

17 October 2023

Our ref: [LP:MC]

Dr James Popple  
Chief Executive Officer  
Law Council of Australia  
Level 1, MODE3  
24 Lonsdale Street  
Braddon ACT 2612

By email: [REDACTED]

Dear Dr Popple

### **Independent Review of the National Legal Assistance Partnership**

Thank you for the opportunity to provide feedback on the Independent Review of the National Legal Assistance Partnership (**NLAP**). The Queensland Law Society (**QLS**) appreciates being consulted on this important review.

This response has been compiled by the QLS Human Rights and Public Law Committee, Access to Justice and Pro Bono Law Committee, First Nations Legal Policy Committee and Migration Law Consulting Committee, whose members have substantial expertise in this area.

The QLS acknowledges the unique and vital role each part of the legal assistance sector contributes to access to justice. The funding delivered through the NLAP must be sufficient and sustainable to address workforce issues. It must be long-term to ensure continuity, partnerships and quality of services. It needs to make explicit how it is addressing the extra costs associated with service delivery in regional, rural and remote areas. There must be a strong and transparent commitment from both state and federal governments. The funding must meet existing identified legal need and be expanded to address unmet legal need, in particular the need for representation services for those who cannot self-advocate. It must also be supportive of community education, community engagement, law and system reform activities.

### **Legal assistance for Aboriginal and Torres Strait Islander Australians**

QLS is supportive of a stand-alone funding regime which funds legal assistance for Aboriginal and Torres Strait Islander Australians. QLS suggests that consideration should be given to redeveloping the former Indigenous Legal Assistance Program (**ILAP**) which provided direct



grants from the Commonwealth to the Aboriginal and Torres Strait Islander Legal Service (ATSILS) to deliver frontline legal assistance and related services to Aboriginal and Torres Strait Islander clients. There are currently too many layers of bureaucracy in the Indigenous Australian justice policy space and thus it is important that funding comes directly from the Commonwealth to ATSILS. In addition, the Commonwealth should adopt a funding model which calculates how to increase legal assistance funding for Aboriginal and Torres Strait Islander Australians across all parts of the legal assistance sector. We now make some specific comments in relation to the key questions listed in Chapter 4 of the Issues Paper.

### **2. To what extent does current legal assistance meet the overall scale and breadth of the legal needs of disadvantaged Australians?**

There is a need for increased funding for unmet legal need. However, as noted in the consultation paper, it has previously been very difficult to identify this unmet legal need and its scale.<sup>1</sup>

QLS notes that both state and federal funding for the legal assistance sector in Queensland falls significantly short of meeting demand. The Law and Justice Foundation's report, *Collaborative Planning Resource – Service Planning*<sup>2</sup>, identified a number of barriers to service access across a range of priority client groups identified in the National Partnership Agreement (NPA). Some common themes included:

- the lack of timely, affordable, specialised legal services
- insufficient awareness of legal rights and entitlements
- lack of awareness about where to obtain legal information and assistance
- lack of particular types of legal services for particular priority client groups (ie lack of civil and family law services for Indigenous peoples)

This underfunding is evident from the increasing upward trend in the number of people being turned away from CLCs. Between 2016 and 2019, according to data gathered by the Law and Justice Foundation, this number more than doubled.<sup>3</sup> Turn away must be understood to include those who cannot access assistance at all as well as those who can only access discrete assistance when they need ongoing assistance.

Australians who experience intersectional disadvantage require casework assistance. Each part of the legal assistance sector must be funded to increase the ratio of casework assistance able to be provided to those receiving discrete services based on how intersectional disadvantage impacts their legal capacity to address their legal need. Specifically, CLCs and ATSILS need to receive increased funding for casework services in the areas where they are the known providers of specialist, multi-disciplinary, services and where they are the providers of complementary services to Legal Aid Commissions and preferred suppliers.

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<sup>1</sup> Dr Warren Mundy FRAeS FAICD, *National Legal Assistance Partnership Review* (Issues paper, August 2023).

<sup>2</sup> Christine Coumarelos, Hugh M. McDonald, Suzie Forrell and Zhigang Wei, *Collaborative Planning Resource – Service Planning*, Law and Justice Foundation of New South Wales, (Report, November 2015).

