



Local Solutions to a Global Problem: Care & Protection Professional Development Initiative

Piloting an innovative place-based response to legal aid service provider market failure in care and protection matters in Regional NSW

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1. Introduction

Private legal practitioners who provide legal assistance to legally aided clients (often for a significantly lower fee than their full fee-paying clients) are an integral part of the provision of legal aid services for all Legal Aid Commissions (LACs) in Australia, as in many other jurisdictions internationally.

The 'mixed model' of service provision involves legal aid services being delivered by a mix of Legal Aid in-house, community legal centre and private practitioners and is a cornerstone of the legal aid model. Many LACs that use a 'mixed model' in providing services have struggled to maintain an adequate number of private practitioners willing to do legal aid work while still maintaining a high standard of quality of legal services. This issue is particularly acute in Regional NSW in the jurisdiction of care and protection. In several identified areas private practitioners are either no longer accepting legal aid work at all or reducing the amount that they take on, resulting in clients who would otherwise be eligible for legal aid being unable to easily access services. This can result in distress for clients and delays in legal processes and in some instances could be categorised as a 'crisis of supply' or 'market failure'. Fundamentally, this is a significant access to justice issue.

Traditional approaches to this complex problem have taken a universal approach, for example by lowering eligibility requirements for those private practitioners eligible to have work assigned to them. Legal Aid NSW has commenced a new, innovative and tailored solution to address this persistent and worsening issue: the Legal Aid NSW Care and Protection Practitioner Development Initiative (CAPPDI). The initiative aims to utilise a more robust approach to data analysis to identify regional areas most impacted by supply shortages and provide tailored place-based solutions to attract and retain private practitioners to do care and protection work and support local care and protection panels. Balancing both the 'quality' and 'supply' elements of the market failure issue. In this paper we will unpack the elements of this complex problem, discuss previous approaches and outline the approach of CAPPDI.



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2. Background

2.1 The 'mixed model' system of legal aid service delivery in New South Wales

Legal Aid NSW is the largest Legal Aid Commission (LAC) in Australia and provides a wide range of legal services across New South Wales with a duty to provide readily available and easily accessible services to people experiencing disadvantage¹.

The *Legal Aid Commission Act 1979* (NSW) provides for Legal Aid NSW to coordinate the provision of a 'mixed model' of legal services to the New South Wales community. The 'mixed model' of service provision involves legal assistance services being delivered by a mix of Legal Aid NSW in-house lawyers, community legal centres and private practitioners and is a cornerstone of the legal aid model in Australia as in many other jurisdictions internationally².

Private legal practitioners who provide legal assistance to legally aided clients are an integral part of the provision of legal aid services for Legal Aid NSW, and all LACs in Australia.

In New South Wales, prior to 2020, individual private practitioners were appointed to individual panels for specific areas of law to be able to undertake legal aid work.

Following a review in 2020, the panels were restructured, and membership is now by law practice. Practitioners with more than 3 years' post admission experience who hold a principal of a law practice practising certificate or barrister can submit a panel application to undertake legal aid work. There is a single application for a law practice or barrister and the applicant can nominate which individual panels they wish to be included on personally but also nominate any practitioners within their firm who intends on undertaking legal aid work.

There are still individual panels for various areas of law, each having specific requirements that any nominated practitioners must meet. These panels are also further divided by region. For some of these panels, work can also be delegated to associates of the law firm who do not otherwise meet the panel requirements, meaning that junior lawyers are able to get experience in these areas of law.

Once an application for panel membership has been approved, the applicant must execute a Service Agreement with Legal Aid NSW. Once executed there are Quality Standards that form part of the panel practitioner's obligations in providing legal aid services.

Panel practitioners are paid for legal aid work in accordance with fixed fee scales that vary based on the area of law and the work that is undertaken on behalf of the client.

Legal Aid NSW has a Private Lawyer Quality Standards unit that actively monitor the quality of work being done by panel practitioners and intervene where appropriate, including removing practitioners from specific panels or from being able to do any legal aid work.

¹ Legal Aid Commission Act 1979 (NSW)

² United Nations Office on Drugs and Crime, "Global Study on Legal Aid Country Profiles" (United Nations, 2016)

In the 2023-2024 financial year, Legal Aid NSW provided representation in 50,644 matters, of these private practitioners acted in 34,343 matters³, which is 67.5% of legal aid grants. Private practitioners also provided 38.9% of all duty lawyer services⁴.

Despite the efficient functioning of the 'mixed model' system being heavily reliant on private practitioners, for some time many LACs that use a 'mixed model' have struggled to maintain an adequate number of private practitioners willing to do legal aid work while still maintaining a high standard of quality of legal services⁵.

There are a number of widely and long recognised factors that contribute to this issue, however the prevailing frustration consistently raised by private practitioners is the financial viability of undertaking legal aid work. Legal aid fee scales are paid at a rate much lower than market rate, have seen little increase in decades and have not been able to keep pace with increased costs of practice⁶. This is a result of limited government funding, despite the benefit of the provision of legal aid services being provided nationally being estimated at \$600 million⁷ and fierce advocacy by Legal Aid NSW and other peak bodies to increase funding⁸.

In 2024 National Legal Aid commissioned a census of private practitioners who undertake legal aid work. This census was the first of its kind in Australia and the 'Legal Aid Private Practitioners 2024 Census Final Report' ("NLA Census") was published on 5 February 2025. The NLA Census was conducted by the Social Policy Research Centre at the University of NSW and surveyed 1,010 private practitioners across various jurisdictions.

The NLA Census confirmed that the primary barrier to private practitioners continuing to undertake legal aid work was financial viability, noting that the comments provided by private practitioners who would like to do less legal aid work were "*overwhelmingly focused on financial issues and profitability*"⁹.

The NLA Census noted that private practitioners who undertake legal aid work do so in contexts which are "*highly challenging, being technically complex, emotionally charged and resource stretched*"¹⁰. Private practitioners surveyed identified a variety of challenges arising from increasing case complexity and difficulties in engagement with LACs as impacting their willingness to continue to undertake legal aid work and the quality of representation that is being provided to legally aided clients⁹.

