# Redfern Legal Centre: A History of Social Innovation

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**Statement of Authorship**

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All research procedures reported in the thesis were approved by the Human Research Ethics Committee La Trobe University.

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Frances Gibson
21/6/2020

## Abstract

This thesis reviews the development of an Australian community legal centre—Redfern Legal Centre—focusing on social innovations at the centre in the period 1977–95. Examination of the centre's work is set in an historical context and framed against a background of expansion in legal assistance to disadvantaged communities since the 1970s, both in Australia and overseas. The history, nature and work of the centre is described. A qualitative methodology has been employed, with a case study incorporating oral histories.

A theme of the thesis is the concept of social innovation, defined from the literature as a novel solution to a problem – in the form of services, ways of organising work or a product, that is implemented, meets a social need and improves the quality of life for individuals or communities. The innovation must address needs unmet due to the failure or absence of markets or state provision.

Social innovations at the centre in the form of new services for prisoners, people with an intellectual disability, complainants in domestic violence cases, aged care residents and social security recipients are identified. Innovations designed to determine unmet legal need and new approaches to providing legal aid services including legal publishing are also detailed. Allied to this is a consideration of the organisational and societal factors that enabled the development of these innovations.

Utilising social innovation theory, factors leading to innovation in the centre are delineated. The findings of the thesis offer insight into methods of encouraging innovation in provision of legal services to disadvantaged communities in the future.

## Glossary

ACOSS: Australian Council of Social Services

AVO: Apprehended violence orders—a form of restraining order made by courts in domestic violence cases

CLC: Community legal centre

DV: Domestic violence

IDRS: Intellectual Disability Rights Service

LAC: Legal Aid Commission

Legal aid: A system of providing free legal information, referral, legal advice, representation, community legal education and law and legal service reform for people unable to access private legal assistance. The term is most often used to describe the government funded Legal Aid Commissions. It is also used at times to describe the services of Aboriginal legal services and community legal centres

NACLC: National Association of Community Legal Centres

NCOSS: New South Wales Council of Social Services

NGO: Non-government organisation

PIAC: Public Interest Advocacy Centre

RLC: Redfern Legal Centre

RLCP: Redfern Legal Centre Publishing

TARS: The Accommodation Rights Service

UNSW: University of New South Wales

WRC: Welfare Rights Centre

## Preface

I am finishing this thesis in the midst of a worldwide pandemic and lockdown in Australia. The disappearance of the usual life we take for granted, and its replacement with invidious fear and great uncertainty in the community, has emphasised to me the importance of those in the community who choose to work to assist others and strive to create a better society for all. The opportunity I had to work in the community legal centre movement for many years was a privilege. That work was the inspiration for this thesis. My colleagues in the legal centres were intelligent, funny, empathetic and committed. I note my admiration for them—in particular those with whom I worked closely while at Redfern Legal Centre, including: Jane Goddard, Ben Slade, Cathy Kerr, Danae Harvey, Pam Anderson, Janet Loughman, Harriet Grahame, Beth Jewell, Pat McDonough, Louise Blazejowska and Mary Perkins, as well as many others.

My supervisors for this thesis, Francine Rochford, David Nichols and Mary Anne Noone, contributed so much to my work and have always been knowledgeable, helpful, encouraging and provided clarity where needed—I am in their debt. Francine and David are outstanding teachers and researchers and a credit to Australian academia, with an impressive concern for their students. Mary Anne Noone has been a role model for many in legal centres, the community and academia over the last 40 years, and I am no exception. Her knowledge, wisdom and delightful persona makes her an exceptional person, and it is an honour to know her. Her in-depth understanding of legal aid services in Australia was incredibly helpful for me.

The thesis would not have been completed without Robin Gibson's unfailing support, encouragement, editing and other assistance. Laura Englert's skills and expertise in editing was crucial in making the document presentable. Thanks to La Trobe University for support and in particular excellent assistance from Emma Henderson. Sue Goodwin offered some much-needed help at an important point. Most importantly, my life would be a sad affair without my best friend and partner—the wonderful Stephen O'Neil, who will, I am sure, be pleased to see this thesis finished so we can get on and play some music.

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## Chapter One

### Introduction

#### Why study a history of social innovation in a community legal centre?

As Sackville stated in 1975, 'By far the most significant bias of the legal system against poor people has been its failure to provide legal advice and assistance and representation to many who require that assistance.'[1] Since their inception in 1972,[2] community legal centres (CLCs) have played an important part in transforming the relationship between Australians, the justice system and the legal profession. They have created points of access to legal advice and assistance through what had appeared, in the past, to be an impenetrable barrier. Innovation in the forms of new services, products and ways of delivering legal assistance has been vital in achieving this result.

The general topic of the thesis is historical innovation in CLC's. This topic has not previously been the focus of research in Australia or in relevant international research. Three factors are the impetus for this current study. First, the facts of the innovations themselves are historically and socially important to the legal profession and legal service provision in Australia, and have not previously been documented. Second, there is a gap in the research literature on legal aid relating to recognition of CLC innovations. Finally, my personal experience and ongoing interest in community legal services have given me insight into the significance of these developments and the innovative capacity of the CLC sector.

As a recent commentator notes:

> [c]ommunity lawyers are recognised for their expertise in the areas of law that affect the most marginalised. Working in relatively small, independent, community-based organisations, they are also well placed to identify emerging problems and develop effective, tailored responses. Community lawyers have become known in Australia for leading the way in the development and implementation of innovative service delivery models that improve access for the most disadvantaged people.[3]

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[1] Commonwealth, *Commission of Inquiry into Poverty, Law and Poverty in Australia: Second Main Report* (Australian Government Publishing Service, 1975) 3.
[2] The first non-Indigenous community legal centre, Fitzroy Legal Service was established in 1972. See Mary Anne Noone and Stephen Tomsen, *Lawyers in Conflict* (The Federation Press, 2006) 3.
[3] Liana Buchanan, 'Community Lawyers, Law Reform and Systemic Change: Is the End in Sight?' in Asher Flynn and Jacqueline Hodgson (eds), *Access to Justice and Legal Aid* (Bloomsbury Publishing PLC, 2017) 141, 142.

It is the contention of this thesis that access to the justice system through CLCs can come in the form of, what have become known as, social innovations. This is a term widely used and with varying definitions (discussed in detail later in this thesis),[4] but which generally describes new methods for addressing problems to benefit particular sections of the community. These CLC innovations have assisted thousands of people, changed the legal practice and careers of many lawyers, revolutionised the study of law for many law students and, in small but significant ways, changed the very nature of Australia's legal system, strengthening our democracy and citizens' ability to participate in public affairs. These are large claims, but they will be supported in this thesis.

This thesis has dual goals: to articulate the nature of CLCs as a form of social innovation, and to document the historical development of one particular legal centre—Redfern Legal Centre—with a focus on a selection of these innovations.

Legal aid and assistance in Australia are provided to individuals (and occasionally organisations) through various complex mechanisms. Funding for legal assistance services is provided by federal and state governments to large statutory organisations—Legal Aid Commissions in each state and territory. These organisations have salaried legal staff, and also fund private lawyers to undertake certain legal aid work. CLCs are non-government organisations with a small paid staff who usually utilise the services of volunteer lawyers and students. CLCs also receive federal and state government funding. Aboriginal and Torres Strait Islander Legal Services are non-government organisations funded by the Commonwealth government to provide services to Indigenous people. Private legal firms offer limited pro bono (free or reduced fee) services. All these services apply different criteria for receipt of their services. This mixed model of legal service provision will be further explained in Chapter 2. Legal aid or legal assistance services are defined for the purposes of this thesis as those included in the Commonwealth government's 2015 National Legal Assistance Data Standards Manual as being: legal information, referral, legal advice, representation, community legal education and law and legal service reform.[5]

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[4] See Chapter Two at page 8.
[5] Attorney General's Department, Commonwealth, 'National Legal Assistance Data Standards Manual' (2017) <https://www.ag.gov.au/legal-system/publications/national-legal-assistance-data-standards-manual >.

Literature on non-government organisations (NGOs) argues that 'democracy within capitalist society requires a vibrant and autonomous civil society and an effective State capable of balancing the demands of different interest groups.'[6] Civil society[7] can process and channel the demands of disparate interest groups to the State thus ensuring legitimacy, accountability and transparency by the State, and assisting in good governance.[8] NGOs can have a watchdog role vis-a-vis the State, facilitate networking between organisations, provide a public voice for marginalised communities and 'check state power by challenging its autonomy … pressing for change and developing an alternative set of perspectives and policies.'[9] It will be seen that these roles have been undertaken by CLCs since the early 1970s[10] in part through innovative methods and programs.

Social innovation theory will be used to investigate historical and organisational factors that led to the appearance of innovations at Redfern Legal Centre. There have been no previous attempts to analyse the work of any CLC from this perspective. While valued by governments, welfare and community NGOs and clients,[11] the innovative aspect of CLCs appears to have been taken for granted in the literature on legal aid. It is hoped that this fresh perspective will be of value to CLCs, their funders and in the planning of new legal services.

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[6] Claire Mercer, 'NGOs, Civil Society and Democratization: A Critical Review of the Literature' (2002) 2(1) *Progress in Development Studies* 5, 7.

[7] Civil society is the "third sector" of society, along with government and business. It comprises civil society organisations and non-governmental organisations: United Nations, 'Civil Society', *United Nations* (Web Page) <http://www.un.org/en/sections/resources-different-audiences/civil-society/index.html>. The term is used to describe organisations that are 'not for profit', and operate to promote the public good separate from government and business sectors: See David Yencken, 'Democracy in Australia: Civil Society and Public Advocacy, an Opinion Piece', *Australian Collaboration* (Web Document, 2013) <http://www.australiancollaboration.com.au/pdf/Democracy/Civil-society.pdf>.

[8] Claire Mercer, 'NGOs, Civil Society and Democratization: A Critical Review of the Literature' (2002) 2 (1) *Progress in Development Studies* 5, 7.

[9] Ibid 9.

[10] See John Chesterman, *Law and the New Left: A History of Fitzroy Legal Service*, *1972-1994* (PhD Thesis, University of Melbourne, 1995).

[11] Government recognition of CLCs is evident in the growth of funding of centres since the 1970s. See the following references for other evidence of the recognition of the value of CLCs: National Legal Aid and Advisory Committee, *Legal Aid for the Australian Community* (NLAAC Report, 1990); Commonwealth, Senate Legal and Constitutional References Committee, *Inquiry into Legal Aid and Access to Justice* (2004); NSW Government, Office of Legal Aid and Family Services, Attorney General's Department, *Community Legal Centres: A Study of Four Centres in New South Wales and Victoria* (1991); New South Wales Government, Office of Legal Information and Publishing, Attorney-General's Department, *The Justice Statement* (1995); L Coulson-Barr, *Volunteers in CLCs: Discussion Paper Prepared for the Review of Victorian Community Legal Centre Funding Program Implementation Group* (1999); Roslyn Melville, *My Time is not a Gift to Government: An Exploratory Study of NSW Community Legal Centre Volunteers* (Institute of Social Change and Critical Inquiry, 2002); Nicholas Edgerton and Emma Partridge, (Web Document, 2006) *The Economic Value of Community Legal Centres* < https://www.pc.gov.au/inquiries/completed/not-for-profit/submissions/sub133-attachmentb.pdf>; Victoria Law Foundation, *The Volunteer Cycle* (Victoria Law Foundation, 2011); Bevan Warner, *Legal Aid Victoria* (Web Article, 2014) 'Community Legal Centres: Worth Their Weight in Gold' <https://www.legalaid.vic.gov.au/about-us/news/community-legal-centres-worth-their-weight-in-gold>; The Honourable Wayne Martin AC Chief Justice of Western Australia, 'The Role of CLCs in the Justice System of Australia: Achieving Through Targeted Intervention, Volunteers and Innovation' (Paper delivered at National Association of Community Legal Centres Conference, Fremantle, 10 August 2016); Commonwealth, *Parliamentary Debates*, House of Representatives, 16 February 2017, 1377 (Ross Hart MP).

Redfern Legal Centre is used as a case study for examining historical innovation in CLCs. The specific questions to be examined in the thesis are:

a) What role has Redfern Legal Centre played in innovation in legal aid services in the period 1977–95?
b) What factors led to innovation in the centre?

**Background to this research**

I spent 17 years working as a lawyer and manager of CLCs and have worked in collaboration with CLCs in my career since then. As a young lawyer inspired by notions of social justice and a fervent desire to help 'save the world', I was too involved in the day to day work of the centres to take an objective view of the methods they employed in addressing legal needs. I have since entered academia and in teaching and writing about legal aid services, it has become apparent to me that it is the innovative culture and nature of CLCs that sets them apart from other legal service providers.

This thesis takes a socio-historical approach to identify innovations in one CLC and then explores how innovations in legal service provision were developed and implemented in this centre. The study offers an analysis of the contexts (socioeconomic, political, organisational and policy) in which this centre and the specific innovations were developed. By contributing to literature on legal aid provision to disadvantaged communities in Australia, it informs the current provision of legal services in Australia and allows centres to build on the lessons of the past.

In Australia, CLCs have long stressed that alongside basic service provision they aim to contribute to systemic change in law, legal practice and government policy. This is often undertaken by way of innovation. This approach is challenged by recent restrictive and conditional funding approaches by government, the establishment of new centres with no knowledge of past practices, and increases in demand from clients following decreases in government funded legal aid services. A recent study that considered 31 of Victoria's 49 CLCs found that a little under half did not engage in any significant strategic or systemic

legal policy work.[12] The reasons cited for this included the constant need for individual casework, as well as funding arrangements that prevent policy and advocacy initiatives.

Despite the pressure of casework, it is apparent that CLCs remain innovative, and it is the role of innovation that is of special interest to this study. It is contended that aspects of the development and operation of CLCs involve social innovation. In the last 20 years, a considerable body of knowledge has been developed which creates a theoretical construct for analysis of CLCs. One focus of this research has been on factors that create optimum conditions for innovation in non-profit organisations. Much of this research can readily be applied to the operation of CLCs, and the application of this theoretical construct to the novel question of innovation in CLCs form the critical points of difference for this thesis. Identifying factors which led to past innovation in centres will be valuable in providing information to assist CLCs in structuring their organisations and work practices to achieve optimal conditions for the development of innovation. This maintains the historical tradition of innovation in centres and shines a spotlight on the value of innovation in legal service provision to disadvantaged communities.

The historical research in this thesis will also point the way forward to directions for further research relevant to the innovatory capacity of centres and will provide a basis and comparisons for studies of current practice and innovation in centres.

## Structure of the thesis

This thesis is subdivided into chapters addressing the constituent elements of the research.

Chapter 1: Introduction—The introductory chapter provides a broad overview of the background to the research—the rationale that led to the questions to be examined and an outline of all the chapters. The author's relationship to the research topic, the goals of the research and discussion of the value of the research is included.

Chapter 2: The literature review—The second chapter contributes a wide-ranging investigation of subject matter. It offers critique, from a research paradigmatic perspective, of

[12] Agata Wierzbowski, *Lawyering for Change: Seven Practice Principles of Strategic Practice for Community Legal Centres* (Victoria Law Foundation, 2015) 14.

the literature on social innovation and legal aid services in Australia, and it identifies gaps in the current body of knowledge. The chapter first compiles a working definition of social innovation for the thesis through a review of the definitions that have been suggested in the literature. Research on significant factors in an organisation that are associated with social innovation is then assessed and summarised. Notable research on the topic of legal aid developments and community legal centres, both in Australia and overseas, is delineated and discussed. This chapter concludes with reflections on the literature and the goals of the thesis.

Chapter 3: Research methodology—this chapter explores the possible approaches to addressing the research question, and outlines the logic underpinning the choice, the resultant scope of study, methods of data collection, analysis and interpretation of field data. The research design, concepts of a case study, ethics, and the process followed for interviews are discussed.

Chapter 4: Historical and social context— this chapter examines the general historical context in which community legal centres came into existence, and provides examples of innovation in the CLC arena generally. Political and social developments in the 1970s and 1980s relating to the genesis of CLCs, a discussion of the nature of the legal profession in this period and an examination of CLC innovations in practice are included.

Chapter 5: History of Redfern Legal Centre—The chapter sets out a brief history of the suburb of Redfern in the twentieth century, delineates the role of the Faculty of Law at the University of New South Wales in the establishment of the centre, discusses the relationship of the Law Society to the centre and provides a description of the general work of the centre, together with work in specialist areas of law, including: housing, drug policy, consumer credit, coronial inquests and legal aid funding providing a context for the study of social innovations to follow.

Chapter 6: Innovation and practice: Innovation at Redfern Legal Centre—This chapter introduces social innovations at Redfern Legal Centre, categorised as: ways of determining legal need, innovation in new services and products, and innovation in the methods of providing services—for instance, multi-disciplinary work, use of non-lawyers and collaborative work. The establishment of and rationale for new services—the Prisoners Legal Service, the Intellectual Disability Rights Service, Redfern Legal Centre Publishing (RLCP)/

Lawyers Practice Manual/Streetwize Comics, Women's Domestic Violence Court Advocacy Service (WDVCAS), the Accommodation Rights Service and the Welfare Rights Centre — are discussed.

Chapter 7: Factors influencing innovation at Redfern Legal Centre—This chapter analyses the data and proposes explanations regarding factors affecting the development of social innovation in the centre under study. Factors examined are the historical context in which the organisation is operating, relationships between groups in the institution and with external organisations, communication in the agency and beyond, the nature of the working practices of the institutions, and the role of individuals.

Chapter 8: Conclusions—This chapter summarises the material in the thesis, offers reflections on social innovation at Redfern Legal Centre, derives conclusions from the research, and offers suggestions for further research and study to encourage and assist innovation in community legal centres.

## Chapter Two

## The literature review

This chapter contributes a wide-ranging investigation of the subject matter. It offers critique, from a research paradigmatic perspective, of the literature on social innovation and Australian legal aid services, including community legal centres, and identifies gaps in the current body of knowledge.

## Social innovation

### Towards a working definition of social innovation

Although social entrepreneurship and social innovation have been topics for public consideration and debate since the 1990s, research on the subject has taken longer to gain momentum.[13] There is considerable experience and knowledge in Australian NGOs about the practice of social innovation, but only in recent years have theorists in varying fields started working on the concept. Hawkins describes this situation as those 'times in human history when there is much more wisdom in practice than in the academy, when gamblers know more about probability than statisticians, and when sailors know more about the heavens than astronomers.'[14] Since 2008, however, there has been a deluge of academic literature using the term 'social innovation.' In much of this literature, built on decades of work relating to business innovations, there have been attempts to define social innovation[15] and to distinguish the term from social entrepreneurship.[16]

Clearly, much can be learned from studies into both business and public innovation, but they do not fully address the social field. Mulgan et al believe that the lack of research is

[13] Alex Nicholls, 'Learning to Walk: Social Entrepreneurship, Innovations', *Skoll World Forum* (2009) 209 <http://www-tc.pbs.org/now/shows/537/Shifting-Power-Dynamics.pdf>.
[14] David Hawkins, 'Learning the Unteachable' in L S Schulman and E R Keislar (eds), *Learning By Discovery: A Critical Appraisal* (Rand McNally, 2004) 3,12.
[15] See for instance Eduardo Pol and Simon Ville, 'Social Innovation: Buzz Word or Enduring Term?' (2009) 38(6) *The Journal of Socio-Economics* 878; and list of definitions in Heloise Buckland and David Murillo, *Antenna for Social Innovation Pathways to Systemic Change* (ESADE, 2013) 159.
[16] Jorge Cunha, Paul Benneworth and Pedro Oliveira, 'Social Entrepreneurship and Social Innovation: A Conceptual Distinction' in Luís M. Carmo Farinha et al (eds), *Handbook of Research on Global Competitive Advantage through Innovation and Entrepreneurship* (IGI Global 2015) 616.

hampering those keen to support social innovation, and that rich studies of particular social innovations have not been developed into studies which can illustrate patterns or generate insights more widely.[17]

Multiple strands of scholarship have concentrated on different aspects of social innovation.[18] Social innovation is often a multi- or interdisciplinary concept and the fields are not confined to particular academic disciplines.[19] In law, innovation has been slow to become regarded as a relevant field of study, and what has been written tends to focus on technology[20] even when applied to community legal centres.[21] In respect of innovation in community law there appears to be no direct relevant research on factors leading to social innovation,[22] though scholars and activists have paid attention to the 'local space' (as in local communities) as part of their focus on social innovation generally.[23] The research in this thesis is unique in focusing on innovation in community law agencies.

Research aimed at proposing theoretical constructs about how social innovation occurs is undeveloped. The rationale for theorising about social innovation is clear. Without theory, we cannot identify the conditions for drivers of innovation. Organisations cannot develop the conditions likely to promote innovation, understand whether innovations may be sustainable, or judge whether innovations are dependent on particular circumstances such as time and place.

As the aim of this thesis is to use theory about social innovation as a lens to examine the historical and organisational factors that led to innovations in CLCs, it is necessary first to propose a definition of the term 'social innovation.' In this section, a working definition of

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[17] Geoff Mulgan et al, 'Social Innovation: What It Is, Why It Matters, How It Can Be Accelerated' (Working paper, Skoll Centre for Social Entrepreneurship, 2007) 6.
[18] For an overview of scholarship in this area, see Elsevier Ltd, *International Encyclopedia of the Social & Behavioral Sciences* (2015) 'Social Innovation' 355.
[19] Frank Moulaert, 'Social Innovation and Community Development Concepts Theories and Challenges' in Moulaert et al (eds), *Can Neighbourhoods Save the City? Community Development and Social Innovation* (Routledge, 2010) 8.
[20] Recent examples being Richard Susskind, *Tomorrows Lawyers* (Oxford University Press, 2013); 'Flip The Future of Law and Innovation in the Legal Profession', *Law Society of NSW* (Web Article, 2017) < https://www.lawsociety.com.au/about-us/Law-Society-Initiatives/flip/UNSW-collaboration-FLIP-stream>. Note in 1984 the Law Foundation of NSW published a report by Purcell entitled 'Innovations in Legal Services' which reported on developments primarily in the private profession overseas which had potential to increase access to consumers to legal services. Terence Purcell, *Innovations in Legal Services* (Law Foundation of New South Wales, 1984).
[21] Aqeeb Rafi Alam, *Doing Everyday Justice Labour Resources and Emotions in the Community Legal Sector* (PhD Thesis Faculty of Arts and Social Sciences University of Sydney,2019) 167.
[22] Though see Cate Banks, Rosemary Hunter and Jeff Giddings, *Australian Innovations in Legal Aid Services: Balancing Cost and Client Needs* (Griffith University Socio-Legal Research Centre, 2006).
[23] See for instance Frank Moulaert et al (eds), *Can Neighbourhoods Save the City? Community Development and Social Innovation (Regions and Cities)* (Routledge, 2010).

social innovation for this project will be selected. I will distinguish notions of social entrepreneurship from social innovations, innovations from inventions, and select a conceptual framework for social innovation from the literature that can be used to inform the findings of this study.

An innovation is 'a new method, idea, product.'[24] A social innovation is any of these applied to meet a social issue or need. Thus, the innovation could be, inter alia, a new organisation, a new method of organising certain work, or a new educational resource. As Phills et al suggest, social innovation 'can be a product, production process, or technology (much like innovation in general), but it can also be a principle, an idea, a piece of legislation, a social movement, an intervention.'[25] Mulgan states that '[t]he starting point for innovation is an idea of a need that isn't being met, coupled with an idea of how it could be met.'[26]

It is not clear who first used the term 'social innovation'[27] but examples from the second half of the twentieth century include James Taylor in 1970 in his analysis of community development dynamics in Topeka, Kansas, and various writers about developments in Europe during unrest in the 1960s.[28] Chambon, David and Devevey, in their important 1982 work '*Les Innovations Sociales*', use the term to describe different types of actions taken to 'lead us from a top down economy and society into a more bottom up creative and participative society that would also recognize in a progressive liberal way the different individual rights of people in all segments of the population.'[29] They note that the State can act as a barrier to social innovation, a facilitator of public debate, and as a regulator of social innovation initiatives by civil society.[30] Moulaert claims that this work built on a French intellectual movement known as the 'Temps des Cerises' in the 1970s. The 1968 revolts by students, intellectuals and workers led to a significant debate of wide social and political significance on the transformation of society which was a turning moment between the 'old' theories of social change and the new 'social innovation' approaches.[31] Moulaert says 'socially

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[24] 'Innovation', *Oxford Dictionaries* (Web Page, 2016) <http://www.oxforddictionaries.com/definition/english/innovation>.
[25] JA Phills, K Deiglmeier and DT Miller, 'Rediscovering social innovation' (2008) 6(4) *Stanford Social Innovation Review* 34, 39.
[26] Geoff Mulgan, 'The Process of Social Innovation' (2006) 1(2) *Innovations* 145,149.
[27] Frank Moulaert et al (eds), *The International Handbook on Social Innovation* (Edward Elgar Publishing, 2013) 15.
[28] Ibid.
[29] Jean-Louis Chambon, Alix David and Jean-Marie Devevey, *Les Innovations Sociales* (Presses Universitaires de France, 1982) in Frank Moulaert et al (eds), *The International Handbook on Social Innovation* (Edward Elgar Publishing, 2013) 15.
[30] Frank Moulaert, 'Social Innovation and Community Development Concepts Theories and Challenges' in Moulaert et al (eds), *Can Neighbourhoods Save the City? Community Development and Social Innovation* (Routledge, 2010) 4.
[31] Evidence and information about this movement is rather thin on the ground, apart from reassertions of Moulaert's claims.

innovative actions, strategies, practices and processes arise whenever problems of poverty, exclusion, segregation and deprivation or opportunities for improving living conditions cannot find satisfactory solutions in the "institutionalized field" of public or private action.'[32] Pol and Ville divide innovations into three classes: pure business innovations that can be helpful or harmful to individuals, business and social innovations that are profitable and have a beneficial outcome for society, and pure social innovations that address needs that have no possibility of being satisfied through market outcomes.[33] In this project, it is generally the 'pure social innovations' that will be considered as the current legal services market rarely addresses the legal assistance needs of those individuals or groups who cannot pay for services.

A consideration of the literature on definitions of social innovation shows some common approaches. Social innovations are 'new answers to social problems … delivering new services'[34] or extending existing ones.[35] They are 'motivated by the goal of meeting a social need … predominantly diffused through organizations whose primary purposes are social.'[36] They satisfy human needs that are not perceived as important or fulfilled by the market or the State, increase the level of participation of all, but especially deprived groups in society, and may increase the socio-political capability and access to resources needed to enhance rights to satisfaction of human needs and participation.[37] A definition often cited is that by Phills, Deiglmeier and Miller: 'a novel solution to a social problem that is more effective, efficient, or just than existing solutions and for which the value created accrues primarily to society as a whole rather than private individuals.'[38]

### What form does social innovation take?

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[32] Frank Moulaert et al (eds), *The International Handbook on Social Innovation* (Edward Elgar Publishing, 2013) 2.
[33] Eduardo Pol and Simon Ville, 'Social Innovation: Buzz Word or Enduring Term?' (2009) 38(6) *The Journal of Socio-Economics* 878. See also Carlo Borzaga and Riccardo Bodini, 'What to Make of Social Innovation? Towards a Framework for Policy Development' (2014) 13(3) *Social Policy and Society* 411, 415.
[34] 'LEED Forum on Social Innovations', *OECD* (Web Page, 2016) < https://www.oecd.org/fr/cfe/leed/forum-social-innovations.htm#:~:text=%22Social%20innovation%22%20seeks%20new%20answers,life%20of%20individuals%20and%20communities.>.
[35] Frank Moulaert, 'Social Innovation and Community Development Concepts Theories and Challenges' in Moulaert et al (eds), *Can Neighbourhoods Save the City? Community Development and Social Innovation* (Routledge, 2010) 10.
[36] Geoff Mulgan, 'The Process of Social Innovation' (2006) 1(2) *Innovations* 145, 146.
[37] Frank Moulaert et al, 'Towards Alternative Model(s) of Local Innovation' (2005) 42(11) *Urban Studies* 1969, 1976. See also Simone Baglioni and Stephen Sinclair, 'Introduction: Social Innovation and Social Policy' (2014) 13(3) *Social Policy and Society* 409.
[38] JA Phills, K Deiglmeier and DT Miller, 'Rediscovering Social Innovation' (2008) 6(4) *Stanford Social Innovation Review* 34, 39.

Research has shown that social innovation is almost always triggered as a reaction to social exclusion.[39] Gonzalez et al state that three questions are inherent in their definition of social innovation: '1) Are the initiatives able to provide people with their alienated basic needs? 2) Do they empower the dispossessed? 3) Do they change social and power relationships?'[40] Mulgan points out that:

> Social innovations are often implemented early. Because those involved are usually highly motivated, they are too impatient to wait for governments or big foundations. The experience of trying to make them work speeds up their evolution, and the power of example then turns out to be as persuasive as written argument or advocacy.[41]

Social innovations run the gamut from large, abstract 'movements,' such as the environmental movement, to concrete programs that affect a local community.[42] They occur in several forms of organisation: from not-for-profits to for-profit firms that often create social value through their corporate social responsibility programs, as well as dual mission organisations forming new hybrid models. For example, they could occur in benefit corporations (a type of for-profit corporate entity authorised in most US states) whose legally defined goals include, in addition to profit, a positive impact on society and the environment. A benefit corporation's directors and officers operate the business with the same authority as a traditional corporation but are required to consider the impact of their decisions not only on shareholders but also on society and the environment.[43]

The term social innovation is not without its critics. The term could be argued to have so many meanings that it is impossible to reach a clear definition. It has been described as a 'buzz word'.[44] Edwards, Schacter and Wallace examined the evolution of the conceptualisation of social innovation in 2015, noting that the term goes back at least two hundred years.[45] Despite this, they note that most studies incorporating the term lack a

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[39] Sara Gonzalez et al 'ALMOLIN: How to Analyse Social Innovation at the Local Level' in Frank Moulaert, et al (eds), *Can Neighbourhoods Save the City? Community Development and Social Innovation (Regions and Cities)* (Routledge, 2010) 54.
[40] Ibid 56.
[41] Geoff Mulgan, 'The Process of Social Innovation' (2006) 1(2) *Innovations* 145, 152.
[42] Peter Lee, 'Social Innovation' (2014) 92 *Washington University Law Review* 1, 14.
[43] See 'What is a Benefit Corporation?' *Benefit Corporation* (Web Page) <http://benefitcorp.net>.
[44] Biekart et al claim that 'Social innovation does not directly take on the political and rarely gives priority to gender/sexuality and embodiment.' For the purposes of this thesis however these concerns do not seem unduly apposite, and Biekert's concerns, though offering an interesting insight, are beyond the scope of the project. The aim here is to identify existing innovations in programs designed to deal with exclusion and inequality as a result of gender, age and disability: Kees Biekart, Wendy Harcourt and Peter Knorringa (eds), *Exploring Civic Innovation for Social and Economic Transformation* (Routledge, 2016) 17.
[45] Edwards-Schachter, Mónica L and Matthew L Wallace, ''Shaken, but Not Stirred': Sixty Years of Defining Social Innovation' (2017) 119 *Technological Forecasting and Social Change* 64.

systematic methodology and that definitions are diverse and varied.[46] For the purposes of this thesis a defined meaning of 'social innovation' has been compiled from the relevant literature.

In the literature on social innovation, innovation is distinguished from invention, in that innovation includes not just a new idea but the implementation of that idea. As Lee points out '[t]he term "invention" thus has little meaning in the social innovation context, for ideas without practical application have no social value.'[47] Lee characterises innovations as 'social' based on the degree to which they substantively serve the public interest, are widely accessible within a target community, and produce changes in individual or institutional behavior.'[48]

The notion of social innovation is also linked to work on social entrepreneurship. After considering the myriad of definitions in the literature, Brouard and Larivet define social entrepreneurs as individuals who, with their entrepreneurial spirit, 'will act as change agents and leaders to tackle social problems by recognising new opportunities and finding innovative solutions and are more concerned with creating social value than financial value.'[49] Indeed the traditional view of social entrepreneurship often portrays a lone visionary striving at all costs to bring about social change.[50] Social innovation theory, by contrast, views the pursuit of a social goal as reliant on collective and dynamic interplay between actors who are working together to achieve social objectives and outcomes.[51] Social entrepreneurship is also usually associated with projects that are business-like in nature, such as a financially sustainable business that has a social objective as its prime purpose.[52]

### Defining social innovation

[46]Ibid 72.
[47] Peter Lee, 'Social Innovation' (2014) 92 *Washington University Law Review* 1, 5.
[48] Ibid 9.
[49] Francois Brouard and Sophie Larivet, 'Essay of Clarifications and Definitions of the Related Concepts of Social Enterprise, Social Entrepreneur and Social Entrepreneurship' in Alain Fayolle and Harry Matley, *Handbook of Research on Social Entrepreneurship* (Edward Elgar, 2010) 45.
[50] Sonja Novkovic, 'Defining the Co-operative Difference' (2008) 37 *The Journal of Socio-Economics* 2168, 2173.
[51] María José Sanzo-Pereza, Luis Ignacio Álvarez-González and Marta Rey-García, 'How to Encourage Social Innovations: A Resource-Based Approach' (2015) 35(7–8) *Service Industries Journal* 430, 431. See also Patrick Dawson and Lisa Daniel, 'Understanding Social Innovation' (2010) 51 *International Journal of Technology Management,* 9–21.
[52] Russell Jaffe and Jaffe Consulting Pty Ltd, 'Social Entrepreneurship and Social Enterprise: A Review of Social Entrepreneurship and Allied Developments and their Implication for the Victorian Government' (Discussion Paper, Russell Jaffe Consulting Pty Ltd, 2003).

The definition of social innovation to be used in this project then incorporates the ideas expressed above (summarised in Mulgan's preferred definition 'new ideas that work'[53]) and amalgamates them into a list of criteria to be met for any proposed innovation to be studied as follows:

a) A novel solution to a problem – in the form of services, ways of organising work or a product;
b) That is implemented;[54]
c) That meets a social need and improves the quality of life for individuals or communities;
d) That addresses needs unmet due to the failure or absence of markets or state provision.

## Factors influencing social innovation

### The role of individuals, organisations and external context

Human capital has been said to be at the heart of innovation and it is people who transform their creativity, knowledge and skills into innovations.[55] There has been little research focused specifically on factors that encourage an innovation-oriented culture in non-government organisations. Shier and Handy have noted within present scholarship there is only minimal investigation into the different ways that non-profit organisations adopt innovative or social change roles.[56] They add that current scholarship concerning the factors in the intra-organisational context that support a social innovation-orientated organisational culture is an emerging area of study that requires greater conceptual clarity.[57] Traditional innovation studies focus on technological and commercial innovations and where research has considered social innovations, much of the literature primarily deals with relationships between governments and non-profits. In social innovation literature non-profits are seen as

[53] Geoff Mulgan et al, 'Social Innovation: What it is, Why it Matters and How it can be Accelerated' (Working Paper, Oxford Said Business School, 2007) 9.
[54] See the discussion on innovation versus invention at page 13 of this thesis.
[55] 'Review Education Policies: Innovation', *OECD* (Web Page, 2018) <https://gpseducation.oecd.org/revieweducationpolicies/ - !node=41768&filter=all>.
[56] Michael Shier and L Handy, 'From Advocacy to Social Innovation: A Typology of Social Change Efforts by Nonprofits' (2015) 26(6) *VOLUNTAS: International Journal of Voluntary and Nonprofit Organizations* 2581, 2583.
[57] Michael L Shier and Femida Handy, 'Executive Leadership and Social Innovation in Direct-Service Nonprofits: Shaping the Organizational Culture to Create Social Change' (2016) 27(2) *Journal of Progressive Human Services* 111,112.

'active agents in shaping solutions to social problems, as opposed to being merely service providers or advocates for policy related reform.'[58]

Some studies have started to delineate the specific role of NGOs in innovation, although with few references to concepts, theories and literature from the traditional innovation field. Researchers have taken different approaches.[59] Dover and Lawrence argue that innovation is a process that happens over time and should be studied as such and they further discuss the role of power and politics in non-profit innovation.[60] Lindberg et al have looked at gendered social innovation.[61]

In 2013, Martinelli noted that 'the growing emphasis on the socially innovative potential of bottom-up mobilization in mainstream circles can work to obscure the rolling back of the welfare state, on the one hand, and the difficulties encountered by such initiatives, on the other.'[62] She notes that:

> A major threat to the sustainability of social innovation is access to reliable resources. In the majority of the examined SIIs [socially innovative initiatives], overwhelming amounts of time and energy were spent searching for funding sources, preparing applications, lobbying and bidding for financial support—time and energy that could be more effectively used to implement the initiatives themselves. Indeed, the constant uncertainty about and the competition for funding often undermines from within, bottom-up initiatives by pitting them one against the other.[63]

Researchers often view social innovation through one of two lenses—either as we have seen above, as a story of exceptional creative and energetic lone heroes[64] remaking the world, or a view of innovation occurring as a result of organisational and contextual structural factors.[65] As Hess and Adams point out, 'social change is a process that has distinctive preconditions

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[58] Ibid 114.
[59] Stephen P Osborne, Celine Chew and Kate McLaughlin, 'The Once and Future Pioneers? The Innovative Capacity of Voluntary Organisations and the Provision of Public Services: A Longitudinal Approach' (2008) 10(1) *Public Management Review* 51, 67.
[60] Graham Dover and Thomas B Lawrence, 'The Role of Power in Nonprofit Innovation' (2012) 41(6) *Nonprofit and Voluntary Sector Quarterly* 991.
[61] M Lindberg, L Forsberg, H Karlberg, 'Gendered Social Innovation: A Theoretical Lens for Analysing Structural Transformation in Organisations and Society' (2015) 3(6) *International Journal of Social Entrepreneurship and Innovation* 472; M Lindberg, 'From Exclusion to Inclusion in Public Innovation Support? Innovative Practices in Bottom-Up Networks' (2014) 18(4) *Scandinavian Journal of Public Administration* 91.
[62] F Martinelli, 'Learning from Case Studies of Social Innovation in the Field of Social Services: Creatively Balancing Top-down Universalism with Bottom-up Democracy' in F Moulaert, et al (eds), *The International Handbook on Social Innovation: Collective Action, Social Learning and Transdisciplinary Research* (Edward Elgar, 2013) 346.
[63] F Martinelli, 'Learning from Case Studies of Social Innovation in the Field of Social Services: Creatively Balancing Top-down Universalism with Bottom-up Democracy' in F Moulaert, et al (eds), *The International Handbook on Social Innovation: Collective Action, Social Learning and Transdisciplinary Research* (Edward Elgar, 2013) 346, 357.
[64] See page 13 of this thesis.
[65] See Geoff Mulgan, 'The Process of Social Innovation' (2006) 1(2) *Innovations* 145, 149.

and stages and those preconditions and stages can be understood and acted upon to promote innovation.'[66] An understanding of the major factors that affect social innovation development is a necessary precursor to examining innovation in CLCs. Development of innovations is affected by the social and political context within which the innovation is occurring. Therefore, in this thesis, it is necessary to understand developments in legal aid worldwide and in Australia before exploring social innovations in CLCs. This will be examined in Chapter Two.

The role of individuals, organisations and external context in innovatory capacity have all been considered by researchers. Where innovations are developed in organisations, they are impacted by the organisational structure within which they are occurring. In 1977, Pierce and Delbecq proposed that organisational conditions facilitating innovation included not only structural variables but also individual attitudes and values.[67] Two years later, Giddens proposed the concept of what he calls the theory of structuration. This recognises duality of structure, in that social structures are pre-determined but humans are also able to alter the structure.[68] Giddens argues that just as an individual's autonomy is influenced by structure, structures are maintained and adapted through the exercise of agency. Therefore, as Cajaiba-Santana notes 'the structure, by using institutions, acts over agents constraining and enabling their actions; through this process, social systems and social practices are recursively created. There is a reciprocal iterative process between agent and institutions as each one shapes and creates the other.'[69] In her 1996 work on innovation in organisations, Slappendel theorises that innovation is produced in a complex process by both the interaction of structural influences and the action of individuals.[70] Drawing on these theorists, a theory of social innovation must take into account the actions of individual people as well as the organisations and institutions within which they operate. Organisations can enable actions or constrain them. People can bring about organisational change. [71] Giddens suggests that the interactive coming together of agents and their social context may be conceptualised as a

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[66] David Adams and Michael Hess, 'Social Innovation as a New Public Administration Strategy' (Paper presented at the Proceedings of the 12th annual conference of the International Research Society for Public Management, Brisbane, 26–28 March 2008) 1.
[67] Jon L Pierce and Andre L Delbecq, 'Organization Structure, Individual Attitudes and Innovation' (1977) 2(1) *Academy of Management Review* 27.
[68] Anthony Giddens, *Central Problems in Social Theory: Action, Structure, and Contradiction in Social Analysis* (University of California Press, 1979).
[69] Giovany Cajaiba-Santana 'Social Innovation: Moving the Field Forward. A Conceptual Framework' (2014) 82 *Technological Forecasting & Social Change* 42, 47.
[70] Carol Slappendel, 'Perspectives on Innovation in Organizations' (1996) 17(1) *Organization Studies* 107.
[71] Giovany Cajaiba-Santana 'Social Innovation: Moving the Field Forward. A Conceptual Framework' (2014) 82 *Technological Forecasting & Social Change* 42, 46.

dialectic relationship whereby agents and the social context cannot exist independently and therefore cannot be understood as separate or distinct from one another.[72]

In 2014 Cajaiba-Santana described two theoretical perspectives on social innovation as:

> an 'agentic centred perspective', an individualistic and behaviourist approach in which social innovation is created through the actions undertaken by specific individuals. On the other side, there is a 'structuralist perspective' in which social innovation is perceived as determined by the external structural context.[73]

Cajaiba-Santana builds on the work of Slappendel and Pierce and Delbecq to develop what he calls the 'structuration perspective'. As he describes it '[s]tructuration theory to the social sciences is this connection between structure and action. The theory focuses on the reciprocal interaction of human actors and social structures across time and space.'[74] He points out that social innovations are also contextual and to study them one must consider historical and contextual analyses.[75] A diagrammatic representation of Cajaiba-Santana's approach is below.

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[72] Anthony Giddens, *Central Problems in Social Theory: Action, Structure, and Contradiction in Social Analysis*, (University of California Press, 1979).
[73] Giovany Cajaiba-Santana 'Social Innovation: Moving the Field Forward. A Conceptual Framework' (2014) 82 *Technological Forecasting & Social Change* 42, 43.
[74] Ibid 47.
[75] On this point see Carol Slappendel, 'Perspectives on Innovation in Organizations' (1996) 17(1) *Organization Studies* 107. Also, see the approach taken in Stephen Osborne, 'Naming the Beast: Defining and Classifying Service Innovations in Social Policy' (1998) 51(9) *Human Relations* 1133–1154.

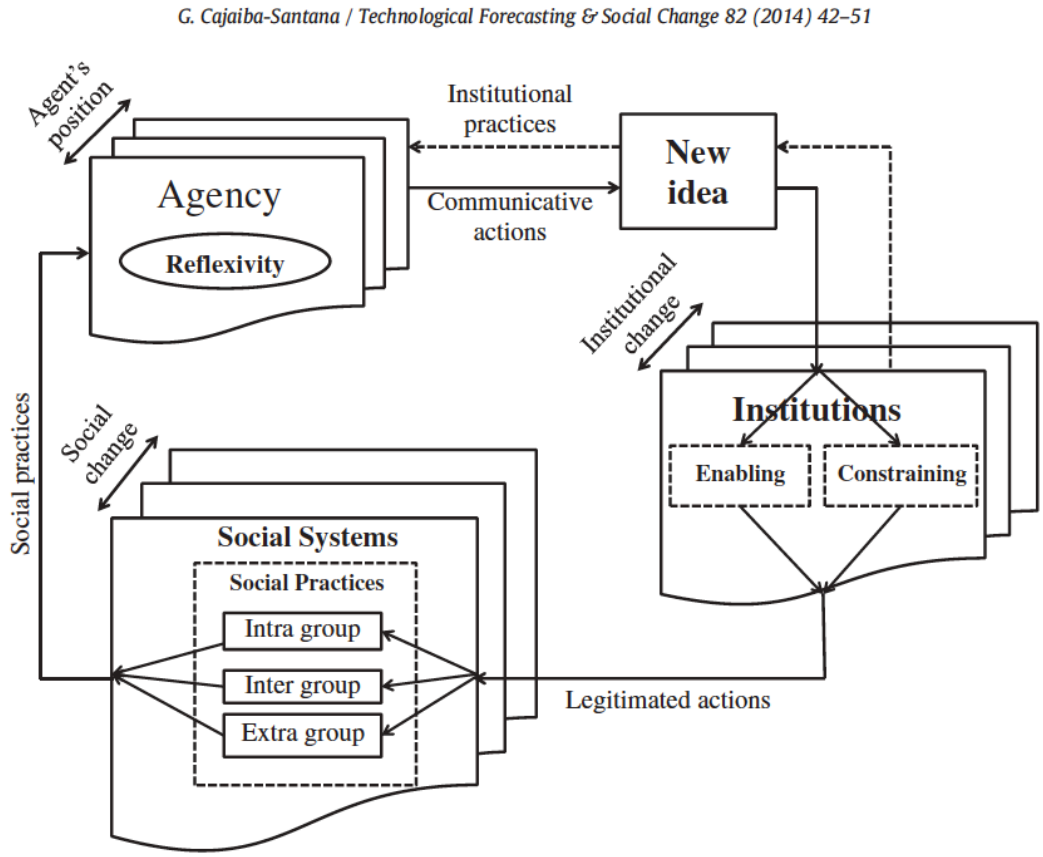


**Fig. 1.** A schematic conceptual model of the social innovation process.

Figure 1. A schematic conceptual model of the social innovation process from Giovany Cajaiba-Santana 'Social innovation: Moving the field forward. A conceptual framework' (2014) 82 *Technological Forecasting & Social Change* 42, 48.

To some degree a definition of social innovation offered by Fowler reflects similar ideas when he says:

> [s]ocial innovations are context dependent, original or inventive agent-inspired initiatives that are intended to alter the rules of the game—or the game itself – through the institutions that mediate and co-determine a society's aspirations, trajectory, sustainability and its winners and losers. Rules of the game are understood as the prevailing norms, standards and practical ways in which a society resources itself and functions at multiple scales of socio-political organising.[76]

Using this approach and model, I conclude from the literature that the issues that can affect innovation in an organisation can be broadly delineated as

[76] Alan Fowler, 'Social Innovation: New Game, New Dawn or False Promise?' (2013) Hivos, The Hague.

a) Communication by individuals in the agency and beyond;
b) The nature of the working practices of the institutions;
c) Relationships between groups in the institution and with external organisations;
d) The historical context in which the organisation is operating.

This perspective is utilised to gain an insight into the nature of innovations in the CLCs studied. A brief examination of these factors follows.

### The role of communication

A characteristic of social innovation is that it cuts across organisational, sectoral or disciplinary boundaries.[77] The success of innovation projects is critically dependent on trust between the participants, and therefore on the quality of the communication.[78] In addition, innovation projects are often complex, bringing together different stakeholder groups in different settings. Communication happens both inside groups and between groups. These networks that produce a flow of people, ideas and resources are effective if they are oriented to the local and community dimension, because face-to-face relationships are essential to social innovation. A community enables social links to be established where people know one another as people.[79] Such links could be developed in person or by utilising new technology available through the internet. In social innovation, a critical role is played by 'the 'connectors'—the brokers, entrepreneurs and institutions that link together people, ideas, money and power—who contribute as much to lasting change as thinkers, creators, designers, activists and community groups.'[80] There are, of course, many forms of communication. Cajaiba-Santana proposes that in organisations where innovation occurs, there are 'communicative actions' by workers. This notion is based on work by Habermas[81] and in this context refers to a situation where people seek to reach common understanding and to

[77] Edwards-Schachter, Mónica L and Matthew L Wallace, ''Shaken, but Not Stirred': Sixty Years of Defining Social Innovation' (2017) 119 *Technological Forecasting and Social Change* 64,72.
[78] Hans Weigand and Aldo De Moor, 'Improving Communication for Collaboration in Social Innovation Projects: A Framework for Pragmatic Research' *IT Artefact Design & Workpractice* (Web Document, 5 June 2013) 1, 7 <http://www.vits.org/adwi2013/HWeigand_ADeMoor_ADWI2013.pdf>.
[79] Denis Harrisson, 'Social Innovation: What is Coming Apart and What is Being Rebuilt?' in HW Franz, J Hochgerner, J Howaldt (eds), *Challenge Social Innovation* (Springer, 2012) 85.
[80] Hans Weigand and Aldo De Moor, 'Improving Communication for Collaboration in Social Innovation Projects: A Framework for Pragmatic Research' *IT Artefact Design & Workpractice* (Web Document, 5 June 2013) 1 <http://www.vits.org/adwi2013/HWeigand_ADeMoor_ADWI2013.pdf>.
[81] Jurgen Habermas, *The Theory of Communicative Action: Reason and the Rationalization of Society* (Beacon Press, Boston, 1984).

coordinate actions by reasoned argument, consensus, and cooperation rather than strategic action strictly in pursuit of their own goals. Innovation may also be affected by communication processes related to the characteristics and values of executive leaders.[82]

### The working practices of the institutions

Gonzalez et al note that 'to be innovative in a bureaucratic top down conservative institutional setting is not the same as in a democratic, participatory progressive one.'[83] In innovation theory, there appears to be a consensus that a high degree of participation in organisational decision-making (known in the literature as decentralisation) contributes to the initiation of innovation phase.[84] Van De Vrande's conclusion that all employees should be encouraged to express their ideas for new or improved products and services means that managers have been urged to achieve decentralised structure, encouraging all employees to participate in the innovation process.[85] Development of a relaxed, less formalised organisational culture that stimulates the interaction of internal and external environments boosts a firm's creativity and innovation.[86]

Innovation is a multidisciplinary activity. Researchers have shown the positive impact of a good working climate on knowledge flows and innovation performance.[87] A good working climate makes employees more committed to the process, and also willing to accept occasional failures and risks inherent in the turbulence and uncertainty involved in knowledge creation.[88] Research by Tracey, Phillips and Jarvis has found that the creation of new organisational forms requires institutional support at three different levels: the micro or individual level, through recognising an opportunity and framing it in a new light, at the

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[82] T Weman and H Kantanen (2018), 'Communicative Leaders, Creative Followers?' in *Public Relations and the Power of Creativity* (*Advances in Public Relations and Communication Management, Vol. 3*) (Emerald Publishing Limited, 2018) 57–72.
[83] Sara Gonzalez et al 'ALMOLIN: How to Analyse Social Innovation at the Local Level' in Frank Moulaert, et al (eds), *Can Neighbourhoods Save the City? Community Development and Social Innovation (Regions and Cities)* (Routledge, 2010) 57.
[84] Jon L Pierce and Andre L Delbecq, 'Organization Structure, Individual Attitudes and Innovation' (1977) 2(1) *Academy of Management Review* 27, 30.
[85] Vareska Van de Vrande et al, 'Open Innovation in SMES: Trends, Motives and Management Challenges' (2009) 29(6) *Technovation* 423, 424.
[86] Kaja Rangus and Alenka Slavek, 'The Interplay of Decentralization, Employee Involvement and Absorptive Capacity on Firms' Innovation and Business Performance' (2017) 120 *Technological Forecasting and Social Change* 195.
[87] Stian Nygaard and Angeloantonio Russo, 'Trust, Coordination and Knowledge Flows in R&D Projects: The Case of Fuel Cell Technologies' (2008) 17(1) *Business Ethics* 23.
[88] Ludwig Bestieler, 'Trust Formation in Collaborative New Product Development' (2006) 23 *Journal of Product Innovation Management* 56.

meso- or organisational level, supporting a new operating design through theorising a new organisational template, and at the macro- or societal level, legitimising the new form by creating connections and interactions with appropriate actors.[89] Managers of organisations providing services to disadvantaged communities often feel obliged to devote as much time, energy, and resources as possible to current programs that provide direct services and resources to participants and clients. They are reluctant to invest in innovation, if that means diverting scarce resources away from their core mission.[90] Institutional support may be necessary to overcome this problem.

Distinct working practices of organisations such as organisational learning (the extent to which an organisation supports the ongoing learning and development of its staff from within the organisation);[91] staff engagement;[92] staff development and hiring practices; board involvement;[93] and the dual role of NGOs as advocacy and service providers have been found to be important in innovative behaviour in non-profit organisations. McDonald[94] found that firms with clear, motivating missions tend to be more innovative.

### Relationships with external organisations

Leenders and Dolfsma describe innovation as being 'by necessity a collaborative effort. Existing knowledge and ideas merge into new combinations, and as formerly separated knowledge comes together, new knowledge emerges.'[95] Westley et al report that the process of social innovation within the interactions of various movements is complex. Everyone involved plays a role, including founders, policy makers, social innovators, volunteers, and evaluators. It is what happens between people, organisations, communities, and related

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[89] Paul Tracey, Nelson Phillips, and Owen Jarvis, 'Bridging Institutional Entrepreneurship and the Creation of New Organizational Forms: A Multilevel Model' (2011) 22 *Organization Science* 60.
[90] Stephanie Berzin and Marcie Pitt-Catsouphes, 'Social Innovation from the Inside: Considering the "Intrapreneurship" Path' (2015) 60(4) *Social Work* 360.
[91] Daniel Jiménez-Jiménez and Raquel Sanz-Valle, 'Innovation, Organizational Learning, and Performance' (2011) 64(4) *Journal of Business Research* 408.
[92] Johan C Coetsee, Patrick C Flood and Steven Kilroy, 'Innovation, Leadership and Staff Engagement: Insights from CEOs' in *Human Resource Management, Innovation and Performance* (Palgrave Macmillan, 2016) 232.
[93] Michael L Shier and Femida Handy, 'Executive Leadership and Social Innovation in Direct-Service Nonprofits: Shaping the Organizational Culture to Create Social Change' (2016) 27(2) *Journal of Progressive Human Services* 111.
[94] Robert E McDonald 'An Investigation of Innovation in Nonprofit Organizations: The Role of Organizational Mission' (2007) 36(2) *Nonprofit and Voluntary Sector Quarterly* 256.
[95] Roger Leenders and Wilfred A Dolfsma, 'Social Networks for Innovation and New Product Development' (2016) 33(2) *Journal of Product Innovation Management* 123.

systems.[96] Project teams that perform well in business innovations tend to have more external ties.[97] The review by Phillips et al of literature on social innovation suggests that:

> contradicting the traditional belief of social entrepreneurs as solitary bodies, innovating in isolation, existing studies show that social innovation is not undertaken in isolation by lone entrepreneurs, but rather it is shaped by a wide range of organizations and institutions that influence developments in certain areas to meet a social need or to promote social development. On this basis, it is suggested that social enterprises and social entrepreneurs exist within a social innovation system—a community of practitioners and institutions jointly addressing social issues, helping to shape society and innovation.[98]

An effective network structure, characterised as wide (a range of different sources of knowledge types, including geographical, sectoral and professional) and open (ensuring access to knowledge both within the network and outside it), helps knowledge and information flow between different actors.[99]

Conversely, researchers have shown that strong dense ties between people in an organisation can actually hinder innovation, as behaviour may stop actors from seeking new knowledge, information and collaboration outside their network.[100] Burt[101] argued that for innovation, the spaces between separate unconnected networks—'structural holes'—are especially useful since they allow actors to connect different knowledge networks. While strong ties build trust and coherence, weak ties are likely to provide the most opportunities for new knowledge to emerge.[102] An ideal ecosystem would have both.

Innovation in non-profit organisations has been shown to be affected by the 'local embeddedness' of many organisations and collaborative practices.[103] Community legal centres are examples of organisations that in most cases are connected to their local area and to the other services operating in that area.

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[96] FR Westley, B Zimmerman and M Q Patton, *Getting to Maybe: How the World is Changed* (Vintage Canada, 2006).
[97] Roger Leenders and Wilfred A Dolfsma, 'Social Networks for Innovation and New Product Development' (2016) 33(2) *Journal of Product Innovation Management* 123, 127.
[98] Wendy Phillips et al, 'Social Innovation and Social Entrepreneurship: A Systematic Review' (2015) 40(3) *Group and Organisation Management* 428, 452.
[99] Lina Sonne, *Innovation in Finance to Finance Innovation: Supporting Pro-Poor Entrepreneur-Based Innovation* (PhD thesis, University of Maastricht, 2007) 57.
[100] Robin Cowan and Anant Kamath, 'Informal Knowledge Exchanges Under Complex Social Relations' (Working Paper No 2012–31, UNU- Merit, 2012).
[101] Ronald S Burt, *Structural Holes* (Harvard University Press, 1992).
[102] Robin Cowan and Nicolas Jonard, 'Network Structure and the Diffusion of Knowledge' (2004) 28(8*) Journal of Economic Dynamics and Control* 1557.
[103] Meric S Gertler, David A Wolfe and David Garkut, 'No Place Like Home? The Embeddedness of Innovation in a Regional Economy' (2000) 7(4) *Review of International Political Economy* 688.

Broader movements of change are crucial in understanding the nature and development of social innovation.[104] In the years from 1972 to 2020 the political and social context has changed dramatically for CLCs. Specifically, as discussed in Chapter Seven, in the 1970s and 1980s Australian state and federal governments demonstrated a willingness to support and fund new proposals in community legal centres. In the following decades, the focus shifted to accountability, franchising and performance outputs and limited additional funding.[105] In recent years governments and grant makers are again recognising a need to provide funding and support to foster social innovation, and innovation is currently a buzz word in government programs. Stylish new websites and blogs about innovation abound.[106] New programs include Victoria Legal Aid's Innovation and Transformation Fund,[107] providing funds for community legal service innovations. This is part of a wider discussion of 'social Silicon Valleys' around the globe.[108]

**How can this concept of social innovation apply to the study of community legal centres?**

The availability of funding is clearly important in developing and sustaining innovations in non-profit organisations. Osborne argues that the innovative capacity of voluntary and community organisations (VCOs) was not a function of organisational characteristics, such as their structure or culture, but arose out of the interaction of these organisations with their institutional and policy environments. That is, it was the context created by central and local government that encouraged innovative activity rather than it being an inherent consequence of their organisational structure or culture.[109] In a follow up study in 2006, Osborne et al emphasised 'the need to understand the innovative capacity of VCOs as a variable organisational capacity, with its key contingencies in the institutional and policy environment rather than an inherent element of these organisations.' Gonzalez et al note that the nature of

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[104] Geoff Mulgan, 'Stepping on the Accelerator of Change' in Willie Chang and Mohamed Sharifah, *The World That Changes the World* (Wiley, 2010) 345.
[105] See Mary Anne Noone and Stephen A Tomsen, *Lawyers in Conflict: Australian Lawyers and Legal Aid* (Federation Press, 2006) 178–198.
[106] See for instance: 'Public Sector Innovation Network', *Commonwealth* (Web Page, 2020) <https://innovation.govspace.gov.au/>; 'Promoting and supporting innovation in the public sector', *Victorian Government* (Web Page, 2020) <http://www.vic.gov.au/publicsectorinnovation.html>.
[107] 'Latest Grants from the Innovation and Transformation Fund', *Victoria Legal Aid* (Web Page, 17 August 2016) <https://www.legalaid.vic.gov.au/about-us/news/latest-grants-from-innovation-and-transformation-fund>.
[108] Geoff Mulgan, 'Stepping on the Accelerator of Change' in Willie Chang and Mohamed Sharifah *The World that Changes the World (*Wiley, 2010) 345, 352.
[109] Stephen P Osborne, 'Naming the Beast. Defining and Classifying Service Innovations in Social Policy', (1998) 51(9) *Human Relations* 1133.

social innovation is highly space and place dependent.[110] This aspect as it relates to innovation in legal centres is explored in Chapter 4.

Mulgan et al declare that:

> Surprisingly little is known about social innovation compared to the vast amount of research into innovation in business and science. In an extensive survey we found no systematic overviews of the field, no major datasets or long term analyses, and few signs of interest from the big foundations or academic research funding bodies.
>
> Does it emerge from common social conditions or develop in unique circumstances in response to specific events? Can governments or other agents create conditions to stimulate SI? Are there particular legal or regulatory environments which either encourage or inhibit the development of SI? Is SI generated primarily by charismatic individuals and dependent upon the actions of community entrepreneurs? What evidence (if any) is there of the impact and added value of SI? For example, do SI initiatives enhance community efficacy and/or political capabilities? Do any impacts produced by SI persist over the longer term? If so, how are such effects sustained and are there particular supporting mechanisms which assist this? Can successful local SIs be scaled up to produce greater effects or help a wider range of beneficiaries? How is this achieved? [111]

Inquiring into the history of CLCs is relevant to this inquiry. Cajaiba-Santana notes that both Van de Ven[112] and Slappendel[113] suggest analysis of social innovation calls for a 'process methodology' where the discrete change of events is analysed based on historical narratives, where the narration of temporal sequence of events shows how change unfolds over time.

By investigating the histories of innovations in a community legal centre, this research sheds light on social innovation in the provision of legal services to disadvantaged communities in Australia. The research provides a theoretical framework for the project that is not commonly used in studies of activist legal institutions and highlights processes not previously studied in community legal centres.

Although the social innovation process is not easy to plan or predict, as Mulgan points out, conscious action can help people and communities to organise and shape the direction of its

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[110] Sara Gonzalez et al 'ALMOLIN: How to Analyse Social Innovation at the Local Level' in Frank Moulaert, et al (eds), *Can Neighbourhoods Save the City? Community Development and Social Innovation (Regions and Cities)* (Routledge, 2010) 57.
[111] Geoff Mulgan et al, 'Social Innovation: What It Is, Why It Matters, How It Can Be Accelerated' (Working Paper, Skoll Centre for Social Entrepreneurship, 2007) 5.
[112] Andrew Van de Ven and Timothy Hargrave, 'Social, Technical, and Institutional Change' in Marshall Scott Poole and Andrew Van de Ven (eds), *Handbook of Organizational Change and Innovation* (Oxford University Press, 2004) 259.
[113] Carol Slappendel, 'Perspectives on Innovation in Organizations' (1996) 17(1) *Organization Studies* 107.

evolution in the form of human, material and social capital or goal achievement.[114] It is useful for future planning to consider questions that arise from social innovation research such as 'do initiatives start small and local then scale up?' Do they begin with 'a radical and confrontational edge to then be co-opted by the formal structures of the State or the market or exhaust their drive.'[115] In assessing the impact of social innovations one must consider the 'tension between innovation and institutionalisation.'[116]

There are many challenges to this research approach. Identifying innovations is perhaps the most straightforward task. Documenting how these innovations came into existence, especially after many years, has obvious difficulties. Evaluation of the impact of these innovations is also difficult. There are, as yet, no commonly agreed methods or standards of evaluation for social impact.[117] With a couple of notable exceptions, CLCs have few monetary or staff resources available for evaluations of their innovations. Unlike commercial innovations there is rarely profit to be made from social innovations of this type. Despite the clear value in assessing innovation failures,[118] it can be difficult to publicly discuss failures in organisations that use limited valuable resources and are funded to assist people in need. The methodology to be adopted in this study will be outlined in the next chapter.

## Legal aid and community legal centres in Australia

The community legal centre studied in this work, Redfern Legal Centre, was established in the late 1970s. The number of academic works on legal aid published during this period reflects significant international attention on developments in this field.[119] Research by Zemans,[120] Cooper[121] and Blankenburg[122] focused on innovations in the provision of legal

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[114] Carol Yeh-Yun Lin and Jeffrey Chen, *The Impact of Societal and Social Innovation: A Case-Based Approach* (Springer, 2016).
[115] Sara Gonzalez et al 'ALMOLIN: How to Analyse Social Innovation at the Local Level' in Frank Moulaert, et al (eds), *Can Neighbourhoods Save the City? Community Development and Social Innovation (Regions and Cities)* (Routledge, 2010) 64.
[116] Ibid 64.
[117] Elsevier Ltd, 'Social Innovation' in *International Encyclopedia of the Social & Behavioral Sciences* (2015) 355, 360.
[118] See for instance Rosemary Hunter, C Banks and Jeff Giddings, 'Technology is the Answer… But What was the Question? Experiments in the Delivery of Legal Services to Regional, Rural and Remote Clients' in P Pleasance, A Buck and N Balmer (eds), *Transforming Lives: Law and Social Process* (Legal Services Commission, London 2007) 133.
[119] Abel suggests that there was perhaps too much attention paid to legal aid issues which were minor parts of the legal services budget but noted that 'this bias also illuminates the hopes and expectations aroused by legal aid' in Richard Abel, 'Law Without Politics: Legal Aid Under Advanced Capitalism' (1985) 32 *UCLA Law Review* 474, 476.
[120] F H Zemans (ed), *Perspectives on Legal Aid: An International Survey* (Continuum International Publishing, 1979).
[121] J Cooper, *Public Legal Services: A Comparative Study of Policy, Politics and Practice* (Sweet and Maxwell, 1983).
[122] E Blankenburg, (ed), *Innovations in the Legal Services* (Oelgeschlager, Gunn and Hain, 1980).

services to disadvantaged communities. Though the term 'social innovation' was not yet in vogue, many of the developments chronicled in these works fit the definition of social innovation proposed above, being novel solutions to a problem—in the form of implemented services, or ways of organising work that met a social need, improved quality of life for individuals or communities and that addressed unmet needs due to the failure or absence of markets or state provision. For instance, Katz describes the way that legal services were organised in Chicago.[123] He contrasts the different approach of legal aid lawyers who react on a case by case basis and provide representation to the poor on an individual basis to those of the new US legal services model. The legal services model lawyers, who were often activists pursuing political goals, focused on representation of the poor as a community and sought reform of laws and policies that adversely affected people through organisation, control of client-intake and test cases.[124]

In Capaletti's four-volume work on issues of access to justice, three waves of reform are identified. First, the emergence of publicly-funded legal aid schemes for the poor, then provision of legal representation for diffuse interests—for example, consumer and environmental, and finally a more wide-ranging approach, focusing on institutions and devices used to process and even prevent disputes in modern society.[125] As Sackville points out, however that:

> [c]are must be taken when employing the imagery of successive 'waves' of reform. The language may create the misleading impression of a series of discrete changes to legal systems occurring at different periods in the development of legal systems. It is more accurate to think of the 'waves' as a number of interrelated changes. Some may be continuing in one form or another, while others may be in retreat. It is also important to recognise that reforms to the legal system and to dispute resolution procedures in general cannot be understood in isolation from broader social and economic changes taking place in a particular country or region. Nonetheless, the imagery of 'waves' of reform assists in identifying some of the key assumptions underlying the reforms that took place in developed countries in the last third of the twentieth century.[126]

### Innovations in global legal aid services: neighbourhood law offices and law centres

[123] J Katz, *Poor People's Lawyers in Transition* (Rutgers University Press, 1982).
[124] See E Cahn and J Cahn, 'The War on Poverty: A Civilian Perspective' (1964) 73 *Yale Law Journal* 1317; C Silver, 'The Imminent Failure Of Legal Services For The Poor: How And Why To Limit The Caseload' (1959) 46 *Journal of Urban Law* 217; S Wexler, 'Practising Law for Poor People' (1974) 79 *Yale Law Journal* 1049.
[125] M Cappelletti and B Garth (eds), *Access to Justice*, *Volume 1: A World Survey* (Sijthoff and Noordhoff, 1978).
[126] Justice Ronald Sackville, 'Some Thoughts on Access to Justice' (2003) *Federal Judicial Scholarship* 22.

In the UK, the *Legal Aid and Advice Act 1949*[127] laid the basis for a national legal aid scheme as part of the development of the welfare state under which private solicitors were paid fees for advising and in some cases representing clients. In Australia, legal aid was only available on a minimal basis, and was generally geared to legal representation for poorer accused and litigants in criminal and family law proceedings, until the Commonwealth Legal Service Bureaux was established during World War 2 in 1942.[128] In the USA, various state and city based schemes existed prior to the 1960s but until the mid 1960s, the American Bar Association 'condemned as socialism the idea of state funded as opposed to bar and charity funded civil legal services.'[129]

The raised social consciousness of the 1960s and 1970s brought the issue of legal aid onto the worldwide agenda.[130] Dramatic improvements were introduced in the legal aid schemes of USA, Sweden, France, Germany, Austria, Netherlands and Canada – primarily through what is known as judicare systems. The word 'judicare' derives from 'Medicare' because the original concept involved the government paying private attorneys to provide legal services to indigent individuals on a fee-for-service basis, much as the Medicare program pays private doctors.[131] The first judicare programs in the United States were pilot programs in Wisconsin, Connecticut, and California, funded by the Federal Office of Economic Opportunity (OEO) as part of President Lyndon B. Johnson's War on Poverty in the 1960s.[132] Judicare whereby 'legal aid is established as a matter of right for all persons eligible under the statutory terms, with the state paying the private lawyer who provides those services.'[133] This method of legal aid provision can be contrasted with that where lawyers are employed by the government and directly paid by the state to provide legal aid services.[134]

Abel points out that concrete historical events such as the election of social democratic

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[127] Peter Alcock, *A study of legal aid and advice in England and Wales* (Masters Thesis, Sheffield University,1976) 25.
[128] Don Fleming; Francis Regan, Evatt's Bastard Child: The Commonwealth Legal Service Bureaux 1942-51, (2003) 7 *Australian Journal of Legal History* 255, 257.
[129] Robert W Gordon, 'Lawyers, the Legal Profession & Access to Justice in the United States: A Brief History' (2018) 148 *Daedalus* 177, 180.
[130] Bryant Garth and Mauro Capaletti, 'Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective' (1978) 27 *Buffalo Law Review* 181.
[131] Larry R Spain, 'The Opportunities and Challenges of Providing Equal Access to Justice in Rural Communities' (2001) 28 *William Mitchell Law Review* 367, 377–378.
[132] Andrea J Saltzman, 'Private Bar Delivery of Civil Legal Services to the Poor: A Design for a Combined Private Attorney and Staffed Office Delivery System' 34 (1983) *Hastings Law Journal* 1165, 1166.
[133] Bryant Garth and Mauro Capaletti, 'Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective' (1978) 27 *Buffalo Law Review* 199.
[134] T Goriely and A Paterson, 'Introduction: Resourcing Civil Justice' in AA Paterson and T Goriely, *A Reader on Resourcing Civil Justice* (Oxford University Press,1996).

governments were critically important in explaining the post-war expansion of legal aid in the welfare capitalist societies.[135] However structural factors such as the dynamics of the family, the legal profession and the legal system, and expanding social welfare systems were also important.[136] He claims that once state subsidies for legal aid work came into existence as in the UK, the private legal profession had a significant economic stake in the preservation and expansion of the judicare model. Paterson criticised Abel for this approach. Paterson's report on Scotland concludes that government legal aid created little demand for new services as the private profession manipulated the scheme using legal aid to maintain its own income rather than to satisfy genuinely new needs.[137]

From the late 1960s, differing proposals for legal aid schemes were under scrutiny around the world.[138] Debates continue about the relative benefits and costs of legal service models compared to judicare schemes.[139] Last century judicare systems, however, received much criticism.[140] People living in poverty faced many barriers, not only in recognising a problem as one with a legal solution, but in utilising and accessing private lawyers. Judicare was not designed to provide representation of a class of people all facing similar problems. It only focused on individual issues. The significant innovation of the public salaried legal aid services introduced in the USA's neighbourhood law offices (arising from ideas expressed by Edgar and Jean Cahn in their article on 'war on poverty') focused on ways to ensure greater access to legal services to communities with the aim of creating greater equality in society.[141] These offices also faced problems including limitations on law reform activity, particularly as they were frequently reliant on government funding to fight essentially political battles, often against the government. Public interest law firms were also set up in the USA during and

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[135] R L Abel, 'Law Without Politics: Legal Aid Under Advanced Capitalism' (1985) 32 *UCLA Law Review* 586–592.
[136] G Little, 'Whitlam, Whitlamism and the Whitlam years' in Australian Fabian Society, *Fabian Papers, The Whitlam Phenomenon* (McPhee Gribble/Penguin Books, 1986), 60–76.
[137] Alan Paterson, 'The Legal Profession in Scotland: An Endangered Species or a Problem Case for Market Theory?' in R L Abel and P S C Lewis (eds), *Lawyers in Society Volume One: The Common Law World* (Berkeley, Los Angeles and London,1988) 99–101.
[138] See R L Abel, 'Law Without Politics: Legal Aid Under Advanced Capitalism' (1985) 32 *UCLA Law Review* 504–508.
[139] See for instance Albert Currie, 'Legal Aid Delivery Models in Canada: Past Experience and Future Developments' (1999–2000) 33 *University of British Columbia Law Review* 318.
[140] See Bryant Garth, *Neighborhood Law Firms for the Poor: A Comparative Study of Recent Developments in Legal Aid and in the Legal Profession* (Sijthoff & Noordhoff, 1980) 99; Joseph Preloznik, 'Wisconsin Judicare: An Experiment in Legal Services' (1971) 57 *American Bar Association Journal* 1178.
[141] See S Edgar and Jean Cahn 'The War on Poverty: A Civilian Perspective' (1963–64) 73 *Yale Law Journal* 131; Jerold S Auerbach, *Unequal Justice* (Oxford University Press, 1976) 269; Bryant Garth, *Neighborhood Law Firms for the Poor: A Comparative Study of Recent Developments in Legal Aid and in the Legal Profession* (Sijthoff & Noordhoff, 1980); Bryant Garth and Mauro Capaletti, 'Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective' (1978) 27 *Buffalo Law Review* 181, 202. See also John Chesterman, *Law and the New Left: A History of Fitzroy Legal Service*, *1972–1994* (University of Melbourne, 1995) 6–8.

after the 1970s—often non-profits created by philanthropic foundations.[142]

### Law centres in the United Kingdom

The establishment of law centres in the 1970s in the UK was the result, at least in part, of adaptation of the innovative US neighbourhood law office model.[143] Though facing opposition from the private profession, law centres were described as early as 1975 as 'an integral and essential branch of legal services.'[144] The first law centre in England, opened in July 1970, was at North Kensington, London.[145] 'This project developed out of sixties radicalism, more specifically a famous summer project run at Notting Hill. The group involved were left wing activists aiming to use the law to achieve change, working within an inner-city area with large numbers of immigrants, in an atmosphere of tension with regard to housing.[146] Both non-lawyers and lawyers were behind the establishment of the legal centre.

