The Right to a Fair Hearing and Access to Justice

Submission of the New South Wales Young Lawyers Human Rights Committee to the Senate Legal and Constitutional Affairs Committee: Inquiry into Access to Justice

"Injustice results from nothing more complicated than lack of knowledge[1]".

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[1] Chief Justice Gleeson, 'Conference Opening and Keynote Address' (Speech delivered at the National Access to Justice and Pro Bono Conference), Melbourne, 11 August 2006

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To Whom It May Concern,

Inquiry into Access to Justice

The Human Rights Committee **(HRC)** of the NSW Young Lawyers is grateful for the opportunity to make a submission to the Senate Committee's inquiry relating to Access to Justice.

NSW Young Lawyers is made up of law students and legal practitioners who are in their first 5 years of practice or under the age of 35. The HRC is concerned with a range of human rights issues both in Australia and abroad and aims to raise awareness and provide education to the legal profession and the wider community on these issues.

Introduction

The NSW Young Lawyers would like to thank the Senate Legal and Constitutional Affairs committee for the opportunity to submit to the inquiry relating to Access to Justice in Australia.

NSW Young Lawyers approaches this submission through its Human Rights Committee (HRC) whose aims are to raise awareness of, and to protect and promote, fundamental human rights in Australia and internationally.

The HRC believes that effective access to justice is essential to the maintenance of a fair and just legal system and also critical to safeguard basic human rights and protect the rights of the vulnerable and marginalised in our communities.

Access to justice and the human rights framework

Currently, there is no internationally recognised universal human right to legal aid or access to the law, and such a right is usually considered as ancillary to other rights (whether statutory, treaty or common law based), most commonly, the right to a fair trial, particularly in the context of criminal proceedings.

Some international jurisprudence has also highlighted the importance of access to the law, even in the context of non-criminal matters. In the civil law context, the European Court of Human Rights held in *Airey v Ireland*[2] that Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms that the State may be compelled to provide '…assistance of a lawyer when such assistance proves indispensable for the effective access to court either because legal representation is rendered compulsory…or by reason of the complexity of the procedure or the case.'[3]

International law jurisprudence emphasises the importance of a fair hearing and this encompasses a number of basic elements. These include (but are not limited to):

- The right to procedural fairness;
- The right to a hearing without delay;
- The right to legal advice and legal representation;
- Equal access to the courts;
- Equality before the courts;
- The right to a competent, independent and impartial tribunal (established by law);
- The right to a public hearing; and
- The right to have the free assistance of an interpreter (if required).

[2] [1979] ECHR 3
[3] Ibid at 24-26.

The right to representation in the criminal law context is also enshrined in Article 14(3) of the International Covenant on Civil and Political Rights (ICCPR) provides a positive obligation on the state to provide free legal assistance in legal matters where the interests of justice require it and a party does not have sufficient means to pay for representation.

Moreover, in 2007, the Human Rights Council **('HRC')** reiterated the importance of the right to representation in General Comment 32 of the ICCPR by stating, inter alia; 'availability or access to legal assistance is often determinative of whether or not a person can access the relevant judicial proceedings or participate in them in a meaningful way[4]'.
In relation to the Australian case of *Dudko v Australia*[5], the Human Rights Council stated that the state has a discretion to direct finite and limited legal aid resources to meritorious matters. This discretion, however, needs to be, 'exercised having regard to factors including the nature of the proceedings, the powers of the appellate court**,** *the capacity of the unrepresented party to present a legal argument*, and the importance of the issue at stake in view of the severity of the sentence[6]'.

While Australia lacks fundamental human rights protections through the form of a statutory charter of rights, such international jurisprudence nonetheless remains relevant to guiding Australia, as an international citizen, but also by virtue of the High Court decision of *Teoh*[7].

There has been a move in recent years to a trend where access to the law, as a wider gamut to simply, the right to legal representation, is commonly recognised as a fundamental right of its own accord.

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[4] United Nations Human Rights Committee, *General Comment 32,* CCPR/C/GC/32, 23 August 2007, p. 10.
[5] *Dudko v Australia,* HRC, UN Doc CCPR/C/90/D/1347/2005 (29 August 2007)
[6] As above
[7] *Teoh v Minister for Immigration, Local Government and*

As Australian academic, Simon Rice, holds:

> We cannot live in dignity, exercising reason and conscience, if we do not know these rules [the law], cannot comply with these rules and cannot use these rules. Just as we must be able to express ourselves, to associate with others, and to have access to education, so must we know, and be able to abide by and use the rules of our society.
>
> This is fundamental. We cannot be human with dignity if, through ignorance of the state's rules, we face censure and sanction; if, through inability to use rules, we face loss and damage; if, through confusion about rules, we lose opportunity. The universally rule-based nature of our social existence gives rise to a fundamental right to *effectively* know the rules of society. [8]

The HRC fully endorses the push for fundamental right to access to the law and supports a greater recognition, both symbolic and financial, of the importance to access to justice in Australia and internationally.