Concerns in relation to quality of representation provided to legally aided clients by some private practitioners have been recognised for a number of years. A range of often intersecting factors have been identified as impacting on the quality of representation provided. Practitioners have reported having to face the decision of lowering the quality of the services they provide or undertaking a

³ Legal Aid NSW, "Annual Report 2023-2024" (2024), 36

⁴ Ibid.

⁵ Dr John Boersig and Romola Davenport, "Distributing the legal aid dollar – effective, efficient, and quality assured?", 4

⁶ Legal Aid NSW, "Submissions to the Productivity Commission" (2013); Legal Aid NSW, "Submission to the Independent Review of the National Legal Assistance Partnership 2020-2025 (2023); National Legal Aid, "Submission to the Independent Review of the National Legal Assistance Partnership 2020-2025 (2023)

⁷ Price Waterhouse Coopers, "The benefits of providing access to justice – National Legal Aid" (2023), 17.

⁸ Natasha Cortis and Megan Blaxland, "Legal Aid Private Practitioners 2024 Census Final Report" (UNSW, 2025), 22.

⁹ Ibid, 6.

certain level of the work unpaid¹⁰. However somewhat positively, although in the recent census practitioners reported feeling pressure to reduce the quality of the work, the responses did not indicate that this was widely occurring. Rather, many of the practitioners surveyed reported their commitment to continue to provide high quality services regardless of the funding that they received¹¹.

In a recent case, *Department of Communities and Justice (DCJ) and the Yarran Taylor Children*¹², the Court commented on the exemplary manner in which the Independent Legal Representative, a panel practitioner, had represented the children. This case highlighted the importance of high-quality legal representation in care proceedings, where there were concerns in relation to the position put forward by the Secretary and the Independent Legal Representative presented a "*balanced view of the evidence for the Court's consideration and the possible options flowing from that evidence*"¹³ that would not have otherwise been presented to the Court and having a real impact on the outcome of that matter.

Although the NLA Census shone a light on the many challenges facing private practitioners undertaking legal aid work, it also highlighted the strengths and opportunities in the 'mixed model' system in Australia. The NLA Census found that private practitioners who undertake legal aid work are typically highly experienced practitioners with a strong commitment to social justice, who "*value legal aid as an opportunity to contribute to clients and communities, and to make a real difference in people's lives*"¹⁴

2.2 Challenges of legal service delivery in regional New South Wales

The issue of having adequate numbers of private practitioners willing to do legal aid work while still maintaining a high standard of quality is particularly acute in regional New South Wales.

The particular challenges in delivering legal services, and particularly legal aid services, in regional, rural and remote areas have been long recognised and include¹⁵:

- Limited access to resources, including administrative support, supervision and services.
- Limited opportunities for specialisation, continuing professional development and career advancement.
- Financial viability due to difficulties in achieving economies of scale and inflated operational costs.

¹⁰ Natasha Cortis and Megan Blaxland, ""Legal Aid Private Practitioners 2024 Census Final Report" (UNSW, 2025), 54.

¹¹ Ibid.

¹² [2024] NSWChC 3, [44].

¹³ Ibid, [43].

¹⁴ Natasha Cortis and Megan Blaxland, ""Legal Aid Private Practitioners 2024 Census Final Report" (UNSW, 2025), 1

¹⁵ Jeff Giddings, Barbara Hook and Jennifer Nielsen, "Legal services in rural communities: Issues for clients and lawyers" *Alternative Law Journal* Vol. 26, No. 2 April (2001): 57-63; Michael Cain and Suzie Forell, "Recruitment and retention of lawyers in regional, rural and remote New South Wales: Summary Report", Justice Issues, Paper 13 (2010); Natasha Cortis and Megan Blaxland, ""Legal Aid Private Practitioners 2024 Census Final Report" (UNSW, 2025); Price Waterhouse Coopers, "The benefits of providing access to justice – National Legal Aid" (2023)

- Working with clients with complex needs where there are limited services available for clients and sometimes an increased exposure to safety risks as a result of the closeness of small communities.
- Geographical isolation which can result in practitioners often having to travel long distances.
- Social pressures, including high expectations from community and social isolation.
- For some regions, an ageing population of practitioners approaching retirement with no succession plan.

Research also suggests that generally that in more remote communities there are higher levels of socio-economic disadvantage, higher proportion of Aboriginal communities and lack of access to appropriate services¹⁶. Factors all associated with people having multiple, complex and often interrelated legal and non-legal needs¹⁷. The NLA Census found that private practitioners undertaking legal aid work were of the view that unmet legal needs had increased in the last two years¹⁸.

In 2023-2024, 35.8% of Legal Aid NSW clients were located in rural and regional areas¹⁹. For the same year, 33.2% of all panel practitioners were located in regional areas²⁰. Currently, approximately 28% of the practitioners that are on the care and protection panels are located in regional areas.

However, the number of practitioners on a panel is not necessarily reflective of the availability of practitioners on the ground. Not all practitioners will formally withdraw from a panel but may remain on the panel while indicating that they are unavailable to take legal aid work. This may be for a specified period, or more generally. In the care and protection jurisdiction in some regions, panel practitioners may also only accept a certain type of matter, i.e. only act for adult clients or only accept matters acting for children.

Legal Aid NSW has 25 offices and two satellite offices that provide services across the State, including out-reach to rural and remote areas. It is not possible for Legal Aid NSW to have an office in every community and some rural and remote areas in New South Wales are serviced almost exclusively by panel practitioners. In many regional areas, the loss of a single practitioner from the care and protection panel would have a considerable impact on the delivery of services. In some areas, the loss of a single practitioner could potentially bring about complete market failure.

Although many of the challenges experienced in delivering care and protection services in regional New South Wales are shared, anecdotal feedback provided to Legal Aid NSW from both in-house staff and panel practitioners has suggested that the issues are more nuanced and varied between

¹⁶ Jeff Giddings, Barbara Hook and Jennifer Nielsen, "Legal services in rural communities: Issues for clients and lawyers" *Alternative Law Journal* Vol. 26, No. 2 April (2001): 57-63; Michael Cain and Suzie Forell, "Recruitment and retention of lawyers in regional, rural and remote New South Wales: Summary Report", Justice Issues, Paper 13 (2010); Natasha Cortis and Megan Blaxland, "Legal Aid Private Practitioners 2024 Census Final Report" (UNSW, 2025)

¹⁷ Ibid; Price Waterhouse Coopers, "The benefits of providing access to justice – National Legal Aid" (2023); Dr Warren Mundy, "Independent Review of the National Legal Assistance Partnership Final Report" (2024), 62.

