

13 April 2016

Ministers of the Law, Crime and Community Safety Council
C/o The Secretariat
Law, Crime and Community Safety Council
3-5 National Circuit
BARTON ACT 2600

LCCSCSecretariat@ag.gov.au

Dear Ministers,

Re: Stopping family violence and the report of the Productivity Commission's Inquiry into Access to Justice Arrangements

National Legal Aid (NLA), representing the directors of all Australian legal aid commissions, is writing to the Law, Crime and Community Safety Council in connection with two inter-related issues which we understand are on Council's agenda, being family violence and responding to the report of the Australian Government Productivity Commission Inquiry into Access to Justice Arrangements.

NLA's 2016-2017 pre-budget submission to The Treasury is attached¹ to this letter. The submission provides information about:

- The legal assistance landscape in Australia
- The complementary roles played by all legal assistance service providers in endeavouring to meet the legal needs of disadvantaged people in Australia as efficiently and effectively as possible, and
- The difference that would be made to people in circumstances of disadvantage if additional funding, in line with the recommendations of the Australian Government Productivity Commission's Inquiry into Access to Justice Arrangements, were to be available.

Service delivery to stop family violence

The legal aid commissions are the main providers of domestic violence legal services to financially disadvantaged women and children, and the biggest providers of legal assistance services in Australia.

- More than 2.4 million services were provided by legal aid commissions to people in need in 2014/15.
- One in five of the services which required the skill of a legal practitioner were related to family violence, child protection, and/or family law matters.²

¹ Attachment 'A' to this letter.

² Further information about legal aid commission service delivery and related data can be found at attachment 'B' to this letter.

- Random sampling of legal aid commission Commonwealth funded family law files showed family violence as an issue in a national average of 79% of matters.

The services provided by legal aid commissions are not limited to advice and information but extend to family dispute resolution where appropriate, 'at court' duty lawyer services, and representation in contested proceedings in the Commonwealth family law courts and the domestic violence courts in the States and Territories. Legal aid commission services are provided across the country from our offices and many outreach locations.

The many benefits of legal advice and representation in domestic violence matters include:

- Redressing power imbalance
- Early resolution of matters
- Reduction of the risk of breach of orders
- Identification of related issues and appropriate referrals
- Improved timeliness, effectiveness and efficiency of the justice system.

In connection with the Law, Crime and Community Safety Council's agenda, we are also aware of Recommendation 69 of the Victorian Royal Commission into Family Violence that:

"The Victorian Government, through the Council of Australian Governments Law, Crime and Community Safety Council, pursue the expansion of resourcing for legal services, including Victoria Legal Aid and community legal centres, to resolve the current under-representation by and over-burdening of duty lawyer services in family violence matters [within 12 months]."³

Whilst the Royal Commission addressed the response to domestic violence in the Victorian service delivery context, domestic violence is common across all Australian states and territories, as is the need for resourcing for legal assistance services.

Report on Access to Justice Arrangements, No. 72, September 2014, Australian Government Productivity Commission & family violence

Ministers are referred to NLA's 2016-2017 pre-budget submission to The Treasury for further detail, however, as members of the Law, Crime and Community Safety Council are aware, the Productivity Commission recommended that until such time as an appropriate assessment has been made of unmet legal need and the costs of provision as outlined in the Productivity Commission's report, that \$200 million annually should be provided by governments as an interim measure "to address the more pressing gaps" in legal assistance service delivery.

The Productivity Commission specified that such funding should be allocated as follows:

- "\$11.4 million per year to maintain existing frontline services
- around \$57 million per year to relax the means tests for LACs (legal aid commissions)
- around \$124 million per year to provide additional grants of aid in civil matters."⁴

³ Victorian Royal Commission into Family Violence Report, March 2016, recommendation 69.

⁴ Productivity Commission 2014, *Access to Justice Arrangements*, Inquiry Report No. 72, Canberra p 1026.

In the broadest of terms, NLA considers that these additional resources could, for example, have the following beneficial impact on service delivery:

- the \$11.4 million per annum for frontline services could deliver an additional 47,500 duty lawyer services or an additional 139,000 early intervention services⁵
- the \$57 million per annum to relax the means test for legal aid commissions could provide an additional 41,000 dispute resolution services or an additional 7,600 representation⁶ services
- the \$124 million per annum for grants of aid in the civil jurisdiction could result in an additional 40,000 grants of aid.

The reality is that the actual total number of additional services that could be provided would be influenced by the combinations of services that would be determined as appropriate by each legal aid commission. There is little doubt, however, that the quantum of additional services that could be provided through the adoption of the Productivity Commission's funding recommendations for legal aid commissions, would extend access to justice to an entirely new stratum of Australian society that currently cannot afford the protection of the law. In an environment where the response to domestic violence is front and centre of the national discourse, the element largely absent from policy responses is extending access to the protections offered by the law. This policy gap could be addressed if the Commonwealth, States and Territories adopted the Productivity Commission's funding recommendations.

Further evidence in relation to the specificity of the Productivity Commission's recommendations, which are relevant to legal aid commission funding arrangements, is outlined below.

The difference that would be made by any additional funding in line with the recommendations of the Productivity Commission including in matters involving family violence

Relaxing the means tests of the legal aid commissions

Applications to legal aid commissions for grants of legal aid for family dispute resolution and for legal representation including in family law and family violence matters are necessarily subject to means and merits testing in an environment of competing priorities and limited funding.

"If the means tests of LACs could be relaxed as suggested by the Productivity Commission many more services to disadvantaged people, particularly in the area of Commonwealth family law, could be provided. In this regard, we note that recent samplings of legal aid commission general family law files across the country indicated a national average of 79% of such matters involved family violence. Currently, many people who are in such circumstances are unable to receive a grant of family law assistance due to the means test"⁷, notwithstanding that these are

⁵ Early intervention services include legal advice, minor assistance and advocacy services pursuant to reporting under the National Partnership Agreement (NPA) on Legal Assistance Services 2010-2015.

⁶ As per "Litigation Services" pursuant to reporting under the NPA 2010-2015.

⁷ National Legal Aid submission to Australian Government Federal Budget 2016-2017, 23 March 2016.

areas of family law priority pursuant to the National Partnership Agreement on Legal Assistance Services 2015-2020.

As the Productivity Commission found “Regardless of the relative poverty measure used, the proportion of the population considered poor is higher than the proportion of the population eligible for grants of legal aid from LACs under their means tests.”⁸ The Productivity Commission estimated “that increasing the means test by 10 per cent for civil (including family) matters would cost an additional \$57 million per year. The Australian Government should provide the bulk of this funding (given that this money would be used to assist clients in areas of Commonwealth law under existing guidelines.) The Commission estimates that such a proposal would increase the number of people eligible for grants of aid in civil (including family) matters from around 1.4 million to 1.9 million.”⁹

Providing additional funding for grants of aid in civil law

“The observation that problems tend to be associated, or ‘cluster’, with family law matters suggests that more assistance is needed for other civil law matters. The Legal Australia-Wide Survey found that family problems often clustered with ‘credit and debt’ problems, and that those with family law problems also frequently had disputes in areas of consumer, criminal, government (including benefits), housing and rights (Coumarelos et al. 2012, pp. 88-89). Given that LACs have identified and provide services to those with family law matters, these data indicate that assistance is needed for other civil matters as well.”¹⁰

The Productivity Commission estimated “the cost of providing an additional 40 000 grants of aid for civil matters is in the order of \$124 million. In practice, however, there are likely to be considerable savings in achieving this goal if LACs were able to use in-house lawyers to provide these grants instead of private practitioners. Governments should give consideration to recommendation 21.3 (relaxing the constraints around the use of in-house lawyers by the LACs) to allow such potential savings to be fully realised. State and territory governments should provide the bulk of this funding on the grounds that most of the civil matters (outside of family matters) relate to state and territory areas of law.”¹¹

It could be anticipated that reducing stressors on families, such as responding to legal issues of housing, income, mortgage stress, and credit and debt, would support a reduction in family violence.

Conclusion

As identified in NLA’s submission to the Australian Government Federal Budget 2016-2017, “LACs are a national resource ready and committed to working with governments and service providers to further respond to the legal need arising from a range of issues that impact adversely on our community such as family violence, threats to the health and well-being of children, family breakdown, loss of employment, debt, poor mental health and ageing.”¹², and in the Productivity Commission’s report on its Inquiry into Access to Justice Arrangements, “Advocating for increases in funding (however modest) in a time of fiscal tightening is

⁸ Productivity Commission 2014, *Access to Justice Arrangements*, Inquiry Report No. 72, Canberra Appendix H p 1022.

