Submission to Senate Legal and Constitutional Affairs Committee inquiry on Access to Justice

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Who we are

Background

The Australian Lawyers Alliance is a national association of lawyers and other professionals dedicated to protecting and promoting justice, freedom and the rights of individuals. We estimate that our 1,500 members represent approximately 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief. The Lawyers Alliance started in 1994 as the Australian Plaintiff Lawyers Association, when a small group of personal injury lawyers decided to pool their knowledge and resources to secure better outcomes for their clients – victims of negligence.

Corporate Structure

Australian Lawyers Alliance Ltd is a company limited by guarantee with branches in every state and territory of Australia. We are governed by a board of directors made up of representatives from around the country. This board is known as the National Council. Our members elect one director per branch. Directors serve a two-year term, with half the branches holding an election each year. The Council meets four times each year to set the policy and strategic direction for the organisation. The members also elect a President-elect, who serves a one-year term in that role and then becomes National President in the following year. The members in each branch elect their own state/territory committees annually. The elected office-bearers are supported by twelve paid staff who are based in Sydney.

Funding

Our main source of funds is membership fees, with additional income generated by our events such as conferences and seminars, as well as through sponsorship, advertising, donations, investments, and conference and seminar paper sales. We receive no government funding.

Programs

We take an active role in contributing to the development of policy and legislation that will affect the rights of individuals, especially the injured and those disadvantaged through the negligence of others. The Lawyers Alliance is a leading national provider of Continuing Legal Education/Continuing Professional Development, with some 25 conferences and seminars planned for 2009. We host a variety of Special Interest Groups (SIGs) to promote the development of expertise in particular areas. SIGs also provide a focus for educational activities, exchanging information, developing materials, events and networking. They cover areas such as workers' compensation, public liability, motor vehicle accidents, professional negligence and women's justice. We also maintain a database of expert witnesses and services for the benefit of our members and their clients. Our bi-monthly magazine, *Precedent*, is essential reading for keeping lawyers and other professionals up to date with developments in personal injury, medical negligence, public interest and other, related areas of the law.

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Introduction

The Australian Lawyers Alliance would like to thank the Senate Legal and Constitutional Affairs Committee for the opportunity to submit to the Inquiry into Access to Justice. The Lawyers Alliance would also welcome the opportunity to provide experienced practitioners to address the Committee on issues pertaining to access to justice in both civil and criminal matters.

Access to justice is a core issue for the Lawyers Alliance, as it is a national association of lawyers and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual. Our 1,500 members represent approximately 200,000 clients per year nationwide. The ability of individuals to find and employ lawyers to protect and further their rights is crucial to the existence of those rights, as rights without the means of exerting them are a hollow fiction.

Executive Summary

The Australian Lawyers Alliance respectfully submits the following:

- All people should have access to effective legal advice and, where appropriate, legal representation, and should not face barriers to obtaining legal assistance on the basis of their age, gender, cultural background, physical or intellectual disabilities, geographical location or financial circumstances.
- Access to legal representation is provided by many different means, and legislators should be cautious about impeding access to legal representation and take active measures to improve such access, where it is lacking.
- People should have unfettered access to information about their legal rights and to find and access appropriate legal services.
- Community legal services, including Legal Aid and community legal centres, should be funded adequately by both state and federal governments so that they can meet reasonable demands for their legal services.
- The resolution of legal disputes can be too costly for many people. Measures to reduce the cost, complexity and length of litigation – including through effective case management, simplified processes, and encouraging and mandating alternative means of resolving disputes, without compromising a person's ability to safeguard their legal interests – should be welcomed and encouraged.
- The recognition of the value of alternative dispute resolution (ADR) has allowed a more appropriate and flexible approach to resolving various legal problems and has served to reduce costly litigation in courts.
- Restorative justice schemes have proven to be effective in providing better outcomes for defendants, victims and the wider community. Australia should move towards using the restorative process more than it currently does.

- The disadvantage faced by Indigenous people in accessing legal services needs to be addressed urgently by increasing funding to culturally appropriate services and improving the numbers and availability of indigenous interpreters.
- A reasonable discretion to extend limitation periods should always be available.

a.) The ability of people to access legal representation

Accessing adequate legal advice and representation is critical to the effective operation of the legal system. By definition, involvement with the legal system by an individual means that serious issues are at stake. Despite attempts to simplify court processes and to provide simpler dispute resolution procedures, most individuals need timely access to legal advice and representation if they are to protect their valid interests.