<[http://www.lawfoundation.net.au/ljf/site/templates/reports/\\$file/CPR\\_Service\\_Planning\\_Nov2015.pdf](http://www.lawfoundation.net.au/ljf/site/templates/reports/$file/CPR_Service_Planning_Nov2015.pdf)>

<sup>3</sup> Community Legal Centres Queensland, *Evidence and Analysis of Legal Need* (Consultation APper, August 2019), 66 <[https://www.communitylegalqld.org.au/wp-content/uploads/2019/10/evidence\\_and\\_analysis\\_of\\_legal\\_need\\_v3.pdf](https://www.communitylegalqld.org.au/wp-content/uploads/2019/10/evidence_and_analysis_of_legal_need_v3.pdf)>..



There is a need for more investment in co-developed (with communities, key stakeholders and persons with lived experience) legal resources to assist specific cohorts who don't have access to the resources they need. For example, there is a need for culturally appropriate legal resources, resources translated into language, and resources for people who live with disability. There is a need for funding to maintain the law handbooks in each jurisdiction. There is also the need for legal resources to be produced in specific areas of legal need including disaster preparedness and recovery to ensure that the legal assistance sector is sufficiently able to cope with disasters as and when they occur.

Additionally, there is significant concern about continued funding for services that have been funded for a limited time, creating an upcoming funding cliff, if that funding is not extended. Funding would preferably be for no less than an 8-10 year cycle.

#### **4. Are there other systemically disadvantaged groups, either existing or emerging, who are not supported adequately?**

Under the NLAP, people who are culturally and linguistically diverse are recognised as a national priority client group.<sup>4</sup> QLS submits that refugees, asylum seekers and humanitarian entrants should also be recognised nationally as a systemically disadvantaged client group. In Queensland, refugees and migrants are already recognised as an additional priority client group under the Queensland Legal Assistance Strategy.<sup>5</sup>

Despite refugees and migrants being recognised as a priority group in Queensland, funding is not sufficient to meet demand and there are significant gaps in the availability of immigration law services.

Critical areas of immigration legal need in relation to refugee applications, refugee family reunion matters and family violence provision matters are systemically underfunded. There are also gaps in relation to character related visa and citizenship refusal matters, other criminal offending related refusals and cancellations, refugee family reunion for boat arriving refugees, citizenship applications and health waivers. The Refugee and Immigration Legal Service's current funding does not stretch to providing legal advice or assistance in relation to these gaps and Legal Aid Queensland's funding guidelines limit funding to judicial review matters, excluding matters where clients may require assistance at the Department of Home Affairs stage or in the Administrative Appeals Tribunal. QLS is aware of practitioners who act pro bono in these matters but even where pro bono assistance is provided, there is no funding for necessary expert psychiatrist and psychologist reports.

Many persons impacted by these immigration law matters are highly vulnerable due to experiences of torture, trauma and family violence, language barriers, homelessness, mental ill health, being a child-in-care, or being detained in an institution such as prison or immigration detention.

Human rights is a core practice area for CLCs and yet, notwithstanding that the *Human Rights Act 2019* (Qld) (**HRA**), commenced operation in 2020, there has not yet been any standalone funding to support CLCs and other legal assistance providers to provide advice or

<sup>4</sup> Australian Government Attorney-General's Department, *National Legal Assistance Partnership 2020-2025*, Schedule A (June 2020) A-1.

<sup>5</sup> Queensland Government, *Queensland Legal Assistance Strategy, National Legal Assistance Partnership 2020-25* (28 June 2022), 22.



representation on HRA matters. In addition to impacting clients, this is limiting the development of this area which should be separately funded as a matter of priority. We note that this is a discrete matter under Queensland legislation, but we use this as an example to highlight the impacts of an overall lack of funds and the siloing of funding into particular service areas which means that it's challenging to service new and emerging areas, such as human rights in Queensland.

There is a gap in funding for advice and representation in racial discrimination and vilification matters for culturally and linguistically diverse clients in Queensland. Subject to the response to the Disability Royal Commission, there is likely to be a need for further funding in that space too.

