

Cost-of-living spiral worsens legal aid crisis in Australia

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A government-commissioned review of legal services funding in Australia has found that current levels are wholly insufficient. This has left millions of working-class people unable to secure legal representation or advice, while the wealthy elite and big business are able to hire expensive lawyers.

The report, released publicly in March, examined the funding of Legal Aid Commissions, Community Legal Centres and Aboriginal and Torres Strait Islander Legal Services. With the current funding arrangements due to expire next year, the federal and state governments were compelled to initiate a review. They appointed Warren Mundy, an economist, company director and former member of the pro-business Productivity Commission, to head the evaluation.

Legal aid providers rely on funding from federal and state governments to pay staff and meet day-to-day operating expenses. For many low- and middle-income earners, assistance from such organisations is the only way to obtain essential legal services. Demand vastly outstrips supply.

Mundy found there had been a significant increase in unmet legal need over the past decade, largely due to socio-economic factors and policy changes. Issues for which people need legal assistance—housing and homelessness, mortgages, dealings with financial institutions, small claims, workplace issues, family breakdown and violence—had been exacerbated by the cost-of-living crisis. In turn, unmet legal need often further intensified disadvantage for those already experiencing hardship.

The inquiry found that funding issues had been compounded by the introduction of “market mechanisms” like competitive tendering. Service providers, which are naturally collaborative, were pitted against each other for whatever small pool of funding is offered.

Organisations must devote to this process already-limited resources that would otherwise be spent helping clients. In the words of the report, “rather than known trusted partners providing a valued service to community, government has treated service providers like sporting clubs tendering for funds to renovate a block of change rooms.”

Despite a 2014 Productivity Commission report recommending better funding, governments have made no attempt to align funding with actual legal need and the costs of

service provision. In the past decade, Legal Aid Commissions have received on average \$16 million per annum less than necessary to cover the cost of service delivery. Mundy concluded that “it is clear that the extent of unmet need for people experiencing disadvantage is primarily an outcome of fiscal choices made by governments.”

The report found that “unmet need is the norm and met need the exception.” Disadvantaged people in some parts of the country were provided with no legal aid at all.

Vulnerable groups—including indigenous people, people in mental distress, single parents, the unemployed, those with long-term illness, and those unable to heat or cool their homes—reported more legal problems and were more likely to incur multiple legal problems at once.

These groups also experienced substantially slower resolution of their legal problems, further worsening their health, social and financial circumstances. In many locations, the nature and effect of unmet legal needs were reported to be at a “humanitarian level.”

The legal aid crisis was seen in shocking turn-away figures. Caxton Legal Centre in Brisbane had received 150,000 calls for assistance over the past five years, but could provide legal advice to only 13 percent of the people who sought assistance.

The centre estimated that of those who received initial legal advice, 1 in 3 also needed representation services, but were turned away due to lack of capacity. In all, 562 casework services were provided over the period, just 0.0035 percent of the initial calls for assistance.

On the other side of the continent, the main provider of legal aid in Western Australia had received 14,310 calls for civil law assistance in the past year, but only 6 percent could be booked in for an appointment with a lawyer due to services reaching capacity.

Overall, there were few grants for civil (non-criminal) issues such as family law, housing, debt problems and appeals against government decisions. This resulted in many disadvantaged people appearing without legal representation in courts and tribunals. Of the appeals commenced by self-represented litigants in the Federal Court, 72 percent were migration appeals.

Several legal aid organisations reported serious issues in

providing housing and tenancy assistance, with some major providers completely unable to offer this type of aid due to funding constraints.

Legal aid for social security issues was also extremely limited, affecting the most economically vulnerable in society.

A “perfect storm” was thus unfolding. Legal aid for civil matters was becoming increasingly underfunded as the cost-of-living crisis intensified social and legal problems.

Legal aid providers reported significant problems recruiting and retaining staff. Uncertain funding, short-term contracts (often limited to a year or two) and unmanageable workloads had led to high levels of burnout and attrition. Surveys showed that 76 percent of providers asked staff to work additional hours to meet demand.

Mundy said that in spite of these challenges, legal aid lawyers had played an essential role in pursuing public interest cases, as exemplified most recently in their work to challenge the previous Liberal-National government’s “Robodebt” scheme. From 2015 to 2019, the scheme issued automated (and often inaccurate) debt notices to welfare recipients, declaring that they owed the government thousands of dollars.

Victims were threatened with jail terms unless they paid the demanded amounts or produced documents to disprove the alleged over-payments. The system had claimed nearly \$2 billion from welfare recipients—and caused immeasurable grief, stress and financial suffering and a number of suicides—before finally being declared unlawful in a court case brought by Legal Aid Victoria.

The existence of an extreme crisis in legal aid funding is not new information. Mundy’s report is further evidence of a long-known and worsening problem.

The 2014 Productivity Commission review found high levels of legal need across the country, with over 1.5 million people living below the poverty line ineligible for legal assistance under means tests described by the Commission as “too mean.”

Of the 18 recommendations the Commission made to improve legal assistance, however, the federal and state governments took up only three. Notably, the recommendation to increase funding to adequate levels went unaddressed.

In his review, Mundy made 39 recommendations, including better geographical coverage of legal aid services, increased pay for staff at Community Legal Centres, and the abandonment of competitive tendering. He called for a \$459 million increase in funding for civil law assistance, including early intervention and mediation—in line with the funding increase recommended by the Productivity Commission a decade ago.

Although Mundy’s report has been with governments for over six months, there has been no official response to it, nor mention of it in the recent federal or state budgets handed down by Labor governments, which are in office across the mainland.

The Law Council of Australia, the lawyers’ peak body, has voiced concern that this means funding is “unduly delayed.”

The council added that with funding arrangements due to run out within a year, there was a “sword hanging over the heads” of legal aid services, making it even more difficult for them to recruit and retain staff.

Mundy’s report functions as an important exposé of the legal aid crisis, but it skates over the fact that this situation has been several decades in the making. Community legal centres were first created by students and volunteers to assist with enormous unmet need in the 1970s.

Then the Whitlam Labor government set up the National Legal Aid Office in 1973, as part of its efforts to contain a huge upsurge of workers’ struggles in Australia and globally. From the start, however, this was a minimal service, constrained by means tests and carefully deferring to the domination of the private legal profession.

Legal aid funding has only been stripped back since, leaving legal services almost entirely in the realm of the private and for-profit sector. No government has ever aimed to deliver anything like legal equality. The principle of “equality before the law” can only be a myth in a society where one’s purse-strings are a decisive factor in access to legal advice and services, and often preclude any legal assistance at all.

Even if the report’s recommendations are implemented, which seems unlikely, legal assistance would still be out of reach for millions who would not meet the stringent means and merits tests required to access legal aid, and demand would likely still outstrip supply even where those thresholds are met. Nothing less than a socialist transformation of society is needed to achieve universal legal assistance as a basic democratic right and ensure social equality.



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