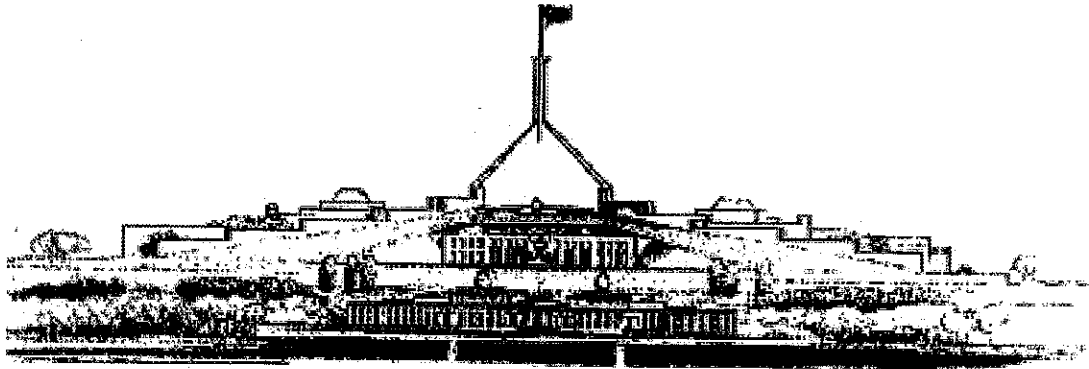




COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



THE SENATE

LEGAL AID

Ministerial Statement

SPEECH

Thursday, 13 December 1973

BY AUTHORITY OF THE SENATE

Lionel Murphy**SPEECH**

Date Thursday, 13 December 1973
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Questioner
Speaker PRESIDENT, The

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The PRESIDENT (NaN.NaN pm) -Is leave granted? There being no objection, leave is granted. (The document read as follows)-

I undertook to provide honourable senators with a comprehensive statement upon the subject of legal aid. This is a highly important subject and I shall deal with the progress already made and the Government's plans. On 25 July 1973 I announced a major step in the provision of legal aid services to persons in need, particularly disadvantaged persons. This was the establishment of a salaried legal service called the Australian Legal Aid Office that will have offices throughout Australia. It will provide legal advice and assistance on all matters of Federal law, including the Matrimonial Causes Act, to everyone in need; and on matters of both Federal and State law, to persons for whom the Australian Government has a special responsibility for example, pensioners, aborigines, exservicemen and newcomers to Australia. The offices will provide a referral service in other cases.

Another step that I announced at the same time was the appointment of a widely representative committee to examine all aspects of legal aid in Australia. Honourable senators will recall that earlier in the year - on 30 April 1973 - I announced Government approval of a grant of \$2m to the States on a per capita basis to supplement their existing legal aid schemes. This was an interim grant for this financial year, designed to effect a quick improvement in the availability of legal aid. This would not, of itself, ensure the provision of aid in all areas that might be desired. Apart from this, the Minister for Aboriginal Affairs (**Senator Cavanagh**) had introduced an Aboriginal legal aid scheme designed to make special provision for aid for Aborigines through non-government aboriginal legal services in the States and Territories. There will be co-operation between the Australian Legal Aid Office and the Aboriginal Legal Services. A special scheme for the provision of legal aid in cases raising environmental or conservation issues is being developed in conjunction with the Minister for Environment and Conservation (**Dr Cass**). A grant of aid has been made to the Tasmanian Conservation Trust in the Precipitous Bluff case in Tasmania.

The Government has taken action because it believes that one of the basic causes of the inequality of citizens before the law is the absence of adequate

and comprehensive legal aid arrangements throughout Australia. This is a problem that will be within the knowledge of every honourable senator who will on many occasions have had to inform citizens seeking assistance with their legal problems that there is nothing that he can do for them; that they will need to go and see a private solicitor. With some exception, we in Australia have been slow to respond to the need of the ordinary citizen for ready and equal assistance when confronted with a legal problem or court proceedings. The ultimate object of the Government is that legal aid be readily and equally available to citizens everywhere in Australia and that aid be extended for advice and assistance of litigation as well as for litigation in all legal categories and in all courts.

There are four major problems that, I believe, need urgent attention. First, the need to provide on an equal basis throughout Australia legal advice and assistance that will fill the gap left by the Law Society or Legal Aid Committee schemes for aid in litigation and to see that advice and assistance reaches disadvantaged people; second, the need to provide legal aid in divorce cases and in proceedings ancillary to divorce; third, the need to provide legal aid for representation in magistrates courts; and fourth, the need to avoid the 'bottomless pit' of ever increasing costs of providing legal aid.

