

# AUDITOR-GENERAL'S REPORT

## PERFORMANCE AUDIT

### Distributing Legal Aid in New South Wales



The Legislative Assembly  
Parliament House  
SYDNEY NSW 2000

The Legislative Council  
Parliament House  
SYDNEY NSW 2000

In accordance with section 38E of the *Public Finance and Audit Act 1983*, I present a report titled **Distributing Legal Aid in New South Wales**.

A handwritten signature in black ink that reads 'Peter Achterstraat'.

Peter Achterstraat  
Auditor-General

Sydney  
December 2006

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**Contact officer**

Sean Crumlin, Director Performance Audit  
Tel (02) 9275 7286  
email: sean.crumlin@audit.nsw.gov.au



## **Foreword**

The Legal Aid Commission of NSW provides a range of legal services to socially and economically disadvantaged people. It is the largest legal aid agency in Australia providing over 500,000 services each year. These services include duty appearances, legal advice and community legal education.

Like most government services they are limited by the funds available.

It is important that legal aid is distributed equitably throughout the community, supported by a good public awareness of these services and sound decisions on how best to allocate them.

In this review we have examined how the Legal Aid Commission responds to the demands from the community despite funding pressures.

Peter Achterstraat  
Auditor-General

December 2006



## Executive summary

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## The focus of our audit

The role of the Legal Aid Commission of NSW (the Commission) is to make legal aid accessible to as many disadvantaged people as possible.

The audit's objective is to assess if legal aid is properly distributed to those who are entitled to it. To assess the Commission against the objective, the audit focused on two lines of inquiry: Is information about eligibility for legal aid clear and well communicated? Are decision-making processes sound?

## Opinion

We found the Commission to be performing well in delivering legal aid services. It has maintained and expanded services despite funding pressures and increasing demand.

Overall, we found the Commission's practices of making people aware of legal issues and its services to be comprehensive. Communication is via brochures, telephone and internet. We also found its processing of applications for legal aid to be sound.

The Commission presently conducts reviews of the services it provides to its key target groups. However, we believe it can further improve how it understands and reports the delivery of its services. We suggest that the Commission undertake periodic agency-wide access and equity reviews to better understand its existing services and unmet demand across its target areas.

An important pressure on the Commission's decision making processes has been funding. Despite funding constraints, the Commission's civil law services are more wide-ranging than other commissions in Australia. However they have not increased to the same extent as the Commission's criminal and family law services over the last ten years.

A recent easing in funding pressures has meant that the Commission was able to relax its means test for legal representation in 2005 for the first time in ten years. The income tests have now been increased and have caught up. However, asset tests are at levels lower than Centrelink full benefit thresholds and those in some other legal aid commissions. As the population ages this is likely to affect those, especially in Sydney, who are income poor but relatively asset rich.

Further improvements in the Commission's decision making will be dependent on the development and implementation of two new information systems by the Commission - a legal aid grants management system and a case management system. These new systems will allow the Commission to better capture and report on cost and productivity. This will support better resource management and benchmarking.



## Recommendations

The Commission should:

*make information clear about legal aid*

- consider extending the range of its toolkits and posters (page 18)
- consider improving the design of its internet site (page 18)

*better understand target groups and demand for services*

- consider conducting periodic whole-of-Commission access and equity reviews of its existing services (pages 22)
- seek funds for research into unmet demand for existing services (page 24)
- make a statement on addressing areas of unmet demand identified in the 2003 Civil Law Review Report (page 26)
- extend its reporting to include the number of services delivered against targets (page 23)

*be more accountable for entitlement tests and resources*

- benchmark its means test against national levels (page 31)
- consider measuring and reporting gaps between available resources and demand for its services (page 34)
- utilise new systems to better cost and benchmark activities (page 35)

*have more consistent and better documented decisions*

- utilise new systems to better monitor applications and refusals (pages 37 and 39)
- expand client surveys to its representation services (page 37)
- consider engaging peers to review its operations (page 37)

*better manage case times*

- measure and report the time taken to process cases (page 40)

*enhance appeal processes*

- consider the option of review of appeals by a member of a review panel rather than an appeal committee (page 42)
- consider reporting the time taken to assess appeals (page 42).

## Findings

**Chapter 2-  
Is information about eligibility for legal aid clear and well communicated?**

The Commission provides extensive information about legal issues and its services. It is communicated in various ways - brochures, telephone, internet, face to face, advertisements, and links with other service providers and justice sector agencies - and is comprehensive.

The Commission's brochures cover a range of relevant topics and provide essential information about legal issues and the availability of legal aid. There is room for improvement in toolkits to better support legal advice.

The LawAccess phone line is an effective gateway to legal aid services.

The Commission's internet site is information rich and includes a means test indicator. It could be more user friendly for members of the public.

The Commission has initiated successful reforms to make its services more accessible. One of these initiatives is the Co-operative Legal Services Delivery Model being implemented in regions.

The Commission targets particular groups to meet their specific needs. In recent years the Commission has conducted comprehensive reviews of five of its service delivery programs. For example, a review into civil law services has resulted in the Commission taking actions to service unmet demand that was identified. But at this point the Commission has not conducted an all embracing access and equity review across all programs at once to gain a more complete picture of access and equity issues.

**Chapter 3 -  
Are decision  
making processes  
sound?**

Sound legal aid decision processes rely on: policies deciding eligibility; systems guiding the application of policies; funding to implement the policies; monitoring of the timeliness and costs of activities; rights of appeal; and reporting on performance.

People in NSW are able to receive legal aid in a greater range of situations than in other states and territories. However the eligibility test thresholds for legal aid in NSW are still below those in some other commissions. But they are catching up. The means test for legal aid was frozen between 1995 and 2005 but was increased in 2005 and 2006. The income tests in NSW are now comparable with Centrelink's full benefit tests. But a pensioner on a full Centrelink pension may not pass the Commission's stricter asset tests.

The Commission's policies are shaped by balancing service demand and funding provided by the NSW and Commonwealth governments. Much of this demand results from new government policies. An example is the appointment of more Department of Community Service care and protection officers resulting in more children's cases for the Commission. However, the Commission does not report the gap between demand for its services and its funding levels. This has lessened public scrutiny of the impact of the Commission's policy decisions such as setting eligibility tests as described above.

The Commission continues to work towards improving its systems. But to this point it is still working on improving its costing system, despite this being a corporate priority for some years. This limits its reporting on whether it provides value for money.

The Commission has well documented and detailed entitlement tests. The application of the tests is reviewed in internal file reviews. The reviews report high levels of compliance with policies and procedures.

At present the recording systems for applications and level of documentation are acceptable but limited. The rates and reasons for refusals of legal aid are monitored as well as the current systems allow. New systems are under development and will help with recording of decisions and review of compliance.

The Commission reports to its Board processing times for applications. It records times for cases from commencement to completion, but does not report this.

Measuring case file loads is currently the Commission's favoured way of managing lawyers with large work loads. Improved time and cost recording would provide additional measures to manage, monitor and report performance.

The right of appeal and the processes involved are made clear to legal aid clients when an application is rejected. The assessment of appeals is made by a committee. We note that in other commissions a member of an appeal panel conducts reviews. We consider this approach has merit and is considered more efficient.

## Response from Legal Aid Commission of New South Wales

*The Legal Aid Commission of New South Wales (the Commission) thanks the Audit Office for the opportunity to provide comment on this report.*

*I am pleased to note that the report is largely positive; finding that overall the Commission is performing well in delivering legal aid services. The Audit Office's recommendations for improvements in the Commission's services, planning and reporting will be a useful input into the Commission's ongoing organisational improvement process.*

*In a number of areas the report comments on the level of funding provided to the Commission by its key funders; being the NSW State Government, the Commonwealth Government and the Public Purpose Fund. It is in this context that the Commission must acknowledge the support it has received from both the NSW State Government and the Public Purpose Fund since major changes were made by the Commonwealth Government to Commonwealth/State funding arrangements for legal aid nationally at the end of the 1996-97 financial year. Recurrent funding from the NSW State Government has increased by 325% from \$26.812 million in 1996-97 to \$87.125 million in 2006-07. Likewise, funding from the Public Purpose Fund has increased by 293% from \$11.264 million in 1996-97 to \$33.048 million in 2006-07. It is only with the support of these funders that the Commission has been able to maintain and in some cases even increase the level of service delivery it provides to the community.*

*The report makes reference to the complex issue of understanding and measuring unmet legal need amongst socially and economically disadvantaged members of the community. While the Commission acknowledges that in an ideal world such information would be available, nowhere in the world has any government or legal aid provider been able to clearly identify unmet legal aid need on a regular basis. That is not to say that services should not be targeted to those groups identified through the best available evidence and research to be in need of legal aid services. The Commission does this by conducting ongoing reviews of its service delivery programs (as mentioned in the Report) using information drawn from a number of sources; such as the Australian Bureau of Statistics, the Law and Justice Foundation, the Bureau of Crime Statistics and Research, the courts, the Attorney General's Department, university researchers and the Commission's own statistics. In addition the Commission's Board has recently approved that both the Elderly and the Homeless are to become additional priority target groups for our range of legal services.*

*Comment is made in the report about the Commission's Civil Law program. The Commission's Board has targeted the Civil Law program at those areas that particularly relate to the needs of socially and economically disadvantaged people such as housing, social security, immigration, veteran's entitlements, consumer law, mental health advocacy and human rights. The Commission's Civil Law program is by far the largest and broadest amongst all Australian legal aid commissions, with most providing minimal or no civil law services. That the Commission has been able to maintain such services during times of record demand for criminal and family law services is an achievement of which I am extremely proud. It is acknowledged in the report that the Commission has recently been able to extend its Civil Law services with the appointment of an additional 10 solicitors across the State.*

*The benchmarking of legal aid services against other States and Territories is discussed in the report. While this would seem a simple exercise, it must be recognised that the legal system in each State and Territory is different. Furthermore, legislation, Commission policy for the granting of legal aid and the structure of each Commission is different. These differences add to the complexity of the benchmarking exercise, and make it difficult to be truly comparable. Having said this, the Commission accepts the need to find suitable benchmarks for its services.*

*It is recommended in the report that the Commission report on the time taken to process cases where legal representation is provided; being the time from receipt of an application from a prospective client until the conclusion of the case in court. The Commission notes that the time taken to finalise a case is not within its control, with other entities such as the courts, NSW Police, the Office of the Director of Public Prosecution and indeed the client being responsible for key milestones during the progress of a case. This measure does not therefore provide insight into the Commission's efficiency. As is already the case in some courts, such a measure is more appropriately captured and reported by the court, where judicial officers do have the ability to influence the conduct of the case before them.*

*The report recommends that the Commission consider implementing a review panel where a single member hears appeals by applicants for legal aid against the refusal to grant them legal aid, rather than the existing Committee structure. It should be noted that the Legal Aid Review Committee is constituted pursuant to the Legal Aid Commission Act 1979, and any changes to this structure are within the purview of Parliament and not the Commission. However, it is the Commission's view that a single member appeal process is less robust than the current process, and would result in a less consistent application of the Commission's policies; but a review of the administration of the appeals process is currently underway.*

*I would like to take this opportunity to thank the Audit Office and its staff for the professional, cooperative and collaborative manner in which this audit was conducted.*

*(signed)*

*Bill Grant  
Chief Executive Officer*

*Dated: 23 November 2006*



## **1. How is legal aid administered in NSW?**

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## 1.1 What does the Commission do?

