



RESEARCH NOTE

Number 30, 9 May 1995
ISSN 1323-5664

Access to Justice – An Action Plan

The Government's response to the report, *Access to Justice - an Action Plan*, will be delivered in the Government's Justice Statement. The Attorney-General on 26 March 1995, indicated that the Justice Statement would be delivered shortly after the Federal Budget.

Background

On 28 October 1993, the Attorney-General, the Hon Michael Lavarch MP, and the Minister for Justice, the Hon Duncan Kerr MP, appointed the Access to Justice Advisory Committee chaired by Mr Ronald Sackville QC.

The appointment was in response to what the Minister for Justice, in his address to the Annual Regional Conference of the Law Society of New South Wales on 28 October 1993, noted was a "crisis of confidence" in the legal system. He also noted that the legal profession's work practices, in some instances, are those of a "pre-industrial craft guild".

In relation to the cost of using the courts, the Minister pointed out "that the costs of one day in court would demolish the average lifetime savings of a young couple on average weekly earnings."

It should be noted that the legal industry in Australia employs about 55,000 people, and has a turnover of \$3 billion per annum.

Terms of Reference

The Committee was given a broad reference which included "...to make recommendations for reform of the administration of the Commonwealth justice and legal system in order to enhance access to justice and render the system fairer, more efficient and more effective".

The process

The Committee was asked to consider a number of specific reports which included those of Parliamentary Committees, the Australian Law Reform Commission, the Family Court, and the Law Society of New South Wales.

Action recommended by the Committee included:

Regulation of the legal services market

The competition principles embodied in the *Trade Practices Act 1974 (Cth)* should be extended to the legal services market. This would require a reference of powers by the States to the Commonwealth, as suggested by the Hilmer Committee in its report, *National Competition Policy*.

Information for consumers

Remaining constraints on advertising by lawyers should be removed.

Lawyers should be required to disclose to clients information, including the approximate costs of any proposed legal service, progress of the matter, and any change in circumstances that may suggest that a reassessment of the costs or prospects of success in litigation, is required.

Regulation of costs

At present, scales of fees are published by courts and in some circumstances form the basis of fees charged by a lawyer to the client. The disadvantages of scales include the tendency to diminish price competition, and that they rarely reflect market conditions. The Committee proposes the abolition of fee scales, provided that the Committee's proposals as to competition, disclosure of information, and investigation of complaints about lawyers, are implemented. When necessary reference would be made to reasonable market rates for fees as determined with the assistance of market surveys approved by the Commonwealth.

Lawyers should be required to enter into written costs agreements with clients.

Contingency fees

The Committee believes that lawyers should be allowed to charge an additional percentage on their normal fees, commensurate with the risk undertaken, if they operate on a 'no-win, no-fee' basis.

Complaints and discipline

- An impartial body independent of professional associations should supervise the profession;
- Non-lawyers and lawyers should be involved;
- Compensation should be awarded in appropriate circumstances;

Legal aid

The Committee proposes an increase in funding subject to structural reforms which include establishing an Australian Legal Aid Commission.

Alternative funding for litigation

The Committee recommends that the Commonwealth take action to foster:

- Contingent legal assistance funds – whereby the fund bears the cost of civil litigation, recovering costs from the unsuccessful party, whilst charging the assisted person a “fund fee” calculated as a percentage of the amount recovered by the litigation.
- Legal expenses insurance schemes – whereby premiums would be paid for certain benefits.

Alternative dispute resolution (ADR)

The Committee suggests steps to encourage ADR. ADR involves the resolution of disputes by an agreement reached by the parties, facilitated by a neutral third party.

Courts and the community

Courts should develop a charter which includes performance standards, and report regularly on the achievement of those standards. A national judicial education centre should be established.

Efficient civil court procedures

Data on the management and performance of all Australian courts should be collected with a view to identifying best practice procedures. The Committee supports the changes already taking place whereby Judges take a more active role in caseflow management.

Court dress

The Committee's view is that judges should continue to wear gowns as a symbol of authority, but that wigs are anachronistic, and that advocates should not wear either. It is important that lawyers and judges not appear remote from the community.

Courts and the electronic media

The Committee recommends the commencement of broadcasting of Federal Court proceedings on a trial basis, subject to guidelines set down by the Court.

Accessible legislation

Legislation should be redrafted where necessary in the new clearer drafting style.

Harmonisation of laws affecting access to justice

The lack of harmony between States and the Commonwealth, creates practical difficulties and adds to the cost of justice.

Gavin Lee
Law and Public Administration
Group
Parliamentary Research
Service

Phone: 06 277 2432

Fax: 06 277 2407

Views expressed in this Research Note are those of the author and do not necessarily reflect those of the Parliamentary Research Service and are not to be attributed to the Department of the Parliamentary Library. Research Notes provide concise analytical briefings on issues of interest to Senators and Members. As such they may not canvass all of the key issues.

© Commonwealth of Australia