

INFORMATION NOTE

Interim report on "The legal aid systems in selected places"

1. Introduction

1.1 Background

1.1.1 At its meeting on 28 January 2008, the Panel on Administration of Justice and Legal Services requested the Research and Library Services Division to conduct a research on the legal aid systems in selected places. The research covers the governance, financing, coverage, eligibility, and delivery of legal aid services in the selected places.

1.1.2 The places selected for this research are England and Wales of the United Kingdom (UK), the Province of Ontario of Canada and the State of New South Wales (NSW) of Australia. This note is an interim report of the research, providing information regarding the governance and finance of the selected legal aid systems as well as their major development/reform in recent years. Tables 1-4 (on pages 26-29) provide a brief summary of the information presented in this note. The whole research is expected to be finished by October 2008.

2. England and Wales of the United Kingdom

2.1 Development of the legal aid system

2.1.1 In 1944, Lord Rushcliff was appointed to lead a departmental committee to examine the question of access to justice. The committee recommended a system under which barristers and solicitors in private practice would be paid by the state to provide legal advice services. The Rushcliff Committee's recommendations formed the basis of the *Legal Aid Advice and Assistance Act 1949*, which has become the foundation of the modern legal aid system in the UK.

2.1.2 The legal aid system under the *Legal Aid Advice and Assistance Act 1949* initially covered matrimonial cases in the higher courts only. It was later extended to other areas of civil work and, in the early 1960s, to proceedings in the county courts and magistrates' courts. The scheme was controlled by the Law Society rather than by a government department or body, but the Lord Chancellor had ultimate political responsibility for it.

2.1.3 Throughout the 1950s, there was a phased introduction of separate schemes for the provision of both civil and criminal legal aid. Although initially only a handful of cases were funded and the situation remained virtually unchanged in the 1960s, the number of people receiving help via those schemes had increased. Advice on matters of social welfare law and other cases heard by tribunals was largely excluded from the scheme. Nonetheless, from the 1970s onwards, the growing network of law centres became involved in the provision of legal aid.

2.1.4 From the 1970s to the mid-1980s, legal aid was expanded to include an advice and assistance scheme, as well as duty solicitor schemes in magistrates' courts and police stations, resulting in a rise in the proportion of the entire legal aid budget spent on criminal matters.

2.1.5 Up until the passing of the *Legal Aid Act* in 1988, responsibility for legal aid lay with the Law Society. In 1988, the legal aid system was formalised and bought under the control of the central government through the establishment of the Legal Aid Board. With some exceptions, the Legal Aid Board was given responsibility for the funding of all the legal aid work paid for by the state. In the early 1990s, the Legal Aid Board began developing a scheme of franchising suppliers of legal services, whose practice management and case management system met the Board's quality standards.

2.1.6 In 1997, the UK government adopted a wide-ranging review of the provision of state-funded legal services, which was extended to cover advice providers (including part of the voluntary sector) funded from other sources. On 2 December 1998, the UK government published its white paper *Modernising Justice*¹, and simultaneously the *Access to Justice Bill* was presented to the House of Lords.

2.1.7 The *Access to Justice Act 1999 (AJA)* received Royal Assent in July 1999, and has become the most significant piece of legislation affecting legal aid since the creation of the scheme. Under *AJA*, the Legal Aid Board was abolished, the Legal Services Commission (LSC) was established, and the whole system of funding and regulating legal aid was redrawn.

2.2 Governance and finance

Regulatory framework

2.2.1 Established in April 2000 under *AJA*, LSC runs the legal aid scheme in England and Wales. Part I of *AJA* deals with the reform of the legal aid system. Other parts of *AJA* deal with private methods of funding litigation; the provision of legal services; the handling of complaints about lawyers; appeals, courts, judges and court proceedings; magistrates and magistrates' courts; and immunity from legal action and costs and indemnities for certain officers exercising judicial functions.

¹ Lord Chancellor's Department (1998).

2.2.2 Section 1 of *AJA* establishes LSC and makes provision for appointments of its members. Further provisions about LSC are in Schedule 1 to *AJA*, covering LSC's legal status; members' tenures and remuneration; staff arrangements; administrative budget; audit and reporting procedures.

2.2.3 Section 3 of *AJA* empowers LSC to perform its functions, including the powers to enter into any contract, make grants, make loans, invest money, promote or assist in the promotion of publicity relating to its functions, undertake any relevant inquiry or investigation and provide the Lord Chancellor pertinent advice.

2.2.4 *AJA* establishes two separate schemes for funding services in civil and criminal matters. They are the Community Legal Service (CLS) and the Criminal Defence Service (CDS).

2.2.5 CLS is a network of organisations which funds, provides and promotes civil legal and advice services. Section 4(2) of *AJA* prescribes these services as ranging from the provision of general information about the law and legal services to the provision of assistance towards preventing or resolving disputes and enforcing decisions which have been reached.

2.2.6 The CLS Fund is used to secure the provision of appropriate legal services, within the resources made available to it and according to priorities. Section 8 of *AJA* provides for LSC to prepare the Funding Code, which sets out the criteria for determining whether services funded by the CLS Fund should be provided in a particular case, and if so, the appropriate services to be provided.

2.2.7 Section 12 of *AJA* requires LSC to establish, maintain and develop CDS, for the purpose of ensuring that individuals involved in criminal investigations or criminal proceedings have access to advice, assistance and representation as the interests of justice require.

2.2.8 *AJA* also extends the ambit of conditional fee arrangements². Extending conditional fees to all civil, but not family, cases had been considered by the UK government as a means to narrow the scope of civil legal aid, prior to the enactment of *AJA*³. Sections 27 to 31 of *AJA* reform the law relating to conditional fees, enabling the court to order a losing party to pay, in addition to the other party's normal legal costs.

² Conditional fee agreements, also known as 'no win, no fee', are alternative methods of funding litigation. In this type of funding, the solicitor concerned shares the risk in that if a case is lost, the solicitor will not be paid, but if the case is won, the solicitor will charge a success fee.

³ The Lord Chancellor's Department consultation paper entitled "*Access to Justice with Conditional Fees*" published in March 1998 set out the UK government's plans for a phased approach to extending conditional fees and narrowing the scope of civil legal aid.

Independence

2.2.9 LSC is a non-departmental public body (an independent public agency) sponsored by the Ministry of Justice (MoJ)⁴ and is accountable to the Lord Chancellor. LSC has the legal status of a body corporate and does not carry out its functions on behalf of the Crown.⁵ Subject to the provisions of *AJA*, LSC may do anything which it considers is necessary or appropriate for the discharge of its functions⁶, and regulate its own proceedings⁷.

Appointment

2.2.10 The law requires that LSC shall consist of not fewer than seven and not more than 12 members. The Lord Chancellor may by order change the number of members of LSC. All LSC members are appointed by the Lord Chancellor in accordance with the "*Code of Practice*" issued by the Commissioner for Public Appointments.

