

National Report Template ILAG Ottawa June 2019

1. Country details

Name: Australia

Population: 25 million¹

GDP: \$1.323 trillion (2017 USD)²

Poverty line: 50% of median income or \$433/week (AUD in 2018)³

Percentage of population living in poverty: 13.2% living below 50% of median income in 2018⁴

Number of practising lawyers in Australia: 66,211 in 2014⁵

2. Legal Aid Organisation / Authority:

There are eight Legal Aid Commissions (LACs) in Australia (one for each of the six states and two territories). Each LAC is an independent statutory body, established under an Act of the State or Territory in which it operates.

Legal aid is delivered through a mixed model, meaning that work is distributed between salaried in-house lawyers and private practitioners working at legal aid rates.

Nationally in 2017-18, 29% of grants (43,723 cases) were dealt with in-house, while 71% (106,517 cases) were assigned to private lawyers.⁶

The method of payment for private practitioners varies between states – some LACs use an hourly rate while other LACs have fixed fees for particular types of work.

¹ <https://www.abs.gov.au/ausstats/abs@.nsf/0/1647509ef7e25faaca2568a900154b63?OpenDocument>

² <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=AU>

³ https://www.acoss.org.au/wp-content/uploads/2018/10/ACOSS_Poverty-in-Australia-Report_Web-Final.pdf

⁴ 12.

⁴ Ibid.

⁵ <https://www.lawcouncil.asn.au/resources/faqs/how-many-lawyers-are-there-in-australia>

⁶ <https://nla.legalaid.nsw.gov.au/nlareports/reportviewer.aspx?reportname=PractitionerType>

3. Budget and Spend:

	Total Income (\$)	% from Federal Government	% from State Government
2018-19	790,490,000	29%	60%
2017-18	798,798,000	29%	59% ⁷

Australia's legal aid budget is capped on an annual basis. As a general rule, federal funding must be used for federal law matters (including family law, federal criminal law, and welfare law), while state funding must be used for state law matters (including most criminal matters and some civil matters).

4. Scope, Caseload and Eligibility:

Scope

The scope of assistance provided varies between jurisdictions and depends on legal aid capacity and funding levels at the time of application. Initial advice and duty lawyer services are usually available to everyone, regardless of means. For ongoing representation in civil and criminal cases, means, merits, and matter tests apply, although there are slight differences in each jurisdiction. In the Australian Capital Territory, there are three criteria for determining the availability of legal assistance. These are:

1. The person needs legal assistance but cannot afford a private lawyer;
2. It is a type of case in which legal assistance may be granted; and
3. It is reasonable in all circumstances to provide the assistance

The first criteria (the means test) looks at a person's income and assets to determine whether they can afford a private lawyer. However, due to capped funding, the means test is applied very strictly and there are many people who cannot afford a private lawyer but are nevertheless ineligible for legal aid. This phenomenon is known as the 'justice gap' and it is a major access to justice issue in Australia.

The second test looks at whether the case is an eligible matter. All serious criminal charges will be eligible matters. In civil law matters, legal assistance will not normally be available where a case could reasonably be conducted privately under a conditional fee agreement (for example, most personal injury cases).

The third test considers two questions. The first question is whether a prudent self-funded litigant would risk their own financial resources to litigate the matter. This criteria aims to ensure that people who qualify for legal aid are

⁷ <https://www.nationallegalaid.org/resources/finance/>

not placed in a better position than ordinary people who must fund their own legal actions. The second question is whether the costs involved in providing the assistance are warranted relative to the potential benefit to the person or the community. This criteria considers whether people are at risk of substantial loss if the action is not taken, for example the loss of housing or livelihood. A benefit to the community may also include cases that raise new questions of law and therefore may be important in developing legal precedent.

Finally, LACs must consider the availability of funds. Where less funding is available, the above tests will be applied more strictly.

Caseload

In 2017-18, Australian Legal Aid Commissions provided over 2.2 million services. The number and type of services provided is set out below:

Service Type	Number of Services	Proportion of total services (%)
Representation	150,243	6.5%
Dispute Resolution	8,047	0.35%
Duty Lawyer Services	486,923	20.4%
Legal Advice & Legal Task	357,295	16.8%
Information and Referral	1,336,697	55.7%
Community Legal Education (Number of presentations conducted)	3,644	0.17%
Community Legal Education (Number of publications created)	1,788	0.07%

In 2017-18, LACs received 179,453 applications for grants of representation. Of these applications, 84% were approved and 15% were refused. By law type, 63% of applications received related to criminal law matters, 34% related to family law matters, and 3% related to civil law matters.

Eligibility

Proportion Eligible: The Australian Government Productivity Commission estimates that only 8% of the population is eligible for a grant of aid (meaning a grant of ongoing representation in a matter) based on income and assets tests.⁸ However, other services including duty lawyers, community legal education, and legal advice are provided free of charge with no means test.

