

Summary of responses to

**Legal Aid Queensland
Consultation Paper**

Review of Civil Law Services

July 2005

Introduction

Legal Aid Queensland (LAQ) is conducting a review of its civil law services. The purpose of the review is to consider whether:

- The current funding priorities for civil law services are appropriate, and if necessary propose a change to current civil law priorities and guidelines
- The current mix of civil law services provided by LAQ's in house legal practice is appropriate
- There is scope for the provision of additional services in civil law.

In April 2005, Legal Aid Queensland (LAQ), sought responses from stakeholders and staff on general issues arising from the review and on twenty-four specific recommendations about the future directions of civil law services. The consultation period closed on 15 July 2005.

Thirty-one responses were received as follows:

Individual Staff members	5
LAQ teams	11
Community Legal Centres(including QPILCH)	5
Government agencies, courts, tribunals	4
Community agencies	4
Solicitors firms	1
Barristers	1

This document provides an overview and analysis of responses. Appendix 1 summarises each response received. This analysis is structured under the following headings:

- General themes
- Comments on proposed approach to delivery of legal services
- Comments on recommendations concerning funding guidelines
- Comments on recommendations concerning in house practice
- Other specific comments

General themes

Timing of review and research

Many responses welcomed the review and the opportunity to provide comment. Two responses considered that the review was premature. Both recommended that the review should be delayed pending further research. The desirability of further research and empirical data was raised in a further three responses, although it was not suggested the review be delayed.

Collaboration

Many responses (both internal and external) expressed a view that there is scope for better collaboration between LAQ and other stakeholders and agencies in relation to a number of the proposals, in particular those relating to disability. One response recommended that the review not proceed until a formal coordination structure established between LAQ and community legal centres and QPILCH.

Responsiveness to particular client groups

Several submissions raised the issue of LAQ's responsiveness to client groups including:

- people from culturally and linguistically diverse backgrounds,
- people with cognitive disabilities and communication difficulties and
- women who are victims of domestic violence and sexual violence.

It was suggested that:

- LAQ processes (such as the application form for a grant of aid) should be reviewed to ensure that they do not create more barriers for these clients and that
- LAQ staff who have contact with clients and make decisions on grants of aid should have appropriate awareness and skills training to respond effectively to these clients.

Funding of proposals

Several responses addressed funding. Some responses recommended that budgets be allocated for particular areas of law so that funding for those matters could be assured. It was also suggested that funding budgets for grants of aid should be administered on a state wide basis to avoid inconsistency between regions. Support for some recommendations was given with the proviso that it not be at the expense of funding to existing services.

Comments on proposed approach to delivery of services

There was general support in the responses for an approach to delivering legal services which has a focus on services designed to redress social exclusion and for targeted services for targeted groups.

There was considerable comment in relation to the criteria for provision of services set out at page 8 of the consultation paper. There was concern that these criteria might be applied to all applications for aid and could exclude clients from funding. If the criteria were to be used in that way, it was recommended that they should be prescriptive so as to minimise discretion and achieve consistent results for clients.

This probably relates to a deficiency in the consultation paper as it was not intended that these criteria would be used in assessing individual applications for aid. Rather they would be used as a framework to inform decisions about the types of services to offer. For example:

- decisions about precise wording of grants guidelines or
 - decisions about areas in which to offer brief services
- would be tested against those criteria.

Comments on recommendations concerning funding guidelines

Recommendation 1 – General capacity to fund matters in the interests of justice in special circumstances

Eleven responses commented on this recommendation and all supported it. There were suggestions for additional categories of special circumstance including: other circumstances where it is warranted in the interests of justice, victims of domestic violence, victims of sexual violence, women from Non English Speaking and Culturally and Linguistically Diverse Backgrounds, indigenous people, young people, older people.

Recommendation 2 – Priority for funding state administrative law matters

Eight responses commented on this recommendation and all supported it. One recommended a broader formulation to include personal and property interests and human rights. Another recommended coordination with other services.

Recommendations 3 and 4 –Child Protection

Twenty-one responses commented on the child protection recommendations. There was general support for recommendations 3 and 4. Further suggestions included: that children should have direct representation as well as separate representation in the Children’s Court and Children Services Tribunal; that representation for parents be provided in the Children Services Tribunal where the parents have an intellectual disability; that representation should be provided for fathers; that representation should also be available at Family Group meetings.

In relation to recommendation 4, most responses were in favour, some arguing that the merit test must be suspended. Others suggested that the merit test be retained but that it be applied to the prospects of restricting or limiting orders rather than opposing orders. This is particularly necessary in relation to arguments about a meaningful contact regime for parents with cognitive difficulties. There were also suggestions to expand the special circumstance category in recommendation 4 to include: all applications in relation to indigenous families; applications where the child has a disability; where there is history of unsuccessful applications by the Department; where there is domestic violence or sexual violence; young parents and other marginalised or vulnerable people. Other suggestions included offering other services to parents including limited representation or assistance to explain the effect of proceedings.

Recommendation 5 – Domestic Violence

Sixteen responses commented on this recommendation and reflected widely divergent views. Some supported the recommendation providing there was an overriding discretion to grant aid. Some responses opposed any alteration to the existing guideline on the basis that it would restrict access to grants of aid. They argued that there should be no distinction between any forms of domestic violence and no distinction between physical, emotional or psychological safety. Others supported the recommendation if there were additional categories added for special circumstances – it was submitted that

all indigenous women and all young people should be represented. Others expressed a view that as a minimum aid should always be granted so that a woman should not have to cross examine a perpetrator of domestic violence. The view was expressed that aid should be granted to respondents to orders, where it is clear they are not the primary aggressor.

Recommendation 6 – Peace and Good Behaviour Applications

Eight responses commented on this recommendation. Seven supported it and one said that no grant of aid should be available. One commented that LAQ should consider providing assistance to respondents to applications where the application is brought as a way of managing the “challenging behaviour” of a person with a cognitive disability.

Recommendations 7 and 8 – Criminal Injury Compensation

Seventeen responses commented on these recommendations. There were divergent views. These ranged from a strongly held view that no changes should be made to the current guideline to views that there should be no funding at all for criminal injury compensation matters and they should be referred to the Civil Law Legal Aid Scheme. Other responses supported the recommendation with some expressing the view that adults who were victims of offences as children should be included in the special circumstances category.

Recommendations 9, 10 & 11 – Mental Health Review Tribunal, Guardianship and Administration Tribunal

Sixteen responses commented on these recommendations. Generally there was support for additional measures to ensure accessibility of grants of aid in this area. There were some reservations expressed about the viability of a visiting duty lawyer service, however there was strong support for liaison with community mental health workers and other agencies to improve awareness of legal aid services. There was support for some limited representation before the Guardianship and Administration Tribunal. One response suggested that representation should be expanded to family members.

Recommendation 12 – Workers Compensation

Twelve responses commented on this recommendation. The majority supported the recommendation, however a small number opposed any change in this area while others argued the grant should be retained for particular clients eg: children. There was also the suggestion that a specialist community legal centre be established for employment law.

