Kyle for covering for me (more than usual), and our board, led by Janet Wight, for its support. I also thank volunteers Maddy McMaster and Gabby Minards for their research assistance.

Thanks finally to all those who met and spoke with me for this project; they are listed at page 1 of this report. This report doesn't quote any of the speakers verbatim, but reflects the impressions that I accumulated. I'm sorry if those reflections don't precisely mirror our conversations, your views or the views of your organisation. Thank you for your insights, your professionalism, friendliness and good humour.

# Executive summary

This report includes reflections on the 50+ organisations with whom I spoke over seven weeks in the US, UK and Canada as part of my Churchill Fellowship. It is informed by over a decade working in community legal centres, as a volunteer, board member and employee.

The key reflection is that we're doing this stuff pretty well in Australia. None of the cities I visited have 'silver bullet' answers to how lawyers can engage and support empowered communities to create change. The community organising tradition in Ontario's community legal clinics is very impressive, but comes from a context and a history that isn't readily transferrable to Australia's community legal centres. The cultural, funding and professional differences in the US and UK don't provide a systemic example that we should emulate, but there are organisations doing great work, and I'm grateful that I got the opportunity to see some of this work.

I don't want to presume to recommend how we could improve our work in Australian community legal centres, but based on the insights I gathered undertaking this project, I do have some suggestions for these organisations:

1. develop a strategy to raise awareness amongst community organisations of the role of legal services, and ways they can work together to achieve change.
2. develop a training program for lawyers to teach them about ways to work better with communities, and the tools and tactics that can be used to achieve law reform and social change.
3. if appropriate, consider employing community organisers as part of the multidisciplinary practice in community legal centres.
4. develop more co-counselling arrangements, and share lessons from these arrangements with other services.
5. organisations with experience and expertise working with particular groups or communities should support other organisations to improve their services and accessibility
6. community legal education strategies could include peer training sessions; don't assume that participants will avoid activities with big time commitments
7. commit to sharing your clients' experience through research reports; this work can be amplified through partnerships with experienced researchers

8. when developing strategies for engaging directly with law makers and elected officials, include members of the community in the planning and execution of this work.
9. support and develop expertise in other areas to support advocacy, including economic analysis, urban planning and other specialist skills
10. avoid tokenistic community participation models
11. legal services should consider establishing forums to support community to guide and support their work
12. ask 'Why do we have members? What value do they give us, and what value do we give them?'
13. remember, you don't empower communities. Communities are empowered.
14. consider using waiting rooms to have conversations about important social change campaigns, and build movements
- 15.** develop a 10 year plan to educate and engage non-government funders about the importance of legal services and advocacy

Some of these actions have already been embraced by some community legal services; all of them are challenging, but I think all would assist legal assistance services to work with communities to create meaningful social change.

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# Program

## Cities:

- Los Angeles (7-16 February 2015)
- San Diego (17-22 February 2015)
- New York (22 February-1 March 2015)
- Chicago (1-11 March 2015)
- Toronto (11-17 March 2015)
- London (18-26 March 2015)

## Interviews:

- Agata Wierzbowski (Consumer Action Law Centre, Melbourne)
- Anne Southworth (University of California Irvine)
- April Donnellan (Global Philanthropy Partnership, Chicago)
- Basil Alexander (Queens University Law School, Ontario)
- Bekele Woyecha (Citizens UK/New Citizens Legal Service, London)
- Casey Trupin (Columbia Legal Service, Seattle)
- Catherine Rodman (Affordable Housing Advocates, San Diego)
- Cathy Albisa (National Economic and Social Rights Initiative, New York)
- Chris Ramsaroop and Helen Luu (Ontario Project for Inter-Clinic Community Organizing, Toronto)
- Chris Williams (Workers' Law Office, Chicago)
- Christine Evans (Chicago Alliance Against Sexual Exploitation, Chicago)
- CT Turney and Tiffany Johnson (A New Way of Life, Los Angeles)
- Dan Flaming (Economic Roundtable, Los Angeles)
- Dasia Skinner (Chicago Coalition for the Homeless, Chicago)
- Elizabeth Bluestein (Public Counsel, Los Angeles)
- Elizabeth Goldberg, (Law Foundation of Ontario, Toronto)
- Eric Tars (National Law Center on Homelessness and Poverty, Washington DC)
- Eve Stotland (The Door, New York)
- Gary Blasi (UCLA Law School, Los Angeles)
- Helen Rogers and Hayley Jones (Allen & Overy, London)
- James Kenrick (Youth Access, London)

- Jamil Dakwar (American Civil Liberties Union, New York)
- Jane Wills and Joanne Ellis (Queen Mary University, London)
- Januari McKay (Advocates for Youth, Washington DC)
- Jeff Wergeles, Bardis Vakili, Gloria Cruz and Greg Rose (ACLU of San Diego and Imperial Counties, San Diego)
- Jennefer Laidley and Jackie Esmonde (Income Security Advocacy Centre, Toronto)
- Jennifer Gordon (Fordham Law School, New York)
- John Bouman (Sargent Shriver Center for Poverty Law, Chicago)
- John McKinnon, Orlando Buonastella, Marion Endicott and colleagues (Injured Workers Consultants, Toronto)
- John No (Parkdale Community Legal Service, Toronto)
- Judy Hertz (Midwest Academy, Chicago)
- Julie Bishop (Law Centres Network, London)
- Julie Mathews (Community Legal Education Ontario, Toronto)
- Karl Scott and Ariana Alcaraz (Los Angeles Community Action Network, Los Angeles)
- Lenny Abramowicz and Ivana Petricone (Association of Community Legal Clinics Ontario, Toronto)
- Lindsey Poole (Advice Services Alliance, London)
- Lois Cromarty, Peter, Sarah Cooling and Dawood Nasir (Northumberland Community Legal Centre, Ontario)
- Lou Sartori and Karen Fisher Gutheil (Legal Aid Society, New York)
- Maria Woltjen and Kate Morgan-Olsen (Young Center for Immigrant Children's Rights, Chicago)
- Mary Gellatly (Parkdale Community Legal Service/Workers Action Centre, Toronto)
- Michele Leering, Deirdre McDade and Gina Cockburn (Consumer Advocacy and Legal Centre, Belleville)
- Mike Balkwill, Alyssa Ginsberg and Colleen Sym (Halton Community Legal Service, Ontario)
- Mubin Haq (Trust for London, London)
- Nahal Zamani (Center for Constitutional Rights, New York)
- Nancy VanderPlatts and Linda Mitchell (Scarborough Community Legal Services, Ontario)
- Neal Davidovich (Neighbourhood Legal Services, Los Angeles)
- Nicole Aylwin (Canadian Forum on Civil Justice/Winkler Institute for Dispute Resolution, Toronto)

- Pascoe Pleasance and Nigel Balmer (University College, London)
- Paul Tepper (Western Center on Law and Poverty, Los Angeles)
- Roger Smith (International Legal Aid Group, London)
- Ruth Hayes (Islington Law Centre, London)
- Sameer Ashar (University of California Irvine)
- Sarah (ReThink, London)
- Sarah Burns (New York University School of Law, New York)
- Scott Cummings (UCLA Law School, Los Angeles)
- Silvia Argueta (Legal Aid Foundation of Los Angeles, Los Angeles)
- Steve Hynes (Legal Action Group, London)
- Walter Rodriguez (Bronx Defenders, New York)

## **Events:**

- National Conference on Ending Family and Youth Homelessness (National Alliance to End Homelessness, 19-20 February 2015, San Diego)
- Organizing for Social Change (Midwest Academy, 2-6 March 2015, Chicago)
- Supporter function (Personal Support Unit, 23 March 2015, London)
- The life and times of the Human Rights Act (Law Society, 25 March 2015, London)

# Key concepts

The literature identified four key concepts that underpin the discussions that contributed to this report. I have adopted the following definitions:

- **Legal assistance services:** identified types of organisations, working to provide legal help to the most vulnerable and disadvantaged.
- **Legal empowerment:** a process of systemic change through which the poor and excluded become able to use the law, the legal system, and legal services to protect and advance their rights and interests.
- **Community organising:**
- **Law and organising:** the delivery of legal services in service to or support of an organising approach to solving problems and creating change, rather than legal services provided as the solution to a client's problem (the direct service approach) or that speak for a client's or client or constituent group's interests (the advocacy approach)

Some background to these definitions are set out below.

## Legal assistance services

Australia's National Partnership Agreement on Legal Assistance Services defines **legal assistance services** as 'all of the sector-wide legal service providers, including legal aid commissions, community legal centres, Aboriginal and Torres Strait Islander legal services and family violence prevention legal services'.<sup>4</sup> The Productivity Commission has summarised these services in a useful diagram:<sup>5</sup>

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<sup>4</sup> Council of Australian Governments, *National Partnership Agreement on Legal Assistance Services* (2010).

<sup>5</sup> Productivity Commission, *Access to Justice Arrangements: Inquiry Report* (No. 72, 5 September 2014) 668. Available at <http://www.pc.gov.au/inquiries/completed/access-justice/report>.