The main sources of legal representation for individuals are:

- Private solicitors
- Legal Aid
- Community legal centres
- Pro bono services
- Duty solicitor schemes

Legal Aid and Community Legal Centres are dealt with under another heading.

Private solicitors

Private solicitors comprise the most widely accessed form of legal representation in Australia. However, private solicitors may be inaccessible to people for the following reasons:

Cost

Private practitioners can be expensive. Depending on the length and complexity of a matter (both of which a prospective client may not themselves be able to gauge), a client may be liable for considerable amounts of money. This financial burden (or the risk of it) can be prohibitive for many who may consequently opt not to engage with the justice system if they have a choice (for example, in civil matters) or may choose to take the first opportunity to remove themselves from the system if they don't have a choice, (for example, in criminal matters) regardless of the merits of their

legal case.

Incomplete coverage

While private practitioners are readily available in some communities, many communities - particularly in regional and remote Australia - do not have a local solicitor. Where there is a local solicitor, he/she may not have the appropriate experience or expertise to assist with certain matters, or may have a conflict of interest (for having advised another party to a dispute), which prohibits them from providing assistance to an aggrieved person.

Restrictions on personal injury advertising

Access to information regarding legal services is critical to allow consumers of legal services to make informed decisions about whether they can assert their legal rights. In certain jurisdictions in Australia - including Western Australia, Queensland, the Northern Territory and New South Wales - the ability of personal injury practitioners to advertise their services to the public is restricted. Advertising legal services allows consumers to gain access to valuable legal information, seek a specialist for their matter and make informed choices. It also enhances competition, leading to improved legal services for clients. The Lawyers Alliance submits that access to information about legal services should be unrestricted, while recognising that advertising should not contravene law, be distasteful or encourage unmeritorious claims.

Thresholds and costs restrictions in personal injury matters

Thresholds in personal injury matters can make otherwise meritorious claims untenable. They are effectively reducing potential claimants' access to justice. For example, in NSW, costs for claims under $100,000 are severely restricted and,

combined with the effect of thresholds for pain and suffering, can mean that seriously injured people have no recourse to the justice system. The Lawyers Alliance submits that lawmakers and administrators should carefully consider the implications of such cost restrictions and thresholds in undermining the exercise of a person's legal rights.

Availability of Legal Aid grants to private solicitors

This subject is addressed in a later section.

Pro bono services

Those seeking representation can either seek pro bono assistance from a practitioner directly, or through a pro bono scheme that is operated by the various law societies.

Pro bono services are generally available only where Legal Aid funding has been refused and the matter is in the public interest. While the efforts of private practitioners providing pro bono services go some way towards alleviating problems associated with access to justice, they should not be seen as a replacement for a properly funded community legal services.

b.) the adequacy of Legal Aid

Legal Aid is the most significant provider of legal services for people facing financial disadvantage in Australia. Legal Aid is largely dependent on government funding to provide services to vulnerable or marginalised people in the community.

The former Chief Justice of the Family Court, the Hon Justice Alistair Nicholson, said:

> 'There is undoubtedly a gap, if you like, between qualification for legal aid and the ability to fund your own legal proceedings. Too many people fall into that gap….A lot of these people have no hope of being able to pay for legal expenses, yet the means test is set at such a level that they are excluded.'[1]

Legal Aid is subject to severe budgetary restrictions, which limit its availability to many clients and in many types of matters. In order to qualify for Legal Aid, clients are required to pass certain tests, as follows.

Means test

Clients must be disadvantaged financially and have limited resources or property at their disposal to fund private litigation.

Generally, if a client is in receipt of Centrelink benefits, they will pass the means test, provided they do not own assets over a certain value. In the absence of Centrelink benefits, the assessment for Legal Aid considers the applicant's income, the number of dependants (partners and children or other family members), the income and assets of anyone financially assisting the applicant and the value of the client's assets. The asset test generally does not include clothing, tools of the trade, furniture (unless exceptionally valuable) and an average house or car (around $200,000 – 300,000 in value for a house, less than $15,000 for a car, as a general guide).

Depending on the outcome of this test, a client may be required to pay some money towards the cost of the dispute proportionate to their financial position. Also, Legal Aid may issue a statutory charge over an applicant's property in order to recover costs if absolutely necessary.

[1] Legal and Constitutional Affairs Committee, *Hansard*, 10 March 2004, p5.