[8] Rice, Simon, *A Human Right to Legal Aid* (February 4, 2009).

Terms of reference

a.) The ability of people to access legal representation

The HRC respectfully submits that the ability of people to access legal representation, but more importantly, the law as a whole, is a critical issue that must be addressed as a matter of priority.

Accessing the law in Australia

In Australia, there is no fundamental right to access legal advice and representation, which results in many people having their ability to fully defend or protect their legal rights diminished.

The High Court in Australia has recognised a limited right to legal representation that is implied from the common law right to a fair trial, in the case of *Dietrich v The Queen*[9]. In that case, it was held that '…depending on all the circumstances of a particular case, lack of [legal] representation may mean the accused is unable to receive…a fair trial.'[10] The High Court was at pains to highlight that this largely turns on the facts and circumstances on the case, and limited the application of the *Dietrich* principle to criminal trials for serious matters. Therefore there is no formal protection to the right to legal representation for minor criminal matters or for civil matters, despite the fact that a person's home, savings or children may be at stake.

There are many factors, which may affect the ability of a person to receive adequate legal representation in Australia. These include:

Financial cost

[9] (1992) 177 CLR 292
[10] At 309.

Hiring the services of a private solicitor can be costly, and particularly where a matter does not have high stakes, a person may not wish to risk spending significant sums of money on a private practitioner to safeguard their rights, or they may simply not have the financial capacity to pay.

Falling between the gaps of community services

Community services such as Legal Aid and Community Legal Centres (CLCs) are in place to safeguard the legal rights of those who are unable to afford private representation.

In order to qualify for Legal Aid representation, an applicant must meet criteria (the 'means' and merits' test), which assess the financial capacity of a client, and the nature of their matter. Community legal services are allocated on a priority basis, so that those with more serious matters where a term of imprisonment appears inevitable or likely, or where removal of children is likely to/or has occurred, who are in no financial position to pay for representation, have priority over less serious matters involving minor traffic infringements or civil disputes.

While every effort is made by the community legal sector and pro bono services to assist as many people as possible, a lack of funding and resources has created a situation where many people unfortunately 'fall between the gaps'. That is, they fall slightly above the threshold for free or reduced-cost legal assistance by virtue of their assets, or due to the nature of their legal problem. As such, they may be in a position where they are required to sell assets such as a family home to fund the resolution of their legal issue or alternatively, must represent themselves in court.

Most courts have a duty solicitor scheme, where claimants without having received advice or without representation can seek some basic advice prior to appearing in court. The HRC would submit that while this is a valuable service that certainly must continue, it is not the ideal alternative to properly funded community legal services. Duty solicitors are extremely busy, and a five minute advice session in the rushed

and stressful surrounds of a bustling court is no substitute for proper, considered legal advice and where appropriate, professional representation from a well-prepared practitioner.

Geographical location

There is little doubt that those who live in rural, regional and remote areas can face significant disadvantage and difficulties in accessing legal representation. The lack of experienced solicitors in some areas, geographical isolation or being in a position of being 'conflicted out'[11] of a service can leave people without representation.

Lack of information

The HRC would also submit that an inability to access information about legal problems or services can also impact on the ability of people to access legal representation.

Many people do not understand the implications arising from legal problems, or know where they can turn to for legal assistance. Measures have been taken in NSW to address this by more actively promoting the free legal information line, LawAccess, particularly in regional and remote areas. While this does go some way to alleviate problems in people accessing information about the law, their rights, and information as to where they can seek the services of a legal practitioner, the HRC would submit greater promotion of information on legal rights and services in the community.

b.) The adequacy of Legal Aid

Legal Aid is the largest provider of free or reduced fee legal services in Australia and seeks to ensure that those without the financial means to seek private legal services,

[11] Legal practitioners or legal service providers are unable to act for a party if they are/have acted for another interested party to a dispute. Therefore, in a family law context, if the mother consults the local solicitor or Legal Aid office, the father is unable to seek advice or representation from those services. This is particularly problematic in regional areas where alternatives are very limited.

are not disadvantaged.