¹⁸ Natasha Cortis and Megan Blaxland, "Legal Aid Private Practitioners 2024 Census Final Report" (UNSW, 2025), 2.

¹⁹ Legal Aid NSW, "Annual Report 2023-2024" (2024), 39.

²⁰ Ibid, 71.

regions. This is supported by the research on issues facing the provision of legal services in regional, rural and remote areas more generally²¹.

In a 2010 report by the Law and Justice Foundation of New South Wales, a census of private practitioners and public legal assistance lawyers indicated that problems in attracting and retaining lawyers for publicly funded legal assistance work in regional, remote and rural NSW were typically location specific²². The authors noted that the implication of this is that the implementation of 'blanket' solutions that approach regional, rural and remote areas "as a homogenous entity" are unlikely to succeed²³.

It is important to note that regional practice is not characterised only by challenges. Private practitioners in regional, rural and remote areas have reported benefits in practicing, and undertaking legal aid work, in these areas²⁴.

There can be lifestyle benefits such as lower cost of living and a close sense of community in regional, rural and remote areas due to a smaller population and limited options for social connection²⁵. This can extend to professional relationships, with some practitioners reporting that by working closely and regularly with other practitioners they are more easily able to resolve legal issues early by working collaboratively in a way their metro counterparts may not be able to²⁶.

For many younger lawyers, moving to a regional, rural or remote area can be seen as an opportunity to get a legal job in a less competitive market and/or to gain experience that they may not otherwise be able to in a metro area²⁷.

2.3 The court process in care and protection matters in New South Wales

The child protection system in New South Wales is primarily governed by the *Children and Young Persons (Care and Protection) Act 1998* (NSW) ("the Care Act").

The Care Act has been amended several times since 1998 often following recommendations of the many inquiries, reviews and reports that the Care Act has been the subject of. The most recent amendments came as a result of the Family is Culture report.

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²² Michael Cain and Suzie Forell, "Recruitment and retention of lawyers in regional, rural and remote New South Wales: Summary Report", *Justice Issues*, Paper 13 (2010), 1

²³ Ibid.

²⁴ Jeff Giddings, Barbara Hook and Jennifer Nielsen, "Legal services in rural communities: Issues for clients and lawyers" *Alternative Law Journal* Vol. 26, No. 2 April (2001): 57-63; Michael Cain and Suzie Forell, "Recruitment and retention of lawyers in regional, rural and remote New South Wales: Summary Report", *Justice Issues*, Paper 13 (2010); Natasha Cortis and Megan Blaxland, "Legal Aid Private Practitioners 2024 Census Final Report" (UNSW, 2025)

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid.

In the Family is Culture Report²⁸, Professor Megan Davis provided a comprehensive review focusing on the experiences of Aboriginal children, young people and families impacted by the child protection system in New South Wales and noted the following:

“The child protection system in New South Wales is incredibly complex, it is based on a mixture of legislation, policies and standard practice procedure, all of which are difficult to understand without the relevant training or experience. The system’s lack of accessibility is compounded by the endless cycle of reform, with internal FACS policies being constantly reviewed and replaced, and amendments to care and protection legislation occurring at regular intervals²⁹”

The Minister for Families, Communities and Disability Services is responsible for the administration of the Care Act and can hold ‘parental responsibility’ for children pursuant to orders made by the Children’s Court. The Department of Communities and Justice (“DCJ”) is the relevant government department. The Secretary is the most senior official within DCJ. Among other things, the Secretary is responsible for conducting litigation on behalf of DCJ.

The Care Act provides that any person who has reasonable grounds to suspect that a child or young person is at risk of significant harm may make a report to the DCJ³⁰. There are also certain professions that are “mandatory reporters” meaning that they are required under the Care Act to make a report if they have reasonable grounds to suspect that a child or young person is at Risk Of Significant Harm³¹. These reports are referred to as “ROSH reports.” Mandatory reporters include doctors, nurses, police, teachers, childcare workers etc.

Once DCJ receives a ROSH report, a triage process will be conducted, and DCJ will make inquiries to determine whether the child or young person is at risk. These investigations by DCJ can include home visits, meeting with the child or young person, gathering information from other agencies or people and a safety and risk assessment.

The Care Act provides that if the Secretary forms the opinion that a child is in need of care and protection, they may take whatever action is necessary to safeguard or promote the safety, welfare and well-being of the child³². This includes the power to remove or assume the child into the care of the Minister³³.

Following the removal or assumption of a child the Secretary is required to commence proceedings in the Children’s Court of NSW to seek court orders. Parents must also be given written notice of the removal of the child and the reasons for removal³⁴.

²⁸ Professor Megan Davis, “Family is Culture Review Report: Independent Review of Aboriginal Children and Young People in OOH” (2019)

²⁹ Ibid, 56.

³⁰ *Children and Young Persons (Care and Protection) Act 1998* (NSW), s 24.

³¹ Ibid, s 27.

³² Ibid, s 34.

³³ Ibid, ss 34, 43, 44, 233.

³⁴ Ibid, s 51.

The Children's Court has several specialist Magistrates who sit under the President of the Children's Court, who is a District Court Judge. There are currently 15 specialist Children's Court Magistrates and the Children's Court has nine permanent locations and there are regular circuits covering the Hunter, Mid-North Coast, Northern Rivers, Western and Riverina regions. In other areas of New South Wales, predominately rural and regional, Local Court Magistrate's exercise the jurisdiction of the Children's Court.

When a care application is filed with the Children's Court, Legal Aid NSW will be notified and provided with a copy of the application and contact details for the parents. This notification will often only be provided the day before the case is first listed in court. The local office of Legal Aid NSW or the Solicitor in Charge of Care and Protection will then allocate representation for the parties (usually the parents and children) for the first court date on a duty basis.

