

SUBMISSION TO SENATE INQUIRY INTO ACCESS TO JUSTICE

11 September 2009

Justice Action is pleased to make this submission.

This submission addresses 3 of the terms of reference being the areas with which we are most familiar. We have had the opportunity of reading a number of the other submissions to this Inquiry and consider they have adequately dealt with anything we would have liked to say on the other terms of reference.

About Us

Justice Action is a community-based, non-profit organisation committed to protecting the rights of people involved within the criminal justice system, and ensuring they receive safe, fair and just treatment. We are prisoners and ex-prisoners, lawyers, academics, mental health patients, victims of crime, and community members.

We have worked with prisoners over more than 2 decades in all jurisdictions within Australia and in many jurisdictions overseas including New Zealand, The United Kingdom and the USA. We have a great amount of experience and knowledge about the criminal justice system. We regularly correspond with prisoners in jails around Australia and their families on such matters as lockdowns, visiting rights, parole, living conditions and access to justice.

Some of our work includes:

Successfully defending the prisoners' right to vote nationally at the Senate Inquiry in 1997 and representing the prisoners of Australia in 2006 on the same issue.

Consulting on the preparation of the information sheet on Human Rights and Prisoners published by the Australian Human Rights Commission this year.

Giving evidence to the NSW Parliamentary inquiry last year into proposed legislation concerning the naming and shaming of juvenile offenders.

Representing prisoners before this year's NSW Legislative Council inquiry into prison privatisation in NSW. We also represented New Zealand prisoners before their Select Committee on law and order in July this year.

Supervising hundreds of people on community service orders since 1984.

Facilitating the creation of the Australian Prisoners Union in 1999.

Submissions on the terms of reference

Trades Hall, Suite 204, 4 Goulburn St,
Sydney NSW 2000, Australia
PO Box 386, Broadway NSW 2007, Australia

ph: 612 9283 0123 fax: 612 9283 0112
email: ja@justiceaction.org.au
www.justiceaction.org.au

- (a) ***the ability of people to access legal representation and (b) the adequacy of legal aid***

Improvement in legal services

There is a maxim that *'every person is entitled to his or her day in court'*. There is another maxim that *'justice must not only be done but be seen to be done'*.

Unfortunately in prison yards around Australia today there is a clash between the implementation of the first maxim, that is a person's day in court, and the reality of the second maxim, the appearance of justice.

A landmark report called "Taking Justice into Custody – the legal needs of prisoners" July 2008 was conducted by the Law and Justice Foundation of NSW. It observed the dearth of research in the area. It described the disempowerment and obstruction of the acknowledged rights of prisoners by the security regime. The report is necessary reading in our area.

We have had the opportunity to read many of the submissions made to this committee. It is apparent that legal aid lawyers have huge caseloads because there are simply not enough of them. That means they have less time to work with their clients in the preparation and conduct of their cases.

That in turn has led to a growing disconnect in the prison yards between prisoners and their lawyers. Complaints of lawyers spending very little time with their clients, an unpreparedness to properly listen to the client's side of the story, pressure being placed on clients to plead guilty and a complete lack of understanding on the part of clients of the trial process and what is happening to them, means in very many cases that whilst people have had their day in court, justice in their eyes and in the eyes of their families and friends has neither been done nor been seen to be done.

Because of this, there is anger and despair not only in the prison yards, but also in the homes of prisoners' families and friends.

In an offender's journey through the criminal justice system there are a number of processes. The first is the conviction process which should lead directly and immediately to the rehabilitation process.

To be effective, the rehabilitation process requires an offender to admit that what they did was wrong and that they deserved their punishment.

We can't think of a less desirable way for an offender to begin his or her rehabilitation than to be full of the anger and despair we speak of that permeates the prison yards of this nation.

This directly and materially impacts on our society through high rates of recidivism amongst offenders because they do not respect the laws of our country that in their perception have not given them a fair go.

We recommend that legal aid be increased to enable enough lawyers to be employed to adequately serve the needs of this heavily disadvantaged group. Not only would that be just,

but it would also lead to a safer society and a less expensive criminal justice system through lower rates of recidivism.