The Commission helps disadvantaged people resolve legal problems through access to legal services. The first step in the process is for disadvantaged people to be aware of their legal needs and where to go for help. The type of legal aid service required will depend on the nature and timing of the need; for example, representing people in police custody before a court, providing advice on filling in court forms, providing information to help resolve a consumer credit issue or attending a community legal education seminar.

Legal aid services are administered through three discrete legal practices in the areas of criminal, family and civil law. They provide specialist legal services in the following areas:

- Children's Legal Service
- Prisoner's Legal Service
- Adult and Youth Drug Court Services
- Care and Protection Legal Service
- Child Support Service
- Mental Health Advocacy Service
- Veteran's Advocacy Service
- Human Rights Unit
- Coronial Unit.

### Types of legal services provided

Legal aid services can be broken down into three types:

1. information, advice, minor assistance and education services
2. representation of clients before courts, tribunals and mediation
3. alternative dispute resolution (ADR) for family law matters.

Most services are information and advice; they are low cost services. Most representations of clients before courts are short and relatively low cost. A much smaller number of high profile court cases each year result in very much higher costs.

### Information services

Information services are provided by calls to LawAccess; visits or calls to Commission offices; pamphlets explaining the Commission's services and legal processes and rights on a range of topics; and visits to the Commission's internet site, which includes outlines of the Commission's policies. These services are provided free of charge to all citizens of NSW. Information services are the largest single category of services overall and the largest single service in family and civil law. In 2005-06, 242,011 information services were provided and percentages by law type were:

- 27 per cent criminal
- 34 per cent family
- 39 per cent civil.



<b>Legal advice sessions</b>	<p>Legal advice includes short meetings of approximately 20 minutes between Commission lawyers and members of the public. The advice is provided free of charge. Appointments are normally required. Advice clinics, without appointment, are also conducted at various offices and outreach locations throughout NSW. Legal advice by law type is:</p> <ul style="list-style-type: none"><li>▪ criminal 36 per cent</li><li>▪ family 39 per cent</li><li>▪ civil 25 per cent.</li></ul> <p>In 2005-06, 74,194 advice services were provided.</p>
<b>Minor assistance</b>	<p>Minor assistance is an extension of legal advice, and is also provided free of charge. It may involve longer or additional face-to-face meetings or supplementary telephone contact. The main difference between legal advice and minor assistance will usually involve the provision of some type of minor legal service such as the drafting of an affidavit, consent orders or writing a letter. The Commonwealth provides funding for minor assistance in family law. Minor assistance for civil and criminal law is developing. The Commission commenced recording minor assistance separately in July 2005. In 2005-06, there were 5,540 services provided.</p>
<b>Education forums</b>	<p>Education forums are targeted to specific groups and problems and are open to the general public. Topics include divorce, domestic violence and child protection. Audiences have included Vietnamese, Chinese, Indonesian and Arabic speaking groups. Venues include schools, public libraries and community centres. Locations include western Sydney and rural towns. In 2005-06, 482 community education sessions were held.</p>
<b>Representation</b>	<p>Generally representation for matters before a court, tribunal or mediation is available if eligibility tests are passed. The eligibility tests are not applied to the representation of children in criminal and care matters, an initial duty lawyer appearance before the local court on a criminal matter for a person in custody, or duty lawyer work in the Family Court. Apart from the initial duty lawyer appearance for a client in custody, the eligibility tests do apply to adults appearing before a local court on a criminal matter.</p> <p>There are three eligibility tests:</p> <ol style="list-style-type: none"><li>1. on means (income and asset levels)</li><li>2. on merit (likelihood of success - not applied to criminal cases, except for appeals)</li><li>3. on policy grounds (the Commission may not cover the type of legal situation).</li></ol> <p>Depending on their means, the applicant may be required to meet some of the costs of their legal aid. The most frequent representation service is provided by duty lawyers at all local courts in NSW.</p>

**Mainly criminal cases**

The Commission mainly represents those on criminal charges, those involved in family law disputes, and children (under 18 years). Criminal law services are the largest and are taking up an increasing portion of the Commission's workload. In 2005-06, 65,150 applications for case grants were received. Of these:

- 70 per cent related to criminal law
- 27 per cent to family law
- 3 per cent to civil law.

Duty lawyer services at courts totalled 123,024, with the split on law types being:

- 74 per cent for criminal law
- 21 per cent for family law
- 5 per cent for civil law.

Those receiving most representation are males aged between 21 and 40 years on criminal charges.

**Alternative dispute resolution**

Alternative dispute resolution (ADR) is a method where solutions are provided beyond the traditional forms of legal aid. It brings the parties at dispute before a mediator. A solicitor is usually present for each party and the agreed solution presented to court for ratification. It is a successful method, especially in family law disputes over the custody of children. In 2005-06, the Commission provided representation at 2,132 ADR conferences with a full or partial settlement rate of 86 per cent.

## 1.2 What is the Commission?

The Commission is an independent statutory authority created by the *Legal Aid Commission Act 1979*. Its Board decides policies on types of services offered and eligibility tests for those receiving representation. An agreement with the Commonwealth dictates the types of services that the Commission is able to provide in Commonwealth matters.

**An important link in the justice system**

The Commission is an important part in the State's justice system. Many of these services are needed as the result of actions by other agencies - police, Department of Community Service (DOCS) child care workers and the courts. It is busy supplying criminal, family and civil law services and community programs. Courts are more efficient as a result of the Commission providing legal aid in a significant number of cases going to court. The Commission provides duty lawyers at all lower courts. There are 160 lower courts in NSW, some that are very busy, while others in country NSW sit only once a month.

**Funding from the State and Commonwealth Governments**

The Commission receives funding from the:

- State Government of 50 per cent
- Commonwealth Government of 31 per cent
- Public Purpose Fund of 14 per cent
- client contributions of 3 per cent and other of 2 per cent.

These figures are for 2005-06 when the total receipts were \$169 million.

The Public Purpose Fund comprises interest earned from lawyers' trust accounts and is controlled by the *Legal Profession Act 2004*.

Expenditure by program for the year was:

- 48 per cent for criminal law
- 33 per cent for family law
- 9 per cent for civil law
- 10 per cent for community programs.

It provides the broadest range of criminal and civil law services of any legal aid commission in Australia. Its family law practice is dependent on Commonwealth Government policies and funding.

**A large legal practice with twenty offices**

The Commission is one of the largest legal practices in Australia. It employs approximately 365 legal staff, and a similar number of administrative staff, in its twenty offices in metropolitan and regional NSW. Supplementing this network are outreach services to more isolated communities. Apart from delivering services through its criminal, family and civil practices, the Commission also administers two community programs - the Community Legal Centres Funding Program, which funds 32 community legal centres across NSW, and the Women's Domestic Violence Court Assistance Program, which has 36 schemes providing assistance to women at 55 courts throughout the State. Their services complement those provided by the Commission.

**A mixed model of service delivery**

The Commission uses a mixture of in-house lawyers and private practitioners to deliver its services. It works with private practitioners and community groups to deliver services in all areas of practice. In 2005-2006, there were 56,821 case grants of which 19,852 (35 per cent) were assigned to private practitioners and 36,969 (65 per cent) were dealt with by in house practitioners. Private practitioners represented 45 per cent of legal aid clients for total duty and case matters. Advice and minor assistance were solely provided by in-house staff or LawAccess.

### **1.3 The audit**

The audit's objective is to assess: Is legal aid properly distributed to those who are entitled to it? In reaching an opinion against the objective, the audit follows two lines of inquiry: 1. Is information about eligibility for legal aid clear and well communicated? 2. Are decision-making processes sound? These two questions give the audit its specific focus and provide the titles for the following chapters. The chapters include assessments and findings against the audit criteria, which are the expected standards of performance. For example: 'Are entitlement tests applied consistently?'

The audit's scope is limited to the legal aid services directly controlled by the Legal Aid Commission. See Appendix 1 for more details on the audit's approach.



**2. Is information about eligibility for legal aid  
clear and well communicated?**

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**At a glance**

**The key question we wanted to answer was:**

Is information about eligibility for legal aid clear and well communicated?

**Our overall assessment:**

The Commission provides extensive information about legal issues and its services. It is communicated in various ways - brochures, telephone, internet, face to face, advertisements, and links with other service providers and justice sector agencies - and is comprehensive.

The Commission's brochures cover a range of relevant topics and provide essential information about legal issues and the availability of legal aid. There is room for improvement in toolkits to better support legal advice.

The LawAccess phone line is an effective gateway to legal aid services.

The Commission's internet site is information rich and includes a means test indicator. It could be more user friendly for members of the public.

The Commission has initiated successful reforms to make its services more accessible. One of these initiatives is the Co-operative Legal Services Delivery Model being implemented in regions.

The Commission targets particular groups to meet their specific needs. In recent years the Commission has conducted comprehensive reviews of five of its service delivery programs. For example, a review into civil law services has resulted in the Commission taking actions to service unmet demand that was identified. But at this point the Commission has not conducted an all embracing access and equity review across all programs at once to gain a more complete picture of access and equity issues.

**2.1 Is there clear information about who can get legal aid?**

**Assessment**

The Commission provides extensive and clear information about legal issues and its services.

Brochures cover a range of relevant topics and provide essential information about legal issues and the availability of legal aid. Some are in foreign languages and they are distributed widely. There is room for expanding the use of toolkits to better support advice and minor assistance. At the time of the audit the Commission was making little use of posters to advertise its criminal services.

The LawAccess phone line is an effective gateway to legal aid services. The Commission proposes to improve the ability of LawAccess to make appointments with access to the Commission's diary system.

The Commission does not have a help line for adults held in custody similar to their youth hotline. The Commission advised us that it does not see an adults in-custody hotline as a priority. They believe that duty lawyers at all local and bail courts provide an acceptable service.

The Commission's internet site could be made more user friendly for members of the public by providing enhanced pathways for their inquiries.

### 2.1.1 Being informed by brochures, toolkits and posters

Brochures are important. A recent survey of clients who received information or advice from the Commission indicates that 40 per cent had read brochures, and this had helped 72 per cent of these readers.

#### Brochures

Examples of Commission brochures are:

- *Do you have a legal problem?* - a general brochure on legal aid services and how they can be accessed; it is available in 12 languages other than English - it is soon to be available as an audio CD in another seven languages
- *Going to Court: A handy guide to the Local Court for defendants* - a general brochure available only in English
- *Are you pleading guilty to a drink driving charge?* - provides information for those on low to medium range drink driving charges who represent themselves in the Local Court; these charges are not covered by legal aid as the offender is unlikely to go to gaol; the brochure is available in English and three other languages
- *Legal aid for mental health matters* - available only in English
- *Do you need help with child support?* - available in English and three other languages.

