

The benefits of providing access to justice

National Legal Aid

January 2023

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Executive summary

This report estimates the economic benefit delivered by Legal Aid services that are funded by the Australian Government - those that relate to Commonwealth law.

Legal Aid commissions (LACs) are independent statutory bodies that deliver Legal Aid services. LACs are the main providers of legal assistance services in Australia and are responsible for nearly all the legal assistance representation services at courts and tribunals. In 2021-22 the commissions collectively delivered over 1.5 million services from their 78 offices across Australia, including:



Source: National Legal Aid

The services provided by LACs in Commonwealth law relate to both family law matters and federal civil law and, crucially, cover early intervention, advice, as well as court representation through grants of legal aid. Table 1 outlines the relevant areas of Commonwealth family and civil law that LAC services cover. Note that family law matters account for 96 per cent of all Commonwealth funded matters for LAC services.

Table 1: Commonwealth law matters for LAC services

Family	Civil
Children (parenting disputes)	Social Security
Child Support	Discrimination and Sexual Harassment
Property and Maintenance	Employment
Independent Children's Lawyer	National Disability Insurance Scheme
	Migration

Source: National Legal Aid

Benefits delivered by commonwealth funded matters for Legal Aid services have been categorised as:

- **Efficiency of the justice system:** the improved operational capacity of the courts
- **Value to individuals:** the benefits derived by individuals who achieve improved legal outcomes
- **Wider government and societal outcomes:** the benefits derived by government and society when an individual achieves an improved legal outcome.

This analysis estimates that Legal Aid services deliver approximately \$601 million in benefit each year. Table 2 below shows how these benefits are allocated across the three categories listed above. This corresponds to a **Benefit Cost Ratio (BCR) of 2.25** when considering the \$267 million in annual Commonwealth funding that the (LACs) receive.¹

The BCR demonstrates how successfully an intervention maximises welfare, and is the key metric that government considers when assessing investment opportunities. Victorian Treasury guidelines state that a BCR greater than one implies that an investment should be proceeded with.²

¹ National Legal Aid (2022), *National Income & Expenses Tables*

² Victorian Department of Treasury and Finance (2013), *Economic Evaluation for Business Cases Technical guidelines*

Table 2: Estimated quantitative benefits from LAC services

Benefits	Annual benefit (2022, \$m)
A - Avoided costs in the justice system	176
A.01 Cost savings from legal representation	22
A.02 Cost savings from dispute resolution services	92
A.03 Efficiency of duty lawyers	62
B - Avoided costs to individuals	332
B.01 Improved livelihood and wellbeing from reduced domestic and family violence	307
B.02 Reduced pain & suffering from more efficient proceedings	25
C - Avoided costs to government	93
C.01 Avoided costs to government – Domestic and family violence	71
C.02 Avoided costs to government – Out of home care costs	22
Total	601

Source: PwC analysis

Every \$1 of Commonwealth funding allocated to legal aid commissions generates a return of \$2.25 in quantitative benefits

In addition to these quantitative benefits, the services delivered by the LACs also lead to a host of non-quantifiable benefits, including efficiency of early intervention services, avoided costs through alternative pathways and avoided mental health and societal costs. These qualitative benefits are listed in Table 3 and are supported by detailed case studies and client stories provided in Appendix A.

Table 3: Qualitative benefits from Legal Aid services

Benefits (qualitative)	Analysis
A - Avoided costs to the justice system	
A.04 Efficiency of early intervention services	Efficiencies within the justice system derived from early intervention services better enabling individuals to resolve their legal issues, including through diversion from courts to other legal pathways such as mediation.
B - Avoided costs to individuals	
B.03 Avoided costs through alternate pathways	Litigation costs avoided due to Legal Aid support that diverts individuals from court proceedings, and instead supports them to resolve issues through mediation and other alternative pathways.
B.04 Value from advice and other services	The benefits individuals derive from understanding their rights and obligations, such as preventing future legal issues from arising, minimising the harm of existing issues, and support to access appropriate services.
C - Avoided costs to government	
C.03 Improved mental health outcomes	The reduced burden on government funded mental health services as a result of helping individuals to navigate the justice system, better advocate their rights and finalise their matter efficiently, which reduces potential pain and suffering for the individual.
C.04 Avoided other societal costs	The social good from guaranteeing access to justice, including improved quality of life, avoided intergenerational impacts of legal issues, reduced risk of conflict and violence, and reduced inequality and disadvantage.

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1 Introduction

A robust legal system that upholds the rule of law is crucial to a just and equitable society. Each part of the justice system needs to operate in coordination with one another to deliver fair, effective, and efficient resolution of legal disputes. Now, as ever, Australia's justice system is geared towards this outcome. National Legal Aid (NLA), as the representative body for each of the state and territory legal aid commissions, has sought to evidence the value of its participation in Australia's legal landscape by identifying the range of beneficiaries from its operations and the quantum of those benefits derived.

PricewaterhouseCoopers Consulting (Australia) Pty Ltd (PwC) has been engaged by NLA to estimate the economic benefit of Legal Aid assistance to the Australian community. This assessment focuses on the Legal Aid services funded by the Australian Government, (i.e., those that relate to Commonwealth law).

The various economic benefits stemming from the provision of Legal Aid are, by their very nature, difficult to quantify in their entirety. There are many different impacts a robust justice system has on society. This report quantifies those benefits that accrue to the efficiency of the justice system, to the individual, as well as the wider government and societal outcomes resulting from the provision of Legal Aid. Some of the benefits that result from Legal Aid services within these and other categories were not able to be quantified and are addressed in this report qualitatively.

1.1 Previous analyses

NLA previously commissioned PwC to develop a first-of-its-kind report in 2009 that estimated the benefits from Legal Aid services that accrue from the increased efficiency of the justice system. The report found there was a net benefit of \$42.2 million to \$59.3 million derived from the contemporary mix of Legal Aid services, corresponding to a benefit-cost ratio of 1.6 to 2.3.³

The Productivity Commission subsequently assessed PwC's report in 2014, identifying areas for improvement, particularly regarding assumptions pertaining to alternative pathways sought in the absence of Legal Aid.⁴ The assumption that all litigants would self-represent was considered not to accurately account for the differences in behaviours and potential outcomes that would likely arise without Legal Aid services.

Since PwC's 2009 report, numerous jurisdictions around the world have sought to assess the benefits of Legal Aid and community legal centres. Analysis in the US, for example, developed a cost of victimisation to capture the avoided cost per incident of assault prevented by virtue of being assisted to secure a legal outcome.⁵ Research in England identified the correlation between decreased legal aid spending and increased proportion of self-represented litigants.⁶ Another study in Liberia quantified the improved quality of outcome that marginalised groups derived from having legal representation when navigating the justice system.⁷

In 2019, the World Bank undertook a literature review of the key findings from various cost benefit analyses of Legal Aid around the world. The World Bank cited the 2009 PwC report as evidence of best practice ways to analyse and capture the economic benefits of efficiencies in the justice system derived from Legal Aid services. The World Bank report further commended the evolution in the analytical approach to cost benefit analyses of legal aid services that has been facilitated

³ PricewaterhouseCoopers (2009), *Economic Value of Legal Aid: Analysis in relation to Commonwealth funded matters with a focus on family law*.

⁴ Productivity Commission (2014), *Measuring the benefits of legal assistance services*.

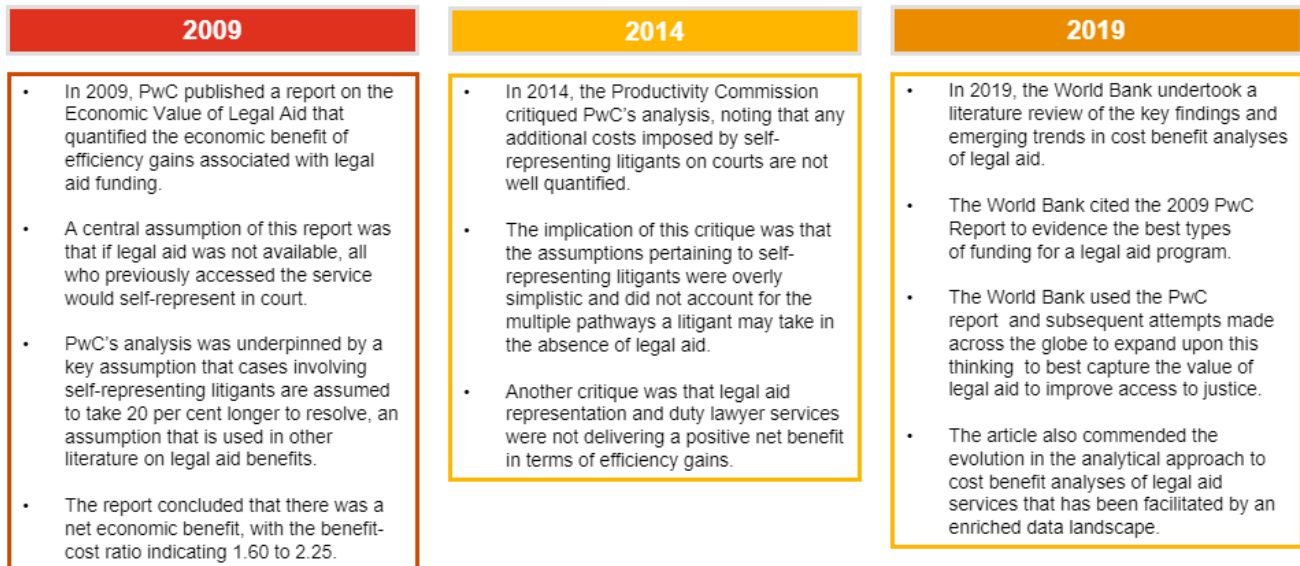
⁵ Liz Elwart, et al., "Increasing Access to Restraining Orders for Low-Income Victims of Domestic Violence: A Cost-Benefit Analysis of the Proposed Domestic Abuse Grant Program," Wisconsin Access To Justice Committee Report, December 2006, <http://www.nlada.org/DMS/Documents/1176146724.92/>.

⁶ Gabrielle Garton Grimwood, (2019) Litigants in Person: The Rise of the Self-Represented Litigant in Civil and Family Cases in England and Wales - Briefing Paper Number 07113 (UK Parliament House of Commons, 2016) at p. 3 in Lisa Moore et al., *Investing in Justice: A literature Review in Support of the Case for Improved Access*, Canadian Forum on Civil Justice.

⁷ Bilal Siddiqi and Justin Sandefur, (2015) *Delivering Justice to the Poor: Theory and Experimental Evidence from Liberia*.

by an enriched data landscape.⁸ Figure 1 provides a brief overview of the timeline of previous analyses on the benefits delivered by legal aid services.

Figure 1: Evolution of Legal Aid Analysis



1.2 Structure of this report

This report incorporates the learnings from prior analyses of legal aid services and leverages the enriched data landscape to provide a more robust appraisal of the benefits derived from Legal Aid in Australia. The rest of this report is structured as follows:

- Chapter 2 – Background and context outlines the services that the LACs deliver and explains the current operating environment, including funding
- Chapter 3 – Benefits from Legal Aid Services describes the qualitative and quantitative benefits delivered by Legal Aid. Includes quantitative benefit estimates and detailed case studies that capture the non-quantifiable benefits.⁹
- Chapter 4 – Results presenting the quantitative benefits estimates from the provision of Legal Aid services.
- Appendix A – Detailed case studies provide examples of the work undertaken by Legal Aid with specific client stories.
- Appendix B - Benefit quantification methodology provides detailed description of the inputs, assumptions, and methodology to derive the quantum of benefits.

⁸ World Bank (2019), *A Tool for Justice – The Cost Benefit Analysis of Legal Aid*

⁹ The analysis and benefits quantification in this report uses data from the 2019-2020 financial year. This is due to the disruptive impact of the COVID-19 pandemic and consequent lockdowns, as well as the limited availability of data pertaining to the new court structures following the changes made in late 2021.

2 Background and context

Legal Aid is a social service that provides access to legal assistance for individuals that are experiencing disadvantage and unable to afford private practitioners, helping to ensure access to justice for everyone regardless of their socioeconomic means, background, or capabilities. The provision of Legal Aid services is predicated on the notion that legally enforceable rights and duties underpin a democratic society. The services that Legal Aid provides includes:

- Legal representation in court proceedings and other legal procedures, by a Legal Aid lawyer or by funding a private practitioner to undertake the work on Legal Aid's behalf.
- Independent Children's Lawyer services to represent the best interests of the child in family law proceedings in accordance with s 68L of the *Family Law Act 1975* (Cth) or s 164 of the *Family Court Act 1997* (WA)
- Dispute resolution services
- free duty lawyer services, providing one-off assistance to people appearing at court without a lawyer
- information and advice about legal rights, responsibilities, and remedies
- education programs to inform the community and intermediaries about the law and legal remedies
- non-legal support services including counsellors, social workers, Aboriginal Family Advocates and Aboriginal community liaison officers.¹⁰

Legal Aid ensures that vulnerable members of society, who would otherwise be unable to access the justice system due to social and economic constraints, have a means to access the justice system.

2.1 How Legal Aid services are delivered

Each of the eight Australian states and territories has its own Legal Aid Commission (LAC), which is an independent statutory body providing legal assistance services. Legal Aid commissions are the largest providers of legal assistance services in Australia and provide most of the legal representation services at courts and tribunals, through grants of legal aid and duty lawyer services.

NLA represents the directors (chief executive officers) of the eight state and territory Legal Aid commissions. NLA's purpose is to lead and encourage a national system of Legal Aid that allows disadvantaged individuals to access justice, ensure the legal assistance sector is adequately funded, and provide a forum for collaboration at a national level to develop best practice legal assistance.

Each of the LACs provide services pertaining to both State and Commonwealth law. State law services extend to providing assistance in each state's and territory's criminal law and child protection jurisdictions, as well as certain areas of civil law – these are not in the scope of this assessment.

The services provided by LACs in Commonwealth law relate to both family law matters and federal civil law and, crucially, cover early intervention, advice, as well as court representation through grants of legal aid. Table 4 outlines the relevant areas of Commonwealth family and civil law that LAC services cover.

¹⁰ Victoria Legal Aid, (2022), *What we do*, available at <https://www.legalaid.vic.gov.au/what-we-do> (updated 18 May 2022); Community Legal Centres Australia (2019), *Non-Legal Support Service – Discrete*, available at <https://clcs.org.au/DataGuide/NonLegalSupportDiscrete>

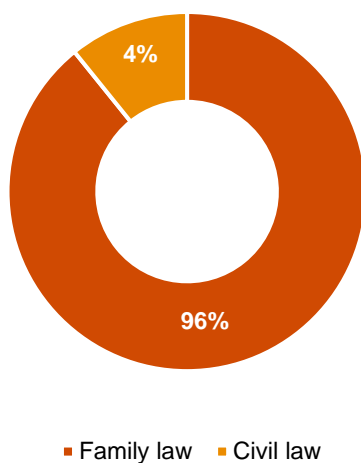
Table 4: Commonwealth law matters for LAC services

Family	Civil
Children (parenting disputes)	Social Security
Child Support	Discrimination and Sexual Harassment
Property and Maintenance	Employment
Independent Children’s Lawyer	National Disability Insurance Scheme
	Migration

Source: National Legal Aid (2021), *Strategic Plan 2021-2024*

While there exists a variety of matter types and complexities unique to each grant, family law matters make up an overwhelming majority of Legal Aid grants. As is shown in Figure 2, family law matters account for 96 per cent of grants for representation. These are predominantly matters of the kind handled by the Federal Circuit and Family Court of Australia (FCFCOA) (Division 2), in all jurisdictions other than WA. Prior to September 2021, this was the Federal Circuit Court.¹¹ As a forum that handles both civil law and family law the FCFCOA is where majority of legally aided litigants will have their matter dealt with.

Figure 2: Breakdown of Legal Aid cases by law Type



Source: Legal Aid Commission data 2019-2020

Ensuring society-wide access to justice requires the harmonized delivery of services from across the legal assistance sector. Legal Aid sits alongside other service providers to deliver quality and equitable access to justice:

¹¹ On 1 September 2021 the Federal Circuit Court (FCC) and Family Court of Australia (FCoA) were merged to create the Federal Circuit and Family Court of Australia (FCFCOA). FCFCOA Division 1 represents a continuation of the jurisdiction of the Family Court, which deals with the most complex family law matters. FCFCOA Division 2 represents a continuation of the jurisdiction of the FCC which hears general federal law matters and family law matters. Majority of the work Legal Aid undertakes is within the FCC, now FCFCOA Division 2.

- **Community Legal Centres** (CLCs) are independent, non-for-profit organisations that provide fee free or low-cost legal assistance services for vulnerable and disadvantaged people. CLCs adopt a holistic approach, working in partnership with non-legal support services that deliver improved legal outcomes and faster resolution times for their clients in the areas of civil and family law.¹²
- **Aboriginal and Torres Strait Islander legal assistance services** (ATSILS) aim to enable and empower First Nations communities to address their legal needs and improve access to justice outcomes.¹³ In this regard, they provide legal services including representation and also advocate for law reform to improve the legal framework Aboriginal and Torres Strait Islander people interact with.
- **Private practitioners** also have a role in the legal assistance sector, providing representation to clients in legally aided matters and providing pro bono legal services to individuals, groups, and charities.
- **Family Violence Prevention Services** provide specialised services to First Nations clients who have experienced family violence or are at risk of family violence including direct support in the form of referrals, education, non-legal support, and facilitation of resolution processes.¹⁴

NLA's role in the legal assistance sector is to maximise the effective and efficient delivery of Legal Aid services within each jurisdiction. Its participation facilitates the provision of best practice legal assistance in a manner that improves access to justice. Table 4 details the funding amount per funding stream provided to each jurisdiction for 2019-20.

