



Legal Services
Commission South Australia

Submission to:

**National Legal Assistance
Partnership Review 2020 - 2025**

26 October 2023

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1. Acknowledgement

We would like to acknowledge the Kurna people as the Traditional Owners of the lands on which we meet today. We recognise that their unique cultural heritage, customs, spiritual beliefs and relationship with the land are of ongoing importance today, and we pay our respects to Elders past, present and emerging leaders of the future.

2. Required Information

Submission from

Legal Services Commission of South Australia
159 Gawler Place
Adelaide SA 5000

Organisation type

Legal aid commission

Funding

Legal Services Commission receives funding from the Commonwealth under NLAP, and other Commonwealth and South Australian government sources.

Consents

We consent to this submission:

- being published on the Review website, and
- being identified and quoted with attribution in the report of the Review

3. Executive Summary

The Legal Services Commission (LSC) delivers more than 150,000 legal assistance services to the South Australian community each year.

As the largest legal assistance organisation in the state, we play a vital role in the South Australian justice system and legal sector.

The Review of the National Legal Assistance Partnership ('the Review') presents a clear opportunity to tackle the issues and challenges facing the legal assistance sector. LSC welcomes the opportunity to make a positive contribution to the Review and the future of the sector.

As an independent statutory authority guided by the *Legal Services Commission Act 1977*, we take our role very seriously, in continuing to provide efficient and effective legal assistance services to the South Australian community.

The principles on which LSC operates are:

- a. seek to ensure legal assistance is provided in the most efficient and economical manner
- b. use its best endeavours to make legal assistance available to persons throughout the state
- c. have regard to the following factors:
 - i. the need for legal assistance to be readily available and easily accessible to disadvantaged persons
 - ii. the desirability of enabling all assisted persons to obtain the services of legal practitioners of their choice
 - iii. the importance of maintaining the independence of the legal profession; and
 - iv. the desirability of enabling legal practitioners employed by LSC to utilise and develop their expertise and maintain their professional standards by conducting litigation and doing other kinds of professional legal work.

LSC's submission to the Review of the National Legal Assistance Partnership will not traverse all of the same areas as National Legal Aid's submission. However, where appropriate, we have sought to cover issues relevant to the South Australian jurisdiction and context.

This submission will have a particular focus on the following issues:

- Legal need
- Service delivery and workforce issues
- Emerging areas of demand
- Funding considerations for SA
- Data
- Technology
- Opportunities

The key issues raised in our submission include:

- Support for the previous findings of the Productivity Commission and National Legal Aids (NLA's) position on the provision of additional baseline funding. This will allow LSC to expand our services, open new regional offices in areas of unmet legal need and increase the fees paid to private lawyers for their representation of legal aid clients.
- The identification of unmet legal need in regional areas, including Mount Gambier, Murray Bridge/Mount Barker and the Riverland.
- The identification of unmet legal need and emerging areas of demand, including child protection, civil law, housing and service delivery to Aboriginal clients.
- Improvement of the NLAP funding model to remove the restriction on Commonwealth funding for Commonwealth matters and rolling over project and special purpose funding into the NLAP baseline funding. Baseline funding should also make appropriate provision for the increased costs associated with contemporary ICT systems and cyber security.
- Recommend incorporation of state baseline funding into the NLAP agreement. This would provide greater certainty over state funding in the long term and protect Legal Aid Commissions (LACs) from the allocation of savings targets (funding cuts) generally applied to public sector agencies as part of the annual State budget process.
- Recommend the establishment of a dedicated fund that provides funding for sector wide digital initiatives and investment in transformation projects that deliver innovative services and efficiencies. The funding could be administered by the Commonwealth Attorney-General's Department, with priority given to joined up projects that deliver sector wide efficiencies and improved access to justice.
- Improve reporting obligations to focus on total service delivery and outcomes and reduce the administrative burden of reporting against numerous ad-hoc funding programs.

4. Discussion

The previous work undertaken by the Productivity Commission as part of the 2014 Access to Justice report sets out the funding issues faced by the legal assistance sector and unmet legal need. The National Legal Aid (NLA) commissioned Justice on the Brink Report builds on that work and identifies the need for significant additional investment in the legal assistance sector.

LSC is supportive of the previous recommendations made by the Productivity Commission and recommendations made by NLA as part of their submission to the Review.

4.1 Legal need

In South Australia (SA), there is significant unmet legal need.

How do we know this?

In SA applicants need to be facing a term of imprisonment to be considered for a grant of legal aid or the application relates to a matter involving a child. Very few civil law grants of legal aid are available.

That results in disadvantaged people appearing without legal representation in Courts and Tribunals all around the State.

On average each year, 10-15% of legal aid applications received are refused. In 2022-23, 12% were refused, with a large proportion not meeting the funding guidelines (50%) or means test (46%).

However, refusals are not the full extent of unmet legal need. In many instances people do not apply for legal aid where they know that their matter is unlikely to be granted aid due to the narrow funding guidelines that must be applied due to lack of legal aid funding. This suppressed demand for legal aid is a result of the legal profession and community workers being aware of the limited funding allocated for legal assistance in SA.

Data produced by Courts and Tribunals also supports this position, indicating large numbers of unrepresented defendants appearing before our Courts. Unmet legal assistance is further evidenced through:

- the small number of Community Legal Centres (CLCs) funded in SA to provide services where legal aid has been refused.
- an unfunded pro bono group that is permanently seeking government funding to remain viable.
- multiple published reports evidencing legal need in Australia (referenced in the NLA submission).

