

COUNTRY REPORT:

AUSTRALIA

INTERNATIONAL LEGAL AID GROUP CONFERENCE

2007

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 (also known as the Commonwealth) 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. In understanding the present Australian system it is important to note that Commonwealth legislation governs matrimonial, social security and immigration law. State legislation governs almost all criminal law, child protection and family violence law.

There are eight independent legal aid commissions (LACs) in Australia, one in each of the states and territories.

The directors of the LACs combine 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.

1.2 Funding

The LACs are individually funded from three main sources. In 2005-06, they received total funding of \$409.5 million AUD (**\$339 million USD**), made up of:

- \$147.3 million AUD (**\$121.9 million USD**) from the Commonwealth of Australia
- \$172.3 million AUD (**\$142.6 million USD**) from the relevant state or territory governments
- \$89.9 million AUD (**\$74.4 million USD**) from interest, contributions paid by clients and other sources of income.

Since 1997, when federal funding of legal aid was sharply cut, the Commonwealth has maintained a policy that has become known as the Commonwealth-State divide. The policy requires LACs to

use Commonwealth revenue exclusively on a narrow range of matters arising under Commonwealth law, mainly matrimonial law matters involving issues of custody, contact & residence of children. In addition to confining the use of Commonwealth funds to Commonwealth matters, the Commonwealth policy also strictly limits the services LACs can provide in the areas of immigration and social security law.

As LACs must give priority to criminal law matters where the client's liberty is at risk, most of this work falls under state law and therefore must be funded from state revenue.

A consequence of the Commonwealth – State divide is that civil law legal aid services have been significantly cut back across Australia in the last decade. The only civil law work that remains a high priority for commissions is family law, child protection and family violence law.

The next page summarises the outputs from Commissions last year.

1.3 2005-06 Australian statistics at a glance

2005-06	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	TOTAL AUSTRALIA
Population (2004)	324,229	6,749,297	200,844	3,926,210	1,536,333	483,813	4,992,667	1,993,926	20,209,993
Funding \$'000									
Commonwealth	3,527	46,298	3,658	31,547	13,142	4,984	30,116	13,988	147,310
State	2,953	72,358	3,295	22,644	11,215	3,820	37,467	18,543	172,295
Other	1,178	31,989	712	19,330	4,437	253	28,265	3,733	89,897
Total	7,658	150,645	7,665	73,521	28,794	9,057	95,848	36,264	409,502
Grants approved									
Civil	522	1,442	181	3,727	570	14	4,978	299	11,733
Crime	1,350	41,157	1,052	19,958	8,986	4,456	22,983	6,309	105,615
Family	962	12,612	614	8,701	2,564	1,819	10,983	3,743	41,276
Total	2,834	55,211	1,847	32,386	12,120	6,289	38,944	10,461	158,624
Duty lawyer	2,554	75,558	2,290	60,133	11,003	4,824	65,128	38,369	259,859
Legal advice	4,434	76,489	4,398	51,812	38,683	6,888	55,732	31,177	269,613
Information service	10,323	242,011	2,625	176,571	62,756	24,744	73,070	68,548	484,077

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. They also provide other legal aid services, including:

- duty lawyer service
- legal advice service
- telephone information service
- community legal education
- primary dispute resolution services.

Some LACs also administer Community Legal Centre funding programs.

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 \$1475 AUD (\$1,221 USD)	Assistance not usually granted if net disposable income exceeds \$364 AUD (\$301 USD) per week
Between \$1475 AUD (\$1,221 USD) and \$6230 AUD (\$5,157 USD)	Assistance not usually granted if net disposable income exceeds \$434 AUD (\$359 USD) per week
Above \$6230 (\$5,157 USD)	Assistance granted unless contributions exceed estimate of legal costs.

Eligibility threshold for assets in Victoria

Asset	Maximum value of assets \$AUD before a contribution is levied	\$USD
Reasonably necessary household furniture, clothing and tools of trade	Not applicable	NA
Principal home	\$325,000	\$269,017
Motor vehicles	\$12,150	\$10,057
Additional assets:		
• Applicants without a financially associated person, or	\$865	\$716
• Applicants with a financially associated person.	\$1,730	\$1,432

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:

(a) Criminal law (mainly state law)

- summary crime
- bail
- indictable criminal trials
- appeals.

(b) Family law (all Commonwealth law)

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

(c) Civil law (state and Commonwealth law)

- mental health
- family violence
- child protection
- war veteran's pension matters.

3.4 Total number of grants of assistance

The following table 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.

Applications 2005-06	Family	Civil	Criminal	Total
Applications approved	41,276	11,733	105,615	158,624
Percentage of total	26%	7%	67%	100%

3.5 Demographics

In 2004, Australia had a population of 20.2 million people. In 2005-06, grants of assistance were made to less than 1% of that population (158,624 grants). The total funding for LACs (\$409.5 million AUD) equated to \$20.26 AUD (**\$16.77 USD**) per head of population.

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 2005-06, in-house lawyers represented 45% of legally assisted litigants and private lawyers represented 55%.

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 2005-06 duty lawyers provided 259,859 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 2005-06, LACs provided 269,613 advice services across Australia.

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 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)

Some 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 Federal Election

Australia has had a Liberal (conservative) Commonwealth government since 1996. This government is the architect of the Commonwealth-State divide discussed at paragraph 1.2. Later this year, there will be an election for the Commonwealth government. Recent opinion polls seem to indicate that there is a prospect that there may be a change of government. NLA is engaging the major parties to encourage them to reform & better resource the national legal aid system.

5.2 Unmet legal needs study

To date there has been no comprehensive research in Australia into unmet legal need. This has made it difficult to find empirical data to support bids for government funding or to provide a foundation for policy decisions about the nature and extent of legal aid services.

This year, NLA is commissioning the Law and Justice Foundation of NSW (LJF) to undertake a major study of unmet legal need across Australia. The study will be modelled on the internationally recognised methodology used by Professor Hazel Genn in the United Kingdom. NLA is also consulting Professor Pascoe Pleasance about the design of the study.

5.3 Older persons legal services

In 2004, people aged 65 years and over made up 13% of Australia's population. This proportion is expected to increase to 28% in 2051. These changing demographics have prompted LACs to consider the specific legal needs of older people.

In 2006, NLA wrote a law reform submission to a Commonwealth inquiry about older people and the law, highlighting research findings that older people:

- mainly require civil legal aid services, rather than family or criminal law services
- face particular barriers to accessing legal service due to health and mobility issues.

The development of services specifically tailored to the needs of the aging population is expected to become an increasing priority for LACs.

6. MORE INFORMATION

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

www.nla.aust.net.au

or please contact Tonye Segbedzi (Manager, Policy) at:

TonyeS@vla.vic.gov.au