

# 2023-24 Pre-Budget Submission

## Submission to The Treasury

13 December 2022

National Legal Aid (NLA) represents the Chief Executive Officers of the eight Australian State and Territory Legal Aid Commissions (LACs).

LACs are independent statutory authorities funded by the Commonwealth and respective State and Territory governments to provide legal assistance to people experiencing financial disadvantage. LAC services focus on prevention, timely intervention, and the appropriate resolution of disputes. Litigation is a response of last resort. The LACs are an integral part of the legal assistance sector and the justice system and generate net benefits to the community including the avoided costs to individuals and the community of unresolved legal issues. This includes the significant costs associated with systems responses to family violence, child protection, health and mental health, housing, social security, as well as the costs associated with the justice system and self-representation.

## Our ask

In recognition of the nature of legal assistance across all federal and state jurisdictions and the historical shared responsibility for funding, we ask for:

1. Increased Federal investment in Legal Aid Commissions of **\$382 million** per annum **by 2025** to match State and Territory investment and ensure shared Federal-State responsibility for legal assistance.

That this investment is developed as part of the National Legal Assistance Partnership (NLAP) review that also invests in Community Legal Centres (CLCs), Aboriginal and Torres Strait Islander Legal Services (ATSILS) and Family Violence Prevention Legal Services (FVPLS) and includes:

- a) an evidence-based assessment of legal assistance need and demand for people experiencing disadvantage with a view to positive adjustment of NLAP funding formulas to better meet this demand, and commitment to a shared responsibility arrangement for Federal, State and Territory governments.
  - b) a commitment to embedding resourcing of legal assistance services (across Legal Aid Commissions, CLCs, ATSILS and FVPLS) in planning for any legislative reform, court reform or other drivers of increased legal assistance need to help ensure people experiencing disadvantage have access to justice.
  - c) a commitment to focus on the issue of rural and remote legal assistance service delivery with a view to increased investment across the legal assistance sector. It is proposed that this is undertaken in partnership with the States and Territories to look at service delivery issues, legal assistance need and funding responsibility in the context of commitment to First Nations Justice and the Closing the Gap targets.
  - d) a commitment to embedding CPI increases into all Federal funding for legal assistance (across Legal Aid Commissions, CLCs, ATSILS and FVPLS) and to review legal assistance investment every three years to ensure appropriate resourcing to meet legal assistance need for people experiencing disadvantage.
2. Immediate investment in Legal Aid Commissions of **\$168.3 million** which includes

**\$54.1 million** of continued funding to:

- Maintain legally aided support for people experiencing disadvantage to have their family law issues resolved through the Federal Circuit and Family Court of Australia (FCFCOA)'s case management pathway (\$16.6 million);
- Maintain legally assisted support in property mediation proceedings for vulnerable people including women who have experienced domestic and family violence (\$6.6 million);
- Maintain and expand the quality oversight of independent children's lawyers in contested parenting proceedings (\$4.4 million);
- Deliver a National Disability Legal Service based on the Your Story Disability Legal Support Service (\$6.5 million); and
- Maintain legal assistance for communities impacted by disaster (\$20 million).

And new funding of **\$114.2 million** per annum to:

- Expand the means test for approximately 7,500 more matters per year, with a focus on family law access for women and children escaping domestic and family violence (\$64.2 million);
- Expand the independent children's lawyer program to provide best interests representation to 3,000 more matters per year or 65% of children in contested parent proceedings (\$27 million);
- Support and enhance the number of legal practitioners available in rural and remote areas of Australia (\$8 million); and
- Assist in preventing cybersecurity incidents across Legal Aid Commissions, with a focus on safety and protection of data of our most vulnerable clients, including women and children escaping domestic and family violence (\$15 million).

## **Legal Aid Commissions provide efficient, effective and responsive legal assistance for people experiencing disadvantage**

Legal Aid services are a critical component of the legal assistance and broader social justice system. Nationally, Legal Aid Commissions provide over 1.9 million instances of legal assistance a year and are the main providers of legal representation for people experiencing disadvantage in Australia – in 2021/2022 this included 412,000 duty lawyer services and 150,000 legal representations. Legal Aid Commissions also aim to assist clients to resolve their legal issues as early as possible and in 2021/2022 provided 682,000 instances of legal information and referral and 8,500 dispute resolution conferences with an 86% settlement rate.<sup>1</sup>

Legal Aid services are provided to the most disadvantaged people in Australia – in 2021/2022 for clients of the 150,000 legal aid approved matters, 100% were financially disadvantaged, 20% were Aboriginal or Torres Strait Islander (61% Northern Territory Legal Aid and 32% Legal Aid Western Australia) and 48% were women and children.<sup>2</sup> 34% of clients receiving legal assistance self-identified as a person with a disability.<sup>3</sup>

Over 86% of all family law legally aided matters included a risk of domestic and family violence.<sup>4</sup>

Legal Aid Commissions provide high quality legal assistance at scale that is value for money. A 2022 PWC cost benefit analysis of federally funded legal aid family and civil law service delivery estimates that legal aid services deliver \$601 million in benefit each year, representing a Benefit Cost Ratio of 2.25. This includes costs saved within the legal system from legal representation, dispute resolution services and efficiencies from duty lawyer services, as well as avoided costs to individuals and government through addressing domestic and family violence, minimising out of home care costs and reducing pain and suffering experienced as a result of legal issues.<sup>5</sup>

Legal Aid Commissions also develop their services to respond to emerging need and in the past 5 years have implemented specialist services for at risk families, women and children who have experienced domestic and family violence, people with disability, older people, veterans and communities impacted by disaster.

Legal Aid Commissions are committed to Closing the Gap and First Nations self-determination, work collaboratively with ATSILS and have undertaken initiatives to improve cultural safety within their organisations, increase First Nations employment and address the over-representation of First Nations people in the juvenile and adult justice systems and in out of home care.

