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## **NATIONAL REPORT:**

## **AUSTRALIA**

INTERNATIONAL LEGAL AID GROUP CONFERENCE

2005

## 1. ABOUT LEGAL AID IN AUSTRALIA

### 1.1 National Legal Aid

Australia is a federation consisting of six States and two Territories:

- Australian Capital Territory
- New South Wales
- Northern Territory
- Queensland
- South Australia
- Tasmania
- Victoria
- Western Australia.

The Federal Government (known as the Commonwealth of Australia) has responsibility for specific national issues set out in the Constitution. Each State and Territory also has its own Government that is responsible for all other issues. There are eight independent legal aid commissions (LACs) in Australia, one in each of the States and Territories. The LACs are creatures of State or Territory statute, receive around 60% of their funding from their State or Territory Government with the Commonwealth Government providing the other 40%.

The directors of the LACs combine informally at a national level to form National Legal Aid (NLA). One director is selected to chair NLA on an annual basis. The role of NLA is to promote leadership and management of a national system of legal aid by sharing resources, knowledge and systems that enhance best practice and value for money in the delivery of legal aid to clients across Australia. NLA has no legal status.

### 1.2 Funding

The LACs are individually funded from three sources:<sup>1</sup>

- the Commonwealth of Australia \$128.5 million AUD (**\$101.8 million USD**)

- the relevant State or Territory Governments \$147.8million AUD (**\$117.1 million USD**)
- interest, contributions paid by clients and other income \$18.3 million AUD (**\$14.5 million USD**).

Since 1996 the Commonwealth has drastically reduced funding to legal aid. Since then it has required LACs to use Commonwealth funds exclusively for a narrow range of matters arising under Commonwealth law (mainly family law matters). These matter types are specified in restrictive guidelines prescribed by the Commonwealth. All other matters must be resourced from limited State funds. As LACs must give priority use of State or Territory revenue to criminal matters (where the client's liberty is at risk), commissions had to abolish grants of aid for most civil law services in 1996. Regrettably the "Commonwealth-State Divide" still means that civil law legal aid has fallen through the cracks in Australia and the Commonwealth shows no signs of correcting this great gap in legal aid services.

## 2. LEGAL AID SERVICES

All LACs provide grants of legal assistance to enable financially disadvantaged and marginalised members of the community to obtain legal representation. For the reasons discussed above, most grants are in the criminal law, family law or child welfare jurisdiction. LACs also provide other legal aid services, including:

- Duty lawyer services
- Legal advice services
- Telephone information service
- Community legal education
- Primary dispute resolution services in family law.

Some LACs also administer Community Legal Centre funding programs.

<sup>1</sup> Based on 2003/04 budgets.

### 3. GRANTS OF LEGAL ASSISTANCE

#### 3.1 Financial eligibility

Financial eligibility is assessed according to a national means test. The test considers the income and assets of the applicant and any financially associated persons according to standard criteria. However, the actual income, deductions and assets thresholds vary between States, depending

on local cost-of-living indices. Applicants who have the ability to contribute to the cost of their case are required to make payments based on a sliding scale and/or to provide security over real estate.

By way of example, the following charts show eligibility thresholds for income and assets in Victoria. The thresholds may differ in other States and Territories.

#### Eligibility threshold for income in Victoria

Estimated cost of legal services	Maximum income
Up to \$1320 AUD ( <b>\$1,045 USD</b> )	Assistance not usually granted if net disposable income exceeds \$359 AUD ( <b>\$284 USD</b> ) per week
Between \$1320 AUD ( <b>\$1,045 USD</b> ) and \$5570 AUD ( <b>\$4,411 USD</b> )	Assistance not usually granted if net disposable income exceeds \$429 AUD ( <b>\$340 USD</b> ) per week
Above \$5570 ( <b>\$4,411 USD</b> )	Assistance granted unless contributions exceed estimate of legal costs.

#### Eligibility threshold for assets in Victoria

Asset	Maximum value of assets \$AUD	\$USD
Reasonably necessary household furniture, clothing and tools of trade	Not applicable	N/A
Principal home	\$306,000	\$242,352
Motor vehicles	\$12,620	\$9,995
Additional assets:		
• Applicants without a financially associated person, or	\$850	\$673
• Applicants with a financially associated person.	\$1,700	\$1,346

#### 3.2 Other eligibility criteria

The other criteria for provision of legal assistance are:

- the merit (likelihood of success) of the case.
- whether the benefit derived from representation is proportionate to the cost of the case.
- the relevant guidelines for assistance for each area of law. Uniform guidelines apply across Australia for cases involving Commonwealth law but

guidelines vary between States for cases involving State law.

#### 3.3 Areas of law

Most LACs allow grants of assistance in the following areas of law:

##### Criminal Law (mainly State law)

- summary crime (lower court)
- bail
- criminal trials (jury, serious crime)
- appeals.

### Family Law (all Commonwealth law)

- separate representation of children
- residence and contact orders
- child support
- limited divorce
- limited property disputes

### Civil Law (State and Commonwealth law)

- mental health tribunals (for patients in psych institutions under involuntary treatment orders)
- family violence
- child protection
- war veteran's pension matters.

### **3.4 Total legal representation provided**

The table below shows the number of applications for legal assistance received for each law type. The number of applications received that were approved and resulted in a grant of assistance is also shown. The balance of the applications were refused or withdrawn.

