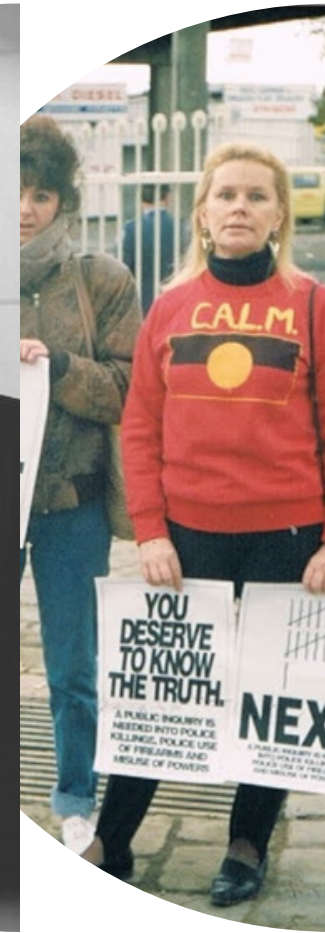


40 Years Challenging The System



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Introduction

FKCLC has been challenging the system since 'FlemKen' was established in 1981. Its archive and storytellers, some of whom were founders, together show how challenging challenging the system can be, how necessary it is to do this work, and how nourishing it can be.

This oral history project explores the long life, convincing work, and robust culture of FKCLC, where a commitment to social change drives the daily grind alongside the high-profile projects, and a strong, networked local community ensures a deep understanding of their clients' lives, needs and aspirations. In the homes, streets and businesses of Flemington and Kensington many people's lives have been changed for the better because of this culture and work.

Dozens of people have played significant roles in FKCLC's history but not all could be part of this project, not least because it coincided with the second year of the COVID19 pandemic lockdowns and social distancing. However, the work of FlemKen in the future rests on the shoulders of all these people, who include:

- staff and volunteers, the longest serving of whom are highlighted in the timeline and rollcall on the website
- the residents, businesses, families and youth of Flemington and Kensington over the last forty years
- and the wider legal community

We are very grateful for the stories and guidance provided by the project steering committee and the people who spoke to us. They include Anthony Kelly, Ash Thomas, Carmen Tommasi, Daniel Haile-Michael, Denise Gardner, Fay Spear, Jude McCulloch, Genevieve Nihill, Gregor Husper, Jenny Si, Joel Townsend, Karen Pyke, Melanie Poole, Neil Cole, Nimet Gurleyen, and Ruth Eyakem.

So you can read, watch, listen and appreciate the enormity of what has been achieved by FlemKen in the last forty years their stories are included in this booklet *40 Years Challenging The System* and in a short film by the same name on the Storytelling page of their website **www.flemkenlegal.org/storytelling-project**.

History At Work and Malcolm McKinnon

What *is* a community legal centre?

“What inspired the community legal centre (CLC) movement was a lack of justice and access to justice for people without means, without wealth, without legal support. This was a time of huge upheaval in the late sixties, early seventies – heady, radical days of great social change. We needed to develop community-controlled organisations to build power and capacity, that were sustainable over decades to put through broad systemic changes. A lot of what we do, the cases, the campaigns, the advocacy work, are certainly not popular with governments. And that’s something we should be proud of really.”

Anthony Kelly

The CLC movement is one of the most important, potentially life-changing and momentous movements we have seen in this country.

It sits with Black Lives Matter and #MeToo, except the people cared for are disparate, ‘faceless’, and harder to identify, so harder to put a hashtag to.

There are 57 CLCs in Victoria, split almost half-half between generalist and specialist centres with some, like FlemKen (as it is affectionately known) doing both. Generalist work deals with the myriad day-to-day difficulties preventing people from accessing their human rights. Specialist, or systemic, work deals with the prevalent, widespread, inherently harmful issues that stand in the way of any degree of social justice being achieved.

The **‘Sector Snapshot’ on the Federation of Community Legal Centres’ Victorian website** shows demand for assistance has surged in the past two COVID19 pandemic years, most notably for help with housing, debt collection, financial aid, family law support and family violence intervention orders. Of the 50,000 people across Victoria who requested assistance in 2021:

- Three out of four were women
- Three out of four were experiencing financial difficulty
- Seven out of ten were victim-survivors of family violence
- One out of four had one or more disability
- One out of five had a mental ill-health condition
- Many had numerous problems.

Stark figures.

There are myriad disadvantages to care about, and none of them are new. The list seems endless – poverty, unemployment, inadequate English, limited education, substandard housing, poor mental health, poor physical health, family abuse, family break-up, disability, disadvantaged family backgrounds, moving from a foreign country (often under fraught circumstances) or inherited disadvantage. Each CLC has a different story shaped by different circumstances, people, locations, and histories.



'At FlemKen the issues facing the community as individuals are all-pervasive and relentless, so the legal issues are significant and severe. The work here is relentless really, and one of the reasons why we're continually pushing for systemic change. There's no shortage of systemic injustices in our country and so we have to pick and choose our battles, and the battles are often chosen for us by the people who walk through our door'

Anthony Kelly

Case Study: Systemic legal work

The systemic work is driven by issues our clients are experiencing, and that changes from time to time.

This sort of work is longitudinal - we're not just picking up an area of activity that we think will finalise in a couple of years. Sometimes you add to it for years and years, getting small changes along the way. CLC's don't do this systemic work by themselves, including the police accountability work, it's almost always sector wide. We respond to systemic issues that affect a lot of people. An example might be the deportation of non-citizens charged with a criminal offence that increases their exposure to deportation. We might join a working group that responds to that because it's happening and affects people in our community.

We were getting [in the 2000s] so many African clients charged with criminal offending, and often that was 'resist arrest' and 'assault police' with the underlying offence. Sometimes there wasn't even an underlying offence. They were telling us stories of being pulled over, sometimes daily, and racially profiled. I don't know if we understood it as that at first. But they were being pulled over constantly, sworn at, searched, bashed and sometimes it wouldn't be until the fifth or tenth time that they would lose it. And then they got the charge of 'assault police' and 'resist arrest'.