South Australia is a large state with an area of over 900,000 square kilometres. This vast expanse makes it difficult to ensure timely service delivery and for those with a legal issue, great distances need to be travelled to attend court or to seek the help required, especially in remote and isolated areas.

South Australia's population is concentrated in Adelaide, leaving vast areas of the state with very low population density. This also makes it less economically viable to provide certain services in remote regions – particularly for private practitioners.

Recent analysis undertaken by LSC identified numerous areas across South Australia where there is unmet legal need due to limited or no legal services presence, and limited capacity by the private profession to deliver legal assistance services – these are covered in more detail later in this submission.

To minimise these challenges, innovative approaches to service delivery continue to be explored within the funding available.

4.2 Service delivery and workforce issues

Annually, LSC delivers more than 150,000 legal assistance services to the South Australian community. Workforce supply is having a significant impact on the provision of legal assistance services, particularly in rural and remote areas.

Recommendation:

- Make appropriate provision for the cost of delivering services in regional and remote areas of the State.
- Provide core funding for ongoing permanent roles for staff, in place of one-off programs and pilot program funding.

Regional workforce and recruitment issues

Over the past four to five years, there has been an increase in the turnover rate of our legal and administrative support roles in roles across LSC, particularly in the northern region (Port Augusta and Whyalla). In some instances, this has resulted in roles remaining vacant for many months.

We have experienced a reduced number of candidates applying for vacancies, even at the entry level of Duty Solicitor and Adviser roles, and an increased frequency of advertising roles to fill vacancies. The nature of short-term tenure for roles, between 6 to 18 months, has exacerbated the issue of recruiting candidates and then retaining employees because of the uncertainty of term employment.

A range of recruitment options have been trialled and we are now looking at potential incentives and support options to attract and retain employees, particularly in regional areas. Some of these incentives will include:

- Filling roles ongoing, even where tied to short term funding
- Regional incentives (+10% of salary as an attraction allowance)
- Regional housing allowances
- Travel and accommodation assistance for medical and dental treatment
- Guaranteed return from the region to a metro or Adelaide office and ongoing employment

All of these initiatives come at a significant cost.

Geography and population demographics

LSC currently has physical office locations in Adelaide, Elizabeth, Noarlunga, Port Adelaide, Port Augusta and Whyalla.

Analysis undertaken by LSC in April 2023 identified numerous areas across South Australia where there is unmet legal need due to limited or no Legal Services presence, and limited capacity by the private profession to deliver legal assistance services.

Additionally, Court data shows that from 1 July 2019 to 30 June 2022, of the 23,987 finalised case defendants who had a finding or admission of guilt in country Magistrates Courts there were 9,300 (38.8%) finalised without legal representation.

Over half of total matters (12,239) were finalised in:

- Port Augusta (26.6% without legal representation)
- Murray Bridge (44.6% without legal representation)
- Port Pirie (32.9% without legal representation)
- Berri (37% without legal representation)
- Mount Barker (61.4% without legal representation)

The top 5 locations with the highest proportion of defendants without legal representation were:

- Clare (74.9%)
- Millicent (64.5%)
- Roxby Downs (63.2%)
- Mount Barker (61.4%)
- Tanunda (58.9%)

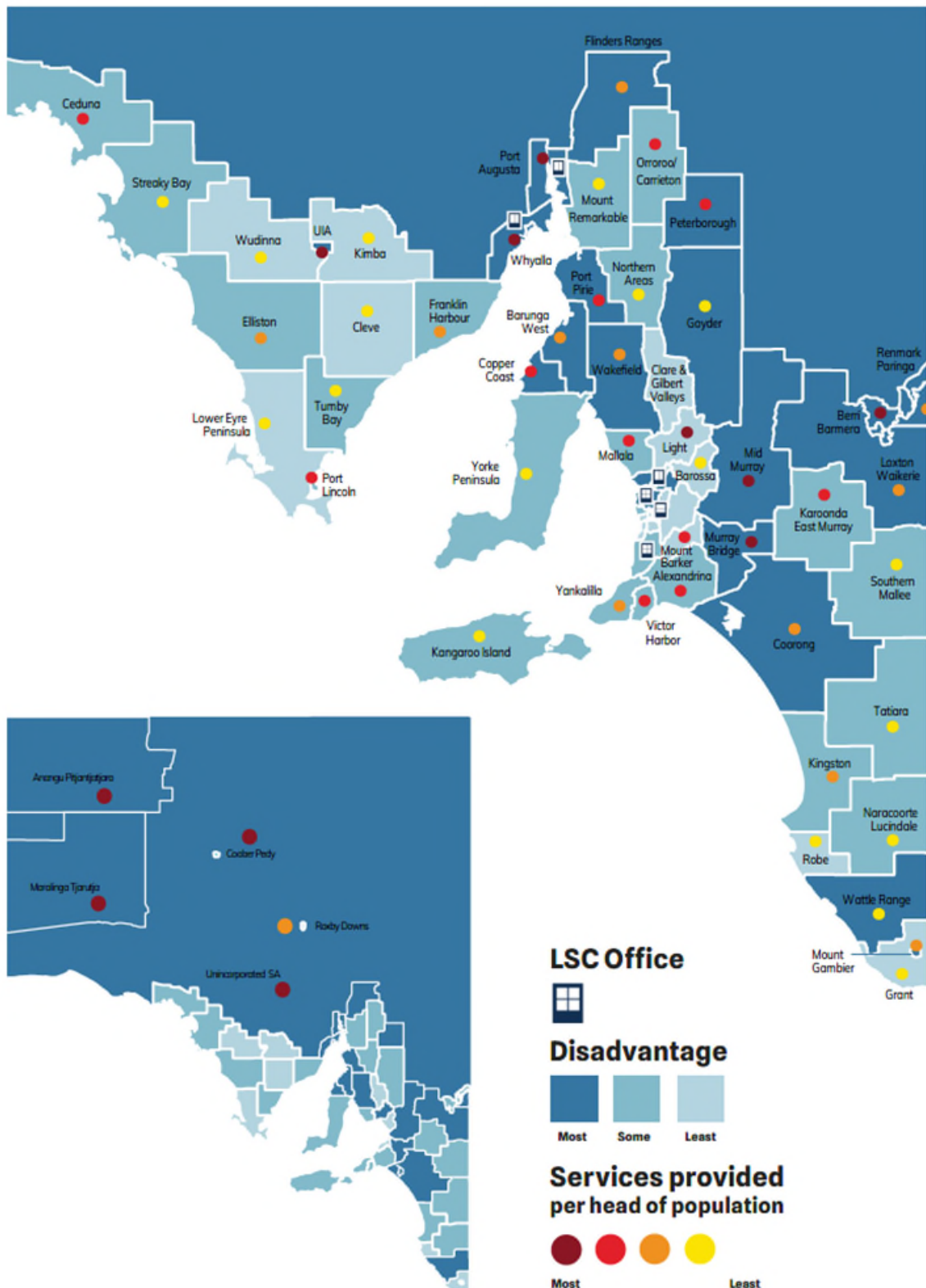
As part of our analysis, LSC has mapped all of our services (information, legal advice, duty lawyer and grants of aid) delivered in each local government area during 2022-23, as a percentage of the total population of that area. This information has been overlaid to indicate the relative socio-economic disadvantage of each local government area, as determined by the Australian Bureau of Statistics (ABS) Local Government Area Index of Relative Socio-economic Disadvantage, 2016. The location of LSC offices is also shown on the map.

