REFLECTIONS OF A WELFARE-RIGHTER

I acknowledge the Traditional Owners of the land, here the Wulgurukaba and Bindal peoples.

I am proud to provide some reflections here today.

Can I remember some of our colleagues from centres no longer with us Darwin, Brisbane, Adelaide.

I am especially proud of this network and of its sophisticated and compelling work.

I haven't been involved for all 30 years of the Network's life but close, give or take a couple of years.

Welfare rights work is emotionally draining, technically difficult and often set against a backdrop of public misinformation about rights and poverty in Australia. It compares in many ways with refugee work in this regard.

You have to do this work to really understand how important it is.

Just think for a moment about the key components of the welfare rights client landscape: people living in poverty, supporting children through formative years, unstable accommodation, potentially with a backdrop of abuse and violence, chronic illness, and poor mental health, in a fight against the might of the Commonwealth wielded by a distant and unsympathetic bureaucracy relying on complex laws and policies that give an appearance of entitlement but are more clearly geared for disentitlement.

And all that just so they can receive a payment that keeps them below the poverty line.

Things are really stacked up against our clients.

Their cases are fundamental human rights cases.

Somehow many are convinced that there exists a hierarchy of human rights which has civil and political rights as its crown, but economic rights are as important as any others. We know from our clients that without income, you are at your most vulnerable.

It is no wonder that as a part of the broader CLC movement welfare-righters were always a little more intense. What do we talk about over wine and beers at National conference: debt waiver of course!

I am still proud to call myself a welfare-righter. It is where I began and remains a very important part of our centre's focus.

I still get the occasional welfare rights file, and I am always reminded of just how much effort has to go in to managing those cases: vulnerable and mistrusting clients, large unintelligible FoI files, trying to make sense of Centrelink acronyms because that

information could be completely worthless or a silver bullet, expert reports that are essential but no one can afford, legislation that simply doesn't make sense and policy that doesn't match the law.

Always stacked against the client and so success is always hard-earned. This has not changed in 30 years, and if anything may have become more complex and more unevenly stacked against the client.

Let's look at a little background to our movement.

Our role as welfare-righters is more than a century old with a rich history here and overseas. The near history of social security advocacy starts in the settlement houses of late 19th century England. Places like Toynbee Hall working in the slums of Whitechapel, with its circa 1898 poor man's lawyer service. Many of those who used the service were non-English speaking – Russian or Polish immigrants from the East End.

The US civil rights movement picked up specialist poverty law services by the 1960s, calling them welfare rights services. The majority of those involved with the National Welfare Rights Organization, both as organizers and clients, were African American women but these organisations also helped migrant farm workers and itinerant labourers.

If you have never read Stephen Wexler's seminal 1970 Yale Law Journal article "Practicing Law for Poor People" I encourage you to do so. It is of course dated in many respects but the ethos Wexler asserts is still just as strong in EJA's membership as it always was.

Wexler says that specialist services are needed to address specialist areas of inequality. He and others also say that unless you combine individual advocacy with systems advocacy, then real change never happens.

Fast forward from Wexler's piece which dropped just as I was born, to when I began at WRC – 1992.

At that time, some commentators, like De Maria suggested we weren't capable of making real structural change. He made a harsh accounting of us in a 1992 ALJ article: "Second Class Lawyers for Second Class Citizens". He said:

> The social security advocate ought not to be a satellite orbiting the legal culture, but someone with an activist commitment *vis a vis* poverty (269)
>
> If the movement is to realise its vast potential as a force of social activism to be reckoned with, welfare rights centres must go through a painful ideological refitting. The limitations of the legal culture must be clearly understood. (270)

De Maria argued the movement from single issue activism (correcting a Department of Social Security (DSS) decision) to class activism (collaborative projects between staff and the poor and disadvantaged to challenge if not overturn the structural antecedents of poverty) was too difficult and unachievable. (270)

Clearly De Maria was wrong. He missed just how powerful our brand of collective activism could, and in fact, would be. His views were vested in a notion that our casework and lobbying was so middle class that it could never adequately respond to the "evils of poverty and disadvantage." (270)

De Maria is a social worker and social activist and so he was probably rightly concerned for a movement with a history in social activism that seemed so captured by and perhaps even obsessed with legal process. I hope he has managed to observe our work now, engaged in and achieving structural reform.