Lack of ability of prisoners to effectively participate in the legal process

We believe that it is directly relevant to the issue of the adequacy of legal aid that aid be made available to resource prisons so that prisoners themselves can effectively participate in the trial process. The trial process from an accused's perspective should be a two way relationship between the lawyer and the client with the client having direct input into the proceedings.

Not only would this remove some of the 'disconnect' between lawyers and prisoners we speak of in the proceeding paragraph, but it would also assist lawyers to properly conduct their client's cases because clients would be able to provide them with accurate instructions.

For instance, prisoners must be given access to a computer in their cells where they remain for around eighteen hours each day unable to properly use their time. They need the discs with the evidence relating to their charges. They would be able to study that evidence and provide appropriate instructions to their lawyers.

In addition, many prisoners have the capacity to assist with research on the law relating to their cases. Unfortunately for those prisoners, the library resources in prisons which could provide a source of information are either not available to prisoners on remand, or inadequate or out of date.

We have access to "unlimited" older computers donated by a charity recycling them from corporations and government departments. They could be linked to a server in each wing – at no cost and be linked to service providers. They could have dedicated access to a legal information website such as *austlii* would be a simple and cost effective way of resolving this problem.

Accordingly, we recommend that aid be made available to facilitate the network of computers and printers into prison cells to enable prisoners to participate in the trial process. For the same reason, we also recommend that every prison wing be provided with dedicated access to a legal information website such as austlii.

One size does not fit all when it comes to legal aid

It is also relevant to the question of the adequacy of legal aid that proper recognition be given to the differing legal needs of women when compared to those of men. Women prisoners, who have children and have been the primary carers, regularly have family law issues relating to custody, maintenance and access.

Legal aid and the Prisoners Legal Service do not regularly visit women's rural centres such as Berrima, Wellington and Kempsey. At the metropolitan prisons when Dillwynia opened Legal Aid did not visit for the first year as they said that no budget at all had been allocated.

Accordingly, we recommend that consultation regularly take place with women prisoner advocacy groups such as WIPAN Inc, and other groups such as ourselves to monitor legal service delivery.

(e) alternative means of delivering justice

Justice Action strongly supports restorative justice programs as an alternative means of delivering justice.

In that regard, we support the submissions to this committee made by the Australian Lawyers Alliance and the Centre for Restorative Justice.

Alternative support.

In the course of preparing this submission we have sought comments from former prisoners concerning the provision of legal aid in the context of access to justice.

Lawyers don't supply a full answer to the problem. Comments about lawyers and legal aid from one of our participants is very relevant. We feel that the use of prisoners' own resources of time and intimate knowledge of the situation, paralegals trained within the prison system called "prison lawyers" are a very important bridge to proper access to the justice.

The Inmate Development Committees in each prison could facilitate some of that support.

Comments in response to our enquiries:

'Firstly, providing legal aid only for those citizens at the very bottom of the pecking order ignores the fact that the vast majority of Australians cannot afford real access to professional legal services.

Secondly, the cost of funding legal aid for all Australians would be far more than any government could afford

Thirdly, the quality of legal service provided by 'in house' legal aid lawyers is substandard as it involves mostly young & inexperienced lawyers

Fourthly, the quality of legal service provided by private lawyers paid via legal aid is substandard as the avarice of lawyers means they will not provide the same attention to lower paying legal aid jobs as they do to full paying clients. (been there done that and wouldn't care to repeat the experience)

Fifthly, legal aid only covers certain criminal law matters despite all legal costs being wildly excessive

Sixthly, focus on legal aid as the 'final solution' to unaffordable legal services is merely an attempt to divert attention from the REAL problem, namely wildly excessive lawyer billing rates.

Additional issues unrelated to legal aid but which nevertheless contribute to the inaccessibility of justice.

- (1) excessive complexity of court documentation and processes*
- (2) excessive delays by police & DPP which mean excessive costs incurred by defendants*
- (3) police practice of refusing access to lawyer by suspect in custody*
- (4) remand & prison system structured to deny access to lawyers*
- (5) common practice employed by lawyers acting for government departments of needlessly prolonging actions until the defendant runs out of financial resources.'*