

Country Report Speech

2018/11/01

To the organisers and hosts of this conference, thank you for the invitation to attend and to be a part of this exciting discussion.

Introduction

The primary challenge for Legal Aid Commissions (LACs) in Australia is to address increasing legal need in civil law areas such as family violence and elder abuse, while maintaining crucial frontline litigation services in family and criminal areas. The nation-wide LAW Survey indicates that only 2% of legal problems occur as criminal problems in isolation – while 98% have some relationship to civil law.¹ Despite this, 63% of grants of aid are allocated to criminal matters, 34% to family matters, and only 3% to civil law – virtually the same ratio as in 2013-2014. While the right to a fair trial for criminal defendants forms the foundation of an equitable justice system and cannot be compromised, addressing criminal law issues in isolation will fail to address the vast majority of legal need in the population. In consequence, LACs in Australia

¹ Productivity Commission, *Access to Justice*, Volume 1 p 96 Figure 2.4.

are under pressure to continue providing high quality representation to people whose liberty or safety is at risk, while also addressing the civil law needs of a much broader section of the population.

This increase in demand is occurring in the context of funding that is stationary or decreasing in real terms, and a shift in program methodology towards a short-term, project-based funding. Additionally, as private lawyers' fees continue to increase, fewer people than ever are able to access private legal assistance.

Therefore, LACs in Australia must find more ways to provide innovative, effective, and efficient assistance to a large number of people, while continuing to provide high quality representation to the most vulnerable members of the community – all this in the context of a fixed budget.

I represent National Legal Aid (NLA) here today as its current Chair. NLA is a forum comprising the directors of the eight state and territory legal aid commissions (LACs) in Australia.

It is important to note that LACs are not creatures of Commonwealth legislation – they are State/Territory entities. NLA is not an agency in its own right.

(I) Legal Assistance in Australia

There are four main legal assistance providers in Australia. These are:

- Legal Aid Commissions (LACs)
- Aboriginal and Torres Strait Islander Legal Services (ATSILS)
- Family Violence Prevention Legal Services (FVPLS), and
- Community Legal Centres

As set out in the Country Report, nationally, LACs are the main provider of legal assistance services in Australia

- in 2017-18, LACs provided over **2.2 million legal services** to a population of around 24 million
- Nearly all courts and tribunals involve the provision of representation services by LACs

Eight LACs deliver legal assistance both through the direct provision of legal assistance with **1,245** in-house lawyers, which comprises about **31%** of cases, and through partnerships with the other providers, in particular the **4,725** private panel lawyers, who provide about 69% of representation services.

The mixed model has clear benefits, including avoiding legal conflicts, capitalising on private practitioners' expertise, and increasing the geographical reach of legal aid services.

However, the mixed model also presents challenges in relation to its financial viability. This is part of an ongoing discussion that we must have with government, about the most inexpensive way to deliver services.

One major issue is that low fee rates can lead to 'juniorisation' and lower quality of services. On the other hand, competitiveness operates to keep costs down and provide quality assurance.

This debate points to the need for coherent bi-partisan legal aid policy And an increase in overall funding for legal aid services.

So, let's look at LAC funding.

(II) Funding for Legal Aid Commissions

The national LACs budget for 2017-2018 was \$742m. It derives from four main sources. These are: Commonwealth government grants; state government grants; public purpose/statutory interest on trust funds; and other income including donations and interest.

Federal and state governments provide the bulk of LAC funding (86% in 2017-18). But the other sources are not insignificant.

In addition to fiscal tightening, interest rates have been down, meaning that income from public purpose funds has decreased by around 27% in the last five years. Contributions from clients are neither reliable nor easily obtained, due to the impecunious cohort of clients that we assist.

Overall, while legal aid funding has been increasing *as a dollar amount*, over the last five years (from \$634 million in 2012-13 to \$742 million in 2017-18) it has been decreasing as a proportion of Gross National Income. We can

extrapolate from this that fewer people, as a proportion of the population, will receive assistance. This is enlarging the 'justice gap' which I will address later.

Although not disaggregated in the Country Report it is worth taking a deep dive at this point into Government funding policy, and look at what might herald a concerning change in approach. There are two main program mechanisms for delivering government investment to LACs:

Core funding (for frontline services and grants of aid) – this is provided under five-year National Partnership Agreements, and

Project funding provided outside the NPA.

Overall trends indicate that core funding is stationary or decreasing in real terms – conversely, there is an increased trend towards project-based funding.

For example, in the past year, around 15% of funding for Legal Aid ACT was project funding, for around 6-10 projects in total. This means that an increasingly large proportion of income is dependent on the delivery of specific projects, which creates uncertainty for LACs in comparison to guaranteed recurrent funding.

This may also point to a policy move away from litigation towards alternative services and early intervention; it is reflective of short-term political cycles and the need to have ‘announceable items’ in government budgets. However, the uncertainty created by short-term funding leads to challenges for staff retention and greater competition between service providers for funding, which undermines the potential for collaboration and jurisdictional planning.

In light of this, NLA has proposed that future funding arrangements should guarantee that no provider will be worse off² – some have also argued that all government funding, including project funding, should be delivered through the NPA.

However, regardless of the means, we know from experience that you can only get the services you pay for!

Importantly, service levels and grants of legal assistance are tied to obligations under the NPA.

² See ‘Funding Allocation Model’ – p 11 NLA sub to NPA review

And the Commonwealth is steadily trying to narrow the eligibility criteria for legal assistance rather than leaving it to legal aid providers to determine

who are the most needy of all the vulnerable and disadvantaged in our society?

As well as providing legal services to people experiencing financial disadvantage, there are eight priority groups which encompass people who experience disadvantage because of age, disability, Indigenous status, language barriers, living in an isolated area, or experiencing family violence.

There is no doubt that these groups are recognised as experiencing a high incidence of legal problems, as well as having low rates of resolution due to factors of vulnerability. For example, people with a disability are twice as likely to experience a legal problem compared to the general population,³ and rates of resolution decrease as people get older.⁴ But is that the end of the story? A more refined analysis must critique the drivers of government investment in legal aid.

³ Law and Justice Foundation, *Legal Australia-Wide (LAW) Survey 2012*, Table 5.3 p 66.

⁴ Ibid Table 7.9 p 148.

(III) Delivery of Legal Assistance

LAC's provide high volumes of services including free legal information and advice, duty lawyer services, and community legal education; together, these services make up over 90% of the services provided by LACs.⁵ The remaining 10% of services are the more resource-intensive forms of assistance –

Facilitated Dispute Resolution and grants of ongoing representation in judicial proceedings.

I want to focus on this form of litigation assistance now.

Grants of legal assistance for ongoing representation are the core business of LACs. This is where the LACs do the 'heavy lifting' across the justice system's courts and tribunals.

- Nationally in 2017-18 there were 184, 903 applications, of which 80% (148, 123) were accepted and 16% (25, 752) were declined
- This represents a slight decrease since 2013, when 81% of applications were accepted, but 18% were refused.

⁵ NLA Submission to ILAP Review November 2018 page 4 Appendix A.

- So, across this 4 year period the Commissions have absorbed the increase in work – and are refusing less.

Grants of legal assistance are determined based on means, merit, and matter tests. I will leave the discussion for ‘merit’ and ‘matter type’ for another occasion and focus on what the ‘means test’ means because I want to highlight its primary ‘unintended’ consequence – which is to create a large gap between those who receive legal assistance for litigation and those people who can afford private representation.

Means tests consider cash income, which is set at about 120% of the poverty line, and actual assets, including houses, cars, and property. Reasonable expenses for housing and childcare are taken into account as deductibles in this equation. As documented in the Country Report 13% of the population are living below 50% of the medium income (of \$426.30 per week) and 20.1% are below 60% of the medium income (of \$511.55 per week).

A recent Productivity Commission Report found that, when the income and assets tests are considered together, only around 8% of the Australian

population is eligible for a grant of assistance, despite the fact that about 14% of Australians live below the poverty line (\$23,050 pa for a single person). Some people have described this as the ‘welfarisation’ of Legal Aid – that is, it is available primarily to recipients of government benefits who live in public housing.

Conclusion: Expanding Services to meet the ‘Justice Gap’

So, in conclusion I want to say a few words about this crucial notion of the ‘justice gap’.

Harsh means tests result in a large ‘gap’ (called the ‘justice gap’ or ‘missing middle’) between those who receive legal aid (the very poor) and those who can afford private legal representation (upper middle and high income earners).

The Productivity Commission estimates that rates for private lawyers range from \$350 to \$600 per hour, while the average full-time employee earns just \$34 per hour.⁶ To put this in context, almost all full-time wage earners would be ineligible for legal assistance. It was not surprising that in 2014 the

⁶ Productivity Commission, *Access to Justice* Volume 1 p 115.

Australian Government Productivity Commission recommended expanding the means test, 'to better align the means test with other measures of disadvantage' – however governments seem reticent to fully remedy the shortfall, despite a significant body of evidence to indicate that legal aid is a cost-effective investment.

In this context, the key drivers of legal aid policy must be to simplify access to legal processes and find ways to empower participants; services should focus on early intervention and de-escalation in order to reduce the costs to the parties and to the community.

