

ACT Auditor-General's Office

Performance Audit Report

Grants of Legal Assistance

ACT Legal Aid Commission

November 2012



ACT AUDITOR-GENERAL'S OFFICE



PA11/14

The Speaker
ACT Legislative Assembly
Civic Square, London Circuit
CANBERRA ACT 2601

Dear Madam Speaker

I am pleased to forward to you a Performance Audit Report titled 'Grants of Legal Assistance' for tabling in the Legislative Assembly pursuant to Section 17(5) of the *Auditor-General Act 1996*.

Yours sincerely

Dr Maxine Cooper
Auditor-General
14 November 2012

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LIST OF ABBREVIATIONS

ACT	Australian Capital Territory
COAG	Council of Australian Governments
Commission	ACT Legal Aid Commission
FDR	Family Dispute Resolution
SEIFI	Socio-Economic Indexes for Individuals
SEIFA	Socio-Economic Indexes for Areas
SMART	Service Management and Report Tracking
the Act	<i>Legal Aid Act 1977</i>
PwC	PricewaterhouseCoopers

1. REPORT SUMMARY AND CONCLUSIONS

INTRODUCTION

- 1.1 This report presents the results of a performance audit that examined the ACT Legal Aid Commission's (the Commission) management of grants of legal assistance.

Grants of legal assistance

- 1.2 A report into the economic value of legal aid by PricewaterhouseCoopers (PwC) notes:

Legally enforceable rights and duties underpin a democratic society. Access to justice is essential to make these rights and duties real. Access to justice can be understood as access to legal assistance for all people, regardless of their means, background or capabilities. Australian governments, under various international conventions and treaties, have an obligation to ensure access to justice for all their citizens, as a basic human right. A key delivery mechanism of access to justice in the Australian community is the provision of legal aid services.¹

- 1.3 Grants of legal assistance facilitate access to the justice system for people who may otherwise find it difficult. A grant of legal assistance provides a person with access to a lawyer who may:

- provide legal advice;
- assist the person to reach agreement or resolve a dispute with someone;
- prepare legal documents; or
- provide representation in court.

- 1.4 While the Commission manages the grants process, legal assistance may be provided by a Commission lawyer or private practice lawyer. Monetary sums are not provided directly to a grant recipient, as grants of legal assistance are managed by the Commission on their behalf.

AUDIT OBJECTIVE

- 1.5 The objective of this audit is to provide an independent opinion to the Legislative Assembly on the efficiency, effectiveness and value for money of the Legal Aid Commission's management of grants of legal assistance.

¹ PricewaterhouseCoopers (2009) *Economic value of legal aid: analysis in relation to Commonwealth funded matters with a focus on family law*, p. i.

AUDIT CONCLUSION

1.6 The audit conclusion drawn against the audit objectives is set out below.

The Commission provides a range of services to vulnerable and disadvantaged people in the ACT in seeking to 'maximise the ability of people to access the justice system.' Grants of legal assistance are a key means by which the Commission achieves its stated aim of 'ensuring that vulnerable and disadvantaged people receive the legal services they need to assert or defend their rights.'

The main risk for the Commission is its financial liquidity, and the Commission has made substantial financial losses in recent financial years. Accordingly, it is incumbent on the Commission to develop and implement administrative processes for the management of its legal aid services (including grants of legal assistance) that are efficient and cost-effective and lead to it being able to deliver its services within its budget in the longer term.

The Commission's governance and administrative arrangements for delivering grants of legal assistance are effective overall. While its strategic and operational planning, risk management and complaints handling procedures are also appropriate there are shortcomings which, if addressed, would strength the Commission's governance and administration.

The inherent risks associated with the Commission's multiple roles and responsibilities for assessing and making decisions regarding applications for grants of legal assistance and allocating grants to either its own in-house Legal Practice or private practice lawyers are effectively managed.

The administrative processes in place to receive and allocate grants of legal assistance are effective. While some shortcomings in the administration and documentation of these processes were identified, as well as instances of non-compliance with administrative processes, these are not considered to indicate that there is an overall problem with these processes. The Commission's administrative processes are considered to facilitate appropriate decision making regarding the eligibility of clients for grants of legal assistance, although some improvements are warranted.

The Commission has made many improvements in its management of grants of legal assistance in recent years. This includes the implementation of an eGrants system, development of a panel of legal services providers and better processes to manage the private practice lawyers it engages for grants. All these are intended to provide efficiency and consistency in the Commission's administrative processes, documentation and record-keeping for the management of grants of legal assistance.

The processes for improving the Commission's management of private practice lawyers have not been adopted by the Commission in managing its own in-house lawyers. For example, the Commission's Legal Practice does not provide regular progress reports to the Client Services Division for monitoring and does not use the eGrants system to manage grants. The Commission's overall management of grants of legal assistance could be improved if there was consistency in the management of its in-house Legal Practice and that used for private practice lawyers.

The Commission has implemented a Service Management and Report Tracking project, which has been effective in developing and measuring indicators of *service effectiveness*. However, it has

not made similar progress in developing and measuring indicators of *service efficiency*. The lack of a costing model for the delivery of its in-house Legal Practice services means that the Commission cannot accurately measure and benchmark the costs of its own service delivery for grants of legal assistance. Without this, it is impossible to undertake any benchmarking or compare the Commission's costs with private practice lawyers. Accordingly, Audit could not assess whether the Commission's own management of grants of legal assistance is being undertaken efficiently or in a manner that offers value for money. While this information would have been useful for this audit, it is also important for the Commission to have so that it can monitor its own efficiency.

KEY FINDINGS

1.7 The audit conclusion is supported by the following findings:

Chapter 2 (Legal Aid Commission background)

- The total number of all services provided by the Commission has generally fluctuated in the four years to 2011-12, while the total number of grants of legal assistance managed by the Commission has steadily declined. There were 2 534 grants of legal assistance provided in 2008-09, and 2 276 grants in 2011-12.
- Key drivers of demand for the Commission's services, including grants of legal assistance, are the introduction of new laws, interpretations and procedures and the current economic climate and its impact on legal needs.
- The Commission made substantial financial deficits in 2010-11 and 2011-12 of \$653 732 and \$869 637 respectively (most of which related to provisions and depreciations). The Commission has remained operational because it has been able to draw on its comparatively large cash and cash equivalents. In June 2012 the Commission had approximately \$3.7 million in cash and short term deposits. The Commission has identified its financial liquidity as its highest organisational risk.
- A key factor influencing the Commission's activities is the 2009 Council of Australian Governments (COAG) *National Partnership Agreement on Legal Assistance Services*. This agreement has introduced a range of new indicators for legal aid commissions, including those for measuring the quality of legal services.
- The *National Partnership Agreement on Legal Assistance Services* envisages a 25 percent increase in the total number of services delivered by legal aid commissions across Australia, but only a 10 percent variance from 2009-10 baseline services for grants of legal assistance. This reflects an increasing focus on preventative, early intervention services as opposed to the more costly and complex grants of legal assistance.

Chapter 3 (Governance and administrative arrangements)

- The Commission has three functional divisions: the Legal Practice, Client Services Division and Corporate Services Division. The Legal Practice is responsible for delivering the Commission's legal services, including grants of legal assistance. Client Services is responsible for receiving and assessing applications for grants of legal assistance and allocating these grants to its Legal Practice or private practice lawyers.
- There are inherent conflict of interest risks associated with the Commission's multiple roles for managing grants of legal assistance, including its responsibilities for assessing and making decisions on clients' applications for grants of legal assistance and allocating the grant to the in-house Legal Practice or private practice lawyers. However, the

Commission's administrative arrangements are appropriate to mitigate the inherent risks. The Commission's administrative arrangements include a strict division of roles and responsibilities between its Legal Practice and the Client Services Division.

- The Commission has a Conflict Policy, which provides guidance to staff for recognising and managing conflicts of interest. Audit's review of a sample of the Commission's files found that a conflict of interest check had been performed for all of the applications for grants of legal assistance.
- The Commission has developed a number of plans to guide the delivery of its services, including a four-year strategic plan and an annual operational plan. The Commission's strategic and operational planning is generally satisfactory, but there are shortcomings in that key requirements and deliverables of the *National Partnership Agreement on Legal Assistance Services* are not reflected in these plans and the goals and strategies identified in the strategic and operational plans are not linked with the Commission's annual Statement of Intent and the key performance indicators reported in the annual Statement of Performance. Furthermore, roles, responsibilities and accountabilities for specific goals and strategies are not defined in the annual operational plan.
- The Commission has a Risk Management Plan, which documents the Commission's risks, risk ratings, mitigation strategies and responsible business owners. It also documents actions and progress on the management of the risks. Both fraud and risks are monitored by the Commission's Executive, the Finance Committee, the Payment Assurance Working Group, the Commission's HR Manager and the Audit Committee on an ongoing basis.
- The Commission has a *Complaints Handling Policy and Procedure* (the Complaints Policy), which provides a satisfactory basis by which the Commission can manage complaints. The Commission maintains a Complaints Register and 54 complaints were recorded between January 2010 and June 2012. The Chief Executive Officer or Deputy Chief Executive Officer provided a response to every complaint and there was satisfactory documentation to support the actions taken by the Commission to investigate the complaint and provide a response to the complainant. A shortcoming however is that there is no evidence indicating what management actions had been taken to address or improve business practices as a result of a complaint.

Chapter 4 (Receiving and allocating applications for grants of legal assistance)

- The Commission provides a range of information, referral, legal advice and minor assistance services, which provides an opportunity to advise people of their legal rights and the principles that are considered in assessing an application for a grant of legal assistance.
- The Commission has developed *Legal Assistance Guidelines*, which state the eligibility principles for grants of legal assistance. Applications for grants of legal assistance are assessed against these principles, including those which apply to the conduct of the means test (assessing the applicant's capacity to pay for the legal service) and reasonableness test (assessing the relative merits of the applicant's legal claims).
- Audit's review of a sample of applications for grants of legal assistance found a series of exceptions and non-compliance in the information provided by applicants, which makes it difficult for the Commission to make an appropriate decision on the application. However, the exceptions and non-compliance identified in the application process do not suggest there are problems with the Commission's overall management of the application process. Shortcomings in the information provided in applications for grants

of legal assistance demonstrates the inherent difficulties of the Commission's role and the need to balance adherence to administrative processes and the delivery of services to vulnerable people.

- All applications for grants of legal assistance are subject to a means test and reasonableness test. There were shortcomings in the application and documentation of the means test and reasonableness tests in the sample of applications reviewed by Audit. In 11 out of 75 applications, there was no evidence that the means test was applied, while in three other applications it appeared the means test had only been partially applied. Furthermore, while a template had been developed to facilitate the conduct of the means test, this had been used inconsistently and, in some instances, not at all. The Commission does not document the conduct of the reasonableness test for all applications, except for those applications that fail the test. This needs to be addressed.
- A person, who receives legal assistance, unless exempted, is required to pay a contribution of \$90. In the sample of grants examined by Audit, it was found that 25 percent of applicants who had been required to pay the client contribution did not make this payment. The vast majority of contributions that were not recovered related to grants managed by the in-house Legal Practice. While the amount of client contribution to be recovered needs to be balanced against the administrative costs associated with Commission staff seeking its recovery, Audit considers that options for improving the recovery of client contributions need to be explored.
- The Commission processes applications for grants of legal assistance in a timely manner. Eighty percent of all applications were processed within five days and ten percent were processed in five to ten days. The balance of applications was processed in ten or more days, often due to the need to seek more information from the applicant or clarify information that has been received.
- Over half of the grants of legal assistance are allocated to private practice lawyers. In 2011-12, 1 213 grants of legal assistance were assigned to private practice lawyers and 1 063 were assigned to the Commission's in-house Legal Practice. The Commission has developed *Work Allocation Guidelines*, which are part of its *Legal Assistance Guidelines*, to guide the administrative decision making process for the allocation of grants to either its in-house Legal Practice or private practice lawyers. However, where there was no conflict of interest or an applicant had not expressed a preference for a particular lawyer there was a lack of documentation to explain the rationale for the selection of a lawyer. While there was no evidence that the assignation of a lawyer was inappropriate or not in compliance with the *Legal Assistance Guidelines*, there was insufficient evidence to support the decision that had been made and to provide evidence that the *Work Allocation Guidelines* had been applied.

Chapter 5 (Managing and monitoring grants of legal assistance)

- Two key means by which effective legal aid services are facilitated are the *Legal Profession Act 2006* and Professional Conduct Rules published by the Law Society of the ACT. These establish the professional duties and responsibilities of all lawyers in the ACT and apply to both in-house Commission staff and private practice lawyers.
- The Commission has developed and promulgated *Practice Standards* for the provision of services under grants of legal assistance. The *Practice Standards* 'set out strategies to ensure the effective, efficient and economic delivery of quality legal services and apply to both private practice lawyers and in-house Legal Aid ACT lawyers.'

- Client Services has a role in managing and monitoring grants of legal assistance being provided by private practice lawyers. However, it does not have a role in managing and monitoring grants of legal assistance that are assigned to the in-house Legal Practice, which is the responsibility of each Head of Practice (e.g. Family Law or Criminal Law).
- As part of the Commission's 2008-12 Strategic Plan, the Commission has been implementing a *New Directions Program*. This involves a series of projects which are intended to improve business practices associated with the Commission's management of grants of legal assistance. These include the development of the eGrants system, the SMART (Service Management and Report Tracking) project and the implementation of the General Panel of private practice lawyers for the provision of services under grants of legal assistance.
- The Commission has developed a standard *General Panel Services Agreement*, for the provision of services by private practice lawyers. This provides a strong basis for the Commission to manage private practice lawyers delivering legal services under a grant of legal assistance. The *General Panel Services Agreement* also provides for the conduct of compliance audits on private practice lawyers. To date, however, a compliance audit program has not been developed and there have only been two compliance audits conducted on private practice lawyers.
- A 'stage of matter' approach is used by the Commission to monitor a grant's progress. This is facilitated by the eGrants system, which has a 'dashboard' reporting function that allows a Commission system user to identify, at any given time, the status of a grant of legal assistance, i.e. what stage it is up to, and the total commitment and expenditure incurred on the grant. A shortcoming of the Commission's administration of grants of assistance is that its eGrants system is only used to manage those grants assigned to private practice lawyers.
- Where a grant is assigned to a private practice lawyer, a key means by which Client Services manages and monitors the provision of services is through progress reports. Progress reports should be received when a grant has reached, and completed, a particular 'stage of matter' and a final report should be received once the matter has been finalised. In the review of a sample of the Commission's files, Audit found there was considerable variability in the quality and comprehensiveness of information provided by private practice lawyers in progress reports. In-house Legal Practice lawyers are not required to provide progress reports or final reports to Client Services. Audit considers that this impairs the ability of the Commission to overall manage its grants and allocate resources efficiently.
- The Commission has implemented the Service Measurement and Report Tracking (SMART) project to improve the recording of service information and enhance service delivery. This project involved the development of measures of *service effectiveness* and *service efficiency*. There has been substantial progress in developing measures of *service effectiveness* and comprehensive six-monthly reviews of performance have been conducted by the Commission to assess the effectiveness of service provision.
- The development of measures of *service efficiency* was intended to be achieved through a more accurate understanding of the Commission's costs of legal services, as a basis for comparison and benchmarking. The Commission has not given priority to the development of measures of *service efficiency* and considerable work needs to be done in relation to this component of the project. At present, the Commission cannot accurately identify the comparative costs of providing grants of legal assistance through its in-house Legal Practice or benchmark these costs against private practice lawyers.

This is a concern given that the Commission has made significant financial losses in recent years and it predicts that this will continue in future years.

- Dr Curran concluded in her report on the Commission; *We Can See There's a Light at the End of the Tunnel: Demonstrating and Ensuring Quality Service to Clients* (April 2012) that with respect to the quality of the provision of legal services to clients, the Commission 'scored highly and consistently on the outcome indicators'.

RECOMMENDATIONS AND RESPONSE TO THE REPORT

1.8 Ten recommendations are made to address the audit findings detailed in this report and assist the Commission in further improving its business practices related to grants of legal assistance.

1.9 In accordance with Section 18 of the *Auditor-General Act 1996*, a final draft of this report was provided to the Chief Executive of the Legal Aid Commission for consideration and comments. The Chief Executive's overall response is shown below:

The Commission welcomes the performance audit report which is supportive of business practice improvements made as part of the Commission's New Directions Program. The Commission accepts, with some qualifications, all recommendations in the report.

The performance audit report provides a useful basis for making ongoing improvements to the management of grants of legal assistance.

1.10 In addition, the Chief Executive provided responses to each recommendation.

Recommendation 1 (Chapter 3 - Governance and administrative arrangements)

The Commission should improve its strategic and operational planning by:

- a) recognising and incorporating key requirements and deliverables of the *National Partnership Agreement on Legal Assistance Services* in its Strategic Plan and Operational Plan;
- b) linking the goals and strategies identified in its strategic and operational plans with its annual Statement of Intent, including key performance indicators identified in the annual Statement of Intent (which are reported in the annual Statement of Performance); and
- c) clearly identifying roles, responsibilities and accountabilities for specific goals and strategies in its Operational Plan.

Legal Aid Commission's Response:

1 a) Agreed

The Commission's strategic plan for 2008-2012 was developed two years before the commencement in July 2010 of the *National Partnership Agreement on Legal Assistance Services* (NPA) and the goals and strategies in the plan are consistent with those in the NPA. Since the commencement of the NPA did not require a change in the Commission's

strategic directions it was not considered necessary to amend the strategic plan to include reference to the NPA. The Commission will incorporate reference to the NPA in its strategic plan for 2013-2017.

1 b) Agreed

1 c) Agreed

While the Operational Plan for 2012-13 does not specify the officers responsible for achieving goals and objectives in the plan, the responsible officers are aware of their accountabilities after several years of implementing these plans and reporting twice yearly on progress against the goals and objectives for which they are responsible. The responsible officers will be specified in operational plans from 2013-2014.