Merit test

A matter undertaken by Legal Aid must have reasonable prospects of success and constitute an appropriate use of public funds. In criminal matters, it is usually sufficient to establish a 'reasonably arguable defence'.

It should be noted that most Legal Aid offices will not provide representation in the following areas: divorce, property settlements, traffic offences, conveyancing, wills and probate, complaints against lawyers and police,[2] defamation, neighbourhood disputes, unfair dismissal, minor civil[3] or criminal matters,[4] commercial matters, bankruptcy, matters where other agencies can assist, or matters where private practitioners can act on a 'no win no fee' basis; for example, property settlements or personal injury matters.

Legal Aid does its best to assist as many clients as possible within a limited budget, but it is evident that applicants need to jump many hurdles before becoming entitled to assistance and representation. It is also often difficult for middle-income earners, who may not be able to afford extensive private representation and yet fail to qualify for Legal Aid (as they are just above the threshold for the asset test), to receive appropriate legal assistance.

As Stan Winford, formerly of the 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.

[2] Complaints can be made to various bodies that can provide legal assistance or advice if required.
[3] Matters where roughly less than $5,000 is at stake.
[4] No penalty of imprisonment or where the applicant is very unlikely to face imprisonment.

Without adequate access to the justice system – through a comprehensive and properly funded legal-aid system – protection of human rights is compromised.[5]'

c.) The cost of delivering justice

While measures have been undertaken to lower the cost of accessing justice, with a move towards effective case management and resolution of legal problems using alternative dispute resolution, the cost of resolving a legal matter is still prohibitive for many people in the community.

Discrimination

A regime where access to justice is prohibitively expensive discriminates against disadvantaged groups in the community such as the homeless, the poor, the aged and those with mental or physical disabilities. Such inherent discrimination undermines confidence in the justice system, and allows those who have wronged vulnerable individuals to remain unaccountable for their actions.

Delays and cost of lack of representation

It should also be noted that a failure to access adequate legal representation and advice accounts for significant delays and unnecessary costs in the administration of justice.

For example:

- Time can be spent in court over a matter where there is no reasonable cause of action or reasonable defence. Parties must be given a reasonable chance to present their side before a judicial officer can strike out a claim or before it becomes clear that a plea of not guilty cannot be sustained.

[5] Winford, Stan, 'Just for the Rich: Legal Aid and Access to Justice in Australia', *Overland,* Issue 185, (01/12/2006) pp34-7.

- Adjournments can be ordered on the basis that a party is either not in a position to enter a plea or does not understand the procedural requirements of running a matter (filing of forms, service, subpoenas and the like).
- Judicial officers are reluctant to allow those facing even minor criminal charges to make a plea without having had access to legal advice beforehand, even if it is only a short conversation with a duty solicitor.
- Self-represented litigants are often unprepared, uncertain of court etiquette and procedure, and can make vexatious or erroneous requests that delay the courts.

As the Hon Murray Gleeson AC QC held, while Chief Justice of the High Court:

> '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.'[6]

Costly expert or out-of-pocket expenses

Substantiating a legal claim often requires significant documentation and reports, all of which can be extremely costly. Medical and expert reports are often critical to establishing a claim, particularly in personal injury cases where a person may have already been dramatically financially disadvantaged. A person who may have lost their job, or already paid for significant medical treatment, will find the prospect of paying significant costs up front, on a legal claim that may or may not succeed, a significant impediment.

'No win no fee' billing arrangements

[6] The Hon Murray Gleeson AC QC, 'State of Judicature' (Speech delivered while Chief Justice of the High Court at the Australian Legal Convention, Canberra , 10 October 1999)

It should be noted that the movement towards 'no win no fee' arrangements, particularly in the realm of personal injury law, has gone some way to address access to justice and underwriting the cost of delivering justice in relation to certain civil claims. Governments generally have not seen it as their responsibility to provide adequate civil law funding for personal injury matters, and have consistently pointed to the availability of 'no win no fee' billing arrangements, while simultaneously criticising lawyers billing under such agreements of being exploitative and creating a 'sue them for free' culture. These accusations are misguided and inaccurate. The Lawyers Alliance believes that the availability of this type of fee arrangement is critical to ensuring that people with limited financial means are able to pursue meritorious claims, particularly in a climate where civil law funding is so significantly restricted.