The procedure for how care and protection matters are dealt with by the Court are set out in Practice Note No. 5 – Case Management in Care Proceedings.

The Care Act provides for children in care and protection proceedings to have a right of appearance³⁵ and for the Children's Court to be able to appoint a legal representative if it appears to the Court that the child should be represented³⁶. In practice, a legal representative is appointed for all children in care and protection proceedings.

For any children under 12 years old, an Independent Legal Representative ("ILR") is appointed³⁷. An ILR is a "best interest" representative and will usually act for all children in a case under 12 years of age. For children 12 years and older, a Direct Legal Representative ("DLR"), is appointed³⁸. If there is more than one child over the age of 12 in a case, they will each be appointed a separate DLR who acts directly on their instructions.

Generally, the Secretary will seek an "interim order" for parental responsibility to be allocated to the Minister while proceedings are ongoing. This decision will usually be made on the first court date, in circumstances where the only evidence before the Court is that of DCJ, the parents have had little opportunity to consider that evidence and have often only met their legal representative that day. The then President of the Children's Court, Judge Peter Johnstone, described the assessment undertaken by the Court at this initial stage to the General Purpose Standing Committee No. 2:

In practice there is usually limited information presented to the Court to assess risk and the vast majority of applications for interim orders are not contested by parents. This may be because the legal practitioner has advised their client not to present evidence to the Court that cannot be substantiated at that time or might later be contradicted. That is, the legal practitioner may have assessed that it is not in their client's best interest to consent the application for an interim order. The Court is therefore often assessing risk on the basis of the information presented by the Department and in a context where the removal has already taken place³⁹

³⁵ *Children and Young Persons (Care and Protection) Act 1998* (NSW), s 98.

³⁶ *Ibid*, s 99.

³⁷ *Ibid*, ss 99A, 99B.

³⁸ *Ibid*, ss 99A, 99C.

³⁹ New South Wales Parliament Legislative Council General Purpose Standing Committee No.2, "Child Protection", (2017), Report no. 46,

There is, from the outset, a significant power imbalance between the parties in care and protection matters before the Court, which is only compounded when parties do not have access to quality legal representation. In her memoir, the Commissioner for Aboriginal and Torres Strait Islander Children Vanessa Turnbull-Roberts, writes about her experience having been removed from her parents as a child. She says of the process:

*“When a state system is pitted against community members and families who lack access to legal services and effective representation, it becomes highly challenging for the family and child involved in foster care to have a successful outcome. This power imbalance can further perpetuate injustices and make it difficult for families to navigate the child protection system”*⁴⁰

Turnbull-Roberts goes on to note that having an advocate or legal representative back you, “*can be the difference for families*”⁴¹

The Court may only make a care order in relation to a child if the Court finds that the child “is in need of care and protection”⁴². The Care Act sets out a non-exhaustive list of reasons that a child may be in need of care and protection including if a child’s needs are not being met or they are at risk of harm⁴³. This is often referred to as “establishment” and is where the Court is asked to determine if there is a risk to the safety, welfare and wellbeing of a child, sufficient for the Court and DCJ to intervene into the lives of the child and their family.

Generally, the Court will want to know the parties’ position on establishment the second time the matter is before the Court. This is generally no more than 28 days after the first Court date. This gives parents and legal representatives little time to consider what is often voluminous material filed by DCJ and prepare an effective argument in response.

Approximately 90% of care and protection cases are established, whether opposed or not⁴⁴ as it is considered a “*very low threshold*” for the finding to be made by the Court that a child is in need of care and protection⁴⁵.

After establishment the matter moves on to what is referred to as the ‘placement’ phase which involves an assessment as to whether there is a ‘realistic possibility of restoration’ of a child to one or both of their parents within a reasonable period⁴⁶, and permanency planning for the child. Early on in proceedings the Secretary will have filed a “Summary of Proposed Plan” which sets out whether DCJ considers whether there is a realistic possibility of restoration and identifies steps that the parent/s must take to address risk concerns.

⁴⁰ Vanessa Turnbull-Roberts, “Long Yarn Short”, (University of Queensland Press, 2024), 96.

⁴¹ Ibid, 99.

⁴² *Children and Young Persons (Care and Protection) Act 1998* (NSW), s 72.

⁴³ Ibid, s 71.

⁴⁴ New South Wales Parliament Legislative Council General Purpose Standing Committee No.2, “Child Protection”, (2017), Report no. 46, 73.

⁴⁵ Ibid, 63.

⁴⁶ *Children and Young Persons (Care and Protection) Act 1998* (NSW), s 83.

During this stage, DCJ will continue to undertake casework, and further evidence will be filed by the Secretary and sometimes the parents or other parties. It is during this phase that is most likely that a matter will be adjourned several times to allow continued casework and allow parents time to address risk concerns. This stage may involve an independent clinical assessment of the child and/or capacity of the parent/s.

The court will usually direct DCJ to file a Care Plan which will include DCJ's assessment as to whether it is safe for the child to be restored home to a parent or parents. If restoration is not supported, the focus becomes where that child will live long term, who will make legal decisions for the child, and who the child will spend time with (their parent/s and important family/kinship members).

Although the Secretary must make an assessment as to whether there is a realistic possibility of the child being restored to their parent/s⁴⁷, it is ultimately the decision of the Court whether to accept that assessment and what final orders should be made for a child⁴⁸. Before making any final orders, the Court must be satisfied that permanency planning for the children has been adequately and appropriately addressed⁴⁹.

The parties may be directed to attend a Dispute Resolution Conference during the course of proceedings, with a view to the parties coming to an agreement as to orders that should be made or at least narrowing issues in dispute. This can also be an opportunity for parents to hear from the other parties in a less adversarial setting and give an opportunity to be heard.

If orders are not made the Court with agreement of the parties, the matter will be listed for a final hearing. As well as the parties' affidavits evidence might include subpoenaed records held about the family by the police, hospitals, doctors, school or other agencies. There might also be a report from an independent expert, or more than one. The parties can be cross examined by the solicitors including the DCJ caseworkers, the expert, the parents, and other people who are involved with the children and/or parents

Pursuant to Practice Note No. 5, the Children's Court will aim to complete 90% of care and protection cases within nine months and to complete all cases within twelve months⁵⁰. Although we do not have data from the Children's Court on the completion rate, what we know anecdotally is that the reality is that these cases often take twelve months to two years to finalise. Once a matter is before the Court, it will often return to court approximately every 4-6 weeks for a status update.

