

Government response to Senate Legal and Constitutional Affairs References Committee report

Access to justice December 2009

Introduction

The Australian Government welcomes the Committee's report *Access to justice* released on 8 December 2009.

Access to justice is central to the rule of law and integral to the enjoyment of basic human rights. It is an essential precondition to social inclusion and a critical element of a well functioning democracy.

Submissions to the Committee highlight several areas where reforms to the legal system would be beneficial in making justice more accessible to Australians, particularly those suffering disadvantage.

An accessible and effective federal justice system is a key priority of the Australian Government's agenda for reform. Improving access to justice is not only about access to courts and access to lawyers, but also about having the means to improve 'everyday justice': the justice quality of people's social, civic and economic relations. Improving access to justice involves providing timely access to good information about the law, improving the quality of primary-decision making, ensuring that laws are clear, and improving the knowledge of and engagement with less adversarial dispute resolution options.

The commitment to this priority is demonstrated in a range of initiatives already undertaken by Government to improve the accessibility and effectiveness of our federal justice system:

- (a) adopted a Strategic Framework for Access to Justice which is based on five key principles of accessibility, appropriateness, equity, efficiency and effectiveness. These principles will guide future policy development,
- (b) endorsed the five principles by all State and Territory Attorneys-General at the Standing Committee of Attorneys-General meeting, November 2009, which promotes a consistent and coordinated approach to access to justice,
- (c) injected \$154 million over four years for legal assistance services in 2010-11 Federal Budget, taking the total Commonwealth contribution to over \$1.2 billion. An important component of access to justice is supporting those who cannot afford legal services. This is the most significant injection of new Commonwealth funding for legal assistance programs in well over a decade. The new funding will focus on early intervention services and will reinforce a shift away from expensive adversarial court litigation,
- (d) negotiated a new National Partnership Agreement on Legal Assistance Services with the States and Territories. The new Agreement promotes reform to legal assistance service delivery by promoting early intervention services, which avoids the need for

litigation, and more appropriate targeting of legal assistance services to people who experience, or are at risk of experiencing, social exclusion. The new Agreement provides greater flexibility for legal aid commissions to provide preventative and early intervention services regardless of whether the matter type comes within Commonwealth or State and Territory law. Commissions will have the flexibility to use Commonwealth funds for grants of aid for State law matters where a child's welfare or an applicant's safety is at risk and there is an overlapping family law matter.

- (e) established a new National Legal Assistance Advisory Body to help develop national responses to critical challenges affecting the legal assistance sector. The Advisory Body will provide strategic policy advice to the Attorney-General on issues affecting the provision of legal assistance services, including the coordination and integration of services, improved access and availability, and early intervention.
- (f) launched an Access to Justice website to provide seamless access to local information about legal assistance and related services at www.accesstojustice.gov.au,
- (g) passed important legislative reforms to the case management powers of the Federal Court aimed at reducing unnecessary delay and time spent in court,
- (h) introduced the Civil Dispute Resolution Bill requiring people to take genuine steps to resolve their disputes before going to court, and encouraging parties and their lawyers to consider a range of options which can assist with resolving the matter or narrowing the issues involved. This Bill implements recommendations of the National Alternative Dispute Resolution Advisory Council (NADRAC) in the Council's report *The resolve to resolve: embracing ADR to improve access to justice in the federal jurisdiction*, November 2009,
- (i) issued three new terms of reference to NADRAC for specific work. These terms of reference include the preparation of a statement of national ADR principles, the development of a model dispute management plan for Government agencies, and providing advice on the integrity of ADR processes,
- (j) requested a review by the Australian Law Reform Commission of discovery and to identify options to improve the discovery process in civil litigation which will promote early information exchange,
- (k) committed to develop improved administrative law guidelines for Commonwealth officials, and
- (l) invested \$1.6 million to attract and support lawyers working in rural, regional and remote areas.

Government response to recommendations

Recommendation 1

The committee recommends that the federal, state and territory governments jointly fund a comprehensive national survey of demand and unmet need for legal assistance services in Aboriginal and Torres Strait Islander communities, with particular identification of rural, regional and remote communities and Indigenous women's needs, to be jointly undertaken with state/territory legal aid commissions, community legal centres, Aboriginal legal services, National Legal Aid and the Law and Justice Foundation NSW.

The recommendation is noted.

The Australian Government is committed to the delivery of high quality and culturally sensitive legal assistance services to Indigenous Australians. The Government is also aware of the increasing demand for legal assistance services and the significant funding pressures faced by all legal aid service providers, including the Aboriginal and Torres Strait Islander Legal Services (ATSILS).

The Government announced additional ongoing funding of \$34.9 million over four years from 2010-11 for Indigenous legal services. This additional funding will assist in meeting increasing demand and costs for Indigenous legal services and will improve access to justice for Indigenous Australians across Australia, supporting key Government priorities, including social inclusion and closing the gap on Indigenous disadvantage. In 2010-11 the Government has allocated over \$63.7 million for Indigenous legal aid services through the ATSILS, and for law reform and community legal education activities.

Ministers discussed Indigenous legal services funding at the May 2010 meeting of the Standing Committee of Attorneys-General. The Commonwealth in consultation with the States and Territories will undertake a review of the relationship between the delivery of legal services for Indigenous Australians by legal aid commissions and Indigenous legal service providers.

The Australian Government provided funding to the Victorian Aboriginal Legal Service to supervise a national review of the workload of the Aboriginal and Torres Strait Islander Legal Services. A consultant has been engaged to conduct the review and is expected to report by the end of 2010. The findings are expected to include data on the demand for Indigenous legal services experienced by the Aboriginal and Torres Strait Islander Legal Services.

A comprehensive National Legal Needs Survey is being conducted by the Law and Justice Foundation of NSW on behalf of National Legal Aid and will report in 2011. The Survey will include data on the legal needs of Indigenous people.