Table 5: Legal Aid Commissions income and expenses 2019-20 (\$m)

	Cth Input Grants NLAP	Cth Input Grants Non-NLAP	State Input Grants	Spec. Trust & Stat. Interest	Other Income	Total Income	Total Expenses
NSW	66	17	220	35	9	347	344
VIC ^	51	10	122	35	6	224	208
QLD	44	6	94	0	4	148	154
SA ^o	16	4	23.94	2	3	26	46
WA*	26	5	49	0	4	84	86
TAS	6	2	8	1	1	17	17
ACT	5	2	8	1	1	17	16
NT	6	2	6	0	2	17	17
TOTAL	220	48	509	74	30	880	888

Source: National Legal Aid (2022), *National Income & Expenses Tables*, rounded to the nearest million

[^] VIC results reflect the significant deferral of case and trial expenditure into future years as a result of changes in court practices in response to COVID-19. The final results also reflect the accounting treatment of the Digital Legal Aid project asset funding and the timing of COVID-19 pandemic specific one-off funding (Cth and State).

^o SA includes \$22.94m in State Funding for the 2019-20 financial year that was paid in advance at the end of the 2018-19 financial year and so is reflected in 2018-19 accounts and not accounted for in the totals calculated in the table.

* WA results include state expensive criminal cases funding & associated expenditure of \$2.160m approved as part of State Government recurrent funding. Total expenses for LAWA includes \$1.817m additional expenses on initial application of the new Accounting Standard AASB 16 Leases

Legal Aid has grown increasingly reliant on government funding over the years. During this time, State Input Grants have grown faster than Commonwealth Input Grants. As a proportion of total LAC funding, Commonwealth funding has decreased from 34 per cent in 2011-12 to 28 per cent in 2021-22, while state funding has grown from 45 per cent to 63 per cent of total LAC funding over the same period.¹⁵ Figure 3 shows the change in funding over the last 10 years.

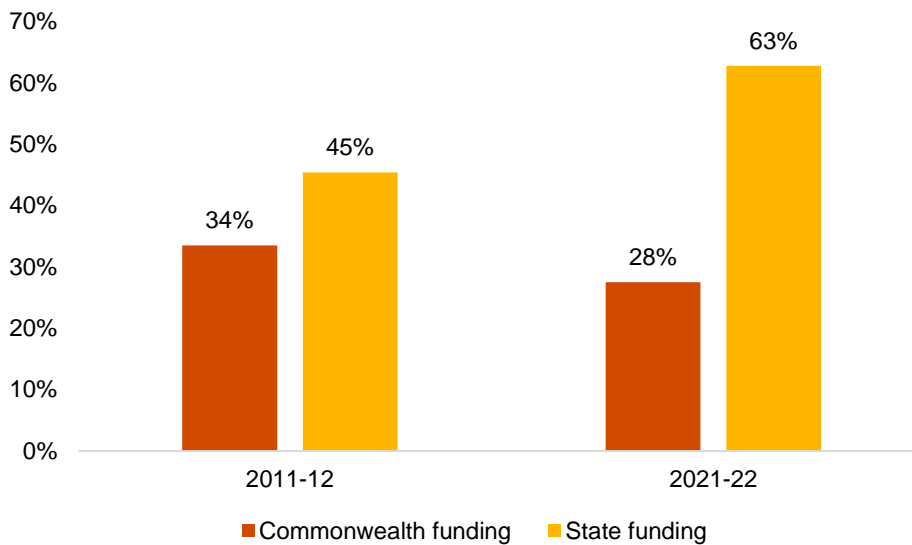
¹² Victorian Legal Aid, (2022), *Community Legal Centres*, available at <https://www.legalaid.vic.gov.au/community-legal-centres> (updated 2 November 2022)
Western Australia Department of Justice (2022), *Legal Assistance Strategy 2022-2025*, p.13-14.

¹³ National Legal Assistance Partnership Agreement (2020), p.4.

¹⁴ National Legal Assistance Partnership Agreement (2020), p.10.

¹⁵ National Legal Aid (2022), *Income and Expenses Tables for 2011-12 to 2021-22*.

Figure 3: Proportion of total Legal Aid Commission funding in 2011-12 and 2021-22 (%)



Source: National Legal Aid (2022), *Income and Expenses Tables for 2011-12 to 2021-22*

This constrained funding environment has coincided with an increase in court filings outpacing finalisations that has caused a backlog of cases within the Commonwealth courts and tribunals.¹⁶ The volume of pending cases has grown by 8 per cent year-on-year in the period of 2011-12 to 2019-20, highlighting the increasing strain the Commonwealth courts are currently experiencing. This growing backlog has a compounding effect, causing the number of cases taking more than 12 months to resolve to increase by 19 per cent year-on-year since 2011-12. There are now five times as many cases that are still awaiting finalisation 12 months after the application was filed than there were in 2011-12.¹⁷

¹⁶ Such was the need to reduce the backlog of cases that the recent restructuring of the federal courts was motivated, in part, by the need to increase procedural efficiency and reduce the time taken to finalisation. See; Attorney General's Department, (26 March 2021), *Parliament backs overdue reform of family courts*, Media Release, available at <https://www.ag.gov.au/legal-system/courts/structural-reform-federal-courts>.

¹⁷ Federal Court of Australia (2011 – 2021), Annual Reports available at <https://www.fedcourt.gov.au/digital-law-library/annual-reports>

3 Benefits from Legal Aid services

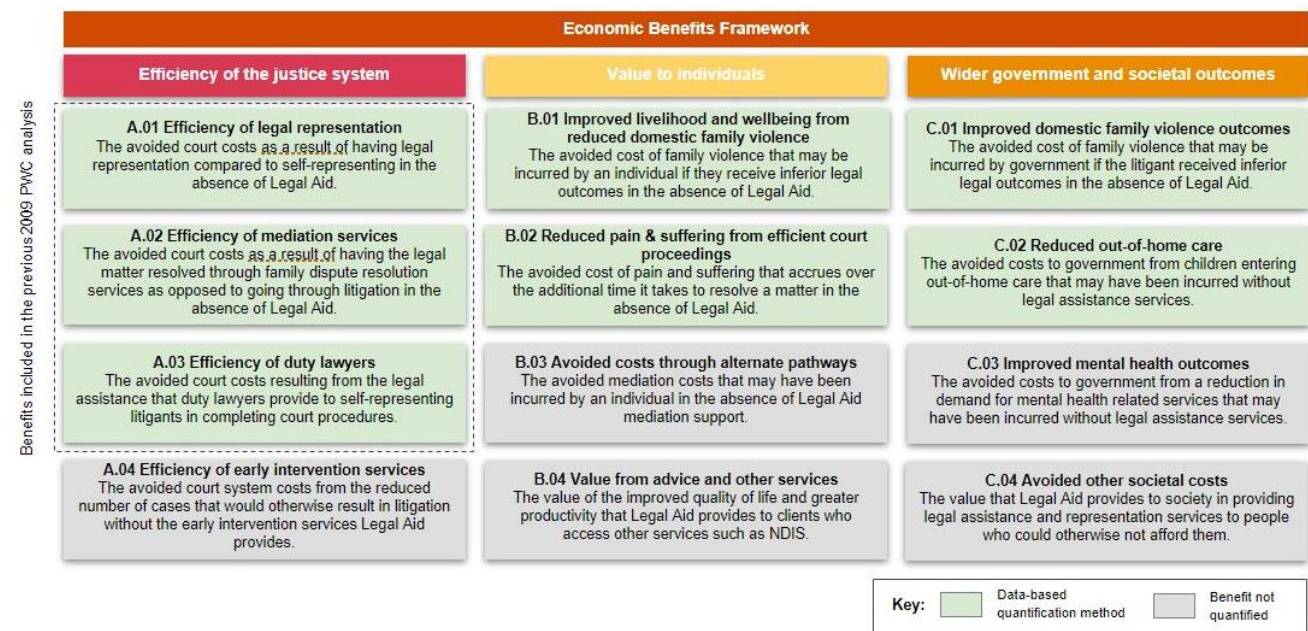
This report considers benefits delivered by Legal Aid services in three categories:

- **Efficiency of the justice system:** the improved operational capacity of the courts that stems from the provision of Legal Aid services
- **Value to individuals:** the benefits derived by individuals who achieve improved legal outcomes through access to Legal Aid services
- **Wider government and societal outcomes:** the benefits derived by government and society when an individual achieves an improved legal outcome through access to Legal Aid services.

This analysis quantifies several benefits within each of these categories and includes qualitative discussion of other impacts. It must be noted that relevant litigation costs have been derived in the context of the Federal Circuit and Family Court of Australia (FCFCOA), notwithstanding the work Legal Aid does in other forums, including the Administrative Appeals Tribunal.¹⁸ The subject matter, quality of evidence, the scheduling of judges and numerous other variables will necessarily affect the litigation process. Without mapping data for each variable across the different legal forums it is necessary to use representative inputs. The FCFCOA hears both civil law and family law cases that comprise an overwhelming majority of Legal Aid matters and as such provides the most suitable representative metric for litigation costs.

Detailed case studies and client stories are referenced throughout this report and provided in full in Appendix A. The case studies evidence the various ways the benefits of Legal Aid manifest in real life scenarios. The various client stories demonstrate how Legal Aid assistance can have a compounding effect that facilitates substantially beneficial outcomes for the individual. Figure 4 provides an overview of the economic benefits framework used in this analysis, including a description of what each benefit is measuring.

Figure 4: NLA Economic benefits framework



¹⁸ Formerly the Federal Circuit Court, FCFCOA (Division 2) is the forum for a majority of family law matters in all jurisdictions except WA. FCFCOA (Division 2) also hears general federal law matters.

3.1 Efficiency of the justice system

The provision of Legal Aid services enhances the efficiency of the justice system by improving the operational capacity of the courts through reducing both the caseload and time taken to finalisation for each matter. Legal Aid delivers efficiency benefits to the justice system through:

- **Efficiency of legal representation:** Access to legal representation for litigant parties that would otherwise be unable to obtain representation, resulting in fewer self-representing litigants (SRLs).
- **Efficiency of mediation services:** Family Dispute Resolution (FDR) services that enable a greater share of family law matters to be settled before they reach litigation, reducing court costs.
- **Efficiency of duty lawyers:** Duty lawyer assistance to self-representing litigants that reduces the burden on in-court practices.
- **Efficiency of early intervention services:** The avoided caseload that results from early intervention services provided by Legal Aid.

A.01 Efficiency of legal representation

The LACs provide representation for parties that would otherwise be unable to afford or access legal representation. Without Legal Aid, these individuals may choose to litigate their matter on their own behalf. Estimates indicate that only 30 per cent of individuals would self-represent in the absence of Legal Aid.¹⁹ Self-representation in the justice system places additional burden on the court's operational capacity because it requires additional resources for matters to be heard and resolved. Self-represented litigants often require support in understanding the rules of procedure, identifying the legal issues at hand, articulating their case, and interacting with opposing counsel. In those instances, court staff have trouble maintaining the line between providing information and providing legal advice.²⁰

Managing the specific needs of self-represented litigants while adhering to the requirements of judicial impartiality is a delicate task that demands more of a court's time. From the early 2000s, courts have acknowledged that matters with at least one self-represented litigant take 20 per cent longer to resolve on average.²¹ The prevalence of self-represented litigants has increased in recent years. Approximately one-fifth of all family law applications are heard without legal representation leading to time inefficiencies including those relating to completing court forms, preparing affidavit material, as well as gathering, presenting and testing evidence.²² The growing number of self-represented litigants and the difficulties they bring has led some judicial officers to question the suitability of existing court processes.²³

The benefits derived from having Legal Aid representation captures the value of the time saved for those 30 per cent who would self-represent in the absence of Legal Aid, as this is a known quantity. These benefits accrue to both the individual and the justice system. For the remaining 70 per cent the benefit derived from Legal Aid enabling them to navigate the justice system falls outside of what can be captured here, notwithstanding that they may be adversely affected in the absence of Legal Aid's support.²⁴ Client Story 7 in Appendix A provides an example of the ways Legal Aid services enable

¹⁹ Australian Institute of Family Studies (2018), *Review of the family law system: Submission from the Australian Institute of Family Studies*; Productivity Commission (2014), *Access to Justice Arrangements Productivity Commission Inquiry Report – Measuring the benefits of legal assistance services (Appendix K)*; Law Right Australia (2022) *Self-Representation*.

²⁰ Richardson et al. (2018), *The Impacts of Self-represented Litigants on Civil and Administrative Justice: Environmental Scan of Research, Policy and Practice*, The Australasian Institute of Judicial Administration Incorporated.

²¹ Annual Review of Western Australia courts (2004)

²² Australian Institute of Family Studies (2018), *Review of the family law system: Submission from the Australian Institute of Family Studies*, p.9

²³ Honourable Mr J Faulks (2021) *Self-represented litigants: tackling the challenge* in the Handbook for Judicial Officers, [2511].

²⁴ As this 70 per cent are presumed not to self-represent there is no direct burden on the justice system that is alleviated by providing them with representation. This is not to suggest that there would not be indirect benefits resulting from facilitating their access to justice. However, the multitude of variables that affect legal problems across the spectrum of civil and family law matters makes it difficult to meaningfully hypothesise the negative impacts of being unable to litigate.

their clients to better understand their rights and navigate the justice system, enabling the courts to resolve their matter expeditiously.

A.02 Efficiency of family dispute resolution services

LACs deliver lawyer-assisted FDR services which offer a non-litigated approach to settling a family dispute. FDR services play an important role in family law by offering a solution that sits between the non-legal dispute resolution services and the adversarial and litigious options of court. FDR helps to reduce the burden of family disputes on the court system because it is a mediation outlet that enables these matters to be finalised without judicial deliberation at hearing, reducing the demand on courts.²⁵ FDR services improve the efficiency of the court because time taken to resolution is shorter for mediation compared to litigation.²⁶

Client Story 5 in Appendix A shows the value of Legal Aid support in securing positive resolution through FDR, avoiding the need for costly litigation.

A.03 Efficiency of duty lawyers

LACs provide duty lawyers to assist self-representing litigants who have a matter before the court on a one-off basis. Assistance provided by duty lawyers includes:

- providing advice about legal matters
- explaining court processes in relation to the legal matter
- assistance in seeking an adjournment
- appearing for the party in court
- negotiating consent orders.²⁷

As identified above in A.01, self-represented litigants can contribute to court system delays due to their inexperience in the legal system.²⁸ The advice and consultation that duty lawyers provide assists self-represented litigants to understand the court's processes, construct arguments for their matter and make better use of court time and resources. Without guidance, self-represented litigants often make the mistake of filing an incorrect application, misunderstanding the rules of evidence, and persisting with a matter in the absence of any legal right.²⁹ Duty lawyers help to negate the need for a new court application and can lead to the discontinuation of a matter that is incorrectly brought before the court. An evaluation of duty lawyer services revealed that in 12 per cent of cases the matter was finalised by the court following the assistance of the duty lawyer.³⁰

²⁵ Attorney General's Department-KPMG (2008), *Family dispute resolution services in legal aid commissions evaluation report*, p.17

²⁶ Justice Connect (2017), *Using mediation to resolve conflicts and disputes*, p.3

²⁷ Legal Aid NSW (2022), *Help at Court*, available at <<https://www.legalaid.nsw.gov.au/get-legal-help/help-at-court>>

²⁸ Australian Institute of Family Studies (2018), *Review of the family law system: Submission from the Australian Institute of Family Studies*, p.9

²⁹ Dr G Lester, (2021) *The querulant litigant* in the Handbook for Judicial Officers, [2448] available at https://www.judcom.nsw.gov.au/publications/benchbks/judicial_officers/querulant_litigant.html

³⁰ Law and Justice Foundation of NSW (2012), *An evaluation of Legal Aid NSW's Family Law Early Intervention Unit Duty Lawyer Service*, p. 26

A.04 Efficiency of early intervention services (qualitative benefit)

LACs provide the following services for individuals seeking assistance with their matter:

- advice and information about their legal matter
- assistance with legal tasks such as drafting documents
- finding a mediation service.³¹

The purpose of these early intervention services is to support the efficient conclusion of legal issues and where possible, to do so through alternate legal pathways, including mediation and conciliation, rather than going to court. This avoids court costs for the individual would-be litigants and reduces pressure on the court system. With court filings outpacing finalisations, early intervention services that divert legal matters from judicial deliberation reduces the court caseload and wait times for subsequent court filings. This is crucial to reducing the backlog of cases, which reduces the time taken and costs incurred to deliver just outcomes.

Early intervention mechanisms also serve to inform individuals of their legal rights and obligations. By providing initial advice, Legal Aid helps ensure that litigants appearing before court are better equipped, reducing the burden on court staff. Early advice can be critical for individuals to effectively redress legal issues as they arise, avoiding the worst outcomes were the issues left to continue and compound.

Client Story 1 in Appendix A demonstrates how early intervention from Legal Aid can help to secure just outcomes efficiently, particularly in time sensitive situations.

Efficiency of the justice system: detailed client story

The following client story highlights the value that Legal Aid can provide by supporting the more efficient and effective conclusion of legal matters through the justice system. The provision of Legal Aid support in regional and remote locations especially helps guarantee access to justice for vulnerable individuals, securing beneficial outcomes and resolving their matters quickly. For full details of the case study see Appendix A.

Client Story 2: Sarah, WA

Sarah was a young woman who lived in a regional town in Western Australia with her child. The child's father had problems with substance abuse and had been violent towards Sarah throughout their former relationship. At some point, the father had taken the child to his residence, and given the history of domestic violence by the father, Sarah did not feel safe in recovering her child. Further, the father had stopped sending the child to school.

Lawyers from Legal Aid WA's regional offices often travel with Magistrates to regional locations as part of the Magistrate Courts circuit. Fortunately, there was a Magistrates Court Circuit session in the regional town at this time, and Sarah chose to attend one of these sessions, five days after the father had taken the child.