	Legal aid commissions (LACs)	Community legal centres (CLCs)	Aboriginal and Torres Strait Islander legal services (ATSILS)	Family violence prevention legal services (FVPLS)	
Where are they located?	<b>8 LACs</b> <ul style="list-style-type: none"><li>• In all states and territories</li><li>• Metropolitan, regional and remote services including regional offices</li></ul>	<b>200 CLCs</b> <ul style="list-style-type: none"><li>• In all states and territories</li><li>• Mainly in metropolitan and regional areas</li></ul>	<b>8 ATSILS</b> <ul style="list-style-type: none"><li>• One in each state, two in the NT; ACT serviced by NSW</li><li>• Majority of outlets in regional and remote areas</li></ul>	<b>14 FVPLS</b> <ul style="list-style-type: none"><li>• In all states and territories except ACT and Tasmania</li><li>• Service 31 high need regional, rural and remote areas</li></ul>	
What are their objectives?	<ul style="list-style-type: none"><li>• Provide access to assistance for the vulnerable and disadvantaged</li><li>• Provide the community with improved access to justice and legal remedies</li></ul>	Contribute to access to legal assistance services for vulnerable and disadvantaged members of the community and/or those whose interests should be protected as a matter of public interest	Deliver legal assistance and related services to Aboriginal and Torres Strait Islander people	Provide legal services and assistance to Aboriginal and Torres Strait Islander victims of family violence and sexual assault	
Who do they target?	<ul style="list-style-type: none"><li>• State and territory communities</li><li>• Focus on vulnerable and disadvantaged people</li></ul>	<ul style="list-style-type: none"><li>• Local communities (with outreach), except specialist CLCs who service their state/territory community</li><li>• Those who do not qualify for legal aid focusing on the vulnerable and disadvantaged</li></ul>	Aboriginal and Torres Strait Islander people or a partner or carer of an Aboriginal or Torres Strait Islander person	Aboriginal and Torres Strait Islander people or a partner or carer of an Aboriginal or Torres Strait Islander person, who is a victim of family violence or a child at risk of family violence and in need of protection	
What are their funding arrangements?	Commonwealth	\$212.6 m	\$36.7 m	\$68.2 m	\$19.1 m
	State & territory <sup>a</sup>	\$366.5 m	\$30.9 m	--	--
	Other <sup>b</sup>	\$30.4 m	\$22.0 m	--	--
		National Partnership Agreement (NPA) and funding administered by the state and territory governments	Funding administered by LACs in most states except SA where provided through the Attorney-General's Department (SA). NT and ACT administered by the Australian Government	Funding administered by the Australian Government	Funding administered by the Australian Government

According to the Commonwealth Government's draft *National Strategic Framework for Legal Assistance Services 2015-2020*:<sup>6</sup>

Legal assistance services are a key part of the justice system. They play a crucial role in helping the most disadvantaged people in our community receive the legal support they need and engage effectively with the justice system. Legal assistance services help maintain the rule of law by ensuring that the law is applied to all people equally and that fundamental rights, such as the presumption of innocence and the right to a fair trial, are upheld. Legal assistance service providers help to achieve timely, cost effective, fair and equitable outcomes for disadvantaged people and assist people to understand and protect their legal rights and responsibilities.

<sup>6</sup> Attorney-General's Department, *National Strategic Framework for Legal Assistance Services 2015-2020*

However, it is the most vulnerable and disadvantaged that are most likely to receive legal assistance services, largely due to the insufficient resources provided to legal assistance services.<sup>7</sup>

In this report, references to **legal assistance services** are to these identified types of organisations, working to provide legal help to the most vulnerable and disadvantaged.

## Legal empowerment

**Legal empowerment** is a contested term;<sup>8</sup> some definitions include:

- the process of increasing the capacity of ordinary people to exercise their human and civil rights as individuals or as members of a community<sup>9</sup>
- strengthening the capacity of all people to exercise their rights, either as individuals or as members of a community<sup>10</sup>
- the use of legal services and related development activities to increase disadvantaged populations' control over their lives<sup>11</sup>
- the ability of women and disadvantaged groups to use legal and administrative processes and structure to access resources, services and opportunities<sup>12</sup>
- a process of systemic change through which the poor and excluded become able to use the law, the legal system, and legal services to protect and advance their rights and interests<sup>13</sup>

A more nuanced approach has been articulated by the Asian Development Bank, which suggests legal empowerment can occur on an ascending scale of sophistication grouped into three orders:<sup>14</sup>

- 1) First-order interventions:** include basic legal awareness raising, or “legal literacy” work that educates the public about its legal rights and obligations,

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<sup>7</sup> See Productivity Commission, *Access to Justice Arrangements: Inquiry Report* (No. 72, 5 September 2014). Available at <http://www.pc.gov.au/inquiries/completed/access-justice/report>; NSW Department of Attorney General and Justice, *Review of the delivery of legal assistance services to the NSW Community*, (2012, Department of Attorney General and Justice, Sydney) 4.

<sup>8</sup> Vivek Maru, 'Access to Justice and Legal Empowerment: A Review of World Bank Practice' (2010) 2 *Hague Journal on the Rule of Law* 259.

<sup>9</sup> George Soros, 'Legal Empowerment, Justice, and Development' (2013) *Justice Initiatives* 1. Available at <http://namati.wpengine.netdna-cdn.com/wp-content/uploads/2014/02/justice-initiatives-legal-empowerment-20140102.pdf>

<sup>10</sup> Open Society Foundations, *Legal Empowerment* (15 September 2014) <http://www.opensocietyfoundations.org/projects/legal-empowerment>.

<sup>11</sup> Stephen Golub, 'Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative', 41 *Rule of Law Series, Democracy and Rule of Law Project*, Carnegie Endowment for International Peace (2003)

<sup>12</sup> Asian Development Bank, *Legal empowerment for women and disadvantaged groups* (Mandaluyong City, Phil.: Asian Development Bank, 2009) viii. Available at <http://asiafoundation.org/resources/pdfs/LegalEmpowerment.pdf>.

<sup>13</sup> United Nations Development Programme, *Making the Law Work for Everyone: Report of the Commission on Legal Empowerment of the Poor* (2008, UNDP, New York) 3. Available at [http://www.unrol.org/files/Making\\_the\\_Law\\_Work\\_for\\_Everyone.pdf](http://www.unrol.org/files/Making_the_Law_Work_for_Everyone.pdf).

<sup>14</sup> Asian Development Bank, *Legal Empowerment for Women and Disadvantaged Groups*, Final Report (2009), p. 41

institutional structures of the legal system, and specific mechanisms that marginalized groups can use to advance their interests. This can include:

- print, broadcast and internet media;
- informational flyers, pamphlets and posters;
- radio and TV outreach;
- dramatic performances; and
- wireless/SMS tools.

**2) Second-order interventions:** focus on resolving legal problems and administrative challenges that are faced by marginalized groups. Interventions are community-driven and provide both formal and informal legal services, including mediation. Paralegals are a key mechanism for implementation at this level. They are able to address informal/formal divides, understand local context, are cost-effective, and help ensure programs are in touch with communities.<sup>15</sup> Activities include:

- Legal counselling and advice;
- mediation and dispute resolution in communities;
- administrative procedures such as identification documents, land titling, and business registration; and
- legal aid and representation in the formal system

**3) Third-order interventions:** are designed to have an impact on highest-level policy constraints and systemic factors that shape the circumstances in which legal problems arise. They target persisting inequitable power relations that continually marginalize the poor. Activities include:

- Public interest litigation;
- policy and law reform advocacy;
- legislation drafting;
- administrative advocacy;
- justice system reform; and
- corruption monitoring.

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<sup>15</sup> For a more in depth discussion of community paralegals and their benefits, see *Between Law and Society: Paralegals and the Provision of Justice Services in Sierra Leone*, Open Society Justice Initiative (2006), available at: [http://www.soros.org/initiatives/justice/focus/legal\\_capacity/articles\\_publications/publications/between-law-and-society-20100310](http://www.soros.org/initiatives/justice/focus/legal_capacity/articles_publications/publications/between-law-and-society-20100310)



# Legal empowerment as a tool of international development

In many ways, the concept of legal empowerment is closely linked to international development, and discussed in that context. Just months after legal aid services were 'slashed and burnt'<sup>16</sup> in the UK, the Secretary of State for International Development wrote:<sup>17</sup>

The UK Government's approach to legal empowerment is to tackle the everyday obstacles facing poor people across the world. In Sierra Leone, we are helping to develop a network of paralegals and community mediators. These are ordinary people based in the community, who are given a basic schooling in the law and conflict resolution. They, in turn, help others understand their rights, resolve potentially violent disputes, and address both individual and community-wide problems. This work has a particular focus on addressing violence against women and girls.

In Bangladesh, the UK's investment in community legal services between 2003 and 2009 helped poor people (80 percent of them women) resolve disputes over land, inheritance and dowries, and secure or recover assets estimated at £1.5 million. Through our support for the Global Legal Empowerment Initiative, the UK is helping to pilot a greater range of options, share lessons, and identify solutions that represent real value for money.

Around the world, governments are beginning to recognize the potential of legal empowerment to deliver justice, promote economic growth, and encourage long-term social change. It is my aspiration that others will join Britain in supporting the kind of work taking place in this exciting, evolving field.

In their review of 199 studies that address the results of a wide range of legal empowerment work, Goodwin and Maru focus on developing countries:<sup>18</sup>

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<sup>16</sup> Gemma Blythe, Defending the rule of law against the UK government's 'slash and burn' (4 March 2015), *OurKingdom*. Available at <https://www.opendemocracy.net/ourkingdom/gemma-blythe/defending-rule-of-law-against-uk-government%E2%80%99s-%E2%80%98slash-and-burn%E2%80%99>.

<sup>17</sup> Justine Greening MP, 'Why Support Legal Empowerment Development' (2013) *Justice Initiatives* 3. Available at <http://namati.wpengine.netdna-cdn.com/wp-content/uploads/2014/02/justice-initiatives-legal-empowerment-20140102.pdf>

<sup>18</sup> Laura Goodwin and Vivek Maru, What do we know about legal empowerment? Mapping the Evidence (Namati, Washington DC, May 2014) 14.



### Evidence Distribution By Country

Afghanistan 1	Guatemala 1	Philippines 8
Angola 1	Honduras 1	Rwanda 1
Argentina 3	India 24	Senegal 2
Bangladesh 18	Indonesia 14	Sierra Leone 4
Belgium 1	Japan 1	Somalia 1
Benin 1	Kenya 7	South Africa 8
Bolivia 3	Liberia 5	South Sudan 1
Brazil 1	Madagascar 1	Tanzania 6
Burma 1	Malawi 5	Thailand 2
Burundi 1	Mexico 9	Uganda 12
Canada 1	Morocco 1	Ukraine 1
Colombia 1	Mozambique 4	United Kingdom 8
DRC 2	Nepal 2	United States 8
East Timor 1	Netherlands 1	Yemen 1
Ecuador 3	Pakistan 2	Zambia 1
El Salvador 2	Papua New Guinea 3	Zimbabwe 1
Georgia 1	Peru 1	Multiple 6
Ghana 4		

This work found that legal literacy is the most common approach to legal empowerment with most interventions combining multiple strategies, such as providing legal literacy training alongside mediation services, or training people to file right to information (RTI) requests and then engage in advocacy based on the results. Many interventions incorporated legal empowerment approaches into the delivery of other basic services, “showing how legal empowerment can be integrated into broader development efforts”.<sup>19</sup> Interestingly, the Goodwin and Maru only cite one example from a country considered by this report:

Jay Wiggan and Colin Talbot conducted a literature review on the impact of welfare rights advice services, which play a role similar to that of community-based paralegals. These offices work with hard-to-reach populations to encourage awareness and take-up of available tax credits, health benefits, and other services, and to assist people with navigating the entitlement system. As a result of using the advice service, some clients reported less anxiety over finances as well as a better ability to communicate with their general physician, leading to more effective health treatments. Wiggan and Talbot find that clients of the welfare rights advice services not only receive additional financial resources through pursuing welfare entitlements, but also experience significant improvements in mental health and some gains in physical health.<sup>20</sup>

<sup>19</sup> Laura Goodwin and Vivek Maru, What do we know about legal empowerment? Mapping the Evidence (Namati, Washington DC, May 2014) 5.