Tamar Hopkins started defending those charges and originally it was criminal defense work. A lot of it. We were trying to chip away at the police violence and misconduct in our local police station, and by individual officers in particular. And then Tamar built up this idea of calling it out as systemic and 'racialised policing'. She got together eighteen of the young people who were being pulled over constantly and it became a really fantastic example of movement lawyering.¹

Storyteller – Gregor Husper

¹ You can read more about this in the Racial Discrimination Case Study on *Haile-Michael & Ors v. Konstantinidis & Ors* on page 15





Case Study: Generalist legal work

One woman – the banks were chasing her for \$80,000 that she'd borrowed and hadn't repaid. They were going to sue her and refer her to the police for fraud. She didn't speak any English and we had to do everything through an interpreter.

She'd met a woman at the casino who told her she could see this particular teller at this particular bank. So she'd done that and been assisted to falsify her application. She got an \$80,000 loan and then gambled it all. I think she'd already lost her house. On the face of it, there didn't look to be very much we could do. But in the sort of punchy way the legal service operated, we were having none of that.

It turns out she genuinely hoped to get a loan. The bank teller said "No, but you can falsify the loan". I turned the tables and said "Our client came to get a loan and your teller was acting fraudulently. We want to see the loan documents, or you won't be able to establish the debt."

They finally provided the documents, and our client didn't know anything that was alleged to have happened. None of the places she was alleged to have worked, or the business she was alleged to own. It became apparent she hadn't completed those parts. I portrayed this as she was an innocent person – because she was! If she'd got a non-corrupt teller, that teller would have told her "No, based on your income you're not eligible for a loan" and that would have been the end of it.

The bank teller's fraudulent work meant our client ended up getting the loan. And the bank wrote it off, so that was incredible!

Storyteller – Gregor Husper



What's the point...

...for the community?

The system's overwhelmingly against people because they've got no money. Poverty is the problem. People had and have no money!

The Centre began as a volunteer service operating at night. We then started to do legal work on a fee-for-service basis – Legal Aid Commission would give you money to represent people. We made it up as we went along. We didn't have any money or resources, but we had a hell of a lot of work.

For systemic change, well, it's very hard to achieve. The reality is we did shift and change and when there was a crisis, like the police shootings, we were very good. We came to the fore. But in real terms it's very, very hard to change the system. The role of the legal service became an agent for change a lot of times, and we were very good at it, but you're not gonna change much. That's the truth.

So I think the whole idea of community legal centres has to be that you're involved in your community in the legal sphere. And also it's about trying to challenge the system.

Community legal centres serve two really important functions. One is there's a huge amount of unmet legal need in the community, often experienced acutely by impacted communities and marginalised people, who are less able to fulfill their potential and participate in society. So legal centres play a fundamental role in saying "OK, we'll take care of this".

The other really important part of that work is recognising the systemic issues, and we do advocacy and policy and law reform work to change the systems that result in the sort of harms our individual clients are experiencing.



Elizabeth Horton, Fay Spear, Lyn Militano and families



...for the staff, volunteers and board?

In the early days it was a smaller sector, and people who were attracted to community legal centres were definitely those who had a very strong social justice bent and commitment.

Volunteering became that feeling of “making a contribution”, even if small, to a community project that had the goal of fairness and justice. Because of this, volunteers from all sorts of backgrounds have contributed to every aspect of the Centre’s work. They’ve been admin people, members from the community, law students, junior and senior lawyers, magistrates, judges, etc.

The Centre was very much part of a bigger community, a bigger project; a Flemington Kensington community of services and agencies and people who were working together to support the people of Flemington and Kensington in really practical ways.

Community law is often in opposition to some of the conservative structures within society, and so practicing community law, and certainly to do so within legal centres, satisfies that interest or concern. It was really about fighting those injustices. And sometimes it wasn’t even so much a burning desire for justice, but more an opposition to conservative values.

Working in private practice was very different. It was a bit transactional – you are largely working for companies or businesses, not for people. In a service like this we get to engage with the community, working towards outcomes to improve their lives. It was also really enlightening to see the sort of people and real problems there are in the community. They might seem a little less important when you compare them to the big corporate issues, but these are things that actually change people’s lives, if you can solve them.

*Storytellers – Neil Cole, Gregor Husper, Genevieve Nihill,
Jenny Si, Nimet Gurleyen*

Case Study: Misunderstanding

Often their problem was they had a legal solution, they didn’t recognise it necessarily in that sense, and they didn’t understand why they were in that position. So it was very satisfying, for us and for the clients as well, to be able to say “these are the facts of your situation and they can be seen through a legal lens, resolved in a legal way, and this is the work we’re going to do for you to address it.” They would be so relieved to have their matter comprehended and fed back to them with a resolution in sight.

Case Study: Tenancy disputes

With such a high number of clients who live in the flats, a lot of generalist work was tenancy disputes with the Office of Housing.

One client was a father whose tenancy was threatened. He also had a young child who had respiratory issues. Once we’d worked with that client for quite a short period of time we recognised that the health issues were to do with the mould growing in the house they lived in, a rental property. It wasn’t being very well maintained and mould was causing respiratory problems, which not only threatened the tenancy itself but threatened the family’s health.

It took a while to work out those intersections and relationships between health and tenancy and legal issues that any local family might face. But it also demonstrated how important it was to work collaboratively with local agencies, to share information, and to delve into the issues beyond what was just the legal issue.

Storytellers – Gregor Husper, Anthony Kelly



Listening to community voices...

... in the early days

Early on the Legal Centre was based in the Community Health Centre. The Foundation for the Survivors of Torture [since renamed Foundation House] was also based in our office. We were connected with the childcare services, tenants' associations, financial counselling services, and the social security office. All the services were linked, and strongly knitted into the community. There wasn't a sense of "these are the people who live in Flemington or Kensington, and these are the service providers who work for them". Flemington Kensington Legal Centre had always had, and still has, a reputation of being very deeply embedded in the community and being a very courageous small legal service.

That was a really good part of it. There were youth workers, ethnic affairs workers, social workers, and we all worked together basically. When it was a legal problem that's when I took over, when it was a social work problem the social workers did it.