Sarah met with a Legal Aid WA solicitor, who identified the urgency of this matter and immediately lodged an application for a grant of Legal Aid. Given the risk to the child by staying with her father, the Legal Aid WA solicitor flagged this application for processing that same day. Legal Aid WA's grant assessment team approved the application within 20 minutes, and within an hour of Sarah's initial consultation with a Legal Aid WA lawyer, Sarah had been contacted by a local private practitioner who had accepted the matter on a grant of legal aid.

With the assistance of this private practitioner, Sarah was able to obtain a recovery order from the Family Court and have her child safely returned to her – an example of Legal Aid WA and a local private practice working effectively together to achieve an outcome that otherwise may not have resulted.

³¹ Legal Aid NSW (2022), *Family Law Early Intervention Unit*, available at <<https://www.legalaid.nsw.gov.au/what-we-do/family-law/family-law-early-intervention-service>>

3.2 Value to individuals

The provision of Legal Aid services can lead to improved legal outcomes for individuals that ultimately benefits their wellbeing and livelihood. This reduces the cost burden to individuals of poor health, social and justice outcomes, which can be captured through:

- **Improved livelihood and wellbeing from reduced domestic and family violence:** The avoided instances of family violence that may be incurred by an individual who receives improved legal outcomes through Legal Aid.
- **Reduced pain and suffering from legal proceedings:** The avoided pain and suffering for a litigant whose matter is resolved faster through Legal Aid assistance.
- **Avoided costs through alternative pathways:** The avoided costs for a litigant because of Legal Aid mediation support.
- **Value from advice and other services:** The improved quality of life and greater productivity that Legal Aid provides to clients who are supported to participate in services such as the NDIS or access payments they are entitled to.

B.01 Improved livelihood and wellbeing from reduced domestic and family violence

Domestic and family violence is a pervasive social issue. One in six Australian women and one in seventeen Australian men experience partner violence, and one in six women and one in ten men experience physical or sexual abuse before the age of 15.³² The number of family law matters presenting at court indicating risk or alleging violence is increasing. The latest data indicates that 79 per cent of all initiating family law applications present a risk of domestic and family violence.³³ Sixty-two per cent of matters screened for family violence are categorised as high risk.³⁴ Providing effective legal recourse is an important role in curtailing domestic violence.

The impacts of domestic violence are numerous and severe. Victims experience pain and suffering leading to greater demand for health care services, exposure to increased risk of chronic illness and a higher likelihood of substance abuse. Suffering violence can be the cause of, or a contributing factor in premature mortality.³⁵ In addition to its physical and psychological impacts, domestic violence also negatively impacts financial and social wellbeing. Victims have an increased risk of homelessness and suffer disruptions to their earning capacity that can cause financial hardship. In 2022, the cost of domestic family violence on individuals is estimated at \$24.4 billion per annum.³⁶

LACs provide specialist family law services that enable access to justice for individuals experiencing domestic family violence. In each jurisdiction, a dedicated Family Advocacy and Support Service (FASS) integrates legal solutions and social work services to holistically address the impact of family violence. These services aim to improve justice outcomes for individuals that experience family violence and address the underlying causes to reduce the likelihood and severity of further instances of domestic violence. In the absence of Legal Aid representation to attain legal redress individuals at high risk are vulnerable to the impacts of domestic violence.

Client Story 5 in Appendix A demonstrates how Legal Aid helps ensure access to justice to protect individuals from the threat and continuation of family violence, and secure beneficial outcomes to support improved livelihoods.

³² Australian Bureau of Statistics (2017), *Personal Safety Survey*.

³³ Federal Circuit Court (2021), *Annual Report 2020-21*, p. 25

³⁴ The Lighthouse project is a world-leading approach to violence risk screening and triaging to provide specialist case management and trauma informed support for matters involving alleged family violence. See: Federal Circuit Court (2021), *Annual Report 2020-21*, p. 4.

³⁵ KPMG (2008), 2008 Family dispute resolution services in legal aid commissions: Evaluation Report, p.77 This captures pain, suffering and increased mortality, the increased occurrence of substance abuse and demand for health care services. This also extends beyond the physical and psychological repercussions to capture the negative effect on financial and social wellbeing, such as workplace absenteeism and risk of homelessness.

³⁶ KPMG (2008), 2008 Family dispute resolution services in legal aid commissions: Evaluation Report, p.77 This captures pain, suffering and increased mortality, the increased occurrence of substance abuse and demand for health care services. This also extends beyond the physical and psychological repercussions to capture the negative effect on financial and social wellbeing, such as workplace absenteeism and risk of homelessness.

B.02 Reduced pain and suffering from efficient court proceedings

Ongoing, unresolved legal matters can cause significant levels of distress for the individuals involved.³⁷ The distress of litigation manifests in the type of symptoms commonly associated with posttraumatic stress disorder. This includes sleeplessness, anger, frustration, headaches, difficulty concentrating, loss of confidence, indecision, high levels of stress, anxiety, despondency, and depression.³⁸ Delays in court finalisation compound these ill effects.

As described in A.01, the increased efficiency derived from Legal Aid representation reduces the time taken to finalise a legal matter. Legal representatives are better able to advocate legal rights and navigate the justice system, thereby alleviating some of the burden of litigation. In addition, LACs provide non-legal support that can help individuals to holistically address their problems and minimise the disruptive impact of legal issues. Legal Aid helps reduce pain and suffering for litigants by supporting individuals to litigate their matter, reducing the time taken to resolution, and providing non-legal support throughout the process.

Client Story 8 highlights the value Legal Aid contributes by supporting individuals through processes that are distressing, reducing the mental and emotional burden of litigation, and bringing the matter to swift conclusion.

B.03 Avoided costs through alternate pathways (qualitative benefit)

LACs provide mediation programs that help individuals come to an agreed conclusion without having to litigate the matter. Through these services, individuals avoid costs associated with litigation and dispute resolution processes that they would have otherwise incurred in the absence of Legal Aid. Mediated agreements also can also reduce the ongoing impact of the legal problem. For example, if an individual is being pursued for a debt, a mediated agreement could lead to an agreed payment plan that's considerate of personal circumstances so that some money is still recovered, and the individual is helped out of the debt cycle.

Client Story 5 in Appendix A is an example of how Legal Aid supports its clients to resolve matters without litigation, reducing the financial burden of their legal issues.

B.04 Value from advice and other services (qualitative benefit)

Advice and specialist support services provided by the LACs empower individuals to understand their rights and obligations, enabling those who experience disadvantage or structural barriers to address those barriers before they eventuate in poor legal outcomes. Resolving these matters is associated with an improved wellness and quality of life. For example, legal assistance in resolving disputes about access to services such as the National Disability Insurance Scheme (NDIS) helps individuals navigate the system's complexities, mitigating the potential for distress, confusion and missed opportunities. Further, by providing advice and advocating for individuals, the appropriate NDIS support can be obtained reducing the risk of adverse consequences such as deterioration in health, well-being, and social engagement.³⁹

Client stories 10 – 12 highlight the value of legal aid assistance to access services such as the NDIS to help improve the individuals' quality of life.

Value to individuals: detailed client story

The Client Story below shows that Legal Aid provides critical support to individuals to secure beneficial outcomes for their ongoing health and wellbeing. This is particularly the case with respect to the National Disability Insurance Scheme.

³⁷ Keet et al., (2020) *Anticipating and Managing the Psychological Cost of Civil Litigation*, (2017); Canadian Forum on Civil Justice, *The Justice Crisis: The Cost and Value of Accessing Law*.

³⁸ Larry H. Strasburger MD, (1999), *The Litigant Patient: Mental Health Consequences of Civil Litigation*, *Journal of American Academy of Psychiatry and the Law* (199) 27, 2, p. 204

³⁹ Department of Social Services (2019), *Review of the National Disability Insurance Scheme Act 2013*, available at https://www.dss.gov.au/sites/default/files/documents/01_2020/ndis-act-review-final-accessibility-and-prepared-publishing1.pdf; Victoria Legal Aid (2019), *Reforming the NDIS to meet people's needs*, available at < <https://www.legalaid.vic.gov.au/reforming-ndis-meet-peoples-needs>>

Client Story 10: *Helen, VIC*

Helen is 59 years of age and has three adult children, the youngest of whom lives at home. She contracted Poliomyelitis as a two-year old. As a result of the virus, she has a foot deformity, a leg discrepancy and weakness in her lower limbs. Helen also has some other chronic health conditions which make completing everyday tasks difficult. She relies on crutches to mobilise and wears special shoes. Though she had a car, Helen did not use it very much as her disability made driving difficult. She also finds it difficult to attend medical appointments without assistance. Helen is unable to do her own shopping and is reliant on her children's assistance. As she does not wish to burden, or impose upon, her family members, Helen stocks up on items with a long shelf-life rather than fresh foods. Helen advises that she struggles with self-care and has had a number of falls when she has tried to shower without assistance.

On her doctor's advice, in 2018 Helen applied to become a NDIS participant. In 2019, her application was rejected as the NDIA deemed that she did not meet the disability requirement of the eligibility criteria. Helen applied for an internal review, and then for an appeal at the AAT. Finding the process very complicated and overwhelming, she considered giving up. However, an officer at the Tribunal suggested that Helen contact VLA and apply for legal assistance with her appeal.

Helen was granted legal aid for the appeal and assigned a lawyer. The VLA lawyer liaised with the NDIA's lawyers rather than Helen having to do this herself. They also obtained pertinent medical information from a doctor specialising in polio. Once received, the VLA lawyer consolidated the new and existing medical information for submission. They prepared Helen's submissions and got the case ready to proceed to a hearing. The NDIA accepted Helen's disability and her eligibility to join the NDIS without the need for a Tribunal hearing.

Helen said, 'During the appeals process, my lawyer organised a range of medical reports, including from a doctor who specialises in polio. I didn't know such specialists existed. The doctor is now my treating specialist and is offering polio specific supports to assist me to manage my disability.'

Now that Helen is a NDIS participant and has her first plan in place, she has access to support workers who attend her home. They assist with self-care tasks and take her shopping. Since Helen has had assistance, she has not had any falls and is buying fresh produce. Helen reports that she is feeling more energetic and is able to collect her medication rather than having it delivered. Helen is also enjoying greater social interaction, both at home with her support workers and also out in the community.

Helen said, 'I have a more positive outlook on life now because of the supports that are in place for me. I am looking forward to contributing to my community and hope to do volunteer work soon. I am really interested in helping the elderly and people with disabilities.'

3.3 Wider government and societal outcomes

Legal Aid generates additional benefits to government and broader society from improving legal outcomes for individuals. Specifically, the cost burden on government is reduced when LACs improve outcomes that reduce the occurrence of poor mental health, domestic and family violence, and reliance on out-of-home care for children. This is demonstrated by:

- **Improved domestic and family violence outcomes:** The avoided cost of domestic and family violence incidence that may be incurred by government if Legal Aid drives improved legal outcomes for the litigant.
- **Reduced need for out-of-home care:** The avoided costs to government from children entering out-of-home care that may have been incurred without legal assistance services.
- **Improved mental health outcomes:** The avoided costs to government from a reduction in demand for mental health related services that may have been incurred without legal assistance.
- **Other avoided societal costs:** The value derived from having a functioning and equitable justice system, which Legal Aid contributes to through the support it provides to vulnerable and marginalised groups.

C.01 Improved domestic and family violence outcomes

All levels of government incur a cost associated with the perpetration of domestic and family violence incidents. These costs include the costs of services to respond to and reduce domestic and family violence, including prevention, early intervention responses and crisis responses.⁴⁰ Treating the effects of violence imposes a significant cost burden on the health care system and associated support services. Conversely, addressing the causes of violence imposes a cost to government of \$5.6 billion per annum spent on the justice system from policing, prosecution, and incarceration.⁴¹

The LACs' family law services operate as an intervention measure to address the harmful behaviours and some of the underlying risk factors that can lead to violence. The effective application of the law plays a fundamental role in securing freedom from domestic violence. Protecting individuals' legal rights can reduce exposure to environments where domestic and family violence can occur, especially for women and children, which has a flow-on benefit to government by reducing this cost burden.⁴²

C.02 Reduced need for out-of-home care (OOHC)

Children who are exposed to domestic family violence face increased risk of adverse health and social outcomes. In extreme cases children and young people who are unable to continue to live with their own families will be moved to out-of-home care for their protection.⁴³ This costs the government on average \$57,085 per person, per year.⁴⁴ The LACs' family law services provide a mechanism to reduce the risk of exposure to ongoing violence, particularly through the support ICLs provide as an advocate for the child's best interest in family law matters. Providing legal assistance services and advocating for the child's needs where the risk of violence is present means that families are less likely to be exposed to domestic violence for extended periods of time and are therefore less likely to require OOHC. This is especially pertinent for First Nations children, who are overrepresented in child protection proceedings and are 11.5 times more likely to be placed in care than non-indigenous children.⁴⁵ The Legal Aid family law jurisdiction provides an alternative forum where families can work out arrangements for children that are culturally safe and address child protection concerns. This allows families to develop solutions where the children remain with family members and do not move into OOHC.

Client Story 4 highlights the work of Legal Aid to support beneficial outcomes for children. By providing an ICL, matters can be decided in a manner that best addresses their experience and their needs to prevent poor situations potentially escalating to worst case scenarios.

C.03 Improved mental health outcomes (qualitative benefit)

As identified in B.02, ongoing, unresolved legal issues are stressful for individuals. The perceived stress of litigation alone can be so daunting that it constrains individuals to inaction, delaying the resolution of their legal problems.⁴⁶ Individuals with ongoing legal problems experience poorer mental health, resulting in increased engagement with mental health services.⁴⁷

⁴⁰ Victorian Department of Premier and Cabinet-KPMG (2017), *The cost of family violence in Victoria*, p.6

⁴¹ KPMG, 2008 Family dispute resolution services in legal aid commissions: Evaluation Report, p.77

⁴² The National Plan to Reduce Violence Against Women and their Children 2010 – 2022: Fourth Action Plan (2019), p. 20.; Victorian Government, Victorian Royal Commissions into Family Violence (2016).

⁴³ Department of Communities and Justice (2019), *Types of Out-of-Home Care*.

⁴⁴ Australian Institute of Health and Welfare (2017), *Australia's welfare 2017 – A stable and secure home for children in out-of-home care*

⁴⁵ Public Interest Advocacy Centre,(2022),The over-representation of First Nations kids in out of home care continues to rise.; Australian Institute of Health and Welfare(2022) Child protection Australia 2020-21 (last updated 15 June 2022) <https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2020-21/contents/about>

⁴⁶ Hugh M. McDonald and Julie People (2014), *Legal Capability and inaction for legal problems: knowledge, stress and cost*, Law and Justice Foundation of New South Wales available at <http://www.lawfoundation.net.au/ljf/pdf>

⁴⁷ Trevor C.W. Farrow et al., (2016), *Everyday Legal Problems and the Cost of Justice in Canada: Overview Report*, Canadian Forum on Civil Justice, available at <https://www.cfjc-fcjc.org/sites/default/files/pdf>; World Bank (2019), *A Tool for Justice – The Cost Benefit Analysis of Legal Aid*

The Federal Government's expenditure on mental health services has increased over the years. In 2019-20 the Federal Government spent \$11 billion, representing a 4.8 per cent increase in per capita spending from 2015-16.⁴⁸ While effective care is critical for treating mental health issues, there is increasing recognition that other services can contribute by addressing the complex ways mental health interacts with other aspects of life. Research shows that individuals experiencing mental ill-health are more likely to experience legal issues and more frequently report that their legal problems have caused stress-related illness.⁴⁹ Although individuals experiencing severe mental illness are more likely to acknowledge the relevance of the law to resolving legal problems, they also perceive there to be greater obstacles to accessing justice. Easing the barrier to legal resolution is a meaningful way of reducing stressors for all individuals and mitigating the adverse effects of the complex interactions between mental health issues and other aspects of life leading to better quality of life outcomes.

Legal representation both supports individuals to navigate the justice system to better advocate their rights and minimises the time taken to finalise their matter. This support can empower individuals to redress their legal issues, decrease stress, reduce the duration of the individual's pain and suffering, and encourage more productive performance. Crucially, the practical problems of ongoing litigation can interfere with an individual's ability to engage effectively with clinical treatment.⁵⁰ Accessible representation of the kind provided by Legal Aid alleviates some of the burden of litigation and facilitates the resolution of legal problems that can act as stressors, helping to reduce the demand on mental health services provided by the Government.

C.04 Avoided other societal costs (qualitative benefit)

In addition to the services described above, LACs assist marginalised groups in a range of situations where free and timely legal representation may be required, including providing support for:

- victims of natural disasters
- people at risk of homelessness
- individuals requiring mental health support
- cases of elder abuse
- migrants and refugees
- the specific needs of defence personal and veterans.

The variety of Legal Aid services and specialist support described above evidences the breadth of vulnerable groups that are direct beneficiaries from Legal Aid services. In addition to the value Legal Aid provides its clients, there is a broader social good derived from guaranteeing access to justice and providing legal support to litigants.

There are three categories of benefits society derives from having a robust justice system where individuals can access legal representation. First, the benefits individuals accrue from Legal Aid services are not time bound. The pain and suffering caused by unresolved legal issues can have lasting, intergenerational impacts. This is particularly the case for matters of family law. The children of parents involved in family disputes who are unable to assert their rights can suffer exposure to violence, reduced education opportunities, homelessness and other disruptions that reduce their integration into, and productivity within, society.⁵¹

⁴⁸ Australian Institute of Health and Welfare (2022) *Health Expenditure*, Webpage last updated 7 July 2022, available at <https://www.aihw.gov.au/reports/health-welfare-expenditure/health-expenditure>

⁴⁹ Nagy MT & Forell S (2020) *Legal help as mental healthcare*, *Health Justice Insights*, Health Justice Australia, Sydney, available at <https://www.healthjustice.org.au/wp-content/uploads/2020/09/Health-justice-insights-legal-help-as-mental-healthcare.pdf>

⁵⁰ Nagy MT & Forell S (2020) *Legal help as mental healthcare*, *Health Justice Insights*, Health Justice Australia, Sydney, available at <https://www.healthjustice.org.au/wp-content/uploads/2020/09/Health-justice-insights-legal-help-as-mental-healthcare.pdf>

⁵¹ World Bank (2019), *A Tool for Justice – The Cost Benefit Analysis of Legal Aid*

Second, human development critically relies on justice. There is a demonstrable correlation between improved access to justice and reduced risk of state conflict and violence.⁵² Individuals suffer reduced opportunities, greater inequality, and risk disadvantage in societies where injustice is pervasive. Ultimately, the legal assistance provided by Legal Aid serves to not only ensure access to justice, but also enhance the quality of the justice system overall.