> There was a strong US influence on the group. The Society of Labour Lawyers published a pamphlet in 1967 called Justice for All and Michael Zander had a chapter on neighbourhood law firms in the US. There was a model which they were using … They were a very political group … They began with a really holistic notion of what people needed in Notting Hill that included the issue of crime. There was a big issue about policing in North Kensington … The time was right for people who wanted to push the limits.[147]

After North Kensington, a number of Labour dominated boroughs in London funded the establishment of law centres. The number of law centres steadily increased, first in London, and then elsewhere. Local authorities were willing to fund them primarily because of the

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[142] See Laura Beth Nielsen and Catherine R. Albiston, 'The Organization of Public Interest Practice: 1975–2004' (2006) 84 *North Carolina Law Review* 1591. See also Deborah L Rhode, 'Public Interest Law: The Movement at Midlife' (2008) 60 *Stanford Law Review* 2027.

[143] Richard Coates, 'A history of legal aid in Australia', *Papers Presented at the Fourth Annual Colloquium of the Judicial Conference of Australia Inc.,* Melbourne, 12–14 November 1999.

[144] See Lord Chancellor's Advisory Committee, '26th Annual Report of the Legal Aid' (1975–1976) (London: H.M.S.O. 1976) 60–61. Note though that this opposition resulted in an agreement they would only do certain type of legal work – the market for profit making work was restricted to private profession. This had significant long term impact on law centres' capacity. See Law Centres Federation, 'Thirty Years On' , *Law Centres Annual Report (2007/2008)*, *Law Centres Annual Report (2007/2008)* <http://www.lawcentres.org.uk/asset/download/42>.

[145] Colin Lancaster, *A Break with Tradition: The Impact of the Legal Profession and the Dominant Paradigms of Legal Practice, Legal Needs and Legal Services on the Development of Law Centres in Strathclyde and the West Midlands* (PhD Thesis, University of Edinburgh, 2002) 1.

[146] Interview with Roger Smith (Frances Gibson, London, 22 July 2015). Roger Smith is an expert in domestic and international aspects of legal aid, human rights and access to justice. He writes regularly in the specialist legal press in England and Wales, with regular op-ed pieces in the Law Society Gazette and the New Law Journal. He edits the newsletter of the International Legal Aid Group (see http://www.ilagnet.org) on international developments in legal aid, and is a Visiting Professor of Law at London South Bank University and an honorary professor at the University of Kent. He is a solicitor and has been director of the Legal Action Group, JUSTICE and West Hampstead Community Law Centre as well as director of policy and legal education at the Law Society, London, and solicitor to the Child Poverty Action Group.

[147] Interview with Roger Smith (Frances Gibson, London, 22 July 2015).

pressures on housing and because they saw the law centres as providing services to working people.[148]

The English legal profession was initially intensely hostile to law centres. There were disputes in the early 1970s between the Law Society and the law centres concerning the proposed opening of the Hillingdon Law Centre in which local legal practitioners claimed that they were adequately meeting legal need and the centre was not needed. In the early 1970s the Law Society arranged for the Lord Chancellor to publish guidelines to the effect that people could get two hours of funded legal advice for free from any legal practitioner on any matter of English law. This did not have a great effect straight away as practitioners did not immediately take up the offer to take on this work but later in the 1970s, more private practitioners offered this service. This cut off a distinctive area of work for law centres. Private practitioners could offer this service and develop expertise in social welfare law.[149]

> The Law Society hoped to control them [legal centres] by setting conditions on the waiver of professional rules on advertising and sharing fees. In its report for 1973–74 it attacked law centres for stirring up political and quasi-political confrontations. Lord Elwyn-Jones, the Lord Chancellor, then brokered an accommodation whereby law centres could not compete with private practices in traditional areas such as adult crime, matrimonial work, personal injury, probate and conveyancing. The Law Society would then grant the necessary permissions.[150]

The Report of the Royal Commission on Legal Services criticised activities of law centres saying it is 'inappropriate for a law centre to devote its resources to taking part in political or community activities.'[151] The Commission was also critical of the notion that clients of law centre services should participate in management. The Commission argued that it did not think it right 'for people who have no knowledge of the law or the handling of legal problems and possibly little experience of managing an office to be expected to assume direct responsibility for the professional work of a CLC.'[152] As Stephens points out the concept was that local people have input into priorities of a centre's work in order to better satisfy the local community needs rather than manage professional legal work.[153] The Report acknowledged that law centres had made an important contribution to the delivery of legal

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[148] Interview with Roger Smith (Frances Gibson, London, 22 July 2015).
[149] Ibid.
[150] Henry Brook, 'The History of Legal Aid: 1945 to 1997' *Sir Henry Brooke* (2016) <https://sirhenrybrooke.me/2016/06/16/the-history-of-legal-aid-1945-to-1997>.
[151] Great Britain, Royal Commission on Legal Services, *The Royal Commission on Legal Services: Final Report* (1979) 8.
[152] Ibid.
[153] Mike Stephens, 'Law Centres and Citizenship: The Way Forward' in Philip A Thomas, *Law in the Balance* (Martin Robertson & Co Ltd, 1982) 112.

services and produced an impact out of all proportion to their size.[154] The Law Society had an overriding concern to avoid duplication of services between law centres and the private profession[155] but by 1975 the Law Society's position was that law centres did not threaten private practitioners.[156]

Smith points out that there were ongoing debates in law centres in relation to the respective roles of community representatives and lawyers, and also about the structure of centres.[157] Writing in 1982, Smith argued for the need for proactive law centres to mobilise support among clients and 'to seek a combination of legal and non-legal strategies if the rights of citizenship are to be more effectively pursued.'[158]

> By the late 1970s they saw themselves as operating in the community rather than judging what they did primarily as lawyers. This was very different to the situation in the USA … Law centres in the UK in the 1980s were good at developing new areas of law such as immigration and asylum and good at bringing in people from different backgrounds into the legal profession but not really at strategic litigation. Centres were marginal in the work on judicial review litigation and working on the Human Rights Act. The consequence of reduced local council funding led to them getting legal aid funding and working on contracts for provision of services to fund themselves which blunted their edge.
>
> Law Centres were part of a movement that rediscovered poverty and what it meant. There were areas of need where the law could play a role. They contributed to the resolution of problems in a fairer way. They operated as a pathfinder for the private profession. They opened up 5 or 6 areas of law which were then taken over by the private profession. They played a real role in bringing through people from ethnic minorities to see the law as a place where they could work.[159]

Recent indications are that law centres are facing a challenging environment in the UK. In March 2015, the Parliamentary Justice Committee reported on the impact of the changes to civil legal aid under new legislation, the *Legal Aid, Sentencing and Punishment of Offenders*

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[154] Mike Stephens, 'Law Centres and Citizenship: The Way Forward' in Philip A Thomas, *Law in the Balance* (Martin Robertson & Co Ltd, 1982) 109.
[155] Ibid 111.
[156] Interview with Roger Smith (London, 22 July 2015) and Mike Stephens, 'Law Centres and Citizenship: The Way Forward' in Philip A Thomas, *Law in the Balance* (Martin Robertson & Co Ltd, 1982) 108.
[157] Interview with Roger Smith (London, 22 July 2015).
[158] Mike Stephens, 'Law Centres and Citizenship: The Way Forward' in Philip A Thomas, *Law in the Balance* (Martin Robertson & Co Ltd, 1982) 123.
[159] Interview with Roger Smith (Frances Gibson, London, 22 July 2015). See also Jonathan M Stein, 'The Future of Social Justice in Britain: A New Mission for the Community Legal Service' *Centre for Analysis of Social Exclusion, London School of Economics* (August, 2001) 31–32 <http://eprints.lse.ac.uk/6434/1/The_Future_of_Social_Justice_in_Britain_A_New_Mission_for_the_Community_Legal_Service.pdf>; Frederick H Zemans, 'Can Community Clinics Survive? A Comparative Study of Law Centres in Australia, Ontario and England' in Francis Regan et al, *The Transformation of Legal Aid: Comparative and Historical Studies* (Oxford University Press, 1999) 349.

*Act 2012* (LASPO) which introduced significant cuts in funding for civil legal aid matters. The Justice Committee was told that nine law centres had shut down.[160] Local Authorities have faced cuts in grants from central government and they have in turn stopped funding law centres.[161] Figures published by the Ministry of Justice in July 2019 show that the number of law centres halved from 94 in 2013–14 to 47.[162]

### Legal aid in Australia

A comprehensive history of Australian legal aid developments is set out in Noone and Tomsen's work 'Lawyers in Conflict'.[163] In short, prior to the 1970s there had been a number of legal aid services in Australia. Early statutory and other pro bono schemes were ad hoc. State governments and the private profession had run various schemes to assist disadvantaged clients. In 1942, the Commonwealth Legal Service Bureau was established within the Attorney General's Department to meet the needs of the wives and children of servicemen serving overseas.[164] In 1943 the Public Solicitors Office and Public Defenders in NSW began providing salaried lawyers for criminal cases.[165] By 1961, judicare schemes of varying size and scope, with little government funding and heavily subsidised by the law societies and private practitioners, were operating in all states. State governments had not demonstrated much interest in legal aid schemes and had resisted legal profession pressure in the 1960s to fund the judicare schemes.[166]

In 1971, the McMahon Coalition Government agreed to fund the first Aboriginal Legal Service (ALS) in Redfern in New South Wales.[167] Senator McAuliffe stated in Hansard that:

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[160] House of Commons Justice Committee, Eighth Report of Session, *Impact of Changes to Civil Legal Aid Under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012* (4 March 2015) <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmjust/311/31102.htm>.
[161] Smita Shah, 'The Impact of Legal Aid Cuts on Access to Justice in the UK' in Corinne Lennox (ed), *Contemporary Challenges in Securing Human Rights*, *London* (Institute of Commonwealth Studies, Human Rights Consortium, School of Advanced Study, University of London, 2015) 101.
[162] Monidipa Fouzder, 'Financial Pressures Force Closure of London Law Centre' *Law Society Gazette* (Web Page, 16 July 2019) <https://www.lawgazette.co.uk/news/financial-pressures-force-closure-of-london-law-centre/5071005.article>.
[163] Mary Anne Noone and Stephen A Tomsen, *Lawyers In Conflict: Australian Lawyers and Legal Aid* (Federation Press, 2006).
[164] Don Fleming and Francis Regan, 'Evatt's Bastard Child: The Commonwealth Legal Service Bureaux 1942–51' (2003) 7(2) *Australian Journal of Legal History* 255. The role of the LSB is described in JP Harkins, 'Federal Legal Aid in Australia' (Paper presented at the International Colloquium on Legal Aid and Delivery of Legal Services, London, 1976).
[165] Mary Anne Noone and Stephen A Tomsen, *Lawyers In Conflict: Australian Lawyers and Legal Aid* (Federation Press, 2006) 29.
[166] Don Fleming, 'Some Reflections on 30 years of a National Legal Aid Scheme' (Paper presented at the National Access to Justice and Pro Bono Conference Melbourne, 11–12 August 2006) 1.
[167] 'History', *Aboriginal Legal Service NSW* (2016) <https://www.alsnswact.org.au/about >. See also E Eggleston, 'Aboriginal Legal Services' (1974) 1(4) *Legal Service Bulletin* 93.

> [t]he idea of the Aboriginal Legal Service developed in the latter half of 1970. The impetus for its foundation did not come from white people or from a desire to implement abstract principles but from a group of articulate young Aborigines reacting to the day to day pressures which they felt operated in their own lives and in the lives of other Aborigines. Essentially, they felt a desire to fight back against what they experienced as an alien apparatus of law enforcement which bore oppressively on Aborigines and did not operate to protect them or accord them rights.[168]

The ALS was controlled by Indigenous people in a similar way to the Aboriginal Medical Services set up at the same time[169] and was the first community legal centre with a structure of community control and a commitment to preventative law.[170]

In 1966, under the direction of Ronald Henderson, the Melbourne University Institute of Applied Economic and Social Research began Australia's first systematic attempt at measuring poverty in Australia by estimating the extent of poverty in the city of Melbourne. Consequently, a Commission of Inquiry into Poverty was set up in August 1972 by the Liberal Prime Minister William McMahon, with Henderson appointed as Chair. The Whitlam Labor Government elected later that year expanded the size of the Inquiry and its scope, giving it specific responsibility to focus on the extent of poverty in Australia together with the groups most at risk of experiencing poverty, the income needs of those living in poverty, and issues relating to housing and welfare services. These issues were addressed in the Commission's first main report, *Poverty in Australia*, which was released in August 1975. In this report, Henderson sought to identify the extent of poverty in Australia in terms of inadequate income relative to need.[171]

In March 1973, the Whitlam government appointed Professor Ronald Sackville (from the University of New South Wales) a member of the Poverty Commission. Legal aid reform to meet the needs of poorer people was at the heart of the work initiated by Sackville in his role

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[168] On the committee establishing the Service were legal academics from UNSW. Professor Wooten was the Dean of the Faculty of Law at the University of New South Wales. Vice-president was Gary Williams, an Aboriginal student; as chairman, Ross McKenna, a senior tutor in French at the University of New South Wales and its Treasurer was Richard Chisholm, lecturer in the Faculty of Law: Commonwealth, *Parliamentary Debates*, Senate, 1 December 1971 Senator McAuliffe (Queensland).

[169] Gary Foley, 'Redfern Aboriginal Medical Service: 20 Years on' (1991) *Aboriginal and Islander Health Worker Journal* 6.

[170] Mary Anne Noone and Stephen A Tomsen, *Lawyers in Conflict: Australian Lawyers and Legal Aid* (Federation Press, 2006) 66.

[171] University of Melbourne Archives, 'Commission of Inquiry into Poverty' *University Library* <https://digitised-collections.unimelb.edu.au/handle/11343/62381?show=full>.

as Commissioner for Law and Poverty. The Report, issued shortly before the dismissal of the Whitlam Government, was hugely influential in developing ideas about legal aid in Australia.[172] The principal theme of the report was that the law had failed to accord equal treatment to all people and had therefore contributed to the perpetuation of poverty in Australia.

The Law and Poverty Report proposed reforms in many areas—reforms to substantive law in areas important to disadvantaged people, such as landlord and tenant and consumer credit. It also expressed the idea that the law could be a force for substantial change. A separate report was specifically on legal aid in Australia.[173] Part of the Australian Government Commission of Inquiry into Poverty Reports (1973–75),[174] the Law and Poverty Report reflected on the history and legacy of the ideas of the War on Poverty in USA.[175] It discussed moves towards access to justice as a world-wide phenomenon in the 1970s. Sackville's Law and Poverty Report endorsed probably the most radical approach to lawyering in any Australian government report to this day. The report criticised the existing legal aid schemes for approaching legal problems in a traditional manner concentrating on cases where litigation was appropriate and not considering assistance that might be provided to clients by other professionals in an integrated system of assistance.[176] It recommended establishing a network of local law centres,[177] and involving local residents actively in the administration of legal aid.[178]

The Report proposed setting up a Federal Legal Services Commission, independent from government which had adequate resources for a research unit focused on delivery of legal services to the poor.[179] This Commission would encourage test case litigation and law reform activities.[180] Training and employment of paralegals was to be encouraged[181] so they could

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[172] Douglas McDonald-Norman, 'Law and Poverty in Australia: 40 Years After the Poverty Commission' (2017) *Australian Journal of Human Rights* 410.
[173] Ronald Sackville, Ronald and Susan Armstrong, *Legal Aid in Australia : a Report* (Australian Government Publishing Service, 1975) and Ronald Sackville, 'From Law and Poverty to Access to Justice' (1995) 20(5) *Alternative Law Journal* 212.
[174] Commonwealth, *Commission of Inquiry into Poverty, Law and Poverty in Australia: Second Main Report* (Australian Government Publishing Service, 1975).
[175] Ibid 22.
[176] Ronald Sackville and Susan Armstrong, Commission of Inquiry into Poverty, *Legal Aid in Australia* (Report by the Commissioner for Law and Poverty, 1975) 165.
[177] Ibid 166.
[178] Ibid 167.
[179] Ibid 173.
[180] Ronald Sackville and Susan Armstrong, Commission of Inquiry into Poverty, *Legal Aid in Australia* (Report by the Commissioner for Law and Poverty, 1975) 174.
[181] Ibid.

take over routine legal matters under supervision and programs developed to encourage law students to be involved in legal centres.[182] Sackville, reflecting on the Report in 1995, noted that the Report had failed to address systemic injustice for women, the role of the legal profession in depriving disadvantaged groups of access to legal assistance and alternatives to the adversarial system, however, the Report clearly had an impact on consideration of legal aid issues in Australia. The Report's approach reflected and influenced the stance of the early CLC movement.[183] Whether the US experience, as described by Sackville, provided the model for Australia[184] is contestable, but the US experience was undeniably influential on several of the founders of the early CLCs.[185]

The advent of the Whitlam government in 1972 saw the introduction of a hastily developed national legal aid scheme managed by the new Australian Legal Aid Office which attracted much criticism and opposition from the established legal profession.[186] The scheme contained many innovative aspects including a mixed model of salaried lawyers and judicare, shopfront suburban offices and preventative legal work—most of which never came to fruition. The history of government legal aid schemes, the failures of the Australian Legal Aid Office (ALAO) and legal assistance and pro bono schemes which preceded this have been well documented and discussed in a number of works.[187] Alan Boulton, for instance, examined the relationship between unions and legal aid in a 1981 paper.[188] Fleming and Regan argue that although the Whitlam government did not come into office with legal aid as a priority, its initial decision to intervene in legal aid was prompted firstly by Attorney General Lionel

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[182] Ibid 175.
[183] See Don Fleming and Francis Regan 'Re-visiting the Origins, Rise and Demise of the Australian Legal Aid Office' (2006) 13(1) *International Journal of the Legal Profession* 69, 91.
[184] Megan Blair and Jude McCulloch, 'From Maverick to Mainstream Forty Years of Community Legal Centres' (2012) 37(1) *Alternative Law Journal* 12, 13.
[185] John Basten, Regina Graycar and David Neal, 'Legal Centres in Australia' (1983) 6 *UNSW Law Journal* 113.
[186] Don Fleming and Francis Regan, 'Re-visiting the Origins, Rise and Demise of the Australian Legal Aid Office' (2006) 13(1) *International Journal of the Legal Profession* 69.
[187] Sources include: Mary Anne Noone and Stephen A Tomsen, *Lawyers In Conflict: Australian Lawyers and Legal Aid* (Federation Press, 2006); S Armstrong, 'Labor's Legal Aid Scheme: The Light that Failed' in R Scotton and H Ferber (eds) *Public Expenditure and Social Policy in Australia, Volume II* (Longman Cheshire, 1979); S Armstrong, 'The Future of Legal Aid' in G Evans (ed) *Labor Essays: Law, Politics and the Labor Movement* (Legal Service Bulletin Co-operative, 1980); S Armstrong, 'What Has Happened to Legal Aid?' (2001) 5 *University of Western Sydney Law Review* 91; G Hawker, 'The Rise and Fall of the Australian Legal Aid Office' in S Encel, P Wilenski and P Schaffer (eds) *Decisions: Case Studies in Australian Public Policy* (Longman Cheshire, 1981); J Lynch, *Legal Aid and the Legal Profession in Victoria 1841–1995* (PhD thesis, La Trobe University, Victoria, 1996); MA Noone and S Tomsen, 'Service Beyond Self-Interest? Australian Lawyers, Legal Aid and Professionalism' (2001) 8 *International Journal of the Legal Profession* 251; Francis Regan, *Promoting Equality Before the Law: Re-assessing Australian Legal Aid Policy in the Twentieth Century* (PhD thesis, Flinders University, South Australia, 2001); A Tomsen, *Professional Conflict and Legal Services: The Legal Aid Debate in Australia 1972–1982* (PhD thesis, Macquarie University, New South Wales, 1988); Bryant Garth, *Neighborhood Law Firms for the Poor: A Comparative Study of Recent Developments in Legal Aid and in the Legal Profession* (Sijthoff & Noordhoff, 1980).
[188] A Boulton, 'Unions and Legal Aid' (Paper presented at Commonwealth Legal Aid Commission, Report of Providing and Funding Legal Aid Conference, 1981).

Murphy's commitment to the reform of family law, and secondly, by renewed pressure from the states for federal funds for the judicare schemes.[189] Murphy's commitment was strengthened by his visits to the US Neighbourhood Law offices in 1973[190] and by a knowledge of the work of Fitzroy Legal Service.[191]

The Australian legal profession did not welcome schemes for legal aid that it did not operate or control.[192] Professional hostility to government provision of legal aid grew steadily throughout the Whitlam Government's term of office. The opposition was based on a number of factors. These included fears of loss of the independence of the legal profession from government, the possibility of lower quality legal aid services and the constitutional limitations that prevented the Commonwealth from legislating reforms to legal aid in the absence of support by state governments.[193] Other concerns were the fact that the Whitlam Government's inability to control the Senate meant that the ALAO was not established as an independent authority outside Attorney General's Department control[194] and, probably most importantly, concerns that salaried legal services would lead to undercutting of professional fees and loss of work for the private profession.[195]

The most serious attack on the ALAO came in Victoria in February 1975 when an extraordinary meeting of the Law Institute of Victoria voted to challenge its constitutional validity and restrain federal expenditure on legal aid. The Victorian Attorney-General, who had earlier expressed concerns about the constitutionality of the ALAO and its significance for the independence of the legal profession, authorised the Institute to initiate proceedings, and on 12 August 1975 a High Court writ was issued. Whilst this matter was not heard—as it was withdrawn when the government changed in November 1975—the issue of a writ challenging the legality of the ALAO demonstrates the intensity of the opposition from the private legal profession.[196]

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[189] Don Fleming and Francis Regan, 'Re-visiting the Origins, Rise and Demise of the Australian Legal Aid Office' (2006) 13(1) *International Journal of the Legal Profession* 69, 87.
[190] David Neal, 'Law and Power: Livin' in the '70s' 29(2) *Law in Context* 99, 109.
[191] Ibid 106.
[192] See John Lynch, 'Comment: Early Australian Statutory Legal Aid Schemes and the Legal Profession' (2001) 19 *Law in Context*, 138, 106.
[193] Don Fleming and Francis Regan, 'Re-Visiting the Origins, Rise and Demise of the Australian Legal Aid Office' (2006) 13(1) *International Journal of the Legal Profession: International Histories of Legal Aid* 69.
[194] See Susan Armstrong, 'The Future of Legal Aid' in G Evans (ed) *Labor Essays: Law, Politics and the Labor Movement* (Legal Service Bulletin Co-operative, 1980) 163.
[195] Susan Armstrong, 'What has Happened to Legal Aid?' (2001) 5(1) University of Western Sydney Law Review 91.
[196] Don Fleming and Francis Regan 'Re-visiting the Origins, Rise and Demise of the Australian Legal Aid Office' (2006) 13(1) *International Journal of the Legal Profession* 69, 87, 83.

In 1975, the NSW Law Society opened its own legal aid office at Mt Druitt in the outer western suburbs of Sydney about 42 kilometres from the Sydney GPO.[197] In early 1976, the Commonwealth government introduced new legal aid arrangements in which the Commonwealth would fund the states and territories to provide legal aid on a decentralised national basis. Although the ALAO was short lived, its establishment had long-term impacts on the form taken by Australian legal aid. For the first time, the Commonwealth had committed to significant funding of legal aid services. In 1977, Purcell et al commented that:

> Labor's main fault was that it placed too much faith in the bureaucracy, and more particularly, with this project, on the creative and innovative capacity of a traditionally conservative department … Another major fault of the Government's initiative was the failure of the ALAO staff to develop interdisciplinary lines of communication and to relate closely to existing community advice services.[198]

As Chesterman notes, however, legal aid had made it in lawyers' financial interest to do work for the poor.[199] Lawyers could be paid by the government to assist clients in cases that were previously deemed not financially viable, and the legal profession was to realise this and the possibilities Government funding offered.

The ALAO scheme was eventually replaced by legal aid schemes run by the states. In 1977, the *Commonwealth Legal Aid Commission Act 1977* was enacted to set up a body 'to ascertain, and keep under review, the extent of the need for legal assistance in Australia and, in particular, the need for legal assistance in respect of Commonwealth matters.'[200] State-based legislation established Legal Aid Commissions (LACs) which drew on the ALAO model of a combination of payments to private lawyers to provide legal services (judicare system) and salaried lawyers.[201] LACs funding was allocated in line with an agreement which apportioned 55 per cent of the funding responsibility to the Commonwealth and 45 percent to

[197] John Basten, 'Control of the Legal Profession' (Paper presented at Power in Australia: Directions of Change conference, Burgmann College ANU, November 23–25 1981).
[198] Terence Purcell et al, 'Legal Aid and Community Needs' (1977) 51(9) *Australian Law Journal* 626.
[199] John Chesterman, Law and the New Left: A History of Fitzroy Legal Service, 1972–1994 (PhD thesis, University of Melbourne, 1995) 130, 162.
[200] *Commonwealth Legal Aid Commission Act 1977* s 3.
[201] Examples being the *Legal Aid Commission Act 1976* (WA); *Legal Services Commission Act 1977* (SA); *Legal Aid Act 1978* (Vic) and the *Legal Aid Commission Act 1979* (NSW).

the states and territories. At this point the LACs determined their own priorities for the use of this revenue.[202]

The Australian mixed model scheme of providing legal aid, whereby a combination of different organisations share responsibility for service provision emerged from the experience of the ALAO and development of CLCs over 1973–76.[203]

Research on legal aid in Australia since the 1970s was not a topic of study for many legal academics, and been carried out primarily by a few prominent researchers, including Mary Anne Noone, Jeff Giddings, Simon Rice, Francis Regan and Don Fleming.[204] The Commonwealth Legal Aid Commission funded some interesting research projects in the early 1980s including a report by Cass and Western,[205] which described legal aid services and canvassed the problems associated with assessing the need for legal aid services. Another funded study was Hanks' work on evaluating the effectiveness of legal aid programs.[206] The reasons for the lack of academic attention to this area of research are unclear but it could be speculated that issues relating to legal aid have not had prominence in law school curricula, and that there are few private practitioners who would have knowledge of the complexities of the legal aid system. This thesis will add to knowledge in this field.

### Community legal centres in Australia

In addition to the above, there has been little academic writing on the advent of community legal centres and their operation, and the accounts that do exist have been written predominantly by those involved with centres.[207] Most relevant articles are to be found in the

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[202] 'Legal Aid Funding Current Challenges and the Opportunities of Cooperative Federalism Final Report', *Law Council of Australia* (Web Page, December 2009) <http://lca.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/a-z-docs/fmsdownload099f.pdf >.

[203] Don Fleming and Francis Regan 'Re-visiting the Origins, Rise and Demise of the Australian Legal Aid Office' (2006) 13(1) *International Journal of the Legal Profession* 69, 91. See also See Mary Anne Noone and Stephen A Tomsen, *Lawyers In Conflict: Australian Lawyers and Legal Aid* (Federation Press, 2006) 29; John Chesterman, *Law and the New Left A History of Fitzroy Legal Service*, *1972–1994* (PhD thesis, University of Melbourne); Peter Hanks, *Evaluating the Effectiveness of Legal Aid Programs :A Discussion of Issues, Options and Problems* (Commonwealth Legal Aid Commission, 1980*);* John Basten, Regina Graycar and David Neal, 'Legal Centres in Australia' (1983) 6 *UNSW Law Journal* 113.

[204] Recent articles include Mary Anne Noone, 'Challenges Facing the Australian Legal Aid System' in A Flynn A and J Hodgson (eds) *Legal Aid and Access to Justice: Comparative Perspectives of Unmet Legal Need* (Hart Publishing, 2016).

[205] Michael Cass and John S Western, *Legal Aid and Legal Need* (Commonwealth Legal Aid Commission, 1980).

[206] Peter Hanks, *Evaluating the Effectiveness of Legal Aid Programs: A Discussion of Issues, Options and Problems (*Commonwealth Legal Aid Commission, 1980).

[207] See for instance David Neal (ed) *On Tap, Not On Top: Legal Centres in Australia 1972–1982* (Legal Service Bulletin Co-operative Ltd, 1984).

*Legal Services Bulletin*, a journal that chronicled theory and discussion of CLC developments from 1974–91. In 1991 it became the *Alternative Law Journal*, which is, for many CLC workers, as close as they will get to academic reporting and writing about the work they are doing. Since their inception, CLCs have worked on issues such as inadequate or inappropriate policing, prisons, aged care, crime, family, youth issues, public space, social security, housing, drugs, alcohol, assault, domestic violence, insurance, motor vehicle property damage, credit and debt, child access, employment issues, discrimination, coronial inquests, environmental issues and fines.[208] Discussion of law and casework, law reform and education programs related to these issues form the basis of the *Alternative Law Journal*. The journal also records developments in the history of centres including activities of the National Association of Community Legal Centres (NACLC) and national conferences.[209]

### Community Legal Centres Timeline Australia 1972–95[210]

| | |
|---|---|
| 1970 | Aboriginal Legal Service (Sydney) |
| 1971 | University of New South Wales established<br>Volunteer weekly legal advice service started at Redfern Town Hall |
| 1972 | Fitzroy Legal Service (Melbourne) |
| 1973 | Australian Legal Aid Office<br>Springvale Legal Service (Victoria) |
| 1974 | Legal Service Bulletin published |
| 1975 | Poverty Commission's Second Main Report, *Law and Poverty in* Australia (Law and Poverty Report) presented Poverty Commission's Second Main Report, *Law and Poverty in* Australia (Law and Poverty Report) presented.<br>West Heidelberg Community Health and Welfare Centre (Melbourne) |
| 1976 | Academics and law students at UNSW resolve to set up a legal centre<br>Tenants Union (Sydney) |
| 1977 | Redfern Legal Centre opens 14 March (Sydney)<br>RLC set up as an unlisted non-profit company limited by guarantee<br>Legal Resources Book (Victoria) |
| 1978 | Macquarie Legal Centre (Sydney)<br>Prisoners Legal Service (Redfern Legal Centre)<br>Legal Resources Book (New South Wales) |
| 1979 | Marrickville Legal Centre (Sydney)<br>Parks Legal Service (South Australia)<br>First National Conference of Community Legal Centres (Jindabyne, NSW) |
| 1980 | Inner City Legal Centre (Sydney) |

[208] Sam Biondo, 'The Pursuit of Systemic Change: A Community Legal Centre Perspective' (2004) 17(1) *Parity* 52.
[209] The concept of a national association of community legal centres was debated at national conferences of CLCs from 1979 onwards and finally set up by 1982. By 1992 the national association was funded by levies from centres. See Rhonda Fadden et al, 'Community Legal Centres: National Overview 1992' (1992) 17(6) *Alternative Law Journal* 283.
[210] This Timeline contains major events related to Redfern Legal Centre and CLCs in NSW in the time frame 1972-1995 and does not purport to be exhaustive.

| | |
|---|---|
| 1981 | Kingsford Legal Centre (Sydney) |
| 1982 | Womens Legal Resource Centre (Sydney) |
| 1983 | Welfare Rights Centre (Sydney)<br>Arts Law Centre (Sydney)<br>Redfern Legal Centre publishes Lawyers Practice Manual |
| 1984 | Womens Legal Service (Brisbane) |
| 1985 | Redfern Legal Centre Publishing<br>The Illawarra Legal Centre (Sydney)<br>The Environmental Defenders Office (Sydney)<br>Immigration Advice and Rights Centre (Sydney) |
| 1986 | NSW Community Legal Centres' Secretariat (Sydney)<br>Accommodation Rights Service (TARS)<br>South West Sydney Legal Centre (initially called Liverpool CLC)<br>Blue Mountains Community Legal Centre<br>Consumer Credit Legal Centre<br>Domestic Violence Advocacy Service<br>Intellectual Disability Rights Service (Redfern Legal Centre) |
| 1987 | Macarthur Legal Centre (initially as Campbelltown CLC)<br>Refugee Advice and Casework Service |
| 1988 | Communications Law Centre |
| 1990 | Womens Domestic Violence Advocacy Service (Redfern Legal Centre) |
| 1991 | Hunter Community Legal Centre (Sydney)<br>Welfare Rights Centre (Hobart) |
| 1993 | Hawkesbury Community Legal Centre<br>HIV/AIDS Legal Centre<br>National Children's and Youth Law Centre<br>Northern Rivers Community Legal Centre |
| 1994 | Disability Discrimination Legal Centre (NSW)<br>Working Women's Centre NSW opens. |

Research and publications by community legal centres commenced after Fitzroy Legal Service was set up in 1972.[211] This followed the establishment of the Aboriginal Legal Service in Redfern in Sydney in 1970—the first community legal centre in Australia which provided services for Indigenous clients and led to a national network of legal services managed by Indigenous people. Chesterman argues that the establishment of Fitzroy Legal Service owed a debt to New Left methods of organisation and protest,[212] the War on Poverty movement, civil rights movements, neighbourhood law centres in the USA as well as some home-grown activist movements. The centre offered what was perceived as a radical

[211] The Aboriginal Legal Services were operating under Indigenous management and had surprisingly little contact with the CLC movement until the 1990s when family violence services were set up.
[212] John Chesterman, *Law and the New Left: A History of Fitzroy Legal Service*, *1972–1994* (PhD thesis, University of Melbourne, 1995) 2.

alternative to traditional legal practice in Australia. Genovese notes:

> The New Left lawyers—a loose, unstructured grouping of practitioners with similar political beliefs about law's negative impacts on the socially marginalised—were broadly interested in the provision of legal services to all citizens denied fair and equal access to its protection. The focus of many of these practitioners was the establishment of community legal centres in inner-city Melbourne and Sydney.[213]

In the early 1970s, similar developments were occurring around the world in common law jurisdictions such the USA, Canada and the UK.[214] In Canada, McMurtry has noted community legal clinics (as they were called there) were distinguished from other access-to-justice initiatives by their ability to respond in a community-specific manner to these needs, and specifically provided for the delivery of services by paralegals. Clinics also set up 'preventive law programs'[215] similar to the Australian CLCs.

Chesterman claims that the radical critique of legal service provision in Victoria adopted by Fitzroy Legal Service dissipated due to the Whitlam government's creation of the new legal aid system, as well as receipt of government funding by the centre and the part played by centre workers in debates about legal aid. Despite the establishment of the statutory government legal aid schemes, increasing numbers of community legal centres continued to appear and to conduct their legal work in a very different manner to traditional legal practices and the government run legal aid schemes. Centres in Australia developed in the 1970s and 1980s in diverse ways as described by Noone and Tomsen.[216] Since the 1980s commentators have noted the achievements of CLCs and the development of the size, coverage and nature of the community legal centre movement. Basten et al's 1985 article 'Legal Centres in Australia' provides an excellent overview of the development of centres nationally to that point in time.[217]

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[213] According to one writer, the 1970s saw 'the emergence of a specifically legal enclave within New Left politics in Australia in the 1970s, underpinned by a broader imperative to engage law with the general question of disadvantage, particularly as it related to Indigenous peoples.' Ann Genovese, *Sex Discrimination in Uncertain Times* (ANU E press, 2010) <http://press-files.anu.edu.au/downloads/press/p63371/html/ch02.xhtml?referer=408&page=10#footnote-13496-31-backlink>.
[214] Jeremy Cooper, *Public Legal Services* (Sweet & Maxwell, 1983) see particularly Chapters 2 and 6.
[215] Roy McMurtry, 'Celebrating a Quarter Century of Community Legal Clinics in Ontario' (1997) 35 *Osgoode Hall Law Journal* 425, 427–429.
[216] Mary Anne Noone and Stephen A Tomsen, *Lawyers in Conflict: Australian Lawyers and Legal Aid* (Federation Press, 2006) 202–208.
[217] John Basten, Regina Graycar, David Neal, 'Legal Centres in Australia' (1983) 6 *UNSW Law Journal* 113.

In their first few decades, the manner and mode of operation of community legal centres appeared very different from traditional private legal practice—from the ways the offices were set up to the methods and causes they espoused.[218] Various articles describe attempts to make centres more accessible to clients by methods including workers' choice of dress,[219] location and style of office, opening hours, use of non-lawyers to assist, and avoidance of technical language.[220] Projects run by CLCs in law reform and legal education programs were also documented in these articles.

Noone and Giddings point out that the distinctive aspects of the early CLCs were

a) a collective rather than individualistic approach;
b) the greater emphasis on social reform rather than a case by case approach to assistance;
c) involvement of non-lawyers, approaching legal problems in the context of the total needs of the disadvantaged.

More specifically, the features that distinguished the early CLCs from the services provided by the private legal profession or other legal aid providers were

a) free legal assistance was provided to anyone who walked in the door;
b) centres were staffed by both lawyer and non-lawyer volunteers working on an equal footing;
c) centres were open out of normal office hours, usually in the evenings;
d) the physical surrounds of the offices and the clothing of the lawyers were informal;
e) there were often no formal organisational or administrative systems; and
f) clear explanations of their legal situation were given to clients and clients were involved in their own problem solving.[221]

According to Genovese, the early workers in CLCs

[218] Megan Blair and Bridget Harris, 'Just Spaces: Community Legal Centres as Levelling Places of Law' (2012) 37 *Alternative Law Journal* 8, 9.
[219] John Chesterman, 'Real Lawyers? Fitzroy Legal Service and the Legal Profession' (1995) 13(1) *Law in Context* 1, 7.
[220] John Basten, Regina Graycar, David Neal, 'Legal Centres in Australia' (1983) 6 *UNSW Law Journal* 113, 130.
[221] Jeff Giddings and Mary Anne Noone, 'Australian Community Legal Centres Move into the Twenty-First Century' (2004) 11(3) *International Journal of the Legal Profession* 257, 259.

> showed, at first, a concern with theorising how the law constructed some subjects as disadvantaged to begin with. At the same time, however, they sowed the seeds for understanding some of the epistemological limits of transformative legal critique that were to come in the 1980s. The centres, and the broad philosophy of working collectively and actively through community education as well as the provision of legal services to alter their society, was important at this time as it brought a genuinely pluralist political community within the auspices of legal service provision.[222]

Improving community understanding of the law has been an important aspect of the philosophy of Australian CLCs since their establishment in the 1970s. Writing about community legal education in 1979, Kirby pointed out that '[u]ntil recently it was a profoundly unimportant "non-issue." The legal profession was unenthusiastic about it. Lawyers tended to be generally, a conservative group, unsympathetic to any but the most technical "reforms of the law."' [223] He states that '[p]roduction of the *Legal Resources Book* by the Fitzroy Legal Service and the Redfern Legal Centre has been a remarkable success in providing relevant information about recurrent daily legal problems.'[224] Community legal education was not seen by CLCs as a stand-alone service but rather as designed to assist people to make informed choices about what further law-related actions they would take. This community legal education focus continues to be emphasised by CLCs.[225]

From the beginning, many centres worked in a multidisciplinary manner and notions of integrated casework were usually part of CLC standard practice.[226] Chesterman notes that the Fitzroy workers believed that legal problems were often inextricably linked to social problems and to concentrate on one and not the other was to offer an inadequate service.[227] It is well recognised that legal and welfare professionals can benefit enormously from working together and developing a greater understanding of their respective roles and

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[222] Ann Genovese, *Sex Discrimination in Uncertain Times* (ANU E press, 2010) <http://press-files.anu.edu.au/downloads/press/p63371/html/ch02.xhtml?referer=408&page=10#footnote-13496-31-backlink>.
[223] Michael Kirby, 'Community Legal Education Preventive Legal Aid and Law Reform', *Commonwealth Legal Aid Commission* (Web Page, 1979) 4 <https://www.michaelkirby.com.au/images/stories/speeches/1970s/vol4/1979/101-Commonwealth_Legal_Aid_Commission_-_Community_Legal_Education%2C_Preventive_Legal_Aid_and_Law_Reform.pdf>.
[224] Ibid.
[225] Monica Ferrari and Angela Costi, 'Legal Aid: Learnings from Community Legal Education' (2012) 37 *Alternative Law Journal* 52.
[226] See Peter Hanks, Kate Lavender and Guy Powles, *Relationship Between Legal Aid Agencies and Social Agencies*: *Research Report for the Commonwealth Legal Aid Council* (Australian Government Publishing Service, 1983). For examples of current practice see Martin Clutterbuck, 'A Multidisciplinary Approach to Community Law' (2007) 32(3) *Alternative Law Journal* 165.
[227] John Chesterman, 'Real Lawyers? Fitzroy Legal Service and the Legal Profession' (1995) 13(1) *Law in Context* 1, 3.

competencies.[228] Developments this decade have seen legal and health personnel working more closely together in CLCs.[229]

### Centres and the community

The approach of the early centres meant that many efforts were made to involve the clients in solving their own problems by collective action with others in a similar position.[230] This approach was not often successful. Centres have not generally played a major role in mobilising community groups although as Basten et al point out they tended to provide sympathetic assistance to existing groups. By 1983, Basten concluded that:

> [a]lthough legal centre workers are committed to social change and have greater opportunities to promote it than lawyers in any other kind of practice, we know that legal reforms have limited effect, and are particularly unlikely to help their intended beneficiaries, without a grass roots movement to exert constant pressure.[231]

Another issue raised in the literature is the degree to which law centres are a community-based movement. Debates continue today about whether and to what degree a centre should be community managed, what degree of control staff has and the role of the 'community' in determining the policy of the centre. In the early years, as Basten says, the relationship of employees to the legal centres varied considerably. 'Unlike private practice, policy is not necessarily determined by the full-time workers but rather at a general meeting of all members. Membership criteria vary but typically include all employees, volunteers, and local residents.'[232] Basten noted early on however, that the aspirations of a centre like Fitzroy to empower the community to determine its policies through the general meeting was not actually realised.[233] Staff aspirations for community activism and real community management of centres by clients leading or alongside the legal centre lawyers was never likely to happen. In the 1980s, Abel also took a realistic view of such ambitions. 'The inescapable conclusions, however reluctant we may be to draw them, are that the clientele of

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[228] See for instance Lucy Fiske and Mary Anne Kenny, ''Marriage of Convenience' or a 'Match Made in Heaven': Lawyers and Social Workers Working With Asylum Seekers' (2004) 10(l) *Australian Journal of Human Rights* 137.
[229] A lengthy list of research resources for Health Justice Partnerships is contained at Health Justice Australia website <http://www.healthjustice.org.au/resources/researchers/>.
[230] John Basten, Regina Graycar and David Neal, 'Legal Centres in Australia' (1983) 6 *UNSW Law Journal* 113,130. See also Frances Fox Piven and Richard A Cloward, *Poor People's Movements: Why They Succeed, How They Fail*. (Vintage Books, 1979).
[231] John Basten, Regina Graycar and David Neal, 'Legal Centres in Australia' (1983) 6 *UNSW Law Journal* 113, 136.
[232] Ibid 131. See also John Basten and Robyn Lansdowne, 'Community Legal Centres: Who's in Charge?' (1980) 5 *Legal Service Bulletin* 52; and a reply by R Gordon. 'Community Control of Legal Services' (1980) 5 *Legal Service Bulletin* 186.
[233] John Basten, Regina Graycar and David Neal, 'Legal Centres in Australia' (1983) 6 *UNSW Law Journal* 113, 131.

legal aid does not lend itself to organization, and that the offer of legal assistance actually may undermine collective action.'[234] He points out that people who are poor usually have higher priorities than legal aid and are most often interested only in what the law can secure for them personally to improve their lives.[235] 'Clients remain passive and uninterested for precisely the reasons that convinced reformers to create legal aid in the first place, and efforts to involve them in governance are relatively unsuccessful.'[236] Legal aid becomes an adjunct to the welfare system and 'because it necessarily seeks to enforce legal rights, it forces grievances into a legal, that is, individual form.'[237] With some notable exceptions, CLCs have not made much use of class or representative actions.[238]

Despite this, CLCs have always put an emphasis on the importance of 'community' in their development. Links with a 'community' are stressed as imperative. The fact that CLCs respond to communities rather than being imposed on communities is perceived as important. Their work is 'to engage with the community in joint pursuit of achieving change.'[239] The thesis will examine links between Redfern Legal Centre and the local community.

### Inside the community legal centres: volunteers, funding and workers

Legal centres in Australia were created through the initiative of volunteers rather than through government programs.[240] Some volunteers were lawyers, some were not. In many cases the CLC's view of the legal profession was not a positive one which led to things being done in ways that clearly challenged existing legal profession practice. Early on there was the innovative view that the use of non-legals (as they were called) would bridge the gap between

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[234] Richard Abel, 'Law Without Politics: Legal Aid Under Advanced Capitalism' (1985) 32 *UCLA Law Review* 474, 498 but see Jeremy Cooper, *Public Legal Services* (Sweet & Maxwell, 1983) particularly the chapter on Brent Law Centre.
[235] Ibid 539.
[236] Ibid.
[237] Ibid 498.
[238] Examples in New South Wales are cases run by Redfern Legal Centre and the Public Interest Advocacy Centre in Sydney such as the *State Bank* case (*State Bank of New South Wales v Various Debtors* [1995] ASC 55–207 (Commercial Tribunal of NSW)), *Homefund* (*Bass v Permanent Trustee Co Ltd* [1999] HCA 9) and a sex discrimination case against BHP (*Australian Iron & Steel Pty Ltd v Najdovska* (1988) 12 NSWLR 587).
[239] Sam Biondo, 'The Pursuit of Systemic Change: A Community Legal Centre Perspective' (2004) 17(1) *Parity* 52, though, this is debated – see Jack Hetzel-Bone, 'Law Week: Community Legal Centres: Quality Advice for Those who may Slip Through the Cracks' (2013) 4 *Bulletin (Law Society of South Australia*) 10. The 'community' in the name is a misnomer as they are not community organisations per se. They are public organisations designed to provide legal assistance for free or at a reduced cost to all members of the public.
[240] John Chesterman, *Law and the New Left: A History of Fitzroy Legal Service*, *1972–1994* (University of Melbourne, 1995) 8.

the community and the lawyers.[241] Basten in 1985 noted the distinguishing use of volunteers by legal centres—the centres were for some time 'voluntary legal centres'.[242] He raised concerns about the political conservatism of volunteers, questioning whether using volunteers was equivalent to notions of 19th century paternalistic charity but also importantly noting that volunteerism is attractive to conservative governments and that the CLC experience may strengthen the idealism of many volunteers.[243]

The provision of government funding created an issue for centres. Some commentators argued that once centres accepted funding they were no longer 'voluntary legal centres' but in a different sphere. A 1983 paper by Basten deals with threats to the independence of centres from government and claims that much of the centres' original strength derived from their independence from and opposition to professional bodies.[244] Noone and Tomsen describe the advent of significant Commonwealth and state funding[245] in the 1980s as well as subsequent attempts at state control, reviews of centre operations and relationships between the government legal aid commissions and centres. Noone notes that centres had to reconcile their 'role as gadflies' while accepting government assistance.[246] Chesterman stresses the failure of CLCs to achieve real social change through the legal system and addresses the question of how an organisation in receipt of government funding can engage in radical critique of developments.[247] In the later 1980s and into the 1990s, more attention was directed to the methods governments were employing to control centres' work, such as franchising[248] and performance contracts. Government reports were focused on standards to be achieved by CLCs in different areas of work.[249]

Various articles by those involved with CLCs document aspects of centre work. Some centres were co-located with other community organisations and there were advantages and

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[241] Arna Della-Vergini, 'Sex-Starved, Suit-Wearing Volunteers Say We Don't Know to Service Restructuring' (1997) 22 *Alternative Law Journal* 287.
[242] John Basten, Regina Graycar and David Neal, 'Legal Centres in Australia' (1983) 6 *UNSW Law Journal* 113, 127.
[243] Ibid 134.
[244] Ibid 136.
[245] Mary Anne Noone and Stephen A Tomsen, *Lawyers In Conflict: Australian Lawyers and Legal Aid* (Federation Press, 2006) 216–224.
[246] Ibid 199.
[247] John Chesterman, *Law and the New Left: A History of Fitzroy Legal Service*, *1972–1994* (University of Melbourne, 1995) 9.
[248] Jeff Giddings, 'Franchising' (1994) *Alternative Law Journal* 270. See also Jeff Giddings and Mary Anne Noone, 'Australian Community Legal Centres Move into the Twenty-first Century' (2004) (11)3 *International Journal of the Legal Profession* 257, 261–263.
[249] See for instance Attorney-General's Department, 'Service Standards Manual for the Community Legal Services Program', *Commonwealth* (Web Document, June 2001) <https://www.ag.gov.au/legal-system/publications/national-legal-assistance-data-standards-manual >.

difficulties with this approach.[250] Another line of inquiry elaborated on methods legal centres were employing—reports on test cases, law reform[251] and education campaigns and funding issues and new developments such as the rise of the specialist, rural and regional and other new centres. Studies on rural and regional centres indicate that the more remote the area, the higher the likelihood of recruitment and retention problems and that solicitors in community legal centres in more rural and remote areas tend to be inexperienced and only stay a short time.[252]

In the early days, centres tried to avoid hierarchies of traditional legal practice by placing lawyers on similar footing as other workers in the centre for salaries, status etc.[253] Centres operated as collectives—a common mode for organisations in the 1970s.[254] Issues of CLC employees' industrial arrangements are not often the subject of study but one external commentator has noted that the CLC sector

> [i]s not fixated on a notion of unrealistic access to funding, or 'government bashing' generally, but instead it is a sector desperate to foster more constructive relationships with governments and the private sector alike. In this respect CLCs might be their own worst enemy for in their benevolence they give comfort to those governments that believe CLC workers will continue to work for minimal wages, in conditions that can only be described as testing and without the whinging that would likely emerge in the private sector. What is perturbing, though, is that instead of rewarding and valuing these people for their efforts, the government takes the altruism of the CLC worker for granted.[255]

### Community legal centre networks: universities, the private profession

The clinical legal education movement[256] developed in Australia in community legal centres and still has the CLC model as a base. Centres have had a significant effect on university law

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[250] Megan Blair and Bridget Harris, 'Just Spaces: Community Legal Centres as Levelling Places of Law' (2012) 37 *Alternative Law Journal* 8, 10.
[251] Liz Curran, 'Community Legal Centres: A Legitimate Part of the Legal Landscape' (2007–2008) 25 *Dissent* 19.
[252] Michael Cain and Suzie Forell, 'Recruitment and Retention Of Community Sector Lawyers: Regional Differences Within New South Wales' (2011) 1 *Deakin Law Review* 265, 283.
[253] John Basten, Regina Graycar and David Neal, 'Legal Centres in Australia' (1983) 6 *UNSW Law Journal* 113, 131.
[254] See for instance the development of the rape crisis centres detailed in 'Development of Services 1970s', *South Eastern CASA* (Web Page) <https://web.archive.org/web/20200401004530/https://www.secasa.com.au/about-secasa/victims-like-us-the-development-of-the-victorian-casas/development-of-services-1970-s/ >
[255] Sebastian de Brennan, 'Whingers or Prophets' (2005) 30(3) *Alternative Law Journal*, 132, 133.
[256] The term clinical legal education means different things to academics, legal practitioners and students. Campbell stated in 1991 that the 'term "clinical legal education" should properly be used only to refer to programs where students act for real clients in the handling of their real legal problems' and this is the meaning adopted in this thesis.. Susan Campbell, 'Blueprint for a Clinical Program' (1991) 9(2) Journal of Professional Legal Education 121, 122. For a full discussion of Australian clinical legal education see Jeff Giddings, Promoting Justice Through Clinical Legal Education) (Justice Press, 2013).

schools especially in clinical courses (despite initial doubts amongst academics that the centres' role would continue).[257] McKelvey and Zaring have considered the role universities can play in social innovation,[258] and the role of clinical legal education consisting of partnerships between CLCs and universities in CLCs has been examined primarily by Giddings as well as by Noone, Rice and Cody.[259] Test case litigation was a hallmark of the Monash and UNSW clinical programs during the 1980s, and Kingsford Legal Centre, Springvale Legal Service, and Newcastle Legal Centre, all related to law schools, developed a formidable reputation for such work. A wide range of law reform projects has also been pursued by staff and students involved in clinics.[260]

While centres often had, and still do have, support from members of large commercial law firms, animosity to the new legal centres from some sections of the legal profession was common especially at the inception of new centres. This was usually caused by concern at potential competition for clients and has been documented in some of the literature.[261]

Continual government reviews[262] have prompted centres to undertake their own research on the achievements of their work and their value for money, particularly in the contributions made by volunteer lawyers and students[263] and other workers. Ongoing legal needs studies continue to demonstrate real need in the community for legal services. There are many reports on different areas of legal practice that centres focus on, and these are referred to where relevant in the text of this thesis.

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[257] John Basten, Regina Graycar and David Neal, 'Legal Centres in Australia' (1983) 6 *UNSW Law Journal* 113, 135.
[258] Maureen McKelvey and Olof Zaring, 'Co-Delivery of Social Innovations: Exploring the University's Role in Academic Engagement with Society' (2018) 25(6) *Industry and Innovation* 594.
[259] Adrian Evans et al, *Australian Clinical Legal Education* (ANU Press, 2017); Jeff Giddings, *Promoting Justice Through Clinical Legal Education* (Justice Press, 2013); Jeff Giddings 'A Circle Game: Issues in Australian Clinical Legal Education' (1999) 10(1) *Legal Education Review* 33; Jeff Giddings, 'The Commonwealth Discovers Clinical Legal Education' (1998) 23(3) *Alternative Law Journal*, 140. See also Mary Anne Noone and Frank Bloch, 'Legal Aid Origins of Clinical Legal Education' in Frank Bloch (ed) *The Global Clinical Movement: Educating Lawyers for Social Justice* (Oxford University Press, 2010); Anna Cody and B Schatz 'Community Law Clinics: Teaching Students, Serving Disadvantaged Communities' in Frank Bloch (ed) *The Global Clinical Movement: Educating Lawyers for Social Justice* (Oxford University Press, 2010); Anna Cody 'Clinical Programs in Community Legal Centres, The Australian Approach' (2011) 4 *Spanish Journal Education and Law Review;* Mary Anne Noone, 'Australian Community Legal Centres: The University Connection' in J Cooper and L Trubek (eds), *Educating for Justice: Social Values and Legal Education*, (Dartmouth, 1997).
[260] Jeff Giddings, 'The Commonwealth Discovers Clinical Legal Education' (1998) 23(3) *Alternative Law Journal* 140, 141.
[261] John Chesterman, *Law and the New Left: A History of Fitzroy Legal Service*, *1972–1994* (University of Melbourne, 1995) 16. See also Kevin Bell, 'Politics of Reforming the Legal Profession in Australia: A Case Study of the Western Region Community Legal Centre' (1985) 7 *Law and Policy* 143.
[262] In 1997 the Commonwealth instituted a series of State reviews of CLCs e.g. Legal Aid Commission Review of the NSW Community Legal Centres Funding Program (2006), Community Legal Centre Steering Committee (WA), Joint Review of Community Legal Centres September 2003.
[263] See for instance Judith Stubbs, 'Economic Cost Benefit Analysis of Community Legal Centres', *NACLC* (Web Document, June 2012) < https://www.pc.gov.au/inquiries/completed/not-for-profit/submissions/sub133-attachmentb.pdf>; Marina Georgiou 'Access to Justice: Case Studies of The Role of Community Legal Centres In Western Australia' (2013) 40(6) *Brief* 12.

## Community legal centres: the future?

A thorough overview of issues facing CLCs is contained in Giddings and Noone's article, 'Australian community legal centres move into the twenty-first century'.[264] They point out that many CLCs

> continue to use a model focused on local concerns, benefiting from close links to their community and to other local agencies [concluding] that variation in the form of CLCs' operations and nature of their work is growing. Within the legal aid system, the distinguishing features of CLCs are increasingly less precise. As the range of 'local, regional or super' CLCs grows, the challenge to find a common definition and agreement on the role of CLCs becomes harder. This reflects the lack of a cohesive, national approach to their continuing development.[265]

In recent times, there have been attempts by state and Commonwealth governments to restrict the ability of government funded services, such as CLCs, to engage in lobbying or advocate political change. Restrictions by government on systemic advocacy by centres indicate a view by some governments that CLCs should be dedicated to individual minor casework and advice services in their local communities.[266] A Queensland Attorney-General is on record as stating that money provided to community legal centres should not be used for political campaigns on political issues.[267] Queensland Health is apparently requiring funded organisations to agree they will not advocate for legal change.[268] In New South Wales, conditions in government funding agreements to community legal centres are similarly prohibiting the use of funding on lobbying activities and public campaigns.[269]
Reflection on the operation of centres, even from the earliest days, has focused on the failure of the centres to achieve an original ambition of radical social change and engaging the

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[264] Jeff Giddings and Mary Anne Noone, 'Australian Community Legal Centres Move into the Twenty-first Century' (2004) (11)3 *International Journal of the Legal Profession* 257.
[265] Ibid 258.
[266] See National Partnership on Legal Aid Commonwealth July 2015 which states that Commonwealth funding should not be used to lobby governments or to engage in public campaigns: Attorney Generals Department, *Commonwealth*, 'National Partnership Agreement on Legal Assistance Services' (Web Document)<https://www.ag.gov.au/LegalSystem/Legalaidprogrammes/Documents/NationalPartnershipAgreementOnLegalServices.pdf >; Liz Curran, 'Community Legal Centres: A Legitimate Part of the Legal Landscape' (2007–2008) 25 *Dissent* 19. See discussion in Aqeeb Rafi Alam, *Doing Everyday Justice: Labour, Resources, and Emotions in the Community Legal Sector* (PhD thesis, University of Sydney, 2019).
[267] Chris Merritt, 'Audit to look at where the legal buck stops' (*The Australian*, 31 August 2012).
[268] Daniel Hirst, 'NGOs told they are right to remain silent to keep funding'(Brisbane Times, 21 August 2012) (online) < https://www.brisbanetimes.com.au/national/queensland/ngos-told-they-are-right-to-remain-silent-to-keep-funding-20120820-24ilb.html>.
[269] L Buchanan, 'Community Lawyers, Law Reform and Systemic Change: Is the End in Sight?' in A Flynn and J Hodgson (eds) *Access to Justice and Legal Aid* (Bloomsbury, 2016); Anthony Gray, 'Withholding Government Funding: A Breach of Freedom of Political Communication' (2013) 38 *Alternative Law Journal* 214.

community in activism. The original legal centre activists had set themselves a difficult task. They had a conviction that to change society they had to change both the law and its apparatus, but in choosing to use legal mechanisms to achieve change they had possibly ruled out any real path to radical structural societal change. In the 1990s and 2000s, writers (often those who were involved with the establishment of the movement) became concerned with whether the centres had lost their way, and a number of papers and reports were written that questioned whether CLCs still had a role in Australia, exhorting centres to focus on their original roles of strategic change in the legal system on behalf of disadvantaged clients.[270] Critics claimed that CLCs are not 'representative, activist or innovative, but have become miniature legal aid commission offices providing primarily individual casework services and subsumed into the mainstream legal system.'[271] Attention was focused on self-help services and limited advice by centres. Questions were asked about the role of the regional and rural CLCs which lacked the wide volunteer basis of the cities and may have focused on limited advice services.[272] Noone warned in 1997 that CLCs in Australia are at risk of losing 'their sense of political purpose and their innovative tendencies': they are facing an identity crisis.[273] All writers agree, however, that CLCs had made the legal system more accessible and given voice to the poor. Basten et al concluded in 1983 that tangible results of centre advocacy were 'not easy to identify but they noted people were now receiving representation who had not before'[274] and this is still the case.

Each centre's development has been dependent on a number of factors including the persistent commitment and activism of its community, the particular needs of that community, the prevailing political climate and the availability of resources.[275] Biondo points out

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[270] Simon Rice, 'Are CLCs Finished?' (2012) 37(1) *Alternative Law Journal* 16; Mary Anne Noone, 'Mid Life Crisis: Australian Community Legal Centres' (1997) 22(1) *Alternative Law Journal* 25; Nicole Rich, 'Reclaiming Community Legal Centres' *Victoria Law Foundation Community Legal Centre Fellowship 2007–2008 Final Report* (Web Document, 2008) < http://consumeraction.org.au/wp-content/uploads/2012/04/Reclaiming-community-legal-centres.pdf>; Mary Anne Noone, 'Imperatives for Community Legal Centres' (1992) 17 *Alternative Law Journal* 120, 122; Peter Noble, 'The Future of Community Legal Centres' (2012) 37 *Alternative Law Journal* 22, 23; Louise Glanville, 'Can CLCs Advocate for Themselves?' (1999) 24(3) *Alternative Law Journal* 154, 155.

[271] Mary Anne Noone and Sophia Panagiotidis, 'Community Legal Centres in the Nineties' (1992) 17 *Alternative Law Journal* 256.

[272] Jeff Giddings and Mary Anne Noone, 'Australian Community Legal Centres Move into the Twenty-first Century' (2004) (11)3 *International Journal of the Legal Profession* 257; Jeff Giddings and Michael Robertson, 'Informed Litigants with Nowhere to Go' (2001) 26 *Alternative Law Journal* 184, 187.

[273] Mary Anne Noone, 'Midlife Crisis: Australian Community Legal Centres' (1997) 22(1) *Alternative Law Journal* 25.

[274] John Basten, Regina Graycar and David Neal, 'Legal Centres in Australia' (1983) 6 *UNSW Law Journal* 113, 133.

[275] See for instance Office of Legal Aid and Family Services, *Community Legal Centres – A Study of Four Centres in New South Wales and Victoria* (Australian Government Publishing Service, 1991).

> the irony for many of us working at the interface is that the problems don't ever seem to diminish. Issues seem to move to a more complex level, they mysteriously metamorphose into 7 headed serpents and the fight for justice continues to be fought on ever more fronts.[276]

Centres have commanded considerable media attention proffering views often quite different from those advanced by legal professional bodies. The centres as commentators are not seen as self-interested unlike the legal profession generally.[277] The diversity amongst centres is usually portrayed as one of the strengths of CLCs. It is justified by the need to respond to differing needs of the various communities served by CLCs. CLCs argue that they have developed an alternative and distinctive model of delivering legal services to the community. This mode of operation has been described as 'solution oriented' rather than 'services oriented.'[278] Legal centres now have people who have spent large parts of their working or volunteer life in the CLC movement, and others who have carried its lessons into everything else that they have done.

There are only a few histories of individual centres. These were generally written at the behest of the centre and outlined the roles that selected people played in centre developments, description of clients' cases and the achievements and in some cases the failures of the centres.[279] They are histories of community organisations and do not attempt to focus on or define models of CLC practice.

Since the 1970s, there have been numerous inquiries into legal aid. Since the Law and Poverty Report, there have been over eleven reports from Parliamentary Committees on access to justice or on the related topics of legal aid and the costs of justice, ten reports on the same topics prepared by the Commonwealth Attorney-General's Department and 'public agencies' such as the Access to Justice Advisory Committee and the Australian Law Reform Commission and many reports or studies on access to justice prepared by research institutes, professional bodies and the like.[280] Sackville continued his perceptive commentary on the

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[276] Sam Biondo, 'The Pursuit of Systemic Change: A Community Legal Centre Perspective' (2004) 17(1) *Parity* 52.
[277] John Basten, Regina Graycar and David Neal, 'Legal Centres in Australia' (1983) 6 *UNSW Law Journal* 113, 133.
[278] Mary Anne Noone, 'Challenges Facing the Australian Legal Aid System' in A Flynn A and J Hodgson (eds) *Legal Aid and Access to Justice: Comparative Perspectives of Unmet Legal Need* (Hart Publishing, 2016) 26.
[279] Fitzroy Legal Service has received notable attention. John Chesterman, Sam Biondo and Chris Field, 'Back to the Future, 25 years of the Fitzroy Legal Service' (1997) 22 *Alternative Law Journal* 282; David Nichols, *From the Roundabout to the Roundhouse: 25 years of KLC* (Kingsford Legal Centre, 2006); Kerry Greenwood, *It Seemed Like a Good Idea at the Time: A History of Springvale Legal Service 1973–1993* (Springvale Legal Service, 1994).
[280] See for instance Ronald Sackville, 'Access to Justice: Towards an Integrated Approach' (Paper presented at the National Access to Justice and Pro Bono Conference 2010, 27–28 August 2010, Brisbane) 210; Roy Turner, Legal Aid Review

legal aid debates when he said in 2010 '[a]t almost any given time in Australia, there is an inquiry under way into access to justice or consideration is being given to the latest report on the subject.'[281]

The result of all these inquiries has been improvements in accessibility to the courts and legal advice and assistance in many areas. Yet, as Sackville points out, there are still too many good ideas lost for the want of an institutional advocate and a general acceptance that we have a long way to go to in even developing a clear idea of what access to justice might look like.[282] There also remains a glaring need for development of new and innovative approaches to providing services to disadvantaged people and communities in Australia.

## Conclusions: reflections on the literature and the goals of the thesis

This thesis will examine the way that 'good ideas' or social innovations are developed in community legal centres, in an attempt to identify the factors that allow innovations to be proposed, developed and accepted in the wider community and justice system. There has been little attempt in academic writing to identify the indicia of a successful legal centre and whether CLCs offer any services that could not better be provided by a properly funded government legal aid service. There have been studies that compare different centres such as *Community Legal Centres: A Study of Four Centres in New South Wales and Victoria*, *July 1991*[283] but this study was prepared for advocating centre work to government. It does tease out similarities between centres but does not offer much analysis or critical review and is designed to be largely descriptive of centres' work. There have been no critical comparative studies analysing how different centres develop and operate. Little attention has been paid to the role of the centres in influencing public debate on the law and legal system and to whether the current centres work in ways that have anything in common with the original

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Committee, Parliament of Australia, *Report 1974;* Ronald Sackville, Access to Justice Advisory Committee, Parliament of Australia, *Access to Justice: An Action Plan* (1994); Nick Bolkus, Legal and Constitutional References Committee Senate, Parliament of Australia, *Legal Aid and Access to Justice* (2004); Joint Committee of Public Accounts and Audit, Parliament of Australia, *Access Of Indigenous Australians to Law and Justice Services* (2005); Legal and Constitutional Affairs References Committee, Senate and Guy Barnett, Access to Justice (2009); Department of Justice and Regulation (Vic), *Access to Justice Review*, (4 October 2016); Commonwealth, Productivity Commission, *Access to Justice Arrangements* (3 December 2014) and Attorney-General's Department, *A Strategic Framework for Access to Justice in the Federal Civil Justice System* (September 2009).

[281] Ronald Sackville, 'Access to Justice: Towards an Integrated Approach (Paper presented at the National Access to Justice and Pro Bono Conference 2010, 27–28 August 2010, Brisbane) 210.

[282] Ibid 210, 236.

[283] Office of Legal Aid and Family Services, *Community Legal Centres – A Study of Four Centres in New South Wales and Victoria* (Australian Government Publishing Service, 1991).

CLC movement. The question remains whether there was or is still such an identifiable CLC 'movement'. Although the notion of centres as innovative has been mentioned from time to time in the literature, there have been no detailed examinations of centre innovations, no studies or attention given to the innovative capacity of certain centres, and no theorising or hypothesis as to the origin of any such innovative ability.

In 2020, community legal centres are an established part of Australia's mixed model of legal aid provision. Despite facing continual ups and downs in relation to funding, all levels of government and the legal profession generally accept that centres are providing a valuable and cost-effective service to disadvantaged people in Australia. But what has been achieved? The needs of the disadvantaged still seem as great and acute as ever.[284] Does the focus on outputs and funding data ignore the real strengths of CLCs? Did the freedom from funding constraints enjoyed by the early CLCs lead to innovation, like investment in basic research in the sciences gives scientists freedom to pursue novel outcomes?[285]

In this work, I propose to address some questions about centre innovations and add to knowledge about CLCs by examining the development and history of innovations in Redfern Legal Centre 1977–95. There have not been any detailed histories written of the centre. This case study will examine the development of a disadvantaged inner-city centre in Sydney established in 1977 primarily by academics and law students. Innovations in legal practice introduced by the centre will be identified and detailed. The research will examine possible factors leading to the ability of centres to innovate. The methodology to be used for this investigation forms the topic of the next chapter.

[284] Sam Biondo, 'The Pursuit of Systemic Change: A Community Legal Centre Perspective' (2004) 17(1) *Parity* 52.
[285] See Jane Calvert and Ben R Martin, 'Changing Conceptions of Basic Research?' (Background Document for the Workshop on Policy Relevance and Measurement of Basic Research SPRU – Science and Technology Policy Research University of Sussex, 29–30 October 2001).

## Chapter Three

### Methodology

The research method to be adopted in any study depends on the nature of the research question being investigated. This investigation firstly details the history of social innovations in a community legal centre, and secondly interrogates the historical data to determine whether there are any factors in the community legal centre organisational model that may tend to produce social innovations in the provision of legal services. The research is not aimed at a formal evaluation of those innovations, but evidence of benefits from each innovation will, where possible, be identified.

A qualitative methodology has been employed, with a case study incorporating oral histories as the primary unit of analysis. As will be explained an historical research approach is appropriate to study the phenomenon in question holistically and in detail.

