



STATE SOCIAL COMMAND (VICTORIA)
Australia Southern Territory

Monday, 22 February 2016

Department of Justice and Regulation
GPO Box 4356
Melbourne VIC 3000

Dear Reviewers,

RE: Access to Justice Review 2016

I am writing to you on behalf of The Salvation Army State Social Command (Victoria) to share our views about Access to Justice as part of the current review process.

The Salvation Army's Interest in Justice

The Salvation Army, a worldwide Christian movement, has been serving the Victorian community since 1883 and assists more than 100,000 people throughout the state every year. We have more than 300 distinct programs, delivered by over 2,000 staff and 4,000 volunteers, spread right across the state.

Whilst these programs are open to anyone, we are particularly aware of our historic calling, which gives special attention to those who are most vulnerable and marginalised, and therefore have developed strong partnerships and expertise in specialist areas such as homelessness, addictions, family violence, mental health, crisis and emergency services. This focus on the margins of society is one reason we think equitable access to justice plays a vital role in protecting our most vulnerable citizens.

Our experience tells us that when economic and social forces shape systems towards the needs of the majority, minority groups fall further through the gaps and their disadvantage becomes increasingly entrenched. Those in our community who suffer multiple levels of socio-economic disadvantage, including intergenerational unemployment, low levels of educational attainment, mental illness, homelessness and addictions are particularly vulnerable to exclusion and injustice.

This submission has been compiled with assistance and advice from The Salvation Army's Urban Justice Centre, a part of the Melbourne Project 614 network, which operates in the CBD. More than just a legal support 'add-on', the Urban Justice Centre is an integrated function of the network, working closely with in-house and outreach services to provide legal advocacy and assistance to homeless, at-risk and highly marginalised members of the community. The integrated nature of the service not only provides continuity for the client base, but helps to establish rapport and trust through a variety of programs including soft entry points such as the Hamodava Café.

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Non-Criminal Matters

Whilst just over a third of Urban Justice Centre assistance relates to criminal proceedings, many of which are relatively minor, the majority of cases involve clients who find themselves in the midst of escalating and hostile processes often related to financial matters. These include issues with Centrelink, State Trustees, creditors and infringement notices.

In many instances, The Salvation Army's clients are especially vulnerable to small matters escalating disproportionately through bureaucratic and adversarial systems due to low levels of literacy, high degrees of transience and the frequent pressing nature of major life issues such as homelessness, mental illness, addictions, serious trauma and previous negative interactions with legal systems. For instance, reminder notices and warnings are not received, or milestone dates are missed due to more urgent life concerns. However, the processes move inexorably forward, escalating in tone and in language whilst at the same time those processes become more difficult (and expensive) to deal with over time.

In most cases, advocacy on behalf of these clients through the Urban Justice Centre results in reasonable outcomes that take into account the extenuating circumstances that are being faced. However, in the absence of such interventions, many similarly disadvantaged people find themselves without support in increasingly difficult circumstances, which further entrench their vulnerability and social exclusion.

At The Salvation Army's Melbourne Project 614, the effectiveness of the Urban Justice Centre's intervention is boosted by its presence alongside a range of other collocated services. Accessibility and proximity as one of a suite of complementary services delivered under the one roof enhances the individual's access to justice, builds their trust in the legal system and facilitates an effective holistic response. This is consistent in philosophy with the findings of the *Legal Australia-Wide Survey (LAW Survey)*.¹ Another noticeable outcome is strengthening the knowledge of the other services, enabling those staff to identify and appropriately refer matters for early interventions and more timely resolutions.

Recommendations: The resolution of these kinds of matters on a wider scale could be facilitated by funding paralegal roles in social and community service hubs across the state. The purpose of these roles would be to more effectively triage issues prior to escalation so they can be addressed earlier, before they become increasingly complex. In addition, training could be provided to community service staff around identifying common issues and pathways towards resolution.

¹ The Survey was conducted by the Law and Justice Foundation of NSW and can be downloaded at <http://www.nationallegalaid.org/home/legal-australia-wide-survey-legal-need-in-australia/>

It is a comprehensive quantitative assessment across Australia of an extensive range of legal needs on a representative sample of the population and examines the nature of legal problems, the pathways to their resolution and the demographic groups that struggle with the weight of their legal problems. The Law Survey was conducted between January and November 2008, involved 21,000 respondents and was published on 12 October 2012.

