

MEDIA RELEASE

LEGAL AID WORK UNSUSTAINABLE FOR NSW BARRISTERS



NEW SOUTH WALES
BAR ASSOCIATION

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The provision of a properly funded legal aid system is crucial to upholding the rule of law and should be a first priority of government. The legal aid system is broken and relies on individual practitioners to make financial sacrifices or compromise their professional standards in order for it to survive. The failure of the State Government to provide sufficient legal aid funding in yesterday's State Budget means that this work is no longer a viable option for many barristers in this State, the President of the New South Wales Bar Association Tim Game SC said today.

“The ethical obligations of barristers require them to fearlessly promote their clients’ interests to the best of their skill and diligence. Unfortunately the current abysmal state of legal aid rates makes it increasingly difficult for barristers in many cases to spend the time and do all of the necessary work to properly prepare their clients’ cases and satisfy those ethical obligations in the absence of anything like adequate funding” said Mr Game.

“There has not been any increase in the amount paid to private practitioners by Legal Aid since 2007. There has not even been indexation for CPI increases over that period. This means that barristers undertaking legal aid work have experienced at least a 20 per cent reduction in fees in real terms over the last twelve years. As a result, it is no longer financially sustainable for many barristers to spend the time and do all that is necessary to undertake legal aid work” Mr Game said.

The current hourly legal aid fee for barristers is substantially less than (and by a wide margin) the fees paid by other NSW Government agencies, and also lags well behind those in other States. Fixed rates for preparation time do not reflect the work involved to prepare for any of the more complex cases, while fees for appearances in court are based on an unrealistic assumption of five hours work per court day, when in reality an average court day will generally involve a barrister working around ten hours, and often significantly more, in order to properly prepare and represent their clients in court.

“Preparation for each court day is time consuming and important in the fulfilment of barristers’ duty to the Court, and is essential to make the most efficient use of public resources, including the time of judges, Crown Prosecutors, court staff, witnesses and jurors” Mr Game said.

“The court day on which legal aid fees operate, and other arbitrary restrictions, mean that in addition to working at a substantially discounted rate, lawyers are expected to provide a further contribution by working many additional days and hours for free.” said Mr Game.

“The current subsidisation of the justice system by the legal profession comes at a great personal and financial cost to those barristers who have been willing to represent clients in legal aid matters. Once

unpaid hours and overheads are taken into account, some barristers undertaking legal aid matters find themselves working for around half of the minimum wage.” Mr Game said.

“The lack of funding inevitably leads to a decline in experienced practitioners undertaking legal aid work which will in turn result in an increase in self-represented litigants, effectively creating one system for those who can afford legal representation and one for those who cannot.”

“In an environment where the volume of legal aid work and court delays are increasing, a boost in legal aid fees will have a substantial impact on efficiencies in the justice system. Greater legal aid fees for counsel would result in an increase in the quality of representation in court, and in turn reduce average trial lengths in the District Court in particular” said Mr Game. “In the absence of such an increase, further pressure will be placed on an already overstretched court system and badly affect outcomes for clients and victims of crime.” said Mr Game.

“The Bar Association has frequently raised these issues with successive governments over many years, but our representations have fallen upon deaf ears. The Productivity Commission warned five years ago that the sustainability of the legal aid system can only be preserved if financial incentives are offered to ensure that experienced practitioners can continue to undertake legal aid work, and they too have been ignored” said Mr Game.

“There has simply been no will on the part of governments to address the problem. This is now the Government’s problem to fix – the legal profession has warned about this issue for a long time and has carried the burden through overwork and the negative impact on the health and personal life of members. The matter is now out of the profession’s hands” Mr Game said.

“In the circumstances, I will be advising our members that they are under no obligation to take on legal aid work when they will not receive anything approaching adequate payment to perform this important work.”

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