



**LEGISLATIVE ASSEMBLY**  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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**SELECT COMMITTEE ON COST OF LIVING PRESSURES IN THE ACT**  
Mr Johnathan Davis MLA (Chair), Dr Marisa Paterson MLA (Deputy Chair)  
Ms Nicole Lawder MLA

## Submission Cover Sheet

Inquiry into Cost of Living Pressures in the ACT

**Submission Number: 006**

**Date Authorised for Publication: 21 March 2023**

7 March 2023

Select Committee on Cost of Living Pressures in the ACT  
Legislative Assembly for the ACT  
GPO Box 1020  
Canberra ACT 2601

By email: [LACommitteeCOL@parliament.act.gov.au](mailto:LACommitteeCOL@parliament.act.gov.au)

Dear Committee,

**RE: Inquiry into Cost of Living Pressures in the ACT**

Thank you for the opportunity to contribute to the inquiry into cost-of-living pressures faced by low- and moderate-income households in the ACT.

Legal Aid ACT ('the Commission') provides legal services to vulnerable and disadvantaged members of our community, who are particularly affected by rising costs of living. We are concerned about a gap in providing legal assistance to vulnerable community members who are unable to qualify for Legal Aid but cannot afford private legal representation. This cohort is a justice gap referred to as the 'missing middle'.

## Access to Justice

The Commission, alongside the legal assistance sector more broadly, is committed to providing access to justice for vulnerable and disadvantaged people. This focus is based on longstanding research into the benefits which are brought to individuals and communities, and is captured in various policy documents, including the ACT's *Legal Assistance Action Plan 2023-2025*, and the *National Strategic Framework for Legal Assistance*.<sup>1</sup>

*'The idea of 'access to justice' is... the capacity to understand the law, to get legal advice, to get legal assistance and representation, and to use public legal institutions such as the courts. It requires an ability to understand, communicate, travel and pay, and also requires the means to overcome the inability to do any of those things.'*<sup>2</sup>

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<sup>1</sup> ACT Government, *ACT Legal Assistance Action Plan 2023-2025* (September 2022); Council of Attorneys General, *National Strategic Framework for Legal Assistance* (June 2020).

<sup>2</sup> Simon Rice, 'Access to a lawyer in rural Australia: thoughts on the evidence we need' (2011) 16:1 *Deakin Law Review* 13, 17-18.

- **Financial Benefit**

In 2022 National Legal Aid commissioned PwC to undertake an updated analysis of the benefits of providing access to justice (this had a focus on federally funded legal aid family and civil law but the analysis is relevant to all legal assistance access). It estimates that there is a \$601 million in benefit each year, representing a Benefit Cost Ratio of 2.25. This includes costs saved within the legal system, but importantly also includes avoided costs to individuals and government through addressing domestic and family violence, minimising out of home care costs and reducing pain and suffering as a result of legal issues.

- **Social Benefit**

Access to justice and the provision of legal assistance to people experiencing disadvantage is often understood as only impacting the justice system. Given the complex, interlinked issues faced by vulnerable people in our justice system, it also has impacts across a range of social policy and systems including community resilience and financial independence, ending violence against women, child protection, disability and social services.

- **Human Rights**

All member states of the United Nations have undertaken to promote access to justice for all, in recognition of its importance as an indicator of peaceful and inclusive society.<sup>3</sup> In particular, Principle 10 of the UN *Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems* emphasises equity in access to legal aid for persons who are members of economically and socially disadvantaged groups.<sup>4</sup>

## The Justice Gap

Each year, the Commission provides services to an increasing proportion of the ACT population, growing from 5.9% in 2016-17 to 7.67% in 2021-22. Many of our services, such as duty lawyers and various legal clinics, may provide one-off advice and minor assistance to anyone who requests aid. However, the Commission must make some decisions about who will qualify for a further grant of legal assistance. To this end, the Commission utilises a means and merits test which considers:

- A person's ability to pay legal fees,
- the likelihood of their case succeeding,
- the benefit that might be gained in comparison to the cost of providing assistance, and
- what the person's case is about.