⁹ Ibid Appendix H p 1023.

¹⁰ Ibid Appendix H p 1025.

¹¹ Ibid Appendix H p 1025.

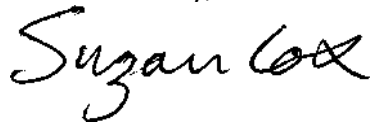
¹² NLA submission to Australian Government Federal Budget 2016-2017, 23 March 2016.

challenging. However, not providing legal assistance in these instances can be a false economy as the costs of unresolved problems are often shifted to other areas of government spending such as healthcare, housing and child protection.”¹³

We would welcome the opportunity to meet the current need for services and to expand services if funding for the purpose was to be made available as recommended by the Productivity Commission. Further, we are keen to discuss with the Council how the full suite of the Productivity Commission’s legal assistance recommendations, primarily contained in Chapter 21 of the report but also in Chapters 5, 14, 22 and 24, are to be implemented.

We would be happy to meet with the Law, Crime and Community Safety Council or representatives of Council to discuss the issues raised in this letter.

Yours sincerely,

A handwritten signature in black ink that reads "Suzan Cox". The signature is written in a cursive, flowing style.

Suzan Cox QC
Chair

cc: Council of Australian Governments
Senator the Hon. Michaelia Cash, Minister for Women
Senator the Hon. Nigel Scullion, Minister for Indigenous Affairs

¹³ Productivity Commission 2014, *Access to Justice Arrangements*, Inquiry Report No. 72, Canberra p. 30.



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23 March 2016

Budget Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir or Madam,

Re: Submission to Australian Government Federal Budget 2016-2017

About this submission

This submission is from National Legal Aid (NLA) representing the Directors of the eight state and territory legal aid commissions (LACs) in Australia. The legal aid commissions are often referred to as "Legal Aid".

LACs are independent statutory authorities established under respective state or territory enabling legislation. They are funded by the Commonwealth and state or territory governments to provide legal assistance to disadvantaged people.

The Australian Government Productivity Commission recently inquired into Access to Justice Arrangements in Australia, including arrangements for the provision of legal assistance services.¹ The Inquiry examined civil law service delivery, including family law. It did not examine criminal law service delivery. Criminal law services, arising mostly from state/territory law, are according to current arrangements, largely funded by the states and territories.

The Productivity Commission reported that "Government-funded legal assistance is an integral part of ensuring that the justice system is accessible to all"² and that "Efficient government funded legal assistance services generate net benefits to the community".³

¹ Productivity Commission 2014, *Access to Justice Arrangements*, Inquiry Report No. 72, Canberra.

² Ibid p 665.

³ Ibid p 2.

The Productivity Commission had regard to the pressing nature of legal assistance service gaps and considered that “an interim funding injection in the order of \$200 million - from the Australian, state and territory governments - is required per year. The Commonwealth’s contribution would be in the order of 60 per cent.”⁴

Recommendation 21.4 of the Productivity Commission report is:

“To address the more pressing gaps in services, the Australian, State and Territory Governments should provide additional funding for civil legal assistance services in order to:

- better align the means test used by legal aid commissions with that of other measures of disadvantage
- maintain existing frontline services that have a demonstrated benefit to the community
- allow legal assistance providers to offer a greater number of services in areas of law that have not previously attracted government funding.

The Commission estimates the total annual cost of these measures to the Australian, State and Territory Governments will be around \$200 million. Where funding is directed to civil legal assistance it should not be diverted to criminal legal assistance.”⁵

The Productivity Commission specified how this funding should be applied in *Appendix H, Eligibility for legal aid and the cost of extending it*, of its report as follows:

- “• \$11.4 million per year to maintain existing frontline services
- around \$57 million per year to relax the means tests for LACs
- around \$124 million per year to provide additional grants of aid in civil matters.”⁶

Appendix H is attachment ‘A’ to this submission.

This “...should continue as an interim arrangement until sufficient data can be collected to better inform funding of legal assistance services.”⁷

Recognising the scale of unmet legal need experienced by disadvantaged people, to address the medium and longer term, the Productivity Commission report also stated “While an injection of funds would help meet some of the more immediate legal needs, the Commission considers that a range of reforms are required to put legal assistance on a more sustainable footing over time and that future funding levels should be determined with reference to a comprehensive assessment of legal need.”⁸

Recommendation 21.5 of the Productivity Commission’s report is: “For the medium and longer term, the Australian, State and Territory Governments should agree on priorities for legal assistance services and should provide adequate funding so that these priorities can be

⁴ Productivity Commission 2014, *Access to Justice Arrangements*, Inquiry Report No. 72, Canberra, p 738.

⁵ Ibid Recommendation 21.4.

⁶ Ibid Appendix H p 1026.

⁷ Ibid Appendix H p 1017.

⁸ Ibid p 739.

broadly realised. Such funding should be stable enough to allow for longer term planning, and flexible enough to accommodate the anticipated reduction in other sources of funding (particularly Public Purpose Funds or equivalents) in coming years. On an annual basis, the Australian, State and Territory Governments should publicly report on the extent of any failure to meet agreed coverage and priorities.

In determining legal assistance priorities, governments should consult with the Legal Assistance Forums in each state and territory.”⁹

The legal assistance landscape and the Australian Legal Assistance Forum

The Productivity Commission examined the legal assistance landscape, describing it as comprised of “four main government-funded legal assistance service providers: legal aid commissions (LACs), community legal centres (CLCs), Aboriginal and Torres Strait Islander legal services (ATSILS) and family violence prevention legal services (FVPLS)”.¹⁰

Representatives of the above-mentioned legal assistance service providers, and of the Law Council of Australia,¹¹ meet regularly as the Australian Legal Assistance Forum (ALAF). ALAF was established by the providers “to enable these organisations to consider and address Australian legal assistance issues in a co-operative way and to make recommendations on those issues in a co-ordinated fashion”.¹²

Treasury will have received submissions similar to this one from our ALAF partners.

The legal assistance providers and their services

“While all four providers offer a mix of services from legal education to casework for individuals and groups of clients, the targets for their services differ, as do their size. ...All four employ mixed service delivery models,¹³ with a focus on holistic services.”¹⁴

Legal Aid Commissions (LACs)

“LACs receive the majority of government funding and service most Australians who receive publicly funded legal assistance.”¹⁵ “LACs prioritise their services to disadvantaged people...”¹⁶

⁹ Productivity Commission 2014, *Access to Justice Arrangements*, Inquiry Report No. 72, Canberra, Recommendation 21.5.

¹⁰ Ibid p 665.

¹¹ The peak national representative body of the Australian legal profession.

¹² ALAF Statement of Co-operation, p 1.

¹³ i.e. use of both in-house lawyers and private practitioners to deliver legal aid services.

¹⁴ Productivity Commission 2014, *Access to Justice Arrangements*, Inquiry Report No. 72, Canberra, p 665.

¹⁵ Ibid p 667.

¹⁶ Ibid p 665.

In 2014-2015 LACs provided a total of 2,404,124 million services (in all law types) comprising:

- 132,115 grants of aid for legal representation services in courts and tribunals (45,943 of these grants were in family violence, child protection, and family law matters)
- 422,342 duty lawyer (32,495 of these duty lawyer services were in family violence, child protection, and family law matters)
- 7,921 family dispute resolution conferences
- 320,373 legal advices (102,025 of these advices were in family violence, child protection, and family law matters)
- 74,549 minor assistance services, such as writing a legal letter or advocating for someone (28,244 of these advices were in family violence, child protection, and family law matters)
- 1,364,618 information/referral services
- 82,206 community legal educations (number of attendees).

Information about funding of LACs can be found at Attachment 'B' to this submission.

Further information about LAC services can be found at Attachment 'C' to this submission.