The HRC addresses this term of reference in a broad sense, recognising that other bodies, particularly Legal Aid itself, is better placed to address more detailed issues surrounding funding models and resource allocation.

Many reports have considered the adequacy of Legal Aid in the past, including the report considered by Professor Ronald Sackville as Commissioner for the Law and Poverty Reference of the Australian Government Commission of Inquiry into Poverty (the '*Sackville Report')* in 1975. This report highlighted the importance of Legal Aid in redressing disadvantage in the legal system.

In 2004 the Senate Legal and Constitutional Affairs Committee held a similar inquiry into *Legal Aid and Access to Justice.* This report highlighted significant problems relating to the adequacy of Legal Aid. Some of these problems included chronic underfunding resulting in unmet legal needs and the failure to address legal disadvantage, particularly for women, Indigenous people, those in remote and regional areas, the mentally ill and homeless people, among others.

As Gleeson CJ stated:

'The expense which governments incur in funding legal aid is obvious and measurable, but what is real and substantial is the cost of the day, disruption and inefficiency which results from the absence or denial of representation. Much of the cost is also borne, directly or indirectly, by governments. Providing legal aid is costly. So is not providing legal aid.' [12]

The HRC would respectfully submit that many of the recommendations emanating from the Senate's 2004 report have not been adequately addressed by governments. As outlined earlier, Legal Aid branches, particularly regional Aboriginal Legal Aid branches, continue to struggle to maintain financial viability, let alone meet the

[12] Chief Justice Gleeson, 'State of Judicature' (Speech delivered at the Australian Legal Convention, Canberra, 10 October 1999).

financial needs of the communities they serve. This ultimately creates a 'emergency ward' situation, where Legal Aid officers are forced to prioritise matters, leaving many disadvantaged people without effective legal assistance.

As Stan Winford from Fitzroy Legal Service said:

> 'It is a fundamental principle of any democratic society that all those living within it have equal access to a justice system where they can expect a determination of their rights. Without adequate access to the justice system – through a comprehensive and properly funded legal-aid system – protection of human rights is compromised. [13]

The HRC would respectfully submit that intensive and effective consultation must occur with Legal Aid to determine the best way to meet need and address disadvantage. The HRC believes that the appropriate funding of Legal Aid is critical to ensuring that Legal Aid can continue to effectively assist those in need.

c.) The cost of delivering justice

The HRC submits that the cost of accessing justice can be prohibitive, and strongly endorses any measures to reduce the length and complexity of litigation in order to encourage the more cost-effective resolution of legal disputes.

It should be noted that those within the legal system face significant costs, not only financial ones. The stress of litigation or legal disputes can often lead to a significant cost to mental and physical health and relationships. The HRC stresses the importance of this fact, but will consider particularly financial cost in addressing this term of reference.

Some of the challenges in relation to the cost of delivering justice are:

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[13] Winford, Stan 'Just for the Rich: Legal Aid and Access to Justice in Australia' *Overland* 01/12/2006, Issue 185, p34-37.

Costs of legal services being prohibitive

In the majority of instances, a lawyer will require of a client adequate funding in the practitioner's trust account to act. Otherwise a solicitor will typically require evidence of financial means to make payment.

Some exceptions arise where provided the lawyer is generating sufficient income from other work, the lawyer may agree to a contingency fee arrangement, whereby the lawyer defers the billing until the conclusion of the matter with the expectation of recouping fees following the successful award of damages and/or party/party costs from an opponent.

If the matter is not one where contingency fees are available, many people may not be in a position to pay for their legal dispute up-front.

Recovering legal costs

Legal costs are usually concerned with solicitor/client costs (consisting of the legal bill a client receives for his/her lawyer's services) and party/party costs, which is what a successful litigant is entitled to recoup from an opponent for being put to the expense of litigating. The latter will typically cover only 60-80% of the solicitor/client costs, with the litigant remaining liable for the shortfall to their practitioner, even if their matter was successful.

Imbalance of legal resources

Justice may be described as the establishment of a system of rectifying wrongs suffered by innocent people with principles of truth, impartiality and deterrence being at the forefront. Both in the criminal and civil justice system, those facing the legal system can face an imbalance of resources. For example, a criminal accused with only limited means must defend him or herself in the face of the significant resources of the state. Similarly, in civil matters an imbalance of power can make the cost of redressing a right impossible.

