

2005 Policy document



Access to Justice

All Australians are entitled to be treated equally before the law irrespective of their sexual, religious, ethnic, cultural, social background. But people are not equal before the law unless they have equal access to an equitable justice system before a truly independent judiciary. A fair and equitable justice system must address the legal needs of the community and work to improve access to justice, particularly by economically and socially disadvantaged people. However, there are now more barriers than ever marginalising disadvantaged groups from the justice system.

Many of those considering litigation or review proceedings require assistance to meet the costs involved. Such assistance is provided by legal practitioners and by the government. It can be secured through a variety of pro bono, litigation lending and insurance schemes, via legal aid and, indirectly, through tax-deductible legal expenses. However, Justice Kirby has commented that, in Australia, plenty of people do not even know their legal rights and are often afraid of exercising them. They fear the costs and rightly so, and unless they receive some help they effectively do not have access to the courts or to the law.

The high cost of legal services, one of the key barriers to access to justice for disadvantaged groups, is exacerbated by inadequate funding for assistance schemes, especially legal aid. The availability of legal aid is extremely limited (and is subject to a stringent means test), while funding for community legal centres (CLCs), legal aid and other organisations has decreased and services such as aboriginal legal services have been tendered. All these factors have resulted in an increase in self-represented individuals, particularly in the Family Court. The increase in unrepresented litigation is held responsible for making litigation slower and settlement less likely, increasing costs to the other party and to the court or tribunal, and in more people pleading guilty because they feel they have no option. Thus, existing inequalities have become more deeply entrenched.

Access to justice is also about more than just formal representation and courts. It is about being able to:

- 1) obtain adequate legal assistance including information, basic legal advice, initial legal assistance and legal representation;
- 2) participate effectively in the legal system, including having access to courts, tribunals, and formal alternative-dispute resolution mechanisms;
- 3) obtain assistance from non-legal advocacy and support including non-legal early intervention and preventative mechanisms, non-legal forms of redress and community based justice; and
- 4) participate effectively in law reform processes.

Attempts to limit claims and litigation, including capping legal costs for claims and restricting or banning legal advertising, have been at the expense of people's access to justice. Moreover, the public's general lack of understanding of the law effectively limits people's scope to participate in law reform processes affecting their civil rights. The erosion of the presumption of innocence, the right to silence, access to legal representation and to the system of review and appeals, together with ever-increasing powers to detain individuals, all undermine our democratic rights.

The Australian Lawyers Alliance opposes further reductions in funding for legal access. Commonwealth funding for legal aid and community legal centres (especially family law and child protection) must be adequate to ensure a reasonable level of access for all. We also oppose proposals restricting the right to legal representation, since access to legal services and information is vital in promoting equality before the law.