



Is access for all really access to justice?

**How Legal Aid New South Wales
(NSW) busted the myth of universal
service and implemented triage to
match service to need.**

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1. Prologue

Over the last seven years Legal Aid NSW has undergone a major shift in how we match demand for advice to supply of legal service. First, we made deliberate (and hard) decisions about who needs our services most. We then operationalised those decisions through a consistent triage model and the phasing-out of existing ad hoc triage processes, such as drop-in advice and lottery systems, because they were producing poor outcomes for the clients we should be serving. We adapted our IT systems to enable the change and provide better visibility of real demand and service delivery. The major and continuing change was a cultural shift from localised control of models for advice services to a consistent 'no wrong door' approach.

No doubt the model will be continually revised. Intake staff continue to struggle with the complexity of triage and the time taken to collect all the required data from the client. However, there are some key learnings that will help us in this ongoing work and may also assist any other legal assistance organisations considering implementing triage.

- **Keep it simple and aligned to your high-level purpose.**
- **Culture is key.**
- **Triage does not stop at intake.**
- **Pay attention to your intake staff.**

"Legal Aid is more [like] legal pain. They say they are easy to get advice from, but they don't have enough lawyers to see the people who need advice and they only give advice one day a week. It is not fair to me and the other people that have to keep coming to the office every week to get advice.

I had my first run in with the law last year. I needed a lawyer but I couldn't pay for one because I am a single mum on a single parent payment. I called Legal Aid who said I could get advice at their office on Tuesday morning. They said to get there early because it was first come first served. I dropped my daughter off at school and arrived at the office at 9.40. The secretary told me I was too late and all the slots were filled. She said I would have to ask the judge for an extension of time.

Luckily the next Tuesday was in the school holidays, so I was able to get to legal Aid by 8.45, before the office opened. There were people waiting outside the doors. At 9, they let people in and I waited again for 20 minutes while they spoke to the people in front of me. When it was my turn, they said I couldn't get advice because they only had appointments for 12 people and I was number 15 or 16. They told me to come back the next week. I asked if I could go to another office but they told me I couldn't because only that office could give advice on cases in the Court I was in.

Now I will have to go to Court again by myself and ask the judge for more time and the judge will probably tell me off. Next week I will have to arrive at 8am just to get advice. If it wasn't the school holidays I couldn't get advice at all. "

Complaint received from client 2018

2. The Problem

Legal Aid NSW provides advice and casework services across most areas of criminal, family and civil law. Our duty under the Legal Aid Commission Act NSW is to help people experiencing disadvantage throughout NSW – and to make that help readily available and easily accessible¹.

We knew from our staff across the state that there was significant demand for advice services. Staff in each of our 25 offices were doing the best they could, to meet this demand, relying on team-work, workarounds, and a mix of traditional and ad hoc approaches to providing legal advice.

Between 2016-2018 we undertook research and field work to understand how our clients were experiencing our varying advice models. We observed and spoke with clients and staff in many locations to document how people experience our service at the ‘front end’ in advice appointments, drop-in clinics and duty services² at court. In addition, we talked with staff about the challenges they faced in delivering advice services with limited resources and increasingly complex needs of clients. We also looked at reviews and complaints that clients had made about our service provision. The findings from this research were:

- Clients had difficulty accessing our services, and often experienced a messy, confusing, and maze-like journey as they tried to get the legal help they needed.
- Clients often had to wait weeks for an appointment or were told to call back another day as an advice clinic was ‘booked out’. One staff member said, “We often have to ask family law clients to call back as we aren’t allowed to book them more than 2 weeks in advance and the 2 week period books out quickly”.
- In some locations, drop-in clinics were based on a ‘first in’ system. The first eight clients that turn up are seen and the remainder are told to try again next time. In almost all drop-in clinics clients are turned away as the demand far exceeds the supply.
- Clients who are least aligned with our priority client characteristics and who have the greatest technological capability are accessing our in-house face to face services at a higher proportion than clients with multiple priority client characteristics and with the least technological capability. 28% of advice services were provided to clients who had no indicators of being socially or economically disadvantaged.
- Clients experienced lots of bounce and delays in getting the right help or to the right service. They were told to call numerous phone numbers and received different information from different offices.
- Clients had to tell their story repeatedly, which is often traumatic.