Recommendation 2

The committee recommends that the federal, state and territory governments, in conjunction with relevant stakeholders, and using an evidence-based approach, review existing legal assistance service programs to determine whether the legal aid system is meeting the needs of the Australian people.

The recommendation is agreed in principle.

In November 2009 the Standing Committee of Attorneys-General agreed that to inform negotiations for the National Partnership Agreement on Legal Assistance Services, National Justice CEOs will consider:

- opportunities for greater coordination and collaboration of service delivery across the legal assistance sector,
- empirical information on factors affecting supply and demand of legal assistance services as well as unmet legal need, and
- alternative sources of revenue to put funding of legal assistance programs on a more sustainable footing, including introduction of cost recovery schemes.

National Justice CEOs agreed to convene a separate working group to examine these issues. The Working Group, chaired by the Commonwealth, will focus on investigating opportunities for greater coordination and collaboration of service delivery across the legal assistance sector and canvassing empirical information on factors affecting supply and demand of legal assistance services as well as unmet legal need. The third issue referred by ministers, alternative sources of revenue, has been dealt with separately through the National Justice CEOs' discussions on the National Partnership Agreement.

As detailed above, in May 2010 the Attorney-General announced the establishment of the new National Legal Assistance Advisory Body. The Advisory Body will provide advice on strategic policy issues affecting the provision of legal assistance services, including the coordination and integration of services, improved access and availability, and early intervention. The Advisory Body will inform and be informed by work undertaken by State and Territory based forums outlined in the National Partnership Agreement on Legal Assistance Services.

Recommendation 3

The committee recommends that the federal, state and territory governments, in conjunction with relevant stakeholders, and using an evidence-based approach, review existing funding programs for legal aid commissions, community legal centres, Aboriginal and Torres Strait Islander legal services and Family Violence Prevention Legal Services units with a view to sufficiently resourcing the legal aid system to meet the legal needs of the Australian people, including appropriate loadings for high needs areas such as remote, rural and regional areas.

The recommendation is noted.

The Government is committed to ensuring that legal assistance programs are appropriately resourced so that disadvantaged Australians who cannot afford legal services are able to receive assistance. This includes fostering efficient and effective ways to support the delivery of legal services in remote, rural and regional Australia.

From 1 July 2010, the Australian Government will invest an additional \$154 million over four years in legal assistance services: \$92.3 million for legal aid; \$34.9 million for Indigenous legal services; and \$26.8 million for community legal services. The new funding will build on over \$70 million in additional funding provided by the Australian Government for legal assistance services over the last three financial years

In 2010-11 the Australian Government will provide the following Budget funding:

- legal aid commissions - \$194.2 million,
- Indigenous legal services - \$63.7 million,
- community legal services - \$31.5 million,
- Indigenous family violence prevention legal services - \$19.5 million, and
- Commonwealth legal financial assistance schemes - \$7.7 million.

Current funding models for legal aid and indigenous legal assistance programs take into account a range of factors including consideration of the specific issues which affect the delivery of legal assistance services in remote, rural and regional Australia such as population dispersion, through the increased costs of communication and travel in servicing clients, and the number and location of courts serviced by Aboriginal and Torres Strait Islander Legal Services (ATSILS). Community legal centres which provide services to remote, rural and regional areas have received support to provide outreach services in these areas and assistance with costs of delivery such as travel, accommodation and equipment.

Recommendation 4

The committee recommends that the state/territory governments and legal professional associations throughout Australia take such steps as are necessary to:

- **advertise and promote participation in formal pro bono schemes, including the National Pro Bono Aspirational Target Scheme;**
- **mandate a pro bono legal work requirement for all classes of practising certificate, including those issued to government employees; and**
- **abolish the practising certificate fee for legal practitioners whose practise involves pro bono legal work only.**

The recommendation is accepted in principle.

The Australian Government commends the legal profession for the high quality pro bono work it performs. The Government is committed to working with the legal profession and other stakeholders to encourage and support pro bono legal work, both in Australia and internationally. The Australian Government has undertaken a number of steps in recent years to recognise and support pro bono legal services in Australia and the Asia-Pacific region.

The Australian Government supports and provides ongoing funding to the National Pro Bono Resource Centre. The Centre will receive funding of \$275,480 in 2010-11. The Government also provided one-off funding of \$40,000 to assist with the completion of the research project *Engaging Retired and Career-Break Lawyers in Pro Bono*. The Government also provides funding to support the Biennial Access to Justice and Pro Bono Conference which provides an opportunity for community and private sector lawyers, academics and judicial officers to come together and discuss current issues in the area of pro bono and legal assistance.

In 2008, the Government amended the *Legal Services Directions 2005* to require that Commonwealth agencies must take the following matters into account when offering a contract for legal services:

- a) the amount and type of pro bono work the legal services provider has carried out or will carry out, and
- b) whether the legal services provider has signed up to the National Pro Bono Aspirational Target of the National Pro Bono Resource Centre.

The COAG National Legal Profession Reform project has given particular consideration to how legal profession regulation can help facilitate volunteerism and reduce the burden on community legal centres and other community legal service providers. In so doing, the National Legal Profession Reform Taskforce has taken into account submissions from the National Pro Bono Resource Centre and National Association of Community Legal Centres.

The Taskforce is proposing the introduction of a no or nominal cost volunteer practising certificate for legal practitioners who wish to volunteer at non-profit or community legal centres anywhere around Australia, and who do not otherwise hold a practising certificate.

This would, for example, allow retired lawyers and government lawyers to volunteer their legal expertise. The proposal also includes ensuring that there are no practising certificate related impediments to undertaking pro bono and volunteer work for those who hold a general practising certificate.