Case study

For example, consider an average person earning a salary of $35,000.00 per annum. Hypothetically he or she struggles, but regularly makes mortgage repayments. Suddenly builders doing renovation or excavating works on the adjoining property negligently demolish or otherwise cause structural damage leading to flooding in their property. An obvious legal remedy would be an interlocutory or mandatory injunction ordering the wrongdoer to immediately remedy the damage. However, the cost of hiring lawyers to advocate for this in the Supreme court, at short notice could be several thousand dollars payable in advance, not to mention further costs to pursue a damages claim in the expectation of rectifying the damage, with the ever-present risk of the wrongdoer going into liquidation. This is an every day example of the cost of justice being too much to bear to remedy an obvious wrong.

Case study

In the case of sex discrimination, the Senate Inquiry Report into the Effectiveness of the *Sex Discrimination Act* 1984 in eliminating discrimination and promoting gender equality acknowledged the evidence that the Act 'is ineffective in addressing systemic discrimination because it adopts an enforcement model based upon individual complaints and remedies.'[14]

PILCH argues the current model requires the individual to 'understand a fairly complex area of law, to elect to make a complaint and then to pursue a remedy, while also assuming that the individual has the resources and the capacity to do that.'[15]

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[14] *Effectiveness of the Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality report,* December 2008 at 139-143, accessed on 9 April 2009 at: http://www.aph.gov.au/senate/committee/legcon_ctte/sex_discrim/report/report.pdf at 87.

[15] Cited in Note 14 at 87.

The costs for the individual complainant are high. The joint submission by the Community Legal Centre sector notes the costs for individuals are often too high.[16]

In considering the costs of delivering justice, consideration must be given to more effective enforcement mechanisms that address structural injustices. For example, Recommendation 37 of the Senate Inquiry Report into the Effectiveness of the Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality provides that 'further consideration be given to amending the Act to give the Sex Discrimination Commissioner the power to investigate alleged breaches of the Act, without requiring an individual complaint.'[17]

If the Sex Discrimination Commissioner was granted such powers, the Australian Human Rights Commission would need to be adequately funded to reflect this additional responsibility.

This should also be considered for other forms of discrimination.

Standing

In term of raising complaints about sex discrimination, former President of HREOC notes that s46P(2) *Human Rights and Equal Opportunity Commission Act* (HREOCA) provides that a complaint can be made by or on behalf of an affected person. Yet s46PO(1) HREOCA provides that only the affected person can commence court proceedings.[18]

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[16] National Association of Community Legal Centres, NSW Combined Community Legal Centres and Kingsford Legal Centre, *Effectiveness of the Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality*, August 2008 accessed on 2 May 2009 at http://www.aph.gov.au/Senate/committee/legcon_ctte/sex_discrim/submissions/sub52.pdf at 14.
[17] Note 14 at 17.
[18] Mr John von Doussa cited in Note 14 at 95-96.

This issue of standing is said to prevent public interest organisations from being able to pursue proceedings in the Federal Court or the Federal Magistrates Court on behalf of an individual complainant.[19]

If standing is expanded, as Recommendation 20 suggests should be the case,[20] there also needs to be a corresponding expansion of funding for such services.

Costs orders

Further challenges arise for the potential litigant who may face an adverse costs order in a federal jurisdiction.[21]

Educational component

An important consideration in determining the costs of delivering justice is the cost in educating the general public about their rights and about any significant changes to legislation.

It is submitted that Legal Aid, Community Legal Centres and the Australian Human Rights Commission are some of the organisations that are best placed to play a key role in this.

In the civil dispute context there are cases where a meritorious litigant is not in a position to safeguard their legal rights because of a lack of legal funds. The HRC respectfully submits that measures to reduce unnecessary complexities, encouragement of alternative means of resolving disputes, a greater recognition of the imbalance between a litigant against the state or business, more effective case management and better funding of community legal services can be some ways in which some of these issues may be address.

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[19] Note 14 at 96.
[20] Note 14 at 15.
[21] Note 16 at 28.

d.) Measures to reduce the length and complexity of litigation and improve efficiency

Following on from the previous term of reference, many problems in terms of accessing the legal system and also the cost of justice derive inherently from the length of time required to resolve disputes (often leading to high costs) and the complexity of litigation (again, leading to high costs, but also creating a significant dependence on lawyers and experts).

