National Legal Aid Best Practice Conference

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***‘The Court is that way’: some thoughts on responding to recruitment and retention challenges***

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In May 2010, the Commonwealth A-G announced $1.1m to address the problems of recruitment and retention of lawyers in rural, regional and remote Australia.

Around the time of the announcement I had started as the Principal Legal Officer at NAAJA, where, in the previous year, staff turnover was 85% and we were struggling to fill positions in our smaller offices in Katherine and Nhulunbuy. So this seemed welcome and timely.

Unfortunately, while there are some good things in what has been done – and I will come to them - the initiatives funded haven’t grappled with the main structural issue that confronts our sector. It comes back, in the end, to funding. I want to touch on this briefly today, but won’t dwell on it, in part because it is not news to anyone here.

What I want to focus on for the bulk of this session, and encourage everyone here to share their ideas about, is what we can do internally to address problems of recruitment and retention. Picking up the theme of the conference, ultimately the internal health and wellbeing of our organisations is one of the most significant factors impacting upon recruitment and retention. Creating an environment in which staff are (and feel) supported and valued is obviously a large part of the answer. This is perhaps so obvious as to be motherhood stuff, but I hope that our discussion will be helpful for those who, like me, grapple with these issues daily.

Of course, the paradox is that when you are short-staffed and spending much of your time recruiting it is hard to find the time and energy to work on developing and maintaining an environment that will attract and keep good people. I’m sure I’m not the only one who walks away from discussions on recruitment and retention with a dozen great ideas while at the same time wondering when I’ll get time to put them into practice. So I’ll forgive you for muttering ‘tell him he’s dreaming’!

**Show me the money**

Let me get the awkward matter of money out of the way up front.

One of the significant issues in the recruitment and retention discussion in the legal aid sector is funding. In short - less work, more pay is a pretty good start in attracting and keeping people.

Burnout from massive caseloads and constant bush travel remains a significant issue for Aboriginal Legal Services and while we don’t have difficulty in attracting junior people who are keen for an interesting and rewarding experience in their first few years out, uncompetitive salaries are a particular problem in recruiting people with experience and retaining people once they have a couple of years under their belt.

But beyond simply providing better overall funding to legal services, specific initiatives could be funded to target this problem, such as:

* Generous relocation packages
* Remote allowances, including accommodation allowances or subsidised accommodation in remote areas
* Loyalty bonuses for people staying more than 2 years
* Training support – eg additional allowances for travel to courses.

Our current funding doesn’t allow us enough scope to make these sorts of things available – unless we are prepared to cut staff and therefore increase workloads, defeating the purpose.

I note that the Country Lawyers Graduate Program operates in WA with some of these features. It is a joint initiative between the Law Society, Legal Aid WA, Community Legal Centres, the Aboriginal Legal Service of WA and Family Violence Prevention Legal Services. It is said to provide a ‘4-year fast-track professional development opportunity’ starting with a year as a junior solicitor with WA Legal Aid before getting a 3-year contract with rotations through regional legal services.

One concern I have heard about the program is that in some offices you may have lawyers who are on the program and therefore getting extra support and financial rewards, and others who are not but are doing the same work – creating an obvious inequity.

Another concern is that 12-month rotations of junior lawyers through legal services is little different to the status quo. Unless the structural funding issues are resolved for our sector, how will we convince people to stay or return after their tour of the regions?

One initiative that NAAJA will be able to formally announce soon is an Indigenous legal cadetship program. We have secured generous pro bono support from Blake Dawson to allow us to cover a student’s tuition and also provide them with paid employment with NAAJA during their end of year breaks, with a view to employing them upon graduation. We are hoping that this will be a small step in creating a deeper pool of lawyers in the jurisdiction from which we can recruit as well as promoting opportunities for Indigenous lawyers.

**So what *did* we get from the $1.1m?**

***$250,000 to Law Council of Australia***

$250,000 of the package went to the Law Council and has been spent on three related initiatives:

* A DVD to promote the benefits of working in RRR areas;
* The RRR Law website, promoting legal work in RRR areas and hosting job ads; and
* A marketing and promotional campaign to raise awareness of employment opportunities in RRR locations.

