

INFORMATION NOTE

Scope and expenditure of legal aid services in selected places

1. Introduction

1.1 This information note provides information on the following items relating to the legal aid services in England and Wales of the United Kingdom (UK), the Province of Ontario of Canada and the State of New South Wales (NSW) of Australia:

- (a) authorities responsible for providing legal aid services;
- (b) scope of legal aid services;
- (c) source of funding for legal aid services; and
- (d) legal aid expenditure per capita.

Table – Scope and expenditure of legal aid services in Hong Kong and selected places

	Hong Kong	England and Wales	Ontario of Canada	New South Wales of Australia
Authority responsible for providing legal aid services	The Legal Aid Department of the Government of the Hong Kong Special Administrative Region and the Duty Lawyer Services, which is incorporated as a company limited by guarantee.	The Legal Services Commission (LSC), a non-departmental public body established under the Access to Justice Act 1999. It is not regarded as the servant or agent of the Crown, nor does it enjoy any status, immunity or privilege of the Crown.	Legal Aid Ontario (LAO), which is a statutory corporation established under the Legal Aid Services Act 1998.	The Legal Aid Commission of New South Wales (Legal Aid NSW), which is a statutory body established under the Legal Aid Commission Act 1979.

Table – Scope and expenditure of legal aid services in Hong Kong and selected places (cont'd)

	Hong Kong	England and Wales	Ontario of Canada	New South Wales of Australia
Scope of legal aid services	<p>The Ordinary Legal Aid Scheme covers civil proceedings in District Court and above.</p> <p>The Supplementary Legal Aid Scheme is available for cases involving personal injury or death as well as medical, dental or legal professional negligence where the claim for damages is likely to exceed HK\$60,000. It also covers claims under the Employees' Compensation Ordinance.</p> <p>Legal aid is also available for criminal proceedings at District Court and above, as well as in committal proceedings in the Magistrates' Court.</p>	<p>Legal aid services are available in the area of criminal law and certain types of civil cases, but are normally not provided for the following types of civil cases:</p> <ul style="list-style-type: none"> (a) personal injury; (b) negligently caused damage to property; (c) conveyancing; (d) boundary disputes; (e) making a will; (f) trust law; (g) defamation (libel and slander) or malicious falsehood; (h) company or partnership law; (i) matters arising out of carrying on a business; or (j) attending an interview or an asylum claim. <p>Legal aid services are also not available for civil cases heard in certain tribunals or courts, including the Employment Tribunal, the Immigration Tribunal and the Lands Tribunal.</p>	<p>Legal aid services are available in the following areas of law:</p> <ul style="list-style-type: none"> (a) criminal matters; (b) family law; (c) clinic law; and (d) mental health law. <p>Legal aid services are also provided in the areas of civil law except in:</p> <ul style="list-style-type: none"> (a) proceedings wholly or partly in respect of a defamation; (b) relator actions; (c) 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; (d) proceedings relating to election; or (e) prescribed areas of civil law, prescribed types of civil cases or prescribed types of civil proceedings. 	<p>Legal aid services are available in the areas of family law, civil law, criminal law, children's matters, mental health matters, prisoners' matters and veterans' pension matters, as shown in Appendix.</p>

Table – Scope and expenditure of legal aid services in Hong Kong and selected places (cont'd)

	Hong Kong	England and Wales	Ontario of Canada	New South Wales of Australia
Source of funding	The Government funds the Legal Aid Department and fully subvents the Duty Lawyer Service.	The budget of LSC is included as part of the departmental budget of the Ministry of Justice. It is financed by grant-in-aid received from the Ministry of Justice of the UK government.	The budget of LAO is included in the estimates of the Ministry of the Attorney General. The Ontario government provides the majority of funding for LAO. Such funding includes contributions from the federal government through cost-sharing arrangements. LAO also receives funding from the Law Foundation of Ontario and client contributions.	The budget of Legal Aid NSW is presented as a single entry of the departmental budget of the Attorney General's Department. Legal Aid NSW receives its funding from the Commonwealth and NSW governments, client contributions and the Public Purpose Fund (which comprises interest earned from lawyers' trust accounts and is governed by the Legal Profession Act 2004).
Legal aid expenditure	HK\$428 million (in 2007-2008)	£1.95 billion (HK\$23 billion) (in 2007-2008)	CAN\$325 million (HK\$2 billion) (in 2005-2006)	AUS\$204 million (HK\$1 billion) (in 2007-2008)
Legal aid expenditure per capita	HK\$61 (Population in 2007: 7 million)	£37 (HK\$430) (Population in 2007: 54 million)	CAN\$27.5 (HK\$173) (Population in 2005: 12 million)	AUS\$29.6 (HK\$150) (Population in 2007: 6.9 million)

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Appendix

Scope of legal aid services provided in the State of New South Wales of Australia

Area of Law	State	Commonwealth
Family law	<ul style="list-style-type: none"> • Proceedings under the <i>Property (Relationships) Act 1984</i>; • Adoption proceedings; and • Domestic violence proceedings as set out in the criminal law policies. 	<p>Matters arising under the <i>Family Law Act 1975</i>, the <i>Child Support (Assessment) Act 1989</i> and the <i>Child Support (Registration and Collection) Act 1988</i>, limited to:</p> <ul style="list-style-type: none"> • Separate representation of children; • Other orders relating to children, including parenting orders, location orders and recovery orders; • Parenting plans; • Injunctions relating to family violence; • Child support and child maintenance; • Spousal maintenance; • Dissolution and nullity of marriage; • Property proceedings; • Enforcement proceedings; or • Contempt and breach of court orders proceedings.