Even a cursory examination of the position in relation to legal aid in each of the Australian States discloses significant gaps in the provision of aid and a good deal of unevenness from State to State in the kind and comprehensiveness of existing legal aid arrangements. The arrangements in some States approach much nearer to the ideal of making comprehensive provision for legal aid for all kinds of litigation and for all courts; in others there are deficiencies either in relation to the nature of the proceedings for which legal aid is provided or in relation to the courts in which aid is provided or both. There have been moves by the Law Societies to set up night referral services but, apart from a quite recent initiative in one State, there is no general availability of legal advice and assistance short of litigation. In some States there is a Public Solicitor with a strict means test and quite limited functions. In all States and in the Australian Capital Territory there are schemes administered by the Law Societies or Legal

Aid Committees under which private practitioners act in certain court proceedings and are paid a percentage of their normal fees from funds partly provided by Governments and partly by statutory interest on practitioners' trust accounts. In the Northern Territory there is an interim scheme pending the introduction of a Legal Aid Committee scheme. Up to the present, the Law Society schemes have failed to provide adequate legal aid for divorce proceedings. Where legal aid has been provided, substantial contributions towards the cost of the proceedings have been levied upon the applicant. There has been a good deal of criticism by divorce law reform associations and others about the absence of suitable arrangements for aid. This is a social problem that must be remedied. The grant of \$2m this year should effect a major improvement in most States.

There has been much criticism of the failure of most legal aid schemes to provide representation in magistrates' courts. In some States there are Public Defenders who appear for defendants in trials for indictable offences and in other criminal proceedings in courts other than magistrates' courts. It is usually the socially disadvantaged person who is unrepresented in magistrates' courts and persons who are unrepresented are prejudiced. This has properly become an issue on the part of organisations concerned with the protection of civil liberties. Many people are ignorant of their legal rights and what legal aid facilities are available. Indeed, because of their circumstances or educational background, many simply do not know how to go about getting help to identify the problem and to seek a solution. In endeavouring to provide proper arrangements for legal aid, it is worth noting the warning of the Lord Chief Justice of England, Lord Widgery who spoke in Perth this year of the twin ogres of cost and delay. He referred to the legal aid system operating in England and went on to warn of the bottomless pit that it was feared the English legal aid system might become.

On the problem of the provision of legal advice and assistance on an equal basis throughout Australia, I believe that the Australian Legal Aid Office will make an important contribution towards filling the gap between referral services and Law Society or Legal Aid Committee schemes for aid in specified litigation. It is the view of the Government that legal assistance to socially disadvantaged persons can most effectively be provided through a salaried legal service. For this reason the Australian Legal Aid Office has been established. The Office will be staffed by salaried lawyers who will work in close cooperation with community welfare organisations, established legal aid schemes, referral centres and the private legal profession. I hope that the young lawyer with a social conscience will be attracted to join the Office and, in

particular, the woman lawyer who has a talent for this kind of work. I have already received letters both from woman lawyers and women law students expressing their interests. To get the Office operating quickly in the capital cities, the existing Legal Service Bureaux that provided advice and assistance to servicemen, ex-servicemen and their dependents have been utilised. I should add a word of caution- to say that the office will not be able to provide a full service until additional staff have been recruited. Advertisements have been placed nationally seeking talented lawyers to join the office. The results of this recruiting campaign will be known soon.

The service that the Office will provide, broadly stated, will be: first, a general problem solving service of advice and assistance short of litigation to persons with an element of financial need- this will, in my view, take care of some 90. per cent of all problems that worry the ordinary citizen; and secondly, the conduct of litigation, particularly family law, environmental and other litigation in areas of special concern to the Australian Government, on behalf of persons who cannot afford the cost of representation in court.

But I do not see the new Office operating merely in buildings in capital cities. I have been impressed by overseas developments, with which many honourable senators will be familiar, that have discarded the traditional conservative approach to legal aid and have set up 'storefront' offices in cities and country areas where lawyers are few and problems are great. I see the role of the Australian Legal Aid Office as taking the law to the people who most need it. I want to see small unpretentious 'storefront' offices opened in the suburbs of the cities and in country centres. I want them to be the kind of offices to which the ordinary man or woman faced with a legal problem will go as readily as he or she would go to the garage with an ailing motor car. My intention is that the Australian Legal Aid Office would work alongside and in co-operation with bodies of all kinds that are concerned with solving the problems of the citizen and especially, of course, with the private legal practitioner. I believe that there is not only scope but a clear need for legal aid offices that are spread throughout Australia where need is greatest; offices that are staffed by salaried lawyers and that serve as a centre of legal aid activity. They would work with law students who wish to come in and help with the legal advice and assistance or with the Law Societies and Legal Aid Committees through which the private legal profession would continue to handle the greater part of litigation in the courts. The role of the Office will be complementary to the role of the private practitioner and, indeed, be an advantage to him in providing continuity and proper preparation of legal aid matters referred. Area or regional offices of

this kind appear to have worked successfully overseas, notably in the Province of Ontario in Canada.

