



Closing the Gap on Unmet Legal Need

The ACT Greens' 5 Point Action Plan

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Introduction

The Greens believe equitable access to justice is a cornerstone of a modern democratic society.¹ Having the ability to speak to a lawyer and get their advice is one fundamental way to ensure that individuals can uphold their rights. Any legal issue that arises can be an unexpected and highly stressful life event for the individual involved. Where legal need is unmet and people go without advice, the quality of justice and of our society is diminished.

However, heavy reliance on the courts to resolve disputes can be costly. A safe and peaceful society can also be promoted by lowering the reliance on lawyers and courts to resolve all disputes. Therefore, proactive government investment to educate, facilitate early dispute resolution and lower overall legal demand is another important strategy to promote access to justice.

This Action Plan (a) outlines the concept of unmet legal need and how it blocks access to justice; (b) highlights why the issue needs addressing in the ACT; and (c) concludes with 5 actions to strategically invest and close the gap on unmet legal need in the ACT.

Unmet legal need

Evidence shows demand for legal assistance is greater than what the present legal system can supply.² Despite the growing number of lawyers practising in Australia, there are people who fall through the gaps and can't secure legal assistance. Unmet legal need is the term given to those people who go unassisted when they need help most.

The most visible example of unmet legal need is the person forced to represent themselves in court. Common examples include the tenant who defends a wrongful eviction and the parent forced to take unpaid leave to represent themselves in a child custody hearing.

There are however more hidden consequences of unmet legal need. These include people foregoing legitimate legal action and a general lack of awareness of individual rights and how they can be enforced.

Such scenarios do not reflect a fair or equitable justice system. Firstly, evidence shows that self represented parties don't generally run their case well placing themselves at a disadvantage,³ and secondly, legal action foregone reflects a system which can only guarantee justice to those who can afford it.

¹ ACT Greens Justice Policy, <http://act.greens.org.au/policies>.

² Senate Legal and Constitutional Affairs Committee, Parliament of Australia, *Access to Justice*, (2009) [2.54].

³ For example, the study *Legal Aid and Self Representation in the Family Court of Australia* (2003) researched judges who had heard cases with unrepresented parties and found that 63% of the judges thought the unrepresented party was disadvantaged by the lack of legal representation.

Case Study of Jenny*: foregone legal action

Jenny is a 46 year old refugee. In 2008 she had been married for 30 years. She and her husband had four children and lived in their matrimonial home in Canberra which was in the husband's name.

Events:

- Domestic violence incident in late 2008. Husband convicted of assault and moved out of matrimonial home.
- Husband transfers ownership of matrimonial home to adult son without Jenny's knowledge and moves back in during mid 2009.
- Jenny forced to move out in late 2009 with the youngest child and takes up rental accommodation and part time work.
- The Women's Legal Centre (a Canberra based Community Legal Centre) was able to assist Jenny to obtain a divorce.

Jenny now lives an uncertain lifestyle working part time, living in rental accommodation and having sole responsibility for a young child. To secure a better life she requires legal assistance to obtain:

- (1) a property settlement and payment to reflect her 30 year contribution to the family and home; and
- (2) child support payments from her ex-husband.

Jenny can not afford a private lawyer and her case does not qualify for Legal Aid. The Women's Legal Centre is able to advise on the legal proceedings required but do not have the staff to run the cases and represent her in court

At the start of 2010 Jenny has little to no prospects of securing a property settlement or the child support payments that she requires.⁴

* Not her real name

⁴ Women's Legal Centre case study.

How unmet legal need arises

Legal assistance is provided by three main groups of lawyers: (1) private law firms, (2) Legal Aid Commissions and (3) Community Legal Centres (CLCs).

The coverage provided by these groups is limited and gaps exist.

Gaps exist in the coverage because:

- (1) Not everyone can afford the fees charged by private law firms.
- (2) Legal Aid is restricted to certain areas of law. It is also means tested and some don't meet the eligibility criteria due to assets they have in their name.
- (3) CLCs operate on limited funding and target their services to specific legal areas.