### What is a case study?

A case study has been defined as 'an empirical inquiry about a contemporary phenomenon (e.g. a 'case'), set within its real-world context.'[286] Case studies require that the context of the phenomenon being studied be taken into account and that, in turn, usually requires that relevant data come from multiple sources of evidence. Published case studies appear in numerous disciplines and have the capacity to offer a high level of contextual, detailed knowledge. It is useful 'as a mechanism for examining the complex process by which innovations, change and research evidence are adopted in organisations.'[287] This qualitative approach 'explores a real-life, contemporary bounded system (a case) or multiple bounded systems (cases) over time, through detailed, in-depth data collection involving multiple sources of information.'[288] More than one case can be studied at the same time; however, each case study is a concentrated, single inquiry, studied holistically in its entirety.[289] Qualitative case study research, as described by Stake,[290] draws together 'naturalistic,

[286] Robert K Yin, *Applications of Case Study Research* (Sage, 2012) 18.
[287] Rosamund Mary Bryar, 'An Examination of Case Study Research' (1999/2000) 7(2) *Nurse Researcher* 61.
[288] JW Creswell, *Qualitative Inquiry and Research Design: Choosing Among Five Approaches* (Sage, 2013) 97.
[289] Robert E Stake, *The Art of Case Study Research* (Sage, 1995).
[290] Ibid xi–xii.

holistic, ethnographic, phenomenological and biographic research methods' using in his words, 'a palette of methods.'[291]

The reasons for selecting a case study methodology for this research are:

a) The theoretical perspective for this study is the 'structuration perspective' described by Cajaiba-Santana above.[292] Case study methodology is a way of collecting data on the various participants and organisations involved with a CLC and investigating the links and relationships between them in light of the models of social innovation outlined above. Slappendel[293] also suggests the use of case research and case histories as a research methodology to investigate the adoption of innovation from the interactive process.
b) Yin states that case studies are pertinent when the research addresses 'either a descriptive question—'what is happening or has happened?'—or an explanatory question—'how or why this has happened'. This contrasts with the situation where the research question addresses an initiative's effectiveness in producing an outcome. In this situation other methods such as an experiment would be better or a question as to how often something has happened—where a survey would be best.[294]
c) Case study research has contributed a great deal to researchers' knowledge of organisational culture.[295] A case study approach can provide an in-depth and close understanding of the organisations and people involved 'hopefully resulting in new learning about real-world behavior and its meaning.'[296]
d) A case study approach can incorporate both qualitative and quantitative data.
e) As Bromley notes 'by emphasizing the study of a phenomenon within its real-world context, the case study method favors the collection of data in natural settings, compared with relying on "derived" data.' [297]

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[291] Robert E Stake, *The Art of Case Study Research* (Sage, 1995) xi-xii.
[292] Giovany Cajaiba-Santana 'Social Innovation: Moving the Field Forward. A Conceptual Framework' (2014) 82 *Technological Forecasting & Social Change* 42.
[293] Carol Slappendel, 'Perspectives on Innovation in Organization' (1996) 17(1) *Organization Studies* 107.
[294] Robert K Yin, *Applications of Case Study Research* (Sage, 2012) 5.
[295] Examples are EE Chaffee and WG Tierney, *Collegiate Culture and Leadership Strategies* (Macmillan, 1988); Rosabeth Moss Kanter, *Men and Women of the Corporation* (Basic Books, 1977); Rosabeth Moss Kanter and BA Stein, *Life in Organizations: Workplaces as People Experience Them* (Basic Books, 1979); Edgar Schein, *Organizational Culture and Leadership* (Jossey Bass, 2004).
[296] DB Bromley, *The Case-Study Method in Psychology and Related Disciplines* (Wiley 1986) 23.
[297] Ibid.

f) A case study approach is useful in providing insights from a number of different perspectives.
g) A case study is ideal to map the highly fluid and evolving situational context of policy and programmatic responses in specific locales.[298]
h) The method is flexible in that policy documents, interviews and focus groups with key informants can be added to the mix of techniques.

There are other possible choices of methodology such as grounded theory or ethnography. A case study approach is more appropriate to this study than these other common approaches. Grounded theory is an inductive methodology and refers to theory that is developed inductively from a body of data. This approach requires no preliminary literature review, a research topic but no research problem and requires systematic data collection (usually intensive interviews) followed by coding of data and comparisons to develop a theory from the data collected.[299] The research in this thesis is based on an examination of aspects of social innovation theory which will be applied to the data collected and thus a grounded theory approach is not appropriate.

Ethnography is the 'study of social interactions, behaviours, and perceptions that occur within groups, teams, organisations, and communities.' It generally relies on some form of lengthy participant-observation,[300] and often involves immersion in a group or organisation.[301] This research focuses on the period 1975–95 so an examination of historical and current developments will be more effective to explore the way that centres developed and any innovations in practice that have arisen.

### Generalising from case studies

Stake notes that '[c]ase study research is not sampling research. We do not study a case primarily to understand cases. Our first obligation is to understand this one case.'[302] Despite

[298] Kerry A Brown et al, 'Social Innovation to Solve Homelessness: Wicked Solutions for Wicked Problems' (Paper presented at European Group of Public Administration Conference, Malta, 2–5 September 2009).
[299] For a discussion of grounded theory research see Anselm L Strauss and Juliet M Corbin, *Basics of Qualitative Research: Grounded Theory Procedures and Techniques* (Sage, 1990).
[300] John Van Maanen, 'Ethnography as Work: Some Rules of Engagement' (2011) 48(1) *Journal of Management Studies* 219.
[301] Scott Reeves, Ayelet Kuper and Brian Hodges, 'Qualitative Research Methodologies: Ethnography', *The BMJ* (Web Page, 2008) <http://www.bmj.com/content/337/bmj.a1020>.
[302] Robert E Stake, *The Art of Case Study Research* (Sage, 1995) 4.

this, much of the methodological literature concentrates on how to ensure case studies may be used to illuminate issues on a wider basis. Yin has addressed this point. He points out a distinction between statistical generalisation where one makes inferences about a population based on empirical data selected from a sample of that universe to what he terms analytic generalisations. Yin says the case(s) should be used as an 'opportunity to shed empirical lights about some theoretical concepts or principles.'[303] As he says the lessons learned could assume the form of a working hypothesis either to be applied in reinterpreting results of similar studies or to define new research. He also notes that the results of such analytic generalisations may 'potentially apply to a variety of situations, far beyond any strict definition of the hypothetical population of "like cases" represented by the original case.'[304]

Some authors have noted the limitations of case studies, for instance, Luck, Jackson and Usher claim that 'case study evidence has been considered poor from a positivist perspective for its limitations in relation to contributing to evidenced-based research.'[305] Case study, however, as noted, is not an inherently comparative approach to research. The objective is not statistical research and the aim is not to produce outcomes that are generalisable to all populations. The objective of this research is firstly to consider innovations in one community legal centre and develop possible proposals for further research on innovatory capacity of other CLCs.

Validity and reliability must be considered by the researcher when doing case study research. Internal validity, defined as the extent to which one's findings are congruent with reality and external validity the extent to which the findings of one study can be applied to other situations, are prime considerations. The reliability of the research is the extent to which one's findings can be replicated and this issue will be discussed in the thesis conclusions.

For this thesis, the case study is of a centre based in an inner urban area. As discussed, it is not useful to think of selection of cases in terms of sampling — that is, seeking representative cases or centres from which one can generalise to all cases. Stake suggests that 'balance and variety are important: opportunity to learn is of primary importance.'[306] Hakim suggests that there is an advantage in selecting cases so as to cover the known range and variation, perhaps

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[303] Robert E Stake, *The Art of Case Study Research* (Sage, 1995) 40.
[304] Ibid 41.
[305] L Luck, D Jackson and K Usher, 'Case Study: A Bridge Across the Paradigm' (2006) 13 *Nursing Inquiry* 103, 108.
[306] Robert E Stake, *The Art of Case Study Research* (Sage, 1995) 6.

starting with both extremes.[307] The extent of knowledge about community legal centres is not at the stage where one can distinguish one from another in terms of certain variables or select cases which could be described as extreme. Therefore, this study will proceed on the basis of a choice of a community legal centre generally recognised as being innovative as a starting point for research in this area.

The differences between centres, sampling choices for interviews and the nature of the data collected, mean that the results of these studies are not expected to generate findings that are generalisable across all legal centres. It is hoped, however, that the findings can be used to develop hypotheses about the nature of social innovations in legal centres and other legal service provision bodies which could be examined in future research.

### Research design

The research design includes a case study focusing on one community legal centre in Australia. This research will collect historical and current data from the centre in the period from the 1970s to 2019. Innovations to be studied in detail will be from the period 1975–95. The CLC to be studied is an inner-city centre established as a result of activity by legal academics associated with a university in Australia's largest city in the 1970s. All centres, including the centre under study, are now members of a national body of CLCs and share systems practices such as insurance requirements, legal practice standards and funding obligations.[308]

A good case study will benefit from multiple sources of evidence[309] and this will be the position here. The primary sources for this project can be grouped roughly into four types:

a. academic publications relevant to the topic, (such as books, journal articles and PhD theses on CLCs);
b. interviews with those who established, worked, volunteered in the CLCs and who are currently working in centres, and professionals working in related organisations;
c. newspaper and media reports; and

[307] Catherine Hakim, *Research Design* (Routledge, 2000) 62.
[308] See 'Community Legal Centres Australia', *NACLC* (Web Page, 2020) <https://clcs.org.au/ >.
[309] Robert K Yin, *Applications of Case Study Research*, (Sage, 2012) 5.

d. primary documents from the organisations including newsletters, emails, websites, social media pages, reports, minutes of meetings, project reports, statistics and brochures archived in libraries, private collections or at RLC.

It was important that the evidence collected be assessed on the basis of its accuracy as much as possible. Triangulating, or establishing converging lines of evidence will make the findings as robust as possible. 'The most desired convergence occurs when three (or more) independent sources all point to the same set of events, facts, or interpretations.'[310] Evidence was collected from sources and people outside the CLC movement to obtain a more independent perspective.

### Research ethics

Ethics approval was granted through the La Trobe University ethics committee. This study fully complies with the La Trobe University Research Code of Conduct. This approval required the informed consent of all interviewees. Each interviewee was given a Participant Information Statement and Consent Form (Appendices A and B) which set out the topic and target of the study, the reason the interviewee was chosen as a participant, the interviewee's rights, the expected length and venue of interviews, the use of data, and the participant's privacy protection. All interviewees signed this form and were given a copy of the signed form. Interviewees were informed that they were free to withdraw their consent to participate in the research at any time without prejudice to their relationship with La Trobe University. Participants were guaranteed that all quotes from interviews would be verified with them prior to any publication of the results.

### Data: interviews

Interview data was collected from people who have worked at the community legal centre in a paid or voluntary capacity and from associated professionals. A decision was made not to interview clients of the centres for several reasons. First, as a major focus of the study is on the development of innovations in legal service delivery by centres, it is likely that the richest source of information about this will be workers in centres and those involved with the

[310] Robert K Yin, *Applications of Case Study Research*, (Sage, 2012) 18.

development of these innovations. While clients of each centre may be able to provide valuable information evaluating the effect of any innovative services, this study is not an evaluation of the services offered and a full evaluation was beyond the scope of the current research. Second, there are significant ethical and practical issues involved with interviewing clients. Clients of community legal centres are often vulnerable people who are disadvantaged in a range of ways and who have often approached the centre for help about stressful legal problems. It would not be appropriate to interview them unless the validity of the research would be in danger otherwise. It would also be desirable to ensure that the research could provide some direct benefit to such clients if they were asked to participate. Third, in relation to the history of centres, it would be difficult in most cases to identify and interview clients from up to 40 years ago, as in most cases, centres do not keep client records for that period of time.

### How were interviewees chosen?

Snowball or chain sampling was used in the research. That is, several people of interest from the centre were chosen and then those interviewees were asked to refer others from the population or who share the characteristics to be studied.[311]

Interviews were digitally audio recorded and interviews were conducted either in person or by phone or Skype in some cases where it would be difficult to do so otherwise. Interviews were based on open-ended questions using a checklist of issues to be covered for each interviewee but were unstructured, allowing interviewees to raise issues not focused on by the interviewer. Interviews were conducted at the place of choice of the interviewee and included interviewee workplaces, La Trobe University, the University of New South Wales and interviewee homes. The advantage of using semi-structured interviews in qualitative research is discussed by Hitchcock and Hughes who described a semi-structured interview as one 'which allows depth to be achieved by providing the opportunity on the part of the interviewer to probe and expand the interviewee's responses … some kind of balance between the interviewer and the interviewee can develop which can provide room for negotiation, discussion, and expansion of the interviewee's responses.'[312]

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[311] Martin Lee Abbott and Jennifer McKinney, *Understanding and Applying Research Design* (Wiley, 2012) 124.
[312] G Hitchcock and D Hughes, *Research and the Teacher: A Qualitative Introduction to School Based Research* (Routledge, 1989) 83.

I conducted a total of 77 interviews, most of which lasted over an hour, but many lasted multiple hours. In some cases, follow up interviews were conducted. These interviews were recorded and after listening to each interview, notes were taken in relation to different aspects of the investigation and then recordings were archived.

### Oral histories

The product of these interviews was a series of oral histories from people associated with the centres. Oral history research became popular in the 1960s (possibly partly due to the availability of cheap tape recorders)[313] and is a research methodology that records oral stories drawn from living memories.

The purpose of the interviews is to generate insights and concepts, to expand the understanding of the topic and to document historical idiosyncratic cases. Portelli observed that oral historians 'do not interview "oral sources" but people.'[314] The interviewee is the expert not the researcher. Oral history is a common method employed in researching the history of organisations. As Yin points out, '[f]or some case studies, the participants construction of reality provides important insights into the case. The insights gain even further value if the participants are key persons in the organisations, communities, or small groups being studied, not just the average member of such groups.'[315] Many of those interviewed in this research could be characterised as key persons in the centre studied.[316]

Portelli concludes that oral histories 'tell us less about events than about their meaning … [they] tell us not just what people did, but what they wanted to do, what they believed they wanted to, what they believed they were doing and what they now think they did.'[317]

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[313] Sean Fiel, SEPHIS Workshops in Vietnam and Philippines, Centre for Popular Memory Historical Studies Department, University of Cape Town, 'Oral History Methodology' (Web Document, 2007) < https://studylib.net/doc/7568873/oral-history-methodology---international-oral-history-ass...>.
[314] Alessandro Portelli, *The Death of Luigi Trastulli and Other Stories: Form and Meaning in Oral History* (SUNY Press, 1991).
[315] Robert K Yin, *Applications of Case Study Research* (Sage, 2012) 18.
[316] It should be noted that community legal centres are such small organisations that most workers in the centres could be characterised as key persons. This is even more likely to be true when considering the history of Centres as Centres were originally run in models that emphasised a flat structure where responsibility for areas of work was to be shared between workers.
[317] Alessandro Portelli, *The Death of Luigi Trastulli and Other Stories: Form and Meaning in Oral History* (SUNY Press, 1991) 52.

These stories add significant context and depth to the documented history. They provide new information about the history of the centre, why certain decisions were made, and how certain objectives were actually accomplished. The original intentions and motivations of the people who set up the early centres, as well as the meaning they, now, in retrospect, attach to their actions, was clarified. On the whole, the participants were willing to speak frankly about what they did and why they did it. Most no longer work with CLCs, although some maintain connections. Most feel a strong bond with the organisations, are proud of the work they did there and what was accomplished and have an interest in how the history is recorded and disseminated.

Well-understood issues arise relating to retrospective narration. Assertions must be checked, not only against documentary evidence, but also between interviewees. Oral history may be defined as a process of collecting, usually by means of a recorded interview, reminiscences, accounts, and interpretations of events from the recent past which are of historical significance. Griffiths points out that critics of the process have usually focused on the fallibility of human memory and questioned both the reliability and the validity of data collected in this manner.[318] Thompson presents a contrary view and argues that informants may actually develop a clearer and more balanced picture of past events as they are further removed from the social influences of the time.[319] The method is now accepted as standard practice in research.[320]

One obvious danger is the interviewer's participation in the interview process. Oral histories are more than simply autobiographies expressed in a different medium — they are 'collaborative histories' jointly created by the informant and the historian. In this case, it should be noted that I was an employee of the centre which is the subject of the research and do know some of the participants interviewed. The possibility exists of some influence on the content of the informant's memories during the interview, making it less useful for future analysis. The likelihood of this however is reduced by the fact that it has been 25 years since I worked at Redfern Legal Centre. Previous association is highly unlikely to influence any of the participants' recollections and in fact, in my case, may have enhanced my understanding of the events that took place. It has been noted that prior knowledge, experiences and

[318] Gareth Griffiths, 'Museums and the Practice of Oral History' (1989) 17(2) *Oral History* 49.
[319] Paul Thompson, *The Voice of the Past: Oral History* (Oxford University Press, 1978) 113.
[320] For discussion of this see Janis Wilton, 'Oral History in Universities: From Margins to Mainstream' in Ritchie, Donald A (ed), *The Oxford Handbook of Oral History* (Oxford University Press, 2011) 470.

conjectures of the researcher form a grid for a particular standpoint that plays a pivotal role in the process of knowledge creation and this is relevant in this case.[321] Shopes points out dangers that 'a community insider, interviewing a peer, does not want to risk disturbing an ongoing, comfortable social relationship by asking difficult or challenging questions.'[322] In respect of this concern my insider status is unlikely to adversely affect the research. Insider research exists on a continuum that depends on the closeness of the researcher to the aspect being researched. Although a few staff of the organisation in the latter stages of the period under study were my close work colleagues, the information collected in interviews with them was on their recollections of the work they were involved in at the time. There would be no apparent reason for these recollections to be affected by their former relationship to me. In addition their recollections are where possible combined with documentary evidence that confirms the validity of their assertions. As Thompson points out '[t]he key point is to be aware of the potential sources of bias, and the means for countering them'.[323] As Strauss and Corbin point out, years of practice in a particular field can provide the researcher with an understanding of the conditions that apply in that field and what might happen under certain conditions. This knowledge enables the researcher to understand the research situation and to do so more quickly and with a greater insight than someone who has not practised in the field.[324]

I started with the basic chronology of events from primary documents, establishing a rough timeline. Other events revealed by the autobiographical, oral and other sources were then added. Disagreement between sources is surprisingly infrequent, but, where it occurred, I did do my best to present a balanced view on the likelihood of the chain of events using available information. A reflective, critical approach to memory and history undoubtedly makes for better oral history as Shopes has argued recently in the context of community history. She suggests that the researcher

> [a]pproach interviews in a spirit of critical inquiry. In part this means asking the hard questions that may cause discomfort; that address difficult or controversial topics or may reveal ruptures in the community. More generally, it

[321] Leila Voloder, Liudmila Kirpitchenko, *Insider Research on Migration and Mobility : International Perspectives on Researcher Positioning* (Ashgate, 2014) 5.
[322] Linda Shopes, 'Oral History and the Study of Communities: Problems, Paradoxes, and Possibilities' (2002) 89(2) *The Journal of American History* 588, 591.
[323] Paul Thompson, *The Voice of the Past: Oral History* (Oxford University Press, 1978) 96.
[324] Anselm L Strauss, Juliet M Corbin, *Basics of Qualitative Research: Grounded Theory Procedures and Techniques* (Sage, 1990) 33.

> means defining an interview as a mutual exploration of the problem at hand, an opportunity for an informed interviewer to talk in depth with a knowledgeable participant about a subject of mutual interest.[325]

While lines of inquiry about controversial issues may not seem an issue in this context, it is conceivable it could have come up in considering workplace disagreements in the centre and attribution or ownership of ideas discussed as innovations. It is important to be aware of these issues and to have developed strategies to deal with them should they arise. Anthropologist Victor Turner argued in the foreword to an ethnographic study by a sociologist that one can have 'an objective relation to one's own subjectivity,' and can therefore should use self-scrutiny to gain greater understanding of the research in which one is engaged.[326] Analysing the data, there was no need to make decisions on controversial issues relating to the topics covered in the thesis.

[325] Linda Shopes, 'Oral History and the Study of Communities: Problems, Paradoxes, and Possibilities' (2002) 89(2) *The Journal of American History* 588, 597.
[326] Valerie Yow, 'Do I Like Them Too Much? Effects of the Oral History Interview on the Interviewer and Vice-Versa' (1997) 24(1) *Oral History Review* 55, 63.

## Chapter Four

## Historical and social context

*'Law and legal services are usually stereotyped as bringing stability rather than innovation to institutional structures. However, the development of legal services since the 1960s demonstrates that this stereotype is not true.'*[327]
Erhard Blankenberg

As seen in Chapter 2 of this thesis, there are a number of factors that may influence the development of social innovations in organisations. One of these is the historical and social context in which the organisation is operating. This chapter outlines the relevant historical and social context in which Redfern Legal Centre was established and operating. It commences with a brief examination of historical events in the 1960s and 1970s, followed by consideration of aspects of the legal profession and activist lawyers during this period.

### The 1960s and 1970s

Redfern Legal Centre was established in 1977. Community legal centres (CLCs) developed in Australia in the 1970s as an inheritance from the international waves of change in the 1960s and 1970s and as Blankenberg notes 'lawyers were the vehicle of social change' in this time.[328] In western democracies, community protests and activism, the rise of feminism, politicisation of the youth, the lowering of the voting age, gay rights, the generation gap, rock music and abolition of university fees created and reflected movements for change which all had an influence on the development of centres.[329]

It has been noted in relation to the 1960s that

[327] Erhard Blankenberg, *Innovations in the Legal Services* (Oelgeschlager, Gunn & Hain, 1980) 1.
[328] Ibid.
[329] See discussion in Jude McCulloch, Megan Blair and Bridget Harris (Web Page, 2011) *Justice for all: A history of the Victorian Community Legal Centre movement.* Federation of Community Legal Centres Victoria, Australia < https://eprints.qut.edu.au/104428/>. Also Adam Jamrozik, Cathy Boland and Robert Urquhart, Social Change and Cultural Transformation in Australia (Cambridge University Press, 1995).

> '[a]s difficult as it is to assess the eventual structural and cultural impacts of a particular movement on a single society at a specific later date, it is even more challenging to determine the lasting effects of an entire decade of collective action spanning several movements—student, anti-war, nuclear disarmament, anti-imperialism, communist, revolutionary, liberation, anti-apartheid, environmental, women's, and civil rights movements—located in several countries including Canada, France, Germany, Pakistan, South Africa, the United Kingdom, and the United States'[330]

—not to mention Australia. Arrow notes that in Australia from the 1960s, post-war prosperity created the conditions for the rise of a new, more educated middle class, which articulated new liberal perspectives in public debate—questioning the cultural cringe, calling for reform to censorship and the White Australia Policy, campaigning for the abolition of the death penalty, the improvement of Aboriginal rights, and changes to abortion law.[331] Drawing on Foucault, Jones and O'Donnell, claims were made that the sixties opened space for a variety of identity-based rights movements providing 'heterotopic alternatives to the mainstream way of living.'[332] Challenging and contesting the boundary between public and private life was central to the liberation movements of the 1970s.[333] One effect of these forces was a heightened consciousness in the community, and amongst universities lawyers and law students, of the failings of our legal system and the possibilities law held for change.

The direct genesis of CLCs in Australia is tied to the actions of many who had been students in the 1960s and 1970s. Demand for university education increased in Australia in the late 1960s and early 1970s, when the first wave of "baby boomers" started to complete secondary education.[334] After World War II, means-tested Commonwealth Scholarships in Australia upheld a meritocratic ideal, assisting the poor but intrinsically talented student to get into university.[335] In 1972, Australia's first Labor Federal government in 23 years came to power. It abolished university fees and introduced a means-tested assistance scheme for all full-time students. The total number of students enrolling at university increased dramatically.[336]

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[330] Robert D Benford, 'Review of Sixties Radicalism and Social Movement Activism: Retreat or Resurgence?' (2015) 44(1) *Contemporary Sociology* 71.
[331] Michelle Arrow, *The Seventies: The Personal, the Political, and the Making of Modern Australia* (NewSouth Publishing, 2019) 6.
[332] Bryn Jones and Mike O'Donnell, *Sixties Radicalism and Social Movement Activism: Retreat or Resurgence?* (Anthem Press, 2012) 227.
[333] Michelle Arrow, *The Seventies: The Personal, the Political, and the Making of Modern Australia* (NewSouth Publishing, 2019) 8.
[334] Angela Melville, 'Barriers to Entry into Law School: An Examination of Socio-Economic and Indigenous Disadvantage'(2014) 24 *Legal Education Review* 45, 48.
[335] Bob Bessant, 'Robert Gordon Menzies and Education in Australia' (1977) *Melbourne Studies in Education* 163.
[336] Angela Melville, 'Barriers to Entry into Law School: An Examination of Socio-Economic and Indigenous Disadvantage' (2014) 24 *Legal Education Review* 45, 48.

Student radicalism had been growing in the USA in the early 1960s and, in Australia, emerged in demonstrations against the apartheid system after 1960.[337] Handler et al note that the coincidence of the civil rights and antiwar movements in the United States in the 1960s helped create a generation of students dedicated to social activism[338] and this was certainly the case in Australia. Students were affected by world events. Sit-ins were held at Australian universities in 1968 at the same time as student uprisings across the western democratic world.[339] As Barcan describes:

> [t]he first and last major student outbreaks occurred in Paris, starting with anti-Vietnam War demonstrations in February and ending in May with a general strike of workers which threatened to overthrow the de Gaulle regime. In London, students led a violent demonstration against the Vietnam war outside the American Embassy; from May to July they occupied many universities and colleges. In Italy students occupied Rome University in February. Outbreaks of violence occurred in Western Germany. In America, where students had sustained the civil rights movement for some years, riots broke out on innumerable campuses following the assassination of Martin Luther King in April. Even in communist-controlled eastern Europe protests erupted in Poland and Czechoslovakia.[340]

The Australian Government's decisions in 1964 and 1965 to introduce a conscription system and send troops to Vietnam led to a widely-based mass movement against both the war itself and conscription.[341] In Australia in the early 1970s there were mass demonstrations against the Vietnam war and apartheid in South Africa. The introduction of free tertiary education in 1974[342] could have had an effect on student radicalism by allowing students from different social backgrounds to study at university and therefore to engage in university activism.[343] Although studies indicate that there was relatively little change in the socioeconomic composition of students following the abolition of fees, the participation of women and mature age students did increase markedly during this period.[344] Civil liberties organisations

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[337] Alan Barcan, 'The Arrival of the New Left at Sydney University, 1967–1972' (2011) 40(2) *History of Education Review* 156.
[338] J Handler, E Hollingsworth and H Erlanger, *Lawyers and the Pursuit of Legal Rights* (Academic Press, 1978) 135–153.
[339] Alan Barcan, 'The Arrival of the New Left at Sydney University, 1967–1972' (2011) 40(2) *History of Education Review* 156, 159.
[340] Ibid.
[341] Richard Gordon (ed), *The Australian New Left* (Heinemann Australia, 1970) 24.
[342] Stephen Foster and Margaret Varghese, 'The Making of The Australian National University 1946–1996 Chapter 8: Who were the Students?', *ANU Press* (Web Document, 2009) < https://press.anu.edu.au/publications/making-australian-national-university >.
[343] In a review of research concerning participation in education generally, Julie Smith concluded that 'certain groups of students sharing particular attributes (rural, female or low family socioeconomic background) are particularly susceptible … (to) these financial or economic factors and are likely to be the students 'tipped out' by an unfavourable balance of financial and economic incentives. These students can be characterised as the 'marginal' groups', Julie P Smith, *Education Participation and Financial Incentives*, Office of Youth Affairs Working Paper, undated) quoted in Don Anderson, 'Tertiary Fees and the Social Mix' (1985) 28(1) *Vestes* 20, 21.
[344] Bruce Chapman, 'Positive and Negative Aspects of Australian Higher Education Financing' (Background paper at Towards Opportunity and Prosperity, *Melbourne Institute* and *The Australian* Economic and Social Outlook Conference,

were revitalised and many of those involved would become active in the community legal centre movement, 'which offered "shopfront" legal advice to those without access to traditional legal services'.[345] Crowley describes the 1970s in Australia as 'a time of street protest that would have been unthinkable 20 years before except by waterside workers.'[346] Arrow describes the decade as 'an extraordinary era of social reform' and notes with surprise the lack of general histories on the decade in Australia.[347] Migration had changed many communities, in the inner cities but also in some suburban areas.[348] Ethnic organisations were advocating for change along with Indigenous people and gay rights activists. These 'special interest groups' also, of course, included advocates of feminism (the term Women's Liberation[349] was abandoned approximately 1973–74).[350]

Of this period in Australia it appears however that 'what was most distinctive and original about sixties radicalism was its attempt to create a "lived radicalism", with consistency between its ends and means, within the womb of civil society rather than through violent revolution or conventional party politics.'[351] This is certainly the approach taken by the early CLC movement. The birth and significance of CLCs cannot be understood unless they are seen 'as part of the outburst of social activism in the late 1960s and early 1970s, which arose outside the framework of political parties and the established welfare system, although always associated with the left.'[352] There were signs of protest in many sectors across the nation. There were prison riots at Bathurst Gaol in 1970s and uprisings in other gaols.[353] Grass roots activists and unions joined forces in protest in the anti-nuclear movement.[354] The

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April 4 and 5, 2002) 2; Neville Wran, Committee on Higher Education Funding, Department of Employment, Education and Training, *Report of the Committee on Higher Education Funding* (Australian Government Publishing Service, 1988); David Weisbrot, *Australian Lawyers* (Longman Professional, 1989) 94. See also 'What is Whitlam's Higher Education Legacy?' *Andrew Norton* (Web Page, 2014) <https://andrewnorton.net.au/2014/10/21/what-is-whitlams-higher-education-legacy/>.

[345] James Waghorne and Stuart Macintyre, *Liberty: A History of Civil Liberties in Australia* (UNSW Press, 2011) 113.

[346] Frank Crowley, *Tough Times: Australia In the Seventies* (William Heinemann Australia, 1986) 35.

[347] Michelle Arrow, *The Seventies: The Personal, the Political, and the Making of Modern Australia* (NewSouth Publishing, 2019) 5. See for instance Arrows comment 'few Australian historians have tackled the 1970s as a decade worthy of analysis in its own right. While there have been book-length studies of the 1950s, 1960s and even the 1980s, the only stand-alone study of Australia in the 1970s is Frank Crowley's Tough Times: Australia in the Seventies, written in 1986.' Michelle Arrow, *The Seventies: The Personal, the Political, and the Making of Modern Australia* (NewSouth Publishing, 2019) 10.

[348] Frank Crowley, *Tough Times Australia In the Seventies* (William Heinemann Australia, 1986) 229.

[349] John Emerson, 'Women in the Legal Profession: A Historical Review' (2004) 26(19) *Bulletin (Law Society of S.A.)* 22.

[350] The biggest change in the legal profession in the 20th century was the entry of women, and from the late 1970s on, 'a critical mass seemed to have been reached … Women began studying law in greater and greater numbers.' See John Emerson, 'Women in the Legal Profession: A Historical Review' (2004) 26(19) *Bulletin (Law Society of S.A.)* 23.

[351] Bryn Jones and Mike O'Donnell, *Sixties Radicalism and Social Movement Activism: Retreat or Resurgence?* (Anthem Press, 2012) 227, 228.

[352] John Basten, Regina Graycar and David Neal, 'Legal Centres in Australia' (1983) 6 *UNSW Law Journal* 113, 135. See also Megan Blair and Jude McCulloch, 'From Maverick to Mainstream: Forty Years of Community Legal Centres' (2012) 37(1) *Alternative Law Journal* 12.

[353] Bernie Matthews, *Intractable: Hell has a Name. Katingal* (Pan Macmillan, 2006) 89.

[354] Brian Martin, 'The Anti Uranium Movement' (1982) 10(4) *Alternatives: Perspectives on Society and Environment* 56.

precursor to the Greens party, the United Tasmania Group was formed in 1972 to oppose proposed environmental destruction at Lake Pedder. This group was the world's first political party based on environmental concerns to contest elections.[355] It has been noted in the context of women's health centres established in this same period that

> [s]ome political contexts facilitate change while others retard it. The environment in which the Australian women's health movement emerged presented perhaps a 'once in a lifetime' policy opportunity. Internationally, change was in the air as radical challenges to the status quo were mounted in all Organisation for Economic Cooperation and Development (OECD) countries. Equality-seeking social movements—interested in such issues as civil rights, peace, sexuality, the environment, self-help, and consumer, student, worker and women's issues—were generating proposals for root-and-branch reform of existing power relations.[356]

The new Whitlam government elected in December 1972, focused activities on 'the progressive elements of Australia and New Zealand and prioritised human rights, international organisations, racial equality, decolonisation and *détente* ... heavily influenced by the new left social movements.'[357] Chesterman's history of Fitzroy Legal Service argues that the objectives of the centre were a product of volunteers attempting to marry the politics of the New Left to the workings of the law, though the author admits that supporting this argument is problematic.[358] One problem is, as Cahill noted in 1969, that no one can agree what the term New Left means in the Australian context. Barcan used the term in 1960 to refer to the socialist left that appeared around 1956 which was not connected to the Communist or Labor parties. Cahill points out that by 1969 this movement was seen as the old establishment left and a 'new' New Left was established.[359]

This Australian 'new' New Left appears to have been based on support from youth, primarily middle class, with concerns for political liberty, advocating control from below, rejection of dogmatism and the party line. It consisted basically of loose groupings of individuals coming together in opposition to various social ills such as apartheid or the Vietnam War and espousing participatory democracy. It was also a small but vocal minority. Barcan describes the New Left in Australia as being made up of two streams in that the first, post 1956, New

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[355] Geoffrey Holloway, 'The Wilderness Society: The Transformation of a Social Movement' (Occasional Paper No.4, Department of Sociology, University of Tasmania 1986).
[356] Gwendolyn Jamieson, *Reaching for Health: The Australian Women's Health Movement and Public Policy* (ANU E Press, 2012) 3 < https://www.jstor.org/stable/j.ctt24h7z0>.
[357] Jack Doig, 'New Nationalism in Australia and New Zealand: The Construction of National Identities by Two Labo(u)r Governments in the Early 1970s' (2013) 59(4) *Australian Journal of Politics and History* 560.
[358] John Chesterman, *Law and the New Left: A History of Fitzroy Legal Service*, *1972–1994* (University of Melbourne, 1995) iii.
[359] Rowan Cahill, *Notes on the New Left in Australia*, (Australian Marxist Research Foundation,1969) 2.

Left, many of them ex-communists, sought a democratic, self-managing socialism. 'The bulk of the second New Left lacked any strong commitment to socialism. They were clearer about what they opposed than what they wanted; they were inclined to settle for an expansion of the welfare state.'[360] It is this approach that in retrospect seems the more influential on the CLC movement.

There is little evidence however to show that the people (lawyers and others) involved in establishment of the early centres would actually have described themselves as part of the 'New Left' and it may be that this term has only been applied in retrospect. Chesterman says 'rejection, or at least the appearance of rejection of mainstream culture was an essential element' of membership of the New Left.'[361] It is difficult to see how the activities of the lawyers involved in the early CLC movement were in any real sense rejecting mainstream culture even though they were rejecting the aims and methods of the prevailing legal profession culture. Even Chesterman says it was the 'non-legal' workers who represented the New Left part of the service at Fitzroy.[362] However, Felicity Faris states, reflecting on the establishment of Fitzroy Legal Service, "Fitzroy was part of a social movement. It combined revolutionary and radical politics and infused these into the legal service'.[363] The notion of alignment with what was known as a New Left movement is possibly more apposite when considering the establishment of Fitzroy Legal Service in 1972 than five years later when RLC was being established in a different political and social environment—in Sydney. No matter what labels may have been used to describe the early CLC workers, it is certainly the case, as Chesterman contends, that the methods and approaches of the people involved with CLCs were in line with what were seen as New Left approaches of participatory democracy, activism and protest.[364]

## The legal profession in Australia

[360] Alan Barcan, *The Socialist Left in Australia 1949–1959* (Australian Political Studies Association Occasional Monograph no 2, 1960).
[361] John Chesterman, *Law and the New Left: A History of Fitzroy Legal Service*, *1972–1994* (University of Melbourne, 1995) 48.
[362] Ibid 72.
[363] Felicity Faris in David Neal (ed) *On Tap, Not on Top. Legal Centres in Australia 1972–1982*, (Legal Service Bulletin Co-operative Ltd, 1984) 57.
[364] John Chesterman, *Law and the New Left: A History of Fitzroy Legal Service*, *1972–1994* (University of Melbourne, 1995) 84.

Activism and protest were not the norm in Australia's legal profession in the 1970s. The practice of law in Australia has always been associated with the upper middle class.[365] Until the early 1970s, the Australian legal profession was almost exclusively the domain of white men from privileged backgrounds.[366] Encel, writing in 1970, pointed out the upper middle class, Protestant, establishment of the Bar[367] and the superior courts in general.[368] A survey of lawyers in New South Wales and Victoria in 1976 revealed that over a third had private school backgrounds and that the profession was politically conservative in its voting preference and identification.[369] Comments in 1978 by Sir John Young, Chief Justice of Victoria, that 'the better the lawyer the less likely he is to propose extensive or substantial reforms'[370] probably reflected the view of many in the profession. Sexton and Maher comment that the legal profession was not representative of the Australian community,[371] non-Anglo Australian ethnic groups were underrepresented, and lawyers had a strong tendency to be from families where other members were lawyers.[372] Even in 1989, Weisbrot's survey of Australian lawyers notes that lawyers were disproportionately drawn from high status backgrounds and he draws attention to the strong dynastic/family connections for lawyers entering the profession.[373]

The profession had been very successful in resisting external (including state) interventions in attempts to change its restrictive practices. Weisbrot claims this was due to the influence of lawyers in parliament and senior bureaucracy, a virtual monopoly on judicial appointments, and the persuasiveness of the rule of law ideology which demands the independence of the profession from the state. Christine Parker's survey of regulation of the legal profession in New South Wales includes the observation:

> The first (and perhaps most compelling) challenge to the self-regulatory bargain came in the early 1970s with the widespread recognition that lawyers' justice was not available, affordable or accessible to the poor and the

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[365] David Weisbrot, *Australian Lawyers* (Longman Professional,1989) 94. See also Margaret Hetherton, *Victoria's Lawyers : the First Report of a Research Project on Lawyers in the Community* (Victoria Law Foundation, 1978)12 and John Goldring, *Admission Policy in Legal Education in Australia* (Discussion Papers, Law Foundation of New South Wales, 1976) 34.
[366] Angela Melville, 'Barriers to Entry into Law School: An Examination of Socio-Economic and Indigenous Disadvantage' (2014) 24 *Legal Education Review* 45.
[367] The Bar is a legal profession of specialist advocates and advisers called barristers.
[368] Sol Encel, *Equality and Authority* (Cheshire, 1970) 76.
[369] Roman Tomasic and Cedric Bullard, *Lawyers and their Work in New South Wales* (Law Foundation of New South Wales,1978) 271.
[370] Michael Sexton and Laurence W Maher, *The Legal Mystique: The Role of Lawyers in Australian Society* (Angus and Robertson, 1982) 7.
[371] Ibid 9.
[372] Ibid 8.
[373] David Weisbrot, *Australian Lawyers* (Longman Professional, 1989) 95.

> disadvantaged. The private profession was criticised from without by the reformist Whitlam government and by the Commission of Inquiry into Poverty as it expanded to examine the legal system. It was challenged from within by a rapidly growing movement of activist lawyers influenced by the welfarist new left politics of the day.[374]

The New South Wales Inquiry into the Legal Profession commenced in 1976 on a reference from Attorney General Frank Walker, was initially aimed at a restructure of the profession but final recommendations did not go that far.[375] The Inquiry, however, did criticise restrictive practices[376] such as requirements that clients could only hire a barrister by hiring a solicitor first; that if they hired a Queens Counsel (QC) they must also hire a junior barrister at two thirds the QC's fee. The divided nature of the profession requiring both solicitors and barristers produced duplication of effort and increased legal costs.[377] The Commission further found that that: lawyers were prohibited from using advertising to inform clients of their fees or the services they offered; that qualified conveyancers could not compete with lawyers and that solicitors' costs were governed by a scale of fees, and it was prohibited to charge less than the scale fee. They found that '[i]ndividual lawyers were often uninformative and unhelpful to clients, particularly in explaining their billing practices, and showed insensitivity to client needs.'[378] It could be strongly argued, on these findings that the way the profession regulated itself and disciplined its members failed to address the issues that most frequently concerned clients. Proposals to regulate barristers and solicitors through a single body with representation from the public as well as the profession were bitterly opposed in NSW. The President of the NSW Bar Association described these suggestions as a 'threat to traditional legal values and … a great step towards the attainment of anarchy.'[379] In contrast to the profession's approach, legal centres ignored or attacked traditional models of legal practice such as bans on advertising and more extensive use of paralegals, they blurred the distinction between barristers and solicitors and were viewed with trepidation and hostility by professional bodies in Australia.[380]

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[374] Christine Parker, 'Justifying the New South Wales Legal Profession: 1976 to 1997' (1997) 2(2) *Newcastle Law Review* 1, 5.
[375] David Weisbrot, *Australian Lawyers* (Longman Professional, 1989) 184.
[376] New South Wales Law Reform Commission Report, 'Chapter 7', *First Report on the Legal Profession: General Regulation and Structure* (1982) 31.
[377] See Michael Sexton and Laurence W Maher, *The Legal Mystique: The Role of Lawyers in Australian Society* (Angus and Robertson, 1982) 35.
[378] New South Wales Law Reform Commission, 'The Legal Profession' (Background Paper III, Sydney, 1980). See also Michael Sexton and Laurence W Maher, *The Legal Mystique: The Role of Lawyers in Australian Society* (Angus and Robertson, 1982) 30, 174.
[379] David Weisbrot, *Australian Lawyers* (Longman Professional,1989) 184.
[380] For an example see Kevin Bell, 'Politics of Reforming the Legal Profession in Australia: A Case Study of the Western Region Community Legal Centre' 7 *Law and Policy* 143.

As Sexton and Maher note, the election of a Federal Labor government in 1972 with its detailed law reform program 'jolted the legal profession as a whole'.[381] Law reform initiatives changed the legal landscape including the establishment of the Law Reform Commission, introduction of the *Family Law Act 1975* (introducing, amongst other measures, no fault divorce), Indigenous land rights and the *Trade Practices Act 1974.*[382] Administrative law was revolutionised with two pieces of legislation: the *Administrative Appeals Tribunal Act 1975* and the *Ombudsman Act 1975*.[383] Barcan argues that the advent of the Whitlam government was a mixed blessing for activists for while

> [t]he new Commonwealth government adopted some of the rhetoric of the left and implemented radical policies such as the abolition of university fees, the abolition of conscription, and the recognition of China, it may have dissipated support for more radical change … The New Left survived the fall of the Whitlam government in November 1975. Indeed, Whitlam's dismissal might even have given it a renewed lease of life. But by the late 1970s right-wing or moderate students were gaining strength. But the New Left did not experience a dramatic collapse. It dispersed gradually, leaving its influence in a wide area of social activities.[384]

Although legal aid was not at the forefront of issues debated at the time for many in the community, it is clear there was 'increasing public awareness that a significant proportion of the population lived in poverty, especially single mothers, unskilled recently arrived migrants, the permanently unemployed, the aged and the Aborigines.'[385] This poverty, then as now, led to social problems such as evictions, violence, unscrupulous finance deals, discrimination, family breakdown, imprisonment—all matters in which the law played a major role.[386] The legal centre lawyers were part of moves directed at achieving change in many spheres across the country. As Parker points out:

> Subcultures of lawyers often mirror external social movements which motivate their actions and politics within the profession. Community interests and concerns thus permeate the profession from the inside, through the dual identification of lawyers with their profession and with wider community concerns.[387]

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[381] See Michael Sexton and Laurence W Maher, *The Legal Mystique: The Role of Lawyers in Australian Society* (Angus and Robertson 1982) 35.
[382] George Williams, 'Whitlam's Legacy of Law Reform' (2014) 88(12) *Law Institute Journal* 26.
[383] *Family Law Act 1975* (Cth), *Trade Practices Act 1974* (Cth), *Administrative Appeals Tribunal Act 1975* (Cth), *Ombudsman Act 1975 (*Cth).
[384] Alan Barcan, 'The Arrival of the New Left at Sydney University, 1967–1972' (2011) 40(2) *History of Education Review* 156, 172.
[385] Frank Crowley, *Tough Times: Australia In the Seventies* (William Heinemann, Australia, 1986) 6.
[386] See Ronald Sackville, Commission of Inquiry into Poverty (1975) *Law and Poverty in Australia* (Australian Government Publishing Service, Canberra).
[387] Christine Parker, 'Justifying the New South Wales Legal Profession 1976 to 1997' (1997) 2(2) *Newcastle Law Review* 1, 27.

### Health and welfare organisations

It was, of course, not only in the legal world that the effect of these forces was being felt. Parallel developments in health and welfare organisations, for instance, reflected the same recognition that the time was ripe for change to create a more equal society. Activists in these fields were also forging innovative organisations and practices that are surprisingly similar to developments in community legal centres. The development of the community health programs in Australia reflected the recognition in the influential Henderson Poverty Report that 'pointed to the economic, social and geographic barriers to equal and easy access to primary health care service' in Australia.'[388] The first Indigenous community-controlled health and legal services were set up in Redfern in Australia by Indigenous activists and others.[389] Both community health centres and the community legal centres were small community organisations set up all over Australia focusing on issues that were not receiving mainstream attention. Community health centres adopted community development and education, and individual advocacy practices to bring the attention of the public and medical and legal professions to issues affecting women and disadvantaged communities. In a striking parallel to CLCs' activities, activists in the women's and community health movements

> [a]rticulated the problems arising from gender roles, identified domestic violence as a serious women's health issue and broke the silence surrounding sexual assault. Where they found glaring gaps in the services available, they tried to fill them by establishing services themselves: health centres, sexual assault services and refuges for women and children who had nowhere to go were set up on precarious foundations. They set up telephone help lines to provide information and support.[390]

Recommendations coming from the Poverty Report with funding from the Whitlam government for instance led to the establishment of West Heidelberg Community Health Service in 1975.[391] It was in this health centre that the first health justice partnership was established—a notable innovation in legal service delivery that was to become recognised as a best practice approach to working with disadvantaged communities. The establishment of

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[388] Raven North, 'Keynote Address to the South Australian Community Health Association Seminar: Innovation in Perspective at Glenside' (2000) 7(2) *Journal of the Home Economics Institute of Australia* 2.
[389] George R Palmer and Stephanie D Short, *Health Care & Public Policy: An Australian Analysis* (Springer Link, 1989) 235.
[390] Gwendolyn Jamieson, *Reaching for Health: The Australian Women's Health Movement and Public Policy* (ANU E Press, 2012) 2 <https://press.anu.edu.au/publications/reaching-health>.
[391] Mary Anne Noone '"They All Come in the One Door" The Transformative Potential of an Integrated Service Model: A Study of the West Heidelberg Community Legal Service' in Pleasence, Buck & Balmer (eds), *Transforming Lives: Law and Social Process* (The Stationary Office, 2007) 94.

this centre is worth examining as an example of the cross-disciplinary approaches to change in medical and legal responses to disadvantage, community involvement, and early involvement by a university in a CLC.

In the 1970s, as part of the Henderson Inquiry into Poverty, grants were made available for research projects. Social workers in the north east of Melbourne made a submission to the Inquiry suggesting that the housing estate at West Heidelberg was a geographic area where there were many people in need. Funding was granted for a study of the area. After unsuccessfully advertising for a project worker, Professor Henderson approached Heidelberg Council to request that Mary Morgan who had been employed as a social worker for the City of Heidelberg since 1971, be enlisted to carry out the research project.[392] The research focused on the Olympic Village as an area of special need.[393] Morgan and her team interviewed professionals, social workers and volunteers working in the area and 30 local families completed a questionnaire about what it was like to live in West Heidelberg.[394]

In the report, Morgan depicted the problems identified by professionals and residents living in the area. She noted the fact that, apparently as a result of Housing Commission policy, the number of separated married females was much higher in the Olympic Village than elsewhere in Heidelberg and that almost all of the deserted wives and unmarried mothers who needed housing were housed in the Village. The area had a very large percentage of low-income families.[395] Her conclusion was that the services in the Olympic Village had many gaps including lack of medical assistance,[396] limited child minding, playgroups, emergency accommodation, paramedical services and 'the services which are present are overtaxed and understaffed.'[397]

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[392] Mary Morgan, Australia Commission of Inquiry into Poverty (1976), *A Study of the Heidelberg (Victoria) Community: Research Report*, xi. See also Clare Rawlinson, 'Doing it Tough Together: Melbourne's Olympic Village Community', *ABC Premium News* (online 9 November 2015) <http://www.abc.net.au/local/audio/2015/11/06/4346853.htm>.
[393] Mary Morgan, Australia Commission of Inquiry into Poverty (1976), *A Study of the Heidelberg (Victoria) Community: Research Report*, 14.
[394] Graeme Dodsworth et al (eds) *The Centre: 40 years of Banyule Community Health* (Banyule Community Health, 2015), 17.
[395] Mary Morgan, Australia Commission of Inquiry into Poverty, *A Study of the Heidelberg (Victoria) Community: Research Report* (1976) 15.
[396] Ibid 17.
[397] Ibid.

The Report recommended the establishment of a Health and Welfare Centre which 'would involve the residents at all stages',[398] and 'have a range of preventative diagnostic services—medical, dental, pharmaceutical, crisis intervention and a Family Planning clinic.'[399] Amongst a number of other recommendations in an Australian (and possibly world) first innovation, the Report recommended that the centre include a Legal Aid Centre.[400] The report recommended the provision of 'a high standard, low cost, integrated health/welfare service in West Heidelberg. The need is URGENT [sic].'[401]

The West Heidelberg Community Health and Welfare Centre (later to be named Banyule Community Health (BCH)) was one of the first centres established under the Whitlam era Commonwealth Community Health Plan.[402] The centre opened on 3 February 1975.[403] Founded by local West Heidelberg community members, Heidelberg City Council and the first CEO Bill Newton, the West Heidelberg Community Health and Welfare Centre was situated in the Administration Block of the 1956 Melbourne Olympic Games Village, West Heidelberg.[404] West Heidelberg Community Legal Service (WHCLS) at the centre began in the mid 1970s with a volunteer lawyer, John Cain, (later to become a Member of the Victorian Parliament and then Premier) offering free legal services.

At this time, Universities—both academics and students—were beginning to develop their role by engaging the wider community. Universities 'faced imperatives to widen participation amongst women, Aboriginal students and ethnic minorities.'[405] At the University of New South Wales in 1973, Aboriginal students began to be admitted via a special admissions scheme.[406] Sawyer, a legal academic at the time, notes that 'law students remain

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[398] Mary Morgan, Australia Commission of Inquiry into Poverty, *A Study of the Heidelberg (Victoria) Community: Research Report* (1976) 22.
[399] Ibid.
[400] Ibid.
[401] Ibid 76.
[402] 'Healthcare and Social Security Commonwealth Community Health Plan', *Whitlam Institute* (Web Page) <https://www.whitlam.org/whitlam-legacy-healthcare-social-security >. The issue of which health centre was the first appears to be contested. There are claims that Clovelly Park S.A. was the first centre, see Interview with Professor Frances Baum (Alison McDougall, 2005), but there are also claims for the Queenscliff and District Community Health Centre, see James Taylor, 'Redevelopment Adds to BCH's Rich History' *Bellarine Times* (online, March 13 2019) <https://timesnewsgroup.com.au/bellarinetimes/news/redevelopment-adds-to-bchs-rich-history/> and claims for earlier centres in NSW in 1971, see Milton J Lewis and Kerrie L MacPherson (eds) *Public Health in Asia and the Pacific: Historical and Comparative Perspectives* (Routledge, 2008) 235.
[403] Graeme Dodsworth et al (eds) *The Centre: 40 Years of Banyule Community Health* (Banyule Community Health, Melbourne 2015) 13.
[404] 'Our History', *Banyule Community Health Centre* (Web Page) <http://www.bchs.org.au/about-us/our-history>.
[405] Hannah Forsyth, 'Expanding Higher Education: Institutional Responses in Australia from the Post-War Era to the 1970s' (2015) 51(3) *Paedagogical Historica International Journal of the History of Education* 365, 376.
[406] UNSW Admissions Committee Minutes File (UNSW Archives, Sydney, 1973–1977).

predominantly conservative but the proportion of radicals steadily rises and the rise is most marked among the most able students.'[407] Sawyer describes a law student from Monash Law School working with him at ANU in 1973:

> Frankly law reform did not interest him much, and that the sort of 'poverty law' area in which he proposed to work was directed not at law reform but at social change—in some respects fundamental change. The attitudes both of the 'poor' and of the legal profession, or the section of it dealing with the poor, had to be changed, and these changes had to be considered as elements in still more far reaching changes in the structure of society. Such attitudes to the law are widespread among contemporary students, and in particular law students and the most able of them have fairly definite views.[408]

La Trobe University had opened in 1967 in the northern suburbs of Melbourne (five minutes drive from the Olympic village area). A Department of Legal Studies was established within its School of Social Sciences. As Neal details:

> It was not to be a law school and would therefore have none of the service obligations or restrictions on curriculum imposed by professional certification training. This was academically liberating: art for art's sake. The Legal Studies Department was one of only two or three in the English-speaking world dedicated to the study of law as a social institution and committed to interdisciplinary approaches in its research and training. Located with the Departments of Sociology, Economics and Politics, its institutional ties were to departments which had their primary commitments to academic social inquiry. Its student numbers were fed by a novel and incredibly popular, if limited, legal studies subject that had started in Victorian high schools in the late 1960s. That subject and a curiosity about legal ordering brought large numbers of students to the new Legal Studies Department.[409]

Most members of the new department had strong associations with the community legal centre movement as volunteers, providing advice and sometimes representation. They 'carried their ideas about poverty and access to law as a means of social change beyond traditional law courses and articles in academic journals and into projects where lawyers and academics were seldom seen or heard.'[410] They also had an influence on development of Australian legal aid.[411] Neal records:

> By some chance—now lost in the mists of 1977–78 but possibly due to the encouragement of Vice-Chancellor John Scott, who actively encouraged the university to engage with the local community—someone thought that the

[407] Geoffrey Sawyer, 'Who Controls the Law in Australia' in David Hambly and John Goldring (eds), *Australian Lawyers and Social Change* (The Law Book Company, 1976) 137.
[408] Ibid 121.
[409] David Neal, 'Law and Power: Livin' In The '70s' (2013) 29(2) *Law in Context* 99, 102.
[410] Ibid 117.
[411] Mary Anne Noone 'Australian Community Legal Centres: The University Connection' in J Cooper and L Trobe (eds), *Educating for Justice: Social Values and Legal Education* (Dartmouth, 1997).

> department should start a clinical legal education centre at the West Heidelberg Community Centre. The idea fell on fertile soil given the interests of the department members who saw the idea of co-locating a legal centre with the range of health and welfare services at the West Heidelberg Centre as an innovative and exciting model for holistic service delivery. This would be the first community legal service to operate in a community health centre where there would be access to a range of support services including medical practitioners, social workers, youth workers and financial counsellors.[412]

The university went on to fund an academic lawyer/lecturer position to be based in the centre for over 40 years.

The legal profession was not immune to change. Michael Kirby wrote in 1978 that 'the legal profession is in the midst of a period of radical change in its work pattern' and that

> [s]pecial groups, Aboriginals, ethnic communities and reform groups will look to lawyers in this country to perform the reforming work in courtrooms done by civil liberties and coloured people's organisations in the United States … Obviously changes of this kind will raise for consideration the extent to which it is right for lawyers to go beyond mere articulation of their clients' causes. Is it necessary for the lawyer to advise clients about lobbying, political and media contacts and so on? How far should lawyers have to adopt a passive service role?[413]

Bell describes in detail an attempt to set up a self-funding poverty law practice (radical legal practices funded by private work) in Melbourne in 1977 based on notions of situationalist theory that led to the conclusion that 'the poor would have to take control of their lives before they could break out of the cycle of poverty.'[414] Considerable work went into the project in securing the support of community and government bodies but the opposition to the practice by the local private profession was extraordinary and it took until 1983 for the poverty law practice to be established. There were also attempts to run similar practices in Sydney.[415]

The early proponents of radical changes in the provision of legal assistance had big ambitions not just to provide greater access to legal help but to change the legal system and the society. Abel[416] points out as early as 1985 that the original far reaching ambitions for legal aid offices were illusory for a number of reasons, including the inability of legal aid to achieve radical social change given the history of its development. Abel says '[t]he primary

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[412] David Neal, 'Law and Power: Livin' In The '70s' (2013) 29(2) *Law in Context*, 99, 124.
[413] Michael Kirby, 'Futurology' in Roman Tomasic (ed), *Understanding Lawyers* (The Law Foundation of New South Wales, 1978) 14.
[414] Kevin Bell, 'Politics of Reforming the Legal Profession in Australia: A Case Study of the Western Region Community Legal Centre' (1985) 7 *Law and Policy* 143, 145.
[415] Interview with Andrew Haesler (Frances Gibson, Sydney, 7 July 2015).
[416] Richard L Abel, 'Law Without Politics: Legal Aid Under Advanced Capitalism' (1985) 32 *UCLA Law Review* 474.

beneficiaries of legal aid—women, children, the disabled, and the elderly—have no labor power to withhold, have been unable to organise politically, and pose no threat to social order.'[417] In Weisbrot's view, legal aid has neither helped the poor nor altered the structure of the legal profession and may be classified more as a palliative than as an agent of social change.[418] No doubt there is much truth in this. It is the case though that the community legal centres and their innovative approach to legal assistance have made a significant and somewhat unrecognised contribution to change in the profession. According to North, the community health program '[r]egardless of its minuscule funding, its shortcomings and unrealised ideals and potential has had a significant effect on the post 1970s landscape of health and welfare services.'[419] Similarly, as Weisbrot says, legal centres 'have certainly established a model of legal services delivery which is at once more humane, accessible and activist than previous models and the centres have had impacts on the structure of legal services and lawyering generally.'[420]

Neal comments:

> [s]omething big happened to public consciousness about law and power in the 1970s. Somehow law got caught up in a broader social upheaval about equality and poverty and the scales that masked the power embedded in legal relations fell away. People joined the dots about law and power at all sorts of levels—neighbourhoods, schools, universities, courts, the media and legislatures—and used it as a means of redressing inequality and achieving social change. They lit fires which burned brightly for a couple of decades and made significant and lasting contributions to the distribution of power in Australia and to the inflection of its legal institutions.[421]

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[417] Richard L Abel, 'Law Without Politics: Legal Aid Under Advanced Capitalism' (1985) 32 *UCLA Law Review* 474, 593.
[418] David Weisbrot, *Australian Lawyers* (Longman Professional,1989) 245.
[419] Raven North, 'Keynote Address to the South Australian Community Health Association Seminar, Innovation in Perspective at Glenside' 7(2) (2000) *Journal of the Home Economics Institute of Australia* 2.
[420] David Weisbrot, *Australian Lawyers* (Longman Professional,1989) 246.
[421] David Neal, 'Law and Power: Livin' in the '70s' (2013) 29(2) *Law in Context* 99 103.

## Chapter Five

## History of Redfern Legal Centre

*The story of the RLC is of course a distinctly Sydney history. This is, however, important: the micro-histories of people and political organisations, and the philosophies that drive them, in each state are too often glossed over in an attempt to reflect what is perceived to be a national or transnational experience. Often the specificities of time and place contribute greatly to the social contests that influence conceptual developments within discourses such as law; and paradoxically, looking closely at such contests can only help reveal the interplay of ideas and political currents that emerges from international intellectual exchange, and that assists in creating a uniquely national political experience.*[422]
Ann Genovese

This chapter sets out a brief history of the centre used as a case study in this thesis. Details of the geographic attributes and location of the centre, its development as a service, management systems and major achievements over the years will be explored to provide context for the development of social innovations presented in this thesis. No previous histories have been written of the centre studied. This material, valuable in and of itself, is also essential to an understanding of the environment from which the innovations to be discussed in Chapter 6 developed.

### Redfern Legal Centre (RLC), Sydney

By the late 1960s, Redfern was described as 'an economically and socially depressed area. Sydneysiders, on the whole, regarded it as a slum, an attitude shared by many of its residents.'[423] However, this had not always been the case. In the 20th century, the suburb of Redfern was a centre for a diverse set of populations. Early that century, many Lebanese people (known as Syrians) had settled in Redfern, establishing retail, warehousing businesses and factories. These businesses often supplied suitcases of drapery and manchester to

[422] Ann Genovese, 'A Radical Prequel: Historicising the Concept of Gendered Law in Australia' in Margaret Thornton (ed), *Sex Discrimination in Uncertain Times* (ANU Press, 2010) 56.
[423] Andrew Jakubowicz, *Changing Patterns of Community Organization* (Government IV Honours Thesis, Sydney University, 1969); David Neal, 'Law and Power: Livin' in the 70s' (2013) 29(2) *Law in Context* 99.

Lebanese hawkers. These hawkers, unable to gain employment in other industries, would travel with these goods, often aiming to raise capital to set up their own businesses in the area.[424] Other residents worked in the Eveleigh train workshops and the manufacturing businesses in the area.[425] Max Neutze describes Redfern before World War II as a 'stable working class inner suburb.'[426] After the war, however, with the availability of better working class housing in outer suburbs, it became common for families to live in Redfern in rented premises while waiting to save the deposit on a new cottage or move into public housing. During this period the suburb became a gateway for Greek, Italian and Maltese migrants arriving in the country.[427] From the 1950s onwards the area experienced significant change. Neutze notes two major sources of change—the displacement of old housing by the Housing Commission towers, and large-scale movement of migrants into the area. In the mid-1950s[428] there was an exodus of manufacturing from the central city. Slum clearances and the many Lebanese people settling further away from the CBD in the western suburbs destroyed the heart of the old Lebanese quarter.[429] Many people, however, stayed in the area due to rent control provisions introduced after the war and there were also large numbers of single people living in boarding houses.[430]

The traditional owners of the land are the Cadigal and Wangal bands of the Eora but since white settlement no large Aboriginal population settled in Redfern until the 1920s, when Indigenous people from rural areas moved in looking for work. Many Aboriginal people moved to the inner city in the 1960s after closure of rural reserves[431] and estimated numbers for Aboriginal people living in the Redfern area by 1971 ranged between 4,000 (by a government commissioned survey) to 9,000 by Aboriginal estimates.[432] In 1973, houses

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[424] Paul Convy, *The Lebanese Quarter: Mapping the Syrian Lebanese Quarters at Redfern. Time, Place and Extent* (Australian Lebanese Historical Society, 2006) 14.
[425] See 'Remembering the Strike that Stopped the Nation', *City of Sydney* (Web Page, 8 June 2017) <https://news.cityofsydney.nsw.gov.au/media-releases/remembering-the-strike-that-stopped-the-nation >.
[426] Max Neutze, *People and Property in Redfern: Post War Changes in the Population and the Properties in an Inner Suburb of Sydney* (Urban Research Unit, Research School of Social Sciences, Australian National University, 1972) 19.
[427] Ibid.
[428] 'Redfern Estate Heritage Conservation Area', *Office of Environment and Heritage NSW* (Web Page, 28 July 2006) <http://www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=2421496 >.
[429] Paul Convy and Anne Mansour, 'Lebanese Settlement in NSW: A Thematic History' *NSW Office of Migration and Heritage* (Web Document, July 2008) <http://www.migrationheritage.nsw.gov.au/mhc-reports/ThematicHistoryOfLebaneseNSW.pdf>.
[430] Max Neutze, *People and Property in Redfern: Post War Changes in the Population and the Properties in an Inner Suburb of Sydney* (Urban Research Unit, Research School of Social Sciences, Australian National University, 1972) 120.
[431] For a short history of Reserves in NSW see 'Living on Aboriginal Reserves and Stations' *NSW Office of Environment and Heritage* (Web Page) <http://www.environment.nsw.gov.au/chresearch/ReserveStation.htm>.
[432] WD Scott and Company, 'Problems and Needs of the Aboriginals of Sydney: A Report to the Minister of Youth and Community Services, New South Wales, Sydney and Foundation for Aboriginal Affairs, Aborigines in Sydney' (unpublished document in Murphy papers, 1971) cited in KJ Anderson, 'Place Narratives and the Origins of Inner Sydney's Aboriginal Settlement, 1972–73' (1993) 19(3) *Journal of Historical Geography* 314.

occupied by Aboriginal people on the Block[433] near Redfern station were bought by the Commonwealth Government and given to the Aboriginal Housing Company. There had long been ongoing conflicts between the police and Aboriginal people of Redfern.[434] In the 1960s, discriminatory policing practices had even led to the establishment of a curfew for Aboriginal people. Reflecting on the period Justice Wootten noted:

> I found, as most people do, it [the curfew] a little hard to believe when I first heard it, but when I observed it operating with my own eyes, I was left with little doubt. The simple position was that any Aboriginal who was on the streets of Redfern at a quarter past ten was simply put into the paddy wagon and taken to the station and charged with drunkenness, and that was something that was just literally applied to every Aboriginal walking along the street, irrespective of any sign of drunkenness in his [sic] behaviour. This and the associated problems gave rise to very strong feelings amongst Aborigines here.[435]

As a response to the ongoing conflict between Aboriginal people and the police, in 1970 lawyers and Aboriginal activists set up the Aboriginal Legal Service in Redfern. The service was staffed by volunteers, including law students, to provide advice to Indigenous people in the area.[436] A number of these students and lawyers were associated with the University of New South Wales. Petre has argued that Redfern Legal Centre was set up later than Fitzroy Legal Service in Victoria because activist lawyers were first involved in setting up the Aboriginal Legal Service and the chamber magistrates in NSW[437] and the Public Solicitor did provide some legal advice to the public.[438] South Sydney Community Aid was also running tenants' rights projects in the area which led to the establishment of the Tenants Union in 1976.[439]

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[433] The Block is an area of houses which were acquired by the Aboriginal Housing Company in the 1970s and 1980s. See 'Aboriginal Housing Company and the Block', *Redfern Oral History* (Web Page, 9 September 2019) <http://redfernoralhistory.org/Organisations/AboriginalHousingCompany/tabid/209/Default.aspx>.
[434] See Chris Cuneen, 'Aboriginal-Police Relations in Redfern', *Human Rights and Equal Opportunity Commission* (Web Document, 1990) <https://www.humanrights.gov.au/sites/default/files/content/pdf/race_discrim/redfern_1990.pdf>.
[435] Hal Wootten, 'Aboriginal Legal Services' in Garth Nettheim (ed), *Aborigines Human Rights and the Law* (Australian and New Zealand Book Company, 1974) 60.
[436] 'History', *Aboriginal Legal Service* (Web Page) <https://www.alsnswact.org.au/about>.
[437] See recognition by Sackville of the importance of the chamber magistrate role in NSW in the legal aid system. Ronald Sackville, Commission of Inquiry into Poverty (1975) *Law and Poverty in Australia* (Australian Government Publishing Service, Canberra) 42.
[438] Clare Petre, 'Specialisation: The Sydney Push Legal Centres in New South Wales' in David Neal (ed) *On Tap not on Top: Legal Centres in Australia 1972–1982* (Legal Services Bulletin, 1984) 12. The Aboriginal Legal Service maintains a significant presence both in Redfern and through New South Wales to the present day. The Redfern office has focused on criminal law for indigenous clients and runs a complementary legal service to that of Redfern Legal Centre.
[439] Paul Mortimer, *Unfinished Business: The Story of the Tenants Union of NSW 1976–1996* (Tenants Union of NSW, 1996) 14. Note that it is arguable that the Tenants Union was the first community legal centre in NSW. The fact that it did not call itself a community legal centre and did not receive any funding for paid workers until 1979, however, have led to it being regarded as another activist group rather than a CLC as such, though it was later to join the national CLC movement.

In 1970, the NSW Law Society Young Lawyers committee was generally dedicated primarily to sporting competitions and cocktail parties. In 1971, however, Terry Purcell, a young lawyer interested in services to disadvantaged clients, put a proposal to the Law Society to set up a legal service one night a week with volunteer lawyers in Redfern. This first legal volunteer advice service in NSW started at Redfern Town Hall in February 1971. 'We used the Alderman's room (the room on the right as you enter the Town Hall). We had a constant stream of people with stories about bad landlords and police. We didn't have a lot of capacity but we gave advice and referred them to lawyers.'[440]

### The role of the University of New South Wales (UNSW)

UNSW Law School was a new law school in Sydney, established in 1971. The first UNSW Vice-chancellor, Sir Phillip Baxter believed that 'the University … must endeavour to meet the needs of a changing society, not be afraid of innovation, and be radical rather than conservative in its attitude to its responsibilities.'[441] This approach was reflected in his choice for appointment of the first Dean of the Law School. Hal Wootten was committed to social justice and determined to create a law school with a difference.[442] Wootten made the decision to hire academics with a social justice outlook to the extent of making personal approaches to young Australian law graduates working in the UK and hiring academics from the USA and Canada.[443] When the UNSW Law School was formed it was given the leeway to forge a critical legal education. Carrigan notes that a number of legal academics disenchanted with positivism and a trade school approach to law became founding staff members at UNSW.[444]

Academic literature and activist programs relating to 'poverty law' and law reform, originating in the United States and the United Kingdom, were influential on legal academics at UNSW.[445] Two Faculty members (John Basten and Julian Disney) were NSW editors of the *Legal Services Bulletin*[446] and were in contact with the new Fitzroy Legal Service

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[440] Interview with Terry Purcell (Frances Gibson, Sydney, 6 September 2016).
[441] Chief Justice Robert French AC, 'University of New South Wales Law School 40th Anniversary', *High Court of Australia* (Web Document, 17 September 2011) 5 <http://www.hcourt.gov.au/assets/publications/speeches/current-justices/frenchcj/frenchcj17Sep11.pdf>.
[442] See Hal Wootten, 'Living Greatly in the Law' (2008) 31(1) *The University of New South Wales Law Journal* 258.
[443] Interview with Terry Buddin (Frances Gibson, Sydney, 4 August 2015).
[444] Frank Carrigan, 'They Make a Desert and Call it Peace' (2013) 23(2) *Legal Education Review* 313.
[445] Marion Dixon, *Thirty Up: The Story of the UNSW Law School* 1971–2001 (UNSW Law School, 2001) 32.
[446] A law journal focusing on issues such as legal aid, alternative legal service delivery, crime, discrimination etc. later to be renamed the Alternative Law Journal.

established in 1972 in Melbourne.

The UNSW law school wanted to be 'different and innovative and not based so much on the big end of town.'[447] Kelsey describes the approach:

> The impetus of the Law School, when it opened in 1971, was towards liberation. Liberation from lectures, textbooks, examinations with a commitment to small-group teaching, varied assessment, wide-ranging inquiry into the law as a social and political process, all within an easy framework encouraging free communication between teacher, student and administrator.[448]

Andrew Haesler, a student at the time, comments: '[b]arriers between some of the lecturers and students were low in terms of age and experience of the law … People were pushing the boundaries about what was taught, what was learnt and what classes were … Students were taking an active role. Academics were encouraging research that had a practical outcome.'[449]

On campus, legal academics, John Basten, Dave Brown and George Zdenkowski were involved with the Prisoners Action Group and were very politically engaged.[450] They were assisting people in gaols including those involved in the Bathurst riots cases.[451] Rice observes

> [m]any of the same people who started the [legal] centres were at the time or later members of organisations such as the Australian Legal Workers Group, the Feminist Legal Action Group, the Prisoners Action Group, and Women behind Bars. They defended the Gay Mardi Gras campaigners and established a prisoners' legal service, they campaigned for drug reform and against police verbals. And they were there, on duty day and night, for local people in trouble or need.[452]

Legal academics at the Faculty worked with prisoners and students on practical legal problems such as assisting at the Children's Court.[453] As Terry Buddin, then UNSW lecturer puts it: 'the concept that law could be an instrument for social justice not social control' was a defining thematic link between people in the Faculty.[454]

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[447] Interview with Robyn Lansdowne (Frances Gibson, Melbourne, 6 July 2016).
[448] Brien Kelsey, 'What's Wrong with the Law School?' *Tharunka* (UNSW Student Paper), 15 September 1976.
[449] Interview with Andrew Haesler (Frances Gibson, Sydney, 7 July 2015).
[450] See George Zdenkowski and David Brown, *The Prison Struggle: Changing Australia's Penal System* (Penguin Books, 1982).
[451] Marion Dixon, *Thirty Up: The Story of the UNSW Law School 1971–2001* (UNSW Law School, 2001) 29–34; Interview with Andrew Haesler (Frances Gibson, Sydney, 7 July 2015).
[452] Simon Rice, 'A Reflection on Justice Virginia Bell' (2009) 1 *Peppercorn* 18.
[453] Interview with Andrew Haesler (Frances Gibson, Sydney, 7 July 2015).
[454] Interview with Terry Buddin (Frances Gibson, Sydney, 4 August 2015).