2.2.11 The Lord Chancellor will appoint one of the LSC members to be the Chair of LSC. The Chair is appointed for up to five years, and may be re-appointed subject to satisfactory performance. The other terms and conditions of the appointment are determined by the Lord Chancellor.

2.2.12 At present, LSC has a Chair and 10 non-executive members. The non-executive members, who work part-time, are appointed by the Lord Chancellor following an open, competitive selection process. On appointing members of LSC, the Lord Chancellor is required to have regard to the desirability of securing that LSC includes members who (among them) have experience in or knowledge of providing legal aid services, work of the courts, consumer affairs, social conditions and management.⁸

2.2.13 The Lord Chancellor may terminate the appointment of a LSC member if it is satisfied that the member has become bankrupt, is unable to carry out his duties because of illness, has been absent from LSC meetings for a period longer than six months without permission, or is unable or unfit to discharge the functions of a LSC member.⁹

⁴ MoJ was created on 9 May 2007 by merging the former Department of Constitutional Affairs with the National Offender Management Service and the Office for Criminal Justice Reform.

⁵ Section 2, Schedule 1 of *AJA* provides that:
"The Commission shall not be regarded –
(a) as the servant or agent of the Crown, or
(b) as enjoying any status, immunity or privilege of the Crown;
and the Commission's property shall not be regarded as property of, or held on behalf of, the Crown."

⁶ Section 3(1), *AJA*.

⁷ Section 12(1), Schedule 1 of *AJA*.

⁸ Section 1(5), *AJA*.

⁹ Section 5, *AJA*.

Relationship with the executive branch

2.2.14 LSC's relationship with MoJ is specified in a framework document, which is an open document.¹⁰ The document is made up of two sections: the Management Statement and the Financial Memorandum. The Management Statement sets out the broad framework in which LSC operates, including:

- (a) LSC's overall aims to support MoJ's wider objectives and the Public Service Agreement¹¹ targets;
- (b) rules regarding LSC's functions, duties and powers;
- (c) how public funds are paid to LSC;
- (d) how LSC has to account for its performance; and
- (e) relationship between the Secretary of State, MoJ and LSC.

2.2.15 The Financial Memorandum sets out in greater detail certain aspects of the financial provisions which LSC must observe. Nevertheless, both the Management Statement and the Financial Memorandum do not convey any legal powers or responsibilities.

2.2.16 The Lord Chancellor is the Minister responsible for LSC, bearing the following responsibilities:

- (a) approving strategic objectives and the policy and performance framework within which LSC operates;
- (b) keeping Parliament informed about LSC's performance;
- (c) approving the amount of grant and grant-in-aid to be paid to LSC, and securing parliamentary approval; and
- (d) carrying out responsibilities specified in *AJA*, including appointments to LSC, approving the terms and conditions of LSC members and laying the annual report and accounts before Parliament.

¹⁰ Department of Constitutional Affairs (2004). Copies of this document are placed in the libraries of both Houses of Parliament and are made available to members of the public on LSC's website.

¹¹ The Public Service Agreements set out performance targets in various policy areas.

2.2.17 In addition, *AJA* authorizes a wide range of power for the Lord Chancellor to issue directions and guidance about how LSC should distribute legal aid and advice.¹² The Lord Chancellor may by order require LSC to make delegations and necessary arrangements in relation to the delegations.¹³ For instance, the *Public Interest Advisory Panel Arrangements 2000* set out the composition and procedures of the Public Interest Advisory Panel which advises LSC on funding cases that raise important public interest points.

2.2.18 Section 23 of *AJA* also enables the Lord Chancellor to give guidance to LSC about the discharge of its functions, and he is required to publish such guidance. However, the Lord Chancellor may not give guidance about the handling of individual cases. LSC is required to consider any guidance given by the Lord Chancellor.

Staffing

2.2.19 The chief executive of LSC is appointed by LSC after consultation with, and subject to the approval of, the Lord Chancellor. The chief executive is responsible to LSC for the exercise of its functions and LSC's Accounting Officer. The Lord Chancellor may appoint the chief executive as a member of LSC on an *ex officio* basis.

2.2.20 LSC may appoint employees as it thinks fit. LSC is divided into four directorates (policy, change and organisational transformation, service delivery and corporate services), each of which is managed by an Executive Director. With a head office in London, LSC employs about 1 650 staff working across 15 offices in England and Wales. LSC regional offices work with service providers (solicitors and not-for-profit agencies) in their local areas. Service providers contract with LSC to provide legal aid to clients, and the regional offices manage the contractual arrangements with their local service providers.

Accountability

2.2.21 The Lord Chancellor is accountable to Parliament for the activities and performance of LSC. The Chair of LSC is responsible to the Lord Chancellor and shares with other LSC members the corporate responsibilities for ensuring that LSC fulfils the aims and objectives set by the Lord Chancellor and for promoting the efficient and effective use of staff and other resources by LSC.

¹² This was a contentious issue when *AJA* was passed. For details, see Thorp & Richards (1999).

¹³ Section 3(5), *AJA*.

2.2.22 LSC members must agree to abide by a *Code of Best Practice*¹⁴ when they accept their appointment to LSC. The code, which is reviewed at least every five years, explains when LSC members should declare any conflicts of interest that may affect their judgment and duties as members. There is also a register of LSC members' interests, which is open for public inspection.

2.2.23 Before the beginning of each financial year, LSC is required to submit an annual plan to the Lord Chancellor, setting out in that year its legal aid funding activities and the arrangements to exercise its other functions.¹⁵ The Lord Chancellor may by direction require LSC to deal with the matters specified in the direction in the annual plan. If the Lord Chancellor does not approve the plan, he must by direction require LSC to revise it, and the direction should include the Lord Chancellor's reason for not approving the plan.

2.2.24 At the end of each financial year, LSC is required to publish an annual report of its activities together with its annual accounts. LSC's annual accounts are audited by the Comptroller and Auditor General, who has the power to carry out examinations into the economy, efficiency and effectiveness with which LSC has used its resources in discharging its functions.

2.2.25 LSC has various types of mechanisms set up to monitor the quality and performance of legal aid services provided by LSC and other LSC-funded service providers, which will be discussed in the final report of this research.

Sources of funding

2.2.26 The Lord Chancellor has a statutory duty to pay to LSC the sums as he may determine as appropriate for exercise by LSC of functions in relation to CLS and CDS as well as the administrative costs of LSC. The Lord Chancellor may determine the manner in which and times at which the sums are to be paid to LSC and may impose conditions on the payment of those sums.¹⁶ LSC's income comprises contributions receivable from funded clients. Income also includes amounts receivable from funded clients and others for costs and, where appropriate, damages awarded.

2.2.27 LSC is financed as part of a departmental budget. *AJA* introduces a cap on the civil aid budget. Each year, as part of the general public expenditure planning process, the Lord Chancellor will set an annual budget for the CLS Fund. The budget will take account of the receipts from contributions and payments expected under other legal commitments, with the balance of the budget provided by the Lord Chancellor from money voted by Parliament. The CLS Fund is not open-ended. Owing to the UK's international obligations¹⁷, the criminal aid budget has a higher priority than the civil one, and is not capped.