¹ Legal Aid Commission Act 1979 (NSW)

² Legal Aid NSW has lawyers at all local courts and at many other courts and tribunals across NSW. These ‘duty lawyers’ help people who have a matter at court that day who do not have their own lawyer. Duty lawyers either work for Legal Aid NSW or are private lawyers paid by Legal Aid NSW to provide the duty service.

This research revealed the hard truth that we simply cannot provide legal advice to everyone in NSW who wants it, and we need to be deliberate and transparent about who can access what level of service, and who needs to be redirected elsewhere.

This finding was critical in busting the organisational myth that clients experience our services as a linear journey from start to finish. The existing narrative was that clients enter Legal Aid NSW at the beginning of their legal problem, working their way through receiving legal advice, and if needed, legal representation and then exit once their matter was finalised. In practice our clients do not enter once and then work their way through 'the system'. They enter through varying channels at different and often multiple times and receive differing responses and service offerings depending on who they encounter and where and how they have entered.

Most critically, it made us challenge the organisational myth that we were required to make legal advice services equally available to every citizen of NSW ('universally' available). This view is not supported by our legislated mandate under the Legal Aid Commission Act NSW. In fact, in attempting to achieve this goal through our existing systems, those who should have been prioritised for service under our mandate were missing out.

3. Triage as a solution

Understanding the purpose of the organisation is foundational to designing and selecting the right triage model.

“To triage appropriately, Legal Aid NSW therefore needs to have a clear understanding not only of who they seek to serve, under what circumstances and for what issues and to what level, but also what resources and assistance other services offer.” (Ibid. p. 7)

“When coming for legal aid don’t be curtius (sic) and let women out the lift first as it is a vicious race to the front desk”

Client review left on Google

3.1 What is triage?

We knew we needed a triage model to consistently assess and direct people according to need/ impact/urgency- and to give certainty to staff. We engaged the Law and Justice Foundation of NSW (LJF) to look at models of triage³ - especially in the legal sector, and the types of criteria that we could include.

‘Triage refers to the practice of responding to and ‘sorting’ the problems of individuals based on their degree or type of need to determine the appropriate type of service within a context of limited resources’ (National Action Committee on Access to Justice in Civil and Family Matters, Prevention, Triage and Referral Working Group 2013, p.14)⁴

The LJF paper helpfully identified different models of triage - and we saw that we were unconsciously operating most of these models simultaneously at different sites. Models included:

- First come, first served
- Equal chance of receiving the service (‘lottery’)
- Priority to worst off
- Priority based on urgency
- Priority based on best outcomes
- Priority based on helping the most people

These models preference people in different ways. For example, ‘First come, first served’ preferences people who have the means and capacity to get there first. ‘Priority based on urgency’ preferences those with the closest deadline/court date/limitation date. Without thinking

³ *Developing a Triage Framework: Linking clients with services at Legal Aid NSW*, Coumarelos, C. and McDonald, H., Law and Justice Foundation of NSW 2019 [Law and Justice Foundation - Developing a triage framework: linking clients with services at Legal Aid NSW \(lawfoundation.net.au\)](https://www.lawfoundation.net.au/developing-a-triage-framework-linking-clients-with-services-at-legal-aid-nsw)

⁴ Ibid p. 5

it through, we were already applying triage criteria but without deliberate intent and purpose- and most seriously, with outcomes that did not support our purpose.

Case Study: Observation of a metropolitan Legal Aid office on a (drop-in) clinic day, 2018

Four people waiting in foyer (of office building) at 8.20am. At 8.30 (when lift access opens) there were seven people sitting on the floor on Level 7 outside the doors of Legal Aid (including a child). By 9am there was 10 people (not all clients, in some cases children and partners of clients). By 9.06 six people had been seen by Legal (*sic*) support staff and handed advice form to complete. Clinic doesn't start until 9.30am. LSO (legal support officer) on front desk was on phones as well.

