

RECOMMENDATIONS

Recommendation 1

2.46 The Committee recommends that the Government reform the funding model for legal aid, taking into account concerns raised by legal aid commissions in the recent review of the model. The Committee is not satisfied with the justifications that have been offered regarding the 'suppressed demand factor' and the 'average case cost' factor, and recommends that they be removed.

Recommendation 2

2.47 The Committee recommends that the Commonwealth Government develop a new funding model to ensure a more equitable distribution of funding between the State and Territories. This model should be based on the work of the Commonwealth Grants Commission model, but with increased funding for the Northern Territory to account for the special challenges it faces in light of its high Indigenous population and remoteness.

Recommendation 3

2.77 The Committee recommends that the state and territory legal aid commissions conduct an assessment of current applications, to ascertain what increase in successful applications would occur if the following changes were made to the merits test:

- (a) extend eligibility to those earning less than \$30,000 after tax; and
- (b) in criminal matters, where a person passes the income test, disregard home equity.

Recommendation 4

2.92 The Committee recommends that the Commonwealth introduce a duty solicitor service for the Commonwealth Administrative Appeals Tribunal.

Recommendation 5

2.103 The Committee recommends that the Commonwealth remove the restriction on the Environmental Defenders Office from using Commonwealth funds for litigation purposes.

Recommendation 6

2.106 The Committee recommends that the Government fund the establishment of a national forensics institute to provide forensic opinions for defendants in serious criminal matters facing forensic evidence.

Recommendation 7

2.115 The Committee recommends that Commonwealth and state/territory governments should provide legal aid impact statements when introducing legislation that is likely to have an effect on legal aid resources.

Recommendation 8

2.116 The Committee recommends that Commonwealth and state and territory governments engage in consultations with legal aid commissions when introducing legislation that may increase demand for legal aid. If such an increase is identified, governments should provide corresponding increases in funding to compensate legal aid commissions for this increase in demand.

Recommendation 9

2.133 The Committee recommends that the current purchaser/provider funding arrangement be abolished, and that Commonwealth funding be provided in the same 'co-operative' manner as existed prior to 1997.

Recommendation 10

2.134 If the current purchaser/provider funding arrangement is retained, the Committee recommends that the Commonwealth Government amend the funding agreements to allow the legal aid commissions to use 10 per cent of Commonwealth funding at their own discretion.

Recommendation 11

3.23 The Committee recommends that the Commonwealth Government should fund a national survey of demand and unmet need for legal services, to be undertaken in cooperation with state legal aid commissions and community legal centres. The objectives of the survey should be to ascertain the demand and unmet need for legal services across the country, and to identify obstacles to the delivery of such services, particularly to the economic and socially disadvantaged.

Recommendation 12

4.25 The Committee recommends that the Commonwealth Government address discrimination against the circumstances of women in the application of the current family law legal aid funding guidelines and priorities, by commissioning national research into the perceived gender bias in legal aid decision-making.

Recommendation 13

4.26 The Committee strongly endorses the recommendation made in the Committee's *Third Report* that legal aid expenditure be closely scrutinised by the Commonwealth Government to determine generally if disproportionate expenditure in certain priority areas is having the effect of depriving other areas of appropriate funding.

Recommendation 14

4.27 The Committee recommends that the Commonwealth Government increase as a matter of urgency the level of funding available for family law matters.

Recommendation 15

4.28 The Committee recommends that the Commonwealth Government and state/territory governments, in conjunction with legal aid commissions, the courts and relevant women's organisations, give priority to an urgent and comprehensive review of legal aid services to women with the aim of formulating more appropriate and wide-reaching services to meet their specific needs. In particular, the Committee considers it imperative that the Commonwealth Government and state/territory governments recognise and address the gender-specific barriers to justice that women face in order to better structure and tailor the legal aid system to meet their particular needs and experiences.

Recommendation 16

4.51 The Committee repeats the recommendation in its *Third Report* that the Commonwealth Government should act to ensure the necessary data on the operation of the "cap" in family law matters is collected, analysed, published and acted upon to ensure that capping does not deny justice in particular cases.