Persons who experience financial rights issues (consumer, credit and debt) do not have access to a financial rights service in Queensland. There needs to be funding for a multi-disciplinary financial rights service in Queensland to incorporate legal, financial counselling, and social supports.

### **5. How should the challenges of service delivery in regional, rural and remote locations be addressed through future agreements?**

People residing in rural or remote areas are identified as priority cohorts under the NLAP<sup>6</sup>. Queensland's geography presents a particular challenge for the provision of legal assistance services. Due to the vast nature of Queensland's geography, a per capita funding model is not effective in regional, rural and remote (RRR) areas. Consideration should be given to the most appropriate way to allocate additional funding to address the specific issues associated with high costs of service delivery in these areas. It will be hard to cost this out specifically, so a 10-20% loading depending on RRR categorisation could be considered.

A particular challenge of legal assistance service delivery in regional, rural and remote locations stems from the difficulty in attracting and retaining lawyers in these areas. Currently, lawyers working for different arms of the legal assistance providers experience disparity in remuneration, employment conditions and workload. Whilst this is also a problem in metropolitan areas, the severity of the impact is heightened in regional, rural and remote locations.

QLS submits that consideration should be given to schemes to encourage young lawyers to begin their careers in the regions. We propose that this could take the form of a regional lawyer scheme in which the government could fund CLCs, Legal Aid Queensland and ATSILS solicitors to work in the regions. Alternatively, a scheme similar to the HELP debt reduction for rural doctors and nurse practitioners could be implemented for lawyers. Under the medical scheme, the Commonwealth government will eliminate up to 100% of an eligible individual's outstanding HELP debt if they reside and work in a regional, rural or remote area for up to 6 years<sup>7</sup>. A similar scheme for lawyers could incentivise young professionals to begin their career outside metropolitan hubs and this would bring great benefit to the delivery of legal assistance services.

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<sup>6</sup> Dr Warren Mundy FRAeS FAICD, *National Legal Assistance Partnership Review* (Issues paper, August 2023), 19.

<sup>7</sup> Australian Government Department of Health and Aged Care, *HELP debt reduction for rural doctors and nurse practitioners v2.1* (September 2023) available at [https://www.health.gov.au/sites/default/files/2023-09/fact-sheet-help-for-rural-doctors-and-nurse-practitioners\\_0.pdf](https://www.health.gov.au/sites/default/files/2023-09/fact-sheet-help-for-rural-doctors-and-nurse-practitioners_0.pdf)



**6. To what extent does the funding model support appropriate distribution and quantum of Commonwealth resources to meet current and future needs?**

The funding model currently favours New South Wales and Victoria due to population size but this is not necessarily commensurate with how a model can address unmet legal need. Distribution models ought to consider both population size and disadvantage. Lower SEIFA indexed areas ought to be allocated a greater portion of funding.

The quantum of Commonwealth resources needs to be increased overall in order to specifically increase the ration of casework services to discrete services being delivered with reference to intersectionality considerations. The complexity of many legal areas of practice has increased significantly. So has the impact of disadvantage on the type of service response that is needed to address intersecting complexity. This requires trauma-informed, holistic, domestic violence informed service provision which at its core is going to be more expensive. CLCs, ATSILS, Legal Aid Commissions and preferred supplier lawyers are at the front-line delivering services to highly disadvantaged people. The quantum of funding provided by the Commonwealth must be significantly increased to attract and retain specialist staff and preferred suppliers and to deliver response models that include more casework services.

A one-off program funding model presents some challenges including limiting the ability to provide innovative solutions. Similarly, one-off funding programs have helped to mask the significant decline in funding for core legal services, particularly casework services.

**8. How can holistic service provision improve outcomes and reduce the demand for legal assistance services?**

Despite the acknowledgement of the complexity of legal needs of CLC clients, the funding model does not properly support the provision of wrap-around support and consequently there are significant service delivery gaps. The demarcation between generalist and specialist CLCs can make meeting this need challenging – there is an assumption that specialist centres will service all the legal needs of a particular priority client group, yet the terms of the funding agreement can be quite specific.