The Taskforce is also proposing to simplify the regulatory system to which non-profit or community legal services are subject by creating a single system of regulation, rather than different systems in each jurisdiction, and by clarifying the responsibilities of the principal or 'supervising' legal practitioners of community centres providing legal services. The centres would have the flexibility to designate a volunteer supervising legal practitioner rather than formally employing one.

The proposal also includes allowing legal practitioners working or volunteering at those centres to choose not to handle trust money. The benefits are that those legal practitioners and the legal centre would not be subject to the regulation that comes with handling trust money and, as there would be no risk of them defaulting with trust money, the practitioners would not need to pay fidelity contributions.

The model proposed by the Taskforce also makes it clear that legal practitioners volunteering at a non-profit or community legal centre may be covered by the professional indemnity insurance of the centre, and would not be required to obtain additional, individual professional indemnity insurance.

The Taskforce is currently consulting on its proposals and will be submitting its final proposals to COAG by the end of 2010.

The Attorney-General's International Pro Bono Advisory Group was established in July 2009 to promote international pro bono work by Australia's legal profession; build effective partnerships in overseas legal capacity building and access to justice work; and facilitate effective coordination between the private sector, the non-government sector, existing in-country structures and Australian Government funding projects that address international law and justice needs. The Government has established a website to provide a portal on international pro bono legal work with a range of general resources such as factsheets and evaluation templates, and links to the websites of brokers and clearing houses. These resources will be of assistance to all firms interested in undertaking international pro bono work.

The Attorney-General will host an International Pro Bono Roundtable to coincide with the third National Access to Justice and Pro Bono Conference in Brisbane in August 2010. The Roundtable will include a panel of speakers with a range of different experiences in international pro bono work and development assistance in the law and justice sector.

Recommendation 5

The committee recommends that the Australian Government investigate means by which small to medium sized legal firms could be encouraged to further participate in the provision of pro bono legal services.

The recommendation is noted.

The proposals of the National Legal Profession Reform Taskforce outlined in the response to Recommendation 4 are also expected to lower the burden on law practices offering the time of their legal practitioners to non-profit or community legal centres.

The National Pro Bono Resource Centre, which receives funding from the Australian Government, plays a key role in promoting pro bono work, including to small and medium sized legal firms. The Attorney-General's International Pro Bono Advisory Group, which was established in July 2009, will also help to promote and support international pro bono work by Australian lawyers. The Attorney-General's Department has updated the Advisory Group's website to provide a portal on international pro bono legal work with a range of general resources such as factsheets and evaluation templates, and links to the websites of brokers and clearing houses. These resources will be of assistance to all firms interested in undertaking international pro bono work.

Recommendation 6

The committee recommends that the federal, state and territory governments provide additional funding to legal aid commissions, community legal centres and Indigenous legal services with a view to expanding service delivery in rural, regional and remote areas. This funding must take into account the significant resources required by legal aid commissions, community legal centres and Indigenous legal services in undertaking resource-building initiatives in rural, regional and remote areas.

The recommendation is agreed in principle.

The Australian Government acknowledges the significant resources required by legal aid commissions, community legal centres and Indigenous legal services in undertaking resource-building initiatives in rural, regional and remote areas. That is why the Government injected an additional \$154 million over four years into legal assistance services, to make the Commonwealth's overall injection of funding to \$1.2 billion over four years.

New funding announced in the 2010-11 Budget will enhance the capacity of legal assistance services to deliver services in rural, regional and remote locations. The sharper focus on preventative and early intervention services that will be reflected in the National Partnership Agreement is expected to lead to more outreach services to areas which now lack services. The Government has also funded some specific initiatives to improve services in rural, regional and remote areas.

In June 2008, the Government announced the allocation of \$5.8 million over four years for the Regional Innovations Program for Legal Services. This initiative aims to improve access to legal services for communities in regional, rural and remote Australia. Legal aid

commissions are eligible to obtain funding for programs which take an innovative approach to improve service delivery in rural and remote areas.

In addition to the increase in funding announced in the 2010 Budget, the Australian Government has provided Legal Aid Western Australia with one-off funding of \$500,000 to continue its Country Lawyers Program which aims to encourage lawyers to practice in regional and remote areas of Western Australia. This funding is in addition to the \$1.1 million already invested in the program since 2007. In May 2010, the Australian Government provided an additional \$1.1 million for the Law Council of Australia and a range of legal assistance providers to work collaboratively to attract lawyers to rural, regional and remote areas.

Recommendation 7

The committee recommends that incentives be considered to encourage lawyers to practice in rural, regional and remote areas.

The recommendation is noted.

Ensuring that legal practitioner services are available to people living in rural, regional and remote (RRR) areas is a high priority. The Australian Government has provided \$6.9 million over the four year period 2007-08 to 2010-11 through the Regional Innovations Program for Legal Services to improve legal services in regional Australia. The Government notes the Law Council of Australia's September 2009 report regarding the recruitment and retention of lawyers in RRR areas. The Government is looking closely at the recommendations in the report. The Government will work with the Law Council of Australia and other stakeholders in responding to the challenge of ensuring that legal services continue to be available in country Australia.

As outlined in the response to recommendation 6, in May 2010 the Government allocated \$1.1 million to work in collaboration with the Law Council of Australia to attract lawyers to work in legal assistance programs in RRR areas of Australia.

The Government also continues to fund the Regional Innovations Program for Legal Services. The Government has also provided \$1.1 million in one-off funding for the development of a range of initiatives to encourage lawyers to practice in rural, regional and remote areas, including a collaborative arrangement between the National Association of Community Legal Centres and the Law Council of Australia to develop a range of awareness activities to assist in attracting and retaining lawyers in RRR areas with a dedicated website and other resources. This initiative will complement the Regional Innovations Program for Legal Services and other Australian Government initiatives such as Country Lawyers Western Australia to:

- deliver an approach consistent with the Access to Justice Framework,
- assist in building up the capacity of the legal profession generally in targeted RRR locations, and

- assist in addressing concerns highlighted by the Law Council regarding lack of lawyers in RRR areas.