The large number of unrepresented defendants in regional Courts and the demand for services in these areas is an indication of unmet legal need in these communities.

Where regions have market failure and the private profession is missing from or failing to meet demand, there is a strong case for a physical presence from legal aid. If additional funding was available, it is considered that some of these communities would be better served through having access to LSC in the area where a full range of community legal education, information and advice, duty solicitor and representation services can be provided.

However, where regions have private practitioners willing to undertake legal aid work, such as Port Lincoln, the community has better access to legal aid services and therefore less unrepresented defendants and less requirement for a permanent legal aid presence.

Map: 2022-23 All LSC Services – Regional and Rural



Based on our analysis, the regional areas in South Australia with the highest unmet need are:

Mount Barker and Murray Bridge

Mount Barker is located approximately 33 kms from Adelaide and has 39,217 residents. It has rapidly become a large urban centre (ranked fifth for fastest growth in South Australia). Murray Bridge is located 78 kms east-southeast of Adelaide and has 21,644 residents, making it the fifth most populous city in the state. Murray Bridge also has a higher proportion of its population that identify as Aboriginal or Torres Strait Islander (5.6% compared to the SA average of 2.4%) and a higher proportion of people who are not in the labour force (42% compared to the SA average of 35%).

In 2006, LSC conducted an analysis of legal need and the forecast demand due to the rapid growth in population in this region and opened an office in Mount Barker in June 2006. The office provided intensive advice, duty lawyer and representation services to the community. However, funding cuts were imposed on LSC by the State Government in 2018 and LSC regrettably closed the office in December that year. This is a prime example of the impact of short-term funding and the availability of legal assistance being dictated by the priorities of the government of the day.

Mount Gambier and South-East Region (Millicent, Naracoorte & Bordertown)

Mount Gambier is a city in the southeastern corner of South Australia, near the Victorian border with an urban population of 26,878 people. The distance from Adelaide is 377 kms and is around four to five hours by car.

Legal aid services in this region are currently delivered by the private legal profession. However, the local private practice is largely focused on delivering privately paid legal services and have insufficient capacity to take on legal aid work. A CLC operates in this region and provides some assistance to LSC for family law duty solicitor services when the Federal Circuit and Family Court of Australia is on circuit.

The preferred model would be the establishment of a permanent legal aid office presence, wide-ranging service delivery, outreach, and community engagement to Mount Gambier and the South-East region of South Australia (refer to case study for more detail).

The Forum Test is of relevance in towns which are close to state borders, such as Mount Gambier. If a legal aid applicant is arrested for an offence that occurred in Mount Gambier, but that person resides in Victoria, they are eligible to apply for legal aid through LSC as proceedings will occur in an SA Court.

* Refer to Attachment 5.1 - Case Study for further information

The Riverland (Berri & Waikerie)

The Riverland is a region of South Australia that covers an area of 9,386 square kms along the River Murray near the Victorian and New South Wales border, 171.6km from Adelaide. It has 41,802 residents.

Legal assistance services in this region are currently delivered by the private legal profession and a Community Legal Centre. Magistrates Court data shows a significant number (37% in Berri and 49.1% in Waikerie) of hearings where a Defendant appeared in custody and was not represented by a legal practitioner at the hearing. If additional funding was available, greater outreach, duty solicitor and legal aid services could be provided to this community.

Other regional and remote locations will require creative and innovative methods of service delivery due to expansive distance and small populations. This could include enhanced regional duty solicitor services via AVL in Court or the establishment of virtual offices (modelled on those services provided by the WA Legal Aid Commission). Increased rates for the provision of regional services to incentivise the private profession to undertake this work should also be explored.

