

Legal Aid and Access to Justice: Back to Basics?

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Legal aid and access to justice

- Access to justice
- Context
- First principles
- What do we know about citizens' needs?
- How to use legal needs data
- Prioritisation
- Delivery

Fundamentals of Access

- **Awareness** of rights, entitlement, obligations and responsibilities
- Awareness of **procedures** for resolution
- Ability effectively to **access** resolution systems/procedures
- Ability effectively to **participate** in resolution process in order to achieve just outcomes

Access to justice as a social good

- Ability to participate in public redress or resolution systems is a measure of the health democracies
- Critical question = not 'what rights do we give or what obligations do we impose'?
- But 'what opportunities do we provide for the public to **make good** their entitlements'?

Context

- Continuing commitment to publicly funded legal services
- Continuing or increased pressure on resources
- Increasing pressure on civil area from criminal justice

What is the legal aid problem?

- Supply?
- Demand?
- Delivery?
- Outcomes?
- Remuneration?
- Quality?

First principles

'Access to justice' is an expression of process not an outcome
What is access for?

First principles

- What are the **purposes** of legal aid?
- What is the **priority** in terms of **purposes**?
- Within broad categories of purpose, what are the **priorities**?

What are the purposes of publicly funded legal services?

- Individual
 - Enforcement of rights
 - Dispute resolution
 - Avoidance
- Social
 - Supporting social order
 - Supporting economic activity
 - Supporting social justice agenda
 - Supporting social inclusion agenda
 - Supporting rule of law through control of executive
 - Legal health promotion

What do we know about legal needs?

- A lot – LSRC body of work
- Surveys from around the world indicate common problems, common approaches to problem resolution
- Common need for information, advice and representation



What have we learned?

- Justiciable problems **ubiquitous**
- Socially excluded experience more problems
- High proportion suffer multiple problems
- Problems often occur in **clusters**
- Cascade effect – one triggers others
- Can have serious impact on lives
 - Family break-up
 - Unemployment and loss of income
 - Ill-health or disability
- Link between unresolved problems and health, crime

Common findings

- Low income groups suffer **more** problems and are **less likely** to do anything about the problem
 - Sense of powerlessness/helplessness
- Resolution strategy **related to problem type**
 - Problems for which action most likely to be taken – family, consumer, property
- Advice-seeking **related to problem type**
 - Problems for which **legal advice** most likely to be sought – divorce, children, property,
- Advice sought from wide range of more or less appropriate sources – **people don't know where to go**
- Significant unmet need for accessible sources of information and advice

What do citizens want?

- **Problem-solving**
- **To be saved**
- **Dispute resolution processes that are**
 - **Easy to use**
 - **Cheap**
 - **Quick (within reason)**
 - **Authoritative**
 - **Transparent**
 - **Fair**
- **To get on with their lives!**

How can results be used?

Refocusing justice policy thinking

- Developing a "**customer**" orientation
- Wider than legal aid issues

Alignment of justice policy with broader government objectives

- Understanding link between access to justice and social inclusion agenda

Guiding legal aid policy thinking

- How to make more **effective** use of legal aid spend to **meet the needs** that citizens have
- Designing services with needs in mind rather than funder convenience or provider assumptions

Need for joined-up thinking and action?

- Dawning recognition that justice system has to clean up the messes that other departments make
 - Poor decision-making on benefits – cost to justice system
 - Social housing policy may lead to cost on justice system
- That unresolved justiciable problems lead to pressure on other services and budgets
 - **Does that person need expensive anti-depressants or do they need to sort out the problem with their landlord?**

Policy Interest in "Impact"

- Cost of unresolved legal problems appearing in other budgets
- Social and economic costs of **unresolved** problems
- Estimating cost in public expenditure on physical and mental health, welfare benefits, social housing costs
- The downstream cost of unresolved problems is a powerful argument for protecting civil legal aid

Smarter approach to advice

- Emphasis on **avoidance and early advice**
 - Concept of cascades and trigger events helps to focus thinking around early intervention
- Making advice more accessible
 - When can people go for advice?
 - Where are they likely to go for help?
- Renewed interest in Public Legal Education
 - Recognizing “unnecessary” helplessness
 - Facilitating self-help
 - Knowledge and skills-development

Legal needs studies and recovery from recession

- Public interest in access to justice will become greater in tough times
- Civil justice system supports enforcement of rights, access to entitlements and resolution of conflicts that might flow from recession
- Civil legal aid necessary **not only to lift up socially excluded** BUT equally important in current climate **to PREVENT slide into social exclusion**

Barrier at top of the cliff or ambulance at the bottom?

- Civil legal aid has both protective and restorative potential
- It is **both** the barrier at the top of the cliff (information, advice, PLE)
- **And** the ambulance at the bottom of the cliff (advice and representation)

How ambitious or limited are our access to justice objectives?



Focus of prioritisation

- Type of person?
- Type of problem?
- Civil v criminal?
- Objective of service?
 - Legal health promotion – proactive
 - Dispute resolution – reactive
- Mode of delivery?

Different ways of meeting needs?

- Delivery Principles
 - Collaboration between providers and different types of service
 - Triage (through IT?)
 - New methods of delivery
- Service principles
 - Legal awareness raising
 - Empowerment
 - Skills development

New Zealand Legal Aid Review September 2009

Essential components of effective legal aid system