Appendix (cont'd)

Scope of legal aid services provided in the State of New South Wales of Australia

Area of Law	State	Commonwealth
Civil law	<ul style="list-style-type: none"> • Matters where there is a likelihood of loss of the applicant's dwelling; • Matters involving loss of civil liberties, e.g. false imprisonment, malicious prosecution; • <i>Protected Estates Act 1983</i> matters; • Matters under Part 3 Division 6 or section 41 of the <i>Public Health Act 1991</i>; • Matters under the <i>Crimes (Serious Sex Offenders) Act 2006</i>; • Matters before the Equal Opportunity Division of the Administrative Decisions Tribunal (ADT); • Inquests in limited circumstances; • Consumer protection matters; • Public interest environment matters; and • Proceedings before the ADT or the Industrial Relations Commission to obtain an exemption under the <i>Child Protection (Prohibited Employment) Act 1998</i>. <p>Legal aid is also available in state civil law matters or other matters where the applicant is at "special disadvantage" in that proceedings are taken by or for the benefit of a child or a person having substantial difficulty in dealing with the legal system by reason of a substantial psychiatric condition, developmental difficulty, intellectual impairment or physical disability.</p>	<p>Matters arising under a Commonwealth Act, limited to:</p> <ul style="list-style-type: none"> • A decision affecting the receipt or amount of a Commonwealth employee's compensation or a pension, benefit or allowance; • A decision or action by the Commonwealth in relation to a person that has a real prospect of affecting the person's capacity to continue in his/her usual occupation; • Discrimination; • Migration matters in limited circumstances (legal aid is also available under the Immigration Advice & Application Assistance Scheme (IAAAS) contract between the Legal Aid Commission of New South Wales and the Commonwealth government); • Consumer protection; • Proceedings under the <i>Proceeds of Crime Act 2002</i>; • Extradition proceedings in limited circumstances; and • National security matters in limited circumstances.
Veterans' pension matters		<ul style="list-style-type: none"> • Appeals from decisions of the Veterans' Review Board about war-caused disability pension entitlement or assessment claims under part II of the <i>Veterans' Entitlements Act 1988</i>; and • Appeals from decisions of the Veterans' Review Board about claims under the <i>Military Rehabilitation and Compensation Act 2004</i>.

Appendix (cont'd)

Scope of legal aid services provided in the State of New South Wales of Australia

Area of Law	State	Commonwealth
Human rights matters	Legal aid is available for public interest human rights matters (State and Commonwealth) where a case has significant wider public interest, is of overwhelming importance to the client or raises significant human rights issues.	
Mental health matters	<ul style="list-style-type: none"> • Magistrates' inquiries under the <i>Mental Health Act 2007</i>; • Proceedings before the Mental Health Review Tribunal; • Representation of forensic patients; • <i>Guardianship Act 1987</i> matters and appeals to either the Administrative Decisions Tribunal or the Supreme Court from decisions of the Guardianship Tribunal; • Appeals from decisions of the Public Guardian or the Protective Commissioner; and • <i>Protected Estates Act 1983</i> matters. 	
Criminal law	<p>Local court:</p> <ul style="list-style-type: none"> • Most criminal matters commenced by a court attendance notice issued by the Police, except for drink driving and related offences unless there is a real possibility of gaol or exceptional circumstances exist; • Committal proceedings; • Domestic violence proceedings; • Annulment applications under Part 2 of the <i>Crimes (Local Courts Appeal and Review) Act 2001</i>; • Drug Court matters; and • Contesting a forensic procedure application made under the <i>Crimes (Forensic Procedures) Act 2000</i> (NSW) in the Local Court. <p>District, Supreme and High Court:</p> <ul style="list-style-type: none"> • Indictable matters; • Appeals; • Proceedings under Part 13A of the <i>Crimes Act 1900</i>; and • Defendants in prosecutions in the Land and Environment Court under environmental protection legislation in limited circumstances. 	

Appendix (cont'd)

Scope of legal aid services provided in the State of New South Wales of Australia

Area of Law	State	Commonwealth
Child support matters		<ul style="list-style-type: none"> • Advice and assistance on child maintenance/support matters; • Representation and assistance in child maintenance proceedings under the <i>Family Law Act 1975</i> and <i>Child Support (Registration and Collection) Act 1988</i>; and • Representation and assistance for child maintenance under the <i>Child Support (Assessment) Act 1989</i>.
<p>Prisoners' matters – State and Commonwealth</p> <ul style="list-style-type: none"> • Visiting justice proceedings; • NSW State Parole Authority review hearings; • Life re-sentencing applications; • Reviews of segregation directions; and • Advice and minor assistance in other matters. 		
<p>Children's matters – State and Commonwealth</p> <p>Children's criminal matters:</p> <ul style="list-style-type: none"> • Proceedings in the Children's Court; • Appeals to the District Court; • Committal proceedings; • Sentence matters and trials in the District Court and Supreme Court; and • Court of Criminal Appeal and High Court. <p>Children's care matters: (applicable to children, parents, guardians and others)</p> <ul style="list-style-type: none"> • Proceedings under the <i>Children and Young Persons (Care and Protection) Act 1998</i> in the Children's Court, District Court, Supreme Court and High Court; • Proceedings under the <i>Children and Young Persons (Care and Protection) Act 1998</i> for dispute resolution conferencing and external alternative dispute resolution when there are no current proceedings, in limited circumstances; • Proceedings in the Community Services Division of the Administrative Decisions Tribunal; and • Proceedings in the Guardianship Tribunal for consent to the carrying out of a special medical procedure on a child. 		

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