

COMMUNITY LEGAL CENTRES

Reigniting the access to justice debate

CHIARA LAWRY reflects on the 2009 Access to Justice Inquiry

On 8 December 2009, the Senate Legal and Constitutional Affairs Committee ('the Committee') released its much-anticipated and timely *Access to Justice Report*, the result of an inquiry initiated by Senator Scott Ludlam to promote actionable solutions to the barriers that hinder access to justice.¹ After more than a decade of chronic under-funding, the community legal sector is facing a resource crisis. As the first inquiry of its kind since the election of the Rudd government, the inquiry and report provide a unique opportunity to get access to justice back on the Australian political agenda.

The terms of reference for the inquiry were comprehensive and provided for a thorough review of the barriers faced by individuals seeking access to justice. They included the adequacy of legal aid, measures that could reduce the length and complexity of litigation, alternative means of delivering justice, adequacy of resource arrangements for community legal centres, and the ability of Indigenous Australians to access justice.

Past reports and inquiries

Stakeholders — including governments, tertiary institutions and the community legal sector — have conducted frequent and extensive inquiries into access to justice issues. The sheer number of past reports and inquiries on access to justice has led to 'issue fatigue' in the legal sector, as was evident in a number of the submissions made to this inquiry.² The Committee, alone, has previously reported on access to justice in March and June 1997, July 1998 and June 2004. The current Report begins with a review of these past reports and inquiries. Although the need for increased access to community legal services continues to escalate, many of the past inquiries have failed to prompt the necessary reform.

Many of the parliamentary access to justice reports of the last 15 years were drafted by Australian Labor Party ('ALP') members of parliament during their time in Opposition. The consistent message throughout these past reports has been the need for change, specifically with respect to the current funding arrangements for legal aid and community legal services. Now in government, this is an opportune time for the ALP to review and implement its past recommendations.

The inquiry

The inquiry received 71 submissions from a diverse range of stakeholders and gathered evidence during four days of public hearings in Melbourne, Canberra, Sydney and Perth. The common sentiment expressed in the evidence received by the Committee was clear;

it is time for action to improve access to justice. As the Committee notes in its 'overview and conclusions' to the report:

At present, reforming the legal system might appear difficult, onerous and expensive, but the committee believes that, ultimately, the investment of effort, time and money will result in significant benefits to all concerned. Otherwise, the committee predicts that within a decade it will again be inquiring into a failing, or failed, legal system and asking, 'why wasn't something done about this ten years ago?'³

Reflections on the report

The Committee report provides clear direction for reform to improve access to justice throughout Australia. Rather than focusing on funding systems, as in past inquiries, this report focuses on an individual's inability to access justice and proposals for rebalancing the scales. The report includes 31 recommendations; additional comments from the Australian Greens include a further five recommendations. Of particular interest are those relating to justice reinvestment, graduate training, and recruitment in community legal centres and community legal sector funding.

Justice Reinvestment

Justice Reinvestment, presented to the Committee by the Australian Human Rights Commission ('the Commission'), proposes diverting rising state funds from incarceration to community-based programs and services that address the underlying causes of crime. Initially developed by the Open Society Institute in the United States in 2003, Justice Reinvestment has been implemented in ten US states including Arizona, Michigan, Nevada, Pennsylvania and Texas. The efficacy of this program has led to its expansion. In Kansas, there has been a 7.5 per cent reduction in prison population, parole revocation is down by 48 per cent and the reconviction rate for paroles has decreased by 35 per cent since the implementation of the program.

The Commission presented Justice Reinvestment as a possible solution to the over representation of Indigenous Australians in the criminal justice system; they estimate that a quarter of total imprisonment expenditure is spent on Indigenous adults, some of which could be diverted to Justice Reinvestment. The Committee recommends that the 'federal, state and territory governments recognise the potential benefits of Justice Reinvestment, and develop and fund a justice reinvestment pilot program for the criminal justice system.'⁴

Graduate training

Noting the difficulty associated with recruiting staff to work in community legal centres, the Committee has recommended funding the Victorian Federation

REFERENCES

1. Commonwealth, *Parliamentary Debates*, Senate, 5 February 2009, 399 (Scott Ludlam).
2. See, eg, Senate Legal and Constitutional Affairs Committee, *Access to Justice (2009)* submissions from: National Association of Community Legal Centres, Associate Professor Simon Rice and Associate Professor Molly Townes O'Brien (ANU), and the Aboriginal Legal Rights Movement.
3. Senate Legal and Constitutional Affairs Committee, *Access to Justice (2009)* xx.
4. *Ibid* Recommendation 21.