It was not long before discussions were held between academics and a group of interested students about the possibilities of setting up either a legal clinic for students as part of the UNSW curriculum or a stand-alone legal service—a community legal centre. In 1975, a meeting was held in Redfern at St Luke's Community Centre in Regent Street to discuss ideas about community controlled legal services. By 1976, the idea of setting up a legal advice centre became a focus of the group at UNSW partly stemming, it seems, from debates about assessment at the Law School. UNSW lecturer Dave Brown's recollections as to this are as follows:

> In 1976 Richard Chisolm, Brian Kelsey and I in particular were campaigning against exams and in favour of what we then saw as much more student centred and anti-authoritarian forms of assessment, such as Pass/Fail (non-grading); self-assessment by students; and group assessment. This should be seen in the light of the then UNSW law school opposition to honours, which was militant and strongly supported by a majority of the school and was a bit of a marker of the new UNSW approach to teaching. As well as arguing for these sorts of policies within the Teaching Committee and School, in one particular session, either session one or two in 1976, Brian, Richard and I were all proposing to our classes some of these then subversive forms of assessment. The school requirement was that the proposed assessment program for individual courses had to be discussed with students in the first class. Mostly this was treated as a formality, but we three, and perhaps others, took it more seriously. In my Criminal Process class I was proposing to the students elements of self or group assessment and had issued a short discussion sheet to this effect.
>
> As a new young lecturer, I was somewhat surprised to be summonsed out of the middle of a class by one of the secretaries, who said I had to report to the Dean immediately. I attended the Dean, Prof Harry Whitmore's office, to be confronted by a red faced Dean waving my assessment discussion sheet about and shouting that if this ever got out to the profession it would be the end of the UNSW law degree. After some time, Brian Kelsey and Richard Chisholm turned up having also been summonsed and a general discussion/argument took place. Brian Kelsey took the running on this as he was a very cool and calm character and much less over-awed than I was.
> The upshot of this was a public debate on whether UNSW should liberalise assessment policy. It took place in one of the large lecture halls in Clancy and was packed out with virtually the whole law faculty including students. Brian and Richard spoke in favour, running all the then anti-institutional lines common to the 1960s and 1970s counter culture and anti-institutional movements and speaking against were Professor's Whitmore and Sackville who argued basically that the legal profession (admittedly at that time very conservative) would withdraw accreditation from the UNSW degree if such policies were adopted. There was a vote of all attending and my recollection was we got around 40% of the vote and they got 60%. My take at the time was that their argument was supported by a majority of students worried about the status of their degree, rather than on the merits of the educational arguments being put.
>
> After this vote a rumbling dissatisfaction among the more radical staff and students continued, given expression by a piece Brian Kelsey wrote in Tharunka, 'What's Wrong with the Law School',[455] in which he argued that the school was departing from its original critical mission. This article was the trigger for a mass meeting of law students and

[455] This piece is republished in the booklet *Critique of Law: A Marxist Perspective* (1978) published by the Critique of Law editorial group edited by Dave Brown and Gill Boehringer at Macquarie University.

> staff, on the then 9th floor common room in the old library tower block building. The room was packed and debate free ranging about what was or should be the ethos or mission of the UNSW law school. I have a strong recollection of a wonderful exchange between Prof Julius Stone, Stone arguing that people needed to move up the ladder of experience and knowledge rung by rung and not rush too fast, and Peter Livesey who was one of the most radical and outspoken law students, arguing in opposition to this 'take it easy', work your way up the hierarchy approach.
>
> At some point, I don't recall who it was, but someone threw in the suggestion that the students and staff should concretise this debate by establishing a community legal centre and there was some discussion of this, with subsequent spin off meetings taking the argument further. I didn't take part in these.[456]

Meetings were held, attended by academics and a vocal minority of students interested in social justice.[457] One meeting also entitled 'What's wrong with the Law School?', was held on 6 October 1976.[458] The thrust of the meeting was 'that the law course was not sufficiently in touch and not focused on practice and particularly poverty law practice.'[459] At this meeting a 'straw vote confirmed overwhelming acceptance of the idea of establishing a law school clinic to provide legal advice and assistance to the community'[460] and a solicitor from Fitzroy Legal Service was sponsored to attend the second meeting.[461]

At a meeting of UNSW Law School on 26 October 1976 it was resolved that approval in principle be given for the setting up of a legal aid clinic as soon as practicable and that a committee be set up to consider the models for such a clinic. The membership of the committee was John Basten, Phil Burgess, Terry Buddin, Julian Disney, Kim Swan, Robyn Lansdowne and Susan Churchman.[462] A further general meeting to discuss the legal centre was held on 19 November 1976 at the Law School in the Library Tower. Phil Molan from Fitzroy Legal Service came to the meeting and described how that centre operated. Richard Chisholm contributed a farsighted discussion paper that included ideas about community legal education and test cases. At this meeting there was discussion about whether to provide clinical legal education for students of UNSW or a service for 'needy members of the

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[456] Email from Dave Brown to Frances Gibson (4 November 2015).
[457] Interview with Terry Buddin (Frances Gibson, Sydney, 4 August 2015).
[458] Email from Dave Brown to Frances Gibson (4 November 2015).
[459] Interview with Robyn Lansdowne (Frances Gibson, Melbourne, 6 July 2016).
[460] Mary Jane Mossman, 'Report to the Academic Policy Committee on Clinical Legal Education' (Undated, UNSW) See Marion Dixon, *Thirty Up: The Story of the UNSW Law School* 1971–2001 (UNSW Law School, 2001) 29–34; Interview with Andrew Haesler (Frances Gibson, Sydney, 7 July 2015).
[461] Clare Petre, 'Specialisation: The Sydney Push Legal Centres in New South Wales' in David Neal (ed) *On Tap not on Top: Legal Centres in Australia 1972–1982* (Legal Services Bulletin, 1984) 12.
[462] Legal Aid Clinic, *UNSW Memorandum* File MP/SC Secretariat 29 November 1976 (Copy held by Robyn Lansdowne).

community.'[463] The service approach was selected. It was decided that a community legal centre was the priority and a clinic would be further down the track. Buddin believes that reasons for this included concerns that the Faculty did not have the resources—financial and skill—to run a clinic at this stage, and that there were other people interested in setting up a legal centre who were outside the Law Faculty.[464] As Giddings et al point out though 'Although Redfern did not become the site for the UNSW clinic, a clear culture of voluntary involvement among students had been established.'[465] In 1977, George Zdenkowski and Brian Kelsey ran a clinical program at UNSW which took the form of a placement program. This was taken over by Terry Buddin. It was understood that this was a holding operation until a clinic got off the ground. It was not to be until 1981 that Kingsford Legal Centre was established in the Faculty of Law at UNSW.[466]

There was discussion about where the service would operate and potential areas were narrowed down to Waterloo, Maroubra and Kingsford with the final decision to be dependent on the availability of accommodation. People were chosen to investigate those areas and to report back on November 30 1976. Julian Disney recalls 'There were about five or six staff who agreed to take action. I remember that Sue Armstrong said, "Why don't we go and look today".' Julian had a car and they set off. First, they looked at Botany. 'We drove around looking at public transport routes and how practitioners and students could get there. We then thought maybe we need to be closer to involve lawyers and students.'[467] Disney adds; 'After I went to the Law Reform Commission in December 1976, I was the only one around as others were away and I kept looking for premises. We went to South Sydney Council and Robert Fitzgerald's father was the community services officer on South Sydney Council, which helped. They gave us a list of places. I went to some bizarre places including one in Darlinghurst which had been a boarding house for girls from the bush. There was a building on the corner of Crown and Foveaux Streets which would have been perfect but we missed out on it. We looked at Alexandria Town Hall as well.[468]

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[463] UNSW Law, *Report of the General Meeting to discuss the setting up of a legal aid clinic held at UNSW Law School* (19–20 November 1976) (Copy in possession of Robyn Lansdowne) 1.Note that the first clinical legal education program in Australia began at Springvale Legal Service, Monash University. See Kerry Greenwood, *It seemed like a good idea at the time : a history of Springvale Legal Service 1973-1993* (1994. Springvale Legal Service).
[464] Interview with Terry Buddin (Frances Gibson, Sydney, 4 August 2015).
[465] Jeff Giddings et al, 'The First Wave of Modern Clinical Legal Education The United States, Britain, Canada, and Australia' in *The Global Clinical Movement: Educating Lawyers for Social Justice* (Oxford University Press, 2011) 4.
[466] David Nichols, *From the Roundabout to the Roundhouse: 25 years of KLC* (Kingsford Legal Centre, 2006). Evans, Adrian, et al, *Australian Clinical Legal Education : Designing and operating a best practice clinical program in an Australian law school* (ANU Press, 2017) 103.
[467] Interview with Julian Disney (Frances Gibson, Sydney, 25 July 2016).
[468] Ibid.

Redfern was seen as an epicentre of disadvantage, and finally the UNSW group had decided that Redfern Town Hall was a good spot for a centre.[469] In early 1977, Purcell, who had been running the weekly evening legal advice at Redfern Town Hall, was contacted by Frank O'Grady from South Sydney Council saying 'there's a bunch of people from the University of New South Wales who want to use the town hall. The town hall wasn't being used then due to the changes in the councils. I said, "This is going to be much better than anything we are doing" and he said "great".'[470]

Buddin describes the experience of dealing with the council as being somewhat cloak and dagger. 'For reasons that were never explained meetings had to be conducted away from the public gaze usually in some obscure back room.'[471] Negotiations were conducted with Terry Murphy—one of the councillors. Council was interested in a deal—the RLC group was offering to provide free legal advice to people the council felt a responsibility for. Negotiations were conducted with South Sydney Council in early 1977. The council had a number of under-utilised halls after the 1968 amalgamations of local suburban councils into the City of South Sydney, so Redfern Town Hall was available. It was suitable because it was close to the city for volunteer lawyers and was close to a court and the railway station. Probably the deciding factor, however, was that the council offered the hall for free rent. In return the RLC group would provide lawyers offering free advice.

Redfern Town Hall, at 73 Pitt Street Redfern, is an imposing building designed in 1871 by George Allen Mansfield.[472] The suburb of Redfern, one of the most famous in Australia, is now closely associated with the Aboriginal community of Sydney but the hall has another history, separate yet connected. It has long been the site of significant community, political and protest events. Labor party luminaries have chosen the hall for campaign launches and speeches.[473] The rugby league team South Sydney Rabbitohs was officially formed on the premises in 1908[474] and the Redfern All Blacks rugby team held large dances there in the

[469] Interview with Terry Buddin (Frances Gibson, Sydney, 4 August 2015).
[470] Interview with Terry Purcell (Frances Gibson, Sydney, 6 September 2016).
[471] Interview with Terry Buddin (Frances Gibson, Sydney, 4 August 2015).
[472] George Mansfield built many notable buildings in Sydney including the original Royal Prince Alfred Hospital and History House and the Macquarie Street offices for the Royal Australian Historical Society.
[473] For example, the Labor party launched their campaign there in 1904. Premier of NSW McCall, made his policy speech upstairs in 1944.
[474] 'Tradition', *Rabbitohs* (Web Page, 2015) <https://www.rabbitohs.com.au/news/2018/12/15/the-story-of-south-sydney/>.

mid-20th century.[475] In 1943, Bill Ferguson hired the hall for a public meeting, where he launched his nomination for a place as the first Aboriginal person on the Aborigines Welfare Board. Anti-conscription meetings were held there in the 1960s. Anzac Day gatherings were held at the hall and it was often the site for polling booths in elections. Notable rugby union player Nicholas Shehadie remembers the time in 1947:

> 'When I was first selected to go to England with the football and the people of Redfern gave me a farewell at the Redfern Town Hall and Johnnie Wade was the compere … And they had this big function at Redfern Town Hall and I remember Johnnie Wade saying "This is a fun night. Everyone leave the hardware outside"—the guns and the knives were left outside.' [476]

Large political meetings still go on in the upstairs hall, along with ballroom dancing sessions and recent dancing innovations such as the free-form dance phenomenon No Lights No Lycra. It is still a hub for the local community. But in addition to all of the above, in 1977, it opened its doors as Redfern Legal Centre and the centre still operates from these premises today.

[475] J Hartley, 'Black, White... and Red? The Redfern All Blacks Rugby League Club in the Early 1960s' (2002) 83 *Labour History* 149,158.
[476] N Shehadie, 'City of Sydney Oral History Program Redfern, Waterloo and Alexandria' *Sydney Oral Histories* (Web Page, 2015) <https://www.sydneyoralhistories.com.au/sir-nicholas-shehadie/.

Redfern Town Hall in 1871 (photograph courtesy Mitchell Library, State Library of NSW— SPF / 727)

Once premises were found, work started on establishing the centre. Haesler remembers that there was a student committee that took over a room in the Library building (at UNSW) which eventually became the RLC room.[477] Room 1309 at the Law School was to be the contact point for the centre.[478]

[477] Interview with Andrew Haesler (Frances Gibson, Sydney, 7 July 2015).
[478] Minutes of the First Meeting of the Redfern Legal Centre Management Committee Meeting 20 March 1977 (From the collection of Robyn Lansdowne).

'When Terry Buddin had organised the premises, a roster of students was formed and the UNSW academics called on their mates to organise a roster of lawyers—this must have been done over the summer 1976–77.'[479] Dominic Gibson was a student at UNSW law school in 1977. 'I started to see signs going up around the law school about Redfern Legal Centre … looking for volunteers.'[480] Peter Livesey put posters up. 'The posters said Redfern Legal Centre—free legal centre. When I was putting them up people were asking me "Hey where's the band on?" They looked like band posters.'[481]

The RLC group was highly organised and had a very practical focus. Issues such as recruiting volunteer lawyers, liaison with local lawyers, and insurance were discussed prior to opening. A detailed paper prepared by Phil Burgess on 10 December 1976 raised the issue of whether the centre should be established as an unincorporated association, a co-operative society or a company limited by guarantee[482] (the last was selected). The working party to set up the centre consisted of the original committee (listed above) with the addition of John Kirkwood, Russell Hogg, Steven Catt and Rick Raftos with a number of other academics named to assist.[483] Another discussion paper canvassed issues such as the aims of the service, services to be provided/excluded, opening hours, rosters, role of non-practitioners, ideas about management, ('we feel there should not be any head as such'[484]) and a detailed description of the procedure to be followed when a client walked into the centre.

The centre opened on the 14 March 1977. The first management committee meeting was held on a Sunday morning, 20 March 1977. Kathy Pierce was the Chairperson and 10 others attended. Nitty gritty matters were dealt with—details of services to be provided, statistics, file procedures, the Diary and File Book. Stephen Catt was the treasurer, and the bank account contained $1310 from the Law School Notes Fund and the Student Law Society. Lindy Jones was doing publicity and arranging promotion in ethnic newspapers and information for radio. John Basten was to chase the Council for information about when the

[479] Interview with Andrew Haesler (Frances Gibson, Sydney, 7 July 2015).
[480] Interview with Dominic Gibson (Frances Gibson, Sydney, 4 July 2015).
[481] Interview with Peter Livesey (Frances Gibson, New South Wales, 5 September 2016).
[482] Phil Burgess, *Choices Open for Formation of Legal Aid Clinic*, (10 December 1976) (Copy in possession of Robyn Lansdowne).
[483] UNSW Law, *Report of the General Meeting to discuss the setting up of a legal aid clinic held at UNSW Law School* (19–20 November 1976) (Copy in possession of Robyn Lansdowne) 3.
[484] Undated Discussion paper (Copy in possession of Robyn Lansdowne).

promised Council social worker/ Coordinator position would be filled.[485] On 31 March 1977, the organisation was set up as an unlisted non-profit company limited by guarantee.[486]

Initially, RLC operated legal advice and assistance sessions[487] five week nights and two afternoons a week on Tuesdays and Thursdays. Academic lawyers were often around during the day.[488] Andrew Haesler was rostered on as a law student on the second day the centre was open. At this stage, there were no paid staff.

> There were folders and a big table, and we must have had some training—probably out at uni the week before. Because it was alien but not totally alien. We had a phone and we had a number … The phone rang and we answered it … People were wandering in … we took details and got information and clients could come back to get advice in the evenings. … I can't remember sending anyone away. The advice was always free. There was never a means test … Referrals were made to the ALAO and the Public Solicitor so we had information about them.[489]

The centre's free legal assistance was provided to anyone who walked in the door and it was open out of normal office hours, usually in the evenings. At first the centre had no funding or assets. 'The Council paid for cleaning, maybe a few bits of furniture. Everything was donated. The first photocopier held together with a paperclip literally—to do a copy you had to move a paperclip. We got some old furniture from law firms who would give furniture as they were upgrading.'[490] By April 1977 a management committee meeting noted that things were clearly moving ahead. It was minuted that Stephen Catt was authorised to 'obtain twelve porcelain mugs, detergent, two tea towels, half a dozen teaspoons, a sugar tin and a scrubber.'[491]

> The dress was casual—there were barristers in jeans etc—there was a quasi-hippiness to it but a sense of pride. There was sense of the humanness of lawyers that was apparent not just to colleagues but for all the clients, and there was a sense of courtesy and respect for all clients. There was a sense that we have to do as good a job as any other lawyers.[492]

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[485] Minutes of the First Meeting of the Redfern Legal Centre Management Committee Meeting 20 March 1977 (From the collection of Robyn Lansdowne).
[486] See Australian Securities and Investment Commission, Companies Register, *Redfern Legal Centre Ltd CAN 001 442 039.*
[487] Clare Petre, 'Specialisation: The Sydney Push Legal Centres in New South Wales' in David Neal (ed) On *Tap not on Top: Legal Centres in Australia 1972–1982* (Legal Services Bulletin, 1984) 12.
[488] Interview with Terry Buddin (Frances Gibson, Sydney, 4 August 2015).
[489] Interview with Andrew Haesler (Frances Gibson, Sydney, 7 July 2015).
[490] Interview with Clare Petre (Frances Gibson, Sydney, 21 May 2013).
[491] Redfern Legal Centre, Minutes of Management Committee Meeting, 6 April 1977, 2 (Copy held in collection of Robyn Lansdowne).
[492] Interview with Michael Mobbs (Frances Gibson, Sydney, 29 April 2016).

A management committee was established. The Council had agreed it would pay for a social worker to staff the centre[493] and Clare Petre, the first employee, started work on 1 August 1977.[494] Advertisements for a lawyer and legal secretary were in the *Sydney Morning Herald* from 16 July 1977 after a $20,000 grant from the Federal government was secured. John Terry was employed as RLC's principal solicitor and Susan Davitt as secretary.[495] With the arrival of paid staff, the centre changed slightly. 'When the paid staff came they became the core and they were there every day … the volunteers were not so crucial.'[496]

That a social worker was the centre's first employee was probably partially a result of the Council's offer to fund a position, but it was also in keeping with the centre's ethos of offering a holistic service to clients. Academics at UNSW involved with the centre had already demonstrated interest in the use of non-lawyers in the provision of legal services.[497] The lawyers at the centre had a radical approach to legal practice, as Petre[498] recalls:

> They felt that a lot of people who came face to face with the legal system had a whole range of problems and a lawyer might represent them, get a plea in mitigation or get a reduced sentence but they still had all these other problems, domestic violence, income problems etc. We wanted to focus on helping clients with a range of other services and if you are a low-income disadvantaged person in poverty, almost by definition, they needed other services. We also wanted to help people not getting legal services, for example prisoners and tenants, gay people and other minority groups were identified as groups who were missing out … We wanted to be proactive and reach out … We wanted to set up a model that would be different, that would be holistic and wouldn't just look at the black letter law part of a person's problem because they wanted to focus on poverty law. The lawyers felt that there were people who fell through the gaps in traditional law and that's where they wanted to focus.

At first the centre had little funding or assets but there was no shortage of clients. A letter seeking funding noted: 'Our first four weeks of operations suggests that there is a strong demand for the type of service we are providing, as illustrated by the fact that with a minimum of publicity we have already assisted approximately 100 clients.'[499] Quality control was managed by UNSW staff —The Gang of Six—Julian Disney, John Kirkwood, Terry

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[493] Minutes of the First Meeting of the Redfern Legal Centre Management Committee Meeting, 20 March 1977 (Copy in possession of Robyn Lansdowne).
[494] Interview with Terry Buddin (Frances Gibson, Sydney, 4 August 2015).
[495] Redfern Legal Centre, *Annual Report* 2016-2017.
[496] Interview with Robyn Lansdowne (Frances Gibson, Melbourne, 6 July 2016).
[497] See John Basten and Julian Disney, 'Representation by Special Advocates' (1975–1976) 1 *University of New South Wales Law Journal* 168, 174, advocating for use of trained non-lawyers in social security and criminal matters. Disney also notes '[w]e knew of a law firm in London which used a social worker.' Interview with Julian Disney (Frances Gibson, Sydney, 27 April 2016).
[498] Interview with Clare Petre (Frances Gibson, Sydney, 21 May 2013).

Buddin, John Basten, Denis Harley and Paul Anderson, who were responsible for reviewing files allocated on an alphabetical basis. Comments by lawyers working at the centre at the beginning:

> The roster at RLC at the beginning was unpredictable. Problems were related to homelessness, domestic violence, consumer issues, family and criminal law. A lot of judgements had to be made about advice on the spot or referrals. People had literacy issues, there were a lot of migrants, tenancy problems, contracts that people couldn't understand.[500]

> It was an eclectic mix—a lot of the work was dealing with bureaucracies.[501]

> [ i]t was hectic—people would come in drunk—a whole range of different people … there was a sense of being on the edge as we were taking on cops, and practices etc which had never been systemically challenged. We were challenging the current way of doing things.[502]

Peter Cashman who had worked in private firms as well as Fitzroy Legal Service noted that RLC:

> [w]asn't as well organised as I would have expected. It is just endemic in the way legal centres operate … there was no adequate typing or secretarial support … there were endless debates about self-sourcing—doing your own typing etc. I was in a conventional legal practice where you had a dictaphone and secretaries … There was a big move about people getting paid the same amount and having no demarcation between professionals and support staff … the centre was always under-resourced … It was a pretty harmonious place … people worked together well.[503]

Community lawyer Debbie Whitmont noted that:

> Redfern had a very important role in building a bridge between the legal system and real people— that was the huge strength of it. Lawyers who worked in big city firms would come out and see people who would walk in off the street— many of whom had very difficult problems … Redfern Legal Centre was THE legal centre. The only legal centre we had to compete with was Fitzroy. The relationship was incredibly competitive as to who was the best provider of services. [504]

Robyn Lansdowne commented that:

[500] Interview with George Zdenkowski (Frances Gibson, Sydney, 28 October 2017).
[501] Interview with Terry Buddin (Frances Gibson, Sydney, 4 August 2015).
[502] Interview with Michael Mobbs (Frances Gibson, Sydney, 29 April 2016).
[503] Interview with Peter Cashman (Frances Gibson, Sydney, 30 August 2016).
[504] Interview with Debbie Whitmont (Frances Gibson, Sydney, 28 April 2016).

> The centre life was very social. There were a lot of informal parties at the Town Hall … John Basten, Peter Cashman, Julian Disney and Stan Ross had a house at Bundanoon and so in the late 1970s we used to spend a lot of weekends there working on their house and a lot of legal centre functions were there.[505]

In the early management committee meetings there were often entries under the headings 'Parties' often held at Phil Burgess' place. Petre says 'We would regularly go to Virginia Bell's in Redfern and my house. The Sydney CLC group was known for having fun.'[506] Despite close links with colleagues at Fitzroy Legal Service in Victoria, the two centres seemed to take different approaches. One saying at the time was 'If you have an idea in Victoria you call a meeting, if you have an idea in Sydney you have a party.'[507] Despite this comment, evidence shows there were plenty of meetings at the centre and no end of discussion. 'There was a lot of discussion … There were definitely disagreements …'[508] Bell remembers;

> 'I enjoyed the work. We used to have regular staff meetings but I was a bit intolerant, I think, of some of the discussions. I remember when the union of social workers came to see us. They had all these ideas that we should only work 35 hours a week. Not that I am anti-union, but I didn't think solicitors who were endeavouring to help people needed that kind of help. My focus was always on the casework. There was the Public Solicitor and the ALAO—but there was a limited amount of legal assistance.'[509]

The centre was well accepted in the Redfern area. Petre points out that '[w]hen people understood what we were doing there was huge acceptance of the centre … Locals got used to everyone. We ended up very good mates with the publican. We developed good relationships with local doctors and local traders like Roger the Shoeman.'[510]

### Management of the centre and the Law Society

Before RLC opened, Garth Nettheim, a legal academic from UNSW, had discussions with the NSW Law Society Council about the proposed operations of RLC but the lecturers at the Law School, aware of the obstructive attitude taken by professional associations in England

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[505] Interview with Robyn Lansdowne (Frances Gibson, Melbourne, 6 July 2016).
[506] Interview with Clare Petre (Frances Gibson, Sydney, 21 May 2013).
[507] Ibid.
[508] Interview with Debbie Whitmont (Frances Gibson, Sydney, 28 April 2016).
[509] Interview with Virginia Bell (Frances Gibson, Sydney,1 December 2016).
[510] For more on Roger the Shoeman see 'Old Shops', *Sydney Morning Herald* (online, 2014) < https://www.smh.com.au/interactive/2014/OldShops/roger-shoe-repairs.html >.

and Victoria,[511] decided not to seek Law Society approval before starting the centre. On 22 February 1977, Don Harley from the Law Society contacted the centre and spoke to Robyn Lansdowne. He said he would come and visit the centre in its first week of operation. Her note of the conversation states that he seemed 'if not enthusiastic, quite interested and non-critical,' but she recalls feeling 'indignation that the Law Society were poking their nose in.'[512] He wanted to know the names of lawyers who were rostered on for the first week. He raised some potential issues about supervision and wanted to participate on the management committee organising the centre. This was going a step too far for the centre workers and by April 1977 this offer had been politely refused [513] though he did attend the second meeting of the Management Committee as an observer. Later there was a meeting between John Kirkwood (UNSW) and Don McKay, Vice President of the Law Society, at which McKay suggested again that the Society have a committee member attend at RLC Management Committee. The proposal was 'spiritedly rejected by the RLC contingent.'[514]

The group involved in establishing the centre differentiated their aims for a legal service from that of the more traditional approach of the legal profession as enunciated by the Law Society and the Bar Association. They were aware of the profession's previous hostility to the government's Australian Legal Aid Office and reform of the profession generally[515] and that, as [Kevin] Bell points out, community legal centres represented an even 'more fundamental challenge to the dominance of private practice.' There was a general belief also that 'Any legal centre worthy of the name will be attempting to upset the status quo to some extent.'[516] Weisbrot notes that the centres attacked (or ignored) traditional notions of professionalism by advertising, using paralegals and blurring the distinction between solicitors and barrister'. [517]

Concerns about the Law Society's reaction to the centre were not unjustified. In a letter dated

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[511] See attacks on the Australian Legal Aid Office described in Mary Anne Noone and Stephen Tomsen, *Lawyers in Conflict* (Federation Press, 2006) 75–95; Don Fleming and Francis Regan, 'Re-visiting the Origins, Rise and Demise of the Australian Legal Aid Office' (2006) 13(1) *International Journal of the Legal Profession* 69, 87; Kevin Bell, 'Politics of Reforming the Legal Profession in Australia: A Case Study of the Western Region Community Legal Centre' (1985) 7 *Law and Policy* 143.
[512] Interview with Robyn Lansdowne (Frances Gibson, Melbourne, 6 July 2016).
[513] Memorandum Management Committee Redfern Legal Centre (2 April 1977) (Copy in possession of Robyn Lansdowne).
[514] Robyn Lansdowne, Note of telephone call to Don Harley 22 February 1976. (Copy held by Robyn Lansdowne) and Minutes of Meeting of the Management Committee of Redfern Legal Centre (24 March 1977) (Copy in possession of Robyn Lansdowne).
[515] Kevin Bell and John Dixon 'Lawyers: Making the Industry More Flexible' (1981) 6 *Legal Services Bulletin* 241.
[516] John Basten, *Community Control of Community Legal Centres*, undated (Copy in possession of State Library of New South Wales) 6.
[517] David Weisbrot, 'The Australian Legal Profession: From Family Firms to Multinationals' in R L Abel and P S C Lewis (eds), *Lawyers in Society Volume One: The Common Law World* (Berkeley, Los Angeles and London,1988) 291.

the 25 March 1977, the secretary of the Law Society advised that the Executive Committee was concerned that aspects of the proposed operation of the centre might give rise to breaches of the *Legal Practitioners Act*.[518] The Society made recommendations to the centre that notices be displayed prominently to those seeking advice noting that between 9am and 5pm the centre is 'manned by students not qualified to give legal advice and that referral out from the centre be directed to a qualified practitioner on a panel as had been the case with existing referral centres.'[519] The centre's files do not include a written response, if any, to these requirements but neither requirement was acted upon. In March 1977, the Society also raised concerns with the Commissioner of Corporate Affairs about the use of the name Redfern Legal Centre on the letterhead but there is no evidence that any action was taken by the Commissioner.'[520] Several months after the opening of the centre, the Council of the Law Society made inquiries of the Law School and arranged a visit to the centre. On being shown around the centre, one senior member was heard to remark, presumably in acceptance of the centre that '[i]t is just like a legal practice, really.'[521]

George Zdenkowski remembers:

> I do recall there were issues with Law Society at the beginning around the sort of activities that were going on—issues such as supervision and the whole notion of volunteers and students. It was dressed up as concern for standards of professionalism but in some ways they were very conservative about that. I don't know if they saw it as a threat but it took a long time for the profession to realise the incredibly important role that CLCs had as a complementary part of the system.[522]

Virginia Bell adds that:

> We had difficulties with the Law Society over letters on Redfern Legal Centre letterhead. They were concerned that Redfern Legal Centre was a company limited by guarantee and not under a name of the Principal. I remember going to talk to the President of the Law Society, Rod McGeoch. These things were new, and new for the Law Society. I think we had a siege mentality in the sense that outside a few barristers that were sympathetic, we tended not to call on the Bar and started off assuming the professional bodies were not in favour of the centre. We saw ourselves as outsiders. I think we were apprehensive and felt that we were not treated well.[523]

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[518] *Legal Practitioners Act* New South Wales 1898. Letter from Law Society of NSW to Redfern Legal Centre, 25 March 1977.
[519] Letter from Law Society of NSW to Redfern Legal Centre, 25 March 1977.
[520] Various authors, 'Legal Centre Practice Problems: November 1983' (Confidential document Copy in possession of Robyn Lansdowne).
[521] John Basten, Regina Graycar, David Neal 'Legal Centres in Australia' *UNSW Law Journal* 163, 172.
[522] Interview with George Zdenkowski (Frances Gibson, Sydney, 28 October 2017).
[523] Interview with Virginia Bell (Frances Gibson, Sydney, 1 December 2016).

Volunteer lawyer Paul Farrugia explains:

> The legal profession definitely had a bit of antagonism to the centre because we were taking work away from private profession but I would say the kind of work we are doing would not be taken on by the private profession and the clients were not ones that private lawyers wanted. We didn't do conveyancing or personal injury. We had panels of lawyers later on we referred matters to.[524]

Debbie Whitmont remembers, though, that local lawyers were generally welcoming and that the centre had good relationships with them.[525] But the profession's fears were slow to dissipate. In 1984, the President of St George/Sutherland Law Society raised his concerns about the centre in a newsletter. 'I have statistics of the Redfern Legal Centre. They open an average of 341 files per month, 4086 files in 1983 and granted 7,958 interviews in 1983. Want to know where all the clients are going?'[526] This concern by the private profession that they were missing out on clients, and therefore income, was common in the early years of community legal centres and legal aid bodies[527] but dissipated after the profession realised that clients taken on by CLCs and legal aid were in almost all cases clients who could not pay private fees and in fact referrals from CLCs to the private profession actually increased work for private lawyers.

### Community control

The centre was not a grassroots community organisation. There were always tensions between the needs of the local community and the wider population, and debates as to what extent the centre should be community controlled. Community control was a topic of much discussion in the 1970s in Australia, the UK and the USA in relation to human services.[528] Arguments in favour of community control present the demand for vesting governmental authority at the neighbourhood level in terms of the liberal democratic tradition. According to this model, individuals become alienated from government and society unless they can

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[524] Interview with Paul Farrugia (Frances Gibson, Sydney, 27 April 2016).
[525] Interview with Debbie Whitmont (Frances Gibson, Sydney, 28 April 2016).
[526] *RLC News* (Redfern Legal Centre, August 1984).
[527] See for instance Kevin Bell, 'Politics of Reforming the Legal Profession in Australia: A Case Study of the Western Region Community Legal Centre' 7 *Law and Policy* 143.
[528] See for instance Warren Feek, *Management Committees: Practising Community Control* (National Youth Bureau, 1982); Richard M Hessler and Carolyn Sue Beavert, 'Citizen Participation in Neighborhood Health Centers for the Poor: The Politics of Reform Organizational Change, 1965–77' (1982) 41(3) *Human Organization* 245.

effectively participate in the determination of public policy as it affects them most directly.[529] Law centres in the USA endorsed a model whereby community control was

> [i]n part a means of negating control by the organised bar which they felt would be opposed to a more aggressive form of advocacy, one that would seek to use the law as an instrument of social change. The lawyers were also committed to altering the conventional power relation between the poor and the agencies that purport to serve them. Community control would create new opportunities for the poor to participate in determining agency policy and decisions, and this principle should also apply to legal service programs for the poor, or so it was felt.[530]

Many of those influential at Redfern Legal Centre's beginning wanted what they termed community focus, not community control, possibly developing a new and more accurate description of the community involvement that was to become the standard in Australian legal centres. This can be contrasted with the rhetoric at Fitzroy and other Victorian community legal centres.[531] In a paper on community control, Basten wrote 'I remain to be convinced however that "community control", as a principle of general application, is any more than a catch cry based on an anachronistic view of society and appealing to the guilt felt by privileged but concerned professionals working with disadvantaged people.'[532] In papers written by RLC staff and volunteers the issues were canvassed. As Lansdowne pointed out 'Redfern Legal Centre was not set up in response to a cry from the heart of Redfern—it was largely a matter of contingencies that the legal centre was sited in Redfern rather than somewhere else.'[533] The varying arguments raised in RLC papers about community involvement were in summary that:

a) the centre should be arming the poor to fight their own legal and political battles, not making middle class professionals such as centre staff indispensable;[534]
b) the centre should be working to overcome the powerlessness of the clients, and responding to the real needs of the clients by enabling clients themselves to identify their needs and priorities;

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[529] Norman I Fainstein and Susan S Fainstein, 'The Future of Community Control' (1976) 70(3) *The American Political Science Review* 905.
[530] Jerome Carlin, 'Store Front Lawyers in San Francisco' (1970) 7(6) *Trans-action* 66.
[531] See John Chesterman, *Law and the New Left: A History of The Fitzroy Legal Service 1972–1994*, (PhD Thesis, University of Melbourne, 1995) 115-121.
[532] John Basten, *Community Control of Community Legal Centres*, undated (Copy in possession of State Library of New South Wales) 15.
[533] Robyn Lansdowne, *Community Involvement in Redfern Legal Centre* (November 1977) (Copy in possession of Robyn Lansdowne) 7.
[534] Ibid.

c) there should be accountability to the community for expenditure of funds and decisions about service provision to clients;
d) community involvement would build political support in the community and maintain the vitality of the centre;
e) it took considerable time and effort and resources to get members of the local community on the management committee together with concerns that people may be out of their depth or bored and, given that middle-class members may overpower others, may not be worthwhile;
f) a concern that other people would change the culture of the centre if their involvement was anything other than token;
g) it would be better for workers at the centre to get involved in already existing community groups or formalising control to have places for local residents on the committee to allow community input.

These issues about the role of community members in the centre were to have a central role in centre discussions for the next 40 years.[535] Community involvement as a concept was of national concern to CLCs and was the subject of a session at the Second National Conference of community legal centres in March 1980.[536] The conclusion adopted by the RLC team was in the end 'that the concept of "community control" is vague and even in its most practical sense it will be difficult to achieve.'[537] 'We were a bit cynical about community control as it didn't really seem to be about the punters on the street but community organisations.'[538] The centre was set up as a company limited by guarantee however the directors of the company in practice delegated decision-making power to the Management Committee. Workers at the centre such as West believed that efforts to adopt 'community control' would end up with members of community organisations being represented on the RLC management rather than any real representation from local individuals.[539]

[535] See Memo to Centre meeting 5 July 1979 from Roger West and John Kirkwood containing proposals for the establishment of a 3-tier structure for the Centre to include more involvement from the community (probably welfare workers, students and solicitors) and Centre restructure proposals in 1988 and 2000 and 2008 discussed later in this chapter.
[536] Kirsty Macmillan, 'Community Legal Centres: Second National Conference' (1980) 5(2) *Legal Services Bulletin* 77.
[537] John Basten and Robyn Lansdowne, 'Community Legal Centres: Who's in Charge? (1980) 5(2) *Legal Services Bulletin* 56.
[538] Interview with Roger West (Frances Gibson, Sydney, 9 December 2016).
[539] See discussion on community participation in Ronald Sackville, Commission of Inquiry into Poverty, *Law and Poverty in Australia* (Australian Government Publishing Service, 1975) 49, noting difficulties involved in the approach.

Centre workers decided that legal aid agencies should provide legal services to disadvantaged individuals and groups in a way that consumer powerlessness is lessened and sense of reliance on professional help minimised. The centre should have close links with the neighbourhood in which it operates. This was to come about without vesting control of centre policy to local residents. Examples given of how this could occur is that staff could live in the local area, staff can assist in local organisations, drink in local pubs, members of local organisations may attend centre meetings, etc.[540]

At the beginning of the centre's operations, Basten observed that although the centre:

> [n]ever had any local residents on its management committee, that committee actively sought comment and criticism from local social agencies. The management committee never had a fixed membership and was open to anyone working at or interested in the operations of the centre. [541]

The basic operations of the centre—evening advice services and general casework—continued mostly unchanged through the 1980s and 1990s. Relationships with the profession and government changed over the years. As Noone points out, by the 1990s Government support and funding had increased. CLCs were no longer on the fringe of the legal aid system but were considered to be an essential element of the system by both government and the legal profession.[542]

Management structure and governance did, however, change slightly in the late 1980s. At the beginning RLC had a flat management structure. All staff were equal and decisions were made collectively. Meetings were held once a month and anyone who showed up was part of the Committee. 'Sometimes 12 people would turn up and sometimes 45. It worked pretty well. There was robust discussion … You had the sense of a community. It was a bunch of people with more or less values aligned, teasing out difficult problems, working out what the priorities should be but also on a collective mission to achieve something'.[543] In January 1988 after a management consultant's report, the management structure changed to have a fixed membership which included staff, volunteer and community representatives.[544]

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[540] See John Basten and Robyn Lansdowne, 'Community Legal Centres: Who's in Charge? (1980) 5(2) *Legal Services Bulletin* 57.
[541] John Basten, Regina Graycar and David Neal, 'Legal Centres in Australia' (1983) 6(2) *UNSW Law Journal* 163, 173.
[542] Mary Anne Noone, 'Mid-Life Crisis: Australian Community Legal Centres' (1997) 22 *Alternative Law Journal* 25.
[543] Interview with Gordon Renouf (Frances Gibson, Sydney, 28 January 2016).
[544] *RLC News* (Redfern Legal Centre, January/February 1988) 2.

## The work of the centre

The centre was involved over the years in a very wide variety of areas of legal and advocacy work. Core areas were housing, crime, police powers,[545] credit and debt, welfare rights, and domestic violence.[546] Staff were active in public discussions on the introduction of new mental health legislation in 1983,[547] occasionally in planning and environmental issues,[548] prisoners' voting rights,[549] and campaigns on proposals to abolish dock statements (the right at common law to make a statement not on oath and not subject to cross-examination).[550] Some of the matters taken on by the centre had bigger dimensions. In 1977 in what was to prove a rare foray into environmental issues the centre decided to assist the Friends of the Earth and the Movement Against Uranium Mining in proposed actions under the *Atomic Energy Act* and another for misleading advertising under the *Trade Practices Act*.[551] Michael Mobbs instigated this uranium action later run under John Kirkwood's name—with no professional connection with the centre.[552] In June 1977, demonstrators were trying to prevent the ship ACT6 taking 200 tonnes of yellowcake from Lucas Heights.[553] John Terry and David Buchanan assisted demonstrators arrested at Glebe Island container terminal in these actions.

The centre was able to offer its services where access to private lawyers may have been difficult for clients. An early challenge for Redfern Legal Centre were the events of the first Mardi Gras march on Saturday 24th June 1978. The evening celebration was a planned street 'festival' calling for an end to discrimination against homosexuals in employment and housing, an end to police harassment and the repeal of all anti-homosexual laws. The event was met with unexpected police violence. The Mardi Gras' organisation history records:

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[545] New South Wales, *Parliamentary Debat*es, Legislative Council, 6 May 1998, 4412 (The Hon. RSL Jones).
[546] See Redfern Legal Centre, Annual Reports.
[547] New South Wales, *Parliamentary Debates*, Legislative Council, 30 November 1983, 3986 (The Hon Elisabeth Kirkby).
[548] The centre often provoked the ire of some conservative MPs, for example, see Fred Nile's observation on a planning issue in 1989: 'From my observation, often some of those groups consist of radicals or stirrers who, like the Redfern Legal Centre, would become involved in a case that could drag on for a long time at great public expense.' New South Wales, Parliamentary Debates, Legislative Council, 19 April 1989, 6767 (The Hon Fred Nile).
[549] New South Wales, *Parliamentary Debates*, Legislative Council, 9 March 2006, 21378 (The Hon. Ms Lee Rhiannon).
[550] New South Wales, *Parliamentary Debates*, Legislative Council, 19 April 1994, 1344, (The Hon. Elisabeth Kirkby).
[551] Redfern Legal Centre, Management Committee Meeting 23 June 1977. (Copy held in collection of Roby Lansdowne).
[552] Redfern Legal Centre, Management Committee Meeting 21 July 1977. (Copy held in collection of Roby Lansdowne).
[553] Drew Hutton and Libby Connors, *History of the Australian Environment Movement* (Cambridge University Press 1999) 141.

> Several hundred gays, lesbians and straight supporters—some in fancy dress and some simply rugged up against the cold—gathered at Taylor Square and followed a truck with a small music and sound system down Oxford Street to Hyde Park. As revellers joined in along Oxford St, the police harassed the lead float along the route and when the march stopped in Hyde Park, where telegrams of support were to be read, police confiscated the lead float truck and arrested the driver … Angered by this, 1500 revellers diverted up William St to Darlinghurst Road, where the police had closed the road. At this point the police swooped and violently arrested 53 men and women, many of whom were beaten in cells.[554]

Virginia Bell remembers:

> I was with some friends and we joined it. I remember it turned ugly in Darlinghurst Road. The police were rounding people up and putting them in paddy wagons and taking them to Darlinghurst Police Station. I think it was using unlawful assembly. I went to the police station and was there with David Buchanan and John Terry would have been there.[555]

RLC lawyers attended the police station and represented those charged in the Local Court. Chris Ronalds:

> Everyone was taken to different police stations. We had no money to bail anyone out. In those days the legal left used to drink at the Criterion. John Terry [RLC solicitor] and I went down and borrowed money from the publican at the pub. He lent us $1000. That was a huge sum of money in those days and we marched up the street with the cash terrified that something would happen to it. So when everyone went to court they had to give me their bail money and then I had to take it down to the pub and pay it back.[556]

It was not until 29 November 1979 that the police officially dropped charges against all RLC clients with assistance from many lawyers including barrister Carolyn Simpson after magistrate Mr Henderson SM found no prima facie case.[557]

The sheer variety of work at the centre is illustrated by an entry in a policy paper for a centre meeting in February 1980. Symonds outlined some of the recent work of the centre including being instrumental in getting an inquiry into Goulburn gaol up and running, the Greek social security cases, an Australian Law Reform Commission (ALRC) inquiry into class actions, work on legal services for children, assisting tenants in Chippendale leading to the development of the first tenants cooperative in Sydney, ALRC inquiry into debtors, CLE including radio tapes on law for migrants, activities in local paper 'The Guardian', creation of

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[554] 'History', *Sydney Gay and Lesbian Mardi Gras* (Web Page) http://www.mardigras.org.au/history/.
[555] Interview with Virginia Bell (Frances Gibson, Sydney, 1 December 2016).
[556] Interview with Chris Ronalds (Frances Gibson, Bawley Point, 24 January 2016).
[557] *RLC News* (Redfern Legal Centre, 1980) 4.

a video tape on RLC, a video tape on defending yourself and articles on legal issues for prisoners magazine Imprint.[558] In the 1980s and 1990s, outreach legal advice services were run at Department of Housing tower blocks and various women's services, and in 1991 a branch office was set up at the University of Sydney to provide advice to students of the university.[559]

Australia's first case of Acquired Immunodeficiency Syndrome (AIDS) was publicly reported in May 1983.[560] This new disease provoked a phobic reaction which caused the professions, the media, and the public to treat it as much more dangerous and infectious than it was.[561] The Federal Labor government invited the gay community and other at risk groups to be part of devising the official government response which built on activist work to raise awareness. Their expertise ensured Australia had an outstanding response to this disease and infections peaked in Australia in 1983 and had dropped by 1987, though, the effects of the disease in relation to legal problems continues. Redfern Legal Centre acted for a number of clients with AIDS in different areas of the law during this period. The centre ran victim's compensation cases involving people whose HIV status had worsened as a result of the crime and ran housing cases of various types for clients with AIDS.[562] There was a great deal of fear in the community and inappropriate responses by the bureaucracy. The author recalls appearing at Redfern Local Court for a client who was HIV positive only to find all the police officers attending the court dressed in head to toe white protective suits. In 1988, the Australian Federation of AIDS Organisations (AFAO), with help from Redfern Legal Centre Publishing, published a pamphlet 'AIDS and Your Rights' which channelled inquiries to the community legal centres 'because many people affected are unable to afford legal advice and representation; because of the experience of the community legal centre movement in anti-discrimination law and public law issues; and because of the role of legal centres in cases where the cause is novel and the facts are challenging.'[563] The Intellectual Disability Rights Service produced a policy document on AIDS and Intellectual Disability.[564]

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[558] Garth Symonds, Background paper to Policy Meeting, 3 February 1980. (Copy held in collection of Robyn Lansdowne).
[559] Letter from Vanessa Chan SRC to Management Committee RLC, 6 August 1990 (Letter held at Redfern Legal Centre archives).
[560] Frank Bongiorno, *The Eighties* (Black Inc, 2016) 202–203.
[561] Julie Hamblin, Nick Crofts and Jamie Gardiner, 'Health Workers, AIDS and Patients' Rights' 17 *Alternative Law Journal* 15 (1992) 18.
[562] One case included *Spooner, Richard (Tenant) v NSW Department of Housing (Landlord)* [1992] NSWRT 32 (11 March 1992), an application for compensation brought by the deceased tenant against the landlord based on the alleged failure by the landlord to provide adequate security for premises let to the tenant pursuant to a residential tenancy agreement, dated 14 June 1991.
[563] David Buchanan and John Godwin, 'AIDS: The Legal Epidemic' (1988) 13(3) *Legal Service Bulletin* 111, 112.
[564] Intellectual Disability Rights Service, *AIDS and Intellectual Disability* (IDRS, 1992).

The centre's work was assisted by a number of long standing pro bono arrangements over the years under study. Private solicitor Paul Farrugia started giving advice on evening advice nights in 1978 and later left his private practice to do advice on afternoons for 20–25 years.[565] In 1988 the Centre was approached by law firm Clayton Utz to develop a pro bono partnership whereby the firm agreed to take on 50 cases a year. The centre also had an arrangement with Frederick Jordan Chambers whereby barristers would act pro bono on matters referred by the centre.[566] These, and similar partnerships developed over the years, enabled the centre to help many clients who could not otherwise have accessed legal assistance.

As well as the generalist work, there were the ongoing specialist areas.

### Specialist areas of work at RLC

A feature of RLC's work has been responding to community demand by the development of specialist areas. The concentration of effort and commitment by staff and volunteers in certain areas led to many of the innovations developed by RLC, as will be apparent in the next chapter. It is also, though, an integral part of the way the centre worked. Allowing staff to follow areas of interest and allowing them autonomy in the choice of matters led to notable successes, involvement in high profile legal matters and campaigns for reform. Areas of work that led to significant innovations in practice such as completely new services or products or new modes of providing legal assistance including family violence, intellectual disability, welfare rights, prison work, aged care and publishing will be described in Chapter 6. Other areas of specialisation detailed below have been in coronial inquests, consumer credit, drug reform policy, housing and legal aid funding campaigning.

### Inquests

Deficiencies in coronial law and practice received considerable attention during the 1980s and 1990s in NSW and to some extent this was a result of the involvement of the centre in

[565] Interview with Paul Farrugia (Frances Gibson, Sydney, 27 April 2016).
[566] Redfern Legal Centre, *Annual Report* 1989-1990.

providing legal assistance in an area where there was little free legal assistance available.[567] There were concerns relating to the status and resourcing of the Coroners Court, the accountability and transparency of the coronial process and the Court's ability to carry out its research and educative function.[568] RLC generally focused on inquests where lawyers at the centre decided there was an element of public interest such as systemic problems in the justice or policing systems. This work started in conjunction with the centre's early work on police issues such as verballing and prisons work, and continues today. The centre appeared at inquests:

a) for the family of Warren Lanfranchi at the inquest into his death in 1981 in Dangar Place, Chippendale at the hands of the police officer Roger Rogerson;[569]
b) for Sasha Huckstepp and Brian Huckstepp into the death of Sally Anne Huckstepp, Lanfranchi's girlfriend, who went public after his death and accused Rogerson of executing Lanfranchi. On February 6 in 1986, her body was found floating in a pond at Centennial Park;[570]
c) into the death of Catherine Dale Payne, a police informant;[571]
d) for the brothers and sisters of David Gundy, an Aboriginal man shot dead by police in Marrickville. Mr Gundy was killed when police raided his home before dawn on 27 April 1989 by members of the Special Weapons and Operations Squad (SWOS), searching for another person;[572]
e) in 2013 in the Le Marseny inquest which highlighted the issue of medical staff not being available for people in police custody after 10pm on Friday and Saturday nights;[573]
f) in 2015 into the death of Dylan Maher who died in a car involved in a police pursuit.[574]

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[567] Michael Hogan, 'Towards A New South Wales Coronial System for the Nineties' (1991) 2(3) *Current Issues in Criminal Justice* 75.
[568] Ibid 75-79.
[569] See Vivian Altman, 'The Lanfranchi Affair: An Unsatisfactory Inquest' (1983) 8 Legal Service Bulletin 64.
[570] Gregory Charles Glass, *Coroner's Inquest Finding into the Death of Sallie-Anne Huckstepp* [State Coroner NSW, 1991).
[571] Parliamentary Joint Committee on the National Crime Authority, Parliament of Australia, *Witness Protection* (1988) 13.
[572] Kevin Waller, State Coroner for NSW from 1988–1992 said of this matter, 'the media appeared to have gone berserk. I have never in my life seen a similar reaction to any such event' in Kevin Waller, *Suddenly Dead* (Pan McMillan, 1994) 18.
[573] Geesche Jacobsen, 'Surry Hills Cell Death Triggers Inquiry', *Sydney Morning Herald* (online, 18 June 2011) <https://www.smh.com.au/national/nsw/surry-hills-cell-death-triggers-inquiry-20110617-1g7vu.html>.
[574] Magistrate Harriet Grahame, 'Inquest into the Death of Dylan Maher', *Decision of Deputy State Coroner Grahame on 23 November 2015* (Web Page) <http://www.coroners.justice.nsw.gov.au/Pages/findings.aspx#2015findingsandrecommendations>.

## Consumer Credit

The centre had undertaken work on credit and debt matters since its inception but it was in the 1980s and 1990s this specialty came to the fore, and developed into what was probably to be RLC's most significant area of major litigation. Fleming notes that from the 1990s, people were encouraged to assume responsibility for the enforcement of economic rights and interests in an increasingly diverse and complex legal regulatory system.[575] Consumer and financial rights were areas previously unexplored to any great extent by legal aid services and RLC and other CLC lawyers saw possibilities to achieve change that could benefit disadvantaged consumers through both policy work and litigation.

In 1978, RLC obtained funding for a financial counselling service[576] and led representations to government for funding for increased financial counselling services.[577] Most cases were individuals seeking minor assistance. An RLC solicitor described one case:

> I remember an Aboriginal client coming in and he had received a notice from the tax office saying he hadn't paid his tax bill. I looked at him and said 'So why haven't you paid your tax then? He said, "I'm an old age pensioner, I'm illiterate, I'm Aboriginal and I'm drunk all the time." I said, "that sounds reasonable" and I wrote that down and sent them a letter. He never heard from them again.[578]

In 1984, it was decided to set up Monday night advice sessions as a specialist credit and debt service. This led to the establishment of a credit group who aimed to develop expertise in this area.[579] The centre's work in this area included casework, research, education, policy and campaigns. Many years of lobbying by RLC and Macquarie Legal Centre with other groups led to the establishment of the specialist Consumer Credit Legal Centre in 1986.[580] Work on credit issues was a collaborative process and RLC worked closely with the consumer credit legal centres in Victoria and NSW as well as the peak body of financial counsellors—the

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[575] Don Fleming, 'Australian Legal Aid under the First Howard Government' (2000) 33(2) *University of British Columbia Law Review* 343, 377.
[576] 'Tenth Year Report 1977–1987', *Redfern Legal Centre* (Web Document, December 1997) 17 <https://rlc.org.au/sites/default/files/attachments/1977-1987%20RLC%2010th%20year%20report.pdf>.
[577] Betty Weule, 'The History Of Financial Counselling In Australia', *Financial Counselling Australia* (Web Page) <https://www.dropbox.com/s/h6cscq92bl5mhrp/Betty Weule The History of Financial Counselling in Australia.pdf?dl=0>
[578] Interview with Helen Campbell (Frances Gibson, Sydney, 23 November 2016).
[579] 'Tenth Year Report 1977–1987', *Redfern Legal Centre* (Web Document, December 1997) 17 <https://rlc.org.au/sites/default/files/attachments/1977-1987%20RLC%2010th%20year%20report.pdf>.
[580] Ibid.

Australian Financial Counselling and Credit Reform Association (AFCCRA). The centre produced a number of reports relating to credit matters, including: *Need or Greed* (1987), a comprehensive guide to credit and debt law for financial counsellors, community workers, lawyers and consumer;[581] the *Debt Survival Guide* (1987);[582] *Financial Over Commitment—the Consumer View* (1988);[583] *More More More*, on financial over commitment and credit assessment (1988);[584] and *31c in the Dollar* about consumer credit insurance. These reports had public impact and were seen by one politician as part of 'a disturbing and well-orchestrated attack on credit providers in Australia'.[585] The centre's work was raising consumer issues that lawyers in New South Wales had rarely if ever addressed.

Policy and campaign work included media events such as the AVCO dump.[586] In 1984, clients whose few household possessions were secured by AVCO (a finance company) under a Bill of Sale,[587] were encouraged to 'dump' those broken possessions, or those they did not need, on the steps of AVCO's head office in Sydney and Melbourne. Financial counsellors then set them alight. The press gave this stunt significant coverage and AVCO agreed not to execute on household furniture. This was followed by an agreement by the Australian Finance Conference locking in their member companies to the same agreement.[588] The centre ran a Bank Bashing Day, utilising volunteers to answer calls from people who had problems with their banks. But it was in 1984 with the advent of the *Credit Act 1984* (NSW) that the centre's casework in this area expanded significantly. A solicitor from the Consumer Credit Legal Centre had worked out there was a provision in the *Credit Act* section 32—a disclosure requirement, which, if not complied with, meant there was a sudden death provision that any credit charges had to be refunded or couldn't be charged.[589]

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[581] Australian Financial Counselling and Credit Reform Association, *Need or Greed? A Report on Consumer Credit Insurance* (Australian Financial Counselling and Credit Reform Association, 1987).
[582] Karen Lavell, Redfern Legal Centre and Consumer Credit Legal Centre, *Debt Survival Guide* (Redfern Legal Centre Publishing, 1987).
[583] Gordon Renouf, *Financial Over Commitment: The Consumer View* (Redfern Legal Centre, 1988).
[584] Carolyn Huntsman and Redfern Legal Centre, *More More More: Lending Practices and Overcommitment* (Redfern Legal Centre, 1988).
[585] New South Wales, *Parliamentary Debates*, Legislative Council, 23 November 1987, 816841 (The Hon.Virginia J Chadwick).
[586] Margaret Roberts and Denis Nelthorpe, 'The Collective King Hit' (1985) 10 *Legal Service Bulletin* 26.
[587] A bill of sale serves as legal evidence that full consideration has been provided in a transaction and that the seller has transferred the rights to the assets detailed in the bill of sale to the buyer.
[588] 'Congratulations Betty Weule, AM', *Financial Counselling Australia* (Web Page, 13 June 2016) <https://www.financialcounsellingaustralia.org.au/congratulations-betty-weule-am/>.
[589] This followed the Walter Pugh case run by the Public Interest Advocacy Centre, in which a Sydney money lender charging 144.4 percent interest on small loans averaging about $450 each, was ordered to forgo 80 per cent of interest on the debts owed to it. The NSW Commercial Tribunal reduced the combined interest bill owed to Walter Pugh Pty Ltd by $800,000 by ordering that the interest rate be reduced to 29 percent: Interview with Ben Slade (Frances Gibson, Sydney, 8 December 2015).

After this, RLC initiated the *State Bank* case.[590] The *State Bank* case was an application under section 86 of the *Credit Act* asserting breaches of the Act by the State Bank of NSW. Over 300,000 borrowers were involved. The solicitor responsible at RLC, Ben Slade, recalls:

> The material was so dense even the bank lawyers had trouble with it … It was 2–3 years before I really understood the *Credit Act*. It was complicated and really hard law. One document in evidence in the *State Bank* case had a note by the in-house counsel for the State Bank which said "Ben Slade has rung again about the *Credit Act*. It's so boring I can't bear reading it." But we had instructed John Basten, Mark Ierace and others—we had such incredibly brilliant barristers. [591]

The centre saw itself as engaged in a David and Goliath struggle against the banks. David Vaile comments:

> The *Credit Act* was self-enforcing. As soon as you showed that there was a systematic breach of the Act on the contracts, they were in trouble … Ben [Slade] had encouraged me to see Redfern's role as being in systemic matters, test cases, class actions, influence on regulations, and policy. No one was going to provide representation for every single customer, we had to have large scale impact and run class actions … The opponents were powerful organisations that were totally screwing the interests of borrowers. Ben would say "We are so fucking pure … They should be scared of you." Where they were vulnerable was in their reputation … Ben said "Never show them the inside of Redfern Legal Centre. If they see how small and weak we are they will realise they can kill us by just writing us a letter every day".[592]

Another major case was taken against Garendon Investments, a timeshare company. Two thousand, three hundred people borrowed money from Garendon to buy timeshare units in a resort.[593] RLC successfully acted for Serena Afa, a secretary who had obtained finance for a time share.[594] The case concerned allegations the company was providing credit without a licence and engaged in high pressure selling tactics.[595]

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[590] *State Bank of New South Wales v Various Debtors* [1995] ASC 55–207 (Commercial Tribunal of NSW).
[591] Interview with Ben Slade (Frances Gibson, Sydney, 8 December 2015).
[592] Interview with David Vaile (Frances Gibson, Sydney, 18 July 2016).
[593] Redfern Legal Centre *Annual Report* 1992/1993. Timeshares are a form of ownership or right to use a particular property or properties, such as a holiday villa, apartment or cabin for a set period of time. They are a long-term commitment and can be difficult to sell: Australian Securities Investments Commission, 'Timeshares', *Moneysmart* (Web Page) <https://www.moneysmart.gov.au/investing/property/timeshares>.
[594] *Afa And Others* v *Garendon Investments Pty Ltd (Receiver and Manager Appointed) And Others* (1995) 37 NSWLR 221, *Afa v Garendon Investments Pty Ltd* (1994) ASC 56–280.
[595] Application for leave to appeal to High Court refused: *Garendon Investments Pty Ltd & Annor v Serina Sainama Afa & Ors* [1995] HCA 297.

The centre (with the Public Interest Advocacy Centre) was also involved in the *HomeFund* case.[596] HomeFund was a NSW Government-sponsored home loans scheme which provided home loans to 57,000 low-income borrowers between 1986 and 1993. As Yates points out[597] the HomeFund experiences in NSW highlighted the difficulties faced by many marginal borrowers.

> Deferral of interest payments contributed to negative amortisation of the mortgage outstanding and this, in combination with low initial equity and a slow down or reduction in house prices, meant that many households had negative equity in their homes. Regardless of whether they had suffered income loss, they were unable to refinance and so take advantage of reductions in interest rates because of the reduced value of their security.[598]

The matter went to the High Court. Those who benefited from the centre's work were the 3,700 borrowers who still had HomeFund loans and became entitled to reduced interest rates which were dramatically less than their contract rate. In addition, over two thousand borrowers who had had their home sold up but still owed money on their loan due to the ballooning nature of the loan, had that debt waived and their credit records amended. [599]

The effect of these major successes was to demonstrate the power of strategic casework combined with media and lobbying skills, even in situations where when RLC was opposing companies or law firms with considerable resources. Apart from the demonstration of the centre's legal ability, the size of the cases meant there were large financial rewards for the centre on wins or favourable settlements that could be beneficially used for other unfunded projects providing practical resourcing for innovative ideas.[600]

### Civil Legal Aid campaign

In 1992, the State government legal aid body, the Legal Aid Commission of NSW conducted a review of its services[601] Although the ensuing report made no recommendation about civil

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[596] *Bass v Permanent Trustee Co Ltd* [1999] HCA 9 (*HomeFund* case)
[597] Judith Yates, 'Ownership and Australia's Housing Finance System' (1994) 12(1) *Urban Policy and Research* 27, 33.
[598] Judith Yates, 'Home Ownership and Australia's Housing Finance System' (1994) 12(1) *Urban Policy and Research* 27, 33.
[599] See Greg Kirk, 'A History of Homefund' (2001) 13 *PIAC Bulletin* 1 (Web Document) https://www.piac.asn.au/wp-content/uploads/PIACBulletin13.pdf; *Bass v Permanent Trustee Co Ltd* [1999] HCA 9.
[600] The Centre's archives still hold a photocopy of the cheque for $100,000 from the State Bank as part payment of costs to the Centre. *State Bank of New South Wales v Various Debtors* [1995] ASC 55–207 (Commercial Tribunal of NSW).
[601] Frances Gibson, *When the Battles Lost and Won: Legal Aid in Civil Matters in New South Wales 1992–1994 Outline of a Community Legal Centre Campaign* (Kingsford Legal Centre, 1997).

legal aid services specifically, on 17 December 1992 a decision was made to drastically curtail the availability of legal aid in civil matters in NSW.[602] This left disadvantaged people in NSW with little recourse to the courts in civil matters. In response, the NSW Combined Community Legal Centres[603] decided that all NSW legal centres be levied to employ a campaign coordinator to run a campaign to get legal aid for civil matters reinstated. Though some centres were concerned about using funds for what they saw as 'political purposes' and thought that the Commission was unlikely to change its decision, centres agreed to fund a worker 1 day a week for 6 months to run the campaign. A solicitor at RLC was employed to coordinate this campaign.[604] Coordinated activities occurred continually over 10 months, including a Fund Legal Aid cakestall run outside the NSW Parliament House and appearances on current affairs programs on TV including a segment run on ABC's '7.30 Report' designed to be watched by Legal Aid Commissioners present at a Board meeting held at the same time. There was a letter-writing campaign from community organisations, the Lawyers Reform Association, local MPs, and private lawyers all over the State. A complaint was made to the Sex Discrimination Commissioner on the basis that a cut to civil legal aid was discriminatory to women, and this all led up to a planned Day of Action set for 27 October 1993. This Day of Action was supported by the Law Society, politicians, and community organisations, and a large protest in Martin Place was planned. Media were lined up to report the event, when 2 weeks before the planned Day of Action, the Legal Aid Commission reversed its decision and reinstated legal aid for many civil matters from 1 November 1993.[605] This was seen as a significant victory and allowed many people to gain access to legal assistance in ensuing decades.[606]

In 1994 RLC with other centres successfully lobbied against legislation that would have seen them lose their direct representation on the governing body of the Legal Aid Commission.[607] Noone notes that loss of this representation in other states meant that the innovations in the

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[602] Jacquelyn Hole, 'Legal Aid Cuts Attacked as Blow to Civil Rights', *Sydney Morning Herald* (Sydney, 21 December 1992) 3; Editorial, 'A Phony Crisis in Legal Aid', *Sydney Morning Herald* (Sydney, 4 January 1993) 8.
[603] See Combined Community Legal Centres Group (NSW) *NSW Community Legal Centres Directory* (NSW CLC State Office).
[604] Just for the sake of clarity the solicitor selected was the author of this thesis.
[605] For full details of the campaign and the way it was run see Frances Gibson, *When the Battles Lost and Won: Legal Aid in Civil Matters in New South Wales 1992–1994 Outline of a community legal centre campaign* (Kingsford Legal Centre, 1997).
[606] Sigrid Kirk, 'Legal Aid Restored for Most Cases', *Sydney Morning Herald* (Sydney, 14 October 1993) 5.
[607] New South Wales, *Parliamentary Debates*, Legislative Council, 12 April 1994, (The Hon. Ron Dyer).

delivery of legal services developed by CLCs could take longer to penetrate the broader delivery of legal aid services.[608]

### Computers and the internet age

The late 1980s into the 1990s saw the advent of computers, then email. Julie Bishop, who had been the convenor of a major expert systems group inside Telstra and was interested in the IT area, became head of the National CLC office in 2001 and was working with RLC as a consultant on their computing systems. David Vaile recalls:

> Julie inspired me to see that technology could be used for social justice purposes. At that stage it was controversial to use Macs. Julie's view was that where you had a usability problem, it was easier to train people on Macs. It was controversial as it wasn't what all the law firms were doing and it was thought to be more expensive. Julie's view was that there wouldn't be secretaries at RLC so benefits in terms of easier training, more obvious interface design, and thus lower support costs would more than offset any hardware difference … Later many other CLCs used Macs due to Redfern's enthusiasm about Macs and RLCP's [Redfern Legal Centre Publishing] use of desktop publishing.[609]

As a result of Bishop's approach, RLC became an early adopter of the new technology including desktop publishing and computers on lawyers' desks.

David Vaile noted:

> In 1992 you got onto the internet through a dial up modem. It was all text based and very slow. The World Wide Web was yet to really get going, it had just been invented, there were no web browsers in use yet. The internet wasn't publicly available. In the community and social justice centres they would use bulletin board systems. The cost of access was very high …[610]

Vaile demonstrated to the centre staff the potential uses of Pegasus—a social justice ISP based in Byron Bay (part of a global network running in parallel to the internet based in universities). Commencing in June 1989 this was one of the first services of its type in

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[608] Mary Anne Noone, 'Mid-Life Crisis: Australian Community Legal Centres' (1997) 22 *Alternative Law Journal* 25, 28. See *Legal Aid Commission Act 1979* (NSW) s 14 which requires that the Board of the Commission include 'one is to be a person who, in the opinion of the Minister, represents such bodies, whether incorporated or unincorporated, as provide community legal services.'
[609] Interview with David Vaile (Frances Gibson, Sydney, 18 July 2016).
[610] Ibid.

Australia.[611] 'Some people realised how amazing it was. It was a really powerful direct technology for activists.'[612] These inspirations persuaded some at RLC to push for the new systems of communication and soon RLC staff were adept at computer use. Later developments such as email, the legal centres' secure national bulletin board system, and the internet were championed and quickly incorporated into the centre's practice due to this early adoption of breakthrough technology. Efforts to adapt technology were not always successful, with an attempt at innovating to produce a program that could automate completion of divorce forms in the 1990s falling by the wayside, despite initial funding from the Law Foundation.

The interest in adapting current technology continues at the centre, exemplified by a mobile app developed by Redfern Legal Centre in 2019 called My Legal Mate. The app offers free legal advice to international students in English, Chinese, Hindi, Korean, Portuguese, Thai, and Vietnamese, courtesy of more than 3,000 videos and focuses on four key areas: employment, housing, disputes with education providers, and sexual assault.[613]

### Housing

Housing has always been a major part of RLC's work with workers representing tenants in eviction, repairs and general tenancy matters. Casework was conducted in the Local Court, tenancy tribunals and Supreme Court challenges to Department of Housing policies. The centre also traditionally focused on law reform in residential tenancy and on regulation of boarding houses often with serious opposition from real estate interests and developers. One tenancy worker at the centre noted the nature of RLC's clients. 'We had many old vulnerable people getting evicted. We had the most drug-addicted and mentally-ill clients at RLC I have ever seen.'[614] New South Wales Government and Law Foundation funding allowed the centre to develop housing publications and to put them on the internet when that form of publication was available. As the NSW Attorney General Jeff Shaw noted in Hansard in 1998 the centre 'has an outstanding reputation in educating consumers about the law.'[615]

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[611] 'Origins and Nature of the Internet in Australia' *Roger Clarke* (Web Page, 29 January 2004) <http://www.rogerclarke.com/II/OzI04.html>.
[612] Interview with David Vaile (Frances Gibson, Sydney, 18 July 2016).
[613] 'International Students in NSW are being Given Access to Free Legal Advice', *SBS News* (Web Page, 5 December 2019) <https://www.sbs.com.au/news/international-students-in-nsw-are-being-given-access-to-free-legal-advice>.
[614] Interview with Emma Golledge (Frances Gibson, Sydney, 13 February 2017).
[615] New South Wales, *Parliamentary Debates*, Legislative Council, 22 October 1998, 8840 (The Hon. JW Shaw).

