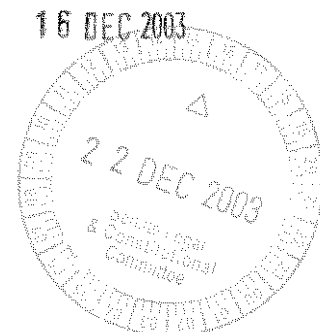


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Our Ref:

Ms Louise Gell  
Acting Secretary  
Senate Legal and Constitutional Committee  
Room S1.61  
Parliament House  
CANBERRA ACT 2600



Dear Ms Gell

**RE: INQUIRY INTO THE CAPACITY OF CURRENT LEGAL AID AND ACCESS TO JUSTICE ARRANGEMENTS**

I refer to the attendance of myself and Ms Judith Walker, Acting Director, Family Law, at the public hearing of the Legal and Constitutional References Committee in Sydney on 13 November 2003, and the Committee's request for further information from the NSW Legal Aid Commission to assist its Inquiry.

Please find attached the Commission's responses to the five questions on notice that were taken at the hearing.

Please do not hesitate to contact either myself, or my Executive Officer, Louise Blazejowska, on (02) 9219 5883/email [louise.blazejowska@legalaid.nsw.gov.au](mailto:louise.blazejowska@legalaid.nsw.gov.au), if you require any further information.

Thank you once again for the opportunity to make a submission to this Inquiry.

Yours faithfully

A handwritten signature in black ink, appearing to read "Bill Grant".

Bill Grant  
Chief Executive Officer

# **INQUIRY INTO THE CAPACITY OF CURRENT LEGAL AID AND ACCESS TO JUSTICE ARRANGEMENTS**

## **NSW Legal Aid Commission – Responses to Questions on Notice**

### **1. Copy of the NSW Legal Aid Commission's submission to the Senate Inquiry into Administrative Review of Veteran and Military Compensation and Income Support (2003)**

I enclose a copy of the Commission's submission to the Senate Inquiry into Administrative Review of Veteran and Military Compensation and Income Support (2003), as requested.

### **2. Evaluation of the Family Law Duty Solicitor Scheme at Parramatta**

I enclose a copy of the report and evaluation of the first year of the Commission's pilot Family Law Duty Solicitor Scheme, which commenced on 5 August 2002 at the Parramatta Registry of the Family Court and the Federal Magistrates Court. According to the Senior Solicitor with the Scheme, the general trends identified in the pilot, in terms of client profile and numbers, referral sources, matter types and conflict issues have remained consistent since the evaluation concluded.

As a result of the success of the Parramatta Scheme, the pilot has been expanded to the Newcastle Registry. The Newcastle Scheme commenced operation on 8 December 2003.

### **3 LawAccess NSW**

LawAccess NSW is a state-wide telephone service that provides a first point of contact for people requiring legal information, assistance and referrals for legal issues. It was launched by the NSW Attorney General, The Honourable Bob Debus on the 17 June 2002.

LawAccess NSW's performance is assessed qualitatively, through monthly performance reports which look at its service delivery, staff issues, projects, policy and procedure, process issues, partnerships with other service providers and stakeholders and service priorities, and quantitatively, through the following Service Level Compliance Standards:

- Call Answering Standard: The number of customers assisted by Law Access.
- Time Standard and Hang Up Standard: The efficiency of answering those calls quantified by time and hang up rates.
- Accessibility Standard: The provision of specific services for people with disabilities and people from NES backgrounds.

- Fulfilment Standard: The percentage of customers referred from a Customer Service Officer to a Legal Officer and the turnaround time for the distribution of material in mail or faxes, and faxes returned the same day.
- Completion Standard: The percentage of matters finalised by Law Access.
- Referral Standard: The breakdown of matters referred to other agencies or bodies. The level of requirement for translating and interpreting services.
- Legal Advice Standards: Including the spread of regions within NSW accessing the service and the area of law advised upon.