This strong network of local community agencies worked together on systemic solutions, as well as individual casework and support. One example was the development of several successful community enterprises that created employment and training opportunities for local residents. They included a gardening service on the Kensington estate, a catering service and the Urban Camp. Two of the enterprises that FKCLC was closely involved with were the North West Conveyancing Service and the Flemington High Rise Security Service, which employed local residents to provide a safe and responsive, multi-lingual and weapon-free security service on the Flemington estate.

Being a small geographic catchment we were largely able to service our clients on any issue. It felt like my place, walking around the streets, going to get my lunch, seeing clients I know on the street. However, despite the small area there was just such a large number of people in public housing. But not only that, the people who weren't in public housing - we're close to the showgrounds and so we had carnival people, people who had worked in the Flemington abattoirs [closed 1977], in the Newmarket Saleyards [closed 1987], in the race course. It was very much a working class suburb. It looked and felt like that.

Back then [in the 1980s and 1990s] it was definitely a bit more hard core. We did a lot more criminal law, and there were more young people in our area from Australia or from overseas involved in crime. It's probably true to say that it was a lot rougher around here and the clients were experiencing different levels of poverty and roughness and disadvantage.

... during trauma

When the [1987-89] police shootings escalated so dramatically and violently, I don't think anybody was prepared for the scale of the trauma. A few things happened. One was a public meeting of people from the area. I was absolutely knocked off my socks. 700 people turned up at the town hall. The police shootings were a series of events with a profound impact on the community and that was one of the ways in which that impact was reflected - hundreds of people came to that meeting.

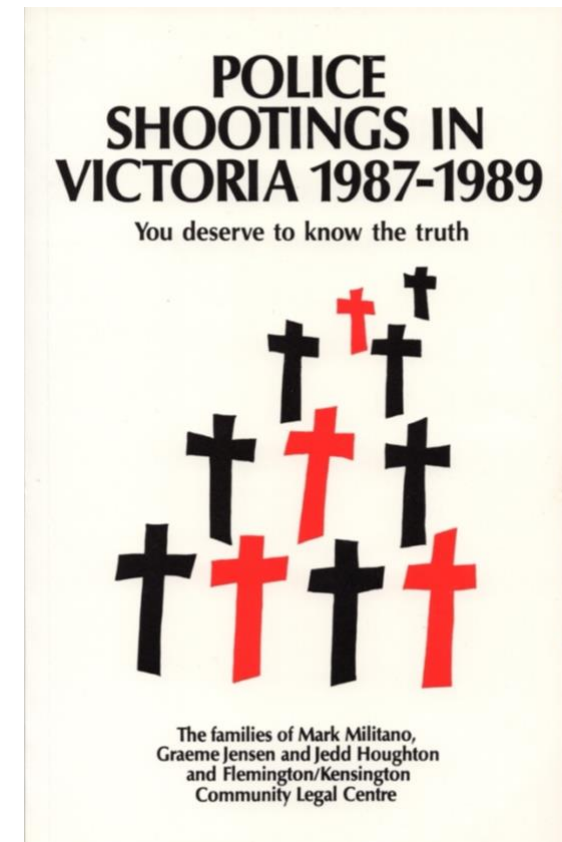
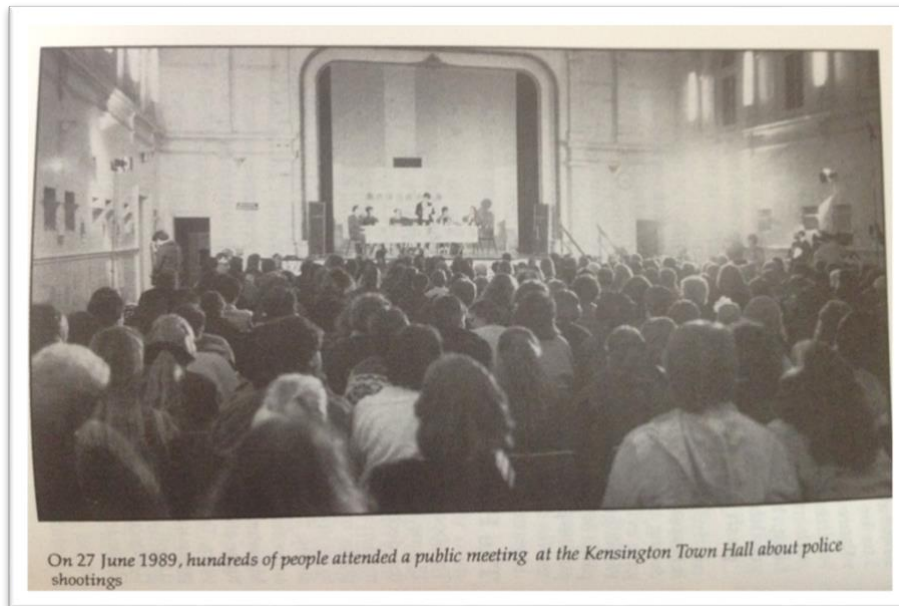
There were lots of calls for action that came out of it, but one was this kind of Friday gathering of people who been directly affected; sisters, mothers of people who had been killed or who lived in houses that were raided during that period. There were a lot of



people who were very, very immediately affected by what had happened. People were frightened, and outraged. Those Friday meetings were like a fixed point in the week where we planned what we would do next week, our long-term strategies, how to get through the week, but also just talked.

We sort of felt... no one said anything, but we felt it was safer with just women. And so we had men in the background supporting us, but our group was mostly females. Without the legal centre we wouldn't have been able to do anything. It was just total, total support. It still carries on 33 years later.

But while the community was unprepared for the trauma, it *was* prepared in a way, because all those networks were already there, built over time, personal and professional. There was a real strength in that, and the local centre was part of that.



This book was one of the things that came out of the 'Friday Meetings' and, with the legal centre, was written by the families of the four Flemington Kensington men shot dead by police in the late 1980s

... on the estates

When I joined the legal centre [in the early 1980s] I was just volunteering because I could see the young kids getting into trouble just for being together in a group, which wasn't a gang, it was just a huge group of friends, sometimes 30, 40 young teenagers. But the police hate the estate, and they treat everyone on the estate badly, so the kids had their plan. If they saw the police they would run, they all had their hiding spots. The kids loved living there, but it's very hard for parents. I was mostly rounding up the kids, keeping them interested. And if there was any trouble on the estate, they'd come running to me. So, I'd be up at the police station a number of times.