Leading up to the Olympics in Sydney in 2000, a group called Rentwatchers was coordinated through the centre and a campaign was run around rent increases and evictions arising out of concerns about the Olympic effect. RLC produced a website (which was very unusual at the time)[616] and the potential detrimental effects of the Olympics were used in the media to demand measures to protect people in boarding houses and to monitor and protest unfair rent increases. General protests about the housing situation were held.[617] A worker from the centre appeared at the United Nations to give evidence about the Government's failure on housing issues in Australia.[618]

### Drug policy

In the 1990s, in conjunction with the continuing police powers work of the centre, the centre ran an active drug policy program, and in the mid 1990s funded a drug policy reform program from the costs won on successful casework in other areas of law. In 1995 the centre published a report advocating harm reduction policy on controlled drugs[619] and in 1996 another report, *Beyond Prohibition*.[620] The project lobbied parliamentarians, promoted community discussion on the issue and produced facts sheets, bumper stickers etc. The positions argued in these papers are, as their author Steve Bolt notes, 'still relevant today sadly.'[621] The work resulted in publication of a legal text[622] and had an impact on debates in Parliament about the issue.[623]

In the late 1990s, the NSW government trained sniffer dogs for the Olympics and after the event retrained them to search out and identify drugs in public places. The *Police Powers (Drug Detection Dogs) Act 2001* (NSW), which came into force in February 2002, gave police the power to use sniffer dogs without any 'reasonable suspicion' of drug activity in

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[616] See Rentwatchers website archived by the National Library: 'Olympic Games 2000, Sydney: Anti-Olympics Campaigns and Activities' (Web Page, 12 September 2000) <http://pandora.nla.gov.au/nph-wb/20000911130000/http://www.rw.apana.org.au/about.html>.
[617] Interview with Polly Porteous (Frances Gibson, Sydney, 16 February 2017).
[618] For further information on the Centre's activity in this sphere see Beth Jewell, 'Sydney Housing: One Year After the Olympic Games' (2001) 26(6) *Alternative Law Journal* 299; Hazel Blunden, *The Impacts of the Sydney Olympic Games on Housing Rights*, Centre on Housing Rights and Evictions, Geneva, Switzerland (Web Document, 2007) <www.ruig-gian.org/ressources/Sydney_background_paper.pdf>.
[619] Redfern Legal Centre, *Drug Law Reform Project Harm Reduction Model of Controlled Availability*, (Redfern Legal Centre, 1995).
[620] Redfern Legal Centre, *Beyond Prohibition* (Redfern Legal Centre, 1996).
[621] Email from Steve Bolt to Frances Gibson, 12 May 2017.
[622] Steve Bolt, *Rough Deal: Your Guide to Drug Laws*, (Redfern Legal Centre Publishing, 1998).
[623] See New South Wales, *Parliamentary Debates*, Legislative Council, 19 November 1997, 2067 (The Hon. RS Jones).

places like pubs, entertainment centres and public transport stations. RLC lawyer Polly Porteous recalls: 'This was a time when a lot of people around Redfern were on heroin. They [the police] put sniffer dogs at Redfern station. We ran a big campaign with dog sniffer T-shirts etc.'[624] An issue which also gained much media attention at the time was the establishment of the safe injecting room at Kings Cross. In November 2001, six months after the injecting room opened, the New South Wales Parliament enacted new laws which would allow use of the sniffer dogs and tougher policing in other drug hot-spots. On May 21 2002 the Redfern Legal Centre's website, which sent SMS messages to registered members with the precise movements of the sniffer dogs, crashed due to the demand for information.[625] The centre campaign against the sniffer dogs was controversial and opposed by many including Parliamentarians.[626] The centre continues work on policing and strip searches in conjunction with UNSW through the police powers clinical legal education program run at RLC, and this continues to be controversial.[627]

### Management changes at the centre

Around 1998–99, the centre was relocated to an old house near Waterloo Green while the Council was renovating the Town Hall. The centre was based there for about a year and a half, in substandard accommodation with 5 flights of stairs and damp offices to deal with. It was a difficult period for the workers. Clients had difficulty finding the centre and in this period the Council decided they would no longer fund the social worker position which had been the first funded position at the centre.[628]

During this time there were serious problems between staff at the centre. This relocation may have exacerbated staff issues and accounts differ as to the causes of the discontent but it eventuated in the Board taking over control of the centre and abolishing the Management Committee.[629] The Board no longer had staff representatives or volunteer solicitors involved

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[624] Interview with Polly Porteus (Frances Gibson, Sydney, 16 February 2017).
[625] Gary Christian, 'Blinded by the Dominant Ideology', *Quadrant Online* (Web Document, 1 November 2010) <https://quadrant.org.au/magazine/2010/11/blinded-by-the-dominant-ideology/>.
[626] See urgent motion proposed by Alison Megarrity, ALP member for Menai in 2001, 'That this House expresses its opposition to calls by the Redfern Legal Centre to abandon the use of sniffer dogs for drug detection and other police activities in New South Wales.' The motion was successful, see New South Wales, *Parliamentary Debates*, Legislative Assembly, 23 October 2001,17744 (The Hon. A Megarrity).
[627] Kate Allman, 'Report Shows 20-Fold Increase in NSW Police Strip Searches', *LSJ Online* (Web Page, 2019) <https://lsj.com.au/articles/damning-report-shows-20-fold-increase-in-nsw-police-strip-searches/>.
[628] Interview with Hilary Chesworth (Frances Gibson, Sydney, 9 July 2016).
[629] Interview with Peter Stapleton (Frances Gibson, Sydney, 20 July 2016).

in centre management and the centre changed from a flat structure to a more hierarchical structure. A position of Director of the centre was established.[630] This was a big change in the centre's management processes. Campbell observes:

> The management committee had been pretty much run by the staff up to this point. The Board felt this was no longer appropriate. There was a real structural problem there … managing a community legal centre is a great deal more difficult than it used to be. The capturing and storage of information is easier and governments require much more accountability and there is a lot more competitiveness for funding. There are much higher standards of OHS, human resources etc. Management has become a professionalised role. Staffing structures have become more hierarchical. Management committees are more like Boards and on the whole not that representative of the communities they are serving. [631]

### A new century

In the first decade of the new century the centre moved to different work arrangements under another restructure. A new Chair of the Board, Nick Patrick was more interested in large scale litigation than in day to day local legal problems and most of the members of the Board at this point were lawyers from private law firms. After these changes, RLC was no longer a strictly generalist centre but had strategic focus areas which continue today. There are six major practice areas: tenancy, employment and discrimination, international students, policing, domestic violence, credit and debt. CEO, Jo Schulman notes:

> The areas selected came from community consultation, analysis of legal need and looking at what we were already doing. We put one team on each area and a pro bono partner and an advice night so we created centres of excellence in those areas and pushed for development of different skills sets so everyone does media work, policy, legal education and direct client and test case work. There are huge expectations.[632]

This process, as described by CEO Jo Shulman, was an attempt to rethink why CLCs exist and how they are different from legal aid. The management system of the centre changed, incorporating corporate practices such as Key Performance Indicators which staff must report to, monthly meetings with the CEO and each practice leader. She notes

[630] Interview with Hilary Chesworth (Frances Gibson, Sydney, 9 July 2016).
[631] Interview with Helen Campbell (Frances Gibson, Sydney, 23 November 2016).
[632] Interview with Jo Shulman (Frances Gibson, Sydney, 19 July 2016).

> It feels quite corporate but it constantly reminds us of what we are trying to achieve. Overall it seems really successful in redirecting our work to focus on strategic outcomes. There were some things lost [in the change process]. We became much less accessible to the community. Less "just drop in and talk to anyone anytime", so we have made an effort to keep a generalist service for vulnerable people. We hadn't thought through our connections etc. Some other CLCs thought they might be left with extra clients. We have tried to be quite responsive and if someone is very disadvantaged we try and make appointments.[633]

The growth in size of the centre (from around 7–10 workers in the 1980s and 1990s to 23 today) has meant that the management systems have had to change. Noone noted in 1992 that

> '[a] number of the features that have made CLCs unique in the past relate to internal practices and structure. Unless centres wish to become replicas of private practice or a regional legal aid commission office, they will have to strive to ensure that the internal work practices remain unique. This means maintaining a non-hierarchical approach based on a team approach; lawyers and non-lawyers working together.'[634]

It would seem that a strict non-hierarchical approach may have gone forever. However, the collegiate nature of the work and team approach remains.

Giddings and Noone describe a growing interest in the formation of partnerships between large legal firms and community legal centres reflecting the increased focus on pro bono activities within the legal profession, limited government funding and the ethos of 'partnerships' or 'social coalitions'[635] that now pervade commercial activities. This is reflected at RLC. Large law firms work with each specialist area that the centre runs. In 2011, RLC expanded the long-standing partnership with Clayton Utz to assist in employment matters, underpayments, unfair dismissals and discrimination.[636] Gilbert and Tobin are pro bono partner for the domestic violence service, Mallesons assists the tenants' service, Ashurst assists the Credit and Debt Team, McCabes is partner for the international students' service, and Fragomen partners with RLC on migration matters. The Gandevia Foundation partly funds the outreach to Indigenous clients.[637]

In 2014, a hospital-based Health Justice partnership with Sydney Local Health District was set up and focused on Indigenous clients. The service trained over 300 health workers on

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[633] Ibid.
[634] Mary Anne Noone, 'Imperatives for Community Legal Centres' (1992) 17 *Alternative Law Journal* 120, 123.
[635] Jeff Giddings and Mary Anne Noone, 'Australian Community Legal Centres Move into the Twenty-First Century' (2010) 11(3) *International Journal of the Legal Profession* 279.
[636] Redfern Legal Centre *Annual Report* 2014–2015.
[637] Interview with Jo Shulman (Frances Gibson, Sydney, 19 July 2016).

identifying legal issues and developed a referral pad containing a checklist of issues. An evaluation of the service showed that the clients that are seen are clients RLC would never have seen without the service.[638] Funding for the partnership came from the NSW Government.[639]

Despite this new focus on strategic areas, former staff member Haesler comments:

> With the exception of maybe EDO or PIAC the [Government Legal Aid] Commissions are running the big cases not CLCs in terms of prisoners, detention. The days of the big test cases run by CLCs are gone. But they may now be run by big firms taking pro bono cases from CLC's. Legal centres have become a service providing legal advice to people in their communities who cannot get legal assistance. By the end of the 1990s staff at RLC were no longer really litigators.[640]

Centre staff feel that there may be some truth in this claim but with the centre's restructure they are now conducting more litigation. Cases in tenancy in the 2000s led to changes in the law. Police powers litigation through the law of torts is ongoing.

Others have noted changes in the centre. Kingsford Legal Centre solicitor Emma Golledge says:

> I think RLC has changed dramatically. Now it's much harder for the average person to just walk in and get advice. There are more layers of complication about who they will help and who they won't. I wonder if it's lost a little bit of the heart of the legal centre. But that's about resources and maybe you have to make decisions of what you can do and what you can't. Test cases in the 70s are really different from test cases now. I think it's hard for CLCs to run test cases now and when you do win the gain is often legislated away. RLC has a really strong reputation. I think it always will be the leading CLC—the history, the idea of what a CLC means.[641]

Funding remains a constant issue for RLC as for other legal aid services. Staff are on rolling contracts because of uncertain funding.[642] The centre has adopted an entrepreneurial stance to seek out funding, is very proactive in exploring opportunities and is often successful. These funding sources have led the centre to taking up work which would not have been envisaged

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[638] Ibid.
[639] Attorney General NSW Mark Speakman: 'This partnership is directly assisting Aboriginal people who may not otherwise seek legal support. It is also training healthcare workers so they can provide patients with legal referrals at an early stage. We have stepped in to fill the gap because it is right thing to do in terms of fairness, equity and access to justice. It also makes good economic sense.' New South Wales, *Parliamentary Debates*, Legislative Council, 5 April 2017, 39 (The Hon. Mark Speakman).
[640] Interview with Andrew Haesler (Frances Gibson, Sydney, 7 July 2015).
[641] Interview with Emma Golledge (Frances Gibson, Sydney, 13 February 2017).
[642] Interview with Hilary Chesworth (Frances Gibson, Sydney, 9 July 2016).

in previous decades—either in geographic areas well outside the centre's traditional catchment or for new types of clients or areas of the law. For instance, the credit and debt team obtained funding for a DVD for training for financial counsellors focusing on crop liens.[643]

In 1997 Noone prophesied:

> As the economic imperative of the market takes hold in the legal aid arena, CLCs will have to compete with the private profession to provide services, particularly as the National Competition Strategy is applied to the legal profession … A local private practitioner could compete to provide legal aid services to a geographic area. More disturbingly, CLCs will compete against other CLCs or welfare organisations. The basis of the CLC community involvement may well be undermined.[644]

These concerns[645] are reflected in relationships between the centre and other organisations. As Noone and Giddings point out '[t]he Federal government now often makes policy and decisions about CLCs without input from the LACs. The tender process creates an environment of competition between CLCs, LACs and the private profession rather than one of working together to improve access to justice.'[646] Monique Hitter from the NSW Legal Aid Commission is concerned:

> As funding has become more competitive between legal centres and legal aid, the funding environment has become more aggressive for want of a better word. There has been a lot more territorial behaviour—probably from both sides. For example, we have a legal aid office in Coffs Harbour [in northern NSW] and do outreach in the area. In about 2014, RLC got some funding from the NBN and started doing some skype advice in the Coffs Harbour area. The first we heard about it was when we saw the pamphlet. The funding environment has completely changed. You need to be entrepreneurial to get funding and deliver more services. People are more self-promoting. Redfern is particularly energetic in that space. We do find that out of all of the legal centres Redfern has got, more difficult to work with. It is the entrepreneurial approach.[647]

The centre's longstanding good relationships with other organisations have been affected by the funding issues and the centre's actions to secure funding for its activities. Helen Campbell, former Director of the centre recalls one example in which, as a result of

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[643] Interview with Helen Campbell (Frances Gibson, Sydney, 23 November 2016).
[644] Mary Anne Noone, 'Mid-Life Crisis: Australian Community Legal Centres' (1997) 22 *Alternative Law Journal* 25, 28.
[645] Jeff Giddings and Mary Anne Noone, Australian Community Legal Centres Move into the Twenty-First Century' (2010) 11(3) *International Journal of the Legal Profession* 257, 276.
[646] Jeff Giddings and Mary Anne Noone, Australian Community Legal Centres Move into the Twenty-First Century' (2010) 11(3) *International Journal of the Legal Profession* 257, 276.
[647] Interview with Monique Hitter (Frances Gibson, Sydney, 7 February 2017).

competitive funding processes for domestic violence services, what were 'comfortable collaborative sharing relationships turned to shit. Marrickville Legal Centre put a complaint about Redfern Legal Centre to legal aid but Redfern received the funding.'[648] The centre has now hired a full-time fundraising officer and charges full fees for its community legal education program including webinars.[649]

The community and volunteer sector have long been acknowledged as a conduit to government regarding information on society's unmet needs and preferences.[650] Their value to government is established. The move to a contracting environment for funding, however, has caused many issues for centres such as RLC. Research in New Zealand has found that the contract environment for NGOs:

> [h]as led to heightened fears surrounding several issues: funding being cut; difficulties in maintaining independence while taking government contract funding; restrictions on what services they can provide to whom, and how these will be provided; and the redirection of their labour to meet the efficiency and accountability demands of government funders.[651]

Jacqui Swinburne, acting CEO of RLC says:

> There are gag clauses in government contacts—we are not supposed to do advocacy services —i.e., speak out against government … The Environmental Defenders Office and the Refugee Advice and Casework Service were partly defunded as a result of their advocacy work. … Being able to get independent money that's not from the government gives huge advantages. We do feel restricted about speaking out under the current government. We are careful about what we say. We are careful about social media. If you are in the Sydney Morning Herald there is more security than just tweeting about it. We used to march in the streets about employment law changes with RLC T-shirts on. We wouldn't do that anymore … The policy is now, we are just careful. We do speak to the media but we make sure we only speak in areas where we have case studies. There is a media policy which prescribes who can speak and who has to authorise it.[652]

With the move by Legal Aid Commission to more control of community legal centre funding there is a perceived conflict of interest, As Swinburne points out:

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[648] Interview with Helen Campbell (Frances Gibson, Sydney, 23 November 2016).
[649] Note that local community legal education programs for community are still free.
[650] Sarah Maddison, Richard Denniss and Clive Hamilton, *Silencing Dissent: Non-government Organisations and Australian Democracy* (Australia Institute, 2004).
[651] Sandra Grey and Charles Sedgwick, 'The Contract State and Constrained Democracy the Community and Voluntary Sector under Threat '(2013) 9(3) *Policy Quarterly* 3, 8.
[652] Interview with Jacqui Swinburne (Frances Gibson, Sydney, 5 July 2016). See also on restrictions to EDO's advocacy work detailed in Jeff Giddings and Mary Anne Noone, 'Australian Community Legal Centres Move into the Twenty-First Century' (2010) 11(3) *International Journal of the Legal Profession* 257, 269.

> They [LAC] are managing our funds as they are expanding—for example they are opening up health justice partnerships every few weeks. In theory this is good, but it's at the same time that CLCs are facing a lack of funds. Legal aid is not based in the community. They are not part of the community—they have 15-minute appointments, the solicitors are on a roster etc. CLCs are really unhappy. It feels like a takeover. They give us money but they have to approve the qualifications of the solicitor etc. We have more demand on services, as people can find us now. We have a higher turnover of students. We spend a lot of time on policies and procedures. We are becoming more and more bureaucratic. The centre has grown, but not huge amounts … but we are always taking on extra projects.[653]

In fact, in the current funding climate, the centre is facing major challenges due to the changed demographics of the community it serves. State Office of NSW Legal Centres Acting CEO, Polly Porteous comments:

> Legal Aid has looked at indicia about disadvantage from ABS. Weightings are given to try and identify the poorest households. Legal Aid mapped this looking at the catchment area for RLC, and across the State. The catchment area for RLC isn't very big in terms of disadvantaged people—there is still public housing but a lot of people in the area are not disadvantaged. They haven't revised the catchment area for 20 years.[654]

Hitter (LAC) notes, however, that there is still real legal need in the area.

> There are still huge pockets of disadvantage in RLC's region for example, the Northcott flats in Surry Hills. It's a huge housing development and chock-a-block full of people with mental health and addiction issues. Massive disadvantage. There is still quite a large Aboriginal community in that area. And in the CBD there is a huge homeless community. The key thing is getting out there and getting in contact.[655]

In its 40th year the centre carries on. Rice argues that if ever CLCs 'pursued a radical agenda, wholly independent of—and in contest with—the State, they long ago gave up that role. Instead the

> independence claimed by CLCs is compromised, the inevitable result not merely of choices they made, but of choices that the State made them make. Decisions about funding relationships that CLCs made in the 1990s and since have rendered them, effectively, outreach service providers for government.[656]

Current staff are convinced of the centre's continuing worth.

> Everyone who works at Redfern works here because you never know what the next day will bring you, you are often involved at a high level. You have the chance to influence outcomes. RLC get consulted on a lot more things than

[653] Interview with Jacqui Swinburne (Frances Gibson, Sydney, 5 July 2016).
[654] Interview with Polly Porteus (Frances Gibson, Sydney, 16 February 2017).
[655] Interview with Monique Hitter (Frances Gibson, Sydney, 7 February 2017).
[656] Simon Rice, 'Are CLCs Finished' (2012) 37 *Alternative Law Journal* 17.

> other CLCs. We love the building. We don't have enough space. But the lack of space does facilitate collaboration. People meet in the hallway. But I don't think anyone would want to move in a hurry. It's a special place with a special meaning.[657]

The centre has assisted well over 200,000 clients in its long history.[658] Hansard records Alex Greenwich MP stating 'For 40 years the Redfern Legal Centre has been a beacon of justice for disadvantaged and marginalised people across inner Sydney'[659] and the centre continues to innovate. It is possible however that the external context, changes in centre structure and the nature of the relationships with other organisations affects the centre's ability to innovate, and the rate of innovation. The question of what led to the social innovations of the early years and whether they are likely to be repeated will be examined in the following chapters. As Stapleton notes: 'The early days of any organisation are great challenging days—a lot of fun. The importance is maintaining that and make sure the organisation keeps running which Redfern has.'[660]

[657] Interview with Jacqui Swinburne (Frances Gibson, Sydney, 5 July 2016).
[658] Exact figures are difficult to obtain due to changes in statistical record keeping over the years. See Annual Reports, Redfern Legal Centre
[659] New South Wales, *Parliamentary Debates*, Legislative Assembly, 30 March 2017, 51 (Alex Greenwich).
[660] Interview with Peter Stapleton (Frances Gibson, Sydney, 20 July 2016).

## Chapter Six

## Innovation in practice: social innovation at Redfern Legal Centre

*'If centres ever lose their sense of political purpose and their innovative tendencies they will die and probably deserve to.'*[661]
John Basten

*'We always thought of ourselves as gadflies stinging other people into action.'*[662]
John Basten

*'The early legal centres illustrate David Donnison's definition of innovation as "springing from the collision between traditional assumptions and changing realities, between theory and practice, in a creatively irreverent mind capable of perceiving how poorly conventional wisdom fits the evolving world.'*[663]
David Neal

One way in which community legal centres are distinguished from other legal service providers in Australia is by the nature and extent of new services they have developed for clients and the methods of providing those services. Innovation was always seen as important to the survival and growth of law centres as Julian Gardner (former co-ordinator of Fitzroy Legal Service) of the Commonwealth Legal Aid Commission made clear at the first National Conference of Community Legal Centres in 1979.[664] These new services and methods were social innovations, defined previously[665] as an implemented novel solution to a problem—in the form of services, ways of organising work, or a product—that meets a social need and improves the quality of life for individuals or communities.

[661] John Basten, 'Neighbourhood Legal Centres in Australia: A Legacy of the Vietnam War?' (Paper presented at the Annual Meeting of the Law and Society Association and the ISA Research Committee on Sociology of Law, Madison Wisconsin, 5–8 June 1980).
[662] Interview with John Basten (Frances Gibson, Sydney, 27 July 2016).
[663] David Donnison (Paper presented at Conference of International Schools of Social Work, Jerusalem, 1978) quoted in David Neal, *On Tap Not on Top: Legal Centres in Australia 1972–1982* (Legal Service Bulletin Cooperative Ltd, 1984) 32.
[664] Garth Symonds, Background paper to Policy Meeting, 3 February 1980, 7. (Copy held in collection of Robyn Lansdowne).
[665] See the discussion on the definition of social innovation page 22 of this thesis.

In previous chapters, the centre to be used as a case study in this thesis was introduced. The history, management systems, type of work and the geographic and socioeconomic features of the area in which the centre is located has been set out as a basis for description and analysis of the innovative work of the centre. In this chapter the concept of social innovation is applied to the operations of Redfern Legal Centre during the period 1977–95. This period has been selected as a basis for focusing on innovations for a number of reasons. First, with the benefit of the passing of time it is possible to more properly assess the resilience of innovations developed by the centre. Second, during this period, community legal centres were based on a community development model. As Noone and Tomsen point out, 'After 1994 … the Federal Government began to purchase community legal services rather than to grant funds to community legal centres as such.'[666] While there has been no research on the effect of this change of approach on innovation by community legal centres, it seems prudent to take the first stage of the centre development in Australia as a separate period of study. Third, this appears to have been a remarkably innovative period in the centre's history. Fourth, in terms of the history of the centre, it was important to take the opportunity to interview those associated with the centre during this period before it became more difficult due to the age and retirement of those involved.

Utilising archival material and commentary from participants, this chapter analyses the structure, manner of work and services provided as forms of social innovation, thus building upon the accepted understanding of social innovation. Drawing on social innovation theory the next chapter will identify factors which appear to be related to the development of the innovations.

The innovations of the centre in this period manifested themselves in varied ways. In conjunction with developments across the community legal services sector, the centre was innovative in the methods developed for identification of legal need, in the development of new services and products and in the manner in which services were provided. Examples from the centre's history illustrate the proposition that the centre challenged the status quo in what they did and how they did it. An integral part of the burgeoning legal centre movement

[666] Mary Anne Noone and Stephen Tomsen, *Lawyers in Conflict* (Federation Press, 2006) 200. See also generally Jeff Giddings, 'Legal Aid Franchising: Food for Thought or Production Line Legal Services?' (1996) 22(2) *Monash University Law Review* 344 ; Jeff Giddings, 'Legal Aid Services, Quality and Competence: Is Near Enough Good Enough and How Can We Tell What's What?' (1996) 1(3) *Newcastle Law Review* 67.

was that it forged a path that stood apart and separate from traditional legal practice. The centre expanded the concept of legal services, who received legal services and for what types of problems. It was to play a part in creating a new approach to provision of legal services nationally, particularly to disadvantaged communities and clients. In this way, the centre has engaged in innovation, as these points of difference meet the criteria for innovation in law, which is often conceptualised as including distinction of products, service provision and recognition of needs.[667] The areas of innovation of Redfern Legal Centre to be examined are examples of all these:

a. Innovation in ways of determining legal need;
b. Innovation in new services and products and;
c. Innovation in the methods of providing services.

### Methods of identifying legal need

The ethos of the centre at the time under consideration was that it was the centre's role to demonstrate legal need in sectors of the community. Once the government accepted that this need existed, the centre could hand over responsibility for providing the service to the government and move on to work on other areas of need.[668] As Basten states, '[w]e always thought of ourselves as gadflies stinging other people into action'.[669]

Identification of legal need is a notion that only came to prominence in the legal profession in the late 20th century. In the USA in 1938 Clark and Corstvet undertook a landmark study of how the needs of the community for legal service were being met in Connecticut during the 1930s recession.[670] There was little significant work in this area in following decades.[671] It is not within the ambit of this thesis to provide a detailed history of legal needs analysis in Australia but historically, as indeed is the case today, the private legal profession would provide services to those who made their needs known and could afford to pay for services.

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[667] See for instance Daniel W Linna Jr, 'Legal Services Innovation index LegalRnD', *The Center for Legal Services Innovation* (Web Page, 2018) https://www.legaltechinnovation.com/innovation-catalog/; 'Innovation in Legal Services', *Legal Services Board, Enterprise Research Centre*.
[668] Interview with Roger West (Frances Gibson, Sydney, 9 December 2015).
[669] Interview with John Basten (Frances Gibson, Sydney, 27 July 2016).
[670] P Pleasence, NJ Balmer and RL Sandefur, 'Apples and Oranges: An International Comparison of the Public's Experience of Justiciable Problems and the Methodological Issues Affecting Comparative Study' (2016) 13(1) *Journal of Empirical Legal Studies* 50, 51.
[671] Ibid.

There was no need or requirement for private lawyers to explore legal need except where they had an interest in expanding their services into new potentially financially rewarding areas of law. There was also a traditional prohibition on advertising by lawyers only relaxed in 1991 by the NSW Law Society allowing advertising as long as it could not 'reasonably be expected to bring the profession into disrepute'.[672] One can note the comments of the UK Royal Commission into Legal Services in 1979 that in adapting to the changes of the 20th century in the spheres of commerce and property the profession 'has done well.'[673] The same might not have been said in the realm of provision of legal services to disadvantaged communities. The criterion for legal assistance to the poor historically was 'neither the most efficient use of available resources nor a recognition of a right of access to the legal system for all poor persons, but rather a concern that funds not be used to support clients or causes that were in some sense unworthy'.[674] It was no role of the private legal profession to seek out previously undetermined legal needs for people who could not pay to have those legal needs met. There was often a narrow view taken of the legal needs of the poor exemplified in Freunds' comments:

> A medical clinic for the poor is valuable for medical education precisely because it presents a wide range of interesting medical problems. In contrast, a legal aid clinic is sharply limited in the scope of the problems that it offers to the lawyer. The problems are important because they are important to the clients, and they may occasionally even be challenging; but they contribute nothing to the legal intern or to the teacher whose field is corporate finance or restraint of trade or international law. The provision of legal aid to the indigent is more purely a philanthropic service, less colored by a tint of self-advantage, than is comparable medical aid.[675]

Those in the business of providing legal aid and academic researchers were however interested in the concept of legal need.[676] In 1976, Marks stated that '[w]e have yet to define legal need or relate available data to that concept.'[677] Lyons raised concerns about how legal need is classified particularly by lawyers, noting:

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[672] Christine Parker, 'Justifying the New South Wales Legal Profession 1976 to 1997' (1997) 2(2) *The Newcastle Law Review* 1, 8.
[673] United Kingdom, *The Royal Commission on Legal Services*, Final Report Volume 1 (1979) 42.
[674] Marshall J Breger, 'Legal Aid for the Poor: A Conceptual Analysis', (1981) 60 *North Carolina Law Review* 281, 298.
[675] Paul A Freund 'The Legal Profession' (1963) 92(4) *Daedalus* 689, 692.
[676] See Michael Cass and Ronald Sackville, Commission of Inquiry into Poverty, *Legal Needs of the Poor,* AGPS, Canberra (1975); Michael Zander, *Legal Services for the Community* (Temple Smith, 1975); Barbara A Curran, *The Legal Needs of the Public: The Final Report of a National Survey*, (ABA, 1977). Studies of 'unmet legal need' are reviewed by M Cass and JS Western, *Legal Aid and Legal Need*, (CLAC, 1980) 34–56, and by F Raymond Marks, 'Some Research Perspectives for looking at Legal Need and Legal Services Delivery Systems: Old Forms or New?' (1976) 11 *Law & Society Review* 191, 193–203.
[677] F Raymond Marks, 'Some Research Perspectives for Looking at Legal Need and Legal Services Delivery Systems: Old Forms or New?' (1976) 11(2) *Law and Society Review* 191.

> When one is engaged in a search for 'unmet legal need', therefore, one is not engaged in objective, 'neutral' research. Value judgments will be necessary concerning the kinds of problems best resolved by lawyers. Further, any consideration of the kinds of problems best resolved by lawyers requires judgments concerning the boundaries of proper 'lawyerly' behaviour.'[678]

This concern was not shared by most researchers, however, and the empirical work relating to legal need has concentrated on legal use. This is demonstrated in a long history of studies addressing how often and for what problems lawyers have been used by various segments of the population.[679] These studies were generally carried out by surveys of different kinds, utilising methods such as interviewing households on their legal needs. In the 1990s there was a shift in the approach to legal needs studies with Genn's [680] work continued by Pleasence[681] and NSW Law and Justice Foundation[682] which looked at the occurrence of 'justiciable' problems in the community and how people respond. In the 21st century there are numerous examples of increasingly significant and sophisticated work on measuring and determining legal need both in Australia and overseas.[683] This was quite different from studies in the 1960s and 1970s. The techniques used by RLC and other CLCs pre-empted this approach recognising that people do not always realise they have a 'legal' problem rather just a problem. The innovatory approaches by CLCs took different forms but focused on actively seeking out information on legal need in selected communities of interest.

Two examples of this in the 1970s and 1980s were the use of community legal education/outreach and phone-ins. This was possibly the first time practising lawyers in Australia had taken pro-active steps to discover specific needs for their services. Approaching potential clients had long been forbidden to lawyers. All bar associations and law societies in

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[678] Greg Lyons, 'Defining Unmet Legal Need' (1983) 8 *Legal Service Bulletin* 165, 166.
[679] James W Meeker, John Dombrink and Edward Schumann, (1985) 7(2) 'Legal Needs of the Poor: Problems, Priorities and Attitudes.' Law and Policy, 225–247.
[680] Hazel G Genn and Sarah Beinart, *Paths to Justice : What People Do and Think About Going to Law* (Hart, 1999).
[681] See OECD/Open Society Foundations (2019), *Legal Needs Surveys and Access to Justice*, OECD Publishing <https://doi.org/10.1787/g2g9a36c-en>.
[682] C Coumarelos et al, *Legal Australia- Wide Survey: Legal Need in Australia*, (2012, Law and Justice Foundation of NSW).
[683] See for instance work on legal need in 70s and 80s, e.g. M Cass and Ronald Sackville, Commission of Inquiry into Poverty, *Legal Needs of the Poor*, AGPS, Canberra (1975); M Cass and John S Western, *Legal Aid and Legal Need*. Canberra: Commonwealth Legal Aid Commission (1980). Small research project at West Heidelberg described in Liz Curran and Mary Anne Noone, 'The Challenge of Defining Unmet Legal Need' (2007) 21 *Journal of Law and Social Policy* 63–89;C Coumarelos, Z Wei and A Zhou, *Justice Made to Measure: NSW Legal Needs Survey in Disadvantaged Areas* (Law and Justice Foundation of NSW, 2006); A Buck, P Pleasence and N Balmer 'Do citizens know how to deal with legal issues? Some empirical insights' (2008) *37 (4) Journal of Social Policy* 661,Liz Curran and MA Noone 'The Challenge of Defining Unmet Legal Need' (2007) *Journal of Law and Social Policy* 21(1), 63–89; Pascoe Pleasance et al, *Courses of Action: Civil Law and Social Justice* (UK Legal Services Research Commission, 2004); P Pleasance et al, 'The Legal Problems of Everyday Life', *Department of Justice Canada* (Web Document) <http://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr07_la1-rr07_aj1/rr07_la1.pdf>; A Currie, 'Civil Justice Problems and the Disability and Health Status of Canadians' (2007) 21 *Journal of Law and Social Policy*, 71.

Australia had previously imposed restrictions on the means by which their members could attract business[684] and until about 1980, solicitors in all parts of Australia were prohibited by professional rules from advertising.[685] By 1982, in a discussion about a relaxing of these rules, the NSW Law Reform Commission had recognised that advertising 'can stimulate innovation and improve efficiency within the profession'[686] though even today there are still rules about advertising particularly in personal injury matters.[687]

### Community legal education

Giddings notes that:

> In keeping with their commitment to demystify the law and break down the traditional lawyer-client relationship, CLCs developed initiatives designed to educate the community regarding their rights and responsibilities. This type of community legal education was not seen as an end in itself, but rather a means to empower people to make informed choices about what further law-related actions they might take. It was designed to promote 'legal literacy' and to raise the profile of poverty law issues rather than providing a way to resolve specific immediate problems.[688]

One example of the earliest steps that RLC took to ascertain legal need was the use of outreach services including community legal education to prisoners in the 1970s. As Petre says of the centre's services:

> The legal advice was locally focused—that's where the need was, but I think that the other characteristic of RLC right from the start is that they would identify a need relevant to the local area—and prisoners was one of the first. Volunteers would go out to prisons, Long Bay particularly and provide legal services and advice out there.[689]

Zdenkowski, a legal academic at UNSW involved with the centre notes:

> The PLS was an opportunity to educate prisoners about their rights and we made regular visits to prisons. The Parramatta debating society was a Saturday morning group which a small group of prisoners organised and which

[684] Julian Disney at al, *Lawyers* (Law Book Company, 1986) 355.
[685] Except for specific circumstances such as notification of change of address. Julian Disney at al *Lawyers* (Law Book Company, 1986) 356.
[686] NSW Law Reform Commission, *Third Report on the Legal Profession* (1982) 11.2.
[687] See for instance 'The Restrictions on Advertising Personal Injury Services' *Legal Services Commissioner Queensland* (Web Document, 2008) <https://www.lsc.qld.gov.au/__data/assets/pdf_file/0015/106215/restrictions-on-advertising-personal-injury-services.pdf>.
[688] Jeff Giddings, 'Lay People, for God's Sake!: Surely I Should Be Dealing with Lawyers? Towards an Assessment of Self Help Legal Services in Australia.' (2002) 11(2) *Griffith Law Review* 436, 438.
[689] Interview with Clare Petre (Frances Gibson, Sydney, 21 May 2013).

> was an opportunity to have a speaker come out and talk on a topic. People would go out to Parramatta gaol and sometimes the talks would involve legal issues. It was about contact and expanding horizons.[690]

This new approach of conducting community legal education and outreach services in the gaols was a method of ascertaining the legal needs of prisoners which had not previously been seen in Australia. The result of this contact was to be the development of a completely new service dedicated to the needs of prisoners developed at the centre which eventually became an integral part of government legal aid services in NSW as discussed below.[691]

### Phone-ins

Another tool used for shedding light on legal need in the early days of CLCs was the phone-in. A phone-in is a tool which allows members of the public to call an organisation and raise concerns about certain pre-designated issues. While phone-ins had been used from the 1960s in researching social issues[692] and in some cases for political advocacy notably by the environmental movement,[693] it appears that the centre was the first legal organisation to use this method as a tool for determining legal needs in a selected area of law.

In 1982, the centre ran a phone-in for people to raise concerns about social security matters. Roger West, a solicitor with the centre who helped organise the phone-in, said: 'I was devastated by the results. Episode after episode of quite frightening stories of a very tough administration and bureaucracy was very serious.'[694] This reaction and other social security cases run by the centre brought attention to the legal need in this area and was a catalyst for proposals to set up the country's first Welfare Rights legal centre (WRC) as described below.[695]

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[690] Interview with George Zdenkowski (Frances Gibson, Sydney, 28 October 2016).
[691] See page 133 of this thesis. For more detail of the development of the Prisoners Legal Service (NSW) see Frances Gibson, 'Redfern Legal Centre and the Prisoners Legal Service: A Short History' (2018) 12 *UNSW Law Society Court of Conscience* 34.
[692] See L Rubinsten, *But I Wouldn't Want My Wife to Work Here: A Study of Migrant Women in Melbourne Industry* (Centre for Urban Research and Action, 1976); *Women and Shiftwork: A Study of Women Working at Night in Melbourne's Western Suburbs* (Western Region Council for Social Development, 1977); R Taft and D Cahill, *Initial Adjustment to Schooling of Immigrant Families* (Australian Government Printing Service, 1978).
[693] Mark Wilson, *The British Environmental Movement: The Development of an Environmental Consciousness and Environmental Activism 1945–1975* (PhD thesis, University of Northumbria, 2014) 295, Ron Chapman, *Fighting for the Forests: A History of the West Australian Forest Protest Movement 1895–2001* (PhD Thesis, Murdoch University, 2008).
[694] Interview with Roger West (Frances Gibson, Sydney, 9 December 2016).
[695] See page 172 of this thesis.

In March the same year, Redfern Legal Centre joined the Social Welfare Action Group and others to conduct a phone-in survey of abuse of elderly people. On the weekend of the survey, 466 complaints were recorded. Many abuses mentioned in the phone-in, such as denial of appropriate attention, victimisation and lack of freedom could be seen as part of a total legal framework which did little to protect the rights of elderly people in retirement villages, hostels and nursing homes.[696] A Report entitled *Prisoners of Neglect: A Study of Abuse of Elderly People* was produced out of this phone-in.[697] Later the centre ran phone-ins on insurance issues[698] and in 1984, the centre ran a 'Bank Bashing Day' phone in—using numerous volunteers to answer calls from people who had problems with their banks.

This method of discovering and exposing legal need in a community has been used by government organisations and researchers since that time, in areas of law such as domestic violence.[699] Phone-ins were an effective innovation in demonstrating legal need and bringing attention to an issue being both inexpensive (staffed by volunteers in the case of CLCs) and allowing anonymity from participants. Staff of the legal centre analysed the data collected and compiled the information incorporating it into reports that could be used to raise attention to issues and lobby government for change.

### Innovation in new services and products

Innovation is evident at the centre in that the new services or products came into existence in the context of a conservative legal profession where legal services had been provided in virtually the same manner for centuries through individualistic one on one lawyer-client relationships. Using Fowler's terminology these social innovations were 'initiatives … intended to alter the rules of the game—or the game itself'[700] and where the rules of the game 'are understood as the prevailing norms, standards and practical ways in which a society resources itself and functions.'[701]

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[696] Debbie Whitmont and Mark Austin, 'Rights of the Elderly' (1983) 8(4) *Legal Service Bulletin* 167.
[697] Diane Gibson, *Aged Care: Old Policies, New Problems* (Cambridge University Press,1998) 114.
[698] Email from Gordon Renouf to Frances Gibson (6 August 2018).
[699] See for instance 'Commission News' (2009) 94 *Australian Law Reform Commission Reform Journal* 45, detailing community consultation on domestic violence including phone ins; Dale Bagshaw and Thea Brown, *Family Violence and Family Law in Australia: The Experiences and Views of Children and Adults from Families Who Separated Post 1995 And Post 2006* (Monash University, University of South Australia, James Cook University for the Attorney-General's Department, 2010).
[700] Alan Fowler, 'Social Innovation: New Game, New Dawn or False Promise?' Hivos, The Hague.
[701] Ibid.

The claim that the centre engaged in innovation must be seen not only against the general political and historical climate at the time but also against the background of the legal profession and changes to the legal system in Australia as previously discussed. As Disney et al note, '[b]efore the period of innovation that occurred in legal aid[702] in Australia in the 1970s, to practice law was almost inevitably to engage in private legal practice.'[703] The role of most lawyers in the twentieth century was to provide legal advice and representation to individual clients, including corporations, and other groups. The lawyer's role was frequently that of 'an interpreter to a lay audience of the body of laws.'[704] Practising lawyers in non-appearance roles focused on established markets such as conveyancing, commercial and company law, car accidents, estates, tax, family law and workers compensation.[705] Most of their time was spent in direct provision of services to middle and high income groups in the community.[706]

For the first time in Australia in the 1970s there were lawyers engaged in collaborative projects designed to achieve a fairer basis to direct provision of services, policy development and law reform for disadvantaged people and groups in the community. As Disney et al stated in 1986, the centres 'have had a positive impact on the legal aid system out of all proportion to their actual size.'[707] The lawyers and other workers in these centres had a focus not only on disadvantaged clients but on ways of empowering people to understand and use the law themselves as well as actively seeking changes to the law and legal system where it led to injustice. As already discussed, the early CLCs had a distinctly different approach to the way they provided legal advice to clients from the services provided by the private legal profession or other legal aid providers[708] in that free legal assistance was provided to anyone who walked in the door; centres were staffed by both lawyer and non-lawyer volunteers working on an equal footing; centres were open out of normal office hours, usually in the evenings; the physical surrounds of the offices and the clothing of the lawyers were informal; there were often no formal organisational or administrative systems; clear explanations of

[702] Disney et al included Aboriginal Legal Services and community legal centres in this term 'legal aid' as well as the government legal aid services.
[703] Julian Disney et al, *Lawyers* (Law Book Company, 1986) 507.
[704] Ibid 63.
[705] Ibid.
[706] Ibid; David Weisbrot, *Australian Lawyers* (Longman Cheshire, 1990) 232.
[707] Julian Disney et al, *Lawyers* (Law Book Company, 1986) 511.
[708] Though note Lionel Murphy's commitment to 'shopfront' legal aid offices in suburbs and regional cities by way of the Australian Legal Aid Office, possibly based on a visit to Fitzroy Legal Service in 1972. Jenny Hocking, *Lionel Murphy a Biography* (Cambridge University Press, 2000) 274.

their legal situation were given to clients; and clients were involved in their own problem solving.[709]

Redfern Legal Centre was one community legal centre that developed a tradition of innovation which led to dedicated services being established that had never been seen before in Australia. Though there were many developments in legal aid in the 1970s and 1980s[710] and in pro bono assistance from the private profession, the centre's services were novel in being provided for new categories of clients (e.g. prisoners), or in areas of law (welfare rights, intellectual disability) that had not been systematically addressed by legal aid offices or the private legal profession.[711]

Redfern's offshoot services would include inter alia:

(a) Prisoners Legal Service: a service that provided legal assistance including legal advice and representation to people serving gaol sentences in NSW gaols;
(b) Intellectual Disability Rights Service: a legal service addressing the legal needs of people with an intellectual disability and their families and carers which took an innovative approach of providing services through education and involving people with an intellectual disability in the service's management;
(c) Redfern Legal Centre Publishing (RLCP)/ Lawyers Practice Manual/Streetwize Comics: a self-funding legal publisher aimed at providing community legal education;
(d) Women's Domestic Violence Court Advocacy Service (WDVCAS): a multidisciplinary legal and welfare service for women suffering domestic violence;
(e) The Accommodation Rights Service: Australia's first legal advocacy service for older people in nursing homes and retirement villages, and;
(f) Welfare Rights Centre: a specialist centre focusing on welfare rights issues.

[709] Jeff Giddings and Mary Anne Noone, 'Australian Community Legal Centres Move into The Twenty-First Century' (2004) 11(3) *International Journal of the Legal Profession* 257, 259. See also David Neal (ed), *On Tap, Not on Top: Legal Centres in Australia 1972-1982* (Legal Service Bulletin Co–operative Ltd, 1984) 58 for a discussion of difficulties in client involvement; Ronald Sackville, Commission of Inquiry into Poverty, *Law and Poverty in Australia* (Australian Government Publishing Service, 1975) 22; Roy Turner, Legal Aid Review Committee, Parliament of Australia, 'Legal Aid Review Committee Report' (Australian Government Publishing Service, 1974).
[710] See Mary Anne Noone and Stephen Tomsen, *Lawyers in Conflict* (Federation Press 2006) 140–144.
[711] See Ronald Sackville and Susan Armstrong, *Commission of Inquiry into Poverty Legal Aid in Australia* (Report by the Commissioner for Law and Poverty, 1975).

As we have seen '[t]he starting point for innovation is an idea of a need that isn't being met, coupled with an idea of how it could be met.'[712] In each of these examples we can see a need that is manifested together with implemented proposals to address that need. The innovations were designed in Moulaert's terms[713] to meet needs that were not filled by the market or the State, designed to increase the level of participation of all but especially deprived groups in society.[23] The service/product (though in many cases building on other CLC initiatives) was new and did not exist elsewhere in keeping with Phills, Deiglmeier and Miller's description of social innovation as 'a novel solution to a social problem that is more effective, efficient, or just than existing solutions.'[714]

### The Prisoners Legal Service

*In February 1984, a man rang RLC early one weekday to say that only 5 minutes previously he had been driving along Anzac Parade behind a police paddy wagon. When both vehicles stopped at lights he became aware of shouting from the rear of the van. The motorist wound down his window and made out a voice calling 'Ring the Redfern Legal Centre, I'm being taken from Long Bay to Maroubra to be interviewed about a murder. Get hold of Redfern Legal Centre' After some intensive investigation the Centre tracked down the client after driving to Maroubra police station.*[715]

RLC News

Prison work started early in the centre's history. Historically there had been little, if any, legal assistance for prisoners in NSW, who often faced harsh conditions and judicial indifference.[716] Brutality in NSW prisons in the early 1970s led to major prison riots erupting at Bathurst gaol in 1974. Lobbying by prison activists, NSW parliamentarians, legal academics and lawyers was successful in getting mainstream press attention to the issue. This led to a Royal Commission into NSW Prisons beginning in 1976, conducted by then Justice

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[712] Geoff Mulgan, 'The Process of Social Innovation' (2006) *Innovations* 145, 149.
[713] Frank Moulaert et al 'Towards Alternative Model(s) of Local Innovation' (2005) 42(11) Urban *Studies* 1969, 1976.
[714] JA Phills, K Deiglmeier and DT Miller, 'Rediscovering Social Innovation' (2008) 6(4) *Stanford Social Innovation Review* 34, 39.
[715] 'RLC Work Comes in Strange Ways', *RLC News* (February, 1984) 1.
[716] For a history of prisoners' rights in Australia, see Mark Finnane and Tony Woodyatt, '"Not the King's Enemies": Prisoners and Their Rights in Australian History' in David Brown and Meredith Wilkie (eds), *Prisoners as Citizens: Human Rights in Australian Prisons* (Federation Press, 2002) 81. See also 'Chronology of the Prisoner Movement in Australia', *Justice Action* (Web Page) <http://www.justiceaction.org.au/index.php?option=com_content&view=article&id=111&Itemid=991>.

of the NSW Supreme Court, John Nagle.[717] One of the first centre lawyers, Virginia Bell, remembers:

> I had followed the Nagle Royal Commission and the revelations were quite shocking … I saw quite a bit of the hearings … There had been an institutional approach to the infliction of physical beatings on prisoners described as intractable. That had resulted in one case in a man becoming a paraplegic. The beatings were officially administered and were savage. When that material came to light, I think it was a shock to people … At the time the *Report* was tabled my recollection is that there was a lot of press coverage about the shocking revelations and the Premier Neville Wran made statements that this would not happen again.[718]

In 1978, a loose group of legal academics, lawyers and prison activists formed the Prisoners Legal Service (PLS), based at the centre. Zdenkowski, a legal academic at UNSW involved with the centre, notes:

> We did a lot of legal visits to the gaols and there was some litigation that took place. It grew out of that … [The centre] received a lot of letters and individuals received letters from prisoners. The PLS was an opportunity to educate prisoners about their rights and we made regular visits to prisons … I used to take out a group of law students weekly to Long Bay Gaol. That was mutually beneficial.[719]

Those working in the PLS consisted of centre staff lawyers, barristers briefed by the centre, and also volunteer lawyers. The centre solicitors were well known in the gaols and word-of-mouth brought the PLS many clients. John Basten (one of the founders of RLC) went to the Bar in 1981 and was briefed by the centre on many prisoner cases.[720] The centre ran appeals for prisoners challenging disciplinary convictions. This work led to the government legal aid service extending legal aid funding for those matters.[721] The centre also ran many cases about prisoners' remission entitlements[722] and was influential in the establishment of the Visiting Justice system (independent magistrates dealing with disciplinary charges in prisons).[723]

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[717] David Brown, 'The Nagle Royal Commission 25 Years on: Gaining Perspective on Two and a Half Decades of NSW Prison Reform' (2004) 29 *Alternative Law Journal* 135, 136.
[718] Interview with Virginia Bell (Frances Gibson, Sydney, 1 December 2016).
[719] Interview with George Zdenkowski (Frances Gibson, Sydney, 28 October 2016).
[720] Interview with John Basten (Frances Gibson, Sydney, 27 July 2016).
[721] John Basten, 'Neighbourhood Legal Centres in Australia: A Legacy of the Vietnam War?' (Paper presented at the Annual Meeting of the Law and Society Association and the ISA Research Committee on Sociology of Law, Madison Wisconsin, 5–8 June 1980).
[722] Remission entitlements are entitlements to a reduction of the term of a prison sentence, usually due to good behaviour or conduct: *Attorney General (Commonwealth) v Burcher* (1986) 86 ALR 457. In this case, the High Court accepted that Mr Burcher, a Commonwealth prisoner, was entitled to remission of his sentence in accordance with the law in the State in question.
[723] Interview with John Basten (Frances Gibson, Sydney, 27 July 2016).

Work done at the centre for prisoners was undertaken in loose coalitions with other organisations. One of these, the Prisoners Action Group (PAG), had been formed in 1973 and 'was committed to abolition (not reform), to activism (not passivity), and ex-prisoners were to have the final say on policy and activities.'[724] Prisoners would make complaints about their treatment in gaols, [725] and the PAG would arrange for solicitors from the centre to take instructions from them. As Genovese notes PAG was:

> [a] unique alliance that would be hard to imagine in our own regulated and politically demarcated times. It included ex-prisoners, UNSW legal academics such as George Zdenkowski and David Brown, libertarians and civil liberties members—all committed to exposing the horrendous conditions in NSW jails. They wanted to transform the criminal justice system itself, with a long-term goal of abolishing jails altogether, and employed the intellectual framework and street performativeness of situationism to great effect in the politics surrounding the Bathurst Jail riots and Nagle Royal Commission into the NSW prison system in the 1970s.[726]

The lawyers working for Redfern Legal Centre's Prisoners Legal Service worked with activist community workers on a number of campaigns and for particular clients. There are many examples of this. One was the campaign for the closure of Katingal, a notorious NSW gaol. It had opened in 1975, billed by the NSW government as 'the country's first modern, purpose-built extreme maximum security prison.'[727] It was built to house the worst killers and intractable offenders. A moat was built as an anti-tank trap, in case anyone resorted to such measures to engineer a break-out. Prisoners were confined to cells 1.5 metres wide by just over three metres long on two levels. They had little visual or physical contact with guards, who watched their movements through a peep hole.[728] Within three years of its opening the Nagle Royal Commission into NSW Prisons expressed the opinion that it should be shut down. The Report stated that '[i]t is clear that the cost of Katingal is too high in human terms. It was ill-conceived in the first place, was surrounded by secrecy and defensiveness at a time when public discussion should have been encouraged. Its inmates are now suffering the consequences.'[729] Initially the government claimed there was no alternative place for these prisoners to go and refused to close the prison. The recommendation that Katingal be closed was finally accepted, but only after a hard-fought campaign over a period

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[724] George Zdenkowski and David Brown, *The Prison Struggle: Changing Australia's Penal System* (Penguin Books, 1982) 83.
[725] Ibid 99.
[726] Ann Genovese, 'A Radical Prequel: Historicising the Concept of Gendered Law in Australia' in Margaret Thornton (ed), *Sex Discrimination in Uncertain Times* (ANU Press, 2010) 56.
[727] Les Kennedy, 'Final Release for Katingal, Misguided Experiment in Extreme Jails', *Sydney Morning Herald* (online, 19 May 2004) <https://www.smh.com.au/articles/2004/05/18/1084783517225.html>.
[728] Ibid.
[729] New South Wales, *Royal Commission into NSW Prisons*, Report (1978) 153.

of months.[730] Barrister Helen Golding, who was working for the centre, was very involved with the campaign run by a number of organisations. Campaign action included burning a model of Katingal outside the District Court, halting traffic for a demonstration on Sydney Harbour Bridge and setting up a tent vigil outside Long Bay where Katingal was.[731] She worked on other prisoners' rights campaigns and was assisting prisoners from Katingal on a regular basis in the courts. In June 1978, Katingal was closed.[732]

Media organisations were involved. Radio Skid Row, in the basement of the Wentworth building at the University of Sydney, conducted interviews on prison issues with the lawyers from RLC.[733] Nick Franklin at ABC Radio 2JJ began broadcasting *The Prisoners Program* in 1979,[734] and there were other prisoners' programs on community radio stations in Sydney. These collaborations and close ties were instrumental in assisting the centre not only in the establishment of the Prisoners Legal Service but increasing its effectiveness by making it responsive to prisoners needs and interests in a way that distinguished the service from traditional private legal practice.

While the PLS mainly focused on prisoners in male gaols, another organisation, Women Behind Bars ('WBB') concentrated on providing legal assistance and advocacy for women prisoners. Staff of the centre were involved with activists in WBB.[735] In 1979, Robyn Lansdowne was working with the Feminist Legal Action Group (FLAG) and WBB[736] to assist clients Violet and Bruce Roberts. Violet Roberts and her son were convicted of murdering her violent husband, Eric in 1976.[737] Lansdowne recalls:

> I interviewed Violet Roberts who had been convicted of murder and had been given a life sentence. Her case was very tragic and through WBB there was a movement to have her and her son released. In 1980, there was a street campaign —sit-ins, marches etc and public meetings at Redfern Town Hall. There was a formal process when I was

[730] George Zdenkowski and David Brown, *The Prison Struggle: Changing Australia's Penal System* (Penguin Books, 1982) 86–90.
[731] Ibid 89.
[732] Ibid. Although note that the gaol was reopened for several months in 1979.
[733] Interview with Andy Nehl (Frances Gibson, Sydney, 9 February 2017).
[734] Bernie Matthews, *Intractable: Hell Has a Name, Katingal. Life Inside Australia's First Super-Max Prison* (Pan Macmillan, 2006) 203. (The first time the program is listed in the *Sydney Morning Herald* is for a broadcast on 4 February 1979 'SMH 7-Day Guide', *Sydney Morning Herald* 29 January 1979, 14)
[735] Women Behind Bars were a 'small … effective group of activists in NSW in the 1970s and early 80s, who changed public awareness about women, crime, punishment and imprisonment': see 'Women Behind Bars' *ABC Radio National* (15 April 2012). <http://www.abc.net.au/radionational/programs/archived/hindsight/hindsight-15-04-12/3941858>.
[736] *Women Behind Bars* (Presented by Lorena Allam, ABC National Radio, 2012) 37:15:00.
[737] 2XX, 'Report on the Violet and Bruce Roberts Story in the 2XX collection', *2XX Collection*, 1979. For more on Violet Roberts, see Ann L Genovese, *The Battered Body: A Feminist Legal History* (PhD Thesis, University of Technology Sydney, 1998) (Web Document) <https://opus.lib.uts.edu.au/handle/10453/20131>.

> the solicitor for Violet at RLC making an application for Violet's release on licence and a campaign through the media including *60 Minutes* episodes etc.[738]

Lansdowne was employed by the law firm Freehills and, in another innovation, was the first pro bono lawyer to be employed by a law firm to work in a community legal centre. 'The terms of my employment were that I worked 1 day a week for the centre and 4 for Freehills and Freehills paid me 5 days a week.'[739] At the centre, Lansdowne worked on Violet's case. Ultimately Violet and her son were released on 15 October 1980.[740] Their release ended a vigil outside the Department of Corrective Services and then Parliament House begun 99 days before. By that time over 20,000 signatures had been collected on the petition calling on the government to set them free. There was extensive press coverage of the case and the issues it raised, virtually all of which was sympathetic, and public calls from all sections of the community for release of the Roberts (culminating in a half page advertisement in the Sydney Morning Herald on Monday 13 October 1980). The Attorney-General, Frank Walker took the responsibility for the decision and indicated that he was prepared to make a public recommendation that a licence be recommended on legal grounds because the Roberts had suffered a 'serious miscarriage of justice'.[741]

There was strong support amongst prisoners for Redfern Legal Centre, to the extent that one of the demands by prisoners in a sit-in at Parramatta Jail on 13 January 1979 was that 'jail authorities organise among prisoners a collection of money to aid the Redfern Legal Centre'.[742] The centre undertook casework for prisoners but also took an activist approach to prison issues. In 1979, the centre organised lawyers to go to Goulburn Gaol to take statutory declarations from prisoners detailing their treatment in prison. This work formed the basis for the terms of reference in the Goulburn Gaol inquiry into warder bashings and other offences.[743] The inquiry led to Public Service Board charges against five prison officers.[744]

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[738] Interview with Robyn Lansdowne (Frances Gibson, Melbourne, 6 July 2016).
[739] Ibid.
[740] Ibid.
[741] 'Violet and Bruce Roberts Released' (1980) *5 Legal Service Bulletin* 297.
[742] 'Sit-In by Prisoners', *Sydney Morning Herald* (Sydney, 14 January 1979) 3.
[743] Garth Symonds, 'RLC Policy Meeting' (Non-casework Paper, Redfern Legal Centre, 3 February 1980) 2; See RW Henry, 'Report of Inquiry into Allegations of Misconduct by Prison Officers at Goulburn Gaol' (Report, NSW Government Printer, 1979).
[744] Garth Symonds, 'RLC Policy Meeting' (Non-casework Paper, Redfern Legal Centre, 3 February 1980) 2.

Well-known prison activist Brett Collins finished a prison sentence in 1980 and was keen to make a difference in NSW prisons.[745] 'Redfern was the only centre [in NSW] following through on prisoners' issues. It was a centre linking the Prisoners Action Group with other activists and lawyers—a safe place and a place of networking.'[746] Collins and other prison activists used the centre as a resource and the centre lawyers and volunteer lawyers were involved in all aspects of prison work, including the management of a halfway house for prisoners in Glebe.[747]

Anne Healey, a centre staff member, recalls:

> The prisoners were getting a voice they hadn't had before and my impression was that the armed hold up squad didn't like it at all … There was a palpable hostility from the Redfern police … I remember thinking particularly Virginia [Bell] and Nanette [Rogers] [RLC Solicitors] were really brave … They never thought of changing their behaviour as a result of the police hostility.[748]

In 1979 and 1980 the centre had discussions with the State Government's legal aid body, the Legal Services Commission, with a view to setting up a funded, independent Prisoners Legal Service. On 27 May 1981, the Legal Services Commission resolved to recommend to the Attorney-General that a separate division of the Commission be established to create a comprehensive Prisoners Legal Service.[749]

The government contracted the PLS services to RLC and other community legal centres. Redfern, Marrickville and Macquarie Legal Centres participated in the Legal Services Commission's Prisoners Legal Service by providing solicitors to attend at Long Bay, Parramatta, Silverwater and Mulawa Jails on a regular basis to give general legal advice to prisoners.[750] An in-house service at the Legal Aid Commission was established in February 1986 staffed by three solicitors and three support staff. The service was responsible for provision of an advisory service to prisoners in all metropolitan prisons; representation of prisoners charged before the Visiting Justice in all metropolitan prisons; coordination of similar services provided by the Service to prisoners in country gaols by rostered private

[745] Interview with Brett Collins (Frances Gibson, Sydney, 18 July 2016).
[746] Ibid.
[747] Ibid.
[748] Interview with Anne Healey (Frances Gibson, Sydney, 24 July 2016).
[749] 'Prisoners Legal Service Advisory Committee Report' (Committee Report, Legal Services Commission, 1981).
[750] John Hunt, 'Free Legal Advice All Year', *Sydney Morning Herald* (Sydney, 13 May 1984) 116.

solicitors; and, co-ordination of a roster of private solicitors to appear for prisoners before the Parole Board at revocation and review hearings.[751]

The legal regime in prisons was arcane and little was known about it. The centre's work led to the first Australian consolidation of prison law in *Halsbury's Laws of Australia*.[752] Previously, prisoners had been almost always unrepresented. Cases were run by the centre, such as *Riley v Parole Board of New South Wales*,[753] where Mr Riley had been refused release by the Parole Board for years with no reasons given. The case was taken on as an issue of natural justice and its successful conclusion assisted not only Mr Riley but also many other prisoners.

Centre staff lawyers represented prisoners at Visiting Justice hearings for which the centre had received specific funding. Andrew Haesler, a solicitor at the centre notes:

> We engaged in strategic thinking about the work being done. In the PLS work for instance, we asked, 'if we run this case will we change the remission system?' We forced changes which got lots of people released. We would send someone down to the gaol with a particular facts situation in mind and try and find someone who fitted that case. We didn't want to be just a duty solicitor.[754]

Prisons solicitor Bill Dickens recalls work in the 1980s.

> We used to do a lot of sentence calculation work … At the Department of Corrective Services, there was an employee whose sad responsibility it was to calculate the sentences. These were done on handwritten cards which had all the arithmetic on them. And it was complex because of the nature of the remissions system … We used to get the cards and would check the release dates and inevitably the Department would get it wrong and we would then commence extensive litigation to calculate the proper sentences. This was a good source of income from costs for RLC for a while.

Dickens relished the opportunity to challenge the inefficiencies and inequities of the system, describing his work here as 'a lot of fun'. He adds:

> I remember one time when the prison released a person and he said to them, 'I am not meant to be released now' and they said, 'yes you are, on your way' and about a week later they contacted him and said, 'please come back now we made a mistake'. So, we briefed John Basten and went to the Full Court of the Federal Court and they found the

[751] 'Notes' (1986) 11(6) *Legal Service Bulletin* 282, 291.
[752] J Basten, S Winters and G Zdenkowski, 'Prisons' in *Halsbury's Laws of Australia*, (Butterworths, 1996).
[753] *Riley v Parole Board of New South Wales* (1985) 3 NSWLR 606.
[754] Interview with Andrew Haesler (Frances Gibson, Sydney, 7 July 2015).

> release extinguished the warrant and there was no power to arrest him so he was out. There was an amendment to the *Crimes Act* to deal with that situation after that. John Basten was absolutely ruthless in his efficiency. You briefed him and within 24 hours you would not only have an advice but you would have pleadings and documents and you were ready to go. It was pretty exciting, all that crime work.[755]

Ben Slade, a centre solicitor in the mid 1980s, had come straight from law school to work at RLC and was participating in the PLS with Bill Dickens. They would visit two gaols in a day. You would 'see a queue of 30 people in one gaol and another 30 in the afternoon.'[756] There was no other free legal advice at the gaols.

The centre's activities clearly antagonised the Department of Corrective Services. John Fahey, Minister in the NSW government publicly criticised the PLS, claiming it was being abused by prisoners who appealed to the District Court when Visiting Justices punished them for misbehaviour. Fahey claimed these appeals 'clogged up the District Court and cost the State tens of thousands of dollars in transport and legal expenses.'[757]

In 1985 it was agreed that the government legal aid office, the Legal Aid Commission of NSW, would set up a separate section to deal with prisoners' matters to start around July that year.[758] The centre handed over the PLS organisation to government though they retained casework in Visiting Justice matters, occasional test cases[759] and representation on the PLS Advisory Committee. The centre's mission in this area was accomplished. The project to provide legal services and a voice for prisoners in New South Wales had been established by the centre and was now to develop into State-wide government funded service to prisoners in NSW gaols.[760]

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[755] *Vella v Commissioner of Australian Federal Police* (1985) 9 FCR 81. Mr Vella was a Commonwealth prisoner who was released and subsequently rearrested. Proceedings were taken to obtain his release on the basis that there was no power to return him to custody even if the original release had been mistaken. Mr Vella was successful in the Full Federal Court
Interview with Bill Dickens (Dubbo, 8 February 2017).
[756] Interview with Ben Slade (Frances Gibson, Sydney, 8 December 2015).
[757] Luis Garcia, 'Prison Drug Smugglers Face Jail', *Sydney Morning Herald* (Sydney, 1 June 1988) 3.
[758] Letter from Andrew Haesler to Tony Woodyatt, 11 March 1985.
[759] For example, 'in December 1988 … Redfern Legal Centre, acting on behalf of all prisoners sentenced to life imprisonment, commenced a representative action in the Supreme Court of New South Wales to have the policy declared null and void' New South Wales, *Parliamentary Debates*, Legislative Council, 1 March 1989, 5396 (Elisabeth Kirkby). This policy declared a mandatory higher security classification for any prisoner who had escaped: at 5391.
[760] The contribution made by Legal Aid's PLS solicitor Jack Grahame, who had a longstanding commitment to civil liberties and prisoners' rights, should be noted.

In the transfer to the Legal Aid Commission, though something was lost. The new PLS did not operate as an activist organisation. Brett Collins, now coordinator of prison activist group Justice Action, notes:

> Over the years legal aid became more and more reluctant to be activist and less prepared to expose what was actually happening in the prisons … after a while they didn't want to put all that time into the meetings … they tried to step away. Then they said they don't want a committee anymore [Advisory Committee] … it was reinstituted after protests but then disbanded … The Prisoner movement lost the network and being part of the processes with lawyers.[761]

Zdenkowski agrees:

> When the PLS went to legal aid there was a gap in advocating for prison rights. There are now very few people involved. Brett Collins and Justice Action have continued to hold the torch. However, there is no sustained public discourse about prison conditions.[762]

Despite these concerns, the innovation of the PLS has proved to be a sustainable service that today assists prisoners everywhere in NSW.[763] The staff and volunteers at the centre identified a need, then designed and implemented a novel service to meet the need. The reciprocal interaction of the human actors and social structures[764] including State funding from the independent statutory corporation of the Legal Aid Commission and complimentary non-government organisations led to a demonstration of the value of providing assistance to some of the most vulnerable people in the State. The NSW government was persuaded to take on and run a service for prisoners in all gaols. In doing so, they made a significant contribution to delivering access to legal services to a previously excluded group of people—prisoners.

### Intellectual Disability Rights Service

The history of intellectually disabled people is a history of marginalisation, oppression and abuse.[765] Around 1981, the centre identified a gap in legal services for people with an

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[761] Interview with Brett Collins (Frances Gibson, Sydney, 18 July 2016).
[762] Interview with George Zdenkowski (Frances Gibson, Sydney, 28 October 2017).
[763] See Anne Grunseit, Suzie Forell and Emily McCarron, *Taking Justice into Custody: The Legal Needs of Prisoners* (Paper, Law and Justice Foundation of New South Wales, 2 June 2008) for research on issues relating to prisoners' access to legal assistance in NSW.
[764] Giovany Cajaiba-Santana 'Social Innovation: Moving the Field Forward. A Conceptual Framework' (2014) 82 *Technological Forecasting & Social Change* 42, 47.
[765] Hilary Little, 'Non-Consensual Sterilisation of the Intellectually Disabled in the Australian Context: Potential for Human Rights Abuse and the Need for Reform' (1992) 14 *Australian Year Book of International Law* 203, 204.

intellectual disability[766] and this focus culminated in the creation of a new organisation—the Intellectual Disability Rights Service (IDRS). The role of IDRS was to advocate for people with an intellectual disability by undertaking strategic casework and education and to aim for the reform of law and policy to promote the rights of people with an intellectual disability.[767] This innovative organisation was to make its mark on the legal services of NSW and Australia through its casework and reform agenda as well as innovations in the mode of delivery of its services.

In the 1970s, the topic of intellectual disability and the law was in its infancy in Australia but was starting to be discussed in progressive legal circles. In July 1978, a conference was held at the University of New South Wales by the NSW Council for the Mentally Handicapped entitled *The Intellectually Handicapped: Citizens or Non Citizens*. Lawyer Jim Simpson was notably struck by the contents of a speech by Edward St John QC in which he talked about people with an intellectual disability as outlaws—'people truly outside the due process and equal protection of the laws.'[768]

Jim Simpson, who came to the service from a private firm, was a volunteer at RLC and describes the development of work relating to intellectual disability at the centre:

> By 1980 there was a social worker on every evening roster and there was a woman called Anne Louise Carlton who was the Friday night social worker and worked in intellectual disability in Parramatta and she introduced us to problems faced by people with an intellectual disability … She would get clients referred from the NSW Council on Intellectual Disability and a group of people from there came along wanting advice about wills to provide for their children. It was a time with no community based supported accommodation so they wanted advice about how parents could pool money to purchase housing. We did quite a lot of work around that stuff and that was the main thing that was coming in. Anne Louise went off to Melbourne but arranged for Janene Cootes to replace her. [769] She was very influential in getting us to think about the problems that people with an intellectual disability had but who were not coming in to see us. There was a lot of discussion about how rotten the institutions were and possibilities for people moving out into the community. It was obvious the vulnerability of people with an ID and in about 1983 we decided to take a more CLE focus and the Friday night roster people started running forums about the rights of people with an ID. This was extra work on top of the usual volunteer work. People included Tony Paine, Julia Hall, and Jill Anderson. Then we started to get stuff where people's rights were abused. We had a guy who was taken advantage of by a marriage agency—they took a lot of money to find him a wife. We got media about that on a current affairs show. There was a horrendous case where a guy was in respite care in an institution and his parents

[766] Redfern Legal Centre, *IDRS Five Years of Rights 1986–1991* (Redfern Legal Centre, 1991).
[767] Intellectual Disability Rights Service, *Annual Report 2008–2009.*
[768] Edward St John QC, 'The Intellectually Handicapped and the Law' (Paper presented at The Intellectually Handicapped: Citizens or Non-citizens, UNSW Sydney, 15–16 July 1978) 11.
[769] Fortuitously for Jim Simpson, who was later to marry Janene Cootes.

> picked him up after a week's respite and all his fingernails were gone. No clear explanation and the Department of Health concluded that their son had a disease that affected his fingernails. We went to Ombudsman who exposed no proper investigation and found that the most likely thing that a staff member had done this. He eventually got compensation but whoever did it was not discovered. In about 1984, there was a planning weekend at Bundanoon and a decision made that each evening would take on a particular specialty which cemented that we were doing ID and a particular staff member was associated with each night … Then we started seeking funding to set up IDRS. [770]

The centre had no specific funding for intellectual disability work and Bill Dickens was the first staff lawyer assigned to the night. Dickens recalls: '[m]y father who was a GP in Dubbo was involved in services for people with an intellectual disability in western NSW so that struck a bit of a chord with me … I used to go out and talk to groups of people with an intellectual disability about what the law was.'[771]

Between 1980–85 seven major State Government Reports were published on services to intellectually disabled Australians. These presented pictures of service delivery, which was fragmented, uncoordinated, and poorly resourced.[772] In 1983, the then Federal Minister for Community Services, Senator Grimes satisfied a pre-election commitment by establishing the Disability Advisory Council of Australia, which provided a mechanism for disabled people to directly advise the government. This initiative was closely followed by the Handicapped Programs Review (HPR) (1983–85) and its legislative outcome, the *Disability Services Act 1986*. The HPR involved a comprehensive public examination of government social policy as it affected the disabled. The review was based 'on the principle that future government funds should be directed towards services and programs that provided the individual with the greatest amount of flexibility.'[773] The centre staff wrote a publication on legal needs of institutionalised people in 1985.[774] In 1986, the Australian Parliament approved the *Disability Services Act*. This legislation

> [s]et out a 'new direction'—and signaled a move away from segregation to the integration of people with disabilities in Australian society. The object of the legislation included;
> 1. to assist persons with disabilities to receive services necessary to enable them to work towards full participation as members of the community;
> 2. to promote services provided to persons with disabilities that:

[770] Interview with Jim Simpson (Frances Gibson, Sydney, 16 September 2016).
[771] Interview with Bill Dickens (Frances Gibson, Dubbo, 8 February 2017).
[772] Michael Steer, 'Review of Legal Rights and Intellectual Disability: A Short Guide Edited by Julia Hall, Tony Payne and Jim Simpson' (1986) 11(5) *Legal Service Bulletin* 227.
[773] Rodney Sullivan, 'Donald James Grimes', *The Biographical Dictionary of the Australian Senate* (Web Page) <https://biography.senate.gov.au/grimes-donald-james/>.
[774] Shane Rendalls et al, *The Legal Needs of Institutionalised People* (Australian Government Publishing Service, 1985).

