

# **SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS**

## **BUDGET ESTIMATES 2017**

### **Attorney General's Department**

#### **Program: 1.1 AGD Operating Expenses - Civil Justice and Legal Services**

#### **Question No. BE17-010**

**Senator Kakoschke-Moore asked the following question on 24 May 2017:**

Mr Gifford: Just to note that in terms of the negotiation of the national partnership agreement changes, it will still put the emphasis on domestic and family violence, as the Attorney has said. There will be parameters set by the arrangements to the changes to the NPA which will then be the basis on which states can allocate the funding to community legal centres.

Senator KAKOSCHKE-MOORE: Going back to the funding amounts that you set out for me, how were those amounts actually determined by the Commonwealth? Are they reflective of demand? How did you arrive at those figures?

Ms Samios: There are two elements to it: as a starting point, we allocated to ensure that no state or territory would have a reduction in their funding, as against this financial year, and the remainder of the funding was allocated in accordance with the funding allocation model that is used for allocating funding under the national partnership agreement generally.

Senator KAKOSCHKE-MOORE: On notice, could you provide me with information about what that funding allocation model looks like and how money is divvied up according to that model?

Ms Samios: We can provide that on notice.

Senator Brandis: That is a model agreed with the states at the time the national partnership agreement was negotiated.

**The response to the honourable Senator's question is as follows:**

A comprehensive paper explaining the funding allocation models for legal aid commissions and community legal centres is below.

# National Partnership Agreement on Legal Assistance Services 2015-2020 – Funding allocation

## INTRODUCTION

This paper provides information on the allocation of Commonwealth funding for legal aid commissions (LACs) and community legal centres (CLCs) between the States and Territories (the States) under the *National Partnership Agreement on Legal Assistance Services 2015-2020* (the Agreement).

The Commonwealth Attorney-General's Department (AGD) has developed two new funding allocation models (FAMs) one for allocating LAC funding and another for allocating CLC funding under the Agreement. AGD has also developed a third FAM for allocating funding for providers of Indigenous legal assistance services, which will continue to be administered by the Australian Government from 2015-16.

The FAMs provide an evidence base for allocating available Commonwealth funding between jurisdictions to support similar access to services across Australia. The models achieve this by accounting for differences in legal need and the cost of delivering comparable legal assistance services, between jurisdictions.

The new LAC model improves upon previous iterations by better accounting for regional and remote service delivery costs and administrative overheads. The new LAC model also uses a more nuanced method of accounting for legal need, which is supported by statistical analysis and is consistent with suggestions made by the Productivity Commission.<sup>1</sup>

Commonwealth CLC funding is being allocated between jurisdictions for the first time. Previously, AGD has provided funding to individual CLCs, informed by historical funding levels, emerging need and in line with Commonwealth priorities. Allocating CLC funding through a FAM is a more systematic approach to funding allocation and implements recommendation 21.6 from the *Productivity Commission Inquiry Report on Access to Justice Arrangements 2014*.<sup>2</sup>

## OVERVIEW OF THE FUNDING ALLOCATION MODELS

The LAC and CLC models use a consistent methodology, comprised of four main components:

- 1) **Establishment cost**
- 2) **Population**
- 3) **Legal need indicators**
- 4) **Cost factors**

### 1) Establishment cost

Funding is allocated to each jurisdiction to account for the establishment and operational costs of delivering services, such as rent, equipment hire and other administrative overheads. The funding a jurisdiction receives under this component increases with its population size and is adjusted for 'economies of scale' (the cost advantage an organisation obtains as the size of its operations increase). This means that smaller jurisdictions receive a larger portion of establishment cost funding relative to their population size.

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<sup>1</sup> Productivity Commission 2014, *Access to Justice Arrangements*, Inquiry Report No. 72, Canberra, page 744.

<sup>2</sup> Productivity Commission 2014, page 748.

### Establishment cost (LAC model)

For the LAC model, the establishment cost component distributes approximately 20% of the national Commonwealth funding for LACs.

The proportion of funding distributed using the establishment cost component was informed by analysis of service data and findings from the *Review of the National Partnership Agreement on Legal Assistance Services* in relation to service efficiency and administrative costs.<sup>3</sup>

Once the establishment cost is allocated, half of the remaining funding is allocated by the population component and the other half is allocated by the legal need component. This 50/50 split of funding between population and legal need is supported by regression analysis of service data. The analysis found that population was the strongest indicator of demand for legal assistance services, followed by the number of people in specific high-needs groups. The 50/50 split also reflects the close relationships between legal need and socio-economic disadvantage, as demonstrated by the findings of the LAW Survey.

