Performance contracts, Corporate Governance and the Third Sector: The Case of the NSW Community Legal Sector

Dr Mark Rix
Graduate School of Business
University of Wollongong
WOLLONGONG NSW 2522
AUSTRALIA[1]

Abstract
This paper will investigate the effects of performance contracts on the governance of third sector organisations to which governments have outsourced responsibility for delivery of important human and welfare services. As governments have retreated from direct delivery of such services under the impetus of the New Public Management (NPM) reform agenda, they increasingly have had to rely on third sector organisations to play the role of service providers. From a public administration point of view, dominance of the purchaser/provider funding and regulatory model has been one of the most significant results. Under this model, performance contracts or so-called 'service agreements' are used to manage the relationship between the government as purchaser of services and the service provider organisations. These contracts or agreements subject provider organisations to a strict funding, governance and accountability regime. The danger for many third sector organisations is that in striving to meet the performance, governance and accountability criteria set down in the contracts, their ability to meet the needs of the communities they serve becomes seriously constrained and compromised. This paper will explore these themes by considering the recent experience of the NSW community legal sector.

The NSW community legal sector is comprised of about 40 community legal centres (CLCs) scattered throughout the state of NSW. Like its counterparts in the other states and territories that belong to the Australian Federation, the NSW sector has as its self-proclaimed *raison d'être* the improvement of access to justice and equality before the law for all Australians, in particular, poor and otherwise disadvantaged citizens. However, all of its funding is provided by the Australian and NSW governments the conditions for acceptance and continuation of which are contained in service agreements with the two governments. This paper will report the findings of a recent survey of NSW CLCs conducted by the author that focused on how the performance, governance and accountability requirements contained in the agreements affect the work of centres. The views of key personnel of the surveyed CLCs were sought on the effects of these requirements on a centre's ability to provide and improve access to justice for the individuals and communities it serves. The findings suggest that service agreement requirements do have a significant impact on the work of centres, imposing onerous time and resource constraints that divert them from their core business. However, it appears that inadequate government funding remains the greatest concern of CLC workers because it so seriously limits the capacity of centres and their staff to meet the legal needs of their clients.

Introduction

This paper investigates the effects of performance contracts on the governance of third sector (or, community) organisations to which governments have outsourced responsibility for the delivery of important human and welfare services. It focuses on how performance contracts have affected the ability of contracted organisations to remain accountable to the individuals, groups and communities that they exist to serve. It is also

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concerned with whether and to what extent performance contracts compromise the community values and mission of these organisations.

The use by governments of third sector organisations as service delivery vehicles has been one of the most important and far-reaching outcomes of the New Public Management (NPM) public sector reform movement. This movement, and its associated policies, has brought about dramatic changes to the structure and functions of the public sector in many developed, and less developed, countries over the past twenty years or so. The purchaser/provider funding and regulatory model has been widely adopted by government to manage the relationship between it and the organisations funded under contract to provide services on its behalf. Performance contracts, or so-called 'service agreements', are integral to the purchaser/provider model often laying down strict service standards and performance indicators on the contracted organisations determining their ability to attract ongoing or additional government funding. Using the NSW community legal sector as a case study, this paper will investigate whether and how the regime of accountability to government contained in performance contracts does affect the ability of third sector organisations effectively to meet the needs of their clients.

The paper begins with a brief overview of the NPM reform movement and reviews the NPM literature that deals with outsourcing by government of public service delivery to third sector organisations, the purchaser/provider funding and regulatory model and performance contracts. The second section profiles the community legal sector, focusing on its role in the Australian community and its relationship with government. In this section, the Commonwealth Community Legal Services Program Guidelines and the Service Agreement with community legal sectors (CLCs) are reviewed identifying the common service standards they contain. The third, and final, section reports the results and findings of a survey of the NSW community legal sector that was recently conducted by the author. Key personnel of community legal centres located in NSW were surveyed for their views of the reporting and accountability requirements contained in the Program Guidelines and the Service Agreement and how they believe these requirements affect the ability of their centre to meet the legal needs of the clients it serves. While there was a significant level of dissatisfaction with the reporting and accountability requirements contained in the Guidelines and service agreement, the survey found that the inadequate level of government funding was of greater concern to centre personnel because it so seriously affected the ability of centres to serve and meet the legal needs of their clients.

The New Public Management (NPM): the state, the third sector and performance contracts

NPM has been described as a "global reform movement" that has been gathering momentum and influence for the past twenty years or more. It is underpinned by "economic theories and normative values" that promote the enhanced efficiency of the public sector above almost all other objectives and outcomes (Christensen & Lægreid 2002: 1). The key characteristics of NPM reforms are "marketization, corporate management, regulation, political control, decentralization and privatisation (Langford and Edwards 2002: 17)." These are all more or less universal features of NPM, with the particular range and shape of reform processes and effects varying from national context

to national context (Christensen & Lægreid 2002: 1). Noting that there have been "major differences in institutional and political patterns affecting the plethora of national NPM regimes" and "despite more localised contingency factors", Ramia and Carney (2003: 255) observe that nevertheless "there has also been from the first a universality in the overriding directions of the shifts" in public sector management and governance. The fundamental intention of these shifts has been to compel public sector organisations to become more like those in the private sector by enhancing their "responsiveness to market stimuli". Gregory and Painter (2003: 63) comment that while there have been differences in "timing and trajectory" of the NPM reforms adopted in Australia and New Zealand, there are "enough underlying similarities to justify considering them as like cases." They note that the central features of these reforms are that they have been "system-wide" transforming "whole-of-government aspects of control and coordination" and bringing about major changes to "administration and service delivery (such as outsourcing and 'agencification'…) (Gregory and Painter 2003: 63)." These reforms have entailed a "shift in emphasis" of NPM accountability regimes from "bureaucratic to market-mimicking models" focusing on "a variety of bottom line results measurements, rather than compliance with rules and processes (Gregory and Painter 2003: 63)." Accordingly, "explicit standards of performance" and "a greater emphasis on output control" have been common features of NPM reforms, not only in Australia and New Zealand but in many other countries as well (Christensen & Lægreid 2002a: 19). Through privatisation, outsourcing, use of contracts and the employment of market-type mechanisms in service delivery, the state has divested itself of many of its traditional functions.