Welfare rights has always had an incredible balance of this. Single issue activism just doesn't reflect the breadth of the system that welfare-righters challenge through their work.

Its members' individual work with people is matched by its collective work to make the system fairer. Its work was always among CLCs best examples of how clients' cases identified and drove education and law reform work.

Our network meetings were always longer, more intense, focused – so much a reflection of the workers, and even then, the whole was so much greater than a sum of its parts.

Classic early examples of our priorities included unemployed people, young homeless people, sole parents, and persons with disability, especially psychosocial or intellectual disabilities. I'm fairly sure this hasn't changed although I will touch on how some trends have come and gone as far as I can tell.

Rewind to the 1980s and Australian welfare rights centres began to establish. By 1983 specialist welfare rights centres opened in Sydney and later that same year in Canberra. 1983 also saw the first federal CLC funding programme to 35 CLCs. Other specialists grew in the 1980s including Brisbane, Melbourne, Adelaide and Sussex Street.

By the 1990s there was a network of centres but we still lacked a presence anywhere north of the Tropic of Capricorn, well actually more like the Brisbane line. We also needed services in Tasmania.

I joined the network in 1992 when I began as an intern with the Welfare Rights Centre in Brisbane. John Stannard, another well-known welfare-righter was my co-intern and together we both went into that work after graduation. Our internship was rugged – here's a file, the AAT is that way.

During my placement, the Centre in Brisbane in Fortitude valley was burned to the ground – either by squatters who lived underneath the raised cottage or possibly a disgruntled client. John and I had to spent about a week at the SSAT and AAT putting together client files – all that was left of the blaze was the principal lawyer's diary and so we didn't even really know who all the clients were.

Great excuse for an adjournment for a while.

Right at the end of that year, 1992, at the urging of the network, Minister Tate found funding. What many of us called "the Million Dollars". That Million compared favourably with 5.8 million as the whole CLC funding programme at the time.

This $1 million created a much-expanded network including a new service in Townsville inside a brand new CLC. Specialist units opened in Darwin, Townsville, Wollongong, Geelong, Launceston and Hobart, Fremantle and existing centres' funding was boosted.

The network was a loose collective up till that point. It suddenly grew and became more than just specialists but also general centres with specialist positions. This did a couple of things. It brought expertise in from outside the area of specialisation – in litigation, in criminal law, in family law and family violence, in consumer and human rights, from other areas of administrative law.

It also introduced welfare rights to the broader movement. General centres began to see the importance of our work.

It brought some equity to Northern Australia although our 2 positions across the top of Australia was somewhat ridiculous (Townsville and Darwin)

Each centre had very different models (from student and ex-client lay advocacy through to legal representation). Some had volunteers, some didn't, some had lawyers, some didn't, some did AAT, some didn't. Some did DSP, some didn't.

The models that grew with the new money copied elements of other centres but also built their own models. Townsville quickly saw that welfare rights was part of a holistic service (what we might call client centric now) that included welfare rights, tenancy, discrimination, consumer.

Townsville routinely did work in the areas of Student Assistance (Austudy and Abstudy) in the Student Assistance Review Tribunal (with opposing lawyer) and Veterans Matters. Brisbane did Comcare cases to raised funding through the AAT's $ jurisdiction. The debate about types and areas of work was live for some time but generally resolved into areas covered by the principal legislation.

TCL ended up mainstreaming welfare rights work – the work was simply too important to have just one person doing that work. We have always viewed it as a critical part of a community law practice. I have argued for many years that all CLCs should do welfare rights work in the same way they do family violence, tenancy or consumer.

Even with all that time and expertise, to be a welfare righter is to know that much of the law is vague and prone to haphazard and inconsistent discretionary decision making.

