

The Change Toolkit

Chapter 1. Why do law reform – the importance of engaging in systemic advocacy

Sometimes, the most effective way to resolve or avoid a legal problem is to work to change the unfair laws, policies or practices that are at the root of the problem. CLCs are uniquely placed to identify and respond to systemic barriers to justice. This chapter briefly describes why CLCs should do systemic advocacy work and some ways in which they can do it.

Why CLCs should do systemic work

CLCs are **uniquely placed and well equipped** to take innovative and preventative action to effect wider change to unfair or ineffective laws. CLC advice and casework services not only offer direct legal assistance to individuals in need, but also facilitate the identification of problematic laws that have a repeated adverse impact on members of vulnerable groups.

There are examples throughout this guide that demonstrate the potential of CLCs to identify and address gaps in the operation or application of a law or policy. This can make the legal system more equitable and accessible to all.

Systemic advocacy is an **effective** way to tackle a legal issue holistically and benefit large numbers of people in the community, and communities as a whole, rather than in isolation on a case-by-case basis. It enables CLCs to look beyond any one client's problem and design a solution to fit the bigger picture. Systemic work empowers CLCs to maximise their impact on those who are vulnerable to the negative effects of the law and need (but may never seek) legal assistance.

It is also **economically efficient** for CLCs to do more systemic work. CLCs that confront legal

problems from this broader perspective can assist not only the particular client or clients who come to their centre with an immediate issue, but also the many other people who are likely to fall into similar circumstances and encounter the same issue in the future.

Ways CLCs can do it

CLCs can advocate for change to unfair laws, policies and practices in a number of ways.

For instance, CLCs can:

- Meet with local Members of Parliament, ministers and advisers;
- Collaborate with other stakeholders;
- Participate in public inquiries and stakeholder forums;
- Make submissions to government;
- Initiate and conduct strategic litigation;
- Enable clients to tell their stories and present case studies;
- Promote community education and empowerment;
- Design a public campaign; and
- Engage with the media.

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The chapters of this guide offer practical advice about advocating for change. Each chapter incorporates examples to capture the

experiences of CLCs and the insights of people in the sector who undertake systemic advocacy work to promote change. There are also links to further resources for more detailed information and to provide extra guidance.

Some of the chapters in the guide are about specific advocacy techniques (for example, Chapter 7 on writing submissions and Chapter 8 on strategic litigation). Others are about operating principles (such as Chapter 4 on working with the community) and others are specialist topics to be drawn on if needed (for example Chapter 11 on working with the media, Chapter 13 on evaluation and Chapter 14 on seeking funding). While we encourage you to read the guide in its entirety, we have designed the chapters so that each one can be

read on its own. Please feel free to dip in and out of topics. We hope you find this guide useful as you play your part in building a fairer system for your clients and your community.

Sources

National Association of Community Legal Centres (NACLC), *Submission to the Productivity Commission on Access to Justice Arrangements*, November 2013, <http://www.nacalc.org.au/resources/SB%20PC%20inquiry%2012Nov2013%20FINAL.pdf>

Nicole Rich, 'Reclaiming Community Legal Centres: Maximising Our Potential so We Can Help Our Clients Realise Theirs', Victoria Law Foundation Community Legal Centre Fellowship 2007-2008, April 2009, <http://consumeraction.org.au/wp-content/uploads/2012/04/Reclaiming-community-legal-centres.pdf>

Examples

Better working conditions and legal protections for taxi drivers, Footscray Community Legal Centre and the Federation of Community Legal Centres

Identifying the issue

Footscray CLC established the Taxi Driver Legal Service in 2011, having recognised that many taxi drivers experienced unique, complex and unusual legal problems. Casework in the Taxi Driver Legal Service identified a number of systemic issues in the taxi driver industry, particularly the adverse impact employment conditions and insurance arrangements were having on drivers.

Among the issues apparent through Footscray CLC's casework was that taxi drivers were exposing themselves to serious financial risk every time they drove because most taxis were not properly insured. Taxi drivers' status as bailees, rather than employees, also meant they were subject to a range of serious problems associated with poor pay, legal entitlements and safety at work.

