Human Rights and Access to Justice

Access to justice is fundamental to a fair and inclusive society and a central tenet in addressing disadvantage and inequality. Inadequate protection of human rights, poor access to legal services and other inequities in the legal system can have far-reaching consequences for people who are already experiencing disadvantage or in crisis.

People come into contact with the legal system for many reasons, such as domestic violence, family breakdown, debt or mortgage stress, tenancy or employment disputes, and crime. Access to justice, including the right to a fair hearing and access to legal representation, is essential for protecting human rights, both in these situations and in general. There are a range of barriers that disadvantaged people face when accessing legal services, however, including high cost of legal services; restrictive legal aid eligibility guidelines; poor coordination of legal aid services; unavailability of legal aid services due to service providers having a conflict of interest; and difficulties in accessing interpreter services.

Multiple Disadvantage

Some Queenslanders are far more likely to suffer poverty and social exclusion. And the effects are multiplied when individuals and families belong to more than one group.

QCOSS recognises the serious disadvantage faced by:
- Aboriginal and Torres Strait Islander communities
- People in rural and remote communities
- Culturally and linguistically diverse communities
- People with a disability
- Young people
- Older people
- Lesbian, Gay, Bisexual and Transgender communities

Improving access to justice is essential to breaking the cycle that leads to homelessness and poverty.

(Legal Aid and Access to Justice Commonwealth of Australia)

Key Issues

Human Rights

Previous government inquiries have recognised that human rights protections in Queensland are piecemeal and incomplete. The absence of an effective framework for the protection of human rights results in vulnerable and disadvantaged Queenslanders being denied justice in their interactions with the government and legal system. In contrast, where other jurisdictions have enacted state or territory based human rights acts, the development of a
human rights culture in the public service has allowed vulnerable individuals to negotiate fair outcomes and prevented the implementation of laws that disadvantage individuals. For example:

- A mother of five children in the care of Queensland child protection authorities was required to obtain suitable accommodation as a condition of reunification. Since she could not afford private rental accommodation, she applied for public housing, but was unable to receive assistance until her children were in her full time care, delaying reunification⁵. In contrast, advocates in the Australian Capital Territory (ACT) were able to invoke protection of family life under the ACT Human Rights Act to gain access to public housing for a homeless mother⁶.

- Move-on directions issued against a Queensland man have interfered with his ability to carry on his work selling magazines on the street⁷. In contrast, human rights principles enshrined in the Victorian Charter of Human Rights and Responsibilities led a local council to reject calls to implement move-on powers in its central business district⁸.

QCOSS is part of a coalition of organisations, including Amnesty International, the Queensland Council for Civil Liberties, Just Rights Queensland, and others, which have formed the Fair Go Campaign to lobby for the introduction of human rights acts in Queensland and at a national level, and the development of a human rights culture.

**Access to Legal Services and Justice**

The Law Council of Australia believes that a *crisis in the legal assistance sector is imminent as a result of current economic conditions*⁹. This will be driven by both increased demand for legal assistance and a reduction in funding from public trust funds. Data from community legal services, for example, show an increase in services being provided in areas such as employment, credit and debt, and tenancy services¹⁰.

“…compared with the same period in the previous financial year, there have been significant increases this year… in certain legal areas, the areas most likely to be impacted by a financial crisis.”

*(National Association of Community Legal Centres)*¹¹.

Issues affecting access to legal services include:

- **Community Legal Centres (CLCs) find it difficult to be as open and accessible as is required** in the face of increased and more complex demand on services, rising operational costs, and inability to attract and retain experienced staff due to limited funding. The results are reductions in direct service delivery, the geographical spread of services, outreach, expertise, complexity of assistance available, and community legal education¹². The 2009 ACOSS Community Sector Survey found that in 2007-08, legal services turned away 16.4% of eligible people seeking assistance.

- Asset and means test thresholds for legal aid are set relatively low, excluding many people who do not have the resources to pay for private legal representation¹³. As a result of funding conditions, funding levels, increasing demand, and rising costs, legal aid commissions are unable to meet demand, particularly in civil law areas¹⁴. This will be compounded by the global financial crisis, with increased numbers of people meeting the means and asset tests and reduced funding from interest on solicitors’ trust accounts¹⁵. Figures published by National Legal Aid show that for 2009-10, Legal Aid Queensland will receive nearly one-third of its income from the Legal Practitioner Interest on Trust Accounts Fund, more than any other state. It also receives a lower proportion of its funding from State Government grants than in any other state, and is likely to face a $4 million shortfall in 2009-10¹⁶.
Demand for pro bono assistance is increasing, reflecting the **increase in unmet legal needs**. However, there is limited capacity for pro bono services to cover the gaps in legal assistance, particularly since few commercial firms have expertise in the key areas of need. Inadequate funding of community legal centres, Legal Aid, and other frontline services also creates barriers to accessing pro bono assistance, since they act as a first point of contact.

