

ATTACHMENT A The ‘Yes We Can’ Resolutions

In his address at the opening plenary of the National Access to Justice and Pro Bono Conference 2008 held in Sydney from 13-15 November 2008, the Chair of the National Pro Bono Resource Centre Peter Stapleton called for a united front of "passion and pragmatism", and encouraged each legal service provider (both organisation and individual) to detail in one page what is needed to improve access to justice within the Australian community. Here are the results.

From National Legal Aid (NLA), representing all the Directors and staff of the 8 Australian Legal Aid Commissions

That the Commonwealth Government adopt ‘A New National Policy for Legal Aid in Australia’ published in 2007 and fund and conceive Legal Aid in the six following priority areas of need:

1. Supporting Australian families and protecting vulnerable family members
2. Supporting Australian at risk of social exclusion due to poverty
3. Supporting Indigenous Australians at risk of social exclusion
4. Supporting Indigenous Australians at risk of social exclusion due to special circumstances
5. Supporting a fair criminal justice system
6. Supporting human rights and equal opportunity.

From the national secretariat of Aboriginal and Torres Strait Islander Legal Services

The agenda of Governments over the next two years should be:

- To devise and implement a strategy on how to adequately fund the ATSILS.
- Recognise the primary role of ATSILS as Legal Service Providers, in policy and nurtured through sustainable, consultative, inclusive and timely sector policy development.
- Implement all 339 Recommendations of the Royal Commission into Aboriginal Deaths in Custody.
- Addressing the underlying issues that lead to the over-representation of Indigenous Australian in the criminal Justice system.
- Replace a “Tough on Crime” with a “Smart on Crime” approach.
- Subsidise cultural awareness training for Law Firms who undertake Pro Bono work for Indigenous Australians.
- Introduce a Legal Aid Impact Statement prior to new legislation being presented to Parliament.
- A notion of social inclusion that does not forget about the need of cultural inclusion.
- The agenda of each government should never be to ‘mainstream’ service delivery. There is a need for both Indigenous specific Legal Services and mainstream services and not just mainstream services.

Opportunities

The opportunities for governments to work better together, to ensure that Indigenous Australians have access to justice, are to:

- Tap into the SCAG process as “Indigenous law and Justice” is a standing agenda item of SCAG.
- Utilise the National Indigenous Law and Justice Advisory Body that the Federal Government plans to introduce.
- Speak to those States and/or Territories that have made some progress in achieving a “Whole-of-Government” approach.

Some guidelines on how governments should work together are:

- Avoid cost shifting;
- Be prepared to work towards a “Whole-of-Government” approach; and
- Be jointly accountable to the Indigenous Australian community.

Increased collaboration between governments is a necessity in order to eliminate the hurdles that stand in the way of Indigenous Australians achieving Access to Justice.

From Public Interest Law Clearing House (VIC)

1. **Increase funding for legal aid and CLCs**
 - The need for increased legal aid funding in order to broaden civil legal aid guidelines, broaden the family law guidelines, increase the fees that barristers get paid in criminal matters, and to make the means test are more flexible one that takes into greater consideration an individual’s particular circumstances.
 - Increase funding to CLCs so that staff can receive better incomes which will in turn assist the CLC sector in attracting and retaining staff, particularly in rural and regional Australia.
2. **Increase access to interpreters**
 - The need for government funding for access to interpreters in all courts and jurisdictions as well as increased funding for onsite interpreters and translators for matters attracting pro bono advice and assistance.
3. **Improve assistance and support for Self Represented Litigants**
4. **Reduce complexity and cost associated with the courts**
5. **Facilitating better access to justice in public interest matters:**
 - Legislating for protective costs orders in bona fide public interest matters (ie. capping costs or ordering that the court will not make an adverse costs order against a party bringing a public interest matter before the Court.
 - Clarification in the law regarding the ability to recover costs from another party when acting for a successful litigant pro bono.
 - Funding to cover disbursements in pro bono matters.

From the National Association of Community Legal Centres

1. Increased funding for the legal assistance sector, including Legal Aid Commissions, Community Legal Centres and dedicated Indigenous legal services.
2. Development and adoption by the Commonwealth of a mechanism to break down the Commonwealth/State funding divide
3. Amend the Family Law Act 2006 to make the safety of women and children a paramount consideration and remove the “compulsory” consideration of 50/50 shared care arrangements.
4. The Social Inclusion project should emphasize the adequate resourcing and support of access to justice as a vital principle of an inclusive democracy.
5. Governments should adopt a Human Rights framework into the Australian justice system.

Optional extra:

6. Governments should consult regularly with the Australian Legal Assistance Forum to support and strengthen the legal assistance sector, and acknowledge the need to involve free legal assistance providers in policy development.

An Individual

- The increased use of Alternate Dispute Resolution as proposed and encouraged by judges - especially in the Family and Magistrates Courts - is not well recognised by many legal firms and practitioners so there is a case for arranging for a mediator practitioner to meet with them and explain the process.
- Family Lawyers might consider case conferencing rather than going straight to court albeit subject to attendance at a Family Relationship Centre and, in the event of case conferencing, an accredited Family Mediator Practitioner could perhaps chair the conferencing and issue the Certificates as required.

December 2008

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