Engaging with decision makers

From 2010 onwards, Footscray CLC and the Federation began engaging with various decision makers and organisations such as the Minister for Public Transport, the Australian Competition and Consumer Commission, the Australian Securities and Investment Commission, and Consumer Affairs Victoria. Methods of engagement included meetings, emails and letters. Footscray CLC and the Federation also engaged with the media, writing letters to print media including an op-ed written by the Federation's policy officer Lucie O'Brien. The op-ed was published in *The Age* in April 2010.¹ They continued to engage with the media throughout 2011 and 2012 and had several articles published by *The Age*, as well as appearing on ABC News. In August 2012 Footscray CLC and the Federation gave interviews about issues in the taxi industry and were subsequently featured on *7:30 Victoria*.

¹ Lucie O'Brien, 'Insurance flaw leaves cabbies out on a limb' *The Age* (online), 10 April 2010 <<http://www.theage.com.au/federal-politics/society-and-culture/insurance-flaw-leaves-cabbies-out-on-a-limb-20100409-ryl2.html>>.

Participation in the taxi industry inquiry

Footscray CLC and the Federation worked together to document the legal and financial problems affecting taxi drivers and set out their recommendations for reform in a report, which was published in August 2012.²

By this time, the Victorian Government had appointed Professor Allan Fels to conduct a broader inquiry into the taxi industry. The Federation used the policy work to make submissions to the inquiry and many of the recommendations were included in the inquiry's final report. In August 2012, Denis Nelthorpe from Footscray CLC and Lucie O'Brien appeared at a public forum for the inquiry, at which they discussed the reform proposals contained in the report with Professor Fels. The majority of these recommendations were accepted by the Victorian Government and have recently been implemented as 'implied terms' in taxi driver's agreements. In July 2013 Lucie O'Brien spoke about the reforms on Radio National's *The Law Report*.

Ongoing work

Most recently, Footscray CLC and the Federation made a submission in response to the Regulatory Impact Statement on driver's agreement 'implied terms' in June 2014, specifically in relation to insurance. They expressed concern in regard to the proposal that taxi operators be permitted to charge drivers for excess (which is against normal insurance practice, where employers commonly pay excess).³ This submission was accepted and the recommendation that excess be paid by taxi operators has also been implemented.

Unless Footscray CLC had noted systemic problems in the taxi industry through interactions with clients, established the Clinic

and worked to record and raise these issues in joint law reform work with the Federation, these issues would not have been raised in the Fels inquiry and would not have been brought to the attention of government.

Reforms spearheaded by a community legal centre in the ACT lead to a fairer fines system for vulnerable people

Prior to May 2013 people in the ACT who were unable to pay their traffic fines within 56 days automatically had their licence suspended until they were able to pay the fine. The fines system did not allow people to pay by instalment, which meant that vulnerable people experiencing financial hardship frequently lost their licence because of their inability to come up with the money. This had serious ramifications for people, including their ability to transport themselves to work.

In November 2011 Street Law (a program of the Welfare Rights and Legal Centre) identified this issue as problematic and took steps to engage decision makers with a goal of changing the current laws.

Street Law published a report that highlighted the adverse impact of the system on vulnerable people, in particular that the system did not allow fines to be paid in instalments, and that a person's licence would be suspended after the fine was issued until it was paid in full.⁴ As a result of the report, the ACT Greens with the support of the Government passed new legislation providing more payment options for low income earners and disadvantaged people.

In July 2014, ACT Attorney-General Simon Corbell officially acknowledged the success of the changes to the system, outlining their positive impact on vulnerable people as well as the financial benefits stemming from increased collection of fines as a result of the use of payment plans.⁵

² Footscray Community Legal Centre and Federation of Community Legal Centres, *'In the driver's seat: Achieving justice for taxi drivers in Victoria'* Report (2012), 5.

³ Federation of Community Legal Centres and Footscray Community Legal Centre, *Response to the Regulatory Impact Statement for the Transport (Compliance and Miscellaneous) Act 1983 Implied Conditions - Taxi Driver Agreements'* (May 2014).

⁴Welfare Rights and Legal Centre Ltd., *How a fine can cause homelessness in the ACT'* (November 2011), <<http://www.streetlaw.org.au/files/view/?id=34>>.

⁵ACT Attorney-General's Department, *Helping vulnerable Canberra's keep their drivers licences*, (10 July 2014),

Acknowledgments

This chapter has been downloaded from <http://www.thechangetoolkit.org.au>. We recommend checking back to see if the content has been updated.

The Change Toolkit was prepared by the Federation of Community Legal Centres. The Federation is the peak body for community legal centres across Victoria.

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