The Care Act provides that care and protection proceedings are not to be conducted in an adversarial manner, and with as little formality and legal technicality and form as the circumstances permit⁵¹. However, this is often not the reality.

In their 2011 paper, '*Lawyers, Advocacy and Child Protection*', Tamara Walsh and Heather Douglas considered two studies, one of child protection caseworkers and the other of care and protection

⁴⁷ *Children and Young Persons (Care and Protection) Act 1998* (NSW), sub-s 83(1).

⁴⁸ *Ibid*, sub-s 83(5).

⁴⁹ *Ibid*, sub-s 83(7).

⁵⁰ Practice Note No. 5 – Case Management in Care Proceedings

⁵¹ *Children and Young Persons (Care and Protection) Act 1998* (NSW), s 93.

lawyers in Australia. They noted that the lawyers surveyed “*overwhelmingly believed that court processes in child protection matters were too adversarial for a parent to be able to navigate the system effectively on their own*”⁵². Many of the lawyers commented on the importance of legal knowledge and skill in advocacy, where legal arguments based on legislation were available and the evidence of the Department was open to interpretation⁵³.

The removal of a child is one of the most significant interventions the State can make in the life of that child, their parents, family and community which is almost certain to cause extreme distress and trauma. It is precisely then that parents and children are forced into a court process that is complex, unfamiliar and fast paced against a well-resourced government department that has affected that removal. The importance of parents and children having high-quality legal representation that they can trust to advocate for them cannot be understated.

2.4 Legal service delivery in the care and protection jurisdiction

For private practitioners in New South Wales there are three ways that they can take on care and protection work:

1. **Allocation by Legal Aid NSW:** panel practitioners are allocated work by the local Legal Aid NSW office or the Solicitor in Charge of Care and Protection, usually in accordance with a duty roster.
2. **Grants Division:** offers can be made by the Legal Aid NSW grants division to panel practitioners.
3. **Direct from Clients:** panel practitioners can be directly instructed by a client and submit an application for a grant of legal aid on their behalf. Although the majority of care and protection clients are legally-aided, private practitioners may also act for privately paying clients.

There are roster arrangements in place for each of the four specifically designated Children’s Court registries (Surry Hills, Parramatta, Woy Woy and Broadmeadow) as well as many of the other locations that the Children’s Court sits. The rosters are centrally managed by an in-house Duty Coordinator and practitioners on the care and protection panel are invited each year to nominate to be placed on the roster.

In locations where there is a duty roster, parties and children are allocated a lawyer in accordance with the roster, with the children usually being allocated first and then parties. In allocating representation, Legal Aid NSW will first consider whether an in-house lawyer will represent a child or one of the parties. There is also a referral protocol between Legal Aid NSW and the Aboriginal Legal Service (ALS) that wherever the ALS provide a service in care and protection matters, all care applications involving Aboriginal children will be referred to the ALS in the first instance.

There are a number of advantages to having a roster, including that it creates efficiencies and predictability in large busy Court lists, and it is an equitable and consistent process that provides

⁵² Tamara Walsh and Heather Douglas, “Lawyers, Advocacy and Child Protection”, *Melbourne University Law Review* (2011), Vol. 35, 621-650, 635

⁵³ *Ibid*, 636.

panel practitioners clarity around when they need to be at Court and a more equal distribution of work.

There are several regional locations that do not have rosters, typically those where the panel is small, and a roster would not be practical, necessary or helpful. In these locations, matters are allocated on an ad-hoc basis generally based on the availability of the panel practitioners and suitability of the allocation.

For some time, there have been significant service delivery challenges reported due to a shortage of care and protection panel practitioners in many regional areas. Staff allocating representation have reported having to make extensive, and time consuming, enquiries to ensure that there is representation for all parties in proceedings. The lack of available panel practitioners locally has often resulted in practitioners who are not based locally providing representation, which means either that a face-to-face service may not be able to be provided or practitioners (or clients) are having to travel sometimes considerable distances. Occasionally it has also resulted in parties not having representation when a matter is first before the Court, which can result in delays in proceedings and compound distress for clients who are already likely to be extremely distressed.

To be allocated a matter by Legal Aid NSW or to act for a legally aided client in a care and protection matter private practitioners are required to be on the care and protection panel.

Prior to the changes to the Legal Aid NSW panels in 2020, there were two care and protection panels that practitioners could be appointed to, for adult representation and child representation. For private practitioners to apply to be appointed to the care and protection panels they were required to undertake a test of their knowledge of the Care Act and Children's Court practice and procedure, outline their experience in care and protection matters and, if applying for the child representative panel, demonstrate their experience in acting for children or transferable skills to be able to do so.

Practitioners were also required to provide two references from practitioners on the panel to confirm their experience in the care and protection jurisdiction. These applications were then assessed by a panel who could determine the practitioner be 'not recommended' if they did not demonstrate the requisite level of knowledge of the jurisdiction and/or a sufficient understanding of the unique complexities of representing children.

When the panels were restructured in 2020 to introduce panel membership by law practice, the care and protection panels were combined. The individual requirements of the combined panel were initially five years post admissions experience in care and protection or specialist accreditation in Children's Law. The application was also self-certified by the Principal of the Law Practice.

These changes saw the number practitioners close to double in size, which raised concerns as to the level of experience of the practitioners on the panel. The individual requirements were then reviewed in 2021, and additional requirements were introduced. These requirements were for practitioners to undertake two training modules (representing children and representing adults), successful completion of an in-person child representation workshop and a satisfactory referee report. As a result of these changes, the panel numbers returned to being close to where they were before the 2020 changes were introduced.

This combined panel structure and the requirements for eligibility have created a barrier for entry for many private practitioners. The nature of care and protection legal representation is that the vast majority of clients are legally-aided and as such there is virtually no private paying legal work in the jurisdiction. This has presented a problem for private practitioners with no way to gain the experience necessary to be accepted onto the panel unless they have recently and for some time worked for Legal Aid NSW or ALS or a law practice already on the panel.