⁸ Productivity Commission 2014, *Access to Justice Arrangements*, Inquiry Report No. 72, Canberra, 1021-22.

Limits for Criminal Legal Aid: The leading authority on legal aid in criminal cases is a 1992 High Court decision which held that where an indigent defendant is charged with a serious criminal offence and, through no fault of his or her own, is unrepresented, a trial judge should normally grant a stay or an adjournment until the accused can secure representation.⁹ Therefore, eligibility for criminal legal aid is effectively determined by two criteria: indigence, and the seriousness of the offence. In general, any indigent accused who is at risk of incarceration will be eligible for legal aid.

Client Contributions: Client contributions vary between LACs. All LACs provide information, initial advice, and duty lawyer services free of charge. LACs may require clients to contribute to the costs of more expensive services such as grants of representation and dispute resolution services. The amount of any contribution will depend on circumstances. Some LACs place charges over property to cover the cost of a contribution. The amount will be then recovered if and when the client sells their property.

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

5. Quality Assurance:

System used – Complaints to LAO, Complaints to the Bar Association/ Law Society, Client Satisfaction questionnaires / interviews, CLE, Mentoring, Peer Review, Supervisor audit, Observation or video/audio tape etc?

Legal aid providers in Australia utilise a variety of quality control systems. The most commonly used systems are:

Supervision and Mentoring: all in-house legal aid lawyers receive supervision, mentoring, and training. LACs maintain a balance of junior and senior lawyers, and use this structure to supervise and develop junior lawyers. In-house supervisors observe junior lawyers in court, review in-house files, and periodically hold case conferences to evaluate progress on large matters.

Complaints: Legal Aid Commissions have complaint mechanisms which allow clients and community members to raise quality concerns about legal aid

lawyers. These complaint mechanisms operate in addition to the Law Society and Bar Association complaint functions that apply to all lawyers.

Audit/Peer review: all jurisdictions undertake auditing/peer review of files. LACs also distribute work by utilising select panel system of lawyers who are qualified to receive work; in some jurisdictions specialist panels have also been established, for example, for appointment as an Independent Children's Lawyers in family law proceedings.

What requirements are there (if any) for lawyers and others who wish to provide legal aid, other than membership of the Bar / professional association e.g. registration, experience, special exams, interviews, upper or lower limits on number of cases undertaken annually etc ?

In all jurisdictions, legal aid lawyers are only required to hold a practising certificate and comply with general professional development requirements.

6. Public Legal Education:

Initiatives in last two years to increase public awareness of the availability of PFLS/ legal aid in your jurisdiction and how to access it. (Include any particular approach for those in remote areas or those with special legal needs).

Legal aid providers around Australia have developed a range of new initiatives to raise awareness of legal assistance services, as well as self-help resources for people who may be ineligible for a grant of representation.

Several Legal Aid Commissions have recently launched 'chat lines' on their websites, so that visitors can interact with paralegals in real time. These interactions allow website visitors to ask questions as they arise and receive accurate information specific to their circumstances. Paralegals can make an appointment with a legal aid lawyer or refer the client to another service where appropriate.

Elder abuse is also a growing issue in Australia, and there are a number of new initiatives for reaching out to older people. Legal Aid ACT undertakes regular outreach sessions at libraries, which has been an effective means of reaching out to older people. Legal Aid ACT also produced a bookmark about elder abuse that has been distributed through the 'Home Libraries Service', a service that distributes books to those who are housebound. Health justice partnerships with hospitals have also been effective in connecting with the older demographic.

LACs have produced a range of visual aids, such as a 'Panotour' of the Magistrates Court, so that people who are attending court for the first time can

familiarise themselves with the environment and the process. This includes an explanation of how to find the legal aid duty lawyer and the assistance they can provide.

Participation in radio programs have also been an effective means of reaching both older people and people living in remote areas. These sessions often focus on a particular area of law and provide information on the services available through legal aid.

Many LACs have also developed a range of online video resources which increase accessibility for people with low literacy or those who are unlikely to read flyers or other handouts. Most Legal Aid Commissions maintain a range of community legal education videos which explain legal processes in a simple way. For example, the video series 'What's the Law?' was developed to explain the Australian legal system to migrants. Legal Aid Queensland has also developed a series of 'webinars' aimed at people working in the community service sector, in order to help these workers to identify legal issues amongst their clients and provide referrals.

LAC are also working to place video resources on computers in prison libraries, so that prisoners have easy access to information on legal aid services and the law. Many LACs also undertake legal education sessions in prisons, in recognition of the fact that many prisoners also struggle with civil law issues which may be difficult to address while incarcerated.

Has there been a country wide Needs Assessment study in your jurisdiction in recent years, looking at the distribution of justiciable problems and how the public respond to them?

The most recent nation-wide survey of legal need was the 2012 Legal Australia-Wide Survey (LAW Survey).¹⁰ Legal aid providers in Australia are currently investigating the possibility of commissioning a second study in order to see how legal needs have changed.