Recommendation 13 - Inquests

Nine responses commented on this recommendation. All supported the recommendation although some with additional inclusions such as: relatives of people with a cognitive impairment who have died in care; deaths where domestic violence is a factor; and a broader definition of relatives for indigenous people which includes kinship.

Recommendation 14 – Anti-discrimination

Eleven responses commented on this recommendation. All supported the recommendation although some suggested broadening the guideline to include: representative complaints by groups of people; special consideration for children; a lower threshold test than “substantial” benefit; and no merit testing until Tribunal stage.

Recommendation 15 – Civil Confiscation of Proceeds of Crime

Six responses commented on this recommendation and all supported it. One suggested means and merit testing.

Recommendation 16 – Dangerous Prisoners Legislation

Eight responses commented on this recommendation and all supported it. It was suggested that the guideline should make particular reference to people with a cognitive impairment.

Recommendation 17 – Administrative Law

Nine responses commented on this recommendation. The majority supported the recommendation, however some considered that it should be restricted. There was also a suggestion that it should be broadened to include personal and property interests and human rights. It was also suggested that the requirement that cases are not able to be conducted on a speculative basis should be removed.

Recommendation 18 – Civil Actions

Nine responses commented on this recommendation. There was general support for the recommendation however the view was also expressed that legal aid should be available in all civil actions for clients with special needs including children.

Comments on recommendations concerning the in house civil justice practice

Recommendation 19 – Targeted minor assistance

Eight responses commented on this recommendation. The majority supported it, however one opposed it on the basis that the need for targeting was not established and one expressed concern about a flow on impact for community legal centres.

Recommendation 20 – Integrated Indigenous Strategy

Eleven responses commented on this recommendation. One suggested that no change be made until the implementation of the changes in indigenous legal services is complete. All others supported expansion of the current scope to include more minor assistance, although there was a divergence of opinion about the type of additional case work. The unit is of the view that additional casework should be in the areas of child protection, domestic violence and anti-discrimination.

Recommendation 21 – Rural and Regional Strategy

Ten responses commented on this recommendation and all supported it. The Farm and Rural Legal Service itself supports the extension of scope.

Recommendation 22 – Civil Law Screening Tool

Fourteen responses commented on this recommendation and all but one supported it. One suggested that it should also be used with clients in child protection matters and another that it should be closely linked with appropriate units at LAQ with good protocols about use. Two responses expressed concern that this should not be funded at the expense of other services.

Recommendation 23 – Access strategy for people with psychiatric or intellectual disability

Eleven responses commented on this recommendation and all were supportive of initiatives to ensure access to LAQ services by people with intellectual disability, cognitive impairments and mental health problems. Many referred to the need for consultation and collaboration with other agencies and stakeholders in this area. One response suggested that a project is more appropriate than an access strategy. Some responses expressed the view that such a strategy should not be established unless additional resources are available and one response suggested a transfer of resources from other access strategies.

Recommendation 24 – Brief Services Unit

Sixteen responses commented on this recommendation and all were supportive of the concept, although some with provisos about not funding at the expense of other services and one suggested no further action on this without research and consultation with community legal centres. Staff members who had been involved in a pilot of a similar service from the Woodridge office expressed strong views about the favourable impact of the service for clients.

Other specific comments

Three responses supported a specific proposal for the establishment of two funds:

- A fund established by a \$5 million payment by LAQ to be used for special public interest cases and innovative service delivery projects; and
- A fund established by \$1 million payment by LAQ and augmented annually by the State Government in the amount of \$500,000 to fund important public interest environment cases.

Conclusion

These responses will now be considered as part of the next stage of the Civil Law Review.

SUMMARY OF RESPONSES – LEGAL AID QUEENSLAND CIVIL LAW REVIEW

Lee Turnbull & Co.

- Supports recommendations 1-5, 7-19 and 22- 24.
- Does not support grants of aid for Peace & Good Behaviour Orders

Farm & Rural Legal Service

- Supports recommendations about in house practice and in particular 21 about expanded scope of FRLS
- Expresses concern about any proposed change to means test for applicants for assistance from FRLS and does not support the imposition of any contribution by FRLS clients towards their legal costs

Mr Ross Beer, Grants Manager, Legal Aid Queensland

- Need for negotiation with State Government about any change to priorities for funding
- Suggests a specific allocation of funds for civil matters exclusive of child protection and domestic violence
- Recommendation 4 - Funding for parents in child protection matters – “reasonable prospects of success” test should relate to success in limiting the terms of the order sought by the Department of Child Safety
- Review recommendation 4 in light of new arrangements for provision of indigenous legal services
- Recommendation 7 & 8 - Explore funding of criminal injury compensation matters through the Civil Law Legal Aid Scheme
- Recommendation 12 – Negotiation with State Government required, explore funding under Civil Law Legal Aid Scheme
- In house work should focus on the priority areas where work is assigned to private practitioners
- Recommendation 20 – need to review in light of new arrangements for provision of indigenous legal services
- Recommendation 21 – FRLS to widen focus to all credit and debt matters or provide resources to Brief Services Unit
- Recommendation 24 – State monies unavailable for funding brief services unit except by transfer of resources.

Ms Karen McLeod, Legal Practice Coordinator & Mr Graham Quinlivan, Legal Practice Manager, Legal Aid Queensland

- Support poverty law focus and alignment of state and commonwealth funding priorities
- Use empirical data to refine broad recommendations and service criteria
- Recommendations 1 & 2 – support broader catch all provision
- Recommendations 3,4,6,7,8,9,10,11,12,13,14,15,16,18, 21, 22,24 supported
- Recommendation 5 – stronger wording required to indicate aid should be provided
- Recommendation 17 – supported, but administrative law matters are a lower priority
- Recommendation 19 – do not consider a need to limit minor assistance

SUMMARY OF RESPONSES – LEGAL AID QUEENSLAND CIVIL LAW REVIEW

- Recommendation 20 – do not support proposed expansion of work mix for Integrated Indigenous Strategy Unit, expansion should be in domestic violence and child protection work
- Recommendation 23 – agree with the principle of ensuring access by people with psychiatric and intellectual disability, but support the establishment of a project rather than an access strategy.

Ms Ana-Maria Alliamant Holas, Multicultural Policy, QCOSS.

- LAQ should improve responsiveness in context of the consultation process in partnership with multicultural sector service providers and ensure adequate resources and support for the direct participation of CALD communities.
- A number of CALD communities experience specific hardship as a direct result of their migration status and do not have access to legal services. In particular, LAQ should consider: asylum seekers on bridging visas, temporary protection visa holders, women and children of CALD background escaping domestic violence.

Bundaberg Office, Legal Aid Queensland

- Support recommendations 1,2,6,12
- Recommendation 3 – Funding should be provided for representation of parents at Family Group meetings under the Child Protection Act, prior to the Department of Child Safety commencing proceedings.
- Recommendation 4 – reasonable prospects of success test should remain but should be prospects of substantially limiting order, not necessarily opposing order
- Recommendation 5 – reasonable prospects of success test should remain
- Support recommendation 7, but note that special circumstances should include victims of sexual abuse.

Ms Sheleagh Van Der Kevie, Grants Officer, Woodridge Office, Legal Aid Queensland

- Supports Brief Services Unit on basis of pilot project conducted in Woodridge office.

