



LEGAL SERVICES COMMISSION
OF SOUTH AUSTRALIA

Senate Inquiry into Legal Aid and Access to Justice

Submission

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Terms of Reference

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

- (a) the performance of current arrangements in achieving national equity and uniform access to justice across Australia, including in 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;
- (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.

Executive Summary

Introduction

It is important at the outset of this submission to define the terms ‘legal aid’ and ‘legal assistance’ as they have different meanings.

‘Legal aid’ can be defined as financial assistance for representation by a legal practitioner made available to persons unable to meet the full cost of their legal proceedings without undue hardship.

‘Legal assistance’ can be defined as the provision of legal education, advice and representation.

Legal aid is an essential component of an accessible, fair, effective and efficient justice system. The well being of our legal system, and the public’s confidence in it, depend on legal aid. The mandate of the Legal Services Commission of South Australia (the Commission) is to ensure that indigence does not become an insurmountable barrier to justice. Our vision is simple - **to provide quality legal assistance to people in South Australia**. The limited resources currently available for legal aid present a challenge in meeting the needs of our clients and their communities.

Legal Aid

The Commission has established an efficient and workable structure to move clients from the least costly and most basic level of service (web based information and the Telephone Advice Line), through personal attendances at our various offices, to representation in defined, more complex matters. The focus at all times is on providing timely, cost effective and practical solutions to clients’ problems.

The Commission directly provided more than **120,000 services** during the last financial year through nearly 13,000 grants of aid, 11,000 duty solicitor appearances, more than 29,000 face to face advice appointments and 67,000 telephone advice calls. Education and web based information services were accessed over **1million times**. 93% of funds were spent on direct service delivery and of that, 83% was spent in providing representation for clients in the criminal and family courts.

Funding

The Commonwealth has a fundamental leadership role in ensuring equality before the law and access to justice for all Australians. To this end, the Commonwealth has a responsibility to provide adequate funding for a legal aid system that provides advice

and representation to those Australians who cannot afford to obtain those services for themselves.

Inadequacies of Funding

Since the Commonwealth changed the previous long standing funding arrangements in 1997 and took responsibility for assisting in Commonwealth matters only and not assisting Commonwealth 'persons', there have been significant impacts on access to legal assistance in this State.

The range of matters funded by the Commonwealth has narrowed and the overall level of Commonwealth funding has declined.

In matters funded by State and Territory governments, each legal aid commission has approached the provision of legal aid differently. The extent to which they have filled the void left by the Commonwealth varies widely. As a consequence, the system for the provision of legal aid in Australia has many gaps. There are significant numbers of people in our society whose needs are not being met. Whilst South Australia's state funding of legal aid has increased over the past five years, the legal aid system is supporting less of the population than five years ago. Grants of aid peaked at 15,517 in 1995/96 amounting to **1.08 %** of the SA population. In 2001/02, grants of aid had reduced to 13,284 amounting to only **0.9%** of the population.

South Australia

In comparison to other jurisdictions, South Australia suffers due to its relatively small population but large geographical area. The Commission has 3 offices and 2 chambers in the metropolitan and outer metropolitan area, and 1 office in a rural area. Solicitors from these offices visit some remote areas. Outreach services are currently provided to Murray Bridge from the Adelaide office. From the Whyalla office, our staff go on outreach to Port Augusta, Coober Pedy and the AP Lands, covering all areas in the State's north west. Private practitioners, the Aboriginal Legal Rights Movement (ALRM), and Community Legal Centres (CLC) throughout the State contribute to the provision of legal aid but there is great difficulty in ensuring an equitable distribution of legal aid and legal services to all people in need in South Australia.

Repercussions

The effect of an underfunded legal aid system is to skew the justice system so that many citizens are unable to exercise effectively their right to defend themselves or to challenge the administrative decisions of government.

The tightening of legal aid funding has caused blow outs in the Family Court's lists, with that situation being exacerbated by self-represented litigants stumbling through the system. This increase in unrepresented litigants in the Family Court is imposing a huge extra cost on this court as its officials attempt to assist with telephone calls, to help with applications, correct mistakes and deal with complications throughout the proceedings. Disputes that should take two days often now last four or five days. The effect is not just increased costs to the client but the potential for violence as clients frustration levels rise dangerously high.

Overall, more costs have been created than saved. This is happening at a time when the public has increased expectations of the legal system and a greater understanding of their legal rights.

There appears to have been no corresponding reduction in the gross amounts the Commonwealth provides for its own legal representation and the rates its own prosecuting authorities and departments pay for legal representation and advice. Access to representation for litigation, and legal services, in rural areas is shrinking. As funding levels have declined, legal aid agencies have been forced to implement other solutions. These have been only partly successful and have contributed to the increasing cynicism and dissatisfaction with our legal aid system. As frustration levels increase, litigants are increasingly turning to the private profession for pro bono help. An increasing level of community cynicism about the likelihood of seeing justice done is divisive and erodes community well-being and confidence in our justice system and the rule of law.

Gaps

The widening gap between the community's awareness and expectations and the publicity about funding cuts to legal aid, has resulted in a reduction in application numbers due to the perceived difficulty of obtaining legal aid.

The Commission is concerned that some defendants are pleading guilty because they cannot afford a solicitor and think there is no other option. The notion that reduced legal aid services can be substituted by self representation is not viable. Our laws are complex and the consequences of breaching them severe. The average defendant is not in a position to adequately represent themselves in court. For those who are less than 'average', the situation is even more extreme.

For example, it is totally inappropriate to suggest that people with an intellectual disability can read a leaflet or take in the guidance of a helpful Registrar to help them represent themselves before a Court or its equivalent.

As the gap between costs recovered in private practice and costs paid by legal aid commissions widens, the private profession is increasingly less prepared to undertake legal aid work.

Lawyers engaged in legal aid work observe that the Commonwealth Government pays full market rates for matters that are politically sensitive or related to its own agenda, e.g. commercial work, war crimes, prosecutions, major criminal prosecutions briefed to the independent Bar, Royal Commissions, etc. but discounts the amount paid for legal aid work.

What is needed

An analysis needs to be undertaken on a national basis to determine unmet legal needs. The submission to this enquiry by National Legal Aid provides some suggested terms of reference for such a study. The Law and Justice Foundation is currently conducting a needs study in NSW, which study is also recommended to the Senate Committee as a model.