4.3 Emerging areas of demand

In a South Australian context, a number of areas of emerging legal demand have been identified. Through an expansion of funding, improved outcomes for legal assistance service clients could be achieved.

Increased demand for services are resulting from Aboriginal clients exercising their right to a solicitor of choice and from the failure of Aboriginal Legal Rights Movement (ALRM), the only Aboriginal Torres Strait Islander Legal Centre (ATSIL) in SA, to retain capacity to meet demand in many areas of SA.

The other pressing areas of concern are Independent Children's Representation and the provision of civil law services including secure housing.

The time to address these areas of demand is now.

Recommendation:

- Provide additional funding to expand grants of aid, based on emerging areas of legal need, including greater Civil Law representation.
- Remove the restriction on Commonwealth funding for Commonwealth matters.

Service Delivery to Aboriginal clients

LSC has continued to experience increasing demand for legal services from clients identifying as Aboriginal or Torres Strait Islander. (Given the small percentage of clients identifying as Torres Strait Islander in South Australia, references in this submission to Aboriginal people includes Torres Strait Islanders.) In 2022-23, clients identifying as Aboriginal made up 24.54% of the representation services provided by LSC, up from 22% and 20% respectively in the previous two financial years.

In 2021-21, LSC provided 5,485 representation services (duty solicitor and grants of aid) to Aboriginal clients, which has increased to 7,872 for 2022-23, representing an increase of 53.51%.

As raised in Unmet Legal Need and Demand at the beginning of this submission, a regional service delivery review was undertaken by LSC in April which identified unmet need predominantly in rural and regional areas. Of the 3,389 services provided to clients identifying as Aboriginal in 2022-23, 848 (or 25%) were within rural and regional Magistrates Courts.

This demand has increased recently due to ALRM's withdrawal of criminal law services in the following Magistrates Courts from April 2023:

- Berri
- Kadina
- Leigh Creek
- Mount Barker
- Coober Pedy
- Murray Bridge
- Port Pirie
- Roxby Downs; and
- Whyalla
- Port Augusta and Port Lincoln: limited services only for existing clients

LSC has continued to work in partnership with ALRM to ensure Aboriginal people across the State have adequate access to legal services, however LSC is experiencing increased activity as a result of ALRM's service withdrawal. In terms of grants of aid, quarter four (Q4) of the financial year 2023 saw the highest overall figure for the last 18 months, including the highest number of grants to clients identifying as Aboriginal (3,028 grants of aid overall; 903 of which were to clients identifying as Aboriginal; 594 of which were for matters within courts ALRM previously serviced).

This increased demand has been met within our Criminal Law Practice Division team via Adelaide-based staff travelling to the northern region to provide assistance on high ALRM listing days.

The continuing growth in demand on LSC for services from clients identifying as Aboriginal requires corresponding growth in training and development for LSC staff and private panel practitioners in cultural competency as a fundamental component of quality legal assistance service provision. This requires significant commitment and investment at both a corporate and individual level in addition to substantive file work.

Lawyers for Children and Parents of Children before the Youth Court

LSC fulfills the statutory function mandated by the *Children and Young People (Safety) Act 2017* (ss 62 and 64) that children, the subject of an application under that Act be heard and represented in any proceedings in the Youth Court of South Australia.

Parents of children subject to a Care and Protection application also apply for a grant of legal aid to be represented in the proceedings. If the parents qualify for a grant of aid they will be allocated a private panel practitioner.

Due to limited funding, we apply a means and merit test to the parent's application for aid. Often parents will not qualify as their application is assessed as having insufficient merit, noting that in most care applications the State is successful in removing guardianship of the children from the parents. This results in one or both of the parents

being unrepresented before the Youth Court. With appropriate funding, families in these proceedings could be provided with the early and consistent advice of a legal practitioner, which should result in less protracted proceedings via earlier resolution of the prospects of reunification for the family.

We have experienced significant growth in demand in this jurisdiction over the past 10 years and this is expected to continue to grow (refer to Attachment 5.2 - Case Study for more detail). Aboriginal children make up a significant percentage (30%) of all children the subject of Care and Protection applications. Along with the increasing number of applications, the sophistication of service required to be provided when representing vulnerable children has increased. The prevalence of alcohol and drug abuse is high, as is deteriorating mental health of parents and children. The need to provide culturally appropriate services for this group is essential.

An agreed approach to the provision of additional funding is required by both Commonwealth and State Governments due to the nature of these matters and potential for cost shifting.

Similarly, demand from the Federal Circuit and Family Court of Australia (FCFCOA) for the appointment of Independent Children's Lawyers (ICLs) is expected to continue to steadily increase, in conjunction with increasing expectations as to the levels of service to be provided by ICLs (including meeting in person at locations where the child will be at ease and other trauma-informed approaches). While undoubtedly worthwhile, these expectations place increasing costs on the capacity of LSC to fund ICLs, the pool of which in South Australia is currently limited and almost exclusively Adelaide-based.

The need for a larger pool of available ICLs, particularly in regional and remote locations, is a significant emerging challenge in South Australia. The cost of training is significant, and the fees paid for ICL grants of aid are not sufficient to induce experienced private lawyers to take on this work.

Civil Law services

The LSC provides initial advice and minor assistance across general civil law areas. All South Australians can telephone the Legal Helpline to receive preliminary information, advice and referrals, either over the phone or in-person.