Recommendation 17

4.52 The Committee recommends that a pilot project similar to the Magellan Project be adopted where the usual legal aid guidelines are altered in cases involving allegations of domestic violence. In effect this would mean removing the "cap" on legal aid funding so that women who are victims of domestic violence would be guaranteed unlimited legal aid funding. Similarly to the Magellan Project, the usual means and merit tests should be maintained. Pending wider application of that principle, the Committee recommends that the "cap" should be indexed annually for movements in the Consumer Price Index.

Recommendation 18

4.72 The Committee repeats the recommendation made in its *Third Report* that the Commonwealth Government should:

- either provide an adequate level of funding for legal assistance in matters arising under state/territory law against domestic violence and child abuse (which are clearly aligned with the Commonwealth family law legal aid priority of providing assistance to spouses and children who are the victims of domestic violence); or
- enhance the remedies currently available under Commonwealth law for domestic violence and child abuse and then ensure that adequate funding is provided to enable victims of domestic violence and child abuse to access those remedies.

Recommendation 19

4.83 The Committee recommends that victims of domestic violence not be required by legal aid commissions to participate in primary dispute resolution processes as a condition of access to legal aid.

Recommendation 20

4.84 The Committee recommends that the Commonwealth Government adopt appropriate guidelines and procedures in relation to grants of legal aid for women whose circumstances are not suitable for participation in primary dispute resolution.

Recommendation 21

4.89 The Committee recommends that the Family Court and legal aid commissions closely monitor the new Family Court guidelines on child representatives to determine what impact, if any, they have on legal aid budgets for family law matters generally.

Recommendation 22

4.90 The Committee recommends that a separate pool of funding for child representation ultimately be established so that decisions made by the Family Court and/or the Federal Magistrates Court to appoint child representatives do not impact on the availability of legal aid funds for parents in family law proceedings.

Recommendation 23

4.102 The Committee strongly recommends that the Commonwealth Government provide legal funding to enable legal representation to be available to all parties in family law disputes where there are allegations of domestic violence or child abuse, or other serious allegations.

Recommendation 24

4.110 The Committee recommends that appropriate coordinated schemes to deal with domestic violence be implemented in those states and territories where they do not presently exist, as well as in the Family Court, and that such schemes be modelled on successful schemes already in place. The Committee also considers that current schemes could be usefully expanded to include a greater emphasis on community education with the aim of removing the stigma often associated with domestic violence.

Recommendation 25

4.118 The Committee recommends that the Commonwealth Government commission research to determine the particular needs of women living in rural, regional and remote areas of Australia in recognition of the fact that improved and coordinated services to women living in those areas are urgently required.

Recommendation 26

4.123 The Committee recommends that the Commonwealth Government commission research in relation to the delivery of legal services and community education for women in areas other than family law, such as immigration and refugee law, human rights law, civil law and administrative law, and in relation to women prisoners, with a view to improving the delivery of services and education.

Recommendation 27

5.128 The Committee recommends that the Commonwealth Government should urgently increase the level of funding to Indigenous legal services in order to promote access to justice for Indigenous people. In doing so, the Government must factor issues of language, culture, literacy, remoteness and incarceration rates into the cost of service delivery.

Recommendation 28

5.129 The Committee recommends that the Commonwealth Government's 'Exposure Draft of a Request for Tender for the Purchase of Legal Services for Indigenous Australians' should be withdrawn and its underlying policy reconsidered.

Recommendation 29

5.133 The Committee recommends that the Commonwealth Government commission a comprehensive national study to determine accurately the legal needs of Indigenous women.

Recommendation 30

5.134 The Committee recommends that the Commonwealth Government and state/territory governments address the needs of Indigenous women as a matter of urgency by improving, developing and promoting appropriate legal and community services, community education programs, domestic violence support networks and funding models to ensure that the experience of Indigenous women within the justice system is fair and equitable. In implementing this recommendation, the Commonwealth Government, state/territory governments, legal aid commissions and other key stakeholders should consult widely with Indigenous women, so that the impetus for change comes from Indigenous women themselves.

Recommendation 31

5.135 The Committee recommends that the Government allocate sufficient funding to Indigenous legal services and Indigenous Family Violence Prevention Legal Services to enable adequate provision of effective legal services for Indigenous women in family law and family violence matters, including funding for additional culturally sensitive services in areas of highest need.

