



South African President Jacob Zuma will appoint four new judges.

Photo: AP

South African judge puts case for court

Alex Boxsell

A senior South African judge spoke of the role of the court in promoting socio-economic rights this week as the Australian government awaits a report on its national consultation on human rights to be delivered by the end of September.

Constitutional Court judge Yvonne Mokgoro will retire in October after 15 years in South Africa's highest court to hear constitutional matters, formally opened by Nelson Mandela in 1995 and created by the country's first democratic constitution in 1993.

The court assesses whether government policies and programs promote and protect the bill of rights in the constitution — including a right to housing, health care, education and social security. Its first case in 1995 led to a finding that the death penalty was unconstitutional.

"There is all this scepticism throughout the world about the justiciability of these rights and whether it is really the business of courts to decide whether the state is meeting its socio-economic obligations to society," Justice Mokgoro said ahead of a speech at the University of NSW.

"Generally these matters are taken out of the hands of courts, but our constitution specifically protects them and gives the judiciary the task and obligation to ensure that government policies with regard to

these issues meet constitutional standards."

One of four Mandela-appointed judges due to retire from the court this year, Justice Mokgoro was the first black woman appointed to the South African judiciary. With the court's 10 other judges, she played an integral role certifying the text of the nation's final constitution in 1996. The new government of President Jacob Zuma will appoint four new judges this year, widely seen as an opportunity to reshape the direction of the court.

In Australia, the government's human rights consultation has sparked strong debate about the role of judges, with Queensland Chief Justice Paul de Jersey arguing against introducing a charter of rights because judges are ill-equipped to deal with questions of high social and economic policy.

Justice Mokgoro said her court relied on government officials to give evidence about the policy considerations behind specific programs, objectives and budgetary decisions. Apart from invalidating unconstitutional laws, the court can also require government departments to report on the improvements made in specific programs found to fall short of protecting constitutional rights. She said the public and the media had hailed the court for its interpretation of the constitution, while even politicians had, at least publicly, accepted the court's role.

Alex Boxsell

A Senate committee inquiry into access to justice has stirred up long-standing frustrations on the inadequacy of legal aid and community legal centre funding.

The Senate directed its legal and constitutional affairs reference committee to conduct the inquiry on March 16, with the first public hearing held in Perth last week, followed by another in Melbourne.

The committee is understood to be planning similar hearings in Sydney and Canberra in coming weeks, before it reports on August 17.

The hearings come as Queensland this week announced criminal and civil justice reforms, the latter seeking to broaden the pool of cases heard by lower courts.

According to Queensland Attorney-General Cameron Dick, this will reduce the cost of civil litigation and make the justice system more accessible.

The Senate committee will investigate access to legal representation, the cost of justice, ways to make litigation cheaper and faster, alternative dispute resolution, and the ability of indigenous people to access justice. However, it is legal aid and community legal centre (CLC) funding that have provoked a more passionate response.

There are 91 legal aid commissions around the country. The federal government gives recurrent funding to 128 CLCs

in urban and regional Australia, but there is no funding for CLCs in the budget. Additional funding is provided by the NSW, Victoria, Australia and Tasmania, the ACT and the Northern Territory, but do programs.

The federal government makes occasional grants. About \$20 million a year, including

Legal aid to severe restriction

Australia

in April, and CLCs in May.

Law Institute president David Gonsky last week that Australia's legal aid system is inadequate.

Similarly, it has been made impossible to continue from a diverse profession, an urgent issue.

Law Society of NSW president Joe Catanzaro said the government's failure to fund legal aid properly is associated with unrepresented



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