However, ongoing representation is generally limited to matters for which special purpose funding has been obtained from the Commonwealth and the South Australian Governments (appeals in National Disability Insurance Scheme (NDIS), guardianship, administration and mental health matters). LSC is currently not funded to provide ongoing legal assistance for South Australians with matters involving housing, consumer protection, welfare support, debt, employment, elder abuse and other civil concerns.

What this means in practice is that, while LSC can provide family and criminal law representation services to the most vulnerable South Australians, it cannot extend

representation services to support those clients with matters relating to, for example, safe and secure housing, debt management and Centrelink appeals.

The situation is particularly dire in rural, regional and remote areas of South Australia. All LSC's civil lawyers are based in Adelaide. There are currently no civil lawyers based in the LSC's two regional offices (Port August and Whyalla).

As illustrated in the National Legal Aid submission, there is a clear disparity of the civil law service provided by LSC when compared with other states and territories, as demonstrated in Table 1:

Table 1: Funding for LAC Civil Law legal assistance across jurisdictions (2023)

LAC	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
General Advice and Minor Assistance	Funded	Limited funding ^{*a}	Funded	Funded	Funded	Funded	Funded	Funded
NDIS Appeals	Funded	Funded	Funded	Funded	Funded	Funded	Funded	Funded
Mental Health	Funded	Funded	Funded	Funded	Limited funding ^{*b}	Funded	Funded	Not Funded
Disaster Response	Funded	Funded	Funded	Funded	Not Funded	Not Funded	Funded	Funded
Guardianship	Funded	Funded	Funded	Funded	Limited funding ^{*b}	Funded	Funded	Funded
Employment	Funded	Funded	Funded	Funded	Not Funded	Not Funded	Funded	Limited funding ^{*c}
Migration	Funded	Funded	Not Funded	Not Funded	Funded	Not Funded	Funded	Limited funding ^{*c}
Financial Matters ***	Not Funded	Funded	Funded	Funded	Not Funded	Not Funded	Not Funded	Funded
Respect At Work	Not Funded	Funded	Not Funded	Funded	Not Funded	Not Funded	Funded	Funded
Discrimination	Funded	Funded	Funded	Funded	Not Funded	Funded	Funded	Limited funding ^{*d}
Housing	Funded	Funded	Funded	Not Funded	Not Funded	Not Funded	Funded	Funded
Fines	Funded	Funded	Funded	Funded	Not Funded	Not Funded	Funded	Funded
Victims Support	Funded	Funded	Funded	Not Funded	Not Funded	Not Funded	Funded	Not Funded
Older People & Elder Abuse	Funded	Funded	Funded	Funded	Not Funded	Funded	Not Funded	Funded
Social Security	Funded	Funded	Funded	Funded	Limited funding ^{*b}	Not Funded	Funded	Funded
Veterans	Not Funded	Funded	Funded	Funded	Limited funding ^{*e}	Limited funding ^{*e}	Not Funded	Limited funding ^{*e}
Human Rights	Funded	Funded	Not Funded	Funded	Not Funded	Not Funded	Not Funded	Not Funded
WorkCover	Not Funded	Not Funded	Not Funded	Funded	Not Funded	Not Funded	Not Funded	Not Funded

^{*a} Subject to triage

^{*b} Limited to reviews and appeals

^{*c} Limited to Federal Court matters

^{*d} Limited to rare matters in the Federal Court or Your Story Program

^{*e} Limited to Defence and Veterans Legal Service

** LAQ has a Farm and Rural Legal Service and LANSW does coronial matters.

*** Including consumer credit and debt, insurance and utilities.

Recognising the importance of addressing civil legal needs upfront, LSC has recently created a new Civil Law Division with a view to consolidating and growing its civil law offering. With increased funding, the Civil Law Division would initially increase its service offering in the mental health, disability, housing and migration areas.

Secure Housing

While there are multiple pressure points being felt by the community with respect to civil law issues, secure housing has increased prominence.

Like most of the nation, South Australia is currently experiencing a housing crisis. Within the A Better Housing Future Report, February 2023, it was noted that the average weekly rent for a house in South Australia has increased by 14% since 2019-2022. Cost of living pressures more generally have heightened the challenge of South Australians securing housing and will inevitably lead to increased legal need within the community.

South Australia's homeless statistics, especially for Aboriginal people, are of concern. 2021 Census data showed South Australia as being one of the highest states for homelessness for Aboriginal Torres Strait Islander (ATSI) people, with 327 people per 10,000 facing homelessness.

Due to funding constraints, LSC is unable to provide legal assistance for housing matters, which results in South Australians needing to pay for private representation without many having the means to do so.

There are organisations in place, such as Rent Right SA, JusticeNet SA and Anglicare SA that provide free legal services for housing matters. However, noting that SACAT applications continue to increase (6,833 housing related applications in 2020-21 and 7,107 applications in 2021-22), the organisations currently providing free legal services face capacity and funding issues in trying to meet demand.

There is well established research to demonstrate that housing stress can be linked to a number of unfavourable outcomes, including deterioration of health, loss of income and criminal offending. The benefits of early intervention and provision of legal assistance would deliver significant benefits to other government funded services and the justice system.

If funding were provided to LSC, areas of law eligible for grants of aid could be expanded to support housing services.

4.4 Funding considerations for SA

LSC is the largest legal assistance provider in South Australia. With over 220 FTEs and six office locations, we provide more than 150,000 services annually to the South Australian community.

Due to our size, we can scale up and deploy services rapidly and effectively as needed should the appropriate funding models be provided.