The initiatives funded by the Regional Innovations Program for Legal Services are detailed below.

New South Wales

The Australian Government funding has contributed to the expansion of Legal Aid New South Wales' Cooperative Legal Service Delivery (CLSD) program. The program provides legal advice, minor assistance and community workshops, including monthly outreach clinics in eight regions across New South Wales. Projects focus on early intervention and prevention with the aim of preventing the escalation of legal issues into complex problems.

Legal Aid New South Wales is also extending and enhancing the Regional Outreach Clinic Program (ROCP). This will involve:

- increasing the frequency and hours of a number of current ROCP clinics in areas of high demand,
- developing and rolling out additional ROCP clinics in disadvantaged areas of rural and remote New South Wales where there is limited access to free legal services, and
- developing and implementing cross-border initiatives with Victoria Legal Aid.

The ROCP increases access to free legal advice for disadvantaged people in rural and remote New South Wales, increases the viability of small regional private practices and facilitates access to grant of aid for private practitioners. Legal Aid New South Wales also provides training of regionally based lawyers in areas of legal aid practice.

Victoria

Victoria Legal Aid was funded for a Regional Legal Access Coordinator (RLAC) in the Murray-Mallee and Albury-Wodonga areas. The RLAC position aims to improve the legal outcomes for marginalised and disadvantaged groups in a number of ways including:

- improving referral systems between legal and non-legal providers, private practitioners, community legal centres and Victoria Legal Aid offices,
- developing outreach legal clinics to areas where there are no or limited services, and
- developing and coordinating community legal education and training and community development activities.

Queensland

Legal Aid Queensland currently provides 16 regional solicitor placements under its regional solicitor placement scheme in 11 locations throughout Queensland and will be providing an additional two placements for 18 months. Legal Aid Queensland supports the Queensland

Legal Assistance Forum, a regionally-based grouping of service providers similar to Legal Aid New South Wales' Cooperative Legal Service Delivery program.

Legal Aid Queensland was funded to develop and deliver community legal education in two rural and remote locations during 2009-10 and in five rural and remote locations during 2010-11. This will be done in collaboration with Family Violence Prevention Units, community legal centres and Aboriginal and Torres Strait Islander Legal Services. Joint promotional material will be developed to assist clients to seek assistance from the most appropriate source, including family relationship centres.

Western Australia

Legal Aid Western Australia is developing a range of online interactive Continuing Professional Development (CPD) modules. The program is designed to help reduce professional isolation and enable regionally-based, publicly-funded lawyers to maintain their professional accreditation, without having to return to Perth for costly face-to-face training and development. The first suite of five modules is scheduled to be available by mid 2010.

Tasmania

The Legal Aid Commission of Tasmania was funded to provide regular outreach services by private practitioners operating from Burnie, Devonport and Launceston to benefit the northern-central and northern-eastern areas of Tasmania and establish a regional young lawyers' network in these areas.

Northern Territory

The Northern Territory Legal Aid Commission has been funded for a regional solicitor position to provide salary subsidies to a private law firm to recruit lawyers to be based in Alice Springs or Katherine but who could undertake legal work in the Central Australian, Barkly and Katherine regions.

The Family Violence Prevention Legal Service (FVPLS) Program is focusing service delivery on the Australian Government Remote Service Delivery sites across Australia. The sites currently being serviced by a FVPLS are:

- Northern Territory: Angurugu, Galiwin'ku, Gunbalanya, Hermannsburg, Nguuu, Ngukurr, Wadeye, Yirrkala and Yuendumu,
- Queensland: Mornington Island, Doomadgee, Hope Vale, Aurukun, and Coen,
- New South Wales: Walgett and Wilcannia,
- South Australia: Amata and Mimili, and
- Western Australia: Fitzroy Crossing, Halls Creek, Ardyaloon and Beagle Bay.

In the Northern Territory the sites of Gapuwiyak, Lajamanu, Maningrida, Milingimbi, Numbulwar and Umbakumba, and in Queensland, Mossman Gorge, may be serviced by other legal assistance providers under Commonwealth or State and Territory funding arrangements.

Recommendation 8

The committee recommends that the federal, state and territory governments, in conjunction with the relevant stakeholders, jointly develop and implement a national civil law program in identified high need areas.

The recommendation is noted.

The Government considers that reforms under the National Partnership Agreement aimed at promoting the earliest resolution of legal problems and supporting connected services in the legal assistance sector will assist in improving access to services to resolve civil law matters.

The broadening of Commonwealth legal aid funding policy to allow Commonwealth funds to be used for preventative and early intervention services will provide legal aid commissions with the capacity to expand service delivery in areas of civil law, particularly to address problems that can lead to social exclusion, such as tenancy, consumer debt and employment.

In 2009-10, the Government provided more than \$26 million directly to community legal centres under the Commonwealth Community Legal Services Program. More than 60% of activities undertaken by community legal centres (information, advice and casework) involve civil law. Of these activities, tenancy, credit and debt, and employment are the most common problem types. Additional funding in these areas has been allocated in the 2010-11 Budget including resources to enhance access to services providing assistance in the areas of consumer credit, matters affecting older people and those at risk of, or experiencing homelessness, and enhanced services in regional, rural and remote areas.

Recommendation 9

The committee recommends that the Australian Government increase the level of funding for the Legal Aid Program with a view to sufficiently resourcing the legal aid system to meet the legal needs of the Australian people, including specific funding for community education programs and telephone advice services.

The recommendation is agreed.