The **proportion of self-represented litigants is increasing as access to legal services becomes increasingly difficult**. A survey of self-represented litigants in Queensland found that 85% had unsuccessfully applied for legal aid at some stage in their litigation. Such litigants are significantly disadvantaged due to their unfamiliarity with the law and legal system.

**Certain groups also face additional difficulties in accessing legal services:**

- **Homeless people** have a range of urgent competing needs and often cannot prioritise even significant legal issues (in areas such as Criminal, Family, Tenancy and Debt law). Access to justice for homeless people requires a coordinated approach and access via outreach and/or services provided in places that homeless people frequent.

- Greater investment in interpreter and translator services is required for people from Culturally and Linguistically Diverse (CALD) backgrounds to be able to access legal services. Effective use of these services will be enhanced by developing the cultural competencies of police, as well as developing community education strategies that address many of the difficulties CALD people have in negotiating and understanding our systems and in accessing meaningful information in their own languages. In addition, although the international human rights framework recognises that free access to an interpreter is necessary for procedural fairness in criminal and some civil hearings, in Queensland there is no right to an interpreter in either criminal or civil trials.

- People in rural, regional and remote areas face a range of barriers when accessing the legal system. These include limited number of solicitors available; frequency of conflict of interest (with limited number of legal firms in one location); additional travelling and communication costs; and heavy reliance on communication technology (such as email, internet and teleconferencing) which is often inappropriate, unreliable or inaccessible.

- **Young people** face particular difficulties in accessing justice, especially in matters of child protection and family violence. The 1997 report of the Australian Law Reform Commission and Human Rights and Equal Opportunity Commission into the legal position of children recommended the development of standards for representation of young people in family law and care and protection proceedings. A recent review article noted that these recommendations have not been implemented, and direct participation by child litigants remains low in all jurisdictions.

- **Aboriginal and Torres Strait Islander people** face significant barriers to accessing legal services, including distrust of the legal system, lack of cultural awareness of mainstream services, language barriers, systemic discrimination, and lack of understanding of potential legal resolutions to an issue. Aboriginal and Torres Strait Islander legal services, however, are described by the Law Council of Australia as the most underfunded of all legal service providers. Despite the wide range of legal issues faced by Aboriginal and Torres Strait Islander people, Indigenous legal services have not been funded sufficiently to provide family and civil law practices.

- **Women's** greatest legal needs are in the areas of family and civil law, as reflected in Legal Aid Queensland figures. These, however, are the areas where there is most unmet need.
As a result, women are less likely to have their legal aid applications granted than men, at 70.99% compared to 81.38%\textsuperscript{26}.

- **Older people** may be dependent on a family member, friend or carer to facilitate access to a solicitor for matters such as wills or powers of attorney, leaving them vulnerable to abuse. Although legal services for seniors have been established, they are limited and are only able to assist clients who are capable of providing instructions\textsuperscript{27}.

- **People with disabilities or cognitive impairment** may face a range of barriers to accessing legal services, including, but not limited to, physical access, limited access to Auslan interpreters, lack of understanding of the legal aspects of their situation, communication difficulties, reliance on others to access lawyers, fear of retribution, and discriminatory attitudes towards people with a disability\textsuperscript{28,29}.

**Recognising Progress**

QCOSS acknowledges State and Federal Government actions towards improving access to justice and the protection of human rights, including:

- The National Human Rights Consultation which recommended that a National Human Rights Act be adopted

- Progress on implementing the new Queensland Civil and Administrative Tribunal, due to commence on 1 December 2009

**QCOSS Recommendations**

1. Commence public consultation with a view to enacting a Queensland Human Rights Act and creating a human rights framework to inform policy development and service delivery.

2. Further increase investment in Community Legal Services (CLCs) to improve access to legal services – funding should incorporate competitive salary rates, a ‘distance loading’ to improve access for clients in regional, rural and remote areas, and indexation.

3. Increase State Government funding to Legal Aid Queensland, to address declining revenue from the Legal Practitioner Interest on Trust Accounts Fund, and improve access to assistance in family and civil law.

4. Reduce barriers to accessing justice for disadvantaged Queenslanders – including Aboriginal and Torres Strait Islander people, homeless people, young people, people from culturally and linguistically diverse (CALD) backgrounds, people from rural and remote areas, older people, and people with a disability – through improvement targets and funded programs that address issues such as limited accessible solicitors, limited prioritising and decision-making abilities, and low literacy and comprehension levels.

5. Deliver access to a state-wide translator and interpreter service for people from CALD backgrounds consistent to all community and government service providers, and provide programs and funding for sustained development and implementation of cultural competency for government departments, legal services and other legal professionals.

6. Amend relevant legislation to introduce a statutory right to an interpreter in all criminal and civil proceedings.
8. HRLRC op cit.
11. Ibid.
14. Ibid.
20. Based on advice given by the QPILCH Homeless Persons’ Legal Clinic.
26. Ibid.
This paper is part of QCOSS’s ‘policy platform’ that contains over 20 policy papers.

Go to www.qcoss.org.au for other papers including – Mental Health, Violence Prevention, and Social Inclusion.