



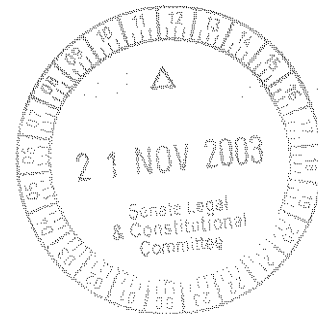
CHIEF JUSTICE'S CHAMBERS, SUPREME COURT,
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18 November 2003

Our Ref: UNRE1001/UNRE1002/LEGA1001

Ms Louise Gell
Secretary
Australian Senate
Legal and Constitutional
References/Legislation Committee
Parliament House
Canberra ACT 2600



Dear Ms Gell,

Inquiry into Legal Aid and Access to Justice

Further to my letter by way of a submission dated 11 September 2003, the Legal Commission made available to me some time ago a copy of its proposed submission to the Committee from which I observed that the number of people obtaining legal representation to resolve a family law matter in Western Australia is 25 per cent less than the national average. With the exception of New South Wales, Western Australia makes the least number of grants for legal representation in family law matters, on a per capita basis, of all States and Territories. As the Commission has pointed out, this does not reflect relative demand for legal assistance.

As the Commission has demonstrated, total Commonwealth funding in this State for legal aid in 2002-2003 had still not reached levels that existed 10 years earlier. In the last decade, the amount of Commonwealth funding has decreased in real terms by \$3.2 million or 28 per cent. In that period, State funding increased by 42 per cent in real terms, by the provision of an amount equivalent to that which the Commonwealth had withdrawn. Unfortunately, the injection of State funds is only available for use for State law matters consistent with the attitude taken by the Commonwealth and the agreements the State and Commonwealth have entered into which limit the use of funds in this way. It is also noted that since 1996, Legal Aid Western Australia is the only State Legal Aid Commission to have accumulated a deficit in relation to Commonwealth law matters by spending \$602,000 more than it received over this period. The



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consequence is that the cross-subsidisation which was said to exist before 1996 is now effectively reversed as Legal Aid WA has demonstrated.

So far as the civil jurisdiction is concerned, courts now have to deal with significant numbers of self-litigants. This Court has two long-standing Committees, namely, the Unrepresented Civil Litigants Committee chaired by Roberts-Smith J and the Unrepresented Criminal Appellants Committee. The first of these Committees is charged with making recommendations in relation to practical formal and informal assistance which can be provided to unrepresented civil litigants. The Unrepresented Criminal Appellants Committee works in co-ordination with Legal Aid WA to provide formal and informal assistance to unrepresented appellants and applicants in relation to both appeals against conviction and applications for leave to appeal against sentence. For some years to the end of 2002, the Department of Justice in Western Australia provided funding for a scheme solicitor to be based at the University of Western Australia Law School. Under her supervision, law students obtained instructions and prepared evidentiary material and draft submissions which were settled by the scheme solicitor. The scheme was extremely successful over a period of some 3½ years. Unfortunately, funding has since been cut and although some assistance is provided by Legal Aid WA, there is no adequate funding available, with the result that in order to progress appeals and applications to the Court of Criminal Appeal, the Court is dependent upon the limited assistance which Legal Aid is in a position to provide and the willingness of a number of lawyers to undertake *pro bono* work. This is not a satisfactory basis upon which the criminal justice system should operate.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'David K Malcolm'.

The Hon David K Malcolm AC CitWA
Chief Justice of Western Australia