Growing up in the housing estate, you're in your own apartments essentially, and people with young families have no backyard. Pretty much all the public space that you've got around you becomes the only space that you have to enjoy, where you go to socialise, host community functions, family events. Without those spaces there'd be a deep sense of isolation. So, we spent most of our time in the public open spaces – on the basketball courts, in the parks. It was a welcoming environment and the only space we had any level of control over. So as young men we ended up dominating or spending a lot of time in these public spaces and some people felt threatened by our presence, and as a result there was quite a heavy-handed police presence in the space. Then it becomes a tussle about who's allowed, who makes the rules about what's acceptable behaviour and what you're allowed to do there or not allowed to do. It raises a lot of issues over use of space.

The fact that all these people are typically part of a community, often its backbone or heart, doesn't make the work of challenging the system any easier. Like all work in legal centres, the stuff you do in policy and advocacy should reflect your clients' lived experiences.

***Storytellers – Fay Spear, Genevieve Nihill, Gregor Husper,
Jude McCulloch, Daniel Haile-Michael***



Case Study: ... to achieve social justice

Horvath v Australia (UN Human Rights Committee 2009)

A remarkable test case that FKCLC ran is the Corinna Horvath matter. That is an *incredible* story. It started in the Magistrates Court, went to the County Court, then the Supreme Court, the High Court, and eventually the United Nations!

In March 1996 21-year-old Corinna and her partner were pulled over by the police who wanted to do a roadworthy on her car, which meant she couldn't drive it. Those police officers came back that evening to Corinna's house to see if in fact they had driven the car home and they entered the property. Corinna and her boyfriend ejected them from the property, with the result that one of those police officers' shirt was torn and the other one had his tie ripped. The police were having none of that and so within a few hours they returned with four police cars and eight police. They did a raid on the house saying they did not need a warrant and kicked open the door. Corinna and her boyfriend were severely bashed, and she was charged with "assault police" and "resist arrest". She had a broken nose, was rendered "senseless", and later that week had to spend five days in hospital.

Corinna defended the charges and sued the police for assault and also for malicious prosecution because she had defended all those trumped-up charges against her. There was no warrant and so the courts recognised this was just extra judicial violence handed out by the police. The County Court judge "found police had committed trespass, assault, unlawful arrest and false imprisonment and awarded Ms Horvath \$145,525 in compensation. This amount was reduced on appeal and Ms Horvath was denied leave to appeal to the High Court."²

So that's when the matter came to the Legal Centre.

² www.remedy.org.au/cases/27/, accessed 19 January 2022

Back then Victoria Police wasn't liable for the actions of police officers. Only the individual police were, so you had to sue them, and they had no money and wouldn't pay.

The Legal Centre made a referral to the United Nations Human Rights Committee arguing this would breach Australia's obligations under the International Covenant for Civil and Political Rights, which says they have to provide a remedy for harms caused by the State. They were in the UN for five years and in 2014 the UN Human Rights Committee found:

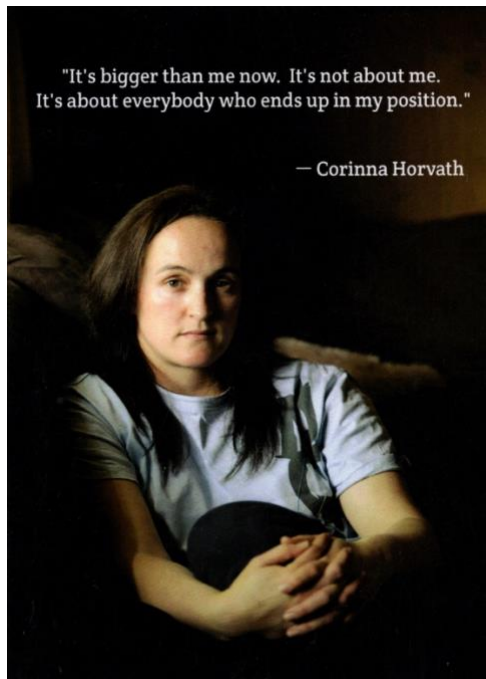
*"[Australia] is under an obligation to provide the author [Corinna Horvath] with an effective remedy, including adequate compensation. [Australia] is also under an obligation to take steps to prevent similar violations occurring in future. In this connection, [Australia] should review its legislation to ensure its conformity with the requirements of the Covenant"*³

The Australian government had to respond because their treaty obligations are to respond to the case that was against them. So now it's the Police, the State, and not individual officers who are liable for police torts, and Corinna got compensated at the end of this huge and lengthy process.

³ *ibid*



Today, the United Nations Office on Drugs and Crime (UNODC) lists 'The Corinna Horvath Case (Australia)' on its Core Reading list for the University Model Series: Crime Prevention and Criminal Justice, explaining that "The Corinna Horvath Case (Australia) is one in which an international legal mechanism (the individual complaints mechanism of the HRC) offered redress (in the absence of an effective remedy at the domestic level)"⁴.



⁴ unodc.org/e4j/en/crime-prevention-criminal-justice/module-1/core-reading.html

Case Study: ... to remedy disadvantage

We provide legal education to the community. Every year I provide about five or so sessions – I've had a couple with the Vietnamese community this year and they are really enthusiastic to learn about family law and family violence. I went in with a script of everything to talk about but there were just so many questions that for an hour and a half I just answered questions.

We had another event for the broader community called 'Bring Your Bills Day' with about 25 different government services and financial institutions, gas and electricity companies, etc. It was a way to address as many barriers as we could. Things like not knowing who to call or talk to, or using phone support and their accents or perhaps their language made it difficult for them to communicate. They would often be confronted with people yelling down the line asking them "what do you want? I can't understand you". People were very happy with this – some came to see one service, others had a whole range of legal problems that they could address at the same time. We had people who had their water bill entirely written off, after having stressed over it for many months.