¹⁴ Legal Services Commission (2000).

¹⁵ Section 15, Schedule 1 of *AJA*.

¹⁶ Section 11, Schedule 1 of *AJA*.

¹⁷ Article 6(3) of the *European Convention on Human Rights* requires those charged with a criminal offence to be given legal assistance free when the interests of justice so require.

2.2.28 In the 10 years preceding to 2007-2008, spending on legal aid in the UK has increased by 37%, and the legal aid budget is currently over £2 billion (HK\$31 billion).¹⁸ In 2006-2007, CLS and CDS spent £478 million (HK\$7,409 million) and £1,199 million (HK\$18.58 billion) respectively, while the total administration expenditure of LSC was £102 million (HK\$1,581 million).

2.3 Major development/reform in recent years

2.3.1 The UK legal aid system has been under constant reviews. In July 2004, the Constitutional Affairs Committee of the House of Commons released its inquiry report "*Civil Legal Aid: adequacy of provision*".¹⁹ The report concluded that the system of civil legal aid faced some serious problems, mainly because increase in spending on criminal legal aid reduced the availability of money for civil help and representation. The Committee proposed that the government should improve its legal aid resource allocation procedures and broaden means of providing legal aid services.

2.3.2 On 5 July 2005, a Department for Constitutional Affairs (DAC) paper entitled "*A Fairer Deal for Legal Aid*"²⁰ was laid in Parliament. The paper set out the UK government's vision for legal aid reform with the purposes of guaranteeing continued fair and equal access to justice; improving outcomes for those who most need publicly-funded legal services and ensuring that the taxpayer gets value for money from legal services providers.

2.3.3 Specifically, *A Fairer Deal for Legal Aid* called for:

- (a) developing the fundamental reforms that would sustain a fair, efficient and effective justice system accessible by all;
- (b) measures to control the processes and spending on criminal cases, especially fraud;
- (c) independent review of how to deliver modern procurement methods;
- (d) developing a cross-government strategy for providing people with advice and help to resolve their disputes; and
- (e) review of child care proceedings.

¹⁸ Department for Constitutional Affairs Annual Report (2006) p.5.

¹⁹ House of Commons (2004).

²⁰ Department for Constitutional Affairs (2005). The paper set out the conclusions of the Fundamental Legal Aid Review set up by the Secretary of State for Constitutional Affairs in May 2004.

Lord Carter's Review

2.3.4 In *"A Fairer Deal for Legal Aid"*, it contained the terms of reference for a review on legal aid procurement. The related review was led by Lord Carter of Coles and began on 5 July 2005. Lord Carter's final report *"Legal Aid – A market-based approach to reform"*²¹ (Carter Report) was published on 13 July 2006, proposing radical changes to the procurement of publicly-funded legal advice and representation.

2.3.5 Moving to a market-based approach to legal aid was at the heart of Lord Carter's proposals to reform the system of legal aid procurement. Lord Carter suggested a staged move from the present mixed system of fixed and graduated fees and payment by hourly rate in different areas of the law to a market-based system of competitive tendering for block contracts, where competition would determine the rates LSC should pay for legal aid work. Competition would be introduced in April 2009, after a comprehensive move to fixed or graduated fees from April 2007. "Very high cost" cases in the Crown Court would continue to be contracted individually and paid on the basis of hourly rates.

2.3.6 The Carter Report made 62 recommendations, the key ones of which were:

- (a) best value tendering for legal aid contracts based on quality, capacity and price from 2009 onwards;
- (b) new responsibilities for the Law Society and the Bar Council to enhance quality of the legal aid supplier market;
- (c) fixed fees for solicitors carrying out legal aid work in police stations to encourage more efficient practices, including cutting costs related to waiting and travelling times;
- (d) revised graduated fees for the Crown Court advocates and a new graduated fee scheme for the Crown Court litigators to reward earlier preparation and resolution of cases;
- (e) tighter control of "very high cost" criminal legal aid cases; and
- (f) standard fees for civil and family legal help, and new graduated fees for solicitors in private law family and child care proceedings.

²¹ Lord Carter (2006).

Implementation of Lord Carter's Review

2.3.7 At the same time when the Carter Report was released, DCA and LSC jointly published a consultation paper – *"Legal Aid: a sustainable future"*.²² In the paper, the UK government set out its proposed programme of legal aid reform, based around the system of procurement proposed by the Carter Review. The paper also laid down detailed plans for graduated fee schemes for civil and family legal aid for the period between 2007 and 2009.

2.3.8 In July 2006, the Constitutional Affairs Committee of the House of Commons agreed to hold an inquiry into the implementation of the Carter Review, focusing on the criminal justice system and considering how the proposals for different means of procurement set out in the Carter review, would impact the system.

2.3.9 In November 2006, DCA and LSC jointly published a paper entitled *"Legal Aid Reform: the Way Ahead"*²³, setting out how reforms would be made to the legal aid system for both criminal and civil law cases. The key changes outlined in the paper were:

- (a) introducing best value competitive tendering for criminal legal aid services;
- (b) introducing a 'unified contract' for civil legal services in April 2007;
- (c) revising standard fees for magistrates' court work;
- (d) introducing a revised graduated fees scheme for the Crown Court advocates;
- (e) introducing a single graduated fees scheme in the Crown Court for both litigators and advocates; and
- (f) introducing fixed fees for police station work.

2.3.10 In February 2007, LSC published the standard terms for the new unified contract for civil legal aid providers, which would take effect from 1 April 2007. The unified contract would bring conditions for not-for-profit advisors in line with solicitors carrying out civil legal aid work. One of the main changes in the standard terms was that LSC would have the right to unilaterally amend the unified contract when it considered necessary or desirable to do so.

²² Legal Services Commission & Department for Constitutional Affairs (2006a).

²³ Legal Services Commission & Department for Constitutional Affairs (2006b).

2.3.11 In April 2007, the Law Society issued judicial review proceedings and offered mediation in relation to LSC's right to unilaterally amend the unified legal aid contract. The Law Society won the legal battle against LSC. The Court ruled that the inclusion of wide unilateral amendment clauses in the unified contract for civil legal aid was unlawful and in breach of the European Commission transparency regulations governing public contract procurement.

2.3.12 In May 2007, the Constitutional Affairs Committee of the House of Commons published its inquiry report on the implementation of the Carter Review.²⁴ The Committee, while generally supporting the aims of the reform and recognising the need to limit legal aid expenditure, believed that *'the government has introduced these plans too quickly, in too rigid a way and with insufficient evidence.'*

2.3.13 The Constitutional Affairs Committee also feared that the proposed legal aid reforms posed a serious risk to access to justice among the most vulnerable in society. The Committee's report expressed concern about a number of the reforms, the way they had been introduced and their potential impact on legal aid services, including:

- (a) government's attempt to reform the entire system, in order to reduce expenditure, rather than concentrating on those areas which were causing the problem, the Crown Court defence work and public law children cases;
- (b) over-complex and rigid plans for imposing fixed and graduated fees in the transitional period, before the introduction of full competitive tendering, based on inadequate data;
- (c) lack of reliable research into the potential effects of competitive tendering on legal aid suppliers and clients;
- (d) impact of the introduction of price competitiveness on the quality of advice provided;
- (e) effectiveness of peer review, particularly under a system of competitive tendering;
- (f) lack of evidence to suggest that larger providers would be more efficient and deliver legal aid work at a higher quality than smaller providers;
- (g) effects on black and minority ethnic suppliers; and
- (h) breakdown in the relationship between LSC and suppliers.