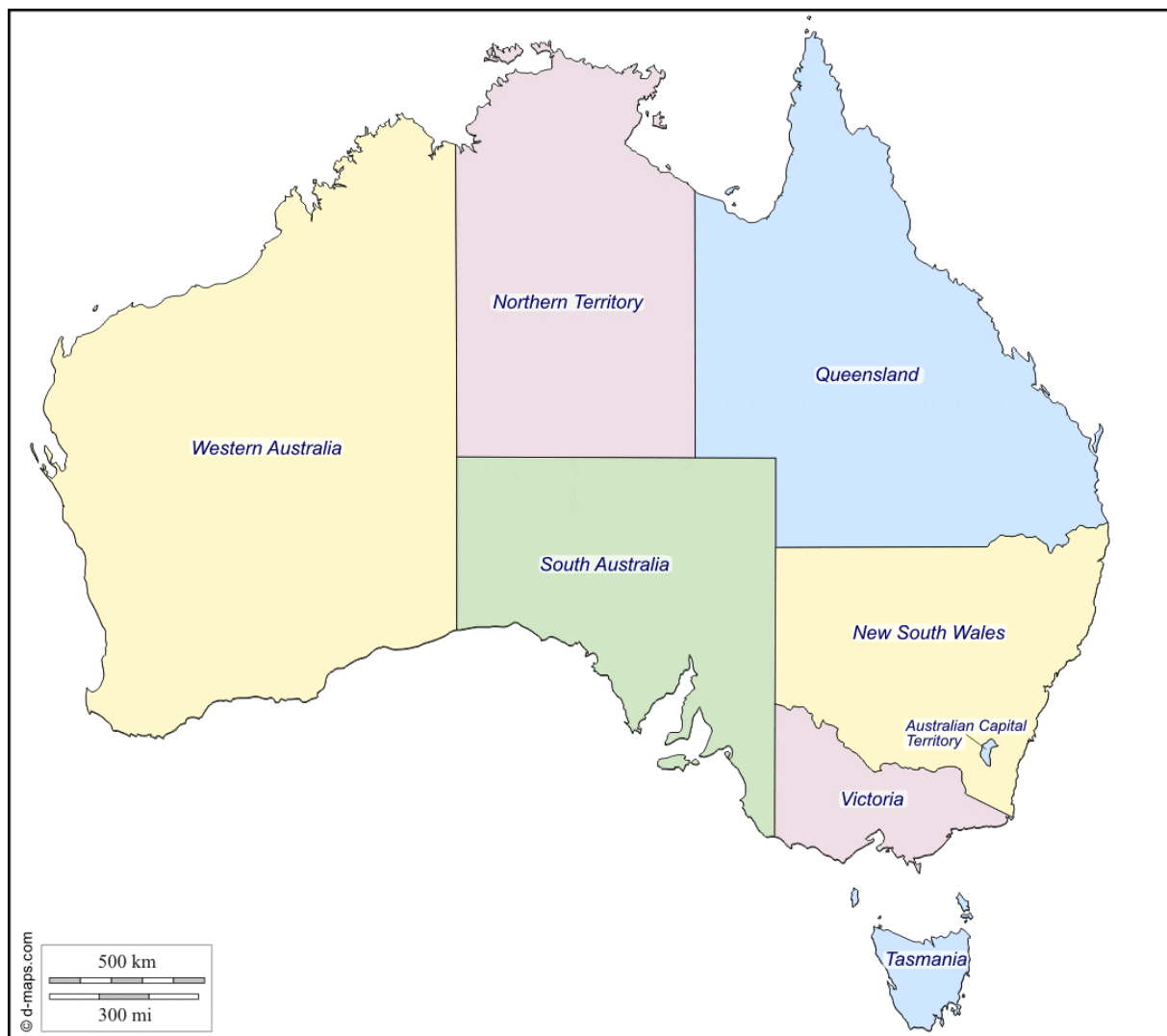
BUT: Whilst low-intensity and low-cost services such as legal information and unbundled assistance can help, they are not always sufficient – and where low-intensity services are inadequate, matters are likely to escalate to litigation. In this sense, the shift towards providing holistic services for a greater number of people has not been able to bridge the ever-growing 'justice gap'.

Thank you for the opportunity to address this conference. I am sure the dialogues over the next few days will provide insight into how best our sector can move forward.

IFLA Country Report - Australia

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1. Please provide the following information about your country:

Your Country				
Country	Population	GDP	Poverty Line & Percentage of Population in Poverty	Total No. of Practicing Lawyers in the Country
Australia	24,970,166 ¹	\$1.323 trillion ²	13.3% of population living below 50% of median income (\$426.30/week) 20.1% of population living below 60% of median income (\$511.55/week) ³	66,211 in 2014 ⁴
Your Organisation				
Name of Legal Aid Organisation(s)	Date of Establishment	Total No. of Applications Received in the Past Year	Total No. of Applications Approved in the Past Year	Total No. of Applications Rejected in the Past Year
Legal Aid Commissions (LACs)	The Australian Legal Aid Office was established in 1973. The Commonwealth Legal Aid Commission Act 1977 established the independent legal aid commissions in each state and territory (now repealed and replaced with State/Territory Acts)	Across all states and territories: 184,903 See PDF marked Appendix 1	Across all states and territories: 148,123 See PDF marked Appendix 1	Across all states and territories: 25,752 See PDF marked Appendix 1

¹ Australian Bureau of Statistics, Population Clock

<<http://www.abs.gov.au/ausstats/abs%40.nsf/94713ad445ff1425ca25682000192af2/1647509ef7e25faaca2568a900154b63?OpenDocument>>.

² World Bank Estimates – Australia, <<https://data.worldbank.org/country/australia>>.

³ Poverty in Australia – 2016 National Report, <https://45hbzy11zfk22hzfapc5zhem-wpengine.netdna-ssl.com/wp-content/uploads/2016/10/Poverty-in-Australia-2016.pdf> 11.

⁴ LCA FAQs – How Many Lawyers are there in Australia, <<https://www.lawcouncil.asn.au/resources/faqs/how-many-lawyers-are-there-in-australia>>.

Total No. of Legal Aid Lawyers (including staff and private lawyers)	Total No. of Non-Legal Professionals (e.g. social workers, counselors, community/culture workers)	Government Budget for the Legal Aid Organisation in the Past Year	Total Legal Aid Expenses in the Past Year	Proportion of Legal Aid Budget Funded by the Government
1,245 in-house lawyers (approx) 4,725 panel practitioners (approx)	No data	Total budgeted income from State and Commonwealth governments in 2017-18: \$655.4 million ⁵ (see Table 22, Appendix 2).	Total budgeted expenses 2017-18: \$757.4 million (see Table 22, Appendix 2)	86.5% in 2017-18 ⁶

2. Please describe the main provider(s) of legal aid services in your country:

- (a) What is the nature of the provider's organisation (i.e., a government department, an independent statutory body or association)?

Legal assistance in Australia is provided primarily through four organisations, each of which receives funding from either or both of the Commonwealth and respective State or Territory governments. The four main funded providers are:

- ✓ Legal aid commissions (LACs)
- ✓ Aboriginal and Torres Strait Islander Legal Services (ATSILS)
- ✓ Family Violence Prevention Legal Services (FVPLS)
- ✓ Community legal centres (CLCs).

Each LAC is an independent statutory body, established under an Act of the State or Territory in which it operates. The other three service providers are associations.

3. Please describe the legal aid organization and the recent business figures:

- (a) Organisational structure.

Appendix 3 sets out the organisational structure of each of the LACs. Broadly, each organisation contains:

- ✓ Board of Directors
- ✓ Chief Executive Officer
- ✓ Heads of practice/practice managers
- ✓ Lawyers

LACs also variously employ para-legals and increasingly social support staff.

⁵ Not including Spec Trust & Stat. Interest and Other Income.

⁶ See Table 22, Appendix 2.

(b) Analysis of the case types aided in the past year.

LACs receive applications in areas of criminal, civil, and family law. Nationally in 2017-18:

-) 63% of applications were in the area of criminal law,
-) 34% in family law, and
-) 3% in civil law.

See Appendix 4 for a detailed breakdown of matters by state/territory and by case type.

(c) What is the number and percentage of cases handled by in-house/staff attorneys and legal aid lawyers in private practice?

Nationally in 2017-18, 31% of matters (46,489 matters) were dealt with in-house, while 69% (101,632 matters) were assigned to lawyers in private practice. See Appendix 5 for figures by state/territory and by type of matter.

(d) What has been the major development strategy of your organisation (or legal aid organisations in your country) over the past five years? What was the reason for adopting this strategy?

Under the *National Partnership Agreement on Legal Assistance Services 2015-2020* (NPA), LACs in Australia have been focussed on five main objectives:⁷

- Targeting legal assistance to priority clients with the greatest legal need;
- Promoting collaboration between legal assistance service providers, governments, the private legal profession and other services;
- Providing legal assistance services that are appropriate, proportionate and tailored to people's legal needs and levels of capability;
- Providing services to identify legal problems and facilitate early resolution; and
- Providing legal information and referral services.

Identifying and resolving legal problems before they escalate is a cost-effective way of providing legal assistance. This objective is achieved through programs such as community legal education (CLE), outreach, and Legal Aid websites and helplines. Furthermore,

⁷ Commonwealth Attorney-General's Department, *National Partnership Agreement on Legal Assistance Services 2015-2020*,
<<https://www.ag.gov.au/LegalSystem/Legalaidprogrammes/Documents/NationalPartnershipAgreementOnLegalServices.pdf>> 3, cl 9.

providing referrals for the resolution of non-legal problems is important due to the complex nature of the problems that disadvantaged clients face.

4. Please describe the legal aid funding arrangements of your country and your organisation:

- (a) What are the sources and the amount of legal aid funding? Are there caps on annual spending?

LACs receive funding from four main sources. These are:

-) Commonwealth government grants (\$225.2m AUD in 2016-17)⁸
-) State government grants (\$403.4m AUD in 2016-17)⁹
-) Public purpose/statutory interest on trust funds (\$67.1m AUD in 2016-17)¹⁰
-) Other income (\$33.8m AUD in 2016-17)¹¹

See Appendix 2 for a detailed breakdown of funding sources.