Without legal need properly identified, it cannot be appropriately funded. The question is not how much is needed to fill the 'bucket', rather what is the size of the bucket which should be provided to satisfy properly the current need.

What should be done

The Commonwealth needs to provide funding for the following:

- Legal aid for all indigenous persons (so that their legal aid costs are met by the Commonwealth without distinction)
- an extension of legal services to rural and remote areas
- legal assistance for all migrant/recently arrived/ non naturalized overseas born persons
- payment of all interpreter fees (the Commission expended \$123,000 in the 2002/03 financial year on such fees; this should be met in full by the Commonwealth)
- all children's matters
- domestic violence related matters.

Funding needs to be put in place to enable new services to be provided as follows:

- the establishment of a duty lawyer/advice scheme to operate in every registry of the Family Court
- the establishment of a comprehensive duty lawyer scheme to ensure that all persons appearing in a court of first instance have access to legal advice and representation on at least their first occasion before the court.

The terms of the current funding agreement need to be altered to include:

- an allowance of between 5% and 10% for shifting Commonwealth funds to State matters to allow more flexibility in funding
- capital funding for new offices, and expenditure over \$200,000 on a single item needs to be separately funded (e.g. new computer management system and software)
- an inflator as per indexation in the 1989 Commonwealth/SA funding agreement based on the movement in Average Weekly Earnings and the Consumer Price Index (and not as per the current agreement)
- additional funds to be allocated when there are changes to Commonwealth legislation, Commonwealth priorities and guidelines, and policies which affect legal aid demand

This Commission would be pleased to provide any further information regarding this submission if required, and would welcome an opportunity to appear before the enquiry to clarify matters outlined herein.

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1. Introduction

Legal aid is currently suffering from the impact of changes to government policies and legislation, which changes are increasing the need for legal aid in the community and potentially increasing the pool of eligible legal aid applicants. Parliament, the Treasury, the Attorney-General's Department and the Courts need to look at the justice system holistically when any one entity makes changes or cuts funding for one or another part.

The Commonwealth's recent Family Tax Benefit changes have had a significant and direct impact on demand for legal aid for child support and family law advice and representation. Mooted changes towards 'shared joint custody' and its impact on child support arrangements are likely to again affect demand for both advice services and representation. It should not be assumed that any change or what is nominated as an 'improvement' will be cost neutral. Any change needs to be factored into funding for all participants and the Commission compensated by increased funding when changes are made.

An excellent working relationship has been established in South Australia between all stakeholders within the legal community so as to achieve efficiencies and cost savings in the delivery of legal assistance. However, legislative change needs to acknowledge and accommodate the impact on legal aid. Unfortunately, this has not always been adequately recognized and taken into account. It is important to ensure that the impact to legal aid of the many legislative changes are costed into these changes. The Commission will continue to lobby funding Governments to redress this situation.

Legal aid is fundamental to ensuring a just and equitable community where access to legal advice and services is not dependent on ability to pay. It is important that all appropriate interventions are available in a timely and cost effective manner, and that options, and the consequences of these options, are explained to the client at the earliest possible time. The best choices are made at a time when the greatest choice is available.

Existing funding does not facilitate this. Currently, this Commission just survives with tight eligibility requirements and strict guidelines controlling access to legal aid by the South Australian community. This is not how the Commission wishes to provide legal aid. There is a need to extend legal aid to a greater proportion of the population and to extend the services available. Currently, new initiatives are not able to be funded without a reduction in other areas of the Commission's work. Without additional funding, the current urgent need for an information management system, and the establishment of an urgently needed, additional regional office, will mean cuts in existing services.

The Commission is currently operating in a deficit budget environment. This is despite the fact that the South Australian economy is the strongest it has been for many years and we have a high employment rate and low interest rates. The current government funding arrangements are fixed for four years. If during those four years, the South Australian economy weakens, as is possible, and unemployment rates and interest rates rise, then there could be a 20-50% increase in the Commission's main client base with many more people in South Australia qualifying for legal aid and with a greater demand for services.

A client survey was conducted by Adstat Solutions on behalf of the Legal Services Commission during April, 2002. Its conclusion was:

“The majority of clients were happy with the outcome of their case and were pleased that their expectations had been met. It seems that even more clients might have felt this way had there been a greater availability of lawyers and legal advisers, since there were a number of comments concerning staff appearing over worked and being unable to devote as much time and effort into each individual case as the client had hoped. It was also suggested by some clients that a lack of funding might be contributing to the difficulty in arranging appointments, to the slow progress of some of the cases and some staff having very heavy workloads.

The community feels legal aid is an essential and highly regarded service, providing people with valuable legal advice and representation. The widely held belief is that an increase in funding and resources would ensure that the high standards are maintained and possibly improved upon, and that the service remains available to everyone who requires it.”

There was also an observation that the service was not accessible enough to some members of the community. An earlier survey conducted by the Commission in 1994 concluded that country clients needed more services and that they felt like second class clients. It was recommended, then, that creative solutions needed to be found to solve this problem. A measure implemented was the establishment of a Rural and Remote Outreach Service but that service ceased in 1999 due to lack of funding. Funding constraints since 1998 have impeded the Commission's ability to address this need.

A copy of both surveys will be made available to the Senate Inquiry if requested.

History of Legal Aid Funding

The Commission's legislated functions

The Legal Services Commission was established under the Legal Services Commission Act 1977. Under section 10(1) of the Act, the Commission's functions includes the provision of, arranging for the provision of, legal assistance.

Eligibility for legal aid

Section 10(2) of the Act requires the Commission, in determining criteria for eligibility for legal aid for representation, to have regard to the following principles;

- (a) that legal assistance should be granted in pursuance of the Act where the public interest or the interests of justice so require; and
- (b) that subject to paragraph (a), legal assistance should not be granted where the applicant could afford to pay in full for that legal assistance without undue financial hardship.

Who can get legal aid?

Upon receiving an application for legal aid, the Commission applies a three facets test for eligibility based on the means and merits test and the guidelines. This is the basis upon which the Commission determines whether legal aid is to be granted. The means, merits and guidelines tests, and the detailed application form required to be completed by all applicants, serve as an effective control so as to ensure that legal aid is the only provided by the commission to people who have a genuine entitlement to it.