The Global Financial Crisis (GFC) has increased demand for Legal Aid and CLC assistance. The 2009 Senate Committee Inquiry into Access to Justice (The Senate Inquiry) noted that the GFC has meant higher unemployment and increased applications for Legal Aid.⁵ The Inquiry stated that these circumstances will require Legal Aid Commissions across the country to tighten means test criteria even further which can only increase the number of unsuccessful applications. This will ultimately increase the demand on CLCs who, in the absence of increased funding, will be restricted in who they can assist.⁶

Quantification of unmet need

Statistical data on unmet legal need is in short supply.⁷ For this reason, Legal Aid Commissions have made the decision nationally to commission research into legal need in Australia. The research will provide detailed information on needs in each jurisdiction and the extent to which those needs are currently being met.

The research project is titled the National Legal Needs Survey and the results are expected to be released in September 2011. Importantly, the results will include the number of legal events Australians are experiencing and how they responded, including: the percentage who used legal services; used non-legal advisers; handled the event alone; or did nothing and the reasons for doing nothing.

The results will be of vital importance to quantifying the gap and represent the largest and most comprehensive assessment of its kind in Australia. Governments at all levels must use the results to assist in an evidence based response closing the gap on unmet legal need.

⁵ Senate Legal and Constitutional Affairs Committee, Parliament of Australia, *Access to Justice*, (2009) [2.17].

⁶ *Ibid* at [2.18].

⁷ *Ibid* at [2.22].

Potential Government responses to address unmet legal need

The Senate Inquiry received 71 submissions from across Australia and made 31 detailed recommendations. The recommendations addressed each of the three main groups of lawyers: private, Legal Aid and CLC. In summary, the Senate Inquiry's main findings and comments on each group were:

Private law firms: commended those who undertake pro bono legal work and encouraged governments to stimulate greater uptake of pro bono work.

Legal Aid: identified a shortfall in funding leading to strict means tests which set unrealistic eligibility criteria. On that basis recommended an increase in Australian Government funding for the Legal Aid Program.

CLCs: identified low levels of funding for CLCs which results in an inability to deliver services, retain staff or properly resource their work environment. The committee acknowledged the cost-benefit of centres, and considered that they need to be properly funded to cope with demand presenting and not presenting at their doors.⁸

Following on from these findings, the ACT Government has two investment options open to it to close the gap on unmet legal need:

Option 1 - greater investment in CLCs;

and/or

Option 2 - greater investment in Legal Aid.

⁸ Senate Legal and Constitutional Affairs Committee, Parliament of Australia, *Access to Justice*, (2009).

Investment in CLCs – the strategic option

The ACT Government can make the most targeted and strategic investment of its resources if it pursues option 1, ie greater investment in CLCs.

The first reason supporting this argument is that CLCs are uniquely placed to increase supply of legal advice while at the same time proactively educating the public and reducing the demand for legal services overall.

In part, CLCs give legal advice and represent in court those people who slip through the coverage provided by private law firms and Legal Aid Commissions. CLCs also perform community legal education and awareness work, participate in law reform activities and produce materials which the public rely on when dealing with the justice system. This work is preventative and reduces future strain on the legal system. Research has shown that for every dollar (\$1) spent in a CLC, the Government saves one hundred dollars (\$100) at later points in the justice system.⁹

The second supporting argument is that the ACT Government currently makes a substantial contribution to Legal Aid. In 2008/09, the ACT Government contribution was \$3.519 million compared to \$4.112 million from the Australian Government.¹⁰ The Australian Government's contribution to Legal Aid funding has been dropping when compared to State and Territory contributions. In 1996/97 the contribution from the Australian Government was equal to the combined State and Territory contributions, however in recent years the States and Territories combined contributions have risen to 70 percent of the total funding.¹¹ This has occurred because State and Territory contributions are increasing while Australian Government contributions have been decreasing.

Recommendation nine of the Senate Inquiry was that, "The Australian Government increase the level of funding for the Legal Aid Program with a view to sufficiently resourcing the legal aid system to meet the legal needs of the Australian people." The Australian Government needs to fully investigate and address this recommendation before States and Territories are asked to again increase Legal Aid Funding.

⁹ *The Economic Value of Community Legal Centres* (2006), prepared by the Institute for Sustainable Futures for the Combined Community Legal Centres Group NSW and the National Association of Community Legal Centres.

¹⁰ ACT Legal Aid Commission Annual Report 2008/09.