- (b) Has your organisation experienced large-scale funding cuts? If so, what were the strategies to respond to such a situation?

Whilst legal aid providers in Australia have not experienced large-scale funding cuts, growth in funding has been insufficient to keep pace with inflation, and so an increasingly small proportion of the population are eligible for legal assistance. The Australian Government Productivity Commission found that there are more people living in poverty (14%) than are eligible for legal aid (8%).¹² “While the LACs’ income and assets tests are based on the national means tests thresholds, the reality of fixed budgets means that LACs have not been able to keep updating the thresholds to keep pace with inflation”,¹³ and that “Client profile data from LACs confirms the welfarisation of legal aid”.¹⁴ The Productivity Commission concluded that \$57m would be required annually, to “better align the means test used by LACs with other measures of disadvantage.”¹⁵

⁸ Appendix 2, Table 21.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

¹² Productivity Commission 2014, *Access to Justice Arrangements*, Inquiry Report No. 72, Canberra, 1021-22.

¹³ Ibid 716.

¹⁴ Ibid 717.

¹⁵ Ibid p 741.

- (c) What is the percentage of funding spent on paying lawyers' fees and costs, and on administration expenses respectively?

No data.

- (d) In addition to lawyers' costs, does legal assistance extend to cover costs such as court costs, government charges, and any shifting costs awarded against the legal aid recipient?

With some exceptions, (for example, test cases where an indemnity is sought in advance),¹⁶ a grant of legal aid does not cover court costs, or an award of costs against an unsuccessful party. However, in most jurisdictions in Australia, a recipient of legal aid will be eligible for a court fee waiver, and most other necessary disbursements will be covered.¹⁷

5. Please describe the legal aid service delivery models in your country (or organisation):

- (a) Are the cases that are granted legal aid assigned to/handled by in-house/staff attorneys or by lawyers in private practice?

In 2017-18 nationally 31% of matters were dealt with in-house, whilst 69% were referred to lawyers in private practice. This arrangement is known as the mixed model of service delivery.

The Productivity Commission report identified the following benefits to the mixed model:

-) Harnessing private sector expertise
-) LACs in-house lawyers specialising where the private sector is unable or unwilling to provide services
-) Flexibility
-) Choice of provider while avoiding issues of quality and information asymmetry (between lawyer and consumer)
-) Conflict of interest situations can be managed
-) Creation of competition between public and private lawyers, and costs control.¹⁸

¹⁶ Victoria Legal Aid, *Handbook for Lawyers*, <<https://handbook.vla.vic.gov.au/handbook/17-decision-to-grant-or-refuse-assistance/limits-on-costs-payable-by-vla>>.

¹⁷ *Civil Procedure Regulation 2017* (NSW) cl 13; Family Court of Australia, *Guidelines for Exemption from Court Fees* <<http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/reports-and-publications/publications/fees/guidelines-for-exemption-of-court-fees>>.

¹⁸ Productivity Commission 2014, *Access to Justice Arrangements*, Inquiry Report No. 72, Canberra, 724-5.

(b) What are the criteria to register as a legal aid lawyer?

Solicitors at Legal Aid must have obtained a Bachelor of Laws, have completed a Graduate Diploma of Legal Practice, and have a current practising certificate.

(c) What are the rules and procedures of assigning approved cases to legal aid lawyers?

Procedures for assigning cases (either to in-house legal aid lawyers, or to the private legal profession) differ slightly between jurisdictions. In the ACT, section 11 of the *Legal Aid Act 1977* (ACT) sets out the guidelines for determining the allocation of work. The factors that must be considered are:

- a) the need for legal services to be readily available and easily accessible to disadvantaged people;
- b) the need to make the most efficient use of the money available to the commission;
- c) the desirability of enabling a legally assisted person to obtain the services of the legal practitioner of his or her choice;
- d) the desirability of maintaining the independence of the private legal profession;
- e) the desirability of enabling officers of the commission to utilise and develop their expertise and maintain their professional standards by conducting litigation and doing other kinds of professional legal work.

On a practical level, the allocation of work also depends on the presence of any legal or personal conflicts, and the particular area of expertise of the practitioners in question.

(d) How do the salaries and fees paid to legal aid lawyers compare with the general market rate?

No national data is available for this measure. However, a 2015 report commissioned by the Law Society of New South Wales,¹⁹ found that the estimated mean income of government solicitors (including Legal Aid solicitors, but also solicitors in other organisations such as government departments) was \$120,479,²⁰ compared to \$125,208²¹ for private solicitors and

¹⁹ Law Society of New South Wales, *2015 Profile of the Solicitors of New South Wales*, <
https://www.lawsociety.com.au/sites/default/files/2018-03/Gender%20stats%202015%20profile.compressed_0.pdf>.

²⁰ Ibid 15, Table 8.

²¹ Ibid.

\$164,526²² for corporate solicitors. The discrepancy was even greater for solicitors in CLCs, for whom the estimated mean income was \$67,989.²³ It is likely that this trend would also be reflected in other states and territories.

Fees paid to private practitioners undertaking legal aid work are generally considered well below market rates.

6. Please describe the scope and types of legal aid services (e.g. legal education, information, advice, representation, advocacy and reform) provided in your country (or organisation), and the types of matters aided.

The services provided by the LACs are wide-ranging and encompass the provision of information and referral, legal advice and legal assistance, advocacy, duty lawyer services, grants of legal assistance, dispute resolution services, CLE programs and submissions on law reform issues.

Legal Aid prioritises those matters where a person's safety and/or liberty is at risk.

7. Please describe application procedures and the criteria for granting legal aid.

Financial eligibility for grants of legal assistance is assessed by LACs according to means testing which is underpinned by national principles. The means test takes into account the income and assets of the applicant and any financially associated persons. According to the Productivity Commission, "[i]n general, the means test is satisfied where:

-) A person receives the maximum rate of an income support payment or benefit administered by Centrelink (social security) as their total income; or
-) Income, with deductions in relation to the objectively referred cost of housing and support for dependents, falls below a nationally standardised threshold; and
-) Assets, excluding allowable exemptions such as equity in principle place of residence, a used car and furniture, do not exceed a nationally standardised threshold or an individual cannot reasonably be expected to borrow against assets.

A person not otherwise eligible but unable to afford private representation may still receive assistance provided they make a contribution towards legal costs, based on a sliding scale that takes into account the likely cost of the matter. Despite efforts to standardise means tests,

²² Ibid.

²³ Law Society of New South Wales, *2015 Profile of the Solicitors of New South Wales*, <
https://www.lawsociety.com.au/sites/default/files/2018-03/Gender%20stats%202015%20profile.compressed_0.pdf> 34.

the different resources available to jurisdictions means that in practice they vary.”²⁴

In addition to passing the means test, a successful applicant for legal assistance must also comply with merit and matter type tests in an environment of competing priorities and limited funds. Each LAC is required by statute to issue funding guidelines in relation to matter type. Every effort is made to keep these consistent across the country, while taking account of local conditions and respective funding situations. To this end, the NLA maintains a set of guidelines known as the “National Legal Aid Template for Commonwealth Legal Aid Guidelines” which, subject to means, merits, and competing priorities and limited funds, are a reference point for individual commissions in developing their respective guidelines about Commonwealth based laws. LACs must however prioritise those matters where a person’s safety and/or liberty is at risk. Given limited funds, even if a matter falls within the guidelines and has merit, a grant of legal assistance might not be made. Less intensive work types are however capable of being delivered more widely including across non-family civil law.

8. Has your organisation (or legal aid organisations in your country) developed services targeting specific underprivileged communities or other legal issues?

Due to the geographical size of Australia, and its diverse population, every LAC has a unique approach to addressing disadvantage in its particular state or territory. In the ACT, the most recent initiative of this kind is the Seniors Rights Centre, established by Legal Aid ACT in order to prevent elder abuse.

(a) Background reasons: why target this group/issue? Why launch this type of service?

Elder abuse is an emerging issue for the ACT community that has not yet been sufficiently addressed in the service sector. According to the Australian Bureau of Statistics,²⁵ the ACT’s population is ageing faster than any of the Australian states and is only second to the Northern Territory. Therefore, the cost to the community of elder abuse is expected to escalate in the coming years. Preventing legal issues that would otherwise escalate to the courts, through providing advice to older people, is an effective way of reducing long term costs to the legal system.²⁶ The seniors’ rights service will address:

-) A lack of awareness as to where to obtain information and support or difficulties in accessing that information; and

²⁴ Productivity Commission 2014, *Access to Justice Arrangements*, Inquiry Report No. 72, Canberra, p 714.

²⁵ Catalogue 3235.0 - Population by Age and Sex, Regions of Australia (for each year)

²⁶ Christine Coumarelos and Others, ‘Legal Australia-Wide Survey: Legal Need in the Australian Capital Territory’, Law and Justice Foundation of NSW, August 2012.

) A lack of a singular, specialised service for older people.²⁷

(b) Scope of legal aid service

The Seniors Rights Service works to prevent legal issues arising by educating the community to better understand, identify and refer clients at risk of elder abuse. By offering early-intervention assistance, the Service provides tailored advice and support, to prevent legal issues from escalating. Where vulnerable clients are already in crisis, the Service provides expert intervention aimed at avoiding litigation and achieving sustainable legal and non-legal outcomes for the client.

(c) Is the financial eligibility criterion for this community group the same as other legal aid applicants?

Whilst the means test is currently the same as for other applicants, the service is exploring the possibility of a specific means test. This special means test could take into account the needs of asset-rich but income-poor clients.

(d) How do you promote this service and deliver legal education to your target community?