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<sup>1</sup> [National Legal Aid Statistics Reports](#)

<sup>2</sup> [National Legal Aid Statistics Reports](#)

<sup>3</sup> NLA, *Legal Aid Commissions' Disability and Intersectional Service Data 2018-19 to 2020-21* (15 October 2021). The data is an underrepresentation due to limitations in data collection and reliance on self-reporting.

<sup>4</sup> National Legal Aid internal review of 100 family law files in each Legal Aid Commission. Over 800 files were reviewed.

<sup>5</sup> PricewaterhouseCoopers Consulting (Australia) Pty Ltd, *The benefits of providing access to justice*, report for National Legal Aid December 2022.

## **Legal Aid Commissions face significant challenges in delivering legal assistance for people experiencing disadvantage – limited access, increased demand, limited supply**

Legal Aid Commissions across the country are facing a range of challenges in meeting the legal assistance needs of people experiencing disadvantage. These challenges have in part arisen due to the erosion of Federal funding of legal aid.

When Legal Aid Commissions were established in Australia and until 1996 the Federal Government contribution was 55%. By 2012 the Federal Government contribution had been eroded to 33%. In 2021/2022 the Federal Government provided \$268 million representing just 27% of the total legal aid funding contributed by state, territory and federal governments of \$938 million.<sup>6</sup>

### ***Limited access***

In response, Legal Aid Commissions have had to restrict their income and assets tests to maximise service delivery in a tight fiscal and demand environment, limiting eligibility to Australians living well below the poverty line. In 2014 the Productivity Commission estimated that only 8% of Australian households were eligible for legal aid with more than 13% of households living below the poverty line.<sup>7</sup> Despite the income levels for calculating the poverty line increasing by 27% since that time,<sup>8</sup> Legal Aid Commissions have not had the resources to increase their means tests in line with this. In fact, since 2014 some Legal Aid Commissions have not been able to increase their means tests at all.<sup>9</sup> It is estimated that significantly less than 8% of Australian households would meet the income and assets test in 2022, with approximately 660,000 households eligible in 2014, to now less than 500,000 households in 2021.<sup>10</sup>

### ***Increased demand***

Alongside a restricted income and assets test, Legal Aid Commissions have seen an increase in legal assistance need and in the complexity of support and advice required in the family and civil law areas without a comparable increase in resources. This has occurred alongside legislative and court reform that has not considered the impact of the reforms on legal aid service delivery and the resultant increased costs in delivering legal assistance to people experiencing disadvantage.

Legal Aid assistance is critical in family law with 40-50% of family law parenting matters having at least one party who is legally aided, approximately 5,000 children provided with independent best interests representation via legal aid and over 8,000 dispute resolution conferences per year being supported by Legal Aid Commissions. Over 86% of legally aided family law matters include the risk of domestic and family violence.<sup>11</sup>

Despite this, Legal Aid Commissions have not been resourced to meet the increasing family law demand with a 14% increase in total family law court applications from 2013/14 to 2020/2021<sup>12</sup>

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<sup>6</sup> [Finance - Income and Expenses - National Legal Aid](#) This is budgeted amounts so excludes Expensive Criminal Cases.

<sup>7</sup> [Inquiry Report - Access to Justice Arrangements - Productivity Commission \(pc.gov.au\)](#)

<sup>8</sup> [Poverty – Poverty and Inequality \(acoss.org.au\)](#)

<sup>9</sup> [Legal Aid Commission means test and contributions tables.](#)

<sup>10</sup> 8% of 8.29 million households versus 5% of 9.28 million households

<sup>11</sup> National Legal Aid internal review of 100 family law files in each Legal Aid Commission. Over 800 files were reviewed.

<sup>12</sup> [Family Court Annual Reports | Federal Circuit and Family Court of Australia \(fcfcoa.gov.au\)](#) 2013/14, 2020/21

and a nearly 25% increase in independent children's lawyer appointments during the same period.<sup>13</sup>

In the civil law area, Legal Aid Commissions have responded to changing and increased legal assistance needs, including building expertise in the disability and disaster areas. Legal Aid Commissions have utilised one off, time limited resources to meet these needs and since 2019 have provided over 10,000 services to assist clients to participate in the Disability Royal Commission process.<sup>14</sup> Legal Aid Commissions have also been integral in supporting disaster affected communities. For example, since 2020 in NSW approximately 7,200 legal assistance services have been provided to people impacted by disaster.<sup>15</sup>

However, the resourcing to provide legal assistance to people experiencing disadvantage has not kept pace with demand. For example, the Administrative Appeals Tribunal (AAT) has experienced an approximately 400% increase in the number of NDIS review cases in 2021/2022 and, as at January 2022, had a backlog of approximately 4,000 cases.<sup>16</sup> In addition, the disaster recovery funding is due to cease in June 2023 despite the increase in the number of affected communities and the ongoing long term legal issues experienced by these communities as a consequence of disaster.

Legal Aid Commissions are an integral component of the legal system and need to be funded and considered alongside the resourcing of courts and other areas of the law as part of legislative or court process reform or in response to other drivers of increased legal assistance need. Without additional investment, Legal Aid Commissions will need to look at further managing costs by reducing assistance such as closing services, further implementation of waitlists and making changes to eligibility guidelines.

### ***Limited supply***

Legal Aid Commissions are also facing challenges in retaining private practitioners to deliver legal aid services. In 2021/2022 78% of legal aid approved matters were assigned to private practitioners.<sup>17</sup> Private practitioners are particularly essential in delivering legal aid services in regional and remote areas of Australia. However, the fees provided to undertake these matters have been limited and not kept pace with increased costs or the 27% increase in CPI.<sup>18</sup> Again, due to limited resources, some Legal Aid Commissions have not been able to increase their fees at all with some providing the same amount per hour to private practitioners as they were in 2007.<sup>19</sup> There is also a lack of parity between the fees paid to criminal law practitioners and family law practitioners with this being up to \$30 an hour less for family law practitioners in some jurisdictions.

