



Law Council
OF AUSTRALIA

Role of the Legal Profession for Social Justice, Legal Aid and Pro Bono Work

Speech delivered by Fiona McLeod SC, President of the Law Council of Australia, at the 2017 Presidents of Law Associations of Asia Conference (POLA), Colombo, Sri Lanka.

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Thank you for inviting me to speak today.

As many of you are aware, the Law Council is the peak national representative body of the Australian legal profession, and represents around 65,000 legal practitioners nationwide. We advise governments, courts and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community.

As the President of the Law Council this year, I have been asked to speak on the topic of *“Role of the Legal Profession for Social Justice; Legal Aid and Pro Bono work”*.

In discussing this I will cover a number of issues, including:

- pro bono work undertaken by Australian lawyers;
- the role of Community Legal Centres (CLCs);
- our national legal aid crisis, and how it is that we got to this point;
- why legal aid is an issue of concern in our communities; and
- the Law Council’s ongoing advocacy in this area.

Australia’s legal aid crisis

So firstly to the broad crisis in the accessibility of legal aid.

Pushing for greater legal assistance funding has been a core priority of the Law Council for many years for a very simple reason: Australia’s legal aid system is in crisis.

Since 1997, successive Federal Governments have been aggressive in stripping hundreds of millions of dollars from legal aid, crippling this vital justice safety net.

Two decades of deteriorating funding means the number and seniority of legal practitioners prepared to undertake legal aid has now been significantly eroded.

Legal assistance services are closing down, and more cuts are on the horizon.

As a result, justice is being denied to thousands of Australians each year.

The system is now at a point where most Australians who can’t afford a lawyer now simply won’t get one – in many cases even if they are living below the poverty line.

Today, only eight per cent qualify for legal aid under the current means test.

Due to the cuts, for the last decade we have seen some 10,000 Australians each year forced to represent themselves in court.

As a result, we are seeing court cases remaining unresolved, and often escalating into much larger and more complex problems for those involved.

People representing themselves are reducing efficiency, and significantly increasing the cost of the court system. And in many cases, their lives are being ruined.

This includes:

- women trying to escape domestic violence, who can be cross-examined by their abusive partner, without a lawyer to defend them;

- workers who lose their job and are forced into court to face banks or debt collectors without legal representation;
- small businesses with disputes threatening their livelihoods; and
- perhaps most tragically, young Australians facing the possibility of detention – facing the possibility of having their future prospects dealt a crushing blow – without legal representation.

For young people already in detention the situation is even worse – inadequate access to legal representation often means there is no way of mitigating abuse and injustice.

Pro bono

As the legal profession's peak body, we have been determined to point out that while a serious access to justice problem has been created by the funding crisis – it is a crisis that would be worse were it not for the culture of pro bono ingrained deep in the Australian profession.

The pro bono work undertaken by Australian lawyers is a matter of enormous pride for us.

Australian lawyers provide hundreds of thousands of pro bono work hours every year to those who have no one else to turn to and cannot afford to pay for legal services.

The Australian Pro Bono Centre's latest report finds 402 thousand hours of pro bono services were provided in 2015-16.

That is 35 hours of pro bono legal services, per lawyer, per year – roughly one week of unpaid work a year for every Australian lawyer.

And of course we know the official numbers will tend to vastly under-represent the actual level of pro bono achieved by private practitioners.

As remarkable as this contributions is, we know that pro bono cannot ever be a substitute for properly funded legal aid services.

Community Legal Centres Services (CLC's)

CLCs are a critical safety net in our justice system, yet they are woefully underfunded.

CLCs managed to assist over 216,000 clients last year with advice and casework services.

In the last year CLCs estimate they were forced to turn away some 160,000 people seeking help.

160,000 people who thought their situation was serious enough to seek legal assistance.

How many of those turned away now have exacerbated problems?

How have those problems spread within their families, their social networks, their communities?

This we don't know. But we can take an educated guess.

Legal Aid Matters campaign

Last year the Law Council launched a major new national campaign ahead of the Federal Election, with the cooperation of dozens of organisations across the country – the Legal Aid Matters campaign, to raise awareness and pressure on legal aid funding.

Through staged action in major cities around the country, the Legal Aid Matters campaign was able to generate significant awareness on some key issues.

- that legal assistance was being denied to thousands of people who need it, even many of those living below the poverty line;
- that the economic case for a major boost to legal assistance had been categorically made by the Productivity Commission; and
- that legal assistance goes to the very heart of what kind of nation we are. It is one in which everyone can get a 'fair go' from our legal system? Or where justice is not only something for the rich?

The Law Council's Legal Aid Matters campaign called for solutions to end the crisis in legal aid:

- return the Commonwealth's share of legal aid commission funding to 50 per cent with the States and Territories;
- a further \$120 million to cover civil legal assistance, with the States and Territories contributing \$80 million, comprising a total of \$200 million, as recommended by the Productivity Commission; and
- the immediate reversal of further funding cuts to legal assistance services announced in 2014, which were due to take effect from July 2017, including:
 - \$12.1 million in cuts to community legal centres (a 30 per cent cut);
 - \$4 million in cuts to Aboriginal and Torres Strait Islander Legal Services;
 - and
 - All cuts directed at policy and advocacy work conducted by legal assistance bodies, as recommended by the Productivity Commission.

All of the Law Council's Constituent Bodies in each State and Territory were committed to the campaign, door-knocking MPs in Canberra and their local constituency in the fight for a commitment to proper funding. The Law Council held over 40 meetings with Federal Parliamentarians, and also cross bench Senators.

While the legal aid commission funding sought might sound like a lot, there are a couple of points worth making.

Firstly: international experience.