I enclose, for your information, a Monthly Assessment report for July 2003, which includes a Service Level Compliance Statement for this period. It shows that in July 2003:

- LawAccess NSW assisted 6841 customers.
- Customers were answered in an average 1 minute and 34 seconds.
- 90% of calls were answered within 5 minutes.
- Of those who received advice, 44% were from regional NSW, 49% from Sydney and its surrounding areas and 7% were from outside NSW.
- Over 80% of legal information calls related to civil and family law matters.
- 12% of customers were referred to LawAccess NSW legal officers for legal advice.

Since its establishment in April 2002, the volume of calls and average time spent with customers has remained fairly consistent.

As a result of a number of enhancements to LawAccess NSW's services and projects, such as the Solicitors Referral Services E-referral project and the Chamber Magistrates Service Co-operation Project, there are difficulties comparing data over the entire period that LawAccess NSW has been operating. For example, from May to July 2003 there was a 5.4% increase in Criminal Law advice. This is thought to be largely due to the promotion of LawAccess NSW to the NSW Department of Corrective Services.

#### **4 Availability of legal aid in Commonwealth matters**

Under the Commonwealth Agreement, Commonwealth legal aid funds can only be spent by the Commission on matters "arising under Commonwealth law" and in accordance with Commonwealth Priorities and Guidelines (as specified under Schedule 2). I enclose a copy of the Guidelines, for the Committee's information.

The Commonwealth's restrictions impact on the Commission's ability to provide effective legal services to its clients in the following ways:

### Commonwealth criminal matters

An increasing problem for the Commission in providing assistance in Commonwealth criminal cases are the significant demands placed by large drug importation matters on the Commission's resources, both human and financial. Each matter can cost anywhere up to \$1.5 million to conduct. A list of recent examples is provided in the Commission's submission to this Inquiry, at pp. 27-28. The Commonwealth should put appropriate and accessible contingency arrangements in place in order to avoid the possibility of a budget blow out and a subsequent reduction in the ability of the Commission to provide Commonwealth criminal law services.

### Family law matters

The Commission's main concern in this area is the limited range of family law matter types in which the Commission is permitted to provide assistance. Of particular concern are the severe restrictions on the types of property dispute matters it can undertake. A more detailed discussion of this issue can be found in the Commission's submission at pp. 31-32.

For example, Guideline 8.2 states that legal assistance for property matters may only be granted if the Commission has decided that it is appropriate for assistance to be granted for *other* family law matters. The guidelines further state that legal assistance should not be granted if the only other matter is spouse maintenance, unless there is also a domestic violence issue involved.

This guideline effectively precludes people who have not had children or whose children are adult, from obtaining a grant of aid, and, as a result, indirectly precludes aid for older people.

Another problem is that legal aid cannot be granted in certain property disputes where the applicant's equity in the matrimonial property is valued at more than \$100,000. Given real estate values in NSW, the effect of this restriction is to deprive many people who would otherwise be deserving of assistance.

### Civil and administrative law matters

In relation to civil law matters, the restriction of Commonwealth assistance to matters arising under Commonwealth law diminishes the Commission's capacity to respond in an integrated way to the range of legal problems with which many clients present, and its ability to provide flexible and innovative solutions to community need for assistance in this area.

The current guidelines also place considerable constraints on the use to which aid can be put even in those narrow areas of law where Commonwealth funding is available. Further details of how this impacts in specific civil and administrative law areas are discussed at pp. 35-37 of the Commission's submission. In summary, the Commission would like to see the expansion of the Guidelines in relation to:

- Immigration matters, so we can act in primary applications rather than just test case matters in the Federal or High Court.

- Veteran's matters so we can do minor assistance work including the preparation of claims under the *Veterans' Entitlements Act 1986* and applications to the Veterans Review Board.
- Discrimination matters so that we can do negotiation and minor assistance work (not just litigation where there is likely to be "substantial benefit to both the applicant and the public").
- So we can grant aid to Aboriginal and Torres Strait Islander people in a wider range of Commonwealth law matters.