This is impacting on the legal aid supply model with all Legal Aid Commissions experiencing a significant decline in the number of private family law practitioners willing to undertake legal aid work due to the low level of fees. In Victoria, the number of firms undertaking legal aided family

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<sup>13</sup> [NLA Statistics Reports \(nsw.gov.au\)](https://www.nsw.gov.au/nla-statistics-reports)

<sup>14</sup> [Your Story turns three: Our impact - Your Story Disability Legal Support](#)

<sup>15</sup> NSW Disaster Legal Service

<sup>16</sup> [NDIS cases going unheard following 400% surge in dispute applications \(crikey.com.au\)](https://www.crikey.com.au)

<sup>17</sup> [National Legal Aid Statistics Reports](#)

<sup>18</sup> [National Legal Aid Statistics Reports](#)

<sup>19</sup> [Law Society of NSW submission](#)

law work has reduced by more than 50% in nine years. This loss of private practitioners has accelerated in recent years, for example, in Queensland there has been a 32% reduction in available family law private practitioners since June 2021.<sup>20</sup>

The loss of private practitioners has been particularly impacted by the Federal Circuit and Family Court of Australia's case management pathway, introduced in September 2021. Legal Aid Commissions are supportive of these reforms, particularly around aiming to settle matters quickly and earlier. However, the increased workload, including preparation of additional documents and additional appearances required at early stages of proceedings, without additional resources, has negatively impacted on private practitioners' acceptance of legally aided clients. In regional, rural and remote communities there are also impacts around the extra time and resources required to consult with clients and travel to communities. For example, practitioners involved in the independent children's lawyer service in regional, rural and remote areas often need to take significant time out of their practice to travel and meet the children.

In order to manage this Tasmania, Queensland, South Australia and NSW have utilised one off funding to increase their family law fees to retain practitioners, with the other jurisdictions currently reviewing their fee structures. This funding ends in June 2023 and, without additional funding, this will mean that Legal Aid Commissions may have to further restrict access to family law support.

The limited availability of private practitioners impacts on access to justice for people experiencing disadvantage, particularly in regional and remote areas of Australia and creates delays in legal and court processes leading to additional stress for vulnerable and disadvantaged people and increased costs to the legal system.

### **Our ask**

For Legal Aid Commissions to appropriately provide legal assistance to people experiencing disadvantage there needs to be a return to shared responsibility between the Federal and State and Territory governments and matched funding from the Federal Government to meet legal assistance demand for people experiencing disadvantage. This would mean an increase of **\$382 million per annum** to increase the 2021/2022 contribution of \$268 million to \$650 million to match the current States and Territory contribution.

The National Legal Assistance Partnership (NLAP) is the mechanism under which funding is provided to Legal Aid Commissions and it is due to be reviewed during 2023. It is proposed that the review includes assessment of legal assistance need and demand, collaboration between the Federal and State and Territory governments and planning between all NLAP partners to understand roles, specialisations and collaboration points but with a view to redressing the current legal assistance funding gap.

It is proposed that the review:

1. include an evidence-based assessment of legal assistance need and demand for people experiencing disadvantage with a view to positive adjustment of NLAP funding formula to better meet this demand, and commitment to a shared responsibility arrangement for Federal, State and Territory governments.

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<sup>20</sup> [National Legal Aid Statistics Reports](#)

2. Commit to embedding resourcing of legal assistance services (across Legal Aids, CLCs, ATSILS and FVPLS) in planning for any legislative reform, court reform or other drivers of increased legal assistance need to help ensure people experiencing disadvantage have access to justice.
3. Commit to focus on the issue of rural and remote legal assistance service delivery with a view to increased investment across the legal assistance sector. It is proposed that this is undertaken in partnership with the States and Territories to look at service delivery issues, legal assistance need and funding responsibility in the context of commitment to First Nations Justice and the Closing the Gap targets.
4. Commit to embedding CPI increases into all Federal funding for legal assistance and to review legal assistance investment every three years to ensure appropriate resourcing to meet legal assistance need for people experiencing disadvantage.

In the meantime, Legal Aid Commissions need an immediate injection of **\$168.3 million** per annum to continue to address critical service gaps:

**\$54.1 million** of continued funding to:

- Maintain legally aided support for people experiencing disadvantage to have their family law issues resolved through the Federal Circuit and Family Court of Australia's case management pathway (\$16.6 million);
- Maintain legally assisted support in property mediation proceedings for vulnerable people including women who have experienced domestic and family violence (\$6.6 million);
- Maintain and expand the quality oversight of independent children's lawyers in contested parenting proceedings (\$4.4 million);
- Deliver a National Disability Legal Service that includes support for NDIS reviews based on the Your Story Disability Legal Support Service (\$6.5 million);
- Maintain legal assistance for communities impacted by disaster (\$20 million).

And new funding of **\$114.2 million** per annum to:

- Expand the means test for approximately 7,500 more matters per year, with a focus on family law access for women and children escaping domestic and family violence (\$64.2 million);
- Expand the independent children's lawyer program to provide best interests representation to 3,000 more matters per year or 65% of children in contested parent proceedings (\$27 million);
- Support and enhance the number of legal practitioners available in rural and remote areas of Australia (\$8 million);
- Assist in preventing cybersecurity incidents across Legal Aid Commissions, with a focus on safety and protection of data of our most vulnerable clients, including women and children escaping domestic and family violence. (\$15 million).

Please see Attachment A for further information on the funding immediately required.



**INCREASED INCOME AND ASSETS TEST FOR FAMILY LAW GRANTS****Our ask:**

**\$64.2 million per annum** to expand the income and assets test for family law providing approximately 7,500 additional grants for people experiencing disadvantage, including women and children escaping domestic and family violence.