There are some measures that can be taken to reduce the length and complexity as follows. HRC submits that they may include:

Simplifying legal processes

Many legal processes can be unnecessarily complex and cumbersome, which can cause confusion even for legal practitioners. Forms can be difficult to locate, in complex language without adequate instructions to assist with their completion and the myriad of legal processes, protocols and deadlines can be overwhelming. There has been a move in recent years to simplify forms, make them accessible on the Internet with detailed instructions attached. The HRC welcomes this move and encourages further progress in simplifying legal processes where possible.

Empowering people to resolve their own legal problems

There is little doubt that some legal matters are inherently lengthy and complex, due to the nature of the issues in dispute. This is often unavoidable, and in such cases it is imperative that parties are properly represented. However, there are some matters which parties are perfectly capable of resolving themselves, perhaps only with minimal advice and assistance from a legal practitioner.

An example of where a push to empowering people to resolve their own legal disputes comes from the creation of the Australian 'Divorce Kit'. This kit is available online and in hard copy, and contains all the forms with detailed instructions on

how to apply for a divorce. Such invaluable resources and processes greatly reduce complexity, the length of time to resolve disputes and also the cost. The HRC encourages the government to consider other areas of law where such self-empowerment may be of value and assistance in reducing the burden on our courts.

Effective case management

The shift towards greater case management is a valuable tool that is effective in reducing the length of litigation. Case management creates a greater obligation on parties to a dispute to:

- Avoid using 'delay tactics';
- Narrow the issues in dispute;
- Avoid making frivolous and delaying applications;
- Present and prepare the clients' case concisely; and
- Avoid 'fishing expeditions' in relation to the discovery of documents.

Providing prompt access to legal advice and representation

Providing adequate access to legal information, advice and representation to people is one of the most significant ways in which efficiency can be improved, particularly at a Local Court level. Having effective access to justice would arguably limit the following:

- Matters being adjourned to allow a litigant to seek legal advice;
- Delays due to unrepresented litigants not understanding proper procedure;
- Defendants altering their plea (in criminal matters) due to lack of access to legal advice;
- The Bench having to explain basic procedures or the law to unrepresented litigants;
- Frivolous or vexatious claims with little or no merit being commenced and wasting court time.

Effective access to justice would minimise court delays by allowing people to be informed of their options, court procedure and etiquette *before* they go to court.

The HRC respectfully submits that the provision of legal advice and representation to those who need it, as well as measures which simplify processes and empower litigants to resolve legal matters themselves will all go some way towards reducing the length and complexity of litigation and save court time.

e.) Alternative means of delivering justice

Litigation is an often stressful, expensive and ineffective way of resolving certain disputes. While in some cases litigation is inevitable, or indeed effective, the HRC submits that there are alternatives to traditional litigation models that are better at solving legal problems.

The shift towards recognising this has seen an increase in alternative dispute resolution (ADR) being court-ordered or encouraged. ADR is the resolution of disputes by an impartial third party outside judicial determination. The main types of ADR are mediation, conciliation, arbitration and expert referral.

Mediation is the confidential resolution of conflicts between to parties by an impartial third party. The aim of mediation is to arrive at a resolution most beneficial to both parties to a dispute.

Conciliation is similar to mediation, however it usually involves an impartial third parties familiar with the subject to dispute and limits the resolution to the subject in dispute. The conciliator assists the parties to reach a decision but it is up to the disputing parties to obtain a resolution.

Arbitration is the formal process in which the parties in dispute present their matter to an arbitrator. The arbitrator makes a binding decision upon the evidence presented by the parties.

Expert determinism involves obtaining an expert in the subject matter in dispute that investigates the dispute and provides a resolution outlined in a report. The decision by the expert is binding upon the parties in dispute and there are limited rights of appeal if they are not satisfied with the decision.

Australian courts have been utilising ADR as a means of case management to ensure the efficiency and cost effectiveness of the courts and work flow. The aim of the court is to resolve the dispute as quickly as possible to prevent undue cost and delay.

Even where ADR is ultimately unsuccessful, it has the benefit of narrowing the issues of dispute and encouraging better case preparation.

Community Justice Centres

Community Justice Centres (CJCs) have been another way in which legal issues have been resolved without recourse to litigation in NSW. CJCs provide free conflict management services, and using mediation, resolve disputes such as neighbourhood disputes, debts and the like. CJCs have an 80% success rate for disputes that proceed to mediation.[22]

Restorative justice programs

Restorative justice programs are available in situations where an accused pleads guilty to a criminal offence and the victim/s of the crime agrees to participate. It is designed to create a forum for an accused to articulate directly their remorse, and for a victim to express the impact that the crime has had on their lives.