7. Alternative Sources of legal services:

Legal Aid Commissions are the largest providers, by volume, of legal assistance services. Other legal services include:

Aboriginal and Torres Strait Islander Legal Services (ATSILS): ATSILS provide culturally appropriate legal services to Aboriginal and Torres Strait Islander people. ATSILS and LACs often work collaboratively to provide legal services to Indigenous people. ATSILS can refer clients to LACs where they have a conflict of interest, and vice versa.

¹⁰ [http://www.lawfoundation.net.au/lif/site/templates/LAW_AUS/\\$file/LAW_Survey_Australia.pdf](http://www.lawfoundation.net.au/lif/site/templates/LAW_AUS/$file/LAW_Survey_Australia.pdf)

Family Violence Prevention Legal Services (FVPLS): FVPLS provide assistance to Aboriginal and Torres Strait Islander people who are victims or survivors of family violence. FVPLS are specialist units which provide legal and non-legal support that is culturally appropriate and tailored to the needs of Aboriginal and Torres Strait Islander people.

Community Legal Centres (CLCs): CLCs are not-for-profit, community based organisations that usually specialise in providing legal services to a particular group of people (for example, Womens' Legal Services) or in a particular area of law (for example, the Consumer Law Centre or the Insurance Law Centre). There are 181 CLCs in Australia.¹¹

There are also a number of state and national forums that facilitate collaboration between the various legal aid providers. For example, the directors of each LAC participate in National Legal Aid (NLA). NLA allows the different LACs to share ideas on best practice, as well as facilitating collaboration on law reform issues in order to provide a unified voice to government. The Australian Legal Assistance Forum (ALAF) is another forum in which representatives from the different services (LACs, ATSILS, FVPLS, and CLCs) come together to cooperatively address issues in the legal assistance sector.

8. Holistic legal services:

There are a many national and state-based initiatives that promote holistic legal assistance service delivery.

Nationally, for example, the largest program for holistic legal assistance service delivery is the LACs' Family Advocacy and Support Service (FASS). FASS provides assistance in family court matters to people who have experienced family violence, or have used or are alleged to have used family violence. The FASS program recognises that matters involving family violence are often very complex, and clients may be more vulnerable and require more assistance than in other matters. The FASS service is primarily a court based walk-in service through which clients receive assistance from a lawyer and social worker. While the lawyer assists with the family law and other legal matters, the social worker assists with the surrounding non-legal issues. FASS social workers can assist clients to access social services including welfare, counselling, housing, drug and alcohol programs, and behaviour change programs. The lawyer and social worker also collaborate with the client, the court, and the police, to provide safety planning where necessary. The FASS program was recently evaluated by the government, with very positive results.¹² The FASS is currently being expanded to include a

¹¹ http://www.nacli.org.au/resources/NACLI_AnnualReport1718_15Oct18_FINAL_WEB.pdf

¹² <https://www.ag.gov.au/Publications/Documents/fass-final-evaluation-report.pdf>

dedicated 'men's worker' with experience in behaviour change programs in each State and Territory.¹³

Each State and Territory LAC maintains a range of partnerships through which they provide holistic legal services. For example, Legal Aid ACT has a health/justice partnership with the local hospital under which a lawyer attends the hospital three days a week to assist vulnerable clients, especially new mothers in the maternity unit, with their legal issues. This lawyer works closely with the hospital social workers to identify clients who may need legal assistance. Many of the clients assisted through this program are experiencing a range of legal issues including family law, family violence, and child protection.

LACs also work in partnership with non-legal service providers, for example with disability advocates to provide holistic services to clients seeking administrative review of disability pension decisions. This ensures that clients with disabilities receive appropriate support throughout the review process.

In addition to these specific services, most LACs have in-house non-legal support workers. These support staff specialise in assisting clients from diverse backgrounds including Aboriginal and Torres Strait Islander people, new migrants, and people who speak languages other than English. This ensures that diverse clients are supported to participate in legal processes.

9. UN SDG Standard 16.3

Please identify any steps being taken to articulate and elaborate Sustainable Development Goal 16.3 in your jurisdiction.

- SDG 16.3 Promote the rule of law at the national and international levels and ensure equal access to justice for all

Promoting access to justice is the overriding goal for LACs. In recent years, and notwithstanding funding constraints LACs have endeavoured to improve access to justice in civil and family law, as well as the traditional area of criminal law. By providing a range of timely intervention services including community legal education, self-help resources, and referral, LACs can meet a broader range of legal need and provide greater access to justice. They also fund appeals in the higher courts, challenged lower court decisions, and seek to establish strong legal precedent, including in the State and Federal Supreme Courts and High in the High Court of Australia.

LACs also promote the rule of law through their status as independent statutory bodies. By maintaining independence from the government, LACs can assist ordinary citizens to hold the government to account for errors and

¹³ Ibid 5.

injustices. LACs also have an important role in advocating for the reform of laws that adversely affect legal aid clients.