To spread the current scarce legal aid funding across as many South Australians as possible, legal aid is not granted for all legal problems. For example, in criminal matters, there must be a reasonable likelihood of imprisonment. Family law matters must usually involve a genuine dispute over children and reasonable steps must have been taken to try to resolve that dispute.

In assessing an application for aid, the Commission takes into account the applicant's personal income and assets, and those of anyone with whom the applicant is financially associated.

Currently, most applicants with minimal savings and income will qualify for legal assistance in the means test. For criminal matters, unless the client is facing a term of imprisonment as a likely penalty, they will not qualify for a grant of legal aid on guidelines even though they may well have qualified under the means and merit tests. The Commission currently grants aid for almost no State civil law matters. In very prescribed circumstances, Commonwealth aid can be granted in migration matters and Centrelink appeals.

Applications for assistance

It may be argued that since the number of applications for aid has reduced over the last eight years, so too has the demand for legal aid. This is not the case. The number of applications for aid received, or the number of applications refused, are not of themselves reliable indicators of demand. The Commission has been very active in training community organizations about the eligibility criteria for legal aid.

Applicants may not apply for aid because of either an accurate or mistaken knowledge of the Commission's guidelines, merits and means tests. Just the complexity of the qualifying system may deter people from applying for aid in the first place.

What the Commission does

The Commission provides 5 major services to members of the public

- eligibility tested legal representation
- free face to face advice interviews
- a free duty solicitor service
- free legal advice via the telephone at the cost of a local call and via the Commission and the Law Hand Book On Line websites
- free and also fee-paying community legal education programs and the production of a range of free publications, pamphlets, kits and books.

Legal representation

Legal Representation is provided both by private legal practitioners, providing their services under legal aid fee scales at heavily discounted rates, and by the Commission's in-house practice. Clients can choose to be represented by their nominated solicitor if that solicitor is willing to accept the assignment of legal aid. In the financial year 2002 /2003, **60.5%** of all legal aid grants were assigned to private lawyers and **39.5%** to the in-house practice.

The other services of the Commission are provided only by Commission staff.

Community involvement

The staff of the Commission are dedicated and socially committed to their clients and to the ethos of legal aid. Many staff members have devoted their entire careers to legal aid clients (many of them have worked at the Commission for over twenty years). Their focus as a group is to provide legal assistance to as many members of the South Australian public as is humanly possible. Members of staff regularly contribute in their own time to the development of professional associations and other groups, including migration support groups, The Family Law Section of the Law Council of Australia, Law Society special interest committees, assistance with Community Legal Centres, prisoners advocacy, The Women's Legal Service, refugee/asylum seeker assistance and more.

Location of offices

The main office of the Commission is located in Wakefield Street in the centre of Adelaide. There are regional offices at Elizabeth, Noarlunga and Whyalla. Two chambers operate at Holden Hill and Port Adelaide. Staff from the Whyalla office visit Port Augusta, Coober Pedy and the AP Lands, covering all areas in the north-west of the State.

The Commission has a commitment to service the needs of people in regional, rural and remote areas of South Australia. Due to funding constraints the Commission has not established a new regional office since 1987.

Preliminary studies indicate that there is unmet legal need in many rural areas of South Australia. The Riverland has been recently identified as one such area and a

study into the most efficient way of delivering legal aid to regional South Australia has been commenced.

Funding Arrangements

Between 1989 and 1997, the Commission was funded through a Commonwealth/State funding agreement entered into in May, 1989 with the Commonwealth and State governments contributing for the latter part of that agreement, 60 percent and 40 percent of Government funding respectively.

Responsibility of the Commonwealth Government

In 1993, the Commonwealth Government established the Access to Justice Advisory Committee (AJAC) to examine ways in which the Australian legal system could be reformed in order to enhance access to justice and make the system fairer, more efficient and effective. Three objectives were central to the development, by the Committee, of an action plan for reform:

- Equal access to legal services – all Australians, regardless of means, should have access to high quality legal services for effective dispute resolution mechanisms necessary to protect their rights and interests.
- National equity – all Australians, regardless of their place of residence, should enjoy, as nearly as possible, equal access to legal services and to legal services markets that function competitively.
- Equality before the law – All Australians should be entitled to equality before the law regardless of race, ethnic origin, gender or disability.

In its Action Plan for reform, AJAC said:

“The objective of equality before the law is unattainable if people experience barriers that prevent them from enforcing their rights. The most obvious barriers are the financial difficulties faced by people who cannot afford legal advice and representation. But there are others. For example, cultural barriers may inhibit recent migrants from seeking the help they need. People may be fearful of a legal system they perceive to be (and not without reason) intimidating, unpredictable and complex. Many Australians living outside population centres face geographical barriers to obtaining legal advice and representation. Equality before the law requires that measures be taken to overcome these barriers. In this respect, the legal aid system is critical to improving access to justice.”

In June 1996, the Commonwealth gave notice to the State government of its intention to negotiate a new legal aid agreement to operate from 1st July 1997.

Current Commonwealth Funding

A Legal Assistance Agreement was entered into between the Commonwealth and State Governments for the provision of legal assistance effective from 1st July 2000, to operate for a period of four financial years. Pursuant to that agreement:

- The Commonwealth provided \$10.351 million in 2002 – 2003 to enable the Commission to provide legal advice and representation in Commonwealth law matters (largely family law).
- Funding is provided on a purchaser/provider model (with outputs and prices agreed annually).

- The Commonwealth determines the priorities and guidelines for the provision of legal aid. Commonwealth funds can only be used for Commonwealth law related matters.

Appropriate Responsibilities of the Governments

When the current jointly funded, single organization, legal aid system was first established, the states were made responsible for funding legal matters involving **both state law and persons** not falling within one of the categories of people for whom the Commonwealth acknowledged as it's special responsibility.

The Commission considers it is appropriate for all funding governments, including the Commonwealth, State and Territory, to bear the responsibility to provide any additional funding required to cover the increased cost of matters which has been brought about by;

- changes to laws for which they are responsible (e.g. increased penalties resulting in jurisdictional changes)
- other policy decisions of the governments which have an impact on the delivery of legal services
- changes to court procedures made by the relevant government
- increases in penalties which result in the imposition of a custodial sentence becoming more likely, and
- the consequences of judicial decisions made by the State and Federal Courts.

Responsibility of the legal profession

The private legal profession has undertaken legal aid work at significantly reduced fees since the inception of Legal Aid Commissions.