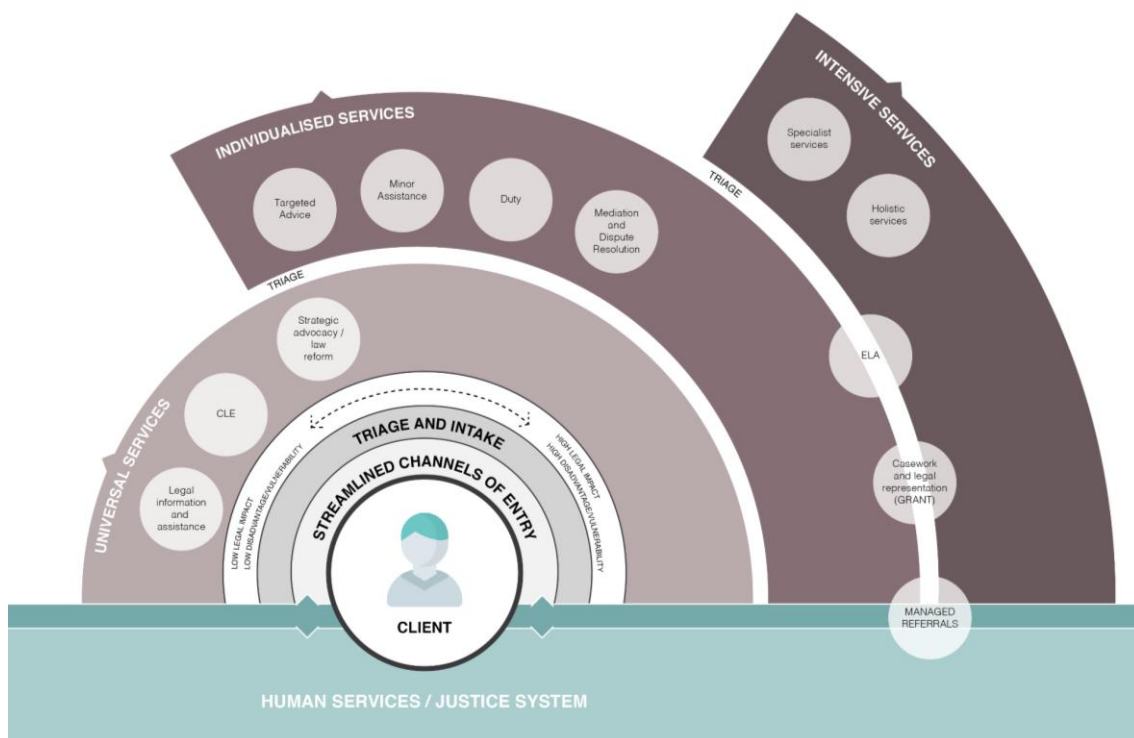
Client number four approached counter – had a medical appointment and had to go. LSO stated that this often happens (**that clients cannot wait until their turn for advice**) and it can mean that clients that were turned away for being number nine or 10, may have been able to see someone.

I spoke to woman who runs café in the foyer. She said that on some days clients are waiting outside the building at 6.30am. She also said there have been incidents in the foyer between the clients waiting to see LA (Legal Aid) who are upset that someone has 'pushed in'.

3.2 A new service model

The existing universal service model for legal advice was not aligned with our mandate and was not allowing us to properly serve those people who were experiencing disadvantage.

We designed a new service model with our executive, staff, and partners. It clearly differentiates between universal (available to everyone) and individualised (available to people who are eligible) services and places triage as the gate between them.



The Legal Aid NSW Client Service Model was launched in 2019. The key features are:

- Universal services are defined and focus on making it easy for people to self-help, take the next steps and remain out of the justice system.
- Legal advice provided by a lawyer is no longer in the universal layer. There is now a consistent triage gate.
- We have differentiated between universal, individualised, and intensive service layers with triage gates between each layer.
- Our universal services such as legal information are being continually enhanced to expand and become more intuitive and person-centred.
- Our whole service model is grounded in the wider legal-social services sector.
- We are opening new channels and streamlining existing channels for assistance. For example, webchat, telephone for legal advice, new consolidated website, online intake and guided pathways.
- Triage occurs when the client first approaches us for assistance, but also before progressing to each level of service.