Legal Aid has historically set the allowable income to qualify for legal assistance at 120% of the Henderson poverty line. The cost of living, however, has increased dramatically over the last few years,

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<sup>3</sup> UN Sustainable Development Goal 16; UNDP Rule of Law and Human Rights Global Programme 'Access to Justice' (web page, June 2021) <<https://2020rolhr.undp.org/focus/access-to-justice/>>.

<sup>4</sup> United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems <[https://www.unodc.org/documents/justice-and-prison-reform/UN\\_principles\\_and\\_guidelines\\_on\\_access\\_to\\_legal\\_aid.pdf](https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf)>.

with CPI in Australia rising by 7.8% in the twelve months to December 2022.<sup>5</sup> In Canberra, CPI increase has been greater than that of Sydney or Melbourne over the past two financial years.<sup>6</sup> The resulting justice gap exacerbates our longstanding concern, especially given the mandate in s 28(3) the *Legal Aid Act 1977* to consider, among other things, ‘the cost of living’ when making decisions about whether a person is unable to afford the cost of obtaining legal services from private legal practitioners.

The current allowable income to be eligible for a grant of legal aid is \$411.49 for a single person with no dependents (this value increases based on status of relationship and/or children). This threshold has not been updated since 2015 and is below the current Henderson poverty line figure of \$414.98.<sup>7</sup> This effectively means that, without the exercise of discretion, the only clients that will qualify the income test would be those currently living on, or below, the poverty line.

Around 5% of applications for legal assistance are refused annually based solely on the means test.<sup>8</sup> Included are the ‘missing middle’ clients and those who can afford a private lawyer. The missing middle group is getting larger as the eligibility requirements for Legal Aid assistance is fixed under the current poverty line, but the cost of engaging a Private Legal Practitioner continues to increase.

In December 2021, the *Counting the Costs* report (ACTCOSS report) showed that pressure faced by community services has been compounded in recent years by ‘population changes and increased complexity of need’ including rising cost of living and rising employment pressures.<sup>9</sup> It attests to the fact that the justice gap is not something easily addressed by directing individuals to other services outside of Legal Aid; it is a problem across the legal assistance sector in our Territory.

## Reducing the Justice Gap

### Addressing increased cost-of-living in the short term

It is important to ‘calibrate’ our means test to the individuals who will otherwise be unable to access justice. To combat an expansion of the justice gap, the Commission submits it would be beneficial to raise the income cap for our means test. To this end, the Commission has considered an increase of the allowed income level to \$622.50 per week, which is 150% of the June 2022 quarter Henderson poverty line. It is estimated there would be up to 100 more grants of legal aid provided to clients that would become eligible under the allowable income condition.

Increased services cannot be provided without increased funding. Based on the estimation of 100 additional grants of legal aid, this increase would cost an estimated \$250,000 per annum. Given the benefit-cost ratio of 2.25 for spending on legal aid services (shown in the PwC report), \$250,000 of funding would provide a quantifiable benefit of \$562,500 per annum in avoided costs to individuals

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<sup>5</sup> Australian Bureau of Statistics, *Consumer Price Index, Australia ‘Overview’* <<https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/consumer-price-index-australia/latest-release>>.

<sup>6</sup> ABS (n 5) ‘Selected tables – capital cities: All groups CPI, percentage changes’.

<sup>7</sup> Melbourne Institute: Applied Economics & Social Research, *Poverty Lines Australia* (Report, June 2022) <[https://melbourneinstitute.unimelb.edu.au/\\_data/assets/pdf\\_file/0008/4288661/Poverty-Lines-Australia-June-2022.pdf](https://melbourneinstitute.unimelb.edu.au/_data/assets/pdf_file/0008/4288661/Poverty-Lines-Australia-June-2022.pdf)>.

<sup>8</sup> From 2015-16 to 2021-22, 1,262 out of 25,579 applications were refused based on means.

