

Access to Justice and Pro Bono Conference

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SHOWCASE 3: Valuing justice: how much justice can we afford?

Thursday 18 June 2015 | 1.50pm – 3.05pm

The subject of Showcase 3 is “Valuing justice: how much can we afford?”. Perhaps there should have been a different title “Valuing justice: how much injustice can we put up with”.

I will make some comments about the sector I work in and greatly value - the legal assistance sector - and unless I say otherwise I will refer generally to “legal aid” to include all of the service delivery partners of the legal assistance sector, including our private practice lawyers.

To quote one of our speakers today, the Chief Justice of NSW, from an earlier speech:

“Government funded legal aid has long been recognised as a fundamental and indispensable component of an effective justice system founded on the rule of law.”

This alone is enough reason to properly appreciate and value the role of legal aid in our society and in our justice system. Similar sentiments have been expressed by many senior judicial figures in our federation, from all of our jurisdictions and over many years. There can be no doubt at all that the Courts and Tribunals of our land understand and value the legal aid provided to the economically and socially disadvantaged to provide them with access to justice and to assist with the effective operation of the justice system.

For the last 10-15 years those associated with the legal assistance sector have, at their own expense, commissioned report after report to establish for the finance bureaucrats and the politicians that legal aid is not only an essential ingredient of providing access to justice, but that it delivers an economic value to the community and to the justice system well beyond its direct cost. If there remained any lingering concerns; they will have been completely dispelled by the thorough, thought provoking and courageous report by the Productivity Commission.

This issue should now be “put to bed”. No further studies should be required, or called for. The value of legal aid in pure economic terms is clear and unambiguous.

The legal assistance sector also turned its attention to the issue of legal need. State and Territory Legal Aid Commissions partnered with the NSW Law and Justice Foundation to produce the Legal Australia Wide Surveys to thoroughly examine and comment on the extent of legal need across this country. There cannot now be any doubt, that there is considerable unmet legal need, and that significant parts of our community are denied access to justice and in particular, legal assistance before the Courts and Tribunals in all jurisdictions and at all levels.

The legal assistance sector has also turned its attention to valuing and evaluating its own work. We have a strong tradition of evaluating our services, both existing services and new services to ascertain if they provide value to our clients and to our organisations. From Legal Aid NSW alone I could speak for the next 10 minutes just listing the evaluations we have conducted in the last 10 years. The evaluations show the success of many of our service delivery mechanisms in meeting client need, usually early in the justice process, and demonstrate clearly the value of properly targeted and specialist legal services to disadvantaged clients.

I will give just one example. Over the past few years Legal Aid NSW has subjected a range of family, civil and crime duty services to rigorous external evaluation. Some consistent and striking evidence has emerged about the unique value they add to clients and the justice system at large.

The evidence shows that duty services are well placed to fulfil the requirements of a *client-focused approach to service delivery*, as defined by the Law and Justice Foundation in their recent work on *Reshaping Legal Assistance*. That is, in working with people with high levels of complex need, legal services should be:

- Targeted
- Joined up
- Timely
- Appropriate.

Successful duty services have some common characteristics. These are:

Reach: Duty services reach disadvantaged people who have not had access to any other legal advice or assistance. People receiving duty services are more likely to have characteristics that indicate a high prevalence of legal need, such as people with a disability.

Value: Duty services add value to the justice system. They:

- Provide an independent 'reality check', and divert non-meritorious matters away from the system
- Assist the right matters to proceed- clients are more prepared and have better access to remedies
- Contribute to faster resolution of matters and increase matters being resolved by consent
- Improve the quality of legal outcomes
- Reduce the stress and tension for clients in high volume Court and Tribunal environments.

Another common characteristic of successful duty services is Design: We now know that the reason good outcomes are achieved is because:

- The service is located at a point of need or crisis for the client- at the right time and place for clients who would not otherwise seek assistance (TIMELY)
- The service responds to the immediate needs of the client (TARGETED)
- Strong relationships are established for cooperation with the Court/ Tribunal and other stakeholders (JOINED UP)
- The service is generally provided by highly experienced and capable staff who work well with the client group (APPROPRIATE).

The evaluations clearly establish our duty services meet these characteristics and provide substantial value to the client, the relevant Court or Tribunal and to the Justice system as a whole.

I now turn my attention to the most important value issue of all, the value to our clients.