In recent years, funding constraints have seen an increasing differential or gap between Commission fee scales and court scales, let alone market rates. The effectively unremunerated contribution made by the legal profession has increased over recent years, given that the cost of delivering services has increased, but there has been little corresponding increase to the scale fees paid to practitioners. In addition to this 'pro bono' contribution made by the private legal profession through the reduced fees paid for legal aid work, many private practitioners give other time voluntarily to assist the community, especially in country courts, and with traditional pro bono work.

Unfortunately, the capacity and good will of the profession have recently become, in many views, over-stretched. The Commission submits that no other group in the community provides such a high level of unpaid assistance to Australians.

2. The capacity of current legal aid and access to justice arrangements to meet the community need for legal assistance.

A consultants report prepared in June 2003 for the Commission reviewed the provision of key services by the Commission. Their review confirmed that the Commission had implemented appropriate business processes to ensure that it met the requirements of the Legal Services Commission Act, 1977.

The consultants stated-

“Discussions with staff throughout the course of the review and observations of the services performed indicate there that there is a strong cultural objective of delivering a quality service to those in the community who do not have their own means to obtain that service. With regard to the effectiveness and balance of the services provided by the Commission in the legal representation field, it was apparent whilst conducting this review that both the Commission’s staff and the services offered are held in high regard by the legal community. There is an acknowledgement within the Commission that the demands for family law work are escalating, however the Commission’s ability to meet this demand is dependent upon an increase in funding from the Commonwealth Government. From an efficiency perspective, the Commission is able to provide legal assistance to applicants in a very specialized manner.....These services provided by the Commission are undertaken in an effective manner”.

The report recommended-

“Whilst not directly able to be influenced by the Commission, with the increase in demand for family law services on the Commission, there needs to be a commensurate increase in funding from the Commonwealth Government. The Commission must take all necessary steps with regard to funding applications and lobbying efforts to ensure that the funding levels received enable the Commission to adequately deliver services in family law to all applicants who are entitled to aid.”
A copy of this report will be made available to the Senate Inquiry if requested.

The current funding arrangements for this Commission were originally based on an estimate of the amount spent by the Commission on Commonwealth matters. (In 1995/96, the Commonwealth determined that the Commission spent in the range of \$9.5 - \$9.6m on Commonwealth matters).

Funding cuts implemented by the Commonwealth Government in the penultimate Commonwealth/State Funding Agreement came into effect on 1 July 1997. As a result of severe funding cuts the Commission was forced to take steps to reduce expenditure. A complete review and restructure of all activities of the Commission reduced costs while still providing a level of service to our clients. Much tightening of eligibility guidelines was necessary. The Commission has continued to manage its budget so that clients are not refused aid on the grounds of inadequate funds. In April 1998 the commission made special arrangements to cover a forecasted deficit on expenditure on Commonwealth matters for the financial year 1997/98. Weekly commitment (authorised expenditure for legal representation costs) was reduced, priorities were established for family law matters, and South Australian practitioners were advised that grants in some areas of law may be restricted to grants to Commission employed practitioners for a short period.

3. Term of Reference (a): the performance of current arrangements in achieving national equity and uniform justice across Australia, including outer-metropolitan, regional, rural and remote areas.

Even though the restrictive guidelines issued by the Commonwealth are slowly providing a uniform set of rules for Commonwealth funding of legal aid in Australia, national equity has not been achieved across Federal Courts and jurisdictions.

Different registries of Courts and Tribunals are still acting differently from each other and managers of assignments are allocating scarce resources in different ways from State to State.

Various services funded by the Commonwealth across different Commissions have been interpreted differently. e.g. Primary Dispute Resolution Units have been set up around the country with varying rules for eligibility.

Combined with Commonwealth funding, is State funding for legal aid. The amounts allocated vary dramatically from State to State. The Consumer Price Index across Australia varies. Legal Aid is not uniform across Australia.

The Commission is of the view that the Commonwealth has omitted some areas of law which should be included in its funding. This is from the perspective not only of fairness and justice, but also for the most cost efficient working of the justice system. Aboriginal persons who do not access ALRM; detainees, asylum seekers charged with State matters; protection matters; domestic violence; women and children involved with family breakdown are urgent examples .

The current arrangement whereby the Commonwealth allocates a total sum for Australia and then divides the 'pie' between the States has resulted in lobbying by different States but if one State is successful at increasing its share it is at the cost of other States.

Commonwealth funds are provided pursuant to a strictly prescribed service provision agreement. Priorities and guidelines on what legal aid can be provided with these funds are prescribed in the agreement.

Changes to these priorities and guidelines can be unilaterally imposed by the Commonwealth under the existing agreement. Funding with an inflator is fixed for the four year term, even though guideline changes may lead to changes in expenditure. Commensurate funding increases are not assured. Legislative and economic changes do not result in increases in funding.

There is a need for a more flexible and responsive agreement so that change can be better accommodated.

South Australia wants to preserve, if not increase significantly, its current funding. In any new Agreement, the Commonwealth needs to significantly increase funding so as to, not only fully meet existing services, but to also address issues of unrepresented litigants and to relax its current tight guidelines.

There needs to be a recognition that services to particularly disadvantaged groups e.g. people from ATSI background, Aboriginal or other clients in remote areas, prisoners etc can not be considered at in the same "cost-efficient" manner as mainstream clients. It costs the Commission more to service these clients and there should a recognition of the cost impacts and an 'allowance' in funding (and reporting terms) to accommodate these services.

Outer-Metropolitan

In South Australian outer metropolitan areas there has been an increase in population. Many people have moved to the coast, following cheaper housing especially for our aged population.

Currently Mount Barker, Mount Gambier and Whyalla are the largest Local Government Areas outside the Adelaide statistical division. The Commission has an office at Whyalla and recognises a need to establish a presence in Mount Barker and Mount Gambier.

The latest Australian Bureau of Statistics figures indicate that the largest growth in population is Salisbury Council, Onkaparinga, Port Adelaide/Enfield, Playford and Mount Barker. Onkaparinga and Mount Barker would be regarded as outer-metropolitan areas.

The fastest growth in population is the Victor Harbor Council, Alexandrina, Kangaroo Island, Light and again Mount Barker. More resources need to be allocated to these growing areas.

Regional, Rural and Remote areas

Increased representation and face to face advice services are needed throughout regional and remote Australia.

