

2014 International Forum on Legal Aid Australia Report

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1. Country Information - Australia

Australian has a population of 23.6 million people and a Gross Domestic Product of 1,500 US\$bn. Percentage of population in poverty: In 2010, 12.8% of Australians lived below the poverty line, measured being below 50% of median income.

2. Main providers of legal aid services in Australia

There are 5 main legal aid service providers in Australia:

- **Legal aid commissions** – Australia is a federation that is divided into 8 States and Territories. Each State and Territory has a legal aid commission, established by statute. Consequently there are 8 legal aid commissions. Legal aid commissions are funded by the Commonwealth and State governments and are the largest providers of legal services to financially disadvantaged people in Australia. Legal aid commissions have a main office in each State or Territory capital city and also regional offices across their jurisdiction. Legal aid commissions use a mixed service delivery model through which legal representation services are provided by employed lawyers and also private lawyers.

- **Community legal centres** – there are about 200 community legal centres in Australia located in metropolitan and regional areas across Australia. Community legal centres work with their local geographic catchment area or in a specialist area of interest such as tenancy or disability discrimination, and have close connections to their respective communities. They primarily provide advice and/or information and referral, community legal education and some case work services. Community Legal Centres are mostly funded by the Commonwealth and/or State/Territory governments, although some do not receive any funding and rely exclusively on volunteers.
- **Aboriginal and Torres Strait Islander Legal Services** – There are 8 ATSILS. ATSILS are Aboriginal community controlled and funded by the Commonwealth government to provide legal assistance including legal representation to Aborigines and Torres Strait Islanders. Aboriginal and Torres Strait Islander peoples are also able to seek legal assistance from legal aid commissions if they wish.
- **The Family Violence Prevention Legal Services** - There are 14 Aboriginal community controlled FVPLS funded by the Commonwealth government to provide front line legal assistance services to Aboriginal and Torres Strait Islander victims of family violence. Many of the FVPLS are in remote areas.
- **Private profession** – members of the private legal profession will represent people on a grant of legal aid. About 70% of legally aided representation work is done by the private legal profession. They also volunteer at community legal centres and do occasional free legal work.

My role is the chief executive officer of Legal Aid Queensland, which is Queensland's legal aid commission. We are the third largest legal aid commission in Australia, with an annual budget of about \$110M, 14 offices, and about 440 employees. We also have a network of about 350 private law firms who are available to do legal aid work.

The directors of Australia's 8 legal aid commissions work closely together and are member of a collective body called National Legal Aid.

Across Australia, we work very closely with our colleagues in the community legal centres, the Aboriginal and Torres Strait Islander Legal Services, the Family Violence Prevention Legal Services and the private profession to provide a matrix of complementary services. Each state/territory has a collaborative group that meets regularly, and nationally representatives of respective peak bodies meet as the Australian Legal Assistance Forum (ALAF) at least twice a year to discuss future directions for legal assistance.

As I work for Legal Aid Queensland, the remainder of this paper focusses on services provided by legal aid commissions and specifically Legal Aid Queensland.

3. Legal aid commissions and recent business figures

As mentioned earlier, Australia is a federation, with a national Commonwealth government, and eight State and Territory governments. There are eight Legal Aid Commissions throughout Australia, representing each State or Territory. The Commissions are independent statutory authorities, established under the respective State or Territory enabling legislation. Each legal aid commission has a board, a director, and employees.

Applications for legal aid across Australia in 2013-14 were as follows:

- received – 160,895
- approved – 129,853
- refused – 28,892

In terms of the types of matters aided, in 2013-14, legal aid commissions across Australia granted aid in the following areas:

- criminal – 80,755
- family – 45,277
- civil – 3,821

Other services provided by legal aid commissions, using 2012-13 figures, include:

- 16 million information and referral services, community legal education activities and website page views
- 374,000 instances of legal advice and minor assistance
- 382,000 duty lawyer services
- 8,000 family dispute resolution conferences

4. Australia's legal aid funding arrangements

Legal aid commissions received \$618M in income in 2013-14, of which \$213.7M was provided by the Commonwealth government, \$291M was provided by the State and Territory governments, \$85.6M was provided by State governments from interest on solicitors trust accounts, and the remainder was from other sources (such as self-generated income through client contributions).