In relation to the issue of limiting Commonwealth funding for Commonwealth matters, it must be noted that the legal needs of many clients relate to both State and Commonwealth areas of law and often includes areas of law where there is a choice of jurisdiction. Similarly some CLCs engage in holistic and multi-disciplinary service delivery which is often done in partnership. These partnerships are expensive and are usually not funded, the costs of which are absorbed by the CLC. Lack of funding for partnerships is problematic as access to justice issues are more appropriately addressed through case work and partnerships.

**9. How should legal assistance funding support activities that at an early stage reduce or prevent legal need, including activities not purely of a legal character?**

QLS highlights that early investment to legal assistance services can lead to long term financial savings due to less expenditure required to address legal need down the track. To achieve this there is a need for a range of early intervention and prevention services. These services should be in addition to rather than in substitution for funding of core legal services.

**10. Should legal assistance funding be provided to legal assistance providers for advocacy and law reform issues?**



The legal assistance sector has unique knowledge and valuable experience about the impact of the law on vulnerable client groups. It is vital that this knowledge and experience is used to inform the legislative branch of government when making laws, and the executive arm of government when formulating policy and administering those laws. CLCs are well recognised for their important role in law and policy reform work. However there is a lack of funding to support this work and most CLC lawyers undertake this work in addition to full caseloads. In the disability space, this is concerning as there are indications that the Federal Government is moving away from funding systemic advocacy for people with disability, towards an exclusive focus on individual advocacy. Systemic advocacy can lead to better laws and policies that reduce the need for individual legal services.

### **12. How might Commonwealth administrative processes, including appeals, be reformed to reduce the demand for legal assistance services and improve outcomes for legal assistance service clients?**

There is a need for significant reform in terms of appeals of decisions of the National Disability Insurance Agency in the Australian Administrative Tribunal (AAT), where the process can be unnecessarily protracted, inaccessible and there can be significant power imbalance (i.e. in terms of the representation of the Agency as compared with the legal service support available for individual appellants). This also contributes to the significant backlog in matters before the AAT.

The approach to funding legal assistance as opposed to individual advocacy can also be a constraint, for example, in the NDIS appeals space there is a split in funding between individual legal and non-legal funding where the work performed can be substantially similar and overlap. The needs of clients of CLCs often encompass both legal and other types of related needs so it can be difficult to draw a clear line around where the support should start and end, particularly where there are insufficient related services, for example, financial capacity building.

### **13. How does workforce supply and remuneration impact on the provision of legal assistance services?**

As discussed above, in relation to workforce supply and remuneration in regional, rural and remote areas, there are significant workforce supply and remuneration challenges which impact on the provision of legal assistance services in all regions, including metropolitan areas. This is evident in the disparity of remuneration and employment conditions for various segments of the legal assistance sector including preferred supplier rates.

As noted in the consultation paper, it is evident that the wage rates in the CLC sector are still far too low and this makes recruiting and retaining skilled staff challenging. This has a direct impact on the provision of legal assistance services. Longer funding cycles and more advanced notice of additional funding will support better recruitment and human resources practices and will assist particularly with planning and staff retention.

With regard to Legal Aid preferred supplier rates, our past advocacy has noted the low rates of remuneration for private practitioners undertaking Legal Aid work (*enclosed*). In addition to these low rates, fees are also capped. The inequity created by these low rates of pay are exacerbated when government funded lawyers are acting on both sides of a dispute. Disparities in fees can see the government lawyers being paid about four times as much as the legal assistance lawyers assisting the other party.

## Independent Review of the National Legal Assistance Partnership

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [REDACTED] or by phone on [REDACTED]

Yours faithfully

[REDACTED]  
Chloe Kopilovic  
President

1 November 2021

Our ref: [BDS-ATJ]

**Confidential**

The Hon Cameron Dick MP  
Treasurer and Minister for Trade and Investment  
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Copy to:  
The Hon Shannon Fentiman MP  
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Dear Treasurer

**Legal Aid Queensland preferred supplier rates**

The Queensland Law Society (QLS) writes to raise concerns of its members about Legal Aid preferred supplier rates. QLS notes that this has been a concern raised by its membership over a long period of time.