As the state has divested itself of many of its more traditional functions, there has been considerable "spanning of traditional boundaries among government departments, between public sector agencies and private and third sector organizations, between citizens and communities, on the one hand, and government decision making, on the other (Langford and Edwards 2002: 7)." The use of private and third sector organisations, such as CLCs, in delivering government or public services has been one of the most important "boundary spanning initiatives" adopted by states and governments.

NPM policies and programs have also often involved subjecting government functions and services to "market tests", increased competition "between public sector organizations and between public sector organizations and the private sector", and the use of "quasi-markets" that "sees central government actors empowering more than one agent to bid for and then produce a defined set of outputs (Hughes 2003: 44; Hood 1995: 97; Considine 2001: 12)." The separation of the purchaser of government services from the provider of those services is another important NPM reform. This means that government agencies are often not engaged in direct delivery of services, particularly in the human and welfare services field.

Under the purchaser/provider model, the government as purchaser decides on what amounts and kinds of services will be provided to particular client groups and also determines program outcomes and outputs. The provider delivers the outcomes and outputs to the approved recipients (Hughes: 2003: 59). This model, and the associated use

of performance contracts or service agreements, generally establishes the relationship between service purchaser and service provider as one of a strict principal-agent sort rather than as an equal partnership. The purchaser/provider model, which emphasises efficiency, cost-effectiveness, measurable outcomes and outputs, and the use of market-mimicking mechanisms in service delivery, privileges managerial accountability over political accountability or so-called "democratic regulation" (Wilson 2002: 12; see also Mulgan 2001).

For Ilcan, O'Connor, and Oliver, the use of "contract governance" in the Canadian public sector raised important accountability issues. Contract governance and the use of market-mimicking mechanisms were "risky because of the potential for opportunism and reductions in the quality of public services delivered (Ilcan, O'Connor and Oliver 2003: 635; see also Brown and Ryan 2003 who take up a number of these issues in the Australian context of the use by state governments of service agreements with community organisations)." In their survey of the boards of non-profit organisations in New York City O'Reagan and Oster found that government funding contracts had a significant effect on board behaviour. Boards of non-profits in a contractual relationship with government tended "to focus less on some traditional functions—like fundraising—and more on fiduciary and boundary spanning kinds of activities (O'Reagan and Oster 2002: 374)." Similarly, Sadiel and Harlan, whose research also focused on boards of nonprofit organisations in New York, found that government contracts often forced boards and staff to play a "buffer role". In playing this role, boards became "more active in buffering the effects of government than in political advocacy" spending much of their time dealing with "possible goal conflicts and weighing the effects of government funds on nonprofit missions and programs (Sadiel and Harlan 1998: 247 and 245-6)." According to Van Slyke, the boards and staff of non-profit organisations with government funding contracts become "new street level bureaucrats" having to divert scarce resources from their core service delivery functions to "program compliance and reporting requirements" leading to a distancing and weakening of the relationship between the organisation and its clients (Van Slyke 2002: 505). However, Van Slyke believes that there are potential benefits for non-profits. By effectively becoming the "implementers of policy", non-profits can begin to play a role in policy formulation giving them a "platform from which they can advocate for increased resources and greater social spending, while enabling them to also increase their expertise in specific policy areas at the same time as government's knowledge base and institutional memory are being reduced (Van Slyke 2002: 506)."

Sounding a note of caution, Considine doubts the ability of non-profit organisations to fulfil their contractual obligations to government while at the same time meeting the needs of their clients. In his early studies of the contracting out of employment services by governments in the UK, New Zealand, Australia and The Netherlands, Considine distinguished between "compliance based" and "client centred" contracting regimes. The former are top down and output driven and involve "simple, target-based instruments which seek to fix a regime of relationships in place" in this way helping policy makers, senior bureaucrats and program managers to deal with problems resulting from loss of direct control of service delivery (Considine 2000: 634). He found that compliance (UK) and client centred (NZ) regimes both led to state micro-management of the agencies to

which service delivery had been outsourced by government. In Australia, the agencies related to clients in a manner driven more by the need to "gain compliance and trigger payments from government" rather than in a 'client-centred' way that would have formed the "basis of a highly individualized job-finding strategy" as the government had promised (Considine 2000: 636).

In a later study of the contracting regimes between the Australian Government and the non-profit organisations to which it had outsourced employment services, Considine found that the "increased level of competition among different contractor types results in the distinctive role of the non-profits being eroded…because the incentive system created by the quasi-market requires that they take on the financial strategies and service-delivery methods used by their competitors (Considine 2003: 74-75)." He also questioned the public benefit of providing services "outside the line" of public service accountability (Considine 2003: 76).

A number of the issues raised in this review of the literature are relevant to the community legal sector and to its ability to continue to play its important, indeed indispensable, role in the Australian community in providing access to justice and meeting the legal needs of disadvantaged Australians. So-called 'contract governance' can be an important factor affecting the extent to which third sector organisations of whatever hue that are contracted to government to provide services on its behalf are able to provide services to their clients in sufficient quantities and at a desired level of quality. Program compliance obligations and reporting requirements included in these contracts can also determine whether organisations are forced to become compliance based or remain client centred. Whether in being "implementers of policy" organisations contracted to government are at the same time provided with a platform from which to advocate for increased resources and greater spending on particular programs is also an important matter that is worthy of consideration. All these issues will be considered in the third section that reports the findings and results of the survey of NSW community legal sector conducted by the author.

