



The Law School  
Ligertwood Building  
The University of Adelaide  
North Terrace  
Adelaide SA 5005

**ARBN** 135 823 513  
**T** 08 8303 5005  
**F** 08 8303 4344  
**E** [tim.graham@justicenet.org.au](mailto:tim.graham@justicenet.org.au)  
**[www.justicenet.org.au](http://www.justicenet.org.au)**

**A submission by JusticeNet SA on the Australian Government report –  
*A Strategic Framework for Access to Justice in the Federal Civil Justice  
System***

**November 2009**



## Introduction

1. JusticeNet SA Inc. (JusticeNet) welcomes the recent agreement by the Standing Committee of Attorneys-General on a coordinated approach to improving access to justice and in particular, the opportunity to comment on the recommendations contained in the report entitled *A Strategic Framework for Access to Justice in the Federal Civil Justice System* (the Report).
2. It is noted that five key principles underpin the Report namely accessibility, appropriateness, equity, efficiency and effectiveness. To achieve a national approach to access to justice the report proposes a coordinated approach on how legal assistance services are funded and delivered, suggests options to ensure seamless access to information and services and to improve the interrelationship between the Commonwealth, State and Territory systems.
3. JusticeNet is broadly supportive of the central recommendation in the Report to use a strategic framework to better coordinate access to justice across the federal civil justice system. We consider that increased funding in absolute terms will be required to deliver on the improvements and reforms proposed in the Report.
4. No doubt funding more and better information and advice services will result in improved justice outcomes. However, further investment in that area will eventually become a false economy as the law of diminishing returns takes effect. Information and advice services can never satisfy all legal needs. Some will inevitably be forced into embarking on court based dispute resolution. There will always be the need for greater and more customised levels of assistance. The justice system must, above all, remain flexible and responsive to community needs. Over reliance on uniform or readymade forms of assistance will inevitably leave gaps that pro bono clearing houses such as JusticeNet cannot always meet.



5. As a relatively new service with limited resources we must limit our further comments to select areas of the Report. The balance of our submission addresses the following matters:
  - An overview of JusticeNet;
  - 'No wrong number, no wrong door' (Chapter 6)
  - Public interest cost orders (Chapter 8);
  - The absence of pro bono and the role of pro bono clearing houses (Chapter 8).

#### **An overview of JusticeNet**

6. JusticeNet is an independent, not for profit legal assessment and referral service. JusticeNet and other pro bono clearing houses play an important role in facilitating access to justice in many areas including the federal civil justice system. JusticeNet was launched on 2 July 2009 and currently employs a full-time Director and a part-time administration officer. JusticeNet also utilises volunteers from South Australian law schools, and secondees from legal offices assisting with the day to day running of the service.
7. JusticeNet facilitates access to justice for charitable organisations and individuals who lack the means to afford a lawyer and are unable to obtain the requisite legal assistance from existing legal service providers. JusticeNet achieves this in two key ways:
  - we match eligible individuals and organisations with a 'safety net' of member law firms and barristers who are willing to provide legal assistance on a pro bono basis; and



- where matters are ineligible for pro bono assistance, JusticeNet refers applicants to existing specialist or generalist legal and other support services (including financial counselors, advocacy services and so on).
8. Our primary function is to receive, assess and refer requests for pro bono legal assistance in a coordinated manner which maximizes the efficient use of pro bono capacity within the legal profession and, through those activities, grows that capacity.
  9. JusticeNet therefore plays an integral role in the delivery of legal services in South Australia. It must be noted, however, that JusticeNet and other like organisations do not and cannot meet all unmet need for legal services in Australia. They are not a substitute for properly funded Legal Aid Commissions and Community Legal Centres.
  10. The South Australian legal profession has always provided a significant amount of legal services on a pro bono basis. This pro bono work has until now been undertaken on a largely ad hoc basis. Prior to the establishment of JusticeNet there was no mechanism in South Australia for collecting and assessing the claims of those with unmet legal needs and matching pro bono capacity with demand in a coordinated fashion. For those with legal problems there was no central organisation to contact for a referral. For the profession, ad hoc pro bono assistance was time consuming as much time was spent sorting which cases had merit and those which did not.
  11. JusticeNet works collaboratively with other stakeholders which make up the South Australian legal profession, including the Legal Services Commission, Community Legal Centres, law schools, private law firms and the South Australian Bar.
  12. JusticeNet is funded to the middle of 2010 by a grant from the Law Foundation of South Australia. We have an increasing number of financial law firm



members and barristers and we are having discussions with all major stakeholders and supporters to help secure a sustainable financial position. The Bar Association, for example, has committed some funding to JusticeNet for next financial year. It is hoped that State and Federal Governments will also provide ongoing support.

13. JusticeNet provides pro bono assistance on a discretionary basis. Those seeking assistance are subject to a means and merits test. Applicants must also establish that they are unable to obtain the requisite legal assistance elsewhere. JusticeNet is careful to avoid duplicating existing service providers. In practice this means that applicants must be unable to obtain legal aid funding or assistance from a Community Legal Centre, the Litigation Assistance Fund (operated by the Law Society) or, in appropriate circumstances, a lawyer acting on a contingency basis.