Third, notwithstanding the innate benefit of being able to access the justice system without formal representation, self-represented litigants impose a burden on courts. The rule of law is grounded in judicial impartiality. Justice must not only be done but be seen to be done. The assistance self-represented litigants require can undermine this fundamental tenet of justice. Accessible legal representation ensures litigants can protect and assert their rights in court in a manner that's effective, efficient, and just, without compromising the independence of the court.

Wider societal and government outcomes: detailed client story

The below Client Story demonstrates the capacity for Legal Aid to secure beneficial outcomes in the wake of natural disasters. In addition to improving the lived experience of the individuals involved, a broader societal benefit is derived by enabling the ongoing productive economic and social participation in the community. Legal Aid services minimise the impacts that would otherwise reverberate throughout society by guaranteeing access to justice to individuals in their time of need.

Client Story 9: *Miranda, NSW*

Miranda was a single mother who lived with her two young children in the Mid-North Coast. The floods in 2021 severely damaged her property, and with a lack of viable alternative accommodation in the region, the family had been forced to live in her van. Miranda lodged an insurance claim to have her property repaired – however, whilst her insurance policy covered claims for the repair of property arising from storm water damage, the insurer's adjuster had determined the damage was caused by flood (which was not covered under her insurance policy), and on that basis refused her claim.

Six months following the floods, Miranda and her children were still living in her van. Miranda attended a community outreach program organised by LANSW in her area, intending to obtain some legal advice on how to access a small financial hardship grant of \$5,000. At the program she was met by an outreach officer, who in turn referred Miranda to a LANSW lawyer.

The LANSW lawyer advised Miranda of her rights and entitlements under the insurance policy, and on how to dispute the insurer's refusal of her earlier claim. The lawyer also assisted Miranda in preparing and lodging a complaint to the insurer - which subsequently resulted in the insurer granting Miranda a payment of \$13,500 to repair her home, providing a significantly more stable living environment for herself and her children.

⁵² World Bank (2019), *A Tool for Justice – The Cost Benefit Analysis of Legal Aid*

4 Quantitative benefit estimates

NLA services provide a range of benefits for the justice system, individuals and government and broader society, which are outlined throughout this report. Table 6 below includes estimates of the annual benefits for those impacts that can be quantified. Descriptions of the methodology used to derive benefit estimates are included in Appendix B.

Table 6: Estimated annual quantitative benefits from NLA

Benefits	Annual benefit (2022, \$m)
A - Avoided costs of the justice system	176
A.01 Cost savings from legal representation	22
A.02 Cost savings from dispute resolution services	92
A.03 Efficiency of duty lawyers	62
B - Avoided costs to individuals	332
B.01 Improved livelihood and wellbeing from reduced domestic and family violence	307
B.02 Reduced pain and suffering from more efficient proceedings	25
C - Avoided costs to government	93
C.01 Avoided costs to government – Domestic and family violence	71
C.02 Avoided costs to government – Out of home care costs	22
Total	601

Source: PwC analysis

The results show that LAC services deliver approximately \$601 million in benefit each year. This corresponds to a **Benefit Cost Ratio (BCR) of 2.25** when considering the \$267 million in annual Commonwealth funding that the LACs receive.⁵³

The BCR demonstrates how successfully an intervention maximises welfare, and is the key metric that government considers when assessing investment opportunities. Victorian Treasury guidelines state that a BCR greater than one implies that an investment should be proceeded with.⁵⁴

Every \$1 of Commonwealth funding allocated to legal aid commissions generates a return of \$2.25 in quantitative benefits

The analysis shows a significant portion of benefits delivered by the LACs are attributable to domestic and family violence outcomes, both in relation to avoided costs to individuals and government. This highlights the importance of legal assistance as a mechanism for early intervention against, and prevention of, family violence. In relation to avoided costs to the justice system, the benefits from duty lawyer services are relatively higher compared to benefits from legal representation. This is because duty lawyers help people who have already decided to pursue their matter in court, as opposed to individuals who are yet to decide whether to self-represent.

The approach in this analysis aligns to the approach used by PwC in 2014, incorporating feedback provided by the Productivity Commission in 2014 to capture benefits attributable to only the 30 per cent of litigants that would engage with litigation through the justice system in the absence of Legal Aid (not 100 per cent). This adjustment in the approach ensures that the benefits attributable to avoided costs to the justice system are more conservative and rigorous.⁵⁵

⁵³ National Legal Aid (2022), *National Income & Expenses Tables*

⁵⁴ Victorian Department of Treasury and Finance (2013), *Economic Evaluation for Business Cases Technical guidelines*

⁵⁵ Whereas it was previously assumed that all NLA clients would self-represent, here it has been assumed that 70 per cent would find resolution through extrajudicial pathways. Although this reduces the cost burden on the judicial system it is not necessarily indicative of a more beneficial outcome for the individual or society. The complexity of human actions and relationships make it impossible to account for all possible alternatives that arise in the absence of legal assistance with litigation.

Appendix A: Detailed Case studies

Detailed case studies have been developed to represent the multitude of benefits across geographies, problem types, areas of law and vulnerable cohorts that Legal Aid supports. These case studies are representative of the lived impact of Legal Aid support and are not exhaustive in their scope or coverage. The portrayed scenarios addressed by specific LACs are by no means confined to that jurisdiction, and each of the LACs provides a broad range of legal support services. The inputs matrix presented in Table 7 identifies the various factors that informed the case study selection process to best cover the broad range of beneficiaries across different jurisdictions, social identifiers and legal issues, whilst also highlighting the individual nuance of each client's situation. Note that the case studies intentionally cover the breadth of law areas, not just family law (family law matters account for 96 per cent of all Commonwealth funded matters for LAC services).

All names in the client stories have been changed and locations removed to protect the identity of clients and consent has been provided by clients to include their stories.

Table 7: Case study selection matrix

Scope of considered case study inputs								
Location	Metropolitan	Regional	Rural	Remote	-	-	-	-
Jurisdiction	NSW	VIC	ACT	SA	QLD	WA	NT	TAS
Vulnerable cohort	First Nations Peoples	People with disability	Culturally and linguistically diverse people	People with mental health conditions	Elderly people	Children	Victims of family violence	People experiencing homelessness
Area of law	Family	Employment	Social Security	NDIS	Veterans	Consumer	Insurance	Disaster Response

There are five case studies, supported by 12 separate client stories throughout the appendix to provide demonstrable examples of the benefits of the work done by Legal Aid across Australia.

Case Study: Regional and remote legal assistance

This case study was developed in collaboration with Legal Aid WA (LAWA) and the Northern Territory Legal Aid Commission (NTLAC).

Overview of Legal Aid assistance provided to clients

Regional and remote communities generally have higher levels of socioeconomic disadvantage and have more people with higher levels of vulnerability to multiple, interrelated legal problems.⁵⁶ This is reflected in a significant demand for Legal Aid assistance across remote and regional areas, accounting for 57.4 per cent of Legal Aid clients in NSW, 34.4 per cent of Legal Aid clients in Western Australia, 31 per cent of Legal Aid clients in Victoria, 40 per cent of Legal Aid services delivered in Queensland, and 14 per cent of Legal Aid clients in South Australia (2021 figures).⁵⁷ This Legal Aid assistance covers the full range of criminal, family and civil areas supported by Legal Aid commissions.

⁵⁶ Law & Justice Foundation of NSW (2014) 'Lawyer availability and population change in regional, rural and remote areas of NSW'.

⁵⁷ 2020-21 annual reports for legal aid commissions of NSW, Western Australia, Victoria, Queensland and South Australia. Regional and remote legal aid case load statistics were not available for other States or Territories.

Regional and remote communities face many access to justice challenges. Due to their significant distance from major metropolitan centres, communities in these locations experience:

- difficulties in physically accessing legal services (whether in person or remotely)
- a lack of available local private practitioners willing to accept Legal Aid work, or who specialise in a particular area of law (such as family law – noting that women in regional and remote areas are more likely to experience domestic and family violence)⁵⁸
- a lack of judicial infrastructure such as courts, counselling, interpreters, and experts
- a lack of legal and associated services that are specifically designed to meet the needs of particular cohorts, such as First Nations people and women.⁵⁹

Although 29 per cent of Australia's population lives outside a major capital city (of which two per cent live in remote or very remote areas), only 10.5 per cent of lawyers reside in and service these populations.⁶⁰ There are many pressures which may disincentivise lawyers from being based in regional and remote locations including:

- limited access to legal and administrative support resources, mentors, and court services
- limited opportunities for specialisation, continuing professional development and training (as face-to-face training programs are generally based in metropolitan areas and may incur significant travel and accommodation costs, including time out of the practice)
- challenges in achieving operational economies of scale, and pressures to support community legal needs beyond their areas of legal practice
- negative local community attitudes towards the justice system, and potential threats to personal safety and security when working with challenging clients
- inflated operational costs (such as due to travelling to meet with clients or attend Court).⁶¹

Principals of law firms in regional and remote communities are very concerned about attracting and retaining lawyers, with 30 per cent of surveyed young lawyers (aged 20-29 years) indicating that they intended to leave their current practice within two years.⁶²

The low number of local private practitioners in regional and remote areas is further exacerbated by frequent conflict of interest scenarios, that is where the only available local private practitioner has already advised one party to a matter then they are unable to assist the other party in that matter. This is especially concerning as perpetrators of domestic and family violence may intentionally consult with the few private practitioners in the area to effectively inhibit the victim-survivor from gaining access to legal representation. Anecdotal evidence from Legal Aid commissions indicates that travelling programs are one solution to this issue, where duty lawyers act as a separate office whilst travelling to regional communities. Notwithstanding an observed decline in local court circuit services, Legal Aid commissions have broadly embraced travelling programs to increase access to justice in regional centres. For example, the Regional Outreach Clinic Program in NSW, and the Stronger Women's Program in WA.

Despite access to regional outreach programs, 19 per cent of those in remote areas who have accessed legal support still needed to travel more than 80 kilometres to obtain it.⁶³ Individuals in remote communities may face multiple barriers to accessing in-person legal services due to their geographical isolation, a lack of public transportation options, and not having access to their own income. Consequently, regional, and remote communities increasingly rely on telephone and online legal services to connect with metropolitan-based lawyers although noting that regional and remote communities may still

⁵⁸ Australian Institute of Family Studies (2015) 'Domestic and family violence in regional, rural and remote communities'.

⁵⁹ Senate Legal and Constitutional Committee (2004) 'Legal Aid and Access to Justice'.

⁶⁰ Law Council of Australia (2018) 'The Justice Project: Rural, Regional and Remote (RRR) Australians'.

⁶¹ Senate Legal and Constitutional Committee (2004) 'Legal Aid and Access to Justice'.

⁶² Law Council of Australia and the Law Institute of Victoria (2009) 'Report into the Rural, Regional and Remote Areas Lawyers Survey'.

⁶³ Law and Justice Foundation of NSW (2012) 'Legal Australia-Wide Survey: Legal Need in New South Wales'.

face barriers in accessing online services due to a lack of internet or computer access and lower levels of digital literacy. For example, only 36 per cent of First Nations households had access to the Internet, and only six per cent of people in remote communities have access to a personal computer.⁶⁴

Benefits of Legal Aid assistance for individual clients and their families

This section describes the lived experience of Legal Aid clients in remote and regional areas, and the impact that Legal Aid assistance has had on their lives.

Client Story 1: *Michael, NT*

Michael, a First Nations man, lived in a remote community in the NT. Due to a variety of risk factors, his children lived with him and his extended family. They were enrolled in the local school and were also supported by a child protection worker based in the community. At one point, the other parent took and kept one of the children interstate without Michael's permission, and Michael sought assistance in having the child returned. Given the risk factors involved, it was imperative to have the child returned to the community as soon as possible.

As part of NTLAC's free advice clinic, an NTLAC lawyer was able to provide Michael with initial legal advice remotely over the telephone. This was critical, since no grant of Legal Aid had yet been secured, and Michael was otherwise unable to afford to travel to a regional centre. On the basis of this initial call, NTLAC was able to secure a grant of Legal Aid, and then connect with the relevant children welfare agencies in both the NT and the other state, as well as police to potentially assist in the recovery and return of the child.

Considerable challenges arose in contacting the other parent, to request the return of the child – and when this request was finally refused, NTLAC made an urgent application in the Family Court for a recovery order. Noting the potential risks to the child, NTLAC was able to quickly secure a Court listing.

Given the urgent nature of the application and the allegations of risk involved, it was imperative for Michael to understand the evidence provided and the nature of relief sought. NTLAC worked with Michael over a number of days to ensure that he fully understood the evidence being provided and the orders sought, including assistance with completing the four other accompanying documents before lodging these all with the Court. In doing so, NTLAC accounted for Michael's level of English proficiency as well as cultural differences in the way First Nations people communicate.⁶⁵

NTLAC was successful in obtaining a recovery order, and the child was safely returned to their community. However, the level of legal, administrative, and social support required to successfully progress this case significantly exceeded the hours allocated under the grant of Legal Aid, and it is highly unlikely that a private practice family lawyer would have been in a position to provide this level of support remotely.

'The grant model does not accurately represent the amount of work and effort that goes into these matters' - Northern Territory Legal Aid Commission

Unfortunately, Michael's case is not unique. NTLAC provided numerous examples of similar cross-border child protection orders where the difficulties imposed by distance and language become insurmountable for private practitioners. For example, in one case the only form of communication was via a community phone booth. After several unsuccessful attempts to contact their potential client, the private practice lawyer filed a Notice of Ceasing to Act. This is because grants of Legal Aid in family law matters are based on a 'stage of matter' model and may not adequately cover the often-

⁶⁴ Marja Elizabeth, 'Does technology help or hinder access to justice for vulnerable people?' Bulletin (Law Society of South Australia), Vol. 39, No. 3, Apr 2017: 8-9

⁶⁵ Spending time ensuring that meaning and intent is well understood is important when working in a bicultural environment: <https://humanrights.gov.au/our-work/legal/commission-submission-common-difficulties-facing-aboriginal-witnesses>.

considerable time and effort spent in trying to receive initial instructions from remote and regional clients, as well as continuous engagement with a client throughout a matter where there is a barrier to contacting the client.

The Queensland State Law Society has indicated that Legal Aid rates are now approaching only 50 per cent of the court scale in Queensland;⁶⁶ in NSW a staged increase of the base hourly rate for Legal Aid cases from \$150 per hour to \$195 per hour will not come into effect until 2023-24,⁶⁷ and only covers cases under state law. Although private practitioners undertake thousands of cases every year, a combination of low hourly rates which are significantly below market, combined with insufficient time claimable under the Legal Aid fee scales for preparation work or attending multiple hearings or mentions in family law cases, makes it financially prohibitive for private practitioners to accept more Legal Aid cases.

Client Story 2: Sarah, WA

Sarah was a young woman who lived in a regional town in Western Australia with her child. The child's father had problems with substance abuse and had been violent towards Sarah throughout their former relationship. At some point, the father had taken the child to his residence, and given the history of domestic violence by the father, Sarah did not feel safe in recovering her child. Furthermore, the father had stopped sending the child to school.

Lawyers from Legal Aid WA's regional offices often travel with Magistrates to regional locations as part of the Magistrates Court circuit. Fortunately, there was a Magistrates Court Circuit session in the regional town at this time, and Sarah chose to attend one of these sessions - five days after the father had taken the child.

Sarah met with a Legal Aid WA solicitor, who identified the urgency of this matter and immediately lodged an application for a grant of Legal Aid. Given the risk to the child by staying with her father, the Legal Aid WA solicitor flagged this application for processing that same day.

Legal Aid WA's grant assessment team approved the application within 20 minutes, and within an hour of Sarah's initial consultation with a Legal Aid WA lawyer, Sarah had been contacted by a local private practitioner who had accepted the matter. With the assistance of this private practitioner, Sarah was able to obtain a recovery order from the Family Court and have her child safely returned to her – an example of Legal Aid WA and a local private practice working effectively together to achieve an outcome that otherwise may not have resulted.

Broader societal and economic benefits of Legal Aid assistance

Private practitioners deliver a significant proportion of Legal Aid services nationally and can play an important role in enabling access to legal assistance for vulnerable people in regional centres, as illustrated by Sarah's story.⁶⁸ In some instances, grants of Legal Aid can form an important income stream for smaller private practices in regional locations and can help to ensure their viability and continued operation in these locations.⁶⁹

'The role of lawyers in helping to sustain vibrant, healthy communities should be recognised' - Law Council of Australia⁷⁰

⁶⁶ Julius Dennis, ABC 'Lawyers for Legal Aid Queensland say declining pay is leading to an exodus and 'huge injustices in the legal system' (12th February 2022): <https://www.abc.net.au/news/2022-02-12/qld-lawyers-legal-aid-low-pay-injustices-criminal-law-queensland/100762198>

⁶⁷ Michaela Whitbourn, Sydney Morning Herald 'Increase to Legal Aid funding 'won't go very far', barristers warn' (8th November 2019): <https://www.smh.com.au/national/nsw/increase-to-legal-aid-funding-won-t-go-very-far-barristers-warn-20191108-p538st.html>

⁶⁸ For example, data from 202-21 legal aid commission annual reports show that private practice lawyers provided 69.8 per cent of casework and 40.6 per cent of duty lawyer services in NSW; and 84.2 per cent of casework and 15.2 per cent of duty lawyer services in Victoria.