Storytellers – Gregor Husper, Nimet Gurleyen



Challenging corrupt & oppressive policing

The shootings

It's fair to say that [in the 1980s] the Flemington police were one of the worst police, in the most violent place, in the most corrupt police state. So we were doing police accountability work because our clients were subject to corrupt and oppressive police misconduct and violence, including fatal violence.

Back then it wasn't a racial issue. That came 15 years later with the African residents. So, it was more about the police being threatened by groups. And because kids met outside in public spaces, even though it was their 'private garden', the police felt threatened.

I had been working on issues to do with police accountability and impunity, and was very disturbed by police violence and brutality. As it turns out, there were particular issues in Flemington, Kensington, but that use of deadly force became a trend that took off in Victoria beyond Flemington, Kensington. The four families [who had a family member shot dead by the police] that we worked with in Flemington, Kensington - it didn't seem to be something that was happening elsewhere at the time. But after the killing of two police officers at Walsh Street in 1988 revenge overcame reason. The story behind it was about structures in the police, attitudes, and training in the use of firearms, which was militaristic and not appropriate for a civic police force.

I was aware of the community work Fay was doing with young people. Many young people living on the estate were affected by aggressive interactions from the police and it had become core work for us - representing young people when they'd been charged with

things they hadn't done, or with resisting arrest, or were being over-policed. And many of the people on our committee of management at the time were parents of these young people. So when the situation escalated so rapidly to fatal shootings it had come to a point where there was no accepting it any longer.

Jude came into that Centre bringing expertise, remarkable courage, an ability to put what was happening locally into a bigger context and make sure the police knew, the state knew, the country knew, and the world knew. What had been a local story was threaded into a much bigger story and gave it a momentum. Something that we, at a local and a grassroots level, couldn't have pushed ourselves. Although, the local network based at the Health Centre and connected with a lot of other services meant that the whole community was able to move at once and respond very quickly.

I think the work the Centre's done since the campaign around fatal shootings has been so innovative, committed, smart, leading, such an inspiration, not only in Victoria but around Australia. It actually did work to pull back the rate of shootings, fatal shootings, in Victoria. Police were re-trained so I think it did save lives.



... If it is believed that the police are abusing power then the police will become not only feared but hated. There can be no community policing in a climate where people believe that police are getting away with murder, only war... There were many allegations of police violence and misconduct ... The shootings, however, led to a new level of fear and distrust between the police and the community - the repercussions of which are still being felt.⁵



The racism

But beyond that, issues with police, especially use of excessive force whether firearms, non-lethal weapons or just straight out brutality, continue and the issue of impunity remains. It's a massive process in a democratic country to maintain democratic policing that is accountable and it's probably never going to finish. But it's so fundamentally

⁵ Jude McCulloch, conclusion from 'Police Shootings and Community Relations' in *The Police and the Community in the 1990s*, 2000. For the full chapter head to https://www.academia.edu/20978633/Police_Shootings_and_Community_Relations

important because the police reinforce and reflect those divisions in society, and the more unequal society is the more unaccountable the police are. But the police also work to create those divisions in society. They create them by over policing certain communities, they create the idea that these are criminalised communities.

So, if you're a young black man in Flemington and you are constantly being told to move on, or you're constantly being stopped and suspected of something, it's not until you connect with other young people from other neighbourhoods that you find out this is not normal police behaviour. Nobody in Glenroy or other parts of Melbourne get that level of police attention in their own backyard. So it took a while to understand that this behaviour wasn't normal, it was targeted.

Storytellers – Gregor Husper, Genevieve Nihill, Jude McCulloch, Daniel Haile-Michael



The shootings and the racism at the hands of the Flemington police created a body of work - case work, campaign work, advocacy work, academic work - at FKCLC that shaped people's lives irrevocably.

This work against corrupt and oppressive policing - in its individual components and in its entirety - has been described as longitudinal, overwhelming, consuming, essential, life-changing, traumatic, monumental, and in a class of its own. Tamar Hopkins was FKCLC's Principal Solicitor from 2005 to 2016 and is credited as the person 'who really drove this work, saw the issue, and responded to it in an incredible way'.

You can read more about FKCLC's work with the Police Shootings Campaign, 'Listen to Me' education kit, Racialised Policing, Policing of Protests, Police Accountability Project, 2013 Race Discrimination Case, Victoria Police Inquiry into Racial Profiling 2013, and the 'Equality is not the same' Report, in the link below and the links within it. You can purchase a copy of 'Police Shootings' from the FKCLC [see book on page 9].

<https://www.policeaccountability.org.au/about/history/>

Case Study: Oppressive policing

Haile-Michael & Ors v. Konstantinidis & Ors

It was a hot summer night during the Ramadan season, so people would fast all day and we'd stay up until late evening. We were walking one night and saw the police around the high school, so we said we'd better get back to the oval. But the divvy van swerved in front of us, pulled up and aggressively questioned us. One officer began questioning me. He got more and more aggressive, and the next memory I have is being on the pavement and him on top of me, then grabbing me by the scruff of my neck and throwing me into the divvy van. I remember losing it in there, screaming, I was petrified because it was only me alone as a 15-year-old. They said I had to tell them everybody who's involved, or I was going to have my head smashed against the curb, or something like that. Then they left me at Moonee Ponds Police Station for questioning. A different set of officers were there, and the rest of the night I guess is history.

I found out later it was muck-up day at the school and people were throwing rocks. The police assumed everybody who was African was part of that or knew what was happening. So that was the cause of the hysteria.

I was questioned overnight without my parent or guardian, then walked home in the wee light. The next day everybody had heard what had happened, the local youth worker asked me about it. I couldn't find the courage to tell her everything, but she knew. I think my story wasn't new. I was maybe the fourth or fifth African person who had, you know, such an incidence.

It was getting to the point where, as a community, people were talking about what we need to do to challenge this police behaviour [against the African community] that's sanctioned by the state - apparently crime has a race.

Youth workers became involved, the council, the legal centre. It was a dynamic, interesting time and I guess people were fearful about retribution. We were a migrant community whose parents had experienced very horrific stories of conflict and trauma. Challenging



power or challenging the state was very, very scary. We didn't have support from our parents or our elders. We didn't have the resources to engage lawyers, we only had one option in terms of challenging the system and that was the legal centre.