### Establishment cost (CLC model)

Due to the way the Commonwealth has historically funded CLCs in the smaller states and territories, introducing a new model disproportionately affects some jurisdictions. Additionally, smaller jurisdictions are less able to manage a drop in Commonwealth funding because there are fewer CLCs.

A minor adjustment was made to the establishment cost component of the CLC model for 2015-16 and 2016-17 to reduce short-term disruption to services to the extent possible, while keeping to an evidence-based distribution. A higher portion of funding has been filtered through the establishment cost component (which is more favourable to smaller jurisdictions) in the first year (at 44% of the model), reducing in the second year (to 33% of the model). From 2017-18 onwards, the model is applied as intended and without adjustment (30% of the model).

The impact of this change is marginal, but it enhances the ability of particular states and territories to manage the transition to new funding arrangements in the first two years of the agreement.

### ***Why is the establishment cost component higher in the CLC model than the LAC model?***

The establishment cost component of the CLC model is higher because the services are delivered by a number of smaller organisations rather than a single larger organisation, a LAC. Accordingly, the proportion of funding needed to account for administrative overheads is higher in the CLC model. This conclusion is supported by statistical analysis of three years of CLC and LAC service data undertaken by the department's consultant.

## 2) Population

Funding is allocated using each State's share of the national population. Population growth projections were used to keep this allocation accurate over the lifetime of the Agreement.<sup>4</sup> The use of population growth projections in the FAMs does not impact the overall amount of Commonwealth funding provided under the Agreement. This is determined by the Australian Government in the Federal Budget.

### **What are the population shares used by the funding allocation models?**

The table below provides the jurisdictional shares of the national population using population shares sourced from the Australian Bureau of Statistics (ABS).

	2015-16	2016-17	2017-18	2018-19	2019-20
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<sup>3</sup> Allen Consulting Group, 2014, *Review of the National Partnership Agreement on Legal Assistance Services*, Canberra, <http://www.acilallen.com.au/projects/23/justice/126/>

<sup>4</sup> The funding allocation models use population projections sourced from the *Australian Bureau of Statistics – Data series 3222.0: Population Projections, Australia, 2012 (base) to 2101*.

NSW	31.79%	31.65%	31.52%	31.40%	31.27%
Vic	24.78%	24.79%	24.80%	24.81%	24.82%
Qld	20.27%	20.33%	20.39%	20.45%	20.50%
WA	11.11%	11.25%	11.38%	11.51%	11.64%
SA	7.16%	7.11%	7.06%	7.02%	6.97%
Tas	2.18%	2.16%	2.13%	2.11%	2.09%
ACT	1.66%	1.66%	1.67%	1.67%	1.67%
NT	1.04%	1.04%	1.04%	1.04%	1.04%

### What is the impact of accounting for population growth?

If a State's population is growing faster than the national average, it will receive a progressively larger share of Commonwealth funding over the course of the Agreement, all else being equal. Conversely, if a State's population is growing more slowly than the national average, it will receive a progressively smaller share of Commonwealth funding.

## 3) Legal need indicators

The legal need component allocates funding using the number of people in specific high-needs groups to account for differences in the relative need for services between jurisdictions. If a jurisdiction has high legal need for its population size, it will receive a higher proportion of available funding.

The legal need component is split into three sub-components, one for each law type (ie family, civil and criminal). This is because the drivers of legal need differ depending on the type of the legal problem. The three law types are weighted by the expected mix of services delivered by LACs and CLCs. These weightings are as follows:

	Family law	Civil law	Criminal law
Legal aid commission model	80%	12%	8%
Community legal centre model	39%	55%	6%

The law type weightings for LACs are derived from Commonwealth-related legal aid expenditure data. The law type weightings for CLCs are based on the numbers of family, civil and criminal law services delivered.

Different methods were used to determine the law type weightings due to the lack of CLC expenditure data by law type. For the LAC model, expenditure data was preferred because it provides a more accurate indication of service effort than service numbers.