Recommendation:

- LSC supports the previous findings of the Productivity Commission and the NLA position on the need for additional baseline funding.
- Roll over special purpose and project funding into ongoing NLAP baseline funding.
- Incorporate State Government baseline funding in the NLAP agreement to provide greater certainty and protect legal aid from further State Government funding cuts.
- Make appropriate provision for the increased costs related to delivering contemporary services, including ICT and cyber security, as part of baseline funding.

LSC has for over 20 years implemented a method of provision of legal advice, information and minor assistance with lawyers being the first point of contact for people calling for legal assistance.

The free legal helpline is staffed by lawyers and in 2022-23, had an average wait time of 2.6 minutes. The lawyers staffing the helpline can provide immediate legal advice, referrals to other agencies or arrange free legal advice appointments. In 2022-23, there were 77,618 calls taken on the helpline and 14,000 appointments were provided.

Our legal practitioners assist with appointments for legal aid applications, ensuring each application includes the relevant information and required attachments. This ensures our clients have the best opportunity to be successful in receiving a grant of aid. This process also adds to the efficiency of the grants function with KPIs set at a five-day turnaround for applications.

As noted in the Issues Paper, the proportion of Commonwealth funding for LACs overall has declined from 63% to 55% (-8%), whilst funding for CLCs, ATSILs and Family Violence Prevention Legal Services (FVPLSs) had increased over the same period. The

Issues Paper also identified a similar trend in the decline in State and Territory funding from 92-89% (-3%) whilst funding for CLCs had increased over that same period.

The NLAP Review Issues Paper Addendum (Table 1.1 Funding Distributions Models) provides further detail on the allocation of Commonwealth baseline funding over time. Between 2019-20 and 2024-25, the proportion of overall funding to LSC has reduced by 4.6% as follows:

Table 2: Funding over time

Baseline Funding	2019-20	%	2024-25	%	Change
LAC (LSC)	\$16.3m	68.8%	\$18.6m	64.1%	-4.6%
CLC	\$2.5m	10.5%	\$4.9m	16.9%	6.3%
ATSILS	\$4.9m	20.7%	\$5.5m	19.0%	-1.7%
TOTAL	\$23.7m		\$29.0m		

Demand and service provision over this same period of time has grown, up from 137,829 total client services in 2019-20 to over 150,000 services in 2022-23 (an increase of 8.8%).

At the same time, LSC has received funding cuts from the State Government as follows:

- 2014-15: \$3.5 million once-off funding cut
- 2015-16: Reduced indexation from 4% to 1.5% resulting in funding cuts of \$0.975 million in 2015-16, \$1.329 million in 2016-17, \$1.704 million in 2017-18 and \$2.103 million p.a. from 2018-19
- 2022-23: \$2.7 million funding cut over 4 years, offsetting \$1.5m on funding for new service delivery previously provided.

Over this time, the State Government has not provided any additional funding to meet increased demand, workload pressures or investment in ICT systems.

In the absence of a long-term funding commitment from both State and Commonwealth Governments, LSC is unable to commit to additional services to address unmet legal need, particularly in regional areas. We also remain exposed to future funding cuts as part of the annual State Budget process.

Baseline vs Special Purpose

In recent years, an increasing proportion of our funding is short-term special purpose funding tied to particular projects, pilots or initiatives. In 2022-23, non-recurrent funding was \$7.892 million (15%) of our baseline funding from State and Commonwealth Governments.

This included \$1.645 million for State initiatives and \$6.246 million for Commonwealth. In terms of baseline funding, this represents a significant proportion of non-recurrent

funding of 8% (State) and 25% (Commonwealth). Decisions around funding extensions are also often made close to the expiry of the programs or at the end of the financial year.

This level of non-recurrent funding and uncertainty makes it difficult to attract and retain staff in short term roles. Often to establish these programs quickly, staff are taken away from core services to work on these specialist programs, resulting in impacts to front line services or the requirement to brief out additional legal aid work to the private profession.

Investment in ICT Systems and Cyber Security

Funding has historically had a significant focus on front line service delivery. However, consideration also needs to be given to necessary investment in contemporary ICT systems and the protection of the sensitive data LACs are required to hold.

Modern ICT systems, particularly for grants and practice management are a necessity to deliver contemporary services in a safe and efficient manner. This requires investment and ongoing support. It also requires appropriate ongoing investment in the safeguarding of these systems and data, with cybersecurity now the top emerging strategic risk across the public sector and legal organisations.

4.5 Data

The current NLAP reporting processes are onerous and it is questionable as to whether this supports the most efficient way of monitoring activity to deliver continuous improvement and achievement of statutory objectives.

Recommendation:

- Improve reporting obligations to focus on outcomes and reduce the administrative burden of reporting against numerous funding programs.
- Provide funding to modernise data collection through investment in ICT systems that will embed capability to effectively collect and report on data.

Data Collection, Performance Monitoring and Reporting

The current NLAP imposes onerous data collection requirements that are activity, rather than outcomes focused. Any changes to data collection or additional data capture will require significant investment in time and ICT systems to be able to effectively collect and report on data.

There are currently inefficiencies for funding programs and the acquittal process via the Grants Hub. These processes often involve unnecessary duplication, reporting and administration. It would be far more efficient if this was managed in the same way as the NLAP.

Expensive Criminal Case funding is currently administered via multiple grant streams with multiple templates and acquittal processes required. This creates an unnecessary administrative burden on LACs. At the moment, where there is residual funding under one funding round carried forward into the next year, it is not rolled into the current grant – so we are always reporting twice, submitting twice (until the earlier grant is extinguished).