In response, particularly in the context of regional areas with the unavailability of practitioners, Legal Aid NSW has, in appropriate circumstances, put in place ad-hoc arrangements to exempt practitioners from the individual panel requirements.

There have been six such arrangements since 2021 and have involved a requirement for the practitioner be mentored by an experience member of the care and protection panel, and a condition that they undertake adult matters only. These arrangements have been without formal structure or processes and have relied on the availability and goodwill of other panel practitioners to offer mentoring with no remuneration.

2.5 Remote Preferred Provider Scheme

The Remote Preferred Provider Scheme (RPPS) is a scheme where solicitors outside the local court area can appear at court events via video link to represent parties where there are insufficient local panel practitioners to represent all parties to the proceedings. This scheme provides for the allocation of care and protection matters in certain remote and regional areas to panel practitioners who are not based locally to that region. The RPPS was initially implemented in two remote regions, Broken Hill and Moree, in 2016. The RPPS in these regions ensured that all parties in care and protection proceedings were represented by highly skilled panel practitioners.

In 2021, Legal Aid NSW undertook a review of their family law and care and protection services and published the Family Law Blueprint. The objective of the Blueprint was to ensure family law services, including care and protection, are provided to our most vulnerable and disadvantaged clients in a consistent, effective and accessible way with a clear vision to make families safe. One of the key elements of the Blueprint was to reform and strengthen the care and protection practice of Legal Aid NSW.

At this point, the shortage of panel practitioners in some regional areas had become extremely dire. Legal Aid NSW established a working group to explore alternative contractual arrangements to address service delivery and quality issues in both crime and care and protection. The care and protection panel were surveyed to gauge their interest in undertaking work in other registries. Responses were received from approximately half the panel and over 90% of those who responded expressed an interest in undertaking this work.

From 2023, the RPPS has been implemented in three other regions and is likely to be utilised in further regional locations. A 2024 review of one of the RPPS locations recommended the extension of the scheme in that region and consideration of other regional locations that could benefit from the RPPS.

The aim of the RPPS is to deliver a consistent, high-quality supply of care and protection panel practitioners to service these communities through a formal and transparent process. The scheme covers the allocation of all grants of aid in care matters in these communities: that is, representation of the child or children, the parent/s and any adult third party or parties joined to the proceedings.

To be appointed as a remote preferred provider, panel practitioners are selected based on the following additional criteria:

1. Ability and willingness to travel to the local court location on a semi regular basis (usually for hearings and dispute resolution conferences) to responsively and effectively undertake care work in those communities.
2. Willingness to undertake additional training and professional development as identified by Legal Aid NSW.

3. Proven capacity to deliver high quality legal services to disadvantaged clients both in person and electronically, and a demonstrated understanding of the complex needs of these clients.

In circumstances where it is understood that the RPPS is supported by stakeholders and appears to be working well, Legal Aid NSW does not intend on ceasing the use of the RPPS in the immediate future. However, RPPS is a costly, short-term solution and could be classified as a 'band aid' solution to deal with crisis in supply and it potentially worsens the market failure over the long-term if not married with complimentary solutions to revive the local supply of panel practitioners.

Whilst feedback in relation to the RPPS from in-house and panel private practitioners and the Court has been generally positive as it ensures all parties are represented, it is a limitation of the most recent review that there was no evidence gathered on client experience. Despite this, Legal Aid NSW recognises that it is often not an ideal method of client focused service delivery, particularly for vulnerable clients.

In many cases, remote preferred providers may only ever speak to their clients via video and telephone calls, and rarely, if ever face to face. For clients to have their lawyer appear in court via a television screen rather than sit at the bar table and communicate to their client before, during and after court face to face could potentially be an unsatisfactory and stressful experience for a client. This can be exacerbated for clients in regional, rural and remote areas where clients may face additional barriers due to a lack of access to technology and lower levels of digital literacy⁵⁴.

⁵⁴ Price Waterhouse Coopers, "The benefits of providing access to justice – National Legal Aid" (2023), 19.

3. Development of the Care & Protection Practitioner Development Initiative (CAPPDl)

As noted above, Legal Aid NSW has for some time recognised that there is a substantial risk that high-quality, or in some instances any, services will not be able to be provided to our clients as a result of a shortage of private practitioners with the requisite experience and willingness to undertake legal aid work⁵⁵.

In seeking to address this risk, Legal Aid NSW has continued to advocate for sufficient funding to adequately compensate panel practitioners and narrow the gap between legal aid fee scales and market rates⁵⁶.

However, as this funding has not been forthcoming, Legal Aid NSW has also looked for other ways to attract and retain suitably skilled and experienced panel practitioners to undertake legal aid work. For a number of years Legal Aid NSW have implemented various changes to our systems, processes, panel structure and quality assurance framework to address concerns raised by, and about, panel practitioners undertaking legal aid work.

To continue and consolidate this work, a Manager of Practitioner Relations has recently been appointed to undertake a comprehensive organisation wide project to identify, develop and implement strategies and solutions to improve the attraction and retention of panel practitioners.

We understood, however, that such a large scale organisation wide approach would take time and the situation for the care and protection jurisdiction in many regions was at or nearing market failure. Although there had already been short-term and/or ad-hoc solutions implemented to address immediate needs in some regions, it was identified that a longer term solution was needed, and as soon as possible.

A workshop was held with a number of internal stakeholders to gain a comprehensive understanding of the current state of the care and protection panel and to explore options for attracting and retaining panel practitioners.

The outcome of this workshop was a proposal to pilot a tailored place-based initiative to attract new panel practitioners to the care and protection panel and to enrich and support the local care and protection panel through targeted relationship and capacity building engagement and provision of training and education.

