

# **MINORITY REPORT BY GOVERNMENT SENATORS**

## **INTRODUCTION**

1.1 This broad and far ranging enquiry into legal aid and access to justice arrangements across Australia, has demonstrated some areas of considerable need and Government senators acknowledge the importance of an examination of that need and the development of solutions, both funding and practical, to address that. However, it is clear that that need is not clearly quantified, either through government, commissions or other providers and to that end we support in principle the Report's suggestion that much better statistical and practical information is required.

1.2 Of the 63 recommendations in the Report, at least 11 call for some form of research, evaluation, review, needs analysis, survey or study of both needs and demand, and services either currently provided or required. Government senators suggest that these recommendations could be effectively refined to examine need and service delivery in 3 key areas, drawing from the recommendations of the Report.

1.3 In relation to the provision of services: a national survey of demand and unmet need for legal services and identification of the obstacles to service delivery, which would include the impact of self represented litigants on the system, the value and effectiveness of government legal information services and the extent to which legal aid funding arrangements impact upon the work of Community Legal Centres.

1.4 Many submissions and witnesses raised very specific concerns in relation to discrimination against women in terms of legal service delivery and support. Government senators agree that all Australians are entitled to access to legal services without discrimination. In light of the concerns raised we support research into the perceived gender bias in access to legal services, including consideration of the specific service needs of women, particularly indigenous women and women in rural regional and remote Australia.

1.5 It is also clear from the evidence received that indigenous Australians and people living in rural, regional and remote Australia face separate and different challenges in terms of access to legal services. Government senators acknowledge that these are areas of different and diverse concern, and both questions merit examination to ensure that services that are being delivered are meeting their aims and objectives and where they are not, what can be changed to achieve more effective service delivery.

---

## **Commonwealth government support for legal aid**

### ***Legal aid funding and agreements***

1.6 The Australian Government is providing \$599 million over the next four years to provide legal aid for Commonwealth law matters in each State and Territory from 1 July 2004 (Budget papers 2004-05). This is an additional \$52.7 million in new money over four years, including \$1.3 million for program administration.

1.7 The new funding includes a component to provide a new duty lawyer service to assist those people who seek to represent themselves before the Family Court and the Federal Magistrates Court. Legal aid commissions will be invited to provide the new service.

1.8 A further component will assist commissions to pay a minimum rate of \$120 (GST exclusive) per hour to solicitors undertaking Commonwealth family law matters. Funding will also be provided to assist commissions to bring the hourly rates for veterans' matters to the same rates as those paid for family law matters in all States and Territories.

### ***Legal aid renegotiations***

1.9 The current agreements for legal aid services provided by State and Territory legal aid commissions are due to expire on 30 June 2004 and negotiations are currently underway with States and Territories and legal aid commissions for replacement agreements to operate from 1 July 2004. If new agreements are not signed by the end of June the current agreements will continue until the new agreements are in place.

1.10 Additional funds will be available to State and Territory legal aid commissions when they enter into new legal aid agreements from 1 July 2004. Those funds do not include payments for duty lawyer services. \$3.3m is available for the provision of duty lawyers should Legal Aid Commissions take up the Commonwealth invitation to provide the service.

## **Policy issues**

### ***Women and access to legal services***

1.11 As noted previously, Government senators support an examination of perceived gender bias in access to legal services. In relation to matters involving Commonwealth and state laws, particularly family law matters which also include domestic violence issues, Government senators are concerned that administrative constraints or arrangements in cost allocation by Legal Aid Commissions may add to the complexities in providing legal services in such matters.

1.12 Government senators note that separate solicitors for family law and criminal law aspects of the same matter are not required under the Commonwealth legal aid agreements. Government senators would encourage the Attorney General's Department to work with Legal Aid Commissions to resolve cost allocation issues to ensure the most effective representation for those women seeking legal services in such circumstances.

### *Pro Bono Legal Services*

1.13 Government senators acknowledge the valuable contribution made by the legal profession in Australia in provision of pro bono legal services. Government senators also support the observation in the report that pro bono legal services should not be seen as a substitute for legal aid funding.

1.14 In the last 4 years the Commonwealth government has strongly supported pro bono efforts including establishment of the National Pro Bono Resource Centre. The centre was provided with seed funding based on the government expectations that it would become a private sector body, fully supported by the private sector.

1.15 Government senators note that concerns were expressed in submissions and evidence that private sector lawyers may be discouraged from acting pro bono in matters against the Commonwealth if they perceived they would subsequently be prejudiced in the selection of legal service providers by Commonwealth agencies. It is important to note that the Commonwealth Attorney General stated at the 2<sup>nd</sup> National Pro Bono Conference in 2003

“It is my belief that, subject to the usual conflict of interest rules, it is irrelevant whether or not legal providers have acted pro bono for clients against the Commonwealth”

Government senators encourage the inclusion of a statement clarifying this matter in the Legal Services Directions.

### *Community Legal Centres*

1.16 Government senators are concerned at the evidence received by the committee in relation to community legal centres, both in terms of staffing and working environments. The community legal centres play an important part in the provision of legal services to many disadvantaged Australians and that contribution cannot be disregarded.

1.17 In 2004-05 recurrent funding for the Commonwealth Community Legal Services Programme will be \$23.3 million, a funding increase of more than 50% since 1996. This includes the establishment of 11 new community legal centres in regional, rural and remote Australia since 1998. In 2002-03 a new 3 year model service agreement was introduced, providing some stability and greater certainty to ongoing

funding arrangements for centres. This is a demonstration of ongoing Commonwealth support for the programme.