4.6 Technology

Giving consideration to how the NLAP could be changed to better support innovation and improved best practice throughout the life of the agreement, the use of technology will be critical in the legal assistance sector's ability to provide wider options for people seeking redress for legal issues and improve the efficiency of service provision so that unmet legal need can continue to be addressed.

Recommendation:

- Ongoing funding for the amica service should be included within the LSC baseline funding.
- Provide additional funding to the legal assistance sector for national and system wide technology projects, through the establishment of a dedicated fund that provides seed funding for digital initiatives and investment in transformation projects that deliver innovative services and efficiencies:
 - Funding should be administered by the Commonwealth Attorney-General's Department, with priority given to joined up projects that deliver sector wide efficiencies.

Use of technology to engage citizens in the provision of services

Technologies, such as generative artificial intelligence (AI), will have the potential to transform the legal assistance sector and improve access to justice over the next five years. They also assist in empowering people by giving them the tools to resolve their own issue and potentially reduce demand from funded legal assistance services. This could include:

- Online dispute resolution (e.g. amica) in other areas of law
- Automation of legal processes (legal research, document generation)
- Early case assessment (precedents, arguments, penalties)
- AI powered chatbots, triage and assistance 24/7
- Customised legal guidance based on individual circumstances
- Real time translation and interpretation
- Predictive analytics (analyse data, identify patterns, predictions).

The use of technology will be critical in the legal assistance sector's ability to deal with workforce issues (e.g., recruitment of lawyers) and improve the efficiency of service provision so that unmet legal needs can continue to be addressed.

The use of technology to assist areas such as triage, provision of minor assistance and advice and practice management will provide greater opportunities for legal resources (e.g. lawyers) to be utilised in those areas that are needed most – supporting the most vulnerable members of our community with intensive bespoke services.

The provision of legal information and legal task is considered the area of greatest potential to deliver significant transformation and efficiencies in the short term.

South Australia is well placed to lead and pilot such initiatives given we are of an ideal size where projects can be scaled up or down to suit smaller or larger jurisdictions and have a track record of delivering national technology projects such as amica.

amica is an online tool to guide separating couples through property settlement and parental arrangements. It incorporates AI to provide a suggested division of assets and provides users with accurate, trustworthy and court ready agreements – without the need to purchase legal assistance services or formal pathways.

amica has demonstrated how technology can engage citizens in the delivery of legal assistance services and deliver significant social benefit. With over 1.5 million views and 8,000 matters registered with the platform, it is now recognised as the leading family law platform globally and referred to as global best practice in the family law sector, dispute resolution community and in academic papers (refer to case study for more detail).

* Refer to Attachment 5.3 for detailed case study

4.7 Opportunities

The legal assistance sector regularly delivers programs that are aimed at making justice accessible and affordable to all, but too often the approach is influenced by past behaviours, perceived community need and reactionary program development.

Recommendation:

- The legal assistance sector should be encouraged to leverage contemporary marketing and communication techniques in addition to Community Legal Education to raise awareness within the community of available legal support services.

Client Journey Mapping

Understanding the experiences and journey of people who have sought legal help is an important way of predicting the route that others in a similar situation may take in the future. In 2023, LSC undertook independent research with clients to gather better insights and improve services for our clients. This research produced a client journey map to help inform legal assistance service providers understand their client's state of mind when they seek help. A copy of the mapping is provided at Attachment 5.4.

Whilst the client journey mapping results appear to be common sense, the greatest insights are derived from the “actions” and “feelings” experienced by a person with a legal problem before speaking with a legal professional.

The client journey is filled with trepidation, fear, and anxiety, but the faster a person can be accelerated to “step 4” and “step 5”, where they are speaking to a lawyer, the better their mental health becomes.

The Role of Modern Communications in Providing Legal Assistance

Social marketing campaigns are a common strategy for raising awareness about social problems and have had a profound impact on social issues in the areas of public health, social justice, human rights and injury prevention as they leverage the power of marketing and communication techniques to promote social good but are rarely used in the legal assistance context.

For those organisations that provide general legal advice in addition to their representation services, clients and potential clients need to be aware of the support services that are available and, in some contexts, changes in law that may impact their lives. Knowledge ahead of time, with a direct call to action has the potential to create a

paradigm shift and may be the difference in a person needing or not needing legal help – through greater awareness of their rights and duties within the law.

From a societal perspective, such activity has the potential to prevent legal problems from occurring, avoid legal problems from escalating and reduce the burden on the justice system by resolving disputes outside of time-consuming and expensive court proceedings.

The client journey and the need for alternate communications approaches to be harnessed (moving from conservative to innovative) has been validated by recent research commissioned by NLA, conducted by Price Waterhouse Coopers (PwC), which found for every \$1 allocated to legal aid commissions (in Commonwealth funding) a return of \$2.25 in quantitative benefits are generated. This includes the reduced burden on government funded mental health services as a result of helping individuals to navigate the justice system, better advance their matter efficiently, reducing potential pain and suffering for the individual.