### How were the needs groups determined?

The needs groups were determined using regression analysis of service data. Regression analysis is a common statistical method used to determine the relationship between a dependent variable (in this case the number of legal assistance services delivered) and an independent variable (ie various indicators of legal need). Regression analysis determines, for example, whether the number of single parents, people with low education or unemployed persons in a particular area is indicative of the number of services delivered.

For each law type, LAC and CLC service data was compared with indicators of legal need at the local government area level. The indicators of legal need tested were informed by stakeholder feedback on drivers of legal need. The analysis yielded the set of needs groups that best account for variation in the number of LAC and CLC services delivered between areas for each law type.

All of the needs groups used in the LAC and CLC models are statistically significant indicators of demand for the types of legal assistance services to which they relate.

### What are the needs groups?

The needs groups used in the LAC model are (in alphabetical order):

- culturally and linguistically diverse people
- Indigenous Australians
- people with a disability and carers
- people with low education levels
- prisoners
- single parents, and
- unemployed people.

The needs groups used in the CLC model are (in alphabetical order):

- culturally and linguistically diverse people
- Indigenous Australians
- people with a disability and carers
- people with low education levels, and
- prisoners.

The needs groups used in the LAC and CLC models are very similar, with LAC service data yielding two additional needs groups, single parents and unemployed persons. The number of single parents and unemployed persons were not found to be statistically valid indicators of the differing demand for CLC services between jurisdictions.

### What are the needs group weightings?

The needs group weightings for the LAC and CLC models are set out in **Table 2** and **Table 3**. The weighting indicates the number of times each person in a needs group is counted towards a jurisdiction total for each law type. A blank means the needs group was not a statistically significant driver of demand for a particular law type. This does not imply that members of that needs group do not have that type of legal problem, just that the underlying data is not a good indicator of differences in legal need between jurisdictions.

**Table 1 – Needs groups and weightings used in the legal aid commission model**

	Needs Groups	Weightings		
		Family	Civil	Criminal
<b>Legal aid commission model</b>	Single parents	2	1	1
	People with a disability and carers	1	1	
	Culturally and linguistically diverse people	1	1	
	Unemployed people	1	1	
	Indigenous Australians	1	1	
	People with low education levels	1	1	1
	Prisoners			1

**Table 2 – Needs groups and weightings used in the community legal centres model**

	Needs Groups	Weightings		
		Family	Civil	Criminal
<b>Community legal centres model</b>	People with a disability and carers		1	
	Culturally and linguistically diverse	1	1	1
	Indigenous Australians	1		
	People with low education levels		1	
	Prisoners			1

### How were the weightings determined?

AGD considered weightings based on the results of regression analysis of service data and the findings of the LAW Survey. AGD was mindful of both the prevalence of legal problems experienced by some groups, as well as evidence of unmet legal need. For example, the LAW Survey found that people whose main language is not English were less likely to take action to resolve a legal problem, less likely to seek advice, and less aware of legal assistance services.<sup>5</sup>

Citing the findings of the LAW Survey, the Productivity Commission suggested, among other things, that greater weighting should be given single parent status and disability status.<sup>6</sup> This is supported by the results of regression analysis of legal assistance service data. The adjustments made by AGD are detailed below.

### Single parents

The LAW Survey asked respondents questions about legal problems they had experienced in a 12-month period. In comparison to other respondents, single parents were twice as likely to have experienced a legal problem, 2.1 times as likely to report a legal problem with a 'moderate' or 'severe' impact on their everyday life, and 1.4 times more likely to report multiple problems. In addition, single parents had high odds of experiencing family law problems (13.3 times more likely).<sup>7</sup>

<sup>5</sup> Law and Justice Foundation of NSW 2013, 'Legal need and main language across Australia', *Updating Justice*, No. 34, [http://www.lawfoundation.net.au/ljf/site/templates/UpdatingJustice/\\$file/UJ\\_34\\_Legal\\_need\\_main\\_language\\_FINAL.pdf](http://www.lawfoundation.net.au/ljf/site/templates/UpdatingJustice/$file/UJ_34_Legal_need_main_language_FINAL.pdf)

<sup>6</sup> Productivity Commission 2014, *Access to Justice Arrangements*, Inquiry Report No. 72, Canberra, page 744.