1.18 It is notable that although community legal centres provide a mix of legal services relating to Commonwealth and State matters, state funding is very varied. It ranges from 43% in one state to no contribution at all in others, specifically Tasmania, the ACT and the Northern Territory. Government senators encourage state and territory governments to more strongly support the work of community legal centres.

## **Report Recommendations**

1.19 Government senators provide the following responses and comments on particular recommendations in the Chair's report.

### **Recommendations 1 and 2**

Government senators note that the Attorney General's Department has advised that a new funding model was developed as part of the process of formulating legal aid agreements with the states, which was used to assist in the distribution of legal aid funds. The model was developed with assistance from the Commonwealth Grants Commission and in consultation with legal aid commissions.

### **Recommendation 3**

Government senators support this recommendation.

### **Recommendation 4**

Government senators support this recommendation.

### **Recommendation 5**

Government senators do not support this recommendation.

### **Recommendation 6**

Government senators recommend that this initiative be considered and costed by the Attorney General's Department and considered for development between the Commonwealth and the states and territories.

### **Recommendation 7 and 8**

Government senators do not support these recommendations. The evidence is not persuasive that these recommendations are practical, nor the impact on services as described properly quantifiable.

---

**Recommendation 9**

Government senators do not support this recommendation.

**Recommendation 10**

Government senators support consideration of this recommendation.

**Recommendations 11, 50, 54, 55, 56, 58, 59**

Government senators support a national survey of demand and unmet need for legal services and identification of the obstacles to service delivery, which would include the impact of self represented litigants on the system, the value and effectiveness of government legal information services and the extent to which legal aid funding arrangements impact upon the work of Community Legal Centres.

**Recommendations 12, 15, 25, 26, 30, 31**

Government senators agree that all Australians are entitled to access to legal services without discrimination. In light of the concerns raised we support research into the perceived gender bias in access to legal services, including consideration of the specific service needs of women, particularly service funding and support for indigenous women and women in rural regional and remote Australia.

**Recommendations 13 and 14**

Government senators note the vexed nature of identifying which areas of spending on legal aid receive greater priority than others, and whether by definition that makes such spending 'disproportionate'. Evidence to the committee suggested that these aspects of legal aid funding do merit examination.

**Recommendation 16**

Government senators support this recommendation.

**Recommendation 17**

Government senators support this recommendation.

**Recommendation 18**

Government senators are concerned that administrative constraints or arrangements in cost allocation by Legal Aid Commissions may add to the complexities in providing legal services in such matters.

Government senators note that separate solicitors for family law and criminal law aspects of the same matter are not required under the Commonwealth legal aid agreements. Government senators encourage the Attorney General's Department to

---

work with Legal Aid Commissions to resolve cost allocation issues to ensure the most effective representation for those women seeking legal services in such circumstances.

**Recommendation 19**

Government senators support this recommendation.

**Recommendation 20**

Government senators support this recommendation.

**Recommendation 21**

Government senators support this recommendation.

**Recommendation 22**

Government senators suggest that this recommendation be reviewed when the results of the monitoring called for in recommendation 21 are known.

**Recommendation 23**

Government senators support this recommendation.

**Recommendation 24**

Government senators support this recommendation.

**Recommendations 27, 29, 32, 33, 36, 38, 39, 40**

Government senators note that it is clear from the evidence received that indigenous Australians and people living in rural, regional and remote Australia face separate and different challenges in terms of access to legal services. Government senators acknowledge that these are areas of different and diverse concern, and both questions merit examination to ensure that services that are being delivered are meeting their aims and objectives and where they are not, what can be changed to achieve more effective service delivery. After the report of such examination is produced consideration should be given to increasing funding levels.

**Recommendation 28**

Government senators do not support this recommendation but reiterate the need for such a tender to include appropriate cultural considerations.

**Recommendation 34**

Government senators support this recommendation.

**Recommendations 35, 60, 61, 62**

Government senators note the support of the Commonwealth government for community legal centres and the rural and regional initiatives introduced and continued by the Commonwealth. Government senators encourage state and territory governments to more strongly support the work of community legal centres. However, it is clear that existing community legal centres are operating under significant financial difficulties impacting on their capacity to retain staff, the quality of the working environment and consequently their levels of service delivery. Government senators acknowledge that this funding situation will require review by the Commonwealth government in the near future.

**Recommendation 37**

Government senators do not support the provision of a subsidy but support the development of a coordinated national approach between Commonwealth and state and territory governments and law societies, in conjunction with university Law Schools, of attracting and retaining lawyers to work in rural, regional and remote areas.

**Recommendations 41, 42**

Government senators do not support these recommendations.

**Recommendation 43**

Government senators support this recommendation.

**Recommendation 44**

Government senators do not support this recommendation.

**Recommendation 45**

Government senators support this recommendation.

**Recommendation 46**

Government senators support this recommendation.

**Recommendation 47**

Government senators support this recommendation.

**Recommendations 48, 49**

Government senators note that the National Pro Bono Resource Centre was provided with seed funding based on the government expectations that it would become a private sector body, fully supported by the private sector.

**Recommendation 51**

Government senators support this recommendation.

**Recommendation 52**

Government senators support this recommendation.

**Recommendation 53**

Government senators support this recommendation.

**Recommendation 57**

Government senators note that Commonwealth funding was provided in the 2004-05 budget for duty lawyer services and encourage state and territory governments to provide funding support for duty lawyer schemes.

**Recommendation 63**

Government senators support this recommendation.

**Senator Marise Payne**  
**Liberal Party**  
**Deputy Chair**

**Senator Nigel Scullion**  
**Country Liberal Party**