

# Administration of justice

## Funding of legal aid commissions and community legal services

### Suggested Question

*What steps is Australia taking, in cooperation with legal aid commissions, community legal services and specialist legal services for Aboriginal and Torres Strait Islander peoples, to determine and provide the minimum level of funding necessary to meet legal need?*

### Background

Funding for legal aid commissions, community legal services and specialist legal services for Aboriginal and Torres Strait Islander peoples is inadequate. In May 2010, the Australian Government announced an increase in funding to specialist community legal services, including Aboriginal and Torres Strait Islander legal services (ATSILS). While this has been welcomed by the sector, there are concerns that the increase does not go far enough to address the systemic crisis in the resourcing of, and access to, specialist services.

Of particular concern:

- between 1997 and 2007, there was an 18% reduction in real funding to community legal centres, who are the 205 not-for-profit community-based organisations that provide free legal advice and services to disadvantaged members of the Australian community and those with special needs;
- a 2009 Australian Senate Inquiry found that there are areas of law not sufficiently funded for the provision of essential legal aid, namely family law and civil law services;
- despite Aboriginal and Torres Strait Islander incarceration rates increasing at an alarming rate over the past decade and the subsequent increase in demand for the ATSILS services, the amount of real funding provided has been declining, compared to mainstream legal aid service providers and departments of public prosecutions; and
- Family Violence Prevention Legal Services (FVPLS) (legal aid providers specialising in

family violence, often existing in regional and remote areas) are not always funded to service urban areas where large proportions of Aboriginal and Torres Strait Islander peoples reside. The high incidence of family violence against Aboriginal and Torres Strait Islander women, means that often the FVPLS are the only culturally appropriate legal assistance option available to Aboriginal and Torres Strait Islander women.

### Proposed Recommendation

That Australia take immediate steps to (1) work with community legal service providers, including Aboriginal and Torres Strait Islander Legal Services, to determine and meet the minimum level of funding necessary to meet legal need; and (2) ensure the funding of the Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention Legal Services is proportionally increased to equal that of mainstream legal aid services and departments of public prosecutions.

## Interpreter services for Aboriginal and Torres Strait Islander peoples

### Suggested Question

*What steps is Australia taking to implement a national Aboriginal and Torres Strait Islander interpretive service?*

### Background

Despite the right to an interpreter in criminal proceedings and in some civil proceedings being enshrined in numerous international human rights instruments to which Australia is a party, Aboriginal and Torres Strait Islander peoples continue to be denied adequate access to interpreter services. This means that Aboriginal and Torres Strait Islander peoples can have great difficulty communicating with police, giving evidence, consulting with and giving instructions to their lawyer, and understanding court proceedings. As a result, Aboriginal and Torres Strait Islander peoples are often denied a fair trial.

### **Proposed Recommendation**

That Australia provide adequate resources for the establishment and ongoing delivery of a national Aboriginal and Torres Strait Islander interpretive service.

### **Over-representation of young people and Aboriginal and Torres Strait Islander peoples**

#### **Suggested Question**

*What concrete measures is Australia taking to ensure that the criminal justice system does not have a disproportionately harsh effect on vulnerable groups such as young people and Aboriginal and Torres Strait Islander peoples, particularly in states with mandatory sentencing laws?*

#### **Background**

Mandatory sentencing laws, which require that offenders receive automatic terms of imprisonment for minimum prescribed periods for particular offences, continue to operate in Western Australia and the Northern Territory. This means that people who might have not otherwise been sentenced to a term of imprisonment are being incarcerated, with all the attendant destructive impacts (exposure to

Mandatory sentences are not reviewable by Australian courts.

Mandatory sentencing laws have a disproportionate impact on Aboriginal and Torres Strait Islander peoples and young people. In the Northern Territory, incarceration rates of Aboriginal and Torres Strait Islander peoples is 3.5 times the national rate of imprisonment, and Aboriginal and Torres Strait Islander peoples constitute 83% of the prison population in the Northern Territory. In Western Australia, expansion of mandatory sentencing laws has seen the number of Aboriginal and Torres Strait Islander people in prison double since 2002. Aboriginal and Torres Strait Islander juveniles are 28 times as likely to be detained as other Australian juveniles, and Aboriginal women prisoners are the fastest growing demographic amongst the prison population, with an increase in incarceration rates of 420% in the decade to 2005.

#### **Proposed Recommendation**

That Australia, through its inter-governmental mechanisms, take concrete steps to repeal legislation that provides for mandatory sentencing.

violence and abuse, dislocation from pro-social supports such as family and employment).