4. Implementing Triage

4.1 Designing a consistent triage model: starting 'ground up'

We wanted a simple first level triage that could be applied by intake staff to direct low impact matters for people with low vulnerability into information/self-help and book the remainder into legal advice. We used two key criteria for staff to base their triage decisions on: the impact of the legal issue and the 'vulnerability' of the client.

We identified these criteria by watching our lawyers giving advice. We saw that as well as giving advice, lawyers were themselves triaging to determine what level of service to provide. The two key criteria lawyers used to determine the level of assistance were the impact of the legal problem and the 'vulnerability' of the client. Where both impact and vulnerability were high, the client would be advised and streamlined into a casework service. Where both were low, the lawyer would spend less time with the client and would provide basic one-off information and referral, rather than advice.

What we were trying to identify in 'vulnerability,' was whether the client belonged to a cohort that experienced systemic disadvantage, such as disproportionate targeting by police and/or historical and/or current experience of harsher treatment under the law. We did this by creating a list of high priority clients who would be prioritised for assistance to try to mitigate any barriers they may experience in the law. The list originally included young people (under 24), Aboriginal and Torres Strait Islander people, people with cognitive impairment, intellectual disability and acute mental health conditions, people experiencing homelessness, refugees, and people on a full government pension.

High impact matters are legal problems where the client is at risk of losing a fundamental human need such as liberty, safety and security, housing, family relationships, basic income, or ability to attain a basic standard of living. For civil law there was a list of matter types that were defined as high impact, all other matters were triaged by vulnerability and the client's ability to self-help. For criminal law, high impact matters included any matter where there was a risk of incarceration. For family law, almost all matters were decided to be high priority because they involved children or family.

At its most basic, anyone who was a high priority client or who had a high impact matter was booked into advice, and anyone who did not was referred to information resources. There was also a self-help test to catch people who needed our help but did not fall within either of these categories. This triage model was trialled in six locations, two locations for each law type: civil, crime and family. Through this process we defined high and low impact legal issues for each type of law.

4.2 Combining triage for law types

After the initial trials, we combined all three law type logics and tried to implement them across the organisation in 2020. It was chaos. COVID-19 dramatically increased the workload for intake staff. They now had to ask and record all of the clients' contact and demographic information over the phone, instead of the client filling in a form when they attended the office.

They were also scrambling to invent systems to deal with a legal practice that went from paper based with solicitors in the office, to online to accommodate staff working from home. This included online appointment booking, managing emailed documents that would previously have been brought in by the client, and file management. Triage was an added burden, especially for the offices who had not triaged before or had not previously triaged across all three law types.

There was also push back from solicitors who were seeing a different mix of clients or matters in their clinics. This feedback made us aware of a multitude of unwritten and localised rules that determined where someone received advice. One issue was with our state-wide specialist teams⁵, which often had complicated intake guidelines to match their funding parameters. Where possible we rephrased and simplified these criteria to also relate to priority and impact. Some Legal Aid NSW offices who focused on criminal law were unable to resource the model because they had traditionally only advised clients who they could provide a duty service at court to under the duty guidelines. The duty guidelines were narrower than the triage model - the larger number of priority clients in the triage model meant they were seeing more clients for advice. The solicitors wanted the high priority client list narrowed to match the duty guidelines.

In response we changed the triage model so there were different definitions of high priority clients across all law types and introduced more detail in the description of matter types to manage the demands of the lawyers. The result was further confusion and complexity - especially for intake staff.

The next year, we introduced technical solutions which allowed intake staff to book an advice appointment in any office across the state. Previously, only the local office could book an appointment at that office and if the client called the wrong office, they were told to hang up and call the correct office. We replaced this model with a catchment list containing every postcode in the state and the corresponding office, so that triage could be applied anywhere in the state. This revealed a 'gap' of over 300 suburbs that were not within a Legal Aid office catchment. We created a team of advice lawyers, State-wide Advice Team (SWAT), who could provide telephone advice to people living in these geographical gaps or in areas of law where the client was unlikely to need our casework services.

