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Coalition and Labour Disregard Current Legal Aid Funding Crisis

"But the law Council, whilst acknowledging these announcements, is uncertain as to how these objectives will be implemented. This is because the Labor party's policy does not provide for any increase in Commonwealth legal aid funding until the year 2001, and a further \$30 million additional funding in the 2001/2 Budget.

"The Law Council says, however, that by the year 2001, it will be too late to properly rebuild a legal aid system that adequately meets the needs of disadvantaged Australians."

"The Democrats responded to the Law Council's questionnaire principally with yes or no answers, but through this indicated that it would support the return to a national approach to legal aid, extend the eligibility range for Commonwealth legal aid assistance, would not maintain current Commonwealth guidelines as to how Commonwealth legal aid can be spent by the legal aid commissions, and would not maintain caps on legal aid funding.

"The Democrats, however, did not signal amounts by which they would increase Commonwealth legal aid funding.

"Whilst the Law Council acknowledges that both major parties have signalled some minor funding initiatives - which are positive steps and have merit - it is important to recognise that neither party has addressed the bigger picture of mainstream legal aid funding.

"For example, a direct flow-on effect for the cuts to legal aid is the ever-increasing number of litigants in person who are now clogging our courts. Two recent studies (the Parker report and the University of Wollongong study) demonstrates the direct impact of legal aid cuts on access to justice and the efficient operation of the courts system.

"A report into the state of Australia's legal aid system - commissioned by the Law Council and undertaken independently by public sector finance consultant. Mr Ian McCauley - has activity in criminal courts (particularly involving young people), and more requirements for representation in other jurisdictions.

"The worrying fact is that neither Labor, nor the Coalition, has come to terms with making legal aid viable in the long term - they

have both adopted an approach of tinkering at the edges of a legal aid system in rapid decline."

Expert Witness Guidelines

Expert Witness Guidelines developed co-operatively by Federal Court and Law Council.

In a first for the Federal Court of Australia and the legal profession, the Court and the Law Council of Australia have developed co-operatively a Federal Court practice direction governing the use of expert witnesses in the Court.

The joint development of the expert witness practice direction is an excellent example of the courts and the legal profession working together in a practical and constructive way, to bring about effective reform to court process.

The development of the practice direction arose out of a mutual concern on the part of both the Court and the Law Council, that expert witnesses may be uncertain as to their role in giving expert evidence. The purpose of the practice direction is to define that role to expert witnesses, and to provide guidelines for legal practitioners and their clients in relation to the use of expert witnesses.

The practice direction, *Guidelines for Expert Witnesses in Proceedings in the Federal Court of Australia*, sets out that an expert witness has a general duty to the Court. This has three defining aspects:

- an expert witness has an overriding duty to assist the Court on matters relevant to the expert's area of expertise;
- an expert witness is not an advocate for a party; and
- and expert witness paramount duty is to the Court and not to the person retaining the expert.

Legal practitioners will now be required to provide any expert witnesses they intend retaining for a case, with a copy of the practice direction.

Amongst other things, the practice direction requires expert witnesses to qualify finding in their reports (where they believe their report may be incomplete or inaccurate without some qualification), and to give reasons for their opinions.

Expert witnesses must now also disclose if their opinions are not fully researched

because they consider that insufficient data are available, and if a particular question or issue falls outside their field of expertise.

In another major change, the practice direction provides that if expert witnesses retained by parties in a case meet at the direction of the Court, it would be improper conduct for an expert to be given or to accept instructions not to reach agreement in that meeting. The direction instructs that if the expert witnesses cannot reach agreement on matters of expert opinion, they must provide reasons for this to the Court.

The development of the practice direction is one of a number of projects on which the Court and the legal profession are working together, with the objective of streamlining court procedure and processes, without compromising the procedural fairness of Australia's civil litigation system.

Family Court Delay Must be fixed

The Law Council of Australia has sent the Federal Attorney-General, the Hon. Daryl Williams AM QC MP, a submission indicating its extreme concern at the level of delay in Family Court hearings, and has called for the appointment of more judges to the Court.

The submissions, written by the Council's Family Law Section, states that the delay in Family Court hearings is "now totally unacceptable" and that the greatest single contributor to this delay "is the insufficient number of judges available to hear contested matters."

The submission demonstrates that the Court's judicial resources have not increased in line with its workload and jurisdiction, which have grown as it has had to deal with proliferating issues such as ex-nuptial children, de facto relationship property matters, under Child Support legislation, children's representatives, welfare matters and surrogacy issues.

The submission also highlights that the complexity of matters coming before the Court, and the increasing numbers of unrepresented litigants - primarily a result of legal aid funding cutbacks - have greatly impacted on Court delay, as have long delays in the Federal Government's appointment for new judges to replace retiring judges.

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"Long-term delay in the Family Court is now feeding more long-term delay, as delays in final hearings are leading to more applications for interim orders which, in turn, consume the already scarce judicial time" says the Law Council's President-elect, Mr Fabian Dixon.

"The number of Family Court judges is not totally inadequate to cope with the current workload."

"The Federal Government has, hitherto, been unprepared to commit the required judicial resources to the Family Court, and it has been using as an excuse the fact that the Family Law Regulations cap the number of judges able to be appointed.

"The Federal Council says, given there is a cap in place, the Government must obviously - and urgently - make that cap higher.

"In many Family Court registries, performance timeframes are not even close to being met."

"For example, the Performance Standard for Standard Track Child Matters is 43 weeks from filing to hearing. This timeframe is not

being met in any of the Family Court's registries, with the average times from filing to hearing being 46.1 weeks (in Hobart) to 93.3 weeks (in Adelaide)."

"Similarly, in Standard Track Financial Matters, the performance standard of 48 weeks from filing to hearing is only being met in one registry (where the average time from filing to hearing is taking 30.0 weeks in Dandenong) - in all other jurisdictions, the average ranges from 51.5 weeks (in Townsville) to 103.7 weeks (in Newcastle)."

"The Family Court has already absorbed a number of Government-imposed budgetary cuts - now is the time to increase the Court's funding, and judicial resource caps, to allow for the appointment of additional judges.

"The Family Law Regulations should urgently be amended to provide that the maximum number of judges in the Court be increased by 12 (to 66). This would enable judges to be appointed in anticipation of the imminent retirement of others, and would be implemented on the understanding that the

maximum number of 'active' judges remains fixed at 61.

"The Law Council also believes that 2 additional judges be appointed in Melbourne, 1 additional judge each be appointed in the jurisdictions of Tasmania, Canberra and Adelaide, and 2 additional judges be appointed in Brisbane. We are also advocating that 1 judge each be appointed in Brisbane. We are also advocating that 1 judge each be appointed in Melbourne and Sydney/Newcastle, to replace retiring judges.

"The Law Council also urges the Government to make arrangements to ensure that as judges announce their retirement, timely arrangements are made to fill the vacancies so that there are no 'gaps' between the dates retiring judges stop hearing cases and the dates on which new judges start sitting.

"The law Council believes that the incoming Federal Government must address urgently the judicial resourcing of the Family Court, to ensure that the chronic level of delay is remedied."

SUCCESS **REQUIRES** **SOUND** **PRACTICE** **MANAGEMENT**

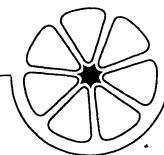
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