It is the QLS view that access to justice is fundamental to the rule of law and the realisation of human rights. To achieve effective access to justice in complex matters, people require access to quality legal advice and representation. Those who lack the means to pay for legal representation require access to an effective legal aid system. Legal Aid Queensland (Legal Aid) plays a critical role in the community by providing legal information and services to those who cannot afford private legal services.

One of the ways in which Legal Aid strives to meet the legal needs of the community is through outsourcing certain work to Legal Aid preferred suppliers. As you know, preferred suppliers are private legal practitioners who have agreed to undertake Legal Aid work on behalf of Legal Aid and are remunerated by Legal Aid in line with Legal Aid's preferred supplier scale of fees. Preferred suppliers undertake approximately 75-80% of legally aided work.<sup>1</sup>

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<sup>1</sup> Legal Aid Queensland, Annual Reports 2016-17, 2017-18, 2018-19, 2019-20.  
<https://www.legalaid.qld.gov.au/files/assets/public/publications/about-us/corporate-publications/annual-reports/2019-20/laq-annual-report-2019-20.pdf>,  
<https://www.legalaid.qld.gov.au/files/assets/public/publications/about-us/corporate-publications/annual-reports/2018-19/laq-annual-report-2019-lr.pdf>,  
<https://www.legalaid.qld.gov.au/files/assets/public/publications/about-us/corporate-publications/annual-reports/2017-18/laq-annual-report-2017-18.pdf>



## Legal Aid Queensland preferred supplier rates

QLS is concerned that the fees paid by Legal Aid to preferred suppliers have fallen far below what is fair and reasonable, and cannot sustain an effective and viable Legal Aid practice within Queensland. Since the beginning of the preferred supplier scheme in Queensland in 1997, there have been few increases in the Legal Aid preferred supplier rates. Hourly rates under the Legal Aid scale of fees are low and this issue is compounded by the 'capped' fees for most services, and the fact that Legal Aid rates are often expressed in a lump sum.

As an example, according to Legal Aid's scale of fees, a solicitor may obtain a grant for a fixed fee of \$660.80 for a full day appearance in the Magistrates Court.<sup>2</sup> Our members advise that these rates are less than half of what private lawyers would typically charge for the same services.

By comparison, other legal assistance schemes provide for substantially higher rates. For example, the Commonwealth Legal Financial Assistance Scheme, administered by the federal Attorney-General's Department, provides for an hourly rate of \$290.00 (inclusive of GST) for solicitors.<sup>3</sup> These rates are payable for attendances (including in conference, appearing in court and instructing in court), reading documents, preparing documents, and certain file work.<sup>4</sup>

In other jurisdictions, Attorney General's Departments publish rates payable to legal representatives engaged by and on behalf of Government departments and agencies. For example, in New South Wales, the rate to engage a solicitor is \$295 per hour with a daily maximum of \$2,950 plus GST.<sup>5</sup> Similarly, in South Australia, the Crown Solicitor's Office can approve public authorities to outsource work to private legal practitioners, who can bill according to a fee structure. The 2020-21 rates for private solicitors ranges from \$358 per hour to \$398, depending on the nature of the work.<sup>6</sup>

In our view, these rates provide an indication of an acceptable market rate for outsourced legal work and demonstrate that the current preferred supplier rates fall short of providing an acceptable standard of remuneration for the work of a legal representative.

The issues of a low hourly rate are compounded by the fact that Legal Aid grants are typically limited in scope, allowing for a limited number of mentions and/or conferences. There is no funding for mentions in excess of what is allowed in the grant, regardless of the reasons for

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[reports/2017-18/laq-annual-report-2018-web.pdf](https://www.legalaid.qld.gov.au/files/assets/public/publications/about-us/corporate-publications/annual-reports/2017-18/laq-annual-report-2018-web.pdf),

<https://www.legalaid.qld.gov.au/files/assets/public/publications/about-us/corporate-publications/annual-reports/2016-17/legal-aid-queensland-annual-report-2016-17-final.pdf>.