<sup>20</sup> Jay Wiggan and Colin Talbot, The Benefits of Welfare Rights Advice: A Review of the Literature, Commissioned by the National Association of Welfare Rights Advisors, 2006.  
<http://nawra.org.uk/Documents/Benefitsofwelfareadviceadviceelitreview.pdf>.

# Poverty in Australia

The Australian Council of Social Services defines poverty as follows:<sup>21</sup>

Poverty is a relative concept used to describe the people in a society that cannot afford the essentials that most people take for granted. While many Australians juggle payments of bills, people living in poverty have to make difficult choices – such as skipping a meal to pay for a child's textbooks.

In Australia, the term “poverty” refers to those whose living standards fall below an overall community standard. People living in poverty not only have low levels of income; they also miss out on opportunities and resources that most take for granted, such as adequate health and dental care, housing, education, employment opportunities, food and recreation.

Part of understanding this issue relates to income poverty and the significant difference between income support payments (pensions, unemployment payments, youth/student payments) and the Henderson Poverty Line. The poverty line measures how much individuals and families require to cover essential living costs. In 2008 the National Welfare Rights Network identified that a single unemployed adult received benefits at 26 per cent below the poverty line and an independent student was paid at approximately 38 per cent below.<sup>22</sup>

But understanding poverty should not be restricted to consideration of income. It's hard to disagree with the Office of the United Nations High Commissioner for Human Rights, who has said that “poverty erodes or nullifies economic and social rights such as the right to health, adequate housing, food and safe water, and the right to education. The same is true of civil and political rights such as the right to a fair trial, political participation and security of the person.”<sup>23</sup> In other words, being poor affects everything, and we see this every day with the people we assist in legal assistance services.

The United Nations defines poverty by adopting a “capability approach” which essentially considers the well-being of an individual and their ability to “do or be” certain things.<sup>24</sup> In addition to the concept of “inadequate command over economic resources”, this approach also involves the identification of “certain basic capabilities that would be common to all – for

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<sup>21</sup> Australian Council of Social Service, *Poverty Report: 2011 Update*. Available at [http://acoss.org.au/images/uploads/ACOSS\\_Poverty\\_October\\_2011.pdf](http://acoss.org.au/images/uploads/ACOSS_Poverty_October_2011.pdf).

<sup>22</sup> National Welfare Rights Network, *Submission from National Welfare Rights Network to FaHCSIA Pension Review* (October 2008) p5.

<sup>23</sup> *Report on the importance of social protection measures in achieving the Millennium Development Goals*, UN Doc A/65/259 (9 August 2010) p

<sup>24</sup> Office of the High Commissioner for Human Rights, *Human Rights and Poverty Reduction: A Conceptual Framework* (United Nations, Geneva, 2004). Available at <http://www2.ohchr.org/english/issues/poverty/docs/povertyE.pdf>.

example, being adequately nourished, being adequately clothed and sheltered, preventable morbidity, taking part in the life of a community, and being able to appear in public with dignity.”<sup>25</sup>

## My definition of legal empowerment

This report will adopt the United Nations Development Program's definition of **legal empowerment** as “a process of systemic change through which the poor and excluded become able to use the law, the legal system, and legal services to protect and advance their rights and interests.” Adopting this definition is as relevant in Australia, as it is in other parts of the world, including developing countries.

## Community organising

Community organising seems to me to be a pretty amorphous concept, defined in different ways according to the schools or traditions of organising. Doran Schrantz says ‘Organizing is a set of strategic disciplines and practices to build the capacity of people to participate in and shape democratic life.’<sup>26</sup> David Walls builds on this definition: ‘Community organizing is a process that seeks to build powerful, purposeful, coordinated and disciplined activity by groups of people who support and challenge each other to affirm, defend and advance their values and self-interests.’<sup>27</sup>

Brian Christens and Paul Speer localise the idea:<sup>28</sup>

Community organizing is an umbrella term for a field of practice in which residents collaboratively investigate and take collective action regarding social issues of mutual concern. Most often, the intent of organizing is to change policies regarding local issues...

Rubin and Rubin suggest a more romanticised definition:<sup>29</sup>

Organizing begins with the belief that change is possible, necessary, and through collective efforts can be brought about. Organizers help create the sense that change is possible, work to show the way, and in doing so help move the world as it is to one that is should be.

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<sup>25</sup> Office of the High Commissioner for Human Rights, *Human Rights and Poverty Reduction: A Conceptual Framework* (United Nations, Geneva, 2004). Available at <http://www2.ohchr.org/english/issues/poverty/docs/povertyE.pdf>.

<sup>26</sup> Doran Schrantz, ‘Community-based organizing must change. But how?’ *Rooflines: The Shelterforce Blog* (3 April 2013). [http://www.rooflines.org/2908/community-based\\_organizing\\_must\\_change\\_but\\_how/](http://www.rooflines.org/2908/community-based_organizing_must_change_but_how/).

<sup>27</sup> David Walls, *Community organizing* (Polity Press, 2015) p17.

<sup>28</sup> Brian D Christens and Paul WSpeer, ‘Community Organizing: Practice, Research, and Policy Implications’ (2015) 9(1) *Social Issues and Policy Review* 193, 193.

<sup>29</sup> Herbert Rubin and Irene Rubin, *Community organizing and development* (Pearson, Boston, 4<sup>th</sup> ed, 2008) p17.

This isn't the place to trace the history and critiques of organising. For present purposes, I'm going to define community organising as the mobilisation of individuals (or just people) to action that seeks to:

- Win real improvements in people's lives
- Get a sense of their own power
- Alter the relations of power

This is essentially taken from the text used at the Midwest Academy training course I attended in Chicago as part of this fellowship.<sup>30</sup>

## Law and organising

I first encountered the idea of **law and organising** in Nicole Rich's 2009 report, *Reclaiming Community Legal Centres: Maximising our potential so we can help our clients realise theirs*. This should be required reading for everyone who works in a legal assistance service, but particularly those who work in community legal centres.

It's useful to extract, at length, some of Rich's comments about law and organising, which she suggests is<sup>31</sup>

the delivery of legal services in service to or support of an organising approach to solving problems and creating change, rather than legal services provided as the solution to a client's problem (the direct service approach) or that speak for a client's or client or constituent group's interests (the advocacy approach) ...

"Law and organising" is not a familiar concept in Australia and one of the reasons for this is probably that both CLC and general public interest legal practice in Australia look quite different to their US counterparts. It is therefore unclear what an Australian version of a law and organising approach might entail. However, there does seem room to experiment with different methods to integrate law and collective action in Australia with a view to achieving law reform and other social change ... the time seems ripe for some experimental pilot projects in Australia. In this regard, there is also room for funders, especially philanthropic foundations, to take more risks in being willing to fund innovative but speculative approaches to law reform and policy work by CLCs that incorporate collective mobilisation.

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<sup>30</sup> Kim Bobo, Jackie Kendall and Steve Max, *Organizing for social change* (MidWest Academy, 4<sup>th</sup> ed, 2010) p 8

<sup>31</sup> Nicole Rich, *Reclaiming Community Legal Centres: Maximising our potential so we can help our clients realise theirs* (Victoria Law Foundation, Melbourne, April 2009) 22-25. Available at <http://consumeraction.org.au/wp-content/uploads/2012/04/Reclaiming-community-legal-centres.pdf>.

# Legal tools for change

On the first 'business' day of my fellowship (Monday 9 February 2015), I visited two very different, and very impressive, legal services. These two services set the tone for my fellowship.

The [Western Center on Law and Poverty](#) focuses on four policy areas: housing, healthcare, welfare and access to justice. It uses a combination of four techniques to achieve positive change in these areas: impact litigation, 'service center' work, administrative advocacy, and traditional law reform - although in a more sophisticated way than most legal services, with specialist lobbyists based in the state capitol.

Over lunch, WCLP executive director Paul Tepper explained that this model relies on law services and community organisations to find clients and cases that fit within the Center's mission, and that other legal services often co-counsel on these matters. (There are some limitations; notably, federally-funded legal services are prohibited from launching class actions, so these cases are simply referred to WCLP.) While WCLP has previously employed community organisers to build and strengthen relationships with community organisations and leaders, they don't currently have dedicated roles for this important work.

In many ways, WCLP reminds me of the [Human Rights Law Centre](#) in Australia - a specialist service which focuses on a small number of high impact cases to achieve its mission.

Unlike these low volume, high impact models, the [Neighborhood Legal Services of LA](#) helps many thousands of clients with legal problems, predominately in the north and east of Los Angeles. Particularly interesting elements of their service mix (interesting to me, I mean) include:

- their Medical Legal Community Partnerships (they use the word 'community' very deliberately here, as community has to be at the centre of the model to meaningfully address the social determinants of health in the way of other MLPs).
- self-help centres based at courts, focusing on family law/DV and tenancy law.
- the size of the outfit, with 100+ staff across 3 offices.

Like WCLP, NLSLA relies on working in partnership to achieve change; it sticks to its areas of expertise (ie legal practice), and works in coalition with community organisations to achieve change. Executive director Neal Dudovitz gave the example of a project supporting homeowners subject to mortgage foreclosure; NLSLA partnered with [One LA](#) to provide representation in some cases, train and empower other mortgagors to self-advocate, successfully working with the state legislature to introduce new consumer protections, and other actions.