The Commission has a total of 51 client service publications comprising printed brochures and on-line brochures and fact sheets.

The Commission distributed 289,000 of its printed publications in 2004-05. The publications are distributed widely in two ways:

- general distribution of all publications to high user stakeholders, such as Commission offices, police stations, courts, community legal centres
- in response to individual request for specific publications - a publications request form is available on the web site.

#### Posters

At the time of the audit the Commission did not have posters about legal aid services at courts, police stations and prisons/remand centres to help create a greater awareness of services. The Commission has advised that a poster advertising its duty lawyer and other services is being developed.

The Commission has a pocket booklet called *Get Street Smart*. It targets youth and is a popular publication. We suggested that communication with this group could be extended in a comic book form. The Commission responded during the audit to say that it will research the possible use of streetwise style comics.

<b>Toolkits</b>	<p>We observed that NSW has less self-help toolkits available in comparison to the Victorian and Queensland Legal Aid Offices and that the documents are less comprehensive. The toolkits provide both information to the public, and form the basis for further advice and assistance from the Commission. An example of a toolkit is the <i>Are you pleading guilty to a drink driving charge?</i> brochure mentioned above. The most likely area for these toolkits is in civil law where the Commission has least services. This is discussed further under section 2.3.2.</p> <p>The Commission is currently auditing all its publications to align them with current and future client needs.</p>
<b>Recommendation</b>	<p>To create greater awareness of legal aid services and legal issues the Commission should consider extending the range of its toolkits for civil law services and posters for its criminal law services.</p> <p><b>2.1.2 Being informed by the Commission’s internet site</b></p> <p>The internet is a valuable communication medium for referring agencies, community groups, youth and the ageing. In the recent client survey 56 per cent of those surveyed had access to the internet and 10 per cent had accessed the Commission’s site. Of those who accessed the site 48 per cent found it useful.</p>
<b>Good guidance</b>	<p>The site provides good guidance on where to go for legal advice or information but provides only limited explanation about legal issues and rights and how the Commission can be of assistance. In particular, the Commission’s policies are not clearly and simply stated. The Policy Manual available on the site is complicated and directed at legal practitioners. The Commission is working on a plain English rewrite of the Manual.</p> <p>Some foreign language instruction about the availability of legal aid is available on the internet site but is not prominent on the home or lead pages.</p> <p>The Legal Aid Western Australia site has a less complicated and more appealing entry page which directs enquirers to legal aid services available, information about the law, and making an application.</p>
<b>Means test indicator</b>	<p>A recent innovation by the Commission is a means test indicator on the internet site. It is a first for legal aid commissions around Australia and provides an easy-to-use tool for clients or those assisting them to assess eligibility for legal aid. Since its launch on the website in April 2006, it has averaged 60 ‘hits’ per day, 7 days per week. After completing the eligibility questionnaire, the user is requested to contact a legal aid office or to submit an application.</p>
<b>Recommendation</b>	<p>The Commission should consider improving the design of its internet site to provide better pathways for clients seeking an understanding of their legal issues.</p>



### **2.1.3 Being informed by phoning the Commission**

**LawAccess  
telephone  
contact**

The Commission directs those seeking help over the phone to LawAccess which provides information on legal problems. A call to LawAccess can result in a legal aid brochure being sent or the call being redirected to a solicitor in the Commission or in the community. LawAccess is part of the Attorney-General's Department. The Commission is a primary funder of LawAccess and has a contract with them for the provision of services. LawAccess operates Monday to Friday between 9am and 5pm. LawAccess can make appointments for clients at Commission offices. The Commission advises LawAccess on a monthly basis of likely waiting times.

This is a so-called 'cold referral' service where limited information about appointments is provided. A better way is a 'warm referral' where phone staff can go on-line and book an appointment for a client in a solicitor's diary at the nearest office. The Commission is developing a new computer-based system to allow this.

The Commission receives information from LawAccess about the numbers of calls, the callers' profile and the type of information provided. The information is used for internal analysis but not reported in the Commission's annual report. In contrast there is client profile information provided in the annual report based on case grants and in-house duty law services.

**Hotline  
telephone  
contact**

The Commission operates an Under 18s Hotline (1800 10 18 10) from Monday to Thursday 9 am to 10 pm and 24 hours on weekends and public holidays. Police frequently refer under 18s to the line when they are held in custody. The Commission has brochures advertising the Hotline. The Aboriginal Legal Service (ALS) has a juvenile advice line and will soon extend this to aboriginal adults. This approach is being taken because the ALS does not have a presence in every court and because of concern for the risks of deaths in custody.

Victoria Legal Aid is introducing a 24 hour/7 day phone service to allow people in custody to call a lawyer. Calls can help those held in custody understand their legal rights and legal processes. The NSW Commission does not support such an initiative. It believes that it is sufficient for duty lawyers to advise all people held in custody just prior to their initial court appearance. This includes the Commission's duty lawyers attending bail courts. The Commission has advised us there are higher priority areas upon which to focus service delivery. Those held in custody are entitled to call a private lawyer for advice.

## **2.2 Is there communication with target groups?**

**Assessment**

The Commission targets many groups through a range of methods. Communication with the targeted groups is well tailored and implemented. Communication with them is complicated, as there are many target groups.

There are no recent reviews into the overall success of access and equity for clients groups that are targeted. The Commission does not undertake access and equity reviews to evaluate the overall success of their target group initiatives.

	<p>The Commission has initiated successful reforms utilising its key position in the justice system.</p>
<b>Co-ordinating legal aid</b>	<p>The Commission has responsibility for co-ordinating legal aid services throughout the State. It works directly with private practitioners and community legal centres throughout NSW to deliver legal aid services. The Commission co-operates with those agencies that refer clients, make judgements, and help manage outcomes. These agencies include police, courts, community services, prisons and non-government welfare providers, such as women's refuges.</p> <p>The Commission has many target groups. Initiatives to communicate with them include:</p> <ul style="list-style-type: none"><li>▪ a mental health advocacy service</li><li>▪ dealing with disability issues and disputes with Centrelink through the civil law division</li><li>▪ a recent brochure on <i>Making our legal services work for Aboriginal people</i></li><li>▪ prisoner's legal service</li><li>▪ children's legal services for criminal cases and care and protection work where a child can be taken away from parents</li><li>▪ alternative dispute resolution in family law</li><li>▪ domestic violence court assistance</li><li>▪ a veteran's advocacy service.</li></ul>
<b>Audio visual links</b>	<p>The Commission uses audio visual link conferencing (AVL) to access difficult locations. For example, it is used to interview prisoners and clients with complicated cases in rural NSW. During 2005-06, AVL was used in 3,691 instances compared with 2,666 in the previous year; 98 per cent of the instances were for criminal law. Such conferencing is cost effective and supplemented with face to face interviews. The Commission has audio visual facilities in all but three offices. It is part of a whole of justice initiative.</p> <p>The Commission has been successful with initiatives by utilising its key position in the justice system. Two of these initiatives are the Co-operative Legal Services Delivery Model (CLSD) and case conferencing being applied before criminal committal hearings. These initiatives are aimed at communicating as early as possible in processes to get the best results for potential clients. The solutions require partnerships with justice and welfare agencies, and professional and community groups.</p>
<b>Co-operative Legal Services Delivery Model</b>	<p>The CLSD model highlights the special needs of disadvantaged people in regional, rural and remote NSW. Small populations and remoteness require different communication and delivery methods. The services provided may be few and be provided periodically and not sustain a full time service in regional offices. The Senate Legal and Constitutional Committee Inquiry report <i>Legal Aid and Access to Justice</i> of 2004 had concerns about a lack of lawyers with particular expertise, high transport costs and the need to rely on telephone advice rather than personal contact. They saw the need for more face-to-face contact through duty lawyer and outreach programs, supplementing the use of videoconferencing and telephone advice. Evidence given to the Inquiry confirmed that these issues were</p>

relevant to legal aid services in regional and rural NSW. The Commission provides duty lawyers to all sittings of the local courts throughout the State and has an extensive outreach program. For example, in August 2006, the Family Law Division provided 218 outreach services.

**Regional Solicitor Program**

The Commission is introducing a Regional Solicitor Program that aims to encourage the employment of young lawyers with one to five years experience. The participating law firm is required to undertake work in areas of law identified by the Commission as needed in the regional or rural location. A salary subsidy of between 20 per cent and 75 per cent is to be provided for ten lawyers under the program. A similar scheme operates in Queensland.

During the audit the Commission appointed ten additional lawyers to its Offices in regional NSW and the Sydney metropolitan fringe to undertake civil law work.

To help co-ordinate communication and services across the State there is the NSW Legal Assistance Forum (NLAF). The Forum meets quarterly and brings together members of the community and justice sectors. Along with the Commission, members are the Combined Community Legal Centres Group, Attorney General's Department, Aboriginal Legal Service, Law Society, Law and Justice Foundation, Bar Association and LawAccess.

**Criminal case conferencing**

Criminal case conferencing is a further example of helping a target group. It not only illustrates how the Commission has helped make the justice system more effective for clients, but also how it helps make process more efficient within the justice system.

From 1 January 2006 all indictable cases before the local court receiving legal aid are 'case conferenced'. This maximises the opportunity for a plea of guilty or the disposal of the matter in the local court. The goal is to achieve a 50 per cent reduction in late pleas in the District Court by 31 December 2006. This outcome should also reduce the number of committals for trial and trial listings.

**Self represented litigants**

Self represented litigants who have been charged with a criminal offence are another target group. By representing themselves they run the risks of not understanding the law and legal processes. This can impact unfavourably on the outcome and cause the court to take longer with the case. It is unlikely that the figure for self-represented litigants will ever be zero as there will always be some litigants who represent themselves. However, the figure should be as low as possible.

The Commission provides approximately 90,000 duty services for criminal matters in all local courts per year. Recent analysis indicates that there were 343 unrepresented litigants in local courts who were imprisoned during 2004. It is too early to draw conclusions why they were unrepresented. Possible reasons are that defendants elected to be self-represented, that they failed the Commission's means test, and that they were not aware of legal aid services.

The Commission has commenced a project with the Judicial Commission to understand why defendants, who received a custodial sentence in the Local Court, were unrepresented. The aim is to identify any gaps in the Commission's services, including communication with potential clients.

The Commission does not represent those charged who are unlikely to go to gaol. It does produce self-help brochures to assist these people. The Commission has produced a brochure for offences of low to mid range drink driving.

**Access and equity reviews**

A recent audit commissioned by Legal Aid Victoria (LAV) into the access and equity of their services is of particular relevance to NSW. It was a comprehensive study of the range of LAV's services and processes, including recent initiatives. The audit made a number of recommendations to improve awareness of services, community consultation, service delivery and data analysis. LAV is to place six access and equity positions in targeted regional offices to work with priority target communities. The NSW Commission's client survey of customer satisfaction of May 2006 was a more limited, but useful, means of identifying improvements for communicating its advice and information services.