¹¹ National Legal Aid Secretariat submission, Senate Legal and Constitutional Affairs Committee, Parliament of Australia, *Access to Justice*, (2009).

Existing CLCs in the ACT

There are five existing CLCs in the ACT affiliated with the National Association of Community Legal Centres. CLCs are independent, non-profit community organisations that provide free legal services to the public.

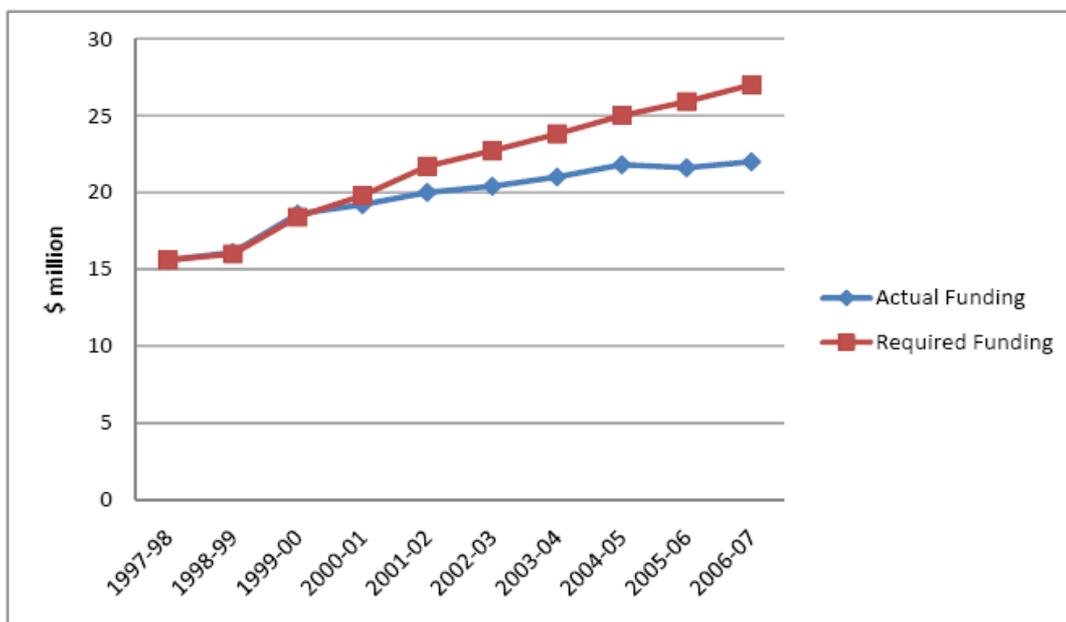
Welfare Rights & Legal Centre 10 staff Tenancy (focussing on public housing), social security and disability discrimination law	Women's Legal Centre 6 staff All legal areas relevant to women
Tenants Union 5 staff Tenancy law with a focus on rights of renters	Environmental Defenders Office 2 part time staff plus regular volunteers Planning and environmental law
Consumer Law Centre 2 staff Telecommunications, consumer credit and utilities law and general fair trading and consumer protection.	

There are other additional providers that are not classified as CLCs but nevertheless are engaged in the provision of free legal advice. Such providers include the Aboriginal Legal Service (NSW/ACT), the Youth Law Centre ACT, the Homeless Persons' Legal Service and the Disability Discrimination Legal Service. Some of these providers operate under the banner of existing CLCs while others rely on funding from Legal Aid. For the purposes of this action plan, these types of organisations are referred to as "non CLC providers".

Underfunding of CLCs in the ACT by Government

CLCs in Australia have been historically underfunded and/or funded on an inadequate year by year basis. This has been recognised in numerous State and Commonwealth inquiries.¹²

Underfunding of CLCs is a problem across Australia. Evidence to the Senate Inquiry showed the growing difference between required and actual funding. The evidence is that actual funding is reaching a plateau while required funding is continuing to rise.



Source: Information submitted to the Access to Justice inquiry by: National Association of Community Legal Centres, *Community Legal Centres across Australia – An investment worth protecting*.

This gap between actual and required funding for CLCs is likely to be larger in the ACT for two reasons:

Firstly, ACT CLCs are funded from a range of sources, including ACT Government Departments and the Law Society Statutory Interest Account, as opposed to a single designated funding program as in other States. The lack of a single funding stream results in less planning and co-ordination of funding.