The Seniors Rights Service is promoted to older people through outreach, at locations such as Canberra Hospital, and through engagement with those already working in the sector. The service collaborates with existing service providers to distribute CLE resources such as booklets, pamphlets, and self-help kits, and to facilitate CLE activities, such as modules, workshops and presentations. Legal Aid ACT is now also responsible for the Older Persons Abuse Prevention Referral and Information Line, in order to identify legal issues and provide legal support.

(e) Do you collaborate with other legal or non-legal organizations/ professionals in this service? How does the collaboration work?

The Seniors Rights Service provides referrals to other organisations for non-legal assistance where necessary. The service has also invited existing service providers to contribute to an advisory committee, in order to provide more targeted assistance.

²⁷ Inquiry into domestic and family violence- Submission No.25 ACT Ministerial Advisory Council on Ageing, https://www.parliament.act.gov.au/data/assets/pdf_file/0005/1128659/Sub-No.-25-Ministerial-Advisory-Council-on-Ageing.pdf

(f) How do you provide the most effective service with limited funding?

In order to provide an effective service with limited funding, the Seniors Rights Service aims to utilise existing services to the greatest extent possible. In this respect, the service acts as a point of entry at which older people can seek help, and then be directed to the organisations that will be most helpful for their particular legal and non-legal issues.

(g) Can you tell us about your service performance and outcomes?

As the Seniors Rights Service only became operational in July 2018, no data is available.

(h) Have you met any challenges and then adopted any solutions?

Thus far, the Service has identified a number of barriers that prevent older people from seeking legal support. Strategies to overcome these barriers are still being developed.

9. Please introduce the quality assurance mechanisms in your organisation/country (if any):

(a) performance evaluation of the legal aid organisation(s) and its branch offices

A review of the NPA is currently underway. This review involves interviews with stakeholders in major cities and regional areas across Australia, in order to assess the effectiveness of service delivery.

(b) quality monitoring, assessment and/or assurance checks on legal aid lawyers' services

Legal Aid lawyers are required to observe the same rules and standards of professional conduct as private lawyers, and are subject to the same professional duties. This means that their professional duties are owed to the law, the court and clients.

(c) on-job training schemes or education programs for legal aid lawyers, (especially for the younger generation)

All Legal Aid staff must meet their mandatory Continuing Professional Development (CPD) requirements in order to remain eligible for practising certificates. The mandatory core areas are:

-) Legal ethics and professional responsibility
-) Practice management and business skills

-) Professional skills
-) Substantive law and procedural law.

The purpose of CPD is to ensure the ongoing competence of practitioners, including ensuring that practitioners' knowledge and skills remain current.

10. How does your organisation (or legal aid organisations in your country) make legal aid resources known to the potential clients in need and improve their legal awareness so they may seek timely assistance? Do you use any different approaches to reach people in remote areas or groups with special legal needs?

LACs around Australia utilise different means of publicising their services and raising awareness. In the ACT, CLE is the primary means of promoting community awareness of legal aid services.

CLE is provided to the general community, community services, community groups, organisations and schools. These services inform and build individual and community resilience by enhancing:

-) Awareness and understanding about the law and how to identify, prevent and deal with problems; and
-) Awareness of the help available from legal and support services.

CLE is delivered through both CLE Resources and CLE Activities.

CLE Resources involve the development or substantial amendment of publications and resources that provide information about the law and legal system, about legal and support services and guidance for identifying, preventing or dealing with particular legal problems.

CLE resources may be delivered via a variety of media including:

-) printed/hard copy;
-) audio products;
-) DVD/video;
-) web-based; and
-) workshops or presentations.

CLE activities include training the staff of organisations that assist vulnerable and disadvantaged members of the community in how to recognise when their clients have legal problems and where to refer them for help, as well as targeted information sessions on a range of specific legal issues. As well as sessions held on the Commission's premises, CLE sessions are also provided at schools, and community organisations.

In some cases, designated services are set up to target particular demographics who may be less likely to seek legal assistance. The establishment of the Youth Law Centre and Seniors' Rights Service are examples of services aimed at reaching vulnerable demographics.

11. How does your organisation help to reduce the number of disputes that resort to the courts?

- (a) Does your organisation provide any alternative dispute resolution services (e.g. mediation)?

The use of dispute resolution, particularly in family law, is well established at LACs. LACs provide a lawyer-assisted models of alternative dispute resolution in family law and child protection matters with the objective of settling disputes at an early stage without the need for recourse to the courts.

- (b) Does your organization participate in law reform or offer legal education to the public? If so, please describe the outcomes of these activities.

LACs in Australia participate in both law reform and CLE, in accordance with the founding legislation of each legal aid organisation.

In the ACT in 2016-17, 5,126 people attended CLE sessions, and 5,755 CLE publications were distributed.²⁸ In a territory with a population of 415,000,²⁹ this figure indicates that CLE resources are reaching a significant proportion of the population.

12. Please describe any modern technology initiatives or self-help services developed by your organisation (or legal aid organisations in your country) (if any), and comment on their effectiveness.

The uptake of technology differs between states and territories. Legal Aid NSW (LANSW) has developed an app to provide easy access to information about LANSW services and the law. It covers searching for a LANSW service, videos about the law, workshops about the law and access to factsheets and resources. Users can find out how to get a grant of legal aid and what to do if they are not eligible. Users can also pay their contribution towards the legal costs of their case. Lawyers and community workers can use it to search for a private lawyer who carries out legal aid work (www.legalaid.nsw.gov.au).³⁰

13. In the past decade, have there been any surveys done in your country on legal needs

²⁸ Legal Aid ACT, *Annual Report 2016-17* <http://www.legalaidact.org.au/pdf/annualreport_2016-2017.pdf>, 28.

²⁹ Australian Bureau of Statistics, <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/3101.0>> December 2017.

³⁰ Judith Bennett et al., *Current State of Automated Legal Advice Tools* (April 2018) University of Melbourne <https://law.unimelb.edu.au/data/assets/pdf_file/0010/1532935/FinalOnlinePDF-2012Reprint.pdf> 41.

and legal assistance seeking behaviours of the general public or any specific underprivileged groups? Or have there been any research studies of your service data?

If yes, please kindly provide the files or URLs of the research results.

The largest survey held in Australia in recent years is the Legal Australia-Wide Survey by the Law and Justice Foundation of NSW.

-) Law and Justice Foundation of NSW, *Legal Australia-Wide Survey: Legal Need in Australia*, 2012

<[http://www.lawfoundation.net.au/ljf/site/templates/LAW_AUS/\\$file/LAW_Survey_Australia.pdf](http://www.lawfoundation.net.au/ljf/site/templates/LAW_AUS/$file/LAW_Survey_Australia.pdf)>

Other studies on service delivery can be found at:

-) The Allen Consulting Group, *Review of the National Partnership Agreement on Legal Assistance Services*, 2014

<http://www.acilallen.com.au/projects/23/justice/126/review-of-the-national-partnership>

-) The Australian Government Productivity Commission Inquiry Report, *Access to Justice Arrangements*, 2014 <<http://www.pc.gov.au/inquiries/completed/access-justice>>

14. Please describe the challenges to delivering legal aid encountered in your country (or your organisation) in recent years, and the strategies for responding to those difficulties.

As set out in question 4 (b), funding shortfalls are the greatest challenge for legal aid providers in Australia. In response to this challenge, legal assistance organisations have focussed on minimising costs, through early resolution and de-escalation of matters, and on lobbying governments for greater resourcing.

15. Has your country (or organisation) established any mechanisms of co-operation with legal aid organisations abroad?

National Legal Aid (NLA) represents the directors of the eight state and territory legal aid commissions in Australia. NLA provides a forum for engagement at a national level with government/s, stakeholders, community; and for the individual LACs to engage with each other about best practice of legal aid and related issues. NLA participates in International Legal Aid Group (ILAG) conferences. .

NLA directors/CEOs communicate with their counterparts in other countries and from time to time will host visits from legal aid organisations of other countries.

16. To what extent have the UN Principles and Guidelines on Access to Justice and UN human rights conventions regarding access to justice for specific disadvantaged groups been implemented in your country and complied with by your organisation? Have you met any challenges during implementation?

Although the ICCPR is not itself part of Australian domestic law, some ICCPR rights (including the right to a fair trial) have been incorporated into domestic human rights acts,³¹ and international jurisprudence on the scope of the ICCPR is relevant to the interpretation of these acts.³² To this extent, citizens in the ACT and Victoria enjoy legislative protection for their fair trial and access to justice rights.

More broadly, all LACs in Australia attempt to comply with the fair trial rights in the ICCPR, and the UN Principles and Guidelines on Access to Justice. This is reflected in the prioritisation of disadvantaged clients. The main barrier to implementation is a lack of adequate funding, as evidenced by the fact that many more people live in poverty in Australia than are eligible for legal aid.³³ However, LACs have a discretionary power to provide legal assistance where necessary, and this discretion is used to provide assistance in cases where a person's liberty or safety is at risk. This is consistent with the principle in article 14, paragraph 3 of the ICCPR, regarding the rights of criminal defendants.

³¹ *Human Rights Act 2004* (ACT); *Charter of Human Rights and Responsibilities Act 2006* (Vic).

³² Asher Flynn et al., 'Legal Aid And Access To Legal Representation: Redefining The Right To A Fair Trial', (2016) 40 *Melbourne University Law Review*, 207, 209-10.

³³ Productivity Commission 2014, *Access to Justice Arrangements*, Inquiry Report No. 72, Canberra, 1021-22.

