



LEGAL AID
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16 September 2003

Chairman
Senate Legal and Constitutional Committee
Room S1.61, Parliament House
Canberra ACT 2600

Dear Sir

INQUIRY INTO LEGAL AID AND ACCESS TO JUSTICE

Please find **attached** a submission from the Legal Aid Commission of Western Australia addressing the capacity of current legal aid and access to justice arrangements to meet the community need for legal assistance.

The submission quite unashamedly points to the parlous state of funding by the Commonwealth for legal aid in Western Australia, relative to other States. National equity does not exist and uniform access to justice across Australia is not achieved by current formulae for distributing available funds.

Legal Aid WA has addressed only those matters unique to Western Australia and limited its submission to those areas not covered in the submission made by National Legal Aid (NLA) with which it also agrees.

I would be pleased to appear before the Committee if and when it convenes in Perth.

Yours faithfully

George Turnbull
DIRECTOR OF LEGAL AID

DIRECT\ExecSec\GMPC\Letters\senate committee

SENATE LEGAL AND CONSTITUTIONAL COMMITTEE

INQUIRY INTO LEGAL AID AND ACCESS TO JUSTICE

Terms of Reference

The capacity of current legal aid and access to justice arrangements to meet the community need for legal assistance, including:

- (a) the performance of current arrangements in achieving national equity and uniform access to justice across Australia, including outer-metropolitan, regional, rural and remote areas;
- (b) the implications of current arrangements in particular types of matters, including criminal law matters, family law matters and civil law matters; and
- (c) the impact of current arrangements on the wider community, including community legal services, pro bono legal services, court and tribunal services and levels of self-representation.

Submission

The performance of current arrangements in achieving national equity and uniform access to justice across Australia, including outer-metropolitan, regional, rural and remote areas

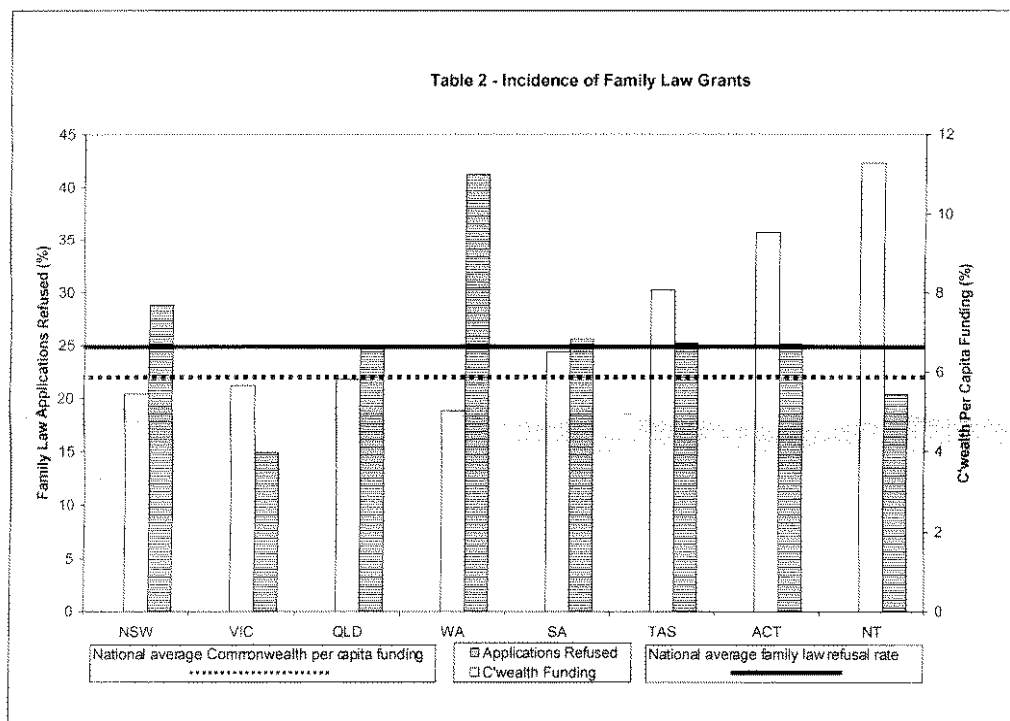
National equity does not exist and uniform access to justice across Australia is not achieved by current formulae for distributing Commonwealth funds.