Clients from many country areas of South Australia suffer because of the limited legal assistance they are able to access due to their location. They can access the Commission's telephone advice line, however, very often the most effective service to the client requires a face to face interview with a solicitor. These people often find themselves in the unfortunate situation where, when advised to see a private solicitor for assistance, there may be only one local firm they can access, and if that firm already represents the other party, they must travel to get assistance elsewhere. Alternatively, the local firm may not practice in the areas they need assistance in eg, consumer type disputes, debt, Centrelink matters.

Internet /Video Conferencing Facilities

New technologies can provide a measure of assistance in helping people in regional, rural and remote areas of South Australia and the Commission has been at the forefront in adopting technologies such as video conferencing and the internet to assist in providing assistance. The number of adults in Australia using the internet continues to grow strongly, although the latest ABS figures indicate that the rate of growth is slowing. In 2002, **58%** of Australian adults accessed the internet, rising from **31%** of adults in 1998.

A reasonable proportion of people calling on the Commission's telephone advice line can obtain help from someone who can use the internet and accordingly access a great deal of legal information. In 2002, the Law Handbook was added to the Commission's web site thus enabling clients with access to an internet connection to read and download information and contact points for information on all aspects of the law in South Australia. In 2002/03 there were 437,402 hits and 40,560 user sessions to the Commission web site and 914,596 hits and 28,083 user sessions to the Law Handbook On Line web site. This amounts to access **over 1 million** times.

Further work is being done to ensure our clients have the benefits of advancing technology to improve access to justice. The State Government has recently agreed to upgrade our video conferencing facilities which will assist rural and remote clients. Currently Family Law Information Seminars are conducted from the Adelaide office and accessed by clients in remote areas such as Ceduna.

Outreach clinics are currently provided in only a few towns in outback South Australia because of problems with the high cost of providing such a service due to the enormous distances to be travelled to see relatively few clients.

In South Australia, there have been no new Commission offices opened since 1987. The Adelaide and Elizabeth offices were opened in 1979, Noarlunga (south of Adelaide) and Whyalla (north of Adelaide) were opened in 1984. An office at Modbury was opened in 1986 and an office at Port Adelaide in 1987. There has not been sufficient funding to open new offices since 1987.

In 1996 a commitment was made by the Commission to improve access for rural and remote clients to legal assistance. A Country Outreach Worker was appointed to provide access to legal advice and community education to South Australians living outside the Adelaide metropolitan area. The Rural and Remote Outreach Service visited Port Pirie, the Riverland, Kadina, Victor Harbor and Murray Bridge, being locations identified as sources of greatest demand in a telephone survey. This service was discontinued in 1999 when funding cuts impacted on Commission services. The Commission recognises that it has not had the resources to better service rural and remote areas but still has a strong commitment to this concept.

The Commission has recently been examining the best means to provide additional legal aid services to rural and remote areas. A study has been commenced and consideration will be given to a range of services from setting up a Legal Services Commission office, to working in conjunction with a local CLC office and funding a solicitor position, to tendering the work out to local practitioners or having a solicitor visiting in a clinic situation on a regular basis. Substantial funding will be required to achieve any of these possibilities. The Commission does not at present have the funds and is currently operating a deficit budget. If general legal aid funding is not increased by Governments, services will have to be cut by the Commission to avoid a continuing deficit budget.

Duty Lawyer Scheme

A duty lawyer scheme operates in South Australia to assist litigants on their first appearance before the court. This scheme currently operates in the Magistrates courts in the metropolitan area and in some outer-metropolitan courts. This service is staffed by Commission lawyers. However there are only limited duty solicitor services in rural and remote South Australia. The Commission does not conduct a duty lawyer service in the civil courts or at the Family Court. This situation needs to be rectified.

The level of self representation is increasing in all Courts and is reducing the efficiency of our Courts and leading to the ethos within the community that it is only those wealthy enough to afford a private solicitor who will have fair access to justice in South Australia.

The best solution would be a National Duty Solicitor Scheme funded separately by the Commonwealth Government with the aim of ensuring that no Court of first instance is without a duty solicitor.

4. Term of Reference (b): the implications of current arrangements in particular types of matters, including criminal law matters, family law matters and civil law matters.

Criminal Law Matters

Criminal law matters are currently almost exclusively funded by the State government in South Australia. Unfortunately, the current level of funding is insufficient to meet all the reasonable needs of those who have to appear in these courts. Restrictions have been placed on applications for aid for criminal matters so that there must be a risk of imprisonment if the client is to be considered for a grant of aid. This policy has created gaps in service delivery and a lowering of expectations across the community.

Problems created as a result of insufficient funding -

- Dishonesty offences – first offence, if the client has no representation and pleads guilty to a charge, there is a stigma attached to the conviction. This is of concern for all members of our society but especially so for the aged and certain ethnic groups.
- It is often perceived as easier to walk away with a fine (but often with an unmerited conviction) than to obtain legal representation.
- Even though the Commission has an ‘exceptional circumstances’ waiver guideline that would apply to minor matters, the whole process of application, refusal, review and then appeal can take too long with the courts enforcing a two adjournment rule, especially for minor matters.
- Problems have emerged when clients are often arrested/reported and immediately seek advice but don’t get their summons for 6-12 months. They then only have two weeks before they are due in court.
- Last resort help available for clients is often for Commission non-representation staff to draft a ‘defence’ and suggest the client approach a pro bono solicitor.
- The administration of justice in the diversionary courts has become difficult because of the number of unrepresented clients. If a minor matter, often it gets sent back to the general list.
- ‘Guilty without conviction recorded’ sounds good but the Commission has found that clients have unexpected implications. Insurance companies, employers and travel visas etc are asking ‘have you been found guilty’. The question also comes up on Police Clearance Certificate.
- Restraining Orders – clients can get advice but often without representation things go wrong at Court, convictions when not guilty, wrong party ends up with order against them, could have been settled if solicitor involved, can be abused by either party in family law matters esp. re contact and property.
- Due to changes in legislation which impose greater obligations on recipients of social security, Centrelink is ‘breaching’ more clients which will impact on grants of aid for Commonwealth matters. The penalties for these breaches are often fines which are not paid so there are additional problems that arise in a population which is least suited to pay additional bills or fines.

- The State Government's 'Law and Order Campaign' has resulted in more people facing a real risk of imprisonment, thereby increasing the pool of clients eligible for legal aid. There needs to be an increase in funding to meet this increased demand.