The following section profiles the community legal sector, identifying the important role it plays in providing access to justice and meeting the legal needs of some of the most disadvantaged members of the Australian community. The sector's relationship with the Australian Government is also considered through an examination of the Commonwealth Community Legal Services Program Guidelines. The service standards contained in Guidelines are detailed and explained. The Service Agreements 2003-2005 and 2005-2008, particularly their contract governance components such as service standards, performance indicators and reporting requirements, are also examined for their implications for CLCs and their ability to deliver legal services in appropriate amounts and level of quality. The question of whether they have forced CLCs to become compliance based rather than client centred is also addressed.

A profile of the community legal sector

There are more than 200 CLCs across Australia, approximately 129 of which are funded under the Commonwealth Community Legal Services Program (CCLSP) to provide legal

services to people on low incomes and individuals and groups with "special needs". Community-based and not-for-profit, CLCs are an important part of the Australian legal aid system offering legal advice and assistance that complement the services provided by state and territory Legal Aid Commissions and the private legal sector (AGD 2004: 5). In the eight years up to 2003, "these 129 centres have provided services to more than 1.5 million people throughout Australia in urban, regional and remote areas, and provided over 2.5 million instances of legal advice, information and case assistance (NACLC 2003: 11)." There are a number of different types of centres. Generalist centres provide a broad range of legal services to communities in particular geographical areas, specialist centres offer services to a specific section of the community such as migrants, indigenous women or young people, and hybrid centres are essentially generalist centres that also provide a specialist service (NACLC 2001).

As the National Association of Community Legal Centres (NACLC) notes, CLCs "are often the first point of contact for people seeking assistance and/or the contact of last resort when all other attempts to seek legal assistance have failed (NACLC 2003a: 3; NACLC is the national peak body representing CLCs)." In addition to this very important role, community legal centres also "serve the growing numbers of people who cannot afford private legal assistance and who do not qualify for legal aid (NACLC 2003: 11)." CLCs have "specialised expertise" in legal fields such as family law and civil and administrative law matters including housing, credit and debt, neighbourhood disputes, motor vehicle matters, and problems arising in the administration of government social security payments and support schemes (NACLC 2003: 11).

CLCs are characterised by their willingness to experiment with innovative modes of legal service delivery that are generally designed to maximise the accessibility of centres to their communities and the availability of the services they provide. Language diversity, opening hours, location, and affordability of services (most centres provide services free of charge or at very low cost) are some of the key factors in these respects. Innovation in service delivery is matched by CLCs' efficiency and cost effectiveness in providing services. Efficiency and cost-effectiveness are to a large extent attributable to the use of volunteers, not only in direct service delivery but also in the administration and management of centres. The corps of volunteers working in and for legal centres includes professional lawyers from the private and public sectors, academics, law students, paralegals, accountants, managers, and others (Rix 2005).

The Commonwealth Community Legal Services Program (CCLSP)

According to the CCLSP Guidelines, the Program is part of the Commonwealth's contribution to legal aid and forms "a vital part of the Commonwealth's multi-layered approach to addressing the legal needs of the disadvantaged members of the community (AGD 2005: 5)." The Guidelines "set out essential principles and obligations governing the management of the program and the delivery of services (AGD 2005: 3)." It is noted in the Guidelines that in addition to Commonwealth Program funding several states also provide funding. The Commonwealth and state funding bodies have a "collaborative arrangement" under which "the CCLSP and the State community legal services programs

operate under a single service agreement with community legal service providers known as the Community Legal Service Program (CLSP) (AGD 2005: 3).” The Program is administered at a national level by the Commonwealth Attorney-General’s Department using an “accrual based outcomes and outputs framework” which is designed to enable resources to be managed and community legal services to be delivered effectively. Underpinning the outcomes and outputs framework is the Program’s outcome statement: “Equitable access to legal assistance services for disadvantages members of the Australian community and those with special needs (AGD 2005: 6).” As for the Program’s outputs, these consist of the core service activities undertaken by CLCs and are underpinned by the Program’s outcome as defined in the statement referred to. These core activities include legal information provision, advice and casework, community legal education (CLE) and law reform and legal policy projects.

The requirement for CLCs to collect and provide service data to the Commonwealth through the Community Legal Services Information System (CLSIS) is a key provision of the Program Guidelines, and of the superseded and current Service Agreements which are explained in more detail below. Among the most important reasons for collecting the data is to enable the Commonwealth government, State governments and CLCs themselves to evaluate the overall performance of the Program in terms of how well it is meeting its outcome and output objectives. The data collected also enable the performance of individual CLCs to be evaluated against performance targets. In addition, they are amongst other things, used in planning future service provision (AGD 2005: 15).

The Service Standards

The Guidelines specify nine service standards “which are used to establish a nationally consistent, foundational level of quality for service provision (AGD 2005: 16).” Five of the Service Standards relate directly to service delivery and core service activities. These are:

1. the provision of information
2. the provision of advice
3. casework
4. community legal education (CLE)
5. law reform and legal policy (LRLP)

The other Service Standards refer to non-core activities including accessibility, organisational management, management of information and data, and assessing client satisfaction and managing complaints (AGD 2005: 16; all of the Service Standards, and related performance indicators, are explained in considerable detail in Community Link Australia 2000 which underpins the sections dealing with the Service Standards in both the Guidelines and the Service Agreements).