National Legal Aid Statistics Report

Applications - Status

for Financial Year 2017-2018 as at August 2018

state	law type	funding category	approved	refused	pending	withdrawn	received
Australian Capital Territory (ACT)	Civil	Commonwealth	87	25	5	1	118
		State	116	160	22	61	359
	Crime	Commonwealth	7	1	0	0	8
		State	1163	201	85	111	1560
	Family	Commonwealth	621	200	34	77	932
		State	528	115	38	75	756
ACT Subtotal:			2522	702	184	325	3733
New South Wales (NSW)	Civil	Commonwealth	515	195	62	0	772
		State	1279	507	134	0	1920
	Crime	Commonwealth	370	96	147	0	613
		State	21023	3995	4618	0	29636
	Family	Commonwealth	6475	1928	2490	0	10893
		State	3429	456	1154	0	5039
NSW Subtotal:			33091	7177	8605	0	48873
Northern Territory (NT)	Civil	Commonwealth	4	1	0	0	5
		State	46	23	0	1	70
	Crime	Commonwealth	19	4	0	1	24
		State	1635	112	0	4	1751
	Family	Commonwealth	649	160	0	11	820
		State	78	15	0	2	95
NT Subtotal:			2431	315	0	19	2765
Queensland (QLD)	Civil	Commonwealth	137	81	0	0	218
		State	263	215	0	11	489
	Crime	Commonwealth	355	119	0	1	475
		State	23592	3758	1	47	27398
	Family	Commonwealth	4727	4210	1	43	8981
		State	2607	1447	0	30	4084
QLD Subtotal:			31681	9830	2	132	41645
South Australia (SA)	Civil	Commonwealth	11	26	0	0	37
		State	8	145	0	0	153
	Crime	Commonwealth	88	21	0	0	109
		State	12395	1660	20	36	14113
	Family	Commonwealth	2395	747	3	9	3154
		State	1248	63	1	1	1313
SA Subtotal:			16145	2662	24	46	18879
Tasmania (TAS)	Civil	Commonwealth	0	2	0	0	2
		State	494	38	0	0	532
		Unknown	14	0	0	0	14
	Crime	Commonwealth	68	8	0	0	76
		State	5676	510	0	0	6186
	Family	Commonwealth	2296	500	0	0	2796
		State	1078	112	0	0	1190
TAS Subtotal:			9626	1170	0	0	10796
Victoria (VIC)	Civil	Commonwealth	231	35	0	5	277
		Commonwealth/State	1	0	0	0	0
		State	780	59	0	1	874
	Crime	Commonwealth	265	17	0	1	312
		Commonwealth/State	5	0	0	0	0
		State	25843	701	0	95	27188
		Unknown	13	0	0	0	13
	Family	Commonwealth	4823	497	0	11	5579
		Commonwealth/State	1	0	0	0	0
		State	10729	529	0	43	11705
VIC Subtotal:			42691	1838	0	156	45948
Western Australia (WA)	Civil	Commonwealth	25	10	1	0	36
		Commonwealth/State	0	0	2	0	2
		State	294	146	11	3	454
	Crime	Commonwealth	104	13	0	2	119
		State	5425	970	60	25	6480
	Family	Commonwealth	2599	684	93	47	3423
		State	1489	235	8	11	1743
	Unknown	Commonwealth/State	0	0	7	0	7
WA Subtotal:			9936	2058	182	88	12264
Grand Total			148123	25752	8997	766	184903

TABLE 22: Commissions' BUDGETED Income & Expenses 2017-2018
(excluding funding & expenditure for Community Legal Centres & Expensive Criminal Cases Funds)

BUDGETED INCOME (\$'000)							BUDGETED EXPENSES
	CW Input Grants NPA	CW Input Grants Non-NPA	State Input Grants	Spec. Trust & Stat. Interest	Other Income	Total Income	Total Expenses
NSW	65,793	2,036	170,113	32,017	4,420	274,379	280,214
VIC	49,287	1,240	95,713	30,037	5,579	181,856	187,438
QLD	43,148	1,110	83,795	0	3,456	131,509	132,321
SA	16,034	450	22,715	2,707	2,563	44,469	45,116
WA*	24,538	392	38,117	0	3,496	66,543	67,684
TAS	5,853	605	8,251	68	142	14,919	14,819
ACT	4,811	605	8,290	623	447	14,776	15,196
NT	5,747	651	6,105	0	1,673	14,176	14,625
TOTAL	215,211	7,089	433,099	65,452	21,776	742,627	757,413

*LAWA - includes state expensive criminal cases funding and associated expenditure of \$2.16m approved as part of State Government recurrent funding

TABLE 21: Commissions' ACTUAL Income & Expenses 2016-2017
(excluding funding & expenditure for Community Legal Centres)

INCOME (\$'000)						EXPENSES	
	CW Input Grants NPA	CW Input Grants Non-NPA	State Input Grants	Spec. Trust & Stat. Interest	Other Income	Total Income	Total Expenses
NSW	64,072	6,539	168,918	32,017	9,502	281,048	283,228
VIC	48,642	934	79,080	31,162	5,669	165,487	173,565
QLD	42,456	1,837	71,574	0	7,675	123,542	122,870
SA	15,879	1,235	22,707	2,579	2,799	45,199	44,993
WA*	24,030	728	39,890	0	4,045	68,693	68,886
TAS	5,804	573	6,806	683	1,422	15,288	13,819
ACT	4,741	423	8,456	672	453	14,745	14,765
NT	5,653	1,668	5,996	0	2,270	15,587	14,590
TOTAL	211,277	13,937	403,427	67,113	33,835	729,589	736,716

*LAWA includes state expensive criminal cases funding \$2.160m & associated expenditure of \$2.845m approved as part of State Government recurrent funding.

TABLE 20: Commissions' ACTUAL Income & Expenses 2015-2016
(excluding funding & expenditure for Community Legal Centres)

INCOME (\$'000)						EXPENSES	
	CW Input Grants NPA	CW Input Grants Non-NPA	State Input Grants	Spec. Trust & Stat. Interest	Other Income	Total Income	Total Expenses
NSW	63,208	3,604	145,715	29,277	7,787	249,591	263,359
VIC	47,911	705	75,552	28,313	6,253	158,734	153,060
QLD	41,691	517	47,255	20,251	3,696	113,410	114,676
SA	15,699	450	21,423	2,957	2,658	43,187	43,837
WA	23,629	784	38,489	397	4,817	68,116	65,868
TAS	6,012	0	6,417	76	950	13,455	12,658
ACT	4,665	150	5,790	897	531	12,033	13,333
NT	5,548	651	5,290	0	1,227	12,716	12,403
TOTAL	208,363	6,861	345,931	82,168	27,919	671,242	679,194

TABLE 19: Commissions' ACTUAL Income & Expenses 2014-2015
(excluding funding & expenditure for Community Legal Centres)

	INCOME (\$'000)				EXPENSES	
	CW Input Grants	State Input Grants	Spec. Trust & Stat. Interest	Self Generated Income	Total Income	Total Expenses
NSW	68,820	123,726	29,277	9,631	231,454	239,102
VIC	47,049	71,049	27,273	5,287	150,658	139,651
QLD	44,548	44,806	19,854	4,018	113,226	112,782
SA	16,194	17,750	2,854	3,351	40,149	44,174
WA	21,099	35,671	823	4,501	62,094	63,389
TAS	6,192	6,032	68	89	12,381	13,426
ACT	4,628	6,179	997	548	12,352	11,740
NT	4,025	6,054	0	1,901	11,980	11,569
TOTAL	212,555	311,267	81,146	29,326	634,294	635,833

TABLE 18: Commissions' ACTUAL Income and Expenses 2013-2014
(excluding funding & expenditure for Community Legal Centres)

	INCOME (\$'000)				EXPENSES	
	CW Input Grants	State Input Grants	Spec. Trust & Stat. Interest	Self Generated Income	Total Income	Total Expenses
NSW	71,079	110,199	35,555	9,189	226,022	225,832
VIC	49,491	69,278	25,663	5,035	149,467	133,057
QLD	46,709	44,255	19,351	3,666	113,981	113,055
SA	17,067	20,282	2,552	3,581	43,483	45,512
WA	22,182	33,709	1,248	6,068	63,207	65,471
TAS	6,527	5,917	102	2,167	14,713	14,590
ACT	4,932	7,717	1,412	559	14,620	14,710
NT	3,950	4,785	0	2,088	10,823	10,962
TOTAL	221,937	296,142	85,883	32,353	636,316	623,189