It was really encouraging and enlightening to visit two such different, and inspiring legal services. While I canvassed many issues with Paul and Neal, the most important idea for my core Churchill project is this: legal services should focus on their mission, and on the skills and expertise they have developed. When working to achieve social change, lawyers work best as part of a larger, longterm, multifaceted, well-planned campaign for change.

# Advice and casework

A number of people I spoke to came from a community organising background, and suggested that lawyers often create barriers to their clients' participating in activities that might contribute to broader change, including:

- a focus on **protecting** clients, especially if there's a continuing legal issue, if it's a particularly 'raw' issue (like a criminal matter or removal of children);
- exclusion of advocacy/policy/organising workers from case conferencing or other forums where opportunities might otherwise be identified, or alternatively, excluding lawyers from policy team meetings in large multi-disciplinary organisations;
- not being willing to participate due to other priorities (particularly overwork);
- lawyers have a 'lobbyist mentality'
- law can be perceived as a 'rarefied' profession, and lawyers can be perceived as bossy, intimidating, serious, intense or unapproachable;
- a reluctance to engage in a brainstorming discussion rather than coming with a 'specific ask';
- lawyers often require organisers to 'turn over' clients, while organisers like to stay involved;
- lawyers don't think about the implementation after successful litigation;

Training both lawyers and organisers in the other's tradition, and about the other's skills, would be useful; some of the people I spoke to spoke highly of the Center for Constitutional Rights' Bertha Justice Institute, which aims 'to build a new generation of lawyers and legal workers that have the vision, expertise and determination to create social change. The BJI aims to support lawyers and legal advocates at every step in their career—as students, during their first few years of practice, and even as directors and supervisors—on how to connect law and social change.'<sup>32</sup>

**Suggestion 1:**      **develop a strategy to raise awareness amongst community organisations of the role of legal services, and ways they can work together to achieve change.**

**Suggestion 2:**      **develop a training program for lawyers to teach them about ways to work better with communities, and the tools and**

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<sup>32</sup> <http://ccrjustice.org/home/BerthaJusticeInstitute>.

## **tactics that can be used to achieve law reform and social change.**

In the UK, legislation provides that there are certain areas of work that are reserved for lawyers,<sup>33</sup> and so often advice work that would be provided by lawyers in Australia are provided by advice services or bureaux. As a result, many of the UK organisations doing work that Australian community legal centres do, don't consider themselves legal services, and this has significant impact on the culture of those agencies, which came through in my conversations with the Advice Services Alliance's Lindsey Poole and the Law Centres Network's Julie Bishop, amongst others. However, these advice services often don't see themselves as agents of change and reformers, but rather strong, trusted community services. Even some of the law centres, enfeebled by reprehensible funding cuts,<sup>34</sup> are now retreating to core service delivery, rather than agitating for change.

This can be contrasted with some of the services I encountered in the US, which have a strong commitment to change. Chris Williams helped established Working Hands Legal Clinic in Chicago. Chris worked as a union official before working at a workers center for non-citizens, and was referring clients to private lawyers for legal assistance. The legal center was established to allow payment of referral fees, allow greater control of strategic litigation, and upskill staff to engage in policy advocacy.

New Citizens Legal Service (NCLS) in London is a project of Citizens UK, and was created after Citizens UK engaged with newly arrived people in a typical broad-based organising model, who identified a need for trustworthy, expert legal help, especially for family reunions. The service, coordinated by Bekele Woyecha, doesn't provide legal services itself, but has a simple model that is much more rooted in its organising history than a true, traditional legal service:

- educate people in the community about their rights and services that are available;
- link people with trustworthy and affordable legal services (generally private lawyers that have built a relationship of trust with NCLS);
- signpost teaching – that is, develop community leaders to work in this space; and

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<sup>33</sup> The six reserved legal activities [under Section 12 and Schedule 2 of the [Legal Services Act](#)]. are:

- the exercise of rights of audience (ie appearing as an advocate before a court);
- the conduct of litigation (ie issuing proceedings before a court and commencing, prosecuting or defending those proceedings);
- reserved instrument activities (ie dealing with the transfer of land or property under specific legal provisions);
- probate activities (ie handling probate matters for clients);
- notarial activities (ie work governed by the [Public Notaries Act 1801](#)); and
- the administration of oaths (ie taking oaths, swearing affidavits etc).

<sup>34</sup> See further Steve Hynes, *Austerity Justice* (Legal Action Group, 2012).



- take action – help people do something to improve access to services or change practices/policy. A protest outside the office of a lawyer that had provided poor service to a NCLS client is an example of this type of action. Bekele noted that traditional legal services face some barriers when acting against other lawyers, a limitation that doesn't affect the NCLS.

Parkdale Community Legal Services in Toronto has four divisions, with a lawyer and community legal worker (**CLW**) (or organiser) in each division. Much of the advice and casework is undertaken by supervised students, and the integration of organisers into the work contributes to strong links to community, assists students understand some of the broader context in which legal problems arise, and the organisation can take a campaigning focus to achieve change. I met with John No (lawyer) and Mary Gellatly (CLW) from their Workers' Rights team, and their mutual respect for each other's skills and perspectives was a terrific example of how organising can be incorporated into a legal service setting.

**Suggestion 3:      if appropriate, consider employing community organisers as part of the multidisciplinary practice in community legal centres.**

Walter Rodriguez suggested that the Bronx Defenders' community organising project could be considered a success when those participating in the project feel comfortable/confident to push the organisation to improve its services.

Across the US, UK and Canada, it was clear that the provision of core services don't prioritise the empowerment of communities. Australia is doing this as well as anyone, but we all should do more.

## Co-counsel

A number of the organisations and individuals that I met with spoke about co-counselling – effectively sharing the lawyering. Examples included:

- Public Counsel, the largest *pro bono* law firm in the US, which enters into co-counsel arrangements with major law firms and corporations as a core part of their service model;
- Western Center on Poverty Law, which co-counsels with legal aid services that find and refer clients to WCPL for complicated litigious matters;
- Columbia Legal Service, which co-counsels with the National Center on Youth Law and private firms for complex child safety matters that may have national impact;



- New York's Legal Aid Society will only engage in impact litigation where this can be done co-counselling with a *pro bono* law firm, to leverage their resources;
- Two specialty clinics in Toronto, the Income Security Advocacy Centre and the Advocacy Centre for Tenants Ontario, focus on impact litigation, leaving high volume work in these areas to local community law clinics to handle. When a geographic (generalist) clinic identifies a case that would benefit from the specialist expertise and resources of one of these clinics, they will often co-counsel with ISAC or ACTO.

True co-counselling is rare in Australian legal assistance services; to my knowledge, it only happens where community legal centres co-counsel with large corporate firms acting *pro bono*. It would be useful to investigate more thoughtful approach to co-counselling, that shares expertise across organisations, shares resources and risks, and improves client care and participation.

**Suggestion 4:        develop more co-counselling arrangements, and share lessons from these arrangements with other services.**

## Impact litigation

As Rich notes,<sup>35</sup>

Law and organising places an emphasis on community organising and empowerment over legal strategies. Litigation in particular is singled out as being unhelpful for several reasons, including that it can teach people that lawyers produce change, not that people have the ability to produce change through their own collective actions. Instead, litigation should be undertaken only to facilitate other community organisational goals, such as defending the organisation and its members or helping to garner publicity, legitimacy or fundraising support for its other efforts.

Sameer Asher from University of California Irvine suggested to me that this flows from the different mindsets of lawyers and organisers; organisers are less focussed on the outcome than on the process of moving or building power, specifically through direct action. He suggests that lawyer-led legal action is unlikely to make major social change. Despite that, community organisers are 'desperately' in need of legal expertise to support their work, from providing legal observation and defence for direct actions, to drafting or reviewing Bills, to supporting requests for information under Freedom of Information laws.

Some other observations or lessons on impact litigation:

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<sup>35</sup> Nicole Rich, *Reclaiming Community Legal Centres: Maximising our potential so we can help our clients realise theirs* (Victoria Law Foundation, Melbourne, April 2009) 23. Available at <http://consumeraction.org.au/wp-content/uploads/2012/04/Reclaiming-community-legal-centres.pdf>.

- A number of policy settings in the US make it easier to engage in litigation (especially the rule that parties generally meet their own costs).
- A US lawyer specialising in children's law issues suggested that they will only run major cases if they think the outcome will impact over 100 other people.
- The Income Security Advocacy Centre in Toronto has a particular focus on intervening in a variety of cases. Canadian courts allow standing for public interest organisations with credibility, and part of the credibility is self-fulfilling.
- Roger Smith from the International Legal Aid Group suggested that national single issue campaigning groups do have legal strategies and engage in litigation with some success in the UK, citing examples like Liberty and Justice. There seems to be many more of this single issue, national campaigning organisations in the UK; in fact, there's a lot

Sameer Asher also suggested that progressive lawyers got on a litigation track early, and that this has been a dominant structure for lawyers working for progressive change in the US. (This can be contrasted with Canada, which Lenny Abramowicz noted adopted a community organising model in their community law clinics, and the UK, which adopted a strong community development focus, as ILAG's Roger Smith told me.) Sameer and his colleague Ann Southworth suggested that conservative legal movement were, and perhaps remain, more creative, and use more legal tactics in their campaigns. Ann cited examples including supporting the appointment of a receptive judiciary, supporting scholarship through journals and intellectuals, developing foundations to coordinate conservative actions, etc. Generally, the legal work of the conservative movement followed substantial political work, where they find common ground, suppress conflict, and invest over a long term.<sup>36</sup>

Scott Cummings from UCLA spoke in general terms about the reluctance of gay and lesbian activists to use litigation as part of their campaign for marriage equality. There was apparently some concern that running an unsuccessful piece of impact litigation would set a poor precedent, and substantially set back the campaign's progress. Even a successful action could build resentment in a community that was not yet ready to embrace this social change. The Vermont Supreme Court held in *Baker v. Vermont*, 744 A.2d 864 (Vt. 1999), that excluding same-sex couples from marriage violated the Vermont Constitution and ordered the legislature to establish same-sex marriage or an equivalent status (which happened in early 2000, making Vermont the first US state to give full marriage rights to same-sex couples). Arguably, this key development would not have occurred but for the litigation, and litigation is certainly a key tactic in this US movement today.