Nobody could forecast what was going to happen. It was really intimidating and being so vulnerable and young brought a number of challenges. But we decided to do everything we can, within our power, to challenge the status quo and probably even bring about a "war" with the police. We were conscious we wouldn't be able to change potentially in our generation, but if we push this thing as far as we can at least our kids won't have to experience the same sort of behaviour.

The relationships, the local community groups, the council, the legal centre, were all critical. Without those it would have been impossible to achieve what was achieved. It speaks volumes of the character of the people involved. It wasn't just a job, this was a 24-hour thing. We had lawyers knocking on our doors at 7 or 7.30 am to talk and drink coffee!

Over time the stakes got higher. Initially we assumed we'd just put in a complaint. The next milestone was when we were potentially up for legal fees. A number of people pulled out. The next milestone was when Victoria Police engaged youth workers to gather intelligence and have some influence over our lives. That was really disheartening. But some things brought us hope – seeing barristers of an extremely high calibre sign up on a pro bono basis to defend our case gave us tremendous hope. At each checkpoint there was something really challenging, but there was always a way forward.

I stuck with the case all these years because of a sense of responsibility and obligation to my community, but also to those involved in the case who were putting their reputation, energy, and time into us. There was also the grievance and the yearning for some sort of resolution. And the third thing was being able to impact your life and the fabric of society – that really appealed to us because we were the first generation of African Australians and that would really set the undertones of how future generations would be treated.

I think this is something that's going to be with me for the rest of my life. It's also created some trauma in my relationship with people in positions of power and authority. It's also something that I'm quite proud of.

Storyteller – Daniel Haile-Michael

Haile-Michael & Ors v. Konstantinidis & Ors was settled on Monday 18th February 2013 with a landmark agreement for Victoria police to publicly review its training and field contact practices [filed contact refers to the practice of stopping people in public and recording their personal information] You can read more about the Race Discrimination case here - <https://www.policeaccountability.org.au/issues-and-cases/racial-profiling/race-discrimination-case-documents/>





The Racial Discrimination Case plaintiffs and legal team at the Federal Court after their win.

Case study (of sorts): 'A Policewoman's Absurdity'

Neil Cole, the founder of FKCLC, is also a playwright. In 1998 he wrote a satirical play, *A Policewoman's Absurdity*, which premiered at La Mama Theatre in Carlton. It was a response to the police shootings of the late 1980s, and one, personal, way of easing the burden of ongoing "absurdities" such as deeply entrenched systemic issues and pervasive generalist issues.

In his play, the police, referred to as the Force, accidentally shoot a photocopier salesman and Sergeant Sarah from the Public Relations Department has come in to cover up the mess. The police shoot more and more photocopier salesmen until they can no longer cover it up.

Here are some extracts:

Scene Six, in which the policeman has been disciplined by being sent to a new squad.

- Sarah:** The Car Door Slammers Squad!?!?
- Inspector:** That's right. It's a squad that slams doors outside the villains' houses.
- Sarah:** The villains would hear them coming.
- Inspector:** They would, that's why we do it. We have nothing on the villains anyway. The police car pulls up outside the villain's house, they slam their doors and the villains run away because they think we've got something on them when we haven't.
- Sarah:** It's very secret.
- Inspector:** Has to be, or the impact would be lost.

Discussion continues.



Inspector: We want bad drivers for the Car Door Slammers Squad... Sometimes we want to enter premises without a warrant, no better way of doing that than accidentally driving straight into someone's house. Our worst drivers are transferred there for that reason.

Scene continues with an insurance salesman entering the room.

Salesman: The risk we take is that a police officer may murder someone and not be charged...

Sarah: But it's very rare they kill someone

Salesman: That's what insurance is for, just in case you do... It can be traumatic if a police officer kills someone, then to be left with that sinking feeling of having let their insurance policy lapse...

Scene continues with the Inspector speaking to the media.

Inspector: Thank you ladies and gentlemen for attending the press conference today. The acting Chief Commissioner has asked me to handle all matters to do with today's shooting by the police in my capacity as Head of Public Relations of the Police Force. I want to say I will be confining my comments to matters surrounding the shooting but not about the shooting because we do not want to pre-empt any inquiries that might be made into the shooting. Because of the seriousness of this matter the Acting Chief Commissioner has given me Acting Chief Inspector status for the duration of this inquiry.

Reporter: While you are in your acting position will you be acting as if nothing unusual has happened?

Inspector: Only questions on the police shooting please.

Reporter: Are you aware that the Special Operations Group, who shot the photocopier salesman this morning, had insurance policies covering them for accidentally shooting a member of the public?

Inspector: I was aware of that.

Reporter: What does the Force propose to do about this shooting?

Inspector: We will be continuing our enquiries based on the overwhelming evidence that it was in fact an accident.

Reporter: What about the insurance policies?

Inspector: They will probably make a claim on their insurance policies to compensate for the stress and strain of shooting someone, however the policies are inoperative at the moment because the person is still alive.

Reporter: Can you confirm that all members of the Special Operations Group slammed their doors loudly?

Inspector: Yes I can confirm that.

Reporter: Why did the police slam their doors so loudly?

Inspector: They were in a hurry.



Supporting family migration

Being a migrant

English wasn't my first language when I arrived as a five-year-old. I remember not having any friends and the teacher as my only point of connection. Then after a while you start to fit in.

We were some of the most politically engaged young people I could imagine. Discussions about world politics was an every-night thing. There's a bench next to the basketball courts under a tree that sort of became our parliament. We had a lot to say about the world because it heavily impacted our lives, being first-generation refugees. All the stories of what was happening back home, all the different conflicts that are occurring in the world, were in our parents' minds. So that "parliament house" was a bit of a place for us to detox and debate different issues that were occurring because we couldn't escape them. They were at home.

That is why we sometimes didn't have support from our parents or elders [when we were harassed and abused by the police]. They were so grateful to be in a country that was peaceful they felt all those other rights were secondary. They live in a different world because of some of the trauma that they've experienced - being shot at, or not allowed to speak your own language or express your own culture. There's a different degree of oppression, and yes, we are very lucky and we are very privileged, but that doesn't change the fact that we're not being treated equally [by the police].