The first of the core Service Standards relates to information provided to a client which does not make any specific reference to the particulars of the client’s case. An advice “is a discrete activity which occurs on an individual occasion” at the conclusion of which “there is no follow up action to be undertaken and there is no expectation that the client will have further contact with the service provider about the same problem (AGD 2005: 21).” An advice can help a client choose between options in dealing with their problem and can include counselling, referral and simple legal advice. Drafting correspondence

and making phone calls related to the client's issue or problem are also included. Casework, as the term would suggest, refers to an activity which involves the provision by a CLC of ongoing legal assistance to a client with regard to a particular problem and also includes acting on behalf of the client with respect to that problem. CLE refers to activities undertaken by a CLC that involve "the provision of information and education to members of the community on an individual or group basis about the law and legal processes" and also refers to the process "of increasing the community's ability to participate in legal processes by utilising community development strategies (AGD 2005: 21)." Naturally, CLCs adopt or design community development strategies that are appropriate for the clients and communities they serve. LRLP refers to a range of activities undertaken by a CLC that, like CLE, are designed to increase the community's participation in and understanding of the legal system. These activities contribute to the process of bringing about desired changes in the law, legal processes and legal or welfare service delivery.

Service Agreements 2003-2005 and 2005-2008

In 1996-97, the Commonwealth moved all 129 legal centres in the Commonwealth Community Legal Service Program from a grants-based funding model to a purchaser/provider model. A three-year service agreement is a fundamental part of this model. The agreement is a template document for all CLCs in the Program, adapted at the margins to reflect the particular circumstances of individual CLCs. It is in effect little more than a performance contract, establishing the relationship between the Commonwealth and the community legal sector as one of a strict principal-agent sort. Under the service agreement (in both the 2005-2008 and 2003-2005 versions), the Commonwealth 'operates' the CCLSP and the relevant State 'operates' the State Community Legal Services Program, together constituting the Community Legal Services Program. However, only in the 2003-2005 agreement is it also stated that the Commonwealth is responsible for determining CLCSP priorities, monitoring the Program's performance and ensuring the accountability for Commonwealth funding provided under the Program. Nevertheless, even the old agreement includes a measure of self-regulation in that it acknowledges the detailed knowledge that a CLCs has of the community it serves and its capacity to reduce to some extent the legal needs of that community, identify unmet areas of need, and successfully administer the centre and the services it provides (Commonwealth of Australia 2003).

The 2003-2005 Service Agreement

As part of the agreement, an individual CLC agreed 'to provide quality Services…for the disadvantaged' and 'to maintain compliance with Service Standards, and to ensure that its operational procedures reflect the attributes set out in them (Commonwealth of Australia 2003).' The service standards in the agreement are the same as those contained in the Program Guidelines and, as noted above, cover all of the core service activities undertaken by a CLC. Like the Guidelines, the agreement also set service standards for accessibility, organisational management, information and data management, and client satisfaction and complaints management. Legal centres were required to submit an annual service standards audit, a written report of a centre's own assessment of its level of compliance with the service standards. In compiling the audit, a centre was required to

use performance indicators to measure the effectiveness of its service delivery in terms of cost, quality, quantity, timeliness, and so on. A centre was also required to conduct a client satisfaction survey (in a standard format) every six months, giving clients the opportunity to assess how well it performs the core service activities of advice, casework and community legal education(Commonwealth of Australia 2003).

The 2005-2008 Service Agreement

A new Service Agreement came into operation in October 2005, after lengthy negotiations between the Commonwealth, the states/territories and the community legal sector represented by NACLC. One key difference between the new and old service agreements is that the new stipulates that a centre must conduct a client satisfaction survey only once over the term of the agreement (2005-2008) rather than every six months as in the old agreement. As noted above, under the old agreement a centre also had to undertake an annual service standards audit. In contrast, the new agreement merely states that "The Funding Bodies [the Commonwealth of Australia and the relevant State Legal Aid Commission/Attorney-General's Department] may undertake Service Standards audits with the Organisation [community legal centre] during the term of this Agreement to ensure compliance with the Service Standards (Commonwealth of Australia 2005)." The new agreement contains much less onerous provisions than the old regarding a centre's ability to retain and use surplus funds.

The following section reports the findings of a survey recently conducted by the author of staff working in the legal centres that comprise the NSW community legal sector. The views of key personnel of NSW community legal centres were sought about the reporting and accountability requirements contained in the Program Guidelines and the new and old service agreements. Centre personnel were also asked for their views about how these requirements affect the ability of their centre to meet the legal needs of its clients and to undertake law reform and policy development work. It appears from the results of the survey that, despite the constraints imposed by the reporting and accountability requirements contained in the Guidelines and agreements, centres and their staff have managed to remain "client centred" rather than become "compliance based". However, lack of funding remains the biggest obstacle to centres being able to provide legal services in adequate amounts to their clients and to perform the important community legal education and policy development and law reform work that the Government requires them to undertake. The section begins with a brief overview of the NSW community legal sector.

A survey of the NSW community legal sector

The NSW community legal sector: a brief overview

There are 41 community legal centres in NSW, located in metropolitan, outer-metropolitan, rural, regional and remote areas. There is a mix of generalist and specialist centres (hybrid centres, those that are generalist but which also provide a specialist service, are included here in the generalist category). Like their counterparts in the other states and territories, NSW CLCs provide legal advice and assistance across a broad range of areas including tenancy, credit and debt, children's legal issues, consumer rights, family law, domestic violence, social security, victims of crime, employment and court

support (this is not an exhaustive list). Of the 41 CLCs in NSW, 19 fall into the generalist category and 18 into the specialist (the remaining 4 are associate members or non-CLC organisations). There are 32 CLCs that currently receive their core funding through the Community Legal Services Program administered by the NSW Legal Aid Commissions (CCLCG 2004: 12).

