

WEST HEIDELBERG COMMUNITY LEGAL SERVICE

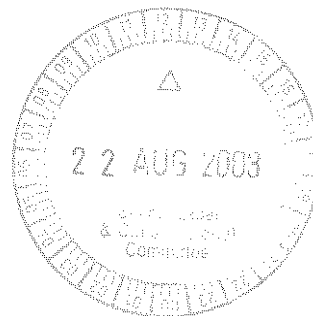
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15 August 2003

Mrs Bronwyn Bishop MP
Chair
Legal & Constitutional Committee
Australian Senate
Parliament House
CANBERRA ACT 2600



Dear Sir/Madam,

Re: Inquiry into current legal aid and justice arrangements.

1. The West Heidelberg Community Legal Service has been delivering legal services to the local area in West Heidelberg since 1976 when the legal service was first established by a group of volunteers prior to it becoming a funded legal service and entering into a working arrangement with Latrobe University. The legal service is based in the Banyule Community Health Service on the site of the former Olympic Village. This area has a high concentration of people who are in public housing and West Heidelberg holds one of the poorest postcodes in Victoria. Recent Australian Bureau of Statistics information revealed that the people of West Heidelberg and who live in the outlining districts which fall within the West Heidelberg Legal Service catchment area are often living on or below the poverty line, are on social security, have intellectual or other disabilities, or live in single parent families and experience other levels of disadvantage. In addition people who have settled in Australia from the Horn of Africa countries also live in high concentration in the West Heidelberg area.

2. In view of the factors outlined in the above paragraph the legal service comes into contact with a large number of people who not only have significant legal problems, but also significant health, financial and other difficulties. It is our experience that the benefit of the legal service being co-located in the Banyule Community Health Centre is that we have access to youth workers, drug and alcohol counsellors, doctors, social workers and financial counsellors. However, these services are continually overloaded with work often if our clients can receive the assistance they need by early intervention and prevention strategies their legal problems do not escalate, for instance, there is currently a five-week waiting list to see a counsellor. It is the legal service's experience that trying to connect our clients into the support services that they need and in which we in our experience we know will help, is increasingly becoming more difficult.
3. We are conscious that the funding of legal aid funding agreements between the State and Federal Government are shortly due for review and that your Terms of Reference seem to address issues pertaining to these arrangements. This submission seeks to highlight the often-artificial demarcations that are made which can pose impediments and obstacles for people on the ground in actually getting their legal issues and other problems adequately resolved in a timely and effective manner.

4. In terms of the demarcations between Commonwealth matters and State matters, from a client's point of view many of them are unaware of what jurisdiction their legal problem falls into. Most of our clients simply want their problems solved or want to get support and assistance at court or in their Family Court arrangements or have their rights accessed or remedies activated when they have been wronged. The issue is that if Governments are serious about improving and ensuring access to justice, then these demarcations and artificial funding divides are unhelpful. Assessing whether a matter is better handled at a Commonwealth or State level jurisdiction can be complex when often those jurisdictions overlap and the selection of venue depends on what may be best given the specific client circumstances. This is often a matter that requires high levels of sophisticated and expert legal knowledge. This is something that many clients do not have the knowledge or capacity to appreciate. Who funds their problem is irrelevant to them what they want is assistance.

5. It is this legal service's experience that on a daily basis, we have to turn clients away often because waiting lists are too long and their difficulty may be pressing. Often they have no other avenue to gain assistance. The reasons the legal service finds itself in this often difficult dilemma are:

- Due to the high numbers of people who are seeking appointments at the legal service

- The fact that the legal service often does not have expertise in areas of law that are extremely complex. For instance, one such area is in medical negligence cases where there have been fairly major recent changes. Often having referred them to law firms after a ring around to see if anyone will give them a free consultation, these law firms may give a free consultation if we are lucky as many of the clients are impecunious but are not in a position to take the matter any further. So having had advice that they have a case the matter cannot be taken any further. This referral process in itself is very resource intensive for the legal service.
- The legal service does not have staff who can assist people in civil court matters For instance, in motor vehicle accidents often our clients are uninsured as they have no discretionary income. They can be taken to court by the insurance company which pursues them after negotiations by the legal service to settle. The people self represent and in some instances even though the issue of liability is highly contestable they lose their case through an inability to argue it effectively and present evidence. This can occur even after advice on how to self represent as some clients start from a point of little literacy or capacity to understand complex issues. Often the clients, opt to proceed to judgement as they may be judgement proof even though they had a very arguable case. This is a simple example of people opting to not pursue a claim because even though they may have one because they have no capacity.

- The legal service is already stretched with its one solicitor that does court work being in court often in relation to criminal matters and social security matters or matters where there is a significant public interest.

This situation often emerges after we have already tried to refer clients to other services who may offer support. We always suggest to our clients, that if after following up on our suggestions for referral, they do not receive the necessary assistance, then they should contact us again. The frequency with which clients again contact us saying that they have not received assistance or do not know where to turn next, is immense. For instance, the legal service often only gives an initial advice in areas such as personal injury and medical negligence. These areas are extremely complex and often involve ongoing changes in the law and they have implications in relation to public indemnity insurance. Clients who may have a genuine claim are often referred to firms on the basis or in the hope that they may enter into a contingency fee arrangement. Often, however the assessment made by the law firm on a commercial basis is that they will not take the case on. This leaves many clients frustrated and leads to a lack in confidence in the legal system's capacity to assist and remedy their problems when they are wronged.