<sup>7</sup> Coumarelos, C et al, 2012. , Macourt, D., People, J., McDonald, H.M., Wai, Z., Iriana, R. and Ramsey, S. 2012. *Legal Australia-Wide Survey: Legal Need in Australia*, August, Law and Justice Foundation of NSW, Sydney.

Regression analysis of service data found single parents, measured by recipients of single parenting payments, to be a strong predictor of demand for family law services provided by LACs. On the strength of this evidence, AGD doubled the weighting for the single parents needs group for family law services delivered by LACs.

### **People with a disability**

The LAW survey found that people with a disability were twice as likely as other respondents to have experienced a legal problem in the last 12 months and were almost three times more likely to report a substantial legal problem. Overall, people with disability were found to have higher odds of experiencing all 12 legal problem categories covered by the LAW Survey.<sup>8</sup>

Regression analysis of service data found that the number of people with a disability, measured by recipients of the disability support pension (DSP), is a strong indicator of demand for family and civil law services provided by LACs, as well as civil law services provided by CLCs.

AGD expanded the data set for 'people with a disability' to include recipients of carer payments in addition to DSP recipients. Expanding the size of the group captured effectively increases the weighting of this needs group in the LAC and CLC models. DSP recipients are people who are working age, but cannot work due to a disability and are therefore financial disadvantaged. The carer payment captures persons with a disability (including people who are not of working age, such as children, youth and older persons) via the payments made to their care-givers. When combined, these two data sets comprehensively account for disability as a driver of demand for LAC and CLC services.

### **How is funding allocated under the legal need component?**

The diagrams on page 10 illustrate how the needs groups and the weightings are used to allocate funding between jurisdictions. The needs groups are combined to obtain jurisdictional totals for each law type. These totals are multiplied by the law type weightings to obtain totals for each jurisdiction. The legal needs totals for each State and Territory are used as the basis for allocating available funding between jurisdictions.

### **What are the results of the legal need component?**

The tables below sets out the percentage results used for the allocation of funding under the legal need component of the LAC and CLC models.

**Legal need allocations**

	<b>Legal aid model</b>	<b>CLC model</b>
NSW	32.61%	34.67%
VIC	22.97%	24.66%
QLD	20.54%	17.98%
WA	9.38%	8.65%
SA	7.28%	7.32%
TAS	2.56%	2.24%
NT	3.46%	3.54%
ACT	1.20%	0.94%

These are the comparative share, by jurisdiction, of the legal needs component of the funding allocation models.

### **Why were some groups with characteristically high legal need not included?**

AGD acknowledges that the FAMs do not incorporate data on all groups that are likely to experience legal problems. There are a variety of reasons for this, such as:

<sup>8</sup> Law and Justice Foundation of NSW 2012, 'Legal needs of people with a disability in Australia', *Updating Justice No.16*, [http://www.lawfoundation.net.au/ljf/site/templates/UpdatingJustice/\\$file/UJ\\_16\\_Disability\\_AUS\\_FINAL.pdf](http://www.lawfoundation.net.au/ljf/site/templates/UpdatingJustice/$file/UJ_16_Disability_AUS_FINAL.pdf)

1. the data was not found to be a statistically significant indicator of differences in demand for legal assistance services between areas<sup>9</sup>
2. there was no nationally consistent data set available for analysis,<sup>10</sup> or
3. there was another data set that covered the same, or a very similar, group of disadvantaged or vulnerable people.

Nevertheless, the FAMs accurately account for differences in demand for legal assistance services between jurisdictions. The regression modelling used to determine the needs groups was over 90% accurate in predicting the numbers of family, civil and criminal law services delivered by both LACs and CLCs in each jurisdiction.

Analysis of LAC service data yielded a greater variety of statistically significant need groups. However, the smaller number of needs groups in the CLC model does not mean it is less effective in accounting for relative legal need between jurisdictions.

### Why do the needs groups differ from the list of priority clients?

They serve different purposes. The needs groups in the FAMs account for the relative need for legal assistance services between jurisdictions. While the list of priority clients in Schedule B of the Agreement is guidance from the Commonwealth on the planning and targeting of services.

The needs groups reflect only the most influential drivers of demand for legal assistance services, based on statistical analysis of service data. The needs groups provide a valid approximation of legal need at the jurisdictional level, however, they do not comprehensively cover the many forms of disadvantage that should be considered in the planning and delivery of legal assistance services.