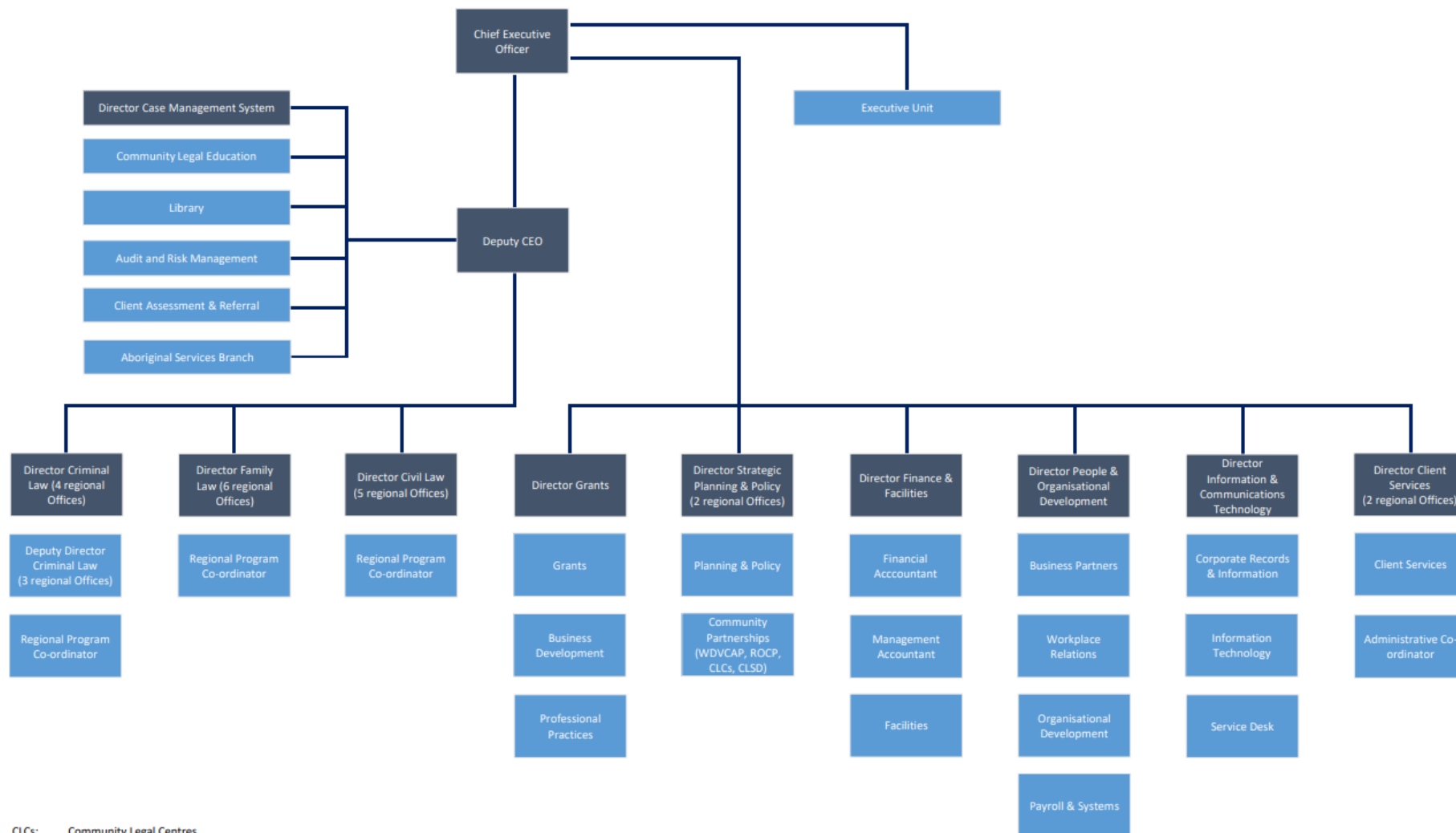
TABLE 17: Commissions' ACTUAL Income and Expenses 2012-2013
(excluding funding & expenditure for Community Legal Centres)

	INCOME (\$'000)				EXPENSES	
	CW Input Grants	State Input Grants	Spec. Trust & Stat. Interest	Self Generated Income	Total Income	Total Expenses
NSW	66,450	110,124	39,758	9,956	226,288	218,792
VIC	46,875	75,304	25,663	8,148	155,990	165,322
QLD	45,097	45,290	18,934	4,043	113,364	109,316
SA	15,695	19,590	2,749	3,015	41,049	40,506
WA	22,960	34,338	1,140	4,997	63,435	62,174
TAS	5,994	5,870	780	378	13,022	14,253
ACT	4,517	5,967	1,412	444	12,340	13,097
NT	3,860	3,549	0	1,625	9,034	9,801
TOTAL	211,448	300,032	90,436	32,606	634,522	633,261

TABLE 16: Commissions' ACTUAL Income and Expenses 2011-2012
(excluding funding & expenditure for Community Legal Centres)

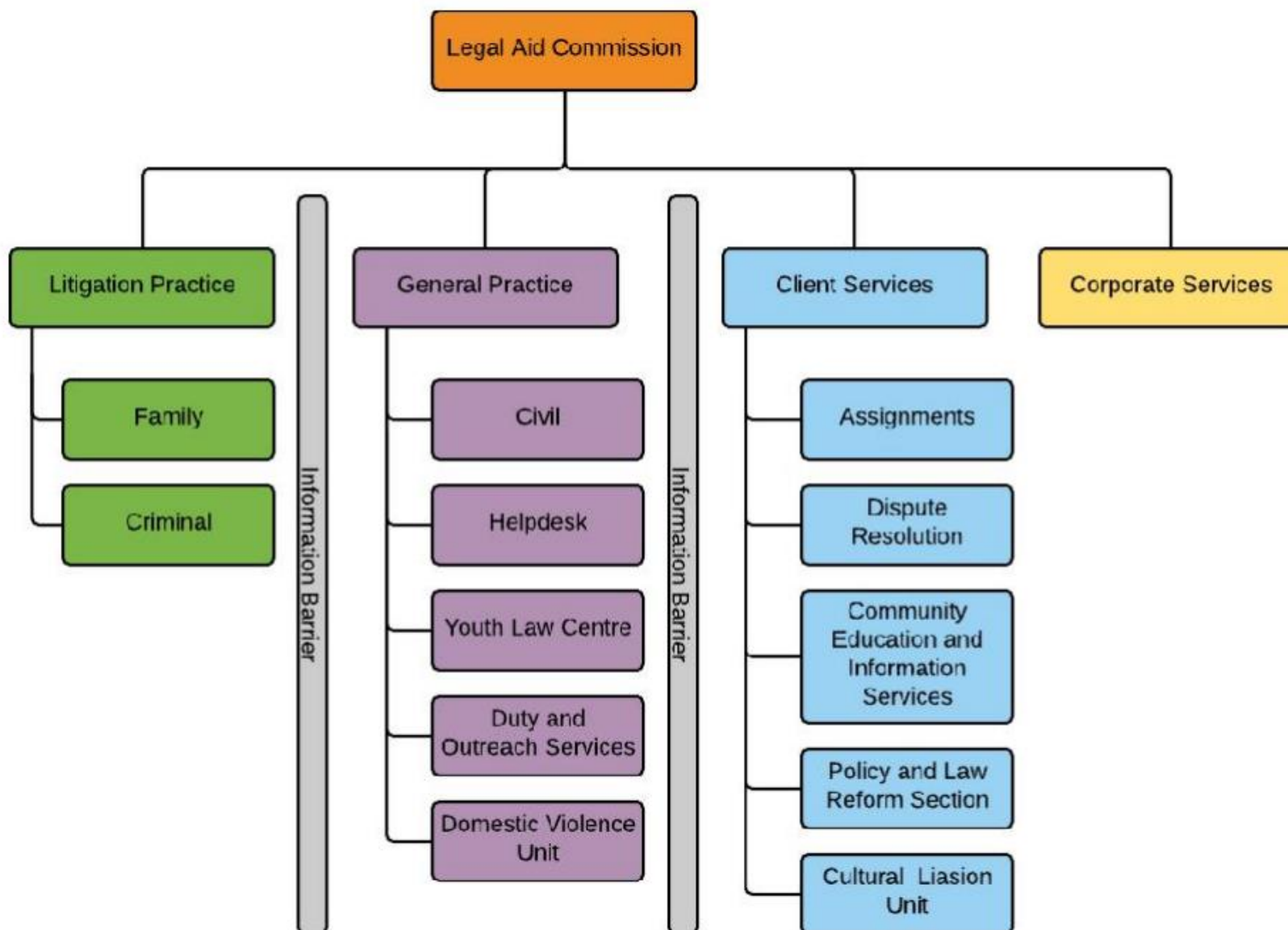
	INCOME (\$'000)				EXPENSES	
	CW Input Grants	State Input Grants	Spec. Trust & Stat. Interest	Self Generated Income	Total Income	Total Expenses
NSW	65,718	106,051	39,505	9,735	221,009	225,657
VIC	46,236	60,227	25,662	8,321	140,446	143,594
QLD	43,612	45,025	19,992	5,038	113,667	110,642
SA	15,434	18,903	3,630	4,944	42,911	39,879
WA	20,891	33,843	1,652	6,331	62,717	63,482
TAS	5,936	5,762	0	379	12,077	12,787
ACT	4,550	4,854	1,420	569	11,393	12,263
NT	3,850	4,648	0	2,382	10,880	11,930
TOTAL	206,227	279,313	91,861	37,699	615,100	620,234