The survey

Before the constructing the survey respondent questionnaire, the author conducted interviews using a semi-structured questionnaire with key informants (KIs) from the NSW Legal Aid Commission, the National Association of Community Legal Centres, the NSW Combined Community Legal Centres Group (CCLCG), and the Law Society of NSW. Representatives of these organisations were interviewed about their views of the importance of the community legal sector in improving access to justice and equality before the law for disadvantaged and 'ordinary' Australians. They were also asked to briefly comment on the Commonwealth Legal Service Program Guidelines and the reporting and accountability requirements of the old and new Service Agreement. Their opinions were also sought about the reporting and accountability requirements of the Tenancy Advice and Advocacy Program (TAAP) administered by the NSW Office of Fair Trading.

Before the survey commenced, both the KI questionnaire and the survey respondent questionnaire were submitted to, and gained clearance from, the University of Wollongong Human Research Ethics Committee. All the information recorded in the interviews with the KIs and contained in the returned survey respondent questionnaires was provided under strict confidentiality conditions and with the assurance that none of the KIs or respondents would be identified in the published outcomes of the survey. Prior to commencing the respondent survey, approval was also gained from Board of the NSW Combined Community Legal Centres Group. The Combined Group's fax stream facility was used to conduct the survey.

The data and information collected in the KI interviews were used in developing a questionnaire administered by fax to a senior staff member (Centre Coordinator and/or Principal Solicitor) of the 32 generalist and specialist CLCs in NSW that receive funding under the Community Legal Services Program (the Survey Respondent Questionnaire is in Appendix 1). The views of the staff members were sought on the service agreements their centre has with the Commonwealth Government and the NSW Office of Fair Trading. Respondents were asked about their professional opinions of the Program Guidelines, and of the reporting and accountability requirements contained in the old and new Service Agreement, specifically, how they believed the requirements affected the ability of their centre to meet the legal needs of the centre's clients. As only four legal centres reported that they operated a tenancy service funded under TAAP, this section of the survey has been omitted from the paper.

Of the 32 CLCs to which the questionnaire was sent, a total of 17 responded. Given the funding, staffing and time constraints under which CLCs operate, this was a very good response rate. The response rate looks even better when it is considered that CLCs are

also routinely surveyed for their views on a range of funding and reporting matters by Commonwealth and state funding authorities and the national and state associations of CLCs.

Demographic profile of the NSW community legal sector

The first section of the survey sought a range of demographic data from the respondents. Data were collected on how long the respondents had worked in their CLC, the respondents' gender, the position the respondent holds in the centre (centre coordinator or principal solicitor, and where their centre is located (a Sydney metropolitan or outer-metropolitan suburb, or, a rural, regional or remote city or town). Respondents were asked about the number of staff employed in their centre, and whether these were full-time, part-time or casual employees. They were also asked to classify the staff of their centre into the categories of legal, paralegal, administrative/managerial, clerical and other. The demographic data collected are contained in the 5 tables in Appendix 2 ((Tables A-E; the table giving the breakdown of categories of staff in each centre is not included). Some of the more interesting results are worthy of brief discussion.

Females heavily outnumber males in the NSW community legal sector. Of the 17 respondents to the survey, 13 (76.47%) were female (Table B). This conforms to a pattern found in many of the 'caring professions' where women predominate. The community legal sector's strong community roots may also attract more women than men. Nearly one third of the centre respondents (5, or 29.41%) had worked in their centre for more than 6 years while another third had worked at their centre for four to six years (Table A). Only 1 respondent (5.88%) indicated that they had worked for less than 1 year at their centre. These responses suggest that despite the relatively low wages and salaries received by legal sector staff compared with their public and private sector counterparts (see NACLC 2003 and CCLCG 2006), many legal centre staff are strongly committed to the centre for which they work and to its important functions of improving access to justice and meeting the legal and related needs of their clients. This point becomes clearer in the answers provided to the open-ended questions that are provided and briefly discussed below. Fourteen (70%) of the respondents were their centre's Coordinator, while 5 (25%) were the Principal Solicitor (Table C; one respondent was Acting Centre Manager). While most centres employ fewer than 10 employees (11 in all), three centres have 20 or more staff with 22 being the largest number of employees. Three centres have between 10 and 20 employees (Table E). Finally, 9 of the centres that responded to the survey (52%) are located in the Sydney metropolitan and outer-metropolitan area, and nearly a third (5, 29.41%) are found in cities or towns located in regional areas of the state such as Wollongong. No remote area CLCs responded to the survey, but 3 (17.65%) in rural locations did so (Table D).

The Commonwealth Community Legal Services Program Guidelines

Respondents were asked for their views on how they believe the Commonwealth Community Legal Services Program Guidelines affect the management and governance of their centre. They were asked to comment on how influential they believed the Guidelines to be and whether they thought the influence of the Guidelines on their centre was positive or negative. Respondents were also asked to rate the reporting and

accountability requirements contained in the Guidelines and how they believe the Guidelines affect the ability of their centre to meet the legal needs of its clients and the centre's ability to undertake law reform and policy work. Four of the five questions in this section employed a five point Likert scale, with respondents asked to provide a rating in a range from very positive or very reasonable through to very negative or very unreasonable. The first question in this section used a four point Likert scale, ranging from very influential through to irrelevant. The five tables below (Tables 1 to 5) provide a breakdown of the responses to these questions.

Table 1 Regarding the management and governance of your legal centre, do you believe the Commonwealth Community Legal Service Program Guidelines are?

	#	%
Very Influential	2	11.76%
Influential	7	41.18%
Somewhat Influential	8	47.06%
Irrelevant		
Total responses	***17***	***100.00%***

Table 2 In your view, has the influence of the Guidelines on your centre been?

	#	%
Very positive		0.00%
Positive	7	41.18%
Neutral	8	47.06%
Negative	2	11.76%
Very Negative		0.00%
Total responses	***17***	***100.00%***
Note: 1 respondent answered both Neutral and Negative. Another did not answer the question		

Table 3 How would you rate the reporting and accountability requirements of the Guidelines?