²⁴ Constitutional Affairs Committee (2007). For the UK government's response to the Committee's inquiry report, see Ministry of Justice (2007).

2.3.14 In April 2008, LSC, the Law Society and MoJ announced that they had reached agreement on the best way forward, following the Court of Appeal's judgment on the unified contract. Under the agreement, there will be a few targeted increases in some of the fees in the civil fee schemes already introduced and some of the legal aid reform items (including the best value tendering for mainstream civil legal aid services) will be delayed.²⁵ The UK government opines that this agreement provides a significant period of certainty and stability for civil legal aid providers, enabling them and LSC to adapt the changes already introduced, and to plan properly for future reforms.

3. The Province of Ontario of Canada

3.1 Development of the legal aid system

3.1.1 Ontario first implemented an organized legal aid plan for criminal cases in 1951.²⁶ At that time, lawyers providing legal assistance were on a voluntary basis. By 1963, both the Ontario government and the Law Society of Upper Canada (Law Society) opined that the voluntary plan did not adequately meet the demand for legal aid and created excessive demands on the volunteer lawyers.

3.1.2 In 1967, the Ontario government introduced legislation to create the Ontario Legal Aid Plan. The joint committee of the Ontario government and the Law Society which recommended the creation of a formal system of legal assistance rejected the basic American approach to legal aid. Instead, the Ontario system was based on the legal aid plans operating in England and Scotland. In the English and Scottish systems, private lawyers represent clients on legal aid certificates, and are paid for services on the basis of fair compensation for their work.

3.1.3 Despite the English and Scottish influence, Ontario's approach to legal aid remained unique, in that it also included the provision of duty counsel lawyers for unrepresented people in criminal courts. The Ontario Legal Aid Plan was financed by the provincial government, while being administered on a day-to-day basis by the Law Society.

3.1.4 Community clinics were first established in the early 1970s to provide legal services, public legal information and community development for low-income and disadvantaged people. Until the 1980s, the major focus of Ontario Legal Aid Plan had been on criminal law. Between 1980 and 1990, the Ontario Legal Aid Plan expanded its community clinic, family, refugee, mental health, and aboriginal services considerably. Services continued to expand in the 1990s.

²⁵ For the full settlement deed, see http://www.legalservices.gov.uk/docs/civil_contracting/FinalDeedofSettlement.pdf.

²⁶ For a detailed discussion, see Ontario Legal Aid Review (1997) Vol. 1, Part 1.

3.1.5 In 1997, the Ontario government appointed a law professor, John McCamus, to head a review of the Ontario Legal Aid Plan. "*A Blueprint for Publicly Funded Legal Services: the Report of the Ontario Legal Aid Review*"²⁷, was released in September 1997. The report recommended the creation of an independent body to govern the Plan. As a result, a new legislation was introduced in 1988 to create such an agency to govern legal aid services in Ontario.

3.2 Governance and finance

Regulatory framework

3.2.1 The *Canadian Constitution* allocates jurisdiction over the administration of justice to the provinces and territories²⁸; accordingly, legal aid is considered to be a provincial and territorial responsibility.

3.2.2 Legal Aid Ontario (LAO) is an independent agency established by the *Legal Aid Services Act 1998 (LASA)*. The purpose of *LASA* is to promote access to justice throughout Ontario for low-income individuals by providing consistently high quality legal aid services in a cost-effective and efficient manner; encouraging and facilitating flexibility and innovation in the provision of legal aid services; identifying, assessing and recognizing the diverse legal needs of low-income individuals and of disadvantaged communities; and providing legal aid services through a corporation that is independent but accountable to the Ontario government.²⁹

3.2.3 *LASA* consists of seven parts, setting out the establishment of LAO and its appointment, the powers conferred to and the services provided by LAO, the eligibility for services, details of community clinic funding and operation, areas that are not allowed to provide services and the cost-recovery provisions.

3.2.4 LAO is mandated³⁰ to:

- (a) establish and administer a cost-effective and efficient system for providing high quality legal aid services to low-income individuals;
- (b) establish policies and priorities for the provision of legal aid services based on its financial resources;
- (c) facilitate co-ordination among the different methods by which legal aid services are provided;

²⁷ Ontario Legal Aid Review (1997) Vols. 1-3.

²⁸ Section 92(14), the *Constitution Act, 1867*.

²⁹ Section 1, *LASA*.

³⁰ Section 4, *LASA*.

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- (d) monitor and supervise legal aid services provided by community clinics and other entities funded by LAO;
 - (e) co-ordinate legal aid services with other aspects of the justice system and with community services; and
 - (f) advise the Attorney General³¹ on all aspects of legal aid services in Ontario.

3.2.5 Section 13(1) of *LASA* states that LAO may provide legal aid services in the areas of criminal law, family law, clinic law³² and mental health law. However, LAO is not allowed to provide services in some specified areas, including proceedings wholly or partly in respect of a defamation, proceedings relating to election and proceedings for the recovery of a penalty where the proceedings may be taken by any person and the penalty in whole or in part may be payable to the person instituting the proceedings.³³

3.2.6 *LASA* contains specific sections dealing with types of legal aid services provided by LAO. They are the legal aid certificate programme (certificates that can be used for seeking help from private sector lawyers), the duty counsel programme, the community legal clinics and the student legal aid services societies. *LASA* also allows LAO to provide legal aid services by any method that it considers appropriate.³⁴

Independence

3.2.7 Legally, LAO is established as a corporation without share capital³⁵ and is neither an agent of Her Majesty nor a Crown agent³⁶. Section 3(4) of *LASA* states that LAO is "*independent, but accountable to, the Government of Ontario...*"

³¹ Unless stated otherwise, the Attorney General in this section refers to the Attorney General of Ontario.

³² Under *LASA*, clinic law means the areas of law which particularly affect low-income individuals or disadvantaged communities, including legal matters related to housing and shelter, income maintenance, social assistance, human rights, health, employment and education.

³³ Section 13(3), *LASA*.

³⁴ Section 14(1), *LASA*.

³⁵ Section 3(1), *LASA*.

³⁶ Section 3(3), *LASA*.

Appointment

3.2.8 LAO is governed by a board of directors, comprising a Chair and 10 other members appointed by the Lieutenant Governor in Council. The nominee for the post of the Chair is selected by the Attorney General from a list of persons recommended by a committee comprised of the Attorney General or a person designated by him or her, the Treasurer of the Law Society or a person designated by him or her and a third party agreed upon by the Attorney General and the Treasurer of the Law Society or persons designated by them.