It was determined that the initiative would be piloted in three regional locations that have Legal Aid NSW offices. The three pilot sites were selected based on consideration of a number of criteria including current and/or anticipated need for panel practitioners and identified strengths of the region that could support the implementation of the initiative, including the availability of local private

⁵⁵ Legal Aid NSW, "Submissions to the Productivity Commission" (2013); Legal Aid NSW, "Submission to the Independent Review of the National Legal Assistance Partnership 2020-2025 (2023)

⁵⁶ Ibid; Monique Hitter, "Survey highlights private lawyers' vital role in legal aid but warns of looming exodus" *Law Society Journal Online*, April 28, 2025, [Survey highlights private lawyers' vital role in legal aid but warns of looming exodus - Law Society Journal](#)

practitioners that may be attracted to participate in the development program and eventually join the care and protection panel.

An analysis of available grants data looked at where we have a shortage of panel practitioners taking on care and protection work and where this places acute pressure on in-house lawyers. To approximate the seriousness of the supply issue in each region, we looked at two main metrics: the number of times a grant needed to be offered to panel practitioners before it was accepted and the percentage of all care and protection grants we retain in-house in the region. We also looked at the data on what law practices were assigned grants and their location as we are aware that due to the way that care matters are allocated that the data on grants offers are not necessarily reflective of the situation on the ground.

In addition to the analysis of grants data, we considered anecdotal feedback that we had received from in-house lawyers and panel practitioners in relation to trends in allocating care and protection matters and practitioners who were likely to reduce or cease undertaking care and protection work within the next twelve months.

To estimate the potential number of private practitioners in each region who may be interested and eligible for the development program, we looked at the number of private practitioners in each region who were recently active on the family law, children's crime and mental health panels that were not already on the care and protection panels. We also looked at the number of accredited specialists in family law and child law in each region.

In assessing the strengths and opportunities within each region that would support the implementation of the initiative, we again looked at anecdotal feedback we had received from both in-house staff and external stakeholders in relation to the nature of the local legal profession, the relationships that the local Legal Aid NSW office has with local stakeholders and any local initiatives already in place, or planned, in each region.

Once the three proposed locations were initially identified, scoping workshops were held with the local Legal Aid NSW offices. The purpose of these workshops was two-fold. Firstly, as we were aware that the available data is not always reflective of the situation on the ground and this can also be quite dynamic, we wanted to confirm what we understood to be the current situation in each region. Secondly, through the workshops we were able to identify the unique issues and pain points of each region as well as the unique strengths and opportunities that would form the basis for tailored structure of the initiative as it is to be implemented in each region.

What we found from these workshops was consistent with our understanding of the landscape for care and protection panel practitioners in regional New South Wales. Although each of the regions had unique characteristics, many of the challenges raised were shared:

- Local private practitioners who are already on legal aid panels are not feeling valued, particularly compared to their colleagues in metro areas. This was consistent with the NLA Census that found that more than 50% of private practitioners did not feel valued by LACs⁵⁷.
- That the numbers of practitioners on the current care and protection panel is not reflective of the situation on the ground. Many practitioners still on the panel are not active and/or are

⁵⁷ Natasha Cortis and Megan Blaxland, "Legal Aid Private Practitioners 2024 Census Final Report" (UNSW, 2025),

only accepting certain matters although we saw some variance here in what types of matters were being accepted in each region.

- There were several complaints, other than financial, that local panel practitioners had in each region that contributed to their leaving the panel or reducing the amount of care and protection work they were willing to take on.

Although there were commonalities between the regions in the strengths and opportunities to support the local care and protection panel, this was where we found the most variance and identified the most potential for tailored place-based solutions.

4. The Care & Protection Practitioner Development Initiative (CAPPDI)

The Care and Protection Professional Development Initiative proposes to allow individual practitioners who do not meet the current care and protection panel requirements to be supported to do care and protection work on grants of legal aid.

The structure of the program will be tailored to meet the needs and build on the strengths of each region with input from the local Legal Aid NSW offices and would consist of a suite of components including:

1. Roadshow and promotion event and materials including videos and social media;
2. Modified eligibility requirements;
3. An Expression of Interest process;
4. Completion of an intensive training program;
5. A requirement to be on the duty roster or available for allocation and accept a minimum amount of care and protection work including a requirement to travel within the region;
6. Mentoring by an experienced care and protection practitioner;
7. At the conclusion of a pre-determined period of time in the program, the practitioner would then be eligible to participate in the child representation training, and on successful completion, be appointed to the panel.

It is also proposed that scaffolding be implemented to support the program, again to be region specific and developed through the workshops and continued engagement with the local Legal Aid NSW offices:

1. Targeted local promotion of the program and both local and statewide promotion of care and protection work in collaboration with the Children's Court, local and NSW Law Societies, local professional networks and media.
2. Enrichment and support of the local care and protection panel through targeted relationship and capacity building engagement such as provision of training and education, hosting and attending local professional events and regular Court users forums.
3. Consideration of utilising Legal Aid NSW in-house specialist teams more in targeted regions and/or increasing resources to local in-house teams.

It is intended that certain components of the development program will be largely consistent across all regions: the expression of interest process, modified eligibility criteria, intensive training program and mentoring, although aspects of these will still be variable.

Expression of Interest process

There will be a process for private practitioners in each of the regions to express their interest in participating in the development program. The process will be consistent across the regions but engagement with the local private profession to invite expressions of interest will be place-based.

An in-house lawyer to act as a 'concierge' for private practitioners through the expression of interest and on-boarding to the development program. It is intended that this will address some of the difficulties

that private practitioners report in dealing with LACs⁵⁸ by having a single point of contact who is experienced in both care and protection and Legal Aid NSW policies and processes.

Modified eligibility requirements

For the development program the eligibility requirements will be modified to the following:

1. That the law practice either be on a Legal Aid NSW panel or eligible for panel membership and upon entry to the program execute a Service Agreement with Legal Aid NSW (if the law practice is not on a panel and therefore there is no current Service Agreement in place).
2. That the participant practitioner be on or eligible for any of the following other Legal Aid NSW panels:
 - a) Any of the Criminal law panels
 - b) Family law panel
 - c) Mental health panel
3. That the participant practitioner hold a current Working with Childrens Check. The Working with Children Check is a requirement for anyone who works or volunteers in child-related work in New South Wales. It involves a criminal history record check and a review of reportable workplace misconduct. The outcome of a check is either a clearance to work with children or a bar against working with children. If cleared, the check will be valid for 5 years, however applicants are continuously monitored.
4. Delegation of work to others is not permitted.
5. The participant practitioner is eligible to represent adult clients only until the successful completion of the program and the child representation training.