Recommendation 2 (Chapter 3 - Governance and administrative arrangements)

The Commission should improve its complaints handling procedures by routinely analysing all complaints to identify potential business practice improvements.

Legal Aid Commission's response:

Agreed

On the occasions when complaints reveal business practice deficiencies appropriate corrective action is taken. Action taken to correct business practice deficiencies will in future be recorded in the Complaints Register.

Recommendation 3 (Chapter 4 - Receiving and allocating applications for grants of legal assistance)

The Commission should develop specific assessment criteria for guiding decision makers in applying the reasonableness test to applications for grants of legal assistance.

Legal Aid Commission's Response:

Agreed in principle.

The Commission will review whether it is appropriate, having regard to the provisions of the *Legal Aid Act 1977*, to develop additional assessment criteria for application of the reasonableness test.

Recommendation 4 (Chapter 4 - Receiving and allocating applications for grants of legal assistance)

The Commission should ensure that decision making processes for the means and reasonableness tests for applications for grants of legal assistance are documented. This should include:

- a) use of standard forms and templates for the conduct of the tests; and
- b) where relevant, documentation as to why either of the tests are not applied to an application for legal assistance.

Legal Aid Commission's Response:

Agreed

The Commission notes that the files checked by Audit related to applications for assistance processed prior to 30 June 2011. Steps taken since June 2011 to improve administrative processes and compliance, including the implementation of the eGrants system, mean that the sample of files selected by Audit does not reflect current practice. The Commission will be taking take further steps to improve documentation of decision making relating to means and reasonableness testing.

Recommendation 5 (Chapter 4 - Receiving and allocating applications for grants of legal assistance)

The Commission should investigate options to enhance the recovery of client contributions.

Legal Aid Commission's Response:

Agreed

As noted in paragraph 4.58 of the report the Commission implemented a revised *Contributions Assessment & Recovery Policy & Procedure* in April 2012. The new policy will enhance the recovery of contributions by ensuring that contributions are levied and recovered when it is equitable and cost-effective to do so.

Recommendation 6 (Chapter 4 - Receiving and allocating applications for grants of legal assistance)

The Commission should ensure that there is appropriate documentation of all reconsideration and review processes undertaken for applications for grants of legal assistance.

Legal Aid Commission's Response:

Agreed.

The Commission will take steps, consistent with the independence of review committees and their power under the *Legal Aid Act 1977* to regulate the conduct of proceedings at meetings as they think fit, to improve the minuting of review committee meetings and the documentation of reasons for decision.

Recommendation 7 (Chapter 4 - Receiving and allocating applications for grants of legal assistance)

The Commission should ensure that all decisions regarding the assignment of a grant of legal assistance to either its in-house Legal Practice or private practice lawyers are documented.

Legal Aid Commission's Response:

Agreed

The Commission will improve documentation of the application of the Allocation of Work Guidelines.

Recommendation 8 (Chapter 5 - Managing and monitoring grants of legal assistance)

The Commission should develop and implement a risk-based compliance audit program for the delivery of legal services by private practice lawyers under grants of legal assistance.

Legal Aid Commission's Response:

Agreed

As noted in paragraph 5.26 of the report the Commission has commenced risk based compliance audits of private practice lawyers' files and is currently reviewing the audit methodology to ensure that it addresses areas of greatest risk. The Commission will conduct regular risk-based compliance audits of both private practice lawyer and in-house Legal Practice files.

Recommendation 9 (Chapter 5 - Managing and monitoring grants of legal assistance)

The Commission should ensure that all grants of legal assistance, irrespective of whether they are assigned to the in-house Legal Practice or private practice lawyers are:

- a) managed using the eGrants system; and
- b) subject to regular progress reports to Client Services.

Legal Aid Commission's Response:

9 a) Agreed

It has been the Commission's intention to manage all grants through the eGrants system. Development of a portal to give the in-house Legal Practice access to eGrants is currently underway.

9 b) Agreed

However, it is important to balance the requirement for progress reports with the need to minimise the administrative overhead cost of handling legally assisted cases. In most cases the need for progress reports is satisfied through the provision of information supporting requests for extensions of assistance, or reports on case outcomes. Reporting letters sent by the in-house Legal Practice to clients at the conclusion of cases satisfy the requirement for a report on case outcomes and in future copies of this letter will be kept on the Client Services file as well as the Legal Practice file.

Recommendation 10 (Chapter 5 - Managing and monitoring grants of legal assistance)

The Commission should:

- a) develop a costing model for its Legal Practice services (e.g. hourly charge-out rates) which should facilitate an accurate assessment of the cost of providing legal services by the Commission; and
- b) use this as a basis for developing measures of service efficiency, which can then be used as a basis for benchmarking and cost comparison.

Legal Aid Commission's Response:

10 a) Agreed

As noted in paragraphs 5.6 and 5.12 of the report the development of a system to measure service costs was part of the New Directions Program under the Commission's Strategic Plan for 2008-2012. The limited resources available to the Commission to undertake major systems improvement projects has resulted in priority being given to projects that offered the greatest potential for efficiency gains (eGrants) or to improve service quality and outcomes (PANELS and the Curran research). Having completed these projects the Commission has allocated funding in its 2012-13 and 2013-14 budgets to the development

of the Legal Aid Management Information System (LAMIS) which will incorporate systems for measuring service costs.

10 b) Agreed

The Commission acknowledges the need to establish service efficiency measures for internal management and benchmarking purposes, but sounds a note of caution in regard to cost comparisons. Comparing the cost of services provided by private practice lawyers and lawyers employed by legal aid commissions (salaried lawyers) has been the subject of a number of inquiries and reports over the past 30 years.

An acceptable model for accurately calculating and comparing the cost of legal assistance services delivered by salaried lawyers and private practice lawyers has not been developed, and given the complexity of the exercise the cost of administering such a model could outweigh the potential benefits. This is partly because cost is not the only factor to be taken into account when deciding whether a case should be handled by a salaried lawyer or a private practice lawyer.

While comparative cost might be an important determinant of whether a particular type of legal assistance service should be predominantly provided by private practice or salaried lawyers, comparative service quality and effectiveness are also important factors.

Furthermore, salaried legal assistance services provide important tangible benefits to the community which cannot be measured in purely cost terms. These include:

- addressing through innovation the needs of vulnerable and disadvantaged people;
- providing competitive stimulus, benchmarking and other information which assists the containment of costs and improves service quality;
- providing specialist services to children and others with special needs;
- providing advice in relation to the development of legal assistance policy and legal assistance programs;
- providing independent and informed input to law reform; and
- increasing the availability and accessibility of legal services to vulnerable and disadvantaged people.

A further non-cost consideration that must be factored into work allocation decisions is that in order to properly carry out its statutory functions the Commission's Legal Practice needs to maintain a caseload of sufficient volume and diversity to develop and sustain the professional expertise necessary to support the provision of other legal assistance services such as legal advice, duty lawyer services, minor legal assistance, dispute resolution services and community legal education.

2. LEGAL AID COMMISSION BACKGROUND

- 2.1 This chapter provides background information on the Legal Aid Commission (the Commission) including its role in providing grants of legal assistance.

SUMMARY

Conclusion

The Commission provides a range of services to vulnerable and disadvantaged people in the ACT in seeking to 'maximise the ability of people to access the justice system.' Grants of legal assistance are a key means by which the Commission achieves its stated aim of 'ensuring that vulnerable and disadvantaged people receive the legal services they need to assert or defend their rights.'

The main risk for the Commission is its financial liquidity, and the Commission has made substantial financial losses in recent financial years. Accordingly, it is incumbent on the Commission to develop and implement administrative processes for the management of its legal aid services (including grants of legal assistance) that are efficient and cost-effective and lead to it being able to deliver its services within its budget in the longer term.

Key findings

- The total number of all services provided by the Commission has generally fluctuated in the four years to 2011-12, while the total number of grants of legal assistance managed by the Commission has steadily declined. There were 2 534 grants of legal assistance provided in 2008-09, and 2 276 grants in 2011-12.
- Key drivers of demand for the Commission's services, including grants of legal assistance, are the introduction of new laws, interpretations and procedures and the current economic climate and its impact on legal needs.
- The Commission made substantial financial deficits in 2010-11 and 2011-12 of \$653 732 and \$869 637 respectively (most of which related to provisions and depreciations). The Commission has remained operational because it has been able to draw on its comparatively large cash and cash equivalents. In June 2012 the Commission had approximately \$3.7 million in cash and short term deposits. The Commission has identified its financial liquidity as its highest organisational risk.
- A key factor influencing the Commission's activities is the 2009 Council of Australian Governments (COAG) *National Partnership Agreement on Legal Assistance Services*. This agreement has introduced a range of new indicators for legal aid commissions, including those for measuring the quality of legal services.
- The *National Partnership Agreement on Legal Assistance Services* envisages a 25 percent increase in the total number of services delivered by legal aid commissions across Australia, but only a 10 percent variance from 2009-10 baseline services for grants of legal assistance. This reflects an increasing focus on preventative, early intervention services as opposed to the more costly and complex grants of legal assistance.

ACT LEGAL AID COMMISSION

The Commission's purpose

2.2 The Commission is an independent statutory authority established under the *Legal Aid Act 1977* (the Act). The formal duties of the Commission, established under subsection 10(1) of the Act are extensive (refer to Appendix B). They include *inter alia* 'ensuring that legal assistance is provided in the most effective, efficient and economical manner.'

2.3 According to its 2011-12 Statement of Intent the Commission 'aims to maximise the ability of people to access the justice system by providing a range of legal aid services through in-house legal and paralegal staff, and lawyers in private practice.'

2.4 The Commission's mission is:

to promote a just society in the Australian Capital Territory by:

- ensuring that vulnerable and disadvantaged people receive the legal services they need to assert or defend their rights;
- developing an improved community understanding of the law; and
- seeking reform of laws that adversely affect those we assist.

We achieve this purpose by delivering a range of high quality legal aid services through our staff and professional partners in a caring manner that respects diversity and promotes confidence in the legal system.

The Commission's services

2.5 In addition to grants of legal assistance, the Commission offers a range of services to the ACT community including:

- **information and referral services** – information about law and the legal system is provided by the Commission to individuals and community groups, primarily through the Legal Aid Helpdesk, by telephone through the Legal Aid Helpline, or by staff in person at the Commission's office and at the courts;
- **legal advice and minor assistance** – legal advice and minor assistance is provided free of charge in face-face interviews arranged through the Commission's Legal Aid Helpdesk, the Legal Aid Clinic and the Youth Law Centre as well as by telephone through the Legal Aid Helpline;
- **duty lawyer services** – duty lawyer services are provided free of charge at courts and tribunals to people who would otherwise be unrepresented in relation to an event or proceeding on that day. Duty lawyer services consist of advising the person, and in appropriate circumstances appearing on their behalf, in relation to the proceeding or event;
- **advocacy services** – advocacy services do not require a grant of assistance and are provided to people in mental health proceedings and in other situations where people are unable to adequately advocate their own case.
- **family dispute resolution** – the Commission provides a lawyer-assisted model of alternative dispute resolution for family law disputes and child protection matters, with the objective of settling disputes without recourse to the courts;

- **community legal education** – the Commission initiates and carries out educational programs designed to promote awareness and understanding of legal rights and responsibilities, and how the legal system works; and
- **law reform** – the Commission has a statutory obligation to advise the Attorney-General of any proposals for new legislation or existing laws and procedures that may adversely impact on those groups in the community who make up its client base.

Extent of services provided

2.6 The Commission reports on selected aspects of its services as part of its Statement of Performance in its annual reports. Table 2.1 shows the volume of services provided by the Commission, as reported in its Statement of Performance, in the four financial years to 2011-12.

Table 2.1: Statement of Performance achievements (2008-09 to 2011-12)

	2008-09	2009-10	2010-11	2011-12
Legal Aid services provided by private practice lawyers				
Total number of legal advice services provided in person	147	231	400	458
Total number of duty lawyer services provided	671	642	555	684
Grants referred to private practice lawyers	1 372	1 327	1 330	1 213
Legal Aid services provided by Commission staff				
Total number of information and referral services provided	26 403	6 501	13 372	58 550
Total number of legal advice and minor assistance services provided in person	3 166	2 783	3 860	3 459
Total number of legal advice services provided by telephone	9 301	8 133	6 949	8 021
Total number of duty lawyers services provided	2 370	2 672	2 818	2 277
Grants referred to Commission staff	1 162	991	965	1063
Total number of dispute resolution conferences held	-	-	-	118
Total number of people attending community legal education sessions	-	-	-	1 894
Total number of ATSIL people receiving services	-	-	-	298

Source: Commission's annual statement of performance

Note: There has been a significant increase in the total number of information and referral services provided between 2010-11 and 2011-12. This is due to the Commission now recording access to information pages on its website in this figure.

2.7 Table 2.1 shows that grants of legal assistance are one of a number of different services reported by the Commission in its Statement of Performance. The table also shows that the number of other services of the Commission (e.g. information and referral services,

legal advice and minor assistance and telephone assistance) are significantly higher than the number of grants of legal assistance.

2.8 Table 2.1 also shows that the total number of services provided by the Commission has fluctuated in the three years to 2010-11. However, the total number of grants of legal assistance managed by the Commission has steadily declined between 2008-09 and 2011-12. There were 2 534 grants of legal assistance provided in 2008-09 (1 372 provided by private practice lawyers and 1 162 by Commission staff), while 2 276 grants were provided in 2011-12 (1 213 provided by private practice lawyers and 1 063 by Commission staff).

The Commission's revenue and expenditure

2.9 Table 2.2 shows the Commission's total actual income and expenditure against budget for the four financial years to 2011-12.

Table 2.2: The Commission's revenue and expenditure

	2008-09 (\$)	2009-10 (\$)	2010-11 (\$)	2011-12 (\$)
Total income	9 760 523	11 148 697	11 147 058	11 393 974
Total expenditure	9 914 729	10 656 659	11 800 790	12 262 975
Operating surplus (deficit)	(154 206)	492 038	(653 732)	(869 637)

Source: Audit Office, based on the Commission Annual Reports

2.10 Table 2.2 shows that the Commission has made substantial operating deficits in 2010-11 and 2011-12 of \$653 732 and \$869 637 respectively. The cash components of the deficits in 2010-11 and 2011-12 were \$58 733 and \$25 039 respectively, with the balance of deficits comprising provisions and depreciations.

2.11 The table also shows that the Commission's total annual revenue remained relatively static between 2009-10 and 2010-11 and increased slightly in 2011-12 but its total annual expenditure increased in the same period. In 2011-12 there was a considerable increase in expenditure of \$462 185 (3.9 percent). This was predominantly due to an increase of \$494 000 in the costs of providing legal assistance.

Sources of revenue

2.12 Table 2.3 shows the major sources of revenue for the Commission in the four financial years to 2011-12.

Table 2.3: The Legal Aid Commission’s major sources of revenue

	2008-09 (\$)	2009-10 (\$)	2010-11 (\$)	2011-12 (\$)
Government payment for outputs	3 519 000	9 109 000	8 949 000	9 209 000
User charges – Non-ACT Government	4 352 892	279 434	435 379	364 028
Statutory Interest	1 648 900	1 531 667	1 244 069	1 420 623
Other sources of revenue	239 731	228 596	518 610	399 687
TOTAL	9 760 623	11 148 697	11 147 058	11 393 338

Source: Audit Office, based on the Commission’s Annual Financial Statements

2.13 Other sources of revenue in the table include revenue from interest on bank accounts and short-term deposits, as well as other miscellaneous revenue.

Government payment for outputs

2.14 Government payment for outputs refers to revenue received from the ACT Government to fund the cost of delivering outputs. There have been comparatively small variations in this amount since 2009-10 (approximately 1.7 percent changes in 2010-11 and 2011-12).

2.15 Since 2009-10 this amount has also included funding received from the Commonwealth. Funding is received from the Commonwealth for the provision of legal services in relation to Commonwealth legal matters, including litigation, Family Duty Lawyer services and Family Dispute Resolution services. In 2008-09 this funding was recognised as non-ACT Government user charges.

User charges non-ACT Government

2.16 User charge revenue refers to funds received from users of the Commission’s legal aid services. Clients who can afford to do so are required to pay a contribution towards the services that they receive. Where court proceedings are likely to result in a settlement of cash or property in favour of an assisted person, or the assisted person has a significant amount of equity in property, the person’s contribution may be reassessed to an amount of up to 100 percent of the legal costs incurred.

2.17 Overall, user-charges represent a comparatively small source of revenue for the Commission (approximately 3.2 percent of total revenue in 2011-12). In its 2011-12 Annual Report the Commission notes that user-charges revenue was under budget by \$59 000 due to reduced client contributions received from recipient of grants of legal assistance.

Statutory Interest - grant from ACT Law Society

2.18 The grant received from the ACT Law Society is based on interest generated on trust funds held in the ACT Law Society Statutory Interest Account, which was established under the *Legal Profession Act 2006*.

2.19 In 2011-12 this grant represented approximately 12.5 percent of total revenue received by the Commission. It should be noted that the amount of the grant from the Law

Society fluctuates. It is expected that with lower interest rates the amount received by the Commission from this source will decline in the next few years.