	#	%
Very Reasonable	1	5.88%
Reasonable	9	52.94%
Neutral	2	11.76%
Unreasonable	5	29.41%
Very unreasonable		0.00%
Total responses	***17***	***100.00%***

Table 4 Has the effect of the Guidelines on the ability of your Centre to meet the legal needs of its clients been:

	#	%
Very positive		0.00%
Positive	5	29.41%
Neutral	7	41.18%
Negative	5	29.41%
Very negative		0.00%
Total responses	***17***	***100.00%***

Table 5 Has the effect of the Guidelines on the ability of your centre to undertake law reform and policy development work been

	#	%
Very positive		0.00%
Positive	4	25.00%
Neutral	9	56.25%
Negative	3	18.75%
Very Negative		0.00%
Total responses	***16***	***100.00%***
1 respondent did not answer this question		

As can be seen from Table 1, only two of the respondents (11.76%) thought that the Guidelines were very influential with respect to the management and governance of their centre. However, 7 (41.18%) and 8 (47.06%) respondents thought that they were either influential or somewhat influential. None of the respondents indicated that they believed the Guidelines were irrelevant. Asked to rate the influence of the Guidelines on their centre (Table 2), 7 respondents (41.18%) indicated that the Guidelines have had a positive influence, 8 (47.06%) thought that the Guidelines were neutral with regard to influence and 2 (11.76%) believe them to have had a negative influence. None thought that the Guidelines had had either a very positive or very negative influence. The range of the respondents' ratings of the reporting and accountability requirements of the Guidelines is interesting (Table 3). Only 2 (11.76%) rated the requirements as neutral, while 1 (5.88%) and 9 (52.94%) rated the requirements as either very reasonable or reasonable. Nevertheless, nearly a third (5, 29.41%) gave an unreasonable rating to the requirements. None rated them very unreasonable. The range of responses to this question suggests that the respondents were unsure about how important the reporting and accountability requirements of the Guidelines actually are or should be. This is borne out by the range of the respondents' ratings of the effect of the Guidelines on their centre's ability to meet the legal needs of its clients and to undertake law reform and policy development work.

None of the respondents believed that the Guidelines had had either a very positive effect or a very negative effect on the ability of their centre to meet the legal needs of clients (Table 4). About a third (5, 29.41%) thought that the Guidelines had had positive effect with the same number rating the effect as negative. However, seven of the respondents (41.18%) rated the effect of the requirements as neutral. Rating the effect of the Guidelines on their centre's ability to undertake law reform and policy development work

(Table 5), 9 (56.25%) thought that it was neutral. Only 4 (25%; one respondent did not answer this question) rated the effect as positive while 3 (18.75%) gave it a negative ranking.

The Service Agreements 2003-2005 and 2005-2008

Respondents were asked whether or not they believed the new service agreement was an improvement on the superseded agreement. They were also asked to rate the reporting and accountability requirements of the new agreement, and to indicate what effect they believe the new service agreement would have on their centre's ability to meet the legal needs of its clients and to undertake law reform and policy development work. All four questions in this section of the questionnaire employed a five point Likert scale, with respondents asked to provide a ranking in a range from great improvement or very reasonable through to significantly worse or very negative. The four tables below (Tables 6 to 9) provide a breakdown of the respondents' responses to these questions.

Table 6 Comparing the new Service Agreement with the old Agreement, do you believe the new one is a:

	#	%
Great improvement	1	5.88%
Improvement	10	58.82%
No Change	4	23.53%
Worse	2	11.76%
Significantly worse		0.00%
Total responses	***17***	***100.00%***

Table 7 How would you rate the reporting and accountability requirements of the new Service Agreement

	#	%
Very Reasonable	1	5.88%
Reasonable	6	35.29%
Neutral	3	17.65%
Unreasonable	7	41.18%
Very unreasonable		0.00%
Total responses	***17***	***100.00%***

Table 8 Do you believe the effect of the new Service Agreement on the ability of your centre to meet the legal needs of its clients will be

	#	%
Very positive		0.00%
Positive	3	17.65%
Neutral	11	64.71%
Negative	3	17.65%
Very Negative		0.00%
Total responses	***17***	***100.00%***

Table 9 Do you believe the effect of the new Service Agreement on the ability of your centre to undertake law reform and policy development work will be:

	#	%
Very positive		0.00%
Positive	2	11.76%
Neutral	13	76.47%
Negative	2	11.76%
Very Negative		0.00%
Total responses	***17***	***100.00%***

As seen in Table 6, 11 respondents (64%) rated the new agreement as being either a great improvement or an improvement over the old. Four of the respondents (23.53%) saw no change and 2 (11.76%) rated the new agreement as being worse than the old. None thought that the new agreement was significantly worse than the old. Regarding the reporting and accountability requirements contained in the new agreement (Table 7), one respondent (5.88%) thought that they were very reasonable and 6 (35.29%) rated them reasonable. Three of the respondents (17.65%) gave a neutral rating to the requirements. However, a significant number (7, 41.18%) thought that the requirements were unreasonable (none rated them very unreasonable). This shows that, leaving aside the three 'in the middle', the sector is evenly divided in opinion about the reporting and accountability requirements contained in the new service agreement. Asked to rate what they believed the effect of the new agreement would be on their centre's ability to meet the legal needs of its clients (Table 8), most (11, 64.17%) thought that it would be neutral. However, equal numbers (3, 17.65%) rated the effect as either positive or negative. None rated the effect as either very positive or very negative. Rating the likely effect of the new agreement on their centre's ability to undertake law reform and policy development work (Table 9), a large number of respondents (13, 76.47%) rated the effect as neutral. Equal numbers (2, 11.76%) rated the effect as either positive or negative, but no respondent thought that it was very positive or very negative.