From 1 July 2010, the Australian Government will provide an additional \$92.3 million over four years for legal aid. The funding supports a more strategic approach to legal assistance service delivery, consistent with the Government's Strategic Framework for Access to Justice. The focus is on early intervention and resolving disputes before they get to court. By helping people early in their disputes, costly litigation and entrenched legal problems can be avoided.

Community legal education and early access to advice and assistance, including telephone advice, are important services already being provided by all legal assistance providers. Under the new Agreement these services will be given greater emphasis, with the requirement that States and Territories implement an Information and Referral Strategy that

ensures comprehensive access to information and seamless referral for preventative and early intervention services.

Recommendation 10

The committee recommends that the Australian, state and territory governments jointly develop and implement realistic and consistent national means tests income and assets levels with an in-built mechanism for ensuring that the levels do not stagnate over time.

The recommendation is agreed in principle.

The National Partnership Agreement on Legal Assistance Services sets the Commonwealth's key principles for standardising eligibility for a grant of legal aid in relation to Commonwealth law matters.

These are detailed in Schedule B of the Agreement as set out below.

- Where a person receives the maximum rate of an income support payment or benefit administered by Centrelink as their total income, that person will be taken to satisfy the income component of the means test.
- Where a person does not receive the maximum rate of an income support payment or benefit administered by Centrelink, the person's income will be determined by making deductions from their total income in relation to certain living costs measured against a nationally standardised income threshold.
- A person who does not initially satisfy the income component of the means test but who is still unable to afford private legal representation may still be eligible for legal aid, on the condition that a contribution towards the person's legal costs is paid to the legal aid commission.
- A person may hold some assets and still be eligible for a grant of legal aid. An assets test component will include allowable exemptions such as the equity in the applicant's principal place of residence, equity in a used motor vehicle and household furniture that are based on nationally standardised asset thresholds.
- A person who does not initially satisfy the assets component of the financial eligibility test may still be eligible for legal aid in limited circumstances, if they cannot reasonably be expected to borrow against their assets. Legal aid commissions have the discretion to determine whether it is appropriate in the circumstances to impose a client contribution and/or secure a charge over the property, to allow recovery of the contribution upon sale or transfer of the property.

The National Partnership Agreement is available on the Ministerial Council for Federal Financial Relations website at www.federalfinancialrelations.gov.au.

The Commonwealth will work with States and Territories through the National Partnership Agreement to ensure that the key principles will be applied by legal aid commissions consistently across jurisdictions.

Recommendation 11

The committee recommends that each state and territory registry of the Federal Court of Australia be permanently staffed by a locally-based and legally trained registrar.

The recommendation is agreed in principle.

On 19 November 2009, Parliament passed the *Access to Justice (Civil Litigation Reforms) Amendment Act 2009*. The Act amended section 34 of the *Federal Court of Australia Act 1976* to require the Federal Court Registrar to ‘ensure that at least one Registry in each State is staffed appropriately to discharge the functions of a District Registry, with the staff to include a District Registrar in that State’.

The District Registrar for Sydney and the District Registrar for Adelaide are responsible for district registries in the Australian Capital Territory and Northern Territory respectively. This arrangement is an efficient and effective use of the Court’s resources given those jurisdictions’ comparatively smaller workloads.

Recommendation 12

The committee recommends that the federal, state and territory governments create and fund a specific disbursement fund for pro bono matters, with eligibility designed to promote the provision of pro bono legal services by the private legal profession.

The recommendation is noted.

The Australian Government supports the private legal profession to undertake pro bono work in a range of ways as noted in the response to recommendations 4 and 5 above.

Recommendation 13

The committee recommends that the federal, state and territory governments develop and implement uniform general disbursement funds throughout Australia to be accessed according to defined criteria with a view to easing the cost of justice for disadvantaged Australians.

The recommendation is noted.

Implementing such a fund would require consultation with States and Territories, noting that in all States and Territories except for the ACT there are disbursement assistance schemes operated either by the legal aid commission or law society. The table below summarises existing schemes.

Issues around the costs of justice, such as the cost of disbursements, are the type of issues which could be considered further by the National Legal Assistance Advisory Body once it is convened.

In May 2010, the Australian Government announced additional one-off funding of \$3 million for legal services that provide support and advice to victims of family violence across Australia. The funding will enable Family Violence Prevention Legal Services, Women’s

Legal Services, and Indigenous Women's Projects (funded under the Community Legal Services Program) to provide disbursements assistance for associated upfront costs such as medical reports.

Table of existing disbursement schemes¹

Scheme	Eligibility	Repayments
NSW – Pro Bono Disbursement Trust Fund	Lawyer acting on a pro bono or at reduced costs basis.	Successful parties must repay all funding.
Victoria – Law Aid	Lawyer acting on a pro bono or contingency basis.	\$100 application fee Successful parties must repay all funding plus a fee equivalent to 5.5% of any damages awarded.
Queensland – Civil Law Legal Aid Scheme	Lawyer acting on a pro bono or contingency basis	Successful parties must repay all funding.
WA – Civil Litigation Assistance Scheme	Lawyer accepts to work at rates provided for under the scheme (\$250 per hour).	Successful parties must repay all costs recovered and 20% of any damages awarded.
SA – Disbursements Only Fund	Lawyer acting on a pro bono or contingency basis	Successful parties must repay all funding and a further fee equivalent to 25%-100% of the total funding provided.
SA – Litigation Assistance Fund	Lawyer accepts to work for ‘solicitor/client’ costs, paid according to scale.	\$100 application fee Successful parties must repay all funding plus a fee equivalent to 15% of any damages awarded.
Tasmania – civil disbursement fund	Lawyer acting pro bono or contingency basis	Successful parties must repay all funding and a further fee equivalent to 20%-100% of the total funding provided.
NT – Contingency Legal Aid Fund	Lawyer acting pro bono or contingency basis	Application fee of \$200. Both successful and unsuccessful parties must repay all funding received. Successful parties must pay a further fee equivalent to a pre-determined percentage of the total funding provided.

