

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S DEPARTMENT

Output 1.7

Question No. 33

Senator Ludwig asked the following question at the hearing on 24 May 2007:

- a) How is funding for Aboriginal Legal Services determined every year? What is it indexed to?
- b) Is Aboriginal Legal Service funding linked to any assessment of need or data on levels of client demand?
- c) How is funding for mainstream legal aid determined every year? What is it indexed to?
- d) Is mainstream legal aid funding linked to any assessment of need or proposals put by the states and territories?
- e) What differences are there in the way that the funding amounts are determined?
- f) What is the rationale for these differences?
- g) How much Commonwealth funding was committed to mainstream legal aid in 2007-08?
- h) How much Commonwealth funding was committed to Aboriginal legal services, not including Family Violence Prevention Legal Services or test case funding?
- i) How is it that one program grew faster than the other? What was the rationale for this greater increase?
- j) Does your funding for Aboriginal Legal Services specify salaries and classification levels of solicitors and other staff? Does it specify how many staff it intends to fund?
- k) Does your funding for mainstream legal aid contain specifications on salaries and classification levels of solicitors and other staff? Does it specify how many staff it intends to fund?
- l) Does your funding attempt to reflect the reality that Indigenous Australians are imprisoned at 12 times the rates of non-Indigenous Australians and therefore have higher demands of representation services? If so, how?
- m) Can you confirm that the Commonwealth have full responsibility for funding Aboriginal Legal Services? Is this something the Commonwealth wishes or intends to change?

The answer to the honourable senator's question is as follows:

- a) Funding for each of the providers of the Indigenous Legal Aid Services is determined by a Funding Allocation Model. Funding was determined prior to the start of the current three year contract period. This model determines the appropriate amount of funding as a proportion of the applicable appropriation. The funding is indexed to the Wage Cost Index.
- b) The Funding Allocation Model was developed to distribute funding for legal services for Indigenous Australians according to the relative need between the states and territories. The model is based on four drivers: demography, regional dispersion, prison locations and the removal of people from their family as children. The model has the capacity to incorporate additional factors as empirical data becomes available to support the accurate weighting of those factors.

The Model will be reviewed as part of the process of developing new contracts for the provision of legal aid services to Indigenous Australians following the expiry of the current contracts in June 2008. The review will consider the Model's structure and data content, including updated

Census data when it becomes available. Existing contracted providers have also been given the opportunity to comment on the Model.

c) Funding for mainstream legal aid reflects the specific circumstances of each jurisdiction. It is primarily distributed according to the legal aid funding model which is updated every four years when legal aid agreements are renegotiated for each jurisdiction. The funding is indexed to the Wage Cost Index.

d) The legal aid funding model uses demographic, social and economic indicators relevant to each State and Territory. The model incorporates age, gender, the numbers of divorces and single parents and unemployed. It also allows for cost differences between jurisdictions to be taken account of, eg higher costs in less populous jurisdictions, costs associated with providing services in highly urbanised environments and differences in socio-economic composition.

At the start of the renegotiation of four year legal aid agreements, each legal aid commission and National Legal Aid has the opportunity to make a submission to the Attorney-General’s Department on key issues in their jurisdiction relating to Commonwealth legal aid. In addition, the Department meets every six months with each commission to discuss performance issues that may impact on the delivery of services.

e) Funding amounts for both mainstream and Indigenous legal aid are determined through the normal Budget process. There are distributional differences in the risk indicators and drivers used in the funding models, eg the mainstream model does not consider prison locations or removal of people from their family as children, but focuses on factors that are closely related to demand for family law services which comprise the major component of the mainstream program. See answers to b) and c) above.

f) The funding models were developed to include factors which were assessed as the best fit for the service requirements of the respective client groups. This is reflected in the service provision focus of each program and its respective client group.

g) The total funding for legal aid for 2007-08 is \$163.886m. This includes grants to the States and Territories and funding administered by the Attorney-General’s Department in respect of the Expensive Commonwealth Criminal Cases Fund, illegal foreign fishing prosecutions and the Regional Innovations Program for Legal Services.

h) Funding for Indigenous legal aid services, not including Family Violence Prevention Legal Services or test case funding, is as follows:

Financial year	2005-06	2006-07	2007-08
Funding (\$)	47,598,178	49,373,672	49,250,000

In 2007-08, funding for Family Violence Prevention Legal Service units, which deliver legal aid and other services to assist Indigenous adults and children who are victims of family violence is \$18.726 million.

A further \$1 million in funding will be available under Indigenous Test Case Guidelines. Indigenous legal aid services can apply for funding under the Guidelines for cases which:

- promote the review of laws and administrative practices that have the effect of discriminating against Indigenous Australians
- promote the recognition of Indigenous Australians’ social, cultural, economic, legal and political rights, and

- promote the resolution of inconsistencies and ambiguities in the application of existing laws to Indigenous Australians.

i) Both programs are adjusted under the same indexation arrangements (the Wage Cost Index). Other changes to program funding levels are the result of initiatives specific to individual programs and determined by Government in the Budget process.

j) No, the contracts of service for the delivery of Indigenous legal aid do not stipulate the salaries and classification of staff in funded organisations, nor do they specify the number of staff to be employed to deliver the services.

k) No. Employment conditions, staffing numbers and classifications and use of private sector providers and their fees are matters determined by individual legal aid commissions delivering Commonwealth law services in accordance with legal aid agreements and within the funding provided by the Australian Government each year. The Commonwealth may respond to specific pressures on commissions, for example, in the 2004-05 Budget, funding was provided to assist some commissions to increase fees for private practitioners providing legal aid services.

l) One of the drivers in the Funding Allocation Model for Indigenous legal aid services is the number of prisons in each former Aboriginal and Torres Strait Islander Commission region. In addition, the Policy Directions for the delivery of legal aid services to Indigenous Australians establish five priority categories for assistance. Priority category (a) is 'providing assistance where the person may be detained in custody'.

m) The Policy Directions for the delivery of legal aid services to Indigenous Australians state that Aboriginal and Torres Strait Islander people experience far higher rates of adverse contact with the justice system than other Australians and are incarcerated at significantly higher rates than non-Indigenous people.

The Australian Government has taken responsibility for funding Indigenous Legal Aid Services under the national program of Legal Aid for Indigenous People as part of its broader strategy to address the causes and effects of Indigenous disadvantage. In addition to the services provided by Indigenous Legal Aid Services, Indigenous Australians can access other legal assistance funded by the Australian Government through mainstream legal aid commissions and community legal centres.

Australian Government funding for Indigenous legal services is provided through contracts with legal service providers. Those contracts require that legal service providers do not receive funding from another source for providing the same services stipulated under the contract. However, there is nothing in the contracts to prevent legal service providers from receiving funding support from other organisations or governments, for other, related activities. There are no plans to change these arrangements.