<sup>9</sup> UNSW Social Policy Research Centre, *Counting the Costs: Sustainable funding for the ACT community services sector*, (Report, December 2021) (‘ACTCOSS Report’) 11.

and government, as well as reduced pain and suffering for vulnerable members of our community. It will ensure that the increasingly unmet justice gap can be addressed.

### **Addressing the justice gap in the long term**

#### Long-Term Stability of Funding

As cost-of-living, and our community's economic position more generally, evolves over time the number of people who are unable to privately access legal assistance will continue to increase. It was emphasised in the Productivity Commission's 2014 *Access to Justice Arrangements* report that funding in this area needs to be 'stable enough to allow for longer term planning'.<sup>10</sup> The importance of such stability is something which was acknowledged by the ACT Government in their commitment to the strategic directions set out under the *ACT Legal Assistance Sector Strategy 2023-2025*, including to support sector capability and long-term sustainability.<sup>11</sup>

A recommendation of the *Review of the National Partnership Agreement on Legal Assistance Services 2015-2020* was that stable funding in real terms should be supported by indexation of funding using labour cost formulae specific to each State and Territory, and updated socio-demographic forecasts drawing on the most current data available.<sup>12</sup> While funding for the ACT Community Sector is indexed in order to maintain its real value over time, the ACTCOSS report noted that 'indexation rates for ACT services have been relatively low in recent years' in comparison to other jurisdictions.<sup>13</sup> This is despite CPI inflation in Canberra having been greater than the weighted average of all Australian capital cities for the past two financial years.<sup>14</sup> Stability in the real value of our funding is essential to allow the Commission to confidently plan ways in which we can meet the rising demand for legal assistance in our Territory.

#### Indexation of the Means Test

Just as with indexation of core funding, it is also important that the Legal Aid means test is indexed to ensure its real value does not fall over time in comparison to trends such as cost of living and poverty. As the current situation demonstrates, a failure to index the means test now requires prospective clients to be at or under the poverty line to access Legal Aid. To remedy and prevent re-emergence of this issue, it would be beneficial to guarantee funding which allows us to annually index our means test as a proportion of the Henderson Poverty line.

This indexed means test would ensure that our efforts to provide access to justice are aligned with the economic situation faced by our community over time, providing funding which is responsive to the proportion of the population who require access to Legal Aid.

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<sup>10</sup> Australian Government Productivity Commission, *Access to Justice Arrangements – Inquiry Report (Volume 1)*, No 72 (5 September 2014) 31.

<sup>11</sup> ACT Government *ACT Legal Assistance Sector Strategy 2023-2025* 19, *ACT Legal Assistance Action Plan* (n 9).

<sup>12</sup> URBIS, *Review of the National Partnership Agreement on Legal Assistance Services 2015-2020 (Final Report*, December 2018) 108.

<sup>13</sup> ACTCOSS Report (n 9) 29.

<sup>14</sup> ABS (n5) 'Selected tables – capital cities: All groups CPI, percentage changes'.

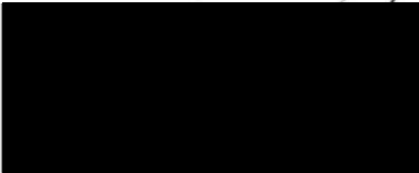
## Conclusion

A prospective client should not have to be on (or under) the poverty line to get legal assistance from Legal Aid. A client who has an income which is slightly above the poverty line simply does not have the means to engage a private legal practitioner for legal assistance, especially given the complex and serious legal issues which vulnerable individuals in our community often face.

Legal Aid is the safety net for these clients, however rising cost of living has left gaps in the number of individuals we are able to assist. Raising the income for which the Commission can provide a grant of legal assistance will reduce the justice gap and allow for provision of crucial legal assistance to the 'missing middle'.

It is the most vulnerable members of the Territory's community that are prevented from accessing justice due to rising costs of living. If this is not addressed, it will continue to affect the safety, wellbeing and could further deteriorate the living standards of these affected members of society.

Yours sincerely



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