The table below is taken from the National Legal Aid website and sets out funding details for all 8 legal aid commissions in 2013-14.

Commissions' Budgeted Income and Expenses - 2013/2014 (excluding funding for CLCs)						
LAC	Budgeted Income					Budgeted Expenses
	CW Input Grants(\$' 000)	State Input Grants (\$' 000)	Spec.Trust & Statutory Interest(\$' 000)	Self Generated Income(\$' 000)	Total Income (\$' 000)	Total
NSW*	66,964	109,418	35,347	7,451	219,180	223,042
VIC*	46,300	67,886	25,663	5,820	145,669	143,695
QLD	46,509	44,201	19,351	3,895	113,956	113,956
SA	16,832	20,231	2,941	2,543	42,547	44,701
WA	22,227	33,158	1,000	5,185	61,570	62,918
TAS	6,483	5,933	0	335	12,751	13,330
ACT*	4,468	5,778	1,328	598	12,172	12,507
NT*	3,950	4,785	0	1,504	10,239	10,273
Total	213,733	291,390	85,630	27,331	618,084	624,422

5. Evaluating performance

Legal aid commissions use various methods to evaluate their performance. Methods include:

- Reporting to government funders about performance against benchmarks established in service delivery agreements. For example the current Commonwealth funding agreement requires legal aid commissions to report annually against a range of performance benchmarks.
- Reporting annually to their respective State and Territory parliaments. Legal aid commissions provide an annual report about their performance that is usually tabled in their respective State or Territory parliament, and made available to the public on the web.
- Reporting to boards about performance. Each legal aid commission provides regular reports to their boards about performance. For example, at Legal Aid Queensland we provide a financial report, a report on our achievement of government performance benchmarks, and also report on a range of performance indicators relating to efficiency, quality and timeliness of services.
- Client satisfaction surveys
- Various reviews, conducted by internal or external bodies. Two recent reviews, publicly available on the web include:
 - Review of the National Partnership on Legal Assistance Services by Allen Consulting
 - Access to Justice Arrangements inquiry conducted by the Australian Government Productivity Commission.

6. Service delivery methods

Legal aid commissions use a mixed service delivery model, which means that we deliver services through employed lawyers and also through private lawyers. While the use of private lawyers varies across jurisdictions, across Australia about 70% of legally aided legal representation work is undertaken by private lawyers.

Most legal aid commissions maintain panels of quality assured law firms who enter into an agreement with the legal aid commission to provide legal aid services. Panels are typically based on areas of law, and also types of matters. For example, there may be a general crime panel and a special panel for large trials. To be listed on the panel, law firms must demonstrate that they have relevant experience in the area of law.

The agreements between legal aid commissions and law firms will usually address issues relating to service quality. For example the agreements used by Legal Aid Queensland includes provisions about supervision of junior lawyers, requires compliance with case management standards, and also co-operation with file audit processes.

The rules and procedures for assigning approved cases to legal aid lawyers vary from commission to commission depending upon local circumstances. At Legal Aid Queensland there is no choice of solicitor, which means that we have the capacity to direct a grant of aid to a particular law firm or to one of our employed lawyers if we choose to do so. Most of the time, however, if a law firm electronically lodges an application for aid, then the same private law firm is assigned the approved grant of aid. In the case of an application lodged by a client, our employed lawyers are usually provided with the first opportunity to have the case assigned to them.

However if they are unavailable to take on the matter because they already have a sufficient file load or because there is a conflict of interest, then the matter is allocated to a private law firm. The method of allocation is simply a listing approach.

Wages paid to lawyers also vary between legal aid commissions. At Legal Aid Queensland we based our wages on government pay rates, and as a result are competitive with other government agencies for lawyers.

7. Types of legal aid services and types of matters aided

Legal aid commissions provide legal services to financially disadvantaged peoples in areas of law such as crime, family, child protection, domestic violence and a range of civil law areas such as anti-discrimination and consumer law.