> (i) assist persons with disabilities to integrate in the community, and complement services available generally to persons in the community;
> (ii) assist persons with disabilities to achieve positive outcomes, such as increased independence, employment opportunities and integration in the community.[775]

Roger West, co-ordinator of the centre, worked with Jim Simpson on how to lobby government and get funding to set up IDRS. The proposal for the new service was successful at the end of 1985 and was the culmination of five years of involvement by Redfern Legal Centre in the problems of people with intellectual disabilities. The NSW Government gave the centre $60,000 in 1985 and IDRS was established at the centre in one of the rooms upstairs in Redfern Town Hall. Initially the staff consisted of a solicitor, a part-time community educator and the administrator. The Service provided initial advice to anyone either by telephone or in person and then generally provided an appropriate referral rather than conducting the case entirely. The aim of the Service was to build up the capacity of mainstream lawyers to act for intellectually disabled people rather than seeking to provide a comprehensive casework service. (This was in accord with the principle of normalisation. This principle says that intellectually disabled people should be allowed to live as normal a life as possible in the general community and as far as possible obtain services from mainstream channels rather than specialist channels).[776]

Shortly afterwards in 1986, Senator Grimes funded several demonstration projects—innovative programs to improve the lives of people with an intellectual disability. Simpson notes that '[w]e got $250,000 for 18 months which was really big money back then. We grew quickly and after Redfern Legal Centre Publishing moved out, we shared space on the top level of the centre with another service, The Accommodation Rights Service.'[777]

The work of IDRS was always collaborative. The centre's work in casework, education and policy and the way in which it offered its services was developed in conjunction with these other community services. Simpson recalls:

> We had support from community groups—NSW Council for Intellectual Disability and Action for People with a Disability which was a parent group who had a rights-based focus and very progressive. Soon after we developed the

[775] National Council on Intellectual Disability, *Submission to the Long-Term Disability Support Productivity Commission Inquiry 2010* (16 August 2010) 6.
[776] Wolf Wolfensberger, *The Principle of Normalization in Human Services* (National Institute on Mental Retardation, 1972).
[777] Interview with Jim Simpson (Frances Gibson, Sydney, 16 September 2016).

> interest at RLC a similar interest developed at Macquarie Legal Centre and they were doing similar stuff. I wasn't aware of anything similar overseas and the model we developed was very much based on our experience. We were very clear from the start we wouldn't just do advice and casework but we would do community education with people with an intellectual disability themselves and support workers. That was the way to go. In the early years, we did about one third advice, one third advocacy and one third education. We would only do test cases where there were glaring outrages and there was no other source of assistance. Part of this was about building up a network of private lawyers and building up expertise in legal aid for people with an intellectual disability.[778]

The new service worked on a wide variety of human rights issues such as the use of physically restrictive and intrusive methods of managing challenging behaviour, employment issues such as wages, conditions of work, self-determination, use of medication, discrimination, guardianship and the establishment of a Guardianship Board, criminal law, education of lawyers, victims of crime including sexual assault, housing, wills, sterilisation, work on *Disability Services Act* standards and issues to do with boarding houses/hostels. Litigation was generally restricted to test cases. The Service trained disabled people to recognise violations of their rights and what they can do about such violations. Similar training was conducted through workshops and publications for relatives, friends and advocates of intellectually disabled people, and those who work with intellectually disabled people.[779] Simpson recalls:

> In 1986, I became the first Principal Solicitor and Coordinator. I was a pig in mud! For a long time, I was just a square peg in a round hole in the private firm. The work was fine but it was for pretty well-off people and I gradually developed clarity that where I was comfortable was working where people were doing it tough and especially the systemic change stuff I particularly enjoyed. The world was ripe for that. I had done a fair bit of litigation so had the confidence to take on issues [780]

The centre took on test case litigation.[781] In the 1980s there was a great deal of debate about who should have responsibility for decisions of sterilisation of minors with intellectual disabilities.[782] In 1988, IDRS was involved with a case before the Family Court in relation to a proposed hysterectomy on a 15-year-old girl with an intellectual disability.[783] The girl's parents organised the operation as they were concerned about how she would react to

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[778] Ibid.
[779] Jim Simpson, 'Intellectual Disability: Intellectual Disability Rights Service' (1986) 11 (5) *Legal Service Bulletin* 237, 238.
[780] Interview with Jim Simpson (Frances Gibson, Sydney, 16 September 2016).
[781] For a shocking look at attitudes to sterilisation of people with an ID see Edgar A Doll, 'Community Control of the Feeble-Minded'(1930) 149(3) *The Annals of the American Academy of Political and Social Science* 167.
[782] Regina Graycar, Mary Gaudron and Jenny Morgan, *The Hidden Gender of Law* (Federation Press, 2nd ed, 2002) 13.
[783] *Re A Teenager* [1988] FamCA 17 (15 November 1988). See Jim Simpson, 'Judges at Odds' (1989) 14 *Legal Service Bulletin* 102.

menstruation. IDRS became aware of the proposed operation and obtained an interim injunction on behalf of a parent active in an organisation of parents of people with an intellectual disability the night before the planned operation to prevent the operation occurring until there had been a full hearing in the Family Court.[784] The Human Rights and Equal Opportunity Commission sought and was granted leave to intervene in the proceedings. This was the first case of its type in Australia. In *Re a Teenager*, Cook J held the operation could go ahead. In his remarks on the case, the judge said that the decision was one for the parents stating:

> The Court was concerned as to how the proceedings came before the Court and as to how a complete stranger to the child and the family, could prosecute an action which, seemingly, involved most intimate and sensitive awareness and appraisal of that particular child's interests. It does not seem appropriate to the Court that representatives of interest groups, no matter how well-intentioned or motivated, can bring to all essential judgments, arising both before and during such litigation as the present, the cool and pragmatic approach required.[785]

The centre was involved in a number of these sterilisation cases which were controversial and attracted significant publicity. Simpson notes:

> Sterilisation was one of the biggest issues we took on. I remember Justice Powell was getting cases where he was authorising hysterectomies on women without any representation for the woman. I wrote to him and said how about having separate representatives in those cases. He said he saw no need to talk to me. I wrote to Chief Justice Street and got a very urbane response which said "I look forward to the assistance of legal representation in this sensitive area of the law" … We were in the thick of the development of the Guardianship legislation which was going to have in it that sterilisation could only occur with permission of the Tribunal. But then we were really concerned about anecdotes we were hearing when young girls were given hysterectomies even pre-menstruation. We got alerted by a local government disability service who rang us and told us they were worried about a particular case where a hysterectomy was to be done the day after tomorrow. The girl was prepubescent so we took the bit between our teeth and I rang up the doctor. At that point, there was a body of law developing overseas that non-therapeutic intervention was illegal without court approval. He told me to buzz off. This was now going to happen the next morning. I talked to a member of the management committee who was a parent and with her I rang up the duty judge of Equity division and gained an ex parte injunction that night. We then got John Basten involved as barrister. John said there were complex jurisdictional issues so it was moved to the Family Court … It was very difficult. There was no doubt about the bona fides of the family. It was an issue about whether the operation was in the child's interests. There was another similar case which we pursued before the first case was heard. Parallel to this the Public Advocate brought a similar case before Nicholson CJ in the Family Court. He looked at overseas case law and concluded that non-

[784] The application was originally made to the Supreme Court of New South Wales and a person who was and is the secretary of a disabled persons' society was appointed the next friend of the child. That Court declined jurisdiction based on the situation, amongst other matters, that the child was the child of a marriage and therefore the Family Court of Australia was the Court, if any court had jurisdiction, to deal with the matter. *Re A Teenager* [1988] FamCA 17 (15 November 1988).
[785] *Re A Teenage*r [1988] Fam CA 17 (15 November 1988) 100.

> therapeutic sterilisation did require family court approval.[786] His decision was followed by a decision of the Full Court of the Family Court that said it didn't require approval. So, we went to the High Court. The High Court in *Re Marion*[787] said Family Court approval was required for sterilisation. We were stoked. We didn't know what to expect. It was such a roller coaster with the different decisions in the Family Court. It was so difficult. We were barging in on these families who were loving caring families. We were worried about what our standing would be. The first judgment had a lot of publicity and the parents did an interview in the *Women's Weekly* and on TV. We were worried about our reputation and our relationships with others in the community. But in fact, there didn't seem to be any negative effect whatsoever and in fact a month after first Family Court decision we had a real spike in our advice work. People knew about us even more.[788]

Funding bodies and organisations supported a community development ideal in this period, but a question arises as to whether those involved at the time addressed the equity issues surrounding participation in such models of community functioning. Marginalised groups remained on the periphery, excluded from the mainstream ideals, so missing out on the opportunities offered by 'community development'.[789] IDRS had its own management committee which included parents, a representative from the centre staff and people with an intellectual disability[790] and the Rights Forum which was a group of people with an intellectual disability who met regularly to provide advice to IDRS on issues. 'At the time this was ground-breaking and very valuable.'[791] In the case of IDRS significant efforts were made to ensure marginalised people had a real voice in the service's activities and policies. The Service recognised the 'value of the unique insight on intellectual disability issues possessed by people who themselves have an intellectual disability'.[792] Two people with an intellectual disability were appointed to the Management Committee and in 1987 to a Consumers Committee which came to be known as the Rights Forum.[793] A publication addressed at people with an intellectual disability participating in management of advocacy services was produced by the Service.[794]

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[786] Interview with Jim Simpson (Frances Gibson, Sydney, 16 September 2016).
[787] Secretary, Department of Health and Community Services v JWB (Marion's Case) (1992) 175 CLR 218. Marion's Case provides that parental consent only suffices as authority when a procedure is performed for 'therapeutic' reasons. Conversely, any proposed non-therapeutic procedure requires approval from the Family Court and will be determined on the basis of an individual's best interests. See also Jeanne Snelling, 'Re-Visiting Re X: Hysterectomy, Removal of Reproductive Capacity and the Severely Intellectually Disabled Child in New Zealand' 22 *Journal of Law and Medicine* 679, 685.
[788] Interview with Jim Simpson (Frances Gibson, Sydney, 16 September 2016). See Jim Simpson, 'Sterilisation and the Family Court' (1991) 5 *Australian Journal of Family Law* 1; Linda Steele, 'Making Sense of The Family Court's Decisions on the Non-Therapeutic Sterilisation of Girls with Intellectual Disability' (2008) 22 *Australian Journal of Family Law* 1.
[789] Wendy Waller, 'Community Management: Has it Gone or Just Evolved? A Discussion on Where Community Management has Come From and Where it is Today' (2002) 4 *Developing Practice: The Child, Youth and Family Work Journal* 26. See also Susan Kenny, 'Contestations of Community Development in Australia' (1996) 31(2) *Community Development Journal* 104, 106.
[790] Interview with Jim Simpson (Frances Gibson, Sydney, 16 September 2016).
[791] Ibid. See also *Five Years of Rights: 1986–1991: Further Up The Hill* (Redfern Legal Centre, 1991).
[792] Intellectual Disability Rights Service, *Promoting Rights* (IDRS, 1987) 24.
[793] Ibid 28.
[794] Sally Robinson, *Stand Up and Speak! Sit Up and Listen*! (IDRS, 1997).

By 1991, IDRS had moved their education focus to a train the trainer model—training workers in the intellectual disability field to ensure widest impact.[795] The main focus of the centre was now primarily on preventative law by means of education rather than casework. Since that time IDRS has continued providing essential legal advice, education and reform work for people with an intellectual disability and their families. The service operates the Criminal Justice Support Network (CJSN) which provides assistance to people with an intellectual disability at police stations and at court.[796] The value of the service has been nationally recognised with calls for similar organisations to be established in all states.[797]

The IDRS provided the first legal service dealing with the topic of intellectual disability in Australia, a legal service that employed people with an intellectual disability on staff to deliver services and a service that had people with an intellectual disability as an integral part of the management of the service in the Rights Forum. It fulfilled the role of a non-profit being an active agent in shaping solutions to social problems, as opposed to being merely a service provider or advocate for policy related reform.[798] As Slappendel theorised, the service produced innovation in a complex process by both the interaction of structural influences and the action of individuals.[799] As we have seen, organisations can enable actions or constrain them. People can bring about organisational change.[800] IDRS, as part of and in conjunction with Redfern Legal Centre, was an organisation that enabled action and change and was innovative in its manner of providing services being primarily by education and retaining people with disabilities to do education and training work.

### Redfern Legal Centre Publishing (including Lawyers Practice Manual and Streetwize comics)

[795] See Intellectual Disability Rights Service, *Five Years of Rights: 1986–1991: Further up the Hill* (Redfern Legal Centre, 1991).
[796] 'About Us', *Intellectual Disability Rights Service* (Web Page, 2019) <http://www.idrs.org.au/s32/_about/aboutMain.php#.WZD4WncjGks>.
[797] See for example in Tasmania: Chris Pippos, *Burnie Advocate* (Burnie, 17 May 2014) 4.
[798] Michael L Shier and Femida Handy, 'Executive Leadership and Social Innovation in Direct-Service Nonprofits: Shaping the Organizational Culture to Create Social Change' (2016) 27(2) *Journal of Progressive Human Services* 111,114.
[799] Carol Slappendel, 'Perspectives on Innovation in Organizations' (1996) 17(1) *Organization Studies* 107.
[800] Giovany Cajaiba-Santana 'Social Innovation: Moving the Field Forward. A Conceptual Framework' (2014) 82 *Technological Forecasting & Social Change* 42, 46.

During the 20th century, in western industrialised countries, economic, social and political changes led to increased legislation, administrative regulation and litigation. 'The number of courts and judges, and their caseloads, increased, and the quantity and length of judicial decisions multiplied. More laws were enacted and more administrative regulations were promulgated. The result was more paper, more books, higher library and research costs, and the need for new approaches to both research and publishing.'[801] Encel points out that the strength of the legal profession is heightened by a written constitution and the intricacies of the Federal system but also by the 'complex web of judicial, quasi-judicial and administrative tribunals which constitute one of the pillars of the bureaucratic ascendancy—an ascendancy which gives an enormous social role to the judge, the lawyer.'[802]

Redfern Legal Centre Publishing was established in 1985.[803] RLCP was an innovation in the form of a self-funding community legal service that published plain English guides to the law with a focus on areas of poverty law.[804] The work of RLCP clearly met the definition of innovation adopted in this thesis. It was a new solution to a problem that met a social need and improved the quality of life for many individuals and communities. It was created as part of Redfern Legal Centre and came into being at a time of movements having an impact on the reform of legal services in the 1970s and 1980s, the Plain English movement, preventative law, a focus on consumer rights and notions of deprofessionalisation.

Legal language and written materials that lawyers produce about the law had been criticised for centuries on the basis of their inaccessibility to general readers.[805] Despite this, most publishing houses were unenthusiastic about legal projects directed at the layman.[806] The Australian Law Reform Commission described the problem:

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[801] Morris L Cohen, 'The Legal Publishing Industry in the 20th Century and Beyond' (1992) 11 *Legal Reference Services* 9, 10.
[802] Sol Encel, *Equality and Authority* (Cheshire, 1970) 123.
[803] RLCP was registered as a company limited by guarantee, (Redfern Legal Centre Publishing Ltd) on 17 July 1987. (ACN 003 333 597): 'Company Names Register', *Australian Securities and Investments Commission*.
[804] The term 'poverty law' describes the broad areas of law and legal needs which arise by virtue of an individual's or a group's poverty: Ontario Ministry of the Attorney General, 'Poverty Law', *Ontario Legal Aid Review* (Web Page) <https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/olar/ch11.php>. 'Poverty law' traditionally includes housing and consumer problems, social security and employment issues, and family matters.
[805] Ros Macdonald, 'Plain English in the Law: A New Model for the 21st Century' 30 (2004) *Commonwealth Law Bulletin* 922, 923.
[806] See Brian Keon-Cohen, 'Community Legal Education in Australia' (1978) 4(4) *Monash University Law Review* 292; Bryan Keon-Cohen 'Community Legal Education in Australia, Philosophies and Programmes for the Future' (Speech, Law for Non-Lawyers: The Newcastle Conference, University of Newcastle, 22–24 August 1978).

> Many legal documents are unnecessarily lengthy, overwritten, self-conscious and repetitious. They consist of lengthy sentences and involved sentence construction. They are poorly structured and poorly designed. They suffer from elaborate and often unnecessary cross-referencing. They use confusing tautologies such as 'ordered, adjudged and decided' and 'let, allow and permit'. They retain archaic phrases such as 'know all men by these presents' and 'this indenture witnesseth'. They use supposedly technical terms and foreign words and phrases, such as inter alia and res ipsa loquitur, even when English equivalents are readily available. They are unintelligible to the ordinary reader, and barely intelligible to many lawyers. Language which suffers from some or all of these defects is called 'legalese'. Linguists regard it as an identifiably different dialect or class of language.[807]

Critics argued that the language of the professions was a symbol and a tool of power creating dependence and ignorance on the part of the public.[808] The Plain English movement was the name given to the first effective effort to change this and to write legal documents, importantly those used by consumers, in a manner that could be understood—not just by the legal technicians who draft them, but by the consumers who are bound by their terms.[809] The Plain English movement for legal writing is widely claimed to have started in the USA with Executive Order 12044 signed 23 March 1978 by President Jimmy Carter and requiring US government regulations to be written 'as simple and as clear as possible'.[810] The 'plain language movement' sought to demystify the law to make it comprehensible to all[811] and as Felsenfeld notes 'The Plain English movement of 1975–80 may be usefully thought of as part of a longer evolution in consumer protection.'[812]

In a parallel development originating in the 1960s and 1970s, researchers were beginning to note a move towards a challenge to the autonomy, monopoly and social privilege of established professions. By 1969, Haug and Sussmann were identifying a 'new stage in the interaction between professionals and the society, a stage we have called the revolt of the client.'[813] Theories advanced as to the cause of this included a higher level of knowledge in the community, doubt as to claims of altruism by the profession and concerns that 'the

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[807] Australian Law Reform Commission, *Plain English and the Law* (Report No 9, 1987) 15.
[808] B Danet, 'Language in the Legal Process' (1980) 14(3) *Law and Society Review* 445, 452.
[809] Carl Felsenfeld, 'The Plain English Movement: Panel Discussion 6' [1981–1982] *Canadian Business Law Journal* 408.
[810] Tom McArthur, 'The Pedigree of Plain English' (1991) 7(3) *English Today* 13, 19. Moves towards Plain English legal writing in the USA precede this however, such as Citibank of New York's introduction of a Plain English consumer promissory note in 1975, and legislation from New York in 1977 which required that every contract of $50,000 or less 'primarily for personal, family or household purposes' be: '1. Written in a clear and coherent manner using words with common and every day meanings' and '2. Appropriately divided and captioned by its various sections.' See also Ros Macdonald, 'Plain English in the Law: A New Model for the 21st Century' (2004) 30 *Commonwealth Law Bulletin* 922, 923.
[811] B Danet, 'Language in the Legal Process' (1980) 14(3) *Law and Society Review*, 445, 452.
[812] Carl Felsenfeld, 'The Plain English Movement: Panel Discussion 6' [1981–1982] *Canadian Business Law Journa*l 408, 411.
[813] Marie R Haug and Marvin B Sussman, 'Professional Autonomy and the Revolt of the Client' (1969) 17 *Social Problems* 153.

organizational delivery system supporting their authority is defective and insufficient.'[814] Also relevant was standardisation and routinisation of activities and an increasing demand by clients to play a part in decisions affecting their needs.[815] Queries were raised as to whether the aims of professionals were in society's best interests.[816] This anti-professional stance or 'Deprofessionalisation' was being discussed with reference to psychiatry,[817] social work,[818] accountants,[819] teachers[820] as well as medicine and law. As Haug stated 'medicine and law, two of the classic learned professions, are suffering the pangs of splits and cleavages in which part of their former work domain is being claimed by new workers, with new titles, training and responsibilities.'[821]

Concerns were being raised that professionals, 'even if they are not venal, are cold, elitist, and divorced from human concerns.'[822] Writers were discussing the dominance, the authority and the autocracy of the professions. [823] Deprofessionalisation was an approach often adopted by early CLC workers and others[824] as illustrated in a discussion on the need for lawyers at the NSW conference on legal services held in St. Luke's Community Centre, Redfern on 7 June 1975. Discussion at the conference focused on the desirability of community control over lawyers, and of encouraging individuals to conduct their own cases or control their lawyer's conduct of them more closely than was usual. The group decided that it would be desirable to continue the discussion at a separate meeting with the idea of forming a group, perhaps called 'Up Against the Law' or 'People Against the Law'. This suggestion was adopted by the conference as a whole. The feeling was that such a group could have three main aims:

a) Help people who are up against the law to defend themselves;
b) Explain to school and community groups about how the law operates;

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[814] Ibid 156.
[815] Nina Toren, 'Deprofessionalization and its Sources: A Preliminary Analysis' (1975) 2(4) *Sociology of Work and Occupations* 323, 332.
[816] Ivan Illich, 'The Professions as a Form of Imperialism' (1973) 25 *New Society* 633.
[817] Paul Fink and Stephen Weinstein, 'Whatever Happened to Psychiatry? The Deprofessionalization of Community Mental Health Centers' (1979) 136(4) *American Journal of Psychiatry* 406.
[818] Harry Specht, 'The Deprofessionalization Of Social Work' (1972) 17 *Social Work* 3.
[819] Francine Bernard and Pierre Hamel, 'Toward a Deprofessionalization of the Profession of Accountant? The Situation in Quebec' (1982) 24(2) *Sociologie du Travail*, 117.
[820] Thomas McDaniel, 'The Deprofessionalization of Teachers' (1979) 43(2) *The Educational Forum* 229.
[821] Marie R Haug, 'Deprofessionalization: An Alternate Hypothesis for the Future' (1972) 20 *The Sociological Review* 195, 197.
[822] Ibid 204.
[823] See Eliot Friedson, *Professional Dominance: The Social Structure of Medical Care* (Atherton Press, 1970); Terence James Johnson, *Professions and Power* (Macmillan 1972); Ivan Ilich, *Disabling Professions* (Marion Boyers, 1977).
[824] Mary Anne Noone and Stephen Tomsen, *Lawyers in Conflict* (Federation Press, 2006) 15.

c) Provide a pressure group for people who have come into conflict with their lawyers, courts, the police or prison officials.[825]

Another parallel movement was the recognition of the notion of preventative law (or preventive law as it is often termed in the United States). The concepts that '(1) mistakes, controversies, and lawsuits are not likely to arise between persons who want and know how to prevent them; and that (2) one who is informed is prepared to protect himself against persons who deal unfairly' had no doubt always been recognised.[826] It was Louis M Brown[827] who brought the notion into prominence in the legal profession and defined preventive law as 'that part of the practice of law which concerns itself with helping a client to minimize risks and maximize rights, not over the entire arena of lawyer-client affairs, but in that part of a lawyer's activity which is commonly called planning.'[828]

Early legal centres including Fitzroy Legal Service had adopted an ethos of demystification of the law[829] and Attorney General Lionel Murphy adopted this approach in the establishment of the ALAO declaring 'The law must be brought out into the light of day.'[830] It was in the midst of this move for a Plain English approach to the law and an increasing appreciation of the importance of preventative law that Redfern Legal Centre Publishing (RLCP) was born.

At the time there was little, if any, available information in plain English about the law. Responses to a NSW Law Foundation survey of 1976 recorded 'a damning indictment of the mystification and obscurantism that is perceived to be the law. The fact that over 70% of the sample questioned complained of the complexity of the law is a clear case for urgent action to both simplify the law and at the same time educate the public as to their legal rights and obligations.'[831] The legal profession however did not see it as their role to educate the public. Keon-Cohen commented in 1978 that community legal education 'was a relatively new concept to Australian lawyers, its existence, let alone the nature of this responsibility, has yet

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[825] John Basten, 'Conference on Legal Services' (1975) 9 *Legal Service Bulletin* 246.
[826] Sidney M Bliss, 'Preventive Law' (1940) 16(2) *The Journal of Business Education* 23.
[827] Louis M Brown is often acknowledged as the father of preventive law. See Avrom Sherr, 'Professor Louis Brown: The Father of Preventive Law' (1996) 3 *International Journal of the Legal Profession* 253. Brown was the author of the 1950 textbook *Preventive Law* (Prentice-Hall, 1950) and *Lawyering Through Life: The Origin of Preventive Law* (Fred B Rothman & Co, 1986).
[828] Louis M Brown, 'From Preventive Law to Mock Law Office Competition' (1972) 51 *Oregon Law Review* 343.
[829] John Chesterman, *Law and the New Left: A History of The Fitzroy Legal Service 1972–1994*, (PhD Thesis, University of Melbourne, 1995) 67.
[830] Jenny Hocking, *Lionel Murphy: A Political Biography* (Cambridge University Press, 2000) 175.
[831] BA Keon-Cohen, 'Community Legal Education in Australia' (1978) 4 *Monash University Law Review* 292, 297.

to be recognized.'[832] In respect of legal publishing in Australia at this time it was noted that '[o]utmoded policies and monopoly practices have led to an almost total disregard of the laymen's need for legal literature.'[833]

The first product of RLCP came from a Victorian CLC publishing innovation. In May 1977, Fitzroy Legal Service produced the *Legal Resources Book*—a loose-leaf plain English guide to the law written and updated by volunteer lawyers and designed for use by the public, as well as community and social workers and teachers who often approached the FLS for advice. The book was a huge success selling out its first edition of 4000 copies in 8 days receiving considerable favourable publicity, selling well and raising funds for the centre.[834]

The expansion of community legal education was seen to be a 'wider critical response to the monopolies enjoyed by the professions who it is argued exploited the inaccessibility of their domain expertise to maintain their power, financial privilege and their elite status'.[835] The centre's philosophy relating to CLE was set out in an article presented at a Commonwealth Legal Aid Commission seminar in 1979 and included the statement that 'A community based legal centre maximises the impact of its scarce resources by reaching more people through its CLE activities than by just taking on individual cases'.[836]

The way that Redfern Legal Centre responded to the need for CLE and preventative law was by developing an entirely new style of legal publisher. RLCP became a specialist legal and educational publishing service. Through assessing legal casework demand from clients at the centre, RLCP staff identified the need in the community for accessible legal information. They designed and developed an organisation devoted wholly to the production of Plain English resources on the law aimed at informing and empowering young people (*Streetwize Comics*) and the general public, community (*Law Handbook*) and social workers and lawyers (*Lawyers Practice Manual*). Operating from December 1978,[837] these publications were designed as educational and preventative resources. Many were able to be distributed free or

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[832] Ibid 292.
[833] Ibid 311.
[834] John Chesterman, *Law and the New Left: A History of The Fitzroy Legal Service 1972–1994*, (PhD Thesis, University of Melbourne, 1995) 180.
[835] Kathy Laster and Ryan Kornhauser, 'The Rise of DIY Law: Implications for Legal Aid', Asher Flynn and Jacqueline Hodgson (eds) *Access to Justice and Legal Aid*, (Bloomsbury Publishing PLC, 2017) 126.
[836] Anne Riches and Garth Symonds, 'Redfern Legal Centre and Community Legal Education' in Ben Boer (ed) '*Community Legal Education Preventive Legal Aid, Proceedings of the Commonwealth Legal Aid Proceedings* (Commonwealth Legal Aid Commission ,1980) 60.
[837] 'Redfern Legal Centre: 15 Years On', *Sydney Morning Herald* (Sydney, 12 March 1992) 97.

at minimal cost through the assistance of profits from sales and government grants. Surplus funds were used to develop new resources.[838] This was a first in the fields of both community legal education and publishing.

A crucial factor in RLCP's success was the availability of funding for projects developed by the centre. One source of this funding was the NSW Law Foundation. In 1967, a Bill was put forward to the NSW Parliament to require solicitors to deposit a proportion of funds placed in their trust accounts with the Law Society to create the Statutory Interest Fund. This fund was to be used to expand legal aid services and encourage law reform research amongst other things[839] and was administered by the Law Foundation. The amount to be deposited was increased over the years.[840] The Law Foundation made a major financial contribution to ensure the successful publication of Redfern Legal Centre's legal resources book.[841]

The centre started work on a NSW version of the Legal Resources Book. Michael Mobbs was a lawyer who had spent time in the USA with Ralph Nader's organisations and consumer advocacy groups.[842] (Ralph Nader is an auto-safety reformer and consumer advocate and had a big influence on the developing consumer movement.) Mobbs describes the development in NSW:

> Nader was a big influence on many people and was known to us all … I came back to Australia in the middle of 1976 and felt like a shag on a rock. I was mixed up with the campaign to stop the Ranger Uranium mine [[843]] and was casting around to see what I could do in law … I got mixed up with the Legal Resources Book and became the founding editor. I worked out at the University of New South Wales. I worked 9–12 months on that. It was excruciating. Just like herding cats. It really was appalling. Many of the contributors came from the Law Faculty and they all wanted to control the job. Egos were offended. Often people couldn't write clearly. There were about 24 chapters. It was a real learning experience. I had no authority. It was the worst job but years and years later people would say to me how useful it was—doctors, social workers etc. John Kirkwood, a UNSW academic very involved with RLC also worked on the book … I would say the book was 90% John's Kirkwood's creation. The book really had a substantial impact—it made the law accessible to a

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[838] Redfern Legal Centre, *Tenth Year Report 1977–1987* (Redfern Legal Centre, December 1987) 19.
[839] *Legal Practitioners (Amendment) Bill 1967* (NSW).
[840] See New South Wales, *Parliamentary Debates,* Legislative Assembly 23 March 1977, 5569 (Mr FJ Walker).
[841] Email from Terry Purcell to Frances Gibson (16 September 2019).
[842] Attorney, activist and politician Ralph Nader is an auto-safety reformer and consumer advocate. He has run for president of the USA several times, as a candidate for the Green Party. 'Ralph Nader', *Biography.com* (Web Page) <https://www.biography.com/people/ralph-nader-9419799>. For Michael Mobb's current activities see Janine Israel, 'Sustainability Expert Michael Mobbs: I'm Leaving the City to Prep for the Apocalypse' *Guardian* (online, 19 September 2019) <https://www.theguardian.com/environment/2019/sep/29/sustainability-expert-michael-mobbs-im-leaving-the-city-to-prep-for-the-apocalypse?fbclid=IwAR1F5CHJsuKh1BESHErQZiV9_M1WQX_MnZsU7VWsK6FySRjTQ4_OXvGYcjk>.
[843] For a brief history of the Ranger Uranium Mine see Keri Phillips, 'The Long and Controversial History of Uranium Mining in Australia' *ABC Radio National* (Web Page, 14 July 2015) <http://www.abc.net.au/radionational/programs/rearvision/history-of-uranium-mining-in-australia/6607212>.

> whole lot of people who needed to understand it. … The book was printed in Melbourne and there was a pilots' strike the day of the launch. I persuaded everybody to go ahead with the launch and managed to get the books brought down in a small plane. The LRB was part of John's vision in providing access to the law. The idea of having the law plainly available to everyone—social workers, teachers etc was a great idea.[844]

Centre workers understood Simon's comment that the fact the law is not accessible 'condemns the citizen to alienation from the experience of justice that law promises him.'[845] The book was published by Redfern Legal Centre and its black hard cardboard cover had an illustration of a seated blindfolded female justice figure. Little figures including a judge were sitting on her knee. The cover stated: 'Adapted from the Victorian Edition by Gardner, Neal, Cashman.'[846] The book was a loose-leaf production and Virginia Bell jokes; 'I think we had this idea that families would sit around the hearth updating their Legal Resources book. There was a certain level of naivety that was breath-taking.'[847] As Kidney notes the book 'was certainly influenced by the plain English movement, in that accessible legal information required it to be written in a more accessible style than was the norm. Individual centre lawyers pushed very hard for easy to understand material—that was a key part of the push to set up RLCP.'[848]

Anne Healey was working at IBM in 1980 when she saw an ad for a publication manager for the centre to work with Bob Fox, the editor who took over from Michael Mobbs. Healey's job was to take care of the financial side of the *Legal Resources Book* and she was partly motivated by a belief that she had to make enough money to go towards the cost of a solicitor's salary as Virginia Bell's solicitor's position at the centre was unfunded. The publishing involved

> [c]ontacting all these fantastic people to write the chapters. None of them were paid for their work … I worked upstairs in the back room surrounded by boxes … I used to have stalls at various places, went to book launches, I knew everyone in the publishing world. We wanted to sell to social workers, workers in other agencies, law students, volunteer lawyers at the centre.[849]

The book was also used as a basis for the centre's community legal education. It could be used for the types of activities outlined in a 1979 article on the centre and community legal

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[844] Interview with Michael Mobbs (Frances Gibson, Sydney, 29 April 2016).
[845] William H Simon, 'Babbitt v Brandeis: The Decline of the Professional Ideal' (1985) 37 *Stanford Law Review* 565, 574.
[846] Michael Mobbs (ed), *Legal Resources Book* (Redfern Legal Centre, 1978).
[847] Interview with Virginia Bell (Frances Gibson, Sydney, 1 December 2016).
[848] Email Sean Kidney to Frances Gibson (7 November 2018).
[849] Interview with Anne Healey (Frances Gibson, Sydney, 24 July 2016).

education including radio programs, pamphlets, videos, newspaper articles, talks at community groups and schools, training social workers, do it yourself kits and community 'teach ins'.[850] The centre's first solicitor (later barrister), John Terry, thought it was important to get Aboriginal Liaison officers education in the law so they would have more power and confidence in their work. He set up a course for Aboriginal field officers through UNSW in 1981/82.[851] Healey developed a series of talks based on the Legal Resources Book and used to go out and talk to the field officers on a regular basis.[852]

The centre built on this first publishing initiative with the publication of the Lawyers Practice Manual (commonly known as the Red Book) in 1983. Neil Rees, John Basten and Chris Ronalds had come up with the idea of a practice manual for lawyers. 'Nothing of the sort existed at the time. All the existing legal information services were just black letter law and there was nothing for junior lawyers.'[853] The Manual was innovatory in 2 ways. It had chapters on numerous areas of law especially relevant to a poverty law practice such as criminal law, discrimination, tenancy, motor vehicle law. This publication also did something that no previous law book in Australia had done, which was to describe in detail the practical steps to be taken in each type of matter from examples of completed court forms to instructions on where to sit at the Bar table and what documents to file. Law school education did not include this type of material and this manual allowed junior lawyers to more effectively assist clients as well as conduct community legal education sessions in areas of law they were not specialised in. Chapters were written by solicitors and barristers—usually staff or volunteers of the centre. Ronalds notes that '[t]his was an incredibly useful resource for new practitioners. People would send in very boring treatises on law and we would send it back and say "No! It has to be practical". We had to choose the right people to write it.'[854] This initiative was subsequently replicated in most other states.[855]

In the early 1980s, the centre decided to look at possibilities for an expanded role for the publishing work. The staff were wedded to the preventative approach to the law and took the

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[850] Anne Riches and Garth Symonds, 'Redfern Legal Centre and Community Legal Education' in Ben Boer (ed) '*Community Legal Education Preventive Legal Aid, Proceedings of the Commonwealth Legal Aid Proceedings of the* (Commonwealth Legal Aid Commission, 1980) 60.
[851] See John Terry, 'What's in a Name' (1983) 8 *Legal Service Bulletin* 181,182.
[852] Interview with Anne Healey (Frances Gibson, Sydney, 24 July 2016).
[853] Interview with Chris Ronalds (Frances Gibson, Bawley Point, 24 January 2017).
[854] Interview with Chris Ronalds (Frances Gibson, Bawley Point, 24 January 2017).
[855] See for instance Legal Australia, *Thomson Reuters* 'Lawyers Practice Manual' (Web Search Results) <https://legal.thomsonreuters.com.au/Search?keyword=Lawyers%20Practice%20manual>.

view that it was possible to prevent citizens acting to their detriment in legal problems, overcome dependence on lawyers, reduce feelings of powerlessness and promote community interest and involvement in law reform through publications work.[856] Publishing worker, Sean Kidney, describes his arrival at the centre and his adoption of the preventive approach to legal problems:

> I was a publisher and I'd dropped out of the commercial sector and worked in community publishing. I had a friend, Debbie Whitmont, who was working at RLC. She used to tell me stories about RLC. My friend, Ian Close and I applied to RLC in 1983 for a job share position. The job was called something like Coordinator of Publishing and the brief was to professionalise the Legal Resources Book and the Lawyers Practice Manual, increase sales and look at other publications. We had a job share at first then both went to full time. We shared a cubicle upstairs in the Town Hall.
>
> After a few years, in 1985, we set up RLCP as a separate organisation. The year after that I pushed to turn the Legal Resources Book into the paperback which significantly improved sales. This later turned into the Law Handbook. We launched a whole catalogue of books and publications. RLCP had become bigger, had more staff and the Redfern Legal Centre Management Committee thought it needed its own management committee … RLCP gave RLC a different profile. These were smart professional publications for people to buy. All of these activities helped burnish the credentials of RLC and crystallised one method of dealing with the ongoing tensions between casework and non-casework. RLCP was another version of specialisation of work to head off the endless repeat stuff from clients coming through the door. I would regularly go downstairs and see what was happening at the front desk or be at CLC conferences and think this should be put into a publication. … I saw myself as part of the Redfern Legal Centre team—I worked on campaigns on interest rates and other areas of law. I used to go to community education meetings of CLCs which led to a sense of community … I had the privilege of not doing casework but I could see what was happening to people and see that something should be done. And what I could do was to get the publications out. I wanted to be engaged in the overall work of the centre. I saw the publication side as a means to solve social problems and stop unnecessary repeating casework. We got a fair bit of attention at RLCP so RLC had a much bigger reputation than other legal centres … You get trapped by constraints such as government money. There were always arguments about that at the centre. We constantly had to document the success of our lobbying and the publishing work was useful. It was high profile.[857]

By 1986, The Law Handbook was accepted as an essential source of Plain English information about the law. The Clerk of the Local Court, Bankstown, Bill Wheeler wrote 'My union, the Petty Sessions Officers Association of NSW, whose members work in Local Courts, has decided that there will be a copy of The Law Handbook in every court office. I suspect barristers will have it under the bar table, and that solicitors will put it in the drawer

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[856] Anne Riches and Garth Symonds, 'Redfern Legal Centre and Community Legal Education' in Ben Boer (ed) '*Community Legal Education Preventive Legal Aid, Proceedings of the Commonwealth Legal Aid Proceedings of the* (Commonwealth Legal Aid Commission, 1980) 60.
[857] Interview with Sean Kidney (Frances Gibson, Boston, 17 September 2016).

of their desks!'[858] Decisions about the work of RLCP had to be signed off by the centre Management Committee but Kidney notes: 'I don't think the Management Committee had any idea much about publishing. But if I could get a grant for a publication, people just said yes. They wanted to be sure the publications would be useful in terms of the centre's practice. Often I would make the decision and then put the decision to the Committee for ratification.'[859]

The lack of accessible information about the law for young people[860] led to the genesis of *Streetwize Comics*—an RLCP innovation to create comics for young people with legal education themes. Streetwize was mainly aimed at young people outside educational institutions, where there is no teacher to act as intermediary.[861] Streetwize was also eventually to become its own separate organisation and the comic concept was so successful that it was emulated in other states of Australia, the United Kingdom, Canada and New Zealand.[862]

The Streetwize idea was that:

> [c]onventional methods of providing information to young people, such as government pamphlets and formal education, were often judgemental, inaccessible and full of jargon, and failed to relate to the everyday lives of young people. It was hoped that by using comics, the information would be more accessible to young people, particularly young people with low levels of literacy.'[863]

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[858] Bill Wheeler, Review of The Law Handbook (1986) 11(5) *Legal Service Bulletin* 229.
[859] Interview with Sean Kidney (Frances Gibson, Boston, 17 September 2016).
[860] The Federal Attorney-General's Department considered a plan to establish courses for high school students and adult education groups on the law and its administration in 1975. 'It would emphasise the problems of disadvantaged groups in the community, and could be adapted for high school use, continuing education courses, and audio-visual public education campaigns.' It seems nothing came of this proposal. 'Community Legal Education' (1974–1976) *Legal Service Bulletin*. Note there had been a project aimed at young people in schools in 1978 in the form of a newspaper Legal Eagle and then the Eaglebook series. Legal Eagle was developed and trialled in the first year and the first Eaglebook appeared in 1978 At its peak, class sets of Legal Eagle went into a third of the high schools in Australia, and the Eaglebooks achieved a similar distribution in many States. Susan Churchman, 'Community Legal Education: The Last Ten Years, Socrates Revisited' (1987) 12 *Legal Service Bulletin* 198, 201.
[861] Susan Churchman, 'Community Legal Education: The Last Ten Years, Socrates Revisited' (1987) 12 *Legal Service Bulletin* 198, 201.
[862] See 'Streetwize Comics', *Museum of Applied Arts and Sciences* (Web Page, 9 August 2007) < https://collection.maas.museum/object/8499> which states: 'Streetwize began in 1984 as an initiative of Redfern Legal Centre, Redfern Legal Centre Publishing, NSW Legal Aid and the Youth Advocacy Service of Marrickville Legal Centre.' While the comics were initially conceived as a way of informing young people about their legal rights and responsibilities, it was soon realised that young people's problems are multifaceted and interconnected. The issues covered in the comics broadened out to include health, drugs, welfare, sexuality, employment and personal rights. Because streetwise comics are based on the philosophy that effective communication must be built around the perceptions and needs of the audience, in-depth research and consultation with target audiences informs the development of each comic, drafts are tested in workshops, and the final results are subject to evaluation. The comics were initially distributed in youth refuges and institutions in NSW, but Streetwize Communications went on to produce specially adapted editions for other states. Funding comes from federal and state government departments, non-government and community organisations.
[863] Kurt Iveson, 'The Real-Life Adventures of Streetwize Comics' (1998) 151 *Overland* 59.

Features of the comics were that they involved young people in the production, included female characters, young people from Aboriginal, disabled, gay and lesbian, and a range of ethnic backgrounds, a character facing a problem, and their peers helping them to overcome the problem by utilising existing sources of information and support.[864] The Streetwize comics focused on groups who were thought of as alienated from society, and whose actions were often attributed to subjective, psychological aberration.[865] A number of government departments recognised the importance of delivering information to young people in comic form but Streetwize did cause some controversy and encountered opposition from some politicians and bureaucrats, making distribution in schools in some states a problem.[866] Kidney recalls:

> I had this idea about comics which led to Streetwize Comics. We put this together with Julie Melbourne from Marrickville Legal Centre, brought in Dominic Gibson to RLCP then got government funding. I had to do Canberra visits all the time. When it came to Streetwize, I had to continually explain to politicians the research evidence about how we were doing the comics. I pushed reality stories. We told funders that workers had to go out and research real stories. Some were amazing. For example, the guy who missed out on a welfare payment and went out and shot his dog. I got respected social and academic researchers to write academic reports in order to persuade the funders this was the way to go. They were approving each issue. We had some good times and we got really good feedback. We produced thousands of copies of the comics. Distribution was always a problem. Towards the end, we got asked by DSS to do a social security comic which turned into a consultancy on welfare payments for homeless kids … I'm very proud of the Streetwize Comics. They would pop up everywhere. It was read by kids and were also useful as a way to explain to politicians what was going on.[867]

In August 1986, RLCP moved out of the Redfern Town Hall to 18 George Street Redfern. RLC News reported that: '[t]he apron strings are not severed yet … the enthusiasm, craziness and non-legal approach of the Press is sorely missed at Pitt Street … The move has enabled us to spread out a little providing the closest yet to barely reasonable working conditions for the staff.' [868] In the late 1980s, RLCP split from Redfern Legal Centre and became an entirely separate organisation. The process was not easy. Andrew Haesler, Principal Solicitor at the centre at the time reflects:

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[864] Ibid 60.
[865] Herbert Gintis, 'Alienation and Power' (1972) 4(5) *Review of Radical Political Economics* 1.
[866] Kurt Iveson, 'The Real-Life Adventures of Streetwize Comics' (1998) 151 *Overland* 59, 60.
[867] Interview with Sean Kidney (Frances Gibson, Boston 17 September 2016).
[868] *RLC News* (Redfern Legal Centre, August/Sept 1986) 1.

> RLCP wanted to be an independent organisation. The finances were merged with RLC. They wanted to run as a collective and be a publishing agency with everyone getting the same pay. RLC realised RLCP would never make RLC a lot of money. We had to get the Community Justice Centre in to help facilitate the split up of assets etc. It was a bit like a divorce.[869]

RLCP operated as an independent organisation for almost 30 years and produced a significant collection of publications. The organisation ran the *Law for Non Lawyers* course which allowed people including social workers, counsellors, health professionals, public servants and other a guided accessible introduction to many areas of the law. Eventually the organisation was dissolved and the rights to the publications sold to University of New South Wales Press Ltd, a publishing organisation at the University of New South Wales. Initially UNSW Press was asked to take over only the *Environmental Law Handbook* because RLCP faced a downward cash flow, but agreement was made to acquire the whole list and maintain the publishing program. RLCP was dissolved and several of its staff joined UNSW Press. The print versions of the main books continued to be successful (with new editions of *The Law Handbook* in 2004 and 2007 and the *Environmental Law Handbook* in 2006) but 'it proved more difficult to commission and develop books on specific topics.'[870] Demands for online publications and issues relating to subscription models were outside the framework of UNSW Press publishing and an approach from Thomson Reuters who had specialist expertise in this type of law publishing seemed the best arrangement for the future of the main RLCP reference works. On 20 July 2009 they were acquired by Thomson Reuters.[871] Redfern Legal Centre Publishing Ltd was deregistered as a company on the 17 April 2004.[872]

The acquisition by Thomson Reuters did not please everybody. Kidney recalls:

> Eventually the Committee sold the Law Handbook off to the fuckers in suits essentially. I was really annoyed. It shows you, you need people who have a vision of what can be, and enthusiasm. The RLCP Management Committee was made up of lawyers who were doing other stuff. They just looked for an easy path to jettison it. It needed work. They gave it to Law Book Company. And the Law Book Company put up rates. But what did they expect?[873]

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[869] Interview with Andrew Haesler (Frances Gibson, Sydney, 7 July 2015). See also Kidney on the split and aftermath: 'Initially funds from the publishing went back to RLC. When it separated, we had an agreement for royalties to go to RLC even after we split off.' Interview with Sean Kidney, (Frances Gibson, Boston 17 September 2016).
[870] University of New South Wales Press Ltd, *UNSW Press a History: 1962–2012* (UNSW Press, 2012) 20.
[871] Ibid.
[872] Australian Securities and Investment Commission Records as at 3 July 2017 for Redfern Legal Centre Publishing ACN 003 333 597.
[873] Interview with Sean Kidney (Frances Gibson, Boston 17 September 2016).

Chris Ronalds, who had chaired the Lawyers Practice Manual Committee for 10 years, says: 'I was never happy over selling the manual to the Law Book Company [Thomson Reuters]. I thought it was a really short term decision. It was a good seller.'[874]

Despite these concerns however RLCP left its mark on the history of Australian community legal education as well as Australian legal publishing. As Kidney reflects: 'It was a very innovative time. The innovations were modest but the breeding ground for later in life cannot be underestimated. All those people were informed for their future careers and that's incredibly important.'[875] The Law Handbook is still sold in every state and in NSW under the imprimatur of Redfern Legal Centre Publishing and the name is well known in legal circles. Little public attention has been paid to the importance and innovation of RLCP as an organisation despite their publications receiving considerable praise.

As a result of the proliferation of law in the late twentieth century, discovering what the law was had never been more difficult. Fitzroy Legal Service's Legal Resource book was a catalyst that led to RLCP changing the face of legal publishing in Australia. No longer were law books designed to be read only by lawyers. RLCP developed publications that were accessible to the public as well as welfare and other professionals. These people needed a gateway to understanding complex laws to assist disadvantaged clients, develop policy proposals and the publications made the law understandable to many in the general public. As Kidney notes RLCP certainly had an influence on the craft of legal writing and efforts to make legal language simple.[876] There is a limited amount of literature relating to the effectiveness of CLE measures in Australia and internationally[877] and there was little formal evaluation of the products produced by RLC and Streetwize, though demand from public and targeted audiences indicate that they were seen to be useful. Neil Rees, noted legal academic, has observed that the work of RLCP has been of extraordinary significance in the field of public access to the law.[878]

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[874] Interview with Chris Ronalds (Frances Gibson, Bawley Point, 24 January 2017).
[875] Interview with Sean Kidney (Frances Gibson, Boston 17 September 2016).
[876] Email Sean Kidney to Frances Gibson (7 November 2018).
[877] M Herron and Christine Slattery, *Community Legal Education in Victoria 1980–1985: A Background Study* (Victoria Law Foundation, 1986); Ania Wilczynski, Maria Karras and Suzie Forell, 'The Outcomes of Community Legal Education: A Systematic Review' (2014) 18 *Justice Issues* 1, 4; Monica Ferrari and Angela Costi, 'Learnings from Community Legal Education' (2012) 37(1) *Alternative Law Journal* 52.
[878] Neil Rees, 'How Should Law Schools Serve Their Communities?' (2001) 5(1) *University of Western Sydney Law Review* 111.

The innovations of RLCP and Streetwize were new solutions to the problem of a lack of accessible practical information for many in the community. This practical legal information was not provided by the government and the publishing market had yet to recognise the possibility of sales of this type of product. Works by RLCP were used by unrepresented people in courts and tribunals,[879] were quoted by judges in court proceedings,[880] informed members of the public and were the basis of the NSW Legal Information Access Centre providing self-help services to the public.[881] The publishing outputs provided practical information on court processes and the legal system to junior lawyers or those working in a new area of law in the *Lawyers Practice Manual*, put complex legal information in comic format to increase accessibility to young people involved the recipients of the legal information in a role in designing the material (*Streetwize*). The RLCP model embedded a legal publisher in a shop-front legal office to ensure publications directly addressed client needs and developed an entrepreneurial self-funded community legal centre focused on publishing a catalogue of books, films etc on specialist areas of the law in plain English and available to the public, community/welfare workers, law students and lawyers thereby increasing accessibility of the legal information. Innovation is a multidisciplinary activity and researchers have shown the positive impact of a good working climate on knowledge flows and innovation performance.[882] Collaboration, open forms of communication and relationships between publishers, lawyers at the centre and with other community legal workers in external organisations were well developed and communication systems were effective—both factors conducive to innovation.[883] Both RLCP and *Streetwize Comics* were organisations and innovations that had a major impact on community legal education and legal publishing in Australia.

### Women's Domestic Violence Court Assistance Scheme (WDVCAS)

From the 1960s, activists such as the Battered Women's movement in the UK and USA had brought the issue of domestic violence to public attention and highlighted the grievous

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[879] *North Coast Community Housing v Field* (Tenancy) [2010] NSWCTTT 446 (22 September 2010), *Australian Competition & Consumer Commission v Murray* [2002] FCA 1252 (11 October 2002).
[880] See for instance *R v Fisher* [2011] ACTSC 56 (1 April 2011).
[881] Legal Information Access Centre, 'Do You Need a Lawyer', *Hot Topic* (Web Page) <http://www.austlii.edu.au/cgi-bin/sinodisp/au/other/liac/hot_topic/hottopic/1999/5/2.html?stem=0&synonyms=0&query=%22Redfern%20Legal%20Centre%20Publishing%22>.
[882] Stian Nygaard and Angeloantonio Russo, 'Trust, Coordination and Knowledge Flows in R&D Projects: The Case of Fuel Cell Technologies' (2008) 17(1) *Business Ethics* 23.
[883] Giovany Cajaiba-Santana 'Social Innovation: Moving the Field Forward. A Conceptual Framework' (2014) 82 *Technological Forecasting & Social Change* 42, 47.

problems with the traditional approach of the law and prosecuting authorities that domestic violence was a private matter to be sorted out inside the family.[884] Feminist theorists in the 1980s were particularly concerned with exploring the ways that dominant ideologies such as heterosexuality, motherhood, monogamy and the public/private dichotomy contribute to male dominance and patriarchy[885] but this was still an era when there was little focus by government on domestic violence. As Graycar et al point out there was a belief that it is for family members to sort out their personal relationships and this was not an area where the law should venture although of course as they discuss this ignores the power inequalities inside the family affected by the structures external to it.[886] As the Australian Law Reform Commission noted in 1986:

> In the long term, the public and private attitudes which have allowed the phenomenon of domestic violence to flourish need to change. These are based on the view that an assault in the home is not a private matter. The resources of the community are called on to deal with the consequences of violence in the home, be they the damaged children, the victim's injuries, the disruption to the neighbourhood, the wrecked lives. It is the business of the whole community to reduce domestic violence as much as possible.[887]

Government inquiries in Australia included an Australian Law Reform Commission Inquiry into Domestic Violence in 1986[888] which found that the most frequent complaint about the law's response to domestic violence (DV) is that it offered inadequate protection to victims. This report highlighted police reluctance to take complaints seriously and noted criticism that courts fail to provide adequate measures (such as enforceable injunctions or restraining orders) to prevent further violence, and that injunctions against violence can be ignored with impunity or, at least, with little fear of serious consequences. The Inquiry found: '[i]n short, the substance of the most common criticism made of the legal system in this area is that spouse beating is not regarded as really criminal. This perception encourages offenders to think that they can "get away with it" and helps to perpetuate violence.'[889]

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[884] See Kathleen J Tierney, 'The Battered Women Movement and The Creation of The Wife Beating Problem' (1981) 29 *Social Problems* 207.
[885] Jalna Hanmer and Mary Maynard, *Women, Violence and Social Control* (Macmillan Press, 1987) 23.
[886] Regina Graycar, Mary Gaudron and Jenny Morgan, *The Hidden Gender of Law* (Federation Press, 2nd ed., 2002) 12.
[887] The Law Reform Commission (ACT) Report No 30 (Australian Government Publishing Service, 1986) 2.
[888] Australian Law Reform Commission, *Inquiry into Domestic Violence No 30* (1986).
[889] Australian Law Reform Commission, *Inquiry into Domestic Violence No 30* (1986) 34.

In the 1980s, legislation providing for specific domestic violence orders led to a significant increase in the number of women applying for protective orders.[890] In NSW in 1982 amendments to domestic violence orders (S547AA *Crimes Act NSW* ) empowered courts of summary jurisdiction to make orders imposing restrictions or prohibitions on the behaviour of those from whom violence is apprehended.[891] Where a lawyer was representing the complainant, the complainant was much more likely not to withdraw the application for protection and the application was more likely to be successful. Research demonstrated that a shift to an increase in legal representation for women seeking orders was associated with a marked reduction in the number of applications for Apprehended Violence Orders (AVOs) being withdrawn or dismissed.[892] Family violence legislation was enacted in most states and territories in the 1980s and 1990s as a response to growing recognition that existing legal mechanisms failed to protect victims—predominantly women—from family violence[893] and by the 1990s, domestic violence was recognised internationally as a significant social and legal problem.[894] Violence against women was recognised as a fundamental infringement of human rights in the 1993 United Nations Declaration on the Elimination of Violence against Women and was a major topic at the 1995 Beijing Fourth World Conference on Women (UN Women, 1995).[895]

Redfern Legal Centre had been acting for victims of domestic violence since it opened. As Petre recalls, the lawyers at the centre had a holistic approach to legal practice:

> They felt that a lot of people who came face to face with the legal system had a whole range of problems and a lawyer might represent them, get a plea in mitigation or get a reduced sentence but they still had all these other problems, domestic violence, income problems etc. We wanted to focus on helping clients with a range of other services and if you are a low-income disadvantaged person in poverty, almost by definition they needed other services.[896]

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[890] Department of the Prime Minister and Cabinet Office of the Status of Women, *The Effectiveness of Protection Orders in Australian Jurisdictions* (1993 Australian Government Publishing Service) 15.
[891] *The Crimes Domestic Violence Amendment Act 1982* No. 166.
[892] Department of the Prime Minister and Cabinet Office, 'Status of Women the Effectiveness of Protection Orders in Australian Jurisdictions' (Australian Government Publishing Service, 1993) 19.
[893] See Australian Law Reform Commission, *Family Violence: A National Legal Response* (2010) 114, 155.
[894] See Anna Matczak, Eleni Hatzidimitriadou, and Jo Lindsay, *Review of Domestic Violence Policies in England and Wales* (2011, University of London); Catherine Jacquet, 'Domestic Violence In The 1970s' *National Library of Medicine, National Institute of Health* (Web Page,2015) <https://circulatingnow.nlm.nih.gov/2015/10/15/domestic-violence-in-the-1970s/>; Michael P Johnson and Kathleen J Ferraro, 'Research on Domestic Violence in the 1990s: Making Distinctions' (2000) 6(4) *Journal of Marriage and the Family* 948–963.
[895] See Anna Matczak, Eleni Hatzidimitriadou and Jo Lindsay, *Review of Domestic Violence Policies in England and Wales* (2011, University of London) 3.
[896] Interview with Clare Petre (Frances Gibson, Sydney, 21 May 2013).

Virginia Bell (The Hon Justice Virginia Bell AC, Justice of the High Court of Australia ) was rostered on at the centre as a solicitor in the evenings and then at the beginning of 1978 started working at the centre full time.

> There was a fair bit of appearance work in the Local Court—mainly Redfern Court doing domestic violence cases in the days when police tended not to prosecute those. There was a decent chamber magistrate at Newtown Court who would refer matters to us. The woman had to bring the proceedings themselves.[897]

The centre also assisted women who had separated from their partners with related matters. Bell continues:

> For a period of 6 months, they needed evidence that in the view of a solicitor there was no practical means of getting assistance from the partner before they could get Commonwealth [social security] benefits. This was the kind of thing the Australian Legal Aid Office wouldn't help with.[898]

The centre continued assisting victims of domestic violence and working on policy and law reform issues in this area as an integral part of its work over the next 10 years.[899] In 1988 Jane Goddard started working as a solicitor at the centre after studying in Canberra and working at the student legal centre run at ANU. 'I was very much in awe of the centre—it was the first legal centre in NSW and had quite a reputation.'[900] Her job involved assisting women victims of violence. She often found the job confronting:

> I had to prepare victims compensation claims for women who had been assaulted. The other component was working with women who had survived domestic violence. This involved a lot of collaboration with support services in the area. Women could drop in or make evening appointments. On the duty days at Redfern Local Court, community agencies would refer cases. We worked closely with sexual assault centres at local hospitals and the South Sydney Women's centre (the Shop), government and community services … I was thrown into the job and expected to do it with very little supervision. I had never worked as a lawyer before … The volunteers on the evening advice sessions were often experienced practitioners though. My job included casework and education.[901]

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[897] Interview with Virginia Bell (Frances Gibson, Sydney, 1 December 2016).
[898] Ibid.
[899] 'Tenth Year Report 1977–1987', *Redfern Legal Centre* (Web Document, 1987) 25 <https://rlc.org.au/sites/default/files/attachments/1977-1987 RLC 10th year report.pdf>. As did CLCS in other states and the specialist Women's Legal Services.
[900] Interview Jane Goddard (Frances Gibson, Sydney, 23 January 2016).
[901] Ibid.

Goddard's job was to represent victims of DV in the magistrates' court. These matters were initiated through the chamber magistrate.[902] Goddard describes the situation that led to the development of the Domestic Violence Court Assistance Scheme proposal.

> Every Wednesday was DV list day. There would be five to seven women who were appearing that morning at Redfern Court. There was nowhere really for claimants to sit that was safe. The perpetrator would turn up and it was very hard to talk to one client and at the same time be able to manage all the other clients who were upset and I didn't think I was providing a very good service. People would be standing on the lobby or the steps of the court.[903]

Ben Slade remembers Goddard considering the concept of a domestic violence court assistance scheme at a legal centre conference in Maroochydore around 1990. 'Jane went hell for leather about how dreadful the domestic violence situation was. The idea came from Jane saying how horrible the situation is and we decided we should do something more about it and decided why don't we set up a service. Jane then took it on.'[904] Goddard devised a scheme:

> We talked to the chamber magistrate and magistrate to see if there was a room we could use. Then we started a roster of support workers. Workers from local agencies would come to court to assist the women and would be able to do associated work on housing, medical issues etc. All these workers had to get permission from their employers to work at court as an ongoing obligation and a commitment of time and resources. We then got other lawyers doing list days at the court too, so lawyers from the Domestic Violence Advocacy Service would come out. We saw it a new way of delivering a legal service but also a way of looking at all of the non-legal issues that were important to the women involved. We all saw it as a new way of doing things.'[905]

The WDVCAS scheme commenced in March 1990. Goddard lists the benefits of the scheme.

> It empowered women to go through the legal process and reduced the possibility of being harassed at court. This was the very early days of awareness of DV—the fact there was a dedicated service took away the stigma to some degree. There was close collaboration with community agencies.[906]

Mary Perkins was the coordinator of the centre at the time.

> I remember Jane was really keen and Ben [Slade] was really pushing it. We were trying to sort out what sort of support women needed in DV cases. There was a series of interviews with women to sort out their needs. The Centre

[902] The Chamber Magistrate provides information about legal options and court proceedings in New South Wales but cannot represent people appearing before the Court.
[903] Interview Jane Goddard (Frances Gibson, Sydney, 23 January 2016).
[904] Interview with Ben Slade (Frances Gibson, Sydney, 8 December 2015).
[905] Interview Jane Goddard (Frances Gibson, Sydney, 23 January 2016).
[906] Ibid.

> put a lot of resources into this project. We got the support of the local magistrate at Redfern Court. There was a committee set up by lawyers and non-lawyers and a report issued.[907]

Once the scheme was operating as a pilot, funding from the Law Foundation was used to evaluate the scheme.[908] The centre and community agencies were assisted by the positive attitude of Redfern Court. Mark Randall, the Clerk of the Court was supportive—sending people down to the centre for advice and really helped the DVCAS.[909]

An evaluation of the scheme in 1991 showed that 74% of women represented by the scheme were granted protective orders compared with 50% represented by other practitioners and 40% represented by the police.[910] The scheme was recognised as a markedly effective method of providing court assistance to women. This was instrumental in getting other legal centres to develop similar services. The model was discussed at Community Legal Centre conferences and criminology conferences.[911]

Louise Blazejowska started work at the centre in 1991 and recalls her time at the centre working on the DV scheme. 'I remember at a staff meeting when we were talking about the DVCAS. It was fantastic. Ben [Slade] said "take it to the world". At that time, there were DVCAS schemes at Marrickville, Newtown, Parramatta … none in rural areas.'[912]

Blazejowska developed the Domestic Violence Court Assistance Kit which was funded by the Federal Government's Office of Status of Women in 1995.[913] This kit provided a model for the setting up of schemes statewide. Blazejowska describes her work:

> I was looking after the DVCAS. I can remember the DVCAS was in a pilot stage and the Law Foundation was doing a review of it. This produced a report which was very positive about the model. It showed 2 things—when you have lawyers and social workers working together you get a better legal outcome and clients are more willing to

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[907] Interview with Mary Perkins (Frances Gibson, Sydney, 22 July 2016).
[908] Marlene Krasovitsky and Denise Lynch, *Women's Domestic Violence Court Assistance Scheme: Evaluation* (Redfern Legal Centre Publishing, 1991).
[909] Interview with Louise Blazejowska (Frances Gibson, Sydney, 11 February 2017).
[910] Marlene Krasovitsky and Denise Lynch, *Women's Domestic Violence Court Assistance Scheme: Evaluation* (Redfern Legal Centre Publishing, 1991) 1.
[911] Interview with Louise Blazejowska (Frances Gibson, Sydney, 11 February 2017); Janette Prichard and Sue Malcolm, 'Integrated Intervention: The Women's Domestic Violence Court Assistance Program' (WDVCAP)' (Paper presented at the Second Australasian Women and Policing Conference, Brisbane, July 1999). See also J Bradfield and J Nyland, *Evaluation of the NSW Women's Domestic Violence Court Assistance Programme: A Report to the NSW Legal Aid Commission* (Bradfield Nyland Group, 1998).
[912] Interview with Louise Blazejowska (Frances Gibson, Sydney, 11 February 2017).
[913] Redfern Legal Centre, *Annual Report, 1995–1996* 17. See Jane Mulroney, *Women's Domestic Violence Court Assistance Program: Support Workers' Kit* (Harris Park, N.S.W, Domestic Violence Advocacy Service, 1999).

> participate in the system and you get a better outcome for other issues like housing, income support etc. Also, if you have legal representation you are far more likely to get a final order … As I was at RLC I got more and more calls about DVCAS and realised it was bigger than just RLC as there were schemes being established all over the State and calls were coming from all over NSW. It was about 1992. I felt quite overwhelmed as I'd had no experience with DV.
>
> Jane Goddard and Jane Mulroney had done all the work on the training manual so I added to it and then we got some money from the State Government's Department for Women and we decided to do a manual for all the WDVCAS so we could establish it as a State-wide model. So, my job was to turn that work into a model that could be used anywhere. I developed a relationship with RLCP. They got the funding to produce the kit.[914]

In 1994, the Australian Law Reform Commission produced a report entitled *Women's Equality Before the Law*.[915] In it, the Commission noted the introduction of court support services operating in parts of urban and rural Australia and that 'all the schemes have been based on the Women's Domestic Violence Court Assistance Scheme which has been operating at Redfern Local Court and coordinated by Redfern Legal Centre since March 1990.'[916]

The Report confirmed the overwhelming success of the court support scheme. Practical results of the scheme as evaluated at Redfern Court were that the percentage of withdrawals (both with and without undertakings) for proceedings was significantly less for complainants represented by the scheme than either those unrepresented or those complainants making applications prior to the scheme's inception. Also, the number of successful orders obtained markedly increased under the operation of the scheme. Recognition by government of the value of the schemes led to support for the scaling up of the project. By 1999 there were 33 funded schemes located at 47 Local Courts across NSW[917] with the specific objectives being:

a) improve the accessibility of the local court system for women seeking AVOs;

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[914] Interview with Louise Blazejowska (Frances Gibson, Sydney, 11 February 2017).
[915] Australian Law Reform Commission, *Equality before the Law: Women's Equality Report No 69* (1994).
[916] Ibid 668. The Report noted 'The model has been used and adapted in other areas to suit community needs … The Redfern Scheme is built upon an interactive, co-operative relationship between solicitor and support worker. Solicitors may be employed by a community legal centre or be private practitioners or court appointed duty solicitors. The solicitor provides professional advice and follow up advice if necessary. The support persons are social welfare professionals usually from local community services. The support workers explain the court process, layout and personnel, take initial instructions and, since women seeking court intervention are often in crisis, investigate the non-legal aspects of the client's situation including housing, financial and counselling needs. Their role is integral to the legal process. Underpinning the Scheme is the belief that solicitors working hand in hand with trained support workers will provide a more effective service than either solicitors or support workers independently. The participants in the scheme acknowledge that the service should be run by women for women. In some circumstances, however, women solicitors may not be available and it may be necessary to have male solicitors appearing.'
[917] 'NSW Health Domestic Violence Discussion Paper' (NSW Health 1999).

b) familiarise women with the court process, layout and personnel, in order to increase their knowledge of the criminal justice system and its operations;
c) arrange legal representation from appropriately trained, sympathetic legal practitioners/police prosecutors for women seeking AVOs;
d) advocate on behalf of women during local court proceedings. To be able to follow up on the order and make appropriate referrals to other legal matters;
e) assist women to identify their needs and then advocate on their behalf in relation to those needs;
f) provide referral to other appropriate services in the area of income support, housing, order enforcement, counselling and other needs as required;
g) provide court assistance services in a manner that ensures access and equity principles are applied which meet the particular needs of special need groups within local communities;
h) assist in ensuring the personal safety of women and children is of the highest priority at all times whilst in the precinct of the court and its surroundings.[918]

Establishing the services under the project across the State however was not without its problems. Blazejowska, working for the Attorney General's Department at the time, recalls:

> The Department for Women decided to set up 21 schemes. I got kicked off the committee as I was arguing for lawyers to be part of the scheme. When it came to Attorney Generals signing off on the model, I refused to sign off on it. But when the money came in for a State-wide network, the Department for Women refused to let the money be used for legal representation and that's how it stayed for about 20 years until I could persuade Legal Aid you had to build lawyers into the schemes. So, for the schemes in the next 20 years people just had to try and get any legal assistance they could beg or borrow or people would be unrepresented. When I got to the [Legal Aid] Commission, I argued for the need for legal representation. I did an audit of what representation was out there and there was very little assistance, so I did a report on legal aid responses and one recommendation was to establish legal representation. Bill Grant [CEO Legal Aid Commission] agreed to fund it and over half the courts the DVCAS were in got lawyers and I developed a training package. I did talk to different states about the scheme. WA wasn't interested. Queensland had something similar but only in the main court in Brisbane and not a network. "DV" schemes are now a flagship at Legal Aid. They are very proud of the systems. They are formally part of the justice system and integrated.[919]

[918] Jane Mulroney, *Women's Domestic Violence Court Assistance Program Support Workers Kit*, WDVCAP Training and Resource Unit, (Domestic Violence Advocacy Service and Redfern Legal Centre Publishing, 1999) 35–54. See also *Domestic Violence: Impact of Legal Reform in NSW* 5 (NSW Bureau of Crime Statistics and Research Legislative Evaluation Series, 1989).
[919] Interview with Louise Blazejowska (Frances Gibson, Sydney, 11 February 2017).

Helen Campbell, now Executive Officer, Womens Legal Service notes:

> This model of court assistance is one of many mighty achievements Redfern Legal Centre has. The model has been widely replicated. It is now in practically every court in NSW, there are still rosters of private practitioners … There is something similar in the Northern Territory. The DVCAS also meant the Centre was assisting more Aboriginal women.[920]

The scheme incorporated many of the underlying philosophies of the centre—the partnership and collaboration with other organisations, support for innovation from other staff at the centre and the outlook of the centre that law was not to be kept distinct from other aspects of individual welfare. The centre received the 2007 Human Rights Law Award from the Australian Human Rights and Equal Opportunity Commission.[921] The award especially recognised the establishment of the Women's Domestic Violence Court Assistance Scheme which aims to provide women seeking restraining orders as a result of domestic violence with legal advice as well as any other support required (including housing, income support and counselling).