“Legal Aid commissions operate within an already stretched funding regime and under strict guidelines that prioritise those in our community who are the most vulnerable and the most in need of assistance. Legal Aid recipients are subject to strict means, merit and guidelines tests and there are funding caps applicable to matters. We have previously stated that the means test used by legal aid commissions are restrictive, reflecting the limited funds available. Income tests are below many established measures of relative poverty. It is not the case that people are ‘too wealthy’ to be eligible for legal aid; rather, they are ‘not sufficiently impoverished’.”<sup>21</sup>

60% of legal aid family law recipients are women and approximately 86% of family law legally aided<sup>22</sup> matters include a risk of domestic and family violence. The *National Plan to End Violence Against Women and Children* has appropriately identified the intersections between domestic and family violence and family law. The restricted means test is limiting women’s access to justice and potentially putting their safety at risk.

Inquiring into Access to Justice Arrangements in Australia in 2014, the Productivity Commission noted that there are more people living in poverty (14%) than are eligible for grants of Legal Aid for legal representation (8%).<sup>23</sup> The Productivity Commission recommended \$57m per annum (\$64.2m in 2022) to change Legal Aid Commissions’ means eligibility tests<sup>24</sup> as an immediate resolution to the limited access to justice that such a restrictive means test provided. A decade later, the means test remains at similar levels across Australia whilst the income level for measuring the poverty line has increased by 27%. Similarly, in evaluating the Legal Aid Commission Property Mediation Trial, the Australian Institute of Family Studies identified that the median net value of assets for Australian households is \$579,200 and recommended that the property definition should be increased to \$550,000.<sup>25</sup>

In 2021-2022 Legal Aid Commissions approved approximately 17,800 family law grants to parties via the Federal funding contribution. An investment of \$64.2 million per annum to changing the means and assets tests could provide around 7,500 additional grants of aid for family law, or a 42% increase in access to legal assistance. This would assist in addressing gender inequities in access to justice for people experiencing disadvantage, provide expert legal assistance that would assist in improving the family law legal processes for people experiencing disadvantage and assist in supporting women and children who have experienced domestic and family violence to remain safe.

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<sup>21</sup> Evidence to Senate Joint Select Committee on Australia’s Family Law System, Parliament of Australia, *Improvements in family law proceedings*, Canberra, 27 May 2020.

<sup>22</sup> NLA internal data

<sup>23</sup> [Productivity Commission, Access to Justice Arrangements](#), (Inquiry Report No 72, 2014) Appendix H 1021-2.

<sup>24</sup> Ibid 1026.

<sup>25</sup> Carson, R., Qu, L., Kaspiew, R., Stevens, E., Sakata, K., Horsfall, B. et al. (2022), [Evaluation of the Lawyer-assisted Family Law Property Mediation: Legal Aid Commission Trial Final Report](#), Australian Institute of Family Studies 27.

## FAMILY LAW TO MAINTAIN ACCESS TO JUSTICE

### Our ask:

**\$16.6 million** per annum to maintain legally aided services for people with cases in the FCFCOA

Legal Aid Commissions seek \$16.6 million per annum so that they, and their essential service delivery partners, can retain family law practitioners and effectively represent clients through the case management pathway in the FCFCOA.

When the new court was formed in September 2021, the case management pathway has resulted in additional:

1. Court events, which have had immediate cost impacts for LACs
2. Preparation time and lengthier court events, for which LAC fee structures did not provide, leading to more private practitioners withdrawing from legal aid work

Private law practitioners are an essential component of legal aid service delivery, 78% of all legal aid approved matters were delivered by a private practitioner.

In Victoria, the number of firms undertaking legal aided family law work has reduced by more than 50% in nine years. This loss of private practitioners has accelerated in recent years, for example, in Queensland there has been a 32% reduction in available family law private practitioners since June 2021<sup>26</sup>.

The loss of private practitioners has accelerated following the introduction of the Federal Circuit and Family Court of Australia case management changes. The increased workload including increased document submission and initial increased number of appearances without additional resources has negatively impacted on private practitioners' acceptance of legally aided clients. In order to manage this Tasmania, Queensland, South Australia and NSW have utilised one off funding to increase their family law grants of aid to retain practitioners with the other jurisdictions currently reviewing their fee structures. Alongside this, States and Territories have seen an increase in demand for Legal Aid in-house family dispute resolution as a consequence of the court reforms and have dedicated a portion of the one-off funding to meet this demand. For example, since the introduction of the case management changes, in Victoria 150 additional conferences at a likely cost of \$550,000 have been held.

This funding ends in June 2023 and without additional funding will mean that it will be very difficult to source private practitioners for legally aided clients as many practitioners may not accept work on the lower fee scale. It will also reduce the number of in-house family dispute resolutions that Legal Aid Commissions will be able to provide.

\$16.6 million per annum is required to maintain legally aided services in family law matters to people experiencing disadvantage, particularly women experiencing domestic and family violence and people in rural and remote areas can access legal representation within the new FCFOA case management pathway.

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<sup>26</sup> NLA internal data.

## LAWYER-ASSISTED FAMILY LAW PROPERTY MEDIATION

### Our ask:

**\$6.6 million per annum** to support the resolution of approximately 450 matters under the Lawyer-Assisted Family Law Property Mediation Program.

Legal Aid Commissions seek \$6.6 million per annum to continue the Lawyer-Assisted Family Law Property Mediation Program. The Program provides legally assisted mediation for small value property matters (currently defined as where the net assets are \$500,000 or less, excluding superannuation). The Program aims to increase access to mechanisms to resolve post-separation property matters for parties (particularly women) for whom the value of the property pool may make it uneconomic to pursue an outcome through family law system services (mediation or a court process) due to a gap in the availability of efficient, low-cost avenues for property settlement. The Program aims to support earlier economic recovery and financial independence for vulnerable people, especially women after relationship breakdown and who may have experienced domestic and family violence, by providing access to legally assisted mediation.