<sup>36</sup> See further Ann Southworth, [Lawyers of the Right: Professionalizing the Conservative Coalition](#) (University of Chicago Press, 2008)

Cathy Albisa from the National Economic and Social Rights Initiative, which does use litigation as part of its work where it's appropriate, suggested that we should ask 'are our wins moving us to an alleyway, or a path?'. She cited the example of a campaign NESRI was involved in, working with exploited immigrant farmworkers. There have been a number of pieces of litigation brought by/with farmworkers themselves, but these rarely lead to systemic change. NESRI has been encouraging growers and buyers to review their practices, so buyers agree to pay a premium that is passed on to farmworkers. Wages and job security have increased.

While I think Australian community legal centres need to do more impact litigation, I didn't get a clear sense that practice in the US, UK or Canada was much further advanced than Australian practice, in terms of ensuring that clients (and communities) feel empowered through the use of this tactic. According to Durbach et al, public interest litigation (or 'strategic litigation') is:

intended to achieve change to law and policy that will benefit individuals and communities beyond those directly involved in the campaign. .... Although certainly not the only strategy available to those seeking to change law and social policy (others include direct action or grass roots campaigns, political lobbying, public information campaigns, and submissions to law reform and other public inquiries), litigation can be a critical component of a broader public interest campaign. Litigation is frequently an important strategy, as either a trigger or catalyst to launch a campaign, or as a 'back-end' mechanism to secure the gains of a multi-strategy campaign.<sup>37</sup>

There are a handful of examples of high-profile strategic litigation cases in Australia,<sup>38</sup> but Australian community legal centres are generally unlikely to develop strategic litigation priorities or practices. I spoke several times to Agata Wierzbowski, who has been awarded a fellowship by the Victoria Law Foundation to investigate impact litigation (or, as Agata calls it, strategic casework), and I look forward to reading her project report later this year.

Strategic casework, as Agata calls it, is an important and underused tactic available to community or cause lawyers in Australia, but it's not a tactic that is likely to empower communities.

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<sup>37</sup> Andrea Durbach, Luke McNamara, Simon Rice and Mark Rix, 'Public interest litigation: Making the case in Australia' (2013) 38(4) *Alternative Law Journal* 219.

<sup>38</sup> See eg *Commonwealth v Tasmania* [1983] 158 CLR 1; *Australian Iron and Steel Pty Ltd v Banovic* [1989] 168 CLR 165; *Al-Kateb v Godwin* [2004] 219 CLR 562; *Al Masri v Minister for Immigration and Multicultural and Indigenous Affairs* [2002] FCA 1009; *Breen v Williams* [1996] 186 CLR 71; *Roach v Electoral Commissioner* [2007] HCA 43; *Plaintiff M70/2011 v Minister for Immigration and Citizenship* [2011] HCA 32.

# Using specialist organisations' experience to improve accessibility

While working at QAILS, I was part of a project called *Access All Areas*, which considered the interface between generalist and specialist community legal centres in Queensland, in an endeavour to identify ways to support Queensland community legal centres to work more effectively together to deliver equitable and accessible specialist legal services in the public interest.

This report identified the difference between 'specialist' and 'generalist' community legal centres, and the context in which they operate. It identified challenges for providing equitable access to services in a vast and decentralised state like Queensland, and discussed some of the alternative frameworks and models that have been developed in other jurisdictions.

We can learn from the expertise of specialist organisations, whether they're legal services or other organisations. There were some good examples I canvassed on my fellowship trip.

Like many parts of Australia, Californian legal services rely on Interest On Lawyers' Trust Accounts (**IOLTA**) payments. As [The Campaign for Justice](#) explains:

IOLTA accounts are held in over 250 banks in California. The interest remitted on the over 46,000 accounts goes directly to the Legal Services Trust Fund Program at the State Bar of California which, in turn, distributes the funds to nearly 100 nonprofit organizations providing critical legal services to their communities.

Interestingly, there are two types of organisations that are able to access these funds: legal services projects, and service centers.<sup>39</sup>

**Legal service programs** "provide civil legal services to indigent persons" – similar to the bread and butter work of community legal centres in Australia.

Of course this work is interesting and relevant for this project, but of more interest for networks of Australian community legal centres is the **service center**, which is responsible for providing "a significant level of legal training, legal technical assistance or advocacy support to qualified legal services projects". According to [Western Center on Law and Poverty](#) executive director Paul Tepper (or my notes of our conversation – any error would be mine!), about 20 of the 95 recipients of IOLTA funding in California are service centers. WCLP is one of these, and describes its activities in this space as:

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<sup>39</sup> More information about the two types of funding programs is available on the [State Bar of California website](#).

Western Center delivers in-depth legal support, including technical assistance by e-mail and telephone, on-site trainings, conferences, webinars, publications, and litigation support to 700 legal aid attorneys at nearly 100 legal services organizations throughout the state.

Generally, these organisations do not provide high volume casework services – they're precluded from receiving legal service program funding. They will co-counsel with LSPs in high-impact cases, but their focus is on supporting and developing a network of services across the state, in particular areas.

Translating this to an Australian context, it's relevant to the work of our 'specialist' community legal centres, who deliver specialist services to their core client community, but also play a vital role in supporting our 'generalist', geographically focused agencies. Coming federal legal assistance reforms, and the requirement to engage in jurisdictional service planning, provide an opportunity for a considered discussion about the role of specialist services, sharing their expertise with other services as part of a joined-up, collaborative and client-focussed plan for legal assistance.

Britain's Youth Access has developed *Opening your doors to young people* as part of the Working Together for Advice project, a partnership project in which the advice networks have come together to support frontline agencies across the advice sector. The guidelines are particularly intended to complement the project's work to improve access to services and to develop the quality of advice.

**Suggestion 5:      organisations with experience and expertise working with particular groups or communities should support other organisations to improve their services and accessibility**

## Community education

OPICCO is very clear that community education is not the same as empowerment or community organising, but it is clear that providing people with information about their rights is a way to increase their civic understanding and engagement.

The American Civil Liberties Union of San Diego and Imperial Counties runs 'Know Your Rights Academies' to train peer educators. The academy runs over six, two-hour sessions, providing up to 25 community leaders with skills to deliver training, and also to develop these community leaders' skills. A number of organisations I visited run, or have run, other peer education training programs, including:

- The national office of the American Civil Liberties Union delivered regional human rights training, focussing on issues relevant in different areas (racial profiling in Texas, low wage immigrant workers in Florida, girls in detention in New York, etc). 10-12 2-day workshops were delivered across America, funded by the JEHT Foundation, and reports and advocacy plans were developed as part of the workshop.
- Toronto's Injured Worker Consultants' 'Speakers School', a program for people who were injured at work to speak to others who have suffered similar injuries. A twelve week program of three hours per week, that takes people through the history of the workers compensation movement, leadership and activism
- Scarborough Community Legal Service in suburban Toronto established a 'Tenants School' in 2010, with the Federation of Tenant Associations and with funding from the Law Foundation of Ontario. Held over six weeks, with three-hour evening sessions covering substantive residential tenancy issues and organising/campaigning skills, participants were also provided with take-away materials, and it was particularly popular for residents of public housing.

**Suggestion 6: community legal education strategies could include peer training sessions; don't assume that participants will avoid activities with big time commitments**

## Ontario's specialist education CLC

All 77 community legal clinics in Ontario, Canada, are required to provide public legal education (**PLE**) to their client communities under their funding arrangements with Legal Aid Ontario. One centre has a particular mandate to focus on this area: [Community Legal Education Ontario](#) (**CLEO**). According to CLEO's website:

Since 1974, CLEO (Community Legal Education Ontario / Éducation juridique communautaire Ontario) has developed clear, accurate, and practical legal rights education and information to help people understand and exercise their legal rights. Our work focuses on providing information to people who face barriers to accessing the justice system, including income, disability, literacy, and language. As a community legal clinic and part of Ontario's legal aid system, we work in partnership with other legal clinics and community organizations across the province.

Our work includes:

- an extensive collection of legal information [resources and publications](#) available in a variety of languages and formats

- research into effective ways of developing and delivering legal rights information through the [CLEO Centre for Research & Innovation](#)
- Your Legal Rights [website](#), which has legal information on a wide range of topics, in a variety of languages, produced by hundreds of organizations from across Ontario
- Connecting Communities [project](#), which is facilitating legal information training partnerships between legal and non-legal organizations to improve legal information and services for those who don't speak English or French or who live in rural and remote communities

Online resources including [Refugee Rights in Ontario](#), [Youth Criminal Law](#), [PLE Learning Exchange](#) and [Get Ready for the ONCA](#)

Other community legal clinics (both 'specialty' and 'geographic') work with CLEO to develop PLE resources, including suggesting topics and reviewing materials. Research and drafting is generally undertaken by CLEO's staff, which includes three lawyers and three plain English editors. These materials are then used by CLCs to provide to individual clients and to support education activities. CLEO order forms ask 'How will these materials be used?', which is a useful way to understand the impact their materials might have, and innovative ways that they could be used.

CLEO also has an important capacity-building function for other organisations, and convenes the PLE Learning Exchange, a network of community-based organizations in Ontario that produce or deliver public legal education and are interested in sharing their experience and expertise, as well as learning from others. An [interactive website](#) for the network showcases research and resources relating to effective public legal education, and provides an online space for organizations involved in PLE to share their insights and learnings and to build partnerships. The PLE Learning Exchange also convenes occasional forums or symposiums for members to meet to discuss their work and learn from the experience of others. This network is similar to Queensland's CLE Legal Assistance Forum.

As CLCs can, and do, prepare their own CLE materials, having a standalone specialist service focusing on PLE cannot ensure resources aren't duplicated. Commonly, funders (including the [Law Foundation of Ontario](#)) will direct potential applicants to CLEO to reduce duplication, and CLEO's [Your Legal Rights website](#) (similar to the NACLC CLEAR database) is a useful resource for CLCs to check before commencing a new project.