Family law matters

The reduction in Commonwealth funding has most seriously affected family law clients.

The Commonwealth has imposed costs limitations or legal aid funding caps which limit the amount that parties to family law proceedings can spend on legal representation. Once the cap is reached, the client has to choose whether to continue the case, representing themselves. This may result in agreeing to, or having orders made, which are not appropriate.

With increases in rates paid to private practitioners, caps are reached more quickly than in the past. On 1 July 1997 family law caps were fixed at \$15,000 for child representatives and \$10,000 for each party. These amounts have not been increased since then.

The Directors of each Commission have a discretion to increase caps in meritorious cases. Unfortunately if this discretion is exercised there is no commensurate increase in funding. Accordingly other applicants for legal aid miss out.

When the funding cap is reached, the cost of expert reports (normally borne by the parties) is transferred to the child representative, whose costs soon quickly reach the level of the cap, and he/she then ceases to act. If the parties have chosen to represent themselves, the case takes considerably longer than it otherwise would, both because there is no monetary incentive to stop, and because they find it difficult to comply with procedural requirements and to distinguish relevant and irrelevant material. When costs reach the cap in child representative cases, the child representative is in the position of having to withdraw. Courts will not generally force the child representative to proceed unpaid.

Once child representation ceases, the Court no longer has the benefit of the evidence that would have been supplied by the child representative as to the child(ren)'s position and interest, nor the moderating influence of the child representative on the dispute between the parents.

The Court is then wholly reliant on the parents to provide this - a paradox because the Court will only have appointed a child representative in cases where the child(ren)'s interests cannot be adequately represented to the Court through the evidence of the parents.

The child representative cannot control the number or content of applications made by either parent; and in the interests of the child may have no choice but to become involved in them, whether they are brought to harass the other parent or not.

Assistance from the Access Services Division of the Commission is sought after the cap is reached with self represented clients seeking advice as they are no longer

eligible for a grant of aid. There is increasing pressure from clients for greater amounts of help particularly with documents. Commission advice staff cannot assist in these matters. It becomes de facto representation without appearing in court to ensure the document is used appropriately.

Commonwealth funding for Family law matters does not extend to property matters. Clients are provided with information and advice on property matters but this does not replace the need for representation to adequately deal with these matters. Property settlements have now become more complicated since changes to the superannuation provisions in property settlements have become law. Splitting of superannuation entitlements is complex and requires independent advice.

There are constant tensions between family law issues that fall under the Commonwealth head and the domestic violence protections available under State law. In the context of the respective responsibilities of governments it should be noted that victims of domestic violence usually seek protection through a domestic violence restraining order in the Magistrates Court rather than through a Family Court order. These orders are applied for in a State Court, by the police department, but are intimately connected with the client's Family law problems. In such instances, the State is actually supplementing funding for what would otherwise be a Commonwealth matter under its new definitional approach of funding only Commonwealth law related matters.

Currently a project is under consideration for funding to assist women from culturally and linguistically diverse communities who are unable to access information about their rights and responsibilities within the legal system. This is an important project but will of course impact on the demand for family law and child support services.

New policies such as the Government's recent announcement of a Parliamentary inquiry on aspects of the current Family Law and Child Support legislation and particularly child support and joint residence issues, will impact on the demand for services of the Commission even before any recommendations are made. At this point the Commission is receiving calls about the new policies. Currently these callers are being referred to their politician.

The Commission has allocated priority to providing advice on family and child support matters to people who are imprisoned, given that there are quite specific issues that arise for men and women who are incarcerated in relation to these matters. Currently this service is funded for 2 days per week. There is a demand for an expansion of these services and to extend them to country prisons.

Significant impediments to the effective delivery of legal assistance occur within the Family Court. Inadequate staffing levels, delays in obtaining trial dates, limitations on court counselling, the increasing need for the appointment of child representatives, the failure to provide family assessment reports are all factors which create impediments and increase costs to legal aid and self funding litigants.

The Commission has attempted to reduce the impact of funding cuts by providing 'band aid', stop gap services. Advice and information cannot replace representation. What is needed is representation and additional grants of aid. Family law is a very

volatile area of law and attracts much violence, much of which is caused by frustration. A significant increase in funds needs to be injected into this area of our justice system.

Civil law matters

Most of the large States have a civil legal aid program while some other States appear to provide some civil legal aid, in varying degrees. The Commission in South Australia does not have such a program.

Despite having considered for quite some time a pilot Civil Aid Scheme, at its July 2003 meeting, the Commission resolved 'the present and projected funding situation of the Commission is such that the Commission cannot prudently implement a civil legal aid pilot at this time'. The Commission regrets that no other decision was reasonably available to it.

People from Culturally and Linguistically Diverse Populations

Government policies with respect to migration issues impact on our client base in terms of advice and minor assistance. Currently the issues surround the Temporary Protection Visas and the interviews to facilitate the application to a Permanent Protection Visa. These matters are very time consuming, involve interpreters and are usually subject to tight time lines imposed by the Department of Immigration and Indigenous Affairs. It is critical that the information presented to the Department is accurate as it will be the foundation information upon which future decisions are to be made. Family members must all be accountable for as well as current political issues in the country of origin. These matters require professional attention from skilled staff. The resource impact is high. As the Commonwealth guidelines do not include aid for these types of migration matters a grant of aid cannot be provided. The need of the client is so great however that advice and limited assistance is provided without a grant of aid. This then reduces the advice time available for other clients.

Inadequate funding for civil law matters has resulted in the following problems -

- Centrelink policies impact on legal rights and responsibilities of recipients. If decisions are to be challenged and the system operate in a legitimate and fair way, then the system to challenge decisions that apparently do not comply with the law needs to be appropriately funded.
- Proactive responses with respect to Centrelink issues may prevent problems arising with wrong determinations requiring Tribunal attention further down the track. The Commonwealth is proposing changes to the current legal aid guidelines with respect to Centrelink matters, but no additional funding has been offered to the Commission to provide additional grants of aid.
- Civil law problems dominate in our society. In the last financial year, 36% of the advice section's face to face interviews consisted of civil matters. It is assumed that the telephone advice service would also reflect a similar breakdown if not more, in favour of civil type matters. This points to a clear existence of demand for assistance in this area of law. The most common enquiries can be generally grouped into three main areas in civil law being; minor civil actions, neighbourhood disputes and consumer/breach of contract type issues. There are a wide variety of other types of matters that come to the advice section, like wills and estate, powers of attorney, defamation, workcover and such like.