The Program was trialled for 3.5 years with funding due to expire in June 2023. During the first two years approximately 1,500 legal aid approvals were made as part of the Program.

The Program was independently evaluated by the Australian Institute of Family Studies which found that it provided access to post-separation property division, particularly to women and in matters where there was a risk of domestic and family violence. Over 80% of instigators were women<sup>27</sup>, 61% of matters included children<sup>28</sup> and 57% included a risk of domestic and family violence<sup>29</sup>. 79% of the asset pools under negotiation were under the value of \$300,000<sup>30</sup>. 65% of instigators earned less than \$1,000 per week.<sup>31</sup>

The Program managed an 81% agreement rate between parties participating and was able to provide a range of other outcomes and supports including the provision of legal advice; safety planning; risk management and case management; safer property settlement negotiations and improved financial disclosure; together with effective referrals and supported engagement with other services, such as family violence services, financial counselling and tenancy assistance services.<sup>32</sup>

The Program was found to provide significant value for money with a Social Return on Investment of 4.69.<sup>33</sup> Continuation of the Program would continue to deliver financial independence and reduce stress and trauma for people experiencing disadvantage, particularly women and women who have experienced domestic and family violence. Continuation of the Program would also support the outcomes identified in the National Plan to End Violence Against Women and Children.

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<sup>27</sup> Carson, R., Qu, L., Kaspiew, R., Stevens, E., Sakata, K., Horsfall, B. et al. (2022), [Evaluation of the Lawyer-assisted Family Law Property Mediation: Legal Aid Commission Trial Final Report](#), Australian Institute of Family Studies 27.

<sup>28</sup> Ibid 30.

<sup>29</sup> Ibid 34.

<sup>30</sup> Ibid 35.

<sup>31</sup> Ibid 45.

<sup>32</sup> Ibid 2.

<sup>33</sup> Ibid 8.

## INDEPENDENT CHILDREN’S LAWYERS

### Our ask:

A total of **\$31 million** per annum comprising:

**\$26.4 million** to expand ICL grants of aid to better meet the demand for this support  
**\$4.4 million** to improve quality management and support for the approximately **600 lawyers** engaged with the ICL program.

Independent Children’s Lawyers (ICLs) “are ordered by the family law courts in family law parenting order matters involving the most serious cases of abuse and neglect on the basis of the *Re K (1994) FLC 92-461* factors. Once an Order is made, the court provides the Order to the local Legal Aid Commission with a request that the Legal Aid Commission appoint an ICL. The ICL represents the best interests of the children and provides vital assistance, including gathering relevant evidence for the court. The ICL is independent of the parties and facilitates settlement wherever possible and appropriate, thereby saving court time and associated resources.

In 2021-2022, approximately 5,100<sup>34</sup> grants of legal aid for the appointment of an ICL were approved. This is an almost 25% increase in the number of appointments made since 2015/16. This is in the context of court ‘rationing’ of Orders due to an awareness of the limited Legal Aid funding available to appoint ICLs and limits applied in some jurisdictions around the level of risk identified in the Orders. There were approximately 13,000 applications about children filed in the family law courts in 2021-22.<sup>35</sup>

Many jurisdictions, such as New Zealand, provide an independent children’s lawyer in all family law parenting order matters and research shows that this greatly improves the experience and outcomes for children in contested parenting matters. It also takes the safety of children into account, with 80% of all family law matters including a risk of domestic and family violence.<sup>36</sup>

It is proposed that the ICL program be expanded to provide best interest representation to all children ordered by the court, regardless of level of risk and to reduce court ‘rationing’ of orders in contested parenting order matters. That is, that Legal Aid Commissions provide an additional approximately 3,000 grants of aid. This would require additional investment of **\$26.4 million** per annum.

To be appointed as an ICL, a lawyer needs to have successfully completed the ICL National Training course, have a minimum of five years relevant family law experience, and be accepted onto a practitioner panel or list. There are currently around 600 ICLs nationally. Improved quality measures such as additional professional development and auditing of practices, has been identified as needed.<sup>37</sup> However, this support is currently at risk because there is no ongoing funding to maintain the infrastructure to monitor quality and provide learning and development support to ICLs.

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<sup>34</sup> [National Legal Aid Statistics Reports](#)

<sup>35</sup> [Federal Circuit Court and Family Court of Australia annual reports](#) 2021-22

<sup>36</sup> [National Plan to End Violence Against Women and Children](#)

<sup>37</sup> For example, see Australian Law Reform Commission, *Review of the Family Law System*, ALRC Report No 135 (2019) 377.

**\$4.4 million** is required to adequately resource program management support, replace and enhance the Learning Management System and maintain and expand quality management of ICLs including file audits and practice interviews.

## DISABILITY

### Our ask:

A total of **\$6.5 million** per annum for a National Disability Specialist Legal Service with legal staff across Australia, caseworker support for clients, a call centre, accessible website and central coordination team, building on the expertise and infrastructure established via the Your Story Disability Legal Support (Your Story) that has supported people with disability, their carers, families and supporters to participate in the Disability Royal Commission (DRC) process.

People with disability, their carers, families and supporters often experience a range of related legal and social problems connected with their disability and are overrepresented in the domestic and family violence, child protection and criminal justice systems.<sup>38</sup> People with disability, their carers, families and supporters benefit from specialist legal services that are delivered with expert knowledge of disability as well as expertise in facilitating access, communication and referral needs of clients.

In September 2023, it is likely that the DRC will make recommendations about improving access to justice for people with disability in response to this overrepresentation and priority access to justice issues identified in their interim report, including a recommendation for a specialist disability legal service.