Recommendation 32

5.137 The Committee recommends that the Commonwealth Government and state/territory governments address the serious problem of lack of access to justice for Indigenous people in remote areas by providing resources to support the expansion and development of available services.

Recommendation 33

5.139 The Committee recommends that the Commonwealth Government conduct a legal needs analysis for Indigenous people throughout Australia through a national strategy involving all Aboriginal and Torres Strait Islander legal services, legal aid commissions, community legal centres and other key stakeholders.

Recommendation 34

6.49 The Committee recommends that technological initiatives such as videoconferencing and telephone advice services should be used by the Commonwealth Government and state/territory governments, legal aid commissions and community legal centres as part of an integrated approach to providing services in rural, regional and remote areas. The use of technology can potentially provide practical solutions to those living in such areas, in conjunction with face-to-face legal services.

Recommendation 35

6.56 The Committee recommends that the Commonwealth Government and state/territory governments provide additional funding to state/territory legal aid commissions and community legal centres to allow them to expand their services, including outreach services, to rural, regional and remote areas which are currently seriously under-funded. Additional funding must take into account the significant resources that are required by legal aid commissions and community legal centres in undertaking resource-building initiatives in rural, regional and remote areas.

Recommendation 36

6.57 The Committee recommends that the Commonwealth Government and state/territory governments allocate additional funding to enable legal aid commissions, at their discretion, to open and maintain new regional and rural offices throughout Australia to provide legal services in those areas which legal aid commissions assess as being under-serviced.

Recommendation 37

6.74 The Committee recommends that the Commonwealth and state/territory governments, in conjunction with the law societies in each state/territory and the Law Council of Australia, fully investigate the viability of providing a subsidy (or any other relevant incentives), and developing a coordinated national approach, aimed at attracting and retaining lawyers to live and work in rural, regional and remote areas of Australia.

Recommendation 38

6.85 The Committee recommends that the Commonwealth Government conduct research to determine the particular needs and services required by people living in rural, regional and remote areas of Australia. The Committee urges the Commonwealth Government and the state/territory governments to develop mechanisms, in conjunction with legal aid commissions in each state and territory, to ensure that people living in rural, regional and remote areas are not disadvantaged, nor denied basic services and access to the legal aid system, simply because of where they live.

Recommendation 39

6.86 The Committee recommends that any increase in funding for rural, regional and remote areas should not be at the expense of funding for

metropolitan areas. Additional funding is urgently required to address the problem of lack of legal and related services in rural, regional and remote areas.

Recommendation 40

6.87 The Committee recommends that the Commonwealth Government and state/territory governments ensure that thorough consultation takes place with rural, regional and remote communities in order to determine the most appropriate legal and associated services required in particular communities. All consultations should occur before any establishment of any new services.

Recommendation 41

7.31 The Committee recommends that the Commonwealth Priorities and Guidelines relating to the provision of migration assistance be amended such that assistance is available to those applicants meeting the means and merits tests, for preliminary and review stages of migration matters, including challenges to visa decisions and deportation orders.

Recommendation 42

7.32 In implementing Recommendation 41, the Committee recommends that the Commonwealth provide the necessary funding to legal aid commissions to meet the need for such services.

Recommendation 43

7.44 The Committee recommends that the Commonwealth and states/territories should jointly fund a \$100,000 pilot program in each jurisdiction to assess the viability of a "one-stop-shop" interpreter service for community legal centres and legal aid services, to be administered by the legal aid commissions.

Recommendation 44

7.50 The Committee recommends that if the IAAAS scheme is to continue as the main source of assistance for migrants and refugees, this program should be administered by the Commonwealth Attorney-General's Department as opposed to the Department of Immigration and Multicultural and Indigenous Affairs, to avoid any conflict of interest.

Recommendation 45

7.51 The Committee recommends that if the IAAAS scheme is to continue as the main source of assistance for migrants and refugees, the funding periods should be extended from 6 months to 12 months to allow specialist services and community legal centres to engage in longer term planning.

Recommendation 46

7.60 The Committee recommends that the Migration Agents Registration Authority co-operate with specialist migration advice services and community legal centres to minimise the costs of complying with the continuing professional development requirements that it administers.

