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The Legislative Assembly for the Australian Capital Territory

Legal Aid Commission (ACT) Submission To Public Accounts Committee Inquiry

Auditor-General's Report No. 9, 2012 Grants of Legal Assistance

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Grants of legal Assistance

1. Executive Summary

The ACT Auditor-General makes 10 recommendations in the performance audit report into grants of legal assistance.

This submission contains the Legal Aid Commission's response to the audit findings and recommendations.

The Commission has accepted, with some qualification, all recommendations in the audit report.

2. Background

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

The audit criteria, approach and method are in Appendix A (page 69) of the audit report.

Audit field work commenced in December 2011 and was completed in August 2012.

A short delay in field work occurred as a result of doubt about the Auditor-General's power to access Commission records containing information concerning the affairs of individuals the privacy of which is protected by section 92 of the *Legal Aid Act 1977*. The doubt was resolved by the Commission, with the Attorney-General's approval, appointing the Auditor-General as a prescribed person for the purpose of an inquiry under Part 12 of the Legal Aid Act.

The audit report was circulated out of session on 20 November 2012.

3. Audit Conclusions

Based on the audit findings the Auditor-General drew the following conclusions:

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

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

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

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

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

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

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

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

4. Legal Aid Commission Position on Audit Recommendations

The Audit Report contains 10 recommendations to address audit findings and assist the Commission in further improving its business practices related to grants of legal assistance. The audit recommendations and the Commission's responses to them are set out below.

Recommendation 1

The Commission should improve its strategic and operational planning by:

(a) *recognising and incorporating key requirements and deliverables of the National Partnership Agreement on Legal Assistance Services in its Strategic Plan and Operational Plan;*

(b) *linking the goals and strategies identified in its strategic and operational plans with its annual Statement of Intent, including key performance indicators identified in the annual Statement of Intent (which are reported in the annual Statement of Performance); and*

(c) *clearly identifying roles, responsibilities and accountabilities for specific goals and strategies in its Operational Plan.*

Commission response

(a) The Commission agrees with this recommendation but notes that its Strategic Plan for 2008-2012 was developed two years before the commencement of the National Partnership Agreement on Legal Assistance Services (NPA) in July 2010 and that the goals and strategies in the strategic plan are consistent with those in the NPA. Since the commencement of the NPA did not require a change in its strategic directions the Commission did not consider it necessary to amend the strategic plan to include reference to the NPA. The Commission is incorporating reference to the NPA in its strategic plan for 2013-2017 which is currently being drafted.

(b) The Commission agrees with this recommendation and will link its Statement of Intent for 2013-14 with its strategic and operational plans.

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

Recommendation 2

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

Commission response

The Commission agrees with the recommendation and notes that when complaints reveal business practice deficiencies appropriate corrective action is taken. In future, any action taken to correct business practice deficiencies will also be recorded in the Commission's Complaints Register.

Recommendation 3

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

Commission response

The Commission agrees with the recommendation in principle and is reviewing whether it is appropriate, having regard to the provisions of the *Legal Aid Act 1977*, to develop additional assessment criteria for application of the reasonableness test.

The reasonableness test guidelines adopted by other legal aid commissions are currently being reviewed and a recommendation in relation to the appropriateness of additional assessment criteria will be made to the Commission's board in February 2013.

Recommendation 4

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

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

Commission response

The Commission agrees with the recommendations but notes that the files checked by Audit on which this finding was based related to applications for assistance processed prior to 30 June 2011.

The Commission has taken steps since June 2011 to improve administrative processes and compliance including implementing its new on-line grants management system, eGrants. Accordingly, the sample of files selected by Audit did not reflect current practice.

As a result of the recommendations the Commission is taking further steps to improve the documentation of means and reasonableness testing. This includes developing in eGrants an automated means testing function and provision for recording means and reasonableness test results (including circumstances where the tests are not applied such as grants for the separate representation of children in family law or care and protection proceedings). Pending these eGrants enhancements additional documentation of eligibility testing has been implemented.

Recommendation 5

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

Commission response

The Commission agrees with this recommendation and notes that a revised *Contributions Assessment & Recovery Policy & Procedure* was implemented in April 2012. The new policy and procedures is enhancing the recovery of contributions by ensuring that contributions are levied and recovered when it is equitable and cost-effective to do so.

Recommendation 6

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

Commission response

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

A meeting has been scheduled in late January 2013 with members of the review committee panel to discuss the audit findings and seek their cooperation in improving the documentation of reasons for decisions.

The reconsideration process is already comprehensively documented.

