

# Northern Australia Legal Aid Conference

*Extracts from Closing Address by David Farquhar, Chairman, Northern Territory Legal Aid Commission*

The timing of this conference is great, to conclude just hours before Budget Night. Right now, more than ever, we in the legal profession all need to be vigorous in promoting the fundamental necessity of legal aid. Legal Aid is not a welfare payment, nor a handout; it is an essential basis for our system of law and order.

The vast majority of lawyers are supporters of our legal system. Whilst it is perceived to be slow, cumbersome and expensive, it is also believed to be fair. Lawyers are trained to cope with and advise on the complex laws that are needed to keep our society functioning.

Society accepts and seeks the security of regulation to govern our lives. Parliamentarians and the media, reflecting the otherwise silent majority, regularly call for even more stringent regulation, such as the mandatory sentencing for property offenders, announced by the Attorney-General.

The Law and Order platform only keeps standing if the vast majority of people respect the law.

For people to respect the law, they must have confidence in our system of law.

To have confidence in the law, people must have an understanding of the legal system and faith in the impartiality of its administrators (be they the judiciary or their legal advisers or representatives of the State).

To understand the legal system, how our laws are created, enforced and changed, people must have equal access to the law, that is an equal ability to obtain legal advice and representation.

That equality of access must be regardless of intellect, health, race, religion, gender or wealth. Without access to legal advice and assistance currently provided by organisations such as Aboriginal Legal Services, Legal Aid Commissions, Community Legal Centres a number of disadvantaged sections of our society will perceive that their equality before the law is jeopardised.

Following this belief of loss of equality before the law is an actual loss of respect for the law by that same class or group of disadvantaged people.

With this loss of respect for the law, the

legal system starts to break down. The breakdown of the legal system goes hand in hand with the loss of law and order.

The legal system is a broad system, not restricted to criminal justice, but governing all of our behaviour, at home, at work, in commerce and recreation. I understand that there must be priorities in spending the increasingly rare legal aid dollar. This usually means that the protection of civil rights gets a lesser priority than the very immediate demands of someone facing criminal charges.

But my interest is in the civil area of personal compensation. People are compensated under various statutory compensation schemes, such as workers' compensation, motor accidents, crimes compensation, equal opportunity and human rights legislation, consumer protection, and the common law of negligence etc.

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A number of lawyers, including myself, make their living representing insurers, financiers, and other caring and compassionate but not charitable corporations.

People are not compensated for injury or wrong done to them unless they ask for compensation. People don't ask for compensation unless they are aware of their entitlements. People don't know how to ask unless they have access to and are told of their rights.

In pursuit of their civil rights, people, for a great variety of reasons, need an adviser and an advocate. That is not only understood by the civil law system. It is catered for and expected.

Without access to such assistance, the competing interests between, on the one hand, the needs and entitlements of the individual, and on the other, the cost to the general population, are no longer capable of being weighed; the balance is lost. The system will no longer be perceived as fair.

With the loss of that fundamental balance between an individual and a corpora-

tion or government, the system of law for compensation and the person's ability to enforce their civil rights and entitlements will be lost.

On 26 June 1996 the Commonwealth Attorney-General gave notice that the Commonwealth will be terminating the present arrangements with the State and Territory governments relating to legal aid funding. The Commonwealth apparently intends to restrict its funding to "matters arising under Commonwealth law".

In the build up to the Budget, the Commonwealth also informed ATSIC that its funds would be slashed. The failure of the Commonwealth to quarantine Aboriginal legal aid services from the budget reduction means that the always chronically underfunded and understaffed Aboriginal Legal Services will need to reduce their services even further. Those lawyers engaged in criminal and civil litigation would all understand the difficulties already suffered by Aboriginal people in relation to our system of law. They are a very disadvantaged group already, who will be further underprivileged by the reduction in access to legal advice and representation.

In conclusion, our legal system, our need for law and order is under threat, not from the disadvantaged under-privileged classes but from the executive government and the administrators who also rely so heavily on that same system.

There are more consequences than the reduction of the \$8 billion blow out in the deficit, that will result from the financial cuts to the legal aid services. The price that society pays to ensure that:

- equality before the law is retained
  - individual civil rights are maintained
- and
- law and order is sustained
- is cheap when you consider the alternative.

The legal profession in Northern Australia as elsewhere, in both the public and private sectors, has an obligation to speak out and act on behalf of all people to ensure that the law is accessible to all, and serves everyone, not just the privileged few.