## 4) Cost factors

The cost factors account for differences between jurisdictions in the cost of delivering legal assistance services. These factors are applied as ratios to all funding allocated by the FAMs. Four factors have been used, three of which are sourced from Commonwealth Grants Commission (CGC).

- 1) **The CGC wage cost factor:** Accounts for variation in the wages paid to otherwise comparable employees between jurisdictions due to differences in labour markets.
- 2) **The CGC regional factor:** Accounts for variation in the cost of delivering services between regions, such as higher wages needed to entice people to work in more remote locations and the higher cost of goods.
- 3) **The CGC service delivery scale factor:** Accounts for the increased cost of delivering services to small isolated communities, and differences in the number of people that reside in such communities, between jurisdictions.
- 4) **Cross-border factor (LAC model only):** Accounts for costs associated with granting legal aid to residents of other jurisdictions for Commonwealth law matters.

The values for each of the cost factors are set out in the table below.

Cost factor values

	CGC Wage	CGC Regional	CGC Service	Cross-border
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<sup>9</sup> For example, people who are homeless or at risk of homelessness are often a focus of legal assistance services. However, the number of homeless people in a particular geographical area was not found to be a statistically significant indicator of the number of legal assistance services provided.

<sup>10</sup> For example, the prevention of family violence is a focus for many legal assistance service providers and priority for the Australian Government. However, a lack of nationally consistent data on the incidence of family violence meant it was not possible to incorporate it into the funding allocation models without unfairly disadvantaging jurisdictions due to differences in the data sets available.



	Cost Factor	Factor	Delivery Scale Factor	factor
NSW	1.009	0.998	0.986	0.974
VIC	0.980	0.995	0.980	1.006
QLD	0.981	1.002	1.020	1.003
SA	0.980	1.006	1.005	0.983
WA	1.063	1.006	1.017	1.003
TAS	0.959	1.005	1.051	1.001
NT	1.072	1.059	1.255	1.061
ACT	1.049	0.992	0.962	1.222

*Note: The cost factors are expressed as ratios relative to a national average of 1. For example, NSW has a CGC Wage Cost Factor of 1.009 meaning that costs are 0.9% greater than the national average.*

These factors do not penalise any State or Territory on the basis of its fiscal capability. They only account for differences in the cost of delivering comparable services between jurisdictions.

#### **How was the cross-border factor developed?**

The LAC model includes a control for where LACs provide a disproportionate number of grants to residents of other jurisdictions. This reality that is not accounted for in the population, establishment cost or legal need components. The cross-border factor was developed by comparing the numbers of Commonwealth grants of aid provided by LACs to residents of other jurisdictions. Data on grants of aid was chosen because they account for approximately 70% of LAC expenditure nationally, are clearly linked to the Commonwealth's contribution to LAC funding, and other types of services (such as advice or task assistance) are not comparable in terms of unit cost.