Open-ended questions

The survey respondents were asked a number of open-ended questions seeking their views of the most positive and negative aspects of the Community Legal Services Program Guidelines and where they thought there had been most improvement in the new service agreement. They were also asked for their views about the overall importance that the Australian Government attaches to the community legal sector and about the Government's treatment of the sector. The most relevant and interesting answers to the open-ended questions are included below (not all respondents answered the open-ended questions).

Respondent 1 thought that the "flexibility" of the Guidelines allowed a centre to develop "tailor made strategies". In similar vein, another respondent (respondent 11) remarked that the "Guidelines are very general and tend to describe what CLCs do rather than prescribe, as such they allow us to do all the things we want and need to do." One respondent (respondent 7) commented that the Guidelines helped centre staff in "Maintaining consciousness about accountability issues" while another (respondent 8)

thought that they were important because complying with them "results in ongoing funding" and allowed "centres to plan its (*sic*) services for the future". For one respondent (respondent 9), the Guidelines gave a "framework and structure" to the work of community legal centres. One (respondent 17) remarked that the most important aspect of the Guidelines was that they give the Commonwealth Attorney-General's Department "a rough idea of what we do" while for another (respondent 16) the most important aspect was that they enabled CLCs to "justify CLE and law reform as part of our 'core work'."

As for the most negative aspect of the Guidelines, respondent 1 thought that the absence of KPIs ("for example case loads etc.") "allows for a very wide discrepancy between CLCs and I feel hinders the fostering of a more homogeneous/collective approach". Another (respondent 2) commented that the reporting and accountability requirements were "onerous) while respondent 11 remarked that "Data collection and quality assurance, while reasonable, is time consuming." Respondent 6 commented on the "uncertainty about interpretation of data limitations" and the inability of CLSIS to "generate qualitative evaluation". Finally, respondent 11 pointedly remarked that the sector "runs on the goodwill of workers" and that "Our centre can only operate because workers accept low wages and appalling conditions. We don't get enough funding to jump through all the hoops without diverting resources away from service delivery."

Most of the respondents were clear about the aspects of the new service agreement where there had been most improvement over the old agreement. Respondent 1 thought the key improvement resided in "not as rigorous reporting", backed up by Respondent 2 who commented that "No requirement to audit SSPI [service standards] and only need to do one Client Satisfaction survey per year." Respondent 3 "SSPI audit once during lifetime of agreement and client survey once only", respondent 5 "reduced reporting requirements" and respondent 6 "not having to conduct the client satisfaction survey twice a year" all agreed. Respondents 12 "more reasonable reporting requirements with clear guidelines", 16 "some streamlining of reporting requirements" and 17 "reporting slightly less onerous" also all agreed but were slightly less effusive in their praise.

The areas where there was still need for improvement in the new agreement included "the provisions of more specific KPIs" (respondent 1), "still too many compliance requirements" (respondent 2) and "reporting requirements still quite onerous" (respondent 11). But inadequate funding was also an area of considerable concern with the new agreement: "Funding could be increased so that we may attract quality solicitors to regional and remote CLCs and to also allow access to legal advice to clients in these remote areas" (respondent 3); "bringing the level of economic support for the sector up so that it actually matches the reporting requirements" (respondent 7); and, it should emphasise "funder's obligations to provide dollars on time and funding at a level that pays actual salaries" (respondent 8).

When asked to comment on the overall importance that the Australian Government attaches to the work of the community legal sector, the respondents were especially pointed and critical. The present government regards the sector as "a political necessity"

(respondent 1), "We are largely invisible to the Federal Government" (respondent 6), "they [the government] like to know we are there, but they don't give sufficient resources to meet legal needs" (respondent 10), "they don't give much importance to us" (respondent 8) and, "I think the Federal Government give little more than lip service [to the sector and its work]." As for levels of funding, respondents commented that "we are a cheap way of providing coverage" (respondent 7), "I don't think the Federal government really see the value and the long term benefit and capacity of the work we do" (respondent 9), and, "the Federal Government views its budget surplus as important, *not* access to justice for all" (respondent 13). Many of these sentiments were repeated in the respondents' comments on the Government's treatment of the sector. Respondents thought that the Government's treatment was "pathetic" (respondent 7), "appalling" (respondent 8), "poor" (respondents 10 and 33), and "shabby" (respondent 16). Inadequate funding was again of concern: "Cheap way to deliver justice" (respondent 2), "poorly funded/resourced" (respondent 5), "ignored and under-funded" (respondent 6), "they have starved the sector for 10 years (respondent 8), "our sector has been allowed to fall behind in terms of the real value of our funding" (respondent 10), "they could do a lot more" (respondent 15), and "no sense that Commonwealth values our work as anything other than 'cheap'" (respondent 16).

Discussion and conclusion

It appears from the respondents' responses to the survey that the staff of NSW community legal centres are determined that they and the centres for which they work will remain client centred rather than become compliance based. This is in spite of the significant reporting, performance and accountability requirements imposed on them by the Program Guidelines, but more particularly the Service Agreement (especially its earlier iteration). Of particular concern to some of the staff is that attempting to meet the Guidelines and Service Agreement requirements is very time consuming. The time spent in meeting requirements is often time that is taken away from service delivery meaning that it is difficult for them to satisfy the service standards and meet the associated performance requirements. This is a classic Catch-22 situation: reporting and accountability take time that should be spent in delivering services to needy clients while, on the other hand, giving the time needed to deliver an adequate quantity and quality of service to these clients means that it is difficult for the staff to meet their reporting and accountability requirements. Without the time to meet these requirements, staff and centres risk under-reporting their service delivery performance. Under-reporting their performance could put a centre and its staff—and potentially the entire sector, for this is a systemic problem—in danger of being sanctioned by the funding authority including having their funding reduced. But here is the nub for the sector—and for the Government.