Take Great Britain, for example. The UK, as you would know, has recently gone through a very harsh round of austerity measures following the European economic crisis.

Yet even after these austerity measures, the UK is still spending roughly double what Australia does on legal aid, per capita.

So we can do much, much better by OECD standards.

Secondly: while this initial investment may sound very high, its deployment will actually save taxpayers money over the long-term.

This is not just the view of the Law Council of the Australia. It is the view of the economists at the Productivity Commission – a group hardly renowned as bleeding hearts!

The Productivity Commission's 2014 report into legal assistance recommended an immediate \$200 million boost to legal aid, because it would reduce reliance on other expensive government services – like social security, public health, law enforcement, and social services. The report called for an extra \$120 million a year from the Federal Government and an extra \$80 million from state and territory governments to bolster the legal assistance sector.

So the economic case for a significant and immediate increase in legal assistance funding is sound.

More than the economic case, however, legal aid goes straight to the heart of Australia's notion of fairness.

Our attitude to its funding tells us what kind of society we want to be.

Do we think justice is a right of all Australians? Or do we think it should be reserved only for those with the resources to afford a lawyer?

After all, statutory rights under the law mean little if you can't access them properly.

That's why legal aid is vital.

What is troubling about this crisis is that like the frog in the pot being boiled slowly, Australians are simply not aware of how this nation's legal safety net has been eroded in recent times.

We know from national polling which the Law Council commissioned in 2016, that the overwhelming majority of Australians believe if they encounter a legal problem and can't afford a lawyer they will have legal aid provided to them.

This assumption is simply wrong in the vast majority of cases.

Some success

On 29 March 2017, following the Law Council's extensive Parliamentary engagement, the Senate passed a [historic motion](#) calling for immediate action on the funding crisis affecting Australia's legal assistance sector and the Federal Courts. The motion called on the Government to:

- immediately reverse the imminent cuts to community legal centres (CLCs) and Aboriginal and Torres Strait Islander Legal Services – that were to take effect from 1 July;
- commit to adequate and sustainable longer-term funding contributions to the legal assistance sector;
- release the 2014 KPMG report on the Federal Courts; and
- review resourcing for the Federal Courts and identify what resources are required to address unacceptable delays in hearings and determinations.

On 24 April 2017, following a year of coordinated lobbying from the legal sector along with other community bodies, Law Council welcomed an announcement by the Attorney-General that the proposed cuts would be cancelled.

The \$35 million that was due to be cut from the sector amounted to a 30 per cent cut that would have devastated CLCs. The Federal Government's cancellation of millions of dollars worth of cuts to legal assistance services therefore came as a huge relief with profound consequences for the justice system, and thousands of vulnerable Australians.

However, while the cancellation of the cuts staved off the immediate 'funding cliff' crisis, the Law Council believes that much more is needed to address the structural and systemic underfunding of legal aid including legal assistance services, which have suffered from over 20 years of funding neglect by successive Federal Governments.

Funding announced in the 2017-18 Federal Budget for CLCs will be directed toward family violence. The Budget demonstrates that the Federal Government is heeding the concerns of the legal profession, with vital new funding for the Federal Courts along with the reversal of cuts to community legal centres (CLCs) and Aboriginal and Torres Strait Islander Legal Services (ATSILS).

The Law Council's role in securing this funding has been acknowledged by the Attorney-General. The Law Council's persistent advocacy, along with the National Association of Community Legal Centres, National Aboriginal and Torres Strait Islander Legal Services and Constituent Bodies, played a key role in building cross-bench and back-bench support within Parliament and the Government caucus necessary to achieve the funding announcement.

The Law Council approached many Federal Parliamentarians on this issue and the campaign brought together a broad network of legal and non-legal stakeholders. The Law Council will continue to work with the Government and Parliament, to develop a sustainable long-term funding model for the Federal Courts.

Justice Project

Another longer term initiative of the Law Council in 2017 which I'd like to note is the Justice Project.

This is a comprehensive national review into the impediments to justice in Australia, focusing on those facing significant social and economic disadvantage in our community – the elderly, the young, those living in remote areas, the homeless, and those affected by discrimination – notable, Aboriginal and Torres Strait Islander peoples who are shamefully overrepresented in our nation's detention system.

The Justice Project recognises and draws from the considerable body of work already undertaken in this area. The project is currently examining the literature, and talking to key people with the necessary expertise. We have sought submissions and explored case studies that illuminate the real personal impact on the lives of our most vulnerable.

From there, the project will look to build the case for new justice strategies and law reform secured by proper resourcing for the courts and appropriate funding.

Following targeted stakeholder consultations during the second half of the year, a final report will be released.

Conclusion

I understand the picture I have painted is not a particularly bright one, and indeed Australia's approach to legal aid funding is not a topic with substantial positives of late. Yet, to conclude on a note of optimism, I do believe the prospect of political change is feasible.

The Law Council's research shows that eight out of ten Australians believe that legal aid should be there in times of need. That is the right of Australians to access legal representation regardless of means.

This means that the current situation is out of kilter with the expectations of 80 per cent of the population.

The traditional temptation would be to disregard this – to point out that public expectation and political reality are very different things.

Yet we are seeing increasingly, all over the developed world, comfortable political expectations being upended by the inconvenient desires of the people.

The aim of the Law Council's Legal Aid Matters campaign is to create public awareness and foment discontent with the existing situation as a means of facilitating political action.

We will continue to fight for improved access to justice through:

- the Legal Aid Matters campaign;
- our support of the CLCs; and
- our Justice Project.

I think any Australian Government would be wise to urgently reform the nation's legal aid situation.

It makes economic, legal, and moral sense.

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