3.2.9 Among the other 10 members of the board, five members are selected by the Attorney General from a list of persons recommended by the Law Society, and five members are recommended by the Attorney General. The members of the board hold office for a term of two or three years, and are eligible for reappointment.

3.2.10 On the selection of the 10 members by the Attorney General, the law requires that the Attorney General shall ensure that the board as a whole has knowledge, skills and experience in the areas that the Attorney General considers appropriate. The appropriate areas include: business, management and financial matters of public or private sector organisations; law and operation of courts and tribunals; special legal needs and provision of legal services to low-income individuals and disadvantaged communities; operation of legal aid clinics; and social and economic circumstances associated with the special legal needs of low-income individuals and disadvantaged communities.³⁷

3.2.11 The Attorney General is also required to ensure that people selected for appointment to the board reflect the geographic diversity of the province. The law specifies that the majority of the appointed members of the board shall be persons who are not lawyers and no more than three of the appointed members of the board shall be benchers³⁸ of the Law Society.

Relationship with the executive branch

3.2.12 LAO is funded by the Ministry of the Attorney General, which is responsible for administering *LASA*. The Attorney General has an appointment role as aforementioned, and his budgetary role will be discussed below. In addition, every five years, LAO and the Attorney General are required to enter into a memorandum of understanding.³⁹ The memorandum of understanding includes:

- (a) annual business plans;
- (b) plans for significant changes in LAO's operations or activities;

³⁷ Section 5(4), *LASA*.

³⁸ The benchers are equivalent to the Society's board of directors.

³⁹ Section 71(1), *LASA*.

- (c) strategic plans for a number of years specified by the Attorney General;
- (d) annual statement of LAO's policies and priorities for providing legal aid services;
- (e) annual statement of LAO's investment policies and goals;
- (f) agenda of all meetings of LAO's board of directors before they are held;
- (g) performance standards that LAO must meet; and
- (h) other matters that may be required by the Lieutenant Governor in Council, the Management Board of Cabinet or the Attorney General.

Staffing

3.2.13 The president of LAO, who is the chief executive officer, is appointed by the board of directors. The president is a non-voting member of the board and is responsible for implementing the policies established by the board. LAO may employ other staff as it considers necessary for its purposes. Staff hired by LAO are not considered as employees of the Crown.

3.2.14 LAO operates 51 offices in 48 communities and funds 79 community clinics throughout Ontario. The secretariat of LAO has divisions responsible for communications and public affairs; client legal services; community clinics and special services; corporate services; and policy, planning and external relations.

Accountability

3.2.15 LAO is required to submit an annual report to the Attorney General within four months after the end of its fiscal year. The report will subsequently be submitted to the Lieutenant Governor in Council and tabled before the Legislative Assembly of Ontario. The Attorney General may at any time require LAO to report to him on any aspect of its affairs or to provide information on its activities, operations and financial affairs.

3.2.16 The board of LAO is required to pass by-laws governing conflicts of interest of members of the board and LAO's officers and employees and, if the board considers it appropriate, to impose restrictions on the activities of such persons to avoid conflicts of interest. LAO's financial statements are audited by the Auditor General and LAO is under the jurisdiction of the Ombudsman of Ontario.

Sources of funding

3.2.17 The provincial government provides the majority of funding for LAO. The provincial government's funding includes contributions from the federal government through cost-sharing arrangements. In Canada, the federal government commits to contributing certain amount of money (to be decided through negotiations between the federal and local governments) to cover the cost of providing criminal legal aid services in each province.⁴⁰ In addition, the federal government provides funding for civil legal aid as part of the Canada Social Transfer to the provinces.

3.2.18 LAO also receives funding from the Law Foundation of Ontario and client contributions. The Law Foundation of Ontario⁴¹ administers the interest earned on trust fund balances. LAO receives 75% of these revenues. LAO also has a client contribution programme for applicants who do not meet its financial eligibility guidelines for non-contributory certificate services. These applicants receive the legal assistance they need and enter into an agreement in which they undertake to repay LAO for the cost of the services on their behalf by solicitors who are paid through LAO.

3.2.19 In 2005-2006, LAO had operating expenditure of over CAN\$351.6 million (HK\$2.74 billion) and received funding of CAN\$309.3 million (HK\$2.41 billion). Of the total funding, contributions from the province amounted to CAN\$260.5 million (HK\$2.03 billion) or around 85%. The deficit was primarily caused by the changes in the methodology to calculate work performed but not billed by lawyers and was mainly paid by the accumulated surplus of LAO.

3.2.20 LAO's budget is based on a three-year cycle and is prepared by LAO. The annual budget approved by the Attorney General is submitted to the Management Board of the Cabinet to be reviewed for inclusion in the estimates of the Ministry of the Attorney General.

3.3 Major development/reform in recent years

3.3.1 As mentioned above, the Attorney General in 1996 commissioned a comprehensive review on legal aid services in Ontario. The review was the first comprehensive review of the Ontario legal aid system in its 30-year history, with a mandate to undertake a thorough analysis of the various programmes that comprised the legal aid system in the province and to make recommendations regarding the future direction those programmes should take.

⁴⁰ In recent years, the provinces have called on the federal government to increase federal funding for legal aid services. While the provinces continue to increase funding for legal aid, the level of federal support has remained virtually unchanged since 2003-2004. The last time when the federal government was a 50/50 partner was 1990-1991. The federal government, in its 2007 budget, indicated that criminal legal aid funding would be maintained at the existing levels for the next five years.

⁴¹ The Law Foundation of Ontario receives interest on lawyers' mixed trust accounts to fund worthwhile programmes for law-related activities.

3.3.2 The review was led by Professor John McCamus. Professor McCamus recommended the creation of an independent body to govern legal aid services in Ontario and experimentation with service delivery models such as the use of staff lawyers, contracting and wider use of duty counsel, with more focus on serving client needs. Based on the recommendations of the McCamus Report, the Ontario government passed *LASA* which established LAO as an independent agency responsible for the administration of the legal aid system.

3.3.3 In April 2000, LAO appointed a task force to carry out an independent analysis of the legal aid tariff. Based on the results of the task force⁴², LAO worked with lawyers' groups and other stakeholders to convince the provincial government to increase the hourly rate paid to lawyers by 10% in 2002-2003. In addition, the duty counsel hourly rate was increased by 28%. It was the first time in 15 years that there were increases in the legal aid tariff.

3.3.4 In early 2007, Professor McCamus was retained by the Ministry of the Attorney General to update his 1997 paper "*Blueprint for Publicly Funded Legal Services*", including a consideration of *LASA* and its regulations. The study would focus on the tools and capacities to maximize effective administration and good governance of the legal aid system; and examine alternatives to the tariff process, including methods of ensuring regular reviews to set and adjust the hourly rate paid to lawyers doing legal aid work.

3.3.5 Subsequently, Professor McCamus was appointed to be the new Chairman of LAO. In August 2007, Professor Michael Trebilcock was appointed to replace Professor McCamus to continue the province's legal aid review. As of the publication of this note, the final review report has not been published.