Restorative justice programs have been defined as follows:

'Restorative programs are means of dispute and conflict resolution which are characterised by

[22] According to the Lawlink website: http://www.cjc.nsw.gov.au/lawlink/Community_Justice_Centres/ll_cjc.nsf/pages/CJC_aboutus (Accessed 24 April 2009)

principles of restorative justice. Although there is a good deal of diversity of form in restorative justice programs, essential to all of them is the principle of direct participation by victims and offenders. Victims have the opportunity for a say in how the offence will be resolved, while offenders are required to understand the consequences of their actions and the harm they have caused[23].'

While recognising that restorative justice programs may not be appropriate in all criminal law cases, the HRC respectfully submits that such programs can be an effective way for an offender to directly address their offending behaviour and encourages greater participation and empowerment in the criminal justice system for victims of crime.

The HRC submits that a move to allow a more flexible approach to resolving legal issues within the traditional legal framework is likely to allow parties to effectively resolve their disputes without recourse to complicated and costly litigation. ADR and restorative justice programs can provide a more productive and rewarding platform within which to resolve legal problems.

f.) The adequacy of funding and resource arrangements for community legal centres

The Rudd government has recognised CLC work with an injection of $10 million one-off funding across Australia to respond to funding deficiencies and inadequacies across Australia.

In addition to this, on 18 April 2008, the new federal Attorney-General, Robert McClelland, announced a further one-off payment to CLCs of which $2 million went to NSW centres. The Attorney-General said: 'Community legal centres and legal aid provide valuable assistance to disadvantages people in a range of areas…The Rudd government recognises that without such support, people can be prevented from

[23] H Strang (2001) Restorative Justice Programs in Australia: A Report to the Criminology Research Council (Canberra, Criminology Research Council)

fully participating in society, causing their problems to escalate and entrenching disadvantage.[24]

The Report of the Commonwealth Review of the Community Legal Centres Program found that CLCs, inter alia, could not meet client demand on their previously allocated resource levels and made 16 recommendations for improvement.

Furthermore in May 2008, the Legal Aid Commission of NSW made a successful submission to the NSW Public Purpose Fund which provided three years of funding to 15 of NSW's smallest CLCs. The centres, which were predominantly located in regional and rural areas of NSW, had previously received either no small grants, or very small grants of funding from the state government.

The HRC commends the federal government for its increase in funding towards community legal services. However, the HRC stresses the importance of maintaining, and where necessary, increasing future funding as CLCs come under greater pressure, particularly in the context of the current financial crisis, where there is a greater need for legal assistance, particularly in relation to home repossessions, social security, industrial law and other areas of law.

g.) The ability of Indigenous people to access justice

There is a wide recognition that Indigenous people, particularly those living in regional and remote areas of Australia, can face significant disadvantage when interacting with the legal system.

This disadvantage may be a result of the following factors:

- Geographical isolation;
- A lack of familiarity with the western system of justice;

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[24] Combined Community Legal Centres Group NSW (2007/2008 Annual Report, p.4) http://www.nswclc.org.au/Publications/final_annual_report_08.pdf

- Language barriers/ lack of access to Indigenous interpreters;
- A lack of culturally appropriate legal services; and
- A lack of information regarding Indigenous legal services or programs.

The HRC submits that the services of the Aboriginal Interpreting Services (AIS) should be expanded to cover more Indigenous languages and provide greater services to Indigenous people in court. As the High Court held in a case involving a deaf mute Indigenous man, who was not given access to an interpreter, : "On a trial for a criminal offence, it is well established that the defendant should not only be physically present but should also be able to understand the proceedings and the nature of the evidence against him or her."[25]

The HRC submits that addressing this disadvantage should be a priority of governments, and that culturally appropriate legal services, such as Aboriginal Legal Aid, should be effectively maintained and funded. Special measures should be taken to provide legal advice and information to Indigenous communities regarding their legal rights and where they can seek further legal assistance if required.

Conclusion

The NSW Young Lawyers Human Rights Committee would again like to thank the Senate Legal and Constitutional Affairs Committee for the opportunity to comment on such a critical issue as Access to Justice.

Effective access to justice carries multi-faceted benefits for society, including a greater confidence in the justice system, the greater protection and promotion of

[25] *Ebatarinja v Deland* [1998] 194 CLR 444, per Gaudron, McHugh, Gummow, Hayne and Callinan JJ at 26.

fundamental legal rights and a more cost-effective and just system.