The services provided by legal aid commission include:

- Community legal education
- On-line and face to face legal information and resources, such as publications
- Legal advice and minor assistance. Minor assistance involves minor follow up services to advice such as drafting letters.
- Duty lawyer services, referring to court based legal services. Criminal law duty lawyers represent defendants on charges. However family law duty lawyer services, are more akin to a court based advice service.
- Dispute resolution services. The dispute resolution services provided by legal aid commissions are principally family law lawyer assisted dispute resolution services which seek to achieve a negotiated outcome to family disputes and so avoid the need for a family court hearing.
- Legal representation services.

Some legal aid commissions have call centres to triage requests for legal assistance. All legal aid commissions have websites, which are well utilised by Australians to obtain legal information.

Legal aid commissions use a mixed service delivery model, which means that we deliver services through employed lawyers and also through private lawyers. While the use of private lawyers varies across jurisdictions, across Australia about 70% of legally aided legal representation work is undertaken by private lawyers.

Numbers and types of grants of aid are included in Section 3.

8. Application procedures and criteria for granting aid

Legal aid commissions use strict criteria when granting aid for legal representation. This way we can make sure we are using our funding to help those who are least able to afford a lawyer.

We use three sets of criteria to determine if legal aid will be granted. These are the means test, funding guidelines and in most cases, a legal merits test.

The means test looks at your income and assets to see if you are financially eligible for legal aid. If you rely on government welfare payments for your income, you will usually be eligible for legal aid, as long as your assets are within the set limits.

The guidelines tell us the types of cases we can fund, based on the priorities set for us by the state and federal governments.

Some of the priorities for Legal Aid Queensland are:

- Criminal law
 - o District and Supreme Court criminal proceedings
 - o Indictable offences in the Children's Court (these are serious offences)
 - o Appeals to the Court of Appeal or High Court
 - o Magistrates court committal hearings where the maximum penalty is more than 14 years in jail
 - o Bail applications.
- Commonwealth Family law
 - o Urgent matters where a child's safety or welfare is at risk or the applicant's safety is at risk
 - o Urgent matters where there is an immediate risk of a child being removed from Australia or to a remote location in Australia
 - o Separate representation of children
 - o Parenting plans and orders
 - o Location and recovery orders
 - o Injunctions relating to family violence.
- State Family law
 - o Child protection proceedings
 - o Domestic and family violence matters
- Civil law
 - o Discrimination matters.
 - o Consumer law matters.

Under the merits test we assess the merit of each person's case by looking at:

- the legal and factual merits of the case and if it is more likely to succeed or fail if it goes to court
- if a sensible person would risk their money to take the case to court
- if the benefit the applicant will receive from having a lawyer justifies spending limited public funds on their particular case.

9. Special services or standards designed specifically for disadvantaged groups

Legal aid commission's guidelines are often designed to assist access to services for disadvantaged groups.

For example, many legal aid commissions operate call centres that filter access to free legal advice services. The filtering criteria used for this purpose often involve client characteristics such as intellectual disability or age, or type of law, such as domestic violence.

In prioritising funds available for and deciding whether a grant of legal assistance is to be made, the particular circumstances of the applicant are often taken into consideration. For example, the grant of aid guidelines used by most legal aid commissions for family law matters priorities grants of aid for the following types of non-urgent legal matters:

- there is, or is a likelihood of, domestic violence, especially if an allegation of domestic violence has been made
- concerns as to the safety, welfare and psychological wellbeing of a child have been identified and require further investigation
- the applicant has a language or literacy problem

- the applicant has an intellectual, psychiatric or physical disability
- it is difficult for the applicant to obtain legal assistance because the applicant lives in a remote location
- the child/children are Aboriginal or Torres Strait Islander as defined under section 4 of the Family Law Act 1975.

Also our grants of aid guidelines have been developed to help identify applicants who would not usually meet our means test, but deserve special consideration because they experience multiple disadvantages – such as living in a remote area or having an intellectual, psychiatric or physical disability or other disadvantage.

10. Monitoring quality

Legal aid commissions utilise a range of different methods to measure quality. I have referred to how we monitor quality at Legal Aid Queensland.