<sup>2</sup> Legal Aid Queensland, *Scale of fees- criminal law*, (1 October 2018)

<https://www.legalaid.qld.gov.au/files/assets/public/work-instructions/grants/scale-of-fees-2020-criminal.pdf>

<sup>3</sup> Commonwealth Legal Financial Assistance Schemes Assessment of Costs cl 2.1, available at:

<https://www.ag.gov.au/system/files/2020-06/Commonwealth%20Legal%20Financial%20Assistance%20Schemes%20-%20Assessment%20of%20costs.pdf>.

<sup>4</sup> Commonwealth Legal Financial Assistance Schemes Assessment of Costs cl 2.2, available at:

<https://www.ag.gov.au/system/files/2020-06/Commonwealth%20Legal%20Financial%20Assistance%20Schemes%20-%20Assessment%20of%20costs.pdf>.

<sup>5</sup> New South Wales Communities & Justice, 'Attorney General's rates for Legal Representation', available at: <https://www.justice.nsw.gov.au/legal-services-coordination/Pages/info-for-govt-agencies/attorney-generals-rates-for-legal-representation.aspx>.

<sup>6</sup> Government of South Australia Attorney-General's Department, 'Private firms and practitioners' available at: <https://www.agd.sa.gov.au/justice-system/crown-solicitors-office/private-firms-and-practitioners>.

those additional mentions, such as adjournments sought by police. This significantly reduces the options available to a defendant who is funded by Legal Aid, unless the lawyer conducts that work pro bono. In **Appendix A** we have included de-identified examples provided by one of our members, which illustrate the difficulties caused by this funding model.

Legal Aid work itself can be complex and time consuming, however, lump sum payments might cover only a couple of hours of work by a solicitor and do not account for cases that may require additional preparation time. Depending on the complexity and nuance of the case, preparation can reasonably take much longer than the hours covered by the lump sum payment. We highlight that Legal Aid is typically granted to those defendants who will receive at least 6 months in custody and where the duty lawyer cannot deal with the matter. Consequently, by their nature, these matters tend to be complex and usually require an element of case conferencing and a sentence listing with substantial preparation.

In the context of this complexity and the capped Legal Aid fees, in many cases, solicitors work additional hours for no financial returns in order to provide a proper service for their clients. Our members report that, in many matters, they undertake the majority of the work in legally aided matters pro bono in order to provide effective representation and meet their ethical obligations.

In addition, we note that there is a discrepancy in fees paid to preferred suppliers for representation at the Mental Health Review Tribunal.

In 2006, the *Study of the Participation of Private Legal Practitioners in the Provision of Legal Aid Services in Australia* noted that low hourly rate and issues with the number of hours allocated under the stage of matter payment structure were the key reasons for disengagement from legal aid among firms.<sup>7</sup> That study revealed that, as a consequence, approximately 33 percent of family and/or criminal law firms had moved away from providing Legal Aid.<sup>8</sup>

The issues observed in the Study continue to be a problem among the legal profession. QLS is aware that a number of firms and experienced lawyers refuse to participate in the preferred supplier scheme because of the low rates and capped lump sum payments, coupled with the complexity and time consuming nature of many Legal Aid matters. Consequently, the low preferred supplier rates provide legally aided persons with less options and risk perpetuating an inequitable system whereby Legal Aid cases are afforded less time than private clients who can afford to pay for adequate preparation and appearance time.

### Recommendations

Preferred suppliers play a critical role in Queensland's Legal Aid framework, undertaking the majority of legally aided work. However, there is a significant disparity between the rates paid to preferred suppliers, and those received in private practice. Low preferred supplier rates contribute to disengagement from Legal Aid work, raising questions about the long-term sustainability of the preferred supplier scheme.