5. Attachments

5.1 Case Study A: Unmet need in Mount Gambier

Unmet need in Mount Gambier

- Mount Gambier is a city in the south-eastern corner of South Australia, near the Victorian border. It's population (highest SA urban centre in the last census – 26,878 people) and demand for legal aid services is comparable with other regions where LSC has a presence in the community via a physical office.
- It currently has a full-time resident Magistrate and is a circuit site for both the District Court and Federal Circuit and Family Court of Australia. This region also has a prison that currently houses the largest prison population in SA.
- Both Criminal Law and Family Law Services (including Independent Children's Lawyers) are required in this region. The resident Magistrate has recently sought more assistance from LSC in areas of the Youth Court, Magistrates Court, special interest courts, domestic/family violence services and care and protection work. This assistance will require attendance by differently skilled lawyers.
- Magistrate and Youth Court data in this region show a significant number of hearings where a Defendant appeared in custody and was not represented by a legal practitioner at the hearing.
- Legal aid services are currently delivered by the private legal profession. However, the local private practice is largely focused on delivering privately paid legal services and have insufficient capacity to take on legal aid work. Further market failure is forecast as older practitioners in this region retire.
- In Mount Gambier, there are no facilities available for use by visiting practitioners such as visiting trial Counsel, and no capacity to host Family Dispute Resolution services.
- Given the distance from Adelaide and the frequency of Court sittings, a fly in fly out service is not feasible. **The estimated cost of establishing a new LSC physical office would be \$1 million in the first year and would require an estimated \$650,000 per annum to maintain thereafter.**
- There would be an opportunity to establish a Legal Assistance Services Hub and co-locate LSC, Community Justice and Women's Legal Services, who are both small and actively seeking alternative office accommodation in the region.
- This would be a significant opportunity to establish a 'one-stop' legal service for the community in this region and serve as a potential model for the co-location of legal assistance services in regional areas.

5.2 Case Study B: Child protection

Child Protection

- There has been significant growth of children and young people being taken into care reflected in the forward estimates where significant funding and resources have been provided to the Child Protection system in South Australia.
- No additional funding has been provided to the LSC for this increased demand and if the demand is to be met, it will require redirection of existing resources away from other services currently funded.
- Our data shows that between 2012, 2013 and 2014 the average number of Care and Protection matters was 649 matters per annum. This now compares to an average of 1,318 matters per annum between 2020, 2021 and 2022. This represents a 203% increase since 2012.
- Over that same period, the average annual legal costs committed to Child Protection by LSC has grown from \$1.116 million per annum (2012-14) up to \$2.879 million per annum (2020-22). This represents a 258% increase since 2012. The increased demand in this jurisdiction has also increased workloads associated with the processing and acquittal of these grants of aid and the associated administration work for these matters.
- As well as growth in the numbers of applications, expectations continue to increase in terms of the sophistication of service to be provided in representing extremely vulnerable children in Youth Court proceedings, a significant percentage of whom are Aboriginal (29% over the last 5 years).
- While costs associated with these matters are at present sourced solely from the State Government (given that the relevant legislation is South Australian), the NLAP Agreement, clause 64 provides specific funding that must be used for family law or family violence related matters. Clause 98(g) provides that family law or family violence related matters refers to – “the provision of legal assistance services to assist a client to address issues related to family law, or address issues arising from or connected with family violence, as defined in s 4AB, *Family Law Act 1975 (Cth)*. This includes, but is not limited to, intervention orders, child protection, housing, credit and/or debt, social security, mental health and employment.”
- However, the application of Commonwealth funds for matters that relate to State legislation would potentially be against the spirit of the funding arrangements and possibly be viewed as cost shifting from State to the Commonwealth.
- **Legal problems like protecting vulnerable children don't really fit in State and Commonwealth categories. It requires a coordinated funding approach from both State and Commonwealth Governments to ensure that our most vulnerable members of the community can access the services they need when they need it.**

5.3 Case Study C: amica

amica

- amica (www.amica.gov.au) was developed by LSC on behalf of National Legal Aid, through specific Commonwealth Government grant funding. It was designed to address unmet legal need where parties were able to work together to resolve their own dispute, but did not qualify for legal aid and could not afford a private lawyer.
- amica was researched and developed by legal aid lawyers and digital design experts, alongside people who have experienced separation and family violence. It has an easy to use interface using conversational language and provides a guided pathway for users to collect information, upload supporting evidence and agree on statements.
- amica incorporates artificial intelligence and provides users with accurate, trustworthy and court ready agreements. It is an online tool to guide separating couples through property settlement and parenting arrangements. It empowers people to resolve their disputes and seek information, education and assistance where needed.
- Using AI, amica provides users with a suggested division of assets based on their circumstances, agreements commonly reached by other couples in similar situations and how courts generally handle disputes of this nature. The suggested offer is designed to guide the negotiation process.
- It has important safeguards built in, using natural language processing and sentiment analysis to prevent parties from using abusive language. It also prevents parties agreeing to a percentage split that is outside a reasonable range.
- amica is providing significant social benefit to Australians who have empowered themselves with information, those who have gone on to receive a suggested division using amica's AI and those who have finalised their separation through one of the agreements generated by amica.
- For those earning below the national minimum wage, amica is free to use. Where users have the capacity to pay, a fee of \$250 is charged if users wish to generate formal consent orders.
- **Noting that the average cost of legal advice for such matters is more than \$10,000 per person, Australians have saved more than \$30 million by using amica.**
- As amica matures and usage grows, so too will the benefits delivered to the community. For this reason, it is considered that amica should be an ongoing funded program and continue to be administered by Legal Aid.
- **Commonwealth funding is currently provided through to 30 June 2025, in line with the expiry of the current NLAP Agreement. It is proposed that ongoing funding be considered as part of that process, and additional funding for the operation of the amica service of at least \$500,000 per annum indexed be included within the LSC baseline funding as part of the next NLAP Agreement. This will ensure there is longer term funding arrangements in place for the ongoing support and operation of the amica service.**

5.4 Client Journey Mapping