First, for our employed lawyers we have a Quality Legal Services Framework with a number of elements including a detailed set of case management standards, regular file audits, and training. We have a performance benchmark of 90% satisfactory file audit outcomes.

Second, for private lawyers, we also audit their legally aided files from the perspective of both compliance with case management standards but also from a financial audit perspective. Again we have a benchmark of 90% satisfactory outcomes.

Third, for grants of aid, we audit our grants officers' files to ensure that they are complying with policies and procedures. We also have a performance benchmark of less than 6% of grants refusal being overturned on external review.

Fourth, we have a complaints system that is oversighted by a governance unit in our corporate services area. All complaints are investigated and followed up, and we have regular reporting on complaints outcomes to our executive management team.

Fifth, we conduct a client satisfaction survey once every two years.

11. Informing potential applicants of the availability of legal aid services

All legal aid commissions have a range of strategies to make the community aware of the availability of legal aid services.

Strategies utilised by legal aid commissions to make the community aware of the availability of legal aid services include:

- **Duty lawyer services.** Due to their location at courts, duty lawyer services are a practical way to raise awareness of legal aid services.
- Maintaining **websites** with information about service availability. There has been strong growth in website usage in recent years.
- Issuing **media releases** about service availability, particularly in regional areas. For example, Legal Aid Queensland issues media releases about the availability of family law duty lawyer services when the Family Court of Australia visits regional centres.

- Distributing posters, pamphlets and other **publications** about the availability of legal services to courts, other legal service providers, government agencies and non-government organisations.
- **Outreach** work to smaller communities to raise awareness of services.
- Participating in **community events**.
- Operating **call centres** which are accessible through a toll free number

12. Reducing the amount of disputes which resort to the courts, including law reform and community legal education.

Strategies utilised by legal aid commissions to reduce the amount of disputes which resort to the courts include early resolution legal processes, community legal education, and law reform.

Examples of **early resolution legal processes** include:

- **Family law dispute resolution conferencing programs** – see Section 7 above.
- **Grants of aid for other mediation and conferencing** – grants of aid are usually available for mediation processes. For example, in child protection matters, grants of aid are available for court ordered conferencing.

In terms of **community legal education**, legal aid commissions also provide a range of community legal education activities. Typical types of community legal education activities include publications, information on websites, conducting community legal education sessions for community members and also non-legal community workers, and activities at community events.

At a national level, legal aid commissions seek to collaborate on community legal education activities through the National Legal Aid Community Legal Education Working Group. A good example of a national legal aid program was the *What's the Law? Australian Law for new arrivals* resource to help newly arrived refugees and migrants understand the Australian legal system.

Legal aid commissions also engage in **law reform**. Following amendments the National Partnership Agreement on Legal Assistance Services, our law reform activities are largely restricted to responding to government requests for feedback on law reform proposals, rather than pro-active advocacy for law reform.

13. Making services accessible through technology

As discussed above, legal aid commissions all maintain **websites** with information about service availability. There has been strong growth in website usage in recent years.

Many commissions also have systems that enable private lawyers **to apply for legal aid** electronically, rather than in paper form. In Queensland, about 50% of all applications are now electronically lodged.

Legal aid commission also utilise **video** technology to access clients in remote locations or prisons.

Legal aid commissions have not yet implemented any web based legal advice systems; however there is growing interest in this area.

14. Difficulties encountered in promoting legal aid work in recent years

Legal aid commissions have a great deal of freedom to promote legal aid work. The only restriction on legal aid work imposed in recent years has been amendments to the National Partnership Agreement on Legal Assistance Services, as a consequence of which our law reform activities are largely restricted to responding to government requests for feedback on law reform proposals, rather than pro-active advocacy for law reform.

15. Mechanisms of co-operation with legal aid organisations abroad

Australia's legal aid commissions do not currently have formal instruments of co-operation with legal aid organisations abroad. However legal aid commissions do provide training and support to some legal aid commissions outside of Australia. For example in recent years Legal Aid Queensland has been hosting lawyers and other officers from legal aid bodies in Papua New Guinea and the Solomon Islanders.