3.3.6 In February 2008, the Ombudsman of Ontario published an investigation report regarding LAO's role in funding a big controversy criminal case.⁴³ The report criticised that there were systemic problems in the way that the province funded people who could not afford to defend themselves in court, and the way that funding was managed. It called for new law to avert legal aid "fiascos". In December 2007, before the publication of the Ombudsman's report, the Ministry of the Attorney General and LAO jointly announced a new protocol for managing court-ordered publicly-funded criminal defences. The protocol applies in the rare circumstance that a judge orders the Ministry to fund the defence of an accused person who is not receiving legal aid.

⁴² See Legal Aid Ontario (2000).

⁴³ The Ombudsman of Ontario (2008).

4. The State of New South Wales of Australia

4.1 Development of the legal aid system

4.1.1 Australia has a federal system of government comprising federal, state and territory jurisdictions. The Australian (Commonwealth⁴⁴) and state or territory governments are each responsible for the provision of legal aid for matters arising under their respective laws.

4.1.2 Legal aid for both Commonwealth and state matters is primarily delivered through state and territory legal aid commissions, which are independent statutory agencies established under state and territory legislation. The Commonwealth funds the provision of legal aid for Commonwealth family, civil and criminal law matters under agreements with state and territory governments and legal aid commissions.

4.1.3 Originally, the Australian government was aiming at the adoption of a national system of legal aid when it established the Legal Service Bureaux in 1942. However, there was a move in the late 1970s to deliver such services by the states and territories. In 1977, the Australian government enacted the *Commonwealth Legal Aid Commission Act 1977*, which established cooperative arrangements between the Australian government and state and territory governments, under which legal aid would be provided by independent legal aid commissions to be established under state and territory legislation.

4.1.4 In 1943, NSW established the Public Solicitor's Office. Although the Public Solicitor's Office provided representation in serious criminal trials only, it had been the only sizeable salaried scheme in Australia up to the 1970s. The Public Solicitor's Office later extended its legal aid services to cover both civil and criminal matters. In 1971, a law society legal assistance scheme was set up, and gradually took up the Public Solicitor's Office's role in providing legal aid service in civil matters.

4.1.5 In 1979, with the enactment of the *Legal Services Commission Act 1979*, the NSW government established the Legal Services Commission of NSW. The establishment of the Commission amalgamated the legal aid scheme of the Public Solicitor's Office, and the Legal Aid Department of the Law Society of NSW. The Commission was charged with responsibility for legal aid services in state law matters.

4.1.6 In 1987, the Australian Legal Aid Office (NSW Branch)⁴⁵ and the Legal Services Commission merged to become the Legal Aid Commission of NSW (NSW LAC), handling matters for both state and federal areas of law in NSW.⁴⁶

⁴⁴ The Commonwealth in this section means the Commonwealth of Australia.

⁴⁵ An office of the Attorney-General's Department of the Commonwealth that operated in NSW.

⁴⁶ For a more detailed discussion about the development of the legal aid system in the Commonwealth and NSW, see Noone & Tomsen (2006).

4.1.7 In 1997, the Commonwealth changed its legal aid arrangements with the state so that NSW LAC has provided legal aid in the Commonwealth matters under an agency arrangement with the Commonwealth since then.

4.2 Governance and finance

Regulatory framework

4.2.1 *The Legal Aid Commission Act 1979*⁴⁷ (*LACA*) governs the functions and responsibilities of NSW LAC and the way in which it delivers legal aid. *LACA* has five parts and the related schedules.

4.2.2 Part 2 of *LACA* provides for the constitution and management of NSW LAC. Section 10 of *LACA* specifies the functions of NSW LAC, requiring it to:

- (a) determine eligibility and priorities in the provision of legal aid services;
- (b) give assistance and make grants to those parties providing legal aid services;
- (c) enter into agreements for the provision of legal aid in proceedings with bodies outside NSW;
- (d) undertake research into all aspects of legal aid, including the investigation and assessment of different methods of financing and providing legal aid;
- (e) initiate and carry out educational programmes designed to promote public understanding of their rights, powers, privileges and duties under the laws; and
- (f) make reports and recommendations to the relevant Minister on legal aid matters as the Minister requests or as NSW LAC considers appropriate.

4.2.3 Section 11 of *LACA* allows NSW LAC to provide legal aid by such means as it determines, including on an in-house basis (or public defender) or assigning to private legal practitioners.

⁴⁷ Formerly known as the *Legal Services Commission Act 1979*.

4.2.4 Part 3 of *LACA* sets out detailed requirements and procedures for providing legal aid services. Sections 53 to 60 of *LACA* provide for the establishment of legal aid review committees and the procedures for dealing with appeals in respect of the provision of legal aid. In addition, there is a special section under Part 3 that enables NSW LAC to arrange for matters to be dealt with by alternative dispute resolution.⁴⁸

Independence

4.2.5 NSW LAC is a statutory body representing the Crown.⁴⁹ Section 10(4) of *LACA* allows NSW LAC to engage in supplemental, incidental and consequential acts as may be necessary or expedient for the exercise of its functions.

Appointment

4.2.6 NSW LAC is governed by a board, comprising the chief executive officer and nine part-time members appointed by the Attorney General⁵⁰. *LACA* provides for the board to reflect a diversity of representation. The nine part-time board consist of four members (including the Chairman) directly appointed by the Attorney General, one member nominated by the Law Society, one member nominated by the Bar Association, one member nominated by the NSW Labor Council, a representative of consumer and community welfare interests and a representative of community legal services. The posts of the board membership representing consumer and community welfare interests as well as community legal services must be openly advertised.

4.2.7 The Chairman of NSW LAC is appointed for a term not exceeding five years, while other board members are appointed for a term not exceeding three years. All board members are eligible for reappointment. The Attorney General may remove a board member from office for inability, misbehaviour or failure to comply with the terms and conditions of his appointment.⁵¹

Relationship with the executive branch

4.2.8 The Attorney General is the Minister responsible for NSW LAC and the Attorney General's Department of NSW is responsible for administering *LACA*. The Attorney General's major responsibilities include carrying out the appointment duties specified in *LACA*, securing state funding to NSW LAC, laying of annual report before Parliament and introducing necessary legislative amendments to *LACA*.

⁴⁸ Part 3A, *LACA*.

⁴⁹ Section 6(3), *LACA*.

⁵⁰ Unless stated otherwise, the Attorney General in this section refers to the Attorney General of NSW.

⁵¹ Section 6, schedule 2, *LACA*.

4.2.9 Since 1997, following the changes in the Commonwealth's legal aid arrangements with the state, NSW LAC has provided legal aid in the Commonwealth matters under an agency arrangement with the Commonwealth. Section 72A of *LACA* deals with Commonwealth-State agreements or arrangements, enabling NSW LAC, with the approval of the Attorney General, to enter into arrangements with the Commonwealth for the provision of legal aid services.