Ipswich Office, Legal Aid Queensland

- Support all recommendations

Toowoomba Office, Legal Aid Queensland

- Poverty law focus is reasonable, but should not lose sight of ordinary Queenslanders who cannot afford legal services.
- Need for further research and caution about expansion of access strategies in tight funding environment.
- Support recommendations 1,2,3,6,7,9,11,13,14,15,16, 18, 19, 20, 24
- Recommendation 4 – reasonable prospects of success should be retained, but consider other options for support services (eg: social worker assistance) to be provided to clients.

SUMMARY OF RESPONSES – LEGAL AID QUEENSLAND CIVIL LAW REVIEW

- Recommendation 5 - Grants officers currently take a sensible and efficient approach at the local level to funding of domestic violence applications, having regard to other support services available and funding available. This may lead to some inconsistency around the state, but current guideline is sufficient and recommendation not supported.
- Recommendation 8 – Do not agree with proposed restrictions to funding.
- Recommendation 10 – Do not support a visiting service, but do support liaison with other agencies and collaborative liaisons, for example, the disability law project which has operated in Toowoomba.
- Recommendation 12 – some funding should continue to be available, perhaps for a limited grant.
- Recommendation 17 – Consider that it may lead to funding of non meritorious matters and should be restricted.
- Recommendation 21 – Supports recommendation but suggests applying means test and retrospective contributions to Farm and Rural Legal Service matters.
- Recommendation 22 – not supported without further information
- Recommendation 23 – support this if budget available or if resources transferred from other access strategies.

Consumer Protection Unit, Legal Aid Queensland

- Current gap where consumers unable to take action because of disability, poverty, gender, cultural, educational isolation. Failure to resolve issues results in severe detriment to families
- Most consumer issues are regulated at a Commonwealth level and many consumer complaints are referred to national dispute resolution schemes
- Minor assistance has significant impact in credit and debt matters
- Paralegals operate successfully providing minor assistance under supervision
- Particular assistance is required by clients with the following characteristics: CALD, disability (including intellectual disability), mental illness, poor literacy skills, geographically and socially isolated, young people, the elderly, homeless, suffering domestic violence, poverty. If a client has more than one of these characteristics they are especially likely to need assistance to resolve legal issues.
- A brief services unit will not resolve all issues, but could have a significant impact on a range of issues

Townsville Community Legal Service Inc

- Approach to civil services should not be limited by traditional notions of “poverty law” but should be expansive and flexible so as to respond to change. Focus on areas of law which disproportionately impact on low income individuals or disadvantaged communities or where low income community of interests coalesce
- Recommendation 1 – support a broad discretion to grant aid in the interests of justice without the inclusion of special circumstances

SUMMARY OF RESPONSES – LEGAL AID QUEENSLAND CIVIL LAW REVIEW

- Recommendation 2 – support the discretion but consider that different drafting is required which expands the personal interest (personal and property interests or human rights) and includes a public interest component, or alternatively a formulation based on s4(3) of the Legislative Standards Act. These comments relate also to 16 and 17.
- Recommendations 3 & 4 – support the addition of other factors eg: child has disability, history of unsuccessful applications by department, concurrent proceedings in another jurisdiction, risk of incrimination.
- Recommendation 5 – support recommendation, and consider representation of respondent in interests of safety of applicant.
- Support recommendations 6, 7, 8, 12, 13, 15, 18, 20, 21, 22, 23, 24
- Recommendations 9, 10, 11 – Grant of aid in mental health matters should be reviewed and there should be an appropriate grant which would allow community legal centres to take on this casework. Support funding for some GAAT matters. Grant of aid to investigate prospects may be appropriate.
- Recommendation 14 – aid should be available for non profit groups for representative complaints in discrimination matters.
- There should be guidelines for funding consumer matters in particular superannuation and insurance.
- Recommendation 19 – concern about impact on community legal centres, more information necessary
- LAQ should consult with community legal centres and other service providers in relation to the implementation of the recommendations and in some areas (eg: mental health service delivery in regional areas) there is scope for collaborative partnerships.

Victims of Crime Compensation Unit, Legal Aid Queensland

- Access to the criminal injury compensation scheme will be compromised if a means test is imposed for grants of legal aid.
- The limits on compensation available mean that many matters are not suitable to be taken on a speculative basis as the process is complex
- Clients pay their legal costs by way of retrospective contribution
- The anomalous position of funding criminal injury compensation matters is justified
- If private solicitors take matters on a speculative basis, because of the small awards, a disproportionate amount is lost to the client in costs which are not recoverable.
- The special circumstances proposed in recommendation 8 are unreasonable and inappropriate. They introduce complexity and the prospect of inconsistency, query what evidence will be required of psychiatric disability.
- Adult survivors of child sexual abuse should be included in the special circumstances list
- Any changes should be postponed as the Attorney-General has foreshadowed changes to the criminal injury compensation system.

Office of the Public Advocate, Queensland

- LAQ needs proactive outreach to people with a cognitive disability including: training for LAQ staff, community education targeted at disability agencies, better use of advocates and support people, recognition of the need to spend more time, changes to the legal aid application form.
- Supports the provision of targeted services
- LAQ has a role in liaising with preferred suppliers and other agencies where clients are referred to ensure that matter progresses as there is limited expertise among lawyers in communicating with clients who have a cognitive disability
- Care will be needed in applying the criteria suggested in the paper and informed strategies and training will be required to ensure that people are not refused assistance.
- The definition of clients with special needs should include people with acquired brain injury, or alternatively could be cast in terms similar to the definition of disability in s5 of the Disability Services Act 1992. The use of a screening device for people with a cognitive impairment may be of assistance.
- The Office of the Public Advocate is currently undertaking a research project in relation to the difficulties faced by parents with cognitive disabilities in the child protection system. The following issues have been identified: the need for representation for fathers, the need for funding of expert reports, the need to fund assistance to argue for meaningful contact regimes.
- Support recommendation 6, but need to consider assistance for respondents where applications are brought as a means of dealing with “challenging behaviour” of a person with a cognitive disability
- Support recommendations 8, 10, 14, 22, 23, 24.
- Does not support general legal representation in GAAT, however considers that it would be reasonable for LAQ to have the ability to grant aid for representation in appropriate matters.
- Does not support recommendation 12 in relation to special needs clients and their families, complex issues arise where homes are workplaces for paid workers.
- Recommendation 13 – inquests grant should include funding for relatives of a person with cognitive impairment who died “in care”.
- Recommendation 16 – the guideline in relation to dangerous prisoners should make particular reference to people with cognitive impairment

Mr Brian Hine, Acting Chief Magistrate

- The court would be assisted by the implementation of recommendations 1, 3, 4, 20, 21, 22 and 23
- The recommendations concerning people with intellectual, psychiatric and physical disabilities are consistent with the court’s current consultation about a “special circumstances” list in Brisbane
- The recommendations concerning child protection would assist the court.

