

ANU COLLEGE OF LAW

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Mr Peter Hallahan
Committee Secretary
Senate Standing Committee on Legal and Constitutional Affairs
Department of the Senate
Parliament House
Canberra ACT 2600

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Dear Mr Hallahan

Inquiry into Access to Justice

Capacity

Our submission is based on extensive experience and expertise in access to justice issues.

Simon Rice has worked consistently in community legal centres in NSW since 1980, variously as volunteer, employed solicitor, chief executive, principal solicitor, board member, board chair, founder, consultant and nominated representative. He is currently a member of the board of the Welfare Rights and Legal Centre (ACT). He was a part-time Commissioner of NSW Legal Aid from 1990 until 1994, and was Director of the NSW Law and Justice Foundation from 1995 until 2000, where he established the Justice Research Centre and the Foundation Law website. He is a part-time judicial member of the NSW Administrative Decisions Tribunal. He is a member of the International Legal Aid Group (ILAG), and has researched, taught and written on justice issues. He is currently conducting research into access to legal service in regional, rural and remote areas. He has made numerous submissions to public inquiries in to legal aid and justice issues, including many of those listed below. He is currently an Associate Professor at the ANU College of Law, where he is Director for Law Reform and Social Justice.

Molly Townes O'Brien is currently an Associate Professor at the ANU College of Law where she teaches courses in *Litigation and Dispute Management*, *Evidence*, and *Criminal Justice*. She was a trial attorney at the Lancaster County Public Defender Office, and from 1986 worked intermittently as a volunteer or paid employee at various community legal centres in the United States, including the Jamaica Plains Legal Services in Boston, Massachusetts, and the Neighborhood Justice Center in Atlanta, Georgia.

Context

The questions raised by the terms of reference have been addressed repeatedly in inquiries similar to the Committee's current inquiry, and in the resulting reports and recommendations, in the 35 years, since Ronald Sackville's landmark reports:

- Commissioner for Law and Poverty, *Legal aid in Australia*, AGPS, 1975
- Commissioner for Law and Poverty, *Legal aid in Australia: discussion paper*, November 1974.

Parliamentary committee reports in that time include:

- Joint Committee of Public Accounts and Audit Title: Report 403: *Access of Indigenous Australians to Law and Justice Services*, 2005
- Senate Legal and Constitutional Affairs Committee:
 - *Legal aid and access to justice*, 2004
 - *Interim report – Legal aid and access to justice*, 2004
 - *Australian Legal Aid System: Third Report*, 1998
 - *Australian Legal Aid System: Second Report*, 1997
 - *Australian Legal Aid System: First Report*, 1997
 - *The Cost of Justice – Checks and Imbalances: The Role of Parliament and the Executive (Second Report)*, 1995
 - *The Cost of Justice – Foundations for Reform*, 1993
 - *Cost of Legal Services and Litigation – Legal Aid 'For Richer and for Poorer'*, Discussion Paper No. 7, April 1992
- House of Representatives Standing Committee on Aboriginal Affairs *Aboriginal Legal Aid*, 1980.

Reports of the Commonwealth Attorney General's Department and public agencies in that time include:

- Attorney General's Department, *Review of the Commonwealth Community Legal Services Program*, 2008
- Australian Law Reform Commission:
 - *Managing Justice: A review of the federal civil justice system*, Report No 89, 2000
 - Part III (Access to Justice), *Equality before the law: Justice for women*, Report No 69, 1994
- Attorney General's Department, *The Justice Statement*, May 1995
<<http://www.austlii.edu.au/austlii/articles/scm/jcontents.html>>
- Access to Justice Advisory Committee *Access to justice: an action plan*, AGPS, 1994
- National Legal Aid Advisory Committee:
 - *Legal Aid for the Australian community*, 1990
 - *Funding, Providing and Supplying Legal Aid Services*, 1989
- G.G. Meredith, *Legal aid : cost comparison, salaried and private lawyers* Commonwealth Legal Aid Council, AGPS, 1983
- M. Cass and J.S. Western, *Legal aid and legal need*, Commonwealth Legal Aid Commission, 1980.

A complete bibliography would show as well the many reports on access to justice issues produced by legal aid agencies, community legal centres, professional associations and law foundations.