Expenditure categories

2.20 Table 2.4 shows the major categories of expenditure for the Commission in the four financial years to 2011-12.

Table 2.4: The Legal Aid Commission’s major categories of expenditure

	2008-09 (\$)	2009-10 (\$)	2010-11 (\$)	2011-12 (\$)
Employee expenses	4 555 326	4 210 822	4 844 533	4 825 288
Superannuation expenses	657 028	724 318	790 770	771 521
Supplies and services	4 633 532	4 778 624	4 866 148	5 308 504
Depreciation and amortisation	65 190	68 036	344 403	374 694
Lease expense	-	871 594	949 026	976 853
Borrowing costs	3 653	3 265	5 910	6 115
TOTAL	9 914 729	10 656 659	11 800 790	12 262 975

Source: Audit Office, based on the Commission’s Annual Financial Statements

Employee expenses and superannuation expenses

2.21 Employee expenses refers to expenditure associated with Commission employees. This amount has generally fluctuated in the four years to 2011-12. Superannuation expenses largely reflect changes in employee expenses. Salaries increased in 2010-11, primarily due to increases in FTEs resulting from additional ACT Government funding for Youth Law Centre staffing and an Indigenous Liaison Officer, as well as annual salary increases. Salaries were held steady in 2011-12 after a small reduction in FTEs.

Supplies and services

2.22 Supplies and services expenditure refers to a range of expenditure from external suppliers. Most of this expenditure relates to payments to private practice lawyers for grants of legal assistance. In 2010-11 this amounted to \$2 870 713 (60 percent of total supplies and services expenditure) and in 2011-12 this amounted to \$3 491 150 (66 percent of total supplies and services expenditure).

Other expenses

2.23 In 2010-11 there was a significant increase in the Commission’s depreciation and amortisation expenses. This reflects the full year effect of the depreciation of assets acquired as part of the Commission’s relocation to new premises. This has continued in 2011-12.

2.24 Since 2009-10, lease expenditure associated with the Commission’s office accommodation has been recognised as a separate line item. Prior to 2009-10 it had been recognised as a supplier expense.

Demand for legal aid services

- 2.25 A report into the economic value of legal aid by PricewaterhouseCoopers (PwC) identified a number of drivers of demand for legal aid services, including:
- new laws, interpretations and procedures. Changes in laws, their interpretation and enforcement, along with changes in justice processes all place upward pressure on the number of people who require assistance from legal aid; and
 - current economic climate and impact on legal needs. The current economic climate can be expected to increase demand for the services that legal aid provides and the number of Australians eligible to receive legal aid under the means test.²
- 2.26 Discussions with Commission staff indicate that these remain valid as key drivers for demand for legal aid services in 2012. In particular, Audit notes that the current economic climate within the ACT is expected to be a continuing driver of demand for the Commission's services.

Financial liquidity risks

- 2.27 Table 2.2 showed that the Commission made a substantial operating deficit of \$653 732 in 2010-11 and \$869 637 in 2011-12. The Commission has remained operational because of comparatively large cash and cash equivalents, which it has been able to draw upon to meet its commitments. In June 2012 this amounted to approximately \$3.7 million in cash and short term deposits.
- 2.28 According to the Commission's 2011-12 Statement of Intent the Commission's primary risk continues to be financial liquidity. The Commission notes:
- This combined with continuing demand for existing services, the expansion of preventative and early intervention services under the National Partnership Agreement, a series of expensive criminal cases and increases in operating costs places increasing pressure on the Commission's budget. The Commission's risk mitigation strategy is to manage demand within existing resources.
- 2.29 Reflecting the Commission's financial liquidity risks, Table 2.5 shows the Commission's estimated operating results for the three years to 2014-15. The table shows that the Commission expects to continue making a loss for the foreseeable future.

Table 2.5: Legal Aid Commission expected operating results (2012-13 to 2014-15)

	2012-13 (Budget \$'000)	2013-14 (Budget \$'000)	2014-15 (Budget \$'000)
Total Income	11 771	11 712	11 885
Total Ordinary Expenses	12 107	12 045	12 186
Operating Result	(336)	(333)	(301)

Source: Audit Office, based on Legal Aid Commission Statement of Intent 2012-13

² PricewaterhouseCoopers (2009) *Economic value of legal aid: analysis in relation to Commonwealth funded matters with a focus on family law*, p. 15.

- 2.30 The continuing demand for legal aid services in conjunction with the Commission's ongoing financial liquidity risks, will continue to place pressure on the Commission's delivery of services. In its 2010-11 Annual Report, the Commission noted:

...the financial position of the Commission remains strained, particularly as the ACT was not a recipient of the additional funding provided by the Commonwealth to the States to assist with the provision of increased service levels under the new National Partnership Agreement between the Commonwealth and the States and Territories. A continued reliance by the Commission on its reserves is unsustainable and a reduction in future service levels is likely without additional recurrent funding.

- 2.31 The Commonwealth Grants Commission model that is used for the allocation of funds to jurisdictions uses the Socio-Economic Indexes for Areas (SEIFA). It is developed to assess the welfare of Australian Communities based on four indexes: the Index of Relative Socio-economic disadvantage, the Index of Relative Socio-economic Advantage and Disadvantage, the Index of economic resources and the index of education and occupation. It is commonly used in National Partnership Agreements as a proxy measure of the need for funding and services in a particular area.

- 2.32 The Socio-Economic Indexes for Individuals is a multidimensional measure of relative socio economic disadvantage specifically designed to measure individuals' relative access to material and social resources based on personal attributes such as income, educational background, or housing status using information from the 2006 Census. The SEIFI data reveals that the ACT has one of the highest proportions of suburbs with high numbers of both the most and the least disadvantaged individuals living side-by-side. This is unique to the ACT and, as a result, the averaging effects of SEIFA tend to under report disadvantage in the ACT. Analysis of SEIFI data recently undertaken by the ACT Directorate of Community Services suggests that the ACT has a much higher level of relative disadvantage than has previously been recorded and that the SEIFA indexes are a poor predictor of individual disadvantaged in the ACT. While the SEIFA index has identified 712 ACT residents who fall into the most disadvantaged 20 percent of all Australians, SEIFA-based calculations estimate that approximately 40 400 ACT residents may fall into this category. Over 90 percent of these disadvantaged individuals reside in areas with SEIFA scores that mask their experience of disadvantage.

- 2.33 It was beyond the scope of this audit to examine the funding model or the appropriateness of the Commission's funding arrangements, but it is incumbent on the Commission to develop and implement administrative processes for the management of its legal aid services (including grants of legal assistance) that are more efficient and cost-effective and lead to it being able to deliver its services within its budget in the longer term. The matter of appropriate funding is something that may need to be progressed between the ACT and Commonwealth at Ministerial level.

COAG NATIONAL PARTNERSHIP AGREEMENT

- 2.34 The activities of the Commission are significantly affected by the 2009 Council of Australian Governments (COAG) *National Partnership Agreement on Legal Assistance Services*. The objective of this agreement is to have a:

...national system of legal assistance that is integrated, efficient and cost-effective, and focused on providing services for disadvantaged Australians in accordance with access to justice principles of accessibility, appropriateness, equity, efficiency and effectiveness.

- 2.35 Key outcomes that are sought from the agreement are:
- earlier resolution of legal problems for disadvantaged Australians that, when appropriate, avoids the need for litigation;
 - more appropriate targeting of legal assistance services to people who experience, or are at risk of experiencing, social exclusion;
 - increased collaboration and cooperation between legal assistance providers themselves and with other service providers to ensure clients receive ‘joined up’ service provision to address legal and other problems; and
 - strategic national response to critical challenges and pressures affecting the legal assistance sector.
- 2.36 The following outputs are intended to achieve the outcomes sought from the agreement:
- legal assistance providers increasing the delivery of preventative, early intervention and dispute resolution services;
 - comprehensive legal information services and seamless referral for preventative and early intervention legal assistance services within each State and Territory; and
 - delivery by State and Territory legal aid commissions of efficient and cost effective legal aid services, consistent with the access to justice principles of accessibility, appropriateness, equity, efficiency and effectiveness, including:
 - preventative legal services such as community legal education, legal information and referrals
 - early intervention legal services such as advice, minor assistance and advocacy other than advocacy provided under a grant of legal aid; and
 - dispute resolution services, duty lawyer services, litigation services and post resolution support services.³
- 2.37 Both the ACT Government and the Commonwealth Government contribute funding to the Commission for the implementation of this agreement. The Commonwealth is to contribute a total of \$17.59 million between 2010-11 and 2013-14.
- 2.38 A requirement of the agreement is for each state and territory to report performance against a set of defined indicators and performance benchmarks, which are outlined in Table 2.6.

³ COAG *National Partnership Agreement on Legal Assistance Services*

Table 2.6: COAG National Partnership on Legal Assistance Services performance benchmarks

Performance indicators	Timeline	Performance benchmark
Number of successful legal aid service outcomes delivered by legal aid commissions	30 June 2014	As demonstrated through: a) less than 20% of legal aid grant recipients return seeking a grant of legal aid for the same type of matter within a 24 month period; b) 10% increase in the number of successful outcomes over four years; and c) client satisfaction feedback.
Number of early intervention services delivered by legal aid commissions in accordance with the Commonwealth Legal Aid priorities.	30 June 2014	30% increase in number of early intervention services
Total number of services delivered by legal aid commissions	30 June 2014	25% increase in the total number of services delivered by legal aid commissions
Development and implementation of an Information and Referral Strategy that ensures comprehensive access to information and seamless referral for preventative and early intervention services delivered by States and Territories, including by: <ul style="list-style-type: none"> improved linkages between legal aid commissions and other appropriate legal and non-legal services; and improved accuracy and effectiveness of referral practices, both incoming and outgoing. 	Strategy to be developed by 30 June 2011 and fully implemented by 30 June 2014	As demonstrated through: a) client satisfaction feedback; b) the number of referral arrangements identified and implemented; and c) the number of referrals, including warm referrals (where the initial contact was made by the referring organisation on behalf of the client) to another service.
Number of: <ul style="list-style-type: none"> duty services dispute resolution services, and grants of aid in Commonwealth family, civil and criminal law matters delivered by legal aid commissions.	Every six months	10% variance from baseline services delivered in 2009-10

Source: Audit Office, based on the COAG National Partnership on Legal Assistance Services

- 2.39 In addition to new indicators associated with quality of legal services (as demonstrated by successful legal aid service outcomes) key aspects to note from the COAG *National Partnership Agreement on Legal Assistance Services* performance indicators are:
- an expected 25 percent increase in the total number of services delivered by legal aid commissions;
 - an expected 30 percent increase in the number of early intervention services; and
 - an expected 10 percent variance from 2009-10 baseline services for grants of legal assistance.
- 2.40 While the *National Partnership Agreement on Legal Assistance Services* envisages a 25 percent increase in the total number of services delivered by legal aid commissions, only a 10 percent variance from 2009-10 baseline services for grants of legal assistance is envisaged. This reflects an increasing focus on preventative, early intervention services as opposed to the more costly and complex grants of legal assistance.

GRANTS OF LEGAL ASSISTANCE

- 2.41 A major function of the Commission, which is the focus of this audit, is the provision of grants of legal assistance. Section 28 of the Act allows for legal assistance to be provided to a person under the Act if:
- the person cannot afford the cost of obtaining the assistance from a private legal practitioner; and
 - it is reasonable to provide the legal services to the person.
- 2.42 While the Commission administers the grants process, legal assistance under a grant may be provided by a Legal Aid Commission lawyer or private practice lawyer.
- 2.43 Grants of legal assistance are provided under three broad categories of matters:
- criminal;
 - family; or
 - civil.
- 2.44 Table 2.7 shows the number of grants of legal assistance provided by the Commission in the past four financial years.

Table 2.7: Number of grants of legal assistance

	2008-09	2009-10	2010-11	2011-12
Criminal	1 266	1 189	1 184	1 164
Family	1 217	1 072	1 076	1 054
Civil	51	57	35	58
TOTAL	2 534	2 318	2 295	2 276

Source: Audit Office, sourced from the Commission's Annual Reports

2.45 Table 2.7 shows that:

- the overall number of grants provided by the Commission has declined over the three-year period across all categories; and
- criminal and family matters significantly outweigh the number of civil matters.

2.46 Tables 2.8 and 2.9 show the top ten types of criminal law and family law grants of legal assistance in 2010-11. The top ten types of criminal law matters accounted for 66 percent of the total value of criminal law grants while the top ten types of family law matters accounted for 92 percent of the total value of family law grants.

Table 2.8: Top 10 types of criminal law grants of legal assistance in 2010-11

Offence	Grants	Commitment (\$)
Assault	310	485 719
Breach of order type offences	140	125 207
Burglary	110	209 338
Traffic / driving offence	109	121 442
Theft	77	112 937
Property damage	52	72 256
Robbery	52	190 937
Possess / use drugs	46	47 127
Police offences (assault, resistance)	34	55 150
Criminal appeal	33	128 535
Top 10 total	963	1 548 648
Total	1 183	2 335 599

Source: Audit Office, based on information obtained from the Commission

Table 2.9: Top 10 types of family law grants of legal assistance in 2010-11

Issue	Grants	Commitment (\$)
Residence	237	649 159
Care and protection proceedings	187	272 286
Domestic violence order	174	97 652
Contact	150	357 719
Child representation care	66	107 057
Independent Child Lawyer	64	249 417
Personal protection order	43	22 125
Property – Marriage	28	55 229
Return of child	25	65 438
Other family issues	18	41 331
Top 10 total	992	1 917 413
Total	1 073	2 091 460

Source: Audit Office, based on information obtained from the Commission

3. GOVERNANCE AND ADMINISTRATIVE ARRANGEMENTS

- 3.1 This chapter discusses the Commission’s governance and administrative arrangements for the delivery of grants of legal assistance. It also examines roles and responsibilities for the administration of grants, risk management practices, complaints management processes, and performance monitoring and evaluation practices of the Commission.

SUMMARY

Conclusion

The Commission’s governance and administrative arrangements for delivering grants of legal assistance are effective overall. While its strategic and operational planning, risk management and complaints handling procedures are also appropriate there are shortcomings which, if addressed, would strengthen the Commission’s governance and administration.

The inherent risks associated with the Commission’s multiple roles and responsibilities for assessing and making decisions regarding applications for grants of legal assistance and allocating grants to either its own in-house Legal Practice or private practice lawyers are effectively managed.

Key findings

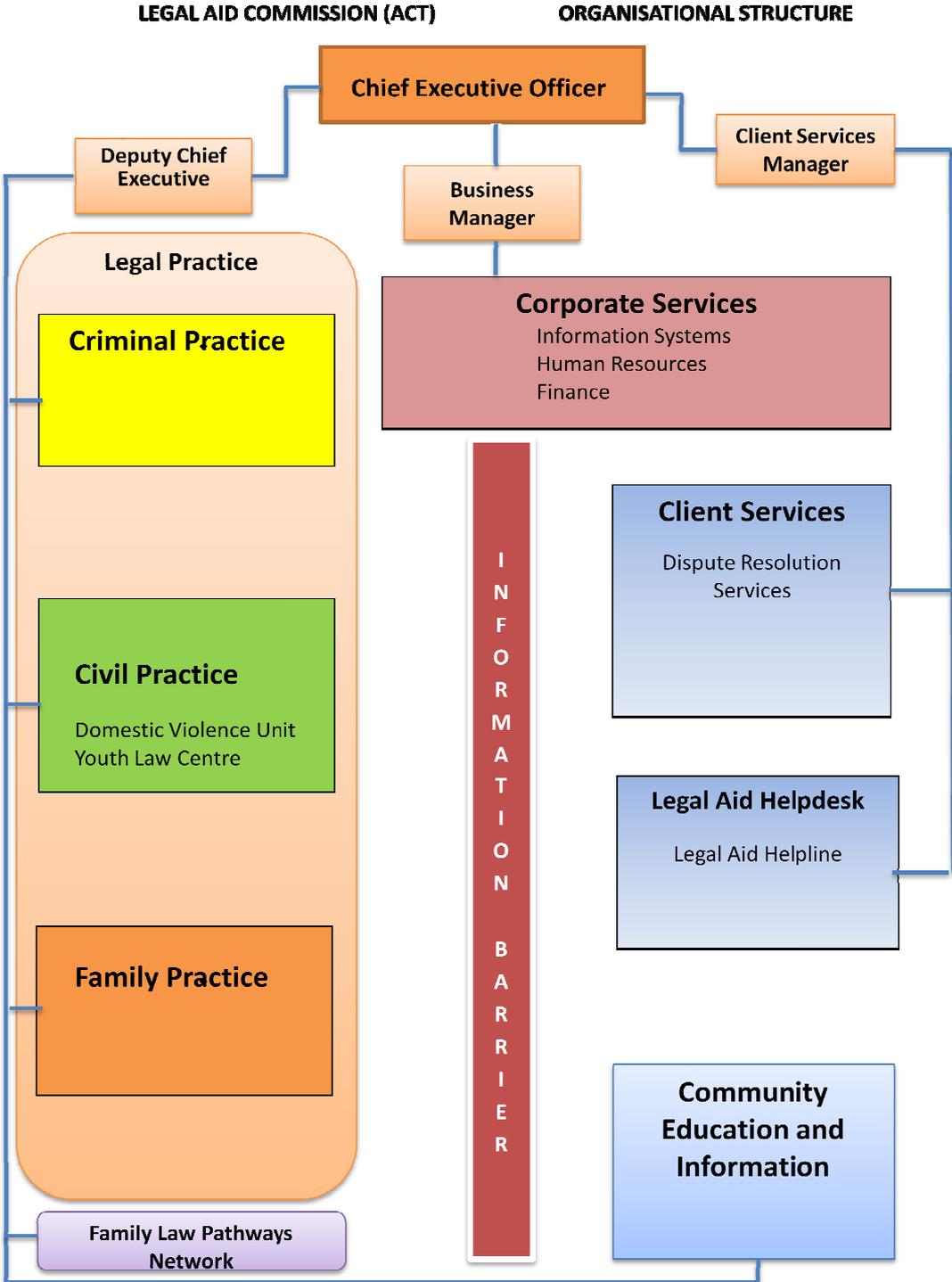
- The Commission has three functional divisions: the Legal Practice, Client Services Division and Corporate Services Division. The Legal Practice is responsible for delivering the Commission’s legal services, including grants of legal assistance. Client Services is responsible for receiving and assessing applications for grants of legal assistance and allocating these grants to its Legal Practice or private practice lawyers.
- There are inherent conflict of interest risks associated with the Commission’s multiple roles for managing grants of legal assistance, including its responsibilities for assessing and making decisions on clients’ applications for grants of legal assistance and allocating the grant to the in-house Legal Practice or private practice lawyers. However, the Commission’s administrative arrangements are appropriate to mitigate the inherent risks. The Commission’s administrative arrangements include a strict division of roles and responsibilities between its Legal Practice and the Client Services Division.
- The Commission has a Conflict Policy, which provides guidance to staff for recognising and managing conflicts of interest. Audit’s review of a sample of the Commission’s files found that a conflict of interest check had been performed for all of the applications for grants of legal assistance.
- The Commission has developed a number of plans to guide the delivery of its services, including a four-year strategic plan and an annual operational plan. The Commission’s strategic and operational planning is generally satisfactory, but there are shortcomings in that key requirements and deliverables of the *National Partnership Agreement on Legal Assistance Services* are not reflected in these plans and the goals and strategies identified in the strategic and operational plans are not linked with the Commission’s annual Statement of Intent and the key performance indicators reported in the annual Statement of Performance. Furthermore, roles, responsibilities and accountabilities for specific goals and strategies are not defined in the annual operational plan.