NSW

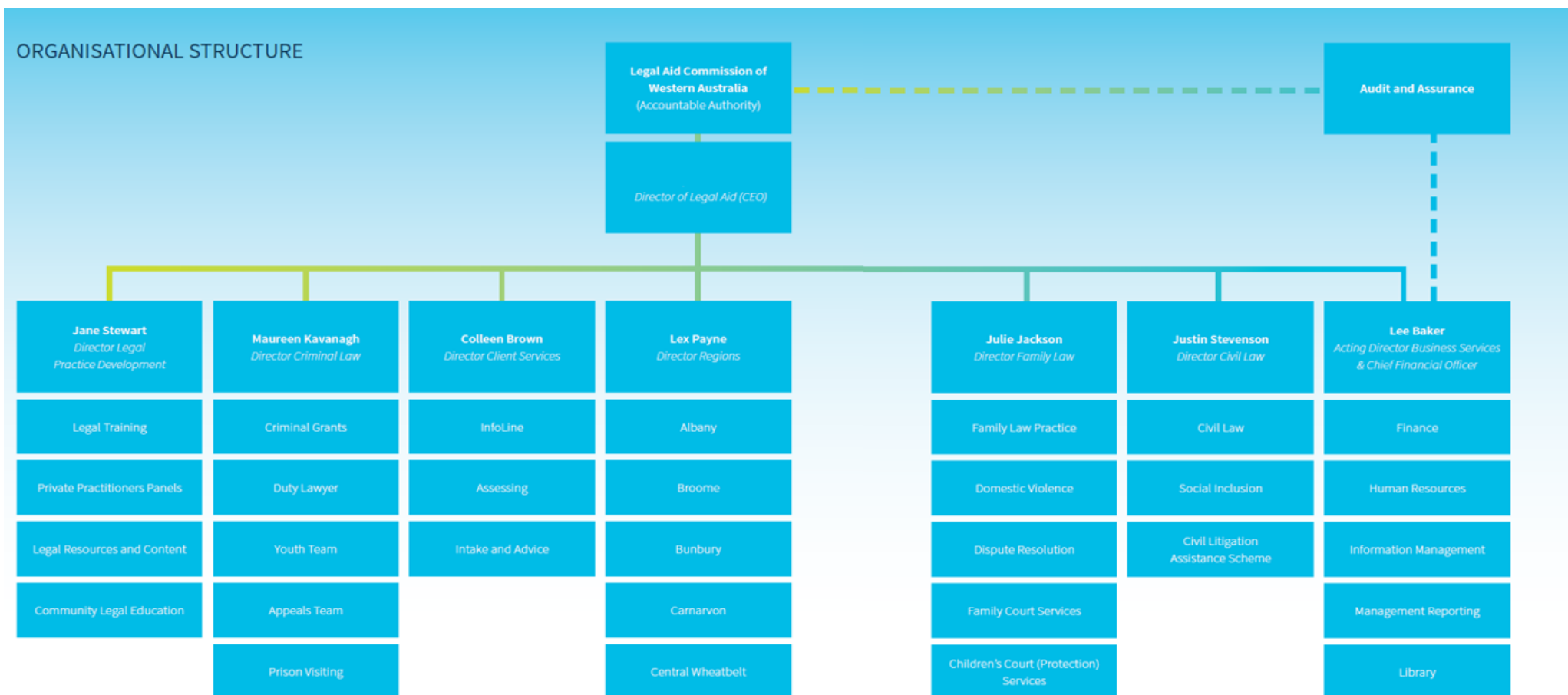


CLCs: Community Legal Centres
 CLSD: Co-operative Legal Service Delivery Program
 WDVCAP: Women's Domestic Violence Court Advocacy Program
 ROCP: Regional Outreach Clinic Program

ACT



WA Pt.1



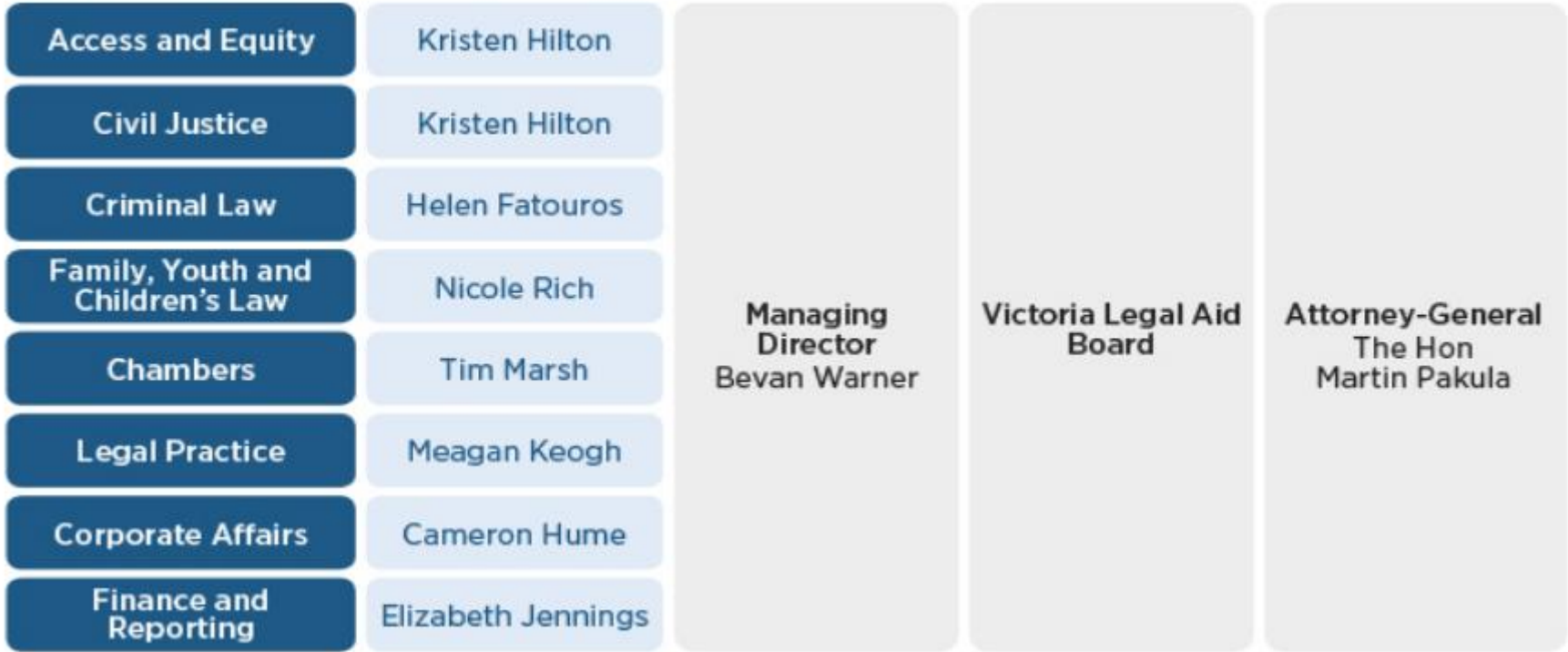
WA Pt.2

Continued from Lex Payne

Christmas Island
CLC Funding Program
Geraldton
Kalgoorlie
Kununurra
Regional Management
South Hedland