Recommendations from parliamentary inquiries such as the Committee's current inquiry have, as a rule, not been adopted as policy, not been the subject of any implementation plan, not been supported by budgetary allocations, and not been monitored or reported against. As a result, Australian justice policy continues to lack coherence and direction. The consequent dissatisfaction gives rise to periodic inquiries such as the current one.

Submission: a standing, independent capacity for justice-related research

In light of the above, in response to the Committee's terms of reference we **submit**:

that the Australian Government take the necessary steps to establish a standing, independent capacity for justice-related research that will inform public policy in the provision and funding of legal aid, community legal services, indigenous legal services courts.

We note that in its submission to the Committee's 2004 inquiry, the Victorian Government advocated for a national approach to legal aid policy. It observed that

There have been several attempts to co-ordinate the provision of Commonwealth legal aid funding at a national level. These have included the establishment of the Commonwealth Legal Aid Commission (1977), the Commonwealth Legal Aid Council (1981), the National Legal Aid Representative Council and the National Legal Aid Advisory Committee (1986). The broad function of these various organisations have included advising the Commonwealth on legal aid needs, funding, organisation and delivery methods.

The Victorian Government's submission drew attention that in 1998 – now 11 years ago – the Committee had recommended that the Commonwealth sponsor the establishment of a National Legal Aid Council to provide advice on legal aid at the Commonwealth and state/territory level (Recommendation 14).

An *independent* body will provide reliable evaluation, data and analysis regarding access to justice needs, systems and models of delivery, and impact and accountability, as a basis for policy and budgetary decisions. And a *permanent* body is necessary: the problem of poverty is not going to go away; conflict and justice issues will always be with us; and governments will always have a responsibility to attend to justice needs. Continuing attention to access to justice is an important means to combat poverty and to prevent and resolve conflicts. Positive returns from government investment in access to justice – in reduced crime and poverty, and in increased social harmony and citizen well-being – can be reasonably asserted, and their full extent should be the subject of on-going expert analysis and research.

It is notable that parliamentary inquiries into access to justice issues did not seem to be necessary while independent entities such as the Commonwealth Legal Aid Council and the National Legal Aid Advisory Committee were operating.

Without a dedicated, independent and permanent research capacity to support, monitor and evaluate justice policy, Australia will, through various public inquiries from time to time, continue to ask the same questions about justice policy, and make the same recommendations for reform.

Model

In its 1998 submission the Victorian Government proposed the following functions for a national research capacity, and they remain a useful illustration of what is required:

- address deficiencies in coordination and integration of services and resource management
- undertake a national assessment of unmet legal need and legal demand and to identify gaps in legal aid service provision
- assess and address sector-wide problems such as private practitioners withdrawing from the legal aid marketplace, the increase in self represented litigants and the growing cost of litigation
- identify opportunities to appropriately integrate different programs, such as programs run by legal aid commissions, community legal centres, ATSILS and pro bono programs and to identify and reduce duplication where it is found to exist
- collect and analyse meaningful data on the legal aid system and act as a clearing house for, and publisher of detailed information on the operation of all aspects of the Australian legal aid system (not just those parts the Commonwealth directly funds) and publish data in a standardised form that enables comparisons between jurisdictions and over time
- develop national benchmarks on uniformity, consistency and access to justice.
- oversee national policy development including the development of a long-term and sustainable strategy for legal aid and an agreed approach in funding access to justice arrangements
- establish a framework for the logical, equitable, and empirically-based distribution of legal aid funds within the Australian community.

A successful model exists in the UK *Legal Services Research Centre* <www.lsrc.org.uk>. The LSRC collaborates with experts and other research organisations in conducting quantitative and qualitative empirical research to inform legal aid policy, and providing theoretical analyses of publicly funded legal services.

In light of its expertise, standing and national charter, National Legal Aid may be well-placed to take on this role.

Interim measure

Aware that establishing such a standing, independent capacity for justice-related research will take time, and aware of the wealth of material that remains in the many reports and recommendations to date, we further **submit**:

that, in the interim, the Australian Government commission and fund a process to review, consolidate and report against justice-related reports and recommendations in Australia since 1974.

We would be very happy to address this submission in further detail.

Yours sincerely,

By email

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