The DVCAS system has expanded since the early days. The DV team went offsite about 2010 when the whole DV scheme expanded. They are part of the centre but are based at the Downing Centre Court complex in Sydney city—there are 8–10 of them and a coordinator, assistant coordinators, and an Aboriginal and CALD specialist worker. The service is funded by Legal Aid NSW and as Administrator Hilary Chesworth mentions:

> We have to keep reminding them they are part of an independent organisation.[922] There are information barriers between RLC and the DVCAS and though discussions have been had about setting up the WDVCAS as a separate service there are no plans on foot for this to happen.[923] The service is growing, becoming a launch site for a project called the Waverley Local Coordination point and women are referred in and our employees contact them and if we assess they are at serious risk they get referred to a meeting of various service providers—housing/social security etc.[924]

The scheme has developed including processes whereby workers get the details of every woman who has reported DV to the police in the centre's area. The centre then calls them as

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[920] Interview with Helen Campbell (Frances Gibson, Sydney, 23 November 2016).
[921] South Sydney Herald, 'Human Rights Award for Redfern Legal Centre', *Redwatch* (online, 2007) <http://www.redwatch.org.au/media/080205sshh/>.
[922] Interview with Hilary Chesworth (Frances Gibson, Sydney, 9 July 2016).
[923] Ibid.
[924] Ibid.

an early intervention system, explaining the process to the women. There is also a pilot scheme of safety action meetings where police ask victims a series of questions and then decide if there was a threat or serious threat. For everyone classified as a serious threat the woman's position would be discussed every week with lawyers, social service and housing.[925]

In 2020, there is significantly increased focus by governments on family violence.[926] The WDVCAS scheme was clearly one of the centre's great achievements. It is firmly entrenched in the legal system of NSW,[927] has a website, facebook page[928] and is still expanding to new courts.[929] The scheme has received public recognition on many occasions. The NSW Ombudsman endorsed the scheme stating in 2006:

> Finally, we note that many locations do not have a women's domestic violence court assistance scheme or have access to a scheme but its coverage is limited. Given the prevalence of domestic violence, the needs of victims and the very valuable service that court assistance schemes provide, we recommend that the Attorney General consider extending its Women's Domestic Violence Court Assistance Program.[930]

The Australian Law Reform Commission has stated 'Victim support is also crucial at court … The NSW Domestic Violence Court Assistance Schemes are useful precedents.'[931] The scheme has provided information and resources for research on domestic violence.[932] There is no doubt that this the centre's innovation not only changed legal practice in supporting domestic violence victims through court processes but provided invaluable help to thousands of women.[933]

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[925] Interview with Natalie Egan (Frances Gibson, Bendigo, 22 October 2016).
[926] See Finance and Public Administration References Committee, Senate, *Inquiry into Family Violence in Australia* (2015); Victorian Royal Commission into Family Violence (2016); Mary Anne Noone, 'Challenges Facing the Legal Aid System in Australia' in Asher Flynn and Jacqueline Hodgson (eds) *Access to Justice and Legal Aid* (Bloomsbury Publishing PLC, 2017) 23, 32.
[927] See Talina Drabsch, Domestic Violence in NSW (2007) NSW Parliament Briefing Paper no 7/07, 28.
[928] Facebook, *Womens Domestic Violence Court Advocacy Service NSW Inc* (Web Page) <https://www.facebook.com/wdvcasnsw/>.
[929] See 'Walgett To Receive Women's Domestic Violence Court Advocacy Service', *The Nationals for Regionals NSW* (Web Page, 12 April 2017) <https://web.archive.org/web/20180330154312/http://www.nswnationals.org.au/walgett_to_receive_women_s_domestic_violence_court_advocacy_service >.
[930] NSW Ombudsman, *Domestic Violence: Improving Police Practice* (2006) Report to Parliament, iv.
[931] Australian Law Reform Commission, *Family Violence Improving Legal Frameworks*, ALRC Consultation Paper Summary 1, 226.
[932] See for instance Jane Wangman, 'Gender and Intimate Partner Violence: A Case Study from NSW' (2010) 33(3) *UNSW Law Journal* 945; Robyn Edwards, 'Staying Home Leaving Violence: Listening to Women's Experiences' (2011) *Social Policy Research Centre Report* 4, 11.
[933] Unlike most of the CLC innovations in the form of new services at RLC, remained a service still firmly ensconced at RLC until 2018 (though geographically based at the Downing Centre Court, the workers at the RLC scheme were all

The WDVCAS service was innovative in several ways being the first holistic legal service offered in courtrooms in Australia for women in family violence offering support in areas of housing, income security and avenues of assistance for other legal problems such as family law. WDVCAS also offered the first multidisciplinary legal service at local courts in NSW.[934] Cajaiba-Santana points out that the nature of the working practices of the institution are a factor in the development of innovation.[935] The support, enthusiasm for a new idea and the centre's willingness to develop the WDVCAS proposal were crucial to its success. Burt's argument[936] that for innovation, the spaces between separate unconnected networks—'structural holes'—are especially useful since they allow actors to connect different knowledge networks is relevant here in development of a service that involved workers from differing professional backgrounds—unusual in the legal industry. The 'local embeddedness' of the centre and the connections and ties with other local organisations leading to collaborative practices[937] were clearly a factor in the development of the scheme and its effectiveness.

### Welfare Rights Centre

A constitutional amendment in 1947 empowered Federal Parliament to make laws with respect to providing certain pensions, allowances and benefits and meant that the Federal government took over responsibility for income maintenance schemes.[938] Section 51(xxiiiA) was inserted into the Constitution granting the Australian Government power to make laws with respect to:

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employed by RLC until 2018). In September 2018 the NSW State government decided to put the WDVCAS services out to tender and Redfern Legal Centre announced that after 30 years of providing a court service for women in Sydney it would not be tendering. In a statement explaining its decision, the centre cited "significant changes made to the new service model and the significant increase in demand for the service". Lisa Valentin, 'Concern for Clients as Domestic Violence Court Services put Out for Tender', *Sydney Morning Herald* (online, 10 September 2018) <https://www.smh.com.au/politics/nsw/concern-for-clients-as-domestic-violence-court-services-put-out-for-tender-20180904-p501mq.html>.

[934] This concept of a multi-disciplinary approach to matters dealt with in courts was replicated in later developments such as the drug courts in NSW, Queensland and Victoria. See Rob Hull, 'Victoria's New Drug Court' [2002] (120) *Victorian Bar News* 10.

[935] See Figure 1 in this thesis at page 18.

[936] Ronald S Burt, *Structural Holes* (Harvard University Press, 1992).

[937] Meric S Gertler, David A Wolfe and David Garkut, 'No Place Like Home? The Embeddedness of Innovation in a Regional Economy' (2000) 7(4) *Review of International Political Economy* 688.

[938] Commonwealth, *Commission of Inquiry into Poverty, Law and Poverty in Australia: Second Main Report* (Australian Government Publishing Service, 1975) 164.

> (xxiiiA) The provision of maternity allowances, widows' pensions, child endowment, unemployment, pharmaceutical, sickness and hospital benefits, medical and dental services (but not so as to authorise any form of civil conscription), benefits to students and family allowances.[939]

This income maintenance came to be seen as a matter of right for people who fell within the relevant categories rather than a privilege. This was exemplified by the repeal in 1974 of sections in the *Social Services Act 1947–1975* that provided a claimant was not to receive a pension unless he was of good character and deserving of a pension.[940]

Recognition of a right to income security brought as a consequence, an acceptance that lawyers had a role in the social security sphere by providing advice as well as representation in challenging determinations.[941] Sackville noted that until the 1970s, lawyers had rarely represented people applying for pensions or benefits.[942] The Department of Social Security discouraged the involvement of lawyers and there was no formal system of review until 1975.[943] The Australian Assistance Plan had provided for some welfare rights officers to assist people[944] but generally there was little assistance for clients.

The centre had long assisted clients with social security problems and been involved in policy work in that area of law. John Kirkwood who was very involved with the centre's development was at UNSW teaching welfare law, a subject which had not been taught before in Australian law schools.[945] Toward the end of 1976, the Sydney office of the Department of Social Security (DSS) learned of an alleged arrangement under which medical practitioners would assist members of the Greek community to obtain invalid pensions fraudulently, in return for payment. The matter was called to the attention of the Health Department and then to the Commonwealth Police. 181 people, virtually all of Greek ethnic background, were arrested and charged with conspiracy to defraud the Commonwealth. There was huge

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[939] 'Commonwealth Role: Social Security and Benefits System', *Parliament of Australia* <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Completed_inquiries/2010-13/commcontribformerforcedadoption/report/c05>.
[940] Commonwealth, *Commission of Inquiry into Poverty, Law and Poverty in Australia: Second Main Report*, (Australian Government Publishing Service, 1975) 166.
[941] Ibid 165.
[942] Ibid 167.
[943] Ibid.
[944] Ibid 170.
[945] Interview with Anne Healey (Frances Gibson, Sydney, 24 July 2016).

publicity about the case.[946] Redfern Legal Centre provided initial legal representation to those charged in the committal proceedings and in the efforts to get the pensions restored.[947]

In the early 1980s, a proposal arose to set up a specialist centre focusing on social security issues as a result of discussions between the New South Wales Council of Social Services, Australian Council of Social Services and the centre. West notes:

> All of these organisations were encountering problems with the Department of Social Security and clients who had difficulty negotiating the system. We worked closely with both ACOSS and NCOSS. They had been trying to get funding for a specialist advice service from the Commonwealth, but with no success. Then, with a sympathetic NSW State Government (Frank Walker A-G, I think), we got funding from NSW instead. We [RLC] tweaked the ACOSS/NCOSS model to make it a legal centre, not just a general welfare advice service. When WRC got funded, we persuaded the South Sydney Council to let us take over the caretaker's quarters at the back of RLC.[948]

At the time Joan McClintock and Phillipa Smith from ACOSS were developing policies around social security benefits. ACOSS was working on social security eligibility issues and drew on the expertise of the centre.[949] As Tomsen notes, from the late 1970s, the politicisation of legal aid issues after the controversial introduction of the Whitlam's Australian Legal Aid Office meant the active involvement in legal aid issues by previously excluded lay groups, including such welfare organisations as ACOSS and its various State affiliates.[950] Clare Petre and Roger West from the centre were very involved with ACOSS at a policy level. ACOSS's efforts were supported by the Combined Pensioners Association, NSW Council of Social Service, Social Workers Action Group, and the Disabled Persons Resource Centre. Together they were able to convince the NSW Treasurer (as Smith recalls) 'that it was smart strategically to set up a specialist welfare rights group because we thought a lot of people were being taken off their entitlements and the consequence for the State Government was that emergency relief was going through the roof.'[951] This collaboration in an area of law ignored by the private legal profession, led to the establishment of an entirely new service.

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[946] 'The Great Social Security Conspiracy Case', *Australian Institute of Criminology* (Web Page, 1989) <https://aic.gov.au/publications/lcj/wayward/chapter-6-great-social-security-conspiracy-case>.
[947] 'The Greek Conspiracy', *PIAC* (Web Page, 22 February 2013) <https://piac.asn.au/2013/02/22/the-greek-conspiracy/>.
[948] Email from Roger West to Frances Gibson (29 August 2017).
[949] Interview with Philippa Smith (Frances Gibson, Melbourne, 6 September 2018).
[950] Stephen Tomsen, 'Professionalism and State Engagement: Lawyers and Legal Aid Policy in Australia in the 1970s and 1980s' (1992) 28(3) *Australian and New Zealand Journal of Sociology* 316.
[951] Interview with Philippa Smith (Frances Gibson, Melbourne, 6 September 2018).

On 2 October 1982, the Sydney Morning Herald announced that 'An $80,000 social welfare rights centre is to be established at the Redfern Legal Centre with State funds.'[952] Sydney City Council contributed $10,000 to help RLC.[953] The centre was opened on 5 May 1983 by the Lord Mayor Doug Sutherland and the NSW Treasurer, Ken Booth.[954] A plaque was put up on the Redfern Town Hall to recognise their contribution. The State Government funding was a real victory for the coalition, being state funding for what was usually seen as a Commonwealth responsibility. As Smith notes '[i]t was an unusual funding thing for the State Government to do at that time.'[955] At the opening Booth stated:

> The Welfare Rights Centre is the first of its kind in Australia. It is hoped that it will act as a prototype for other similar centres in high unemployment areas such as Newcastle and Wollongong. The Welfare Rights Centre will be working closely with other established Community Legal Centres, which can provide assistance on a range of legal matters, including some Social Security matters.[956]

The Welfare Rights Centre was a new type of legal centre dealing primarily with one specific area of law—almost one statute—rather than say, a defined clientele or type of issue.[957] As Smith notes '[f]or us [ACOSS] it was a really useful collaboration working with the Welfare Rights Centre as it provided real life examples of what was happening on the ground.'[958] The collaboration continued with work on invalid pensions test and unemployment benefits work tests. As we have seen[959] an effective network structure with a range of different sources of knowledge types and ensuring access to knowledge both within the network and outside helps knowledge and information flow between different actors and encourages innovation.[960] The Welfare Rights Centre was an example of this process and as the first legal centre focusing on social security entitlements in Australia led the way to a network of centres around Australia which have made a significant impact in this important area of administrative law.[961]

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[952] Graham Williams, '14 Refuges for Runaways', *Sydney Morning Herald* (Sydney, 2 October 1982) 2. See also New South Wales, *Parliamentary Debates*, Legislative Assembly, 27 September 1982, 1269 (Mr. Booth, Treasurer).
[953] Mark Coultan, 'City Backs Welfare Centre', *Sydney Morning Herald* (Sydney, 2 February 1983) 14.
[954] 'Diary', *Sydney Morning Herald* (Sydney, 5 May 1983) 16 and see Michael Raper (ed), *Welfare Rights in Black and White* (Welfare Rights Centre Sydney, 2003) vi.
[955] Interview with Philippa Smith (Frances Gibson, Melbourne, 6 September 2018).
[956] Philippa Smith, 'New Centre Fills Gap in Welfare Rights Aid', *Sydney Morning Herald* (Sydney, 5 June 1983) 103.
[957] Legal Service Bulletin, 'Briefs, Welfare Rights Centre' (1983) 8 *Legal Service Bulletin* 130, 142.
[958] Interview with Philippa Smith (Frances Gibson, Melbourne, 6 September 2018).
[959] See page 22 of this thesis.
[960] Lina Sonne, *Innovation in Finance to Finance Innovation: Supporting Pro-Poor Entrepreneur-Based Innovation* (PhD thesis, University of Maastricht, 2007) 57.
[961] Note that in 1979, the Brotherhood of St Laurence operated a specialist service to help people to deal with social security matters and established the Unemployment Rights Service assisted by students from the then Phillip Institute of Technology

### The Accommodation Rights Service

RLC had been involved with issues facing people in nursing homes from the early 1980s. As discussed above[962] a phone in was held in 1982 in a Senior Citizen's Week project in a collaboration with the Combined Pensioners and the Australian Consumers Association.[963] A report of the phone-in was launched in a blaze of media attention and the abuse of older people in nursing homes was squarely on the agenda for the first time.[964]

Over the following three years campaigning continued and The Aged Care Coalition was formed to identify a means of improving the quality of life for older people living in supported accommodation. The coalition was comprised of seven organisations: Redfern Legal Centre, Social Welfare Action Group, Disabled Persons International, NSW Council of Social Service, NSW Combined Pensioners Association, the Ethnic Communities Council and the Australian Consumers Association. Members of the Coalition started visiting aged care organisations to follow up on complaints that kept coming in after the phone-in. Evidence of the abuse noted in the phone-in was provided to the Senate Enquiry on Nursing Homes and Private Hospitals and taken up in national policy debates, over time leading to a range of user rights measures being incorporated into state and later national laws.[965]
A proposal was developed to establish an advocacy service in the aged care field. Dominic Gibson, lawyer/policy worker at RLC recalls:

> We formed an extremely tight working relationship with the Combined Pensioners … A big driver was John Barber as the policy officer and Noreen Hewitt. In one of my first jobs in 1983, the Commonwealth flew us down to Canberra to Department of Social Security as they were the people who managed nursing homes to give evidence about management of those facilities. … RLC put a proposal up for an advocacy service in this area of law. We applied to lots of funders—the Legal Aid Commission, the Department of Housing, Law Foundation and they all

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(now RMIT Bundoora). Funding for the service was discontinued in 1984. Centres operated on differing models see the Victorian Welfare Rights Centre which was established on different model based of no casework but being a service to other workers. See 'Social Security Rights Victoria' *History* (Web Page) <http://www.ssrv.org.au/about/history/>. See also Charles Livingstone, 'Welfare Rights: A Proposed Model for Their Better Protection' (1986) 11(1) *Legal Service Bulletin* 24.

[962] See page 130 of the thesis.

[963] John Barber and Helen Kiel, 'Redfern Legal Centre and Australian Consumers' in Association & Combined Pensioners' Association of N.S.W et al. *Prisoners of neglect: A Report on the Phone-in Survey on Abuse of the Elderly 6th–7th March 1982* (Social Welfare Action Group, 1982).

[964] Dorothy Cora, *Noreen Hewitt: Portrait of a Grassroots Activist* (Older Womens Network NSW, 2010).

[965] Michael Fine, 'TARS: Its Beginnings' *TARS Annual Report 2010–2011.*

provided some funding. In 1983, the Commonwealth flew us down to Canberra to give evidence about the TARS service.[966]

The Aged Care Coalition which included RLC studied the experience of residents of supported accommodation which resulted in a report entitled *If Only I'd Known* published in March 1986.[967] This report along with other research in aged care was highly influential in demonstrating the serious need for a new advocacy service.[968] As a result of RLC's work with the Combined Pensioners and the Aged Care Coalition, The Accommodation Rights Service was established in 1986 under the auspices of Redfern Legal Centre, and with the support of the then Housing Commission and NSW Department of Community Services. In 1986 a national conference was held to focus on user rights with the Combined Pensioners Association and TARS advocating for a greater role for consumers in the planning monitoring and delivery of community services.[969] TARS began operating as advocacy service for elderly residents. The service later changed its name to Seniors Rights. These services now operate in most states in Australia. Again the success of the service was due to the high level of collaboration between agencies external to the centre and the links formed in pursuit of the end result of service provision to a disadvantaged community.

## Innovation in the methods of providing services

Apart from the new services and products, innovation is evident in the methods of working adopted by RLC. Notable aspects in the design for providing a legal service were ways of determining legal need, involving end users in the provision of legal and management assistance and a focus on lawyers working with non-lawyers.

### Working with non-lawyers

As Menkel-Meadow has pointed out 'in an ideal world, the role of nonprofessional advocates would not be determined by examining what legal tasks could be delegated to a person with less or different training, but by a broader functional view, including consideration of all of

[966] Interview with Dominic Gibson (Frances Gibson, Sydney, 4 July 2015).
[967] Kathryn Freytag, *If Only I'd Known: A Study of The Experiences of Elderly Residents in Boarding Homes, Hostels and Self-Care Units* (Aged Care Coalition NSW, 1986).
[968] Peter Grimshaw, ''Horror' Conditions in Boarding Houses' *Daily Telegraph*, (Sydney 6 March 1986).
[969] Linda Adamson and John Barber, *Beyond Benevolence* (Australian Pensioners Federation,1989) 5.

the possible ways to handle, manage or solve a problem and then identification of those groups of people who might best be able to perform those functions.'[970]

The use of non-lawyers in providing legal services was and still is, controversial.[971] Law Societies and the Law Council have generally been opposed to use of non-lawyers to perform legal tasks.[972] In most legal offices, lawyers, in theory at least, do the legal work and other administrative staff do the other work though law students may act as paralegals as undertaking legal tasks under supervision of a lawyer. Arguments relating to private legal practice in favour of using non-lawyers include breaking down the monopoly that lawyers hold on providing certain services and thus reducing costs for clients. Concerns include fears that certain sections of the community, that is poor people, will be denied lawyers in favour of paralegals while richer people would get lawyers.[973]

From the 1970s onwards there was increasing interest in the use of paralegal services and non-lawyers in relation to access to justice work.[974] Advocacy groups in the USA such as HALT (founded in 1978) called for change in the lawyers' monopoly. The Wall Street Journal described their work:

> The advocacy group, whose acronym stands for Help Abolish Legal Tyranny, is waging a sophisticated state-by-state campaign to chip away at lawyers' monopoly on the legal system. Its activists lobby bar organizations and state legislatures to persuade them to open lawyer disciplinary proceedings to the public and the practice of law to trained non-lawyers … It would allow legal technicians (non-lawyers like paralegals) to provide out-of-court legal services for 14 non-criminal matters, such as uncontested divorces, simple bankruptcies, name changes, housing and estate planning that often require nothing more than filing the correct documents. The technicians would be required to use written contracts, give estimates of fees and inform clients that they aren't lawyers.[975]

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[970] Carrie Menkel-Meadow, 'Nonprofessional Advocacy: The Paralegalization of Legal Services for the Poor' (1985) 19 *Clearinghouse Review* 403, 405.
[971] Mark A Cohen, 'Clients Need Legal Services but Not Necessarily Lawyers' *Forbes* (Web Page, 19 February 2019) <https://www.forbes.com/sites/markcohen1/2019/02/19/clients-need-legal-services-but-not-necessarily-lawyers/#4589b58e702d>; Lisa Trabucco, 'Lawyers' Monopoly? Think Again: The Reality of Non-Lawyer Legal Service Provision in Canada' (2018) 96(3) *Canadian Bar Review* 460. Frank Regan and Julia Vernon, *Improving Access to Justice, the Future of Paralegal Professionals: Proceedings of a Conference Held 19–20 February 1990* (Australian Institute of Criminology Canberra, 1991); MA Noone, 'Paralegals and Legal Aid Organisations' (1988) 4 *Journal of Law and Social Policy* 146.
[972] See for instance Law Council of Australia, 'Access to Justice: Let's Get Back to the Issues: Summary of Law Council of Australia's Response to Australia Access to Justice Advisory Committee' (1994) 29(8) *Australian Lawyer* 13, 15.
[973] Carrie Menkel-Meadow, 'Nonprofessional Advocacy: The Paralegalization of Legal Services for the Poor' (1985) 19 *Clearinghouse Review* 403, 404.
[974] See John Hollister Stein, *Paralegals: A Resource for Public Defenders and Correctional Services* (U.S. Department of Justice, 1976); Michael Zander, 'Legal Aid Proposal' *The Guardian* (London, 1976); B Abel-Smith, M Zander and R Brooke, *Legal Problems and the Citizen* 80–82 (Heinemann, 1973).
[975] Arthur Hayes, 'Activists Want to Pry Open Lawyers World' *Wall Street Journal* (New York, 1990); See *HALT* Facebook site (Web Page) <https://www.facebook.com/HALTdc/>.

Regan claims that the debate about paralegals in the 1970s did not address the practical and policy concerns and that was why very little progress was made in the area. [976] But early on CLCs recognised the important role that non-lawyers can play. At an Australian conference discussing 'Access to Law' in 1978, there was a call for the increased utilisation of paralegals both in the traditional sense and more innovatively in providing advice and advocacy.[977] Of course, CLCs also took the view that services such as education and law reform activity often conducted by non-lawyers at the centres are as important for clients as direct legal advice and casework.

The innovation by CLCs was to have lawyers and non-lawyers working together to provide services to clients. As we have seen Fitzroy Legal Service had started with non-lawyer workers and the first employee of Redfern Legal Centre was a social worker. Part of the role of the non-lawyer was to interpret what lawyers were saying—this role was prominent in the positions of field officers employed at the ALS.[978]

Menkel Meadow pointed out in 1985 in the US context that there were dilemmas in using non-lawyers for specific legal tasks in the delivery of legal services in that separation of tasks may thwart legal services goals; in that by making certain tasks routine, neither lawyer nor non-lawyer was encouraged to approach the issue from a broader perspective.[979] This concern arose from situations where non-lawyers were simply allocated specific tasks in casework under a lawyer's supervision. Noone noted that the experience both overseas and in Australia indicate that paralegals in the private profession acted as subordinates to the supervising solicitor whereas the legal aid paralegal 'is more often developed as a preferred alternative to a solicitor in areas of the law not normally serviced by the private profession'.[980] CLCs, of course, often delivered legal services with non-lawyers or paralegals such as law students and social work students. In addition, however, centres employed in the legal office legal publishers such as at RLCP, community/social workers such as the first position at RLC,

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[976] Francis Regan, 'Paralegals and Making Access to Justice Effective' in Julia Vernon and Francis Regan *Improving Access to Justice* (Australian Institute of Criminology, 1991) 137.
[977] Susan Armstrong, 'The Future of Legal Aid' in *Access to Law* quoted in Mary Anne Noone, 'Paralegals: A Growth Area in Times of Restraint?' (1988) 13(6) *Legal Service Bulletin* 253.
[978] Nielsen, Marianne O, 'Indigenous-Run Legal Services in Australia and Canada: Comparative Developmental Issues' (2006) 16(3) *International Criminal Justice Review* 157,164.
[979] Carrie Menkel-Meadow, 'Nonprofessional Advocacy: The Paralegalization of Legal Services for the Poor' (1985) 19 *Clearinghouse Review* 403, 405.
[980] Mary Anne Noone, 'Paralegals: In the Community's Interest?' in Julia Vernon and Francis Regan *Improving Access to Justice* (Australian Institute of Criminology, 1991) 31.

legal educators as at IDRS and policy workers all delivering services to the community of a legal/advocacy nature. Thus, all workers at RLC were contributing to a broad advocacy service aimed at achieving structural change in the legal system by education, lobbying or casework and advocacy tasks could be assigned to those with the relevant skills. This was a very different approach from the position at private legal offices or even the government legal aid services where paralegals were really seen as an adjunct to solicitors rather than legal service professionals in their own right.[981]

This chapter has detailed the genesis and development of a number of significant innovations at Redfern Legal Centre. In each case the context and details of steps taken to progress development of the innovation has been supplied in order to provide a basis for examining factors that may have been relevant to facilitating innovation. The chapter provides a valuable historical record of legal service development in New South Wales and indeed in Australian legal assistance services. The evolution of the services chronicled above give a sense of the way that community legal centres were reaching out and developing solutions to legal needs that were significantly different to anything that the legal profession had previously been involved in. Stepping away from the traditional focus on one to one legal advice and assistance to clients who walked in the door, CLCs created a new paradigm of how lawyers should respond to need in their community.

Current CEO of Redfern Legal Centre, Jo Schulman says:

> Redfern has always been seen as the innovative centre and it's part of our role. It's a culture and a history and you need a certain level of um … ego—a track record to be able to do that. There is now an expectation that that is what RLC is and that tradition carries on.[982]

In fact, the examples above demonstrate that Redfern Legal Centre was innovative in many ways and across a wide variety of areas of law—innovative in the way it provided direct legal services, the method of determining sections of the community who might benefit from the centre's services, and in the advocacy and education services proposed and established. As we have seen, within present scholarship there is only minimal investigation into the different

[981] See for instance discussion in Legal Aid and Family Services, *Paralegals and Legal Aid* (Attorney General's Department, 1994).
[982] Interview with Jo Shulman (Frances Gibson, Sydney,19 July 2016).

ways that non-profit organisations adopt innovative or social change roles[983] and without such investigation organisations cannot develop the conditions likely to promote innovation, understand whether innovations may be sustainable or judge whether innovations are dependent on special circumstances, such as time and place. In Chapter Seven, the history of the services and methods outlined above are examined for clues to the factors that could have facilitated the innovative behaviour.

[983] Michael Shier and L Handy, 'From Advocacy to Social Innovation: A Typology of Social Change Efforts by Nonprofits' (2015) 26(6) *VOLUNTAS: International Journal of Voluntary and Nonprofit Organizations* 2581, 2583.

## Chapter Seven

## Factors influencing innovation at Redfern Legal Centre

There are various stages of innovation. First ideas must be generated then idea selection—where a selection is made from all the ideas that are being developed within an organisation takes place.[984] At that point the idea can be tested on a small scale to see whether it works in practice. A successful test will be followed by scaling-up of the idea to get it implemented on a larger scale and embedded in the organisation.[985] In this phase, financial and capacity barriers may prevent the process of innovation from development. If the innovation has been turned into a successful commodity it can then be transferred to other contexts and the process of diffusion and adoption can take place.[986] Eventually one comes to the stage when the innovative idea becomes established practice to the point where it is no longer considered an innovative idea.[987]

This process suggests a linear development but the literature highlights the reality that actual innovation processes may move back and forth between various stages and may also bypass some of them. We know according to Cajaiba-Santana[988] and others that innovation is produced in a complex process by both the interaction of structural influences and the action of individuals and this applies, as we have seen, to the innovations described in Chapter Six.[989] These innovations produced ground breaking inventive new legal services and methods of service provision which can now be regarded as established practice. Factors identified in the research relevant to social innovation (notably in Cajaiba-Santana's work see

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[984] MS Morabito, 'The Adoption of Police Innovation: The Role of the Political Environment' (2008) 31(3) *Policing: An International Journal of Police Strategies and Management*, 466. Organisational attention and resources are scarce and hence selection is needed. Political and organisational barriers are crucial here – the idea needs to compete with other ideas for attention and resources.

[985] O Lee and A Luykx, 'Dilemmas in Scaling Up Innovations in Elementary Science Instruction with Nonmainstream Students' (2005) 42(3) *American Educational Research Journal* 411; P Van Mele, 'Zooming-In, Zooming-Out: A Novel Method to Scale Up Local Innovations and Sustainable Technologies' (2006) 4(2) *International Journal of Agricultural Sustainability* 131–142.

[986] E Korteland, '*Diffusie en Adoptie van Interorganisationele Innovaties in de Publieke Sector: Een Onderzoek Binnen de Beleidssectoren Onderwijs en Veiligheid*' (Doctoral Thesis, Erasmus University Rotterdam, 2011); WM Oliver, 'The Third Generation of Community Policing: Moving through Innovation, Diffusion, and Institutionalization' 2000 3(4) *Police Quarterly*, 367; EM Rogers, *The Diffusion of Innovations* (Free Press, 1995).

[987] Nancy C Roberts and Paula J King, 'Policy Entrepreneurs: Their Activity Structure and Function in the Policy Process' (1991) 1(2) *Journal of Public Administration Research and Theory: J-PART* 147, 150.

[988] G Cajaiba-Santana, 'Social Innovation: Moving the Field Forward. A Conceptual Framework' (2014) *Technological Forecasting and Social Change* 48.

[989] See Carol Slappendel, 'Perspectives on Innovation in Organizations' (1996) 17(1) *Organization Studies* 107.

Figure 1 at page 18 of this thesis which will be discussed in relation to these innovations are the historical context in which the organisation is operating, the social systems in place i.e. relationships between groups in the institution and with external organisations, and institutional practices such as communication in the organisation and beyond, the nature of the working practices of the institutions and the role of agents or individuals.

### Historical context

Cajaiba-Santana has noted that social innovations are contextual and to study them one must consider historical and contextual analyses.[990] The first factor relevant to the development of the innovations described in the previous chapter which must be taken into account is the historical context and the mood for change which was prevalent in Australia and other western countries in the 1970s and early 1980s, discussed in Chapter Four.

The historical context and political climate of the times was highly conducive to innovations in the form of new services and products. Despite the general conservatism of the legal profession alluded to in Chapter Six, there was a societal climate of impetus for change and specifically for reform of the legal profession.[991] As we have seen, the 1970s in Australia was as Arrow puts it 'a decade of extraordinary social reform'[992] which 'saw the emergence or reawakening of many social movements.'[993] Governments were receptive to supporting new ideas and projects and there was a marked increase on government spending on welfare related projects. Graycar conducted a survey of non-government welfare organisations 1981–83 and reported:[994]

> Australia, a country of 15 million people, has seen a rapid growth in the past decade in social welfare activity and social welfare expenditure. In 1971 expenditure on social security and welfare comprised 17.7 percent of the Federal Government's budget and 4.3 percent of Gross Domestic Product. A decade later the respective proportions were 27.3 percent and 7.6 percent … a substantial amount goes to non-government welfare organizations (NGWOs) for them to service populations and areas in need.

[990] G Cajaiba-Santana, 'Social Innovation: Moving the Field Forward. A Conceptual Framework' (2014) *Technological Forecasting and Social Change* 42,46.
[991] See page 70 and following pages of this thesis.
[992] Michelle Arrow, *The Seventies: The Personal, the Political and the Making of Modern Australia* (NewSouth Publishing, 2019) 5.
[993] Ibid.
[994] Adam Graycar, 'Non-Government Welfare Organizations in Australia: Preliminary Results from a National Sample Survey' (1984) 13 *Nonprofit & Voluntary Sector Quarterly* 44.

In 1973, a national regional development project, known as the Australian Assistance Plan, was initiated under the Whitlam Labor Government. It aimed to encourage people at the local level to participate in the planning and development of their communities and it provided financial support for community projects on a regional basis.[995] Throughout Australia a number of small projects was established under the rhetoric of empowering disadvantaged communities to take some control of their destinies.[996] These projects left a legacy and by the late 1970s a range of people in social policy areas, local and federal governments and academic institutions had begun to take an interest in the potential of community development and social justice, if not as a mechanism of empowerment, as a co-operative planning process. [997] There was, as a result, a huge expansion in community services during the 1970s and 1980s.[998] An ACOSS research paper relates this to the rise of the women's movement, significantly increased funding from the Commonwealth government and the emergence of well-organised groups of consumers of services.[999]

Legal aid funding increased during the first half of the 1980s, and in 1987 the Commonwealth negotiated funding agreements with the states which generally provided for the Commonwealth to provide 55% and the states 45% of funding for state legal aid bodies.[1000] The reasons for government interest in funding legal aid and legal centres in this period are complex. Tomsen describes the growing dependence of the professional sector of the new middle class in Australia on state, particularly expanded welfare state, activities in the 1970s and 1980s. He notes that 'the expansion of public legal services in Australia in those decades cannot be regarded as just the outcome of a professional construction of the needs of newly uncovered clients among the poor and disadvantaged.'[1001] He ascribes a level of professional self-interest to lawyers during this period[1002] and claims that the recent arrival of the new non-private groups [presumably including the legal centre lawyers] appears in part to allow them to more plausibly represent 'public' or 'community' interests in this sphere.[1003]

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[995] Adam Graycar, 'The Australian Assistance Plan' (1974) 17 *International Social Work* 54, 55.
[996] These included a new legal service in South Australia. See Mary Anne Noone and Stephen Tomsen, *Lawyers in Conflict: Australian Lawyers and Legal Aid* (Federation Press, 2006) 205.
[997] Susan Kenny, 'Contestations of Community Development in Australia' (1996) 31(2) *Community Development Journal* 104, 105.
[998] ACOSS, *Reforming Australia's Community Services: A Review of Proposals* (ACOSS Research Paper No 13 October 1995) 3.
[999] Ibid.
[1000] Mary Anne Noone, 'Legal Aid: A Return to the Sixties?' (1997) 22(5) *Alternative Law Journal* 251.
[1001] Stephen Tomsen, 'Professionalism and State Engagement: Lawyers and Legal Aid Policy in Australia in the 1970s and 1980s' (1992) 28(3) *Australian and New Zealand Journal of Sociology* 306, 325.
[1002]Ibid.
[1003] Ibid 324.

Legal aid though, as Germov points out, 'has always been a peripheral part of the social wage, having to compete with health, education and housing. It has been relegated to a secondary political issue due to public apathy, since few people have an interest in the law until they use it.'[1004]

As Arrow points out 'Australia is a unique case study in the ways that social movements 'fandango-ed' with the state because in many cases progressive Labor governments in the 1970s and beyond, responded to those seeking change by hiring specialist advisors or officers, sponsoring legislation and law reform and providing funding for new services.[1005] In the Federal sphere, these funding programs may have been reduced in scope in some cases under the Fraser conservative (Liberal and National Country Party) government (1975–83) which 'adopted a considerably narrower view of their responsibilities and took a much firmer grip on the use of public funds.'[1006] Arrow comments, however, that while the Fraser government grappled with new right ideas popular under Reagan and Thatcher including dismantling social welfare, it did not adopt them wholeheartedly.[1007] This era was also a period of 'new Federalism' whereby the Commonwealth was seeking to devolve responsibility in many policy areas to the states.[1008] Tomsen states that by the early 1980s, the Federal government had reversed its conservative suspicions about the radical structure and activities of the nascent independent legal centres' movement. It became impressed with the low overheads, high caseloads and use of voluntary labour in these centres amounting to 'excellent value for the legal aid dollar'.[1009] It did mean that with tighter guidelines and closer accountability, federally funded agencies were left with less 'room to manoeuvre' during the later 1980s and 1990s.[1010]

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[1004] John Germov, 'Equality Before the Law: The Limits of Legal Aid and the Cost of Social Justice' (1995) 30(2) *Australian Journal of Social Issues* 174.
[1005] Michelle Arrow, *The Seventies: The Personal, the Political and the Making of Modern Australia* (NewSouth Publishing, 2019) 13.
[1006] Helen Meekosha and Martin Mowbray. 'Reconstruction to Deconstruction: The Transformation of Community Work in Australia' (1990) 25(4) *Community Development Journal* 338. Note Tomsen's comments 'After Whitlam's dismissal, the Fraser Government took office with the intention of making stringent cuts in the federal budget – especially in the area of social welfare. For the ALAO this meant a sudden and permanent negative effect on the funding, staffing and work patterns of the office … Funding levels increased throughout the late 1970s and 1980s, but inadequate funds were provided for the continued growth in legal costs and the demand for legal help – especially in family law matters.' Stephen Tomsen, 'Professionalism and State Engagement: Lawyers and Legal Aid Policy in Australia in the 1970s and 1980s' (1992) 28(3) *Australian and New Zealand Journal of Sociology* 316.
[1007] Michelle Arrow, *The Seventies: The Personal, the Political and the Making of Modern Australia* (NewSouth Publishing, 2019) 175.
[1008] John Basten, Regina Graycar and David Neal, 'Legal Centres in Australia' (1983) 6(2) *UNSW Law Journal* 163, 169.
[1009] Stephen Tomsen, 'Professionalism and State Engagement: Lawyers and Legal Aid Policy in Australia in the 1970s and 1980s' (1992) 28(3) *Australian and New Zealand Journal of Sociology* 306, 321.
[1010] Helen Meekosha and Martin Mowbray. 'Reconstruction to Deconstruction: The Transformation of Community Work in Australia.' (1990) 25(4) *Community Development Journal* 338.

In NSW though, a Labor Government was in power in NSW from 1976 to 1988. In 1979, NSW Minister for Planning and Environment Paul Landa, described an adequate legal aid system as a social essential[1011] and committed the government to an increase of funding for legal services in introducing the *Legal Services Commission Bill* 1979 saying 'The Government has pledged itself to the improvement and expansion of legal aid services'[1012] and 'There must be reasonable limits to how much of the community's money is spent on this, but within those limits we will without apology commit whatever resources we can find to the removal of injustice against our helpless fellows.'[1013] This Bill created funding for a State Legal Aid Commission but was also to include funding 'to assist financially minor legal aid organizations, such as the Redfern Legal Centre.'[1014] Redfern Legal Centre had a 'very vocal role' in the debates regarding the establishment of the State legal aid scheme.[1015] There was government recognition of the innovatory role of legal centres. A place was reserved for legal centre representation on the Board of the Legal Aid Commission[1016] as:

> [t]he Commission should benefit from the value of their enterprise and experimentation. Centres such as the Redfern Legal Centre have discovered new ways to achieve the things that need to be achieved in legal aid. Such a representative will play a valuable part on the Commission.[1017]

The same debate saw this stated commitment to assist Redfern Legal Centre in innovation reaffirmed in the Legislative Assembly where Attorney General Walker mentioned the centre's potential to enable a desirable degree of diversity and experimentation to be maintained in the legal aid system.[1018]

So, in the early years of RLC, workers were operating in a context where potential for new approaches to welfare issues were seen as not only possible but desirable, where responsiveness to community needs was accepted and where there was unusual access to government financial support as well as funding from the Law Foundation to scale up

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[1011] NSW, *Parliamentary Debates* Legislative Council 23 April 1979, 4766 (DP Landa).
[1012] Ibid 4768 (DP Landa). Note also his comments that the Commission would have a position on the Board of the Legal Services Commission 'to represent voluntary legal aid organisations, such as the Redfern Legal Centre, which have earned the right to representation by their determined efforts to provide supplementary and diversified legal aid.'
[1013] NSW, *Parliamentary Debates* Legislative Council 23 April 1979, 4766 (DP Landa).
[1014] Ibid 4768.
[1015] Stephen Tomsen, 'Professionalism and State Engagement: Lawyers and Legal Aid Policy in Australia in the 1970s and 1980s' (1992) 28(3) *Australian and New Zealand Journal of Sociology* 30, 320.
[1016] Legal Aid Commission Act 1979 section 14(2) (vii).
[1017] NSW, *Parliamentary Debates* Legislative Council 23 April 1979, 4766 (DP Landa).
[1018] NSW, *Parliamentary Debates*, Legislative Assembly, 19 April 1979, 3239 (Frank Walker).

innovative ideas. Cajaiba-Santana notes that 'social innovations are associated with intended, planned, coordinated, goal oriented and legitimated actions undertaken by social agents aiming at social change that will emerge in the establishment of new social practices'.[1019] This description fits the centre's work. Redfern Legal Centre would start working in an area of need, demonstrate both the need and potential for a new service to begin to meet that need and lobby government to scale up the service and put it on a sustainable footing.

The State Government funding (rather insignificant from the point of view of government budgets) of the Prisoners Legal Service, the Intellectual Disability Rights Service, the Welfare Rights Centre, the Accommodation Rights service, and publications by RLCP, however, led to remarkable results. The funding of all these new services associated with a small NGO like Redfern Legal Centre within a period of less than 10 years was unprecedented and demonstrates that governments at the time were open to new ideas and supporting innovation. The funding included minimal governmental control and allowed centres to operate the services with little interference. This is very different to the current position. As Schetzer points out, since the late 1990s:

> [R]ather than funding community legal centres, the Commonwealth government viewed itself as the purchaser of community legal services, through service agreements. These service agreements allowed greater direction by the Commonwealth of CLC activity. In particular, all funds received by CLCs were to be spent on the purchased services as outlined in the Service Agreement Strategic Plan.[1020]

Beginning in the latter part of the 1990s, governments in the states began reviews of the efficiency of community legal centres.[1021] CLC funding is now subject to tender processes and Legal Aid NSW transfers funding directly to individual community legal centres subject to a service agreement (contract).[1022] Organisations are required to meet or exceed performance and outcome measures that are specified in the funding schedule of the contract.[1023] There are numerous financial, statistical and other obligations for reporting which require considerable resources to comply with.

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[1019] G Cajaiba-Santana, 'Social Innovation: Moving the Field Forward. A Conceptual Framework' (2014) *Technological Forecasting and Social Change* 42, 44.
[1020] Louis Schetzer, 'Community Legal Centres: Resilience and Diversity in the Face of a Changing Policy Environment' (2006) 31(3) *Alternative Law Journal* 159, 161.
[1021] Jeff Giddings and Mary Anne Noone, 'Australian Community Legal Centres Move into the Twenty-First Century' (2004) 11(3) *International Journal of the Legal Profession* 257, 263.
[1022] 'Funding and Reporting', *Community Legal Centres NSW* (Web Page, 5 June 2019) < https://www.clcnsw.org.au/funding-and-reporting>.
[1023] 'NGOs Providing Human Services', *NSW Government* (Web Page) <https://www.procurepoint.nsw.gov.au/before-you-supply/ngos-providing-human-services>.

> The progression to a purchaser-provider model, in which the government purchased community legal services via service agreements and put funding for new CLCs out to competitive tender, raised substantial concerns about loss of flexibility in service delivery. There was a loss of collaboration between community organisations and legal service providers, as they anticipated the prospect of tendering against each other. There was also a fear that such a market driven competitive environment would see the loss of the significant volunteer contribution to legal service delivery which has characterised CLCs since their inception.[1024]

Being subject to tighter governmental control has other drawbacks. A review of the National Partnership Agreement on Legal Assistance Services 2015–20 commissioned by the Federal government found that:

> [s]low delivery of the database collecting CLC statistical information has created operational inefficiencies … at CLC level. The introduction of the Data Standards Manual (DSM) to support collection of consistent and comparable data has also required significant investment in systems and training for both CLCs and LACs, and this is very likely to have had a negative transitional impact on service efficiency … Factors that have hindered CSP [Collaborative Service Planning] include competitive tensions (related to the funding environment), perceptions of conflicted interests among some participants, and perceived power imbalances associated with the relative scale and influence of different sector actors. Some stakeholders also expressed cynicism about the process resulting in 'gap shifting' in the context of a resource constrained environment.[1025]

There is clearly some tension between the radical approach of the centre in the early years and the ongoing institutionalisation of government support and support from the private legal profession in the form of pro bono legal services. As Rix states;

> [c]itizens are transformed into consumers of services that are directly provided by community organisations but which are at the same time almost totally funded by government. This funding severely constrains how effectively these organisations are able to serve their communities, especially in terms of the amounts of money they actually receive from government and the regulatory and administrative practices they are compelled to adopt as a condition of government financial support.[1026]

Pro Bono services offered through CLCs, though clearly a cheaper way for government to provide legal services to disadvantaged clients, may also affect the nature of services supplied to clients through decisions made by private commercial law firms on the choice of

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[1024] Louis Schetzer, 'Community Legal Centres: Resilience and Diversity in the Face of a Changing Policy Environment' (2006) 31(3) *Alternative Law Journal* 159, 164.
[1025] 'Review of the National Partnership Agreement On Legal Assistance Services 2015-2020' *Urbis* (Web Page, 2020) ix < https://urbis.com.au/insights-news/access-to-justice-urbis-review-released/>; See 'Legal Assistance Reviews', *Commonwealth* (Web Page) <https://www.ag.gov.au/LegalSystem/Legalaidprogrammes/Pages/Legal-assistance-review.aspx>.
[1026] Mark Rix, 'Community Legal Centres and Pro Bono Work: For the Public Good?' (2003) 28(5) *Alternative Law Journal* 238.

clients and the range of services offered.[1027] It should be noted however that allocating cases out to pro bono services or to in house pro bono secondee lawyers allows CLCs to focus their energy on assisting and advocating in areas of practice where there is no alternative available.

The establishment of RLC in 1977 and the development of the new innovative services out of the centre were assisted by the socio-political context of the early years of the centre's operation. While the ideas developed at the centre post the mid 1990s may have been just as innovatory as in the 1970s and 1980s, it is difficult to envisage the scaling up of any new organisations branching out from Redfern Legal Centre in this period succeeding in a more hostile funding environment.[1028]

### Communication in the agency and beyond

As we saw in the literature review the success of an innovation project is critically dependent on trust between the participants, and therefore on the quality of the communication. There are of course many forms of communication as we have seen. Cajaiba-Santana proposed that in organisations where innovation occurs there are 'communicative actions' by workers referring to a situation where people seek to reach common understanding and to coordinate actions by reasoned argument, consensus, and cooperation rather than strategic action strictly in pursuit of their own goals.[1029] Current research has also identified innovation culture and internal communication as critical factors for success in innovation.[1030] Innovation may also be affected by communication processes related to the characteristics and values of executive leaders and the role that idealism plays in the organisation.[1031]

In the case of the centre, there is evidence that the communication processes used in the agency and the nature of the working practices were of a type described in the research literature to support innovation. Evidence for this assertion falls under several headings:

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[1027] Ibid.
[1028] See Mary Anne Noone and Stephen Tomsen, *Lawyers in Conflict: Australian Lawyers and Legal Aid* (Federation Press, 2006).
[1029] Giovany Cajaiba-Santana 'Social Innovation: Moving the Field Forward. A Conceptual Framework' (2014) 82 *Technological Forecasting & Social Change* 42, 47.
[1030] Anne Linke and Ansgar Zerfass, 'Internal Communication and Innovation Culture: Developing a Change Framework' (2011) 15(4) *Journal of Communication Management* 332–348.
[1031] Michael L Shier and Femida Handy, 'Executive Leadership and Social Innovation in Direct-Service Nonprofits: Shaping the Organizational Culture to Create Social Change' (2016) 27(2) *Journal of Progressive Human Services* 111.

a) the style of management adopted;
b) processes adopted for decision making at staff and management meetings;
c) close work and social links between staff, management and volunteers and
d) shared values between staff, management and volunteers.

RLC was set up with a non-hierarchical approach to management.[1032] As we have seen when the centre was set up, in theory, all staff were equal and decisions were made by a collective. Whitmont recalls:

> I remember a decision that everyone should be paid the same amount and that everyone should share in all the tasks. There was a wonderful sense of equality even though there were obviously some brilliant people there. That was fabulous—the sense of participation, taking people's views into account, the friendship.[1033]

Centre management meetings were held once a month and anyone who showed up was part of the Committee. As we have seen the meetings had variable attendances and included vigorous discussion but the shared commitment of the participants was clear. Whitmont comments:

> [t]he words that probably best describe my sense of RLC when I worked there are "shared idealism". I saw the centre as full of extraordinarily smart and driven idealists (students, lawyers, academics, social workers) all enthusiastically committed to the same general cause of trying to make the world a better, fairer and more just place. That's why seeing so many former RLC lawyers now in high places is incredibly inspiring. As I said, I know that if back then, anyone had suggested an RLC lawyer might end up on the High Court, we would have all fallen about laughing.[1034]

Cajaiba-Santana's proposal that innovation requires a practice of reasoned argument, consensus, and cooperation rather than strategic action strictly in pursuit of personal goals was fulfilled by the way that the centre worked. Staff at the centre had shared values and goals. They believed that they were involved in a movement to change the structure of the legal system's relationship to the community. 'We should be arming the poor to fight their

[1032] UNSW Law, *Report of the General Meeting to Discuss the Setting Up of a Legal Aid Clinic held At UNSW Law School* (19–20 November 1976) (Copy in possession of Robyn Lansdowne) 3. Note the statement from 1976 in the early minutes of meetings, 'we feel there should not be any head as such.'
[1033] Interview with Debbie Whitmont (Frances Gibson, Sydney, 28 April 2016).
[1034] Email from Debbie Whitmont to Frances Gibson, 28 April 2016.

own legal and political battles, not making middle class professionals such as ourselves indispensable.'[1035]

There were occasional difficulties but those who attended these meetings comment on the respect shown for other people.[1036] 'Conversations were generally constructive, collaborative and approached with good will. Of course, sometimes people had strong views and sometimes people's different styles or approaches annoyed other people.'[1037] A lot of staff attended meetings and the contributions of all staff members as well as administrative workers and volunteers were valued.[1038]

Interviewees during the period under study describe a shared social as well as work life. Communication and common understandings were developed by links between staff and volunteers who were very close. Petre says that, 'Wilsons, the oldest continuing Lebanese restaurant in Sydney, was a big hangout for people from the centre as well as the pub across the road. After work and weekends people would have parties in their houses.' We would go for weekend planning meetings— the big discussion was focus on grassroots assistance or how to put energy into reforming the system … this was always a huge topic at all those meetings.'[1039] The staff and those responsible for setting up the centre were completely focused on their work.

In the absence of email and mobile phones, nearly all discussion was face to face between people in the same room.[1040] Redfern Town Hall is not large and staff do not have a lot of space. But the lack of space does facilitate collaboration.[1041] For collaboration to succeed, rich interactions are important.[1042] Considerable time was spent constructing lengthy written discussion papers and proposals to disseminate information to all those interested in the

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[1035] Robyn Lansdowne, *Community Involvement in Redfern Legal Centre November 1977* (paper in the collection of R Lansdowne) 15.
[1036] Interview with Gordon Renouf (Frances Gibson, Sydney, 28 January 2016).
[1037] Email from Gordon Renouf to Frances Gibson, 9 October 2019.
[1038] See for instance Renouf's experience, 'The role of chairing and taking minutes was always a bit vague … One day I volunteered to take minutes and people liked the way I took minutes and as a wet behind the ears volunteer, I was very chuffed by this.' Interview with Gordon Renouf (Frances Gibson, Sydney, 28 January 2016).
[1039] Interview with Clare Petre (Frances Gibson, Sydney, 21 May 2013).
[1040] Note comments in Hans Weigand and Aldo De Moor, 'Improving Communication for Collaboration in Social Innovation Projects: A Framework for Pragmatic Research', *IT Artefact Design & Workpractice* (Web Document, 5 June, 2013) <http://www.vits.org/adwi2013/HWeigand_ADeMoor_ADWI2013.pdf> 1, that face to face communication is vital for innovation, though other technology may also assist.
[1041] See Ying Hua et al, 'Relationship Between Workplace Spatial Settings and Occupant-Perceived Support for Collaboration' (2011) 43(6) *Environment and Behavior* 807,810.
[1042] Ibid 808.

centre's management.[1043] In January 1988 after a management consultant's report, the management structure changed to have a fixed membership which included staff, volunteer and community representatives.[1044] Processes at staff and management meetings, though, retained the same format of discussion and collectivity.

The ability to make collective decision making work effectively may be related to the size of the organisation. As Perkins notes about staff meetings:

> At RLC when the staffing level was about 10–12 everyone could have reasonable discussions. That gave it its best shot. But that didn't work very well when the staff levels got much higher. When staff levels got over the 12 mark the structure didn't work to support collaborative practice and you would get disputes … The structure that was there in 1980s, 1990s worked because of the high degree of trust between individuals.'[1045]

As the Harvard Business Review puts it 'It seems that decisions reached through group dynamics require, above all, a dynamic group.'[1046] At the centre during the period under study there was a dynamic group of people who were committed to open communication and collective decision making.

Minutes of meetings at the centre indicate there were discussions and attempts to define the exact ideology of the organisation without success[1047] but certainly staff and volunteers had a shared approach to the importance of the work, cooperation and consensus about the focus of the organisation. There is little evidence of individuals focusing on their own career or other goals. In fact, the general rhetoric at the centre was that if they were successful in their task to improve access to legal services they and the centre would no longer be needed. West remembers: 'When I took on the job at Redfern, they could guarantee my salary for 3 months and I thought I was the luckiest person on earth. I don't think you would get away with that as an employer now … We used to say it's really important we are not here in 20 years from now on. We consciously knew we would not make a career out of this.'[1048]

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[1043] See Redfern Legal Centre archives held at the State Library of New South Wales.
[1044] *RLC News* (Redfern Legal Centre, January/February 1988) 2.
[1045] Interview with Mary Perkins (Frances Gibson, Sydney, 22 July 2016).
[1046] Leigh Buchanan and Andrew O'Connell, 'A Brief History of Decision Making' *Organizational Culture* (Web Document, 2006) <https://hbr.org/2006/01/a-brief-history-of-decision-making>.
[1047] See for instance Minutes of Special Staff Meeting 8 December 1987, RLC papers held at the State Library NSW.
[1048] Interview with Roger West (Frances Gibson, Sydney, 9 December 2016).

We have seen that the style of communication between those engaged in centre work was usually effective. Individuals were encouraged to discuss issues and ideas and thrash them out in staff and management meetings. Cajaiba-Santana points out that intra social group innovations are related to the basic norms, values, rules, habits, and conventions of a given social group and it is important to understand the socio and cognitive-related conditions that lead to the acceptance or refusal of new practices. The role played by individuals here is very important because social innovations at this level are directly related to the way in which individuals are socialised.[1049]

### The role of individuals

The role of an individual person in the processes of innovation is clearly important but it is still not well understood.[1050] As we have seen there are two ways to view innovation. One is that it comes about through the efforts of outstandingly creative individuals.[1051] Doig and Hargrove[1052] identify three sets of capacities that are associated with successful innovators: a capacity to engage in rational analysis, an ability to see new possibilities offered by the evolving historical situation and a desire to make a difference. Part of the received wisdom about the history of Redfern Legal Centre is that the founders of the centre were a set of extraordinary energetic, innovative, intelligent, creative people. Evidence for this is cited as their career paths post the centre which include the High Court, Supreme Court, District Court judges, Ombudsman, Professors in Law Schools, CEOs of international NGOs etc. At the centre in the period under study there were certainly a number of people who demonstrated the qualities of successful innovators. From the examples given one can see that, particularly in the stage of idea generation, individuals were very important. This is supported in the literature on innovation.[1053] The roles of Basten, Kirkwood, West, Goddard, Simpson, Kidney just to mention a few in generating the ideas and proposals that led to the development of new services and products were critical.

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[1049] G Cajaiba-Santana, 'Social Innovation: Moving the Field Forward. A Conceptual Framework' [2014] *Technological Forecasting and Social Change* 42, 48.
[1050] JW Doig and EC Hargrove, *Leadership and Innovation. Entrepreneurs in Government* (John Hopkins University Press,1987); NC Roberts and PJ King, 'Policy Entrepreneurs: Their Activity Structure and Function in the Policy Process' (1991) 1(2) *Journal of Public Administration Research and Theory* 147–175; NC Roberts and PJ King, *Transforming Public Policy: Dynamics of Policy Entrepreneurship and Innovation* (Jossey-Bass, 1996).
[1051] NC Roberts and PJ King, *Transforming Public Policy: Dynamics of Policy Entrepreneurship and Innovation* (Jossey-Bass, 1996).
[1052] JW Doig and EC Hargrove, *Leadership and Innovation. Entrepreneurs in Government* (John Hopkins University Press, 1987).
[1053] WR King, 'Measuring Police Innovation: Issues and Measurement' (2000) 23(3): *Policing: An International Journal of Police Strategies and Management* 303, 306.

As Cajaiba-Santana points out any social innovation process requires attention to the individual persons—more specifically, to what they think, to what they value, to how they behave, and to how inter-relations between actors and social systems take place.[1054] Many people are not able or willing to change the way they see the world and do not invest time or energy in considering new ideas.[1055] Employees are of course a vital resource for an organisation's innovation and employees at any level in the organisation can contribute to this goal.[1056] Because the creative/innovative performance of employees depends on individual characteristics, such as personality traits (e.g. openness to experience), cognitive style and creativity and relevant skills, practices for enhancing employee creativity have traditionally focused on recruitment and selection of creative talents and on creativity training of the workforce.[1057] What makes an innovative employee? Research, mostly in the psychology field, has proposed that personality (e.g. openness, broad interest, toleration of ambiguity), cognitive style (e.g. divergent thinking, problem solving) and knowledge (e.g. domain knowledge, broad knowledge), and persistence in the face of obstacles are positively related to worker creativity.[1058] It is beyond the scope of this paper to attempt to determine what personality factors or attributes are related to a proclivity for an individual to take an innovative approach in a legal centre workplace but the research above is likely to be applicable.

It is not, however, solely individuals associated with an organisation who can play an important part in the innovation process. A critical role is also played by the 'connectors'—the brokers, entrepreneurs and institutions that link together people, ideas, money and power

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[1054] G Cajaiba-Santana, 'Social Innovation: Moving the Field Forward. A Conceptual Framework' (2014) *Technological Forecasting and Social Change* 42,48.
[1055] WR King, 'Measuring Police Innovation: Issues and Measurement' (2000) 23(3): *Policing: An International Journal of Police Strategies and Management* 303, 306.
[1056] Jan Dul and Canan Ceylan, 'Work Environments for Employee Creativity' (2011) 54(1) *Ergonomics* 12; N Madjar, G R Oldham and M Pratt, 'There's No Place Like Home? The Contributions of Work and Non-work Creativity Support to Employees' Creative Performance' (2002) 45 *Academy of Management Journal*, 757; G Scott, LE Leritz and MD Mumford 'The Effectiveness of Creativity Training: A Quantitative Review' (2004) 16 *Creativity Research Journal* 361.
[1057] G Scott, LE Leritz and MD Mumford 'The Effectiveness of Creativity Training: A Quantitative Review' (2004) 16 *Creativity Research Journal* 361.
[1058] See GR Oldham and A Cummings. 'Employee Creativity: Personal and Contextual Factors at Work' (1996) 39 *Academy of Management Journal*, 607; MD Mumford, 'Managing Creative People: Strategies and Tactics for Innovation' (2000) 10 *Human Resource Management Review*, 313; Christina Shalley and Lucy Gilson, 'What Leaders Need to Know: A Review of Social and Contextual Factors That Can Foster or Hinder Creativity' (2004) 15(1) *Leadership Quarterly* 33; Fiona Patterson and Máire Kerrin, 'Characteristics and Behaviours Associated with Innovative People in Small-and Medium-Sized Enterprises' in *Handbook of Research on Small Business and Entrepreneurship* (Edward Elgar Publishing Ltd., 2014) 187, 200.

—who contribute as much to lasting change as thinkers, creators, designers, activists and community groups.[1059]

NSW Attorney General Frank Walker was an example of an individual who was instrumental in the success of the centre's work. Without Walker's support many of the new services developed by the centre may not have come to fruition. The Hon. (Frank) Francis John Walker, QC was a member of the Legislative Assembly from 1970 to 1988 and Attorney General from 1978 to 1983. At his funeral in 2012, High Court Judge Mary Gaudron said that '"A lot of people have had, and many others will have, a much better life than otherwise because of Frank Walker.'[1060] Bruce Hawker,[1061] who was an advisor to Walker, had been a volunteer at the centre and was an important connection between the centre and Walker. Hawker notes Walker's introducing the first state-based land rights legislation in Australia and says, 'In all my years in politics, I cannot recall another state politician with such a consistently strong record of empowering the powerless.'[1062] His list of accomplishments in reform in NSW is quite outstanding.[1063]

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[1059] Geoff Mulgan et al, *Social Innovation: What It Is, Why It Matters and How It Can Be Accelerated* (Oxford SAID Business School, 2007) 5.

[1060] David Humphries, 'Activist Politician Delivered a Better Future for Others', *Sydney Morning Herald* (Sydney, 20 June 2012).

[1061] Bruce Hawker is a former Chief of Staff to Bob Carr, Labor Party campaign strategist, chairman and founder of the government relations and communications firm Hawker Britton.

[1062] Bruce Hawker, 'Populists, demagogues and celebrities. Challenges for progressive campaigning in the age of Trump – 2018 Frank Walker memorial lecture' *The Lucky General* (Lecture Transcript, Web Page, 15 May 2018) <https://theluckygeneral.biz/2018/05/15/the-2018-frank-walker-lecture-populists-demagogues-and-celebrities-challenges-for-progressive-campaigning-in-the-age-of-trump/>.

[1063] Michaela Whitbourn 'A Labor Immortal' *Financial Review* (Sydney, 20 June 2012). Frank Walker was appointed NSW youngest Attorney-General at the age of 34 and later entered Federal politics. He was a determined and fearless campaigner with strong convictions whose reputation as a reformer and a passionate advocate for the underdog was well known. His record of support and funding for new innovative community services is widely acknowledged, including: Funding for the first government funded service specifically for transgender people in Australia, opening Tiresias House on 14 December 1983. Redfern Legal Centre worked closely with Tiresias House in later years ('Our history', *The Gender Centre* (Web Page) <https://gendercentre.org.au/about-us/our-history>); He is credited with a major role in saving the rainforest at Terania Creek after protests this was the 'first time citizens physically defended a rainforest by placing themselves in front of police and loggers', and he persuaded Neville Warn to act: Laurie Patton, 'Barbarians at the Gate: Don't let them Destroy Murray Valley National Park', *Independent Australia* (Web Page) <https://independentaustralia.net/australia/australia-display/barbarians-at-the-gate-dont-let-them-destroy-murray-valley-national-park,12915>); a program of law reform, including decriminalised public drunkenness, begging, vagrancy and most prostitution offences, raised the legal threshold for common public order offences such as offensive language and behaviour; establishing the Housing Information and Tenancy Services (HITS) Program in 1985, a network of twenty-one independent tenants' advice services throughout NSW, to be set up in 1986 and 1987, and the Tenants' Union would be funded to resource them. Shelter NSW and the inner-city based Housing Information and Referral Service (HIRS) also got funded under the program: Paul Mortimer, *Unfinished business: The story of the Tenants' Union of NSW 1976–1996* (Tenants Union, 1996) 27. One of these programs was at Redfern Legal Centre; In August 1979, the New South Wales Government announced that it would establish "Community Justice Centres" and three were in operation by January, 1981. These were the first such centres in Australia: University of Sydney, Proceedings of the institute of Criminology No 51 Community Justice Centres 10 March 1982; Community Justice Centres (1979) 4(4) *Legal Service Bulletin* 152–154; Reformist policies in the juvenile justice area such as de-institutionalisation and the juvenile cautioning scheme introduced by the ALP when Frank Walker was Minister for Youth and Community Services (YACS) came under strong attack from the Coalition in the lead-up to the election; Until 1979 the Law Foundation's funding was largely at the discretion of the Law Society but this changed in 1979 when during Frank

While Walker was Attorney General and in the Ministry, funding was provided for a number of the centre initiatives described above as innovations. In 1982 the NSW Government provided funding for the Prisoners Legal Service within the Legal Aid Commission.[1064] On 28 September 1982, the NSW government announced funding for the Welfare Rights Centre. By 1984, Walker had moved to the portfolio of Minister for Youth and Community Services and Minister for Housing and it was in 1985 that Department gave the centre $60,000 and IDRS was established at RLC in one of the rooms upstairs in Redfern Town Hall.

It is clear that the role Walker played was again crucial in the development of a number of the centre's innovations and is an example of the role that an individual can play in innovation to be an integral factor in its success.

Another approach to innovation is to consider that the majority of social innovations arise from a process of:

> [c]ollective creation. It points to institutional interdependencies in innovation processes where innovation is not seen as episodic, but as interactive, iterative and continuous. It implies a 'democratisation' of innovation where consumers and citizens, not just institutions, have a voice in the innovation process and collaborative capacity is critical for innovation.[1065]

Creative employees who are placed in traditional productivity-driven organisations with formal structures, time constraints, strict regulations, daily similar tasks, standardised workplaces, etc may not be stimulated to show creative behaviour. The extent to which a person generates new and useful ideas depends on the support that is received from the work environment.[1066]

### Nature of the working practices of the institutions

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Walker's tenure the Foundation was incorporated by its own Act which also provided for it to receive a 10% share of the income – this put the Foundation on a firm footing funding wise. Later during Terry Sheahan's tenure the Foundation received larger allocations from the mid 1980s until the mid 90s. (Email from Terry Purcell to Frances Gibson, 1 October 2019.)

[1064] NSW, *Parliamentary Debates*, Legislative Assembly, 1 April 1982, 3239 (Frank Walker).

[1065] Nicola Brackertz, *Social Innovation* (APO, 2011) 7.

[1066] TM Amabile, 'Assessing the Work Environment for Creativity' (1996) 39 *Academy of Management Journal* 1154–1184; R Woodman, JE Sawyer and RW Griffin, 'Toward a Theory of Organisational Creativity' (1993) 18 *Academy of Management Review* 293–321.

Cajaiba-Santana points out that the nature of the working practices of the institution are a factor in the development of innovation. There has been little quantitative survey based research focussing on organisational environments that promote innovation[1067] and little discussion of this factor in relation to social innovation.[1068] There appears to be general agreement in literature on innovation though that some form of autonomy or empowerment of workers is a vital factor.

In the 1970s, in the USA, a concept of 'new professionalism' in the legal profession was identified. This was seen as an outgrowth of the social reform movements of the 1960s.[1069] Erlanger[1070] states that much of the political activity and social criticism within those movements came from relatively well educated, high status youth—the college and immediate post-college population. He notes that popular and scholarly literature suggests that when these youthful critics reached the job market, they tried to put their ideals into action by choosing non-traditional occupations such as public interest law. In seeking to explain the way that Legal Service Commission lawyers took a more radical and law reform approach to their positions than even traditional legal aid lawyers, Erlanger concludes this is due to the fact that these lawyers had much more autonomy to pursue cases in any manner they wished.[1071]

The factor of workplace autonomy is important in innovation. Senior executives in one survey on the corporate world almost unanimously (94%) have said that people and corporate culture are the most important drivers of innovation.[1072] It has been shown that employees who receive encouragement for their creative efforts and do not experience high time

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[1067] Anthony Arundel et al, 'The Organization of Work and Innovative Performance: A Comparison of the EU-15 Statistics' Canada Blue Sky II Indicators Conference, Ottawa, Canada; See discussions in Michael L Shier, Femida Handy and Calvin Jennings, 'Intraorganizational Conditions Supporting Social Innovations by Human Service Nonprofits' (2019) 48(1) *Nonprofit and Voluntary Sector Quarterly* 173; Michael L Shier and Femida Handy, 'Cross-Sector Partnerships: Factors Supporting Social Innovation by Nonprofits' (2016) 40(3) *Human Service Organizations: Management, Leadership & Governance* 253; Michael L Shier and Femida Handy, 'Executive Leadership and Social Innovation in Direct-Service Nonprofits: Shaping the Organizational Culture to Create Social Change' (2016) 27(2) *Journal of Progressive Human Services* 111.

[1068] See report on Innovation in the Legal Profession- Katie Miller, Disruption, Innovation and Change the Future of the Legal Profession, *Law Institute of Victoria* (Online article,2015) <https://www.vgso.vic.gov.au/content/disruption-innovation-change>.

[1069] Ronald Gross and Paul Osterman, *The New Professionals* (Simon and Schuster, 1972).

[1070] Howard Erlanger, 'Lawyers and Neighborhood Legal Services: Social Background and the Impetus for Reform' (1978) 12(2) *Law and Society Review* 253, 254.

[1071] Howard Erlanger, 'Lawyers and Neighborhood Legal Services: Social Background and the Impetus for Reform' (1978) 12(2) *Law and Society Review* 253, 255.

[1072] Joanna Barsh, Marla M Capozzi, and Jonathan Davidson, 'Leadership and Innovation', *McKinsey Quarterl*y (Online Article, 2008) <https://www.mckinsey.com/business-functions/strategy-and-corporate-finance/our-insights/leadership-and-innovation>.

pressure are more likely to persist in their idea generation endeavours[1073] and even start inventing in their spare time.[1074] A popular example of this notion often quoted is Google's 20% time concept. Founders of Google, Larry Page and Sergey Brin highlighted the idea in their 2004 IPO letter:

> We encourage our employees, in addition to their regular projects, to spend 20% of their time working on what they think will most benefit Google. This empowers them to be more creative and innovative. Many of our significant advances have happened in this manner.[1075]

Research on creativity has revealed[1076] that individuals produce more creative work when they perceive themselves to have choices about how they accomplish the tasks they are given. Allowing staff to pursue their own ideas during work hours provides time to observe, experiment and speculate with others. These activities are vital for innovation outcomes.[1077] Some job slack is needed, because it 'nourishes the pursuit of innovative projects associated with high levels of uncertainty and potentially high pay-offs'.[1078] In contrast, tightly defined jobs with low autonomy tend to encourage narrow perspectives.[1079] In researching innovation in non-profits, Grant and Crutchfield[1080] found that many organisations were either so focused on maintaining existing systems they lacked creativity, or were able to generate ideas but then struggled to implement them.[1081]

Evidence for the high level of autonomy of staff involved with Redfern Legal Centre during the period under examination is available from interviews conducted in this research. There are numerous examples. West describes the centre's approach:

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[1073] M Baer and GR Oldham, 'The Curvilinear Relation Between Experienced Creative Time Pressure and Creativity: Moderating Effects of Openness to Experience and Support for Creativity' (2006) 91(4) *Journal of Applied Psychology* 963–970.
[1074] LN Davis, JD Davis and K Hoisl, 'Leisure Time Invention' (2013) 24(5) *Organization Science* 1439–1458.
[1075] Jillian D'onfro, 'The Truth About Google's Famous '20% Time' Policy, *Business Insider* (Web Page, 18 April, 2015) <https://www.businessinsider.com.au/google-20-percent-time-policy-2015-4>.
[1076] TM Amabile et al, 'Assessing the Work Environment for Creativity' (1996) 39(5) *Academy of Management Journal* 1154–1184.
[1077] JP Deschamps, *Innovation Leaders: How Senior Executives Stimulate, Steer and Sustain Innovation* (John Wiley & Sons, 2009).
[1078] K Laursen, 'Keep Searching and You'll Find: What do we Know about Variety Creation through Firms Search Activities for Innovation?' (2012) 21(5) *Industrial and Corporate Change* 1181–1220.
[1079] See A Burcharth, M Præst Knudsen and H Søndergaard, 'The Role of Employee Autonomy for Open Innovation Performance' (2017) 23(6) *Business Process Management Journal* 1245, 1250.
[1080] LR Crutchfield and Grant McLeod, *Forces for Good: The Six Practices of High-Impact Nonprofits* (John Wiley & Sons, 2007).
[1081] Graham Dover and Thomas B Lawrence, 'The Role of Power in Nonprofit Innovation' (2012) 41 *Nonprofit and Voluntary Sector Quarterly* 991, 992.