⁶⁹ Research indicates that a majority of law firms in remote and regional areas accept legally aided matters, and of these, the majority dealt with more than 30 such case per year: Law Council of Australia and the Law Institute of Victoria (2009) 'Report into the Rural, Regional and Remote Areas Lawyers Survey'

⁷⁰ Law Council of Australia (2018) 'The Justice Project: Rural, Regional and Remote (RRR) Australians'

However, in smaller regional towns and remote communities there are often no private practitioners that Legal Aid commissions can assign grants of legal assistance to, and the high costs of providing legal assistance services in these locations can be a barrier to private practitioners from metropolitan or larger regional centres accepting these matters. As a result, vulnerable people seeking legal assistance in these locations are often entirely reliant on Legal Aid lawyers or other government funded legal assistance services, to resolve their legal issues.

Legal aid lawyers are critical to maintaining access to justice in these locations by providing the dedicated (and often time-intensive) support required to engage with vulnerable individuals, many of whom have English as a second, third or fourth language. This can often require working with interpreters to receive instructions that reflect the client's needs and wishes and providing legal advice that relates to multiple and complex legal issues.

In addition, Legal Aid lawyers often work with other services (such as schools, health clinics, police, and child protection workers) in remote locations to communicate with and support the needs of their clients, particularly when they are not able to travel to the community in person. Where a client needs to travel to a regional or metropolitan centre to take part in legal proceedings, Legal Aid lawyers will work with and make referrals to other social support services to assist clients access funding for travel costs and other supports (such as temporary accommodation) to enable them to travel and resolve their legal matters.

Case Study: Independent Children's Lawyers

This case study was developed in collaboration with Victoria Legal Aid (VLA). All names in the client stories have been changed to protect the identity of clients.

Overview of Legal Aid assistance provided to clients

Under the *Family Law Act 1975* (Cth) and the *Family Court Act 1997* (WA), the court can order the appointment of Independent Children's Lawyers (ICLs) in complex family law parenting matters to represent the best interests of particularly vulnerable children. Unlike lawyers who act on the instructions of their client, ICLs are obliged to consider the views of the child but are ultimately required to provide to the court an independent view. Based on a range of evidence, ICLs give an independent view on what parenting arrangements would be in a child's best interests.

The main roles of the ICL include:

- facilitating the participation of the child in proceedings
- gathering and arranging evidence to be presented to the Court
- case management and settlement negotiation.⁷¹

Through their role in case management and settlement negotiation, the ICL works to ensure that the matter stays on track and encourages earlier resolution of matters through mediation or other channels as appropriate. In addition, the ICL often plays a role in providing referrals to other support services, such as family or individual counselling, parenting programs, men's behaviour change programs and paediatric and psychiatric assessments.

ICLs may be appointed by Order of the Federal Circuit and Family Court of Australia, or the Family Court of Western Australia. A Court may appoint an ICL where one or more *Re K* factors⁷² are present and the Court deems that the child ought to be independently represented. *Re K* factors include, but are not limited to:

- instances where there are allegations of child abuse or neglect
- there is intractable/high level conflict between the parents; there are allegations of family violence
- one or both parents suffer serious medical, psychiatric, or psychological issues
- the matter involves other complex issues.

⁷¹ Federal Circuit and Family Court of Australia, *Independent Children's Lawyer*, accessed at <https://www.fcfcqa.gov.au/fi/children/icl>

⁷² The 1994 case of *Re K* was a decision of the Full Court of the Family Court and established a number of factors that the Court should consider in appointing an ICL.

VLA advises that Legal Aid commissions deal with very complex family court matters, with 80 per cent of matters involving family violence and a constellation of other, related social issues.⁷³ Where parents are separating, the National Domestic and Family Violence Bench Book notes that there is an 'increased risk of harm to children's psychological and physical wellbeing due to exposure to domestic violence, history of maltreatment, parental stress, social isolation of the family, and inadequate resources and support'.⁷⁴ As such, it is beneficial for the courts to have the assistance of the ICLs to centre the interests of children, ensure relevant evidence is before the court and assist with referrals that can lead to more sustainable outcomes, and ultimately lead to less conflict.

'Judges value the ICL role as they ... bring a child focus to proceedings that would otherwise be conducted bilaterally and adversarially.'⁷⁵ – *Australian Institute of Family Studies*

When the Court makes an Order for an ICL, it requests the legal aid commission in the relevant state or territory to make an appointment of an ICL to the case. Legal aid commissions have in-house ICLs and operate panels of private practitioners that can act as an ICL. In VLA's case, demand for ICLs outstrips the number of ICLs it can fund. Currently, VLA aims to provide around 1,100 grants of Legal Aid for ICLs, with 1,072 grants allocated in 2020-21⁷⁶ and 1,112 in 2019-20.⁷⁷

VLA appoints ICLs on *Re K* factor 1 which is allegations of physical, sexual, or emotional abuse. VLA refers the matter back to court when a case does not meet these guidelines for funding. Due to the limited funding available, there are some matters where an ICL is not funded even though a Court has ordered that one be appointed. In the Productivity Commission's 2014 report *Access to Justice Arrangements*, the Commission observed that funding for legal assistance in family and civil law matters has not kept pace with demand; it found the gap in independent lawyer services for children 'especially worrying'.⁷⁸

'On occasions it is impossible to have children represented, even when a court so orders, because of [a] lack of Legal Aid funding. ... This represents, in my opinion, a lamentable situation and one that puts children seriously at risk.'⁷⁹ – *Professor Richard Chisholm AM*

⁷³ Data provided to PwC by Victoria Legal Aid.

⁷⁴ National Domestic and Family Violence Bench Book <accessed at <https://dfvbenchbook.aija.org.au/dynamics-of-domestic-and-family-violence/factors-affecting-risk/>>

⁷⁵ Kaspiew, R., Carson, R., Moore, S., De Maio, J., Deblaquiere, J., & Horsfall, B. (2014), Independent Children's Lawyers Study: Final report (2nd ed.), Attorney-General's Department

⁷⁶ Data provided to PwC by Victoria Legal Aid

⁷⁷ Annual Report 2019-20, Victoria Legal Aid

⁷⁸ Access to Justice Arrangements, Productivity Commission Inquiry Report No.72 Overview, Productivity Commission.

⁷⁹ Chisholm, R. (2009), Family Courts Violence Review, Attorney-General's Department.

Benefits of Legal Aid assistance for individual clients and their families

In this section we describe the lived experience of Legal Aid clients and the impact that Legal Aid assistance has had on their lives. The two client stories described below illustrate a key benefit of having an ICL involved in a matter; the interventions of the ICLs led to improved safety and wellbeing of the children. The involvement of an ICL in representing the child's best interests can help to produce an outcome that lessens children's exposure to conflict, family violence, mental health issues and other risk factors, which can have long-term positive impacts on the health and wellbeing of children. ICLs can also identify where counselling or other support services may be required to assist families to address the broader issues they are experiencing, leading to more sustainable outcomes than may be achieved solely through a Court order.

Client Story 3: *Samuel, VIC*

VLA was appointed as ICL for 5-year-old Samuel. At the first family report writing session, Samuel was highly anxious, as was his mother Josie, who spoke about family violence that Samuel's father, Tony, had perpetrated against her. Tony was inflexible during the session and said that Josie was trying to prevent him from having a relationship with Samuel. Josie and Tony could not agree on whether Samuel should receive counselling so it was left to Samuel's ICL to express a clear view as to why he would benefit from counselling, and who would be the most appropriate counsellor for him.

In the middle of the proceedings, Josie relocated two hours away from the father and at the second family report session, Samuel was far less anxious, and his stress levels had reduced. The report writer thought that this was a direct consequence of Josie's reduced anxiety levels following her relocation. The report writer recommended that Samuel live with Josie and spend time with his father. The report was completed very close to the trial and so the report writer was uncertain about what would be the best contact arrangements. To tease these issues out, the report writer suggested a conference with Samuel's parents.

The ICL arranged for the conference to occur, and for the report writer's views to be shared about proposed contact arrangements. As a result of this, Tony conceded that Samuel would live with his mother. However, he still wanted to have substantial and significant time with Samuel. Unfortunately, as neither Tony nor Josie could agree on what arrangement to put in place, the matter went to a final hearing. At the final hearing, the ICL's cross examination of Tony was pivotal to getting to the heart of the matter. Samuel was very anxious and there was some blame of Josie passing down her own anxieties to him. The cross-examination revealed Tony was inflexible, angry and had demonstrated high levels of coercive and controlling behaviour that significantly contributed to Josie and Samuel's anxiety. The Court made Orders based on the ICL's recommendation. This would mean that Samuel's mother would have sole parental responsibility and he would live with her; Tony would only have limited time with Samuel. Samuel's case highlights the critical role of the ICL in case managing matters whilst also ensuring that the Court is placed in the best position to make Orders in the best interests of the child.

The ICL's involvement had several positive impacts:

- As an immediate benefit, the ICL was able to ensure that Samuel got the counselling support he needed, both during and after the court case.
- The parents' lawyers were very litigious and the ICL helped to keep the matter on track and keep the parties' and the Court's focus on the child and his best interests.
- A safe and appropriate outcome was achieved for Samuel, where both he and his mother are now in a safer environment and likely to be experiencing less stress and anxiety.
- The acknowledgement that coercive and controlling behaviour had occurred meant a lot to Josie; she felt heard and believed, and the resolution of the matter contributed to her anxiety being alleviated.

Client Story 4: *Simon and John, VIC*

VLA was appointed ICL for two children, Simon, and John. The eldest child, Simon, was living with their mother, Grace, while John, was living with their father, Han. There was a lot of conflict between Grace and Han, with Simon being in the middle of the dispute and trying to be the peace maker in the family. Han was not actively facilitating and promoting John's relationship with his mother and only followed the Court Orders when it suited him. Grace was in a vulnerable situation and would sometimes be inconsistent in spending time with John and this then impacted his willingness to see her.

In order for a Family Report to be written for the Court, the family saw the Family Report Writer. After liaising with the Family Report Writer, the ICL was concerned that the true dynamics of the family had not been understood, so she linked the family with a family counsellor again. When the Report was released, the ICL was disappointed to read that the Family Report Writer could not engage John. Though the Report Writer recommended shared care for the children, the Report did not articulate how this would work as Han was not complying with the current Orders and the level of conflict had only increased.

The ICL spoke with the children's school counsellor and worked out a strategy for a meeting with them. Once the meeting was arranged, she met with the children and spoke with them together, and then individually. The ICL spent some time developing rapport with John, and with some encouragement, he was able to express how he was really feeling, what his wishes were and why. John was also able to ask questions about the court process and get an understanding of what was going on. The ICL also spoke with the principal, vice principal, and counsellor directly about the children and how they were coping.

The meeting with the children and the information gained from the school was invaluable in informing the ICL's views about what Final Orders would be in the children's best interests. At the Final Hearing, the ICL was able to offer a clear view on the matter and Orders were made on the first day of trial by consent. Though the Orders were not in the same terms as the recommendations of the Family Report Writer, the ICL was able to advise the Court and the parties as to why her view was different. She explained that it was based on the information she gained from the children and their school.

After Orders were made, the ICL also arranged to explain them to the children. The children were happy with the Orders and felt like their concerns had been heard.

This case highlights the importance of the ICL meeting with children and making comprehensive enquires in the matter. If the ICL had not met with the children and taken the time to plan the meeting, the outcome for them could have been different. It may have set up an arrangement which would not have worked for the children and only prolonged the conflict which may have led to the parties returning to Court again for further Orders. The benefit to the family is that it finally resolved the matter.

Broader societal and economic benefits of Legal Aid assistance

Another short-term benefit to the economy and society is the role that ICLs play in helping to resolve matters more quickly and efficiently, leading to cost savings to the justice system. This can include for example encouraging the parties to engage in mediation and to resolve the matter without going to a final hearing if appropriate, while working to ensure that the best outcome is achieved for the child (or children) involved. In matters where one or more of the parties is self-represented, the ICL can also play a role in ensuring relevant evidence is collated to be put before the Court and in assisting the parties with navigating procedural issues, which can avoid unnecessary adjournments.

Case Study: Legal aid assistance with property matters where there is family violence

This case study was developed in collaboration with the Legal Services Commission of South Australia (LSCSA) and Legal Aid WA (LAWA). All names in the client stories have been changed and locations removed to protect the identity of clients and consent has been provided by clients to include their stories.

Overview of Legal Aid assistance provided to clients

While family and domestic violence can affect people of all ages, genders, and backgrounds, it predominantly affects women and children. It is the main reason that women and children leave their homes in Australia.⁸⁰ Victim-survivors of family violence often are the ones who bear the costs of leaving their relationships, family homes and communities⁸¹ and make up a large proportion of clients who access homelessness services.⁸²

It is common for women leaving family violence situations not to pursue a property settlement. Seven in ten women who leave a violent relationship have left property or assets behind, and where asset pools are under \$100,000, women often walk away instead of pursuing a drawn-out property settlement which might also provoke violence from their former partner.⁸³

Where women who have experienced family violence do pursue a property settlement, as many as 90 per cent have difficulty in obtaining one.⁸⁴ Where assets are divided, victim-survivors of family violence are three times more likely to receive less than 40 per cent of the property.⁸⁵

There is a real risk of financial or other hardships for women who are victim-survivors and their children whether or not property settlement is sought. The impacts of childhood poverty could potentially reach into adulthood if this risk eventuates.

Leaving an abusive relationship can create a need for assistance with a range of often complex and interrelated legal issues. This includes for example, separation and parenting matters, family violence intervention orders and criminal charges and debt issues. Legal aid commissions can provide Legal Aid assistance to resolve these issues, to clients who meet their eligibility tests. However, Legal Aid assistance for property matters is more limited. Due to funding constraints and competing priorities, legal aid commissions have had to make difficult decisions to use their core Commonwealth funding to prioritise Legal Aid grants for other types of family law matters (e.g. matters involving care arrangements for children).⁸⁶ The absence of assistance with property matters can lead to or exacerbate housing issues for victims of domestic violence.

In 2018, the Australian Government released the Women's Economic Security Package. As part of this raft of measures, funding was provided to Legal Aid commissions for new dispute resolution services to help separating families resolve family law property disputes faster, and if possible, out of court. The Lawyer Assisted Family Dispute Resolution Small Property Cases Pilot Project was designed to allow more women to achieve equitable property settlements and increase their financial independence at a time when they need it most.

Both LSCSA and Legal Aid WA have run Lawyer Assisted Family Dispute Resolution Small Property Claims Pilot programs with this funding. The number of women accessing Legal Aid through the program in both SA and WA demonstrates the level of demand there is for Legal Aid assistance in this area. The pilot program commenced on 1 January 2020 and will run until 30 June 2023, in each Australian state and territory. Although LSCSA initially only had 100 places as part of the scheme, to date, they have accepted 260 clients into the program, 87 per cent of whom have experienced domestic or

⁸⁰ Emma Smallwood, *Stepping Stones: Legal Barriers to Economic Equality After Family Violence*, Women's Legal Service Victoria, 2015

⁸¹ HRCSPLA (House of Representatives Standing Committee on Social Policy and Legal Affairs) 2021. *Inquiry into family, domestic and sexual violence*. Canberra: Parliament of Australia

⁸² AHURI (Australian Housing and Urban Research Institute) 2021. *Housing, homelessness and domestic and family violence*

⁸³ Australian National Research Organisation for Women's Safety, *Horizon's Research Report – Violence against women in Australia: Additional analysis of the Australian Bureau of Statistics' Personal Safety Survey 2012*

⁸⁴ Emma Smallwood, *Stepping Stones: Legal Barriers to Economic Equality After Family Violence*, Women's Legal Service Victoria, 2015

⁸⁵ Australian Institute of Family Studies, *Post-Separation Parenting, Property and Relationship Dynamics After Five Years*, 2014

⁸⁶ *The Justice Project Final Report*, Law Council of Australia, 2018

family violence.⁸⁷ LSCSA notes that it would not have been able to support these clients without being funded for this pilot and as such it is catching a group that may not otherwise seek legal assistance to resolve these types of matters. Legal Aid WA advises that it has received 375 referrals to the pilot program and issued 507 grants of aid. Approximately 75 per cent of applicants to the program have disclosed family violence as part of the intake process.⁸⁸

In addition, Legal Aid WA has received special project funding from the Australian Government to establish the Stronger Women program, which is a free legal service for disadvantaged women who live in regional WA with respect to Family Violence Restraining Order cases, protection and care cases and family law cases. Since January 2022, the program has provided legal assistance to 517 women in regional WA and outer metropolitan areas.⁸⁹

The following section shows the benefits of providing Legal Aid assistance to resolve property matters where there is family violence.

Benefits of Legal Aid assistance for individual clients and their families

In this section we describe the lived experience of Legal Aid clients and the impact that Legal Aid assistance has had on their lives.

Client Story 5: *Linda and John, SA*

Linda and John are in their 60s and had been married for several decades before separating. During their marriage there was severe family violence, and when they separated an interim intervention order was made against John. After they separated, Linda continued to live in their marital home. John became homeless and was living out of his car because he didn't have access to any money. Despite the interim intervention order being in place, John would often return to the house while Linda was at work.

The only assets Linda and John owned were equity in their marital home and superannuation, which combined totalled less than \$500,000. Linda sought advice from a private practitioner who advised her to apply for Legal Aid assistance. Linda was granted legal assistance through the Lawyer Assisted Family Dispute Resolution Small Property Claims Pilot and a private practitioner was appointed to represent her. John was invited to participate in Family Dispute Resolution with Linda and LSCSA was also able to approve funding through the pilot program for a private practitioner to represent him. Through seeking legal advice, Linda and John became aware that because John was over the age of 65, he could access the superannuation.