¹ Information in the table except for Western Australia was summarised from National Pro Bono Resource Centre and Victoria Law Foundation, (nd), *Australian pro bono manual*, viewed 9 March 2010, <<http://www.nationalprobono.org.au/probonomanual/page.asp?sid=4&pid=11>>. Information on WA Civil Litigation Assistance Scheme from Legal Aid WA website, viewed 9 March 2010, <https://www.legalaid.wa.gov.au/Page/LAServices/pdf/CLAS_Info.pdf>.

Recommendation 14

The committee recommends that the federal, state and territory governments enact legislation to abrogate the indemnity principle, to the extent necessary, to ensure that litigation costs can be awarded and recovered in pro bono matters.

The recommendation is noted.

The Government is giving consideration to this recommendation in conjunction with the federal courts and other relevant stakeholders. Given the federal structure of the Australian legal system, the issue would also need to be addressed at a State and Territory level through the Standing Committee of Attorneys-General.

Recommendation 15

The committee recommends that federal, state and territory governments, in conjunction with affected stakeholders, review and modernise existing legal aid fee scales including an inflator to promote participation of the private legal profession in legal aid service delivery.

The recommendation is noted.

Under the National Partnership Agreement on Legal Assistance Services, States and Territories will have responsibility for determining how funds are used to achieve the outcomes identified in the National Partnership Agreement. This includes responsibility for input controls such as private practitioner fees. This is consistent with existing arrangements in which legal aid commissions are responsible for managing their own fee scales for work undertaken by private practitioners. Fee scales are determined by commissions in consultation with State and Territory legal professional bodies and are subject to each commission's operating budget.

Recommendation 16

The committee recommends that the federal, state and territory governments commission research to quantify the economic effects that self-represented litigants have on the Australian justice system, including court, tribunal, other litigant, legal aid system and social welfare system costs.

The recommendation is agreed in principle.

Courts, tribunals and legal service providers have a variety of administration arrangements and many are responsible for their own data collection. However, the Australian Government recognises that consistent data collection is necessary for justice institutions to be able to identify and act on challenges and gaps, and to inform analysis and understanding of the performance of the justice system generally.

The Government acknowledges that statistical information in relation to the justice system is currently inconsistently collected and reported, with significant gaps existing, including in

relation to self-represented litigants. The Government is currently considering options to improve the quality of data collection as part of its consideration of recommendations proposed by the Attorney-General's Department's Access to Justice Taskforce.

Recommendation 17

The committee recommends that the federal courts and tribunals should report publicly on the numbers of self-represented litigants and their matter types, and urges state and territory courts to do likewise.

The recommendation is noted.

While this recommendation is directed at the courts and tribunals, the Government supports initiatives which aim to improve the accuracy and quality of data collection across the civil justice system.

The federal courts currently publish some data on self-represented litigants in their annual reports. The Federal Court of Australia publishes broad statistics about the number of self-represented litigants appearing in the Court as applicants in a matter (respondents are not recorded), and the type of matter the majority of these applicants appear in. The Federal Magistrates Court (family law only) and the Family Court of Australia also provide statistics on the number of self-represented litigants, in respect of finalised applications for final orders.

A number of tribunals also report publicly on the number of self-represented applicants. The Social Security Appeals Tribunal provides a break down in its annual report on the number of represented and unrepresented applicants per jurisdiction (Centrelink or Child Support Agency), in addition to the type of representation (legal or non-legal). The Migration Review Tribunal and Refugee Review Tribunal publish data on the percentage of decided cases where the applicant was unrepresented, in addition to set aside rates for unrepresented applicants.

The collection and publication of further data is complicated by the fact that the status of a litigant's representation may change throughout the duration of their case.

Recommendation 18

The committee recommends that the federal, state and territory governments jointly fund and establish a comprehensive duty solicitor scheme in identified high need areas throughout Australia with a view to reducing the length of litigation and increasing judicial efficiency in self-represented matters.

The recommendation is noted.

The Government recognises the value of duty lawyer services in contributing to the effective operation of the courts.

Legal aid commissions are funded to provide duty lawyer services to assist self-represented litigants in the Family Court, the Family Court of Western Australia and the Federal Magistrates Court.

This service provides a low-cost effective way of targeting legal assistance where people are not eligible for legal aid, improves court efficiency and is widely supported by the courts, and is effective for self-represented litigants. It is seen as an essential element of effective management of family law litigation particularly in large registries. The availability of duty lawyer services in key circuit sittings also enhances legal services for people in rural, regional and remote Australia. Legal Aid New South Wales also provides duty lawyer services for family law matters in local courts in regional New South Wales.

Family Court and Federal Magistrates Court registries serviced by a duty lawyer are as follows:

- New South Wales: Parramatta, Sydney, Newcastle, Wollongong. Federal Magistrates Court circuit: Albury, Coffs Harbour, Dubbo, Lismore, Orange, Tamworth, Wagga Wagga. Local courts exercising jurisdiction under the *Family Law Act 1975*: seven in the Sydney metropolitan area, 16 in regional areas,
- Victoria: Melbourne, Dandenong. Federal Magistrates Court circuit: Ballarat, Bendigo, Geelong, Shepparton, Traralgon, Albury,
- Queensland: Brisbane, Townsville, Cairns. Circuit registries: Rockhampton, Mackay, Maroochydore, Toowoomba, Southport, Hervey Bay, Bundaberg, Ipswich,
- Western Australia: Perth,
- South Australia: Adelaide, Mount Gambier by telephone,
- Tasmania: Hobart, Launceston and Devonport,
- ACT: Canberra, and
- Northern Territory: Darwin, Alice Springs.