When I met with Helen and Hayley from the pro bono team at Allen & Overy in London, they were very supportive of Law for Life (the Foundation for Public Legal Education), 'an education and information charity that aims to increase access to justice by providing everyone with an awareness of their legal rights together with the confidence and skills to

assert them.<sup>40</sup> Sadly, I didn't get to visit this organisation, but it seems to play a similar role, although I observed that the UK access to justice sector seems more fragmented and less coordinated than in Ontario, and Australia.

## Research, advocacy and reform

A number of the organisations I met with undertake substantial research to inform their advocacy and activism, either independently or as part of a broader consortium or coalition. Examples include:

- Toronto's Injured Workers Consultants are part of the Research Action Alliance on Consequences of Worker Injuries (**RAACWI**) to undertake research on the workers' compensation system and its role in the economic, social and health consequences of work injury. RAACWI builds on the expertise of all involved to produce insights into the compensation system that will influence policy development, education, and further investigation. Ultimately, RAACWI hopes to make the system work better for all injured workers.<sup>41</sup>
- The National Law Centre on Homelessness and Poverty regularly releases substantive research reports on the criminalisation of homelessness in various US jurisdictions. This report often leads to local service providers or municipal governments engaging with NLCHP to reform local laws and practices.
- The Canadian Forum on Civil Justice (**CFCJ**) is a national non-profit organization dedicated to advancing civil justice reform through research and advocacy. CFCJ strives to make the civil justice system more accessible, effective and sustainable by leading and participating in projects that place the citizen at the center of Canada's civil justice system. When I spoke to their executive director Nicole Aylwin, she discussed a recent 'social labs' model, which takes a designs thinking approach into workshops with a variety of stakeholders to develop prototype solutions to specific high level problems (eg the experience of people with mental health in family justice).
- The Children and Youth Project at Columbia Legal Services works with geographers at the University of Washington to understand how the area an abused/neglected child lives impacts on whether they are appointed an attorney to help them navigate the court system.
- Toronto's Income Security and Advocacy Centre joined with Ontario Campaign 2000 on the Ending Poverty Project, to work with low-income people in 10 communities to

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<sup>40</sup> <http://www.lawforlife.org.uk/>.

<sup>41</sup> See <http://www.consequencesofworkinjury.ca/>.



share ideas for what's needed to end poverty in Ontario and to build broad public support for tackling poverty both locally and across the province. The two-year project, which began in January 2008, involved community partners in Thunder Bay, Sault Ste. Marie, Ottawa, Owen Sound and Windsor. In Toronto, the project involved youth, people with disabilities, single moms, and racialized communities. The project produced a report with low-income people's ideas for ending poverty, *Solutions Start with Us: Voices of Low-Income People in Ontario*.<sup>42</sup>

- The Economic Roundtable, based in Los Angeles, participates in the Southern California Interuniversity Consortium on Homelessness and Poverty, which has published reports including *Ending homelessness in Los Angeles*, *Los Angeles in an era of welfare reform: implications for poor people and community well-being* and *Jobs, welfare and homelessness*.
- Several of the academics I spoke to run public interest clinics, where students develop research papers that advocate for law reform.
- Youth Access, the UK's national membership organisation for young people's information, advice, counselling and support services, produces regular research reports to ensure high quality services, modelled on evidence-based approaches, exist to meet young people's needs. James Kenrick, who I met with, is the Advice Services Development Manager at the organisation, and one of his key functions is building this evidence base.
- Youth Access also developed **Make Our Rights Reality** in December 2014, a manifesto on rights and advice services created by hundreds of young people across England. The document sets out six key changes demanded by young people to make their rights a reality.

**Suggestion 7:        commit to sharing your clients' experience through research reports; this work can be amplified through partnerships with experienced researchers**

A number of US organisations I visited employ lobbyists at state capitals or in Washington. While their resources could never meet the resources of the private sector, engagement with politicians is an important advocacy tool. Several organisations I met with, including the Chicago Coalition for the Homeless and the ACLU of San Diego and Imperial Counties, bussed large groups of community members into state capital buildings to do this work, which should be encouraged.

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<sup>42</sup> Available at <http://incomesecurity.org/campaigns/documents/EndingPovertyReport-FINAL-Dec.2008.doc>.

**Suggestion 8:       when developing strategies for engaging directly with law makers and elected officials, include members of the community in the planning and execution of this work.**

## Where does your legitimacy come from?

When seeking to create change, advocates must have legitimacy to be taken seriously. For community legal centres, this legitimacy comes from the services that we provide to marginalised and disadvantaged people. This experience helps us identify what change is needed, and ideally provides credible evidence to policy-makers about ways that systems can be improved.

However, when we're working in coalition with other community or advocacy organisations, it's important to understand where their credibility comes from. Some will be credible by virtue of the fact that they speak for a large constituency (Midwest Academy repeatedly stated that any action or tactic must consider if/how it could 'build the base' of the organisation, which I discuss elsewhere in this report). Some organisations will be credible for their deep academic knowledge of an area, or because of their research base. Some organisations' credibility comes from their profile.

One of the areas where progressive community movements can lack credibility is in economic analysis. It was great to meet with Dr Dan Flaming from the Economic Roundtable in Los Angeles, a nonprofit public policy research organization with 'exceptionally strong capabilities for research into economic, social, and environmental conditions'. The Economic Roundtable describes its core strengths as 'creating, integrating, analyzing, and communicating highly detailed demographic, economic and property development datasets to provide operationally relevant information for public sector economic strategies.'<sup>43</sup>

Strictly speaking, it's outside the scope of this project to be looking at the work of this type of organisation. However, Australian public policy is poorer for not having specialist non-government organisations practising in this area.

**Suggestion 9:       support and develop expertise in other areas to support advocacy, including economic analysis, urban planning and other specialist skills**

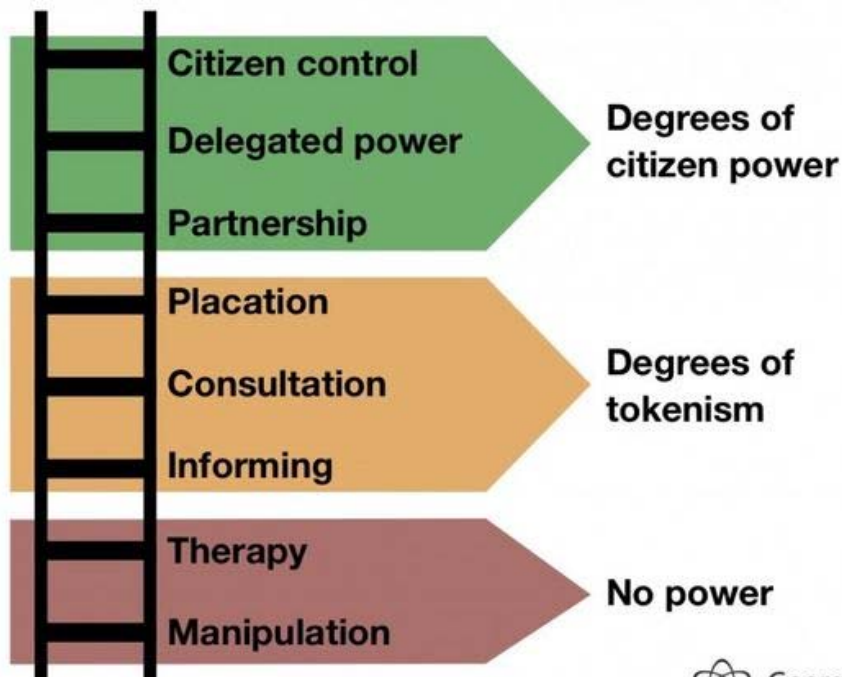
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<sup>43</sup> <http://economicrt.org/about/>

# Community participation

Sherry Arnstein proposes a hierarchy (or 'ladder') of citizen participation:<sup>44</sup>

Arnstein (1969) Ladder of citizen participation



George Julian  
Knowledge Transfer Consultancy

When thinking about legal services' work with their communities, this provides a useful typography to frame some of the ways that citizens engage.

Generally, US legal services that receive LSC funding are required to have boards that are constituted of two-thirds lawyers and one third community members that are eligible to receive legal services (I reviewed the LSC's documentation, which isn't this directive, but a few of the organisations I spoke with suggested that this was a norm). One organisation 'got around' the requirement for community representatives by recruiting people who worked in community organisations providing services to people who would qualify for services, and technically be eligible to use the services (due to their low income), but wouldn't usually be service users. This suggests a level of tokenism, to use Arnstein's ladder.

**Suggestion 10: avoid tokenistic community participation models**

<sup>44</sup> Arnstein, Sherry R. "A Ladder of Citizen Participation," JAIP, Vol. 35, No. 4, July 1969, pp. 216-224.

At the other end of the spectrum was Voices for Change, a group of people living in poverty in Burlington (outside Toronto) that I met with. Voices for Change is a grassroots advocacy group supported by Halton Community Legal Services as an extension of the clinic's commitment to systemic strategies to address poverty and promote human rights. According to the group's website (<http://www.voicesforchange.ca/about>):

Voices for Change Halton is a grass roots organization whose intentions are simple. We believe in the end of poverty. We believe that shelter, food and dignity are human rights. We believe that poverty in Halton can be eradicated through education, advocacy and activism, working in solidarity with active community partnerships.

We are making a difference, holding the government accountable for its struggling citizens and exposing the unacknowledged truth that there are people living in poverty in Halton.

Our group formed in 2011 supported by Halton Community Legal Services through a grant from the Atkinson Charitable Foundation to build a community based strategy for civic engagement by people with lived experience of poverty in poverty elimination activities.

This was an impressive group, well supported by two very capable community organisers, Mike Balkwill and Alyssa Ginsburg. The participants felt great ownership over the project (and didn't feel that it was a project of the legal clinic, as much as a project of their own). Interestingly, the group had experimented with members coordinating and chairing, and decided that they worked better when Mike facilitated meetings. There were clear groundrules – for example, participants couldn't seek legal advice at meetings, participants must accept people as they are, etc. Participants got involved in projects including administering legal health checkups within their own community, hosting a "walking/rolling" tour of several square blocks of downtown Burlington with the Mayor and Councillors which led to some policy changes around accessibility and transit, holding town hall meetings, and regular speaking events.