Legal representation is also provided via duty lawyers. Duty lawyers provide assistance to people who attend court without legal representation and who would otherwise be unrepresented.

#### **Applications 2002-03**

	<b>Family</b>	<b>Civil</b>	<b>Criminal</b>	<b>Total</b>
Applications Received	55,256	14,773	118,701	188,730
Applications Approved	39,844	10,074	103,691	153,609

#### **Duty lawyer services 2002-03**

	<b>Total</b>
Duty lawyer services provided	232,704

#### **Total legal representation provided 2002-03**

	<b>Total</b>
Duty lawyer services and grants of assistance provided	386,313

### **3.5 Demographics**

In 2003 Australia had an estimated population of 19.9 million people.<sup>2</sup> Grants of assistance were made to less than 1% of the population.<sup>3</sup>

### **3.6 Type of legal representation**

Legal representation is provided through in-house lawyers and through private lawyers funded by LACs. Legal representation includes preparation of legal documents, negotiations and representation at Court. In 2002-03, on average, in-house lawyers represented 45% of legally assisted litigants.

### **4. OTHER LEGAL AID SERVICES**

#### **4.1 Duty lawyer service**

LACs provide duty lawyer services to various Courts throughout Australia. Duty lawyers provide assistance to people who attend Court without legal representation and who would otherwise be unrepresented. In 2002-03 duty lawyers provided 232,704 services across Australia.

#### **4.2 Legal advice service**

LACs provide face-to-face legal advice to clients at LAC offices and selected prisons, youth detention centres and mental health institutions. In 2002-03, LACs provided 238,191 advice services across Australia.

<sup>2</sup> Australian Bureau of Statistics data, December 2003.

<sup>3</sup> Based on 153,609 grants of assistance

### 4.3 Telephone information service

LACs provide free telephone legal information and referral services. Some LACs provide these services in languages other than English.

### 4.4 Community legal education

LACs provide community legal education materials, such as publications, seminars and workshops, and websites. Some LACs also provide public access to law library collections.

### 4.5 Community Legal Centre funding programs

Community Legal Centres (CLCs) are independent, community based but government funded organisations that provide specialised or general legal services including free legal advice and assistance, advocacy, community legal education and law reform activities. CLCs are community managed and harness volunteer support to a level almost equal to their funding. Some LACs administer funding programs for CLCs. Funding programs ensure that CLCs fulfil service delivery targets and operate within appropriate governance frameworks.

### 4.6 Primary dispute resolution (PDR)

Most LACs provide primary dispute resolution services in family law. PDR services engage with parties (and their lawyers in some States) to facilitate dispute resolution in a non-adversarial forum. The PDR models vary between States, but may include components of legal advice, education, conciliation and negotiation.

## 5. NEW DEVELOPMENTS

### 5.1 Australian Total Legal Aid Solution (ATLAS)

Seven Australian LACs, together with New Zealand Legal Aid, are developing an integrated IT solution for legal aid case management, electronic document management and grants management. In

2003-04, a contractor was engaged to pilot and develop the final requirements for the design, development and implementation phases.

### 5.2 Legal Aid Congress

The Legal Aid Congress was held in Brisbane, Australia on 18 and 19 November 2004. A wide variety of national and international delegates from Australian and overseas legal aid commissions, CLCs, the legal profession and government attended the conference to discuss the challenges and opportunities facing the legal aid sector. Speakers included:

- Angela Longo, CEO of Legal Aid Ontario.
- Dr Ab Currie, Principal Researcher, Access to Justice and Legal Aid Research and Statistics Division, Department of Justice, Canada.
- Pascoe Pleasance, Head of Legal Services Research Centre, United Kingdom.

The Congress passed the following resolutions unanimously:

- *that the Australian Legal Assistance Forum (ALAF) develop a proposal for a national civil legal aid scheme*
- *that ALAF develop a set of national research priorities for the future of legal aid in Australia.*

These resolutions closely reflect the major recommendations of the 2004 Commonwealth of Australia Senate Inquiry into legal aid in Australia. Both address the major problems in the current Australian legal aid system – the scarcity of legal aid for civil law matters and the paucity of information about the location, nature and quantum of unmet legal need. Papers from the Congress are available at: <http://www.legalaid.qld.gov.au/gateway.asp>

### 5.3 New family law publication

In 2005 National Legal Aid produced a new national publication *Untying the Knots – Your guide to family law*. This collaborative effort between LACs in each State and the Northern Territory drew upon the experience

and expertise of many family law and community legal education professionals across Australia. It is intended to provide a first port of call for people seeking legal information about family law, and is also a source of referral for services associated with legal and non-legal issues in family law, such as primary dispute resolution services.

Each State and Territory has its own colour-coded edition. In each edition the first part relates to local law and services (including Legal Aid services) and the second (and common) part covers the Commonwealth family law system. *Untying the Knots* includes relevant and current legal information on relationship breakdown and separation, family violence, children's and property issues, proof of parenthood, changing names and wills. It covers both State and Federal jurisdictions as well as heterosexual and other relationships.

#### **MORE INFORMATION**

More information about National Legal Aid and links to each State LAC are available at:

[www.nla.aust.net.au](http://www.nla.aust.net.au)

Statistics for all LACs for 2004-05 year to date are available at:

[www.legalaid.tas.gov.au/nla](http://www.legalaid.tas.gov.au/nla)

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