Whereas State law jurisdictions differ and differences in levels of State funding for legal aid can reasonably be expected, that is not the case with respect to Commonwealth funding. It remains the case that in per capita terms, 25% fewer people obtain legal representation to resolve a family law matter in Western Australia than do the national average. With the exception of NSW, Western Australia makes the fewest number of grants for legal representation in family law matters, on a per capita basis, of all the States and Territories.

As Table 1 shows, Western Australia is the lowest funded State or Territory on a per capita basis and as a consequence maintains the highest refusal rate on applications received. The incidence of family law grants in Tasmania is more than three times the rate for Western Australia. Importantly, this does not reflect relative demand for legal assistance. It is reflective of available funds or capacity to supply legal assistance, and highlights the inequities that exist within current formulae for distributing Commonwealth funds.

Table 1 – Incidence of Family Law Grants									
2001/02	NSW	VIC	QLD	WA	SA	TAS	ACT	NT	TOTAL ('000)
Population – ABS December Qtr 02									
Raw	6,671.4	4,902.9	3,750.5	1,940.5	1,524.1	474.4	322.7	197.4	19,786
%	33.7	24.8	18.9	9.8	7.7	2.4	1.7	1.0	
Commonwealth Funding									
Raw	36,337	27,750	21,806	9,741	9,901	3,827	3,071	2,226	114,659
%	31.7	24.2	19.0	8.5	8.6	3.4	2.7	1.9	
Commonwealth Funding							National Average		
Per Capita (1000)	5.45	5.66	5.81	5.02	6.50	8.07	9.52	11.28	5.8
Applications	12,164	12,777	11,816	4710	4217	3052	1504	681	50,921
%	23.90	25.10	23.20	9.24	8.28	6.00	2.95	1.33	
Per Capita (1000)	1.82	2.60	3.15	2.42	2.76	6.43	4.66	3.44	2.57
Refusals	3510	1908	2954	1942	1081	770	379	139	12,863
%	27.28	14.83	22.96	15.09	8.40	5.98	2.94	1.08	
Per Capita (1000)	0.52	0.38	0.78	1.00	0.70	1.62	1.17	0.70	
Refusal Rate %	28.8	14.9	25	41.2	25.6	25.2	25.1	20.4	25.3
Grants	8279	10,355	8862	2913	2931	2244	1118	505	37,207
%	22.25	27.83	23.81	7.82	7.87	6.03	3.00	1.35	
Per Capita (1000)	1.24	2.11	2.36	1.50	1.92	4.73	3.46	2.55	1.88

As Table 2 shows, more than 41% of persons seeking assistance with a family law matter are refused legal representation in WA. In contrast, less than 15% of persons are refused in Victoria, with the national average being around 25%.



As Table 3 shows, Commonwealth funding to WA for legal aid in 2002/03 had still not reached levels that existed 10 years prior. The amount of funding from the Commonwealth decreased in real terms¹ by 3.2 million or 28% during this period. State funding increased by 42% in real terms, an amount equivalent to that which the Commonwealth has withdrawn.