Victoria

Organisational chart



Queensland

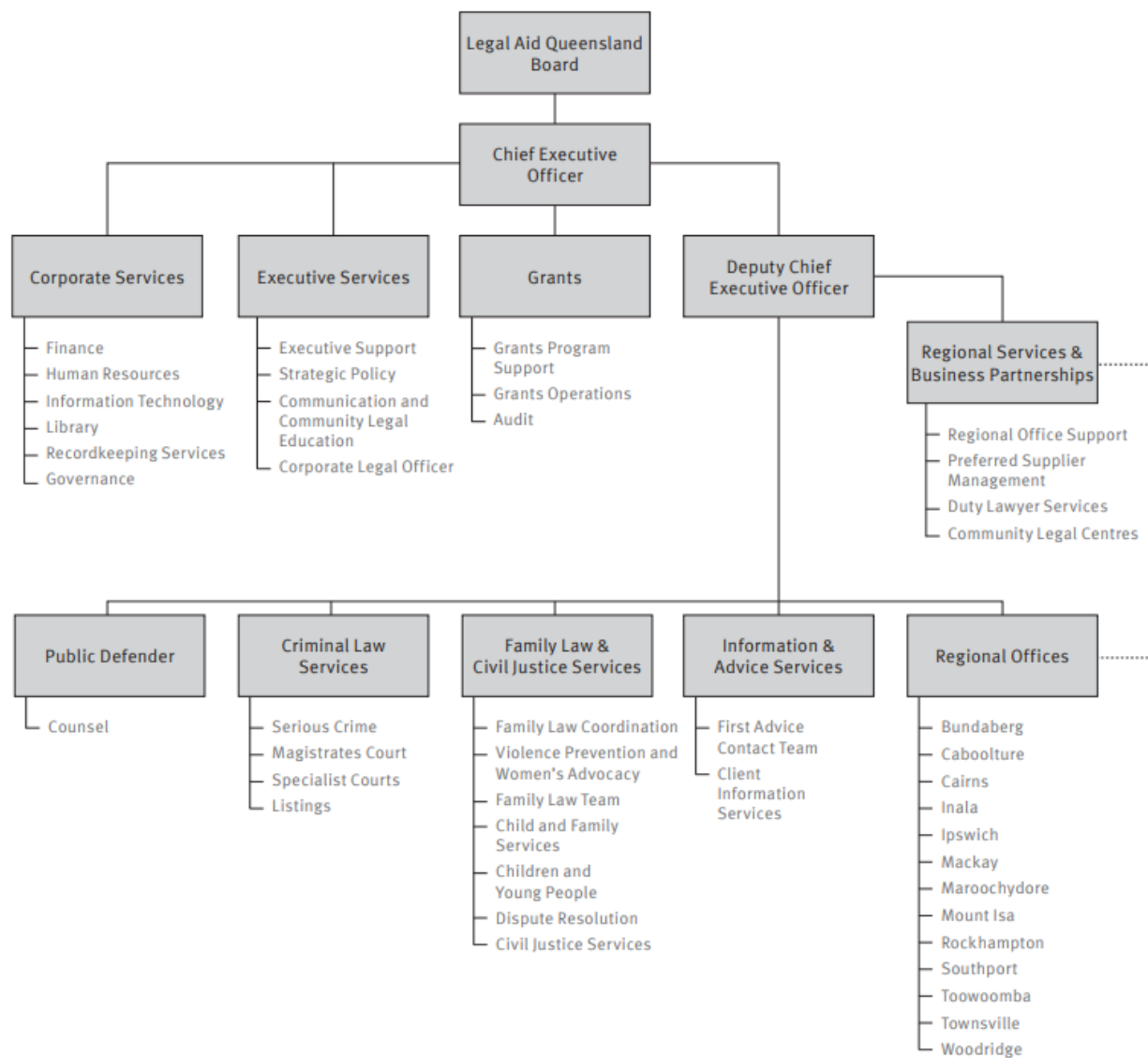
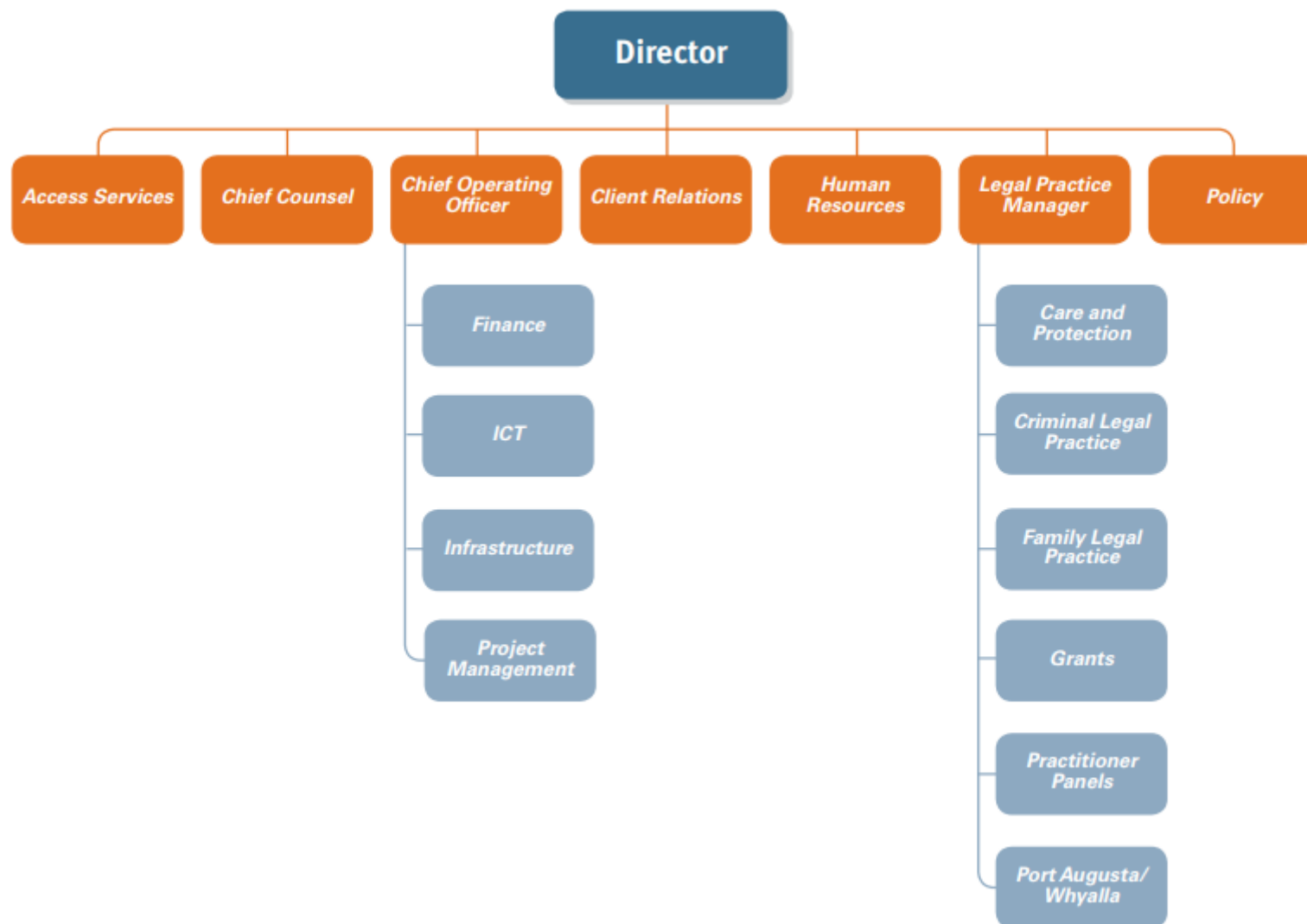
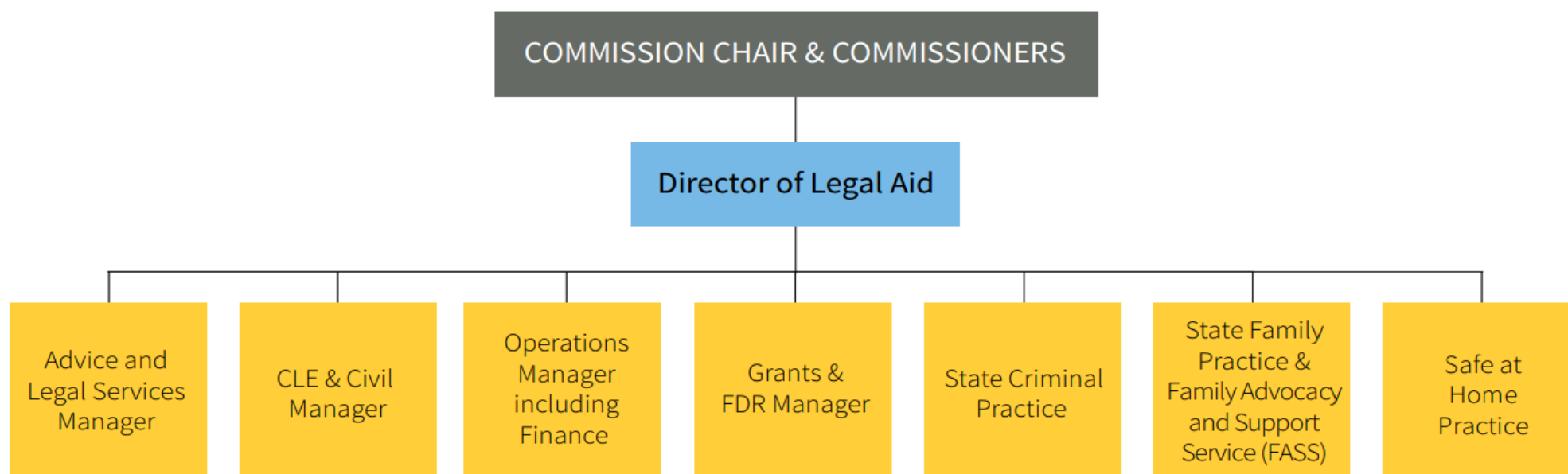


Figure 2. Organisation structure

South Australia



Tasmania



National Legal Aid Statistics Report

Applications - Received

for Financial Year 2017-2018 as at August 2018

state	law type	funding category	received
Australian Capital Territory (ACT)	Civil	Commonwealth	118
		State	359
	Crime	Commonwealth	8
		State	1560
	Family	Commonwealth	932
		State	756
ACT Subtotal:			3733
New South Wales (NSW)	Civil	Commonwealth	772
		State	1920
	Crime	Commonwealth	613
		State	29636
	Family	Commonwealth	10893
		State	5039
NSW Subtotal:			48873
Northern Territory (NT)	Civil	Commonwealth	5
		State	70
	Crime	Commonwealth	24
		State	1751
	Family	Commonwealth	820
		State	95
NT Subtotal:			2765
Queensland (QLD)	Civil	Commonwealth	218
		State	489
	Crime	Commonwealth	475
		State	27398
	Family	Commonwealth	8981
		State	4084
QLD Subtotal:			41645
South Australia (SA)	Civil	Commonwealth	37
		State	153
	Crime	Commonwealth	109
		State	14113
	Family	Commonwealth	3154
		State	1313
SA Subtotal:			18879
Tasmania (TAS)	Civil	Commonwealth	2
		State	532
		Unknown	14
	Crime	Commonwealth	76
		State	6186
	Family	Commonwealth	2796
State		1190	
TAS Subtotal:			10796
Victoria (VIC)	Civil	Commonwealth	277
		State	874
	Crime	Commonwealth	312
		State	27188
		Unknown	13
	Family	Commonwealth	5579
State		11705	
VIC Subtotal:			45948
Western Australia (WA)	Civil	Commonwealth	36
		Commonwealth/State	2
		State	454
	Crime	Commonwealth	119
		State	6480
	Family	Commonwealth	3423
State		1743	
WA Subtotal:			12257
Grand Total			184896

% of total received		
total civil received	6,332	3%
total crime received	116,061	63%
total family received	62,503	34%
total received 2017-18	184,896	

National Legal Aid Statistics Report

Practitioner Type

for Financial Year 2017-2018 as at August 2018

state	practitioner type	law type	approved
Australian Capital Territory (ACT)	Assigned	Civil	44
		Crime	316
		Family	453
	InHouse	Civil	159
		Crime	854
		Family	694
ACT Subtotal			2520
New South Wales (NSW)	Assigned	Civil	493
		Crime	11675
		Family	7405
	InHouse	Civil	1301
		Crime	9718
		Family	2499
NSW Subtotal			33091
Northern Territory (NT)	Assigned	Civil	30
		Crime	377
		Family	419
	InHouse	Civil	20
		Crime	1277
		Family	308
NT Subtotal			2431
Queensland (QLD)	Assigned	Civil	116
		Crime	18467
		Family	5649
	InHouse	Civil	284
		Crime	5480
		Family	1685
QLD Subtotal			31681
South Australia (SA)	Assigned	Civil	12
		Crime	8842
		Family	2158
	InHouse	Civil	7
		Crime	3641
		Family	1485
SA Subtotal			16145
Tasmania (TAS)	Assigned	Civil	64
		Crime	3186
		Family	2796
	InHouse	Civil	444
		Crime	2558
		Family	578
TAS Subtotal			9626
Victoria (VIC)	Assigned	Civil	217
		Crime	18608
		Family	13425
	InHouse	Civil	795
		Crime	7518
		Family	2128
VIC Subtotal			42691
Western Australia (WA)	Assigned	Civil	233
		Crime	3444
		Family	3203
	InHouse	Civil	86
		Crime	2085
		Family	885
WA Subtotal			9936
Grand Total			148121

% of all approvals		
total approvals assigned	101,632	69%
total approvals in-house	46,489	31%
total approvals 2017-18	148,121	