Community Legal Centres (CLCs)

"CLCs are smaller (with \$68 million in government funding in 2012-13) and work alongside LACs to fill civil and family law gaps, mainly for disadvantaged people."¹⁷

Aboriginal and Torres Strait Islander Legal Services (ATSILS) and Family Violence Prevention and Legal Services (FVPLS)

"ATSILS and FVPLS focus on meeting the legal needs of Aboriginal and Torres Strait Islander Australians. ATSILS (with \$68 million in 2012-13) have a heavy focus on criminal law matters. FVPLS (with \$19 million in 2012-13) focus primarily on family violence matters."¹⁸

The difference which would be made by any additional funding in line with the recommendations of the Productivity Commission

As identified above, the Productivity Commission has identified that "an interim funding injection in the order of \$200 million - from the Australian, state and territory governments - is required per year" to address the more pressing gaps in services:

¹⁷ Productivity Commission 2014, *Access to Justice Arrangements*, Inquiry Report No. 72, Canberra, p 665.

¹⁸ Ibid p 665.

- “• \$11.4 million per year to maintain existing frontline services
- around \$57 million per year to relax the means tests for LACs
- around \$124 million per year to provide additional grants of aid in civil matters.”¹⁹

Front line services

All legal assistance service providers provide front line services. All legal assistance service providers experience inability to meet demand.

Relaxing the means tests of the LACs - the means test is “too mean”

Applications to LACs for grants of legal aid for family dispute resolution and for legal representation are subject to means and merits testing in an environment of competing priorities and insufficient funding.

The Productivity Commission found that:

“...there is clear evidence at present to suggest that legal assistance services are not fully meeting the legal needs of either the impoverished or the disadvantaged as intended, due to a lack of resources...”²⁰

“...the number of households eligible for legal aid appears to be very low”²¹

“...the proportion of the population considered poor is higher than the proportion of the population eligible for grants of legal aid...”²²

The Productivity Commission estimated “that increasing the means test by 10 per cent for civil (including family) matters would cost an additional \$57 million per year. The Australian Government should provide the bulk of this funding (given that this money would be used to assist clients in areas of Commonwealth law under existing guidelines). The Commission estimates that such a proposal would increase the number of people eligible for grants of aid in civil (including family) matters from around 1.4 million to 1.9 million.”²³

If the means tests of LACs could be relaxed as suggested by the Productivity Commission many more services to disadvantaged people, particularly in the area of Commonwealth family law, could be provided. In this regard, we note that recent samplings of legal aid commission general family law files across the country indicated a national average of 79% of such matters involved family violence. Currently, many people who are in such circumstances are unable to receive a grant of family law assistance due to the means test.

NLA has recently written to the Prime Minister, the Commonwealth Attorney-General, the Minister for Women, the Minister for Social Services, the Minister for Justice, and the

¹⁹ Productivity Commission 2014, *Access to Justice Arrangements*, Inquiry Report No. 72, Canberra, Appendix H p 1026.

²⁰ Ibid Appendix H p 1022.

²¹ Ibid Appendix H p 1021.

²² Ibid Appendix H p 1022.

²³ Ibid Appendix H p 1023.

Council of Australian Governments in relation to the need to extend legal assistance service delivery in matters involving family violence particularly.

Providing additional funding for grants of aid in civil law

“The observation that problems tend to be associated, or ‘cluster’, with family law matters suggests that more assistance is needed for other civil law matters. The *Legal Australia-Wide Survey* found that family problems often clustered with ‘credit and debt’ problems, and that those with family law problems also frequently had disputes in areas of consumer, criminal, government (including benefits), housing and rights (Coumarelos et al. 2012, pp. 88-89). Given that LACs have identified and provide services to those with family law matters, these data indicate that assistance is needed for other civil matters as well.”²⁴

The Productivity Commission estimated “the cost of providing an additional 40 000 grants of aid for civil matters is in the order of \$124 million. In practice, however, there are likely to be considerable savings in achieving this goal if LACs were able to use in-house lawyers to provide these grants instead of private practitioners. Governments should give consideration to recommendation 21.3 (relaxing the constraints around the use of in-house lawyers by the LACs) to allow such potential savings to be fully realised. State and territory governments should provide the bulk of this funding on the grounds that most of the civil matters (outside of family matters) relate to state and territory areas of law.”²⁵

In 2013/14 when additional funds were provided to legal aid over two (2) years to deliver additional civil law services, LACs around Australia immediately put in place new programs to assist civil law clients. It was with great disappointment that those funds were reduced by 50% and discontinued one (1) year into a two (2) year funding agreement. What was demonstrated however, is that LACs can use additional funds economically and efficiently to the immediate benefit of disadvantaged people.

The medium to longer term

As recommended by the Productivity Commission Governments should “agree on priorities for legal assistance services and should provide adequate funding so that these priorities can be broadly realised. Such funding should be stable enough to allow for longer term planning and flexible enough to accommodate the anticipated reduction in other sources of funding (particularly Public Purpose Funds or equivalents) in coming years. On an annual basis, the Australian, State and Territory Governments should publically report on the extent of any failure to meet agreed coverage and priorities”.

In determining legal assistance priorities, governments should consult with the Legal Assistance Forums in each state and territory.”²⁶

²⁴ Productivity Commission 2014, *Access to Justice Arrangements*, Inquiry Report No. 72, Canberra, Appendix H p 1025.

²⁵ Ibid Appendix H p 1025.

²⁶ Ibid Recommendation 21.5.

As members of respective state and territory Legal Assistance Forums, LACs look forward to working with governments in responding to this recommendation, to produce evidence-based policies to benefit the public.

Conclusion

The LACs are statutorily established to provide the legal services needed by financially disadvantaged people. Our organisations are well managed and professional, demonstrating accountability and transparency. We have existing infrastructure and appropriate legal and related skill sets.

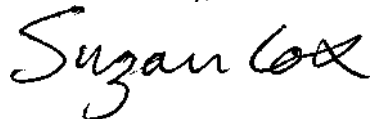
LACs are therefore a national resource ready and committed to working with governments and service providers to further respond to the legal need arising out of the range of issues that impact adversely on our community such as family violence, threats to the health and well-being of children, family breakdown, loss of employment, debt, poor mental health, and ageing.

We would welcome the opportunity to expand services as recommended by the Productivity Commission if the funding for the purpose was to be made available.

If you require any further information please do not hesitate to contact us.

We thank you for the opportunity to make this submission.

Yours sincerely,

A handwritten signature in black ink that reads "Suzan Cox". The signature is written in a cursive, flowing style.

Suzan Cox QC
Chair

H Eligibility for legal aid and the cost of extending it

This appendix describes the means test applied by legal aid commissions (LACs) to determine eligibility for grants of legal aid. Estimates of the number of households eligible for these services are discussed in section H.1. Section H.2 details the Commission's approach to estimating the additional cost associated with recommendation 21.4.

H.1 Who is eligible for legal aid?

The LACs ration their services by means, merit and matter. The means tests determine a threshold of income and assets above which applicants are denied legal aid, or are required to make a contribution towards the cost of their case. Some types of legal aid services are not means tested, including minor assistance and information services (chapter 20). This appendix focuses on those services that are means tested — specifically the grants of aid that comprise the bulk of LAC expenditure on civil, including family matters.

The means tests vary considerably between LACs, but all comprise an income and assets test component. The LACs typically use a measure of disposable income — that is, one that takes into account tax and welfare transfers — for the purposes of administering the income test, although some jurisdictions assess gross income. Additional allowances are also often made for the number of dependants and household expenses. The income tests imposed by the different LACs for grants of legal aid are summarised in table H.1.

The assets test also varies considerably across legal aid providers, with different allowances for equity in housing, vehicles, businesses and other assets. Where an applicant's total assets exceed the threshold allowed, then they are usually expected to make a contribution towards the cost of their case. The assets test used by the LACs for grants of legal aid are summarised in table H.2.

Table H.1 Summary of income test thresholds for which no further contribution is required^a

<i>Legal aid commission</i>	<i>Threshold of income, above which a contribution is required (net of allowances)</i>	<i>Allowance for children and dependants</i>	<i>Allowances for rental assistance and other household costs</i>	<i>Other allowances, notes</i>
Legal Aid New South Wales	\$213 per week	\$120 per week per dependant	\$320-\$455 per week	Net of income tax and Medicare levy, family tax benefits, carer allowance, rent assistance, NDIS amounts; up to \$250 per week in childcare costs; up to \$120 per week per child in child support payments
Victoria Legal Aid	\$255 per week	\$130 per week for first dependant, \$125 per week for each dependant thereafter	\$240 per week	Income tax, the Medicare levy, business expenses; up to \$240 per week in childcare costs; up to \$125-130 per week in child support payments
Legal Aid Qld	\$370-\$1 370 per week			Gross income measure that depends on number of children
Legal Services Commission of South Australia	\$342 per week	\$128 per week for first dependant, \$120 per week for each dependant thereafter	See note ^b	Allows a range of deductions for expenses such as tax, childcare and household expenses, but only up to a maximum level linked to the Henderson poverty line
Legal Aid WA	\$264 per week	\$99 for first dependant, \$93 for each dependant thereafter	\$260-\$390 per week	Net of income tax and the Medicare levy; \$148 per week in childcare costs; child support payments using the same scale as the allowance for children and dependants
Legal Aid Commission of Tasmania	\$450-\$1 005 per week			Gross income measure that depends on number of children
NT Legal Aid Commission	\$271 per week	\$101 for first dependant, \$96 for each dependant thereafter	Equal to rental 'cost of 2 bedroom flat in Darwin'	Net of income tax and Medicare levy; \$140.50 per week in childcare costs
ACT Legal Aid Commission	\$396 per week	\$185 for the first dependant, around \$174 for each dependant thereafter	\$450 per week	Net of income tax and Medicare levy; childcare costs up to \$208 per week

^a In practice, most LACs require an initial contribution from clients for a grant of aid. This initial cost ranges from \$20 to \$110 depending on the jurisdiction and matter. ^b Equal to the 'childcare relief figure' set by the Commonwealth Department of Human Services for up to 50 hours (Legal Services Commission of South Australia 2014a).

Sources: Commission research based on Legal Aid NSW (2010a, 2010b); Victoria Legal Aid (2010a, 2010b, 2010c, 2010d); Legal Aid Queensland (2014); Legal Services Commission of South Australia (2014a, 2014b); Legal Aid WA (2010a, 2010b, 2010c); Legal Aid Commission of Tasmania (2003, 2010, 2014); Northern Territory Legal Aid Commission (2005); Legal Aid ACT (2013); Melbourne Institute of Applied Economics and Social Research (2014).

Table H.2 Summary of assets test thresholds for which no further contribution is required

<i>Legal aid commission</i>	Threshold of assets, above which a contribution is required (net of allowances)	<i>Home equity allowed^a</i>	<i>Vehicle equity allowed^b</i>	<i>Other allowances, notes</i>
Legal Aid New South Wales	\$100-\$1 500 depending on the matter	\$260 550 to \$521 000	\$15 100	Allowance is made for the reasonable value of household furniture, clothing and tools of trade; baby bonus and NDIS are exempt, as are lump sum compensation payments if the applicant and family members are not working; allowance of up to \$287 750 is allowed for farm or business equity
Victoria Legal Aid	\$865	\$300 000	\$11 280	Household furniture, clothing and tools of trade are excluded from assessable assets; allowance for farm/business equity between \$161 500 and \$336 500 depending on number of dependents; lump sum payments are excluded unless they affect the receipt of a Commonwealth benefit
Legal Aid Qld	\$930-\$1 880 ^c	\$146 000 ^d	\$16 000	Household furniture and tools of trade are exempt unless they are of 'exceptional value'
Legal Services Commission of South Australia	See note ^e	See note ^f	See note ^g	Household furniture, clothing, and tools of trade; equity in a farm or business up to assets limit under various Centrelink benefit tests
Legal Aid WA	\$950-\$1 900 ^c	\$299 614 to \$355 051	\$14 600	Household furniture, clothing, and tools of trade; equity in a farm or business between \$161 500 and \$346 000 depending on home ownership and partner status.
Legal Aid Commission of Tasmania	\$740-\$1 490 ^c	\$169 000 to \$215 750	\$11 500	Equity in a farm or business between \$118 000 and \$251 000 depending on home ownership and partner status
NT Legal Aid Commission	\$950-\$1 950 ^c	\$310 000	\$13 500	Household furniture, clothing, and tools of trade; some lump sum payments if the applicant and family members are not working
ACT Legal Aid Commission	\$1 100-\$2 200 ^c	\$507 250 ^h	\$16 315 ^g	Household furniture and effects that are not of exceptionally high value, clothing, tools of trade, lump sum compensation payments if the applicant and dependants are not working, lump sum child or spouse maintenance where the applicant is receiving a pension/benefit at a reduced rate. Between \$196 750 and \$421 500 in farm or business equity depending on home ownership and partner status

^a Typically, these allowances are made for the principal home of the person applying for assistance, with any other real estate being counted against the net assessable assets allowed. Those aged over 60 years are often provided with more leeway in several jurisdictions. ^b Equity allowed is usually up to two vehicles, with any equity in additional vehicles being assessed as assets. ^c Varies by number of dependants. ^d Also allows for savings of up to this amount for the purpose of buying a home, provided that contracts were exchanged prior to knowledge of the legal problem. ^e The figure is set and updated in accordance with the weighted average of the Consumer Price Index and Average Weekly Earnings, with an allowance for dependants. ^f Up to the amount equal to the median value of an established home in Adelaide. ^g Equity allowed up to the published re-sale value for a 5 year old 6 cylinder family car. ^h Equity allowed up to a maximum equal to the median price of an established house in the ACT.

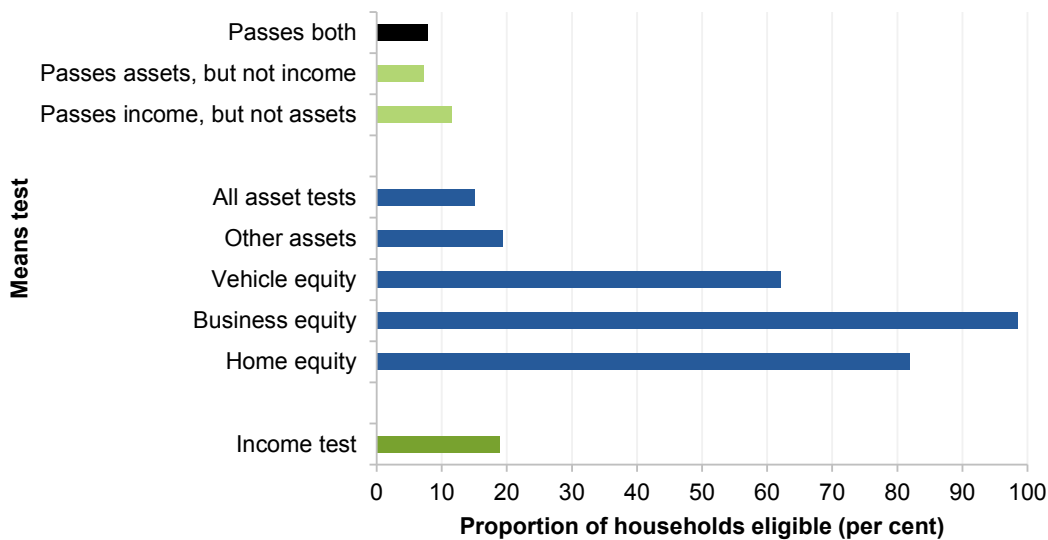
Source: As per table H.1.

Few are eligible for legal aid

It is difficult to determine a ‘notional’ national means test given the way that eligibility requirements vary considerably between jurisdictions. That said, the Commission has derived such a notional national means test, in an effort to understand the proportion of households that would be eligible for legal aid without having to make a contribution. To do so, the Commission has used the ABS 2009-10 Household Expenditure Survey (HES), as this data source provides consistent information on a range of different income measures and assets. It does not, however, provide detail down to the level that LACs frequently consider — such as the value of tools and household furniture.

The Commission estimates that around 8 per cent of households across Australia are eligible for legal aid without having to make a contribution towards their costs. Based on the income test alone, around 19 per cent of households meet the ‘average’ LAC criteria, while 15 per cent of households meet the assets criteria alone. Figure H.1 summarises the results of the Commission’s estimates, and the assumptions used to derive it. It should be noted that the calculations are indicative only and rely on a number of assumptions, which, if incorrect, could significantly change the estimated proportion of eligible households.

Figure H.1 **Estimated proportion of households eligible for legal aid^a**



^a Based on an income test that allows for \$300 per week base income, \$150 per week per dependant under 15 years of age, \$300 per week per household in rental assistance, and \$100 per week per household for other household expenses; and an assets test that allows for \$500 000 in home equity for the place of residence, \$250 000 in business equity, \$15 000 in vehicle equity, and \$1000 for other assets. Other assets includes the value of accounts in financial institutions, private trusts, shares, debentures and bonds, residential property besides the place of residence, non-residential property, and ‘other assets not elsewhere classified’ by the Household Expenditure Survey.

Data source: Commission estimates based on ABS (*Household Expenditure Survey, 2009-10*, Cat. no. 6503.0, Confidentialised Unit Record File).

Very different proportions of households are eligible for the different criteria of the assets test. Most households are not constrained by the allowances made for business and home equity — possibly because many households do not own businesses and rent their principal place of residence. The vehicle constraint is more binding, but still not applicable for most households. However, the low threshold for assessable assets means that the constraint on other assets — predominantly liquid assets — renders about 80 per cent of households ineligible for aid without making a contribution.

H.2 How much would it cost to provide more legal aid services?

The Commission, in recommendation 21.4, proposes more funding be provided to legal assistance services for three purposes:

- to maintain existing frontline services that have a demonstrated benefit to the community
- to relax the means tests applied by the LACs and allow more households to be eligible to receive their grants of legal aid
- to provide grants of legal aid in areas of law where there is little assistance being currently provided, by either LACs or other legal assistance services.

The Commission estimates that the collective cost of this recommendation is around \$200 million per annum, and should continue as an interim arrangement until sufficient data can be collected to better inform funding of legal assistance services (chapters 21 and 25). This section describes in detail how these estimates were derived.

Providing funding to maintain existing frontline services

Recent decisions taken in the 2013-14 Mid-Year Economic and Fiscal Outlook (MYEFO) Statement and 2014-15 Budget reduced funding to all four legal assistance providers (Australian Government 2013). The announced reductions in funding from MYEFO totalled around \$43 million over four years, and were designed to limit policy reform and advocacy activities:

The Government will achieve savings of \$43.1 million over four years by removing funding support for policy reform and advocacy activities provided to four legal assistance programmes. Funding for the provision of frontline legal services will not be affected. (Australian Government 2013, p. 119)

The distribution of these changes in funding, over four years (2013-14 to 2016-17), comprised:

- a \$6.5 million reduction to the LACs
- a \$19.6 million reduction to the Community Legal Services Program (CLSP), directed to the community legal centres (CLCs)
- a \$13.3 million reduction to the Aboriginal and Torres Strait Islander Legal Services (ATSILS)
- a \$3.7 million reduction to the Family Violence Prevention and Legal Services (FVPLS) — however, this change in funding did not eventuate (table 20.4).

A further reduction of \$15 million to LACs was made in the 2014-15 Budget for that financial year.

However, these adjustments to funding should be considered against the wider context of additional funding that was provided in the 2013-14 Budget. In that budget, additional funds of \$30 million were provided to LACs over two years to undertake work in civil areas of law. (The subsequent \$15 million reduction in the 2014-15 Budget represented an early end to the provision of those funds.) An additional \$10.4 million for four years was also provided through the CLSP (table 20.4).

That said, many legal assistance services have stated that the changes to funding as part of the 2013-14 MYEFO and 2014-15 Budget have affected frontline services. For example, the National Aboriginal and Torres Strait Islander Legal Services stated in respect to the changes outlined in the MYEFO:

[I]mplementing the announced funding cuts cannot simply be done by removing dedicated law reform and advocacy positions. Given how law reform and advocacy work is shared amongst multiple people with responsibility in areas of frontline services, the implementation of the announced funding cuts will mean that cuts to frontline service delivery will have to be made. Furthermore, ATSILS allocate very few resources to law reform and advocacy work, and the size of the announced funding cuts far exceed what is spent in this area meaning that in order to implement such, other frontline services are going to have to be withdrawn. (sub. DR327, p. 2)

The Commission is satisfied that the changes to funding as part of the 2013-14 MYEFO and 2014-15 Budget have affected frontline legal services (chapter 21). The Commission considers that these adjustments to funding be altered, and funding restored to the LACs and ATSILS. The resulting total cost to the Commonwealth would be around \$34.8 million over four years (or around \$8.7 million per year). Consistent with recommendation 21.6, more information around appropriate funding levels should then be available to make a comprehensive assessment of what funding is needed for each legal assistance provider.

The case for returning CLSP funding back to the level of the 2013-14 Budget is not as strong. The additional funding provided in that budget comprised of new, additional funds as well as a transfer of funds previously allocated to other government programs (summarised in table 20.4). In practice, it appears that Environmental Defenders Offices

(EDOs) benefited from the additional funding in the 2013-14 Budget, but then lost these gains, as well as funding for their operating budgets, as part of the 2013-14 MYEFO decisions.

Consequently, the Commission considers that the Commonwealth should provide funding for the operating costs of the EDOs (of around \$1 million per year, over four years), but does not see merit in restoring to the EDOs those additional funds that they received in the 2013-14 Budget. This adjustment, in conjunction with returning the other CLSP funding that was withdrawn in the 2013-14 MYEFO, would cost the Commonwealth a total of \$10.6 million over four years (or around \$2.6 million per year).

In total, the cost of these proposals is \$45.4 million over four years (or around \$11.4 million per year).

Providing additional funding to the LACs to relax their means tests

The Commission has used a variety of data sources in order to cost the recommendation about relaxing the means tests applied by the LACs for civil (including family) matters. These include:

- unpublished administrative data from Victoria Legal Aid (VLA) on the number and average costs of services provided, by matter and method (grants of aid, duty lawyer services, minor assistance services, and information services)
- unpublished administrative data from Legal Aid New South Wales (LANSW) on the number of services provided by matter and method, along with the average cost of grants of aid fulfilled by private practitioners
- published data from the National Legal Aid (NLA) website, which shows the total expenses for each legal aid commission
- the ABS 2009-10 Household Expenditure Survey (HES), which provides information around the distribution of income and assets of households.

However, these data have some limitations. The data provided by the LACs contains some gaps. For example, the data from VLA only contains a sampling of costs for grants of legal aid (which make up the largest proportion of LAC expenditure) at private practitioner rates. Similarly, LANSW was only able to provide the average cost of grants of legal aid for private practitioner rates. This means that there are no data on the cost of providing 'in-house' grants of legal aid. To account for this, the Commission has calculated the total cost of grants of aid at private practitioner rates, then 'scaled down' the result by a factor equal to the number of grants of aid provided in-house as a share of total grants of aid. Such a method implicitly assumes the same ratio of in-house grants of aid to private practitioner grants in any costing calculation.

Another limitation is that LANSW was unable to provide cost estimates for providing duty lawyer services, minor assistance, and information services (but were able to provide the

number of each). To cost these services, the VLA costs have been applied to the LANSW figure as they represent the closest substitute for which detailed data are available. Such a process is not ideal, but is consistent with cost-benefit analysis methods (Department of Finance and Administration 2006).

The data provided by VLA and LANSW have been used to derive the total costs of providing legal services for civil (including family) law matters in those jurisdictions for 2012-13. The resulting estimates, combined with the NLA data, allow for the proportion of costs associated with providing legal aid in those areas of law. This proportion was then applied nationally to determine an imputed total national cost for civil (including family) law services — around 35 per cent of total expenses.

The HES data have been used to plot a distribution of income and assets that, depending on where thresholds are drawn, define how many people are in scope for legal aid. A baseline case is first set by picking a representative income and assets test based on those estimated by the Commission to be eligible for a grant of legal aid (section H.1) — around 8 per cent of households. Changes to the means test allow for a new proportion of households eligible for legal aid to be estimated, and it is the proportionate change between this and the baseline case that determines the additional funding required (by applying it to the national total for civil, including family, law matters).

Choosing a ‘baseline’ set of eligibility requirements

The Commission has used a simplified approach that considers equivalised household disposable income (box H.1) and a single, combined measure of net assets to determine changes in eligibility. This is a simpler approach than the means tests commonly employed by the LACs as it does not make different allowances for different assets. The choice of this approach has been made on the grounds that it is the limits on ‘other assets’ that are the main binding constraint, rather than the specific asset types commonly considered (figure H.1).¹

An initial, or ‘baseline’ set of income and assets parameters is necessary in order to determine proportional changes in the number of households eligible for legal aid. This baseline set of income and net assets is chosen by examining the distribution of income and assets for those households found to be eligible under the ‘notional’ national parameters discussed in section H.1. This indicates that:

- a median equivalised disposable household income of approximately \$400 per week (or around \$20 000 per year)
- most households had net assets of less than \$150 000.²

¹ In practice, moving towards a ‘pooled’ assets test is effectively equivalent to relaxing the most restrictive assets test first, and then the next most restrictive, and so forth.

² While there could be concerns that such a baseline would omit those that are ‘asset-rich’ and ‘income-poor’, such as some Age Pension recipients, it should be noted that those older than 65 comprise less than 3 per cent of VLA and LANSW clients, and so do not materially affect the costing estimates.

These parameters were used to calculate the baseline case, which in turn indicate that around 8 per cent of households are eligible for grants of legal aid.

Box H.1 Equivalised disposable household income

Comparing the relative wellbeing and economic resources of households is difficult because different households can have different compositions. Comparing the income of a single-person household to that of a couple, who are both employed, with several dependants can be misleading. Some adjustment is necessary to take account of different compositions of households for meaningful analysis.

One established method to do this is to use 'equivalence scales' — factors that control for different compositions of households — to weight income in order to make meaningful comparisons. Applying these equivalence scales means that the resulting 'equivalised' income can be viewed as an indicator of the economic resources available to a standardised household. This enables more accurate comparisons across households to be made.

The ABS HES contains equivalence scales based on a 'modified OECD' approach, and these scales are used by the Commission for its analysis.

Source: ABS (Household Expenditure Survey, 2009-10, Cat no. 6305.0, Household Expenditure Survey User Guide, pp. 132–137).

Increasing the number of households eligible for legal aid in civil including family matters

As discussed in chapters 21 and 25, the Commission has recommended that, once further work has been done to improve the evidence base, further analysis and consideration should be given to the quantum of funds necessary to provide legal aid services for those where there is a net benefit from doing so.

At present, however, based on limited data, the number of households eligible for legal aid appears to be very low. Indeed, some means tests are below some common measures of poverty — such as the Henderson Poverty Line and the OECD Relative Poverty Line (described in box H.2). The Commission is not proposing to increase the means test to these levels, although notes that VLA has indicated that the latter benchmark may be an 'appropriate starting point' when determining future means tests:

We've acknowledged ... the OECD as a starting point, it's not an end point, and we recognise that there would be different ways to approach the question of financial eligibility or someone's lack of capacity to meet the full cost of their own legal representation for very severe life-affecting issues. (trans., p. 741)

There are many measures of disadvantage that consider factors beyond relative income, such as including combinations of assets, income and consumption, length of time in poverty, and broader measures of social exclusion (McLachlan, Gilfillan and Gordon 2013). Each of these has benefits and drawbacks when considered as a measure to determine eligibility for legal aid. For example, measures of deprivation — which look at

going without or being unable to afford particular goods and services — may be a poor measure to use to determine eligibility for legal aid as the deprivation in question may not be related to legal need.

Box H.2 Measures of relative poverty

Two commonly used poverty lines are the Henderson Poverty Line and the OECD Relative Poverty Line.

- The Henderson Poverty Line defines benchmarks of poverty on the basis of equivalised disposable income for different household types. A recent estimate found that around 12.4 per cent of Australians were below this poverty line (Melbourne Institute of Applied Economics and Social Research 2013).
- The OECD Relative Poverty Line is defined as household income below 50 per cent of median equivalised household disposable income. Statistics from the OECD indicate that about 13.8 per cent of Australians were below this poverty line (OECD 2014). Another estimate, which used a different measure of equivalised disposable income and other assumptions, found that around 10.3 per cent of Australians were impoverished (McLachlan, Gilfillan and Gordon 2013).

However, these measures do not consider assets in their calculation. One measure that does — a measure of financial poverty (Headey, Krause and Wagner 2009) — considers both equivalised household income as well as a household's net worth. Households with less than \$200 000 or little in the way of liquid assets are considered to be poor. It was estimated in 2008 that around 13.7 per cent of the population was classified as poor under this measure.

Regardless of the relative poverty measure used, the proportion of the population considered poor is higher than the proportion of the population eligible for grants of legal aid from LACs under their means tests. This indicates that many households, despite being financially disadvantaged, may still fail the means tests for grants of legal assistance, or be required to make a contribution towards the cost of their case from a position of meagre resources.

An even smaller proportion would be likely to receive a grant of legal aid once the other methods of rationing are considered (chapter 21).

The choice of a measure of disadvantage to determine eligibility for legal assistance services should also be judged against the costs and benefits of providing services for different matters to those with other dimensions of disadvantage. While legal aid could be used to solve various legal needs, it may be the case that it is more cost effective to resolve those needs through, or in conjunction with, other services (which in turn may have their own means tests). Accordingly, more information is needed to best identify the measure or measures that should best be used to determine eligibility for legal aid. The recommendations in chapter 25 outline the best way to improve the evidence base in order to achieve this.

That said, there is clear evidence at present to suggest that legal assistance services are not fully meeting the legal needs of either the impoverished or the disadvantaged as intended, due to a lack of resources (chapters 21 and 22). A review of the National Partnership Agreement governing legal assistance services by the Allen Consulting Group found that

present funding arrangements for LACs mean that legal aid is failing to provide services to the disadvantaged clients that need them:

Current arrangements do not equip legal aid commissions to provide grants of legal aid to all disadvantaged clients in all matters within stated service priorities, nor do the eligibility principles and service priorities draw a clear line between the types of matters and clients that should attract Commonwealth funded legal assistance services, and those where services should not be provided, or should be provided through other mechanisms. (2014, p. 113)

Given the low number of households eligible for grants of legal aid, and evidence to suggest that financially disadvantaged households may be ineligible, the Commission has calculated the cost of relaxing the means test, relative to the 'notional' national case described above. Because there is a lack of data at present to indicate what proportion of households should be eligible for assistance, the Commission has calculated the cost of increasing the means test (both income and assets) by 10 per cent, relative to the baseline case described above,³ on the grounds that such a policy represents a reasonable interim arrangement. Such an increase would lead to around 10 per cent of households (or about 9 per cent of the population) being eligible for legal aid services in civil and family matters — a proportion that more closely matches the share of households experiencing relative poverty. Such a shift would also move the eligibility requirements closer towards means tests applied to some other government benefits.

The Commission estimates that increasing the means test by 10 per cent for civil (including family) matters would cost an additional \$57 million per year. The Australian Government should provide the bulk of this funding (given that this money would be used to assist clients in areas of Commonwealth law under existing guidelines). The Commission estimates that such a proposal would increase the number of people eligible for grants of aid in civil (including family) matters from around 1.4 million to 1.9 million.

Sensitivity testing the relaxing of the means test

The accuracy of this additional cost can be tested for sensitivity by considering the estimated costs for different changes to the baseline case (table H.3). The sensitivity testing estimates a range of costs from \$38 million to \$122 million. The higher estimates represent cases where the baseline considered often comprises a very small number of households, which in turn leads to large proportional increases when the means test is increased. Conversely, the lower estimates result from smaller proportional changes in the number of households considered eligible.

One factor that should be noted is the small range of changes in estimates of cost within the income bands (the columns of table H.3). This indicates that once the 'other assets' test is relaxed, the binding variable that controls eligibility is primarily income. This highlights

³ That is, to an equivalised disposable household income of \$22 000 per year and total net assets of \$165 000.

the importance of relaxing the means test on other assets (or raising the general assessable asset limit) when increasing eligibility.

Table H.3 Sensitivity testing of the cost of raising the means tests by around 10 per cent for civil and family matters^{a,b}

Change in net household assets	Change in equivalised net disposable household income				
	\$18 000 to \$20 000	\$19 000 to \$21 000	\$20 000 to \$22 000	\$21 000 to \$23 000	\$22 000 to \$24 000
	\$m	\$m	\$m	\$m	\$m
\$130 000 to \$142 500	116	84	56	38	39
\$140 000 to \$155 000	122	89	61	42	43
\$150 000 to \$165 000	113	84	57	39	40
\$160 000 to \$175 000	113	84	57	39	41
\$170 000 to \$187 500	112	85	59	40	42

^a **Bold** denotes the Commission's preferred estimate. ^b The discreteness of the data does not always allow for an exact 10 per cent increase in income and assets measures, and so the proportional change in some categories may be greater than others.

Sources: Commission estimates based on unpublished VLA and LANSW data; ABS (*Household Expenditure Survey, 2009-10*, Cat. no. 6503.0, Confidentialised Unit Record File).

Providing additional funding for grants of aid in civil matters

Increasing the means test for the present range of services offered would still leave considerable gaps in coverage because LACs do not offer grants of aid in many civil matters. Some areas of civil law are covered by the other legal assistance services, but the Commission has heard many instances where coverage has been 'wound back' or where LACs have suggested that there is unmet legal need in particular areas, but do not have the resources to cover it (chapter 21). For example:

Then there's looking at areas of law in which we're not adequately meeting unmet need. Particularly in the civil law space we accept that we will never be able to cover the field, but in running effective niche civil law practices which can spotlight systemic problems and tackle issues at their source ... we can contribute to the avoidance of legal problems for other people who will never actually be a client. (VLA, trans., p. 744)

However, when pressed on the extent of unmet legal need for civil (as well as family matters), no LAC was able to provide a concrete figure on the level of unmet need, or how much additional funding would be necessary to close the perceived 'gap' in legal services. The inquiry process revealed a number of anecdotes relating to unmet need in the civil

space, but quantifying the costs of resolving that need and the benefits from doing so is not possible to do accurately on such evidence.

The observation that problems tend to be associated, or ‘cluster’, with family law matters suggests that more assistance is needed for other civil law matters. The *Legal Australia-Wide Survey* found that family problems often clustered with ‘credit and debt’ problems, and that those with family law problems also frequently had disputes in areas of consumer, criminal, government (including benefits), housing and rights (Coumarelos et al. 2012, pp. 88–89). Given that LACs have identified and provide services to those with family law matters, these data indicate that assistance is needed for other civil matters as well.

On this basis, the Commission has examined the option of increasing the number of (non-family) civil grants of aid to match the number of grants presently provided for family matters — an increase of around 40 000 grants, annually. This represents a substantial increase in the total grants of legal aid, given that (non-family) civil matters are not well covered by LACs at present.

The present lack of coverage in (non-family) civil matters makes it difficult to cost such a proposal with accuracy. Because the LACs do relatively little casework for civil (other than family) matters, the cost information provided by VLA and LANSW may not be a good indicator of the funding they would require if they were to increase their caseload in this area of law. Another issue is the relatively skewed nature of the other civil casework at present — some areas of civil law (besides family) receive a much greater number of grants of legal aid than others. However, while such data may be imperfect, it is the most reliable source that the Commission has had access to at this particular level of disaggregation.

The data about grants of legal aid undertaken by private practitioners provided to the Commission indicated that the cost of a grant of aid for a civil matter ranged from \$1923 (for matters relating to mental health in New South Wales) to \$24 988 (for consumer matters, including consumer credit, in New South Wales).⁴ The weighted cost of a civil grant of aid currently undertaken by VLA and LANSW — based on their cost weighted by their incidence — is around \$3100.

Accordingly, the cost of providing an additional 40 000 grants of aid for civil matters is in the order of \$124 million. In practice, however, there are likely to be considerable savings in achieving this goal if LACs were able to use in-house lawyers to provide these grants instead of private practitioners. Governments should give consideration to recommendation 21.3 (relaxing the constraints around the use of in-house lawyers by the LACs) to allow such potential savings to be fully realised. State and territory governments should provide the bulk of this funding on the grounds that most of the civil matters (outside of family matters) relate to state and territory areas of law.

⁴ The number of grants of aid for consumer matters is relatively low in New South Wales, and the high average cost reported here reflects the effect of a few complex cases.

Sensitivity testing the provision of additional grants of civil aid

A lack of comprehensive cost data for grants of aid in civil matters means that it is difficult to provide an exact figure or confidence interval around the cost of providing these additional grants of aid. One method of sensitivity testing these additional grants of aid is to cost them at the private practitioner rates in the areas of civil law most commonly provided by VLA and LANSW. Two areas of law — financial matters and government matters — are currently provided more often than other civil matters (although they themselves are far less common than areas of family law). Costing an additional 40 000 grants of civil aid at those rates yields an estimate between \$80 million and \$130 million, respectively.

The Commission estimate of \$124 million is towards the higher end of this estimate, reflecting the relatively high cost of grants of aid in civil areas of law (outside of family law) where there are currently fewer cases undertaken by VLA and LANSW — such as migration, housing and human rights. An estimate towards the higher end of the band is considered credible as costs may rise if LACs expand into providing more services in these areas of law.

Summary

The combined cost of these proposals is around \$192 million per year, comprising:

- \$11.4 million per year to maintain existing frontline services
- around \$57 million per year to relax the means tests for LACs
- around \$124 million per year to provide additional grants of aid in civil matters.

However, the Commission has recommended a funding increase of around \$200 million (recommendation 21.4), due to a number of sensitivities around the methodology employed. These include:

- the potential for a higher cost of providing private practitioner services than what is currently being paid at present (as an increase in the demand for the services has the scope to raise prices)
- concerns that increasing the means test could alter the ‘mix’ of problems faced by those seeking legal aid, and so alter the costs of grants of aid
- uncertainties around how the intensity, or number of problems per household, changes as the means tests are relaxed.

These factors highlight the need for greater data collection to better understand the cost drivers and legal problems facing those who need legal assistance services. The challenges of building such an evidence base are discussed in chapter 25.

There is also a question as to which level of government should bear the cost of recommendation 21.4. Based on the present principle used under the current National Partnership Agreement — that ‘Commonwealth money should be attached to Commonwealth matters’ — the Commission estimates that around 60 per cent of the cost associated with recommendation 21.4 should be borne by the Commonwealth. This reflects the cost of changes in funding from MYEFO and the Budget, and the cost of additional family law matters from relaxing the means tests, which are largely Commonwealth responsibilities. The cost of providing grants of aid for these additional non-family civil matters would be more evenly shared between the Commonwealth and the states.

TABLE 19: Commissions' BUDGETED Income and Expenses 2014-2015
(excluding funding for CLCs)

	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 Expenses (\$'000)
NSW	71,197	128,452	29,278	7,884	236,811	243,776
VIC	46,874	68,438	26,305	5,468	147,085	141,980
QLD	43,519	44,794	19,777	3,945	112,035	112,035
SA	16,194	21,250	2,712	2,566	42,722	45,512
WA	21,090	34,344	1,000	5,319	61,753	64,915
TAS	6,149	5,974	48	174	12,345	13,500
ACT	4,553	5,486	996	632	11,667	12,060
NT	4,025	4,913	0	1,467	10,405	10,521
TOTAL	213,601	313,651	80,116	27,455	634,823	644,299

TABLE 18: Commissions' ACTUAL Income and Expenses 2013-2014
(excluding funding for CLCs)

	INCOME				EXPENSES	
	CW Input Grants (\$'000)	State Input Grants (\$'000)	Spec. Trust & Statutory Interest (\$'000)	Self Generated Income (\$'000)	Total Income (\$'000)	Total Expenses (\$'000)
NSW	62,189	97,821	35,555	17,973	213,538	215,786
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	213,047	283,764	85,883	41,137	623,832	613,143

TABLE 17: Commissions' ACTUAL Income and Expenses 2012-2013
(excluding funding for CLCs)

	INCOME				EXPENSES	
	CW Input Grants (\$'000)	State Input Grants (\$'000)	Spec. Trust & Statutory Interest (\$'000)	Self Generated Income (\$'000)	Total Income (\$'000)	Total Expenses (\$'000)
NSW	66,317	99,582	39,758	11,108	216,765	209,696
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	211,315	289,490	90,436	33,758	624,999	624,165



TABLE 16: Commissions' ACTUAL Income and Expenses 2011-2012
(excluding funding for CLCs)

	INCOME				EXPENSES	
	CW Input Grants (\$'000)	State Input Grants (\$'000)	Spec. Trust & Statutory Interest (\$'000)	Self Generated Income (\$'000)	Total Income (\$'000)	Total Expenses (\$'000)
NSW	65,163	97,180	39,274	9,734	211,351	216,147
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	205,672	270,442	91,630	37,698	605,442	610,724

TABLE 15: Commissions' ACTUAL Income and Expenses 2010 - 2011
(excluding funding for CLCs)

	INCOME				EXPENSES	
	CW Input Grants (\$'000)	State Input Grants (\$'000)	Spec. Trust & Statutory Interest (\$'000)	Self Generated Income (\$'000)	Total Income (\$'000)	Total Expenses (\$'000)
NSW	61,376	90,959	38,553	8,671	199,559	203,296
VIC	47,195	59,401	25,769	3,341	135,706	133,582
QLD	41,232	38,477	29,003	5,151	113,863	104,252
SA	14,946	18,047	3,836	3,819	40,648	38,155
WA	20,922	27,845	1,408	7,055	57,230	55,045
TAS	5,992	5,610	209	962	12,773	11,941
ACT	4,421	4,613	1,244	869	11,147	11,801
NT	3,860	3,549	0	1,625	9,034	9,801
TOTAL	199,944	248,501	100,022	31,493	579,960	567,873

TABLE 14: Commissions' ACTUAL Income and Expenses 2009 - 2010
(excluding funding for CLCs)

	INCOME				EXPENSES	
	CW Input Grants (\$'000)	State Input Grants (\$'000)	Spec. Trust & Statutory Interest (\$'000)	Self Generated Income (\$'000)	Total Income (\$'000)	Total Expenses (\$'000)
NSW	57,567	83,789	37,838	9,240	188,434	192,112
VIC	43,643	53,646	23,500	5,785	126,574	120,424
QLD	38,497	27,131	37,887	5,053	108,568	107,866
SA	14,054	16,818	2,919	2,658	36,449	37,344
WA	17,276	25,993	1,026	5,271	49,566	48,047
TAS	6,218	5,030	250	256	11,754	11,363
ACT	4,827	4,282	1,532	508	11,149	10,404
NT	3,723	3,549	0	1,733	9,005	9,855
TOTAL	185,805	220,238	104,952	30,504	541,499	537,415



TABLE 13: Commissions' ACTUAL Income and Expenses 2008-2009
(excluding funding for CLCs)

	INCOME				EXPENSES	
	CW Input Grants (\$'000)	State Input Grants (\$'000)	Spec. Trust & Statutory Interest (\$'000)	Self Generated Income (\$'000)	Total Income (\$'000)	Total Expenses (\$'000)
NSW	54,599	80,063	39,642	9,462	183,766	192,859
VIC	37,571	55,970	28,000	5,524	127,065	129,602
QLD	34,994	25,711	35,446	5,185	101,336	106,962
SA	13,762	14,785	3,851	2,783	35,181	35,246
WA	16,990	23,651	1,841	4,662	47,144	46,631
TAS	5,755	4,841	1,460	386	12,442	11,983
ACT	4,112	3,519	1,649	481	9,761	9,915
NT	3,603	3,437	0	1,713	8,753	8,862
TOTAL	171,386	211,977	111,889	30,196	525,448	542,060

TABLE 12: Commissions' ACTUAL Income and Expenses 2007-2008
(excluding funding for CLCs)

	INCOME				EXPENSES	
	CW Input Grants (\$'000)	State Input Grants (\$'000)	Spec. Trust & Statutory Interest (\$'000)	Self Generated Income (\$'000)	Total Income (\$'000)	Total Expenses (\$'000)
NSW	66,437	78,805	42,423	11,468	199,133	188,106
VIC	35,183	42,897	31,860	9,384	119,324	139,629
QLD	34,407	24,537	28,579	4,886	92,409	93,233
SA	13,666	14,218	4,385	2,768	35,037	33,271
WA	16,946	20,980	1,701	3,957	43,584	41,650
TAS	5,375	4,625	420	445	10,865	12,263
ACT	4,027	3,199	1,297	546	9,069	9,127
NT	3,529	3,545	0	1,747	8,821	8,835
TOTAL	179,570	192,806	110,665	35,201	518,242	526,114

TABLE 11: Commissions' ACTUAL Income and Expenses 2006 - 2007
(excluding funding for CLCs)

	INCOME				EXPENSES	
	CW Input Grants (\$'000)	State Input Grants (\$'000)	Spec. Trust & Statutory Interest (\$'000)	Self Generated Income (\$'000)	Total Income (\$'000)	Total Expenses (\$'000)
NSW	47,703	78,293	32,960	11,050	170,006	146,824
VIC	30,852	41,263	26,543	12,495	111,153	117,623
QLD	32,470	23,359	18,642	4,801	79,272	82,295
SA	13,370	11,968	4,336	3,614	33,288	31,715
WA	14,069	19,060	1,361	3,625	38,115	38,467
TAS	5,035	4,081	0	422	9,538	9,836
ACT	3,887	2,966	1,080	474	8,407	8,874
NT	3,428	3,418	0	930	7,776	7,903
TOTAL	150,814	184,408	84,922	37,411	457,555	443,537

ATTACHMENT C

Legal Aid Commission services - background

Legal aid commission services are provided consistently with the priorities specified by the inter-governmental National Partnership Agreement on Legal Assistance Services 2015, and with the state and territory enabling legislation of the respective legal aid commissions.

Legal representation services

Legal representation services include legal representation in fully contested matters including the provision of Independent Children's Lawyers and Child Representatives as requested by the family law courts and child protection courts respectively, as well as full legal representation services for parties with matters predominantly in the family law, family violence, child protection, and criminal law courts.

Duty lawyer services

Duty lawyer services are provided in civil law courts and tribunals including the family law courts, the Administrative Appeals Tribunal and in as many local courts as possible including State/Territory family violence courts. "The presence of duty lawyer services on the day at court has been proven to contribute to the effectiveness and efficiency of the court process for both the client and the court or tribunal"¹

Dispute resolution services

Dispute resolution services are provided as a necessary first step in all matters which are appropriate for such service delivery. All legal aid commissions operate programs which provide legally assisted models of dispute resolution conferences, and which achieve very high settlement rates, eg. In 2014-2015 the national average settlement rate was 77%. Whenever settlement is achieved these services avoid the cost of resources associated with court proceedings, including the cost of court administration and hearing time.

Legal advice, information and referral services

Legal advice, information and referral services, and community legal education, are non-means tested services designed as prevention and early intervention strategies. These services are provided on-line, by phone, and face to face.

Legal aid commissions produce information and self-help resources and provide community legal education services to further support self-representing parties with various problem types.

End.

¹ An evaluation of Legal Aid NSW's Early Intervention Unit Duty Service at Parramatta Family Law Courts, Law and Justice Foundation, 2012 www.legalaid.nsw.gov.au/_data/assets/pdf_file/0003/15969/Evaluation-of-Family-Law-Early-Intervention-Duty-Service.pdf found that the duty service contributed to the efficiency and effectiveness of the court process by: diverting matters that should not have been in court and advising and assisting clients to take the most appropriate course of action; and contributing to the resolution of matters on the day through the drafting of documents, including providing a 'reality check' with clients – while explaining the processes and implications and negotiating with other parties for clients.

**2010-2015 Legal Aid Commission Service Statistics
At 24-03-2016**

- Legal aid commissions provided 2,404,124 services to people in legal need in 2014/15.
- One in five of the services requiring the skill of a legal practitioner were related to family violence, child protection, and/or family law matters.

Services provided	2010-11	2011-12	2012-13	2013-14	2014-15
Grants approved (total)	140,989	144,111	140,407	129,990	132,115
↳ Grants approved for family violence, child protection &/or family law matters (Commonwealth & State)	41,429	46,401	47,080	45,357	45,943
Duty lawyer (total)	380,525	387,739	387,851	398,290	422,342
↳ Duty lawyer services relating to family violence, child protection &/or family law matters (in-house & assigned)	25,562	31,296	32,175	30,508	32,495
Legal advice (total)	315,096	306,744	315,183	317,510	320,373
↳ Legal advice services relating to family violence, child protection &/or family law matters (in-house & assigned)	109,436	106,391	106,471	105,937	102,025
Minor assistance (total)	43,176	65,033	62,653	64,856	74,549
↳ Minor assistance services relating to family violence, child protection &/or family law matters (in-house & assigned)	11,677	22,044	23,991	24,367	28,244
Family Dispute Resolution Conferences (total)	7,306	7,953	8,177	8,219	7,921
Community Legal Education¹ (total) (numbers of attendees)	23,292	73,092	47,139	109,144	82,206
Information/referral¹ (total)	943,862	1,150,828	1,188,037	1,300,583	1,364,618
Total services provided	1,854,246	2,135,500	2,149,447	2,328,592	2,404,124

Sourced from National Legal Aid Statistics as at March 2016 <http://lacextra.legalaid.nsw.gov.au/NLAREports/Default.aspx>
Community Legal Education & Information/referral services sourced from legal aid commissions' reporting pursuant to the National Partnership Agreement on Legal Assistance Services 2010-2015.

¹ Including family violence, child protection, family law, and related matters such as tenancy, mortgage stress, debt relief etc.