

# Education v casework

## A losing battle

Jenny Burley

*In hard times the need for community legal education is greater than ever but so are the threats to its funding.*

Community legal education (CLE) has traditionally been the poor relation of case work in the allocation of resources designed to improve access to justice in Australia. Against the many odds, community legal education has made considerable achievements. But those gains are again under threat where increasing case work demands consume reduced budgets. South Australia's solution to the dilemma of the demonstrable need for legal education to expand rather than contract has been to raise its own funds for worthwhile projects. Based on the 'Robin Hood' principle, user-pays legal education now funds a host of other education activities.

CLE as a method of improving access to justice has been with us now for nearly 20 years. However, it is a far cry in 1991 from the days in the early seventies when the first formulation of CLE goals was that everyone should have the opportunity of knowing at least the basic principles of the laws which affect them in their daily lives.<sup>1</sup>

With the publication in 1975 of the Sackville Report *Legal Aid in Australia* the primary focus for legal educational projects shifted from global goals to the pressing needs of the disadvantaged; be that disadvantage one of class, gender, age, ethnicity, physical disability, mental impairment or of economic origin.<sup>2</sup>

Legal education in schools was also an issue in overcoming, in the future at least, widespread ignorance of the legal system and its processes. During the latter half of the seventies, when funding and enthusiasm was high, legal studies was introduced in several states and has since become established in secondary, and some primary, curricula throughout Australia.<sup>3</sup> The schools project could possibly be considered as the single most successful of CLE ventures. However, adult education programs, especially those targeted to disadvantaged groups, have been less straightforward to provide.

While the need for CLE remains undisputed, there has been, and continues to be, less than total agreement, in the literature

at least, about what the aims and objectives for CLE projects should be.<sup>4</sup> Differing needs — political, geographic, social and clientele based — have produced a wide range of legal education programs or services in the past 15 years. For example, English language pamphlets in many areas of the law have proliferated in all states, 'do-your-own-divorce' classes are now commonplace, *Streetwise* comics continue to be published regularly and legal centres throughout Australia have produced or collected multi-media materials and a number of do-your-own kits such as those on divorce, immigration procedures and motor vehicle accidents. These materials are brought together each year at the Community Legal Centres National Conference where ventures undertaken in every state are available to be shared with other states and organisations within them.

Community Legal Centres and Legal Aid Commissions have been in the forefront of these developments but still, it seems, the need for legal education and for equality of access to the legal system grows rather than diminishes.

In 1986 the Law Institute of Victoria published the results of its study 'Community Legal Education in Victoria 1980-85: A Background Study'. This study was a thorough examination of all CLE ventures in the period. Documenting the initiatives and achievements of the CLE movement they nevertheless identified that important sections of the community — the disabled, migrants and the many Australians who are illiterate — remained disadvantaged before the law and the legal process.<sup>5</sup> The difficulties entailed in reaching these groups are well known but the chief constraint is the availability of resources. The last five years have witnessed steady reductions, in real terms, of funding for both Community Legal Centres and Legal Aid Commissions and it is within these organisations that conflict has arisen over the allocation of resources. Increasing case work, especially in the past year or so of economic downturn, is claimed to be the more important service to the community at large despite strong arguments that education activities are demonstrably as necessary as well as being more cost effective.<sup>6</sup> This is a crucial point in the struggle to obtain equality of access to the law. As one *Legal Service Bulletin* editorial argued, as far back as 1978:

Without at least the rudiments of a legal education, direct access to the legal system is denied the vast majority of citizens.<sup>7</sup>

Even legal aid, as it is dispensed at present, tends to perpetuate the mystique of the law and promote individualistic

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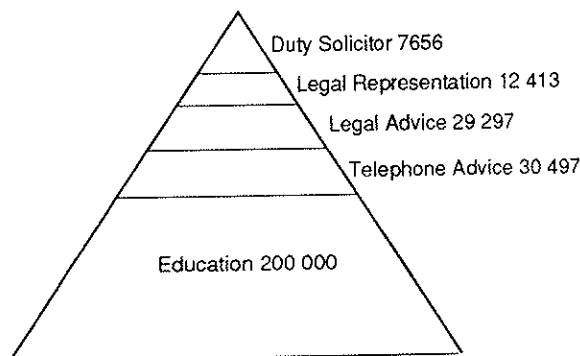
problem-solving rather than create a greater public awareness of the function of law in our society.