Secondly, the ACT Government has not undertaken work since 1993 to measure the demand for legal services meaning that information is limited and out of date.¹³

The situation is essentially that funding comes from multiple streams through uncoordinated administration to meet an undefined and unmeasured need.

¹² Senate Legal and Constitutional Affairs Committee, Parliament of Australia, *Access to Justice*, (2009) at [2.2 and 2.8].

¹³ Legal Affairs Committee, Parliament of the ACT, *Access to Justice in the ACT* (1993).

Case study: success of the Indigenous Liaison Officer

When appropriately funded, CLCs are capable of innovative and proactive action to address key areas of legal need. One success story has been the Indigenous Liaison Officer (ILO) position operating from within the Women's Legal Centre.

Indigenous women are frequently identified as being highly isolated and disconnected from relevant services, especially legal advice.¹⁴ To address this isolation and disconnection in the ACT the Women's Legal Centre set up the Indigenous Women's Project. The project is run by the ILO and has the central aim of improving access to justice for indigenous women in the ACT.

Since the ILO was funded in 2005 the number of indigenous women assisted by the Women's Legal Centre has risen from less than 10 in 2005 to nearly 70 in 2008/09.¹⁵ The ILO is a contact point for all indigenous women in need of assistance and has had a positive impact by strengthening access to justice. The specialised expertise offered by the ILO ensures that women are accompanied to meetings with their lawyer and that they understand the advice given. The ILO then continues to work with the client after contact with the lawyer to ensure the matter progresses and offers support.

ILO success story:

Molly, an elderly Aboriginal woman, approached the ILO at a community football game. The ILO put her in contact with the WLC solicitor who assisted Molly to apply for compensation from a statutory fund set up for children who were abused in institutional care in the 1950's. Molly subsequently referred 5 cousins for assistance with similar applications.

Over the next 6 months, the Centre provided Molly and her cousins with over 40 individual advices in relation to matters including wills and probate, child protection, racial discrimination, contact with grandchildren, guardianship and a police complaint. Without the help of the ILO, it's unlikely that Molly or her cousins would have accessed legal assistance in order to recognise their legal rights.¹⁶

The ACT Government funding for the ILO has been short term or year to year. The funding is currently due to cease at 30 June 2010. Should the ILO position not be funded into the future, the increasing numbers of women accessing the assistance will have nowhere to go and the specialised service will be lost.

¹⁴ Joint Committee of Public Accounts and Audit Inquiry, Parliament of Australia, *Indigenous Law and Justice*, (2005); Senate Legal and Constitutional Affairs Committee, Parliament of Australia, *Access to Justice*, (2009).

¹⁵ Women's Legal Centre Annual Report 2008/09, p9.

¹⁶ Women's Legal Centre Annual Report 2008/09.

Case study: the need for a Mental Health Legal Centre

Anna is a Canberra resident with a mental illness. Because Anna developed a mental illness in her teenage years she is not familiar or comfortable with 'the system' and feels some services don't understand her situation. After several negative experiences she is reluctant to access mainstream services.

Anna has been detained for involuntary treatment under the Mental Health (Treatment and Care) Act 1994. Anna feels the decisions of the ACT Civil and Administrative Tribunal (ACAT) around her treatment have not been made in her best interest and her opinions have not been adequately considered. Currently Anna makes appearances before the Tribunal without legal representation.¹⁷

A Mental Health Legal Centre could provide Anna with advice, support and representation as she appears before the ACAT. The staff of the Mental Health Legal Centre would have a good understanding of the relevant provisions and rights contained in the Mental Health Act, and would be trained and experienced in understanding the difficulties faced by people living with mental illness.

A Government organisation is also pursuing Anna for recovery of a social security debt. At the time she was receiving payments she was unwell and did not have a clear understanding of her obligations. Although she now understands, she is not in a position to repay the debt, and would like her mental health at the time to be taken into account as a special circumstance. As a result of this issue Anna is experiencing significant distress and anxiety.