I think the RRR website is a worthwhile initiative and I’d encourage you all to have a look at it – particularly the NAAJA job ads.

But I have to confess some frustration and cynicism with aspects of this. If we all prepared our wishlists for recruitment and retention initiatives, I don’t know that a marketing campaign would feature highly on them.

More fundamentally, however, turning the enthusiasm that may be generated by a website and a marketing campaign into action – actually packing up your life and heading off - requires that the structural issues that confront our sector are addressed. And hanging on to those people once the novelty of a change of scene has worn off is perhaps the bigger part of the challenge.

One aspect of the website that caught my eye was the claim that you will enjoy a great work/life balance if you make the switch to RRR law. I can’t say that is the experience for anyone I know working at an ALS. If we had more lawyers the situation might be quite different. There are, to be sure, many reasons other than work/life balance that explain why we do it, and the site isn’t intended only to attract lawyers to Aboriginal Legal Services, but it does rankle just a little.

***Money for NACLC***

The majority of the $1.1m was provided to the National Association of Community Legal Centres for the engagement of regional coordinators to develop strategies to attract and retain lawyers in selected RRR areas, including support for services to coordinate recruitment and to provide mentoring and professional support to lawyers for all Commonwealth Government-funded legal assistance services.

We have had a number of meetings with the local co-ordinator and they have been useful. An important benefit of having a regional co-ordinator is that it has made space for discussing these issues at a local level and we hope that it will allow for greater collaboration and co-operation around things like training and mentoring

Again, however, I would note the limitations to these sorts of initiatives. They may generate good ideas and help mobilise our good intentions, but we all return to the coalface and once the co-ordinator’s position ends, we are unlikely to have anyone with the time to implement and co-ordinate these ideas. Unless there are structural changes, these sorts of initiatives can only do so much and tend not to be sustainable. They amount to asking us to do more within our stretched budgets and this can only go so far.

**What do staff say they want?**

But enough whinging. This stuff matters and ultimately we need to be prepared to give it priority so that we are doing what we can to attract and retain quality staff.

Our regional co-ordinator funded through the money given to NACLC has spent time talking to staff and former staff across our organisations. The feedback confirms that the issue is more complex than money and there are plenty of things we can do internally to ensure we are recruiting and retaining quality staff. What solicitors in the services say is that the following things are important:

* Training and development opportunities – including access to what is available in the major centres.
* Administrative support – a lack of effective administrative support is a major cause of stress and burn-out.
* Inductions – allowing people to get up to speed quickly and minimising time spent floundering in the deep end. The title of this presentation ‘The Court is that way’ is my reflection on how inductions can be rather perfunctory affairs, especially in times of high turnover.
* Mentoring and professional support – regular feedback and a chance to ask questions.
* Policies and procedures manuals - another way to remove frustration that comes with not knowing how things work.

This reflects what I’m sure you have all been hearing from professional staff. It was certainly the feedback I received in the first few months after my arrival at NAAJA in May 2010. The importance of effective systems and support was a constant refrain.

We’ve done a number of things in the past year to respond to this including developing a handbook for our criminal lawyers that covers both internal policies and procedures and also practical tips for solicitors on things from ethical issues and court etiquette to bail applications and making a plea in mitigation. We have reviewed our induction process and have given a particular focus to training and professional development: regular internal seminars are now a feature of our workplace.

What I would like to touch on in some more detail is the issue of support.

Providing support for our legal staff from both management and administrative support staff is clearly critical. But my impression is that there is a tendency to hire people in management and administrative support positions and leave them to it. How do we make sure that the support that is provided is effective?

**Support for management**

Turning first to management. I am talking here about ‘middle’ management – the managers of our legal teams.

Managers of our legal teams are often good technical lawyers who have achieved some seniority and shown some interest in leadership. Or possibly they have reached the top of their salary band and the only way up is by taking on management.

But being a good technician does not mean you have the skills and qualities that make good managers.