**5 Responses to Recommendations 39 (data collection) and 57 (use of paralegals to assist applicants to complete legal aid forms) from the Australian Law Reform Commission's Report No 89, *Managing Justice (2000)*.**

Recommendation 39

Recommendation 39 states that:

*Legal aid commissions should standardise data collection nationally and publish this data in their annual reports, with respect to both in-house and assigned cases on,*

- *Applications and refusals for legal aid, specifying case and applicant type (including data such as gender, non English speaking background, and rural and regional postcode);*
- *duration (from date of grant to date of finalisation) and outcomes in legal aid cases, by reference to case types (i.e. criminal family, care and protection, administrative, general civil);*
- *statistical trends in approvals and refusals of aid;*
- *outcomes in conferencing and/or alternative dispute resolution services within legal aid commissions;*
- *use of legal aid commission services other than under a grant of legal aid.*

All Australian Legal Aid Commissions use the same data collection methodology and computer software to collect the following information:

**Cases by Commonwealth and State, and by Law type for:**

- Applications received
- Applications approved
- By in-house
- By assigned
- Applications pending

- Application refused
- Applications withdrawn

**Duty work by:**

- In-house
- Assigned

**Advice services by law type:**

- In-house
- Assigned

**State profile by law type:**

- Male
- Female
- Other
- Aboriginal and Torres Strait Islander
- Total

**State profile by age groups:**

- Male
- Female
- Other

Analyses of these statistics appear in the various Commissions' Annual Reports each year. The collected data assists in the continued improvement of services provided by the various Commissions and in targeting and developing new programs where funding allows.

Until 2002, each Australian Legal Aid Commission's statistics were published on a National Legal Aid Internet website. National Legal Aid is currently negotiating with a new provider with a view to updating and maintaining the website.

In mid 2003, all Commissions except LAQ went out to tender for a new integrated business system. It is envisaged that any new system that is installed will provide enhanced data collection, such as the data not currently collected suggested in Recommendation 39 and report capabilities.

Whilst standardised data collections are extremely useful, there are also a range of challenges in developing data collection systems and in ensuring the integrity and consistent interpretation of the data collected. Different definitions and practices between Commissions can lead to different outcomes, which may create misleading impressions about the work being undertaken. There is always a need for such data to be supported by qualitative information to give the full picture.

## Recommendation 57

*Legal aid commissions should use employed paralegals and/or law students in internship programs, to assist applicants to complete legal aid application forms*

The Commission provides assistance in the completion of legal aid application forms in a number of ways. Clients receive assistance from legal officers and clerical staff at the Commission's offices across New South Wales.

However, the Commission's application forms (both paper and electronic versions) require certification of merit in the appropriate circumstances. In family and civil cases, it is often very difficult to elicit enough information from a form alone to make an assessment of merit. In the family law area, problems with the quality of information being provided on the application forms has recently been addressed through the introduction of a fee to private solicitors who assist clients to complete the form. In many instances it is more efficient for a qualified legal practitioner to take instructions to complete the application form on behalf of their client.

Improvements are also being made to ensure that the Commission's application forms are accessible, such as designing forms to ensure they are user friendly and the use of plain language.

On the wider issue of "internship programs", the Commission is currently looking at establishing a structured program for law graduates wishing to complete the practical legal training component of their legal studies. Significant issues that are being considered in developing the program include the Commission's ability to pay law graduates for the work they do, as well as its ability to provide appropriate supervised work.

The Commission is very well placed to provide superior opportunities for law graduates subject to appropriate resourcing and management. The range of experiences the Commission could provide would be unmatched in the legal market place, and are eagerly sought. Such programs would also assist in defining the Commission as a provider of excellent legal services in the graduate market place.

As to the employment of "paralegals", it is noted that that the Commission is currently undertaking a review of the duties and grades of clerical officers within the Commission to ensure that legal support services are fulfilling the Commission's needs. The Commission is mindful to ensure that legal support staff have the necessary skills to support the business of the Commission, including, if considered appropriate, assisting in the completion of legal aid application forms. Several paralegal positions have already been introduced in the in-house Criminal Appeals Unit.

The Commission is continuing to review its needs in respect of legal support staff (and the skills required by such staff) and will adopt appropriate recruitment practices in accordance with those needs.