**Recommendation**

The Commission should consider conducting a whole-of-Commission access and equity review to examine the effectiveness of its targeted services.

### **2.3 Is the demand for legal aid well understood?**

**Assessment**

The Commission reviews the community's needs for legal aid services through reviews of existing programs, analysis of changes in population and measuring its activity levels. Reviews of how the Commission co-ordinates and delivers its total services are not regularly conducted. Unmet demand for legal aid services is not well understood.

The Commission's reporting focuses on how many services it supplies and does not report against targets on the basis of law type or specific needs.

The Commission has maintained a broad range of civil law services. Strategies are yet to be developed to meet the unmet demand for all of the seven groups identified in a recent review of civil law services. The disadvantaged groups included aboriginal communities, the ageing population and the disabled.

The Commission has undertaken a range of initiatives to especially address service delivery issues for its target groups and through its regional and urban fringe offices.

#### **2.3.1 Measuring demand for legal aid**

The Commission's legislation requires that it understand the community's needs for legal aid. It is then to make services accessible and available to disadvantaged people. To achieve these aims the Commission has the capacity to adjust its policies to deliver services as close as possible to the available resources. This capacity to adjust is greater for State funded services. The Commission's priority is to supply services to meet core demands (such as duty lawyers in criminal and child related cases) and to meet other demands (such as in civil law) which it carefully defines and has some ability to control.

**Legislative requirement**

The Commission pursues its legislative requirement to ‘ascertain and keep under review community needs in relation to legal aid’ by measuring demand for its services in three ways.

One, the Commission undertakes reviews of its service programs and extends them when opportunities arise. These occur with decreases in demand for services, internal efficiencies, increased funding and new policies. Over the past four years the Commission has conducted comprehensive reviews of five programs. The programs reviewed were: criminal law; civil law; care and protection; mental health; and the prisoner’s legal service.

Two, it conducts environmental scans using internal service data, Australian Bureau of Statistics demographics and reports from researchers such as the Law and Justice Foundation. The Commission and Law and Justice Foundation have monthly meetings to help with the targeting of legal needs.

Three, it measures activity levels for its services by type of services, by law type, location and time.

**Demand for legal aid services difficult to identify**

These three methods do not identify the total population of disadvantaged people and their legal aid needs. Ideally this would be known, but researching and identifying it is difficult and costly. Research identifying the socially and financially disadvantaged, and the contributors to disadvantage, is an area of some debate. There is also limited research available on what constitutes legal need and how to identify it. This is true not just for Australia but for legal aid organisations worldwide. Research does show that individuals turn to those they know (family and friends) in the first instance for assistance with legal problems. In addition, legal need does not necessarily translate into a need for legal aid services. Even when it does, it does not necessarily translate into a need for case representation or even advice. Many legal problems can be resolved by individuals, even those with social or financial disadvantage, on their own with access to information.

As a result, the Commission’s reporting of its activities is focused on its supply of services - the number of services provided. It does not, however, support this approach with public reporting on its performance against service targets - for example, targets for accessing groups of disadvantaged persons or specific needs within the law types.

**Recommendation**

The Commission should extend its reporting to include the number of services delivered against targets.

**Developing a greater understanding of legal aid**

As indicated in section 2.2, a greater understanding of demand can be achieved by regular studies of the total services provided by the Commission. These periodic access and equity reviews would build on the target group specific reviews and aggregate needs, and also help identify legal needs crossing over the target groups. Accumulated figures would need to take into account those members of the target group that will not meet the Commission’s eligibility criteria, nor want legal aid. Supplementary research would be required for a more comprehensive understanding of the unmet legal needs of the groups targeted and identified by the Commission. This research would require additional funding.

**Increasing demands and referrals**

A further issue for the Commission is that demand for legal aid services is created by policy changes upstream of the Commission. The changes are outside the Commission's control. They include increasing the number of DOCS children's case officers, more mental health beds, stricter sentencing guidelines for criminal cases and establishing new courts. The actions create more clients and locations to be serviced for the Commission.

Also, the Commission receives many of its clients who require legal representation through other agencies. For example: people on criminal charges presented by the police and courts; prisoners; partners or children in family law disputes coming via the family court; and children with criminal or care issues presented by the Department of Juvenile Justice or DOCS. This creates a dependency between the Commission, the other agencies and stakeholders. For instance, the efficiency of the lower courts is dependent on the Commission representing those without the means to engage a private practitioner.

The smaller size of the Commission's offices in regional NSW and the metropolitan fringe means that changes in government policies and community needs can increase demand and create gaps in services more readily. For example, current pressures in the metropolitan fringe are arising from additional DOCS care and protection officers being appointed in western Sydney and on the Central Coast.

Initiatives by the Commission to reallocate staff to the metropolitan fringe are:

- reallocation of staff to Parramatta to staff the new Parramatta justice precinct
- expansion of the civil law practice
- expansion of the care and protection legal service to meet some of the challenges arising from the increase in DOCS staffing - a review paper was submitted to the Board's August meeting.

**Recommendation**

Additional to the access and equity review recommended above, the Commission should seek additional funding to conduct research into the demand for its services and the extent to which it is unmet.

**2.3.2 Measuring the specific needs of civil law**

Of the three types of law, civil law is most likely to benefit from actions to promote awareness. It is the most constrained of the three types of law offered by the Commission and the one with most potential to expand. In terms of resources applied by the Commission, civil law legal aid services are dwarfed by those for criminal and family. Over the last ten years, the Commission has maintained civil law services and has only been able to expand them at the margin. For example, the Commission has recently expanded representation services to the Coroner's Court and appointed ten additional lawyers to regional NSW and the Sydney metropolitan fringe to fill some of the gaps identified in the Civil Law Review.

By its nature it is the area of law where people are more likely not to know about legal rights and legal aid services. They may also be discouraged from seeking legal aid if they believe they will not receive it.

In contrast, the Commission's position with criminal and family law matters is well defined. Here there are significant dependencies between the Commission and the other agencies. There are well trodden pathways putting constant pressure on these services.

**Civil law has broad scope**

Civil law, compared to criminal and family law, is harder to classify as it covers a broad range of topics and advice is provided by a wide range of advisers. The civil matters include housing, consumer, government, accident/injury, wills/estates, employment and credit/debt. There are also a number of tribunals offering recourse to the decisions of government adding further demand.

The Commission restricts its civil law services to consumers (personal debt), tenants, discrimination and government (including, social security, immigration and veterans). The focus of civil law policies is areas of law that are important to disadvantaged people and where services are not provided by the private profession. This includes information and minor assistance services that are provided to members of the community free of charge.

The diversity of civil law is a challenge for legal aid policy makers. In some cases, such as personal injury, money will be recouped and be attractive to private practitioners. However, the Commission has responsibility to improve access to justice by providing a range of legal services to the economically and socially disadvantaged. In personal injury cases the Commission provides advice, information and minor assistance and will provide case representation for people at special disadvantage. As described earlier, it is also an area where minor assistance and toolkits can provide solutions. (See section 2.1.1)

**Civil Law Review 2003**

Unmet demand was identified in the Civil Law Review of November 2003. The Commission has taken some action in response but has not provided a reply to the review's recommendations. They were to expand coverage in seven areas: aboriginal communities; remote, rural and regional NSW; the Sydney fringe; youth; people with disabilities; older people; and self represented litigants. The Commission has a new policy on improving access to civil law services in aboriginal communities and has taken recent actions to expand services in regional NSW and the metropolitan fringe, and is researching self represented litigants.

The NSW Law and Justice Foundation in its recent research also identified remote and rural communities, youth, people with disabilities and older people having difficulties with identifying and dealing with legal issues. On the other hand the Commission has very specific knowledge of issues such as long term stays in caravan parks. Such expertise allows the Commission to support changes in regulation which can have influence beyond individual client cases. The Foundation's research also suggests better tailored communication and self help strategies, allowing clients to work through the legal process in steps.

By not acting directly on all areas identified by the Civil Law Review, demand for civil law is suppressed by Commission policies restricting services. While a similar conclusion can be made for the Commission's other law types, civil law has most potential to expand to new areas.

<b>Disabled clients and carers</b>	The Commission's recent survey of clients found that 17 per cent had some form of disability. Of those interviewed for the survey, 32 per cent were carers or had carer responsibilities.
<b>Ageing population</b>	<p>Legal Aid Queensland has a pilot program to help its ageing population. It is investigating solutions through the use of minor assistance, community legal centres and volunteers.</p> <p>The Commission advised, during the audit, that ageing issues are not a specific priority and that they are coping with the related issues through their existing programs.</p>
<b>Extending civil law services</b>	<p>The expansion of civil law remains a sensitive issue and a matter of priorities. The Civil Law Review stated that expansion requires additional funding, collaborative approaches, and additional research on unmet demand.</p> <p>With the extension of civil law services, a risk is that governments are sensitive to the policies and actions of its agencies being questioned in courts or tribunals and subsequently reported in the press. The Commonwealth government is especially sensitive and their agreements with the states to fund Commonwealth law matters make it very explicit what types of cases are to receive funding. The Commission does fund some Commonwealth law civil cases outside its agreement with them, for example, cases on human rights grounds assessed by the Commission's Human Rights Committee.</p>
<b>Recommendation</b>	The Commission should make a statement on addressing areas of unmet demand identified in the Civil Law Review.



### **3. Are decision making processes sound?**

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**At a glance**

**The key question we wanted to answer was:**

Are decision making processes sound?

**Our overall assessment:**

People in NSW are able to receive legal aid in a greater range of situations than in other states and territories. However the eligibility test thresholds for legal aid in NSW are still below those in some other commissions. But they are catching up. The means test for legal aid was frozen between 1995 and 2005 but was increased in 2005 and 2006. The income tests in NSW are now comparable with Centrelink's full benefit tests. But a pensioner on a full Centrelink pension may not pass the Commission's stricter asset tests.

The Commission's policies are shaped by balancing service demand and funding provided by the NSW and Commonwealth governments. Much of this demand results from new government policies. An example is the appointment of more DOCS care and protection officers resulting in more children's cases for the Commission. However, the Commission does not report the gap between demand for its services and its funding levels. This has lessened public scrutiny of the impact of the Commission's policy decisions such as setting eligibility tests as described above.

The Commission continues to work towards improving its systems. But to this point it is still working on improving its costing system, despite this being a corporate priority for some years. This limits its reporting on whether it provides value for money.

The Commission has well documented and detailed entitlement tests. The application of the tests is reviewed in internal file reviews. The reviews report high levels of compliance with policies and procedures.

At present the recording systems for applications and level of documentation are acceptable but limited. The rates and reasons for refusals of legal aid are monitored as well as the current systems allow. New systems are under development and will help with recording of decisions and review of compliance.

The Commission reports to its Board processing times for applications. It records times for cases from commencement to completion, but does not report this.

Measuring case file loads is currently the Commission's favoured way of managing lawyers with large work loads. Improved time and cost recording would provide additional measures to manage, monitor and report performance.