In the most recent triage refresh (2023) we have again revised the model. Firstly, we have tried to simplify it by reverting to having one consistent definition of high priority client⁶ across all law types and clarifying issues that typically appear across law types such as Apprehended Violence Orders (restraining orders) and fines. We have produced a user's manual that outlines key business rules across all offices and reduced the number of data points that staff must collect at the advice stage.

⁵ We have both specialist area of law teams and specialist client teams. Examples of specialist area of law teams are immigration law, the social security team and the housing appeals team. An example of a specialist client team is the Civil Law Service for Aboriginal Communities (CLSAC).

⁶ This list includes an Aboriginal or Torres Strait Islander person, young people or children under 21 years, a person experiencing domestic or family violence, a person with cognitive impairment and/or intellectual disability, a person with an acute mental health condition, a person experiencing homelessness, a person who is a refugee or asylum seeker and has arrived in Australia within the past six years.

5. Outcomes and learnings

It has been four years since we implemented triage at Legal Aid NSW. Its success can be seen in the 10% reduction in incoming telephone calls across our offices and 50% reduction in client bounce.⁷ It has also produced better alignment in criminal law with about 25% more Aboriginal clients receiving crime advice and decreases in advice for low impact traffic advice and wait times.

It has eliminated ad hoc triage systems such as drop-in advice and lottery systems, which were producing poor outcomes for the clients that need us most. Perhaps most importantly, we now have better visibility of real demand and service delivery. We are recording data that shows how clients are contacting us and what level of service they are receiving.

We are also aware of local nuances that affect service delivery but that we were not previously aware of at an organisational level. For example, in some criminal court services, the Legal Aid team will only provide a duty service if the client has already had an advice service from the office. This affects triage because different arrangements need to be made if no appointment is available, but it also affects client and stakeholder expectations and satisfaction in those areas. We are now working towards service solutions in those teams to ensure consistency across the state.

No doubt the model will be continually revised. Some intake staff continue to struggle with the complexity of triage and the time taken to collect all the required data from the client. However, there are some key learnings that will help us in this ongoing work and may also assist other legal assistance organisations considering implementing triage.

1. Keep it simple and aligned to your high-level purpose.

Primary triage is a blunt tool rather than a precision laser. The purpose is to make sure that the people who you should be prioritising for legal assistance (according to your high-level purpose) can get it in a simple and timely way; and to create capacity by referring some people to information and self-help resources. We found that client legal vulnerability and impact of the legal matter were the key criteria in achieving this but that they need to be defined with enough clarity so that intake staff do not have to make stressful judgement calls on the fly.

2. Culture is key.

Until the introduction of triage, intake was controlled by the local office and each had their own ways of managing demand. The introduction of triage produced a strong narrative in some offices that their local way was the best and that others were getting it wrong. We had unfortunate examples of staff calling other staff to tell them why their

⁷ This is a 50% reduction in people being told to call another phone number

triage decisions were wrong. We now have intake managers in each office who will support local staff doing triage and work together to resolve issues between offices.

3. Triage does not stop at intake.

Triage is an ongoing process through the client's engagement with the legal assistance service. The primary triage undertaken by intake staff directs the client to legal advice (or elsewhere). The lawyer then provides advice and fulfils a secondary triage role in determining what level of service the client needs, and what the next steps are. This is appropriate because the impact of the legal problem involves an assessment of legal merit which can only effectively be done by the lawyer. The lawyer will also have an extended conversation and build rapport with the client which may allow them to identify vulnerabilities that were not evident in the brief initial conversation.

4. Pay attention to your intake staff.

Like many legal assistance and legal aid organisations, we have staff answering our phones and staffing our counters who have historically been poorly paid⁸ and are required to perform diverse tasks for clients and lawyers, including client intake. We designed and implemented our triage system with this workforce who were often feeling stressed, overworked, and under-prepared because we had no alternative. They have been the champions of this project - giving us frank and fearless feedback and constantly asking for us to simplify and streamline. Their insights are authentic and informed by their encounters with the very people we serve. Legal Aid NSW has renewed our recognition of these 'front-line justice warriors' and we are taking new steps to invest in their development, wellbeing, and career path.

⁸ In some agencies, they may even be volunteers or students on placement

For more information, please contact clientservice@legalaid.nsw.gov.au



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