Caps on legal costs

Legal caps on costs have been one way in which governments have attempted to address rising legal costs. However, such caps only serve to disadvantage consumers and clients by restricting the availability and quality of legal representation.

Caps on costs also limit the feasibility of complex test cases or public interest litigation. Many public interest cases can be complex and lengthy, requiring significant preparation and legal work. If legal costs are capped at a rate that is not financially feasible for practitioners, they are less likely to take on such matters, disadvantaging clients and the development of the law. Such restrictions also lead to less thoroughly prepared cases delaying the courts.

The Lawyers Alliance submits that practitioners should be paid fairly for the work they do to facilitate access to quality legal representation and to minimise the cost of delivering justice.

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

There has been a push in recent years to implement measures to reduce the length and complexity of proceedings. Some of these measures include:

- Encouraging or mandating alternative dispute resolution before litigation.
- Putting a greater emphasis on case management.
- Requiring timely access to relevant documentation.
- Reducing 'fishing expeditions' at the discovery stage, which increases costs and delays.

In many cases, creating obligations for 'pre-action procedures' has been a positive step that has allowed many matters to resolve without recourse to litigation. Litigation is often expensive, time consuming and takes a significant physical and emotional toll on the parties involved.

Where matters have eventually proceeded to litigation, they are often resolved more quickly because issues in dispute have been narrowed to those issues that are genuinely in dispute. Such measures also allow parties to assess the strength of their case and an opportunity to reconsider litigation.

The Lawyers Alliance submits that pre-action procedures and effective case management can be an effective way to reduce the risk and time wasted in litigation, without removing the right of an aggrieved party to have their matter heard in court.

e.) Alternative means of delivering justice

Having one's 'day in court' is often not an efficient way to deliver justice to an aggrieved person, and non-litigious alternatives can be far more effective in achieving redress, resolution and closure for a party facing a legal problem.

The greater emphasis on alternative dispute resolution (ADR) is borne out of the need to reduce the number and length of matters before often overburdened courts. It also recognises that matters can often be more satisfactorily resolved in a non-adversarial environment.

Problems with the adversarial setting

Parties may not feel justice was delivered in an adversarial setting, because they:

- cannot afford to litigate a matter;
- find court processes alienating and intimidating;
- feel they cannot have their say, or adequately share their side of the story;
- can suffer irrevocable damage to relationships;
- feel the matter is 'all about the other party'; and
- cannot understand the various legal arguments and procedures.

Benefits of ADR

Alternative dispute resolution can be beneficial because:

- It is more cost effective for parties;
- It provides a more flexible forum for people to express their concerns and grievances;
- Parties are able to tailor the resolution of their issue to their individual circumstances;
- ADR proceedings can remain confidential;
- Other parties, such as family members or related parties, can be present or participate if required; and

- It can refine issues in dispute, even if the matter does later proceed to litigation.

ADR can take place using a private mediator or arbitrator, can run through a court-authorised scheme or through community based services, such as Community Justice Centres.[7]

The Lawyers Alliance supports the creation and maintenance of alternative dispute resolution schemes, but maintains that appropriate access to the courts should always remain if an issue is not resolved satisfactorily through alternative dispute resolution. The Alliance also notes that alternative dispute resolution programs are not always appropriate; for example, compulsory mediation in family law disputes where there is domestic violence and abuse within the family unit.

Restorative justice programs

The Lawyers Alliance submits that the traditional criminal justice system is expensive, inefficient and can result in significant injustices. The chronic inadequacy of Legal Aid funding and poorly resourced courts, and the inherent inequality involved in a state prosecutor with 'deep pockets' pitted against, in the main, defendants who are financially challenged, are all hallmarks of the current system which operates in every jurisdiction in Australia.

Greater consideration needs to be given to moving away from this system towards a process that is focused on better outcomes for defendants and victims and society. It is submitted that restorative justice is a core feature of any such approach.

[7] Community Justice centres in NSW claim an 80% success rate for the free mediation services that it provides: http://www.cjc.nsw.gov.au/lawlink/community_justice_centres/ll_cjc.nsf/pages/CJC_aboutus

Restorative justice has been defined in this way:

> 'Restorative programs are means of dispute and conflict resolution which are characterised by 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'.[8]

Restorative justice is a process that becomes an option where a defendant admits guilt, and accepts responsibility for his or her actions and agrees to participate in the program. The victim must also agree to participate in the program. Such programs are currently utilised to varying degrees in Australia in the context of juvenile justice, Indigenous justice, and family law.