Resource restraints for legal providers mean there are few options for Anna. She will only be eligible for Legal Aid if and when she is required to appear in court. The stress of having to face this issue alone before that time could have negative effects on Anna's mental health.¹⁸

A Mental Health Legal Centre could provide Anna with advice and assistance to proactively address this issue and potentially keep it out of the courts. In the event the matter did proceed to court the Centre would ensure all relevant issues and considerations are brought to the attention of the court before it makes a ruling.

¹⁷ Mental Health Community Coalition ACT case study

¹⁸ Ibid

Case study: critical lack of office space

Three of the five ACT CLCs are currently co-located. The Welfare Rights and Legal Centre, Women's Legal Centre and Tenants Union all work from the same building, Havelock House in Turner. Co-location is ideal for CLCs as people coming for assistance often need the specialist advice of multiple CLCs. Having CLCs located together makes it much easier for the individual to get all the advice they need, as opposed to being referred from one side of town to the other. This need for co-location is heightened by the fact that many people needing the help of CLCs rely on public transport.

However, office space at Havelock House is more than fully utilised and the three CLCs based there are turning away volunteers who want to offer their services. For example, the Women's Legal Centre has the ability to increase volunteer solicitors but has no space to offer them to work in. The Homeless Persons' Legal Service, which is a service run from under the banner of the Welfare Rights and Legal Centre, does not currently have any office space and are using the Centre's library. The Homeless Persons' Legal Service has potential volunteer and pro bono solicitors and law students but no office space to accommodate them.

Such opportunities to address unmet legal need should not be missed for such simple reasons.

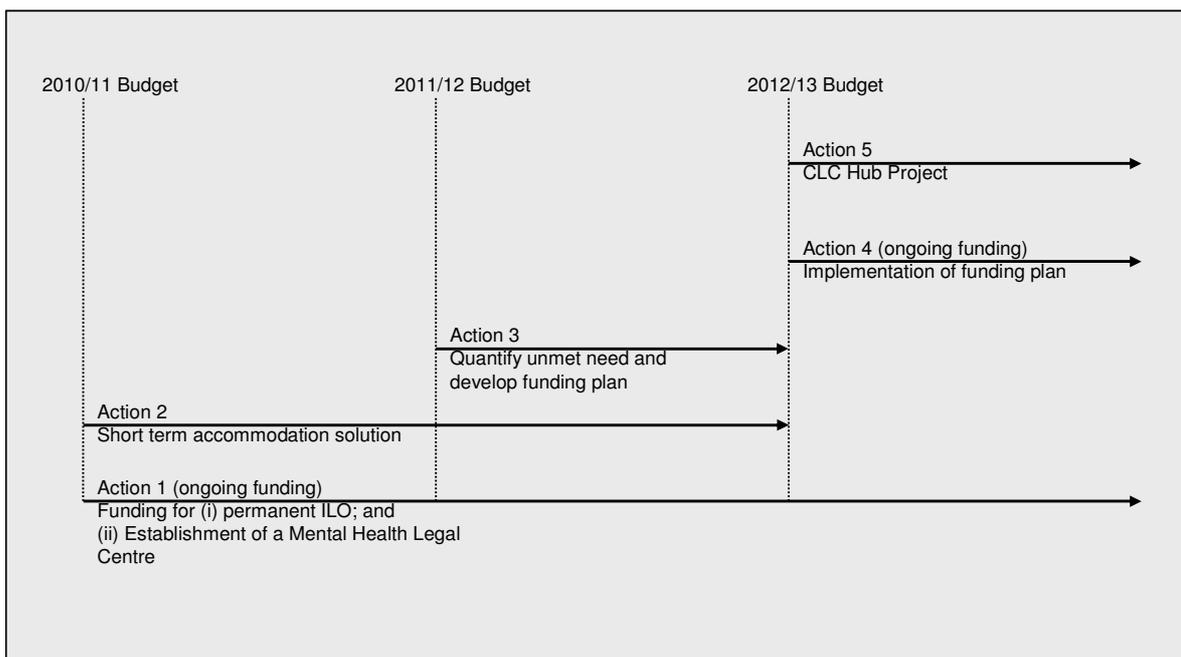
ACT Greens' 5 point action plan

This Greens' action plan sets out 5 actions to close the gap on unmet legal need in the ACT.

Actions 1 and 2 address the most urgent issues which need to be addressed immediately in the upcoming 2010/11 budget.

