

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S DEPARTMENT

Sub Program 1.1.2

Question No. 111

Senator Barnett asked the following question at the hearing on 8 February 2010:

In relation to the Access to Justice report issued by the Legal and Constitutional Affairs References Committee late last year, the report noted that legal aid in this country is underfunded.

- a. How does the Attorney-General's Department see the situation where millions of dollars are made available for a single case such as the Sydney terrorism case, but thousands of Australians can't get legal aid for matters that are of great importance to them, such as family law matters?
- b. Is this an appropriate balance in the use of government funds for the purposes of delivering good legal outcomes in this country?
- c. Should further action be taken in response to the Access to Justice Report?
- d. Does the Department have comment on any other aspect of the Access to Justice report?

The answer to the honourable senator's question is as follows:

- a. Core funding for legal assistance services has been maintained. In 2009-10, legal aid funding totals \$171.1 million. There is \$700 million allocated for legal aid over the next four years in the Forward Estimates. The Government provided \$28 million in one-off additional funding for services in 2007-08 and a further \$26.4 million in one-off additional funding in 2008-09.

Costs incurred by Legal Aid NSW in representing the persons in Sydney recently charged and convicted of terrorism offences were met from the Expensive Commonwealth Criminal Cases Fund (ECCCF). The Australian Government separately funds the ECCCF to ensure that Commonwealth criminal trials do not impact on the ability of legal aid commissions to provide legal assistance to disadvantaged and vulnerable Australians. The ECCCF is available to reimburse costs arising from high cost Commonwealth criminal matters such as terrorism, drug importation, and people trafficking cases. The ECCCF was supplemented by an additional \$9 million in 2007-08 for these trials and a further \$2 million was provided in 2009-10. The additional funding was provided to ensure that legal aid commissions are appropriately funded to meet the cost of these matters.

- b. If an accused person in a serious criminal trial is unable to get proper legal representation, the Court could decide that the trial cannot proceed, following the High Court's decision in *Dietrich v R* (1992) 177 CLR 292. The result is that a trial could be stayed indefinitely and the accused never brought to justice.

Legal aid commissions are responsible for deciding whether to grant legal aid to a particular individual, and for establishing the terms of any grant. This includes determining the appropriate level of representation, based on the nature and complexity of each matter. In

considering an application for reimbursement of costs from the ECCCCF, the Attorney-General's Department must be satisfied that a commission has applied the guidelines set by the Commonwealth, including that on managing the costs of expensive criminal cases.

- c. The Government is considering its response to the Senate Legal and Constitutional Affairs References Committee report *Access to justice*, in the context of its broader access to justice agenda and the Strategic Framework for Access to Justice, adopted in September 2009. Any action in relation to recommendations in the report will be a matter for Government.
- d. The Department is considering the recommendations of the Committee's report.