SUMMARY OF RESPONSES – LEGAL AID QUEENSLAND CIVIL LAW REVIEW

- Recommendations 20 and 21 are of interest because of the decentralised nature of Queensland. The court would be assisted by recommendation 21 in relation to the civil needs of domestic violence clients in rural and remote areas.
- Recommendations 22 and 23 are of relevance to the court. Adequate representation saves time and costs and ensure the expeditious operation of the court's jurisdiction.

Guardianship and Administration Tribunal

- There is a need to protect the substantive rights of adults with impaired decision making as adults with impaired capacity are vulnerable and not reasonably able to protect themselves.
- While the bulk of matters in GAAT are dealt with expeditiously, there are more complex matters and LAQ should consider providing funding for representation upon request from GAAT.
- The call on LAQ resources would not be great as the requests from GAAT for representation are limited.
- LAQ should continue to provide separate representation of children in relation to chapter 5A matters concerning sterilisation of a child.
- The issue of separate representation of adults before GAAT remains unresolved.

Youth Advocacy Centre

- Systemic abuse of children through involvement in the care and protection system can be minimalised through appropriate direct and separate representation.
- Legal aid must be available to a child who requires both separate and direct representation in child protection proceedings and in the Children Services Tribunal. The number of matters which require direct and separate representation are limited by a child's age and their ability to express their views.
- Supports recommendation 4
- All children in domestic violence matters, whether they are applicants, respondents, or named in proceedings should be entitled to a grant of aid for legal representation.
- Supports recommendation 8 that aid should be provided to children in criminal injury compensation matters.
- YAC supports strategies to ensure that grants of aid before the Mental Health Review Tribunal are accessible and young people appearing before that tribunal should have access to a grant of aid.
- A grant of aid should be available for workers compensation matters for young people
- Children and young people need to be given special consideration for grants of aid for discrimination matters.
- Young people should have access to grants of aid to challenge administrative decisions about access to education.
- Children should be given special consideration for eligibility for general civil law grants of aid.

SUMMARY OF RESPONSES – LEGAL AID QUEENSLAND CIVIL LAW REVIEW

Integrated Indigenous Strategy Unit, Legal Aid Queensland.

- Support recommendation 2
- Support recommendations 3 and 4 in relation to child protection matters and notes that it is vital that Aboriginal and Torres Strait Islander children and their parents, who are over represented in the child protection system are afforded access to legal assistance, however the reference to the aboriginal placement principle in recommendation 4 should be replaced by “the proceedings relate to an Aboriginal or Torres Strait Islander child”
- Indigenous women seeking assistance in relation to domestic violence applications should be prioritised and the special circumstances should include where an applicant lives in a remote location.
- Recommendations 7 and 8 are supported, with the additional special circumstance in 8 of an adult applicant who was a child when the offence occurred.
- Support recommendation 12 and 14.
- The current guideline in relation to inquests should be amended to reflect the nature of indigenous families so that it includes applicants related by blood, kinship, marriage, or de facto relationship.
- Support recommendation 20 in relation to minor assistance and casework. Expanded casework should include child protection, domestic violence and anti-discrimination.
- Support recommendation 22
- Further work should be done with the disability sector as to the nature of legal issues and extent of legal need.
- Indigenous clients would benefit from a brief services unit, particularly in relation to government benefits and consumer protection. It would also assist the IISU lawyers to have this referral option.

Mr Paul Wonnocott, Senior Solicitor, Rockhampton Office, Legal Aid Queensland

- Supports recommendations 3 and 4. In relation to recommendation 4 there is a need to define “remote location” perhaps using the Accessibility /Remoteness Indicator or the Local Government Areas Distribution by Index of Relative Socio-Economic Disadvantage
- A grant of legal aid should be available for representation at Family Group Meetings convened by the Department of Child Safety.
- Endorses recommendation 10, but queries resource capacity of regional offices to provide a visiting duty lawyer service. Note recent disability forums conducted in four regional offices.
- Supports recommendations 16, 21 and 22 and sees a role for the Civil Screening Tool in child protection matters as these have benefits and housing consequences for clients.

Queensland Public Interest Law Clearing House Incorporated

- Three issues are of the utmost importance, namely: the importance of statistical data and research to give a true picture of the extent of demand and legal need in the delivery of all free and low costs civil law services in Queensland; the value of coordination of free and low cost

SUMMARY OF RESPONSES – LEGAL AID QUEENSLAND CIVIL LAW REVIEW

civil law services to ensure efficiency and effectiveness; and the role of the Civil Law Legal Aid Scheme (CLLAS) in increasing civil law services.

- The review is premature and should not be considered without adequate data to properly model and map existing services and need.
- There need to be institutional links and support at the highest levels of LAQ and formal mechanisms for ensuring communication and coordination. LAQ has been active in competing with CLCs and criticising CLCs for lack of direction, rather than providing leadership in the coordination of services.
- CLLAS offers an opportunity to enhance civil law casework if it is managed effectively and is so integral to consideration of civil law services, it should be considered with the other issues raised in the paper. This reinforces the view that the paper is premature.
- The paper does not provide enough information to give a full picture of current services and consequently any insight into civil law need and it is difficult to understand why some services are not provided.
- LAQ is not able to respond to the changing environment as quickly as CLCs and should focus its resources where they are most useful and ideally all services should work together to determine the best way of responding to need.
- LAQ does not appear to be mindful of opportunities which could enhance access to justice through better coordination of services.
- There is a need for research as a priority before any assumptions are made.
- Support the suggested approach of a poverty law focus, but it can only be effective if all civil law services are coordinated and alternative ways of doing things such as discrete task services are considered in depth.
- Support recommendation 1 with the addition “There are other circumstances where it is warranted in the interests of justice”.
- Support recommendation 2, however LAQ should work with Prisoners Legal Service and QPILCH Administrative Law Clinic to determine how best to coordinate services
- Support recommendations 3, 4 , 5, 16 and 17 as long as alteration is made as suggested in recommendation 1.
- Support recommendation 6, 18, 19, 20, 21, 22
- Criminal injury compensation could be excluded from funding in line with personal injury claims as damages are recoverable and private solicitors can conduct claims on a speculative basis with funding from CLLAS for medical reports, however if a grant is retained limitations in recommendations 7 and 8 are supported.
- Support recommendations 9,10 and 23 but recommend a strategy be developed in conjunction with Queensland Advocacy Inc, Prisoners Legal Service and other non legal agencies with an interest in mental health and disability.
- Support the first part of recommendation 11 subject to a coordinated approach with CLCs and QPILCH and suggest instituting other changes such as improved funding of outlays either directly through grants of aid to private practitioners and CLCs or through CLLAS