The Legal Aid Foundation of Los Angeles also has three active client councils, and generally tries to have a client council for each branch office/neighbourhood. One representative of each of these councils sits on the organisation's board. The Councils meet monthly, have clear by-laws, set terms and the organisation is developing a curriculum or program for participants.

**Suggestion 11:      legal services should consider establishing forums to support community to guide and support their work**

Other examples of client participation that I discovered as part of this Fellowship include:

- Chicago Alliance Against Sexual Exploitation (**CAASE**) holds roundtable discussions for people who have experienced sexual violence. The organisation's constitution also requires people with lived experience to be board members.
- CAASE was also involved in the development of a documentary film about a client's experiences.
- CAASE's 'Voices and Faces Project' involves workshops to help survivors tell their stories, to the media or to community groups.
- ReThink, a large UK mental health service, has an 'information panel' of less than 100 people who have experienced mental ill-health. The organisation sends draft information resources to this group for feedback.

I was particularly impressed with the client participation model used at Toronto's Injured Workers Consultants. As I understand it, clients are booked into appointments to see a lawyer to appeal the rejection of their workers compensation claim. However, before they meet with lawyers, a group of clients are brought into a room and a staff member facilitates a conversation (called a 'community house') that covers their legal problems, the systemic difficulties with the workers compensation system, and some of the health and social impacts stemming from their workplace injury and their interactions with the workers compensation statutory authority. This conversation helps clients understand the context in which their legal problem has arisen, and ensures that they understand that the exclusion, frustration and anxiety that is a natural result of this type of legal problem. Clients are then provided with legal assistance, and given the opportunity to participate in groups facilitated by IWC that engage in direct action or other advocacy (currently there are four groups: Bright Lights, Women of Inspiration, Chinese Injured Workers and Tamil Injured Workers).

Make the Road New York requires people to join the organisation to receive services, including legal services. While this might be considered controversial in Australian community legal centres, it certainly warrants some consideration – leaving aside the issue of fees, why shouldn't service users support the organisation that provides those services?

## Community organising

American legal services funded by the federal Legal Services Corporation are prohibited from community organising. This limitation not only applies to use of these LSC funds, but to all activities of the recipient organisation. As it was explained to me, the Republican-controlled legislature in the mid-1990s was concerned that LSC-funded services were employing organisers to organise tenant groups to protect/promote the rights of tenants, or to 'incite' workers to unionise or form other collectives. This was perceived as taxpayer

funding being used for left wing or progressive causes, and so restrictions were placed on this work. Part of the restriction (that prohibited LSC-funded organisations litigating to strike down federal laws) was effectively struck down by the Supreme Court 5-4 in *Legal Services Corp. v. Velazquez*, 531 US 533 (2001), but the prohibition on class actions, lobbying and organising remains. This also advantages aggressive opponents in these matters; for example, a defendant landlord may refuse to settle with individual complainants, and ask for a class settlement, which LSC-funded organisations can't settle.

As a result, most high-volume US legal assistance services do not engage in organising, although some will work with community organisations to address some systemic issues. (Gary Blasi suggested to me that some of these restrictions could give some organisations an 'excuse' to say no to controversial legal work, which is possible.) Some organisations, such as the Legal Aid Society (New York) and Los Angeles' Inner City Law Center refuse federal funding, as the funding conditions limit their options in advocating for clients and communities.

UCLA's Gary Blasi, reflecting on his work as a tenancy lawyer before joining academe, recalled telling clients that he would help them on the condition that they would speak to their neighbours about the issue he was assisting with, and that this led to an increase in inquiries in buildings and neighbourhoods, that could provide a good base for organising. Sometimes this would lead to formal groups being formed to engage in advocacy and litigation on behalf of the residents, and Blasi recalled the retainer essentially forming the constitution of these residents' groups. However, these groups were transient – they came together (or came to see him) because they were facing a housing crisis, and once this was averted, they wouldn't stick around.

**Suggestion 12: ask 'Why do we have members? What value do they give us, and what value do we give them?'**

The Bronx Defender's Office identifies a number of social issues that contribute to people committing criminal offences, and advocates for change. For the last year or so, they've started using a community organising model to undertake this policy/advocacy work, and this has required some organisational/cultural change. Walter Rodriguez from BDO reminded me of an important truth, that lawyers working in this area might forget (I know I have): 'I can't empower you. You empower yourself. I can facilitate.'

**Suggestion 13: remember, you don't empower communities. Communities are empowered.**

According to their website:

At The Bronx Defenders, we look beyond individual struggles to identify and challenge entrenched injustice. We work for systemic reform and simple fairness and respect for our clients. New York's criminal, civil, and family legal systems are broken. They are marked by deep racial bias. By trapping individuals and families in cycles of court involvement, they waste millions of dollars on failed solutions that harm communities instead of healing them. Our Policy & Community Organizing team works closely with staff, clients, and their families to fight for justice and fairness in the communities we serve. We build community through annual events like our annual Community Block Party, Youth Justice Summit, and Thanksgiving Dinner. And we take a holistic approach to policy reform, using a broad range of strategies including grassroots organizing, coalition building, legislation advocacy, and research.

Public Counsel, which predominately works in partnership with *pro bono* lawyers to provide services, recently established an Impact Litigation Unit, and recruited organisers to support this work. Rather than employing more lawyers or paralegals, it was identified that a new role was needed to build trust with client communities, gather facts without the formality of a lawyer's intervention, and to keep clients in touch. This resonated with me – I ran a legal service where most services were provided by *pro bono* lawyers from large firms, and an audit of our files revealed that about 24% of our cases were closed because we lost contact with clients.

Similarly, the American Civil Liberties Union of San Diego and Imperial Counties has employed organisers, specifically to work with 'undocumented people'. They support groups of recent arrivals to the southern parts of California, including helping to establish formal groups if there are gaps. The ACLU expressed a concern about 'helicoptering' into communities around a particular issue or piece of litigation, then leaving, resulting in poor relationships. Community organisers can build and maintain these relationships, and it supports their '**integrated advocacy**' model which uses organising, policy and litigation. Specifically, the community organiser can engage in *reactive* organising (working with communities to find breaches or violations of rights) or *proactive* organising, through 'know your rights' training (discussed elsewhere in this report). I also met with the ACLU's national office; they don't employ any organisers, but do work in coalitions with community groups and organisers.

In Ontario, there's a strong tradition of community organising in their community law clinics. The Ontario Project for Inter-Clinic Community Organizing, has identified 10 reasons why legal clinics make good community organizers,<sup>45</sup> which can be summarised as:

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<sup>45</sup> <http://www.opicco.org/files/Why%20Clinics%20make%20good%20Community%20Organizers.doc>.

1. it's **mandated** (by Ontario funding agreements)
2. we have strong community and neighbourhood **networks**
3. community lawyers are **respected** and **trusted**
4. legal services have more **stable funding** than many other community organisations
5. we have staff who are **dedicated** to creating change over time
6. we don't rely on short-term project funding, so we have **permanent** staff
7. our client work gives us great **information** and **experience**
8. we develop **strong networks** with politicians, officials and local workers
9. lawyers' participation can add **legitimacy**
10. Treadmills are no fun!

In Ontario, this work is often done in coalition, and one example that came up in my visits was the ODSP Action Coalition, which wants to improve social security services for people with disability. The coalition is made up of service providers (including law services) and people with disability; in fact, 75% of members need to be people with lived experience, and each of the coalition's four committees<sup>46</sup> are co-chaired by someone from a service provider and someone who receives ODSP. When I spoke to recipient members, they told me that lawyers need to understand the lived experiences of their clients, and they saw that they had a key role in informing lawyers and helping them to understand. Coalition activities include:

- Lobby Members of Provincial Parliament (MPPs), including key government ministers.
- Consult with government staff.
- Bring media attention to disability and poverty.
- Organize public events, local demonstrations and actions.
- Build networks between other groups and organizations to push for disability rights.
- Gather statistics and document the experiences of people on ODSP to push for improvements to ODSP.

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<sup>46</sup> Committees include:

- Policy/Research Committee
- Public Awareness and Advocacy Committee
- Earnings and Employment Supports Working Committee
- Access to ODSP Committee



- Provide information and materials on disability rights and the ODSP program.
- Provide referrals for low-income people who want to appeal ODSP decisions or make a complaint regarding ODSP to the provincial Ombudsman.
- Encourage ODSP recipients and agencies to form ODSP support groups in their communities to provide practical support to people with disabilities on ODSP.

Sameer Asher from University of California Irvine provided a beautifully simple summary of lawyers and organisers/activists:



In the first model (evident in Ontario CLCs and some US organisations including Public Counsel and the ACLU SDEC), organisers are on staff at legal services. This allows staff to play to their strengths, and can allow for a focus on using legal tools/tactics to achieve change. Often – as in Ontario – this model relies on historical or cultural factors, and there can be some cross-discipline challenges, where lawyers don’t understand or value organisers’ skills, experiences or perspective, or vice versa. The Ontario Project for Inter Clinic Community Organizing (**OPICCO**) suggests ten tips for incorporating community organising into law clinics:

1. It takes time! Set aside time for clinic staff to do community organising
2. Prioritise organising opportunities when they arise
3. Set aside clinic resources for community projects
4. Prioritise training and education for staff and clients
5. Have board/staff discussions about how to organise in your community
6. People with lived experiences or direct affect must lead, and be given support to take leadership roles
7. Make changes to intake processes that support collective responses to issues
8. Follow local issues, build relationships with community organisations
9. Be ready to take strong positions on divisive local issues
10. Organising/community work will help avoid burnout, and engage creativity

OPICCO was created in 2002 to ensure that community organizing remains a central part of the work that legal clinics across Ontario do. Membership in OPICCO is open only to legal clinic staff, board members or clinic delegates. Members include social workers, community legal workers, lawyers, clinic directors, office managers and board members representing clinics across the province. OPICCO members meet annually and have also formed committees that meet more regularly to:

- lobby for dedicated funding and staff time for community development in all Ontario legal clinics
- promote and develop opportunities for community development training
- share community organizing resources with clinic staff, low-income activists and community advocates
- encourage clinic staff to share and discuss community development strategies regionally and across Ontario
- develop better ways of measuring the value and effectiveness of community organizing

The second model, of lawyers in activist or community organisations, isn't a common model in Australia (perhaps with the exception of trade unions), and is certainly unlikely to be government funded. In the US, this model is not unusual in environmental organisations or workers' centers.

