



Law Council
OF AUSTRALIA

POLICY PRINCIPLES

Legal Aid & Access to Justice

November 2008



Law Council Legal Aid & Access to Justice Policy Principles

1. Development and adoption by the Commonwealth of a mechanism to break down the Commonwealth/State funding divide.

This will allow the ability to transfer Commonwealth funds to priority areas of disadvantage rather than depending upon a requirement that the relevant law be enacted by a Commonwealth or State parliament.

For example, whilst the Commonwealth takes responsibility for matters under the Family Law Act, closely related legal aid services in child protection and family violence matters fall under State law and have to be funded from State revenue. The Law Council intends to foster a debate about how to allow the funding process to be flexible enough for such closely related matters, most likely being dealt with by a single legal practitioner, to be funded from a single source.

2. Creation and adoption by the Commonwealth of a national means test.

Currently, every Legal Aid Commission applies a different means test that must be satisfied before an individual is granted legal aid. Although there is a formula for reaching a national means test, due to the complexity of the means tests and variations amongst jurisdictions, it is not possible to identify a generally applicable national cut-off point for grants of legal aid for representation.

The Commonwealth has indicated that it would like a true national means test to be created which is set at an appropriate level. The Law Council would support the development of a nationally consistent and appropriately set means test.

3. Increased fees for private practitioners undertaking legal aid work.

In July 2007 the Attorney-General's Department commissioned TNS Social Research to review the remuneration arrangements for private practitioners undertaking legal aid work. One of the key findings of the TNS Research was that legal aid work was becoming increasingly unsustainable as private practitioners withdraw from it because it is not commercially viable in most cases.

Nationally, of the firms which provided legal aid in recent years, 33% of them have since stopped. A further 19% have never provided it. The key reason cited in both situations is the rate of remuneration. In most cases, the rate for legal aid work is 50% less than if the work was paid for commercially.

4. Incentives for lawyers to practice in rural, regional and remote areas.

In light of the recognized difficulties facing disadvantaged individuals who reside in regional and remote areas, the Law Council has consistently argued that a range of incentives are required to encourage young lawyers to practice in rural and remote areas.

5. Increased funding for Community Legal Centres (CLCs).

CLCs provide referrals, advice and assistance to more than 350,000 people each year. Each CLC has a baseline funding requirement for it to operate effectively which is currently not being met. The National Association of Community Legal Centres wrote to the Attorney-General in January 2008 requesting a total of \$39 million in new funds.

Ensuring that CLCs have adequate funding is one of the most simple and direct means to tackle the problems faced by those that have difficulties accessing the justice system.



6. Increased funding for dedicated indigenous legal services.

The importance of dedicated indigenous legal services and the pivotal role they play in helping indigenous people access the legal system has been well established.

A shortfall in funding to dedicated indigenous legal services is a curtailing of the most likely means by which indigenous people can seek legal help. Aboriginal and Torres Strait Islander Legal Services (ATSILS) has calculated its real term funding loss since 1996 at just under 40%. This does not take into account unmet and increased need due to population increases and demographic changes, or changes to the substantive criminal law that particularly affects indigenous people. Funding increases need to factor in the issues of language, culture, literacy, remoteness and incarceration rates into the cost of service delivery.

Another important issue relates to the salaries of solicitors employed by indigenous legal services. In terms of encouraging lawyers to take up practice in indigenous legal centres, and attracting and retaining experienced staff, the salaries the current level of Commonwealth funding allows solicitors to be paid is insufficient.

7. National civil legal aid program.

The Law Council has a long held policy on the restoration of a national civil legal aid program. As a result of the Commonwealth funding reductions of the mid 1990s, all commissions shut down or dramatically reduced their civil law legal aid programs. With the Commonwealth now funding family law legal aid, most state/territory revenue is used up in the provision of criminal law services. As a result, some states and territories increasingly tend to regard their obligation to support the work of commissions as being confined to criminal law, with the result being that civil law has become a low priority.

It is the Law Council's hope that the Commonwealth will agree that the provision of legal aid for civil law matters will remove a substantial barrier to access to justice.

Authorised by Bill Grant

*Secretary-General, Law Council of Australia
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