As a number of the respondents' responses to the open-ended questions demonstrated, the Government depends on the sector to be a cheap vehicle for the delivery of essential legal services to some of the most disadvantaged individuals and groups in the Australian community. As such, it relies on the commitment of the staff of legal centres to the principles of equal access to justice, equality before the law and social inclusion knowing that this commitment will keep centre workers in their jobs even though these are not well paid and often involve working in inferior conditions under circumstances of great

stress, anxiety and threat. The Government also knows that the community legal sector and its staff will remain compliant with its reporting and accountability requirements, and low funding and low wages, because non-compliance would likely invite sanction meaning, paradoxically, that centres and staff could not remain centred on their clients and continue to deliver to them the services that they require. The relaxing of the reporting and accountability requirements in the new Service Agreement is a tacit admission by the Government that it can continue to rely on the commitment and hard work of the sector and its employees for the delivery of legal services to disadvantaged Australians. It does not require centres and staff to comply with a strict reporting and accountability regime, knowing full well that because the sector is client-centred it will continue to satisfy the service standards, and meet the now-relaxed reporting and accountability requirements, that it dictates. For, in doing so, centres and staff can remain focused on delivering legal services that meet the legal needs of their clients.

As a number of the respondents also indicated, another reason that they and the sector can live with the Guidelines and Service Agreement is that community legal education and law reform and legal policy remain recognised in both as core service standards for community legal centres. These areas of the work of the community legal sector are vital for improving access to justice and equality before the law in Australian society, and therefore encompass some of the most important activities undertaken by community legal centres and their staff. For as long as the sector is able to undertake this sort of work, and for as long as the Government is prepared to provide funding (however inadequate) to enable it do so, the uneasy relationship between the Government and the sector will persist. Again, and paradoxically, only by being compliant can the sector continue to be client centred and pursue equal access to justice and equality before the law for all Australians. Far from being rivals, in the context of the community legal sector a compliance focus and client centredness are strange bedfellows.

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Appendix 1

Survey Respondent Questionnaire

Research Project	Performance contracts, corporate governance and community organisations: The case of the NSW community legal sector
Chief Investigator	Dr Mark Rix
Institution	Graduate School of Business, University of Wollongong

Demographic Details

1. How long have you worked at your legal centre?
   Less than 1 year   1-3 years
   4-6 years   More than 6 years

2. Male   Female

3. Position you hold at the legal centre
   Centre Coordinator   Principal Solicitor

   Other (please specify) ____________________________

4. Location of legal centre
   Metropolitan   Outer Metropolitan   Regional   Rural
   Remote

   Total number of employees in your centre ____________________

   Number of employees
   full time ____________________
   part time ____________________
   casual ____________________

   How many of you centre's workers are
   legal ____________________
   paralegal ____________________
   administrative/managerial ____________________
   clerical ____________________

1. Regarding the management and governance of your legal centre, do you believe the Commonwealth Community Legal Service Program Guidelines are?
   very influential influential somewhat influential irrelevant

2. In your view, has the influence of the Guidelines on you centre been?
   very positive positive neutral negative very negative

3. How would you rate the reporting and accountability requirements of the Guidelines
   very reasonable reasonable neutral unreasonable very unreasonable

4. Has the effect of the Guidelines on the ability of your Centre to meet the legal needs of its clients been
   very positive positive neutral negative very negative

5. Has the effect of the Guidelines on the ability of your Centre to undertake law reform and policy development work been
   very positive positive neutral negative very negative

6. In your view, what is the most positive aspect of the Guidelines

   ____

   ____

   ____

   ____

7. In your view, what is the most negative aspect of the Guidelines

   ____

   ____

   ____

   ____

8. Turning now to the new Service Agreement, in comparison with the old Service Agreement do you believe it is a
   great improvement improvement no change worse
   significantly worse

9. How would you rate the reporting and accountability requirements of the new Service Agreement
   very reasonable reasonable neutral unreasonable
   very unreasonable

10. Do you believe the effect of the new Service Agreement on the ability of your centre to meet the legal needs of its clients will be

    very positive | positive | neutral | negative | very negative

11. Do you believe the effect of the new Service Agreement on the ability of your centre to undertake law reform and policy development work will be

    very positive | positive | neutral | negative | very negative

12. In your view, in what areas has there been most improvement with the new Service Agreement

    ____

    ____

    ____

    ____

13. In your view, what areas are still in need of improvement

    ____

    ____

    ____

    ____

14. Your overall view of the importance that the Federal Government attaches to the work of the community legal sector

    ____

    ____

    ____

    ____

15. Your overall view of the Federal Government's treatment of the community legal sector

    ____

    ____

    ____

    ____

Thank you for your time and the information that you have provided.

Appendix 2

Table A Length of time respondent has worked at their legal centre

	#	%
Less than 1 year	1	5.88%
1 - 3 years	6	35.29%
4 - 6 years	5	29.41%
More than 6 years	5	29.41%
Total responses	***17***	***100.00%***

Table B Gender

	#	%
Male	4	23.53%
Female	13	76.47%
Total responses	***17***	***100.00%***

Table C Position held at the legal centre:

	#	%
Centre Coordinator	14	70.00%
Principal Solicitor	5	25.00%
Other:		
Acting Centre Manager	1	5.00%
Total responses	***20***	100.00%

Notes:
2 respondents indicated that they served as both Centre Coordinator and Principal Solicitor and accordingly in both cases the two positions were counted separately
1 respondent indicated that they served as both Principal Solicitor and Acting Centre Manager and accordingly the positions were counted separately

Table D Location of legal centre

	#	%
Metropolitan	7	41.18%
Outer Metropolitan	2	11.76%
Regional	5	29.41%
Rural	3	17.65%
Remote		
Total responses	***17***	***100.00%***