SUMMARY OF RESPONSES – LEGAL AID QUEENSLAND CIVIL LAW REVIEW

- Funding should be retained for workers compensation matters with refund to be made to LAQ if a common law claim succeeds or significant lump sum is received. A better approach would be to work with CLCs and others to undertake research, determine the aspects the various services should target, develop this as an area of expertise and explore establishment of a specialist CLC in employment law for disadvantaged workers.
- Support recommendation 13 and believe that all applications from family members of indigenous deceased should be assisted and there is a need to consider ways to broaden access to assistance.
- The antidiscrimination guideline should be amended to allow greater flexibility to take on work for representative groups and there should be greater resources at LAQ to undertake casework.
- There is a need for coordination in the area of consumer protection including developing a proposal to establish a consumer law centre.
- Civil confiscation of profits should be subject to means and merit testing.
- CLCs should be consulted and further research undertaken before establishing a Brief Services Unit.
- A more comprehensive review is required as the paper provides no financial information, no assessment of emerging need and little assessment of priority for new resources or reallocation of existing resources.
- LAQ holds an accumulated cash surplus. The opportunity provided by this surplus should not be lost by creating something new that that can over time put civil law services (both within and external to LAQ) on a more solid footing in the absence of more Commonwealth or State input. New resourcing will help address particular injustices or help in important areas not otherwise addressed. The surplus should seed innovation in CLCs in project work, casework and in operational ways so that new approaches to service delivery can be encouraged.
- A standing committee should be appointed of representatives of LAQ, CLCs (with separate representation by QPILCH) and Indigenous legal services and the state government with the specific function of coordinating all free and low cost civil legal services in Queensland and consultation groups on a range of issues should be established and should be resourced and supported by LAQ. The first task should be to identify existing research and data on all civil law services, emerging need and innovative schemes and projects and plan new research projects to gather necessary data where gaps are identified.
- Conduct a study of other mechanisms for delivering effective legal services at low cost to consumers, including discrete services and pro bono panels.
- Undertake a study of speculative services and barriers to them in conjunction with a review of CLLAS and, armed with new research, conduct a more comprehensive review of civil law services in Queensland
- Identify other potential sources of funding for coordination of services, corporate sponsorship of low level services such as provision of

SUMMARY OF RESPONSES – LEGAL AID QUEENSLAND CIVIL LAW REVIEW

information and telephone services, research funding and infrastructure.

- Create two new funds: a \$5 million fund from current LAQ surplus with the interest to be used for special public interest cases and innovative service delivery projects; a \$1 million fund allocated from the current LAQ surplus and augmented annually by the State Government in the amount of \$500,000 to fund important public interest environment cases.
- Explore the potential and develop proposals for the creation of new specialist community legal services in civil law areas such as consumer law and employment law.

Mr Greg Pohlmann, Senior Solicitor, Mackay Office, Legal Aid Queensland

- Targeting specific client groups is reasonable
- There should be no removal of merit testing at final hearing
- In assisting clients with psychiatric or intellectual disabilities who lack merit, limited representation could be provided at final hearings which protects the client's interests while not arguing substantive issues and explains outcome.
- In care and protection matters, no merit test should apply to negotiation and compulsory conference, but after that stage a merit test should apply
- There should be an overriding discretion to grant aid in domestic violence matters.
- Query availability of resources for recommendations 9,10,11,17.and 24
- Recommendation 18 would require an independent merit investigation
- A clear definition of minor assistance is required for recommendation 20.
- In relation to recommendation 22 a disability strategy could also focus on indigenous people and people disadvantaged by distance.

Immigrant Women's Support Service

- Women from Non English Speaking Backgrounds (NESB) have multiple, interrelated and interconnected personal current needs as well as diverse past experiences of migration and settlement. Women from new emerging communities are particularly vulnerable with limited female interpreters, limited resources in the community and compounded issues of unemployment, racism, and language skills. There can be barriers to knowing and understanding about legal rights and about domestic violence.
- In establishing criteria for access to services, the degree of social disadvantage needs to be clarified to include a prescriptive criterion as to how this is to be measured to ensure access by those who are most disadvantaged in the community. Consideration should be given to women with a history of domestic violence, people from NESB, people from indigenous communities and people with disability.
- Criteria need to ensure support and assistance for people who fall through the gaps of the legal system.

SUMMARY OF RESPONSES – LEGAL AID QUEENSLAND CIVIL LAW REVIEW

- The ability of a person to self represent needs to take account of capacity of those who are victims of domestic and/or sexual violence, people from NESB, people with disability and people from Indigenous backgrounds.
- In assessing criteria about complexity of the procedure and complexity of the case, prescriptive criteria should be developed and training to ensure objectivity and consistency should be given to those making decisions. Training should include understanding of domestic violence, sexual violence, issues and barriers for women from NESB who are victims of domestic and or sexual violence, issues and barriers for people from NESB and CALD and Indigenous backgrounds
- In decision making about access to services, priority should be given to victims of domestic and sexual violence, and indigenous people. There should be a mechanism to allow advocates to provide supportive evidence that informs the decision making process.
- Dedicated funding should be provided for domestic violence and child protection.
- Recommendation 1 - Special circumstances should include: victims of domestic violence, victims of sexual violence, women from NESB who are victims of domestic and/or sexual violence; people from NESB and CALD; Indigenous people, young people who are particularly vulnerable and marginalised, aged people who may be particularly vulnerable and marginalised, clear definitions of intellectual disability, clear definitions of mental health issues.
- In relation to child protection, the parent should have representation, aid should be available for variations and special circumstances should include the list as above
- In relation to recommendation 5, the “special need for protection” needs to refer to respondents as well as applicants. The special need should be defined by prescriptive criteria. The special circumstances should include the list as above and in addition, women where application is brought by police, particularly women from NESB where issues of communication significantly distort the representation and story of the woman, and women whose partner may be self-representing and would be cross-examining her in the process.
- Recommendations 7 and 8 are not supported. Victims of crimes related to domestic and or sexual violence should not be means tested.
- Support recommendation 10.
- Consideration should be given to training and resourcing to ensure collaborative practices with specialist multicultural services in the community.
- There should also be a focus on cross cultural practices and the use of professional interpreters.
- The consultation was not disseminated amongst the multicultural community of Queensland.

Queensland Domestic Violence Services Network

- Women and their children escaping domestic and or sexual violence are often rendered more financially disadvantaged when leaving violent relationships.
- In establishing criteria for access to services, the degree of social disadvantage needs to be clarified to include a prescriptive criterion as to how this is to be measured to ensure access by those who are most disadvantaged in the community. Consideration should be given to women with a history of domestic violence, people from NESB, people from indigenous communities and people with disability.
- Criteria need to ensure support and assistance for people who fall through the gaps of the legal system.
- The ability of a person to self represent needs to take account of capacity of those who are victims of domestic and/or sexual violence, people from NESB, people with disability and people from Indigenous backgrounds.
- In assessing criteria about complexity of the procedure and complexity of the case, prescriptive criteria should be developed and training to ensure objectivity and consistency should be given to those making decisions. Training should include understanding of domestic violence, sexual violence, issues and barriers for women from NESB who are victims of domestic and or sexual violence, issues and barriers for people from NESB and CALD and Indigenous backgrounds
- In decision making about access to services, priority should be given to victims of domestic and sexual violence, and indigenous people. There should be a mechanism to allow advocates to provide supportive evidence that informs the decision making process.
- Dedicated funding should be provided for domestic violence and child protection.
- Recommendation 1 - Special circumstances should include: victims of domestic violence, victims of sexual violence, women from NESB who are victims of domestic and/or sexual violence; people from NESB and CALD; Indigenous people, young people who are particularly vulnerable and marginalised, aged people who may be particularly vulnerable and marginalised, clear definitions of intellectual disability, clear definitions of mental health issues.
- In relation to child protection, the parent should have representation, aid should be available for variations and special circumstances should include the list as above
- In relation to recommendation 5, the “special need for protection” needs to refer to respondents as well as applicants. The special need should be defined by prescriptive criteria. The special circumstances should include the list as above and in addition, women where application is brought by police, particularly women from NESB where issues of communication significantly distort the representation and story of the woman, and women whose partner may be self-representing and would be cross-examining her in the process.
- Recommendations 7 and 8 are not supported. Victims of crimes related to domestic and or sexual violence should not be means tested.