Linda and John and their lawyers took part in a Family Dispute Resolution conference. During the conference, Linda and John were able to agree to a property settlement that both Linda and John were happy with. They agreed that the title to their marital home would be transferred to Linda, and John would keep most of the superannuation, with a small amount of the superannuation also going to Linda. As a result of this settlement, John would have access to money that he could use to buy a new property or pay for a rental property, meaning he would no longer be homeless. The final consent order agreed to by Linda and John also specified that John would no longer access the house that Linda would own, resulting in a safer situation for Linda.

Access to Legal Aid assistance led to improved outcomes and financial security for both Linda and John, resulted in the matter being resolved quickly and avoided the need for a court hearing.

⁸⁷ Data provided to PwC by the Legal Services Commission of South Australia

⁸⁸ Data provided to PwC by Legal Aid Western Australia

⁸⁹ Data provided to PwC by Legal Aid Western Australia

Client Story 6: Jane, WA

Jane is a very vulnerable client who was assisted by Legal Aid WA - she is elderly, homeless and has a mental health condition. She lives in a regional town in WA and does not have the means or ability to travel to Perth for assistance. Her daughter-in-law contacted a regional Legal Aid WA office as she was concerned about Jane being in financial difficulty, not knowing what her legal issues and options were. After assessment, Legal Aid WA referred her to the Stronger Women program.

Jane is currently staying in temporary accommodation with her adult children and grandchildren living in tents on the same property. Her grandson has a heart condition so is sharing her unit with her, but this puts her at risk of being removed from the accommodation if the owners find out. Jane was in a de-facto relationship for 29 years during which she was subjected to severe family violence and financial abuse. After the parties separated seven years ago, Jane and her children were left without financial support. Due to the separation and trauma from the family violence, Jane suffered a mental break down and spent time in a mental health ward. Due to her mental state, she did not obtain legal advice or pursue a property settlement. The other party is still living in the former matrimonial home which is now unmortgaged. Jane's sole income is her pension.

Although Jane was outside the time limit to commence a property settlement, Legal Aid WA took the view that she had merit to seek leave of the Family Court of WA to commence proceedings out of time, and so assisted Jane to apply for Legal Aid to make an application to the Court. Whilst assessing Jane's situation, the lawyer assisting discovered that she had an outstanding Centrelink debt as a result of the other party's financial abuse. The lawyer assisting Jane attempted to refer her to the Legal Aid WA Civil Law Division, but they were at capacity. Legal Aid WA were then able to warmly refer her to the Welfare Rights and Advocacy Service (WRAS) who contacted her within 24 hours. Legal Aid WA assisted Jane to send the necessary documents to her lawyer at WRAS. She was also referred to Legal Aid WA's in-house Social Support workers for safety planning and to discuss her housing options.

As a result of the support and referrals through Legal Aid WA, Jane is now receiving the Carer Payment from Centrelink for the care that she provides to her grandson and is still working with WRAS to cancel the outstanding Centrelink debt. She is continuing to search for housing and sharing her one-bedroom unit with her grandson in the meantime. Legal Aid WA have now received a grant of aid to assist Jane with the Family Court of WA application. Her Legal Aid WA solicitor will shortly meet with Jane to start drafting her application. Having a grant through the Stronger Women's Program means that the solicitor is able to meet with her regularly in-person as opposed to only providing assistance by phone.

If it were not for her daughter-in-law reaching out to Legal Aid WA, Jane would not have known what her legal rights were. She has told Legal Aid WA she would be unable to participate in this process without their help as she is too scared to face her ex-partner in court and struggles to understand the legal process. Despite being separated from her former partner for seven years, Jane and her family are still being impacted by family violence. If she is able gain her share of property and assets, Jane will gain greater financial autonomy and have a better chance of breaking out of the cycle of family violence. In turn, this will likely have a positive impact on her mental health and reduce her need to access mental health services. Obtaining her rightful share of the property settlement would mean that Jane would be able to afford better, more suitable housing and would no longer need to rely on government assistance through Centrelink, Homeswest and temporary housing services. If she can obtain housing for her family, this will reduce homelessness for two more generations of this family, improving the quality of life for her children and grandchildren as well as potentially avoiding the deleterious consequences of poverty, and future need for health and community services.

Client Story 7: Sarah, WA

Sarah lives in a regional town in WA; she is in her early 40s and was recently diagnosed with early-onset dementia. Although separated from her partner, she was living in the former matrimonial home as the other party worked away. During the relationship there was severe family violence, and the other party was convicted of violent offences against her. After her diagnosis, Sarah stopped working, and as such, was struggling to keep up mortgage repayments. When she took steps to sell the home, the other party made an urgent application to the Family Court of WA to stop her. The Court made orders to allow the home to be listed on the market, but any sale proceeds were to be held in trust until a property settlement was finalised.

When Sarah received a letter from a local lawyer acting on behalf of her former partner that she needed help understanding, a friend of hers brought her to their local Legal Aid WA office. Though there was a conflict of interest in the regional office, Legal Aid WA were able to assist Sarah from the Perth office. Legal Aid WA explained the orders to Sarah and advised her on property settlement, including on how to make an urgent application for the release of her part of the share. The lawyer at Legal Aid WA also advised her on potential issues that could arise from her diagnosis and how it could impact her capacity to make legal decisions in the future. Together, Sarah and her lawyer were able to formulate a plan of protective steps to safeguard her interests before her condition progressed to the stage where she was unable to make legal decisions.

Due to her diagnosis, Sarah's lawyer took an application for Legal Aid for advice and negotiations for the property settlement which allowed her to receive ongoing legal assistance. Through the Legal Aid assistance she has received, Sarah has been able to appoint a legal guardian. Her sister has expressed gratitude for Legal Aid WA's assistance as Sarah would not have been aware of the need to appoint a legal guardian so early in the proceedings without advice. Dealing with this issue early on has meant Sarah can pick a legal guardian that she is comfortable with whilst she still has capacity. She is currently working with a private lawyer using her grant of Legal Aid to get a power of attorney, with the property settlement on hold until this is achieved. Prior to working with Legal Aid WA, Sarah was under enormous financial stress, unable to afford anything except her mortgage payments. A share of the property settlement will mean that she will be able to afford better housing and care options as her dementia progresses.

Without Legal Aid WA's advice and support, Sarah may have been unaware of the four-stage property settlement process and that an adjustment may be required to address her 'future need'. The other party was initially proposing a significant adjustment in his favour even though he had a well-established career, whereas Sarah sacrificed her career to raise their children and now cannot work due to her diagnosis. Through Legal Aid WA's advice and support, Sarah has been able to avoid agreeing to an unfair settlement. Once the property settlement is finalised, Sarah will be able to fully separate from her violent former partner, with positive impacts on her mental health.

Broader societal and economic benefits of Legal Aid assistance

There are a range of societal and economic benefits of providing Legal Aid assistance in this area. In the immediate short-term, women who are in a relationship where there is family violence can access free advice and/or representation without costs showing up in their bank statements (which may be under surveillance by the perpetrator) and which may empower them and provide the financial autonomy required to leave the relationship.

‘Having Legal Aid helps clients feel like there is someone on their side and takes a weight off their shoulders’. *Legal Aid WA.*

Legal aid commissions often also connect clients to other support services so that clients have the support they need to leave relationships in a safe manner. It is well recognised that relationship breakdown and separation is a time of increased risk of family violence, where a perpetrator may escalate the violence they inflict. Australian data also indicates individuals with intention to separate or separation pending are a significant proportion of victims of intimate partner homicide.⁹⁰ Where women have access to planning and support, they are more likely to be able to leave a violent relationship with clear benefits to their own, and their children’s, safety. Being able to safely leave a violent relationship can result in decreased police call outs, issuing of police orders (which can cause temporary homelessness for one of the parties) and decreased need to access family violence, health and mental health services and facilities.

There are also significant medium-long term benefits of providing legal-aid assistance in this area. The Australian Association of Gerontology notes that divorce is one of the risk factors for homelessness and housing insecurity for older women.⁹¹ Providing Legal Aid assistance to seek a fair share of property and assets can increase their economic security and reduce the risk of homelessness and reliance on homelessness, social housing services and social security payments. In addition to the direct benefits from a property settlement, access to Legal Aid empowers women and increases their capacity to engage with the legal system and to understand their rights.

Case Study: Disaster response

This case study was developed in collaboration with Legal Aid NSW (LANSW) and Legal Aid Queensland (LAQ). All names have been changed and locations have been generalised to protect the identity of the individuals in the client stories.

Overview of Legal Aid assistance provided to clients

In recent years, Australia has faced an increasing frequency, intensity and concurrence of extreme weather and pandemic events giving rise to catastrophic hazards (or ‘disasters’) – and according to the CSIRO, this trend is likely to continue into the foreseeable future. For instance, between 2019-21 different parts of the country have been variously impacted by pandemic, drought, heatwaves and bushfires, hailstorms, severe storms and flooding.⁹²

As a result of vastly different geographies, populations, environments and climates, disasters are experienced differently both inter and intrastate – in terms of their type, frequency, scale, and intensity. Some regions have localised factors that unfortunately expose them to a higher risk of hazards, and the communities from some of these regions have recently been forced to cope with the compounded effects of multiple disasters at once.⁹³

Catastrophic disasters expose communities to large-scale property and infrastructure damage, disruption to key public services, homelessness and potential loss of life – and responding to and assisting impacted individuals and communities poses its own set of challenges (ranging from physical access and logistics, to managing panic, trauma and

⁹⁰ National Domestic and Family Violence Bench Book <accessed at <https://dfvbenchbook.aija.org.au/dynamics-of-domestic-and-family-violence/factors-affecting-risk/>>

⁹¹ Background Paper: Older women who are experiencing, or at risk of, homelessness, Australian Association of Gerontology (2018)

⁹² Commonwealth Royal Commission into National Disaster Arrangements (2020), ‘Final Report’

⁹³ Commonwealth Royal Commission into National Disaster Arrangements (2020), ‘Final Report’

misinformation). Depending upon the nature and severity of the disaster, the impacts can also range from immediate to longer-term. The types of legal issues arising for individuals impacted by a disaster may potentially include:

- insurance-related issues and claims
- financial issues such as mortgages or loan repayments
- housing issues for tenants whose homes have been damaged or destroyed
- family and domestic violence issues (noting that women seek family violence legal advice at a higher rate both during and after disasters)⁹⁴
- employment issues.⁹⁵

In response to more frequent disasters and more widely impacted communities, legal aid commissions sought to increase the scope and accessibility of their disaster support services. In addition to providing dedicated telephone hotline services where support is made available to disaster victims for urgent legal inquiries, we have seen:

- in NSW, provision of face-to-face legal services at local Recovery Centres and Recovery Assistance Points in collaboration with Local Community Legal Centres, Resilience NSW, Service NSW and charities such as the Australian Red Cross. In the recent 2022 floods, 2200 services were provided at recovery centres
- in Queensland, attending and providing CLE and independent legal services at community forums organised by the Insurance Council of Australia, and pro-actively engaging in online community forums to circulate accurate messaging on the legal assistance available.

‘Bush fires changed the way we needed to respond, considering the magnitude and the large areas that they affect. So, we had to develop a scalable delivery model’ - Legal Aid NSW

In response to the 2022 floods, LANSW has provided over 2700 disaster-related legal services, with services still being provided on the ground, and via the helpline. Additionally, legal aid commissions are seeing an upward trend in delayed requests for legal support, where the impact of a disaster has manifested over a longer period (such as where temporary accommodation periods have expired before housing and properties could be restored). As part of the access to justice ecosystem, Community Legal Centres are also increasing their level of disaster-related legal assistance – for example, in 2020-21 the NSW Financial Rights Legal Centre provided 768 disaster-related legal services for 554 clients, with a local response on the ground at recovery centres.⁹⁶

⁹⁴ Australian Institute of Family Studies (2015), ‘Domestic and family violence in regional, rural and remote communities: An overview of key issues’

⁹⁵ Legal Aid Western Australia, ‘Natural Disasters’ <https://www.legalaid.wa.gov.au/find-legal-answers/money/natural-disasters>

⁹⁶ National Legal Aid (2020) ‘Lessons to be learned in relation to the Australian bushfire season 2019-20’

Benefits of Legal Aid assistance for individual clients and their families

In this section we describe the lived experience of Legal Aid clients impacted by disasters, and the effect that Legal Aid assistance has had on their lives. In both of the client stories below, the amount of money secured through Legal Aid's involvement was not significant, but it nonetheless had a significant and direct impact, primarily in ensuring that these two families avoided homelessness.

Client Story 8: *Bill and Betty, NSW*

Bill and Betty's South Coast home was destroyed by bushfires on 31st December 2019. Fortunately, they had appropriate home insurance and so they decided to receive a cash payout from their insurer to rebuild their home. As provided by their insurance contract, the insurer arranged for the family to be housed in temporary accommodation for 12 months, ending on 3rd January 2021.

However, COVID-19 related delays, shortages of materials, shortages of tradespeople (due to the number of people in a similar situation to Bill and Betty) and local government changes to building regulations led to the rebuild being over nine months behind schedule. Over the same period, their family has experienced ongoing financial and personal hardship: Bill lost his job due to the restrictions of COVID-19, Betty has suffered anxiety and depression, and one of the children has suffered PTSD as a result of the fires.

Betty and Bill were referred to a Disaster Response Legal Service (DRLS) outreach lawyer by a Service NSW Bushfire Recovery Care Specialist at Service NSW, who had become aware of this emerging systemic issue at a DRLS Community Legal Education event on the South Coast. All DRLS lawyers are trained in trauma-informed practice, and the lawyer was able to engage with Betty and Bill in an empathetic manner. At the same time, a DRLS Financial Counsellor prepared a statement of their financial position, outlining that the family could not afford to pay for accommodation whilst rebuilding their home, and would likely become homeless if their temporary accommodation support was not extended.

The DRLS outreach lawyer prepared submissions outlining Betty and Bill's personal circumstances which, combined with the detailed statement of their financial position, persuaded their insurer to exercise its discretion. Temporary accommodation was extended until September 2021 on compassionate grounds, by which time it was anticipated that the home would be rebuilt. This was a life-changing outcome for a family who was otherwise facing homelessness just before Christmas.

Client Story 9: *Miranda, NSW*

Miranda was a single mother who lived with her two young children in the Mid-North Coast. The floods in 2021 had severely damaged her property, and with a lack of viable alternative accommodation in the region, the family had been forced to live in her van. Miranda lodged an insurance claim to have her property repaired – however, whilst her insurance policy covered claims for the repair of property arising from storm water damage, the insurer's adjuster had determined that the substantial damage to her home's flooring, electrical and fixtures was caused by flood (which was not covered under her insurance policy), and on that basis refused her claim.

Six months following the floods, Miranda and her children were still living in her van. Miranda attended a community outreach program organised by LANSW in her area, intending to obtain some legal advice on how to access a small financial hardship grant of \$5000. At the program she was met by an outreach officer, and who in turn referred Miranda to a LANSW lawyer.

The LANSW lawyer advised Miranda of her rights and entitlements under the insurance policy, and on how to dispute the insurer's refusal of her earlier claim. The lawyer also assisted Miranda in preparing and lodging a complaint to the insurer - and which subsequently resulted in the insurer granting Miranda a payment of \$13,500 to repair her home, providing a significantly more stable living environment for herself and her children.

Broader societal and economic benefits of Legal Aid assistance

For those impacted by disasters, in many cases this will be the first time that they have needed Legal Aid assistance. The physical hardship and emotional trauma of suffering individual and community loss, and unexpectedly being placed into a position of financial and emotional vulnerability (such as leaving one's home at short notice or facing the loss of secure housing, belongings, businesses or workplaces), often leaves those impacted by disasters unable to move forward without support, even if they have resources and capability. Legal Aid enables people impacted by disasters to rebuild their lives.

'Giving the people the skills, in some instances money - the power it gives people to take some control back of their lives is invaluable' - Legal Aid Queensland

Whilst the individual stories of Legal Aid helping families rebuild their lives following a disaster are themselves impactful, there is also a much larger and more impactful story. Unlike other scenarios where legal issues generally only impact one or a few individuals, Legal Aid is generally available to anyone living in communities affected by a disaster.

During disasters a very large number of individuals are suddenly impacted by very similar sets of legal issues – and which means that with appropriate engagement, legal aid commissions have the capacity to significantly scale their impact across entire communities. Legal aid commissions monitor systemic issues that have a disproportionate impact on vulnerable or disadvantaged members of the community, and advocate for improved practices and reform.

For example, legal aid commissions generally observed that insurance is often stopped or downgraded when people experience financial hardship – which can leave people vulnerable when disasters subsequently occur. Furthermore, for those individuals with current insurance coverage, LANSW observed that multiple communities were being impacted by the industry-standard 12 month temporary accommodation provision, and in response developed a proactive strategy to upskill local community workers with sufficient knowledge about insurance law and temporary accommodation issues, so as to be able to identify and refer impacted individuals to obtain Legal Aid support (who may otherwise have not characterised their current hardships as a 'legal issue'). At the same time, LANSW engaged with APRA and the insurance industry to advocate for a broader change in the industry standard approach to this issue.

Legal assistance is an important element in community-led disaster recovery (as outlined in the National Principles for Disaster Recovery), because unresolved legal issues can prevent individuals and families from re-establishing their lives following a disaster, and which in turn can stall the recovery of disaster-affected communities.⁹⁷ As individuals begin to rebuild in both a literal and financial sense, anecdotal evidence from legal aid commissions suggests that communities invest back into themselves – in the form of providing and procuring local services, helping each other, and re-establishing their sense of community.

Case Study: Legal aid assistance for National Disability Insurance Scheme matters

This case study was developed in collaboration with Victoria Legal Aid (VLA) and Legal Aid NSW (LANSW). All names in the client stories have been changed to protect the identity of clients.