- The Commission has a Risk Management Plan, which documents the Commission's risks, risk ratings, mitigation strategies and responsible business owners. It also documents actions and progress on the management of the risks. Both fraud and risks are monitored by the Commission's Executive, the Finance Committee, the Payment Assurance Working Group, the Commission's HR Manager and the Audit Committee on an ongoing basis.
- The Commission has a *Complaints Handling Policy and Procedure* (the Complaints Policy), which provides a satisfactory basis by which the Commission can manage complaints. The Commission maintains a Complaints Register and 54 complaints were recorded between January 2010 and June 2012. The Chief Executive Officer or Deputy Chief Executive Officer provided a response to every complaint and there was satisfactory documentation to support the actions taken by the Commission to investigate the complaint and provide a response to the complainant. A shortcoming however is that there is no evidence indicating what management actions had been taken to address or improve business practices as a result of a complaint.

LEGAL AID COMMISSION ORGANISATIONAL ARRANGEMENTS

3.2 Figure 3.1 presents the Commission’s organisational structure.

Figure 3.1: Commission organisational structure



Source: Legal Aid Commission

The Board

- 3.3 The eight-member Board of the Commission is established under Part 3 of the Act. Seven of the Board members are appointed by the Attorney-General to represent various interests of the community, while the eighth member is the Chief Executive Officer of the Commission.
- 3.4 Section 15 of the Act provides that the functions of the Board are to determine the broad policies, priorities and strategies for the provision of legal assistance and to ensure the Commission's affairs are managed in accordance with the Act.
- 3.5 In 2010-11 the Board met eleven times on a monthly basis (except for January). Since July 2011 the Board has met every two months.

Chief Executive Officer

- 3.6 The Chief Executive Officer of the Commission is appointed under section 17 of the Act. This officer is 'charged with the management of the operations and affairs of the Commission.' The Chief Executive Officer is required to have a current unrestricted practising certificate, which has been granted under the *Legal Profession Act 2006*.

Committees

- 3.7 Internal committees have been established to inform the work of the Commission. These are the:
- Executive Committee;
 - Law Reform Committee;
 - Finance Committee; and
 - Internal Audit Committee.
- 3.8 Details of these committees are in Appendix C. In addition to these governance committees a Payment Assurance Working Group has been established to review the status of existing and emerging risks associated with the Commission's financial management and administration.

Administrative roles and responsibilities

- 3.9 The Commission has three functional divisions:
- Legal Practice;
 - Client Services; and
 - Corporate Services.
- 3.10 The Legal Practice is responsible for delivering the Commission's in house legal services, including services under a grant of legal assistance. The Legal Practice operates in a similar way to a private law firm and is organised into three specialised areas: Criminal Practice, Family Practice and Civil Practice. Under section 13 of the Act, the Chief Executive Officer and the Deputy Chief Executive Officer are deemed to be a firm of solicitors practicing in partnership. The Legal Practice is also involved in the community

legal education program. The Youth Law Centre is part of the Legal Practice. The day to day work of Legal Practice is managed by the Deputy Chief Executive Officer.

- 3.11 Client Services is principally responsible for assessing and allocating grants, including the assignment of cases to the Legal Practice and to private practice lawyers. Client Services also manages the Family Dispute Resolution (FDR) program and contractual arrangements under which private lawyers provide legal aid services on the Commission's behalf.
- 3.12 Corporate Services provides financial, governance, human resources, facilities management and information and communications technology (ICT) services to the Commission and arranges payments to private lawyers for providing legal assistance services on the Commission's behalf. Payments to private lawyers include payments for providing advice, duty lawyer, dispute resolution and emergency after-hours telephone advice services, as well as for legal casework.

Inherent conflict of interest risks for managing grants of legal assistance

- 3.13 There are inherent conflict of interest risks associated with the Commission's multiple roles for managing grants of legal assistance including its responsibilities for:
- assessing and making decisions on clients' applications for grants of legal assistance;
 - (where a grant application has been successful) allocating the grant to the in-house Legal Practice or an external private lawyer; and
 - (where a grant of legal assistance has been allocated to the in-house Legal Practice) performing the legal services for the client.
- 3.14 There are risks that the multiple roles and responsibilities of the Commission, leading to conflict of interest risks, may lead to poor and inappropriate decision-making. For example, there are arguably incentives for the Commission to make favourable decisions on grants of legal assistance in order to maintain current levels of funding (i.e. continuing to make favourable grants of legal assistance will assist the Commission when developing and negotiating its annual budget). Similarly, there are arguably incentives for the Commission to direct grants of legal assistance to the in-house Legal Practice to maintain current staffing levels.
- 3.15 These inherent risks are common to all state and territory legal aid commissions. However, it is incumbent on the Commission to ensure that its administrative processes and practices operate in a way that reduces these inherent risks and ensures that the best interests of the client are recognised and achieved, particularly with respect to decisions around granting legal assistance and allocating grants to in-house and private practice lawyers.

Administrative roles and responsibilities for managing grants of legal assistance

- 3.16 The Commission's administrative arrangements are appropriate to mitigate the inherent risks associated with the Commission's roles and responsibilities for managing grants of legal assistance. (The Commission's administrative processes for assessing and allocating grants of legal assistance are discussed in chapters 4 and 5 of the report.) In

practice, the Commission's administrative arrangements ensure that conflicts of interest risks are mitigated and client (and prospective client) confidentiality is maintained.

- 3.17 This is primarily achieved through a very clear division of roles and responsibilities between Client Services and the Legal Practice. Client Services is, in practice, responsible for assessing applications for grants of legal assistance and, in the event that a grant is approved, allocating the case to the Legal Practice or a private practice lawyer. The Legal Practice is not involved in this administrative process.
- 3.18 These arrangements also support client confidentiality because information is shared on a need-to-know basis. In this respect there is a possibility that one or more parties to a single issue may apply for a grant of legal assistance from the Commission. Conflict of interest rules would preclude the Commission's Legal Practice from acting for all of the parties and, in such a case; the services of private lawyers would be used. Under these arrangements, all of the parties to the dispute could receive a grant of legal assistance, but be represented by a mixture of in-house and private practice lawyers.
- 3.19 While these administrative arrangements are maintained in practice, they were not formally documented. Such documentation may strengthen these arrangements and explicitly show the effective manner in which potential conflicts of interest are managed to promote the best interests of the client.

Managing conflict of duties

- 3.20 The Commission has a Conflict Policy which provides staff with guidance to identify when there is a conflict of duties. The Conflict Policy provides:

A conflict of duties occurs when practitioners cannot completely fulfil their professional obligations to one client without breaching a duty owed to another client, or former client, OR where a practitioner's duty to a client conflicts with the practitioner's duty to the court. Conflict refers to actual or potential breach of professional (fiduciary) duty, or conflict between two or more of those duties – confidentiality, to disclose all relevant information and act in a clients best interests, loyalty, and not to put the lawyer's or anyone else's interests before those of the client.

- 3.21 There are three principal areas of conflict involving:
- conflicts between current client and former clients;
 - conflicts between current clients; and
 - conflict between the lawyer's interests (or by reason of imputed knowledge the firm's interests) and the client's interests.⁴

⁴ *Legal Profession (Solicitors) Rules 2007*, Subordinate Law SL 2007-31 made under the *Legal Profession Act 2006*.

- 3.22 The Conflict Policy provides that Commission staff are required to adopt the following guiding principles in managing conflicts:
- a robust and practical approach to determine conflicts;
 - referrals will only be made if satisfied a real, rather than perceived, conflict would exist; and
 - provision of information services does not require a conflict check.
- 3.23 A primary means by which potential conflicts of interest are identified is through the Commission's Case Management Information System (VisualFiles). The VisualFiles system identifies possible conflicts of interest:
- when a Legal Aid Helpdesk service is being provided when it is determined that the service required will commence to form a lawyer-client relationship;
 - whenever a duty lawyer service is being arranged;
 - whenever an appointment is made for an interview with an Commission lawyer; and
 - on all applications for legal assistance.
- 3.24 When applications for grants of legal assistance are received, Client Services undertakes a conflict of interest check through VisualFiles. Audits' examination of 75 applications for grants of legal assistance found that a conflict of interest check had been performed in all of the cases.

STRATEGIC AND OPERATIONAL PLANNING

- 3.25 The Commission has developed a number of plans to guide the delivery of its services. These include:
- *Strategic Plan 2008-2012: New Directions for Legal Aid* (Strategic Plan); and
 - the Commission's *Operational Plan 2011-12* (Operational Plan).
- 3.26 The Strategic Plan articulates 'the Commission's Mission or purpose, and how we intend to progress towards achieving our Mission over the next five years' as well as a comprehensive range of goals and supporting strategies. The Strategic Plan is also available to the public on the Commission's website. The Strategic Plan is currently under review and a new Strategic Plan for 2012-17 is being developed.
- 3.27 The Strategic Plan is supported by an annual operational plan, which is developed by the Commission's Executive and senior staff. The *Operational Plan 2011-12* identifies a range of objectives (i.e. action items) and target timeframes for their achievement. Audit notes that the *Operational Plan 2011-12* generally aligns with the Strategic Plan, although there is some misalignment of terminology, given that the Strategic Plan was developed in 2008.
- 3.28 Stakeholders involved in the Commission's planning include staff, the Commissioners, parties involved in the provision of justice in the ACT including the courts, private practice lawyers and community legal centres, and other community and government agencies including the Justice and Community Services Directorate.

- 3.29 The Strategic Plan is informed by:
- independent research;
 - internal environment such as financial and human resources and the appropriate allocation of these resources, demand trends and gap analysis;
 - collective experience of staff and other stakeholders;
 - changes in the external environment such as socio-demographic trends;
 - emerging social, economic, political and technical trends likely to impact the Commission;
 - government legislation, agreements, policies and plans;
 - risk management and modelling; and
 - client needs.
- 3.30 Audit considers that the Commission's strategic and operational planning is generally satisfactory, but has some key shortcomings, including the need to:
- recognise and incorporate the key requirements and deliverables of the *National Partnership Agreement on Legal Assistance Services* in the Strategic Plan and Operational Plan (recognising that the current Strategic Plan pre-dated the implementation of the *National Partnership Agreement on Legal Assistance Services*);
 - link the goals and strategies identified in the strategic and operational plans with the Commission's annual Statement of Intent and the key performance indicators identified in the annual Statement of Intent and reported in the annual Statement of Performance; and
 - clearly identify roles, responsibilities and accountabilities for specific goals and strategies in the Operational Plan.
- 3.31 Addressing these shortcomings would improve the Commission's strategic and operational planning and facilitate the achievement of the Commission's outcomes and objectives.

Recommendation 1 (Chapter 3)

The Commission should improve its strategic and operational planning by:

- a) recognising and incorporating key requirements and deliverables of the *National Partnership Agreement on Legal Assistance Services* in its Strategic Plan and Operational Plan;
- b) linking the goals and strategies identified in its strategic and operational plans with its annual Statement of Intent, including key performance indicators identified in the annual Statement of Intent (which are reported in the annual Statement of Performance); and
- c) clearly identifying roles, responsibilities and accountabilities for specific goals and strategies in its Operational Plan.

RISK MANAGEMENT

- 3.32 Program risk management is the systematic identification, analysis and management of uncertainty in service delivery. Conducting a risk assessment and subsequently monitoring and reporting against the risks through a risk management plan allows managers and administrators to effectively manage service delivery implementation.
- 3.33 The Commission has a Risk Management Plan, which documents the Commission's risks, risk ratings, mitigation strategies and responsible business owners. It also documents actions and progress on the management of the risks. Both fraud and risks are monitored by the Commission's Executive, the Finance Committee, the Payment Assurance Working Group, the Commission's HR Manager and the Audit Committee on an ongoing basis.
- 3.34 The Risk Management Plan identifies a series of risks that are either directly or indirectly associated with the provision of grants of legal assistance. The risks are all rated as *High* and are described as follows:
- financial mismanagement and incompetence – unreliable invoices obtained from private practice lawyers, lack of controls on checking accuracy of invoices from private practice lawyers, uncertainty in the completeness and accuracy of external lawyers' financial information;
 - financial mismanagement and incompetence – lack of controls in handling cash contributions;
 - quality of legal aid service provided by inhouse and external service providers – the Commission lacks compliance and monitoring controls; and
 - inadequate operational policies and procedures – the Commission lacks a complete and comprehensive set of policies and procedures for day-to-day operations.
- 3.35 The eGrants system has been identified as a key mitigation strategy to address most of the risks identified above. It is discussed in more detail in paragraphs 5.7 to 5.11.

3.36 The Commission has identified an additional risk, which has been rated as *Extreme*, which relates to its liquidity risk (funding not keeping pace with the rising costs of providing services). This is commensurate with earlier commentary in paragraphs 2.27 to 2.33, which notes the expected projected operating losses of the Commission in forward years.

3.37 The Commission is in the process of establishing a new Risk Management Plan.

FEEDBACK AND COMPLAINTS MANAGEMENT

3.38 Apart from demonstrating good customer service, the proper management of feedback and complaints should be recognised as an important component of ongoing business management practices and continuous improvement processes. Such practice has the potential to:

- identify key service delivery failings or shortcomings on a timely basis; and
- identify service delivery successes, which may be emulated across the organisation.

3.39 Closely allied with complaints is feedback. Feedback is a broad concept that includes a wide range of sentiments, including statements of satisfaction (i.e. compliments) through to suggestions for improvement.

3.40 Feedback and complaints cover all aspects of the Commission's services, including decisions made on grants, grant extensions and complaints about lawyers' behaviour. Client Services is responsible to the chief executive officer for managing feedback and complaints concerning the provision or non-provision of grants of legal assistance, and complaints about legal services provided by private lawyers on behalf of the Commission. The deputy chief executive officer as head of the Legal Practice together with the heads of each practice area are responsible to the chief executive officer for managing feedback and complaints relating to legal assistance services provided by Commission staff.

Complaints Handling Policy and Procedures

3.41 The Commission has developed a *Complaints Handling Policy and Procedure* (the Complaints Policy). This outlines its:

- handling policy framework;
- handling procedure; and
- strategies associated with handling unreasonable conduct from complainants.

3.42 The Complaints Policy provides that 'the Commission will ordinarily not accept a complaint unless it is in writing', although it also provides that 'if a complainant finds it difficult to lodge a written complaint due to literacy, language or other disability they should be assisted to put their complaint in writing'. This is reasonable, but care should be taken to ensure that this policy does not present a barrier to potential complainants.

3.43 The Complaints Policy distinguishes between:

- conduct complaints – about services provided by, or other conduct of, Commission staff, contractors or private lawyers; and

- complaints about the provision of legal assistance (primarily associated with allegations that a person does not qualify for assistance because of means or lack of legal merit).

3.44 The complaint-handling procedures are appropriate with respect to conduct complaints. All conduct complaints must be referred to the Chief Executive Officer/Deputy Chief Executive Officer, who will then take appropriate action to refer the matter for investigation.

3.45 The Complaints Policy specifically provides that 'it is the responsibility of the Commission to...keep complainants informed of the progress and outcome of enquiries.' Advising a complainant of the outcome of the investigation is an important part of a complaints-handling process and also makes appropriate operational sense if it deters future unnecessary administrative action due to misunderstanding on the part of the complainant.

Complaints received by the Commission

3.46 The Commission maintains a Complaints Register and 54 complaints were recorded between January 2010 and June 2012. Audit's review of the Complaints Register found that:

- the Chief Executive Officer or Deputy Chief Executive Officer of the Commission provided a response to every complaint unless it was inappropriate for the Commission to do so; and
- there was satisfactory documentation to support the actions taken to investigate the complaint and the communication that was provided to the complainant.

3.47 While there was satisfactory documentation of the process used in the resolution of each complaint, Audit did not find any documented evidence to support management actions taken to address or improve business practices as a result of complaints. The Commission advises that corrective action is nevertheless undertaken when it is warranted.

3.48 The Board of Commissioners considered the issue of complaints at its June 2012 meeting and resolved that a summary of complaints was to be provided to it at its meetings. As a result, details of relevant complaints are to be included in the Chief Executive Officer's Operational Report to the Board.

3.49 This provides a mechanism by which complaints and complainants can be monitored and reported on a regular basis.

Recommendation 2 (Chapter 3)

The Commission should improve its complaints handling procedures by routinely analysing all complaints to identify potential business practice improvements.

4. RECEIVING AND ALLOCATING APPLICATIONS FOR GRANTS OF LEGAL ASSISTANCE

- 4.1 This chapter discusses the administrative and decision making processes of the Commission for receiving and processing applications for grants of legal assistance. Consideration of the Commission's processes for allocating grants to in-house or private practice lawyers in accordance with the *Legal Aid Act 1977* and established policies and procedures is also explored.

