

Legal insurance lifts access to justice

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The cost to the consumer is relatively small in comparison with the cost of the service WHAT can be done to make justice more affordable?

The Centre for Innovative Justice recently published an article suggesting lawyers must share their exclusive role so consumers can access affordable justice. Currently, the Federal Productivity Commission is also conducting a public inquiry into the cost of and access to civil justice.

All analysis seems to lead to one conclusion, which is that the wealthy are able to pay their own legal fees, the poor are able to apply for legal aid but that there is a section of people caught in the middle.

I have long wondered why we make no complaint about the cost of our medical care. More than half the state's budget is spent on healthcare. The amount spent on justice is minute by comparison.

Why are we fixated, therefore, with the apparent cost of lawyers but are not concerned about the fees of doctors and allied health professionals? The simple answer is that we all have either public or private insurance to offset the cost of our medical care.

The ultimate cost to the consumer is relatively small in comparison with the cost of the service. We are perfectly happy to pay a Medicare levy and private health insurance premiums if we can afford it.

However, there is no such thing as public insurance for legal fees, while private insurance is hidden and sporadic.

In truth, many people have insurance. For example, if a trade union member gets into some strife, their trade union will often assist with offering them legal advice and access to a lawyer.

Similarly, if you are a director or officer in a company you will most likely be entitled to the benefits of a director's and officer's policy of insurance.

Why then, is this not more widely offered within society?

In Europe, legal insurance is regarded as quite normal. Sophisticated schemes of insurance exist in Austria, Belgium, France, Germany, the Netherlands, Spain and Switzerland.

Their experience has not been that there is frivolous litigation, because insurance underwriters by their very nature prevent unnecessary or frivolous litigation occurring.

Rather, it enables those caught in the gap – who are either not sufficiently wealthy to pay their own fees or are so underprivileged that they have entitlement to legal aid – to access the justice system.

It is time that we started thinking smartly about our options rather than risk diluting our excellent standard of law and justice in this country. Legal insurance is one such idea.

Just like doctors are essential to a health system, lawyers are to our legal system.

There ought to be a national conversation about the importance of law and of funding a citizen's access to our legal system through the provision of legal insurance.

Law should not be regarded as a poor second cousin to health care, but central to the operation of our democratic society.

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