Overview of legal aid assistance provided to clients

There are around 4.4 million people with disability in Australia;⁹⁸ and of these people, around 12 per cent (518,668)⁹⁹ currently active participants of the National Disability Insurance Scheme (NDIS). The NDIS provides funding for supports and services to people who have permanent and significant disability. A person with disability who meets the eligibility criteria is able to apply to the National Disability Insurance Agency (NDIA) to be accepted as a NDIS participant.

⁹⁷ National Legal Aid (2020) 'Lessons to be learned in relation to the Australian bushfire season 2019-20'

⁹⁸ People with disability in Australia 2020, Australian Institute of Health and Welfare

⁹⁹ NDIS Quarterly Report to disability ministers, March 2022, National Disability Insurance Agency

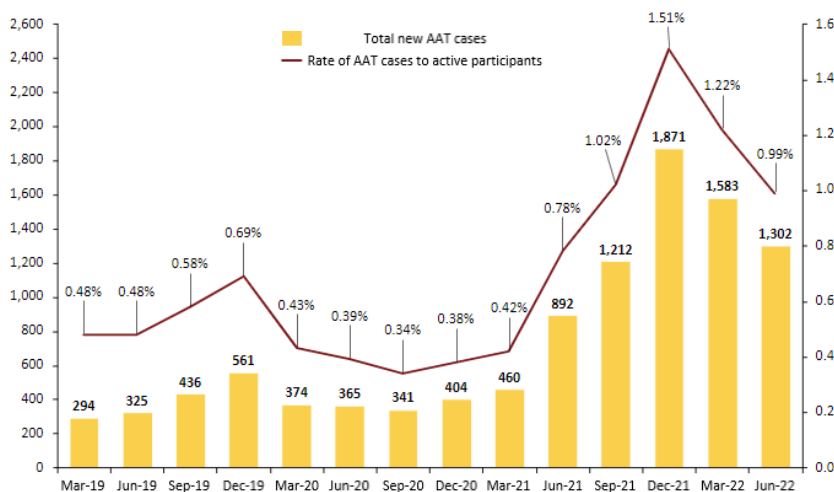
To join the NDIS, potential participants must:

- be under 65 years of age at the time of application
- be an Australian citizen, permanent resident, or Protected Special Category Visa holder and residing in Australia
- have a disability caused by a permanent impairment that causes a need for disability-specific supports to complete daily life activities.¹⁰⁰

Once a person is accepted into the Scheme, they create a plan with the NDIA that is tailored to their requirements and includes the supports and services they can access through the plan, and associated funding. Where a person has been declined access to the scheme or funding has been declined for one or more supports or services in their NDIS plan, they can request an internal review of a decision by the NDIA. If unsuccessful, the person may be able to appeal the decision to the Administrative Appeals Tribunal (AAT). AAT data (set out in Figure 5) show there have been significant increases in recent years in the applicants (as a proportion of active participants) appealing NDIA decisions through the AAT, with a steep increase in lodgements in 2021-22.

Of 6,466 closed AAT cases, 6,284 (97 per cent) were resolved before a hearing. Of the 182 cases that went to hearing and received a substantive decision, the NDIA's original decision was set aside in 61 cases (34 per cent) and varied in 44 cases (24 per cent).¹⁰¹

Figure 5: Number and proportion of NDIS appeal cases to AAT over time



AAT Caseload Reports, available at <https://www.aat.gov.au/statistics>; NDIS, Quarterly Reports, available at <https://www.ndis.gov.au/quarterly-reports>

Legal aid commissions receive specific funding from the Australian Government Department of Social Services (DSS) to provide NDIS appeals legal services. In assessing whether funding for legal services may be provided to a person for representation in a NDIS matter at the AAT, legal aid commissions must consider whether:

- there is a significant likelihood that legal representation will lead to wider community benefit
- the applicant is experiencing disadvantage and would likely realise a substantial benefit from legal representation
- the matter meets the legal aid commission's merits test.¹⁰²

¹⁰⁰ National Disability Insurance Scheme eligibility checklist, National Disability Insurance Agency

¹⁰¹ NDIS Quarterly Report to disability ministers, March 2022, National Disability Insurance Agency

¹⁰² Department of Social Services, Guidelines for the assessment of applications for NDIS Appeals legal services funding for National Disability Insurance Agency (NDIA) Decision Reviews in the Administrative Appeals Tribunal, April 2019; Note: The purpose of the Merit Test is to assess whether it is reasonable in all the circumstances to grant legal aid and takes into account the following (amongst other issues):

Both VLA and Legal Aid NSW report that they have experienced large increases in the number of applications for legal representation, that correspond with the significant increases in appeals lodged with the AAT. Given the complexity of NDIS appeals work, limited funding and large volumes of applications, legal aid commissions are only able to represent clients in some matters. VLA have found matters are staying at the AAT for longer because of the increasing complexity which results in a delay in allocating lawyers to the new matters. This is further impacted by the lack of long-term funding for the NDIS AAT matters which limits the ability to plan and address resourcing issues. In the year 2021-22 to date, VLA has received 199 applications for legal assistance for appeals to the AAT, a significant increase from the 94 applications they received in 2020-21.¹⁰³

In addition, legal aid commissions provide one-off advice and minor assistance with NDIS AAT matters. For example, Legal Aid NSW provides 45-minute phone advice sessions. In addition to the phone advice, this can involve up to two hours of preparatory work by legal aid lawyers to review a person's NDIS related documentation in order to provide tailored advice. Legal Aid NSW notes that due to the increase in demand for legal aid assistance in NDIS AAT matters it is providing one-off advice and minor assistance to greater numbers of clients. Even with this shift, Legal Aid NSW notes that it was able to provide some form of legal aid assistance to approximately 50 per cent of people in NSW appealing an AAT decision in 2020-21, however due to the increase in demand, it is now only able to assist approximately 30 per cent.¹⁰⁴

The 2014 *Legal Australia-Wide Survey* found that people with disability have a higher prevalence of legal issues, including multiple and significant legal issues, and that 'the wide range of legal problems [people with disability] face may impact negatively on their lives and further entrench their social exclusion'.¹⁰⁵ Where legal aid commissions identify that a person with disability may have multiple legal and/or other issues they can refer the client to the appropriate in-house legal team, or on to other services such as financial counselling, disability support advocates or social workers. In addition to assisting people with disability to access other supports and assistance, VLA and Legal Aid NSW noted that their lawyers work with clients in a trauma-informed and disability inclusive way.

the nature and extent of any benefit that the applicant might expect to gain by receiving legal aid, or any disadvantage or harm to the applicant that might result from being refused legal aid, and whether the applicant has reasonable prospects of success.

¹⁰³ Data provided to PwC by Victoria Legal Aid

¹⁰⁴ Data provided by Legal Aid NSW

¹⁰⁵ Coumarelos, C., (2012), *Legal Australia-wide survey legal need in Australia*, Sydney: Law and Justice Foundation of New South Wales

Benefits of legal aid assistance for individual clients and their families

In this section we describe the lived experience of legal aid clients and the impact that legal aid assistance has had on their lives. The following three client stories reflect the similar but varied benefits that Legal Aid can provide to individuals.

Client Story 10: *Helen, VIC*

Helen is 59 years of age and has three adult children, the youngest of whom lives at home. She contracted Poliomyelitis as a two-year old. As a result of the virus, she has a foot deformity, a leg discrepancy and weakness in her lower limbs. Helen also has some other chronic health conditions which make completing everyday tasks difficult. She relies on crutches to mobilise and wears special shoes. Though she had a car, Helen did not use it very much as her disability made driving difficult. She also finds it difficult to attend medical appointments without assistance. Helen is unable to do her own shopping and is reliant on her children's assistance. As she does not wish to burden, or impose upon, her family members, Helen stocks up on items with a long shelf-life rather than fresh foods. Helen advises that she struggles with self-care and has had a number of falls when she has tried to shower without assistance.

On her doctor's advice, in 2018 Helen applied to become a NDIS participant. In 2019, her application was rejected as the NDIA deemed that she did not meet the disability requirement of the eligibility criteria. Helen applied for an internal review, and then for an appeal at the AAT. Finding the process very complicated and overwhelming, she considered giving up. However, an officer at the Tribunal suggested that Helen contact VLA and apply for legal assistance with her appeal.

Helen was granted legal aid for the appeal and assigned a lawyer. The VLA lawyer liaised with the NDIA's lawyers rather than Helen having to do this herself. They also obtained pertinent medical information from a doctor specialising in polio. Once received, the VLA lawyer consolidated the new and existing medical information for submission. They prepared Helen's submissions and got the case ready to proceed to a hearing. The NDIA accepted Helen's disability and her eligibility to join the NDIS without the need for a Tribunal hearing.

Helen said, 'During the appeals process, my lawyer organised a range of medical reports, including from a doctor who specialises in polio. I didn't know such specialists existed. The doctor is now my treating specialist and is offering polio specific supports to assist me to manage my disability.'

Now that Helen is a NDIS participant and has her first plan in place, she has access to support workers who attend her home. They assist with self-care tasks and take her shopping. Since Helen has had assistance, she has not had any falls and is buying fresh produce. Helen reports that she is feeling more energetic and is able to collect her medication rather than having it delivered. Helen is also enjoying greater social interaction, both at home with her support workers and also out in the community.

Helen said, 'I have a more positive outlook on life now because of the supports that are in place for me. I am looking forward to contributing to my community and hope to do volunteer work soon. I am really interested in helping the elderly and people with disabilities.'

Client Story 11: *Mary, Billy and Emma, VIC*

Mary is a single mother with two children, 13-year-old Billy and 16-year-old Emma. Billy uses they/them pronouns. They have been diagnosed with Autism Spectrum Disorder (ASD) and have issues with emotional regulation. Billy's disability has had a huge impact on the family. They use physical and verbal aggression to control Mary and Emma. Over the past few years, there has been an escalation in Billy's behaviours. Consequently, Mary and Emma have been living in fear with adverse impacts on their mental health. Mary has self-harmed and contemplated suicide while Emma has referred herself to mental health services. The family had regular involvement with the police and child protection services and were relying on a number of community and welfare organisations for support. Due to the pressures on Mary, she deferred her tertiary studies. She also considered giving up work, and even relinquishing care of Billy.

Billy was accepted as a NDIS participant, so Mary began preparing documentation for the creation of their NDIS plan. Mary sought that the following supports be funded as part of Billy's plan:

- regular respite care
- support worker assistance
- a behaviour support plan
- support coordination.

These supports were recommended by their doctors and psychologist. Mary provided reports from Billy's doctors, treating professionals and the police, in addition to letters from organisations involved with the family to support the creation of the plan. The NDIA did not approve any of the supports requested by Mary.

Mary was supported by her family support worker to go through the NDIA's internal review process in a bid to get the supports Billy required. However, the internal review was unsuccessful. The family support worker then assisted Mary to lodge the application for review with the AAT and to apply for legal assistance. They made the enquiries about legal assistance and also completed the legal aid application form. Mary was approved for a grant of legal aid and allocated a VLA lawyer. The VLA lawyer worked with Mary to put together a Statement of Lived Experience that was provided to the NDIA and the Tribunal. The Statement had a powerful impact in this case with all the information about the impacts of Billy's disability summarised in one place rather than across many different documents. Not long after the VLA started to act and provided the Statement of Lived Experience, the NDIA agreed to fund all the requested supports.

Access to the new plan and the additional supports it funds has been life changing for Billy and their family. Billy is attending school regularly, has made new friends and is engaging with their doctors and allied health professionals. The plan has also had positive impacts for Mary and Emma, with the whole family seeing improvements in their mental health. Billy and Emma have started rebuilding their relationship. The family no longer requires police intervention. Mary remains in full-time employment and has resumed her studies. Mary said, 'For the first time in a long time I can see a bright future for my child. Tertiary studies and full-time employment are now a possibility [for them]'.

Mary found the process of engaging with NDIA and appeals process very stressful and difficult to navigate. Without the assistance of her family support worker and the VLA lawyer, she advises that she 'would've given up'.

Client Story 12: Mark, NSW

Mark is 50 years old and has primary progressive Multiple Sclerosis. He has lived alone most of his adult life and his independence is very important to him. Mark works flexible hours, has a dog, likes to socialise and to have choice over who is in his space. Mark made an application for Specialist Disability Accommodation (SDA) as he was living in a granny flat with an inaccessible shower and kitchen. He was also unable to navigate out of the property in his wheelchair without carer assistance.

Mark applied for, and was made an offer of, a one-bedroom SDA property that would be ideal for him. The whole house was accessible and would allow him to have friends over when he chose, shop and visit the GP independently, in addition to keeping his job. However, the NDIA agreed to SDA funding for Mark only on the basis that he live with two other people. An Occupational Therapist assessed the SDA house and found that it would be cheaper for Mark to live there as he would be able to do more activities without the need for carer assistance.

Mark's disability advocate contacted Legal Aid NSW and submitted an application for legal aid assistance on his behalf. The legal aid assistance was granted and Legal Aid NSW assisted Mark to seek an AAT review of the NDIA's decision to only fund dual occupancy SDA, and represented him before the AAT. Mark's legal aid lawyer obtained expert reports from the Occupational Therapist and Mark's Doctor and sought quotes from the SDA provider to provide evidence that it would be cheaper for Mark to live in a one-bedroom SDA property. The legal aid lawyer also attended case conferences with the NDIA.

A month before the case was due to be heard by the AAT, the NDIA offered to settle Mark's case and provide him with single occupancy SDA funding. Consequently, Mark was able to move into a safe and secure home that gave him more autonomy and independence, all while costing the NDIA less overall. Living in his new home, Mark can continue working, avoiding the need to access government support.

Broader societal and economic benefits of legal aid assistance

As illustrated in the case studies above, legal aid assistance can benefit people with disability by assisting them to access the NDIS and the supports and services they need. A key objective of the NDIS is to 'support the independence and social and economic participation of people with disability' and give them greater agency over their own lives.¹⁰⁶ The client stories described above show the life changing impacts that access to appropriate supports afforded to each person in terms of improving their quality of life and their ability to participate in education, employment or volunteering. This can in turn decrease reliance on government social security payments, as well as their need to seek support from community and welfare services. In some cases, it can also reduce involvement with police, child protection and mental health and hospital services.

Beyond benefits to the person with disability, having access to a NDIS plan with the right supports can have flow on benefits for families and broader support networks. For example, with the right supports in place, family members who have been performing caring responsibilities may be able to participate in employment and education, rather than being reliant on social security payments. Having the right supports through the NDIS can also greatly improve their quality of life.

In 2017 the Productivity Commission noted that on average, participation in the NDIS led to "improved wellbeing of NDIS participants and their families and carers ... [and] increased social participation for some scheme participants and their carers".¹⁰⁷ The NDIA Family and Carer Outcomes Report notes improved employment outcomes have been observed for families and carers of NDIS participants who are under 24 years of age. It also notes the longer participants are in the Scheme, the more likely it is that family and carers providing informal care are able to work as much as they want.¹⁰⁸

¹⁰⁶ *National Disability Insurance Scheme Act 2013*, section 3(c).

¹⁰⁷ *National Disability Insurance Scheme (NDIS) Costs Study Report (2017)*, Productivity Commission

¹⁰⁸ *Family and carer outcomes to 30 June 2021*, National Disability Insurance Agency

Access to the NDIS and having a plan with the right supports can also lead to decreases in costs to governments in other areas. For example, the NDIS can fund access to specialist disability accommodation and other supports that can enable younger people with disability to transition from living in residential aged care facilities to live independently. In addition, the NDIS can fund capacity building and other supports that may assist people with mental health conditions or psychosocial disabilities to transition out of inpatient settings and to live independently.

Appendix B: Benefit quantification method

Appendix B details the methodology used to estimate the quantifiable benefits of Legal Aid that have been included in this analysis. In addition to providing the inputs and values, the relevant assumptions are listed below each benefit estimation method table. Values are rounded to the nearest whole number.

Efficiency of the justice system

Benefits relating to efficiency of the justice system captures the value of the time saved for those 30 per cent who would self-represent in the absence of Legal Aid, as this is a known quantity. These benefits accrue to both the individual and the justice system. For the remaining 70 per cent the benefit derived from Legal Aid enabling them to navigate the justice system falls outside of what can be captured here, notwithstanding that they may be adversely affected in the absence of NLA's support.¹⁰⁹ Further, specific family law matters require legal representation to avoid direct cross examination between alleged victim and abuser, which could impose additional costs that have not been specifically accounted for here.¹¹⁰

A.01 Efficiency from legal representation

The avoided litigation costs from more efficient legal proceedings when individuals are legally represented by Legal Aid, estimated at \$22 million annually.

Key assumptions

- The proportion of cases resolved through mediated agreement, final judicial order and informal agreement incur interim orders in the same proportion as all matters before the court.
 - Mediated agreement, final judicial order and informal agreements are separate resolution pathways
 - Interim orders are applied in addition to these resolution pathways
 - To avoid double counting, the cost of interim orders only captures the uplift in cost of an initiating application where there is on interim order, i.e., the difference between item and item 1 in Federal Circuit and Family Court of Australia (Division 2) (Family Law) Rules (2021)
- Court costs apply equally to the procedural pathway types because the value has already been averaged across court procedures and outcomes.
- Individual costs are estimated based off family law costs and are applied here to civil and family law matters collectively. This is a conservative assumption based off the fact that the costs incurred under the equivalent FCFCOA rules in civil law jurisdiction are in fact higher, though costs incurred in other civil law forums such as the AAT would likely be lower. Additionally, civil law matters accounts for only 4 per cent of Legal Aid matters.¹¹¹
- FCFCOA (Division 2) (Family Law) Rules 2021 are used as the basis for individual costs as they form the basis for calculating party/party costs orders. They reflect the value the court ascribes to the relevant processes/outcomes (not costs incurred by self-represented litigants).