Criminal Proceedings

Despite the presence of a Legal Aid system originally designed to ensure more just outcomes for vulnerable and disadvantaged individuals, Salvation Army services frequently report encounters with clients who have fallen through the gaps of this system. The criminal cases seen by the Urban Justice Centre tend to be lower level criminal proceedings, which are dismissed by Legal Aid as not meeting their merits test. However, the merits test looks at the seriousness and/or complexity of the offence charged, not the circumstances of the individual charged. In the matters encountered by the Urban Justice Centre most of the complexity rests in the nature or circumstances of the individual who is being supported. When these individuals turn up to court without representation they may be referred to the Duty Lawyer. However, even if their case is accepted by the Duty Lawyer (which isn't assured), this system can hardly be claimed to be the best pathway to justice for a complex and high needs client group.

Furthermore, due to the manner in which some of our clients present themselves in the court environment, which is a consequence of their disadvantaged social position, they face much greater probability of negative outcomes.

Recommendations: The existing systems for Legal Aid are overburdened and are consequently too restrictive to meet the needs of many of The Salvation Army's clients. These systems should be reviewed to ensure that resourcing is adequate to effectively deliver on the purposes for which they were established. The merits test should not be permitted to exclude representation of disadvantaged and complex clients, even in minor matters.

Case Studies

The following case studies illustrate the points made above.

Paperwork Overload

AB is a young man on a Disability Support Pension who suffers depression. He has no fixed address and relies on couch surfing between friends. He was referred to the Urban Justice Centre by a homelessness outreach worker because he had a letter from lawyers threatening legal action. AB was confused as to why this had happened and produced a small bundle of documents, which revealed that some months earlier he had been a passenger in a motor vehicle accident requiring admission to hospital. The hospital needed him to complete some paperwork which would then be submitted to the TAC. Although AB made several attempts to complete the forms, he found them confusing and intimidating. Because he had not completed them, there was a trail of correspondence, escalating to threatening letters from the hospital's lawyers.

For the client, and even the outreach worker, this had become a legal issue and required a professional legal response. However, it illustrates many of the challenges created by inflexible systems that escalate matters unnecessarily.

Exploitation of Vulnerable Young People

BD is a young man raised in state residential care facilities who binge drinks.

He secured employment with a company that marketed telephony services to small businesses and was very good at the work. The employer moved him to spearhead a newly opened branch in a regional city. As an incentive to meet or exceed sales targets, the employer regularly gave BD a 'slab of VB' on a Friday after work. BD established a pattern of drinking Friday night, buying more and drinking throughout Saturday, recovering Sunday and returning to work on Monday.

After several complaints by female employees of unwelcome sexual suggestions in work-related social settings, the company summarily dismissed him with no opportunity to respond to the allegations. BD drank his payout on the evening he was dismissed and was subsequently admitted to hospital after threatening to self-harm. After being discharged, he returned to Melbourne with no money and nowhere to live. A Melbourne Project 614 homelessness outreach worker met him in a park, found temporary accommodation for him and referred him to the Urban Justice Centre.

A wrongful dismissal claim was lodged with Fair Work Australia. After conciliation, BD got a payout which was used to secure ongoing accommodation and clear his debts. He is being supported by a case worker, regularly sees the mental health care coordinator, attends counselling for alcohol abuse and has recently obtained employment.

Facilitating Justice

DJ is a woman with a mild intellectual disability who lives on a Disability Support Pension.

When DJ's elderly male companion died, he left his house, which was all he owned, to her. When lawyers acting for the man's disabled son (who was excluded from any bequest under the will) threatened to issue on his behalf, DJ didn't know what to do.

She was referred to the Urban Justice Centre through The Salvation Army's Hamodava Café. The Urban Justice Centre engaged experienced counsel pro bono, who in turn secured agreement from the other legal representatives to also act pro bono. This meant that the issue could be successfully mediated without resort to litigation and without cost to the estate. Because the deceased had left substantial debts secured against his property, this maximised the worth of the asset to both parties, who shared similar disadvantages.

From here Project 614 and the Urban Justice Centre continued to be involved with DJ, negotiating with a real estate agent to secure new accommodation, arranging deferral of part of the rental until receipt of her share of the estate, assisting her to move into the new accommodation, and negotiating with an investment business for fee free management of the investment of funds she is receiving after sale of the property.

Further Information

The Salvation Army is pleased to make this contribution to the Access to Justice Review and welcomes further discussion about the issues outlined above. Should you require clarification about our position on any of the matters above, please contact the manager of our social policy unit, Captain Jason Davies-Kildea, on (03) 9353 5217 or via email at jason.davies-kildea@aus.salvationarmy.org.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Michael Coleman', with a long horizontal line extending to the right.

Michael Coleman (Major)
STATE SOCIAL COMMANDER