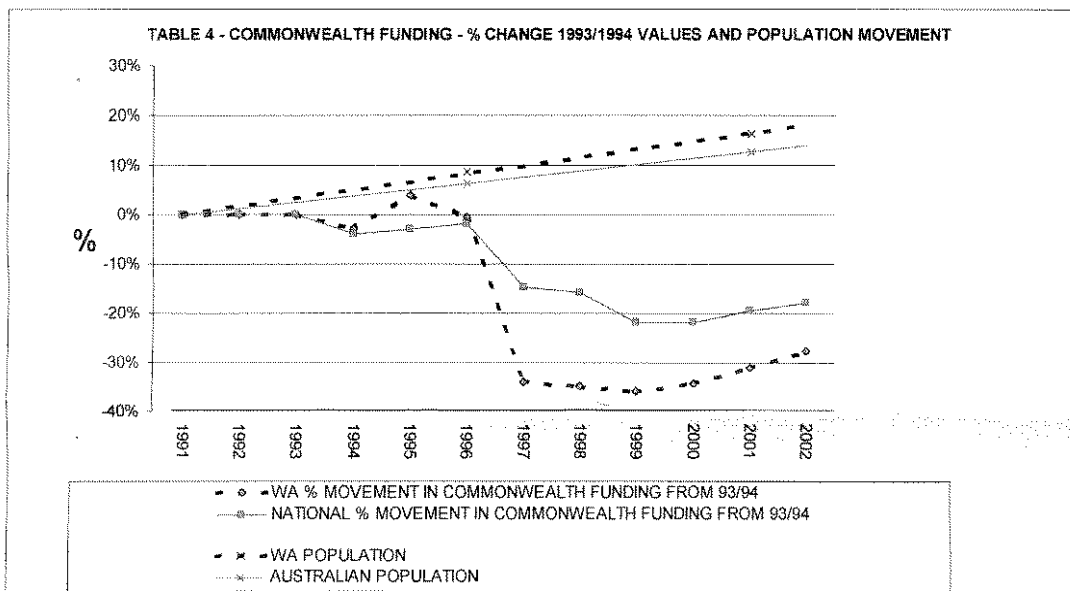
Table 3 - Funds for Legal Aid WA 1993/1994 Values (\$million)

	1993/ 1994	1994/ 1995	1995/ 1996	1996/ 1997	1997/ 1998	1998/ 1999	1999/ 2000	2000/ 2001	2001/ 2002	2002/ 2003
Commonwealth Actual	11.5	11.4	12.8	12.5	8.3	8.3	8.3	9.0	9.7	10.5
Commonwealth Converted (\$)	11.5	11.2	12.0	11.4	7.6	7.5	7.4	7.6	7.9	8.3
State Actual	7.4	7.6	8.2	8.2	10.3	11.5	13.1	12.0	12.8	13.3
State Converted (\$)	7.4	7.5	7.7	7.5	9.4	10.4	11.7	10.1	10.5	10.6

Importantly, the injection of State funds has been for State law matters consistent with the attitude of the Commonwealth and the agreements they negotiated to limit the use of funds in this way.

Whereas some States have accumulated large Commonwealth surpluses, since 1996 when agreements limited use of funds to Commonwealth law matters, we understand that Legal Aid WA is the only State Legal Aid Commission to have accumulated a deficit on Commonwealth law matters, spending \$602,000 more than it received over this period. The cross subsidisation said to exist before 1996, has now been effectively reversed.

As Table 4 shows, during the 10 year period 1991-2001, the State's population grew by 260,000 or 16%, whereas the national growth in population (including WA) was just 12%.



Data can be analysed in a variety of ways, however it should be clear that on population growth alone there has been a substantial reduction in the real value of Commonwealth funding in the past ten years to the States and that this reduction has been experienced more sharply in WA than the rest of the nation.

While Legal Aid WA welcomed the increases in quadrennial funding that commenced in 2000, it remains unclear what new formulae will apply to guarantee an equitable distribution of funds, when current agreements expire in nine months. Similarly, special funding for development of Alternative Dispute Resolution (ADR) programs is not ongoing and will require substitution of traditional litigation grants for ADR grants, when this funding stops.

In summary, there are fewer funds available to support people with their family law difficulties and WA continues to lag behind other States when it comes to an equitable share of available resources. The gap between what is promised under the guidelines, what is needed and what can be made available with monies provided has increased. What was a family law system under strain in 1993-94 is arguably, now a family law system in crisis.

The implications of current arrangements in particular types of matters, including criminal law matters, family law matters and civil law matters.

See NLA submission

The impact of current arrangements on the wider community, including community legal services, pro bono legal services, court and tribunal services and levels of self-representation.