Legal Aid Commissions have experience in delivering specialist legal assistance to people with disability. Of the over 644,000 intensive services<sup>39</sup> provided by Legal Aid Commissions in 2020-2021, at least 161,120 of these were provided to people who self-identified as persons with disability.<sup>40</sup> Legal Aid Commissions have also established a national model to deliver legal assistance to people with disability via Your Story.

Your Story is a national specialist service that links in with the disability legal services delivered by State and Territory Legal Aid Commissions. Since 2019, Your Story<sup>41</sup> has received over 8,000 calls and provided over 10,000 legal and social work services related to the DRC. Your Story has provided 5,700 services connecting clients with specialist legal support for issues separate to their engagement with the DRC, as well as to other disability support services. It has established a phone line for people with disability in all adult and juvenile correctional facilities across Australia

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<sup>38</sup> According to former Disability Discrimination Commissioner Graeme Innes' [evidence to the Disability Royal Commission](#), disability was the most common grounds for complaints to the Australian Human Rights Commission, estimating that it made up 40% of complaints. Australian Institute of Health and Welfare (AIHW) Report, *'People with Disability in Australia 2022'*, 39 percent of social housing households have at least one person with disability. Report published by the Disability Royal Commission *'Police responses to people with disability'*, the Australian Anti-Corruption Commission Committee found that people with disability were more likely to be victims of police misconduct. *'Prevalence and risk of violence against people with and without disabilities: findings from an Australia population-based study'*, people with a disability are twice as likely to experience physical or sexual violence by a partner, compared to people who do not have a disability. People with disability are more likely to experience violence or abuse particular to their disability, such as financial abuse, social abuse, reproductive abuse or withholding of food, medication or disability support aids. People with disability are more likely to experience violence that lasts for a longer time, results in more serious injury and goes underreported. According to [research tendered to the Disability Royal Commission](#), parents with intellectual disability are at higher risk of coming to the attention of child protection authorities and of having their children permanently removed, with some research citing that up to three in every five children with a parent or parents with intellectual disability being likely to be removed.

<sup>39</sup> [National Legal Aid Statistics Reports](#). CLE and information/referral data are estimates - data obtained from legal aid commission annual reports where available. Where the data was not available in the 2020-21 annual report it is based on the 2019-20 data for those legal aid commissions.

<sup>40</sup> NLA, *Legal Aid Commissions' Disability and Intersectional Service Data 2018-19 to 2020-21* (15 October 2021). The data is an underrepresentation due to limitations in data collection and reliance on self-reporting.

<sup>41</sup> [Your Story turns three: Our impact - Your Story Disability Legal Support](#)

which has received over 2,000 calls. Your Story has also delivered a range of accessible resources and education activities.

The funding for Your Story ceases in June 2023 and the service will be wound down before then if ongoing funding is not received, losing experienced staff and the infrastructure that supports the Your Story service.

It is proposed that the Your Story model is adapted to deliver a National Disability Legal Service that would continue to assist clients with legal problems that commonly affect people with disability - within the service or where appropriate provide a pathway to specialist services within the relevant LAC. The Service would continue to be staffed by people with disability and/or with specialist expertise in working with people with disability.

The Service would include two jurisdictional lawyers in each state and territory, including First Nations specialist positions. NLA would also support the continuation of funding to NATSILS to provide services as part of the National Disability Legal Service as they have done as part of Your Story.

The service would utilise the existing infrastructure of Your Story including caseworker support for clients, a call centre, accessible website and central coordination team. In addition to providing specialist legal advice and assistance to people with disability, the service would also provide NDIS Review coordination, information and referral, implement DRC recommendations, guide good practice approaches to supporting people with disability across all Legal Aid Commissions and provide input about key law reform issues affecting people with disability.

This national service would complement the Legal Aid Commission services available at a statewide level including the NDIS teams that provide support to people with disability as part of the NDIS Review process. The national service would provide initial advice and support, and triage clients to appropriate Legal Aid Commission teams for community based legal assistance.

## DISASTER

### Our ask:

A total of **\$20 million** per annum for the delivery of disaster response and recovery legal services nationally across Legal Aid Commissions and in partnership with CLCs and ATSILS. This includes a baseline service and the capacity to stand up support in disaster affected areas.

The funding would include:

1. \$10 million for the delivery of disaster baseline legal service across Australia
2. \$10 million contingency fund to be accessed as needed when disaster affects communities

This funding would be in addition to the \$12 million over 4 years announced in the October Budget for CLCs to deliver disaster response services. The CLC funding is a critical aspect of the disaster response and this funding is welcomed, however, it is one component of the broader response. Without commitment to ongoing funding at a national level the co-ordination, scale and geographical coverage of the disaster response would be significantly reduced and communities, particularly in rural and remote areas of Australia, would not receive support.

Disasters are becoming more frequent, more destructive, more widespread, impacting larger numbers of people, and for longer periods, resulting in concentrated and escalating demand for legal services. For example, in NSW since 1 January 2020 the Legal Aid NSW Disaster Response Legal Service (DRLS) provided **7,483 disaster related legal services**. Of these, 5,070 were in response to flood disasters since 1 March 2022 this year. At the peak of service delivery between March and July 2022, Legal Aid NSW lawyers simultaneously attended eleven Recovery Centres across Northern NSW and Greater Sydney as well as over 20 Recovery Assistance Points and pop-up events and coordinated the wider legal assistance sector response.

Disaster response legal assistance has become a specialised area and is an expansive area of law - it includes insurance, housing and tenancy, grants, environmental and planning issues and income support. It is critically important to provide an early response to communities to assist with matters such as temporary accommodation, insurance claims and disputes, saving tenancies, financial hardship, accessing grants, employment law entitlements, motor vehicle (vital transport in regional areas). Disasters span jurisdictions particularly for cross border communities and for clients navigating national insurance law.

