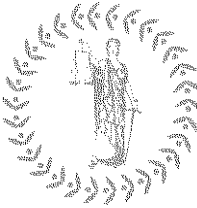
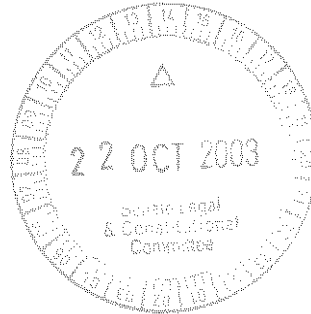


THE LAW
OF SOUTH



SOCIETY
AUSTRALIA

20 October 2003



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JM;rp

Ms Louise Gell
Secretary
Senate Legal Aid and Constitutional Reference Committee
Parliament House
CANBERRA ACT 2600

Dear Ms Gill

Re Senate Inquiry into Legal Aid and Access to Justice

I refer to your letter of 27 June 2003 and thank you for giving the Law Society of South Australia the opportunity to make a submission to the Inquiry into Current Legal Aid and Justice Matters that is being conducted by the Legal and Constitutional References Committee.

The Society's Justice Access Committee has considered the terms of reference and has provided the attached comments.

I realise that the timeline for the provision of comment has passed, but trust that this submission will no doubt be of interest to the Committee.

Yours sincerely

Jan Martin
EXECUTIVE DIRECTOR

Senate Inquiry into Legal Aid and Access to Justice

Submission by the Law Society of South Australia

Responsibility for providing access to justice falls on the Federal, State and Territory governments. The report by the National Legal Aid Advisory Committee, 1990, concluded that Federal, State and Territory governments are *"the creators and administrators of the law and justice systems and the custodians of public interest and access to justice."*

There must be adequate access to justice if there is to be equity in the community.

Where one party to a dispute does not have access to the legal system, the ability to obtain proper redress is frustrated. If a number of people suffer from the same problem, they have little chance of overcoming those problems and there is a danger that they will be subjected to systematic exploitation based on their inability to resist the practices perpetrated upon them.

The functions and responsibilities of government give rise to two duties:

1. To ensure the fair and effective application of the law;
2. To ensure that Australian legal systems are administered in a fair and effective manner.

The Society has had the opportunity of reading the submissions of the Law Council, the Legal Services Commission of South Australia and the Aboriginal Legal Rights Movement.

Significant issues identified in these submissions include

- The current funding arrangements provide a challenge to legal aid in meeting the needs of clients and communities.
- The range of matters funded by the Commonwealth has narrowed and the overall level of Commonwealth funding has declined.
- In comparison to other jurisdictions, South Australia suffers due to its relatively small population but large geographical area. The Legal Services Commission has 3 offices and 2 chambers in the metropolitan and outer metropolitan area, and 1 office in a rural area. Solicitors from these offices visit some remote areas. Outreach services are currently provided to Murray Bridge from the Adelaide office. From the Whyalla office, staff go on outreach to Port Augusta, Coober Pedy and the AP Lands, covering all areas in the State's north west. Private practitioners, the Aboriginal Legal Rights Movement (ALRM), and Community Legal Centres (CLC) throughout the State contribute to the provision of legal aid but there is great difficulty in ensuring an equitable distribution of legal aid and legal services to all people in need in South Australia.

- It is difficult to determine the unmet legal need and it is suggested a needs analysis is important both for the improvement of service delivery in individual cases and to direct funds generally to cases, clients and geographical areas which experience particular disadvantage. People from rural and remote areas in particular experience difficulties accessing legal and family services and dealing with litigation or review proceedings. The travel involved to access such services can be extensive and costly.
- The impact of an underfunded legal aid system is to place demands on pro bono services. Pro bono practice is a voluntary activity, deriving from the legal profession's service ideal, and is a shared responsibility involving individual practitioners, law firms, peak professional bodies, courts, law foundations and others. Pro bono practice is not a substitute for legal aid.
- A further impact is the increase in self represented litigants and the commensurate increase in costs to courts and delays in the progress of matters.

The Commonwealth Government is urged to provide funding for

- legal aid for all indigenous persons (so that their legal aid costs are met by the Commonwealth without distinction)
- an extension of legal services to rural and remote areas
- legal assistance for all migrant/recently arrived/ non naturalized overseas born persons
- payment of all interpreter fees
- all children's matters
- domestic violence related matters
- funding to Aboriginal Legal Rights Movement for the payment of transcript fees
- the establishment of a duty lawyer/advice scheme to operate in every registry of the Family Court
- the establishment of a comprehensive duty lawyer scheme to ensure that all persons appearing in a court of first instance have access to legal advice and representation on at least their first occasion before the court
- additional funds to be allocated when there are changes to Commonwealth legislation, Commonwealth priorities and guidelines, and policies which affect legal aid demand.