The right of appeal and the processes involved are made clear to legal aid clients when an application is rejected. The assessment of appeals is made by a committee. We note that in other commissions a member of an appeal panel conducts reviews. We consider this approach has merit and is considered more efficient.

### 3.1 Are entitlement tests and available resources aligned to achieve program goals and policy objectives?

#### Assessment

The means test for access to legal representation was frozen for ten years and was increased during 2005 and 2006. Under the new income threshold, recipients of full Centrelink benefits meet the income component of the means test. However, the income threshold is lower than some other states and territories. Additionally, the asset tests have not been increased in the line with Centrelink tests and increases in real estate prices. Balancing this, disadvantaged people in NSW are able to receive legal aid in a greater range of situations than in other states and territories.

The Commission's policies are influenced by tight budgets and constant demands. Many of the changes in demand for the Commission's services are caused through new government policies. This puts pressure on the supply of services by the Commission. The Commission does not refuse legal aid because of lack of resources and is able to adjust its policies and implement efficiencies. The Commission does not report the gap between demands for its services and its funding levels. The lack of funds to increase eligibility tests between 1995 and 2005 could have been reported in this way.

The Commission's costing system is limited. This restricts benchmarking of its activities against other Commissions and private practitioners. This restricts its reporting on whether it provides value for money. It did not meet a corporate target to develop an enhanced costing model.

#### 3.1.1 Thresholds for means tests

The means test is a policy of the Commission. It has both income and asset tests. It results in consistent entry tests and filters access to grants of aid for legal representation.

The means test was adjusted for the first time in ten years in October 2005. This was the first of three stages. The first step allowed all recipients of full Centrelink benefits to qualify for the income component of the means test. In January and August 2006 means test thresholds were further increased and the income threshold returned to a level relative to 1995. In 2006 the Commission's means test was significantly below that for Victoria and the Australian Capital Territory (ACT). See Exhibit 1 below. We acknowledge that the Commission is committed to bring the thresholds up to a level that is comparable with other jurisdictions.

Exhibit 1: Comparison of means tests - August 2006			
Indicator	Current NSW	Victoria	ACT
Maximum weekly income to qualify	\$269	\$364-\$434 depending on cost of matter	\$262.50-\$379 depending on cost of matter
Dependant allowance (for children, elderly parents etc)	\$91	\$125/--\$120 for subsequent dependants	\$122/--\$115 for subsequent dependants
Childcare costs	\$144	\$245	\$263.25
Car equity	\$14,990	\$10,860	\$10,583
Home equity	\$252,035	\$325,000	\$338,500

Source: Legal Aid Commission of NSW

Legal Aid Queensland was in a similar situation to NSW and did not increase its means tests for seven years. However, cost variations across states and within states must be considered. The means tests are consistent nationally to the extent that they apply similar criteria but are dissimilar because of the different thresholds applied. This is indicated in the table above.

**Reduced  
eligibility  
for legal aid**

During the ten years to 1 July 2005 the cost of living in NSW increased by 30 per cent, the federal minimum wage by 42 per cent and the value of housing in Sydney doubled. During this time the Commission's fixed means test reduced the numbers of disadvantaged people eligible for legal aid grants. The actual number affected is difficult to quantify due to the way in which the means test works for people with different circumstances. For example, someone who has equity in property will be affected differently to someone who is renting. The same applies to people with children.

The Commission's increases in particular income and asset thresholds are illustrated in Exhibit 2 below. The means test income thresholds are now at the same real level they were in 1995. This means that the same group eligible in 1995 should also now be eligible in 2006. To support increases in the means test the Commission was able to source funds internally and obtain additional funding from the Public Purpose Fund.

Exhibit 2: Increases in specific means test thresholds			
Threshold types	1995 - 2005 threshold \$	January 2006 threshold \$	August 2006 threshold \$
Income eligibility threshold (per week) (note: income eligibility is reached after tax and allowable deductions for housing, dependants and childcare)	190	216	269
Asset housing equity	195,200	214,145	252,035

Source: Legal Aid Commission of NSW

The Commission's current income threshold means that a Centrelink recipient on a full benefit will pass on income grounds. However, they will not necessarily pass the asset test as it is lower than Centrelink's. The Centrelink assets test for a couple allows \$386,000 for a property, the Commission allows only \$252,035. This means Centrelink pensioners may not get legal aid in NSW, or will be required to make contributions to the costs of legal aid. If the contribution calculated is greater than the cost of legal aid, the grant will be refused.

The contribution rule is applied to all representation. It commences at \$75 for all clients and increases with means. It is waived in many criminal and child cases and applied to most family and civil law cases, but can be varied. The Commission also has discretion to disregard equity in the family home if the applicant for legal aid is over 60 and has lived in the home for over 5 years. However, older people are in the minority in terms of use of legal aid representation services. The average age of persons convicted of an offence in the Local Court in 2005 was 33 years.

**Serving the ageing**

As mentioned in section 2.3.2, providing legal aid services to an ageing population is an emerging issue. For them to just fail an asset test, because of their property and superannuation benefits, can be a significant issue. However to change this would result in grandparents being treated differently to the younger working poor who can't afford a lawyer. What is common is an increasing gap between litigants who qualify for legal representation and those who don't qualify but cannot afford private representation. The access and equity study recommended earlier could include in its terms of reference those who just fail the means test.

**Recommendations**

The Commission should benchmark its means test against national levels and report on how it compares. This will allow greater understanding of its relativity and provide Parliament with assurance that disadvantaged people in NSW are getting legal aid services the equivalent of other jurisdictions.

The Commission should include analysis of those who just fail the means test for legal aid in the access and equity review recommended above. This will allow options to be developed and considered.

**3.1.2 Managing the budget and demand**

Historically the Commission has had trouble managing within its budget.

**Reduction in Commonwealth funding**

In 1996-97, Commonwealth government funding of \$42.3 million met 55 per cent of matters undertaken by the Commission. From 1 July 1997, the Commission could only use Commonwealth funds to provide services in matters under Commonwealth law. This major change dramatically changed the entire operation of the Commission. Funding by the Commonwealth was provided on a purchaser/provider basis and restricted largely to family court matters, child support and war veterans. Funding was \$31.1 million per annum for 1997-98, 1998-99 and 1999-00, a reduction of \$11.2 million per annum. It was only in 2004-05 that funding from the Commonwealth reached the amount provided in 1996-97 (in nominal terms).

In particular, the reduced Commonwealth funding in 1997 restricted monies available for Commonwealth related civil law matters and put increased pressure on State funding for these matters. The Commission's policy has been to maintain a constant level of funding for the civil law

program, despite the demands experienced in other programs. Many of the increases in funding provided to the Commission by the State Government have been tied to particular areas of the Commission's practice, and could not be diverted to the civil law program. The funding pressures have restricted the Commission from expanding its civil law services. It has been difficult for the Commission to align resources to meet newly identified demands such as those identified in the Civil Law Review of 2003. (See also section 2.3.2.)

Trends in expenses over recent years illustrate the position with funding for civil law. Funding for criminal and family law services has expanded to meet demand, whereas funding for civil law legal aid, while constant, is declining relative to growth in criminal and family law. This trend is demonstrated in Exhibit 3 below.

<b>% of funding for 2006</b>	<b>Year ended 30 June</b>	<b>2006 \$'000</b>	<b>2005 \$'000</b>	<b>2004 \$'000</b>	<b>2003 \$'000</b>	<b>2002 \$'000</b>
48	<b>Criminal law program</b>	67,927	73,823	72,462	66,373	56,418
33	<b>Family law program</b>	46,406	46,094	45,067	38,314	31,239
9	<b>Civil law program</b>	12,545	13,791	12,187	11,969	12,828
10	<b>Community legal services</b>	14,720	14,136	13,743	13,207	11,767
100	<b>Total all programs</b>	141,598	147,844	143,459	129,863	112,252

Source: Legal Aid Commission of NSW annual financial statements

Since 1997 the State has increased its funding of the Commission from both annual budget allocations and supplementary funding required towards the end of financial years. The supplementation was received largely for increasing the Commission's services. The supplementation was necessary to maintain services at existing levels as the Commonwealth Agreement in June 1997 withdrew the Commission's discretion to use Commonwealth funding for State matters. The levels of State supplementation are indicated in the following exhibit.

<b>Year</b>	<b>Year-end budget supplementation \$ million</b>	<b>Financial result \$ million</b>
2001-02	1.563	0.519 surplus
2002-03	1.306	2.998 deficit
2003-04	4.0	0.113 surplus

Source: Legal Aid Commission of NSW annual financial statements

**Improved financial position**

In 2004-05 and 2005-06 the Commission achieved small operating surpluses and supplementary year end funding was not required. This indicates that the Commission's financial position is stabilising.

The financial overview to the 2005 financial accounts said that:

- productivity measures introduced over the past two years are now having an effect
- demand for the Commission's services is increasing at a slower rate than the rapid rate experienced in the past few years
- expensive criminal law cases where the cost exceeds \$100,000 have shown a slight decrease (however, current terrorism matters will impact on this trend over future years).

The Commission is now better placed to stand back and look at demand and its implications for funding and priorities.

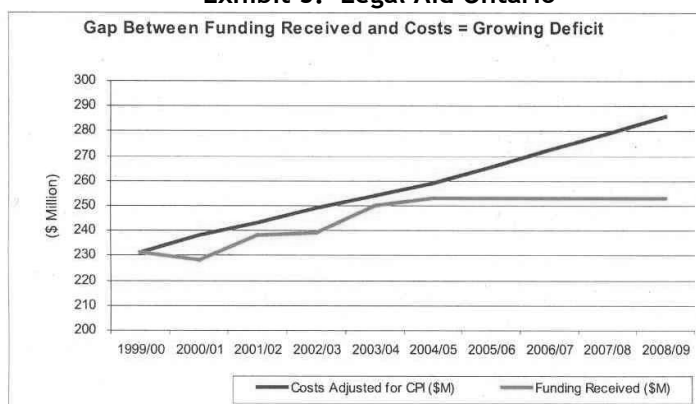
**Reporting the gap between demand and funding**

However, gaps arising between the demands for its services (as discussed earlier) and its funding levels (as described above) are not reported by the Commission. Such disclosure is important for the Commission's accountability. It helps reconcile the Commission's mandate, services provided, the level of resources provided by government and the demand for services.

This type of analysis is especially relevant where increasing demands are outside the control of the Commission and caused by changes in government policy. The analysis also assists with the Commission's Results and Services Plan (RSP) reporting to the Budget Committee of Cabinet. The RSP is submitted to government each year setting out the Commission's service priorities and funding requirements.

Legal Aid Ontario (LAO) reports the gap between its funding and the amount it spends. This indicates an alternative way for the Commission to report gaps between increasing demands and its funding. LAO report that since 1999 they have absorbed increased demands and costs for its services. Operating costs have gone up and demand for legal aid services continues to increase every year. Their position is illustrated in Exhibit 5.

**Exhibit 5: Legal Aid Ontario**



*Structural Deficit:*  
The gap between the amount of funding received and the amount of program spending.