Legal Aid Commissions alongside our partners have developed the expertise to respond to community need. Responding in a timely way is challenging but the disaster response legal service models can be mobilised immediately, so lawyers are in recovery centres from opening and are available as part of the response. They have contacts within all major insurers to escalate matters on behalf of clients to resolve matters as soon as possible. They meet with regulators and industry to address systemic issues in relation to insurance claims and issues impacting on tenants, including in residential parks. Disaster response lawyers are trained in trauma informed practice and specialise in legal issues that arise following disasters, causing acute hardship if left unresolved.

New South Wales, Victoria and Queensland received temporary funding over the past two years to deliver and co-ordinate disaster response legal services for disaster affected communities. Each



state delivers these services differently based on community need and scale of disaster events, taking a place-based approach.

We note that in Victoria, the service response for communities affected by disaster is provided by Disaster Legal Help Victoria, a partnership between the Federation of Community Legal Centres, Justice Connect, the Law Institute of Victoria, Victoria Legal Aid, Victorian Aboriginal Legal Service and the Victorian Bar, which emerged out of the response to the 2009 bushfires. Based on the collaborative governance model, further consultation would be needed across the Victorian Partnership to determine allocation of any funding directed to legal need in Victoria.

All models include a partnership approach with CLCs, ATSILS and engagement of pro-bono lawyers. All models include access to a 1800 legal advice line, face to face legal advice at Recovery Centres, Recovery Assistance Points and mobile pop up events, and legal education to build the capacity of local staff from other agencies, Local Councils and various local non-profit organisations so that they identify legal problems and refer clients for timely assistance. In times where there isn't disaster, disaster response legal services would focus on community preparedness with legal education and awareness and each State service would have capacity to support others who may have communities affected by disaster.

A \$10 million contingency fund that could be accessed by any jurisdiction when disasters occur would enable services across Legal Aid Commissions, CLCs and ATSILS to be stood up quickly and provide legal assistance in recovery centres and in specialist areas such as income support, insurance and housing. It would also enable staff to be deployed from outside the disaster affected community to provide support rather than draining the existing resources of communities in emergency response mode.

Federal funding is due to end on 30 June 2023, while Legal Aid Commissions in NSW, South Australia and Victoria are responding to catastrophic and widespread flood events. The capacity to service demand is hampered by short term funding, with the regular loss of skilled expertise due to insecure employment. A nationally funded disaster response legal service model will build on the expertise that has been built by Legal Aid Commissions, CLCs and ATSILS to date, will expand the service to every state and territory with access to additional emergency-based funding to stand up services as need arises in disaster affected communities.

## RURAL AND REMOTE LEGAL ASSISTANCE

### Our ask:

1. That the NLAP Review focus on the issue of rural and remote legal assistance service delivery with a view to increased investment across the legal assistance sector. It is proposed that this is undertaken in partnership with the States and Territories to look at service delivery issues, legal assistance need and funding responsibility in the context of commitment to First Nations Justice and the Closing the Gap targets.
2. A total of **\$8 million per annum** to address Legal Aid Commission service delivery gaps in rural and remote communities in the Northern Territory, Queensland, South Australia, Tasmania and Western Australia

Rural and remote communities face disadvantage and ongoing access to justice issues. Approximately 29% of Australians live outside major cities, but the availability of legal assistance is limited in these communities and even more limited if you are experiencing disadvantage and are unable to afford legal costs. 7 of the 10 communities with the highest poverty after housing costs are in rural or remote Australia.<sup>42</sup> These communities also have a high proportion of First Nations people.

Access to justice issues and the high level of incarceration for First Nations people in Australia is well documented. This is compounded for people living in remote communities. For example, young people aged 10-17 living in very remote areas are 6 times as likely to be under youth justice supervision as those from major cities.<sup>43</sup> In order to meet Closing the Gap targets aiming to address the over-representation of First Nations people in the juvenile and adult justice systems and in out of home care it is essential that there is legal assistance available for First Nations communities in rural and remote communities.

National Legal Aid is committed to funding being prioritised for the expansion and investment in ATSILS. Legal Aid Commissions also aim to provide choice to clients and be available to support clients where there is a conflict of interest, particularly First Nations clients. For example, in 2021/2022 20% of all Northern Territory Legal Aid (NTLA) grant approvals were referrals from the North Australian Aboriginal Justice Agency (NAAJA).<sup>44</sup>

It is a challenge for Legal Aid Commissions to recruit and retain legal practitioners in rural and remote areas, particularly in the Northern Territory, Queensland, South Australia, Tasmania and Western Australia and Legal Aid Commission offices in these areas have high vacancy rates. For example, in Alice Springs currently 60% of NTLA legal positions are vacant.

Alongside this, it is a challenge to engage private practitioners in these communities to deliver legal assistance to people experiencing disadvantage. For example, in Queensland there has been a 32% reduction in family law practitioners undertaking legally aided matters over the past two years.

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<sup>42</sup> [Maps – Poverty and Inequality \(acoss.org.au\)](https://acoss.org.au)

<sup>43</sup> [Youth justice - Australian Institute of Health and Welfare \(aihw.gov.au\)](https://aihw.gov.au)

<sup>44</sup> NT Legal Aid Annual Report 2021-22

Legal Aid Commissions have undertaken a range of innovative and technology-based initiatives to continue to provide legal assistance in rural and remote communities. For example, in Western Australia this has included Virtual Office where online legal appointments are made in community organisations in rural and remote communities and the remote domestic and family violence duty lawyer service where Perth-based solicitors provide legal assistance to women and children who have experienced domestic and family violence in remote communities. In Queensland this has included a partnership initiative with the Law Society to increase legal practitioners in rural and remote communities.

Alongside this, all Legal Aid Commissions undertake regional planning with ATSILS and CLCs to help ensure coverage of legal assistance and representational need in rural and remote Australia.