Jurisdictions outside of Australia have begun to apply restorative justice principles to adult criminal matters, including in the context of serious crimes. It is submitted that these applications have, on the whole, been successful and led to more cost-effective outcomes for all participants involved.

Last year, the United Kingdom government published a fourth evaluation of three restorative justice schemes.[9] This evaluation, and the three that preceded it (published in 2003 and 2007) examined three centres where restorative justice programs are in place for offences as serious as fraud and assault – London, Thames Valley, and Northumbria.

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

[9] J Shapland et al, Restorative Justice: Does Restorative Justice affect reconviction? The fourth report from the evaluation of three schemes, Ministry of Justice Research Series 10/08 (London, Ministry of Justice, 2008).

The evaluations concluded that:

- Restorative justice reduced the frequency of re-conviction on average by 27 per cent - by 33 per cent when delivered to prisoners just prior to release; and by 55 per cent when delivered to prisoners serving community sentences;
- For every £1 spent on delivering the restorative justice conferences, up to £9 was saved by lowering the rates of offending and the associated; the trials alone saved the criminal justice system £7.29 million, compared to the £5 million they cost to set up and evaluate; and
- Importantly, 85 per cent of victims and 80 per cent of offenders were satisfied with their experience of the restorative justice process.

Restorative justice has been utilised in the criminal law in Canada for 35 years. A 2005, seven-year evaluation of the use of restorative justice in cases of serious criminal offences concluded that it can lead to more satisfactory outcomes than the traditional trial process. The results mirror the UK experience:

> 'Ninety-five per cent of offenders and 78.7 per cent of victims felt that justice had been served in their case. Only 4.9 per cent of offenders and 5.3 per cent of victims felt that the outcome would have been more satisfying had they pursued their case in the traditional criminal justice system rather than going through the CJP. In fact, 87.8 per cent of offenders and 86.3 per cent of victims said that they would choose a restorative justice approach over the traditional criminal justice approach if they were to become involved in criminal proceedings in the future.'[10]

By contrast, there has been a marked reluctance in Australia to fully extend restorative justice programs to the criminal courts and, in particular, the

[10] T Rugge, (2005) Evaluation of the Collaborative Justice Project: A Restorative Justice Program for Serious Crime 2005-02 (Ottawa, Public Safety Canada).

intermediate courts that deal with serious criminal matters.

It is submitted that the results of experience in the UK and Canada in recent years amply demonstrate that, in terms of providing access to, and satisfaction with, the justice system, restorative justice programs should be widely available.

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

Community legal centres play a critical role in providing free or reduced-cost legal services to the community. In many cases, CLCs 'fill the gaps' and attempt to address holes in the provision of Legal Aid by providing more civil and employment advice, and also assisting those who have been 'conflicted out' of Legal Aid or those who fail to meet the means and merits test.

Community legal centres (CLCs) are independent not-for-profit legal centres that assist those who cannot afford legal representation. They carry similar eligibility requirements to Legal Aid, but can be somewhat more flexible in the matters that they assist with. CLCs will often pursue matters that are considered to be in the public interest, even though the matter may not strictly fall within the centre's eligibility requirements.

CLCs recognise the limitations of Legal Aid in terms of its coverage of certain matters, and attempt to address this by creating a certain number of specialist legal centres (such as the Environmental Defenders' Office, the Immigration Rights and Advice Centre) or providing advice in matters that Legal Aid does not assist with, such as industrial matters, tenancy, neighbour disputes and wills and estates, among other matters.

While CLCs play an important role, they are limited in resources and coverage. CLCs operate on the basis of catchment areas, and while every effort is made to assist those who fall outside specific catchment areas, it can be difficult to assist those who are geographically isolated. Similarly, CLCs are chronically under-funded, which affects the quantity and scope of cases they are able to take up.

CLCs get their funding from a variety of sources, including the Commonwealth and state governments, donations and grants. Such funding often varies significantly, and does not provide a consistent stream of income. In the report from the National Association of Community Legal Centres, *Community Legal Centres Across Australia: An investment worth protecting* , it is estimated that CLCs faced an 18 per cent reduction in funding over the past ten years in real terms.[11] The NACLC argues that an immediate funding boost of roughly $5 million would overcome many of the significant problems faced by CLCs, including reduced opening hours, difficulties in retaining experienced staff, a lack of resources and interruptions to service delivery. The submission further indicates funds required to improve CLC infrastructure, target disadvantaged group with specialist services, support people in rural, regional and remote areas and diversify the current services that CLCs can provide to communities.

