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8 May 2009

Committee Secretary  
Senate Standing Committee of Legal and Constitutional Affairs  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

### ***Senate Inquiry into Access to Justice***

Thank you for the opportunity to comment on the Committee's inquiry into Access to Justice.

Liberty Victoria is one of Australia's leading human rights and civil liberties organisations. Liberty works to defend and extend human rights and freedoms in Victoria.

Liberty Victoria welcomes the move by the Australian Greens who initiated this inquiry to identify the limitation of the Australian justice system and is keen to comment on the measures that can be taken to remove the barriers faced by people trying to access justice.

We make the following comments in relation to access to justice →

1. 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, and be given, a determination of their rights without fear or favour, and free from external pressures upon a court or tribunal. The right to a fair hearing is recognised in the Victorian Charter of Human Rights and Responsibilities in section 24. This section is based on Article 14 of the United Nations International Covenant on Civil and Political Rights (ICCPR) which Australia has signed and ratified.

Section 24 of the Victorian Charter states that a fair hearing requires that a person charged with a criminal offence or a party to a civil proceeding must have the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing. This is broader than the ICCPR in that it clearly includes right to a fair hearing in civil proceedings. The right to a fair hearing includes right to legal representation for all, not just those that can afford it.

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2. Liberty is firmly of the view that without the adequate provision and funding of legal aid services (this includes legal aid commissions “VLA” and community legal centres “CLC”) many people who are impecunious or disadvantaged may miss out on a fair hearing. A strong and vibrant legal aid system is integral to protecting the right of a fair hearing. It is a fundamental obligation of governments to adequately fund legal aid services. Pro bono legal assistance is not and should never be a replacement for such adequate funding, as it is necessarily ad hoc by nature. Liberty is of the view that more commonwealth funding is needed for both commonwealth legal matters together with supporting state VLAs ability to fund themselves and CLCs. This is most important in our current human rights framework agenda. We must assist those whose voices are lost when shut out from a system because they don’t understand it, or more so, they simply cant afford it.

The work of both VLA and CLC’s cannot and should not be underestimated. CLC’s in particular provide legal and welfare services to vulnerable individuals but also have a preventative role by providing community legal education and policy law reform work. For many litigants, they are the first point of call for those in dire need of assistance. They assist people in engaging services available to them and further take on their legal matters that need urgent attention.

The national body of CLCs, National Association of Community legal Centres (“NACLC”) estimates that for every dollar invested in CLCs, around \$100 may be saved by CLC clients, governments and other affected parties.<sup>1</sup> This has to mean that any investment in CLCs is an investment and cost effective.

The inadequacy of legal aid funding is evidenced by the Committees previous reports, the Victorian Law Reform Commission and the Law Council of Australia. Liberty therefore supports the conclusion that have been previously reached by these bodies, that there is an urgent need for greater legal aid funding. An increase in legal aid funding would increase the availability of legal representation and advice would enhance the protection of human rights of litigants.

3. Rules of procedure which discourage litigants, e.g. by requiring security for costs or undertakings as to damages, should be reviewed especially in their application to public interest litigation. Public interest litigants should also be freed of the burden of paying the other party’s costs when they do not succeed in genuine cases with a real public interest. This would allow for a greater ability of people to access justice without the huge hurdle of costs particularly in public interest matters.

Should you require any further comments please feel free to contact myself on 9225 7\*\*\* or Aggy Kapitaniak on 9225 8746.

Yours faithfully

Julian Burnside AO, QC  
Immediate Past President, Liberty Victoria

Aggy Kapitaniak  
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<sup>1</sup> Institute for Sustainable Futures, *The Economic Value of Community Legal Centres*, February 2006, available at [www.naclc.org.au](http://www.naclc.org.au)