of Community Legal Centres' Graduate Program and other similar future programs. The Federation's program seeks to capitalise on the high level of interest in community legal centres among university students by recruiting top graduates through the program. A survey conducted in 2008 by the Young Lawyers Committee of the Law Institute of Victoria, found that 59 per cent of students 'could see themselves working in a community legal centre.'⁵

The community legal sector

The most comprehensively explored issue within the inquiry was the role of the community legal sector in improving access to justice. The inquiry heard that, after more than a decade of chronic under-funding, the provision of legal aid in Australia is highly inadequate. Funding limitations have resulted in excessively prohibitive legal aid eligibility criteria, the collapse of civil law legal aid services and a sharp decline in the number of private practitioners willing to take on legal aid matters. Community legal centres gave evidence to the inquiry that their funding has not kept pace with the increased costs of running existing services over a period where the need for services has actually increased. Recent research presented to the inquiry confirms that community legal centres provide a valuable and highly cost effective service reaching their target groups, primarily the financially disadvantaged and socially vulnerable. The final report of the 2004 Senate Inquiry found that community legal centres were a crucial part of providing access to justice for all Australians but noted that they appeared to be facing a funding crisis.⁶ The Committee reaffirmed these findings and recommended an increase in legal aid and community legal centre funding.

In conjunction with its recommendation for increased community legal centre funding, the report controversially recommends increasing accountability and transparency requirements for community legal centers. The report argues that it is reasonable to review and where necessary introduce accountability and transparency requirements, for example, 'measurable key performance indicators' for all publicly funded community legal centres.⁷ This recommendation is particularly contentious given the already arguably onerous reporting requirements placed on community legal centres that receive public funding. Community legal centres submitted that, while accountability is essential to ensuring appropriate use of the limited community sector funding, the existing reporting requirements are already burdensome and new requirements should not be imposed if they would inhibit the delivery of services and consequently access to justice for those seeking to access community legal centre services.

Equally contentious is the Committee's recommendation

that the Australian Government reconsider the eligibility criteria of the Community Legal Services Program with a view to allowing for the admission of suitable community legal centres throughout Australia.⁸

Specifically the report suggests disallowing funding eligibility for community legal centres which are not politically neutral, citing the Environmental Defender's Offices as an example of such an organisation because of their engagement in political activity. As noted

in the Australian Greens Additional Comments, 'requiring political neutrality would endanger the valuable advocacy role performed by many community legal centres.'⁹ Such a funding requirement would also potentially jeopardise the ability of community legal centres to appropriately represent their clients' interests, as these interests may be best pursued by political advocacy.

Conclusion

The inquiry emphasised what has been said before:

that the Australian legal system is beset with various weaknesses, some endemic, some deeply rooted and some based in non-legal causes, all of which are interconnected, thus requiring large scale rather than microeconomic reforms.¹⁰

Acknowledging the breadth of its recommendations, the report notes the Committee's reservations 'as to whether there is enough will and impetus to embark on a large scale reform of the legal system, and if there were, when practical reforms might reasonably occur.'¹¹ Given the lack of action on past reports and inquiries, this concern is well-founded.

While the report calls for a decisive commitment on the part of all stakeholders to act on its recommendations, it will be important for stakeholders to consider this report in light of the past reports and inquiries which remain unimplemented. To ensure a strong and appropriate legal system there must be a commitment by all governments and stakeholders to improving access to justice. This report contains a host of new proposals — such as 'justice reinvestment' — which should be trialled. More importantly, however, the inquiry has reignited the access to justice debate and provided the Rudd government with an opportunity to take decisive action on issues that the Australian Labor Party fiercely advocated while in Opposition. Now it is up to our governments and other stakeholders to take forward the Committee's work and improve access to justice.

The *Access to Justice* report can be found at: <aph.gov.au/SENATE/COMMITTEE/legcon_ctte/access_to_justice/report/report.pdf>

CHIARA LAWRY is a recent ANU Arts/Law graduate who has been working on access to justice issues.

© 2010 Chiara Lawry

5. Ibid, Additional Information Received, 'A proposal to establish a Victorian CLC Law Graduate Scheme — provided by the Federation of Community Legal Centres (Vic) Inc on Friday 21 August 2009'.

6. Senate Legal and Constitutional Affairs Committee, *Inquiry into Legal Aid and Access to Justice* (2004), 218.

7. Senate Legal and Constitutional Affairs Committee, *Access to Justice* (2009) 129.

8. Ibid Recommendation 24.

9. Ibid 171.

10. Ibid xx.

11. Ibid.