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<sup>7</sup> Legal and Constitutional Affairs Committee, 'Chapter 4 The Cost of Delivering Justice' in *Access to Justice* (Report, 8 December 2009)

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/Completed\\_inquiries/2008-10/access\\_to\\_justice/report/c04](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2008-10/access_to_justice/report/c04)

<sup>8</sup> Legal and Constitutional Affairs Committee, 'Chapter 4 The Cost of Delivering Justice' in *Access to Justice* (Report, 8 December 2009)

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/Completed\\_inquiries/2008-10/access\\_to\\_justice/report/c04](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2008-10/access_to_justice/report/c04)



## Legal Aid Queensland preferred supplier rates

QLS is aware that, in recent times, there have been a number of practices cease doing legal aid work, particularly in regional Queensland. The last decade has also seen a substantial increase in the in the number of lawyers working in house for Legal Aid Queensland, particularly in the offices in regional Queensland. Our members report that the salary rates paid to in house lawyers at Legal Aid Queensland are significantly higher than the salaries that firms doing legal aid work are able to pay their employed solicitors. While QLS does not seek to reduce the salaries paid to Legal Aid Queensland staff, we note that these have increased year on year, both as a result of reclassification of positions and as a result of annual percentage increases. Preferred supplier rates are not indexed and have fallen far behind.

QLS recommends a review of the Legal Aid preferred supplier rates, with a view of increasing fees payable to preferred suppliers. QLS acknowledges that Legal Aid itself has limited resources, and QLS advocates for an increase in funding to Legal Aid Queensland to allow it to increase its rates to a fair and reasonable level. We note that the government of New South Wales has recently embarked on a program to bring preferred supplier rates to \$195 per hour over four years.

QLS encourages the government to also explore additional funding sources for Legal Aid Queensland. We note that money and property forfeited as proceeds of crime is sold and returned to the State's consolidated revenue fund, to be reinvested in the community. The Crime and Corruption Commission (CCC) is responsible for recovering the proceeds of crime under the *Criminal Proceeds Confiscation Act 2002*. In 2019-20 the CCC obtained assets valued at \$8,994,886 by exercising its powers under this Act and 100 percent of these proceeds were forfeited to the State consolidated revenue fund.<sup>9</sup>

QLS considers that Legal Aid's funding position may be fortified if the distribution of proceeds of crime were guided by funding priorities.<sup>10</sup> These priorities may require, for example, that a certain percentage of proceeds of crime forfeited to the State be reinvested in Legal Aid to bolster its financial position. In turn, this could assist to finance higher preferred supplier rates.

When legal aid commenced in Australia, rates paid were set at 80% of the current court scale. They have fallen far below this, and it is well known that court scales are not reflective of market rates. We consider attention should be directed towards increased preferred supplier rates in line with, at minimum, 80% of court scales of fees. QLS further considers that the structure of Legal Aid fees that favours lump sum payments should be reconsidered, as such a model fails to account for cases that differ in complexity and therefore require more or less preparation time.

Finally, while it is no substitute for regular review and reassessment of fees, QLS considers that preferred supplier scales should be indexed yearly, in line with the Queensland Treasury's Government indexation rate, to ensure that rates are increased regularly to account for inflation.

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<sup>9</sup> <https://www.ccc.qld.gov.au/sites/default/files/Docs/Publications/CCC/CCC-Annual-Report-2019-20.pdf> p. 30

<sup>10</sup> See e.g. the Gambling Community Benefit Fund, which is guided by funding priorities to ensure funds are distributed consistently and fairly <https://www.justice.qld.gov.au/initiatives/community-grants/guidelines/priorities>

## Legal Aid Queensland preferred supplier rates

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [policy@qls.com.au](mailto:policy@qls.com.au) or by phone on (07) 3842 5930.

We would value the opportunity to meet with you to discuss these matters further.

Yours faithfully



Elizabeth Shearer  
**President**



## APPENDIX A

By way of background, I am the director of a small firm that only practices in criminal, traffic and domestic violence law. I employ one solicitor. I am a preferred supplier for Legal Aid Queensland and am currently on the following panels:

- General crime
- Youth crime
- Life crime
- Domestic violence

I am also an accredited duty lawyer for Magistrates Court, Children's Court and Domestic Violence Specialist Court.

I am currently giving serious consideration to removing my firm from the youth crime and domestic violence panels due to the low rates paid for those matters compared to the amount of work required.