Working with migrants...

The non-English speaking background was a defining element of the legal centre. Our clientele always reflected the people who are newly-arrived in Australia and had legal problems, which you would expect navigating a new system.

... who are offshore refugees

My work is exclusively with offshore refugees – the groups that come in depending on the different priority given by the Immigration Department. People are referred to us from Foundation House from what's called the Refugee Migrant Program. Most of them have a partner, children or parents who need to be reunited. My job is to do the paper work.

This is a free service because the families need it. People who have been tortured whose family are still in that situation need to be able to say to themselves "I've done something to try and help this problem". When I started, the principal migration groups would have been Vietnamese, Latin Americans fleeing Chile, Nicaragua. Then the Chinese after Tiananmen Square, Africans, Burmese, Tibetans. I've worked with Foundation House long enough to receive the support they give their people. It's necessary – when you talk to so many refugees from so many places of conflict you learn too much about torture and pain – I have a trap door at the back of my brain and I slam it shut and go home to the farm.

Tibetans are a particular problem because a lot still have immediate family in Tibet who can't get out because of the policies of the Chinese government. It's quite different for people who've come out of Somalia, a lot are born in Kenya, Ethiopia, Egypt and have no experience of their homeland – their experience is of a refugee camp, so their expectations are different.

We have many clients that we first saw as a migration client, then they'll come back with a car accident, or want a will, or some legal issue and they'll come back over 10, 15 years. Almost all new refugee migrants have the same legal problems when they get here. It's about housing, the odd fine, kids mucking up, and so on. But what they think about is who they left behind.

... who have limited English

The Somali Women's Project arose because there were many barriers identified in the community. There's a lot of children, on average, in a Somali family so they've got all these extra barriers on top of their legal problem because they've got to look after these children. Somali women don't necessarily have the same levels of fluency as other cultures, a sizeable proportion of them can't read in any language at all, which means all you have left is verbal information.

That means you have to talk to the leader, and they need to pass that information along. That can distort on the way and become something else entirely. One example is when we advertised an event to know your rights in the legal space, including infringements and bills etc. That got conflated on its way through the community and people were coming thinking we were paying their bills for them. Then they're less likely to engage when they think something will be provided, and it's just not. So we need to be very carefully attuned to them and to their understandings.

... as a migrant

I've been living in the flats for a long, long time. We've been doing a lot of jobs in COVID lockdown. We cook for needy people and give food packages. I'm working part-time in Co-health to our Flemington Kensington North Melbourne community. A lot of people don't speak English or don't hear news. Elders, non English-speaking people, new arrivals don't have knowledge, even if they speak English. So we give them feedback to the community in our language, encouraging to have tests and a vaccine. As a community member we take the injection first.



What happened in the first lockdown when police came to the flats - we was prisoners! No one can get in. No one can go out. It was difficult time. A lot of phone calls, organisation, a lot of lawyers coming outside fighting for us. So we connect with all the people, the Sudanese community, Eritrean community, Ethiopian community. All the lawyers is standing outside fighting for us. But it was strictly armed force. So no one can break it. So it was disgusting. But it passed. Now we move on. But sometimes that time is like we are coming from a lot of traumatised war zones so that things flash on you, everyone is shocked so we have to support each other. I do this traditional coffee ceremony to make my daughter relax, myself relax, give to other people support

*Storytellers – Daniel Haile-Michael, Denise Gardner,
Nimet Gurleyen, Ruth Eyakem*

Case Study: Barbarism

I took a phone call this morning from a woman I've known for about five years and who wants to bring her partner out. She's entitled to do so - she has the type of refugee visa that allows her to do that. But COVID - we can't get that man out, there're just no spots. She has a sister with a child she's trying to bring out but has the same problem.

A lot of it isn't necessarily political, it's just that everything is slow. Families are incredibly anxious. People are threatened, people are killed. It's horrible. When you have to write to the department and say, "I'm sorry, we need to withdraw this person from the application. They've been shot", this is not government policy, it's just barbarism.

Having the long-range history in my head can sometimes help clients - I say "let's get your citizenship, get your passport, then we'll talk about regime change." And that's something good for people to hear when there's nothing else to give them hope.

Case Study: Cultural learnings

A while ago a woman came in on her own. She wanted her husband here but we beavered away for a while. He eventually turned up and at the end of the interview I put my hand out to shake his hand but he wouldn't take it, then they left. No biggie. A Muslim gentleman. I understand, that was fine.

When they were outside I heard her absolutely yelling at him - "How dare you treat her like that. Get back you..." It was odd that the language didn't need to be translated!

Anyway, he came in very sheepish and offered me his hand.

Storyteller – Denise Gardner



Backing FlemKen's Families

So you're living in a world where people are in need of legal services but denied them because of the finances. We were able to overcome that. It was terribly sad though. There is an old saying "only the best for the working class". So when we had family law matters we sent them to the best family law we could get, which was paid for by Legal Aid.

So many discriminatory issues

The issues facing the community, as individuals, as families, are really all-pervasive and relentless. The legal issues they're facing can mean impoverishment, homelessness, losing access to children, being relocated, and being deported even. Communities who are marginalised face extraordinary levels of legal injustice and at great odds. And often legal issues are only one of a plethora of issues faced by families and individuals.

In the early decades we helped establish childcare services, resident-run security systems for the local public housing. We support families or their children to navigate a whole range of legal issues for young people and then on an ongoing basis for a long period of time.

It doesn't necessarily mean that there's anything inadequate about that family at all. It's just the relentless nature of so many discriminatory issues and the structural stuff that slows the time it takes for any family to navigate the array of legal issues they face over a lifetime. It's another good example of why community legal centres are such long-term projects.

The infringement system, for instance, is a huge poverty trap. It pushes people into poverty and maintains them in poverty. It also intersects with family violence and family breakdown. So many of our clients have inherited debt through their ex-partner or abusive partner racking up infringements or fines. It's not means-tested – no matter if you're incredibly wealthy or if you are homeless - you cop exactly the same fine.