Recommendation 7

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

Commission response

The Commission agrees with the recommendation. Audit found that while there was no evidence that decisions concerning the allocation of grants between private practice lawyers and the Commission's Legal Practice were inappropriate, or not in compliance with the legal assistance guidelines, there was insufficient evidence to support the decisions made and to provide evidence that the Allocation of Work Guidelines were complied with.

Pending the development of enhancements to eGrants to include fields for recording application of the Allocation of Work Guidelines, the Commission has improved the documentation of work allocation decisions.

Recommendation 8

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

Commission response

The Commission agrees with the recommendation. As noted in paragraph 5.27 of the Audit Report the Commission has commenced risk-based compliance audits of private practice lawyers' files and is currently reviewing the audit methodology to ensure that it addresses areas of greatest risk. The Commission will conduct regular risk-based compliance audits of both private practice lawyer and in-house Legal Practice files.

Recommendation 9

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

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

Commission response

(a) The Commission agrees with this recommendation and notes that it has always been the intention to manage all grants through the eGrants system. A portal to give the in-house Legal Practice access to eGrants has been developed and implemented.

(b) The Commission agrees with this recommendation but notes that it is important to balance the requirement for progress reports with the need to minimise the administrative overhead cost of handling legally assisted cases. In most cases the need for progress reports is satisfied through the provision of information supporting requests for extensions of assistance, or reports on case outcomes. Reporting protocols for in-house cases will be built into the Commission's proposed new Legal Aid Management Information System which is currently in the early stages of development. In the meantime, arrangements have been made for copies of the reporting letters sent to clients when cases are completed to be placed on the Client Services file which will satisfy the requirement for a report on case outcomes.

Recommendation 10

The Commission should:

(a) develop a costing model for its Legal Practice services (e.g. hourly charge-out rates) which should facilitate an accurate assessment of the cost of providing legal services by the Commission; and

(b) use this as a basis for developing measures of service efficiency, which can then be used as a basis for benchmarking and cost comparison.

Commission response

(a) The Commission agrees with the recommendation to develop a model for measuring the cost of its Legal Practice services. As noted in paragraphs 5.6 and 5.12 of the Audit Report the development of such a system was part of the Commission's Strategic Plan for 2008-2012. However, due to the limited resources available to the Commission for major systems improvement projects, the Commission gave priority to projects that offered the greatest potential for efficiency gains (eGrants) or for improving service quality and outcomes (new legal aid panel arrangements and the implementation of measures of service effectiveness).

Having completed these projects the Commission is commencing the development of an integrated Legal Aid Management Information System (LAMIS). LAMIS will incorporate a model for measuring service costs.

(b) There is qualified agreement with this recommendation. The Commission agrees that the costing model should be used for developing measures of service efficiency for use for internal management and benchmarking purposes, but a note of caution is sounded in regard to cost comparisons.

Comparing the cost of services provided by private lawyers and lawyers employed by legal aid commissions (salaried lawyers) has been the subject of research and reports over the past 30 years but an acceptable methodology for accurately calculating and comparing the cost of delivering the same types of services through salaried and private lawyers has yet to be developed. Given the complexity of the exercise it would be important before embarking on it to be confident that the usefulness of the data obtained justified the expense of obtaining it.

The assumption underlying the reference to cost comparison in the recommendation is that comparative cost data would be a measure of comparative efficiency and that this information could be used to inform decisions about the allocation of work between private and salaried lawyers. However, the cost of providing a service is only part of the efficiency equation. An efficient service is one that provides the desired service outcome at the least cost. The quality and effectiveness of a service are therefore relevant to an evaluation of service efficiency.

Cost comparisons only measure one aspect of service efficiency and factoring in measures of service quality and effectiveness would add further complexity and cost to the exercise.

An important issue for the Commission will be whether the benefits of undertaking a complex and costly comparative exercise will justify the time and expense involved. The ultimate purpose of the exercise would be to ensure, consistent with the Commission's statutory responsibilities, that legal assistance is provided in the most effective and efficient manner. This raises the question of whether the Commission's limited resources would be more productively invested directly in improving service efficiency, rather than in measuring comparative efficiency. While measuring comparative efficiency would identify less efficient services it would not provide a means of improving the efficiency of those services.

The key to improving the efficiency of services is improving work practices. In a legal services context this means investing in staff skills development and providing case and information management systems to support service delivery. Improving work practices through skills development enables staff to provide better quality services without wasting time or effort.

Once a costing model has been developed as part of the LAMIS project the Commission will use the costing data obtained, in conjunction with other measures, to ensure that legal assistance services are provided in the most effective and efficient manner.