Despite the weight of evidence demonstrating the continuing inequality and injustice in the Australian legal system, justification for an expanded role for legal education has, in recent times, hinged on the availability of legal aid resources for case work. As the Legal Aid Task Force recommended in its *Final Report* in 1985:

These services (research and education) should not be given a high priority while legal aid resources are limited and that attention should first be given to using *all* resources to assist those persons who have a higher priority of need [emphasis added].

There is little appreciation in this Report that the preventative approach to law implemented in legal education might, in fact, reduce case loads if citizens were better informed of the laws under which they live and work. The problem with this stance is unfortunately seen as one of proof by the Task Force. Evaluation of education, especially preventative programs, is impossible to quantify. How do you measure something which does not happen? As can be seen from Figure 1, education activities of the Legal Services Commission in SA touch the lives of more than twice the number of clients seeking advice or representation, and this is a conservative estimate.

Fig 1: South Australian Commission services by numbers of clients



Source: Twelfth Annual Report of the Legal Services Commission of South Australia 1989-1990

Railing against the system which rewards lawyer focused activities, although necessary, is, however, not going to produce immediate funding for legal education.

Faced with this impasse and an urgent need to expand rather than contract legal education services the Legal Services

Commission of SA decided in 1989 to raise its own funds for education purposes.

### Public legal education

There were two reasons for the Commission undertaking this initiative. One was the suspected unmet need in the general community for knowledge of the law, and secondly there was the ongoing problem of restricted funds for future expansion of projects in community education.

One of the most important of these projects was the provision of training for paralegal advisers. The Legal Services Commission uses paralegal staff in the provision of a free legal advice service and prior to this time there was no formal training available for these advisers. If we wanted to increase our education activities in this way we would also clearly need to generate the funds to do so.

A detailed proposal and budget to initiate public courses called the 'Law Handbook Live' was accepted by the Commission in early 1989. There was considerable risk involved in floating this project in that a co-ordinator had to be employed, a program formulated, thousands of pamphlets had to be designed, printed and distributed and venue and lecturers arranged. The Commission decided to underwrite the risk.

In the planning stages of 'Law Handbook Live', the Law School at the University of Adelaide was approached to co-operate with the Commission in providing the course. The purpose of being involved with the University at this level — their name goes on the brochures, certificates and in the advertising — was to give the course status even though it is not accredited. (A certificate of participation is given to all those who attend two-thirds of the course.) For the University's part, they gain kudos from being associated with an organisation providing

legal knowledge to the wider community. It is part of breaking down, for them, a publicly perceived elitism surrounding the study of law.

Conducted twice a year, 'Law Handbook Live' is a 13 week course costing \$300 and consisting of two hour lectures on Wednesday evenings. It is now being

run for the sixth time. A total of 663 have attended.

The course fee includes a copy of the *Law Handbook* (value \$44.95). This cost is usually too high for individuals but it does not seem to be a problem for employers. The cost, less the price of the Handbook, for 26 hours of learning, is still very good value, relative to other training courses.

At the end of each course, participants are asked to fill out an evaluation questionnaire. Although only a little over half the people take the trouble to do this, we have established that, by and large, the course meets their needs for basic legal knowledge. We also ask people if they have further needs in this area. Over 90% of replies express an interest in learning about the law in more details in a number of areas.

As a result of this feedback, the Commission accepted a proposal to run short courses in 1990.

Another general public course 'Law for Non-Lawyers' offers four lectures in a month on a selected topic with a different topic being offered each month. Eight were conducted from March to November 1990. The cost is \$150 per topic and participants are given a certificate and a bound copy of the lecture transcripts at the end. There is an enrolment of an average of 30 people in each course. These courses were so popular that the number offered in 1991 has been doubled. A few of these had to be cancelled because of insufficient enrolments but offering a particular course in the first place is a good way of finding out if a need exists for it.