See NLA submission

Table 5: Commonwealth funds for legal aid 1993-2003 (\$million)

State/ Territory	1993/ 1994	1994/ 1995	1995/ 1996	1996/ 1997	1997/ 1998	1998/ 1999	1999/ 2000	2000/ 2001	2001/ 2002	2002/ 2003
NSW ²	38.65	38.35	38.56	41.09	31.31	37.32	31.27	33.89	36.61	39.36
VIC ³	33.83	34.32	36.85	35.5	33.0	27.8	27.75	27.78	28.07	27.80
QLD ⁴	17.13	18.03	18.22	19.80	18.44	18.00	18.02	19.90	21.80	23.70
SA ⁵	9.40	9.08	9.51	10.21	8.96	8.96	9.28	9.58	10.30	10.88
WA ⁶	11.5	11.4	12.8	12.5	8.3	8.3	8.3	9.0	9.7	10.5
TAS ⁷	4.36	4.00	4.25	4.44	3.72	3.72	3.72	4.23	4.14	4.08
ACT ⁸	2.42	TBA	2.69	2.71	3.12	3.00	3.00	3.17	3.07	4.05
NT ⁹	2.39	2.23	2.28	2.59	2.01	2.01	2.01	2.11	2.42	2.13

National Legal Aid

Table 6: State/Territory funds for legal aid 1993-2003 (\$million)

State/ Territory	1993/ 1994	1994/ 1995	1995/ 1996	1996/ 1997	1997/ 1998	1998/ 1999	1999/ 2000	2000/ 2001	2001/ 2002	2002/ 2003
NSW ¹⁰	15.09	17.25	22.38	21.67	23.06	24.77	30.36	34.14	46.18	60.02
VIC ¹¹	23.94	23.94	24.05	22.23	22.32	22.07	26.11	31.45	32.56	34.37
QLD ¹²	9.78	8.69	9.73	10.77	14.14	15.26	17.89	18.22	20.43	20.69
SA ¹³	3.29	4.02	4.69	5.26	5.07	6.15	7.88	11.02	12.00	12.33
WA ¹⁴	7.4	7.6	8.2	8.2	10.3	11.5	13.1	12.0	12.8	13.3
TAS ¹⁵	2.23	2.60	2.69	2.73	2.70	2.73	2.74	3.08	2.85	3.00
ACT ¹⁶	1.54	TBA	2.54	1.68	1.76	1.79	1.76	1.89	2.01	2.29
NT	0.66	0.81	0.98	1.14	1.88	1.94	1.88	1.91	2.00	2.14

Endnotes

1. Adjusted for movements in Consumer Price Index (CPI).
2. Figures exclude funding for CLCs WDVCA, PIAC, EDO
3. Figures pre 96-97 include CLC funding, 96-97 exclusive of CLC funding
4. Figures excluding funding for CLCs
5. Figures excluding funding for CLCs
93-94 includes \$417,000 for one off Commonwealth project
99-00 includes \$320,000 for Expensive Case, \$300,000 refunded when case did not proceed
00-01 includes PDR funding
01-03 includes PDR and Child Support Stage 1 funding
6. Figures excluding funding for CLCs and Indian Ocean Territories services
00-01 excludes PDR funding of \$176,000
01-02 excludes PDR funding of \$560,000, Expensive Case funding of \$74,000 and Law-by-Telecommunications funding of \$50,000
02-03 excludes PDR funding of \$110,000 Expensive Case funding of \$290,000 and Law-by-Telecommunications funding of \$50,000
7. Figures excluding funding for CLCs
8. Figures excluding funding for CLCs
Total Commonwealth and State funding for 95-96 = \$4.6 million
9. 92-93 & 96-97 figures include one off payments
01-02 figures include pre-payment of \$201,800
02-03 figures exclude pre-payment of \$201,800
10. Figures exclude funding for CLCs WDVCA, PIAC, EDO
11. Figures pre 96-97 include CLC funding, 96-97 exclusive of CLC funding
12. Figures excluding funding for CLCs
13. Figures excluding funding for CLCs
00-01 figures include \$2,514,000 received for an Expensive Case
01-02 figures include \$2,593,000 received for an Expensive Case
02-03 figures include \$2,521,000 received for an Expensive Case
14. Figures excluding funding for CLCs
00-01 figures exclude \$644,000 for Expensive Cases
01-02 figures exclude \$407,000 for Expensive Cases and \$336,000 for Finance Brokers Inquiry
02-03 figures exclude \$686,000 for Expensive Cases, \$291,000 for Finance Brokers Inquiry, and \$721,000 for Police Royal Commission
15. Figures excluding funding for CLCs
16. Figures excluding funding for CLCs
Total Commonwealth and State funding for 95-96 = \$4.6 million