SUMMARY OF RESPONSES – LEGAL AID QUEENSLAND CIVIL LAW REVIEW

- Support recommendation 10.
- Consideration should be given to training and resourcing to ensure collaborative practices with specialist multicultural services in the community.
- There should also be a focus on cross cultural practices and the use of professional interpreters.

Child Protection Unit, Legal Aid Queensland

- Child protection matters involve the power of a State institution against that of an individual. Given the importance of the decisions made it is imperative that parents have appropriate legal advice and representation. This is of particular importance to indigenous families who remain overrepresented in the child safety system.
- Feedback from the Children’s Court is that the cases which go to hearing are most often those where the parents are unrepresented and it is in the interests of children for parents to be legally represented.
- Legal representation should also be considered for parents in the Children Services Tribunal where a parent suffers from an intellectual disability or language difficulty.
- Where parents are appropriately represented, there is less need for adjournments and delays and this is in the best interests of the children.
- Funding could be diverted from juvenile justice matters where there is no risk of detention, as the decision about removal of children from their families has as significant an impact for their future as a criminal history.
- Recommendations 3 and 4 are supported with the proviso that recommendations say reasonable prospects of success “should” rather than “may” be suspended.
- In addition a special circumstances ground relating to domestic violence should be included “the applicant is involved in (or there is a likelihood of) a domestically violent relationship especially if an allegation of domestic violence has been made by a party to the matter and this has been relied on as grounds for the application for the child protection order” and “the applicant is a child and has been a child in the child protection system”.

Combined Women’s Refuge Group (South East Queensland)

- Women and their children escaping domestic and or sexual violence are often rendered more financially disadvantaged when leaving violent relationships.
- In establishing criteria for access to services, the degree of social disadvantage needs to be clarified to include a prescriptive criterion as to how this is to be measured to ensure access by those who are most disadvantaged in the community. Consideration should be given to women with a history of domestic violence, people from NESB, people from indigenous communities and people with disability.
- Criteria need to ensure support and assistance for people who fall through the gaps of the legal system.

SUMMARY OF RESPONSES – LEGAL AID QUEENSLAND CIVIL LAW REVIEW

- The ability of a person to self represent needs to take account of capacity of those who are victims of domestic and/or sexual violence, people from NESB, people with disability and people from Indigenous backgrounds.
- In assessing criteria about complexity of the procedure and complexity of the case, prescriptive criteria should be developed and training to ensure objectivity and consistency should be given to those making decisions. Training should include understanding of domestic violence, sexual violence, issues and barriers for women from NESB who are victims of domestic and or sexual violence, issues and barriers for people from NESB and CALD and Indigenous backgrounds
- In decision making about access to services, priority should be given to victims of domestic and sexual violence, and indigenous people. There should be a mechanism to allow advocates to provide supportive evidence that informs the decision making process.
- Dedicated funding should be provided for domestic violence and child protection.
- Recommendation 1 - Special circumstances should include: victims of domestic violence, victims of sexual violence, women from NESB who are victims of domestic and/or sexual violence; people from NESB and CALD; Indigenous people, young people who are particularly vulnerable and marginalised, aged people who may be particularly vulnerable and marginalised, clear definitions of intellectual disability, clear definitions of mental health issues.
- In relation to child protection, the parent should have representation, aid should be available for variations and special circumstances should include the list as above
- In relation to recommendation 5, the “special need for protection” needs to refer to respondents as well as applicants. The special need should be defined by prescriptive criteria. The special circumstances should include the list as above and in addition, women where application is brought by police, particularly women from NESB where issues of communication significantly distort the representation and story of the woman, and women whose partner may be self-representing and would be cross-examining her in the process.
- Recommendations 7 and 8 are not supported. Victims of crimes related to domestic and or sexual violence should not be means tested.
- Support recommendation 10.
- Consideration should be given to training and resourcing to ensure collaborative practices with specialist multicultural services in the community.
- There should also be a focus on cross cultural practices and the use of professional interpreters.

First Advice Contact Team, Legal Aid Queensland

- General support for the philosophy of the recommendations, but concern that advice lawyers may be called upon to make complex assessments about access to further services which may increase advice times

SUMMARY OF RESPONSES – LEGAL AID QUEENSLAND CIVIL LAW REVIEW

- Concern that realistic amount of time be allowed for intake for brief services and delivery of those services so that meaningful service can be provided without additional demands on existing advice service.

Domestic Violence Unit, Legal Aid Queensland

- Support for the focus on provision of targeted legal services to targeted groups and provision of additional services to those who suffer significant disadvantage.
- The implementation of additional criteria for civil legal services is not supported as it may produce additional barriers to marginalised people and in particular, victims of domestic violence. This creates wider discretion for grants officers and would lead to further inconsistency in decisions.
- If such criteria are to be adopted, they require to be more closely defined so that there is an organisational understanding of what the criteria mean. Changes would also be required to the legal aid application form and assistance should be provided to clients to complete the form, and clients should need to satisfy only one criterion.
- Legal aid should not be refused to a client identified as disadvantaged without reference to a legal officer practising in the area.
- LAQ should implement a “Legal Aid Telephone Application” so that clients could apply for aid over the phone as part of legal advice.
- Recommendation 5 seeks to limit the number of grants and make funding more difficult to obtain and introduces a stringent and subjective test.
- The very nature of a Domestic Violence Order Application revolves around the fact that the client’s safety has been compromised. They are at risk and the act of making an application creates a higher risk. The applicant is required to attend court and expose themselves to the source of the risk. All forms of abuse are serious and any form of domestic violence is equally detrimental. Legal representation decreases the risk to safety. If a client does not get representation, they may not continue with the proceedings, return to the perpetrator and not be eligible for government and or other assistance.
- Any person who has suffered domestic violence and needs a protection order has special needs for protection.
- All domestic violence matters contain complex matter of fact and law.
- A catch all provision of special circumstances is supported and should include: elderly, children, NESB, CALD, mentally ill, those suffering an illness which affects their ability to represent themselves. The proposed changes are offensive to LAQ’s policies of access to justice and natural justice and could be considered discriminatory as clients seeking assistance with criminal law matters are not required to go through as many hoops as clients seeking assistance in civil law. LAQ would be acting inconsistently with other government agencies which prioritise victims of domestic violence.
- While any change from the current guideline is opposed, if there is to be a change the following is submitted:
 - *the applicant has “special needs” for protection which may not be adequately addressed without legal representation, or*