6. In the area of family law, recently the West Heidelberg Legal Service has been fortunate enough to be able to employ, on a part-time basis, an outreach lawyer for our Greensborough site. The State funding for this position

remains uncertain. This part-time solicitor has a background in family law and so has been able to assist in family law matters that are relatively straightforward where the clients are significantly at a disadvantage or when they are in need of some help and totally unable to assist themselves, but the matter is complex. Since this solicitor has been employed at Greensborough it has become clear to the legal service that the areas of unmet legal need in the Greensborough region are immense but (as is the case in West Heidelberg) we do not have the resources to meet this need. Hence we have criteria for the types of matters which we can place in appointment times. The cases that we are not able to assist, because of the limited resources, are not matters, which one would assess as peripheral or unnecessary. They are often the sorts of cases where members of the public are in dire straights and really do need legal assistance. For example, personal injury, workcover, transport accident claims, some care and protection cases (where our work-load is heavy at the time), and testators family maintenance.

7. The West Heidelberg Community Legal Service relies heavily on the provision of pro-bono legal advice from barristers. Often we act as instructing solicitors in cases where legal aid is available and legal aid will provide us with a barrister to appear in court in criminal matters. We are not in a position in terms of our staffing to be able to act as instructing solicitors in family law matters and so, where we have a complex family law matter, we refer it to the Victoria Legal Aid. The heavy reliance on pro-bono barristers emerges where

we find that client cases are not eligible for legal aid but the particular clients are unable or incapable of adequately representing themselves or where we have worked on a case that appears to be in the public interest. The legal service has been finding it more difficult to find barristers who are prepared to do work pro-bono. The reason for this is that barristers are finding that they are being called upon to do more and more pro-bono work for other agencies. This is having a significant impact upon this legal service's ability to ensure that clients are adequately represented in the most deserving of cases. This is a matter of current concern to our legal service.

8. One of the other areas of law that the legal service finds quite confronting, in context of provision of access to justice, is when family law clients come to us who have already reached their legal aid cap. Often these clients have received legal aid and this cap has been reached at the point when they are about to embark upon the actual court case and their court hearing date is imminent. The clients come to us extremely frustrated, frightened and stressed at the prospect that they will probably be appearing in court in a matter that is of incredible importance to them but without the aid of the lawyer. Often these clients need a voice piece, they will be unable to handle and deal with complex evidentiary issues, which they do not understand, and in many cases are afraid that they will be cross-examined by their former partner. This is often heightened if their former partner has been abusive or

violent towards them. In these instances, we have often tried to secure a pro-bono family law barrister at short notice but have as a rule been unsuccessful.

9. One of the concerns that the legal service has, aside from the impact on access to justice of people not being able to access legal help in a purposeful and timely manner is the effect this has on the public confidence in the legal system.

10. The West Heidelberg Community Legal Service has for twenty-five years been involved in a partnership with La Trobe University. This partnership involves La Trobe University providing a part-time academic staff member solicitor at the legal service. It also provides students on placement from La Trobe Law with an opportunity to participate in legal practice and class time to examine ethical and legal professional issues. The students under the supervision of the La Trobe Law Lecturer provide assistance to clients thus extending the capacity of the legal service to see more clients. The students interview clients and only provide legal advice to those clients after consultation with the supervising solicitor/lecturer. What the students lack in experience is often made up for their keenness and desire to help clients in difficult circumstances. In recent years the La Trobe University students have, as part of their assessment, researched and surveyed areas of law, which the legal service has found problematical, and provided written reports with recommendations as to how the legal system can be improved or law reform

suggestions or education initiatives. One of the reports that students released in the second semester of 2002 was a report on self-represented litigants in the Victorian Magistrates' Court. This report was entitled "A Report on the Implications of Unrepresented Litigants in the Magistrates' Court, November 2002. The legal service would be happy to provide a copy of this report to the committee should they require it. In this report the problem outlined in the previous paragraph about the increasing level of frustration and lack of confidence in the legal system due to the self-represented litigants experienced was highlighted.

11. In addition to this report, students from semester one 2003 have recently completed, an as yet unpublished, report on the issues of duty lawyers and holistic legal services.
12. We will provide this report to the Senate Committee Inquiry as soon as it has been made ready for publication.
13. Mary Anne Noone, Senior Lecturer, Law and Legal Studies at La Trobe University who for some years held the position of Supervising Solicitor of students at West Heidelberg Community Legal Service and who is currently on the Committee of Management of the Legal Service and Liz Curran, Lecturer in Law, La Trobe University who currently holds the position of supervising solicitor of students at West Heidelberg Community Legal Service

have both been interested in researching the issue of unmet legal need across Australia in more detail. Both academics consider the issue of unmet legal need is a critical issue for Australia in ensuring that human rights are upheld and in maximising people's citizenship rights. It is noted that there is a dearth of empirical evidence on unmet legal need and it is their intention to try and fill this gap by providing more research on the topic. Their involvement in the direct service delivery aspect of the West Heidelberg Legal Service, which is ongoing, is also an important aspect of informing any such research, as they are aware of the practical exigencies that exist on the ground. We note that this same Senate Committee in its previous investigation into legal aid services noted the need for such empirical evidence. Unfortunately, gaining independent funding for the conduct of such legal and social research is not an easy task.

14. This submission is short and to the point, mainly as the legal service does not currently have the capacity to write a more detailed and fully researched submission in view of the deadline of 21 August 2003 and in view of case-work commitments. Should the Senate Committee however want further clarification in relation to any of the short points raised in the submission it should not hesitate to contact the legal service.

15. The legal service would be happy to appear at any oral hearing in Melbourne that the Senate may intend to hold subject to availability of staff.

Yours faithfully



Liz Curran
Lecturer/Solicitor
West Heidelberg Community Legal Service/
La Trobe University Law