- The limitations of the service the Commission can provide, namely, "advice only", translate into very real difficulties for a lot of the clients who can ill afford the service of private solicitors. In particular, there are disadvantaged groups such as the elderly, the disabled, migrants (or more particularly those where English is a second language), and those who live in the country or rural areas who really feel they have nowhere to turn to. The amount actually being sought may not be a true reflection of the legal difficulty of the case. Certainly, in areas relating to breaches of contract or consumer type disputes, the legal remedies involves an appreciation of the Trade Practices Act, basic contract law, etc, which very few lay-people are able to comprehend sufficiently enough to argue the matter themselves, let alone draft any relevant court documents. When one factors in the fact that the client may be, elderly and often immobile, has some form of disability which may be physical (eg, deaf or blind) or mental (illiterate, or reduced cognitive development), or unable to speak English then their difficulties multiplies exponentially.
- Deceased estates and problems with Powers of Attorney generate a lot of very upset and distressed people.

The people most affected by the restricted guidelines are non-refugee migrants, people with social security case management problems, people with social security problems other than those that relate to overpayments of \$5000 or disability pension entitlements, and students with Austudy issues. By definition, this group is experiencing severe financial hardship.

Those who are migrants may also suffer from language difficulties, extreme social isolation, lack of understanding of the legal system, and a deep fear of authority, instilled by past experience, that blocks effective communication with officialdom, including the tribunals before whom they must represent themselves.

Everyone affected by welfare or immigration legislation in Australia is entitled by law to challenge unfavourable decisions, whether made by departmental decision makers or informal tribunals. Appeals lie to the AAT and if necessary to the Federal Court. The department concerned is advised and represented by a lawyer at these proceedings. Before the 1998 funding changes legal aid had been available for those who could not afford private legal representation and would have difficulty representing themselves, if their proposed appeal had genuine merit.

In migration matters aid is currently only available for proceedings in the Federal Court and High Court in very limited circumstances. In welfare matters aid is only available for representation in the AAT in certain limited circumstances mainly associated with legal complexity or personal disability. Appeals are funded to the Federal Court and High Court in accordance with the general appeal guidelines.

By its present guidelines, the Commonwealth requires poor people with meritorious claims to proceed without legal advice or representation against all the language and literacy obstacles already described, *and* in opposition to a lawyer employed or briefed by the Commonwealth to represent one of its departments. In representing themselves, they must:

- read and comprehend the legal issues in, for example, the Section 37 Tribunal documents;

- read and comprehend the relevant legislation;
- proof, examine and cross-examine witnesses;
- negotiate with the legal representative of a Commonwealth department; and
- marshal and present legal argument before the Tribunal.

This is not 'access to justice' or 'equality before the law'.

Legal representation is needed in the welfare review process at the first review step, i.e. review by the original decision maker (ODM) and further review by the Authorised Review Officer (ARO). If unsuccessful, the applicant can appeal to the Social Security Appeals Tribunal (SSAT). A further merits review is then available at the Administrative Appeals Tribunal (AAT). At all steps before the AAT hearing clients require legal advice and representation.

In contrast to the Eastern States, Welfare Rights in South Australia cannot help the majority of these people. These people have no other source of legal representation. The current guidelines restrict aid to the AAT level or above and no aid is available at the preliminary stages. A further restriction is that only overpayment decisions of more than \$5,000.00 can be aided.

Clearly providing representation at the lower end of the review process would be an effective and quick way to help clients. The AAT appeal is often hampered by evidence and comments made by the client at the earliest stages of the review when they are not represented. The earlier stages, being quicker and more informal, are less expensive than an application to the AAT.

There has been a suggestion that the current Commonwealth Guidelines be amended to include legal representation at both preliminary levels, i.e. ARO and SSAT. This would be a great boost for clients and welcomed by the Commission but would necessarily involve additional funding from the Commonwealth. The Commission and the WRC is not in a position to fund this additional aid without an increase in Commonwealth funds.

If the guideline changes are made without additional funding the Commission would have to reduce services in other areas to accommodate the additional grants of aid.

Veterans

Under Commonwealth Guidelines, only people with war-caused disability pensions contesting disability issues qualify for legal aid. There is a wide range of other issues and payments under the *Veterans Entitlement Act* for which people need representation before the AAT.

These people cannot get legal aid for representation before the AAT because their claims relate to eligibility, not to disability.

There is no other source of legally aided representation before the AAT available to veterans in South Australia. (The RSL funds representation only before the Veterans Review Board).

Interpreters Fees

The Commission currently funds the cost of interpreters to ensure some degree of access and equity for people from non-English speaking backgrounds vis a vis clients with English as a first language. If the Commission was not prepared to pay for this service, clients from non-English speaking backgrounds could quite rightly claim discrimination. This cost is not funded by the Commonwealth government but should be, across all matters.

Proactive strategies are currently being employed in the Commission to avoid problems in providing advice and the representation of clients.

Projects such as facilitating understanding of the legal system through the training of interpreters has taken place and is continuing. This is a proactive strategy to avoid the confusions and misunderstandings that can arise when the system is not well understood and the cultural differences are not acknowledged.

Bankruptcy matters

The Commission liaises with financial counsellors across South Australia and has placed financial counsellors in the Commission offices to assist with debt and bankruptcy matters. The Commission attempts to address these matters in a proactive way. Unfortunately, these matters are increasing as South Australians become poorer. Often debt related matters impact on family law matters.

There are many bankruptcy and insolvency type situations which arise from legislation - people contemplating bankruptcy due to criminal injuries compensation awards against them. People who have had small businesses and are facing bankruptcy as a result of applications from creditors. Funding restraints prohibit the Commission from providing better information and advice in these areas.

5. Term of Reference (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.

The advice and education services offered by the Commission encompass three main areas;

- Telephone advice
- Face to face advice
- Legal education programs.

The demand for education services from the South Australian public is increasing, particularly for the telephone advice service and via the Legal Services Commission web site. A key objective of the services offered by the Commission is to provide assistance and information to members of the public to enable them to reach a desired outcome with regard to their legal concern. This is not a substitute for representation but education.