There is a danger – by no means unique to the law - that management positions get filled with people who don’t have the skills, the interest or the stomach for management: the unglamorous and emotionally demanding grind of sorting out problems and grievances, ensuring that systems are working effectively, managing underperformance and reporting up the line.

I suspect that all lawyer/managers dearly wish that everyone would just take care of themselves so that we can get back to our casework.

I think this is an important thing for us to remember both in recruiting into those positions and in thinking about what support and training our managers require.

Things like providing effective feedback and managing performance are hard work. They are things that I suspect every manager hates and would rather avoid: given the choice between a full bench and a disgruntled employee I know which one causes me the greater stress.

But these parts of the job are vital to staff feeling supported and valued and maintaining an effective team. We need to make sure that our managers are given ongoing training and support in these areas so that they can do it well. Sending people off on ‘management course’ is a good start, but it is not enough. There needs to be ongoing support for people in these roles and opportunities for our managers as a collegiate group to share their ideas and experiences.

One process that we have given recent attention to at NAAJA is performance management. Performance reviews were not happening regularly and for some staff were not happening at all. When they did, they required lengthy forms to be completed and it was regarded as onerous by staff and managers. While the forms were filled out they didn’t seem to contribute significantly to the conversation that followed and weren’t ultimately useful in assessing performance. What happened was not part of an ongoing process or culture of feedback, mentoring or support.

We have introduced a new simple system of performance review that is aimed at supporting good communication between managers and their staff, rather than amounting to an annual ‘test’. We wanted to come up with something that was easy to do – otherwise experience tells us that it won’t be done and won’t be done well.

The formal part of our system involves asking and answering together the following questions, twice a year:

* What am I doing well and where have I improved – reflect on successes in the last period?
* What can I improve in my performance?
* How do I plan to improve my performance – what will you change or do differently?
* What are my professional/skills development needs?
* What can I do as you supervisor to help you improve your performance and develop your skills?
* Do you have any other ideas for how our team can work more effectively?

Once we have developed a culture and practice of regular reviews we can look at refining things and no doubt there will be plenty of scope for improvement. But I’m hoping that it is a way that we can support our managers to provide the support that staff need.

Another aspect to support management that I think is important is succession planning. Losing a key manager can throw a team into a spin and result in the loss of staff unless the transition is managed effectively. Helping managers to delegate and structure their teams so that responsibility fans out across the team is one way to avoid problems here.

**Supporting support staff**

Another area that I think warrants attention and can reap rewards is better supporting support staff.

We know that having good support staff makes an office hum and takes a lot of stress off lawyers.

But the fact is that much admin work is not particularly interesting, may be pretty unrewarding and isn’t well paid. Lawyers can be demanding and may have varying degrees of interpersonal skills. Finding and keeping support staff is therefore an important part of the challenge.

It is common in an organisation like NAAJA for us to recruit support staff who are young and have limited previous experience, especially in a legal office. We pride ourselves on employing Indigenous people – nearly 50% of our workforce is Aboriginal – and many of our Aboriginal staff are in support staff roles (in addition to lesser roles like CEO!).

So training, support and career development for our support staff are very important not only to make sure they are providing the support we need, but also to keep the team engaged, interested and willing to stick around. And for an organisation like NAAJA, if we are serious about leadership in and for the Aboriginal community, we need to make sure we are providing real pathways and skills development for Indigenous staff and making the most of our local talent.

The divide between support staff and professional staff is a perennial issue and source of tension in some offices so finding ways to break that down is important. Team-building activities are good and well but I think there is also scope for finding ways to make sure that support staff feel like they have a stake in the game. Giving people responsibility and an understanding of how their work relates to the end product is something we are looking at to see if this helps build a more cohesive team. For example, we are having regular in-house training on legal concepts and legal processes for support staff and encouraging them to attend court to see cases for which they have done work.

So I’d like to give us a chance to discuss these issues further. I have no doubt that many of you have experiences of your own in grappling with these issues and I hope you might share some of the ideas and initiatives that you are implementing in your own organisations.