As earlier noted, legal services provided at an early stage can serve to minimise costs and delays by addressing legal problems at an early stage, rather than letting them drag on, incurring further costs and delays.

[11] National Association of Community Legal Centres, *Community Legal Centres Across Australia: An investment worth protecting* – Funding submission to the Commonwealth Government 2007-2010, at p1.

> 'It is…important to emphasise that the value of this preventative work is far greater than the reactive costs that would be incurred in the absence of such services. It is indeed a truism that the fence at the top of the cliff not only saves lives, but it is also much cheaper than the ambulance at the bottom.'[12]

The Lawyers Alliance submits that effective and adequate funding for community legal services is critical to addressing problems with accessing legal services.

g.) The ability of Indigenous people to access justice

There is recognition in Australia that Indigenous people may require culturally appropriate services when interacting with the legal system as a victim, an accused, or a witness, or in any other capacity.

Aboriginal Legal Services, usually branches of Legal Aid, provide culturally appropriate legal services to Indigenous people.

Indigenous people, particularly those living in remote locations, can face significant disadvantage in the legal system due to language and cultural differences, the alien nature of Western 'justice' compared to traditional practices and the isolation of remote and regional areas in which many indigenous people live.

Access to interpreters

Access to interpreters and the right to understand charges and proceedings in which you are involved is a fundamental right; it is essential for procedural fairness.

[12] Partridge, Emma, *Economic Value of Community Legal Centres*, Institute of Sustainable Futures, University of Technology Sydney, February 2006.

There are over 200 Aboriginal languages still spoken in Australia; many Aboriginal people use their native language every day and may speak and understand English only at a limited level. Some attempts have been made to address these issues, including the joint Commonwealth and Northern Territory funding of the Aboriginal Interpreters Service (AIS), which operates to assist in interpreting in up to 105 Aboriginal languages.

The High Court recognised the necessity of access to interpreters in the case of *Ebatarinja v Deland* [1998] 194 CLR 444, where a deaf mute Aboriginal man was charged with murder and was unable to communicate with his lawyers, understand the charges against him or understand the proceedings in court after a suitable interpreter could not be found. In that case, the court held:

> '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.'[13]

Interpreters in Aboriginal communities can face significant challenges, as lawyer and interpreter, Dominic McCormack, told the ABC's *Law Report.*[14] These include:

- the difficulty in securing an interpreter that is independent in the sense that they do not have kin relationships with parties.
- the 'burn-out' factor, given that skilled interpreters are being overloaded with work.
- the danger faced by interpreters whose role is often misunderstood to be 'working for the prosecution', or who can be blamed when things don't go well in court.

[13] Per Gaudron, McHugh, Gummow, Hayne and Callinan JJ at 26.
[14] *Law Report*, ABC Radio, 22 May 2007. Transcript available at: http://www.abc.net.au/rn/lawreport/stories/2007/1928403.htm

Other matters

The Australian Lawyers Alliance wishes to raise an additional issue that is relevant to access to justice.

Limitation periods

Civil actions carry limitation periods that specify a period within which an action may be brought. The limitation period regime in Australia varies significantly from jurisdiction to jurisdiction, as most limitation periods are statutory. The Lawyers Alliance understands the public policy justification for limitation periods, to provide certainty and finality, but also believes that it is critical to maintain a discretion to extend or suspend limitation periods where appropriate.

The Lawyers Alliance also submits that special consideration should be given in relation to minors and people with mental illness. Minors cannot be expected to know their legal rights, and there are many reasons why parents or guardians do not commence proceedings on their behalf. Similarly, those suffering from mental illness, or who are under a disability that prevents them from properly accessing their legal rights, can suffer significant disadvantage if there is no mechanism for an extension of limitation periods.

Conclusion

Improvement to access to justice can be achieved through a variety of means; including increasing an adequate stream of regular funding to legal services, adopting a flexible approach to the resolution of legal issues, simplifying unnecessarily complex or costly burdens on litigants, and ensuring that legal information is clearly communicated to the wider public – in and out of the courtroom.

By facilitating access to justice in real terms, public confidence in the justice system will remain strong, and parties will be able to effectively and efficiently safeguard their fundamental rights and interests.