Staffing

4.2.10 The chief executive officer of NSW LAC is appointed by the Attorney General and is not required to be a legal practitioner. *LACA* provides that the chief executive officer is responsible for the day-to-day management of the affairs of NSW LAC, including managing financial and staffing, in accordance with the board's policies and strategic plans and any general directions the board may issue in connection with those policies and plans.

4.2.11 Under *LACA*, NSW LAC is not allowed to employ any staff.⁵² Civil servants are recruited as staff to the secretariat of NSW LAC to exercise its functions. At present, the secretariat has 805 staff members (about 354 based in regional offices and the rest in the Sydney central office) and four divisions: Legal Services, Grants, Business and Client Services and Strategic Planning and Policy. Of this staff, 383 are lawyers and the others are employed in administrative roles.

Accountability

4.2.12 NSW LAC is required, as soon as practicable after 30th June of each year, to prepare and forward to the Attorney General an annual report of its work and activities for the year ending on that date and to include in the report a review of all other legal aid services available in NSW. As soon as practicable after the receipt of the annual report, the Attorney General should lay the report before each House of Parliament of NSW.

4.2.13 NSW LAC is under the jurisdiction of the NSW Auditor-General and NSW Ombudsman. NSW LAC has various types of mechanisms set up to monitor the quality and performance of its legal aid services, which will be discussed in the final report of this research.

⁵² Section 10(5), *LACA*.

Sources of funding

4.2.14 NSW LAC receives its funding from the Commonwealth and NSW governments, the Public Purpose Fund and client contributions. NSW LAC undertakes work for the Commonwealth government on the basis of a four and a half year agency agreement, which ends on 31 December 2008. The Public Purpose Fund is made up of interests earned from lawyers' trust accounts, and its operation is regulated under the *Legal Profession Act 2004*.

4.2.15 In 2006-2007, NSW LAC had a combined income of AUS\$189.5 million (HK\$1.32 billion). Of that sum, AUS\$90.98 million (HK\$636.86 million) or 48% came from the NSW government and AUS\$53.27 million (HK\$372.89 million) or 28% was contributed by the Commonwealth government.

4.2.16 NSW LAC is responsible for establishing and administering a Legal Aid Fund, which is used to collect incomes and pay out all the expenditure incurred by NSW LAC. Each year, NSW LAC is required to prepare estimates of its income and expenditure for the following financial year.⁵³ NSW LAC's budget is presented as a single entry of the departmental budget of the Attorney General's Department when seeking parliamentary approval.

4.3 Major development/reform in recent years

4.3.1 In November 2003, NSW LAC completed the Civil Law Review⁵⁴, aiming at examining the way in which the civil law program delivered legal aid services in NSW and making recommendations for the future direction of the programme.

4.3.2 The 2003 Civil Law Review report made 33 recommendations, including:

- (a) developing and implementing an evidence-based process for determining and reviewing community need;
- (b) encouraging private legal practitioners and other community groups to provide legal services to certain disadvantaged client groups;
- (c) developing a framework for a coordinated outreach programme;
- (d) establishing a pilot duty service at the Administrative Appeal Tribunal⁵⁵ and NSW Industrial Relations Commission;

⁵³ Section 67, *LACA*.

⁵⁴ Legal Aid Commission (2003).

⁵⁵ NSW LAC currently provides a duty service at the Administrative Decisions Tribunal wherein advice is provided to self-represented parties in discrimination and guardianship matters.

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- (e) focusing the civil law practice on the existing four core legal aid areas, namely consumer protection, housing, human rights and discrimination and government; and
 - (f) other services management and planning improvements.

4.3.3 In response to the 2003 Civil Law Review, NSW LAC has expanded representation services to the Coroner's Court and appointed 10 additional lawyers to regional NSW and Sydney metropolitan fringe areas to fill some of the gaps identified in the Review.

4.3.4 In December 2006, the Auditor-General published a performance audit report on NSW LAC – *Distributing Legal Aid in New South Wales*.⁵⁶ The Auditor-General found that NSW LAC was performing well in the delivery of legal services and that it had maintained and expanded services despite funding pressure. However, the audit report pointed out that although NSW LAC had taken some actions in response to the 2003 Civil Law Review, it had not provided a formal reply to all the Review's recommendations.

4.3.5 In 2004, the Commonwealth and State Attorneys General jointly commissioned a review of the Community Legal Services Program⁵⁷ (CLSP) in NSW, with the aim of contributing to:

- (a) development of strategies to consolidate and strengthen the programme, and
- (b) more integrated framework for planning and delivering legal services to disadvantaged members of the NSW community.

4.3.6 Community Legal Centres (CLCs) have operated in NSW since 1977. At the time of the review, there were 38 organisations operating as CLCs and belonging to the NSW Combined Community Legal Centre Group, the peak body for CLCs in NSW. These centres comprised 19 'generalist' centres providing legal services to local communities, and 19 specialist centres with expertise in identifying and responding to the legal needs of particular groups or specialising in particular areas of law.

⁵⁶ New South Wales Auditor-General (2006).

⁵⁷ CLSP is jointly funded by the Commonwealth and NSW governments and is administered on behalf of both governments by NSW LAC.

4.3.7 The CLSP review made 62 recommendations on a range of issues⁵⁸, including:

- (a) establishment of a NSW Legal Assistance Forum;
- (b) adoption of a Strategic Service Delivery Model for CLSP;
- (c) review to identify the full range of effective service delivery models for regional and remote areas;
- (d) establishment of training, resource and infrastructure programmes to provide centralised support for CLCs on a range of issues; and
- (e) provision of funding for CLCs targeting at indigenous people and communities.

4.3.8 NSW LAC has constantly reviewed its legal aid services. At present, NSW LAC is calling for submissions regarding the provision of their services to people in domestic violence matters, for the purpose of developing an integrated, organisation-wide service delivery strategy to improve responses to domestic violence. Meanwhile, NSW LAC is administering state government funding for the Women's Domestic Violence Court Assistance Program. The Program, which was established in 1996, funds 33 Women's Domestic Violence Court Assistance Schemes, servicing 55 local courts throughout NSW.

⁵⁸ See Legal Aid Commission (2006).

