



# ACCESS TO JUSTICE

The Australian Greens have a plan to:

1. Reverse cuts and increase funding for legal assistance services
2. Create a national annual survey of legal need
3. Reinstate and increase funding to Environmental Defenders Offices
4. Retain the Indigenous Legal Assistance Program funding program
5. Establish a Royal Commission into family law and the protection of children

## OVERVIEW

Access to justice shouldn't be dependent on the size of your wallet. Too many people in Australia are being marginalised by a legal system that is completely out of their reach. Legal assistance is not a privilege – it is the right of all people living in Australia. The Australian Greens are the only party with a plan to fund legal assistance based on actual need.

To live in a truly just society, we must have a legal system that can serve those who cannot afford to pay for legal representation, through to those that have no voice.

But what we currently have is far from a system that provides access to justice for all, and it's only getting worse.

It's not only the Australian Greens who think this isn't good enough: the Government's own Productivity Commission also considered the accessibility of our justice system as being desperately inadequate, and urgently called for extra funding.

## DEFENDING THE ENVIRONMENT

The Abbott-Turnbull Government cut ALL federal funding for Environmental Defenders Offices in 2014, for purely ideological reasons<sup>1</sup>. This cut has been maintained to this day by the Turnbull-Morrison Government.

This was and remains another of their relentless attacks on the environment, and on all who advocate on its behalf.

The Australian Greens' plan for justice will reinstate and increase federal funding for Environmental Defenders Offices with an allocation of \$16 million over four years. With escalating threats to our natural environment coming from cashed-up corporations, lobbyists,

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<sup>1</sup> ABC News 2013, *Funding cut to Environmental Defender's Offices described as 'barbaric'*, Australian Broadcasting Corporation, Sydney, viewed 27 March 2019, <https://www.abc.net.au/news/2013-12-18/funding-cut-to-environmental-defenders-offices/5164934>

and the politicians in their pockets, fully-funded EDOs are needed now more than ever to defend the rights of communities to a healthy environment.

## **REVERSING CUTS & INCREASING LEGAL ASSISTANCE FUNDING**

Legal assistance includes the Legal Aid Commissions, Aboriginal and Torres Strait Islander Legal Services, Family Violence Prevention Legal Services, and Community Legal Centres.

In 2018-19, Community Legal Centres (CLCs) helped over 201,000 people. But every year they have to turn nearly as many people away: around 170,000 people every year<sup>2</sup>. In 2014, an Australian Council of Social Service survey of legal assistance services found 72 per cent of CLCs were unable to meet demand, with only four per cent able to fully meet demand<sup>3</sup>. In 2015-16, around 75 per cent of these turn aways were due to insufficient resources<sup>4</sup>. And many of these people are our the most marginalised members of our society.

The Law Council found that inadequate government funding has resulted in only 8 per cent of people living in Australia being able to access legal aid, despite 14 per cent of the population living under the poverty line<sup>5</sup>. Marginalised groups that are currently being failed by our justice system due to a lack of resourcing include First Nations peoples, people experiencing discrimination and disadvantage, older people, and people experiencing family violence. As an example, some Family Violence Prevention Legal Services estimate that they are turning away 30-40 per cent of people seeking assistance<sup>6</sup>.

In 2014, a landmark inquiry by the Productivity Commission into Australia's civil justice system found that it needed an immediate injection of \$200 million per year of federal (60 per cent) and state (40 per cent) funding to meet existing need<sup>7</sup>. In 2018, after years of budget cuts and inaction, The Law Council of Australia's Justice Project suggested the funding gap was now around \$390 million per year<sup>8</sup>. The longer ignore this problem, the worse it will get, with decreasing access to justice leading to increasing injustice for more people.

This is why the Australian Greens have a plan to fully fund access to justice for all people living in Australia. This begins with funding the legal assistance needs we are aware of. This includes new programs and extra funding for Community Legal Centres, including for specialist units that help people experiencing family violence and elder abuse, extra consumer financial legal advice and to help people engage with the Royal Commission into Aged Care Quality and Safety.

Over the next four years, the Australian Greens' plan for justice includes:

- \$408 million for Community Legal Centres
- \$299 million for Legal Aid Commissions
- \$97 million for Aboriginal and Torres Strait Islander Legal Services
- \$118 million for Family Violence Prevention Legal Services
- \$16 million for Environmental Defenders Offices
- \$16 million for legal assistance peak bodies

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<sup>2</sup> National Association of Community Legal Centres 2018 *NACLC National Census of CLCs 2017*, NACLC, Sydney

<sup>3</sup> ACOSS 2014, *Australian Community Sector Survey 2014*, Australian Council of Social Service, Sydney

<sup>4</sup> National Association of Community Legal Centres 2017, *NACLC National Census of CLCs 2016*, NACLC, Sydney

<sup>5</sup> Law Council of Australia 2018, *The Justice Project: Final Report*, Law Council of Australia, Canberra

<sup>6</sup> *ibid*

<sup>7</sup> Productivity Commission 2014, *Access to Justice Arrangements: Productivity Commission Inquiry Report Volume 2*, Australian Government, Canberra

<sup>8</sup> Law Council of Australia 2018, *The Justice Project: Final Report*, Law Council of Australia, Canberra

That's \$954 million in extra federal funding over four years for these essential legal assistance services that allow our most disadvantaged and vulnerable citizens to access to justice.

Following the Productivity Commission's recommendations for a 60:40 investment split with the Commonwealth, states and territories would match this funding with an extra \$635 million for legal assistance funding, bringing the total investment to over \$1587 million in total extra funding over four years. That's \$397 million a year of Commonwealth, state and territory funding for legal assistance services, which meets the funding recommendations of the Law Council of Australia's Justice Project, and the justice needs of ordinary people living in Australia.

