

THIRD NATIONAL ACCESS TO JUSTICE PRO BONO CONFERENCE

Brisbane 27 August 2010

Plenary Session 3: Access to Justice – A Vision for the Future
Presenters: Mr George Brandis SC (Liberal Party of Australia), Mr Mark Dreyfus QC (Australian Labor Party), Ms Larissa Waters (Greens)
Chair: Mr Richard Douglas SC

This session was structured in a panel question and answer format.

1. *The result of the recent federal election simply underscores that the conference theme is apt. We are at the crossroads in respect of access to justice. The objective is to look forward in development of a vision for the future on access to justice issues. With the benefit of the election result, what do you envisage as the key issues in developing such a vision?*
 - a. **Mr Dreyfus:** Different political futures for Australians and different futures for legal aid are expected depending on the outcome of the negotiations over the next few days. Labor's vision for access to justice has been and will continue to be the adoption of a strategic framework for access to justice in government, namely through the advancement of its principles of accessibility, appropriateness, efficiency, and effectiveness. Although money is important, there are other steps to take also. Areas of focus for the government will be access to information generally and government decision-making, early dispute resolution options, courts and tribunals and specific access issues in rural, regional and remote areas of Australia. Access to information is very important as it is a gateway to resolving disputes. Mr Dreyfus noted that he was encouraged by Mr Michael Brennan's presentation [please refer to Plenary Session 2 and the economic perspective to access to justice] and regarded the PWC report as a very useful piece of work. The government has committed an additional \$154 million over four years for the legal assistance sector and a new National Partnership Agreement.
 - b. **Senator Brandis:** It is very well to say that access to justice is not all about money, but resourcing the legal aid system which is the core component of the access to justice issue is a money issue. Regardless of which party forms government, the amount of discretionary spending that that government can responsibly undertake is going to be constrained by the debt it will inherit. The 2012-13 budget must be returned to surplus. However, Australia is over \$100 million in debt. Both sides are committed to a budget surplus and every discussion has to start from this proposition. When the Shadow Minister for Finance published both the initial and supplementary schedule of expenditure cuts which the Coalition Government would undertake, funding for legal aid was not an area where money was going to be taken away from. At present, the Coalition would not advise that money be taken away from this sector.
 - c. **Ms Waters:** The Greens are aware of the gap between the demand and funding for the community legal centres (CLCs). Something must be done. Greens have announced that this is a priority area. The Greens are committed to the restoration of funding to pre 1996 levels

- and a 50/50 split between the Commonwealth and the States in funding for legal aid. Recurrent funding for CLCs must also be urgently increased. It is important that this issue is dealt with innovatively, for example, justice reinvestment programs and preventative measures (such as diversionary measures). One of the conclusions of the Access to Justice Inquiry was that it was a question of priority and identifying less important areas where money is invested to take away from.
2. *Whilst there is a consensus as to a need to ensure at least adequate resourcing of the legal assistance sector, it remains the view of the legal profession and others involved in that sector, that even with the most recently announced additional funding, the sector remains chronically and seriously under-resourced, even in respect of the mainstream areas of family law and crime. How can adequacy of funding be achieved?*
 - a. **Senator Brandis:** Firstly, principal argument for legal assistance is not an economic argument but a philosophical, equity argument. It is not fair that a person should lack capacity to be represented because they are too poor. It is a question of how to spread the finite resources available so to seek to achieve the equity goal. Quite apart from basic principle of equity there are sound economic arguments in terms of offsetting the public expenditure. It is necessary that there is an efficient use of the resources available for the legal assistance sector.
 - b. **Mr Dreyfus:** Philosophical justification for legal assistance funding is evident in, for example, human rights jurisprudence. There are economic examples of where the expenditure on the legal assistance sector would save money later, such as in family law matters, in relation to unrepresented litigants, and tort law, where presence of lawyers improves the efficiency of the system.
 - c. **Ms Waters:** Reports from NSW indicate that for every dollar spent \$100 is later saved in the justice system. Although appropriate, the requirements for CLCs are voluminous. Unrepresented litigants are unrepresented due to the means tests which are strict due to ongoing funding problems of the sector.
 3. *There appears to be general recognition of the problems faced by rural, regional and remote (RRR) communities, in recruiting and retaining professionals such as lawyers. Why then is there resistance to initiatives for lawyers such as a HECS Relief Program, when such a program has been in place, for some time, in respect of young doctors?*
 - a. **Mr Dreyfus:** Labor government has worked with the Law Council to address the issue of shortages of lawyers in RRR communities. There is a general national skills shortage. As with the labour shortages across the country, these problems are unlikely to be solved by an incentive such as HECS debt reduction.
 - b. **Senator Brandis:** Incentives should be used as a social policy tool. Abbott has announced that an incoming Coalition Government would conduct a pilot study in relation to the offsetting of the HECS debt for those involved in the voluntary sector. The definition of the voluntary sector might be flexible enough to apply to lawyers, such as those lawyers employed by ATSILSs who forego the salary could be eligible for HECS debt reduction under the scheme. Senator Brandis noted that in the three years as the Shadow Attorney-General he had been really disappointed at the way in which the procurement of the services by the