**Estimated deficit for 2006/07 = \$10 - 12 million**

See *Legal Aid Ontario Business Plan 2006-2007*, pages 9 and 10

LAO's Business Plan for 2006-07 indicates that the additional cost of services has been absorbed by depleting reserves and by maximising efficiency. Quotas have been used to limit the number of people who can receive a grant of legal aid, and legal aid is refused to many people although they are financially eligible. The number of people being refused legal aid has increased in recent years.

The situation in NSW is not completely comparable to LAO. In both organisations, policy restrictions and internal efficiencies help control the gap. But, in NSW, there is no similar reserve fund or quota. NSW, however, can focus on reporting gaps in demand and funding for services or issues where it can reasonably estimate the demands and costs involved. An example is the impact of not increasing eligibility thresholds mentioned above.

**Recommendation** The Commission should consider measuring and reporting gaps between available resources and demand for its services. This will help the Commission be more accountable against its mandate of providing as many services as possible.

### 3.1.3 Understanding the costs of services

The costs of providing services are an important business indicator. For the Commission these include cost per information service, advice session, community education seminar and case managed.

**Costing is a continuing issue** The Commission does not have a costing model which will analyse costs across its activities to the level we believe it should. The Commission's current systems cannot capture the cost of individual cases assigned to in house lawyers and compare these with the cost of matters assigned to private practitioners except in areas of law where 'lump sum' costing is applied.

The Commission did not deliver on the corporate target of developing a costing model by 31 December 2004. The 2004-05 corporate strategy aimed to 'develop a model for costing the in-house practice'. Consultants are currently assisting the Commission with the task.

Costing remains a controversial issue within the Commission. Some years ago flexible working hours were introduced. As a trade-off expanded time and cost recording were to be introduced. However, this has been delayed through negotiations with unions and the development of information systems. Executive management is committed to implementing better costing of services and to undertake benchmarking and comparison with other commissions.

**Different costing approaches** The Commission's current costing system for its in-house practice is able to dissect expenditure and income to law type and then to cost centre, for example, to duty lawyer criminal services or family law at a particular location. The Commission can also provide costing information for activities at an aggregated level such as advice, information and representation. It cannot break these aggregates down significantly to the cost of certain courts, certain matters or certain groups of matters. This limits comparability with matters assigned to private practitioners to a high level.



The Commission's costing system for matters assigned to private practitioners is more comprehensive and can break down costs by court, individual cases and types of cases. Payments to private practitioners are based on lump sum costing in some jurisdictions. The lump sum is an agreed price for a parcel of work which is separately approved. It is applied to limited Commission activities - Commonwealth and State family law and veterans' matters. It is also to be introduced in the near future for State Committals and District Court sentence matters dealt with under the case conferencing scheme. Within the legal professional there is a trend towards lump sum fees which vary according to the type and complexity of cases.

Both Victoria Legal Aid and Legal Aid Queensland apply fees paid to private practitioners to internal processes to measure and compare case costs. Legal Aid Queensland in 2004-05 was 92.9 per cent cost efficient on this basis and have built up to this rate over some years. They expect cost efficiency to be less than 100 per cent of the private practitioner fee rate because of the additional activities undertaken by commissions.

The difference in costing methodologies between jurisdictions restricts benchmarking costs per case. However, the Commission's annual reports do include the numbers of legal aid services by cases, information services, advice sessions and education seminars.

**Previous performance measures**

The Commission has reported other measures in the past which have provided useful indicators of financial performance. These were noted in the Audit Office's 1999 performance audit report *Key Indicators - Legal Aid Commission Case Study*. They included a gross unit cost index to compare the relative cost of services over the years. It measured trends from 1993-94. The index was a measure of increases in costs from the base year, adjusted for inflation. Also reported were two efficiency indicators: average client services provided per staff member and average expenditure per client service. The indicators are no longer used by the Commission.

**Recommendations**

The Commission should:

- utilise proposed management information systems to better understand the costs of its activities
- report and benchmark comparable costs against private practitioners and other Commissions, to the extent possible.

**3.2 Are the entitlement tests applied consistently?  
Are reasons for decisions clear and documented?**

**Assessment**

The Commission has well established and detailed entitlement tests and supporting procedures. These practices include appropriate documentation in support of decisions about eligibility. The application of them is reviewed in internal and external file reviews. The reviews report high levels of compliance with policies and procedures.

The Commission's policies and procedures include delegations for approvals and discretions to be applied in exceptional circumstances where applicants have failed means and merit tests. Existing systems do not allow the extraction of details on the exercise of discretions. This weakens monitoring for compliance and quality assurance. New systems are under development and will help with recording and reporting of decisions and review of compliance. The existing systems and software are ageing and rudimentary.

	<p>The client survey recently conducted by the Commission covered only those seeking advice and information and did not include applicants for legal aid representation.</p>
<b>Applications assessed against eligibility criteria</b>	<p>The Commission's legal aid policies require that an application for legal assistance, either under State or Commonwealth law, be assessed against policy guidelines and priorities, means and merit tests and the availability of funds. The legal aid policies and the eligibility criteria are available on the Commission's web site.</p> <p>Procedure manuals for the three law types provide detailed practice management standards. The Criminal Law Procedure Manual states it is '... a practical guide to the granting and refusing legal aid, including: who should make decisions; where decisions are made; when it is appropriate to assign a matter; how to act in accordance with our obligations to clients, partners, stakeholders, and under the Legal Aid Commission Act 1979.' The procedure manuals also include business rules which detail the steps and documentation required in assessing and allocating cases. It includes the sending of letters to the applicant, with proforma letters available on the grants system.</p>
<b>Focus on compliance</b>	<p>Compliance with policy and procedures is a key performance indicator for the Commission. The Commission's benchmark for 2005-06 was for 85 per cent compliance with procedures. During the year 263 file reviews by supervisors had a compliance rate of 99.4 per cent. In the past this performance was not reported externally. The Commission is to publish the results in their 2006-07 annual report. Reviews are also conducted of files of private practitioners who have been assigned cases. During 2005-06 the files of 43 practitioners were reviewed and six files were found to have significant non-compliance. The Commission's internal auditors also conduct periodic audits of the grants systems and processes.</p> <p>The current grants management system, which also has some elements of case management, is ageing. Case files are largely in hardcopy with the management of the case being manually recorded. We found instances of discretion being exercised to grant assistance where applicants have failed the means test. The existing system does not allow them to be flagged for review or figures collected. This weakens monitoring for compliance and quality assurance. The Commission is, however, extending the use of electronic lodgement of applications for grants of legal aid, which has largely captured private practitioner lodgements. It presently also captures all of the in-house family law applications. This is increasing the recording of the exercise of discretions but not in a way that enables a report to be produced on the reason for the exercise of discretion.</p>
<b>New systems under development</b>	<p>Two new systems are in development for the receiving and processing of grants for legal representation and for the management of the case files.</p> <p>The new grants system will support more consistent decision making and more accurate and complete data collection on applications and the approval or refusal of grants. The new system will capture all applications and the decisions electronically. It will allow Grants Division staff in head office, rather than in regional offices, to process more approvals, and to undertake more effective monitoring of decisions and the standard of documentation.</p>

The new case management system is to include the following:

- tracking of progress from start to completion of cases
- different built in procedure templates for different types of cases
- the recording of events in electronic forms that comply with Commission requirements
- alerting staff to key events and review dates
- improving visibility of progress and workloads for case managers and supervisors
- collecting and reporting of performance data - file loads, time elapsed, costs incurred
- assistance with client questions on the progress of their case.

The new case management system is to be operating by 30 June 2007.

#### **Complaints procedures**

The Commission has complaints procedures applying to all its services and decisions. For example, a person can complain about the Commission's eligibility policies under the complaints procedures. During the audit revised complaints policy and procedures were issued.

The number and nature of complaints is an indicator of client satisfaction. However, figures on numbers and nature of complaints have not been reported by the Commission. A recent review by the Commission resulted in revisions to its complaints policy. The new policy requires the number and nature of complaints to be reported in the Commission's annual report. The information is to be included for the first time in the 2006-07 annual report.

The client survey recently conducted by the Commission was restricted to clients receiving information and advice services. It excluded applicants for legal aid representation. Including them in future surveys will provide valuable feedback on the standard of these services and how customer services could be improved.

Independent review of the Commission's practices is limited. Many professional organisations participate in reviews by fellow professionals external to their organisations. The accounting profession is one such profession. The emphasis of the reviews is quality assurance and the operation of policies, procedures and systems. Peers review processes, independence, staff skills and management practices. They provide assurance and insight into improvements. Independent peer reviewers could be a firm appointed by the board or a legal aid agency from another jurisdiction.

#### **Recommendations**

The Commission should:

- apply operational information collected from new systems to improve documentation and monitoring of application approval and management processes
- expand client surveys to assessment of applicants and recipients of representation services
- consider engaging in peer reviews of its operations by other commissions or legal practices.

### 3.3 Are the rates and reasons for refusals of legal aid monitored?

#### Assessment

The rates and reasons for refusals of legal aid are monitored as well as the current systems allow. File reviews conducted by the Commission indicate that reasons for refusals are well documented. The proposed grants management system will provide for better monitoring of refusals.

Refusal trends indicate steady rates of refusals over recent years.

#### Monitoring of refusals

Officers in the Grants and Law Divisions assessing applications are monitored by their supervisors. As indicated above, there is also internal assessment of files on a sample basis, including review by group and division heads. The reviews include assessing files where applications were refused. The results indicate high levels of compliance with policies and procedures. As indicated in the previous finding the existing grants system does not report on decisions to accept or refuse applications and monitoring is limited. The grants system currently in development has the ability to improve the recording and monitoring of refusals.

The numbers of applicants refused, and the trend, helps indicate how the Commission's eligibility rules are applied.

Each year there is a significant percentage of applicants who have their applications for legal aid refused. These are highlighted for the last five years in the following exhibit. In 2005-06, 87 per cent of total applicants were approved, with 13 per cent being refused.

Exhibit 6: Percentage of applications refused					
Year ended 30 June	2006	2005	2004	2003	2002
Criminal law program	7.2	7.3	8.1	9.6	13.4
Family law program	23.9	27.1	22.8	24.1	23.8
Civil law program	37.4	42.0	44.1	45.8	46.2

Source: Auditor-General's Reports to Parliament (based on Legal Aid Commission figures)

Overall the table indicates steady refusal rates for legal aid.

#### Criminal law refusals

Contributing to the decline in the rejection rate for criminal law applicants was a change in definition in 2001-02. This resulted in less duty lawyer services and more small case grants for in-house matters, which have a low rejection rate. As indicated earlier in section 3.1.2, criminal law funding has remained at about 50 per cent of the Commission's budget for the last five years. The funding has supported increasing numbers of applications for grants of legal aid, of which 70 per cent are for criminal cases.

#### Family law refusals

The rejection rate for family law applications is steady but high when compared to Victoria. In 2004-05 the refusal rate there was 12 per cent. Contributing to this would be the unadjusted means test in NSW over the period, which was more restrictive than in Victoria.