## **PEAK BODY FUNDING**

This extra federal funding of \$954 million over four years includes over \$16 million for peak bodies to continue their vital roles in providing advocacy, support services, and policy development for their members, with the following allocations:

- \$4.5 million for National Family Violence Prevention Legal Services
- \$4.8 million for National Aboriginal & Torres Strait Islander Legal Services
- \$6.8 million for national, state and territory Community Legal Centre peak bodies

## **COMMUNITY LEGAL CENTRES**

The Australian Greens' plan for justice includes new programs and extra funding for Community Legal Centres, which includes:

- \$61.3 million additional core funding for centres to meet existing unmet legal need as recommended by the Productivity Commission
- \$57.7 million for national rollout of specialist units and health justice partnerships to support people experiencing elder abuse
- \$40.4 million to extend and nationally roll out specialist units and health justice partnerships to keep people experiencing family violence safe
- \$10.1 million for engagement with Royal Commission into Aged Care Quality and Safety
- \$2 million for the national quality and continuous improvement framework and scheme
- \$218.4 million for consumer financial legal advice and assistance services and National Debt Helpline

That brings extra funding for Community Legal Centres, and the vital work they do, to around \$408 million over four years.

## **ABORIGINAL AND TORRES STRAIT ISLANDER LEGAL SERVICES**

In the 2019-20 Budget, the Government announced a single national mechanism for commonwealth legal assistance funding, which will include Aboriginal and Torres Strait Islander Legal Services (ATSILS). This is despite the Government's own Independent Review into the Indigenous Legal Assistance Program (ILAP)<sup>9</sup> recommending the retention of a standalone specific program, such as ILAP, which will be made redundant by this new single national mechanism. The abolishment of ILAP means that, for the first time since ATSILS was established in 1970, there will be no dedicated national funding program for ATSILS at the Commonwealth level.

The Australian Greens support the retention of the Indigenous Legal Assistance Program as a specific standalone program to provide funding certainty for Aboriginal and Torres Strait

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<sup>9</sup> Attorney-General's Department 2019, *Review of the Indigenous Legal Assistance Program (ILAP) 2015-2020*, Australian Government, Canberra

Islander people to provide culturally safe and community-controlled services for their communities.

## **A NATIONAL SURVEY OF LEGAL NEED**

Funding the legal assistance needs we are aware of is the first step to providing access to justice for all people living in Australia. The next step is to identify the needs we are unaware of.

The true picture of unmet legal need is unknown. One-off surveys of legal need have uncovered some alarming statistics. For instance: in a year, around half of all people living in Australia will experience a legal problem. For half of these people, the problem will have a moderate to severe impact on their lives.

Only one in two people will seek professional advice, and one in five will take no action at all<sup>10</sup>. The reasons given for taking no action were often related to stress (30 per cent), cost (27 per cent) or simply not knowing what to do (21 per cent).

A regular survey of legal need will identify what people living in Australia, particularly those who are most disadvantaged, require to access and receive justice, and appropriate levels of resourcing to meet those needs. The survey would include the use of interpreters to collect data from culturally and linguistically diverse (CALD) and First Nations communities, to ensure data integrity.

The Australian Greens have allocated \$8.5 million across the forward estimates to fund a regular national survey of legal need.

## **ROYAL COMMISSION INTO FAMILY LAW & THE PROTECTION OF CHILDREN**

The Australian Greens, with the support of numerous non-government organisations, the general public, and even a Chief Justice<sup>11</sup>, will call for a Royal Commission into family law and the protection of children.

According to Law Council of Australia Chair of Family Law, Ms Wendy Kayler-Thomson, Australia's family law system is in "a state of crisis"<sup>12</sup>, and the Turnbull-Morrison Government's recent attempts to merge the Family Court of Australia and Federal Circuit Court "flew in the face of the evidence presented to government from experts, research and even parliamentary inquiries"<sup>13</sup>.

The family law system in Australia is currently underfunded, overworked, and destructively adversarial in nature. And it's just not getting the results parents and children need or deserve.

Rather than put these systemic problems in the too-hard basket, like successive Liberal and Labor governments have done, the Australian Greens demand the sort of rigorous, evidence-based, and arms-length-from-Government inquiry that only a Royal Commission can provide.

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<sup>10</sup> Coumarelos et al 2012, *Legal Australia-Wide Survey: Legal need in Australia* (Access to justice and legal needs, Volume 7), Law and Justice Foundation of New South Wales, Sydney

<sup>11</sup> Howells & Doran 2018, *Family law system may need royal commission scrutiny, Chief Justice John Pascoe says*, Australian Broadcasting Corporation, Brisbane, viewed 27 March 2019, <https://www.abc.net.au/news/2018-10-03/family-law-court-may-need-royal-commission-justice-pascoe-says/10332588>

<sup>12</sup> Powell, R. 2017, *Family Court underfunded, letting people down, chief justice says*, Australian Broadcasting Corporation, Melbourne, viewed 27 March 2019, <https://www.abc.net.au/news/2017-04-30/family-court-letting-families-down-chief-justice-says/8483858>

<sup>13</sup> Koziol, M. 2018, *Abolition of the Family Court 'an act of vandalism' that could endanger women, children*, The Sydney Morning Herald, Sydney, Viewed 27 March 2019, <https://www.smh.com.au/politics/federal/abolition-of-the-family-court-an-act-of-vandalism-that-could-endanger-women-children-20180531-p4z1qs.html>



**SENATOR NICK McKIM**  
**SPOKESPERSON FOR JUSTICE**

Tel: 03 6224 8899    [Senator.McKim@aph.gov.au](mailto:Senator.McKim@aph.gov.au)

[greens.org.au](https://greens.org.au)

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