The Australian Government also provides funding to community legal centres located in Melbourne, Frankston, Newcastle and Brisbane areas to pilot alternative family law duty lawyer services to cover situations where a legal aid commission duty lawyer was unable to assist a client due to a conflict of interest. These locations have high-level of family law proceedings. Following a review of these services in early 2010, the Government committed additional funding through the May 2010 Budget to enable these services to continue for three years commencing 1 July 2010.

Duty lawyer services for criminal matters are funded by State and Territory governments.

Recommendation 19

The committee recommends that judicial and court officers receive training in relation to assisting self-represented litigants.

The recommendation is noted.

Various bodies in Australia are responsible for the professional development of judicial and court officers including court education committees, judicial education bodies and the Australasian Institute of Judicial Administration. Judicial education bodies include the National Judicial College of Australia, the Judicial Commission of New South Wales and the Judicial College of Victoria. Various programs and tools provided by these bodies address issues with respect to assisting self-represented litigants.

The Government supports appropriate training for judicial and court officers in relation to assisting self-represented litigants. Duty lawyers provided by legal aid commissions work closely with judicial and court officers to help self-represented litigants through judicial processes.

Recommendation 20

The committee recommends that the Australian Government consider funding a number of restorative justice pilot programs in areas where there is an over-representation of minor offenders in the criminal justice system.

The recommendation is noted.

Restorative justice initiatives are primarily a State and Territory responsibility.

The *Proceeds of Crime Act 2002* (Cth) enables the approval of programs for confiscated funds to be given back to the community to help prevent and reduce the harmful effects of crime. These include crime prevention measures, law enforcement measures, measures relating to treatment of drug addiction, and diversionary measures relating to the illegal use of drugs.

The most recent funding round closed on 1 February 2010 and focused on crime prevention measures addressing one or more of the following issues:

- diversion and prevention programs, including those focusing on indigenous persons,
- youth crime, including diversion and prevention programs,
- early intervention projects with families, children and schools,
- crime prevention for seniors (personal and financial security), and
- assisting victims of violent crime.

Restorative justice initiatives may be eligible for consideration for funding should the Minister decide to approve any funding programs in the future that focus on crime prevention measures.

The Attorney-General's Department provides complementary funding through the Indigenous Justice Program (formerly the Prevention, Diversion, Rehabilitation and Restorative Justice Program) to develop and undertake projects to help reduce Indigenous Australians' adverse contact with the justice system. This includes projects under the Restorative Justice Sub-Program that strengthen community-driven justice responses that involve, or promote the involvement of, families, communities, victims and offenders. For example, the Department funded the Queensland Department of Justice and Attorney-General to consult with the community on Mornington Island about the development of a restorative justice initiative. This initiative is now being piloted on Mornington Island with funding from both the Department and the Queensland Department of Justice and Attorney-General.

Recommendation 21

In conjunction with Recommendation 1, the committee recommends that the federal, state and territory governments recognise the potential benefits of justice reinvestment, and develop and fund a justice reinvestment pilot program for the criminal justice system.

The recommendation is noted.

The funding of justice reinvestment pilot programs is primarily a State and Territory responsibility.

The approach proposed for the justice reinvestment pilot programs appears to be seeking to deliver similar benefits to many of the crime prevention and diversionary projects funded under Section 298 of the *Proceeds of Crime Act 2002* (Cth) and the now closed National Community Crime Prevention Programme.

It may be possible that lessons from relevant projects funded under these programs could be used to inform consideration of the potential effectiveness of justice reinvestment programs.

Recommendation 22

The committee recommends that the Attorney-General's Department, in consultation with interested stakeholders, expedite the development of a new funding model for the allocation of Australian Government funding to all community legal centres.

The recommendation is noted.

The review of the Commonwealth Community Legal Services Program published by the Attorney-General's Department in March 2008 included a recommendation that a funding model be adopted for the allocation of any new funding provided to the Program.

Consultations on the review recommendations identified that stakeholders generally supported the adoption of an evidence-based funding model but sought consultation on the detail and how the model would be implemented. Details of the proposed model were provided to stakeholders, and valuable and constructive feedback was provided to the

Department. A new funding model will be a matter for further consideration by the Government.

Recommendation 23

Subject to increased accountability and transparency requirements, including measurable key performance indicators and benchmarks, the committee recommends that the federal, state and territory governments increase the level of funding for community legal centres with a view to sufficiently resourcing this sector of the legal aid system to meet the needs of the Australian people.

The recommendation is accepted in principle.

From 1 July 2010, the Australian Government will provide an additional \$26.8 million over four years for community legal services programs. This will bring the total investment in the community legal services program to \$135.2 million over four years. This will help providers to enhance and increase their services including strengthening the capacity of community legal services to continue to provide legal assistance to disadvantaged people particularly in areas such as family law, domestic violence and homelessness.

The Commonwealth Community Legal Services Program includes a range of accountability requirements that funded organisations must meet to be eligible for funding. The Program service agreements for 2010-2013 will include a new performance monitoring framework that will assist in enhancing the client-centred focus of the Program.

Recommendation 24

In conjunction with Recommendation 22, the committee recommends that the Australian Government reconsider the eligibility criteria of the Community Legal Services Program with a view to allowing for the admission of suitable community legal centres throughout Australia.

The recommendation is noted.

Funding under the Commonwealth Community Legal Services Program is not currently subject to eligibility criteria, other than a requirement that a funded organisation be an Australian company, an association incorporated under the legislation of the State or Territory in which it operates, or an Aboriginal association incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

Recommendation 25

The committee recommends that the Australian Government provide the Federation of Community Legal Centres with some funding support for its proposed Community Legal Centres Graduate program and that the future Community Legal Centre graduate schemes be similarly supported.

The recommendation is noted.