> We didn't employ people as specialists in areas of law. People's own interests dictated what the content of their job would be. We had endless debates about whether we were letting the employees dictate the areas of law not the clients … But the other side of the argument was we were letting people pursue their passions and if they wanted to contribute to the general cause of the legal centre … then why not let them pursue their passions as long as it's consistent with the overall direction of the legal centre. It's always a balancing act as you consider the needs of the clients and how that aligns with the passions interests and strengths of the person delivering the services.[1082]

Lawyers were able to take on cases without going through a formal process[1083]— even quite large and resource intensive ones such as the *State Bank* case[1084] and *HomeFund*.[1085] Until the 1990s, the centre's Board delegated their powers to the management committee. In reality, most of the decisions were left to the staff. Stapleton comments, 'The staff had nearly complete autonomy.'[1086] It was not just the lawyers who had this control over their work. Hillman says, 'I had a lot of autonomy [be]cause no one really understood what a social worker did.'[1087] Petre points out that even volunteer staff had a say in their areas of work. 'Lawyers from the big commercial firms were often frustrated with their own work and enjoyed coming to RLC. At RLC they had autonomy and could pick their area of interest, criminal, tenancy etc.'[1088]

Bell concurs, 'We had quite a lot of autonomy in our jobs.'[1089] This independence and self-direction, while a challenge, was appreciated and enjoyed by staff. Simon Rice details his experience: 'I was 22 or 23, and faced with intensely confronting personal experiences and when you think of the autonomy we were given to do this— I thrived on it.'[1090] Jim Simpson discussing his work on IDRS states

> There was very little control over what we did. We had a collectivist model—staff meetings but things were decided by consensus— staff had a high degree of autonomy but from the start we had a list of issues and prioritisation of those led by staff but management were part of the decision process.[1091]

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[1082] Interview with Roger West (Frances Gibson, Sydney, 9 December 2016).
[1083] Interview with Robyn Lansdowne (Frances Gibson, Melbourne, 6 July 2016).
[1084] *State Bank of New South Wales v Various Debtors* [1995] ASC 55–207 (Commercial Tribunal of NSW).
[1085] *Bass v Permanent Trustee Co Ltd* [1999] HCA 9. Interview with Ben Slade (Frances Gibson, Sydney, 8 December 2015). Decisions about extremely resource intensive cases were left to staff to make decisions on. Slade commented: 'Like most places as you get more senior and you haven't fucked up then you get to make more decisions about what you're going to do without having to run it past anyone. *State Bank* case which was really huge and *Homefund* were my decision to take on … I told people and people were pleased enough about it but I can't remember having to go through any complicated processes to take on these gigantic cases.'
[1086] Interview with Peter Stapleton (Frances Gibson, Sydney, 20 July 2016).
[1087] Interview with Mick Hillman (Frances Gibson, Hunter Valley, 15 February 2017).
[1088] Interview with Clare Petre (S Frances Gibson, Sydney, 21 May 2013).
[1089] Interview with Virginia Bell (Frances Gibson, Sydney, December 2016).
[1090] Interview with Simon Rice (Frances Gibson, Canberra, 28 January 2016).
[1091] Interview with Jim Simpson (Frances Gibson, Sydney, 16 September 2016).

It was not just at the inception of the centre that this situation existed. Goddard working at the centre in the late 1980s says

> I think the level of responsibility was great. There was a lot of collaboration. It was a model that worked well for me. Genuine collaboration within the centre … The autonomy was not like in a traditional law firm where you draft a letter and someone red lines it— it was very different. There was real collaboration. You were trusted to seek assistance when you needed to.[1092]

Like Goddard, Blazejowska worked on the domestic violence projects. She says:

> I had total autonomy in my job. Most things came up at the staff meeting. Things would bubble around in the back room and when there was some structure it was brought up at the staff meeting. Then it was really debated and thrashed out. People were supportive of new ideas. There was pragmatic approach by the coordinator about resources but there was little concern about biting the hand that funds you. Concerns about risking funding were articulated but no one cared. We just thought we'll deal with that later.[1093]

Hillman comments that it was

> [v]ery rare if a staff member wanted to go with something that anyone would say no. The main debate was in staff meetings. Usually people were supportive of new ideas— or people would think well if it doesn't affect me just go and do it. We had policy days down at Andy Haesler's house on south coast that was very useful to bring new ideas. We all used to repair to the Cricketers Rest [Hotel] and a lot of ideas came from there. By Friday night people were pretty razzled and that was always a good thing to do.[1094]

Perkins was the Coordinator of the centre in the 1980s. She points out that 'People were very keen about new ideas coming along. It was a place that had a culture of saying we break new ground. The problem for Redfern was always consolidating all the new ideas'.[1095] The size of the organisation may be relevant to innovation and the autonomy for workers. Elizabeth Morley was Principal Solicitor at the centre from the later 1990s:

> In small centres the autonomy of various workers was very high but you could come back and talk about issues as everyone had a high level of awareness about what everyone was doing— a high level of consensus existed. In bigger centres it's similar but you get workers who don't have the sense of responsibility for administration. They are consistent workers but they don't see the way the centre runs as their responsibility— not the same sense of

[1092] Interview Jane Goddard (Frances Gibson, Sydney, 23 January 2016).
[1093] Interview with Louise Blazejowska (Frances Gibson, Sydney, 11 February 2017).
[1094] Interview with Mick Hillman (Frances Gibson, Hunter Valley, 15 February 2017).
[1095] Interview with Mary Perkins, (Frances Gibson, Sydney, 22 July 2016).

> ownership—that has to be in a way—you don't have time to do everything. You don't have that same feeling of ownership and joint responsibility and feeling of going forward like in the early days for the work of the centre.'[1096]

Centre workers, David Vaile and Pat McDonagh provide similar perspectives. Vaile says:

> The idea of legal centres birthing new projects was a strong part of the ideology at RLC … I may have had some role in crushing the autonomy of Centres with the MSP [Management Support Project] around 1994. We helped people by providing training and systems. In one sense a sort of managerial feel came through. But as things go when you have larger organisations and more rigid funding regimes came into existence, freedom and loose managerial control was not possible.[1097]

McDonagh:

> I pretty much did what I liked. Now it has become more corporatised. If I felt sorry for people, I could take their case on—I could always ring up Clayton Utz or refer matters to them or get legal aid. I had pretty much full autonomy.[1098]

Clearly, staff had an extremely high level of autonomy in their work. One can hypothesise from this that this autonomy allowed them to pursue proposals that led to the generation of ideas for new services and ways of approaching the work that may not have been possible in a more controlled work environment.

Information sharing is also another important work practice relevant to innovation. For employees to be able to participate in organisational decision-making at any level, they need access to the relevant information. Providing employees with information for decision-making will only lead to empowerment if they are also given authority to make decisions. It appears that in many organisations the potential for social innovation is held back by issues with organisational design and culture that prevent employees from receiving information, or deny them discretion to make decisions.[1099] At the centre information was shared with all employees both at staff and management meetings and meetings were accessible to all. Employees had the discretion to make decisions about the content of their jobs and how the work was to be carried out.

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[1096] Interview with Elizabeth Morley (Frances Gibson, Sydney, 21 July 2016).
[1097] Interview with David Vaile (Sydney, (Frances Gibson, Sydney, 18 July 2016).
[1098] Interview with Pat McDonough (Frances Gibson, Sydney, 24 January 2016).
[1099] D Limburg, 'Social Innovation through Information Provision' (2014) 14 *Human Resource Management, Social Innovation and Technology* 21–36.

As we have seen staff and volunteers developed the centre based on the innovation of Fitzroy Legal Service in Victoria—the first non-aboriginal legal centre in Australia. Workers were aware they were part of a new movement developing new ways of approaching delivery of legal assistance and they had a shared ideology about notions of access to justice and a passionate belief that change was needed. They were supportive of new ideas and people were encouraged to bring ideas and proposals for new programs for discussion. There was trust among the employees and others associated with the centre. It was understood that novel ideas were valued, and employees trusted that it was safe to express those ideas. This situation is highly conducive to innovation.[1100]

### Relationships between groups in the institution and with external organisations

Cajaiba-Santana notes that relationships between groups in the institution and with external organisations are a relevant consideration when considering innovatory capacity. The centre had many committed volunteers and it has been demonstrated that volunteer engagement relates positively to innovativeness of non-profits.[1101] At the centre, evidence demonstrates that relationships were productive and facilitated innovation. Evidence for this includes

a) Close working relationships between people from different professions in the centre;
b) Relationships with external organisations were well developed—working together day to day on joint projects;
c) Relationships with external organisations were collaborative rather than competitive.

We have seen in this thesis, the way that other professionals besides lawyers such as policy workers, educators and community and social workers were an integral part of Redfern Legal Centre's approach to the work. The first employee of the centre was a social worker and this position remained part of the centre's staff until the late 1990s.[1102] The social worker volunteers at the centre in the intellectual disability field were crucial to the development of IDRS. Community workers were working side by side with lawyers in the WDVCAS to

[1100] Joanna Barsh, Marla M Capozzi and Jonathan Davidson, 'Leadership and Innovation', *McKinsey Quarterly* (Web Page, 2008) <https://www.mckinsey.com/business-functions/strategy-and-corporate-finance/our-insights/leadership-and-innovation>.
[1101] Irina Krasnopolskaya and Lucas Meijs, 'The Effect of Enabling Factors on Social Innovation in Russian Non-Profit Organisations' (2019) 39(5/6) *International Journal of Sociology and Social Policy* 447, 450.
[1102] Interview with Hilary Chesworth (Frances Gibson, Sydney, 9 July 2016).

provide services in domestic violence cases to women. Administrative staff were an integral part of the centre's workforce and all workers were paid equally at first[1103] and later in the 1990s paid based on relevant years of service no matter what their job was.[1104]
Community legal centres were the first legal organisations in Australia to explore the approach of combining skills from a number of disciplines to assist clients by means of legal casework, policy and education work. When the new Welfare Rights Centre was established by the centre, ACOSS and partners it was established that lawyers would work as a backup in collaboration with community workers:

> In contrast to more established and traditional areas of law, the area of social security law offers a unique opportunity for the development of techniques and approaches that place lawyers in a back-up role as a resource rather than in the front line. There are already many community workers, professionally trained or otherwise, who have a superior understanding of social security law and the needs of clients affected by it. It is also, fortunately, an area where tribunals are, at least in theory, open to lay representation … The point is that lawyer involvement in the traditional sense is likely to mean lawyer domination and yet there is little reason to feel confident that advantages would flow for clients. A preferable model, and one that has been adopted at the Welfare Rights Centre, uses lawyers primarily as consultants to lay advisers and advocates who deal directly with clients.[1105]

Centre staff and volunteers were taking an activist stance to the legal issues facing clients. It was standard practice from the beginning of the centre's history to work in coalitions with other organisations in a collaborative fashion. As has been observed there has been profound scepticism about what lawyers can do 'for and to' social movements.[1106] This led to a belief that lawyers should stand behind movements, supporting them when necessary, but not get too far out front.[1107] Diamond points out that from the 1970s lawyers have been

> engaging in tasks far beyond what was their traditional domain. Today, lawyers engage in community organising and education, strategic planning with oppressed groups, and overtly political action on behalf of clients. Bringing the changing views of power together with the changing views of the role of lawyers leaves a space for an effective collaboration between those suffering from a power deficit and the lawyers who wish to assist in that effort.'[1108]

To some extent this was the approach taken by the centre workers over four decades ago.

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[1103] Interview with Debbie Whitmont (Frances Gibson, Sydney, 28 April 2016).
[1104] Interview Jane Goddard (Frances Gibson, Sydney, 23 January 2016).
[1105] Roger West, 'Welfare Rights Centre' (1983) 8 *Legal Service Bulletin* 130, 142.
[1106] Sarat Austin and Stuart Scheingold, 'What Cause Lawyers Do For, and To, Social Movements: An Introduction' in Austin Sarat, *Cause Lawyers and Social Movements* (Stanford University Press, 2006) 1.
[1107] Scott L Cummings, 'Rethinking the Foundational Critiques of Lawyers in Social Movements' (2017) 85(5) *Fordham Law Review* 1987, 1990.
[1108] Michael Diamond, 'The Transposition of Power: Law, Lawyers, and Social Movements' (2017) 24 *Georgetown Journal on Poverty Law and Policy* 319, 351.

As Goddard states 'Lawyers can't operate in a vacuum and should not operate in a vacuum.'[1109] There were a number of justice organisations associated with the centre—groups such as the Australian Lawyers Workers Group,[1110] Women behind Bars,[1111] Feminist Legal Action Group,[1112] Prisoners Action Group and the publication coordinators of the *Alternative Criminology Journal* and *Legal Service Bulletin* which ran out of UNSW.[1113] The centre worked closely with other community legal centres, financial counsellors, advocacy services, the NSW Council of Social Services and disability rights groups as well as women's centres such as The Shop Womens and Children's Centre—a service for women and children based in Waterloo.

Most innovative thinking and new practices are the outcome of joint collaborations.[1114] Cross-boundary collaboration has in fact been said to be 'a prerequisite for innovative contribution.'[1115] Multi-actor collaborations may foster innovation by bringing together public and private actors, facilitating knowledge sharing and transformative learning, and building joint ownership to new innovative visions and practices.[1116] Collaborative relations contribute to legitimacy, stability and survival of innovative solutions and collaboration can secure organisational and in some cases resource support.[1117] Coalitions, where various groups join together in pursuit of a common cause, are often vital to change because change at times can only be effected with a significant amount of power— more power than a single individual or organisation can bring to bear.[1118] The value of using collaboration and coalitions to achieve change was recognised by legal service providers in in the 1970s and 1980s in Australia and community legal centres were the first lawyers to work in a concerted

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[1109] Interview with Jane Goddard (Frances Gibson, Sydney, 23 January 2016).
[1110] People at Redfern Legal Centre and others were behind the establishment of the Australian Legal Workers Group which was setting itself up as the alternative law society for radical young lawyers in the 1970s. See Jeff Giddings, 'Clinical Legal Education in Australia: A Historical Perspective' (2003) *Journal of Clinical Legal Education* 7,14. Also see Stan Ross, *The Politics of Law Reform* (Penguin,1982).
[1111] Women Behind Bars was a small group of prison activists campaigning in NSW in the 1970s and early 80s. See ABC Radio, *Women Behind Bars* < https://www.abc.net.au/radionational/programs/archived/hindsight/women-behind-bars/3932334>.
[1112] The Feminist Legal Action Group (FLAG) in the 1980s used the law to run test cases made submissions and lobbied for changes to laws affecting women. See Womens Web , Womens Stories, *Interview with Margaret Thornton* < http://www.womensweb.com.au/sources/Later%20Stories/Margaret%20Thornton.htm>.
[1113] Interview with Robyn Lansdowne (Frances Gibson, Melbourne, 6 July 2016).
[1114] Alexander Styhre, *A Social Theory of Innovation* (Copenhagen Business School Press, 2013) 200.
[1115] Irina Krasnopolskaya and Lucas Meijs, 'The Effect of Enabling Factors on Social Innovation in Russian Non-Profit Organisations' (2019) 39(5/6) *International Journal of Sociology and Social Policy* 447, 450.
[1116] See Eva Sørensen and Jacob Torfing, 'Introduction: Collaborative Innovation in the Public Sector' *The Innovation Journal*, *suppl. Special Issue: Collaborative Innovation in the Public Sector* (2012) 17(1) Ottawa 1–14.
[1117] Stephen PP Osborne and Kerry Brown, *Managing Change and Innovation in Public Service Organizations* (Taylor and Francis, 2012).
[1118] T Black, 'Coalition Building: Some Suggestions' (1983) 62(3) *Child Welfare* 263.

approach with other welfare and activist organisations to achieve better outcomes for their clients and develop innovative approaches to social problems.[1119] Examples of this can be seen throughout the centre's history. Genovese states that

> [c]ommunity legal centres and the broad philosophy of working collectively and actively through community education as well as the provision of legal services to alter their society, was important at this time as it brought a genuinely pluralist political community within the auspices of legal service provision. The Redfern Legal Centre (RLC) in Sydney provides perhaps the best example of the practicalities of these connections and influences …[1120]

The concept of a national association of community legal centres was debated at conferences of CLCs from 1979 onwards and finally set up by 1982. By 1992, the National Association of Community Legal Centres was funded by levies from centres.[1121] State associations also facilitated collaborative work between centres.

At RLC, examples of successful collaborations and coalitions of workers from different organisations working together can be seen in many instances detailed above including:

a) the Prisoners Legal Service (coalition with Prisoners Action Group, Women Behind Bars, Feminist Legal Action Group and other prison activists);
b) the development of the Welfare Rights Centre (coalition with New South Wales Council of Social Services, Australian Council of Social Services);
c) the establishment of the Accommodation Rights Service (coalition with Combined Pensioners Association, Aged Care Coalition);
d) the Intellectual Disability Rights Service (coalition with Council for Intellectual Disability and Action for People with a Disability).

As these examples illustrate, collaborative work has been a vital part of the success of the innovations in the form of new services associated with the centre. Joint activism, shared focus on outcomes, trust and lack of competition between services for funding was productive in achieving positive outcomes. As Morley notes in the current climate this may

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[1119] Similar approaches were being followed by legal service providers in the USA at the same time. See T Black, 'Coalition Building: Some Suggestions' (1983) 62(3) *Child Welfare* 263; Gary Bellow, 'Turning Solutions into Problems: The Legal Aid Experience' (1977) 4 *NLADA Briefcase* 106.
[1120] Ann Genovese, 'A Radical Prequel: Historicising the Concept of Gendered Law in Australia' in Margaret Thornton(ed), *Sex Discrimination in Uncertain Times* (ANU Press, 2010) 56.
[1121] The first recorded motion to set up National Association was at Jindabyne in 1979: Rhonda Fadden et al, 'Community Legal Centres: National Overview 1992' (1992) 17(6) *Alternative Law Journal* 283.

no longer be the case due to more competition for funding and government recognition or assistance.

> The sense of competitive tendering has meant a lot of sharing of ideas and information and collegiate work has been less as Centres are more mindful of intellectual property and ideas. They are less likely to put ideas forward for discussion in case someone else takes the idea and also Legal Aid don't seem themselves as collegiately aligned with CLCs as part of the legal aid sector. It was a small world back in the 70s and 80s—we all knew one another—we went to the same wine cask and cheese and Jatz parties. We had planning days when volunteers, management committee and staff would all be together in some small cottage … Those things do not happen now.[1122]

### UNSW Law School

There is no doubt that the connection of the centre with the UNSW Faculty of Law and the collaboration of centre workers with various academics was a factor assisting the inspiration for creation and sustainability of centre innovations. The UNSW Law Faculty had a history of employing staff whose interests were in justice issues. Ronald Sackville, who was appointed Commissioner for Law and Poverty on the Australian Government Commission of Inquiry into Poverty which ran from 1972–75, was a Professor at UNSW. Staff including Professor Hal Wootten had assisted in setting up the Aboriginal Legal Service. Two Faculty members were NSW editors of the *Legal Services Bulletin* and in contact with the new legal service at established in Fitzroy in 1972 in Melbourne. Two Americans in the Faculty probably had an influence—Curt Garbesi, and also Stan Ross, who had worked in legal aid clinics in Berkeley. Obviously, University staff and students were involved in the establishment of the centre, and without that impetus the centre would not have existed. The connection with the law school also meant there were individuals who were aware of international developments and contributed these ideas.

There were courses being run at UNSW that enlivened the student volunteers to issues in areas of need such as prisoners and housing issues.[1123] Zdenkowski comments: 'There was a proliferation of elective courses which didn't really exist at traditional law courses. I taught a trial process option which had simulated trials based on reality. Some students became very involved and it later led some students to get involved at RLC.'[1124] In 1972, Robyn

[1122] Interview with Elizabeth Morley (Frances Gibson, Sydney, 21 July 2016).
[1123] Interview with George Zdenkowski (Frances Gibson, Sydney, 28 October 2017).
[1124] Ibid.

Lansdowne was in her last year of school and was making decisions about which law school to enrol in. She visited both Sydney University Law School and UNSW. At UNSW, she encountered the academic staff sitting outside in a circle near the Nissan Huts at the campus where the Law school was originally based. 'Yes' she thought, 'this is the one'. The law school wanted to be 'different and innovative and not based so much on the big end of town.'[1125] 'There were different groups at the Law School— the Law Revue, the Law Journal, and the practical "do things in the community" group who were thinking about alternative ways of practice. There was of course some merging of those groups.'[1126]

Early on there was discussion at the Law School about the idea of setting up a legal aid clinic. Lecturer Terry Buddin had been on a study tour to Illinois and became aware of the law school clinics there,[1127] and John Kirkwood and Buddin had many discussions about the idea of a UNSW law school clinic.[1128] Kirkwood was an activist recruited by the Faculty to do tutoring at UNSW before he had even finished his law degree.[1129] He spoke German and French and was given a Swiss government scholarship to study international law in Geneva.[1130] He had volunteered at the Aboriginal Legal Service, did some practical training with Bruce Miles[1131] and worked at the DPP.[1132] He had a profound social conscience and was teaching what was the first social security law course at any law school in Australia.[1133]

But beyond these roles, there are many other services provided by the Faculty of Law at UNSW that had an impact. Many volunteers at the centre, about the time of its opening in 1977, were still in law school at UNSW or had just completed their law degrees. Robyn Lansdowne, reflecting on the initial organisation of the centre, has characterised the informing perspectives of its original membership as products of the more radical new law curriculum at the University of New South Wales.[1134] UNSW administrative staff prepared the manuscript of Neal's '*On Tap not on Top'* for publication and word processing—an

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[1125] Interview with Robyn Lansdowne (Frances Gibson, Melbourne, 6 July 2016).
[1126] Interview with Andrew Haesler (Frances Gibson, Sydney, 7 July 2015).
[1127] Interview with Terry Buddin (Frances Gibson, Sydney, 4 August 2015).
[1128] Ibid.
[1129] Interview with Judith Kirkwood (Frances Gibson, Sydney, 5 December 2016).
[1130] Ibid.
[1131] A well known criminal barrister dedicated to social justice. See Malcolm Brown and Tony Stephens, 'A lifelong campaign for the voiceless', *Sydney Morning Her*ald 12 August 2002 < https://www.smh.com.au/national/a-lifelong-campaign-for-the-voiceless-20020812-gdfj7s.html>.
[1132] Interview with Judith Kirkwood (Frances Gibson, Sydney, 5 December 2016).
[1133] The John W. Kirkwood Memorial Scholarship was established to assist students who may be experiencing financial difficulty to undertake study in the Faculty of Law at UNSW.
[1134] Ann Genovese, 'A Radical Prequel: Historicising the Concept of Gendered Law in Australia' in Margaret Thornton(ed), *Sex Discrimination in Uncertain Times* (ANU Press, 2010) 57.

examination of the work of CLCs 1972–82 which was almost a manifesto for community legal centres. The Faculty hosted Michael Mobbs, the first editor of the Legal Resources Book, at UNSW. It was a paper presented at UNSW on intellectual disability that caught Jim Simpson's attention and led him to work on the creation of IDRS. The Prisoners Action Group was an alliance that included ex-prisoners, UNSW legal academics such as George Zdenkowski and David Brown, libertarians and civil liberties members as well as the workers at the centre—all committed to exposing the horrendous conditions in NSW jails.[1135]

Connections and partnerships with universities are well recognised as facilitating innovation.[1136] The influence of the university on the way the centre developed was crucial and had an enduring legacy. Establishment of the successful UNSW police powers clinic at the centre in 2010[1137] and participation of UNSW students and graduates as volunteers and interns at the centre continue the connection.

In this chapter, we have seen that the factors identified in innovation, research and literature appear to have relevance in considering the case study of Redfern Legal Centre. As Caijaba-Santana theorises, social innovation can be seen through different perspectives. It is socially constructed as individuals collectively engage in purposeful actions and reflexively monitor the outcome of their actions and comes about as a result of exchanges of knowledge and resources.[1138] In the case of Redfern Legal Centre, the historical context in which the organisation was operating, the relationships between groups in the institution and with external organisations, the nature of the communication within the organisation and the working practices of the centre together with the role of individuals combined to create an environment that was highly conducive to innovation. Santana's model does not suggest which of the factors outlined might be more important than others in encouraging innovation and the data collected for this thesis does not shed light on this issue. It is suggested that further research of a comparative nature might be useful to investigate this question. Cajaiba-Santana suggests that 'From a policy-maker's perspective, we need structures able to foster

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[1135] Ibid 58.
[1136] See Aris Kaloudis et al, *How Universities Contribute to Innovation: A Literature Review-based Analysis* (Norwegian University of Science and Technology, 2019); Kenneth R Lutchen, 'Why Companies and Universities Should Forge Long-Term Collaborations', *Harvard Business Review* (Web Page, 24 January 2018) <https://hbr.org/2018/01/why-companies-and-universities-should-forge-long-term-collaborations>.
[1137] Vicki Sentas, 'Redfern Legal Centre: Challenging Everyday Police Powers' (2018) 12 *UNSW Law Society Court of Conscience* 40.
[1138] Giovany Cajaiba-Santana 'Social Innovation: Moving the Field Forward. A Conceptual Framework' (2014)82 *Technological Forecasting & Social Change* 42, 49.

social innovation by empowering individuals to act and think reflexively in the development and implementation of new ideas to promote social change.'[1139] Conclusions from the research in this thesis and the relevance of these conclusions to the possibility of fostering social innovation in current CLC and NGO practice will be discussed in Chapter Eight.

[1139]Ibid.

## Chapter Eight

## Conclusions

*The business of the historian is to remember what others forget* [1140]
Eric Hobsawm

*Every social innovation represents a story, a rich account of the actions, events, and circumstances in which social context and actions are interwoven.*[1141]
Giovany Cajaiba-Santana

### Introduction

This thesis reviews the development of an Australian community legal centre—Redfern Legal Centre—focusing on social innovations at the centre in the period 1977–95. Examination of the centre's work is set in an historical context and framed against a background of expansion in legal assistance to disadvantaged communities since the 1970s, both in Australia and overseas. The history, nature and work of the centre is described. A theme of the thesis is the concept of social innovation and social innovations at the centre in the form of new services for prisoners, people with an intellectual disability, complainants in domestic violence cases, aged care residents and social security recipients are identified. Innovations designed to determine unmet legal need and new approaches to providing legal aid services including legal publishing are also detailed.

Allied to this is a consideration of the organisational and societal factors that enabled the development of these innovations. It has been claimed that 'Novelty and creation are not the outcome of optimizing resources at work, or maximising output, being instead produced outside of such utilitarian frameworks; creation is the effect of serendipity, chance, unpredicted events, idiosyncratic conditions foreseen by no one.'[1142] While this may be true

[1140] Paul Lay, Eric Hobsbawm, 1917-2012 *History Today*< https://www.historytoday.com/eric-hobsbawm-1917-2012.>
[1141] Giovany Cajaiba-Santana 'Social Innovation: Moving the Field Forward. A Conceptual Framework' (2014)82 *Technological Forecasting & Social Change* 42, 49.
[1142] Alexander Styhre, *A Social Theory of Innovation* (Copenhagen Business School Press, 2013) 200.

to some extent, research demonstrates that factors that encourage innovation in an organisation can be identified and therefore in theory at least, reproduced.

Utilising social innovation theory, factors leading to innovation in the centre are delineated. These include the historical context in which the centre was established, high staff autonomy, collaboration with other organisations, links with academia, lack of hierarchy in the organisation, size of the organisation, opportunities for regular communication between all staff, multidisciplinary approaches and the selection of employees.

Redfern Legal Centre is one community legal centre amongst what are now 181 legal centres[1143] currently operating in Australia. Conclusions drawn from this research are not necessarily generalisable to all centres. The conclusions do, though, provide a basis for further research and encourage consideration of ways to further stimulate innovation in a field where shortages of resources and difficult recurring problems require adaptive approaches.

### Historical overview

Legal aid as an issue has rarely been at the forefront of political concern in the Australian community. The raised social consciousness of the 1960s and 1970s, however, brought the issue of legal aid onto a worldwide agenda [1144] and its development was aided by the election of social democratic governments.[1145] Dramatic improvements were introduced in the legal aid schemes of the USA, Sweden, France, Germany, Austria, Netherlands, Canada and Australia— primarily through what is known as judicare systems, under which the government pays private lawyers to provide legal services to indigent individuals on a fee-for-service basis.[1146]

[1143] National Association of Community Legal Centres, About CLCs < https://clcs.org.au/about-us>.
[1144] Bryant Garth and Mauro Capaletti, 'Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective' (1978) 27 *Buffalo Law Review* 181.
[1145] RL Abel, 'Law Without Politics: Legal Aid Under Advanced Capitalism' (1985) 32 *UCLA Law Review* 586.
[1146] Larry R Spain, 'The Opportunities and Challenges of Providing Equal Access to Justice in Rural Communities' (2001) 28 *William Mitchell Law Review* 367, 377–378.

People living in poverty face many barriers, not only in recognising a problem as one with a legal solution[1147] but in utilising and accessing private lawyers. The significant innovation of the public salaried legal aid services introduced in the USA's neighbourhood law offices (arising from ideas expressed by Edgar and Jean Cahn in their article on 'war on poverty') focused on ways to ensure greater access to legal services to communities with the aim of creating greater equality in society.[1148] The subsequent establishment of law centres in the 1970s in the UK was the result, at least in part, of adaptation of the US neighbourhood law office model.[1149] Prior to the 1970s, there had been a number of legal aid services in Australia. Although early statutory and other pro bono programs were very ad hoc affairs,[1150] state governments and the private profession had run various schemes to assist disadvantaged clients.[1151]

In 1970, Indigenous activists, academics and lawyers established the Aboriginal Legal Service in Redfern, Sydney, New South Wales.[1152] The ALS was controlled by Indigenous people in a similar way to the Aboriginal Medical Services set up at the same time[1153] and was the first community legal service with a structure of community control and a commitment to preventative law. In 1971, the Federal McMahon Coalition Government agreed to fund the service.

In 1972 a Commission of Inquiry into Poverty was set up by the Liberal Prime Minister William McMahon. The Whitlam Labor Government elected later that year expanded the size of the Inquiry and its scope, giving it specific responsibility to focus on the extent of poverty

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[1147] C Coumarelos et al, *Legal Australia -Wide Survey:Legal Need in Australia* (2012, Law and Justice Foundation of NSW) xvii.

[1148] See S Edgar and Jean Cahn 'The War on Poverty: A Civilian Perspective' [1963–64] 73 *Yale Law Journal* 131, and also Jerold S Auerbach, *Unequal Justice* (Oxford University Press, 1976) 269; Bryant Garth, *Neighborhood Law Firms for the Poor :A Comparative Study of Recent Developments in Legal Aid and in the Legal Profession* (Sijthoff & Noordhoff, 1980); Bryant Garth and Mauro Capaletti, 'Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective' (1978) 27 *Buffalo Law Review* 181, 202. See also John Chesterman, *Law and the New Left: A History of Fitzroy Legal Service*, *1972–1994* (University of Melbourne, 1995) 6–8.

[1149] Richard Coates, 'A history of legal aid in Australia', *Papers Presented at the Fourth Annual Colloquium of the Judicial Conference of Australia Inc.,* Melbourne, 12–14 November 1999.

[1150] John Lynch, 'Comment: Early Australian Statutory Legal Aid Schemes and the Legal Profession' (2001) 19 *Law in Context* 138–145.

[1151] For a full history see Mary Anne Noone and Stephen Tomsen, *Lawyers in Conflict: Australian Lawyers and Legal Aid* (Federation Press, 2006).

[1152] On the committee establishing the Service were legal academics from UNSW. Professor Wooten was the Dean of the Faculty of Law at the University of New South Wales, Vice-president was Gary Williams, an Aboriginal student, as chairman, Ross McKenna, a senior tutor in French at the University of New South Wales, and its Treasurer was Richard Chisholm, lecturer in the Faculty Of Law: Commonwealth, *Parliamentary Debates*, Senate, 1 December 1971 Senator McAuliffe (Queensland).

[1153] Gary Foley, 'Redfern Aboriginal Medical Service: 20 years on' (1991) *Aboriginal and Islander Health Worker Journal* 6.

in Australia, as well as on the groups most at risk of experiencing poverty, the income needs of those living in poverty and issues relating to housing and welfare services. The Poverty Commission's Second Main Report, *Law and Poverty in Australia* presented in October 1975, shortly before the dismissal of the Whitlam Government, was hugely influential in developing ideas about legal aid in Australia.[1154] The principal theme of the report was that the law had failed to accord equal treatment to all people and had therefore contributed to the perpetuation of poverty in Australia. The Law and Poverty Report proposed reforms in many areas—reforms to substantive law in areas important to disadvantaged people such as landlord and tenant and consumer credit. It also expressed the idea that the law could be a force for substantial change.[1155]

The Law and Poverty report endorsed what was probably the most radical approach to lawyering in any Australian government report to this day. The report criticised existing legal aid schemes for approaching legal problems in a traditional manner, concentrating on cases where litigation was appropriate and not considering assistance that might be provided to clients by other professionals in an integrated system of assistance.[1156] It recommended establishing a network of local law centres[1157] and involving local residents actively in the administration of legal aid.[1158] The advent of the Whitlam government in 1972 saw the introduction of a hastily developed national legal aid scheme managed by the new Australian Legal Aid Office which attracted much criticism and opposition from the established legal profession.[1159] The ALAO scheme was eventually transformed into legal aid schemes run by the states. In 1977, the *Commonwealth Legal Aid Commission Act 1977* was enacted to set up a body 'to ascertain, and keep under review, the extent of the need for legal assistance in Australia and, in particular, the need for legal assistance in respect of Commonwealth matters.'[1160] State-based legislation established Legal Aid Commissions which drew on the

[1154] Douglas McDonald-Norman, 'Law and Poverty in Australia: 40 Years after the Poverty Commission' (2017) *Australian Journal of Human Rights* 410.
[1155] Commonwealth, *Commission of Inquiry into Poverty, Law and Poverty in Australia: Second Main Report*, (Australian Government Publishing Service, 1975) and Ronald Sackville, 'From Law and Poverty to Access to Justice' (1995) 20(5) *Alternative Law Journal* 212.
[1156] Ronald Sackville and Susan Armstrong, Commission of Inquiry into Poverty, *Legal Aid in Australia* (Report by the Commissioner for Law and Poverty, 1975) 165.
[1157] Ibid 166.
[1158] Ibid 167.
[1159] Don Fleming and Francis Regan 'Re-Visiting the Origins, Rise and Demise of The Australian Legal Aid Office' (2006) 13(1) *International Journal of the Legal Profession* 69.
[1160] *Commonwealth Legal Aid Commission Act 1977* s 3.

ALAO model of a combination of payments to private lawyers to provide legal services (judicare system) and salaried lawyers.[1161]

The first non-Indigenous community legal centre in Australia, the Fitzroy Legal Service, was set up in Melbourne in 1972.[1162] The centre offered what was perceived as a radical alternative to traditional legal practice in Australia. This centre was the first step towards a network of community legal centres which were to be established in Australia over the next 48 years.

### The establishment of Redfern Legal Centre

In 1971, the University of New South Wales established a new law school in Sydney. The first Dean of the Law School Hal Wootten was committed to social justice and was determined to create a law school with a difference. Academic literature and activist programs relating to 'poverty law' and law reform, originating in the United States and the United Kingdom, were influential on the legal academics at UNSW.[1163]

Academics at UNSW Law School wanted the School to be 'different and innovative and not based so much on the big end of town'[1164] and were engaged in research that had practical outcomes.[1165] Lecturers were involved with prisoners' groups and assisting people in gaols[1166] and worked with students on client based legal problems such as assisting at the Children's Court.[1167] As Terry Buddin, then UNSW lecturer puts it: 'the concept that law could be an instrument for social justice not social control' was a defining thematic link between people in the Faculty.[1168]

By 1976 this desire to use the skills and enthusiasm of academic staff and students, a belief that the law course was 'not sufficiently in touch and not focused on practice and particularly

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[1161] Examples being the *Legal Aid Commission Act 1976* (WA), *Legal Services Commission Act 1977* (SA), *Legal Aid Act 1978* (Vic) and the *Legal Aid Commission Act 1979* (NSW).
[1162] The Aboriginal Legal Services were operating under Indigenous management and had surprisingly little contact with the CLC movement until the 1990s when family violence services were set up.
[1163] Marion Dixon, *Thirty Up: The Story of the UNSW Law School 1971–2001* (UNSW Law School, 2001) 32.
[1164] Interview with Robyn Lansdowne (Frances Gibson, Melbourne, 6 July 2016).
[1165] Interview with Andrew Haesler (Frances Gibson, Sydney, 7 July 2015).
[1166] Marion Dixon, *Thirty Up: The Story of the UNSW Law School 1971–2001* (UNSW Law School, 2001) 29–34. Interview with Andrew Haesler (Sydney, 7 July 2015).
[1167] Interview with Andrew Haesler (Frances Gibson, Sydney,7 July 2015).
[1168]Interview with Terry Buddin (Frances Gibson, Sydney, 4 August 2015).

poverty law practice'[1169] led to much heated debate on various issues (including assessment practices at the School), which in turn led to the idea of setting up a legal advice centre.

A meeting to discuss establishment of a legal centre was held on 19 November 1976 at the Law School. Phil Molan from Fitzroy Legal Service came and described how that centre operated. Different Sydney locations were considered. Redfern was known as an epicentre of disadvantage and the UNSW group decided that Redfern Town Hall was a good spot for a centre.[1170] A deal was made with South Sydney Council-—the Council offered the hall for free on the basis that the UNSW group would provide free legal advice to residents. Once premises were found, plans were put into place for the opening of the centre and staff and students worked from a room at the Law School building to prepare.[1171]

RLC opened on the 14 March 1977. Students took instructions from clients and lawyers at the centre saw clients after hours. The first staff member, a social worker, Clare Petre was engaged in August that year. The centre offered a holistic and multidisciplinary service to clients and a broad spectrum of areas of law were covered including tenancy, domestic violence, inquests, credit and debt, criminal law, prisons, aged care rights and social security cases. From the beginning the centre not only provided legal advice and representation in litigation but also engaged in community legal education and law reform/policy work in collaboration with welfare and activist groups. The service, now operating for over 43 years has become an extremely well recognised public institution in New South Wales.[1172]

### Social innovation

Since 2008 there has been a great deal of academic literature using the term 'social innovation' including attempts to define the term.[1173] The definition of social innovation used in this project incorporates ideas expressed in the literature and amalgamates them into a list of criteria to be met for the innovations to be studied in this thesis. The criteria are:

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[1169] Interview with Robyn Lansdowne (Frances Gibson, Melbourne, 6 July 2016).
[1170] Interview with Terry Buddin (Frances Gibson, Sydney, 4 August 2015).
[1171] Minutes of the First Meeting of the Redfern Legal Centre Management Committee Meeting 20 March 1977 (From the collection of Robyn Lansdowne).
[1172] See history of the Centre in Chapter Five of this thesis.
[1173] See for instance Eduardo Pol and Simon Ville, 'Social Innovation: Buzz Word or Enduring Term?' (2009) 38(6) *The Journal of Socio-Economics* 878 and list of definitions in Heloise Buckland and David Murillo, *Antenna for Social Innovation Pathways to Systemic Change* (ESADE, 2013) 159.

a) a novel solution to a problem—in the form of services, ways of organising work or a product;
b) that is implemented;
c) that meets a social need and improves the quality of life for individuals or communities;
d) that addresses needs unmet due to the failure or absence of markets or state provision.[1174]

Social innovation is often a multidisciplinary concept and has not been a focus of legal academic research except in relation to the development of technology. In respect of innovation in community law there has been little relevant research.[1175] The research in this thesis is unique in focusing on factors relating to social innovation in community law agencies.

Social innovation has primarily been seen through two lenses—either as a story of unusually creative and energetic people with a vision for change, or a view of innovation occurring because of organisational and contextual structural factors.[1176] In 2014 Cajaiba-Santana described the two theoretical perspectives on social innovation as:

> an 'agentic centred perspective', an individualistic and behaviourist approach in which social innovation is created through the actions undertaken by specific individuals. On the other side, there is a 'structuralist perspective' in which social innovation is perceived as determined by the external structural context.[1177]

Cajaiba-Santana builds on the work of Slappendel and Pierce and Delbecq to develop what he calls the 'structuration perspective' based on structuration theory. As he describes it '[s]tructuration theory to the social sciences is this connection between structure and action. The theory focuses on the reciprocal interaction of human actors and social structures across

[1174] See discussion in Chapter Two of this thesis.
[1175] But see Cate Banks, Rosemary Hunter and Jeff Giddings, *Australian Innovations in Legal Aid Services: Balancing Cost and Client Needs* (2006, Socio-Legal Research Centre, Griffith University).
[1176] See Geoff Mulgan, 'The Process of Social Innovation' (2006) 1(2) *Innovations* 145, 149.
[1177] Giovany Cajaiba-Santana 'Social Innovation: Moving the Field Forward. A Conceptual Framework' (2014)82 *Technological Forecasting & Social Change* 42, 43.

time and space.'[1178] He also points out that social innovations are also contextual and to study them one must consider historical and contextual analyses.[1179]

### Reflections on social innovation at Redfern Legal Centre

Non-profit organisations have been described as inherently innovative[1180] and identified as leaders in tackling social problems being 'a laboratory for experimentation and risk taking—a place where new ideas are tested and evaluated.' [1181] The role of innovation in non-profit organisations is a critical one because the social problems and challenges that non-profit organisations address are continuously changing.

Redfern Legal Centre has been in existence since 1977. For over 40 years the centre has assisted thousands of people who would have found it difficult, if not impossible, to gain legal assistance elsewhere. One of the most important aspects of the centre's work is the innovation described in this thesis. Innovation in ways of determining legal need, in new services and products, and in methods of providing services—for instance through multi-disciplinary work, use of non-lawyers and collaborative work. New services developed by the centre in the period 1977–95 include the Prisoners Legal Service, Intellectual Disability Rights Service, Redfern Legal Centre Publishing, Women's Domestic Violence Court Advocacy Service, the Accommodation Rights Service and the Welfare Rights Centre. Many, if not most, community legal centres in Australia have undertaken ground breaking law reform and education projects as well as providing valuable client assistance. During the period 1977–95 though, in addition to this type of work, Redfern Legal Centre arguably demonstrated a capacity for innovation that was outstanding in the history of the community legal centre movement. Why was this so? What were the factors that led to this result?

A study of the history of the centre through the lens of social innovation research points to some answers to these questions—a number of factors were important. The historical context in which the centre was established and was operating during this period was conducive to

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[1178] Giovany Cajaiba-Santana 'Social Innovation: Moving the Field Forward. A Conceptual Framework' (2014)82 *Technological Forecasting & Social Change* 42, 47.
[1179] On this point see Carol Slappendel, 'Perspectives on Innovation in Organizations' (1996) 17(1) *Organization Studies* 107. Also, see the approach taken in Stephen Osborne, 'Naming the Beast: Defining and Classifying Service Innovations in Social Policy', (1998) 51 (9) *Human Relations* 1133–1154.
[1180] Waldemar Nielson, *The Endangered Sector* (Colombia University Press, 1979).
[1181] P Frumkin, *On Being Nonprofit: Conceptual and Policy Primer* (Harvard University Press, 2002) 32.

innovation. Governments were interested in supporting new projects that contributed to an increase in access to justice for disadvantaged members of the community and were willing to allocate funds to support new ideas.[1182] The funding included minimal governmental control and allowed centres to operate the services with little interference. The position is completely different now[1183]—with centres subject to government service agreements specifying performance outputs and rigorous reporting requirements.[1184]

The structure and methods of working at the centre were conducive to innovation. The centre was run on a non-hierarchical basis and was small enough to allow all staff to communicate regularly and freely. Staff had a good knowledge of the work their colleagues were engaged in and were keen to discuss new ideas and ways of undertaking work. Staff were supportive of new projects. At the centre, information was shared with all employees both at staff and management meetings and meetings were accessible to all. Staff and volunteers had a shared approach to the importance of the work, cooperation and consensus about the focus of the organisation. The lack of hierarchy in the organisation and the workplace culture meant there was little, if any, focus on individual staff rewards or career progression. There were no awards for individual CLC staff promulgated by the Law Society or other bodies. The centre had no ambitions for empire building as an organisation and the focus was on persuading government to take over services from the centre where possible or starting a new service rather than expanding the centre.

Staff had an extraordinary level of autonomy in their jobs. They were not tied to set performance indicators in terms of numbers of cases, advices completed etc. They took on the projects and cases they thought should be undertaken after discussion in staff meetings. Jobs could be altered significantly to incorporate new projects if a worker could persuade staff and management this was a good idea. Management was generally guided by staff views.

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[1182] See Chapter Seven.
[1183] See discussion in Chapter Seven.
[1184] See 'Review of the National Partnership Agreement on Legal Assistance', *Urbis* (Web Page) <https://urbis.com.au/insights-news/access-to-justice-urbis-review-released/>. Also see Martinelli's comments on operational funding constraints on non-profits in F Martinelli, 'Learning from Case Studies of Social Innovation in the Field of Social Services: Creatively Balancing Top-down Universalism with Bottom-up Democracy' in F Moulaert et al (eds), *The International Handbook on Social Innovation: Collective Action, Social Learning and Transdisciplinary Research* (Edward Elgar, 2013) 346, 357.

The connection with the Faculty of Law at the University of New South Wales enhanced the centre's work with provision of academic expertise, administrative assistance and support and a broad political and ideological vision that took centre debate outside the demands of day to day casework. Individuals such as Attorney General Frank Walker in NSW recognised the value of the centre's work and assisted in its success by advocating for and providing funding for ongoing programs. Relationships between RLC, other legal centres, legal aid and welfare organisations were collaborative. There was little if any competition for funds between organisations and joint projects were common.

The results of extensive interviews with staff and volunteers at the centre and examination of research on innovation sheds light on these possible indicia related to the high level of innovation in the period 1977–95 described in the thesis. This leads to a checklist of approaches to work, based on the literature, that are likely to have contributed to innovation at the centre. These are high staff autonomy, collaboration with other organisations, links with academia, lack of hierarchy in the organisation, small organisation, opportunities for regular communication between all staff, multidisciplinary approaches, selection of employees who are open to new experiences, proactive, knowledgeable about the domain in which they are trying to implement their ideas,[1185] and persistent in the face of obstacles.

From this one can hypothesise that a similar checklist could be devised for government when funding community legal centres to encourage innovation. Approaches such as flexibility in contracts to allow experimentation in service provision; encouragement of collaboration between services not competition between them; reporting of outcomes not outputs;[1186] regular funding of new projects and innovations could be used to stimulate creativity. In relation to government contracts with legal centres, research shows that outsourcers that remain too closely involved with the outsourced service delivery and do not allow their suppliers to act autonomously during contract execution limit their suppliers' innovation

[1185] Though note that 'too much expertise in one area may also block innovation within that domain, there is believed to be an inverted-U-shaped relationship between knowledge and innovation, where too much or too little knowledge inhibits new inventions.' Fiona Patterson and Máire Kerrin, 'Characteristics and Behaviours Associated with Innovative People in Small and Medium-Sized Enterprises' in *Handbook of Research on Small Business and Entrepreneurship* (Edward Elgar Publishing Ltd, 2014) 187, 190.

[1186] See 'Review of the National Partnership Agreement on Legal Assistance Services 2015–2020' *Urbis* (Web Page, 2020) <https://urbis.com.au/insights-news/access-to-justice-urbis-review-released>.

potential, and innovation only occurs when the supplier is granted autonomy in the contract execution phase.[1187]

The research on the centre's activities was based on events that took place from 1977–95. The question of whether it has any applicability to current times is an interesting one. Clearly, the historical and social context in which the centre was operating then is quite different to the current one. For example, Hasenfeld and Garrow argue that dominant political and economic shifts in the provision of social welfare from the public to the non-profit sphere has resulted in greater roles being played by these non-profits in meeting the social welfare needs of the citizenry. They add that 'By turning vulnerable citizens into consumers, the ideology also reduces the national visibility of their needs. Most importantly, neoliberalism dampens the sector's motivation to challenge the state and greatly curtails its historical mission to advocate and mobilize for social rights.'[1188] This article is describing the scene in the USA, but similar concerns have arisen in Australia in recent years. The Federal government has imposed restrictions on advocacy by community legal centres—incorporating them into funding agreements[1189] and excluded the national network of Environmental Defenders Offices (EDO) entirely stating that resources were limited and 'should go to case work rather than causes.'[1190] The Deputy CEO of RLC has said:

> We do feel restricted about speaking out under the current government. We are careful about what we say. We are careful about social media. If you are in the Sydney Morning Herald, there is more security than just tweeting about it. We are careful about social media. We used to march in the streets about employment law changes with RLC T-shirts on. We wouldn't do that anymore.[1191]

Government interest and focus on developing new welfare programs is less. Management of programs is tightly controlled with government purchasing named services from organisations and requiring tenders for new and even for existing services. Services

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[1187] Regien Sumo et al, 'Using Performance-Based Contracts to Foster Innovation in Outsourced Service Delivery' (2016) 59 *Industrial Marketing Management* 12, 19.
[1188] Yeheskel Hasenfeld and Eve E Garrow, 'Nonprofit Human-Service Organizations, Social Rights, and Advocacy in a Neoliberal Welfare State' (2012) 86(2) *State Social Service Review* 295.
[1189] 'Community Legal Peak Supports Law Reform and Advocacy with New Guide' *Federation of Community Legal Centres Victoria* (News Post, 17 February 2015) <https://www.fclc.org.au/community_legal_peak_supports_law_reform_and_advocacy_with_new_guide>.
[1190] Helen Davidson, 'Environmental Defenders Office Lashes Out at George Brandis Over Funding Cuts', *The Guardian* (online, 31 March 2015) <https://www.theguardian.com/australia-news/2015/mar/31/environmental-defenders-office-lashes-out-at-george-brandis-over-funding-cuts>.
[1191] Interview with Jacqui Swinburne (Frances Gibson, Sydney, 5 July 2016).

purchased are subject to strictly measured outputs and require considerable administrative resources for centres just to manage the reporting requirements.[1192]

Historical context may not be such a barrier to the utility of examining ideas about innovation from the history of CLCs as it may first appear. Although the availability of government funding for new community legal centre projects/services may not be at the same level as in the period under study, a survey of the current scene indicates that governments, at least in official pronouncements, are still keen on encouraging innovation.[1193] The NSW and Victorian governments run Innovation Funds designed to encourage innovative ideas that will help increase access to justice, particularly for socially and economically disadvantaged communities.[1194] Innovation is still an integral aim for community legal centres where possible although this is not necessarily supported through funding mechanisms. The Review of the Commonwealth's National Partnership on Legal Aid (2015–20) states: 'This review also noted that while there are many examples of innovation in the sector, there are few mechanisms within the National Partnership Agreement to drive innovative practices, and the evaluation of innovation success and scalability.'[1195]

Another indication that there are reasons to examine the utility of the checklist of approaches proposed in this thesis, is the similarity of the proposed drivers of innovation to those promulgated in current literature on social and business innovation. In many business sectors, the focus on quality management as a competitive strategy is being replaced by a focus on innovation and key elements relevant to innovation tend to mirror the checklist developed above. Employee participation in decision-making, support from top management, teamwork, and having an open culture are important.[1196] Research shows employees who are placed in productivity-driven organisations with formal structures, time

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[1192] See 'Review of the National Partnership Agreement on Legal Assistance Services 2015–2020' *Urbis* (Web Page, 2020) <https://urbis.com.au/insights-news/access-to-justice-urbis-review-released>.

[1193] See 'Attorney General's' *Commonwealth* (Web Page) <https://web.archive.org/web/20161025213708/https://research.legalservicesboard.org.uk/wp-content/media/Innovation-Report.pdf > stating 'From 1 July 2020, the Australian Government is increasing its investment in baseline funding for legal assistance services, to $30.5 million per year over three years**.** This funding will allow LACs, CLCs and ATSILS to deliver frontline services and to support a more collaborative and innovative legal assistance sector.'

[1194] 'Access to Justice Innovation Fund', *NSW Government* (Web Page) <https://www.justice.nsw.gov.au/lsb/Pages/access-to-justice-innovation-fund.aspx>.

[1195] 'Review of the National Partnership Agreement On Legal Assistance Services 2015–2020' *Urbis* (Web Page, 2020) viii.<https://urbis.com.au/insights-news/access-to-justice-urbis-review-released/> .

[1196] F Lasrado, 'TQM, AMO, and Factors Impacting Organizational Creativity and Innovation' in F Lasrado, *Fostering Creativity and Innovation* (Palgrave Macmillan, 2019).

constraints, strict regulations, daily similar tasks, standardised workplaces, etc. may not be stimulated to show creative behaviour.[1197] In 2017, a survey of 86 experts cited the factors relevant in innovation were management support, leadership involvement, employee commitment, organisational culture, communication and employee involvement. In relation to management of staff, teamwork, multifunctional integration and autonomy were relevant.[1198]

Similarly to the findings in this research on Redfern Legal Centre, autonomy of staff has been recognised by business to be a factor in innovation. Unsworth and Clegg state 'Time and time again, research has shown autonomy to be positively related to creativity.'[1199] In addition to business innovation, recent research on human service non-profits generally has found that organisational characteristics that support social innovations include:

> [p]rocedures that incorporate staff at all levels within the decision-making processes of the organization, the use of staff training to promote the empowerment of service users and hiring practices that employ people who are willing to push boundaries. Critical in this environment is the engagement of staff at all levels in the program and initiative development process, a general focus by the board that aims to create social change, the use of structured committees that focus on the mission of the organization, collaborative work processes, and a general alignment among personnel about the organization's vision, mission, and purpose.[1200]

Shier and Handy report suggestions from experienced workers in organisations on methods to facilitate an innovative culture. One example is the suggestion that all staff were responsible for responding to service users' needs as they emerged, and there was no process for passing off responsibility to colleagues. For instance, one respondent to the survey noted:

> Everyone answers the phone and everyone fields the calls. Unless there is an explicit need to transfer a call from one person to another, everybody basically takes their turn at trying to get a good sense at that individual level advocacy piece and becoming aware of the needs of the individual who would be accessing this service. So, I think that it does provide some degree of ownership, some degree of innovation.[1201]

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[1197] Teresa M Amabile et al, 'The Creative Environment Scales: Work Environment Inventory' (1989) 2(4) *Creativity Research Journal* 251.
[1198] Maria Gabriela Lins, Luis Perez Zotes and Rodrigo Caiado, 'Critical Factors for Lean and Innovation in Services: From a Systematic Review to an Empirical Investigation' (2019) *Total Quality Management and Business Excellence* 1, 18.
[1199] Kerrie L Unsworth and Chris W Clegg, 'Why Do Employees Undertake Creative Action?' (2010) 83(1) *Journal of Occupational and Organizational Psychology* 77.
[1200] Michael Shier, Femida Handy and Calvin Jennings, 'Intraorganizational Conditions Supporting Social Innovations by Human Service Nonprofits' (2019) 48(1) *Nonprofit and Voluntary Sector Quarterly* 173, 187.
[1201] Michael LL Shier and Femida Handy, 'Executive Leadership and Social Innovation in Direct-Service Nonprofits: Shaping the Organizational Culture to Create Social Change' (2016) 27(2) *Journal of Progressive Human Services* 111, 119.

Other ideas expressed in current innovation literature include the need to implement a consultative form of decision making within the organisation so individuals at all levels of the organisation feel comfortable with bringing issues or challenges forward and to offer input for solutions, involving staff at all levels in the organisation's initiatives and bringing awareness to the staff's role in creating social change. Providing the tools or resources to mobilise that awareness, aligning staff with the organisation's goals, training with a social-change focus and ensuring the Board has a general focus on creating social change [1202] are also important. These approaches mirror the situation at RLC in the period under study.

The conditions that allowed Redfern Legal Centre to demonstrate the high level of innovation described in this thesis can never again be exactly reproduced. As we have seen earlier in this thesis, Yin says the case(s) should be used as an 'opportunity to shed empirical lights about some theoretical concepts or principles.'[1203] As he says, the lessons learned could assume the form of a working hypothesis either to be applied in reinterpreting results of similar studies or to define new research. There are lessons to be learnt from these experiences that are worthy of consideration in attempts to stimulate innovation in community legal centres and other non-government organisations. It is to be hoped that the ideas distilled from the past practices of the legal centre movement will not be forgotten, and can be used to sustain productive, creative workplaces for community legal centre workers to serve future communities.

## Directions for further research

Current scholarship concerning the factors in the intra-organisational context that support a social innovation-orientated organisational culture is an emerging area of study that requires greater conceptual clarity.[1204] The importance of understanding how to create an innovative culture and greater capacity in the community legal centre movement is vital. Community legal centres face ongoing funding challenges. As Biondo has pointed out issues facing CLC workers get ever more complex.[1205] Innovative practices allow clients and communities to get the benefit of creative approaches to providing legal advocacy and assistance. These approaches need to offer more

[1202] Michael LL Shier and Femida Handy, 'Executive Leadership and Social Innovation in Direct-Service Nonprofits: Shaping the Organizational Culture to Create Social Change' (2016) 27(2) *Journal of Progressive Human Services* 111, 119–123.
[1203] Robert E Stake, *The Art of Case Study Research* (Sage, 1995) 40.
[1204] Michael LL Shier and Femida Handy, 'Executive Leadership and Social Innovation in Direct-Service Nonprofits: Shaping the Organizational Culture to Create Social Change' (2016) 27(2) *Journal of Progressive Human Services* 111, 112.
[1205] Sam Biondo, 'The Pursuit of Systemic Change: A Community Legal Centre Perspective' (2004) 17(1) *Parity* 52.

than simply providing individual legal assistance more cheaply though new technology such as apps, internet or phone sources though these developments can if properly structured have their value.

This research points the way to further work on this topic. As previously discussed, the reliability of the research is the extent to which one's findings can be replicated. Further studies of community legal centre innovations would be valuable to the sector and could be used to increase knowledge on this topic. As Yin notes the results may 'potentially apply to a variety of situations, far beyond any strict definition of the hypothetical population of "like cases" represented by the original case'[1206] and could extend beyond legal centres.

Research should be conducted on innovations in centres currently operating to determine the factors most relevant to present day innovations. It would also be informative to have research on innovative proposals that do not become successful though organisations are understandably reluctant to publicise such attempts when using public funds.

Given the lack of previous research in this area, topics for additional study are multiple. One question arises as to why the innovations at RLC were often manifested in the form of new services. This was generally not the case at other CLCs whose innovations would be in the services provided within the centre. It is possible this practice developed as a result of those involved setting up the first centre in NSW seeing new services as a viable way to proceed and establishing a tradition of this. Other questions include to what extent the characteristics and values of workers are critical to socially innovative organisation level change, and what day to day work practices allow workers a realistic ability to develop innovatory ideas. Does the size of a centre have an impact on innovatory ability? Volunteer services are integral to the operation of most CLCs. Research on how students/lawyers doing internships or voluntary community service can assist innovation by bringing new ideas to the centres they volunteer for due to their specific knowledge and skills would be valuable. As de Wit comments:

> Despite the commonly held view of volunteers and third sector organizations as drivers of social change, it is yet unsure how volunteers play a role in the process of generation, implementation, and diffusion of innovative

[1206] Robert E Stake, *The Art of Case Study Research* (Sage, 1995) 41.

activities. Explicit connections between the concepts of volunteering and social innovation are scarce in the literature.[1207]

To some extent Redfern Legal Centre's history speaks for itself. UK lawyer Roger Smith describing RLC in 1991 said: "I was really impressed by the centre which I first visited in 1991 and for me, was the best law centre that I had seen anywhere in the world.'[1208] Ground breaking litigation, effective policy and law reform campaigns and impressive community education projects have made it a leading light in Australia's legal and welfare circles. But one of the greatest achievements of the centre was to foster an innovative culture that has given rise to distinctive new services and products that have changed the face of Australia's legal landscape. It is hoped that the research in this thesis will go some small way not only to recording the many achievements of an impressive organisation but to shining a light on the conditions that support innovation in the sector that may be useful well into the 21st century.

[1207] See A de Wit et al, 'Beyond Service Production: Volunteering for Social Innovation' (2019) 48 (2) *Nonprofit and Voluntary Sector Quarterly* 52S.

[1208] Email from Roger Smith to Frances Gibson,15 June 2020. Also Roger Smith, 'Redfern Legal Centre', (February 1992) *Legal Action: Journal of Legal Action Group* 9.

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## Appendix A List of Interviews

| Name | Date of Interview | Role related to RLC |
|---|---|---|
| Baghoomians, Irene | Sydney, 6 September 2016 | Volunteer lawyer, RLC |
| Basten, John | Sydney, 27 July 2016 | Barrister, Legal academic, UNSW |
| Biber, Katherine | Sydney, 7 September 2016 | Volunteer law student, RLC |
| Bell, Kevin | Melbourne, 12 April 2018 | Solicitor, West Heidelberg Legal Service |
| Bell, Virginia | Sydney,1 December 2016 | Solicitor, RLC |
| Blazejowska, Louise | Sydney, 11 February 2017 | Solicitor, RLC |
| Bolt, Steve | Lismore, 21 February 2017 | Solicitor, RLC |
| Brown, Dave | Sydney, 4 November 2015 | Legal academic, UNSW |
| Buddin, Terry | Sydney, 4 August 2015 | Legal academic, UNSW |
| Campbell, Helen | Sydney, 23 November 2016 | Director/lawyer, RLC |
| Casey Chris | Bendigo, 30 June 2016 | Solicitor Loddon Campaspe Community Legal Centre |
| Cashman, Peter | Sydney, 30 August 2016 | Volunteer solicitor, RLC |
| Chesworth, Hilary | Sydney, 9 July 2016 | Administrator, RLC |
| Cleary, Simon | 9 March 2017 | Solicitor, RLC |
| Collins, Brett | Sydney, 18 July 2016 | Prisoners Action Group |
| Craddock, Gerard | Sydney 1 May 2013 | Volunteer law student/lawyer, RLC |
| Crawford, Sarah | Sydney 3 February 2017 | Volunteer law student, RLC |
| Curran, Liz | Melbourne, 31 January 2018 | Solicitor, West Heidelberg Legal Service |
| Dalton, Andrew | Crete, 26 September 2017 | Director, RLCP |
| Dickens, Bill | Dubbo, 8 February 2017 | Solicitor, RLC |
| Disney, Julian | Sydney, 25 July 2016 | Legal academic, UNSW |
| Egan, Natalie | Bendigo, 22 October 2016 | Volunteer law student, WDVCAS |
| Farrell, Sophie | Sydney, 22 September 2016 | Communications and Volunteer Manager |
| Farrugia, Paul | Sydney, 27 April 2016 | Long term volunteer solicitor, RLC |
| Gardner, Julian | Melbourne, 5 September 2016 | Solicitor, Fitzroy Legal Service |
| Geary, Bernie | Melbourne, 18 April 2018 | CEO, West Heidelberg Community Health Service |
| Geary, Michael | Melbourne 19 March 2018 | CEO, West Heidelberg Legal Service |
| Gibson, Dominic | Sydney, 4 July 2015 | Solicitor, RLC |
| Goddard, Jane | Sydney, 23 January 2016 | Solicitor, RLC |
| Golledge, Emma | Sydney, 13 February 2017 | Tenancy worker, RLC |
| Haesler Andrew | Sydney, 7 July 2015 | Principal solicitor, RLC |
| Healey Anne | Sydney, 24 July 2016 | Publishing worker RLC, Barrister |
| Hillman, Mick | Hunter Valley, 15 February 2017 | Social worker, RLC |

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|---|---|---|
| Hitter, Monique | Sydney, 7 February 2017 | Manager, Civil Law, Legal Aid Commission |
| Inglis, Shivaun | Bendigo, 12 August 2016 | Advisor, Indigenous issues |
| Jewell, Beth | Sydney, 26 July 2016 | Social worker, RLC |
| Kerdo, Peggy | Melbourne, 14 September 2018 | Solicitor, West Heidelberg Legal Service |
| Kerr, Cathy | Bendigo, 12 August 2016 | Volunteer lawyer, RLC |
| Kidney, Sean | Boston, 17 September 2016 | RLCP publisher |
| Kirkwood, Judith | Sydney, 5 December 2016 | Wife of John Kirkwood UNSW legal academic, |
| Lansdowne, Robyn | Melbourne, 7 May 2016, 6 July 2016, 28 September 2016 | Volunteer law student, solicitor, RLC |
| Livesey, Peter | NSW, 5 September 2016 | Barrister, RLC |
| Matthews, Bernie | Silverwater Gaol, 12 July 2016 | Author, Client RLC |
| McDonough, Pat | Sydney, 24 January 2016 | Solicitor, RLC |
| McPherson, John | Bendigo, 31 August2016 | Chair Management Committee, Loddon Campaspe Community Legal Centre |
| Mikula, Christian | Canberra, 20 September 2018 | Solicitor, Consumer Credit Legal Centre |
| Mobbs, Michael | Sydney, 29 April 2016 | Editor, Legal Resources Book |
| Morley, Elizabeth | Sydney, 21 July 2016 | Principal solicitor, RLC |
| Nehl, Andy | Sydney, 9 February 2017 | Radio Presenter Radio Redfern |
| Newton, Bill | Melbourne, 18 June 2018 | Coordinator West Heidelberg community Health service |
| Noone, Mary Anne | Melbourne, 19 August 2016 | Solicitor, West Heidelberg Legal Service. |
| Perkins, Mary | Sydney, 22 July 2 | Coordinator, RLC |
| Petre, Clare | Sydney, 21 May 2013 | Social worker, first employee RLC |
| Porteous, Polly | Sydney, 16 February 2017 | State Office of CLCs NSW |
| Price, Stephanie | 25 June 2018 | Solicitor, West Heidelberg Legal Service |
| Purcell, Terry | Sydney, 6 September 2016 | Director of Law Foundation |
| Quarry, Penny | Sydney | Solicitor, RLC |
| Renouf, Gordon | Sydney, 9 December 2016 | Policy worker, RLC |
| Rice, Simon | Canberra, 20 May 2013 | Solicitor, RLC |
| Ronalds, Chris | Bawley Point, 24 January 2016 | Barrister/Editor Lawyers Practice Manual |
| Shulman, Jo | Sydney, 19 July 2016 | CEO, RLC |
| Simpson, Jim | Sydney, 16 September 2016 | Solicitor, IDRS |
| Slade, Ben | Sydney, 8 December 2015 | Solicitor, RLC |
| Smith, Phillipa | Melbourne, 6 September 2018 | ACOSS |
| Smith, Roger | London, 22 July 2015 | UK Legal aid expert |

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|---|---|---|
| Smith, Sally | Castlemaine, 14 February 2017 | Project worker, Loddon Campaspe Community Legal Centre |
| Stapleton, Peter | Sydney, 20 July 2016 | Board member/Volunteer lawyer RLC |
| Stimson, Sean | Sydney, | Solicitor, RLC |
| Sue Schreiner | Canberra, 7 March 2017 | Magistrate, Redfern Local Court |
| Sullivan, Gary | Melbourne,1 February 2018 | Solicitor West Heidelberg Legal Service |
| Swinburne, Jacqui | Sydney, 5 July 2016 | Deputy CEO/ RLC |
| Symonds, Garth | New York, 20 September 2016 | Solicitor, RLC |
| Vaile, David | Sydney, 18 July 2016 | Solicitor, RLC |
| West, Roger | Sydney, 9 December 2016 | Coordinator/lawyer, RLC |
| Whitmont, Debbie | Sydney, 28 April 2016 | Community lawyer, RLC |
| Womersley, Steve | Bendigo, 17 February 2017 | Community education worker, Loddon Campaspe Community Legal Centre |
| Zdenkowski, George | Sydney, 28 October 2017 | Legal academic, UNSW |

## Appendix B Participant Information Statement Research Ethics

**Participant Information Statement**
**Community legal assistance in Australia**

Frances Gibson PHD Student School of Law
Email: f.gibson@latrobe.edu.au
Supervisors
Prof Mary Anne Noone
Dr Francine Rochford
Dr David Nichols

PARTICIPANT INFORMATION STATEMENT AND CONSENT FORM

Community legal assistance in Australia

You are invited to participate in a study of community legal centres in Australia. I, Frances Gibson, PhD student in the School of Law La Trobe University, hope to be able to document events relating to the establishment of community legal centres and their impact on the legal profession and legal aid in Australia. You are selected as a possible participant in this study because you have worked or been involved with community legal centres.

If you decide to participate, I will conduct an interview in person which I anticipate will be approximately 45 minutes long. This interview will be recorded electronically and conducted in a place of your choice. The interview will be recorded and notes will be taken so that I can ensure that I properly represent the content of the interview. The interview will be audio-recorded for transcription purposes only with your consent.

Any information that is obtained in connection with this study and that can be identified with you will be confidential. You will only be named with your consent. You may request a copy of personal data collected in the course of the research. If you give us your permission by signing this document, I plan to publish the results publicly. Please note that confidentiality of the participant cannot be guaranteed, as authorised or required by law or where the investigators believe that disclosure is necessary to lessen or prevent a serious threat to public health or public safety.

Recordings of the interviewed will be securely stored. Computer files will be password protected. All copies of recordings and paper copies of interview notes will be stored in a locked filing cabinet in a locked office situated on the Bendigo campus of La Trobe University with only the researcher and her supervisors (and the University) having a key.

Data will not be preserved for possible future use in another project and raw data will be disposed of at the conclusion of this project.

I anticipate the project will result in a PhD thesis conference papers and journal articles. I cannot and do not guarantee or promise that you will receive any benefits from this study though I anticipate the study will result in a contribution to historical knowledge and will allow you to reflect on your professional experiences and contribute to the community legal centre movement. An assessment of the history, innovations, and effectiveness of the work of community legal centres may assist in 1) allowing community legal centres to identify and build on their strengths in legal advocacy to better assist clients 2) providing community legal centres with information and a basis for lobbying for better funding to provide more services 3) engendering a better understanding of the role of community legal centres within the legal profession, legal academia and by law students 4) documenting an important part of Australia's legal history. In addition, an assessment of community legal centres' innovation may help contribute to community legal centres services' improvement. If you give us your permission by signing this document, I plan to publish the results in a PhD thesis and/or by publication in journal articles. You may only be identified in any publication with your express consent.

You have the right to withdraw from active participation in this project at any time. You may also request that data arising from your participation are not used in the research project provided that this right is exercised within four weeks of the completion of your participation in the project. You are asked to complete the "Withdrawal of Consent Form" or to notify the researcher by email or telephone that you wish to withdraw your consent for your data to be used in this research project.

If you would like to be informed of any publications arising from this research please let us know and this can be supplied.

There are no disadvantages, penalties or adverse consequences for not participating or for withdrawing from the research. Your decision whether or not to participate will not prejudice your future relations with the La Trobe University If you decide to participate, you are free to withdraw your consent and to discontinue participation at any time without prejudice.

Any questions regarding this project may be directed to the Investigator Frances Gibson of the School of Law on email:f.gibson@latrobe.edu.au.

If you have any complaints or concerns about your participation in the study that the researcher has not been able to answer to your satisfaction, you may contact the Senior Human Ethics Officer, Ethics and Integrity, Research Office, La Trobe University, Victoria, 3086 (P: 03 9479 1443, E: humanethics@latrobe.edu.au).

## Appendix C Consent Form Research Ethics

**Consent Form**

**Community Legal Assistance**

I _____ have read and understood the participant information statement and consent form and any questions I have asked have been answered to my satisfaction.

I agree to participate in the project, realising that I may withdraw from active participation in this project at any time. I understand that I may request that data arising from participation are not used in the research project provided that this right is exercised within four weeks of the completion of my participation in the project. I understand that I will be required to complete the "Withdrawal of Consent Form" or to notify the researcher by email or telephone that I wish to withdraw consent for my data to be used in this research project. I agree that research data provided by me or with my permission during the project may be included in a thesis, presented at conferences and published in journals on the condition that neither my name nor any other identifying information is used except where I have given my consent.

I give permission for audio recordings to be made of my interviews
YES/NO (please select)

Name of Participant (block letters):
Signature:
Date:
Name of Student Supervisor (block letters):
Date: