

Review of the National Partnership Agreement on Legal Assistance Services 2015-2020 Discussion Paper

Submission to NPA Review Team, Urbis
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Introduction

About National Legal Aid and Australia's legal aid commissions

National Legal Aid (NLA) represents the directors of the eight state and territory legal aid commissions (LACs) in Australia.

NLA and the individual LACs welcome the opportunity to contribute to the Review of the National Partnership Agreement on Legal Assistance Services 2015-2020 Discussion Paper.

LACs are independent, statutory bodies established under respective state or territory legislation. They are funded by state or territory and Commonwealth governments to provide legal assistance services to the public, with a particular focus on the needs of people who are economically and/or socially disadvantaged.

NLA's purpose is to:

- lead and encourage a national system of legal aid which allows economically disadvantaged people to obtain access to justice, and
- provide 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.¹

NLA aims to ensure that the protection or assertion of the legal rights and interests of people are not prejudiced by reason of their inability to:

- obtain access to independent legal advice;
- afford the appropriate cost of legal representation;
- obtain access to the federal and state and territory legal systems; or
- obtain adequate information about access to the law and the legal system.

LAC services

LACs are the main providers of legal assistance services in Australia,² and provide nearly all the legal assistance representation services at courts and tribunals.

In the 2017-18 financial year LACs provided in excess of 2.2 million services (in all law types) to people across the country. These services were delivered from LAC offices and by way of outreach including through health justice partnerships.

Attached to this submission is a booklet which describes LAC services and the location of LAC offices.

¹ Charter of NLA.

² Productivity Commission 2014, *Access to Justice Arrangements*, Inquiry Report No. 72, vol 2 667.

LAC services are:

- proportionate to the particular need of the individual,
- proportionate to the point along a pathway that the individual's issue/s has reached,
- focussed on timely, appropriate, efficient and effective resolution of the issues.

Litigation is a response of last resort for LACs and in accordance with the *National Partnership Agreement on Legal Assistance Services 2015-2020* (NPA 2015), LACs endeavor to resolve disputes through alternative dispute resolution (ADR) processes rather than through litigation, where ever appropriate.³ A national settlement rate of 77% was achieved through LAC legally assisted dispute resolution processes in 2017-18.

Executive summary

- LACs are the main providers of legal assistance services in Australia,⁴ and provide nearly all the legal assistance representation services at courts and tribunals.
- LACs are statutorily mandated to provide efficient and effective legal assistance services. The NPA 2015 is consistent with this mandate.
- The overall impact of the 2015 reforms has been positive.
- The NPA 2015 introduced significantly improved reporting arrangements, and NLA is supportive of these arrangements continuing into the future.
- Collaborative Service Planning pursuant to the NPA 2015 has improved communications amongst legal assistance service providers and funders; however, it is considered that there is room for improvement and that collaborative service planning needs to be better resourced by the Commonwealth.
- Current NPA 2015 data holdings for the community legal centres (CLCs) are understood to be unreliable. To support improved data collection, recording and reporting by all legal assistance service providers into the future, providers need to be better resourced.
- Insufficient funding and competitive funding environments undermine constructive relationships amongst providers and collaborative service planning, and adversely impact on the objective and outcomes under the NPA 2015.
- Future funding arrangements should ensure that no legal assistance provider's funding 'goes backward', funding should be by way of dedicated funding streams to the different providers, and legal assistance providers should have sufficient notice of funding arrangements to ensure the retention of staff, premises, and equipment.

³ National Partnership Agreement on Legal Assistance Services 2015-2020, Clause B9.

⁴ Productivity Commission, above n 2.

3.1. NPA impact on delivery of efficient and effective legal assistance services

Questions

- What impact have the 2015 reforms had on the legal assistance sector?
- To what extent has the NPA encouraged more effective and efficient service delivery practices?
- To what extent does the NPA support innovation in service delivery?
- To what extent do the NPA objective and outcomes remain relevant to the legal assistance landscape?

What impact have the 2015 reforms had on the legal assistance sector?

The over-all impact of the 2015 reforms has been positive. There have however been some negative impacts largely as a result of funding related issues.

Main impacts of the reforms are considered to be:

- significantly improved reporting arrangements;
- improved collaborative service planning and communications between service providers and funders;
- validation of the LAC client base and LAC prioritisation (as reflected by the inclusion of the priority client groups in the Commonwealth priorities and eligibility principles);
- uncertainty about some aspects of funding; and
- funding which is not sufficient for the purpose.

These impacts are described further below.

Significantly improved reporting arrangements

The current reporting arrangements, introduced by the NPA 2015, are a significant improvement on those required by the NPA 2010.

Data sets now reported by the LACs are considered to be meaningful, reflecting what LACs do, whilst not being overly onerous to report on. The documented data definitions contained in the National Legal Assistance Data Standards Manual (DSM) support improved consistency of data reporting.

Data reporting is discussed further below.

Improved collaborative service planning and communications amongst service providers and funders

Within each State and Territory jurisdiction, the NPA 2015 collaborative service planning reforms have enabled increased communications between legal assistance sector service providers, the Commonwealth and the respective State or Territory. Collaborative service

planning as described in Schedule A of the NPA 2015 has developed the concept of the information sharing jurisdictional forums provided for by the NPA 2010, which in turn reflected sector initiated legal assistance service provider forums.⁵

Collaborative service planning meetings are considered a particularly positive aspect of the NPA 2015, with regular face to face meetings generally supporting constructive relationships amongst providers and funders.

It is however suggested that the true potential for collaborative service planning is yet to be realised, with the ability for providers to fully engage in planning processes negatively impacted by uncertain and competitive funding environments. For example, the introduction of the CLCs into the NPA 2015, the devolution of many of the responsibilities of the Commonwealth Community Legal Services Programme (CCLSP) to the States and Territories, and the changed basis for the distribution of CLC funding resulted in concerns amongst the CLC sector that they would not be able to continue to provide the same level of services into the future. This adversely impacted upon collaborative service planning.

It is also suggested that the loss of Commonwealth support for the then CCLSP state and territory program managers regular meetings with each other and the Commonwealth, has impacted negatively with these meetings considered important as enabling ready exchange of information relevant to the program and to service planning.

Validation of LAC priorities and service delivery

The inclusion of reference to 'priority clients' in the NPA 2015 Outcomes and to 'priority client groups' in the Commonwealth priorities and eligibility principles, and the renewed recognition of the importance of timely intervention and prevention in the Outcomes is considered to be a positive validation of LAC priorities and service delivery. The Outcomes are a point of reference for LACs when communicating the nature of legal assistance work to others.

Uncertainty about some aspects of funding

It would support collaborative service planning into the future if all legal assistance service providers were able to rely on at least existing levels of funding being assured. The retention of good staff and the ability to renew leases and equipment are key issues for providers in ensuring ongoing professional service delivery to priority clients.

There is currently concern in the legal assistance sector generally about the potential for any adverse impact on service planning and service delivery as a result of likely time frames for new funding arrangements involving renegotiation, budget cycles and payment processes.

⁵ The first legal assistance forum was the New South Wales Legal Assistance Forum (NLAFF), the idea for which was generated at the Legal Aid Congress held in 2004 which was organised and presented by Legal Aid Queensland and endorsed by the Australian Legal Assistance Forum (ALAF).

Funding which is insufficient for the purpose

Current funding is insufficient to meet legal need. This has been soundly demonstrated by a series of reviews of legal assistance, e.g. the Australian Government Productivity Commission's review into Access to Justice Arrangements in Australia. It is considered that if future funding agreements are to facilitate greater achievement of outcomes then funding for the purpose must form part of the agreement.

To what extent has the NPA encouraged more effective and efficient service delivery practices?

The NPA is consistent with the LAC's respective statutory mandates, found in LAC enabling legislation, to provide effective and efficient legal assistance service delivery. LACs have continued throughout the life of the current NPA to strive to meet this mandate to the highest possible degree.

To what extent does the NPA support innovation in service delivery?

The NPA 2015 is considered to support innovation in service delivery in that the Objective and Outcomes of the NPA specify concepts which are capable of being used to inform service design. The NPA is not prescriptive beyond requiring reporting on core services and client satisfaction. The service design agility of service providers is therefore not constrained by the NPA other than by way of limited funding. NLA enables coordinated and consistent implementation of service delivery taking account of local conditions across the country.

There is a concern that when LACs develop innovative service delivery programs, that these can require funding outside of the NPA, resulting in additional individual project funding agreements.

To what extent do the NPA objective and outcomes remain relevant to the legal assistance landscape?

NLA considers that the NPA Objective and Outcomes remain completely relevant to the legal assistance landscape. They clearly reflect what LACs seek to achieve, and are consistent with LAC enabling legislation.

The concern held in relation to the Objective and Outcomes is that the 'available resources' referred to must bear a relationship to legal need.

3.2. Collaborative service planning

Questions

- **How effective has collaborative service planning been in your area/region?**
- **What are the opportunities to improve collaborative service planning?**
- **What barriers, if any, prevent effective collaborative service planning?**

How effective has collaborative service planning been in your area/region?

Generally, the effectiveness of collaborative service planning is considered to depend on trusting relationships and effective resourcing. Area/regional service planning will be addressed by individual LAC submissions and consultations.

Whilst not collaborative service planning pursuant to the NPA, all LAC directors meet regularly as 'National Legal Aid' to showcase initiatives and innovation and to exchange information including about local collaborative service planning.

The Australian Legal Assistance Forum (ALAF), comprising representatives of the peak bodies for each of the main legal assistance organisations, also meets regularly including with Commonwealth representatives from time to time.

Attached please find the ALAF Statement of Co-operation.

What are the opportunities to improve collaborative service planning?

Suggested opportunities to improve collaborative service planning include:

- Building upon and supporting trusting relationships amongst and between funders and legal assistance service providers.
- Ensuring the right people get to the right meetings. Collaborative service planning needs to occur in a range of locations and in relation to different aspects of legal assistance business. Depending on subject matter it may be appropriate for more than one person from a particular organisation to be involved in collaborative service planning meetings, and different levels of authority in terms of decision making capacity may be required.
- Improved resourcing of collaborative service planning. Providers attending meetings should be sufficiently well equipped in terms of:
 - i) role, knowledge and skill sets appropriate to the agenda of the meetings;
 - ii) information about, and tools for, planning; and
 - iii) funding to enable attendance.
- The Commonwealth is uniquely placed in relation to collaborative service planning, with representatives attending meetings in all jurisdictions and therefore having the 'helicopter' view into collaborative service planning. This unique position could be used to better inform planning, including by sharing of information between jurisdictions. It is noted that Victoria Legal Aid hosted a Collaborative Service Planning Symposium in

May, attended by key representatives from most Australian jurisdictions. It is suggested that the Commonwealth would be well placed to hold/resource such symposiums into the future.

What barriers, if any, prevent effective collaborative service planning?

As indicated above, it is generally considered that collaborative service planning is negatively impacted by funding uncertainty, both because individual providers are not always certain that they will be able to continue to offer services into the future and because competitive funding environments threaten trusting relationships amongst providers.

Collaborative service planning decisions should be informed by an agreed understanding of community need for legal assistance services. Together with the ability of legal assistance providers to work together to plan these services, an accurate understanding of legal need is critical to effective collaborative service planning.

Also, as indicated above, if effective collaborative service planning is to be achieved meetings should be appropriately resourced.

3.3. Effectiveness, efficiency, and appropriateness of current funding arrangements

Questions

- **To what extent is progress towards the NPA desired outcomes facilitated by the NPA funding allocation model?**
- **To what extent has the NPA facilitated good geographic coverage between states and nationally of legal assistance and associated outcomes?**

Please note that the scope of the NPA Review includes assessment whether the NPA has been effective, efficient and appropriate in the context of the funding that is available, and whether NPA funding has enabled progress toward NPA objectives (as stated in section 1.3 of this document). This assessment will not include consideration of whether the existing funding is sufficient to meet legal need.

To what extent is progress towards the NPA desired outcomes facilitated by the NPA funding allocation model?

NPA outcomes and funding

NLA points out that the question of whether funding is sufficient to support the objectives and outcomes of the NPA is entirely relevant to the purpose of the NPA which is access to justice for disadvantaged people.

For example, Outcome 9 (c) of the NPA requires that “legal assistance services are appropriate, proportionate and tailored to people’s legal needs and levels of capability”. Legal assistance service providers will not achieve this outcome if they must refuse services

to people in need because of lack of funding. Significant numbers of self-representing litigants in the family law courts are an example of this concern. Self-representing litigants can prolong the time it takes for matters to progress through the courts and they generally experience considerable associated stress with risk to their health and well-being and that of their family. The findings of the Australian Government Productivity Commission upon its Inquiry into Access to Justice Arrangements in Australia⁶ in relation to civil and family law were that as an “interim measure”⁷ “to address the more pressing gaps in services”⁸ an additional \$57m was needed essentially for family law and related matters (as to be provided by the Commonwealth), and an additional \$124m was needed for additional grants of aid in civil matters. It is considered that not funding the legal assistance sector accordingly is a false economy particularly when the impact on the wider justice system and its users is taken into account.

Attached is Appendix H of the Productivity Commission report on its Inquiry into Access to Justice Arrangements. It contains the Productivity Commission’s specifications about the service delivery to which the recommended funding of \$200m should be applied.

Funding and fees paid to private practitioners

LACs rely on private practitioners to extend reach of services around the country and to help address issues of professional legal conflict. LACs cannot afford to increase grant of aid fee rates paid to these private practitioners. Of significant concern is that there is a history of private practitioners withdrawing from legal aid work due to low fee rates. For example, see *Study of the participation of private legal practitioners in the provision of legal aid services in Australia*, TNS Social Research March 2007. Page iv “Remuneration matters including the low hourly rate, and issues with the number of hours allocated under the stage of matter payment structure were the key reasons for disengagement from legal aid among all firms”. Following this report, funding was provided to support increases in fee rates so as to enable retention of private practitioner services. Low fee rates also contribute to juniorisation and quality issues.

Funding allocation model

Without increases in funding, use of a funding allocation model to divide an insufficient fixed amount results in ‘winners’ and ‘losers’. As indicated above, this is not conducive to achieving the collaborative outcome of clause 9 (b) of the NPA. Progress towards a similar outcome under any new funding arrangements would be supported if new arrangements included both dedicated funding streams for each of the LACs and CLCs. Funding to individual providers should be maintained at least at existing levels such that no organisation ‘goes backwards’.

⁶ Productivity Commission, above n 2.

⁷ Ibid 878.

⁸ Ibid 741.

Multiple funding agreements

Innovative projects which have been designed by the LACs since the implementation of the NPA are funded by the Commonwealth outside of the NPA, e.g. funding for the Family Advocacy and Support Services. Other areas where there are separate funding agreements include the National Disability Insurance Scheme, Domestic Violence Units and Health Justice Partnerships. The intended scheme for the prevention of direct cross-examination in family law, and the proposed service trials as part of the response to elder abuse, are also likely to require additional funding agreements. It would be beneficial where such services are to be funded into the future if the funding of them could be rolled into the main agreement.

Indexation

Funding provided by the Commonwealth Government⁹ over the forward estimates is below the annual CPI increase and further below legal inflation. This amounts to a reduction in funding in real terms. If indexation arrangements do not improve, LACs will be confronted with little choice but to make considered decisions about fee increases to ensure adequate supply and quality arrangements which will inevitably compete with frontline services.

To what extent has the NPA facilitated good geographic coverage between states and nationally of legal assistance and associated outcomes?

To the extent that collaborative service planning under the NPA has facilitated good geographic coverage within jurisdictions, this will be addressed by individual LAC submissions.

Good geographic coverage is enabled by provider infrastructure across the country. This infrastructure was almost entirely in place prior to the NPA. The ability to expand coverage is dependent on new funding.

3.4. Utility of performance monitoring and reporting arrangements

Questions

- **To what extent do the current NPA performance monitoring and reporting requirements appropriately balance the need for accountability versus the need to minimise the bureaucratic burden on administrators and legal assistance service providers?**
- **To what extent does the National Legal Assistance Data Standards Manual support collection of consistent and comparable data?**
- **What barriers have impacted implementation of performance monitoring and reporting arrangements?**

⁹ Commonwealth Government of Australia, Budget Paper No.3, 2018-19, p.64

- **What are the opportunities to improve performance monitoring and reporting arrangements?**

To what extent do the current NPA performance monitoring and reporting requirements appropriately balance the need for accountability versus the need to minimise the bureaucratic burden on administrators and legal assistance service providers?

The current NPA performance monitoring and reporting requirements are considered by NLA to appropriately balance the need for accountability and to minimise the bureaucratic burden on LACs.

To what extent does the National Legal Assistance Data Standards Manual support collection of consistent and comparable data?

Consistency of data collection, recording, and reporting relies on efficient data systems and those who are collecting and recording the data understanding the definitions which underpin the data. The DSM identifies the definitions which should be used in reporting data.

Comparability of data, particularly at a high level and for representation services is unlikely to ever be achieved because of the varied nature of the work undertaken, e.g. the count of 1 representation service could be a terrorism trial running over months or a tenancy hearing concluded within hours.

It is understood that the CLC sector has had some issues with both transitioning to a new data system and a lack of familiarity with the content of the DSM. Accordingly, it is understood that the NPA data reported by the CLCs is compromised and unreliable.

If the DSM is to persist, it is considered that the Commonwealth should provide/enable sector wide training to staff whose responsibility it is to capture, and/or record and/or report on data to help support a common understanding of mandatory data reporting and underpinning definitions.

What barriers have impacted implementation of performance monitoring and reporting arrangements?

Please see above.

What are the opportunities to improve performance monitoring and reporting arrangements?

As indicated above, NLA considers that the NPA provides for appropriate performance monitoring and reporting arrangements.

Also as indicated above, it is suggested that opportunities to improve the quality and accuracy of data reported lie with legal assistance service providers being appropriately resourced in terms of data collection, recording and reporting systems and related training.

3.5. Fulfillment of agreed roles and responsibilities

Questions

- **To what extent have the roles of both the Commonwealth and states and territories contributed to meeting the objective of the NPA?**
- **To what extent have the Commonwealth, states and territories and legal assistance sector been effective in working together to address legal need?**
- **What are the opportunities to improve the roles of both the Commonwealth and the states and territories?**

To what extent have the roles of both the Commonwealth and states and territories contributed to meeting the objective of the NPA?

“The objective of the NPA is a national legal assistance sector that is integrated, efficient and effective, focused on improving access to justice for disadvantaged people and maximising service delivery within available resources.”

LACs are independent statutory authorities and the objective of the NPA in large part replicates the statutory mandate of the individual LACs.

The NPA specifies shared roles for the Commonwealth and States and Territories and also some roles and responsibilities particular to each.

The 5 roles and responsibilities particular to the Commonwealth are:

- (a) the provision of a financial contribution;
- (b) monitoring and assessing performance;
- (c) “providing national guidance, oversight and support for collaborative service planning (Schedule A)”;
- (d) specifying priority and eligibility principles; and
- (e) providing a forum for facilitating information sharing with the States regarding best practice delivery of legal assistance services.

As indicated above it is considered that:

- The Commonwealth’s financial contribution is critical, but that presently the contribution to available resources is insufficient to meet the access to justice needs of disadvantaged people arising out of Commonwealth and related laws.
- Commonwealth requirements in relation to reporting are appropriate.

- The specification of Commonwealth priorities and eligibility principles are beneficial in that it provides focus and enables providers to readily communicate their role and purpose to others.
- It would be beneficial if resources for collaborative service planning could be improved with key initiatives harvested from the various collaborative service planning meetings better shared across the country. It is envisaged that this would be an appropriate role for the Commonwealth.

The States and Territories have 9 roles and responsibilities particular to them. 5 of these relate to the administration and/or distribution of funding in connection with the CLCs, with the Commonwealth under this NPA having largely devolved these roles and responsibilities, including the methodology for the distribution of funding, to the States and Territories. As indicated above, uncertainties in relation to funding outcomes for individual CLCs contributed to issues with collaborative service planning.

In relation to the States and Territories role in connection with the facilitation of surveys by the LACs and the CLCs, LACs all undertook client satisfaction surveys as required using standardised questions developed by the parties (clause 19 (g) NPA).

The undertaking of client satisfaction surveys is considered essential to inform good service delivery and the achievement of the outcomes of the NPA. Client satisfaction surveys are however expensive and onerous to implement. It would be beneficial if future funding arrangements specified provision for the resourcing of such surveys.

To what extent have the Commonwealth, states and territories and legal assistance sector been effective in working together to address legal need?

At a national level, NLA considers that Commonwealth and NLA/LAC representatives work together well to address legal need. NLA also enjoys good relationships with the other peak bodies for the legal assistance providers. Please also see the response to Question 3.2.

NLA works with Commonwealth representatives to provide expertise in the design and development of responses to issues occurring in legal service delivery, e.g. responding to issues such as the direct cross-examination of victims in family violence matters, and project funding proposals leading to initiatives such as the Family Advocacy and Support Services. Whilst these achievements are not directly the result of the NPA, the trusting and constructive relationships which exist between the Commonwealth and NLA are supported by, and reflected in, the NPA.

LACs generally work well with their respective State or Territory and other service providers in their jurisdictions. This aspect of the review will be addressed by individual submissions as appropriate. NLA has little contact with the States and Territories collectively.

What are the opportunities to improve the roles of both the Commonwealth and the states and territories?

Please see the response to Questions 3.2 and above.

3.6. Areas for improvement and opportunities to enhance current and future arrangements

Questions

- **Which elements of the NPA support and/or limit the agreed outcomes and objectives being achieved?**
- **What changes or improvements to the NPA would further improve service delivery and maximise use of resources? Please consider innovative service delivery models and best practice.**

Which elements of the NPA support and/or limit the agreed outcomes and objectives being achieved?

NLA considers the following elements of the NPA support the agreed outcomes and objectives being achieved:

- identified amounts of funding for each of the LACs and CLCs in each State and Territory;
- Commonwealth priorities and eligibility principles;
- collaborative service planning; and
- reporting requirements under this NPA.

NLA considers the following elements limit the agreed outcomes and objectives being achieved:

- insufficient funding;
- competitive funding environments; and
- uncertainty in relation to future funding producing a negative impact on collaborative service planning.

What changes or improvements to the NPA would further improve service delivery and maximise use of resources? Please consider innovative service delivery models and best practice

As indicated above the main change to the NPA which would further improve service delivery is an increase to funding. It is not possible for LAC resources to be maximised beyond current levels.

For LACs, additional funding would primarily enable means tests to be relaxed so that self-representation in the family law courts was reduced (in accordance with the report of the

Productivity Commission), and the expansion of innovative holistic service delivery, e.g. by way of increased employment of social workers within LAC teams. Additional funding would help to reduce the existing justice gap, and to deliver services to those members of the community referred to as the 'missing middle', i.e. those who are on low incomes and cannot afford to engage private lawyers and are ineligible for legal aid because insufficient funding means that LAC means tests exclude them.

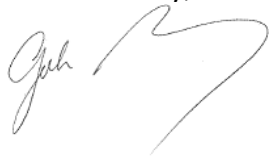
Also, as indicated above, it would be beneficial if the range of other funding agreements pursuant to which LACs deliver services could be rolled into one new agreement.

Conclusion

Thank you for the opportunity to provide a submission to the Review of the National Partnership Agreement on Legal Assistance Services 2015-2020 Discussion Paper.

Should you require any further information from us please be in touch with the NLA Secretariat on 03 6236 3813 or nla@legalaid.tas.gov.au

Yours sincerely,

A handwritten signature in black ink, appearing to read 'John', followed by a large, stylized flourish that extends to the right.

Dr John Boersig PSM
Chair



National Legal Aid

September 2018



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Legal aid commissions

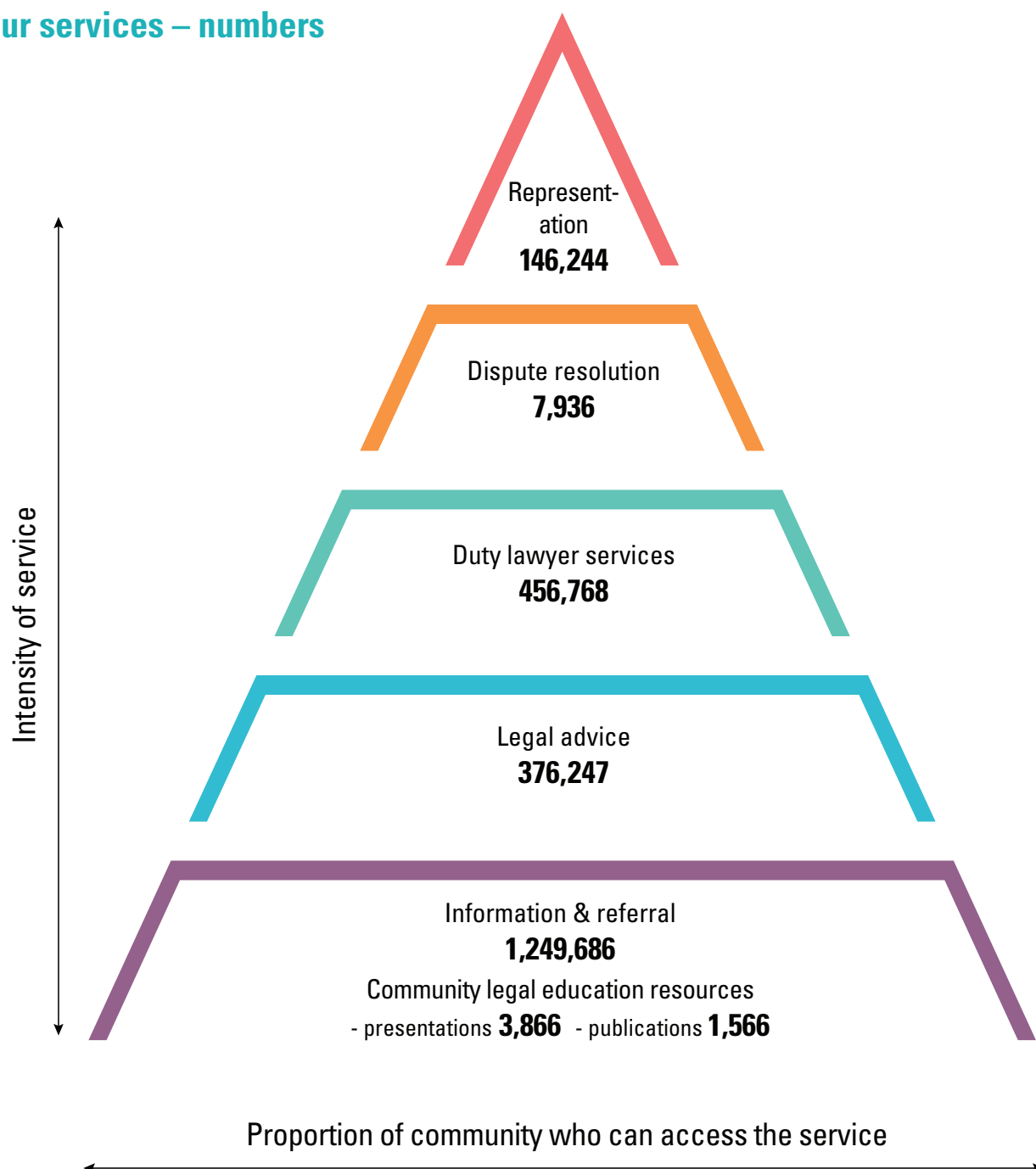
8 legal aid
commissions 

in excess of 2.2 million services
per year

2016-17
funding \$729.6 M

80 offices around
the country

Our services – numbers



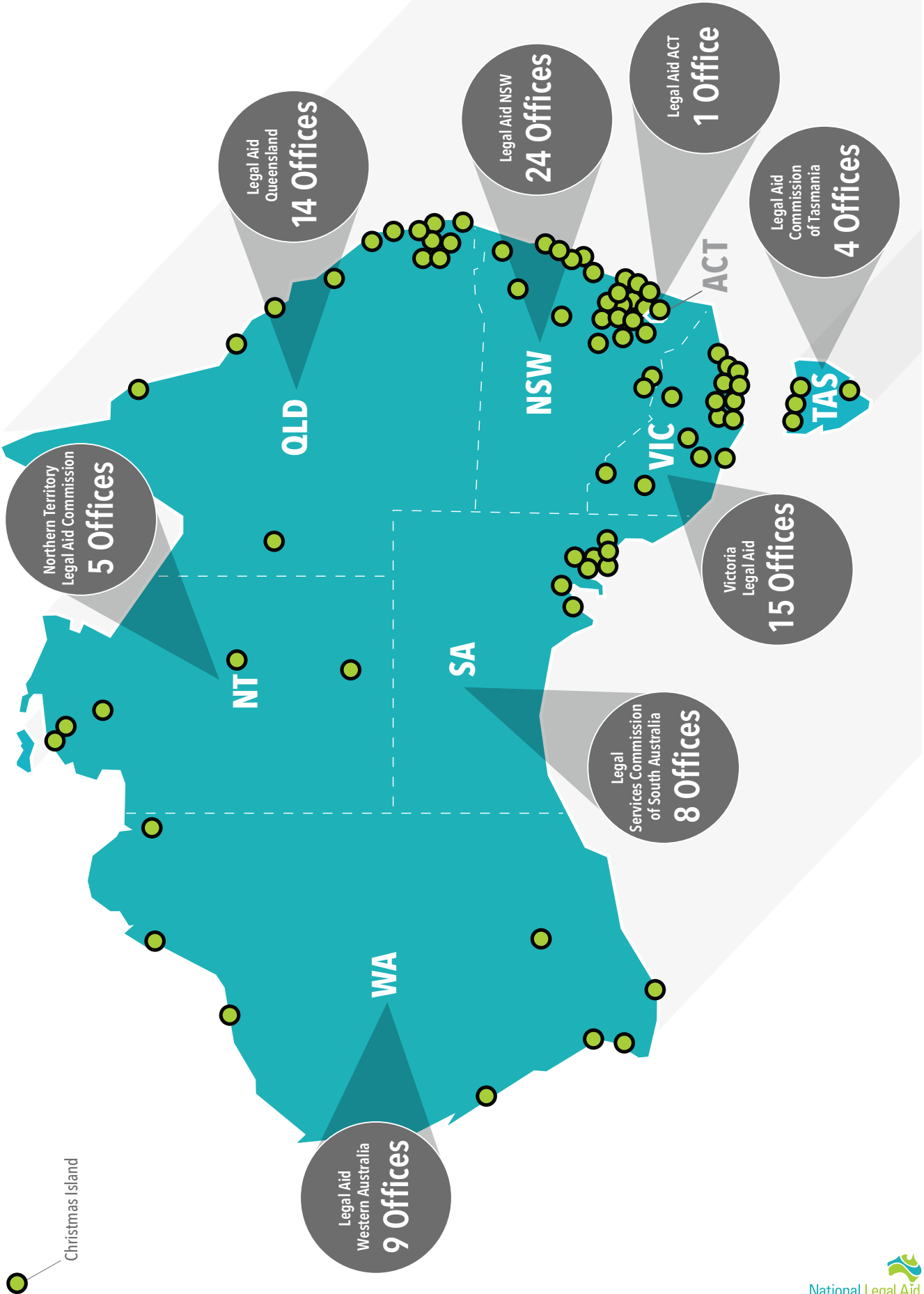
Sources: National Partnership Agreement on Legal Assistance Services 2015-20;
National Legal Aid Statistics

<https://nla.legalaid.nsw.gov.au/nlareports/>

Notes:

- i) Duty lawyer services include Family Advocacy and Support Services.
- ii) Legal advice includes work accompanying the advice e.g. drafting of legal letters, telephone advocacy on someone's behalf etc.
- iii) Community legal education resources reported here are Commonwealth law related only. More services were provided for state/territory law matters.

Our reach



Our services – description

Legal aid commissions services

Legal aid commissions (LACs) are the main providers of legal assistance services in Australia,¹ and provide nearly all the legal assistance representation services at courts and tribunals. Many also co-ordinate funding to community legal centres.

In 2016-2017 LACs provided in excess of 2.2 million services (in all law types) to people across the country. These services were delivered from LAC offices and by way of outreach including through health justice partnerships.

Background

LAC services are provided consistently with the priorities specified by the inter-governmental National Partnership Agreement on Legal Assistance Services 2015-2020 (NPA), and with the state and territory enabling legislation of the respective LAC.

Litigation is a response of last resort for LACs and the NPA also specifies that “Family or civil law disputes should be resolved through alternative dispute resolution processes rather than through litigation, where appropriate.”²

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 and family advocacy support services

Duty lawyer services are provided in civil law courts and tribunals including the family law courts, the Administrative Appeals Tribunal, and 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”.³

Family advocacy and support services are provided at some registries of the family law courts⁴ to assist families experiencing domestic violence as they move through the family law system. The service integrates duty lawyers with specialist family violence workers to help families navigate between the federal and state court systems and connect people with trauma-informed help such as risk assessments and safety planning.⁵

Our services – description (continued)

Dispute resolution services

Dispute resolution services are provided as a necessary first step in all matters which are appropriate for such service delivery. All LACs operate programs which provide legally assisted models of dispute resolution conferences, and which achieve very high settlement rates, e.g. in 2016-2017 the national average settlement rate was 78%. The LACs organise conferences, including providing the Chairperson for these conferences, and ensure parties who qualify for a grant of legal aid are legally represented.

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

The 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.

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

¹ Productivity Commission 2014, *Access to Justice Arrangements*, Inquiry Report No. 72, Canberra vol 2 667.

² National Partnership Agreement on Legal Assistance Services 2015-2020, Clause B9.

³ 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.

⁴ The services in the Northern Territory are primarily delivered from the Darwin Local Court and the Katherine Local Court due to demand for services at these locations.

⁵ Senator George Brandis (then Attorney-General) 'Improving family violence support in family law courts' (media release, 17 May 2017).

Our national achievements

- 2.2 million services to the public
- Family dispute resolution – 78% national settlement rate
- Family Advocacy and Support Services

Implementation in March 2017 of the Family Advocacy and Support Service at the main registries of the family law courts following the announcement in late October 2016 by Government that the services would be established.

- Independent children's lawyers

Dedicated website (<https://icl.gov.au>) and suite of publications to provide information, news and resources to the public about the role of the independent children's lawyers in family law proceedings and also the professional development and mentoring for those undertaking the role.⁶

- *What's the law? Australian law for new arrivals*

What's the law? was produced for national use in the Adult Migrant English Program (AMEP) and addresses 10 commonly experienced legal issues. The kit includes a DVD with 10 photo stories, information for teachers and activity sheets. A recent research study which focused on one of the *What's the law?* modules found that it improved the participants understanding of the law. The study will soon be published in the *Journal of Law and Social Policy*.

This resource was developed by the eight Australian state and territory legal aid commissions, and inspired by the resource *Getting to know the law in my new country*, produced by the Footscray Community Legal Centre in Victoria.

- National consultations and submissions, including in response to parliamentary inquiries and reviews by the Australian Law Reform Commission, ensuring an experience informed national response.
For example:

Family Law

- Family Law Amendment (Parenting Management Hearings) Bill 2017, Senate Legal and Constitutional Affairs Committee Inquiry
- Family Law Amendment (Family Violence and Other Measures) Bill 2017 Exposure draft and public consultation paper and the Senate Legal and Constitutional Affairs Committee Inquiry
- Family Law Amendment (Family Violence and Cross-examination of Parties) Bill 2017 Exposure draft and public consultation paper, Commonwealth Attorney-General's Department
- Parliamentary inquiry into a better family law system, House of Representatives Standing Committee on Social Policy and Legal Affairs

Elder Abuse

- Australian Law Reform Commission Elder Abuse Inquiry, Issues Paper and Discussion Paper.

⁶ In response to the release of the Australian Institute of Family Studies *Independent Children's Lawyers Study* Final Report 2nd edition June 2014, and with NLA taking on sole responsibility for independent children's lawyer training as from May 2017.

What we are working on

- Review of the National Partnership Agreement on Legal Assistance Services 2015-2020
- Responding to elder abuse
- Review of the family law system by the Australian Law Reform Commission

- Online Dispute Resolution System project

This project is investigating the introduction of an Online Dispute Resolution System for couples that are separating or divorcing in Australia to assist them to resolve their family law disputes with less reliance on formal pathways.

National Legal Aid gratefully acknowledges the sponsorship of the Commonwealth Attorney-General's Department.

- ICL training program

This program comprises online and face to face training modules and tested learnings. National Legal Aid gratefully acknowledges the support of the Commonwealth Attorney-General's Department for developing this training.

- Family Violence and Family Law Community Legal Education Resource to complement the Family Advocacy and Support Services

This resource comprises a national website housing family violence resources and information about the Family Advocacy and Support Services in each state and territory. National Legal Aid gratefully acknowledges the support of the Commonwealth Attorney-General's Department for developing this resource.

- Hosting the International Legal Aid Group Conference 2021

"The International Legal Aid Group (ILAG) is a network of legal aid specialists including Chief Executives and Managers from Legal Aid Commissions, high ranking Civil Servants and leading Academics from over two dozen countries. ILAG's mission is to improve evidence-based policy-making in the field of poverty legal services through discussion and dialogue relating to international developments in policy and research. ILAG focuses primarily on the particular issues raised in jurisdictions which have established highly developed systems of legal aid. However, ILAG is expanding its brief to include jurisdictions with less developed systems and has in an real interest in how technology can be used to improve access to justice."⁷

⁷ International Legal Aid Group website <http://www.internationallegalaidgroup.org/index.php>

Charter of National Legal Aid

Membership

National Legal Aid (NLA) represents the directors of the eight state and territory legal aid commissions (LACs) in Australia.

The LACs are independent statutory bodies that provide legal assistance services to the public, with a particular focus on the needs of people who are economically and/or socially disadvantaged. LACs provide in excess of 2.2 million legal services each year.

One of the NLA directors, on a rotation basis, is the Chair and primary spokesperson for NLA.

Purpose

NLA's purpose is to:

- lead and encourage a national system of legal aid which allows economically disadvantaged people to obtain access to justice, and
- provide 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.

Beliefs

NLA is guided by belief in the rule of law and the importance of an effective, efficient, independent justice system which is accessible to everyone. These are the cornerstones of a civil and democratic society.

Priorities

In 2017-18 key priorities for NLA include:

- prevention of and responding to elder abuse;
- prevention of and responding to domestic violence, and
- inclusion of justice targets in the Closing the Gap strategy and support for adequate funding for the Aboriginal and Torres Strait Islander legal services as the 'specialised legal assistance services for Aboriginal and Torres Strait Islander people'.⁸

⁸ Productivity Commission 2014, *Access to Justice Arrangements Inquiry Report No. 72*, Canberra, 767.

Charter of National Legal Aid (continued)

Strategies

NLA:

- maintains a set of policies which provide the basis for our work in advocating for equitable access to justice;
- is supported by a secretariat and by a number of working groups and networks including a representative of each of the LACs with expertise in the respective area of legal aid business, and
- meets regularly for strategic planning purposes.

Co-operation

There are four main government funded legal assistance service providers in Australia, including the LACs, community legal centres, Aboriginal and Torres Strait Islander legal services and Family Violence Prevention Legal Services.

NLA is a member of the Australian Legal Assistance Forum (ALAF), comprised by representatives of the above legal assistance service providers and the Law Council of Australia representing Australian lawyers and their state and territory representative bodies, a signatory to the ALAF Statement of Co-operation, and provides the ALAF Secretariat.

New Zealand

There is a strong alliance between NLA and Legal Aid Services New Zealand. The legal aid alliance facilitates the sharing of information, the showcasing of initiatives, and contributes to the development of best practice.

A representative of Legal Aid Services NZ attends NLA meetings to discuss matters of mutual interest.

Further information

Further information about NLA and the work that we do, can be found at



<http://www.nationallegalaid.org/>

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Statement of Co-operation

This Statement of Co-operation is made on the 5th day of June 2015.

1. **Whereas:**

The Australian Legal Assistance Forum (ALAF) is an organisation whose participants are representatives of the following organisations ('the Parties'):

1. National Legal Aid representing the Directors of all Legal Aid Commissions in Australia and through them those Commissions.
2. The Law Council of Australia representing Australian lawyers and their state and territory representative bodies.
3. The National Aboriginal and Torres Strait Islander Legal Services representing the Aboriginal and Torres Strait Islander Legal Services across Australia.
4. The National Association of Community Legal Centres representing Community Legal Centres and their State and Territory Associations throughout Australia.
5. The National Family Violence Prevention Legal Services Forum representing the Family Violence Prevention Legal Services across Australia.

ALAF was established in 1998 to enable its then participants, being the national bodies listed at 1. - 4. above, 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. Recognising the mutual benefits to be gained through co-operative arrangements in relation to legal assistance service delivery, in July 2009 those participants signed a Statement of Co-operation to record their common commitment to co-operative, efficient and effective delivery of legal assistance services.

This Statement of Co-operation renews and reaffirms the commitment made in 1998 and formalised in the Statement of Co-operation in 2009, and provides for the inclusion of the National Family Violence Prevention Legal Services Forum.

2. Acknowledgements:

A purpose of this Statement of Co-operation is to confirm that:

- 2.1 Each of the organisations exists to support their members in providing legal assistance to the most disadvantaged clients in our communities.
- 2.2 Each of the organisations acknowledges and respects the strengths and value of each other in providing legal services to disadvantaged clients.
- 2.3 The organisations each acknowledge that their respective differences are strengths.
- 2.4 Each of the organisations acknowledges that Aboriginal and Torres Strait Islander peoples are amongst the most disadvantaged in the community and have vast unmet legal need.
- 2.5 Community controlled Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention Legal Services are the preferred and most culturally safe providers of legal services to Aboriginal and Torres Strait Islander peoples.
- 2.6 The value of Community Legal Centres at community based levels is their ability to respond flexibly to the changing legal needs of their communities and in the community development role they also bring to their communities.
- 2.7 Legal Aid Commissions have been established by statute in each State and Territory as independent organisations with a legislative obligation to provide legal services to disadvantaged people.
- 2.8 The delivery of legal assistance services across Australia is greatly reliant on the service of private practitioners, represented at the national level by the Law Council of Australia, who provide legal services pursuant to grants of legal aid at rates well below the market rate that are available for those services, and by undertaking pro bono work and by volunteering.
- 2.9 Each organisation acknowledges that there are manifold unmet legal needs in the community that can be best met by working together co-operatively to ensure that legal needs can be identified, and their responses shared and prioritised between us to avoid inappropriate duplication and to co-ordinate the effective delivery of the most appropriate services to meet those legal needs.
- 2.10 Each organisation commits to working together with the other organisations party to this Statement of Co-operation to improve service delivery options to ensure that the clients with the greatest legal needs receive legal assistance.

3. Status:

- 3.1 This Statement of Co-operation is not intended to impose legally binding obligations or legal relations on the participants.

4. Objects, Intended Activities:

- 4.1 To promote co-operation between legal assistance service providers to ensure that clients' individual legal needs are met with the most appropriate and effective service available.
- 4.2 To regularly disseminate information and promote communication amongst the service providers on issues of mutual concern to enhance the ability of those providers to address client needs.
- 4.3 To actively demonstrate support for the Parties and their respective roles in the delivery of effective legal assistance services across Australia.
- 4.4 To inform governments and other organisations on the needs of legal assistance client groups and on issues relevant to the practical, effective and sustainable delivery of legal assistance and representation services.
- 4.5 To assist governments and other organisations in the development of policies to enhance access to justice for all people in Australia.

5. Operational Matters:

- 5.1 Each organisation will nominate 2 representatives to attend ALAF meetings.
- 5.2 ALAF will elect a Chairperson from the representatives attending ALAF meetings. The Chairperson will hold office for 2 years unless otherwise agreed by the Parties.
- 5.3 ALAF will be supported by a Secretariat, which will be provided by National Legal Aid for the time being unless otherwise agreed by the Parties.
- 5.4 The Executive Officer from the Secretariat will work to the Chairperson of ALAF and will be responsible for the co-ordination of, and follow-up from, meetings etc.
- 5.5 The Secretariat will attend ALAF meetings.
- 5.6 Meetings will not usually be scheduled unless at least one representative from each organisation can attend.

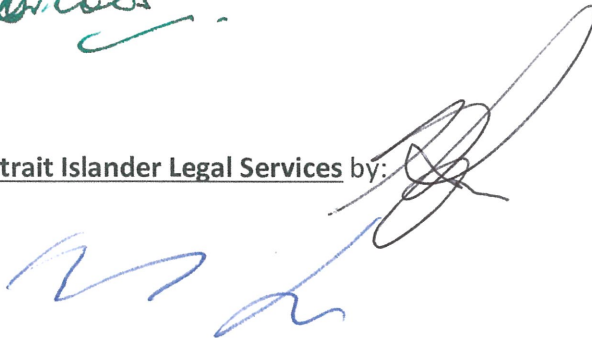
- 5.7 The Parties agree that they will respond to the emails from the Secretariat and ensuing email exchanges in a timely fashion and will endeavour to find and adhere to agreed meeting dates.
- 5.8 Submissions and other written communications will be signed and sent by the Chairperson on behalf of ALAF after first having been approved by at least one representative from each of the organisations, unless urgency requires otherwise in which case the Chairperson has authority to speak consistent with the objects of ALAF.
- 5.9 The Parties to the Statement of Co-operation agree that they will provide the ALAF Secretariat with up to date contact details for their respective representatives.

Signed on this 5th day of June 2015

Signed for and on behalf of
Law Council of Australia by:



Signed for and on behalf of
National Aboriginal and Torres Strait Islander Legal Services by:



Signed for and on behalf of
National Association of Community Legal Centres by:

Signed for and on behalf of
National Family Violence Prevention Legal Services Forum by:



Signed for and on behalf of
National Legal Aid by:



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>	<i>Threshold of assets, above which a contribution is required (net of allowances)</i>	<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.

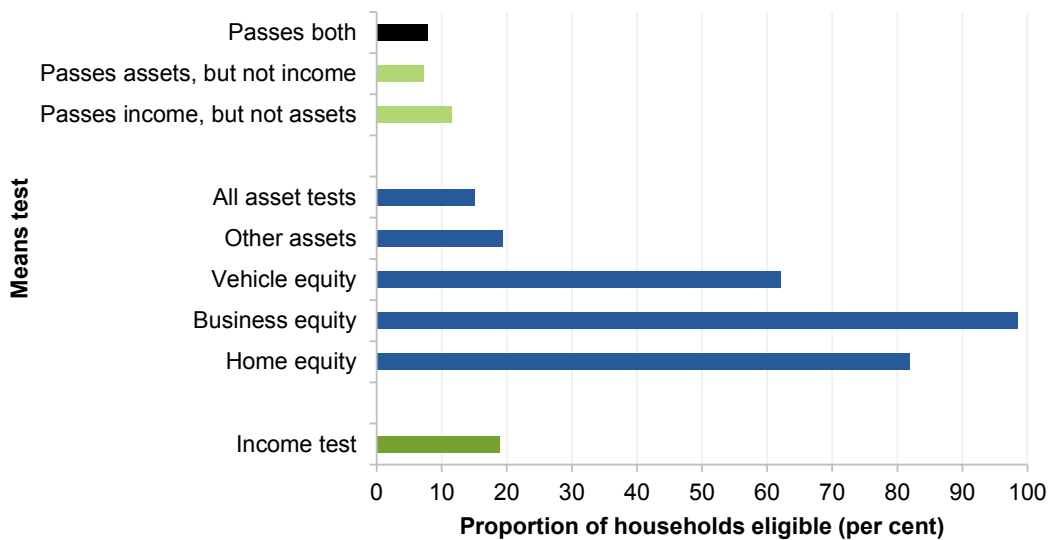
Source: As per table H.1.

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.