'Law for Non-Lawyers' is meeting a substantial need in the community for people who want to know more about the law for either their work or personal interest. If enrolments continue in the way that they have to date, we can expect to be offering legal education to nearly 600 people per year in these public courses.

Who is it, though, who wants this knowledge? In the first 'Law Handbook Live' course 58% were employees of State Government Departments and 10.5% of the Commonwealth Government. People from both professional, business and educational institutions comprised 7%. Occupations varied widely from legal secretaries to accountants.

In the second course this profile altered slightly with 37% State Government workers and 8% Commonwealth Government. This reduction in numbers from the public sector was made up by the 29% enrolment of people from private profes-

## Student profile by employer

Public sector			Private sector	
Commonwealth	State	Local	Professional	Teaching
8%	37%	5%	29%	10%

sional firms (mostly legal) or business and 10% from teachers. Local government workers represented 5%. We know from anecdotal evidence that word of mouth advertising is also beginning to take effect. This enrolment breakdown has remained stable for subsequent courses.

The public response to our courses has been dramatic but it is too early to know whether or not all of the courses will be ongoing. The Commission is committed to them at this stage but should demand reduce it is unlikely that the Commission would continue. There is some evidence of reduced enrolments this year despite the introduction of the Training Guarantee legislation for which the courses can qualify. We have yet to determine, however, whether this is a result of the recession or whether a saturation point of public education in the law has been reached.

In 1990 it was also decided to explore the possibility of providing 'tailor-made' legal education courses for individual organisations and the Commission advertised the availability of this service in its standard course brochures. The demand has been strong. We have, in 1990-91, devised and offered specific training courses for the Child Support Agency, the trade union movement, the SA Public Service Association, women's shelter workers, the State Taxation Office, forensic science workers and family and youth shelter workers. Depending on the organisation's capacity to pay, the Commission charges a fee for these courses or provides them free of charge. In the case of the Forensic Science Department we actually 'exchanged' services. The Commission devised a course for their workers on legal issues affecting their work and forensic scientists trained the Commission's lawyers in forensic methods used in producing evidence. Courses which are funded by the customer provide another avenue of both generating funds for our purposes and extending the availability of legal knowledge.

### Paralegal training

The other major development of legal education by the Commission has been in the area of paralegal training. The first year-long training course for paralegal advisers was completed in June 1990. The

first semester was titled 'Conflict between Individuals', and the second semester 'Individuals and Government'.

These topics form a part of a larger Certificate in Justice Studies run by Adelaide TAFE. This is a two year part-time course constructed especially for workers in court services, Legal Services Commission, Department of Corrections and the police. For court workers and police there is scope for two-thirds of the certificate subjects to be accredited towards a further two years of subjects and an Associate Diploma in Justice Administration.

The aims of the training course are, briefly, to equip paralegals with sound information of the law, advocacy skills and a wide knowledge of community resources. When students have completed the course they will understand the major principles underlying specific areas of the law and how they are applied. They will also possess appropriate communication skills and have a thorough knowledge of the responsibilities associated with advocacy, advice and alternative dispute resolution.

The course has 20 places and is conducted at the Commission for three hours one afternoon a week. Approximately eight of the 20 places are made available for the training of Commission staff and the other 12 places are advertised to community organisations. In the first and second intake there were many more applications from both groups than could be accommodated so selection criteria were developed. For our own staff an application in writing is sought and this is followed by an interview. Preference is given to those people already working in situations where they need to give advice and experienced secretaries and clerical staff wanting advancement. Personality, existing skills and a commitment to complete the TAFE certificate are also taken into account.

It is clear in the selection of Commission staff for paralegal training that they will have, on completion of the course, a wider knowledge and increased skills in the performance of their existing duties. They also form a pool of relief advisers who, in the event of an adviser's absence, can take up appointments which might otherwise be cancelled.