SUMMARY

Conclusion

The administrative processes in place to receive and allocate grants of legal assistance are effective. While some shortcomings in the administration and documentation of these processes were identified, as well as instances of non-compliance with administrative processes, these are not considered to indicate that there is an overall problem with these processes. The Commission's administrative processes are considered to facilitate appropriate decision making regarding the eligibility of clients for grants of legal assistance, although some improvements are warranted.

Key findings

- The Commission provides a range of information, referral, legal advice and minor assistance services, which provides an opportunity to advise people of their legal rights and the principles that are considered in assessing an application for a grant of legal assistance.
- The Commission has developed *Legal Assistance Guidelines*, which state the eligibility principles for grants of legal assistance. Applications for grants of legal assistance are assessed against these principles, including those which apply to the conduct of the means test (assessing the applicant's capacity to pay for the legal service) and reasonableness test (assessing the relative merits of the applicant's legal claims).
- Audit's review of a sample of applications for grants of legal assistance found a series of exceptions and non-compliance in the information provided by applicants, which makes it difficult for the Commission to make an appropriate decision on the application. However, the exceptions and non-compliance identified in the application process do not suggest there are problems with the Commission's overall management of the application process. Shortcomings in the information provided in applications for grants of legal assistance demonstrates the inherent difficulties of the Commission's role and the need to balance adherence to administrative processes and the delivery of services to vulnerable people.
- All applications for grants of legal assistance are subject to a means test and reasonableness test. There were shortcomings in the application and documentation of the means test and reasonableness tests in the sample of applications reviewed by Audit. In 11 out of 75 applications, there was no evidence that the means test was applied, while in three other applications it appeared the means test had only been partially applied. Furthermore, while a template had been developed to facilitate the conduct of the means test, this had been used inconsistently and, in some instances, not

at all. The Commission does not document the conduct of the reasonableness test for all applications, except for those applications that fail the test. This needs to be addressed.

- A person, who receives legal assistance, unless exempted, is required to pay a contribution of \$90. In the sample of grants examined by Audit, it was found that 25 percent of applicants who had been required to pay the client contribution did not make this payment. The vast majority of contributions that were not recovered related to grants managed by the in-house Legal Practice. While the amount of client contribution to be recovered needs to be balanced against the administrative costs associated with Commission staff seeking its recovery, Audit considers that options for improving the recovery of client contributions need to be explored.
- The Commission processes applications for grants of legal assistance in a timely manner. Eighty percent of all applications were processed within five days and ten percent were processed in five to ten days. The balance of applications was processed in ten or more days, often due to the need to seek more information from the applicant or clarify information that has been received.
- Over half of the grants of legal assistance are allocated to private practice lawyers. In 2011-12, 1 213 grants of legal assistance were assigned to private practice lawyers and 1 063 were assigned to the Commission's in-house Legal Practice. The Commission has developed *Work Allocation Guidelines*, which are part of its *Legal Assistance Guidelines*, to guide the administrative decision making process for the allocation of grants to either its in-house Legal Practice or private practice lawyers. However, where there was no conflict of interest or an applicant had not expressed a preference for a particular lawyer there was a lack of documentation to explain the rationale for the selection of a lawyer. While there was no evidence that the assignation of a lawyer was inappropriate or not in compliance with the *Legal Assistance Guidelines*, there was insufficient evidence to support the decision that had been made and to provide evidence that the *Work Allocation Guidelines* had been applied.

ADMINISTRATIVE PROCESSES

- 4.2 A major function of the Commission is to provide legal assistance to people living in the ACT who are disadvantaged relative to the general population and have difficulty accessing private legal services.
- 4.3 The Act does not define disadvantaged people, nor is it defined in other Australian jurisdictions' legislation. 'Disadvantaged' in the context of legal aid services is generally accepted to mean socioeconomic characteristics that indicate vulnerability to experiencing multiple, severe legal problems combined with barriers to accessing the legal services necessary to resolve those problems. Disadvantage can take many forms, and includes limited financial resources, illness, mental or physical disability, age, homelessness, language or cultural barriers.

Information about legal issues and services

- 4.4 A key aspect of delivering grants of legal assistance to disadvantaged people is raising awareness and providing information on the services that are available.
- 4.5 As mentioned in paragraph 2.5, the Commission provides a range of information and referral services, legal advice and minor assistance services:

- **information and referral services** – information about law and the legal system is provided by the Commission to individuals and community groups, primarily through the Legal Aid Helpdesk, by telephone through the Legal Aid Helpline, or by staff in person at the Commission’s office and at the courts;
- **advocacy services** – advocacy services are provided to people in mental health proceedings and in other situations where people are unable to adequately advocate their own case; and
- **legal advice and minor assistance** – legal advice and minor assistance is provided free of charge in face-to-face interviews arranged through the Commission’s Legal Aid Helpdesk, the Legal Aid Clinic and the Youth Law Centre as well as by telephone through the Legal Aid Helpline.

4.6 These services provide an opportunity for the Commission to advise people of their legal rights and the principles that are considered in assessing an application for a grant of legal assistance.

4.7 Information can be obtained from the Commission’s premises in Civic or from the Commission’s website (www.legalaidact.org.au) and that which is specific to grants of legal assistance is :

- *Applying for a grant of legal assistance* – a general brochure (fact sheet) on legal aid services, how they will be assessed, eligibility criteria for a grant of legal assistance, conditions of a grant of assistance, how to appeal against a decision, applicants’ obligations and other services provided by the Commission; and
- the *Application For Legal Assistance* form.

4.8 In addition, a range of administrative documentation is available on the Commission’s website including the *Legal Assistance Guidelines* (the Guidelines).

Legal Assistance Guidelines

4.9 These Guidelines are made by the Commission under section 12 of the Act. Section 12 of the Act provides that the Commission shall determine, and make known to the public, guidelines to be applied *inter alia*:

- in deciding the nature and extent of legal assistance to be given in relation to a matter or proceeding; and
- in determining whether the granting of legal assistance to a person will be subject to conditions.

4.10 They are the key means by which the Commission determines and conveys eligibility for grants of legal assistance.

Processing applications

4.11 Applications for grants of legal assistance may be submitted by an individual or a legal practitioner on the individual’s behalf. Applications for grants can be submitted in person, mail, email and facsimile. Since 24 September 2012 applications can be submitted online by private lawyers on behalf of clients by means of eGrants. The use of eGrants will progressively replace the submission of paper application forms except

where applicants do not have access to a lawyer such as applicants in detention. In these cases applications will continue to be accepted in paper form.

4.12 All applications are managed by Client Services. When an application is received, Client Services staff record information in the Commission's Case Management Information System (VisualFiles) including:

- the applicant's personal information such as name, date of birth, language;
- grants-related information such as file number, type of legal issue, decision date, date closed and assignment i.e. in-house or external lawyer; and
- legal service provider information such as solicitor name and contact details.

4.13 Entering information into VisualFiles facilitates a conflict of interest check. It may result in advice that there is no 'possible conflict flag' in which case normal assessment processes are conducted. Where there is a 'possible conflict flag' the application must be reviewed by an authorised officer. Possible conflict flags in VisualFiles will be generated when:

- an employee of the Commission is an 'other party';
- the Commission is listed as a party; or
- an 'other party' has been provided with legal advice or been granted legal assistance, including in matters where the file has been closed.

4.14 Client Services performs an initial administrative assessment of each application, verifying that sufficient information is received for making a decision. To facilitate a decision, each applicant is required to submit:

- the completed application form; and
- documents necessary to perform the means test, such as proof of records or statements showing amounts in any bank, building society or credit union account owned solely or jointly by the applicant (or by any financially associated person) for the last three months and the applicant's last tax return if they are self-employed.

4.15 If an applicant does not provide sufficient information, Client Services will inform the applicant that, if no additional information is provided within 28 days, the file will be closed.

Assessing applications

4.16 Client Services assesses an applicant's eligibility for a grant of legal assistance based on information provided by the applicant in the *Application for Legal Assistance* form against the Commission's Guidelines.

- 4.17 The Guidelines state that a grant of legal assistance is available under section 28 of the Act if:
- a person needs legal assistance but cannot afford a private lawyer (the means test);
 - it is a type of case in which legal assistance may be granted; and
 - it is reasonable in all circumstances to provide the assistance (the reasonableness test).
- 4.18 The approval of a grant is, however, subject to the availability of funding. While the means and reasonableness tests may be satisfied and the matter or proceeding is covered by the Guidelines, the Commission must have sufficient funds to proceed with the grant.

Guidelines for assistance in territory matters

- 4.19 The Guidelines outline the classes of matters for which legal assistance may be granted (refer to Appendix D). These are extensive and include, by way of example:
- representation in prosecutions where a conviction is likely, in the opinion of the Chief Executive Officer, to result in imprisonment or dismissal from employment or loss of livelihood or vocation, provided that in the case of a defended matter a legal practitioner certifies that it is reasonable in all the circumstances to defend the prosecution;
 - initiating or responding to applications for domestic violence orders under the *Domestic Violence and Protection Orders Act*;
 - proceedings under the *Domestic Relationships Act*; and
 - proceedings pursuant to the *Children and Young People Act*.

The means test

- 4.20 To be financially eligible for legal assistance an applicant must satisfy a means test, which involves both an income and assets tests. The objective of the means test is to assess an applicant's financial eligibility for legal assistance. The means test also applies to any financially associated person of the applicant.
- 4.21 A financially associated person (such as a relative, partner, spouse, corporation, trust etc of the applicant) includes a person:
- from whom the applicant usually receives financial support; or
 - to whom the applicant usually provides financial support; or
 - who would be likely to financially assist the applicant in obtaining legal services.
- 4.22 In conducting the income test of an applicant and any financially associated person, the following principles relating to financial eligibility are applied:
- total income includes all income from all sources;
 - where a person receives the maximum rate of an income support payment or benefit administered by Centrelink as his/her total income, that person will

automatically be considered to satisfy the income component of the means test; and

- where a person does not receive the maximum rate of an income support payment or benefit administered by Centrelink, the person's income will be assessed after adjusting for costs of housing and providing support to dependents against a nationally standardised income threshold (such as the Henderson Poverty Index).

4.23 With respect to the asset test component of the means test, an applicant is eligible for legal assistance if their nett assets do not exceed, by more than the likely cost of the subject proceedings, a defined assets allowance.

The reasonableness test

4.24 The Guidelines state that the reasonableness test considers:

- the benefit the person may receive from legal assistance;
- any disadvantage that person might suffer if assistance is not granted; and
- if assistance is sought for legal proceedings, the outcome of the legal proceedings is likely to be favourable to the person.

4.25 The guidelines for assistance in Territory law matters do not provide specific criteria for the reasonableness additional to the criteria stipulated in the Act. However, the guidelines for assistance in Commonwealth law matters specify in Part 2 (pages 24 to 26 of the Legal Assistance Guidelines) three tests relating to merit:

- the *reasonable prospects of success* test
- the *prudent self-funding litigant* test and
- the *appropriateness of spending limited public legal aid funds* test

Further guidance in applying the reasonableness test, specifically with respect to Territory law matters, is likely to improve decision making and ensure equity in grant allocations.

Recommendation 3 (Chapter 4)

The Commission should develop specific assessment criteria for guiding decision makers in applying the reasonableness test to applications for grants of legal assistance.

Conditions of a grant of assistance and client contributions

4.26 Client Services will advise an applicant in writing of the outcome of their grant application. If an application for a grant of legal assistance is approved, the letter of advice will list conditions, including the contribution that the assisted person must pay to the Commission for providing assistance.

4.27 Other than grants for protection orders and children's separate representation in family law or care proceedings and children's criminal representation, the standard initial contribution imposed is \$90. That is, a person receiving a grant of legal assistance is

expected to pay a minimum of \$90 towards the cost of their legal fees. This may be waived or a reduced in special circumstances.

- 4.28 Contributions can be reassessed or changed if the financial circumstances of the assisted person change or the original financial information provided to the Commission was incorrect or incomplete. The contribution and reassessed contributions may be up to 100 percent of the cost providing assistance.

Appeal and reconsideration of decisions

- 4.29 A person who has applied for legal assistance may seek a reconsideration of a decision from the Commission among other matters in relation to:

- refusing to grant legal assistance to the person;
- the amount of contribution or reassessed contribution required by the person; and
- the type or extent of legal assistance the person is receiving.

- 4.30 The reconsideration is performed by an officer of the Commission who is independent from the original decision-maker.

- 4.31 Section 36 of the Act allows an applicant who is dissatisfied with a decision relating to the provision of legal assistance to request the Commission in writing to reconsider the decision. If the applicant does not agree with the outcome of the reconsideration, he/she can request the Commission, in writing, to refer the decision, or the outcome of the reconsideration made by the Commission, to a review committee established by the Chief Executive Officer under Section 37 of the Act.

- 4.32 Reconsiderations and reviews are not limited to the initial grant, as other decisions such as decisions on subsequent grants, and termination of grants due to non-compliance can also be the subject of a reconsideration or review process.

- 4.33 The role and functions of a review committee are outlined in sections 39, 39A and 39B of the Act. A decision made by a review committee referred to it is considered as 'final and conclusive' under subsection 40(5) of the Act. The review committee is required to send its decision to the appellant and the Commission in writing.

GRANT APPLICATIONS AND RELATED DECISION MAKING PROCESSES

- 4.34 Audit reviewed a sample of successful and unsuccessful applications for grants of legal assistance processed by the Commission between 2008-09 and 2010-11. It is noted that since 30 June 2011 steps have been taken to improve administrative processes and compliance, including the implementation of eGrants. The sample included matters relating to criminal, family and civil law and included:

- 25 grants that were allocated to in-house lawyers;
- 25 grants that were allocated to private practice lawyers; and
- 25 applications for legal assistance that had been unsuccessful.

- 4.35 The objective of the review was to examine whether the Commission has:
- complied with its legislative requirements, policies and procedures in processing and approving grant applications; and
 - demonstrated sound administrative processes in deciding eligibility, monitoring appeal and reconsideration, and allocating cases to the Commission's in-house legal practice or private practice lawyers.

Application process

4.36 The audit sample should have been maintained in 100 files held by the Commission (75 files maintained by the Client Services Division and 25 files maintained by the Legal Practice). However, only 95 of the 100 files selected for examination were available to Audit as three Client Services and two Legal Practice files could not be located, notwithstanding effort by Commission staff to search for the missing files during the audit. For those five missing files the VisualFiles system was used to review information that should have been in these files.

- 4.37 Of the files that were examined in:
- 13 instances it was obvious that the application form lacked relevant information on which to make an appropriate decision;
 - two instances the application form could not be found;
 - two instances the application form was not signed by the applicant;
 - two instances the application form was not properly stamped with a date of receipt;
 - three instances the applicant had not signed the approval to perform financial checks (allowing the Commission access to personal information of the applicant) although there was evidence that these checks were subsequently performed; and
 - some instances the Commission accepted an application form for legal assistance from another jurisdiction such as Legal Aid Queensland or NSW Legal Aid.

4.38 As mentioned in the previous paragraph there were 13 instances where there was a lack of relevant information in the application form which could mean that a decision may not have been appropriately made. While this suggests a shortcoming in the Commission's administrative processes, Audit notes that many of the 25 grants selected for review that were not approved, were not approved because of a lack of information from the applicant. This suggests that there is an awareness of the need for sufficient information on which to make a decision and, at least in some instances, a reticence to approve a grant application in the absence of this information.

4.39 Shortcomings in the information provided in applications for grants of legal assistance also demonstrates the inherent difficulties of the Commission's role and the need to balance adherence to administrative processes and the delivery of services to vulnerable people

4.40 In two instances the application form was not signed by the applicant and in three instances the approval to perform financial checks was not signed by the applicant. This is an important aspect of the application process as it demonstrates the applicant's

certification of the accuracy of the information being provided and it allows the Commission to access personal information of the applicant from, for example, Centrelink.

- 4.41 In some instances the Commission accepted an application form from another jurisdiction. Although other jurisdictions' application forms for legal assistance may provide similar information to that required by the Commission's application form, the use of the Commission's application form is primarily required to ensure compliance with section 25 of the Act. Section 25 of the Act requires all applications for legal assistance to be made in writing in a form approved under section 99 of the Act. Effective from 6 May 2011, the Commission's application form is an approved form made under section 99 of the Act.⁵
- 4.42 Section 25 of the Act allows the Commission, in special circumstances, to treat an application that is not in the form approved under section 99 of the Act as having been properly made. However, there was no documentation in the files examined by Audit explaining the reason for accepting other jurisdictions' application forms. It is assumed that applications for grants of legal assistance made through the use of other jurisdictions' forms were accepted under these special circumstances, although this is not clear, nor was it appropriately documented.
- 4.43 Overall, the exceptions identified in the application process do not suggest there are problems with the Commission's overall management of the application process. Nevertheless, the shortcomings do create risks for the Commission in its management of grants of legal assistance.
- 4.44 The eGrants system being implemented facilitates applications for grants of legal assistance from private practice lawyers on behalf of their clients. It has system controls, which prevent an application form being lodged without all the required information. Audit considers that this is an appropriate means by which to improve the quality of applications for grants of legal assistance. However, the Commission will still accept applications directly from individuals seeking assistance (which will not be submitted using eGrants) and this creates a risk that an application may have inadequate information. Accordingly, Client Services staff will, for the foreseeable future, need to continue to review application forms for the adequacy of information and be diligent in not approving a grant if insufficient information is received.

Assessment of financial eligibility for legal assistance

- 4.45 Client Services should assess the eligibility of applications for grants of legal assistance, and apply the means (income and asset) and reasonableness tests, in accordance with the Commission's assessment criteria and its Guidelines.