Recommendation 47

8.50 The Committee recommends that the Government consult with state and territory legal aid commissions about the need for increased Commonwealth funding to youth legal services.

Recommendation 48

9.21 The Committee recommends that the Commonwealth government provide additional funding to the National Pro Bono Resource Centre to enable it to encourage and provide support to law firms, community legal centres, pro bono referral schemes and legal aid commissions in recording and reporting statistics on pro bono service provision.

Recommendation 49

9.32 The Committee recommends that the Commonwealth Government commit ongoing funding to the National Pro Bono Resource Centre past 2006 to enable it to continue its work to improve the provision of pro bono legal services.

Recommendation 50

9.52 In conjunction with Recommendation 11, the Committee recommends that the Commonwealth Government provide additional funding to allow community legal centres, clearing houses and other pro bono services to collect detailed information on the community need for legal services.

Recommendation 51

9.61 The Committee recommends that the Attorney-General issue binding directions to federal government agencies that the fact that a legal service provider has acted or is likely to act against the Commonwealth Government or its agencies in a pro bono matter is not to be taken into account to the detriment of the provider when decisions relating to the procurement or purchasing of legal services are made. The Committee urges state and territory governments to issue similar directions.

Recommendation 52

9.80 The Committee recommends that all courts consider amending their rules to allow lawyers who provide pro bono legal services to recover their costs in similar circumstances to those litigants who pay for their legal representation.

Recommendation 53

10.30 The Committee recommends that all Federal courts and tribunals should report publicly on the numbers of self-represented litigants and their matter types, and urges state and territory courts to do the same.

Recommendation 54

10.43 The Committee recommends that the Commonwealth and state/territory governments commission research to quantify the economic effects that self-represented litigants have on the federal justice system, including the costs these

litigants impose on courts and tribunals, other litigants, community legal centres and the social welfare system.

Recommendation 55

10.71 The Committee recommends that the Commonwealth Government fund and publish an evaluation of the legal information services that it funds, in order to determine the extent to which those services assist in resolving self-represented litigants' legal problems.

Recommendation 56

10.72 The Committee urges providers of legal information services to evaluate the contribution that those services make in resolving self-represented litigants' legal problems.

Recommendation 57

10.83 The Committee recommends that the Commonwealth Government and the state/territory governments provide funding to establish a comprehensive duty solicitor scheme in all states and territories of Australia. The scheme should offer, at the very least, a duty solicitor capacity in courts of first instance (criminal, civil and family) and should provide legal advice and representation on all guilty pleas, not guilty pleas in appropriate matters, adjournments and bail applications, and assistance for self-represented litigants to prepare their evidence and narrow the issues in dispute.

Recommendation 58

11.49 The Committee recommends that the Commonwealth Government, state/territory governments, legal aid commissions and community legal centres should engage in collaborative research to accurately determine the extent to which current legal aid funding arrangements impact upon the work and operations of individual community legal centres.

Recommendation 59

11.50 The Committee recommends that the Commonwealth Government urgently consult with state/territory governments, legal aid commissions and community legal centres to determine the needs of individual community legal centres and develop strategies for addressing these needs.

Recommendation 60

11.51 The Committee recommends that the Commonwealth Government should take a lead role in recognising and overcoming the diminishing capacity of community legal centres by, for example, providing increased levels of funding to enable community legal centres to better perform their core functions, and establishing new community legal centres to ease some of the burden on existing community legal centres and to address unmet legal need.

Recommendation 61

11.52 The Committee recommends that the Commonwealth Government and state/territory governments should provide additional funding to enable

community legal centres to recruit, train and retain staff, through adequate remuneration, skill development programs and improved employment conditions.

Recommendation 62

11.53 The Committee recommends that the Commonwealth Government and state/territory governments should provide additional funding to enable community legal centres to overcome existing operational difficulties, such as inadequate premises, facilities and resources, and enable them to better plan for such requirements in the future.

Recommendation 63

11.59 The Committee recommends that any legislation in relation to the definition of charities ensure that organisations involved in the provision of pro bono legal services are not prevented from providing advocacy policy services.