¹⁰⁹ As this 70 per cent are presumed not to self-represent there is no direct burden on the justice system that is alleviated by providing them with representation. This is not to suggest that there would not be indirect benefits resulting from facilitating their access to justice. However, the multitude of variables that affect legal problems across the spectrum of civil and family law matters makes it difficult to meaningfully hypothesise the negative impacts of being unable to litigate.

¹¹⁰ Family Law Amendment (*Family Violence and Cross-examination of Parties*) Act 2018 (Cth) came into effect on 10 March 2019.

¹¹¹ Legal Aid Commission data (2022)

Appendix B: Benefit quantification method

- No distinction has been made for grants for Independent Children's Lawyers.
- Conservative assumption that cases finalised through informal agreement or non-legal resolution do not avoid court expenditure costs.
- In the absence of jurisdiction-specific data, cases in ACT are resolved in the same proportions as in NSW
- The proportion of cases resolved through informal or non-legal resolution is estimated based on available data in NSW and VIC and extrapolated nationally to apply to all jurisdictions.
- Conservative assumptions that cases involving interim orders have just one interim order, mediated agreement assumes a short mention and a final order assumes a two-day hearing. Non-legal resolutions are arrived at prior to hearing, after the matter is mentioned and preparations for a two-day hearing are undertaken.
- Legal aid services reduce a) the time taken to resolve a matter (e.g., by requiring fewer pre-hearing mentions), and b) the number of applications (e.g., avoiding filing incorrect applications). This is represented in the 20 per cent efficiency factor.

Estimation method

$$\text{Total time cost} = \sum \text{litigants} \times \text{resolution method} \times \text{procedural pathway} \times [\text{associated pathway cost (system + individual)} + (\text{interim orders required} \times \text{associated individual costs})] \times \text{efficiency factor}$$

Input	Value	Source
Litigants = total no. of Legal Aid grants for legal representation in Commonwealth family and civil law matters		
Australia-wide	27,644	Legal Aid Commission Data (2022)
Resolution method = the means of resolving a legal matter in court in the absence of Legal Aid		
Self-represent	30%	Australian Institute of Family Studies (2013), Productivity Commission (2014), Law Right Australia (2022)
Procedural pathway = the procedural pathways encountered by self-represented litigants to resolve their matter		
Mediated Agreement	32%	PwC Analysis; Legal Aid Commission Data (2022). Weighted average across jurisdictions
Final Order	16%	PwC Analysis; Legal Aid Commission Data (2022). Weighted average across jurisdictions
Informal agreement and/or non-legal resolution reached	20%	PwC Analysis; Legal Aid Commission Data (2022). Weighted average across jurisdictions
Application filed	32%	PwC Analysis; Legal Aid Commission Data (2022).
Interim orders required for each procedural pathway		
Interim Order	72%	National Legal Aid (2009), <i>The Economic Value of Legal Aid</i> , p.33
Pathway costs to the individual = the costs that an individual would incur as a result of litigating their matter		
Interim orders (cost to individual)	\$3,368	Item 2: \$2,947 (cost of initiating application up until completion of first court date, incl interim order) less Item 1: \$2357 plus Item 13(c): \$2,357 (cost of full-day hearing) Federal Circuit and Family Court of Australia (Division 2) (Family Law) Rules (2021) inflated to 2022 dollars
Mediated Agreement (cost to individual)	\$5,306	Item 1: \$2,357 (cost of initiating application up until completion of first court date) plus Item 13(a): \$321 (cost of short mention) plus Item 5: \$1,964 (dispute resolution litigation intervention) Federal Circuit and Family Court of Australia (Division 2) (Family Law) Rules (2021) inflated to 2022 dollars
Final Order (cost to individual)	\$15,933	Item 1: \$2,357 (cost of initiating application up until completion of first court date) plus Item 13(a): \$321 (cost of short mention) plus Item 8: \$6,227 plus Item 13(c): \$2,357 x2 (cost of full-day hearing) plus Item 9: \$321 (attendance at hearing to take judgement and explain orders) Federal Circuit and Family Court of Australia (Division 2) (Family Law) Rules (2021) inflated to 2022 dollars
Informal agreement/non-legal resolution	\$10,178	Item 1: \$2,357 (cost of initiating application up until completion of first court date) plus Item 13(a): \$321 (cost of short mention) plus Item 8: \$6,227 (preparation for final hearing, 2-day matter) Federal Circuit and Family Court of Australia (Division 2) (Family Law) Rules (2021) inflated to 2022 dollars
Application filed	\$2,694	Item 1: \$2,357 (cost of initiating application up until completion of first court date) Federal Circuit and Family Court of Australia (Division 2) (Family Law) Rules (2021) inflated to 2022 dollars

$$Total\ time\ cost = \sum\ litigants \times resolution\ method \times procedural\ pathway \times [associated\ pathway\ cost\ (system + individual) + (interim\ orders\ required \times associated\ individual\ costs)] \times efficiency\ factor$$

Pathway costs to the system = the average cost of operating the court for each matter litigated		
Average court expenditure per matter (system cost)	\$6,167	PwC (2018), <i>Review of efficiency of the operation of the federal courts</i> , p.4. Inflated to 2022 dollars
Efficiency factor = additional time taken and applications filed to resolve matters without legal representation		
Efficiency factor	20%	<p>Annual Review of Western Australian Courts (2004) supported by National Legal Aid (2009), <i>The Economic Value of Legal Aid</i>; Law and Justice Foundation of NSW (2012), <i>An evaluation of Legal Aid NSW's Family Law Early Intervention Unit Duty Lawyer Service</i></p> <ul style="list-style-type: none"> • In nearly 20 per cent (19.7%) of matters in the two-month snapshot period, duty lawyers reported that 'appropriate court documents were filed' following the assistance provided to draft new documents and re-draft documents • In other instances, inappropriate matters were diverted from the being commenced in the family courts <p>Citizens advice Bureau (2010) <i>Towards a Business Case for Legal Aid</i></p> <ul style="list-style-type: none"> • on average over 60 per cent of work is reported as having beneficial outcomes across various jurisdictions

A.02 Efficiency of family dispute resolution services

The avoided court costs from having the legal matter resolved through family dispute resolution services as opposed to going through formal litigation in the absence of Legal Aid, leading to an estimated cost saving of \$92 million annually.

Estimation method

$$\text{Total time cost} = \sum \text{litigants} \times \text{procedural pathway} \times \text{pathway cost (individual + system)}$$

Input	Value	Source
Litigants = total no. of family dispute resolution cases that reach full or partial settlement of their matter		
Full settlement Australia-wide	3,615	Legal Aid Commission Data (2022)
Partial settlement Australia-wide	2,513	Legal Aid Commission Data (2022)
Procedural pathway = the proportion of cost of final settlement and court expenditure avoided as a result of the FDR procedural pathways encountered		
Full settlement through FDR	100%	KPMG, 2008 <i>Family dispute resolution services in Legal Aid commissions: Evaluation Report</i> , p.76
Partial settlement through FDR	75%	KPMG, 2008 <i>Family dispute resolution services in Legal Aid commissions: Evaluation Report</i> , p.76
Pathway costs to the individual = the costs that an individual would incur as a result of litigating their matter		
Mediated Agreement (cost to individual)	\$5,306	Item 1: \$2,357 (cost of initiating application up until completion of first court date) plus Item 13(a): \$321 (cost of short mention) plus Item 5: \$1,964 (dispute resolution litigation intervention) Federal Circuit and Family Court of Australia (Division 2) (Family Law) Rules (2021) inflated to 2022 dollars
Final Order (cost to individual)	\$15,933	Item 1: \$2,357 (cost of initiating application up until completion of first court date) plus Item 13(a): \$321 (cost of short mention) plus Item 8: \$6,227 plus Item 13(c): \$2,357 x2 (cost of full-day hearing) plus Item 9: \$321 (attendance at hearing to take judgement and explain orders) Federal Circuit and Family Court of Australia (Division 2) (Family Law) Rules (2021) inflated to 2022 dollars
Pathway costs to the system = the average cost of operating the court for each matter litigated		
Average court expenditure per matter (system cost)	\$6,167	PwC (2018), <i>Review of efficiency of the operation of the federal courts</i> , p.4. Inflated to 2022 dollars

Key assumptions

- Parties that reach full settlement avoid 100 per cent of the individual costs of court expenditure. Parties that reach partial settlement avoid 75 per cent of costs.
- Cost to individuals is the difference between the cost of final order and mediated agreement.
- FCFCOA (Division 2) (Family Law) Rules 2021 are used as the basis for individual costs as they form the basis for calculating party/party costs orders. They reflect the value the court ascribes to the relevant processes/outcomes (not costs incurred by self-represented litigants).
- Conservative assumptions that cases involving mediated agreement assumes a short mention and a final order assumes a two-day hearing.

A.03 Efficiency of duty lawyers

The avoided court costs resulting from the legal assistance that duty lawyers provide to self-representing litigants in completing court procedures, totalling \$62 million annually.

Estimation method

$$Total\ time\ cost = \sum litigants \times costs\ (individual + system) \times efficiency\ factor$$

Input	Value	Source
Litigants = total no. of appearances by duty lawyers in civil law and family law matters under Commonwealth law		
Australia-wide	23,392	Legal Aid Commission Data (2022)
Cost to the individual = costs that accrue to the system as a result of litigation		
Final Order (cost to individual)	\$15,933	Item 1: \$2,357 (cost of initiating application up until completion of first court date) plus Item 13(a): \$321 (cost of short mention) plus Item 8: \$6,227 plus Item 13(c): \$2,357 x2 (cost of full-day hearing) plus Item 9: \$321 (attendance at hearing to take judgement and explain orders) Federal Circuit and Family Court of Australia (Division 2) (Family Law) Rules (2021) inflated to 2022 dollars
Costs to the system = the average cost of operating the court for each matter litigated		
Average court expenditure per matter (system cost)	\$6,167	PwC (2018), Review of efficiency of the operation of the federal courts, p.4. Inflated to 2022 dollars
Efficiency factor = additional time taken and applications filed to resolve matters without duty lawyers		
Efficiency factor	12%	Law and Justice Foundation of NSW (2012), <i>An evaluation of Legal Aid NSW's Family Law Early Intervention Unit Duty Lawyer Service</i> , p.26

Key assumptions

- In the absence of jurisdiction specific data, cases in ACT are resolved in the same proportions as in NSW
- Individual costs are estimated based off family law costs and are applied here to civil and family law matters collectively. This is a conservative assumption based off the fact that the costs incurred under the equivalent FCFCOA rules in civil law jurisdiction are in fact higher, though costs incurred in other civil law forums such as the AAT would likely be lower. Additionally, civil law matters accounts for only 4 per cent of Legal Aid matters.¹¹²
- FCFCOA (Division 2) (Family Law) Rules 2021 are used as the basis for individual costs as they form the basis for calculating party/party costs orders. They reflect the value the court ascribes to the relevant processes/outcomes (not costs incurred by self-represented litigants).
- Conservative assumptions that cases involving a final order assumes a two-day hearing.
- Each duty lawyer appearance derives the same benefit as the data does not distinguish cases where duty lawyers appear on more than one occasion.

¹¹² Legal Aid Commission data (2022)

Value to individuals

B.01 Improved livelihood and wellbeing from reduced domestic and family violence

The avoided instances of family violence that may be incurred by an individual who receives improved legal outcomes through Legal Aid totals an estimated \$307 million annually.

Estimation method

$$Total\ cost = \sum litigants \times risk\ factor \times outcome \times cost$$

Input	Value	Source
Litigants = number of Family Law Legal Aid matters		
Australia wide	26,534	Legal Aid Commission Data (2022)
Risk factor = the proportion of family law cases presenting with a risk of violence		
Cases with identified risk of violence	79%	FCC 2020-2021 (2021) <i>Annual Report</i>
Outcome = adverse outcomes encountered in the absence of legal aid that result in violence		
Proportion of matters presenting as high family violence risk	62%	PwC analysis; Federal Circuit Court (2020), <i>Annual Report 2020-2021</i> , p. 4
Cost = cost of violence per incident		
Cost of violence per incident (cost to individual)	\$23,622	PwC analysis; KPMG (2016), <i>Cost of Violence Against Women and Children</i> ; ABS (2016) <i>Personal Safety Survey</i> . Inflated to 2022 dollars. This includes: <ul style="list-style-type: none"> • Pain, suffering experienced by the victim • Health costs associated with treatment • Production-related costs, including being absent from work, employer replacement costs • Consumption-related costs, including replacing damaged property, costs of moving, and defaulting on bad debts • Second generation costs of children witnessing and living with violence, including ongoing psychological consequences, and increased juvenile and adult crime • Administration costs, including police, court systems costs, violence prevention programs, funeral services.

Key assumptions

- It is assumed that Legal Aid assistance helps prevent violence in only the proportion of matters presenting with a high risk of family violence, given that legal intervention is not a guarantee against subsequent violence.

B.02 Reduced pain & suffering from more efficient proceedings

The avoided pain and suffering from the anxiety and emotional distress litigation can cause in the absence of Legal Aid representation and support is estimated at \$25 million annually.

Estimation method

$$Total\ time\ cost = \sum litigants \times time \times efficiency\ factor \times cost$$

Input	Value	Source
Litigants = number of civil law and family law Legal Aid matters		
Australia wide	27,644	Legal Aid Commission Data (2022)
Time = the average time taken to resolve a matter		
Average days to finalisation per case	201	Federal Court (2021) <i>Annual Report 2020-21</i> , p.136. PwC Analysis.
Efficiency factor = cost saving from having access to legal representation		
Efficiency factor	20%	Annual Review of Western Australian Courts (2004) supported by National Legal Aid (2009), <i>The Economic Value of Legal Aid</i> ; Law and Justice Foundation of NSW (2012), <i>An evaluation of Legal Aid NSW's Family Law Early Intervention Unit Duty Lawyer Service</i> <ul style="list-style-type: none"> In nearly 20 per cent (19.7%) of matters in the two-month snapshot period, duty lawyers reported that 'appropriate court documents were filed' following the assistance provided to draft new documents and re-draft documents In other instances, inappropriate matters were diverted from the being commenced in the family courts Citizens advice Bureau (2010) <i>Towards a Business Case for Legal Aid</i> <ul style="list-style-type: none"> on average over 60 per cent of work is reported as having beneficial outcomes across various jurisdictions
Cost = cost of pain and stress		
Cost per day of pain and suffering	\$22	PwC analysis; KPMG (2016), <i>Cost of Violence Against Women and Children</i>

Key assumptions

- The secondary impacts resulting from emotional distress, including reduced productivity, loss of employment and ongoing psychological issues aren't quantified due to a lack of data.
- Legal aid services reduce a) the time taken to resolve a matter (e.g., by requiring fewer pre-hearing mentions), and b) the number of applications (e.g., avoiding filing incorrect applications). This is represented in the 20 per cent efficiency factor.

Wider governmental and societal costs

C.01 Avoided costs to government – domestic and family violence

The avoided cost of domestic and family violence that may be incurred by government if the litigant received inferior legal outcomes in the absence of Legal Aid totals at an estimated \$71 million annually.

Estimation method

$$Total\ cost = \sum litigants \times risk\ factor \times outcome \times cost$$

Input	Value	Source
Litigants = number of family law Legal Aid matters		
Australia wide	26,534	Legal Aid Commission Data (2022)
Risk factor (applied to cohort)		
Percentage of family law cases with risk of violence	79%	FCoA 2020-2021 (2021) <i>Annual Report</i> FCC 2020-2021 (2021) <i>Annual Report</i>
Outcome = adverse outcomes encountered in the absence of legal aid that result in violence		
Proportion of matters presenting as high family violence risk	62%	Federal Circuit Court (2020), <i>Annual Report 2020-2021</i> , p. 4
Cost = cost of violence to government		
Cost of violence to government per/person per/ year	\$5,441	PwC analysis; KPMG (2016), <i>Cost of Violence Against Women and Children</i> ; ABS (2016) <i>Personal Safety Survey</i> . Inflated to 2022 dollars. This includes: <ul style="list-style-type: none"> • Health costs associated with treatment • Second generation costs of children witnessing and living with violence, including ongoing psychological consequences, and increased juvenile and adult crime • Administration costs, including police, court systems costs, violence prevention programs, funeral services • Transfer costs, inefficiencies associated with payment of government benefits, victim compensation payments.

Key assumptions

- Legal Aid assistance helps prevent violence in only the proportion of matters presenting with a high risk of family violence, given that legal intervention is not a guarantee against subsequent violence.

C.02 Avoided costs to government – out of home care costs

The avoided costs to government from preventing children entering out-of-home care that may have been incurred without legal assistance services totals an estimated \$22 million annually.

Estimation method

$$Total\ cost = \sum litigants \times risk\ factor \times outcome \times cost$$

Input	Value	Source
Litigants = number of family law Legal Aid matters		
Aus. wide	26,534	Legal Aid Commission Data (2022)
Risk factor = the proportion of family law cases presenting with a risk of violence		
Percentage of family law cases with risk of violence	79%	FCoA 2020-2021 (2021) <i>Annual Report</i> FCC 2020-2021 (2021) <i>Annual Report</i>
Outcome = adverse outcomes encountered in the absence of legal aid		
Proportion of matters presenting as high family violence risk	62%	Federal Circuit Court (2020), <i>Annual Report 2020-2021</i> , p. 4
Proportion of cases where children and young people access Intensive Family Support Services	3%	NSW Department of Communities and Justice (2019-20); <i>Annual Statistics Report</i>
Cost = cost of out-of-home care to government		
Cost of out-of-home care to government per/person per/ year	\$57,085	PwC analysis; <i>Australian Institute of Health and Welfare (2017), Australia's welfare 2017</i> , p. 82. Inflated to 2022

Key assumptions

- Children who have been exposed to/experienced domestic and family violence are at risk of entering out-of-home care.
- It is conservatively assumed that the proportion of cases accessing services applies equally to the high family violence risk cohort. To mitigate this assumption, the above methodology assumes that the full costs of OOHC are avoided.

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