⁵ *Legal Aid (Application Form) Determination 2011 (No 1)*, Approved Form AF 2011-50 made under section 99 of the *Legal Aid Act 1977*.

Means test

- 4.46 To assist in the application of the means test, the Commission has developed an assessment template. This facilitates appropriate and consistent decision-making by providing for the recording of information with respect to the different sources of income and assets of an applicant, such as tax statements, employer's payment statements, Centrelink reports and bank statements. Following the receipt and documentation of relevant information on the form, an appropriate decision on the means test should be made if calculations are correctly made.
- 4.47 Audit found that the assessment template had not been used in some instances, where it was apparent that informal written notes had been made on the application form to provide evidence of the conduct of the means test. Different administrative approaches and record-keeping practices between decision-makers are likely to result in inconsistency in decision-making and potentially poor and incorrect decisions.
- 4.48 Furthermore, the means test did not appear to be performed in all the applications for legal assistance examined by Audit. Eleven out of 75 grant applications tested did not have any evidence of the means tests having been conducted. In a further three instances it was apparent that the means test was only partially applied. Audit was advised by Commission staff that the absence of relevant financial eligibility checks in these applications might relate to unrepresented applicants who could be in custody at the time of applying legal assistance, but this was not clear. In a further six instances it was apparent that the applicant had failed the reasonableness test and the means test was not performed.
- 4.49 Reasons for not conducting the means test were not clearly documented by the decision-maker, i.e. there was no evidence in the file as to why the decision-maker had not conducted the test. Audit is therefore unable to form a view as to whether the applicants' special circumstances could prevent the Commission from performing the means test in determining the applicants' eligibility for legal assistance. In this respect, however, Audit notes that the Commission does not have a formal and documented policy for granting exemptions from the means test that could cover exceptional circumstances such as being in custody at the time of applying for a grant of legal assistance.

Reasonableness test

- 4.50 There was poor documentation and record-keeping associated with the application of the reasonableness test. There is generally no documented evidence that an application has been subject to the reasonableness test, except for those applications that have been rejected by the Commission. In these instances, the application of the reasonableness test was only evident because it was cited as a reason for the rejection of the application in the Commission's letters to unsuccessful applicants.
- 4.51 By default, it appears that if a grant of legal assistance has been approved then the application has satisfied the reasonableness test, but this is not clearly documented. Audit considers that it is important to document decision making associated with the reasonableness test to demonstrate that appropriate processes have been followed and that the allocation of grants is fair and appropriate.

Recommendation 4 (Chapter 4)

The Commission should ensure that decision making processes for the means and reasonableness tests for applications for grants of legal assistance are documented. This should include:

- a) use of standard forms and templates for the conduct of the tests; and
- b) where relevant, documentation as to why either of the tests are not applied to an application for legal assistance.

Client contributions

4.52 Audit’s review of the Commission’s files found that 40 of the 50 successful applicants for grants of legal assistance were required to pay a client contribution of \$90. The remaining ten successful applicants were granted an exemption and were therefore not required to pay the contribution. There was appropriate documentation and record-keeping supporting the decision to either apply or exempt the client contribution.

4.53 Where a person receives legal assistance from a private practice lawyer, the Commission receives the client contribution directly from the private practice lawyer. The Commission deducts the client contribution from invoices received from the private practice lawyers. It is then incumbent on the private practice lawyer to recover the contribution from the client.

4.54 Where a person receives legal assistance from the Commission’s Legal Practice, the Commission seeks to recover the client contribution directly from the person.

4.55 Of the 40 applicants who had been required to pay the client contribution:

- thirty (75 percent) had paid it as required; and
- ten (25 percent) did not pay as required and the requirement to pay was written off. Nine of these grants were managed by the in-house Legal Practice and one grant was managed by a private practice lawyer.

4.56 Audit notes that a significant number of client contributions are written off every year by the Commission as unrecoverable. Table 4.1 shows the number and value of client contributions written off as unrecoverable in the four years to 2011-12. The table also shows that in 2010-11, the Commission undertook an exercise to write-off a significant number of unrecoverable client contributions that had accumulated over the years.

Table 4.1: Number and value of client contributions written off as unrecoverable

	2008-09	2009-10	2010-11	2011-12
Number of client contributions	101	579	2 117	471
Value of client contribution	\$21 127	\$90 732	\$201 995	\$59 894

Source: Audit Office, based on Legal Aid Commission Annual Reports

- 4.57 The client contribution fee of \$90 is an important mechanism by which a client demonstrates their commitment to the legal process. Of the 50 successful applications for grants of legal assistance reviewed by Audit, the client contribution was only recovered from 60 percent of clients. All but one of the instances where the client contribution was not recovered from the client and eventually written off related to grants of legal assistance managed by the in-house Legal Practice.
- 4.58 The Commission implemented a revised *Contributions Assessment & Recovery Policy & Procedure* in April 2012. The purpose of the new policy and procedure is to ensure that the Commission is levying and collecting contributions in accordance with the Act and to fulfil the Chief Executive Officer's responsibility under the *Financial Management Act 1996* to ensure the efficient and effective financial management of the Commission.
- 4.59 The Commission advises that the objectives of the new policy and procedure are to be achieved by ensuring that:
- where applicable clients are advised that a contribution is payable to the Commission at their first interview;
 - clients are aware of the payment methods accepted by the Commission (e.g. Centrepay, cash, credit card, cheque, EFT etc.);
 - clients are aware that if they do not have the capacity to pay the contribution they can apply for a waiver;
 - staff have a clear, step-by-step, process to follow when recovering initial contributions on in-house grants;
 - appropriate finance treatment is applied to contributions that remain outstanding as a result of unsuccessful attempts to collect the debt;
 - contributions are reviewed at the conclusion of the matter to determine if the contribution should be reassessed and, if so, a course of action commences to ensure the Commission recovers the reassessed contribution, and
 - there are clear guidelines in place should the Commissions determine that a debt will be recovered by legal proceedings under subsection 31(4) of the Act.

Recommendation 5 (Chapter 4)

The Commission should investigate options to enhance the recovery of client contributions.

Reconsideration and review of decisions

- 4.60 Thirteen of the 75 applications for grants of legal assistance (17 percent) were subject to a reconsideration process of the original decision. The Commission has developed a standard template that is to be used by Commission staff in the reconsideration of decisions.
- 4.61 Audit's review found that the standard template was not used in four files that were subject to reconsideration. Because the standard template was not used in the reconsideration process on these occasions, Audit was unable to identify the administrative processes that were undertaken and the basis for any reconsideration.

The outcome of the reconsideration process was only evidenced from records of email correspondence and letters to the applicants.

- 4.62 The review also found that on seven occasions the original decision to grant legal assistance was varied. The main reason for variation of the original decision was that new information had been provided by the applicant. This might suggest that the initial information provided by the applicant was inadequate to form a decision during early stage of application process.
- 4.63 If applicants are not satisfied with a reconsideration decision, they can request that a review be conducted by an independent review committee. In 75 Client Services files examined by Audit, only two applications had been subject to a review conducted by an independent review committee. The review process is documented through the completion of a decision record sheet signed by the presiding member of the review committee. This document together with a copy of each meeting agenda, a record of review committee meetings, a pro forma file note completed by the Commission's representative and a copy of the letter sent to the applicant is kept at the Chief Executive Officer's office.
- 4.64 Nevertheless, Audit found that there was scope for improvement with respect to documentation of the reasons for the decision. Sections 76 to 81 of the Act outline administrative provisions relating to review committees and subsection 80(7) of the Act states that:

A review committee may regulate the conduct of proceedings at its meeting as it thinks fit and shall keep minutes of those proceedings.

Recommendation 6 (Chapter 4)

The Commission should ensure that there is appropriate documentation of all reconsideration and review processes undertaken for applications for grants of legal assistance.

TIMELINESS OF PROCESSING

- 4.65 Table 4.2 shows the number of working days taken to process applications for grants of legal assistance over the past four financial years (2008-09 to 2011-12) and the first quarter of 2012-13.

Table 4.2: Total number of grants processed

	TOTAL	2008-09	2009-10	2010-11	2011-12	2012-13 first quarter
TOTAL	13 238	3 378	3 135	3 064	2 994	667
<= 5 days	9 229	2 600	2 377	2 152	1 621	479
>5 <= 10 days	2 008	388	329	458	721	112
> 10 days	2 001	390	429	454	652	76

Source: Audit Office, based on Commission information

4.66 Table 4.3 shows the percentage of grants applications processed within the Commission's reporting timeframes for four years to 2011-12 and the first quarter of 2012-13.

Table 4.3: Percentage of grant application processed within timeframes

	TOTAL	2008-09	2009-10	2010-11	2011-12	2012-13 first quarter
TOTAL	100%	100%	100%	100%	100%	100%
<= 5 days	69%	76%	75%	70%	54%	71%
>5 <= 10 days	15%	11%	10%	14%	24%	16%
> 10 days	15%	11%	16%	14%	21%	11%

Source: Audit Office, based on Commission information

4.67 These tables show that although the Commission experienced a decrease in the number of applications from 3 378 in 2008-09 to 2 994 in 2011-12, there has been an increase in the time to process the applications; 76 percent of all applications were processed within 5 working days in 2008-09 to 54 percent in 2011-12. However, for the first quarter of 2012-13 there was an improvement, 71 percent of all applications were processed within 5 working days.

4.68 The time taken for processing includes the lag time occurring when a client needs to provide additional information in order for the application to be processed.

4.69 The explanation for the 2011-12 decrease in processing times is due the Commission's effort to improve the reliability of its decision making by seeking additional and more accurate information prior to an application being processed. This is particularly important for the development of the e-Grants system that will be implemented in 2012-13. The eGrants online application process will provide assistance to applicants to

ensure that accurate and complete applications are lodged. It is expected that the eGrants application process will improve the Commission processing time.

- 4.70 Audit considers that these timeframes are appropriate and demonstrate effective performance in the assessment of applications for grants of legal assistance.

ALLOCATION OF LAWYERS

- 4.71 Client Services may assign a successful applicant to a Commission in-house lawyer or a private practice lawyer. Section 11 of the Act provides that the Commission shall determine guidelines for the allocation of work between officers of the commission and private practice lawyers having regard to the following considerations:

- the need for legal services to be readily available and easily accessible to disadvantaged people;
- the need to make the most efficient use of the money available to the Commission;
- the desirability of enabling a legally assisted person to obtain the services of the legal practitioner of his or her choice;
- the desirability of maintaining the independence of the private legal profession; and
- the desirability of enabling officers of the commission to use and develop their expertise and maintain their professional standards by conducting litigation and doing other kinds of professional legal work.

- 4.72 The Commission has developed *Work Allocation Guidelines*, which are part of the *Legal Assistance Guidelines*. The *Work Allocation Guidelines* state:

The intention of the Act is that the Commission provides legal assistance in partnership with the private legal profession. Consistent with this intention, the Commission will distribute legally assisted work between private legal practitioners and officers of the Commission in a manner that ensures that neither partner becomes the predominant provider of legal assistance. The Work Allocation Guideline is designed to maintain an appropriate balance in the allocation of work within the framework of the Commission's statutory duties and the considerations in section 11.

- 4.73 The *Work Allocation Guidelines* provide detailed guidance on the decision-making process associated with the allocation of work between in-house Commission staff and private practice lawyers (see Appendix E).

- 4.74 Table 4.4 shows a breakdown of grants of legal assistance by type of matter for in-house and private practices lawyers.

Table 4.4: Grants of legal assistance provided by the Commission (in-house and private practice lawyers)

		2008-09	2009-10	2010-11	2011-12
In-house lawyers	Criminal	611	565	532	601
	Family	532	407	425	419
	Civil	19	19	8	43
Total in-house		1 161	991	965	1 063
Private lawyers	Criminal	655	624	652	563
	Family	685	665	651	635
	Civil	32	38	27	15
Total private practice		1 372	1 327	1 330	1 213
Cumulative total		2 533	2 318	2 295	2 276

Source: Audit Office, sourced from the Commission's Annual Reports

4.75 Table 4.4 shows that a larger proportion of grants of legal assistance are delivered by private practice lawyers compared to the Commission's in-house Legal Practice. This has been a consistent trend in all four years. The number of grants of legal assistance managed by in-house lawyers steadily declined in the three years to 2010-11, but increased by 98 in 2011-12. The Commission's 2011-12 Statement of Intent proposes that 1 000 grants will be managed in-house and 1 259 grants will be managed by private practice lawyers in the forward years to 2014-15.

Providing legal assistance through Commission or private lawyers

4.76 As noted in paragraph 3.24 Audit's review found that a conflict of interest check had been conducted for all applications. In some of the files that were reviewed, it was evident that there was a conflict of interest for the Commission's lawyers or that the client had expressed a preference for a private practitioner. In these instances the case was assigned to a private practitioner.

However, where there was no conflict of interest or an applicant had not expressed a preference for a particular lawyer there was a lack of documentation on the file to explain the rationale as to why the grant had been allocated to the Commission's Legal Practice or a private practitioner. While there was no evidence that the assignment of a lawyer was inappropriate or not in compliance with the *Legal Assistance Guidelines*, there was insufficient evidence to support the decision that had been made and to provide evidence that the *Work Allocation Guidelines* had been complied with.

Recommendation 7 (Chapter 4)

The Commission should ensure that all decisions regarding the assignment of a grant of legal assistance to either its in-house Legal Practice or private practice lawyers are documented.

5. MANAGING AND MONITORING GRANTS OF LEGAL ASSISTANCE

- 5.1 This chapter discusses the Commission's processes for managing and monitoring grants of legal assistance and in so doing considers the processes used for ensuring that the quality of service delivery is maintained and costs are managed.

SUMMARY

Conclusion

The Commission has made many improvements in its management of grants of legal assistance in recent years. This includes the implementation of an eGrants system, development of a panel of legal services providers and better processes to manage the private practice lawyers it engages for grants. All these are intended to provide efficiency and consistency in the Commission's administrative processes, documentation and record-keeping for the management of grants of legal assistance.

The processes for improving the Commission's management of private practice lawyers have not been adopted by the Commission in managing its own in-house lawyers. For example, the Commission's Legal Practice does not provide regular progress reports to the Client Services Division for monitoring and does not use the eGrants system to manage grants. The Commission's overall management of grants of legal assistance could be improved if there was consistency in the management of its in-house Legal Practice and that used for private practice lawyers.

The Commission has implemented a Service Management and Report Tracking project, which has been effective in developing and measuring indicators of *service effectiveness*. However, it has not made similar progress in developing and measuring indicators of *service efficiency*. The lack of a costing model for the delivery of its in-house Legal Practice services means that the Commission cannot accurately measure and benchmark the costs of its own service delivery for grants of legal assistance. Without this, it is impossible to undertake any benchmarking or compare the Commission's costs with private practice lawyers. Accordingly, Audit could not assess whether the Commission's own management of grants of legal assistance is being undertaken efficiently or in a manner that offers value for money. While this information would have been useful for this audit, it is also important for the Commission to have so that it can monitor its own efficiency.

Key findings

- Two key means by which effective legal aid services are facilitated are the *Legal Profession Act 2006* and *Professional Conduct Rules* published by the Law Society of the ACT. These establish the professional duties and responsibilities of all lawyers in the ACT and apply to both in-house Commission staff and private practice lawyers.
- The Commission has developed and promulgated *Practice Standards* for the provision of services under grants of legal assistance. The *Practice Standards* 'set out strategies to ensure the effective, efficient and economic delivery of quality legal services and apply to both private practice lawyers and in-house Legal Aid ACT lawyers.'
- Client Services has a role in managing and monitoring grants of legal assistance being provided by private practice lawyers. However, it does not have a role in managing and

monitoring grants of legal assistance that are assigned to the in-house Legal Practice, which is the responsibility of each Head of Practice (e.g. Family Law or Criminal Law).

- As part of the Commission's 2008-12 Strategic Plan, the Commission has been implementing a *New Directions Program*. This involves a series of projects which are intended to improve business practices associated with the Commission's management of grants of legal assistance. These include the development of the eGrants system, the SMART (Service Management and Report Tracking) project and the implementation of the General Panel of private practice lawyers for the provision of services under grants of legal assistance.
- The Commission has developed a standard *General Panel Services Agreement*, for the provision of services by private practice lawyers. This provides a strong basis for the Commission to manage private practice lawyers delivering legal services under a grant of legal assistance. The *General Panel Services Agreement* also provides for the conduct of compliance audits on private practice lawyers. To date, however, a compliance audit program has not been developed and there have only been two compliance audits conducted on private practice lawyers.
- A 'stage of matter' approach is used by the Commission to monitor a grant's progress. This is facilitated by the eGrants system, which has a 'dashboard' reporting function that allows a Commission system user to identify, at any given time, the status of a grant of legal assistance, i.e. what stage it is up to, and the total commitment and expenditure incurred on the grant. A shortcoming of the Commission's administration of grants of assistance is that its eGrants system is only used to manage those grants assigned to private practice lawyers.
- Where a grant is assigned to a private practice lawyer, a key means by which Client Services manages and monitors the provision of services is through progress reports. Progress reports should be received when a grant has reached, and completed, a particular 'stage of matter' and a final report should be received once the matter has been finalised. In the review of a sample of the Commission's files, Audit found there was considerable variability in the quality and comprehensiveness of information provided by private practice lawyers in progress reports. In-house Legal Practice lawyers are not required to provide progress reports or final reports to Client Services. Audit considers that this impairs the ability of the Commission to overall manage its grants and allocate resources efficiently.
- The Commission has implemented the Service Measurement and Report Tracking (SMART) project to improve the recording of service information and enhance service delivery. This project involved the development of measures of *service effectiveness* and *service efficiency*. There has been substantial progress in developing measures of *service effectiveness* and comprehensive six-monthly reviews of performance have been conducted by the Commission to assess the effectiveness of service provision.
- The development of measures of *service efficiency* was intended to be achieved through a more accurate understanding of the Commission's costs of legal services, as a basis for comparison and benchmarking. The Commission has not progressed the development of measures of *service efficiency* and considerable work needs to be done in relation to this component of the project. At present, the Commission cannot accurately identify the comparative costs of providing grants of legal assistance through its in-house Legal Practice or benchmark these costs against private practice lawyers. This is a concern given that the Commission has made significant financial losses in recent years and it

predicts that this will continue in future years.