Commonwealth misses RRR areas. It is important that the Commonwealth services procurement guidelines are looked at to give RRR practitioners a better go.

- c. **Ms Waters:** It is important to get lawyers out in RRR areas, particularly in the Indigenous communities. Incentives are an important part of the solution to the complex problem and should be seriously considered. They are a good social tool which offers a small reward for people who are doing the right thing. However, better infrastructure is needed. Ms Waters expressed a wish to learn more about the various incentives.
4. *Are you committed to the Joint Parliamentary Human Rights Committee?*
 - a. **Mr Dreyfus:** Labor is committed to the framework.
 - b. **Senator Brandis:** Yes.
 5. *What are your views on removing adverse costs for public interest litigation?*
 - a. **Mr Dreyfus:** The Government is conscious of it.
 - b. **Ms Waters:** Adverse costs for public interest litigation represent a great disincentive and there is no reason why public interest matters should be subject to adverse cost orders.
 - c. **Senator Brandis:** Needs of family and criminal law litigants, small businesses, and needs of individual citizens in particular cases, as a matter of principle, would have a prior claim.
 6. *The Australian Financial Review has previously reported that the Attorney-General has agreed to provide \$154 million over 4 years for the legal assistance sector. Will this remain the case if the Government retains the power?*
 - a. **Mr Dreyfus:** The government is not proposing any cuts.
 7. *A cultural attitude exists around people with disabilities. Currently, 70% of Australians do not believe that people with disabilities have their human rights adequately protected. What are your views in relation to this issue?*
 - a. **Senator Brandis:** A pragmatic approach must be employed. The current Social Inclusion Department deflects from addressing needs of people with disabilities and less resourcing is devoted to people with needs. If a coalition government is formed, Senator Mitch Fifield will be responsible for this area which will focus on outcomes rather than inspirational statements or targets.
 - b. **Ms Waters:** We should be encouraging people to stay in home care as long as possible. It is important that flexible working arrangements are available for carers of people with disabilities.
 - c. **Mr Dreyfus:** The Government has shown a commitment to people with disabilities. Minister Shorten has shown an immense commitment through introduction of various improvements such as captioning at cinemas and access to premises of public areas. In 2007, the Senate Legal and Constitutional Affairs Committee conducted an inquiry into needs and rights of people with disabilities. The Government proposes to continue working further in this area.

Summary of Main Points

1. **Ms Waters:** The Greens would like to increase funding for legal aid and CLCs, particularly in view of the decision by Queensland to pay these practitioners equal rate of remuneration as those in private practice. The Greens also support HECS reductions for lawyers moving to RRR areas, increasing the number of ATSILSs, and provision of nation-wide interpreters in courts.
2. **Mr Dreyfus:** The Government has committed to provide \$154 million over four years to the legal assistance sector. This will result in a situation where we have arrested the decline in per capita funding for this sector. The Government has also developed a new National Partnership Agreement, which all States have signed up to or have indicated their intention to do so. The Commonwealth/State divide is an artificial division and the new National Partnership Agreement partly tries to correct that.
3. **Senator Brandis:** The increase in funding for the legal assistance sector is supported by the Coalition. Legal aid is not an area of policy where there are sharp divides. It is a matter that all parties support and wish to see resourced. It is a question of what available resources there are in the limited budget. Unfortunately, Attorneys-General do not make these decisions; Treasurers and Finance Ministers do. The Coalition is committed to access to justice by all Australians.

Summary by T ea Paris
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