Inquiry into Australia's Judicial System - Access to Justice.

By – *Senate Legal and Constitutional Affairs Committee.*

Submission by - John G E R E M I N,

REFERENCE:- The terms of reference for the new inquiry into ***Access to justice*** *require the committee to have particular reference to:*

a. the ability of people to access legal representation;

b. the adequacy of legal aid;

c. the cost of delivering justice;

d. measures to reduce the length and complexity of litigation and improve efficiency;

e. alternative means of delivering justice;

f. the adequacy of funding and resource arrangements for community legal centres; and

g. the ability of Indigenous people to access justice.

Introduction:

a- I am not a legal practitioner, but have had some semi-academic legalistic training.

b- I have had very little direct involvement with various Courts except for the Family Court, mainly in the late 1990s/early 2000s.

c- I believe that there are too many Courts in Australia – with too many different rules re evidence, etc. Jurisdictions need to be rationalised. This of course could only happen with a complete overhaul of the various legal systems – but this could be initiated by the Commonwealth where any law could be applied across state borders; or where 'entities' are registered with the Commonwealth.

f- I am an Engineer by profession. My training/experience has included automotive, electrical, mechanical, civil, traffic and computing. The major part of my working life has been associated with computer engineering – both software and hardware. I have generally been involved with computer systems support where I have had to analyse/diagnose various systems to debug problems or improve systems. To do this I have had to be very methodical and logical in all my work.

g- In the 1990s, I was self-employed as a Computer Engineer working out of my home, purchased in 1978 as a result of a formal undertaking given in the NSW Workers Compensation Commission, which I believed was legally binding.

h- I have had one case in the Supreme Court of NSW where I had difficulty in sorting out the required formatting

of documents. In the actual Court during procedural hearings I thought that the Judge went to a lot of trouble to help a young man who had difficulties with the language and processes.

Submission: Mostly with reference to the FAMILY COURT MATTERS.

Ref – A, the ability of people to access legal representation;

1. There are two problems here – firstly financial – secondly competence.

    a. I did have funds before the Property Hearing – but anyone without funds has to rely on 'self representation' or legal aid. Some Courts allow a 'McKenzie Friend' to assist an individual who represents themselves, but other Court prohibit this. There needs to be a consistent and well publicised routine for allowing 'McKenzie Friends' to assist in proceedings so that the Courts may operate more efficiently. They should also be permitted to speak on behalf of the litigant.

    b. Legal Aid has many problems. I have been told that they will not appear in ADVO applications in Local Courts – this is a major denial of justice. They also say that they cannot represent 'both' parties in a hearing – this could be solved by assigning one party to a different office or a subsidised private practicioner.

    c. The COMPETENCE of Legal Representatives seems to be limited to restricted fields. In my experience, I had half a dozen allegedly experienced Family Court practitioners. I was asked to document the History of the Relationship, but none told me that I need full financial history to be included or that the Judge would reject my formal summary of my financial contributions.

    d. I was also unable to obtain any formal documentation of my Workers Compensation case from 20 years prior to the Family Court case – this meant that my compensation was treated as 'windfall income' rather than necessary long-term survival funds.

    e. In many Court cases that I have seen or heard about there is a vastly different level of legal representation for the parties. When a barrister for one party quotes obscure sections of legislation to the Judge in order to gain an advantage for a client it is very difficult to refute if the other party does not have similarly experienced representation. This could be simply fixed by requiring the same level of representation at minimum affordable level for all parties involved in personal matters.

2. Another anecdotal problem is that of the Family Court appointment of a "Children's Representative". This representative is usually/normally seated next to the wife's legal representative in Court and they tend to converse together on a regular basis which gives the impression that the Court has a pre-determined bias against the father in most hearings.

Ref – D, measures to reduce the length and complexity of litigation and improve efficiency;

3. In one of my hearing a formal Affidavit was rejected because it was written in the wrong 'tense'. Most people with any scientific or technical training or experience in report writing tend not to use 'first person' tenses as it implies opinion and not fact. This sort of technicality should be noticed by the Court staff long before a hearing commences so that time in Court can be minimised.

4. A Court Registrar or other legal officer of the Court could scan all documents after they are lodged to ensure that they are in a form that will allow a Court to process them without trivial and time-consuming attempts to allow or disallow items in the formal Hearing.

5. The secrecy provisions of the Family Law Act ensure that no proper parliamentary or academic scrutiny of the Family Courts can take place in the interests of Justice.

    a. I can understand that children may need to be protected from disadvantage, but see no reason why adults should not be recognised as responsible citizens – rather than the Act protecting them – especially when so many lies are told in the Family Court [and AVO applications] in order to gain monetary or other advantage.

6. There are many other problems relating to Justice in the Family Court area – one specific one is the Court's apparent inability to prevent (or even delay) child abduction.

    a. It would be so simple to suspend passports once an application is lodged in the Family Court.

    b. Child abductions are apparently increasing dramatically, but the legal processes to prevent them are not automatic and rely on hearings that may not happen for many months.

    c. Even after the child has been taken out of Australia the processes of initiating a return so that a Family Court matter can continue are long and tedious.

    d. A classic example of mixed jurisdictions where cross-responsibility prevents justice being done. [Ref: public case.]

Ref – E, alternative means of delivering justice;

7. In most other jurisdictions the Court has the power to order investigations and collect evidence that is independent of the two parties in a case.

    a. I have been formally told in the family Court that the Court has 'no powers of investigation' and 'no powers of enforcement of orders'.

8. I have had experience in a NSW Tenancy Tribunal which worked very efficiently, without any legal representatives. I would recommend a Tribunal system as the 'first port of call'

in all matters other than Criminal cases.

   a. In the Family Court system the Tribunal should consist of one legally trained official [eg current Registrar level] with two community members. The tribunal should have investigative powers and powers of referral in matters where criminal activities are concerned.

9. In Family Court proceedings costs are way too high, thus preventing proper delivery of 'Justice' to all citizens.

   a. The legal fees should be limited to a maximum of 10% of the total assets – in the best interests of the children.

   b. Preferably – legal representatives should be barred from the hearings.

   c. Judges should KNOW the relevant law rather than relying on lawyers to tell them.

   d. There should be no ambiguities or confusion in the Family Law Act.

   e. Instructions for completing applications and affidavits should be simplified and readily understandable by all members of the community.

   f. I understand that the initial intention of the Parliament in 1975 was that dress would be informal and parties would represent themselves, this should now be a requirement so that family funds stay in the family for the 'benefit of the children'.

Next Steps:

I would be happy to attend and give further submissions if the Committee was to meet in Sydney.

I could attend in Canberra on a Monday or Tuesday afternoon with sufficient notice.

I suggest that the Committee obtain formal access to all my documents from the Family Court and complete an independent analysis of the evidence.