Choosing applicants from the wider community is also a difficult task. Criteria in those cases are: the size and type of the organisation's client base, its geographic location, availability of funds for training and the permanence of the employee they wish to be trained. The Commission's aim in formulating these criteria is to increase the availability of legal knowledge over as wide a field as possible in the interests of facilitating access to justice generally but especially for marginalised groups in the society. Hence, organisations serving larger sections of the population like, for example, migrants, the elderly, women or youth would have preference for entry into the course over smaller concerns such as church welfare groups. The type of service provided is also relevant in that an effort is made to reach a range of service providers. To this end, places have been provided for all community legal centres but only one place for other specialist agencies such as those serving, for instance, women, migrants, the disabled, youth, etc. Geographic spread is thought to be desirable and preference will always go to the less well-funded services if other criteria are satisfied. Our aim is to increase the availability of legal knowledge in the community rather than develop individual expertise.

### Future projects

Now that the paralegal training course is established we are looking to future projects which include training courses for ethnic communities, and the intellectually disabled, as well as initiating some form of legal education in country regions. A distance education course in the public courses is also a possibility. Another project, already begun, is a series of tapes, containing the information we have in our pamphlets, to be placed in all public libraries.

CLE over the past 20 years has taken many and varied directions. Debate about those directions has surfaced regularly with consistent pleas for community education to be considered a more than worthy partner to case work in the struggle to improve access to justice in an increasingly inaccessible Australian legal system. In the 1970s when enthusiasm and funding were generous, a plethora of publications Australia-wide furnished citizens with much needed information on their legal rights and obligations. Along with the collection of other multi-media materials into resource centres and the dissemination of information through community legal centres and Legal Aid Commissions, the 1980s have nevertheless seen a steady contraction of funds for community education and, more disturbingly, a down-grading of wider

educative priorities to the point where the final report of the Commonwealth Legal Aid Task Force in 1985 stated that community legal education was a 'luxury that cannot be afforded at present'. As economic rationalism becomes the dominant force in disbursement of funding decisions, the inability to measure and quantify tangible effects and outcomes of community education has meant that case work, eminently measurable, is increasingly perceived as the most important avenue of funding access to justice.<sup>8</sup> This is despite convincing evidence of a cost benefit analysis, such as Inglis proposed recently, which highlights the fallacy of assuming that case work is a more justifiable method of delivering legal aid.<sup>9</sup>

The Legal Services Commission of South Australia's decision to develop user-pays public legal education to raise funds for the further development of its community education projects has proved to be very worthwhile. Previously neglected groups such as public and private sector employees have had their needs for legal knowledge met and it is this sector's ability to pay for training which has financed the provision of services to less advantaged groups.

There is, however, no guarantee that the public courses will continue to be profitable to the extent that the profit might finance other ventures. In that event, the battle for funding will resume. If past experience and present public policy is any guide, community legal education will again become the poor relation of case work. It is a very short sighted view of the need to improve access to justice for all Australians.

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# The NLAAC Report

## The challenge to community legal centres

Philip Kellow

### *In the light of recent developments the implications of the NLAAC Report for Community Legal Centres are examined.*

The National Legal Aid Advisory Committee's Report *Legal Aid for the Australian Community* is a comprehensive review of legal aid in Australia which includes many constructive recommendations directed at the future of legal aid. It is a report that deserves careful examination and it will be an important reference in the development and implementation of legal aid policies, programs and strategies for the 1990s and beyond.

The report is significant for legal centres both as members of the legal aid community and as participants in the legal system. The Committee recognised the important contribution made by legal centres to legal aid over the last 20 years, and this recognition is reflected in its recommendations with respect both to the general legal aid system and legal centres in particular.

The Committee examined a wide range of issues relevant to legal aid. Some of its important recommendations include the following:

*Defining the language of legal aid:* The report introduced a set of definitions in an attempt to create a 'common language' for the members of the legal aid community, their funders and governments. While there may be some disagreement as to the meanings given to particular words or terms, the definitions do achieve their purpose of bringing a level of certainty to the language used when discussing legal aid issues.

*National principles and national guidelines:* The Committee identified national principles, being the 'central principles of public policy which govern the obligations of governments, and the concomitant right of members of the Australian community, towards legal aid in Australia' and national guidelines, being 'desirable principles of public policy, administration and management . . . [which] will improve the efficiency and effectiveness of legal aid program management in the short, medium and long term'. These principles and

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The following article is based on a paper delivered to the 1991 National Community Legal Centres Conference held in July in Adelaide. It has been updated in the light of recent events.