I once had a case whose facts won me best case story at a national conference. A 16-year-old young woman was breached by Centrelink for failing to attend job training. Her reasonable excuse – she had no transport from her town of 21 persons to Chartres Towers – a distance of 50klms. The over eager Centrelink staffer had determined, and even put in writing that the youth allowee who was 16 could have ridden her horse.

As I said to Linda, I may well have run cases in the Federal Court on section 94 but I'm still not sure I understand what is meant by a "continuing inability to work". I think it better describes the DSP system than those who seek its support.

National, annual conferences, delegations to Canberra and much deeper policy work galvanised and drew the network together. When we got together our common focus was very powerful and our delegations were based around our collective experience of people's lived experience of the social security system. This still shines through EJA's work.

We actually worked more closely with the review system, because it allowed it. One review officer based in Townsville was affectionately called the Green ARO for his rather useful superpower to waive debts.

The review process really has changed. Tribunals were face to face three-member panels with true expertise in the issues they were reviewing. A far cry from where we are now with single member, remote hearings.

Trends in work were similar to now though there has been a distinct change in the amount of work done to challenge the nature of people's relationships. Welfare righters even had a play called Love Lust and the DSS which portrayed DSS as a jealous, controlling and abusive partner or domineering Daddy as Linda described to me. These deeply personal and intrusive cases were just appalling examples of micro-control. I guess they still exist but certainly not to the extent that they once did.

Sydney WRC had a fabulous shirt with a despairing woman on a beach with a DSS form in her hand. It read "Don't let DSS spoil your day" Every time I wore that shirt in public, which I proudly did, someone would offer to buy it. Bring back the shirt Sydney!

No internet in these times and we relied on certain essential items: Peter Sutherland's Annotated Act, The WRC Sydney Independent Social Security Handbook, Rights Review, the dreaded National Instructions and the CCH Loose-leaf Service if you could afford it – Townsville couldn't. We also had, and many of us wrote for the social security reporter.

Despite being in a small centre I never felt alone in my work. The camaraderie and technical support we gave to each other and still do was critical to ensuring that the work doesn't get you down. It involves talking to people experiencing poverty, violence, discrimination, stigma, stereotyping against the overlay of the complex, technical system of laws, policies, decisions and often physically and emotionally distant decision makers. I mentioned this earlier and I do think welfare-righters are prone to experience vicarious trauma over time.

Our stories often brought bureaucrats and politicians to tears, or anger at times that we would dare suggest fairness ought to be implicit part of the social security system. How dare those Vu babies be breadwinners, how dare those victims of family violence have debts waived, how dare those who gamble expect us to pick up their lives when they need support – the list goes on as you know.

We were always creative.

I ran one argument until it worked. I argued that a section 24 decision was, in reality, a reverse waiver, done in advance but for much the same reasons. The AAT agreed, but Centrelink's lawyers were appalled that we might characterise it so. Sure, it isn't an exact fit pretty damn close.

We need to keep pushing creative arguments and understand how discretion and definitions are used. I remember Gen Bolton from Canberra tracked through the entire FTB rate calculator in a case – that is true dedication but sometimes that is what is needed.

The definition of a member of couple is identical in most federal laws, for example, social security and migration law. One is used to prove a relationship in order to disentitle, the other is used to disprove a relationship, and you guessed it to disentitle.

We need to keep picking these constructs apart where they are unfair.

I think De Maria and Wexler would be blown away by the professionalism and work of the network now.

Economic Justice Australia is far removed from where it was 30 years ago.

A loose collective of centres doing similar work is now a tight formation combining strategic work across all areas of services delivery. As is the case with so many other areas of public policy the fast-moving media and social media landscape is perfect for our work. The Network's ability to keep telling our client's stories in a way that shapes national social policy is laudable.

That didn't and doesn't happen by accident. It reflects the network's history of strong leadership and hard work.

Happy 30th EJA

Thank you again for inviting some reflections.