The advice service is nevertheless a very important complement to legal representation services, in that

- it provides essential legal advice for all comers, regardless of means

- it filters, and directs appropriately, those who need legal representation, and assists them to access this
- for those who do not qualify for aid, it often provides the only remaining alternative to representation
- it offers education and resource materials to the South Australian community at large
- it diverts from the legal process those matters which do not require litigation because they can be otherwise resolved; for example, through counselling, mediation, negotiation and self-help.

The Commission's Advice Service is under great pressure because

- people who cannot get legal representation want and need advice and assistance to represent themselves
- people seek Commission advice services when other special purpose legal advice/advocacy organisations such as Welfare Rights, or the Women's Legal Service are unable to meet demand due to inadequate funding
- community expectations are higher now in all areas of life, not just the law, and clients are better educated about their rights.

Examples of requests for complex advice in Commonwealth law related matters are as follows:

- Residence and contact questions also include child support and debt/bankruptcy, and financial and family counselling
- Property disputes where the value of the property or the extent of the debt makes it uneconomic to hire lawyers
- Immigration advice (by advisers who are registered Migration Agents) is often more complex because other issues are involved.
- Commonwealth unfair dismissal laws are very complicated and keep changing. Action must normally be taken very quickly after dismissal. Commonwealth guidelines exclude unfair dismissal applications from legal representation, so the dismissed employee seeks help from the advice service.

Because advice is a service to *all* South Australians, the whole community misses out when additional pressures are put on the service. There is no way of knowing which members of the community are most affected by inadequate Commonwealth funding; the Commission does not know who chooses not to apply for aid for legal representation, or who rings off when their call has waited in the telephone advice queue for too long, or whose calls do not even make the queue.

The aged are greatly disadvantaged due to their relatively low incomes and reliance on social services. South Australia has the most rapidly aging population in Australia. The median age in South Australia has increased from **33** in 1992, to **35** in 1996 and **37** in 2001.

Indigenous Persons

In 1994 a Justice Statement grant of \$2000 allowed the Commission to employ an Aboriginal worker to assist with domestic violence issues to help Aboriginal victims who were unable to get help from ALRM (because this organisation was representing the alleged perpetrator). This successful service ceased when the grant ran out. No

further monies were provided by the Commonwealth to continue the service even though there has been an increase in the percentage of indigenous population in South Australia shown in 2001 census.

The ALRM was set up to provide legal aid to all indigenous persons in South Australia. This organization is funded by the Commonwealth Government.

Indigenous persons also access the Commission for legal aid. They may do so merely from choice or because ALRM are not able to act for them because they've already act for the other party to the dispute. This happens frequently in domestic violence matters.

In 2002/03, **918** legal aid applications were received from indigenous persons. Of those, **779** were granted legal aid.

In 2002/03, a total amount of **\$628,680.00** was spent by the Commission on grants of aid for indigenous persons. All but a small proportion of this money was paid from the State budget but should logically come from the Commonwealth budget. This amount has grown over the last three years from approximately \$370,400.00.

The Commonwealth will need to change its guidelines and increase its level of funding to enable the Commission to fund indigenous legal aid. State funding will then be available for other projects currently requiring funding.

Diversionsary programmes

New services such as Family Court Advice Services, duty lawyer schemes, prison services and other unbundled services, should not be seen as compensating for the lack of proper funding for traditional grants of assistance for clients to obtain proper legal representation in appropriate cases. These should be additional (funded) programmes to supplement the core work of providing representation and not provided as an alternative way of cheaply providing some form of assistance to unrepresented/unsericed groups.

The Commonwealth needs to revisit its decision to restrict Commonwealth eligibility to Commonwealth law related matters only, as it has a special responsibility for before mentioned groups of people even if they are involved in a State law matter.

6. Community Legal Centres

Funding for CLC's in South Australia is administered by the Justice Department. In some other States, the Legal Aid Commissions administer CLC funding. The combining of resources is proving to be beneficial through regional and remote Queensland. In this State there is a co-operative relationship between the Commission and all CLCs. Quarterly meetings are held to discuss current issues and training resources are interchangeable. Regular contacts are maintained between the CLC's and the Commission in day to day work.

7. Pro Bono Legal Services

There it is a significant commitment to pro bono legal work within the legal profession in South Australia. The Refugee Advocacy Service of South Australia, for example, has developed a roster of more than half of the members of the Independent

Bar to provide pro bono assistance in refugee matters. South Australia is one of the few States in Australia where all law students have access to some form of clinical legal education program. The National Pro Bono Resource Centre (NPBRC) recently visited South Australia to discuss the most effective ways in which pro bono legal services to disadvantaged people could be supported in Adelaide. Effective coordination is a key to improving access to pro bono legal services and a number of ideas were raised including variations on a 'Public Interest Clearing House' model as currently operates in three eastern states, strategies to support lawyers offering volunteer services at community legal services and other ways in which the legal profession may be able to lend support.

There are some important differences between South Australia and the larger jurisdictions, including the smaller size of the legal profession and considerably smaller commercial clientele that traditionally provides core funding for the profession's pro bono work. There is certainly scope and enthusiasm for development of more effective pro bono legal services for disadvantaged people. A working party is to be established to undertake further work to develop an effective model for the support of pro bono work in South Australia. The working party will include a representative of the LSC, as it supports in principle improved pro bono coordination. The NPBRC is not able to refer individuals to lawyers for help with a legal problem but promotes and supports pro bono by publishing information and undertaking other activities.

Pro bono work is not a substitute for legal aid.

8. Levels of self-representation

The Commission has referred to the problems associated with self-represented litigants. The resource implications of this problem are great. If the Commission assisted even say 10% of unrepresented litigants in the South Australian registry of the Family Court it could cost the Commission \$600,000 in any one year.

During 2001, 29,065 cases (not including prosecutions for minor traffic offences, breaches of local government by-laws etc) were finalised in the Magistrates courts across South Australia. Recent studies indicate that 16,579 of those defendants appearing before the Magistrates Courts on the first occasion, were unrepresented. A greatly expanded duty solicitor scheme would be needed to advise these clients on their first occasion before the Court. Currently 16% of defendants in the South Australian Magistrates Courts are likely to get a grant of legal aid. 84% will need private representation or will self-represent. If a Commonwealth funded scheme was developed to provide duty lawyer services to all persons on their first occasion before Court across Australia, the current legal aid and access to justice arrangements would certainly go a long way towards achieving national equity and uniform access to justice for all Australians.