SUMMARY OF RESPONSES – LEGAL AID QUEENSLAND CIVIL LAW REVIEW

- Special needs defined as
 - Need to have children listed
 - Need for no contact provisions
 - Need to obtain order for items owned by the applicant to be collected from a place where the Respondent is
 - Need for an ouster order
 - Any other matter which is a special need and outside the 2 “standard conditions”
- ~~the matter includes complex issues of law or fact, or~~
- there are issues in dispute which will be relevant to potential or current proceedings about children, or
- a special circumstance exists. Special circumstances include:
 - The applicant has a language or literacy problem
 - The applicant has an intellectual, psychiatric or physical disability.
 - Serious consequence to the client of the legal matter including social and legal consequences
- There should be a short grant of aid to allow negotiation with the respondent where the client would be at a distinct disadvantage.
- There should be a grant of aid for counsel in complex matters.
- Training should occur within LAQ so that the perspectives of a survivor of domestic violence are understood by grants officers throughout Queensland
- Support recommendations 3 and 4. The reasonable prospects of success test should be removed altogether or its definition widened to include prospects of limiting the scope of orders or obtaining orders such as contact which promote the parent’s involvement. The list of disadvantaged persons should be expanded to include victims of domestic violence and other marginalised groups.

Women’s Legal Aid, Legal Aid Queensland

- The Civil Law Review is premature and does not coordinate with research project timelines.
- The idea of targeted services for targeted groups is supported especially for women experiencing domestic violence.
- Domestic violence, age, cultural identity/ cultural factors and disability should be included as additional social indicators.
- Concern about the implementation of criteria proposed and scope for inconsistent interpretations by grants officers. Discretion should be minimised so as to prevent biased assessment and training should be provided to grants officers
- Funding for domestic violence matters should be administered on a state wide basis so there are not anomalous results across regional areas due to pressure on regional budgets.
- There is a concern that an increase in funding for child protection and / or adoption of any new initiatives may result in a decrease in funding for domestic violence. Funds should be earmarked for each area of law
- Cultural identity, cultural factors, victims of domestic violence and young parents aged between 18 and 25 should be included to further describe “special circumstance”

SUMMARY OF RESPONSES – LEGAL AID QUEENSLAND CIVIL LAW REVIEW

- Support for recommendation 3 and it should be extended to include representation of parents with an intellectual disability in the Children Services Tribunal.
- The proposed change to the guideline for aid for domestic violence matters is opposed because it requires grants officers to make a social assessment which they are not trained to carry out.
- The guideline for domestic violence should be amended by adding that aid can be granted where a temporary order has been made by a Court or to assist with the drafting of an application where a special circumstance exists.
- The current guideline in relation to respondents should be amended by adding that aid should be granted where there is a history of domestic violence against the respondent supported by independent evidence.
- Alternatively the proposed guideline should define domestic violence to include emotional and psychological well being and the term safety should include all forms of domestic violence both actual and threatened.
- Support for recommendations 7 and 8 with recognition that the remoteness criteria take account of the fact that access to legal services in a small town can be difficult due to conflict of interest issues.
- Recommendations 9,10 and 11 are supported and recommendation 10 should include consultation with the Public Advocate and consumer consultants.
- Aid should be made available for clients to oppose applications in GAAT where the application is brought by the other party when domestic violence is an issue.
- Legal Aid should be provided to all applicants for representation in the Anti-Discrimination Commission and merit testing should only be conducted at the Tribunal stage.
- The proposed Civil Law Screening tool and Brief Services Unit are supported but should be funded from additional sources rather than at the cost of other services.

Environmental Defenders Office (Qld) Inc and Northern Qld Inc

- The six civil law services provided by Legal Aid Queensland do not address any form of public interest environmental matters.
- The only public interest environmental legal services in Queensland are the two Environmental Defenders Offices, in Cairns and Brisbane respectively. Those offices classify as poorly funded. Commonwealth funds may not be used for “litigation” hence less than half of those solicitors’ time may be spent on litigation.
- Compare those two part time lawyers working on litigating public interest environmental issues to our estimate for Queensland of 60 lawyers working for private developers keen to exploit the environment with big tax deductible budgets. We desperately need more funding for public interest Planning and Environmental law to address this overwhelming imbalance.

SUMMARY OF RESPONSES – LEGAL AID QUEENSLAND CIVIL LAW REVIEW

- As there have been no grants of Legal Aid for environmental matters for over 13 years, needy clients in our experience do not bother applying to Legal Aid Queensland.
- With great effort, the EDO offices might run 2-3 main cases each per year for clients with assistance from the Barristers operating pro bono or at reduced rates. Barristers cannot “spec.” cases in the Planning and Environmental Court, the usual jurisdiction for environmental cases in Queensland, as it is a “no costs” jurisdiction.
- We estimate that over the State there are over 20 excellent cases per year with a willing and able client which fail due to lack of resources (and many more worthy cases with no clients). The failure to run those cases leads to irreparable social and environmental degradation.
- All Legal Aid Offices are stretched for funds and have the difficult decision as to where to grant aid and where not. In NSW there is a system where the State Legal Aid office makes grants of environmental legal aid. NSW has traditionally lead Australia in terms of public rights in the environmental laws.
- However Queensland needs environmental legal aid more than any other State. Queensland has a spectacular natural environment of international importance, problems of rapid growth and air pollution, especially in South-East Queensland (SEQ has the fastest growing population in Australia). Referrals to the Commonwealth under Commonwealth Environmental legislation for assessment of development proposals with impacts on Commonwealth environmental matters are consistently higher for Queensland than the number of referrals for any other State.
- That the Guidelines or eligibility for the Civil Law Legal Aid Scheme should be amended to include public interest environmental and planning cases, including test cases. That for such cases, there is: 1. no requirement that the court has power to award costs; 2. no means test; 3. the outlays that may be paid include such things as experts’ fees and part barristers’ fees; and 4. A cap on the total outlays granted under this category per annum.
- We ask LAQ in conjunction with the State Attorney-General to make a grant to the fund sufficient to ensure that each year the total granted outlays under this public interest environmental category may total \$270,000. That figure will enable between 8-10 important public interest environmental cases to be run.

Q-COMP – Queensland Workers’ Compensation Regulatory Authority

- Q-Comp provides information on the operation of the current Queensland workers’ compensation scheme to assist the review.
- Legal representation at a Medical Assessment Tribunal is not required and is a personal choice for the worker
- The following table provides statistics regarding representation of workers at Medical Assessment Tribunals.

SUMMARY OF RESPONSES – LEGAL AID QUEENSLAND CIVIL LAW REVIEW

MATs Representation

Outcome Year	None	Legal representative present at the Tribunal	Union representative present at the tribunal	Total
2002-2003	2982	616	60	3658
2003-2004	2426	936	121	3483
2004-2005	2347	547	55	2949

- A worker has the right to engage the services of a solicitor to assist in the preparation of her / his application to Q-COMP's Review Unit. In these instances any associated expenses must be met by the worker.
- If either party (i.e. employer or worker) is aggrieved by Q-COMP's review decision, they can appeal that decision by lodging a Notice of Appeal at the Magistrates Court.
- Provisions introduced by the *Workers' Compensation and Rehabilitation and Other Acts Amendment Act 2004* and yet to be proclaimed, will also allow a choice of appealing against review decisions to the Queensland Industrial Relations Commission as an alternate to the Industrial Magistrate.
- The following table provides statistics regarding representation of workers in the Review process via Q-COMP and in the appeals process via the Magistrate's Court.