On a recent duty day at a Family Law Court, a 19 year old mother arrived at the Parramatta Family Court duty room about 12.30 pm.

The previous day as a mother's day present, she had been gifted on behalf of baby George a half-day spa treatment. She returned to an empty home and found her partner's and their nine-month old child's belongings gone.

The matter was listed that afternoon. An urgent oral application was made for watch list orders and recovery orders were made. The matter was re-listed for the following day.

Enquiries with the Australian Federal Police and International Social Services confirmed that the father had indeed left with the child for a non-Hague country on a passport that had been fraudulently obtained by a family member. The family member revealed that she was intending to leave Australia to join the father and baby.

Our lawyer made an urgent application to join that family member to the proceedings, sought and was granted orders that the family member be placed on the airport watch list on an ex parte basis. The application was successful and the relative was directed to attend Court on the following Monday. At Court, a telephone number for the father was provided and he was contacted overseas. Our lawyer conducted tense negotiations between the mother, the father and the family member who had attended Court.

The following Sunday the police recovered the child from an inbound flight at Sydney International Airport. Mother and child have been reunited.

Turning now to the area of Civil Law, an area of huge unmet need. Legal Aid NSW has developed a model of providing civil law services to Aboriginal communities that targets particular areas of law that impact on everyday lives. This is a tailored and specific service to multiple Aboriginal communities across NSW staffed by Aboriginal and non-Aboriginal lawyers with specialised skills in working collaboratively with Aboriginal communities. It involves working closely with senior members of Aboriginal communities in putting on special events that encourage people to tell their stories to lawyers.

The model has led to a massive increase in the number of services provided to Aboriginal communities in a very short space of time (over 100% increase). It has also allowed us to target legal problems that particularly impact on large numbers within a community. For example, Legal Aid picked up a large number of matters regarding the rental of consumer household goods by particular household lease companies.

These companies engaged consumers in Aboriginal communities in relation to consumer credit products which:

- Failed to meet responsible lending obligations
- Breached the 48% cap on interest
- Failed to meet disclosure requirements
- Consumers ended up paying for goods which far exceeded the approximate retail value for such goods (upwards of 300% of the value of the goods)

At last count, in one small town alone, Legal Aid had 40 clients with close to 100 lease contracts with just two traders. Whilst we are currently in negotiations with both traders on appropriate compensation in the circumstances, and have achieved some very good settlement outcomes, we are working closely with the regulator, ASIC, to achieve a systemic outcome across the affected market.

These cases lead us to question how we value access to justice. Is it about the money saved to the Courts and Tribunals by implementing alternative processes outside of the Court and Tribunal system?

Is it about the money saved by many agencies in the justice system by getting to the problem early before it becomes protracted?

Do we value legal assistance because it offers people a voice or an ability to be part of the legal framework, not swimming against it?

While all of these things are true, I believe we should value access to justice because it improves lives. Baby George was returned to his home and will not grow up without his mother. His mother will not endure potential mental health problems or substance abuse issues arising from his removal.

In the yet to be finalised new National Partnership Agreement on Legal Assistance Services Legal Aid NSW loses \$2.6m in Commonwealth money next financial year, \$16.7m over the life of the NPA, which is a reduction in money of 4.9% in forward funding. For all the legal assistance services there are winners and losers, but any winners are relatively small winners and the losers will need to cut front line services. The real losers will be women and children, many of which will be victims of domestic violence. They could be the baby Georges and the members of remote Aboriginal communities of this country.

Funding of Legal Aid NSW by the Commonwealth was around 55% of our budget in the mid 90's, now it is just over 25%. Without a considerable increase in State funding over this period, access to justice in NSW would be in a parlous state.

In this context one could be forgiven for wondering when this madness will stop. When will a Commonwealth Government learn to value and appropriately fund access to justice solutions provided by all in the legal assistance sector? When will it value the contribution by private solicitors who work with us to be part of the best legal aid model in the world – the mixed model of service delivery?

We have shown, over many years the services we provide are targeted at unmet need, are desperately needed by our clients and those who want to be our clients. These services are appropriate to the issue to be resolved and evaluated as effective.

They are economically advantageous to the justice system and to the community. And above all else, they improve peoples lives.

The challenge for all of us is to find ways to get our Federal Politicians to accept these values and respond appropriately.