14. An applicant will be eligible in most cases for assistance if they meet the following criteria:

- they have insufficient means to afford requisite legal services without undue hardship; and
- they are an individual or a not-for-profit organisation whose purpose (s) is primarily charitable; and
- they have a problem requiring a legal remedy for which there are reasonable prospects of a successful outcome, and the applicant would suffer significant injustice if not legally represented, or the matter concerns an issue of public interest; and
- they are unable to obtain the requisite services from an alternative legal services provider; and
- the matter is of such a nature that the applicant could not reasonably be expected to self-represent; and
- the Assessment Panel considers that in all the circumstances the matter



would be an appropriate use of available pro bono legal resources.

15. In its first few months of operation JusticeNet has dealt with a wide range of inquiries in areas such as administrative law, consumer credit, contract, landlord and tenant, not for profit issues and migration law. 16 matters have been referred to member firms and barristers for pro bono legal advice or representation. Many more matters have been referred to publicly-funded legal service providers, or other appropriate services such as the Law Society's Litigation Assistance Fund.
16. Several referrals have involved matters in the federal civil justice system. In one case a member firm and barrister provided pro bono assistance where a visa had been cancelled under the *Migration Act 1958*. The applicant's appeal to the AAT was successful. In another matter a member firm provided a charitable organisation with advice concerning a substantial penalty imposed by the Australian Taxation Office. The organisation received expert legal advice which led to the resolution of a dispute with the ATO.

## Chapter 6

17. *JusticeNet supports recommendations 6.1, 6.2, 6.3, 6.4 and 6.7.* JusticeNet considers that these practical recommendations are amongst the most important in the Report and have far reaching implications. However, in our view a "*no wrong door, no wrong number*" would only be effective if properly resourced and implemented in conjunction with the States and Territories. In our experience, while the increased use of 'warm referral' procedures would help to ensure effective so-called triage of legal need, clearly they would require significantly increased funding for the relevant services.
18. With our strong relationship and profile within the private legal profession, JusticeNet is well placed to improve the effective triage of legal need by using increased warm referral procedures. Many applicants who approach



JusticeNet are initially ineligible for pro bono assistance because they have not exhausted all other avenues for assistance. However, most such applicants have never heard of Community Legal Centres (CLCs), for example. A significant portion of staff time is spent on referring those clients to other appropriate services. A significant proportion of those clients are then unable to secure the requisite assistance from CLCs and return to JusticeNet.

19. Adequately funded pro bono groups can develop strategies designed to increase the accessibility of legal information and services among groups that may not be reached by more general programs. These services are there to catch those who slip through the cracks and look to pro bono assistance as last resort.

20. The JusticeNet model in South Australia is a good example of a 'joined up solution to service delivery'. It consists of legal assistance agencies and the private legal profession cooperating for the benefit of disadvantaged clients.

## Chapter 8

21. *JusticeNet supports recommendation 8.10.* We consider that the best and fairest approach to costs in public interest matters is for the costs obligations of the parties to be identified as early as possible.

22. JusticeNet does not limit assistance to public interest matters including test cases. However, we will endeavour to refer matters that are genuinely in the public interest. Whilst a number of Australian jurisdictions have recognised the benefit of public interest litigation and have amended their cost rules to facilitate such litigation (e.g. Order 62A of the Federal Court Rules) little use has been made of such powers. Including the recommended wording for costs orders in relevant legislation is a significant step forward in helping to ensure that public interest litigation is not stifled by impediments such as costs



orders.

## Chapter 11

23. *JusticeNet supports recommendations 11.1 and 11.2. We consider that given the diverse and multi-stakeholder nature of the sector, a national coordination group is likely to improve legal assistance service delivery. JusticeNet proposes that such a national coordination group should also include a representative of the pro bono clearing houses.*

24. It is disappointing that the Report is largely silent on the benefits of pro bono and the increasingly important role played by pro bono clearing houses in providing cost-effective access to justice services.

25. Coordinated pro bono legal service delivery, facilitated by the emergence of pro bono clearinghouses over the last decade or so, has been a standout development in access to justice in Australia. The legal profession makes a substantial contribution to access to justice by way of pro bono services that has helped close some of the gaps in pre-existing legal service.

26. However, to extract maximum benefit from the pro bono capacity in the profession requires the active involvement of Government. A *laissez fair* approach that regards the pro bono contribution to access to justice as solely a matter for the profession is inadequate. A pro bono strategy is essential to ensure the maximum long term benefits of this important contribution to access to justice.

27. JusticeNet urges the Government to make specific provision in the definition of legal assistance service providers for pro bono in future policy development and funding provision. In particular, JusticeNet recommends that the Government provide sufficient recurrent funding to pro bono clearing houses such as JusticeNet to ensure their continued operation and innovation.





Because of the commitment of legal practitioners as volunteers, minimal government funding can produce maximum results.