- Dr Curran concluded in her report on the Commission; *We Can See There's a Light at the End of the Tunnel: Demonstrating and Ensuring Quality Service to Clients* (April 2012) that with respect to the quality of the provision of legal services to clients, the Commission 'scored highly and consistently on the outcome indicators'.

- 5.2 In 2011-12 the Commission provided 2 276 grants of legal assistance to vulnerable members of the community.
- 5.3 There has been considerable variability in the Commission's financial performance and in 2011-12 the Commission made an operating deficit of \$869 637. Table 2.5 shows that the Commission expects to continue making an operating loss in future years.
- 5.4 The Commission's primary risk (rated as Extreme) continues to be financial liquidity and its risk mitigation strategy for this risk is to 'manage demand within existing resources.'
- 5.5 Given these financial pressures, it is incumbent on the Commission to develop and implement administrative processes for the management of its legal aid services (including grants of legal assistance) that are efficient and cost-effective and in the longer term can ensure that it does not exceed its budget. The challenge for the Commission however, will be to achieve this, without compromising the quality or effectiveness of its legal aid services, and be able to reasonably meet demands by the community.

NEW DIRECTIONS PROGRAM

- 5.6 As part of the Strategic Plan for 2008-12, the Commission has been implementing a *New Directions Program*. This is intended to improve business practices associated with the Commission's management of grants of legal assistance. The *New Directions Program* originally included the following:
- eGrants project;
 - SMART (Service Management and Report Tracking) project; and
 - panels project.

eGrants

- 5.7 The eGrants system aims to create a web-browser based application that provides a consistent and unified portal to both internal and external legal aid providers and the Client Services Division.
- 5.8 The eGrants system is designed to facilitate:
- applications for grants of legal assistance;
 - applications for extensions of grants of legal assistance; and
 - billing for provision of services by practitioners (internal and external).
- 5.9 The system is intended to provide limited decision support and automation through business rules that guide and triage applications via the grant application form information entry process.

- 5.10 The key benefits of the system are expected to be:
- consistency in the Commission's administrative processes, documentation and record-keeping for the management of grants of legal assistance, primarily associated with the application and invoicing processes;
 - efficiencies in the Commission's administrative processes due to the automation of key administrative steps and the implementation of business rules that guide a person through the application process (prompting them to complete and provide all required information); and
 - improved capability for managing and monitoring financial commitments associated with grants of legal assistance.
- 5.11 The eGrants system has been progressively implemented in modules. The Commission expects all modules of the eGrants system to be fully operational by October 2012.

SMART – Service Management and Report Tracking

- 5.12 The Commission is in the process of implementing the Service Measurement and Report Tracking (SMART) project, to improve the recording of service information and enhance service delivery. According to the Commission, the objective of this tracking project is to develop and maintain a robust monitoring and reporting capability, so that the Commission is able to:
- continuously improve the services it provides to clients and the community;
 - routinely monitor and evaluate its performance against agreed legislative, policy and service standards;
 - assess predictors of case complexity and benchmark performance of private and in-house legal practices;
 - demonstrate the efficiency and efficacy of the services it delivers to its funders and other stakeholders; and
 - benchmark with other legal aid offices.
- 5.13 Three key aspects of the SMART project involve:
- the development of measures of *service effectiveness*, primarily achieved by an action-research project that has sought to develop quality service indicators against which the Commission can regularly measure and monitor performance; and
 - the development of measures of *service efficiency*, primarily through more accurate understanding of the Commission's costs of legal services, as a basis for comparison and benchmarking.
 - improvements to the accuracy of service *output* measurement and recording through the documentation of service definitions and recording procedures in the *Service Data Manual* introduced in March 2011.
- 5.14 The Commission has demonstrated substantial progress in relation to the measurement of *service effectiveness*. On behalf of the Commission, Dr Liz Curran produced the *We Can See There's a Light at the End of the Tunnel Now: Demonstrating and Ensuring Quality Service to Clients* report in April 2012 on the basis of November 2011

information. A follow-up report was prepared in June 2012, on the basis of information collected six months later.

- 5.15 The Commission has not given priority to the development of measures of service efficiency and considerable work needs to be done in relation to this component of the project. Specific progress on measuring service efficiency and service effectiveness is discussed in further detail later in this chapter.

Panels

- 5.16 The Panels project aimed to establish panels of potential service providers for supplying legal aid services. In June 2011 the Commission established a general panel of private practice lawyers and in late 2012 two special panels will be established for Independent Children's Lawyers (ICLs) and family dispute resolution (FDR) practitioners.

- 5.17 As part of panel arrangements, standard services agreements have been developed, which are mandatory for any legal practitioners who seek to undertake work on behalf of the Commission. The services agreements provide for *inter alia*:

- required levels of service delivery and performance, including standards of practice and continuing eligibility for practising in the ACT;
- requirements for the private practitioner's specified personnel for the delivery of services; and
- a right of access of the Commission to the private practitioner's information and records, including the right to conduct Compliance Audits of the services provided.

- 5.18 The key benefits of the panel arrangements are consistency in administrative practices, which are obtained through common contractual agreements, terms and conditions.

MANAGING AND MONITORING SERVICE DELIVERY

- 5.19 Two key means by which effective legal aid services are facilitated are the *Legal Profession Act 2006* and *Professional Conduct Rules* published by the Law Society of the ACT. These establish the professional duties and responsibilities of all lawyers in the ACT and apply to both in-house Commission staff and private practice lawyers. All lawyers must adhere to these professional standards and disciplinary processes may be taken against lawyers that breach their professional duties and responsibilities.

Practice Standards

- 5.20 The Commission has also developed and promulgated *Practice Standards* for the provision of services under grants of legal assistance. The *Practice Standards* 'set out strategies to ensure the effective, efficient and economic delivery of quality legal services and apply to both private practice lawyers and in-house Legal Aid ACT lawyers.' They establish:

- general principles for the conduct of legal assistance;
- practitioners' responsibilities to clients; and
- practitioners' responsibilities to Legal Aid ACT.

5.21 The *Practice Standards* are a useful means by which to document and articulate expected levels and standards of service delivery from all legal practitioners.

Private practice lawyers

5.22 For private practice lawyers, a key means by which the quality of legal services are promoted is through the development and implementation of the General Panel for the provision of grants of legal assistance. The standard *General Panel Services Agreement* requires the practitioner to *inter alia*:

- perform the services in accordance with the provisions of the agreement;
- not subcontract the performance of the services or assign the whole or part of the services;
- ensure that its employees are appropriately qualified and experienced to perform the services and maintain an adequate supervisory system for employees providing the services; and
- (if required) ensure that the services are performed by a specified employee if requested to do so by the Commission.

5.23 The standard *General Panel Services Agreement* also requires the practitioner to:

- maintain a current unrestricted practising certificate in accordance with the *Legal Aid Profession Act 2006*, without any condition, restriction or qualification that would limit or restrict the practitioner's capacity to provide the services;
- comply with the *Legal Profession Act 2006* and Professional Conduct Rules published by the Law Society of the ACT;
- comply with the *Practice Standards*; and
- 'perform the services to the standard of care and skill expected of a person who regularly acts in the capacity in which the practitioner is engaged and who possesses the knowledge, skill and experience of a person qualified to act in that capacity'.

5.24 The practitioner must notify the Commission in writing upon becoming aware of bankruptcy, disciplinary proceedings or criminal proceedings being commenced or foreshadowed against the practitioner.

5.25 The *General Panel Services Agreement* also provides for the conduct of compliance audits on private practice lawyers. The *General Panel Services Agreement* requires the private practitioner to comply with compliance audit requirements and produce relevant documentation to the Commission for inspection and copying.

5.26 The General Panel and its associated services agreement provides a sound basis on which to manage and monitor the services of private practice lawyers. The Commission has already conducted two compliance audits of private practice lawyers (in August 2012) partially as a means by which to test a proposed method for the compliance audit process. At the time of audit fieldwork in September 2012, the Commission was reviewing the outcomes of these audits.

5.27 Audit considers that a risk-based compliance audit program, potentially driven by risk indicators such as volume of cases or client feedback, would be a useful mechanism for

the Commission to obtain assurance over the quality and effectiveness of services from private practice lawyers. The Commission advises that preparation for this is well underway.

Recommendation 8 (Chapter 5)

The Commission should develop and implement a risk-based compliance audit program for the delivery of legal services by private practice lawyers under grants of legal assistance.

In-house legal practice

5.28 Within the Commission, Practice Heads of each of its practice areas (Criminal Law, Family Law and Civil Law) are responsible for allocating work and monitoring the efficiency and effectiveness of the delivery of legal services within their area. Employee efficiency and effectiveness is promoted and monitored as follows:

- position descriptions are developed and modified as necessary to take account of changing work arrangements and shifting workloads;
- lawyers' caseloads are monitored by Practice Heads, to ensure that each practice is operating at an optimal level. Workload reports are produced and monitored for management scrutiny; and
- staff participate in regular performance reviews with managers.

5.29 Furthermore, Commission lawyers are kept informed of legal developments by:

- regular meetings – the three practice areas have regular meetings where they discuss recent legal and administrative developments;
- participating in the mandatory Continuing Professional Development (CPD) program run by the Law Society. The Deputy Executive Officer monitors in-house lawyers' participation in the program. In the first quarter of each year the Commission also organises an in-house Continuing Professional Development program;
- attendance at the biannual National Legal Aid conference; and
- attendance at conferences and seminars.

Monitoring service delivery

5.30 Client Services' primary role is to grant and extend assistance in accordance with eligibility criteria and information supplied by the assigned lawyer, to ensure that payment of legal fees and disbursements is made in accordance with approved commitments, and in rare cases where there has been no contact from an assigned lawyer for a long period to seek a report on progress. In this respect, Client Services' role is the same whether a case is assigned to a private lawyer or to an in-house lawyer.

5.31 Client Services monitors the progress of cases assigned to private lawyers, although this does not extend to the professional conduct or management of cases. Client Services does not monitor the progress of cases assigned to the in-house Legal Practice, which is the responsibility of the Heads of Practice. A 'stage of matter' approach is used by the Commission to monitor a grant's progress. This is facilitated by the eGrants system,

which has a 'dashboard' reporting function that allows a Commission system user to identify, at any given time:

- the status of a grant of legal assistance, i.e. what stage it is up to; and
- the total commitment and expenditure incurred on the grant.

5.32 A key issue for consideration, however, is that only grants of legal assistance that are assigned to private practice lawyers are currently on the system. The Commission envisages realising the integration of the in-house practice with the eGrants system through a two year project aimed at enhancing the existing ICT infrastructure to a fully integrated Legal Aid Management Information System (LAMIS). Audit considers that this is a shortcoming in the Commission's practices which impairs its ability to efficiently manage its resources. Managing all of the Commission's grants of legal assistance on the system would allow it to more effectively:

- plan for the delivery of legal aid services, including resource and financial planning and the allocation of cases to the in-house Legal Practice or private practice lawyers; and
- manage its financial commitments.

Progress and final reports

5.33 Where a grant is assigned to a private practice lawyer, a key means by which Client Services manages and monitors the provision of services is through progress reports. Progress reports should be received when a grant has reached and completed a particular 'stage of matter' and a final report once the matter has been finalised.

5.34 There is no specific format or template that provides practical guidance to the external lawyers on how to provide a progress report or final report. However, the *Practice Standards* require the lawyer to ensure that:

Reports contain details of court appearances for which payment is sought including outcomes and orders made, an outline of the work completed under the grant of legal assistance, and any other information that Legal Aid ACT reasonably requires or that the Practitioner considers relevant.

5.35 In the review of a sample of the Commission's files, Audit found there was considerable variability in the quality and comprehensiveness of information provided by private practice lawyers in progress reports. Some reports were very brief, while others were quite comprehensive and covered a range of pertinent information, the provision of which gave the Commission a more comprehensive understanding of the nature and progress of the matter. Audit notes that there was no standard form or template for the receipt of progress and final reports from private practice lawyers. The lack of consistency in reports from private practice lawyers does not easily allow the Commission to analyse and aggregate the information provided through the reports and provide it with a more comprehensive insight into the quality of external service provision.

5.36 In-house lawyers are not required to provide progress reports or final reports to Client Services. This impairs the ability of the Commission to generate grant-related information that could assist in the identification of the Commission's future financial and resource commitments. This also impairs the Commissions' ability to compare the

progress and complexity of cases between its in-house practice and the external services provided by the private practice lawyers, as a potential means by which to make future and ongoing decisions on allocating grants of legal assistance.

Recommendation 9 (Chapter 5)

The Commission should ensure that all grants of legal assistance, irrespective of whether they are assigned to the in-house Legal Practice or private practice lawyers are:

- a) managed using the eGrants system; and
- b) subject to regular progress reports to Client Services.

Monitoring service delivery costs

5.37 Tables 5.1 and 5.2 show comparisons between grants managed by the Commission’s in-house Legal Practice and those managed by external service providers for criminal law and family law matters. The number of grants shown are those *completed* in the financial year (not those *approved* in the financial year).

Table 5.1: Comparison of in-house and private practice lawyers - criminal law grants of legal assistance

Year	Practice	Grants	Value		Extensions	
			Total value of all grants	Average value	Total no. of extensions	Average no. of extensions
2008-09	In-house	526	\$936 425.95	\$1 780.28	993	1.9
	External	666	\$1 376 981.95	\$2 067.54	1 801	2.7
2009-10	In-house	434	\$779 706.90	\$1 796.56	821	1.9
	External	656	\$1 109 515.90	\$1 691.34	1 670	2.5
2010-11	In-house	687	\$ 1 181 583.64	\$1 719.92	1 502	2.2
	External	530	\$1 215 632.66	\$2 293.65	1 442	2.7
2011-12	In-house	530	\$1 061 592.30	\$2 003.00	1 414	2.7
	External	613	\$1 430 343.00	\$2 333.35	2 338	3.8

Source: Audit Office based on information provided by the Commission

5.38 Table 5.1 shows that:

- the average value of criminal law grants of legal assistance assigned to private practice lawyers has for most years been higher than those assigned to the in-house Legal Practice; and
- private practice lawyers consistently seek a greater number of extensions for grants of legal assistance than in-house Legal Practice lawyers.

Table 5.2: Comparison of in-house and private practice lawyers - family law grants of legal assistance

Year	Practice	Grants	Value		Extensions	
			Total value of all grants	Average value per grant	Total no. of extensions	Average no. of extensions
2008-09	In-house	417	\$662 465.57	\$1 588.65	1 090	2.6
	External	477	\$1 164 612.74	\$2 441.54	2 081	4.4
2009-10	In-house	377	\$586 712.81	\$1 556.27	940	2.5
	External	611	\$1 527 601.23	\$2 500.17	2 613	4.3
2010-11	In-house	489	\$868 438.07	\$1 775.95	1 346	2.8
	External	584	\$1 219 160.03	\$2 087.60	2 125	3.6
2011-12	In-house	446	\$651 385.59	\$1 460.51	1 122	2.5
	External	624	\$1 506 389.79	\$2 414.09	2 666	4.3

Source: Audit Office based on information provided by the Commission

5.39 Table 5.2 shows that:

- the average value of family law grants of legal assistance assigned to private practice lawyers has been consistently higher than those assigned to the in-house Legal Practice; and
- private practice lawyers consistently seek a greater number of extensions for grants of legal assistance than in-house Legal Practice lawyers.

Monitoring the costs of in-house Legal Practice service delivery

5.40 As noted earlier in paragraph 5.12, the Commission has implemented the Service Measurement and Report Tracking (SMART) project to improve the recording of service information and enhance service delivery. One aspect of this project involved the development of measures of *service efficiency*, primarily through a more accurate understanding of the Commission’s costs of legal services, as a basis for comparison and benchmarking.

5.41 However, the Commission has not made substantial progress on the development of measures of *service efficiency* and considerable work needs to be done in relation to this component of the project.

5.42 The Commission cannot accurately identify the comparative costs of providing grants of legal assistance through its in-house Legal Practice compared with using private practice lawyers. While the total value and average value of grants assigned to the in-house Legal Practice and private practice lawyers facilitates a simple comparison Audit notes that this is not robust as it does not reflect the *actual cost* of providing the legal assistance.

- 5.43 Audit notes that the Commission has not:
- developed a costing model for its Legal Practice services, which takes account of the Commission's expenditure (salaries and overhead corporate costs) in the development of an hourly charge-out rate for its lawyers; or
 - undertaken any other activity-based costing analysis for the delivery of services through its in-house Legal Practice.
- 5.44 The Commission asserts that the in-house Legal Practice is handling more complex cases than private practice lawyers. It is difficult to verify the accuracy of this statement, or make an assessment on the cost implications of these assertions, in the absence of robust and accurate cost data. Audit also notes that a simple analysis of the features of a particular matter, its nature and type, does not facilitate an easy comparison of the relative costs associated with grants. A costing model would provide a stronger basis on which to facilitate this comparison.
- 5.45 The Commission advises that the lack of progress on this issue is primarily due to priority being given to other New Directions Program projects. In this respect, the Commission advises that it sought to have a better understanding of what constitutes an appropriate service outcome (i.e. through the Curran report) before developing a costing method. The Commission advises that this was a pre-requisite before developing an appropriate costing method.

Recommendation 10 (Chapter 5)

The Commission should develop:

- a) develop a costing model for its Legal Practice services (e.g. hourly charge-out rates) which should facilitate an accurate assessment of the cost of providing legal services by the Commission; and
- b) use this as a basis for developing measures of service efficiency, which can then be used as a basis for benchmarking and cost comparison.