Review Representation

Decided Year	None	Solicitor firm attached to the review	Union Attached to the review	Total
2002-2003	1546	619	112	2277
2003-2004	1702	695	66	2463
2004-2005	1561	776	109	2446

Appeal Representation

IM Outcome Year	Solicitor firm attached to the Appeal	Self / None Representation	Total
2002-2003	359	52	411
2003-2004	314	57	371
2004-2005	407	62	469

- Since 2000, Q-COMP has provided funding to four peak worker and employer bodies with the original objective being to facilitate the establishment of a workers' compensation advisory service to enhance the knowledge and understanding of employers and workers of the review, appeals and Medical Assessment Tribunal processes. In 2004, the focus of the advisory services shifted to providing readily available, current, broad-based information on the scheme, in general, and statutory claims and rehabilitation, in particular. In providing information services, the representative bodies offer a comprehensive avenue for education and support through the dissemination of

SUMMARY OF RESPONSES – LEGAL AID QUEENSLAND CIVIL LAW REVIEW

information, publication of booklets, presentation of seminars, informative websites and the provision of toll-free telephone services.

Women's Legal Service

- Many women are refused legal aid because they do not have adequate advice or assistance when completing their application. Changes to the application form and a grant of aid to preferred suppliers to assist clients to apply for aid would overcome this problem so that applicants for aid in domestic violence and child protection do not have additional barriers and so that resources are not wasted on the appeal process.
- Training and safeguards should be introduced to ensure consistent decision making by grants officers. Grants should be cross checked by an experienced officer.
- Meaningful cross cultural training should be undertaken across all levels of service provision at LAQ.
- A consultation and review should be undertaken to ensure that the allocation of the grants budget across particular geographical areas, areas of law and levels of disadvantage provide the greatest level of protection for the most disadvantaged in the community, particularly those whose safety is at risk.
- Adequate funding should be provided for interpreters where necessary.
- Recommendations in relation to the in house civil justice practice are supported. Resourcing must be available to ensure that the recommendations are effective and do not impact negatively on other services.
- Further consultation is required in relation to recommendation 23 and this should not be considered in isolation from the competing need for a strategy for CALD clients.
- Recommendations 22, 23 and 24 need clear and specific links to LAQ services in child protection, domestic violence and family law.
- Consultation and research is required to ensure that LAQ access strategies are tailored to address social exclusion, ensure accessibility for and to best meet the needs of the groups of people that civil legal services are targeted towards.
- The proposed structure of criteria, special circumstances and guidelines for funding creates some confusion and uncertainty. They should be replaced by a statement of priorities for funding, the criterion of "degree of social disadvantage" together with a list of factors to be taken into account in the assessment of criteria for assistance namely:
 - The applicant lives in a remote location
 - DV is in any way connected to the proceedings
 - Sexual violence is in any way connected to the proceedings
 - The applicant is in prison
 - The applicant identifies as Aboriginal or Torres Strait Islander
 - The proceedings relate to a child who is subject to the "Aboriginal placement principle"
 - The applicant identifies as coming from a CALD background
 - Mental health is an issue or the applicant identifies as having a mental illness
 - The applicant is less than 18 years or over 50 years.

SUMMARY OF RESPONSES – LEGAL AID QUEENSLAND CIVIL LAW REVIEW

- any other fact or circumstance that, within the discretion of the grants officer, the grants officer considers amounts to a special circumstance
- Geographic location should not be given a level of priority that disadvantages other applicants
- The needs assessment criterion should be based on empirical data which is made publicly available.
- The capacity to self represent should only be taken into account for clients who fall outside the criteria of social disadvantage and list of factors.
- The seriousness of the consequences to the applicant must be given sufficient weight and should include personal consequences
- The complexity of the proceedings should include consideration of the risk that an applicant will need to cross-examine a party who has perpetrated violence or abuse against them, or where there is a power imbalance.
- Prospects of success and prospects of recovery should have limited weight and no weight in domestic violence proceedings.
- Highest priority should be given to domestic violence and child protection
- High priority should also be given to criminal injuries, mental health, discrimination and inquests where there is the possibility of a criminal charge or where domestic violence is an issue which must be taken into account in the death.
- The legal aid application form needs to be modified to better ensure that disability and other relevant factors are disclosed. Consultation should occur about how disability is assessed.
- Specific funds must be set aside for domestic violence so that women are not disadvantaged by funding for other areas including child protection. If the funds set aside are fully utilised then general funds should be able to be accessed if available. There should be no cap to funding and aid should be granted through to conclusion including cross applications. Aid should always be granted so that a woman does not have to cross-examine a perpetrator. Safety must clearly include psychological, emotional and physical safety. Aid should be given to women respondents when it is clear they are not the primary aggressor.
- The LAQ specialist unit in domestic violence must be retained.
- Specific funds must be set aside for child protection so that women are not disadvantaged by funding for other areas. Aid should always be granted so that a woman does not have to cross examine the Department. Aid should be available for variation as well as revocation. Grants of aid should be available for negotiation before proceedings commence. There should be no cap to funding and aid should be granted through to conclusion.
- Recommendation 3 should be altered so that a parent can be represented in the Children Services Tribunal in those matters where there are issues about the parent's capacity to understand the proceedings.

SUMMARY OF RESPONSES – LEGAL AID QUEENSLAND CIVIL LAW REVIEW

- Recommendation 4 should be amended so that the merit test must be suspended.
- Recommendation 8 should remove the requirement about speculative matters. Factors such as those outlined in relation to domestic violence should be included in special circumstances so as to better meet the needs of victims of domestic violence and sexual violence.
- Mental health should be a consideration in relation to all applications for aid.
- Aid should be provided for representation of family members before GAAT and further consultation should be undertaken in relation to this matter with Caxton Legal Service and Queensland Advocacy Inc.
- Factors such as those outlined in relation to domestic violence should be included in special circumstances so as to better meet the needs of victims of domestic violence and sexual violence in relation to discrimination matters. The requirement for “strong prospects of substantial benefit” should be changed to “reasonable prospects”.
- Recommendation 17 should remove the requirement about speculative matters.
- LAQ’s failure to provide assistance in immigration matters requires urgent review
- In relation to general civil actions, the same criteria as set out above should apply.

Stephen Keim, Barrister-at-Law

- Support the submission made by QPILCH
- Endorse the call for better and more in-depth information on need for legal services and information should be maintained and reviewed so that trends are identified at an early stage
- Endorse the call for co-ordination to occur between LAQ and other deliverers of legal assistance, particularly CLCs and recognising the partnership status of CLCs. The knowledge and expertise of CLCs should be drawn upon when strategic decisions are made about service delivery and need recognition. Existing and potential CLCs should be considered as a means of addressing unmet need.
- The establishment of the two funds as proposed by QPILCH from LAQ reserves would be an initiative of great strategic significance. The funds should be created using Foundation structures and operated by independent boards with expertise.