There have already been encouraging discussions with student referral services and community legal referral services and it is intended to enter into discussions with Law Societies and other interested bodies as soon as possible. I should add that the Government has made an interim grant of financial assistance to the Fitzroy Legal Service in the suburbs of Melbourne as a pilot scheme of the 'store-front' law office type. I envisage that the decentralised store-front offices of the Australian Legal Aid Office could provide administrative support bases for community services of this kind. It is more difficult to provide a satisfactory answer to the problem of representation in magistrates' courts. This applies particularly in criminal cases where the defendants have been arrested or attend on summons and questions of bail, pleas of guilty and adjournments, need to be dealt with. In the Australian Capital Territory and the Northern Territory I would propose to have an officer of the Australian Legal Aid Office attend at the Magistrates' Courts to advise persons in custody on bail, and on pleas of guilty. If proceedings are to be defended, the defendant would, in appropriate circumstances, be provided with representation under the legal aid schemes operating in the Territories or by the Public Defenders' Offices that I intend to establish in the Territories. Similarly, I would propose to have an officer attend the magistrates' court in Sydney known as the Special Federal Court. But these arrangements would leave substantially untouched the problem of providing legal representation before a very great number of magistrates' courts in the States that handle some 90 per cent of the total volume of litigation.

I think that this is a problem that I should specifically refer to the Committee that I have appointed. One approach that attracts me- and I hope the Committee will look closely at it- is the scheme of 'Duty Counsel' or 'Duty Solicitor' that operates in Scotland and Ontario. This scheme involves attendance by private practitioners at magistrates' courts on a roster basis. They attend to bail, pleas and adjournments. They give advice to persons in custody and are paid a daily or hourly fee from legal aid funds. Cases would be referred by the Australian Legal Aid Office, Legal Aid Committees or referral services. An alternative would be to employ salaried lawyers but this could be costly where there are many widely scattered courts. I have said that I see private legal practitioners, through their Law Societies or Legal Aid Committees, performing the major work in the legal aid field, that of litigation in the various courts. I hold firm views about the necessity for a strong and independent private legal profession that can stand between the Government and

the citizens, not least in the fields of human rights, civil liberties and criminal matters generally.

Having said that, I return, to Lord Widgery's warning about the bottomless pit that legal aid could become. It can very well become such a pit in Australia unless action is taken to deal with the problem of divorce costs that have come close to wrecking the legal aid schemes of more than one State. Honourable senators are familiar with my views about the sum that ought to be charged by solicitors in an undefended divorce case. I shall be introducing legislation to change the basis of divorce from an adversary system to a single ground of permanent breakdown of marriage for more than 12 months and to simplify procedures. This will in itself reduce costs. I am determined to see that legal aid is made available in divorce matters for everyone in need and without requiring them to pay excessive contributions towards the costs. I am also determined to see that divorce does not become the bottomless pit of legal aid in Australia. My own view is that the Australian Government will need to provide continuing funds for legal aid but that the funds should not necessarily be made available in the same way as this year. What future provision will have to be made can only be assessed after a full examination of the problem. I am looking to the Committee I have appointed for assistance in this matter.

I have previously announced the constitution and terms of reference of the Committee but I should record them for the information of honourable senators. I appointed the following persons to be members of the Committee: **Mr Roy F. Turner**, a member of the Council of the Law Society of New South Wales and a Vice President of the Law Council of Australia, the Chairman of the Committee; **Mr Justice J. H. Wootten** of the Supreme Court of New South Wales, past President of the Aboriginal Legal Service; **Mr J. A. Heffernan**, Secretary of the Victorian Legal Aid Committee; **Mr E. P. Mullighan**, a member of the Executive Committee and Honourary Treasurer of the Law Society of South Australia; **Mr W. A. Lalor**, the Public Solicitor of the Territory of Papua and New Guinea; **Miss Eilish Cooke**, a barrister and solicitor of Melbourne and a member of the Fitzroy Legal Service; and **Mr J. P. Harkins**, a senior officer of the Attorney-General's Department.

The Committee has been asked to examine the areas of need for the provision of legal assistance and advice and, in particular, the areas of need not covered by existing schemes; the means by which legal assistance and advice should be provided and in what areas should they be provided by a salaried legal service; and the means by which finance for schemes of legal assistance and advice should be provided. The Chairman of the

Committee has told me that the Committee expects to provide me with an interim report soon.

I shall keep honourable senators informed of progress in the provision of better legal aid. The Government's aim is that eventually no person anywhere in Australia should suffer injustice because of the unavailability of legal advice or inability to afford the cost of representation in court proceedings.