**Civil law refusals** The steady and high refusal rate for civil law applications reflects the restrained level of funding for civil law discussed earlier. Commission figures indicate that 80 per cent of the applications refused were either because policies did not cover the situation or they failed the merit test. The consistently small number of applications approved, around 1,200 per year, indicates suppressed demand for civil law legal aid - the low level of applications being influenced by the relatively narrow focus of civil law policies causing people not to bother applying. A significant factor contributing to the decrease in applications is the *Civil Liability Act 2002* which has reduced public liability claims.

**Recommendation** The Commission should ensure that the proposed grants management system provides for improved monitoring and analysis of applications refused.

### **3.4 Are applications assessed and actioned in acceptable timeframes?**

**Assessment** The Commission does not record the time taken by in-house lawyers from application to closure. The limitations of current computer systems contribute to this, especially detailed information about processing times. These are recorded for cases run by private practitioners contracted to the Commission.

The Commission does report to its Board on time taken to process applications. But this is only part of the process its clients experience. The Commission is in a unique position to measure processing from the time of consultation with them to the closure of the case. It is an important indicator for the Commission and the justice system.

Measuring and monitoring case file load is a favoured way of managing lawyers with large case loads. Improved time and cost recording would help expand productivity measures to other activities and comparison against targets.

**Measuring the processing of applications** The Commission's reporting to its Board includes the time taken to process applications, monthly trends and comparison to past performance.

It was noted earlier that the cost of individual cases is not captured on a regular basis and deficiencies in computer systems contribute to this. A related measure is the time taken to process cases. It can indicate the efficiency and effectiveness of processing. For example, clients wanting their cases processed as quickly as possible to limit their time in custody.

The process and time between application for aid and a decision on whether to grant aid is controlled by the Commission. However, the Commission does not control court and agency activities required to process and conclude a case. There is a danger that reporting case processing times could be interpreted as the Commission being responsible for activities outside its control.

**Case processing times** We recognise that the Commission does not have control over court and agency processes that may delay proceedings. The Commission client group can present the Commission with some difficulties in processing cases in accordance with a perception of timely case disposition. Many clients want their cases processed as quickly as possible. Many others, particularly criminal clients, want the opposite. They are fearful of the outcome of the case and happy to delay it for as long as possible. Many clients through disability, cultural barriers or intellectual incapacity fear our justice system and follow avoidance behaviour when confronted with legal problems, missing appointments with practitioners, missing court dates and failing to provide information.

However, the Commission is able to monitor and review progress and assist the courts and other agencies to advance cases. In addition, the Commission is in a pivotal position to capture processing times from discussion of the issues and application to the completion of cases. This is an important whole-of-justice sector indicator. While not responsible for the actions of other agencies such as the police or the courts the Commission is able to bring the bigger picture together. This not only benefits client relationship management but the understanding of linkages and blockages.

**Case file loads** The favoured way of managing productivity in the Commission is by file load. It measures files handled per month. It also takes into account the type and complexity of cases being handled. It is a more client focused indicator than costs of cases as it focuses on time and responsiveness. However, it has limited application as many staff undertake a mix of casework, duty, minor assistance and advice work. A mixture of indicators are needed in these circumstances. Reporting of performance against targets at division and corporate level would give these performance measures greater meaning. Performance against output targets and productivity measures such as services per staff member and expenditure per client provide a much better understanding of whether services are provided within acceptable timeframes.

**Recommendation** The Commission should measure and report the time taken to process cases, from application to finalisation.

### **3.5 Are appeal processes clear and timely?**

**Assessment** How to appeal and the processes involved are made clear at the time an application is rejected. There are a small number of appeals and few of them are successful. Appeals mainly relate to issues of merit.

Figures are not available to accurately measure the time taken to process appeals.

The Legal Aid Review Committee (LARC), which assesses all appeals, can only sit as a committee and this can be inflexible.

**Appeal processes** The LARC is established by Division 3 of the *Legal Aid Commission Act 1979*. It sits as a committee of three independent members. Decisions of the Committee are final and binding.

The appeals process allows for the reconsideration of administrative decisions in relation to the granting of aid. A person applying for legal aid may appeal to the LARC if they are dissatisfied with:

- a determination of an application for legal aid
- a variation of a grant of legal aid that adversely affects a legally assisted person
- a decision to refuse to pay part of or all of the costs awarded against a legally assisted person
- a re-determination of application for legal aid
- a re-determination of a variation that terminates the provision of legal aid.

Clients refused legal aid are advised of the appeals process in proforma letters. All appellants receive written advice of decisions.

**Numbers of appeals** During 2005-06, of 8,288 refusals 864 were appealed (10.4 per cent). Of this number, 137 or 16 per cent of appeals were allowed. The small number and low success rate of appeals points to the fairness and accuracy of assessments of eligibility.

**Appeal process option** The Victorian Legal Aid's approach is for a member of a panel rather than a committee to consider appeals. The panel member considering an appeal may consult other panel members if necessary. This approach offers flexibility over a committee, but limits the number of reviewers considering the appeal. It is worthy of consideration. Legal Aid Queensland has a similar approach to Victoria and appoints external review officers to consider appeals against the refusal of a grant of legal aid. If NSW was to take up the option of a review by a member of a review panel, it would require an amendment to the *Legal Aid Commission Act* as the constitution of the LARC is prescribed in the Act.

**Monitoring appeal performance** There is no reporting or benchmarking of the appeal system's performance, including processing times, types of cases in question and the nature of delays. Some delays are caused by complainants being slow in response to requests to provide additional information. If a court has adjourned proceedings because of an appeal, such a situation has the potential to extend the court's delay.

The Commission advises that an appeal will usually take six weeks and that in urgent matters the time frame may be shortened. However, detailed figures on the time taken are not available.

The Commission is currently undertaking a review of the LARC. The LARC review has two stages, namely:

- review of the forms used by LARC
- review of the processes for managing appeal documentation.

The first stage has been completed. The second stage is underway and will be completed by the end of the year.

**Recommendations**

The Commission should consider:

- the need for an appeal committee to consider all appeals and the option of a review by a member of a review panel
- reporting on the time taken to assess appeals.



## Appendices

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**Appendix 1: About the audit**

**Audit objective** The audit’s objective is to assess if legal aid is properly distributed to those who are entitled to it.

**Lines of inquiry** In reaching an opinion against the overall objective, the audit pursued two specific lines of inquiry:

1. Is information about eligibility for legal aid clear and well communicated?
2. Are decision-making processes sound?

**Audit criteria** The audit criteria, against which the Commission’s performance is evaluated, addressed these two questions in greater detail. The criteria (the ‘what should be’) are standards based on our research of current thinking and guidance on better practice. They were discussed and agreed with the Commission.

For line of inquiry 1, the audit criteria applied were:

- Are there clear statements about who can get legal aid?
- Is there communication with target groups?
- Is the demand for legal aid well understood?

For line of inquiry 2, the audit criteria applied were:

- Are entitlement tests and available resources aligned to achieve program goals and policy objectives?
- Are the entitlement tests applied consistently?
- Are reasons for decisions clear and documented?
- Are the rates and reasons for refusals of legal aid monitored?
- Are applications assessed and actioned in acceptable timeframes?
- Are appeal processes clear and timely?

**Audit scope** The audit’s scope is limited to the legal aid services directly controlled by the Commission.

It includes the delivery of services by types of law - criminal, family and civil; the types of services offered - legal information, advice, dispute resolution and representation by way of duty or case grants; and, the links the Commission has with external stakeholders, such as community legal centres, private practitioners, legal profession bodies, legal aid providers in other states and legal research organisations.

The audit does not question government policy objectives but assesses how consistently and effectively legal aid policies are implemented.

This audit did not examine legal aid services outside the control of the Commission, such as pro bono work conducted by private practitioners.

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<b>Audit approach</b>	<p>We collected evidence by:</p> <ul style="list-style-type: none"><li>▪ interviewing Commission staff involved in providing legal aid, issuing grants to private practitioners, producing information systems reports, strategic planning, assessing corporate performance, providing educational services and coordinating external providers who receive Commission funding</li><li>▪ conducting interviews with Commission staff in head office, a regional office and at courts and other delivery points</li><li>▪ interviewing stakeholders</li><li>▪ conducting internet searches</li><li>▪ benchmarking with interstate agencies.</li></ul>
<b>Audit selection</b>	<p>We use a strategic approach to selecting performance audits which balances our performance audit program to reflect issues of interest to Parliament and the community. Details of our approach to selecting topics and our forward work program are available on our website.</p>
<b>Audit methodology</b>	<p>Our performance audit methodology is designed to satisfy Australian Audit Standards AUS 806 and 808 on performance auditing, and to reflect current thinking on performance auditing practices. We produce our audits under a quality management system certified to International Standard ISO 9001. Our processes have also been designed to comply with the auditing requirements specified in the <i>Public Finance and Audit Act 1983</i>.</p>
<b>Acknowledgements</b>	<p>We gratefully acknowledge the co-operation and assistance provided by the staff and executive of the Commission. Special thanks are extended to the liaison officer for the audit, Stephen O'Malley.</p> <p>In addition, discussions with stakeholder representatives were similarly expansive and highly valued. They included representatives of the Law Society, Commonwealth and NSW Attorney General Departments, Victorian and Queensland Legal Aid Commissions, Public Defenders Office, Treasury, the Law and Justice Foundation of NSW, community legal centres, judges and magistrates, and the Public Service Association.</p>
<b>Audit team</b>	<p>The audit team leader was Chris Bowdler. Sean Crumlin provided direction and quality assurance.</p>
<b>Cost</b>	<p>Including printing and overheads, the estimated cost of the audit is \$235,000.</p>



## **Performance Audits by the Audit Office of New South Wales**

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## Performance Auditing

### What are performance audits?

Performance audits determine whether an agency is carrying out its activities effectively, and doing so economically and efficiently and in compliance with all relevant laws.

Performance audits may review a government program, all or part of a government agency or consider particular issues which affect the whole public sector.

Where appropriate, performance audits make recommendations for improvements.

If you wish to find out what performance audits are currently in progress, visit our website at [www.audit.nsw.gov.au](http://www.audit.nsw.gov.au).

### Why do we conduct performance audits?

Performance audits provide independent assurance to Parliament and the public that government funds are being spent efficiently and effectively, and in accordance with the law.

Performance audits seek to improve the efficiency and effectiveness of government agencies so that the community receives value for money from government services.

Performance audits also assist the accountability process by holding managers to account for agency performance.

### What are the phases in performance auditing?

Performance audits have three key phases: planning, fieldwork and report writing.

During the planning phase, the audit team will develop audit criteria and define the audit field work.

At the completion of field work we will meet with agency management to discuss all significant matters arising out of the audit. Following this, we will prepare a draft performance audit report.

We meet with agency management to check that facts presented in the report are accurate and that recommendations are practical and appropriate. Following this, a formal draft report is provided to the CEO for comment. The relevant Minister is also provided with a copy of the final report. The final report, which is tabled in Parliament, includes any comment made by the CEO on the conclusion and the recommendations of the audit.