The third model, of legal services working in partnership or collaboration with community organisations or activists, is certainly common in Australia's community legal centres. It allows for organisations to maintain independence and mission clarity, but means campaigns/movements might not always be well coordinated.

Gerry Lopez from UCLA advocates lawyers' partnerships with community institutions to advocate for change, but his colleague Gary Blasi notes that these formal structures don't exist within or for all communities, and that sometimes informal collectives of individuals is the more appropriate group.

## **Waiting for change**

A New Way of Life in Compton, South Los Angeles provides housing and support services to formerly incarcerated women, facilitating a successful transition back to community life.

One of the services they provide is an 'expungements clinic'. An overly simplistic description: people convicted of (but not imprisoned for) misdemeanor crimes can apply to Californian

courts to have these cases expunged from their records. The clinic works with staff attorneys, students and volunteer lawyers to assist clients through this process.

Relevantly for this project, while clients are waiting to see a lawyer, organisers from All of us or none present to people waiting for the service. AOUON is a grassroots community organizing effort that works to amass enough political power to reverse the discriminatory policies and practices affecting prisoners, former prisoners and others with criminal records; entirely relevant and appropriate for this client group.

As part of the Midwest Academy training that she presented, Kate Barthelme also reflected that a similar system was used at Planned Parenthood when she worked there. Policy interns would have an advocacy table in the waiting room of these services, generally where women were seeking to access health services. Those interns were trained to engage with services users about current campaigns and advocacy priorities, with specific 'actions' that women could take to support the campaigns.

**Suggestion 14:      consider using waiting rooms to have conversations about important social change campaigns, and build movements**

# Conclusions & reflections

## Some reflections

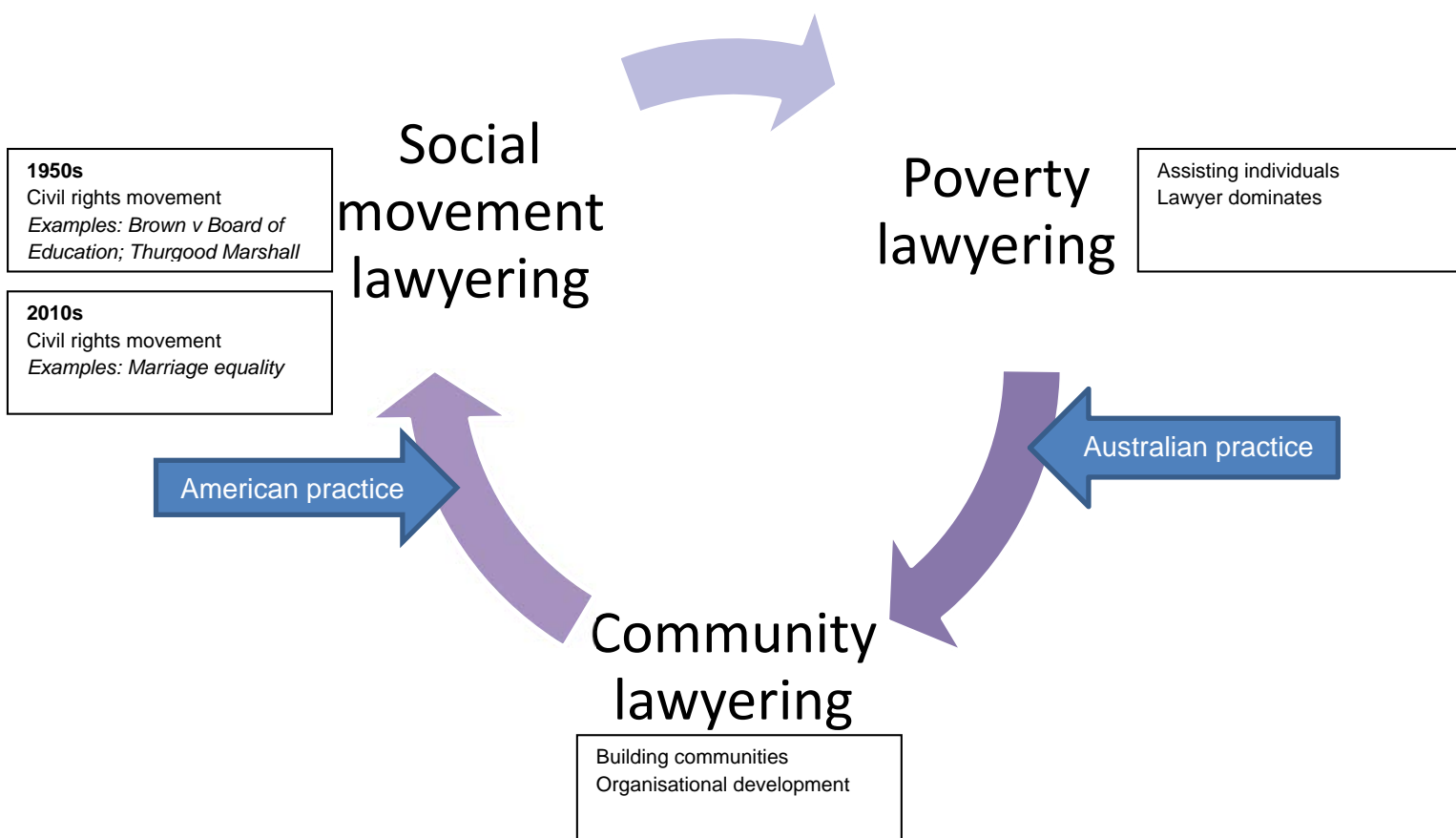
### The cycle of cause lawyering

Professor Scott Cumming suggested to me that US cause lawyering has come full circle to social movement lawyering; starting with the strong civil rights movement of the 1950s and 1960s, which Professor Jennifer Gordon noted didn't always shift power despite important courtroom wins in cases like *Brown v Board of Education of Topeka*, 347 US 483 (1954). The 1970s and 1980s led to the growth of poverty lawyering (which contributed to the establishment of Australian community legal centres at that time). Frustration with the cyclical and repetitive nature of poverty lawyering (seeing the same, or similar, clients with the same, or similar, legal problems – something I can relate to!) led to community lawyering, which focussed on building the capacity of community organisations and social enterprises to build economic participation and social cohesion. However, acting within dominant structures and systems again leads to frustrations, so cause lawyering has returned to fighting for causes like equality – the marriage equality campaign is a good example.

I'm paraphrasing Scott here – he's done lots of work on these issues<sup>47</sup> – but I've attempted to capture this idea in a simple diagram:

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<sup>47</sup> See eg



If that model holds true then, to my mind, the type of work that (mainly) happens in Australian community legal centres is still in the ‘poverty law’ sphere, with some minor experiments in the ‘community lawyering’ (or perhaps more accurately ‘community economic development lawyering’).<sup>48</sup>

## Funding

Like in Australia, the source of funding often drives the activities of legal services organisations.

Legal aid funding in the UK has been decimated due to austerity budgets in recent years, but even before this, legal services focussed on the needs of the clients that were presenting, and the cases with which they presented – particularly as they were (relatively well) paid on the basis of the numbers of these services that they provided. The recent cuts have had a profound impact on community law centres. In my meetings in London, it seemed that organisations are focussed on survival, on raising community awareness about the impact of the funding cuts on vulnerable people with legal problems, and on winding back those

<sup>48</sup> See eg the work of JusticeConnect's Not-For-Profit Law service: [www.nfplaw.org.au](http://www.nfplaw.org.au).

services. It reinforced the difficulties that come from relying on government funding which is subject to poor decision-making and unforeseen consequences.

Conversely, while I was visiting Toronto, the Ontario government announced an increase in funding for community law clinics. An additional quarter of a million low-income Ontarians will be eligible for legal aid funding after Legal Aid Ontario boosted its eligibility thresholds.

Practically speaking, that means a family of three earning under \$24,045 a year (compared to \$22,684 previously) would be eligible for preliminary clinic services, while such a family earning under \$23,932 (compared to \$22,577) would be eligible for courtroom representation. This idea – of increasing funding to ensure a base level of services, rather than allocating funding and then limiting services according to the ‘cloth’ – is far more sensible, and ensures a better, adequate safety net.

In the US, most of the legal organisations I met with are either funded by the Legal Services Corporation (which comes with significant restrictions) or IOLTA funding (discussed below), or by relying on grant-making bodies or individual donors. While the US philanthropic culture is very different to the Australian context (it was great to get some insight into this by meeting with April Donnellan from Global Philanthropy Partnership in Chicago and Elizabeth Goldberg from the Law Foundation Ontario), my fellowship has shown that we must focus on educating non-government funders about the value of the work that we do in community legal centres, and particularly the value of our advocacy work. This must be a long-term project.

**Suggestion 15:      develop a 10 year plan to educate and engage non-government funders about the importance of legal services and advocacy**

## It takes time...

Californians with felony drug convictions were ineligible for welfare payments. For life. I don't need to explain how problematic a law like this is. Western Center challenged this law, repeatedly and unsuccessfully, for years. Finally, their work was successful, and this bad law was overturned. It had taken 17 years.

Immigrant and poor workers were engaged as 'independent contractors' to haul cargo from LA port. They were paid less than the minimum wage, and had to supply their own trucks, which were in poor repair as they didn't have the money to upgrade. Local communities affected by the ports, environmentalists concerned about polluting trucks, and labor

organisations concerned about workers' rights came together to deal with these problems. They successfully lobbied LA government (owner of the port) to introduce requirements for the trucking companies to employ their workers and update the fleet. While the new requirements were ultimately overturned by an appellate court, it took over a decade from the time activists started discussing the issue until the new laws were introduced.

These, and many other stories, reinforce that meaningful social change is a long journey, and (as Friere says<sup>49</sup>) we make the road by walking. These campaigns require thorough planning, willing coalitions, long term commitment and a range of complementary tactics and strategies.

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<sup>49</sup> Horton, Myles and Paulo **Freire** (1990). **We Make the Road by Walking**: Conversations on Education and Social Change. Philadelphia: Temple University Press.





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