Table 1 – Establishment of the legal aid institution

| Place | Legal aid institution | Year of establishment | Enabling legislation | Legal status | Objective |
|---|---|-----------------------|--|---|---|
| England and Wales of the United Kingdom (UK) | The Legal Service Commission (LSC) | 2000 | The <i>Access to Justice Act 1999</i> | A body corporate not carrying out its functions on behalf of the Crown. | To deliver, through high quality service providers, legal aid, advice and representation to people with problems in England and Wales. |
| The Province of Ontario of Canada | Legal Aid Ontario (LAO) | 1998 | The <i>Legal Aid Services Act 1998</i> | A corporation without share capital, neither an agent of Her Majesty nor a Crown agent. | To promote access to justice for low-income Ontarians by providing consistently high quality legal aid services in a cost-effective and efficient manner. |
| The State of New South Wales (NSW) of Australia | The Legal Aid Commission of New South Wales (NSW LAC) | 1987 | The <i>Legal Aid Commission Act 1979</i> | A statutory body representing the Crown. | To improve access to justice for socially and disadvantaged members of the NSW community by providing a range of legal services. |

Table 2 – Composition and appointment procedure

| Place (Institution) | Number of members | Appointment methods | Criteria for appointment |
|--|--|---|---|
| England and Wales of the United Kingdom (The Legal Service Commission) | Not fewer than and not more than 12 members. The chief executive of LSC may be appointed as a member of LSC on an <i>ex officio</i> basis. At present, LSC has a Chair and 10 non-executive members. | All LSC members are appointed by the Lord Chancellor in accordance with the " <i>Code of Practice</i> " issued by the Commissioner for Public Appointments. The Lord Chancellor will appoint one of LSC members to be the Chair. | The Lord Chancellor is required to have regard to the desirability of securing that LSC includes members who (among them) have experience in or knowledge of providing legal aid services, work of the courts, consumer affairs, social conditions and management. |
| The Province of Ontario of Canada (Legal Aid Ontario) | LAO's board of directors comprises a Chair and 10 other members. The president of LAO, who is the chief executive officer, is a non-voting board member. | All members are appointed by the Lieutenant Governor in Council. The nominee for the post of the Chair is selected by the Attorney General from a list of persons recommended by a special committee. Among the other 10 members of the board, five members are selected by the Attorney General from a list of persons recommended by the Law Society, and five members are recommended by the Attorney General. | The Attorney General must ensure that the board as a whole has knowledge, skills and experience in the specified areas that the Attorney General considers appropriate, including business and public organisation management, law and operation of courts and tribunals and relevant legal services experiences. |
| The State of New South Wales of Australia (The Legal Aid Commission of New South Wales) | Comprising the chief executive officer and nine part-time members. | Appointed by the Attorney General. The nine part-time board members consist of four members (including the Chairman) appointed by the Attorney General, one person nominated by the Law Society, one member nominated by the Bar Association, one member nominated by the NSW Labor Council, a representative of consumer and community welfare interests and a representative of community legal services. | Not specified. |

Table 3 – Operation and source of funding

| Place (Institution) | Relationship with the executive branch | Staffing | Source of funding |
|--|--|---|--|
| England and Wales of the United Kingdom (The Legal Service Commission) | A framework document sets out LSC's overall aims, rules regarding LSC's functions and duties, how public funds are paid to LSC and how LSC has to account for its performance. | The chief executive of LSC is appointed by LSC after consultation with, and subject to the approval of, the Lord Chancellor. LSC may appoint employees as it thinks fit. | Financed as part of a departmental budget of the Ministry of Justice. |
| The Province of Ontario of Canada (Legal Aid Ontario) | A memorandum of understanding sets out annual business plans, strategic plans, annual statement of LAO's policies and priorities for providing legal aid services and performance standards that LAO must meet. | The chief executive officer is appointed by the board of directors. LAO may employ other staff as LAO considers necessary for its purposes. | Financed by the provincial government (including contributions from the federal government through cost-sharing arrangements), the Law Foundation of Ontario and client contributions. LAO's budget is integrated in the estimates of the Ministry of the Attorney General. |
| The State of New South Wales of Australia (The Legal Aid Commission of New South Wales) | Relationships with the executive branch are not laid down in a specific document. NSW LAC is allowed, with the approval of the Attorney General, to enter into arrangements with the Commonwealth for the provision of legal aid services. | The chief executive officer of NSW LAC is appointed by the Attorney General. NSW LAC is not allowed to employ any staff. Civil servants are recruited as NSW LAC staff to exercise its functions. | NSW LAC receives its funding from the Commonwealth and NSW governments, the Public Purpose Fund and client contributions. NSW LAC's budget is presented as a single entry of the departmental budget of the Attorney General's Department when seeking parliamentary approval. |

Table 4 – Recent development/reform

| Place (Institution) | Recent development/reform |
|---|--|
| England and Wales of the United Kingdom (The Legal Service Commission) | <p>In July 2005, the Department for Constitutional Affairs (DCA) published a paper entitled "<i>A Fairer Deal for Legal Aid</i>".</p> <p>In July 2006, Lord Carter published his review report: "<i>Legal Aid – A market-based approach to reform.</i>" Moving to a market-based approach to legal aid was at the heart of Lord Carter's proposals to reform the system of legal aid procurement.</p> <p>In July 2006, DCA and LSC jointly published a consultation paper – "<i>Legal Aid: a sustainable future</i>". The paper set out the UK government's proposed programme of legal aid reform, based around the system of procurement proposed by the Carter Review.</p> <p>In November 2006, DCA and LSC jointly published a paper entitled "<i>Legal Aid Reform: the Way Ahead</i>", setting out how reforms would be made to the legal aid system for both criminal and civil law cases.</p> <p>In May 2007, the Constitutional Affairs Committee of the House of Commons published an inquiry report on the implementation of the Carter Review. The Committee feared that the proposed legal aid reforms posed a serious risk to access to justice among the most vulnerable in society. The Committee's report expressed concern about a number of the reforms measures, the way they had been introduced and their potential impact on legal aid services.</p> |
| The Province of Ontario of Canada (Legal Aid Ontario) | <p>In 1996, a comprehensive review on legal aid services in Ontario was completed. The review report recommended the creation of an independent body to govern legal aid services in Ontario and experimentation with service delivery models such as the use of staff lawyers, contracting and wider use of duty counsel, with more focus on serving client needs. Based on the recommendations of the review report, the Ontario government passed a legislation which established LAO as an independent agency responsible for the administration of the legal aid system.</p> <p>In April 2000, LAO appointed a task force to carry out an independent analysis of the legal aid tariff. Subsequently, LAO worked with lawyer's groups and other stakeholders to convince the provincial government to increase the hourly rate paid to lawyers by 10% in 2002-2003.</p> <p>In early 2007, the Ontario government decided to conduct another legal aid review. The study would focus on the tools and capacities to maximize effective administration and good governance of the legal aid system; and examine alternatives to the current tariff process, including methods of ensuring regular reviews to set and adjust the hourly rate paid to lawyers doing legal aid work.</p> |
| The State of New South Wales of Australia (The Legal Aid Commission of New South Wales) | <p>In November 2003, NSW LAC completed the Civil Law Review, aiming at examining the way in which the civil law programme delivered legal aid services in NSW and making recommendations for the future direction of the programme. In response to the Review, NSW LAC has expanded representation services to the Coroner's Court and appointed 10 additional lawyers to regional NSW and Sydney metropolitan fringe areas to fill some of the gaps identified in the Review.</p> <p>In 2004, the Commonwealth and State Attorneys General jointly commissioned a review of the Community Legal Services Program in NSW, aiming at contributing to the development of strategies to consolidate and strengthen the programme.</p> <p>At present, NSW LAC is calling for submissions regarding the provision of their services to people in domestic violence matters, for the purpose of developing an integrated, organisation-wide service delivery strategy to improve responses to domestic violence.</p> |

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Prepared by CHAU Pak-kwan
23 May 2008
Tel: 2869 9593

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