We tend not to focus on people's deficits. We often see them originating in childhood and becoming intergenerational. Also drug and alcohol abuse, family violence, all of those are really horrific, difficult issues to navigate but it's easy to focus on the deficit of how bad and difficult it is, rather than people's ability to navigate lives that are fulfilling, to look after children, to raise families, and to build community around them. That's what I get inspired about. So we look at where the system and the structures are problematic, rather than focus on where individuals are deficient. The same with communities. We tend not to look at communities as if they're disadvantaged or vulnerable because the media and the institutions do that very effectively.



Extremes of humanity

There were different groups [in the flats in the 1980s]. There was a very young group of 13 and 14-year-olds who were already alcoholics, had come from alcoholic families. So that was sad. About four ended up heroin addicts, but they were the only ones. All the others got on with their lives, got married, had children. And they're all doing really, really well. So I'm happy about them.

The flats [in more recent times] are a very diverse community. People have stories that bring them together and also tear them apart. Heartbreaking stories of migration and conflict, and powerful stories of resilience and resistance. It's a bit of a melting pot so it was an interesting place to grow up. It was full of challenges but it gave you a lot of opportunities to see the extremes of humanity.

*Storytellers – Neil Cole, Anthony Kelly, Fay Spear,
Daniel Haile-Michael*

Case Study: Tara Smith⁶

This was a significant test case we ran in the Supreme Court. Our client had been the victim of family violence for very many years and reported those incidents to the police over many years. The police had repeatedly failed to protect her and she continued to experience and suffer family violence. So the Centre's lawyers thought "Could we sue the police for failing to protect our client?".

At the time the law was absolutely settled and the police did not owe a duty of care to someone who had experienced harm from somebody else. The classic example would be if I got burgled, I couldn't sue the police for not being around to protect my house. But the Centre filed the matter in the Supreme Court alleging breach of duty of care and the State responded by going for a strike out application, where they say the case is hopeless, there is no recognised course of action, and it should be struck out.

So, our case became a strike out action, not a breach of duty of care case, and it ran for about four years. Our client was incredible and drove this case from start to end. We won and the court said it was willing to consider the police might own a novel duty of care to a victim of crime for failing to protect that person from crime and violence caused by another person. The duty of care matter was settled after the strikeout.

Since that case and other work by the Centre to identify police duty failures towards family violence, the largest work the Centre does now is policing family violence work. So that case has had a number of impacts: it's opened the door to a new police tort and it's helped us secure philanthropic funding for the largest part of the work we do, which is protecting women and children from perpetrators of family violence or whom the police failed to protect when they're experiencing family violence. In some ways the most impactful work we're currently doing is in the family violence space.

Storyteller – Gregor Husper

⁶ Not her real name.





Summary of Judgment

Smith v Victoria* [2018] VSC 475

27 August 2018

Justice John Dixon in the Victorian Supreme Court has cleared the way for a woman and her children, who were all violently assaulted and threatened by the children's father, to sue the State of Victoria for negligence and breaches of alleged duties of care for failing to enforce repeated breaches of intervention orders.

The woman and her children, who cannot be named, allege that police officers in two regional Victorian towns repeatedly failed over a nine-year period to take action against the father when he assaulted them and that police failed to protect them. They also assert that the failure by police amounted to a breach of their human rights and a breach of the public authorities' obligations under the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

Excerpt from the Summary of Justice John Dixon's judgement delivered on 27 August 2018.

For more on the Tara Smith case:

<https://theconversation.com/court-opens-door-to-domestic-violence-victim-to-sue-police-for-negligence-102336>

<https://www.policeaccountability.org.au/family-violence/court-opens-door-to-domestic-violence-victim-to-sue-police-for-negligence/>



What does community law look like?

What do clients think?

When I got married all these women I'd worked with from the flats came to have a cup of coffee with me. One of them, who was a ripper of a woman, tough as they come, said "we thought you'd be like a priest and you'd never get married". And I think that's what they believed, that we were sort of evangelists, serving people, whether it was with Helen telling the police to get lost [see "We're not going to cop this!" below] or whatever it might have been. I think that's the way it looked to them, so the Legal Centre was seen as being a saviour for those people.

The Centre helped me a lot and Sue Brown [FKCLC generalist lawyer] is an angel in my life. When help is happening - 2, 3, 4, 5 sessions - it helps to open your eyes with advice. Our knowledge is limited and we have to use the facility of the legal centre because everyone goes through a lot of things and we don't know where to go because we're not born here.

Storytellers – Neil Cole, Ruth Eyakem



What do we think?

Let's not deceive ourselves we're somehow changing anything substantially. I have lots of stories of where we did things to change the system and we were successful, but it's still a pretty small change.

It feels like it's never ending. It's one of the reasons we're continually pushing for systemic change. It's often very evident that we can't deal with an issue one person at a time with people who walk through the door one at a time. That would take forever. So we look at ways to shift the law, change the problem at its source.

One of the things about this work, in order to do it effectively and in a sustained way, is that it's necessary to stay alert and practical, organised and strategic, ensure the skills you need are front of mind and you're getting the support you need. At the same time the passion and emotional connection to the work needs to be as strong because it's hard work.

There's been some extraordinarily committed people who've come through the centre. Gregor is one, Tamar's another but there are many who very strongly have a sense of mission. It's critical to have lots of new oxygen and new ideas and fresh perspectives, and it's sustaining to have the strong spine of commitment and memory.

There are people here that were volunteers but are now workers. People who were workers and have joined the community. People who have moved on but drop money in the collection plate. Kids will come in tomorrow to start their first day of placement and they're the continuation.

Storytellers – Neil Cole, Anthony Kelly, Genevieve Nihill, Denise Gardner



Case Study: 'We're not going to cop this!'

I remember a case where Helen, I won't give her last name, was in the car park down at the flats. Two police came over and started questioning her and she told them to "f... off" They charged her and she was fined. So I said, "Well, I think we should appeal". Now, that is the most stupid thing you could do but we appealed against the swearing [charge] and she got off and it was one little victory.

The argument of course was on what basis can police go to a public place and start questioning? If it was a private place, would they walk in and start questioning? And of course they wouldn't. That's basically what you're up against. So you do stupid things like appeal – I have to go with my wig on just to say to the system and the police *"we're not going to cop this!"*.

Storyteller – Neil Cole



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