The Australian Government has already allocated \$240,000 over four years for a feasibility study project for law graduates for community legal centres in regional Australia. This project is being undertaken by the National Association of Community Legal Centres.

In January 2010 the Australian Government provided additional one-off funding of \$360,000 to seven community legal centres to develop or expand partnerships with universities providing placement opportunities for students in family law. These projects will help students develop their legal skills and awareness of social justice and equity issues in the legal system through access to practical legal education and experience. They will also include the opportunity for students to participate in alternative dispute resolution and to provide assistance to clients in rural and regional areas. Additional recurrent funding allocated by the Government to the Commonwealth Community Legal Services Program through the 2010-2011 Budget will enable these projects to continue over the period of the 2010-2013 service agreements with community legal centres.

Recommendation 26

The committee recommends that the federal, state and territory governments inquire into and report on joint funding for the Legal Aid for Indigenous Australians program and related services with a view to more equitably apportioning financial responsibility for Indigenous legal services funding.

The recommendation is agreed in principle.

In the 2010 Budget, the Australian Government allocated an additional \$34.9 million over four years to Indigenous legal services. The Australian Government believes it is appropriate for State and Territory governments to provide funding for Indigenous legal aid services. Aboriginal and Torres Strait Islander Legal Services (ATSILS) are crucial to the effective operation of the State and Territory justice systems. In 2008-09, 89% of the services' casework was in criminal matters which are mostly State and Territory laws. Additionally, demand factors are driven by changes to State and Territory laws and policies, such as increased court circuits and numbers of magistrates, which can impact on the ability to deliver services in conditions of limited funding and rising service delivery costs. The Australian Government will raise these issues with the States and Territories as part of its coordinated approach to the delivery of legal assistance services.

As noted in the response to recommendation 1, Ministers discussed Indigenous legal assistance services funding at the May 2010 meeting of the Standing Committee of Attorneys-General. The Commonwealth, in consultation with the States and Territories, will undertake a review of the relationship between the delivery of legal assistance services for Indigenous Australians by legal aid commissions and Indigenous legal service providers.

Recommendation 27

The committee recommends that the Australian Government increase the level of funding for Indigenous legal services with a view to sufficiently resourcing this sector of the legal aid system to meet the needs of Indigenous peoples, including appropriate loadings for extra service delivery costs.

The recommendation is noted.

From 1 July 2010 the Australian Government is investing an additional \$34.9 million over four years for Indigenous legal services. This will assist providers to enhance and increase their services including meeting the rising demand for Indigenous legal aid services.

Existing funding takes into account the additional costs for delivering services in regional and remote areas. This includes factors such as the number and location by region of courts serviced by ATSILS and the number and location by region of offices maintained by ATSILS.

Recommendation 28

The committee recommends that:

- **the federal, state and territory governments provide additional funding to court-based interpreter services in each state and territory with a view to expanding that service in high need areas; and**
- **the Australian Government commence a process of consultation to seek solutions to the translating difficulties associated with some Indigenous languages, with a view to reducing language barriers to access to justice.**

The recommendation is accepted in principle.

The Australian Government agrees that access to interpreter services is vital to ensuring that individuals understand their rights and responsibilities and, in particular, matters relating to law and justice.

The Department administers a Memorandum of Understanding between the Australian Government and the Northern Territory Government for interpreter services to Indigenous Australians. The funding provided under the agreement supports law and justice agencies in the Northern Territory and allows free access to interpreters for Indigenous legal aid providers, family violence prevention legal services units and community legal centres. Interpreter services will receive a total of \$1.8 million in 2010-11.

The Northern Territory Aboriginal Interpreter Service (NTAIS) supports interpreters and translators of Indigenous Aboriginal languages throughout the Northern Territory. NTAIS provides a predominantly oral interpreter service representing 105 Indigenous languages with a core of 15 major languages necessary to ensure geographical coverage of all areas.

Funding allocated under the initiative Closing the Gap in the Northern Territory assists with meeting the increased demand for interpreter services as a result of the Northern Territory Emergency Response. This increased support allows legal assistance service providers to assist Indigenous people in understanding their rights and obligations.

Additionally, under the Remote Service Delivery National Partnership Agreement, the Australian Government is contributing \$19.8 million over six years for Indigenous translation and interpreting services, and the states will be contributing \$18.9 million. The Australian Government will be working with the States and the Northern Territory to develop and introduce a national framework for the effective supply and use of Indigenous language interpreters and translators.

Recommendation 29

The committee recommends that the federal, state and territory governments jointly, and in conjunction with affected stakeholders, review current salary levels across legal aid commissions and Aboriginal and Torres Strait Islander legal services, and propose salary level reforms for this sector of the legal aid system with a view to eliminating wage disparity.

The recommendation is noted.

Conditions and entitlements of employees are a matter for the service providers in the legal assistance sector and are not set by the Australian Government. The Government acknowledges the impact of differences in salaries on services. The Government recognises that salary disparity is an issue affecting the capacity of legal services to attract and retain staff. This will be an issue for consideration under moves to establish a more integrated legal assistance framework.

Recommendation 30

The committee recommends the introduction of portable leave entitlements across legal aid service providers in Australia with a view to enhancing the retention of staff in these sectors.

The recommendation is noted.

Conditions and entitlements of employees are a matter for the service providers in the legal assistance sector. Agencies are governed under a wide range of conditions, including Commonwealth legislation, State or Territory legislation or as non-government agencies. It is not appropriate for the Commonwealth to impose a uniform approach under these circumstances. Chief Executive Officers of each commission may have the discretion to approve portable leave entitlements for staff transferring to or from other legal aid commissions, and other Commonwealth, State or Territory public service agencies.

While it is a matter for individual services to manage, the Government supports the portability of entitlements and will work to promote it across the sector.