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# OPINION

## Legal aid and legal representation

Increasing concerns are being raised about people appearing in courts without legal representation. Discussion on the difficulties faced by these self-representers and their impact on our legal system is likely to grow in the near future. The third report of the current Senate Inquiry into the Australian Legal Aid System is likely to be tabled in the Senate by the end of this month.

The Commonwealth Government's cutting of legal aid funding (\$120 million over three years) has been condemned as a major cause of the increase in self-representers. Such people are the clearest sign to judges, magistrates and senior members of the legal profession of the practical effect of these cuts. The judiciary and senior lawyers tend not to see the impact of increased contributions being levied from legally aided parties, the family law property matters not funded, the contested criminal cases in the Magistrates Court where legal aid is refused so the defendant pleads guilty, and so on. People in receipt of legal aid have far less political clout than the judiciary and legal profession so it is not surprising that the focus of concerns about legal aid is on the comments of judges.

Judges have criticised the legal aid funding caps introduced by some legal aid commissions. The available legal aid funds can end up being expended on preparation for the court hearing of a case such that funding for the final hearing simply is not available. Justice Alan Barblett of the Family Court recently stated that the number of people appearing for themselves in Family Court cases has increased by one-third. Justice Frank Vincent of the Victorian Supreme Court considers it is 'almost impossible for a judge to act, in part, as counsel to one of the parties who is unrepresented in order to ensure that person's rights to be protected' (*Age*, 4 June 1998).

Judges have also expressed concern at the way in which these legal aid cuts involve a 'false economy'. Cases involving self-representers are seen by judges as taking longer and being difficult to run. This is especially so in those family law cases where both main parties appear without representation. Of course, the same 'false economy' argument could be run in relation to the lack of availability of legal aid to assist people before an issue turns into a 'problem' which leads to a court hearing. Advocates of community legal education have long emphasised the value of practising 'preventative law'. There is also clear value in people having access to legal advice as early as possible in any process. Legal aid is currently unlikely to be available to provide 'interim assis-

tance' such as advice to a person about to be interviewed by police or to someone in need of advice on social security entitlements or in relation to an environmental planning matter.

### The impact of self-representation

It is difficult to generalise about the effect which a lack of legal representation will have on a party to a court case. Many of the possible impacts relate to a person's lack of familiarity with legal processes, particularly trial processes. An unrepresented person may find themselves unable to negotiate in the lead-up to a court case. They may also be unaware of the steps the court expects them to take to get their case ready for hearing. While some magistrates and judges will show considerable patience with unrepresented parties, this is certainly not the case across the board. Failure to comply with procedural requirements can result in information important to one party's version of events not being heard by the court.

In the highly adversarial context of a criminal trial before a jury, one important role the defendant's counsel plays is that of being a barrier between the defendant and the jury. The prospect of a defendant personally cross-examining someone they once were very close to must be a grave concern. The distress which the witness feels at giving evidence is likely to be exacerbated. The defendant is unlikely to confine their questioning to what the law would consider to be relevant to the trial. Such a defendant is unlikely to be aware that, as well as there being questions they should ask, there are also dangerous questions which should not be asked.

The procedural safeguards which our legal system uses in an attempt to ensure that due process is followed are likely to be ineffective unless people can both obtain advice about their rights and responsibilities and receive assistance in asserting any rights which they believe have been violated. The system clearly places a high value on the importance of legal representation and advice. Concerns from judges and lawyers about people having to appear for themselves in court are likely to further embarrass the Commonwealth Government in the near future.

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