## DATA SETS USED FOR NEEDS GROUPS

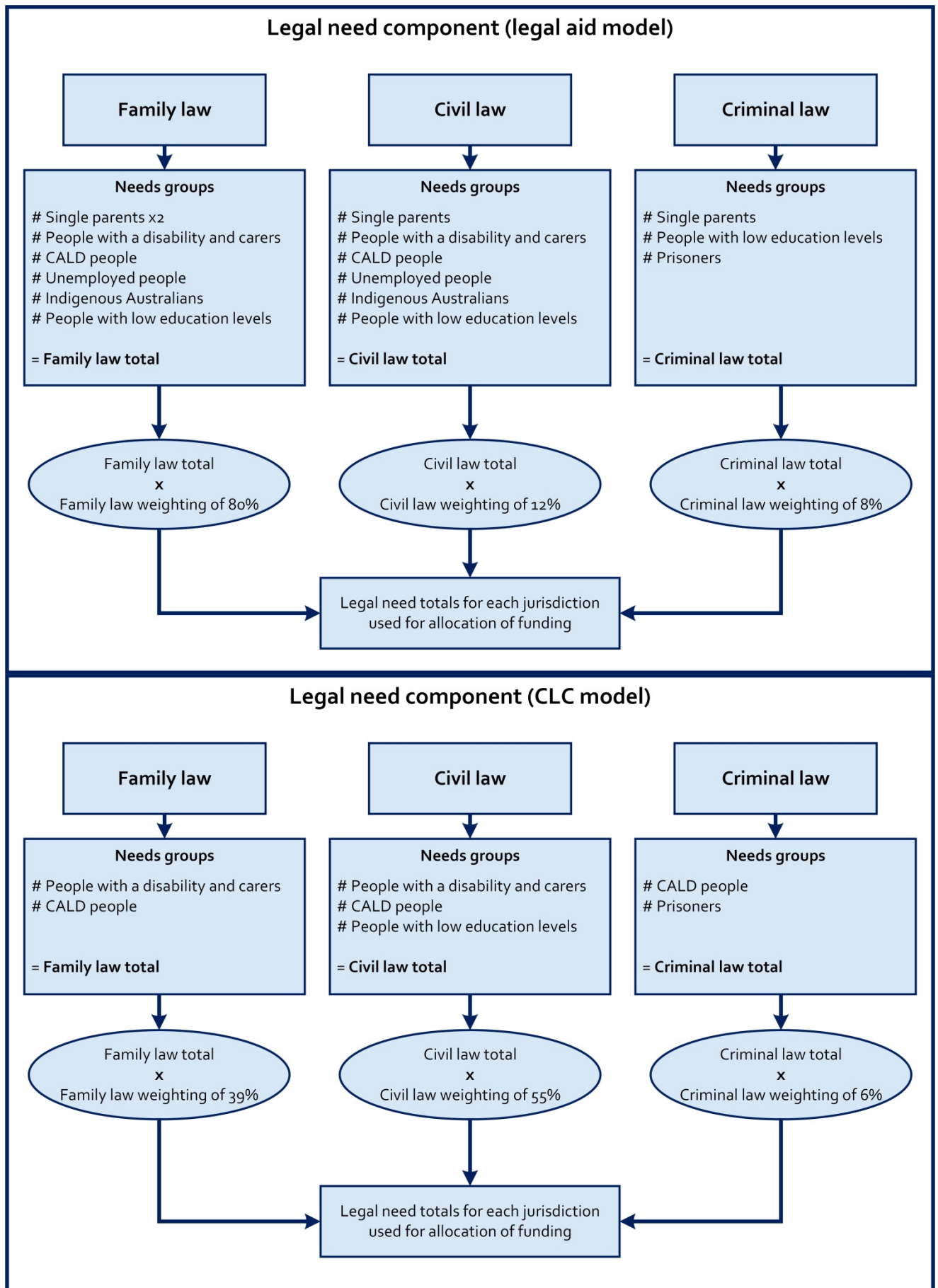
### Legal aid commission model

Needs groups	Data set(s)	Source
<b>Single parents</b>	Recipients of single parenting payments (Used for family law)	Department of Social Services – September 2014 quarter – Payment demographic data
	Single parents with children under the age of five (Used for criminal law)	Australian Bureau of Statistics – 2011 Census – X32: Family composition and birthplace of parents by age of
<b>People with a disability and carers</b>	Recipients of the Disability Support Pension and recipients of Carer Payments	Department of Social Services – September 2014 quarter – Payment demographic data
<b>Culturally and linguistically diverse people</b>	Speaks English 'not well' or 'not at all'	Australian Bureau of Statistics – 2011 Census – T11: Proficiency in spoken English/Language
<b>Unemployed people</b>	Persons looking for work	Australian Bureau of Statistics – 2011 Census – B37: Selected labour force, education and migration characteristics
<b>Indigenous Australians</b>	Indigenous population projections	Australian Bureau of Statistics – Data Series 3238.0: Estimates and Projections, Aboriginal and Torres Strait Islander
<b>People with low education levels</b>	Left school in year eight or below	Australian Bureau of Statistics – 2011 Census – B16: Highest year of school
	Did not go to school (Used for criminal law)	Australian Bureau of Statistics – 2011 Census – B16: Highest year of school
<b>Prisoners</b>	Number of prisoners	Australian Bureau of Statistics – Prisoners in Australia 2013