It is recommended that the NLAP Review focus on the issue of rural and remote legal assistance service delivery with a view to increased investment, particularly for ATSILS, but also more broadly. It is proposed that this is undertaken in partnership with the States and Territories to look at service delivery issues, legal assistance need and funding responsibility in the context of commitment to First Nations Justice and the Closing the Gap targets.

It is also recommended that funding is urgently committed to the following to address the significant risk of not delivering legal assistance in rural and remote communities in the Northern Territory, Queensland, South Australia, Tasmania and Western Australia:

- Tailored incentive program providing \$10,000 to in-house and private legal practitioners committed to undertaking legally aided matters that can be utilised for relocation, additional leave, professional development or additional salary in return for a commitment of at least 2 years of service delivery in remote communities (\$1 million per annum);
- National expansion of the WA Regional Graduate Program for 30 graduates to rotate amongst remote communities over 2 years, with a focus on First Nations graduates. This would provide salaries, administration and supervision support and HELP fee relief (\$5 million per annum);
- National expansion of the WA and NT Virtual office program to connect remote communities with online legal advice and assistance (\$500,000 per annum);
- 50% contribution towards Bush Court legal assistance service delivery in the Northern Territory to assist with meeting Closing the Gap targets (\$500,000 per annum);
- National campaign to attract law students and graduates to working with Legal Aid Commissions in rural and remote communities (\$1 million per annum).

## CYBERSECURITY RISK MANAGEMENT

### Our ask:

Cybersecurity risk management is a responsibility of both Federal and State/Territory governments. Some Legal Aid Commissions have received additional resources from State/Territory governments to address these risks, but others have not. It would be useful for the joint responsibility to be recognised and a joint approach adopted with resourcing committed to by both the Federal and State/Territory governments. This commitment could be considered as part of the NLAP Review. However, immediate funding is required for the following:

1. Capital upgrade expenditure of **\$4 million** to address identified cybersecurity risks in the IT infrastructure of Legal Aid Commissions (one off funding)
2. Risk management operating expenditure of **\$7 million per annum** to continue to address cybersecurity risks of Legal Aid Commissions (per annum)
3. **\$4 million contingency fund** to be accessed by Legal Aid Commissions, CLCs and ATSILS as needed if cybersecurity incidents occur that would provide early management and provide risk management support, including assistance to help ensure the safety of clients in circumstances of vulnerability

All Legal Aid Commissions possess personal and sensitive client data about members of the public in circumstances of vulnerability. Nationally, Legal Aid Commissions provided over 1.9 million instances of legal assistance in 2020-2021 to people experiencing disadvantage. A high proportion of these clients are vulnerable and include women and children escaping domestic and family violence and sexual violence, vulnerable children, people with disability and people from culturally diverse or First Nation communities.

All types of legal practice across Australia are increasingly digitising records. In order to provide this assistance it is necessary to create records and to retain them in line with professional legal practice and varied state archiving and retention acts. Data held includes personal information, sensitive personal information (both as defined by the Australian Office of the Information Commissioner), and additionally information specific to legal matters, which is subject to legal privilege. Due to these requirements, it is estimated that Legal Aid Commissions hold data on over 3 million clients.

Typical examples of information routinely collected includes identifying information (including official identity documents), contact and residential details, income, tax and superannuation information, medical reports and doctors' certificates, photographs, videos and audio, along with other very detailed information relating to legal matters, including some graphic content. The information is collected either directly from clients, from other legal practitioners, or others within the justice sector such as policing agencies and courts.

It is critical that this information remains protected from cybersecurity incidents and that Legal Aid Commissions are able to ensure the confidentiality of this information for clients to assist in maintaining their safety and to engender trust.

Legal Aid Commissions must also be mindful of the implications for the administration of justice if significant amounts of legally privileged client information were to be released into the public domain.

Cyber security is a growing organisational risk for Legal Aid Commissions. Based on the Australian Cyber Security Centre system hardening standards (including a subset called the Essential 8 which is used Australia wide as an initial stance against Cyber threat and used as a common Cyber Security Maturity Benchmark) Legal Aid Commissions have identified four areas where they can undertake improvements to cyber resilience:

1. Tailored cyber awareness learning and development initiatives based on systems that staff use providing:
  - Protection against human error which is reported to play a part in up to 90% of all successful cyber attacks
  - A cost-effective additional line of defence against cybersecurity threats
  - Better learning outcomes than generic training packages
2. Additional resources for detection, protection, and testing as part of a cyber strategy providing:
  - Protection against exploitation of system vulnerabilities, which is a common form of cyber-attack
  - Access to additional technical roles in a competitive and shrinking market
  - Opportunities for unused resources to be redeployed into upgraded services from a managed security service provider
3. Additional resources for data governance and privacy providing:
  - Improved ability to prevent, respond to and reduce the impacts of a cyber breach.
  - Advice and support for implementation of protective data security obligations and ensure that data is managed securely and appropriately throughout its lifecycle.
  - Advice, design and development of privacy resources as they relate to information and training.
  - Support for reduction of personally identifying information reducing the risk of sensitive information that can be exposed.
4. Additional resources for cyber crisis response and recovery providing:
  - Better integration of cyber processes into existing risk and business resilience frameworks
  - Improved readiness to respond to cyber incidents and reduced business disruption

It is proposed that funding is provided to assist in addressing these risks in each area via one off capital expenditure, ongoing operational support and a contingency fund. It is particularly critical that this is managed with client safety as a priority, particularly for vulnerable clients such as women and children escaping domestic and family violence. It is noted that these risks are also applicable to ATSILS and CLCS and so funding across the legal assistance sector is required to address this. At a minimum, it is proposed that the contingency fund in the event of a cybersecurity incident is accessible to all legal assistance providers including Legal Aid Commissions, CLCs and ATSILS.