Depending on the scope, performance audits can take several months to complete.

Copies of our performance audit reports can be obtained from our website or by contacting our Office.

### How do we measure an agency's performance?

During the planning phase, the team develops the audit criteria. These are standards of performance against which the agency or program is assessed. Criteria may be based on best practice, government targets, benchmarks, or published guidelines.

### Do we check to see if recommendations have been implemented?

Every few years we conduct a follow-up audit. These follow-up audits look at the extent to which action has been taken to address issues or recommendations agreed to in an earlier performance audit.

The Public Accounts Committee (PAC) may also conduct reviews or hold inquiries into matters raised in performance audit reports. Agencies are also requested to report actions taken against each recommendation in their annual report.

### Who audits the auditors?

Our performance audits are subject to internal and external quality reviews against relevant Australian and international standards. This includes ongoing independent certification of our ISO 9001 quality management system.

The PAC is also responsible for overseeing the activities of the Audit Office and conducts a review of our operations every three years.

### Who pays for performance audits?

No fee is charged for performance audits. Our performance audit services are funded by the NSW Parliament and from internal sources.

### Further information

Further information can be obtained from our website [www.audit.nsw.gov.au](http://www.audit.nsw.gov.au) or by contacting us on 9275 7277.

## Performance Audit Reports

No	Agency or Issues Examined	Title of Performance Audit Report or Publication	Date Tabled in Parliament or Published
81	Department of Housing	<i>Maintenance of Public Housing</i>	11 April 2001
82	Environment Protection Authority	<i>Controlling and Reducing Pollution from Industry</i>	18 April 2001
83	Department of Corrective Services	<i>NSW Correctional Industries</i>	13 June 2001
84	Follow-up of Performance Audits	<i>Police Response to Calls for Assistance The Levying and Collection of Land Tax Coordination of Bushfire Fighting Activities</i>	20 June 2001
85*	Internal Financial Reporting	<i>Internal Financial Reporting including a Better Practice Guide</i>	27 June 2001
86	Follow-up of Performance Audits	<i>The School Accountability and Improvement Model (May 1999) The Management of Court Waiting Times (September 1999)</i>	14 September 2001
87	E-government	<i>Use of the Internet and Related Technologies to Improve Public Sector Performance</i>	19 September 2001
88*	E-government	<i>e-ready, e-steady, e-government: e-government readiness assessment guide</i>	19 September 2001
89	Intellectual Property	<i>Management of Intellectual Property</i>	17 October 2001
90*	Intellectual Property	<i>Better Practice Guide Management of Intellectual Property</i>	17 October 2001
91	University of New South Wales	<i>Educational Testing Centre</i>	21 November 2001
92	Department of Urban Affairs and Planning	<i>Environmental Impact Assessment of Major Projects</i>	28 November 2001
93	Department of Information Technology and Management	<i>Government Property Register</i>	31 January 2002
94	State Debt Recovery Office	<i>Collecting Outstanding Fines and Penalties</i>	17 April 2002
95	Roads and Traffic Authority	<i>Managing Environmental Issues</i>	29 April 2002
96	NSW Agriculture	<i>Managing Animal Disease Emergencies</i>	8 May 2002
97	State Transit Authority Department of Transport	<i>Bus Maintenance and Bus Contracts</i>	29 May 2002
98	Risk Management	<i>Managing Risk in the NSW Public Sector</i>	19 June 2002
99	E-Government	<i>User-friendliness of Websites</i>	26 June 2002
100	NSW Police Department of Corrective Services	<i>Managing Sick Leave</i>	23 July 2002
101	Department of Land and Water Conservation	<i>Regulating the Clearing of Native Vegetation</i>	20 August 2002

No	Agency or Issues Examined	Title of Performance Audit Report or Publication	Date Tabled in Parliament or Published
102	E-government	<i>Electronic Procurement of Hospital Supplies</i>	25 September 2002
103	NSW Public Sector	<i>Outsourcing Information Technology</i>	23 October 2002
104	Ministry for the Arts Department of Community Services Department of Sport and Recreation	<i>Managing Grants</i>	4 December 2002
105	Department of Health Including Area Health Services and Hospitals	<i>Managing Hospital Waste</i>	10 December 2002
106	State Rail Authority	<i>CityRail Passenger Security</i>	12 February 2003
107	NSW Agriculture	<i>Implementing the Ovine Johne's Disease Program</i>	26 February 2003
108	Department of Sustainable Natural Resources Environment Protection Authority	<i>Protecting Our Rivers</i>	7 May 2003
109	Department of Education and Training	<i>Managing Teacher Performance</i>	14 May 2003
110	NSW Police	<i>The Police Assistance Line</i>	5 June 2003
111	E-Government	<i>Roads and Traffic Authority Delivering Services Online</i>	11 June 2003
112	State Rail Authority	<i>The Millennium Train Project</i>	17 June 2003
113	Sydney Water Corporation	<i>Northside Storage Tunnel Project</i>	24 July 2003
114	Ministry of Transport Premier's Department Department of Education and Training	<i>Freedom of Information</i>	28 August 2003
115	NSW Police NSW Roads and Traffic Authority	<i>Dealing with Unlicensed and Unregistered Driving</i>	4 September 2003
116	NSW Department of Health	<i>Waiting Times for Elective Surgery in Public Hospitals</i>	18 September 2003
117	Follow-up of Performance Audits	<i>Complaints and Review Processes (September 1999)</i> <i>Provision of Industry Assistance (December 1998)</i>	24 September 2003
118	Judging Performance from Annual Reports	<i>Review of Eight Agencies' Annual Reports</i>	1 October 2003
119	Asset Disposal	<i>Disposal of Sydney Harbour Foreshore Land</i>	26 November 2003
120	Follow-up of Performance Audits NSW Police	<i>Enforcement of Street Parking (1999)</i> <i>Staff Rostering, Tasking and Allocation (2000)</i>	10 December 2003
121	Department of Health NSW Ambulance Service	<i>Code Red: Hospital Emergency Departments</i>	15 December 2003



No	Agency or Issues Examined	Title of Performance Audit Report or Publication	Date Tabled in Parliament or Published
122	Follow-up of Performance Audit	<i>Controlling and Reducing Pollution from Industry (April 2001)</i>	12 May 2004
123	National Parks and Wildlife Service	<i>Managing Natural and Cultural Heritage in Parks and Reserves</i>	16 June 2004
124	Fleet Management	<i>Meeting Business Needs</i>	30 June 2004
125	Department of Health NSW Ambulance Service	<i>Transporting and Treating Emergency Patients</i>	28 July 2004
126	Department of Education and Training	<i>School Annual Reports</i>	15 September 2004
127	Department of Ageing, Disability and Home Care	<i>Home Care Service</i>	13 October 2004
128*	Department of Commerce	<i>Shared Corporate Services: Realising the Benefit including guidance on better practice</i>	3 November 2004
129	Follow-up of Performance Audit	<i>Environmental Impact Assessment of Major Projects (2001)</i>	1 February 2005
130*	Fraud Control	<i>Current Progress and Future Directions including guidance on better practice</i>	9 February 2005
131	Follow-up of Performance Audit Department of Housing	<i>Maintenance of Public Housing (2001)</i>	2 March 2005
132	Follow-up of Performance Audit State Debt Recovery Office	<i>Collecting Outstanding Fines and Penalties (2002)</i>	17 March 2005
133	Follow-up of Performance Audit Premier's Department	<i>Management of Intellectual Property (2001)</i>	30 March 2005
134	Department of Environment and Conservation	<i>Managing Air Quality</i>	6 April 2005
135	Department of Infrastructure, Planning and Natural Resources Sydney Water Corporation Sydney Catchment Authority	<i>Planning for Sydney's Water Needs</i>	4 May 2005
136	Department of Health	<i>Emergency Mental Health Services</i>	26 May 2005
137	Department of Community Services	<i>Helpline</i>	1 June 2005
138	Follow-up of Performance Audit State Transit Authority Ministry of Transport	<i>Bus Maintenance and Bus Contracts (2002)</i>	14 June 2005
139	RailCorp NSW	<i>Coping with Disruptions to CityRail Passenger Services</i>	22 June 2005
140	State Rescue Board of New South Wales	<i>Coordination of Rescue Services</i>	20 July 2005
141	State Budget	<i>In-year Monitoring of the State Budget</i>	28 July 2005
142	Department of Juvenile Justice	<i>Managing and Measuring Success</i>	14 September 2005
143	Asset Management	<i>Implementing Asset Management Reforms</i>	12 October 2005

No	Agency or Issues Examined	Title of Performance Audit Report or Publication	Date Tabled in Parliament or Published
144	NSW Treasury	<i>Oversight of State Owned Electricity Corporations</i>	19 October 2005
145	Follow-up of 2002 Performance Audit	<i>Purchasing Hospital Supplies</i>	23 November 2005
146	Bus Transitways	<i>Liverpool to Parramatta Bus Transitway</i>	5 December 2005
147	Premier's Department	<i>Relocating Agencies to Regional Areas</i>	14 December 2005
148	Department of Education and Training	<i>The New Schools Privately Financed Project</i>	8 March 2006
149	Agency Collaboration	<i>Agencies Working Together to Improve Services</i>	22 March 2006
150	Follow-up of 2000 Performance Audit	<i>Fare Evasion on Public Transport</i>	26 April 2006
151	Department of Corrective Services	<i>Prisoner Rehabilitation</i>	24 May 2006
152	Roads and Traffic Authority	<i>The Cross City Tunnel Project</i>	31 May 2006
153	Performance Information	<i>Agency Use of Performance Information to Manage Services</i>	21 June 2006
154	Follow-up of 2002 Performance Audit	<i>Managing Sick Leave in NSW Police and the Department of Corrective Services</i>	June 2006
155	Follow-up of 2002 Performance Audit	<i>Regulating the Clearing of Native Vegetation</i>	19 July 2006
156*	Fraud Control	<i>Fraud Control Improvement Kit: Meeting Your Fraud Control Obligations</i>	20 July 2006
157	Roads and Traffic Authority	<i>Condition of State Roads</i>	16 August 2006
158	Department of Education and Training	<i>Educating Primary School Students with Disabilities</i>	6 September 2006
159	NSW Health	<i>Major Infectious Disease Outbreaks: Readiness to Respond</i>	22 November 2006
160	NSW Health	<i>Helping Older People Access a Residential Aged Care Facility</i>	5 December 2006
161	Follow-up of 2003 Performance Audit	<i>The Police Assistance Line</i>	6 December 2006
162	NSW Health	<i>Attracting, Retaining and Managing Nurses in Hospitals</i>	12 December 2006
163	Legal Aid Commission of NSW	<i>Distributing Legal Aid in New South Wales</i>	December 2006

\* Better Practice Guides

**Performance audits on our website**

A list of performance audits tabled or published since March 1997, as well as those currently in progress, can be found on our website [www.audit.nsw.gov.au](http://www.audit.nsw.gov.au).

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