### Community legal centre model

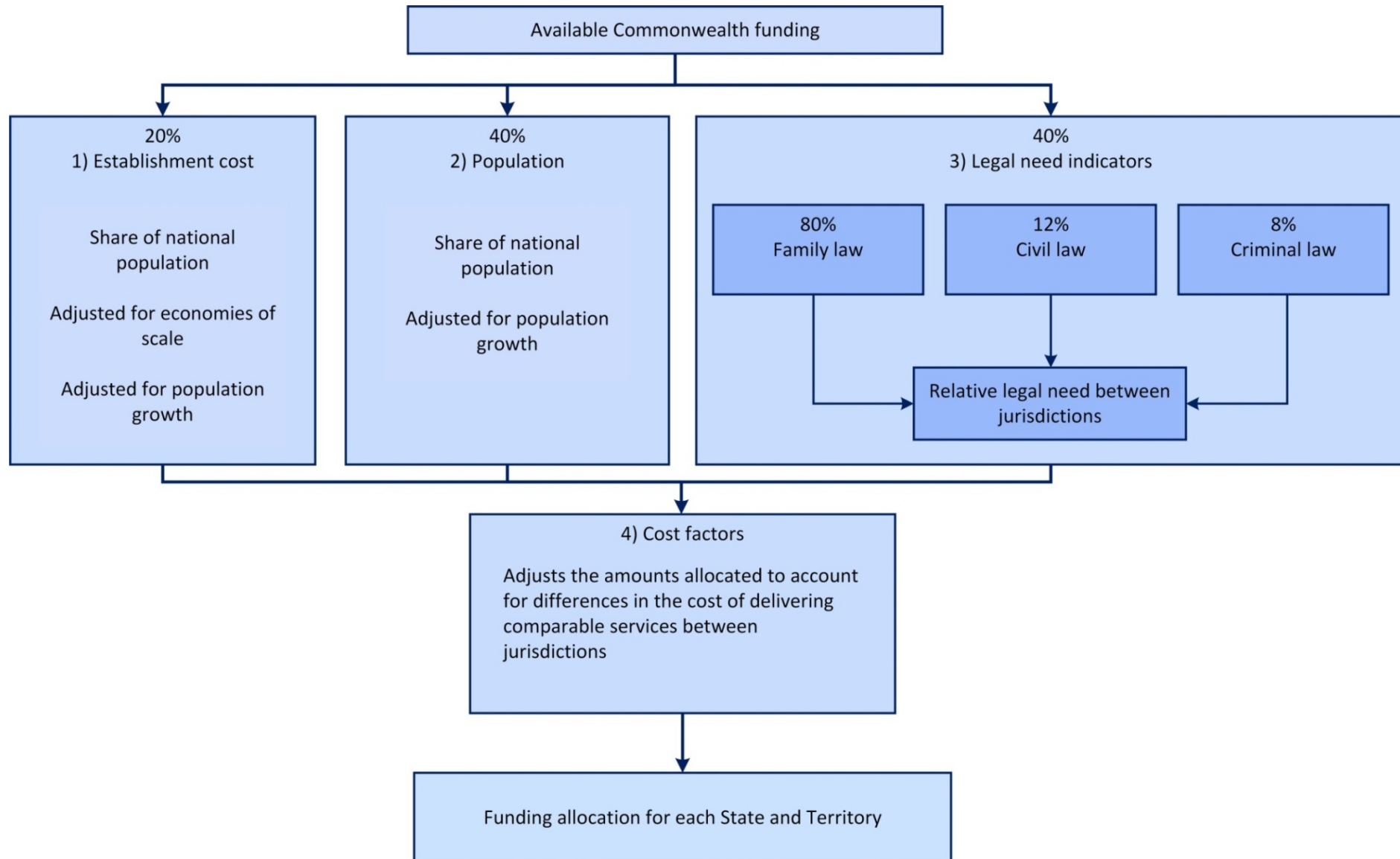
Needs groups	Data set(s)	Source
<b>People with a disability and carers</b>	Recipients of the Disability Support Pension and recipients of Carer Payments	Department of Social Services – September 2014 quarter – Payment demographic data
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<b>Indigenous Australians</b>	Indigenous population projections	Australian Bureau of Statistics – Data Series 3238.0: Estimates and Projections, Aboriginal and Torres Strait Islander
<b>People with low education levels</b>	Left school in year eight or below	Australian Bureau of Statistics – 2011 Census – B16: Highest year of school
<b>Prisoners</b>	Number of prisoners	Australian Bureau of Statistics – Prisoners in Australia 2013

## DIAGRAMS OF LEGAL NEED COMPONENT



## Model Diagrams

### Legal aid commission model



## Community legal centre model