Actions 3 to 5 set up an integrated long term strategy to be rolled out over multiple budgets. These actions are sequential and are required to close the gap on unmet legal need. This will be achieved by returning ACT CLCs to a secure position, physically and financially, and guaranteeing their long term future.

Action 1	2010/11 Budget funding to secure: (i) a permanent Indigenous Liaison Officer; and (ii) establishment of a Mental Health Legal Centre
Action 2	Urgent location of short term office space to meet the present needs of the three CLCs co-located at Havelock House
Action 3	Quantify unmet legal need in the ACT and develop a funding plan to close the gap
Action 4	Implement the funding plan by establishing an ACT Community Legal Services Program
Action 5	Commit in the 2012/13 budget to securing an ACT Community Legal Centre Hub to house CLCs.



Action 1: 2010/11 Budget funding to secure: (i) a permanent Indigenous Liaison Officer; and (ii) establishment of a Mental Health Legal Centre

A permanent Indigenous Liaison Officer (ILO)

The successful ILO position has one-off funding ceasing 30 June 2010. To secure the future of this service the ACT Government must commit to ongoing funding in 2010/11 and beyond. The funding required is \$64,000 per annum.

The Women's Legal Centre (WLC) has submitted a request to the Government for funding for the existing ILO position and an additional specialist lawyer and a part time admin worker. As a minimum first step in meeting unmet legal need the ACT Government should commit to annual ongoing funding for the ILO position.

The additional funding required for the specialist lawyer and part time admin worker can be addressed through Action 4.

A Mental Health Legal Centre

The Government must fund a pilot project to establish a Mental Health Legal Centre in the ACT. The pilot project would cost \$150,000 over 3 years.

Action 2: Urgent location of short term office space to meet the present needs of the three CLCs co-located at Havelock House

Three of the five ACT CLCs are co-located in Havelock House and are experiencing significant office shortage meaning they are turning away volunteers.

As an urgent interim measure, the ACT Government must assist the three CLCs at Havelock House to either (a) locate alternative short term accommodation that can appropriately accommodate existing staff and volunteers, or, (b) facilitate an expansion into other existing office space at Havelock House.

Action 3: Quantify unmet legal need in the ACT and develop a funding plan to close the gap

Demand for legal services in the ACT has not been quantified since 1993.¹⁹ However, unmet legal need in the ACT is likely to be high given the GFC, Australia wide underfunding of CLCs and the ad hoc way in which the various ACT Government agencies and interest accounts currently fund CLCs.

The Survey of Australian Legal Needs is due to report in September 2011. This survey will give a jurisdiction by jurisdiction snapshot of unmet legal need. During the 2011/12 financial year the ACT Government must use the results of the survey to:

- (a) quantify the number of people falling through the gaps in the ACT;
- (b) identify the number and type of new lawyers required to help to close the gap and how those lawyers should be distributed across CLCs, non CLC providers and Legal Aid;
- (c) develop a funding plan to secure those lawyers

Unmet legal need for the Aboriginal and Torres Strait Islander community in the ACT is well known and likely to figure prominently in the findings of this work. The ACT Government must ensure indigenous unmet need is included in its funding plan.

Action 4: Implement the funding plan by establishing an ACT Community Legal Services Program

Part of the funding plan will require and increase in funding for CLCs. The most appropriate method to fund CLCs is through a central ACT Community Legal Services Program (CLSP). Similar programs operate in most other Australian jurisdictions. Having such a program in the ACT would allow for a more strategic administration of CLC funding compared to the existing system where different departments and interest accounts fund the various CLCs.

In addition, existing Australian Government funding for ACT CLCs would be distributed through the CLSP allowing for a single central funding source. In other jurisdictions, the Australian Government contributes to costs associated with administering the program and the ACT would be likely to secure a similar arrangement.

¹⁹ Legal Affairs Committee, Parliament of the ACT, *Access to Justice in the ACT* (1993).

Action 5: Commit in the 2012/13 budget to securing an ACT Community Legal Centre Hub to house CLCs

The long term solution to the present office problem for CLCs must be a Community Legal Centre Hub. The Hub needs to be:

- (a) large enough to co-locate the five CLCs, taking into account their increased staff numbers; and
- (b) located close to public transport and ACT Courts

