

The Secretary  
Standing Committee on Legal and Constitutional Affairs  
PO Box 6100  
Parliament House  
Canberra  
ACT, 2600

8th May 2009

Dear Sir or Madam,

**RE: Australian Legal Assistance Forum - Submission to the  
Inquiry into Access to Justice, 2009**

### **Introduction**

The Australian Legal Assistance Forum (ALAF) is an organisation whose participants are representatives of the following organisations:

1. National Legal Aid representing the Directors of all Legal Aid Commissions in Australia and through them those Commissions.
2. The Law Council of Australia representing all Australian lawyers and their State and Territory representative bodies.
3. Representatives of the Aboriginal and Torres Strait Islander Legal Services Forum.
4. The National Association of Community Legal Centres representing Community Legal Centres, and some Aboriginal Family Violence Prevention Legal Services, throughout Australia.

ALAF was established in 1998 to enable these organisations to consider and address Australian legal assistance issues in a co-operative way and to make recommendations on those issues in a co-ordinated fashion.

Each of these organisations and those they represent may make submissions to the Inquiry.

### **Previous inquiries, existing research and reports**

There is already a raft of material which should inform Governments and policy makers about access to justice issues. Legal assistance service providers, have made multiple submissions repeating the same concerns over the years, the main concern being inadequate funding. These submissions have included the Senate Legal and Constitutional References Committee inquiry into Legal aid and Access to justice, referred to the Senate on the 17th June 2003 and completed in June 2004, and the Senate Legal and Constitutional Affairs Committee inquiry into the Australian Legal Aid System referred to the Senate in 1996 and completed in June 1998.

### **The Inquiry into Legal Aid and Access to Justice 2003**

The main messages to the 2003 Inquiry into Legal Aid and Access to Justice were that legal assistance service providers, despite working co-operatively to maximise service delivery, were even then unable to meet the demand that was presenting at the door; and that they believed that there were also significant numbers of people with legal needs who did not reach service delivery points.

The report of that Inquiry made 63 recommendations. Many of the recommendations were aimed at determining and meeting legal needs in Australia, including the legal needs of Aboriginal and Torres Strait Islander Peoples, and people living in rural, regional and remote areas.

### **What has changed**

- Service delivery capacity and funding

Since the 2003 inquiry, demand for services has increased and the cost of providing those services has increased. The Aboriginal and Torres Strait Islander Legal Services have not received any meaningful increase in funding during the ensuing period. When funding increases to the Commissions and Community Legal Centres have been made they have been inadequate to address even the demand at the door.

The situation has therefore worsened since 2003.

- Legal Needs Survey

National Legal Aid, represented on ALAF, and the Law and Justice Foundation of NSW are undertaking a National Legal Needs Survey. It is expected that some results will be available from late 2010, with the main reports (national and for each state/territory) released in the second half of 2011. It is understood that the results of this survey will provide the empirical evidence that legal aid service providers have previously been advised by funders would be required in relation to approaches for increased funding.

While it is noted that the survey will not pick up sufficient samples of some of the most difficult to reach groups (such as people in isolated Aboriginal and Torres Strait Islander communities), the particularly large scale of the survey will allow for analysis and reporting in relation to legal needs of a wide range

of the most disadvantaged groups, including Aboriginal and Torres Strait Islander peoples, culturally and linguistically diverse groups, people with disabilities, recipients of government benefits, etc.

- **Global Financial Crisis (GFC)**

The economy has worsened with very tough economic times predicted. More people are finding themselves in need of legal assistance in areas such as employment, credit/debt, mortgage repossessions, housing and tenancy, and consumer protection. In addition, difficult economic times are likely to put pressure on families, leading to an increase in demand in this area too.

Reduced employment will mean more people will meet legal aid means tests and be eligible for legal aid. This will result in further refusals due to the requirement to prioritise matters because of limited legal aid funding.

### **Main priorities**

It is agreed by ALAF that the following areas of legal need remain immediate priorities for funding:

- Legal needs of Aboriginal and Torres Strait Islander Peoples
- Civil legal aid - eg homelessness, social security issues, older people's issues
- Domestic/family violence

### **"Funding divide"**

Current Commonwealth government policy is that Commonwealth funds can be used to provide grants of legal assistance for Commonwealth law matters only. This Commonwealth policy is generally known as the Commonwealth/State funding divide.

Family breakdown can involve both Commonwealth law and State law such as child protection and domestic violence. If a case involves both Commonwealth and State laws, two separate grants of aid are required to be made because of the administrative and financial requirements which result from the Commonwealth/State funding divide.

Commonwealth funding should be available to provide grants of aid to address legal needs arising from family relationship breakdown regardless of whether the specific legal need arises under Commonwealth or State legislation. ALAF believes that a better way to prioritise the Commonwealth legal aid program is to base it on defined legal need and that this approach is more consistent with social inclusion principles.

### **Conclusion**

ALAF is prepared to work with funders to co-operatively identify the particular recommendations, including those from previous inquiries, to be implemented as priorities if more funding becomes available. The current reality is however

that more funds are required to meet service delivery needs. Legal assistance service providers are already working co-operatively with each other to stretch service provision as far as possible.

Thankyou for the opportunity to make this submission to the inquiry.

Please do not hesitate to contact us if you require any further information from us.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Jenny Hardy', written in a cursive style.

Jenny Hardy  
Chairperson, ALAF