PERFORMANCE EVALUATION AND REPORTING

- 5.46 The Commission currently collects information and reports on the following performance indicators:
- legal aid services provided by private practice lawyers;
 - legal advice provided in person
 - duty lawyer services
 - grants referred to them
 - legal aid services provided by Commission staff;
 - legal advice and minor assistance services provided in person
 - legal information, referral and advice services provided by the legal aid helpline
 - duty lawyer services provided

- grants referred to Commission staff
- dispute resolution conferencing
- advocacy services
- community legal education sessions, and
- special support to indigenous people receiving services.

5.47 Paragraph 3.30 mentions that the *National Partnership on Legal Assistance Services* measures of performance are not incorporated in the Commission's strategic and operational planning or annual Statement of Performance.

5.48 The SMART project was intended to develop measures of *service efficiency* and *service effectiveness*. While there has been little progress on the development of measures of *service efficiency*, as mentioned in paragraphs 5.42 to 5.47, there has been considerable progress in the development of measures of *service effectiveness*.

Curran Report

5.49 Dr Liz Curran was engaged by the Commission to undertake an assessment of its activities, including considering the quality of its legal services to clients. Dr Curran reported her findings in April 2012 in her report; *We Can See There's a Light at the End of the Tunnel: Demonstrating and Ensuring Quality Service to Clients*. Dr Curran, in the report states:

...any attempt to measure legal aid services' impact, outcomes and/or results must take into account the challenges of working with disadvantaged and vulnerable clients. Human services such as legal aid services involve individual lives and impact on these lives in ways that can be beneficial or detrimental. Rather than assuming that the impact of legal aid services is simple, easy to measure and/or predictable in advance, the approach to measurement used in these circumstances must acknowledge the difficult and unpredictable nature of service delivery when complex work is undertaken for vulnerable and disadvantaged clients.

5.50 Dr Curran also states:

The ACT is a small jurisdiction and thus has few resources. It is therefore critical that legal aid services remain focused on delivering that service. While funders, stakeholders and others are rightly interested in assessing accountability and transparency, measuring these things must not divert essential and scarce resources and services away from the most disadvantaged sections of society.

5.51 Dr Curran developed outcome indicators, and it is understood that it is the Commission's intention to use these to evaluate its performance on a regular basis (at least annually and potentially six-monthly) to assess its delivery of its services. The outcome indicators developed by Dr Curran are outlined in Table 5.3.

Table 5.3: Legal Aid Commission outcomes and indicators

Outcome	Qualities demonstrated by outcome
1. A good client interview.	Holistic, Joined-up, Quality, Problem Identification, Empowerment, Good Practice, Early Intervention, Prevention, Responsiveness, Client Centred, Alternative Dispute Resolution (ADR), Targeting, Expertise.
2. Clients with chaotic lifestyles attend interviews, appointments and court dates.	Early Intervention, Prevention, Empowerment, Client Centred, Holistic, Targeting.
3. As appropriate, sentences are minimised or unsubstantiated charges are dropped.	Rule of Law, Efficiency, Good Practice, Expertise.
4. Clients are better able to plan and organise their legal affairs.	Early Intervention, Prevention, Empowerment, Quality, Good Practice, Client Centred
5. Improvements in the client's interaction with the legal system.	Early Intervention, Prevention, Empowerment, Quality, Client Centred
6. Consideration of issues before a court or tribunal enhanced because the lawyer asked questions/raised issues and brought the client's story before the court.	Rule of Law, Quality, Voice, Flexibility, Good Practice, Client Centred, Responsiveness, ADR, Expertise
7. Client is better able to understand their legal position and the options open to them.	Early Intervention, Prevention, Empowerment, Good Practice, Quality.
8. A process is undergone where the client is listened to, respected and given fearless advice of their legal position.	Quality, Client Centred.
9. Relationships and trust building with other legal and non-legal support agencies enabling client referral and support.	Early Intervention, Prevention, Holistic, Joined-up, Good Practice, Quality.
10. Holding of authority to account.	Rule of Law, Quality, Voice, Flexibility, Good Practice, Client Centred, Responsiveness.

Outcome	Qualities demonstrated by outcome
11. A holistic service delivered to the client through collaboration, networking, community legal education and joined-up services.	Good Practice, Client Centred, Problem identification, Collaboration, Prevention, Early Intervention, Holistic, Joined-up.

Source: Curran, L. (2012) *We Can See There's a Light at the End of the Tunnel: Demonstrating and Ensuring Quality Service to Clients*.

5.52 Dr Curran assessed aspects of Commission's performance against these outcomes using:

- lawyer and client interviews;
- entries in observation logs made by Commission staff members;
- a voluntary client feedback survey/questionnaire of all clients receiving advice from Commission lawyers;
- a telephone survey of clients, conducted on the closure of their files;
- case studies collected from open questions in observation logs, focus groups, client interviews with the researcher and an online survey;
- interviews with a range of stakeholders;
- an on-line survey of private practice lawyers and in-house Legal Practice lawyers; and
- a feedback session with staff and board members.

5.53 Dr Curran made a number of findings and found that overall the Commission:

scored highly and consistently on the outcome indicators across the different measurement tools...this suggests that the 11 desired outcomes and quality service were present. On many counts [the Commission] scored extremely highly. This was verified by clients and stakeholders.

5.54 The outcome indicators developed by Dr Curran were used in a snapshot survey of services provided by the Civil Practice and Community Legal Education in June 2012. The Commission intends to evaluate the quality of services provided by Clients Services and the Legal Aid Helpdesk in December 2012. This will mean all areas of the Commission providing services to the public will have been surveyed for effectiveness over the space of a year.

APPENDIX A: AUDIT CRITERIA, APPROACH AND METHOD

AUDIT OBJECTIVE

The objective of this audit is to provide an independent opinion to the Legislative Assembly on the efficiency, effectiveness and value for money of the Legal Aid Commission's management of grants of legal assistance.

AUDIT CRITERIA

In determining whether the Legal Aid Commission is managing its grants of legal assistance efficiently and effectively, key considerations and criteria for the audit are:

- The Commission has adequate governance arrangements in place to facilitate high quality service delivery
- The Commission effectively plans for grants of legal assistance
- The Commission has effective processes in place to receive and assess applications for grants of legal assistance
- The Commission effectively assesses all applications for grants of legal assistance against identified and articulated criteria
- The Commission applies client contributions effectively and consistently
- The Commission effectively manages and monitors assistance provided through grants of legal assistance

AUDIT APPROACH AND METHOD

The performance audit was conducted under the authority of the *Auditor-General Act 1996*, and in accordance with the principles, procedures, and guidance contained in Australian Auditing Standards relevant to performance auditing. These standards prescribe the minimum standards of professional audit work expected of performance auditors. Of particular relevance is the professional standard on assurance engagements - *ASAE 3500 Performance Engagements*.

The audit approach and method consisted of:

- a review of relevant literature and work undertaken on this subject by other jurisdictions with the intention of finding better practices;
- interviews and discussions with key Legal Aid Commission staff, including executives, management and administrative staff with responsibility for grants of legal assistance;
- a review of program documentation, including planning and strategy documents, governance and accountability documents, related policies and procedures, research reports and other relevant documentation;
- a review of a selection of files and other documentation associated with a selection of grants of legal assistance. Files and other document associated with:
 - 25 grants of legal assistance undertaken by in-house lawyers (across criminal, family and civil matters);
 - 25 grants of legal assistance undertaken by in-house lawyers (across criminal, family and civil matters); and

- 25 unsuccessful applications for grants of legal assistance (across criminal, family and civil matters).

APPENDIX B: DUTIES OF THE COMMISSION

Subsection 10(1) of the Act provides that in the exercise of its functions, the Commission shall:

- (a) ensure that legal assistance is provided in the most effective, efficient and economical manner; and
- (b) ensure that its activities are carried on consistently with, and do not prejudice, the independence of the private legal profession; and
- (c) liaise and cooperate with and, if the commission considers it desirable to do so, make reciprocal arrangements with, other legal aid commissions, professional bodies representing private legal practitioners and other bodies engaged or interested in the provision of legal assistance in the ACT or elsewhere; and
- (d) liaise with professional bodies representing private legal practitioners in order to facilitate the use, in appropriate circumstances, of services provided by private legal practitioners; and
- (e) make maximum use of services which private legal practitioners offer to provide on a voluntary basis; and
- (f) make the services of the commission available to people eligible for legal assistance by establishing such local offices as it considers appropriate and by making such other arrangements as it considers appropriate; and
- (g) determine priorities in the provision of legal assistance as between different classes of people or classes of matters; and
- (h) arrange for the provision of duty lawyer services at sittings in the ACT of such courts and tribunals as the commission considers appropriate; and
- (i) endeavour to secure the services of language interpreters, relationship counsellors, welfare officers and other appropriate people to assist legally assisted people in connection with matters in respect of which they are provided with legal assistance; and
- (j) encourage and permit law students to participate, so far as the commission considers it practicable and proper to do so, on a voluntary basis, under professional supervision, in the provision of legal assistance by officers of the commission.

APPENDIX C: COMMITTEES OF THE COMMISSION

Executive Committee - The Executive Committee comprises the Chief Executive Officer, Deputy Chief Executive, Business Manager and Client Service Manager. The role of this committee is to advise and assist the Chief Executive Officer in managing the Commission's affairs.

Law Reform Committee - The Law Reform Committee comprises the Deputy Chief Executive, the Head of Civil Practice, the Head of Criminal Practice and the Head of Family Practice. The role of this committee is to monitor law reform issues and prepare law reform and it provides a focus for the Commission's law reform activities. Law reform submissions are undertaken by committee members depending on their areas of expertise.

Finance Committee - The Finance Committee comprises the Chief Executive Officer, Deputy Chief Executive, Business Manager, Client Services Manager, the Chief Financial Officer and the Financial Accountant. The role of this committee is to advise and assist the CEO in managing the Commission's financial affairs as well as improve financial management by broadening input into the budget process and increasing levels of understanding and scrutiny of financial processes and reporting. This committee is responsible for the Commission's financial planning including the preparation of budgets and business cases.

Internal Audit Committee - The Internal Audit Committee's objective is to provide independent assurance and assistance to the Commission on the Commission's risk, control and compliance framework, and its external accountability responsibilities. This committee has an independent chair and meets each quarter. The Chair provides an annual report to the Board of the Commission.

Payment Assurance Working Group - The Payment Assurance Working Group comprises the Deputy Chief Executive, Business Manager, Client Service Manager, the Chief Financial Officer, Information System Manager and the Finance and Corporate Administration Officer. This working group meets every month to review the status of existing and emerging process risks as they apply to finance and administration and to propose and discuss process improvement initiatives.

Review Committees – Section 37 of the Act provides for the establishment of review committees. A review committee is convened whenever a review of a relevant decision is requested by an applicant for legal assistance. Each review committee is comprised of three members selected from panels appointed by the ACT Attorney-General, members of which are independent of the Commission.⁶ The panel include community members and lawyers nominated by the Law Society and the Bar Association.

⁶ Legal Aid Commission Annual Report 2010-11 page 68.

APPENDIX D: CLASSES OF MATTERS IN WHICH LEGAL ASSISTANCE MAY BE GRANTED

The Commission's Legal Assistance Guidelines provide that the classes of matters in which legal assistance may be granted in matters involving Territory law are as follows:

- Representation in prosecutions where a conviction is likely, in the opinion of the Chief Executive Officer, to result in imprisonment or dismissal from employment or loss of livelihood or vocation, provided that in the case of a defended matter a legal practitioner certifies that it is reasonable in all the circumstances to defend the prosecution.
- Representation of children in non-traffic prosecutions.
- Proceedings under the *Domestic Relationships Act*.
- Proceedings pursuant to the *Children and Young People Act*.
- Initiating or responding to applications for domestic violence orders under the *Domestic Violence and Protection Orders Act*.
- Initiating or responding to applications for personal protection orders under the *Domestic Violence and Protection Orders Act* where there are substantial issues of personal safety or where the applicant for assistance may experience significant personal detriment if assistance is not granted.
- Proceedings under the *Mental Health (Treatment and Care) Act*.
- Applications for the grant or restoration of a licence to drive a motor vehicle where the applicant is, in the opinion of the Chief Executive Officer, more likely than not to be dismissed from employment or is otherwise likely to suffer exceptional hardship if the order sought is not granted.
- Actions for damages for death or personal injury.
- Applications for criminal injuries compensation.
- Applications for employment related compensation.
- Personal debt matters involving an issue of such substance as to warrant the representation of the applicant.
- Family provision matters.
- Inquests, inquiries under the Inquiries Act and similar proceedings involving issues of substantial public interest.
- Proceedings under the *Terrorism (Extraordinary Temporary Powers) Act*.
- Matters which in the opinion of the Chief Executive Officer raise real questions of denial or breach of human rights.

The Chief Executive Officer may at his/her absolute discretion grant assistance in a matter not falling within one of the classes listed above

APPENDIX E: WORK ALLOCATIONS GUIDELINES

- 1(a) Subject to guideline 1(b), legal assistance will be provided by making available the services of an officer of the Commission in the following circumstances:
- (i) where an assisted person expresses a preference for an officer of the Commission to act.
 - (ii) where an assisted person is charged with an offence that is to be dealt with in a superior court, or related proceedings are to be dealt with in a superior court;
 - (iii) where a matter involves family law;
 - (iv) where assistance is sought for an inquest, inquiry under the Inquiries Act or similar proceedings;
 - (v) where a matter is capable of resolution as a small civil claim, or
 - (vi) where in the opinion of the Chief Executive Officer legal assistance can be provided at less cost by utilising the available capacity of officers of the Commission.
- 1 (b) In the following circumstances, legal assistance to which guideline 1(a) refers may be provided by making available the services of a private legal practitioner chosen by the assisted person, or, if the assisted person has not expressed a choice, by a private legal practitioner selected by the Commission in accordance with guideline 3:
- (i) where the Commission is unable to act due to a conflict of interest;
 - (ii) here in the opinion of the Chief Executive Officer there are special circumstances that make it desirable that legal assistance be provided by making available the services of a private legal practitioner.
 - (iii) where an assisted person is charged with an offence that is to be dealt with in a superior court and it is necessary in the interests of justice that legal assistance be provided by making available the services of a private legal practitioner
- 1 (c) For the purposes of paragraph 1(b)(ii) 'special circumstances' include but are not limited to:
- (i) the urgency of the matter for which legal assistance is provided;
 - (ii) any hardship which might be occasioned to the applicant due to the location of Commission offices;
 - (iii) the desirability of a lawyer being able to converse with the assisted person in a language other than English;
 - (iv) the existence of a prior professional relationship between the assisted person and a private legal practitioner that would be of material benefit to the conduct and outcome of the case.
- 2) Subject to guideline 1, where an assisted person expresses in their application for legal assistance a preference for the services of a particular private legal practitioner or officer of the Commission, legal assistance will be provided by making available the services of that practitioner or officer, subject to their availability.
- 3 (a) Where legal assistance is to be provided by making available the services of a private legal practitioner, but the assisted person has not expressed a preference for particular legal practitioner, the Commission will select a private legal practitioner from the panel maintained by the Commission under section 32(1) of the Act (the panel).

- 3 (b) In selecting a private legal practitioner from the panel in a particular case the Chief Executive Officer will have regard to the interests of the legally assisted person, the nature of the practice conducted by the private legal practitioner and the expertise of the private legal practitioner in the relevant field of law, and subject to these considerations will allocate work among private legal practitioners on the panel in a manner that ensures an equitable distribution of work.

AUDIT REPORTS

Audit reports published in recent years are listed below.

Reports Published in 2012-13

Report No. 08 / 2012	Australian Capital Territory Public Service Recruitment Practices
Report No. 07 / 2012	Annual Report 2011-12
Report No. 06 / 2012	Emergency Department Performance Information

Reports Published in 2011-12

Report No. 05 / 2012	Management of Recycling Estates and E-Waste
Report No. 04 / 2012	Development Application and Approval System for High Density Residential and Commercial Developments
Report No. 03 / 2012	Early Childhood Schooling
Report No. 02 / 2012	Whole-of-Government Information and ICT Security Management and Services
Report No. 01 / 2012	Monitoring and Minimising Harm Caused by Problem Gambling in the ACT
Report No. 06 / 2011	Management of Food Safety in the Australian Capital Territory
Report No. 05 / 2011	2010-11 Financial Audits
Report No. 04 / 2011	Annual Report 2010-11

Reports Published in 2010-11

Report No. 03 / 2011	The North Weston Pond Project
Report No. 02 / 2011	Residential land Supply and Development
Report No. 01 / 2011	Waiting Lists for Elective Surgery and Medical Treatment
Report No. 10 / 2010	2009-10 Financial Reports
Report No. 09 / 2010	Follow-up audit – Courts Administration
Report No. 08 / 2010	Delivery of Mental Health Services to Older Persons
Report No. 07 / 2010	Management of Feedback and Complaints
Report No. 06 / 2010	Annual Report 2009-10
Report No. 05 / 2010	Delivery of ACTION Bus Services

Reports Published in 2009-10

Report No. 04 / 2010	Water Demand Management: Administration of Selected Initiatives
Report No. 03 / 2010	Delivery of Budget Initiatives
Report No. 02 / 2010	Student Support Services for Public High Schools
Report No. 01 / 2010	Performance Reporting
Report No. 08 / 2009	2008-09 Financial Audits
Report No. 07 / 2009	Annual Report 2008-09
Report No. 06 / 2009	Government Office Accommodation
Report No. 05 / 2009	Administration of employment issues for staff of Members of the ACT Legislative Assembly

Details of reports published prior to 2009-10 can be obtained from the ACT Auditor-General's Office or the ACT Auditor-General's homepage: <http://www.audit.act.gov.au>.

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