

# The human toll of legal aid cuts in Australia

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Two recent developments have highlighted the human cost of the gutting of legal aid in Australia.

The state legal aid office in Wollongong, a major working class city in New South Wales, has recently employed security guards to protect staff from people angered by the rejection of their applications for assistance, particularly for family law and immigration cases. A notice is now displayed at the front counter explaining that the federal government has cut funding for legal assistance by 30 percent since July 1997.

A senior solicitor at that office, Justin Hutchinson, told reporters: 'I think the increase in frustration and violence is the result of the pressure of the combination of unemployment, poverty, depression and in some cases drug-induced psychosis.

'We have never been faced with the same constant undercurrent of violence and I don't blame the individual. It's because the basic foundation of our justice system, equality before the law, is being smashed.'

Last month the Chief Justice of the Family Court of Australia, Alastair Nicholson, publicly blamed government cutbacks to legal aid for having facilitated growing violence in family break-ups and further disadvantaged those who cannot afford private solicitors. He cited two cases last year where men had killed their estranged wives outside courthouses, pointing out that both men had little legal advice before the court proceedings.

Nicholson said a court survey conducted during August and September found that 35 percent of family court cases had at least one party with no legal representation. In a rare public display of judicial criticism of government policies, Nicholson blamed severe cutbacks to legal aid funding for what he called a crisis in family law.

'One matter of obvious concern is the possibility that delay [in cases] may exacerbate violence, and another

is the continuing reduction in legal aid, which may also have this effect. The cost to innocent people of current legal aid policies comes high, even if the Government saves money.

'If it is unfair for a trial to proceed in a serious criminal matter without legal representation, how much more so is it in a case involving the welfare of a child?' he asked.

Currently around 250,000 people pass through the Family Court nationally each year, making it the busiest court in the country. Worsening unemployment, economic insecurity and poverty have taken a terrible toll on working class families, creating a rising level of break-ups.

In general, the demand for legal assistance is growing--for example, it has risen 25 percent in the state of New South Wales over the past two years. Yet both Labor and Liberal governments have continued to cut funding. In August 1996 the Howard government sliced \$120 million from legal aid over three years, or about 20 percent. Prior to that the Labor government had implemented cutbacks of around \$50 million a year since the late 1980s.

Australia spends only \$12 per person per year on legal aid. In England it is \$65 and in the United States, just \$3. Another study found that only 18 percent of Australians are eligible for legal aid, compared to 48 percent of Britons and 90 percent of Swedes. The Howard government's cuts mean that the federal government, which previously funded about 55 percent of the legal aid budget, now only funds matters pertaining to federal law. Most criminal cases come under state laws.

Not only are family break-ups and custody conflicts heard without proper advice and representation, but so are many criminal cases. Many studies have shown that defendants without representation fare worse in criminal cases. In some instances, the alleged victims

suffer as well, having to be cross-examined directly by defendants, even in rape and child sexual assault cases.

Immigrants and refugees challenging deportation orders have also been among the worst affected. Often with no knowledge of English, they are forced to defend themselves under conditions where funding for interpreters has also been cut. In addition, workers seeking to pursue unfair dismissal and personal injury claims are denied assistance.

Immigrants, defendants involved in criminal proceedings and those in family cases often come from the most disadvantaged and oppressed sections of society. These people are least able to represent themselves in a court, as they have little or no knowledge of the law and legal procedures.

The decimation of legal aid funding has a wider impact on democratic rights as well. Those seeking to challenge government and corporate actions--including life-threatening decisions such as the current plan to reopen the Port Kembla copper smelter--find it increasingly difficult to obtain the necessary legal assistance.

In recent years around half a million people have used legal aid each year. However it has only been available to the most impoverished sections of society, mainly those on social benefits, who account for 70 percent of legal aid clients. Even for those on welfare eligibility is subject to strict criteria. Candidates must have an assessable income of less than \$190 per week and are still required to pay hundreds and sometimes thousands of dollars in fees. In one case last April the Legal Aid Commission of NSW asked a woman to mortgage her house to them in order to finance a \$20,000 fee. Up-front payments are now a common practice.

Even the principle of formal 'equality before the law' is being publicly questioned. An editorial in the *Sydney Morning Herald* on October 24 criticised Chief Justice Nicholson's complaint and declared: 'It is part of the problem of the court system as a whole that legal aid is so easily assumed as a right. Of course, the right is always justified in terms of high principle, the citizen's right to equal treatment under the law.'

The newspaper argued that this 'high principle' only fed an ever-expanding legal industry. In other words, the high cost of legal services--itself a product of private legal practice under the profit system--is being used to justify the destruction of legal rights.

The same newspaper had only days earlier reported on the case of Australia's richest man, Kerry Packer. Served by a high-powered team of legal advisers and barristers estimated to cost several million dollars, Packer obtained a court ruling reducing his tax liability by some \$300 million.

As Packer's case demonstrates, there is one law for the super-wealthy and another for the 90 percent of the population who cannot afford legal representation.



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