In relation to youth matters, there is no funding available for bail applications, of which there are usually more than one conducted for a juvenile before their matter is finalised. There is also no additional funding available where we hold a grant of aid for a juvenile and they are charged with more offences before we finalise the original matters. This is also a common occurrence for juveniles. I am often required to attend court at short notice on numerous occasions for juveniles and apply for bail. At the moment due to the media interest, there is often an application by the media to be present in court before the bail application is heard. The majority of those appearances are not funded by Legal Aid Queensland and it has become impossible to effectively represent a juvenile on the rates paid by Legal Aid Queensland.

The same situation exists for my practice currently with domestic violence matters. The work required to effectively prepare affidavit material is not adequately compensated by Legal Aid Queensland so I am considering removing my firm from that panel.

The current grant of aid for a Magistrate Court sentence for an adult or juvenile is \$660.11 (inclusive of GST). This is less than ½ of what private lawyers would charge for a Magistrate Court sentence. Legal Aid is only granted to those defendants who will receive at least 6 months in custody and where the duty lawyer cannot deal with the matter. Therefore, they are always complex matters that usually require an element of case conferencing and a sentence listing with substantial preparation.

The current grant for a committal in the Magistrates Court is less than \$600. The fee does not even come close to covering the fees for the lawyer to review a Brief of Evidence and provide advice in relation to it. It also restricts the number of mentions paid to two, regardless of the reason we might be required to appear at more mentions, such as the Brief of Evidence not being provided by police and adjournments sought by them. There is no funding available at all if the defendant wishes to conduct a directions hearing if there are disclosure issues, or if they wish to proceed by way of full hand-up committal with a no case submission. This significantly reduces the options available to a defendant who is funded by Legal Aid Queensland, unless the lawyer conducts that work pro bono. There is also no funding available to conduct a bail application in the Magistrates Court for a defendant at any stage of the matter.

More generally in relation to general and life crime matters, the funding available is wholly insufficient. The grants available for these matters are not sufficient to provide competent legal representation for a matter and we are undertaking the majority of the work pro bono to provide effective representation. For example, the grant of aid for a District or Supreme Court trial only allows for one or two conferences with the Solicitor and Barrister, and two mentions in court. They refuse to pay conferences conducted with the Solicitor only and will not pay for any conferences or mentions in excess of what is allowed in the grant. In Townsville, due to our local practices, the Solicitor is required to appear in person at the indictment presentation, arraignment, two separate trial review dates and any other mentions that arise in the meantime. We have often exhausted our funding for mentions before the matter is listed for trial, and certainly before we appear at a trial review. In terms of conferences, it would be completely unprofessional and bordering on incompetent to represent a defendant at trial after having only two conferences with them.

In 2020 I represented a defendant at a Murder trial in the Supreme Court.

The trial was adjourned once due to the COVID outbreak. It was then adjourned at short notice on the Crown's application due to a witness issue. I had to re-brief Counsel between the first and second listing and the trial proceeded on the third listing.

Leaving aside the issues about not being reimbursed for the preparation each time it was delisted, or the time I had blocked out in my diary (which equated to 6 weeks over the year), or the various mentions I appeared on; I claimed the 6 conferences I had conducted with Counsel. That did not include the conferences held during the trial outside of business hours (before and after court each day, as well as during any adjournment) and the conferences conducted without Counsel in the lead up to trial.

The invoice was amended by Legal Aid Queensland and only one conference was paid as that it all that was allowed under the grant of aid I had for the matter. The work undertaken on that particular file far exceeded the amount I was paid by Legal Aid Queensland and amounted to approximately 1/5 of what I would have charged if it was privately funded.

It is unlikely I would represent a defendant at a Supreme Court trial again on Legal Aid rates due to that recent experience. That was also a file I agreed to accept less than one month before the first trial listing because there were issues with his legal representation by the Townsville in-house Legal Aid lawyers and the file was significantly unprepared for trial.

Generally in my experience the fees payable for legal aid matters are insufficient and it is becoming almost impossible to continue to undertake this work when I consider the commercial benefits of it. I am also aware that there are a growing number of firms who are no longer preferred suppliers for Legal Aid Queensland.