Intensive training package

Participants in the development program will have to undertake an intensive training package that would cover:

- Care and protection law
- Advocacy
- Legal Aid NSW policies and processes and available resources
- Compliance with Quality Standards
- Trauma informed lawyering and working with vulnerable clients

Currently, the majority of Legal Aid NSW training is provided online or in person in Sydney. Feedback from panel practitioners based in regional locations has been that although they consider the training provided by Legal Aid NSW to be of high quality that the cost of travel and taking time out of their

⁵⁸ Natasha Cortis and Megan Blaxland, "Legal Aid Private Practitioners 2024 Census Final Report" (UNSW, 2025), 31-37; 59-60.

practice precludes them from attending. This was also identified in the NLA Census, with private practitioners suggesting that training should be provided in more accessible ways⁵⁹.

To address this, a core package of training modules will be developed that is accessible to local Legal Aid NSW offices to be able to provide locally, including the required training for the development program.

Mentoring

The scoping workshops held with the local Legal Aid NSW offices all identified mentoring as an essential component of the development program.

Previous arrangements have generally been on the following terms:

1. Monthly meetings (or more if required);
2. A mentor report to be prepared by the mentor and provided to the Solicitor in Charge for Care and Protection at the end of each 12-month period covering the following:
 - a) Observations of representation of clients in care and protection;
 - b) Frequency of meetings and meeting discussions;
 - c) Any concerns about the quality of representation;
 - d) Whether ongoing inclusion on the Care Panel is recommended.
3. The participant to seek assistance from the mentor when deemed necessary including but not limited to preparing for final hearings;
4. Informal support outside formal monthly meetings as required;
5. Legal Aid NSW to be immediately notified if the requirements can no longer be complied with.

It is proposed that the mentoring for the development program would largely be consistent with the above terms, to be tailored to the needs of each participant practitioner by way of a mentoring plan to be developed during on-boarding to the program. Mentoring guidelines will be developed that will be applicable to all participant practitioners.

Consideration was given to whether the mentoring component of the development program would continue to utilise experienced panel practitioners or whether the mentoring should be undertaken by an in-house lawyer. Ultimately, we determined that it would be preferable for an in-house lawyer to provide mentoring.

This is consistent with responses from private practitioners in the NLA Census, where several practitioners suggested that LACs should expand the supports they provide for legal aid work, *“wellbeing and peer support, among other forms of guidance and supervision, would assist those unable to access it in their own organisations”*⁶⁰

There were several identified benefits of the mentoring being provided by an in-house lawyer, as opposed to an external panel practitioner:

- a) Ensures consistency in the mentoring that is provided to the participant.

⁵⁹ Natasha Cortis and Megan Blaxland, “Legal Aid Private Practitioners 2024 Census Final Report” (UNSW, 2025), 61.

⁶⁰ Ibid, 60.

- b) Higher level of oversight of the participant's compliance with the conditions of the development program.
- c) Greater consistency in monitoring quality of representation and immediacy in addressing any quality concerns if they arise.
- d) Availability of a mentor in circumstances where the identified issue is a lack of panel practitioners, noting that previous mentors have been on an ad-hoc volunteer basis and have been identified through personal relationships with either the mentored practitioner or Legal Aid NSW.

Tailored place-based components

The scoping workshops confirmed that each region has unique challenges in attracting and retaining care and protection panel practitioners and unique strengths to build from in implementing the initiative:

- The issue of shortage of care and protection panel practitioners was nuanced across the regions. In one region panel practitioners would only accept matters acting for adults, in another they would only accept matters for children. One region relied heavily on a single panel practitioner whose loss from the panel would likely bring about market failure, in another the majority of practitioners were approaching retirement and would leave only one practitioner on the panel.
- Similar but uniquely specific pain points for care and protection panel practitioners were identified in each region and there were wide range of solutions proposed in each region.
- Although each region identified private practitioners who were or might be interested and suitable to participate in the program, there was considerable difference in the characteristics of the practitioners identified and how they would most effectively be engaged with.
- It was agreed across all regions that making practitioners feel valued would be a key piece in being able to continue to attraction and retention. The local offices in all regions already had stakeholder engagement plans to address this and in some locations were already implementing strategies. Again, there was considerable variance in what form of engagement local panel practitioners would appreciate.

A detailed implementation plan will be developed in consultation with each office. It is the intention that the local offices will drive the implementation of the initiative in their region, with support from the wider project team. This is because we appreciate that the local staff are the experts in their region. They are on the ground, in the community, in practice and already have relationships with the stakeholders who are key to the success of the initiative.

Evaluation

The initiative is still in initial stages of development and implementation; however, it is intended that evaluation methods will be built into the implementation plan. A working group comprised of the project team and the Solicitors in Charge and/or Family Law Practice Managers from each office will meet regularly to monitor the implementation of the initiative.

It is also intended that there be a mid-project and end of project evaluation that will draw on quantitative and qualitative data to assess the effectiveness of the development program, including available grants

data, data on court outcomes and feedback from stakeholders including participant practitioners, local panels, DCJ lawyers, the Court and clients. This could also include an analysis of the existing RPPS sites that would allow us to analyse how these different approaches to the shortage of panel practitioners could be used together or where one should be implemented over the other.

Legal Aid NSW recognises that the challenge of attracting and retaining private practitioners to undertake legal aid work is complex and nuanced. With CAPPDI, it is envisioned that the tailored and multi-faceted strategies will provide a sustainable long-term solution to this issue in the care and protection jurisdiction. With several interconnected strategies being implemented over the period of the pilot, we anticipate that there will be both short term and long term measures of success. For example, with the implementation of the development program, we anticipate an increase in the availability of local practitioners able to accept care and protection matters from the outset of the program.

Although there may be also some challenges or pain points for panel practitioners that can be addressed immediately, we understand that many aspects of the initiative, particularly the promotion of care and protection work, and the enrichment of regional panels is going to take consistent targeted communication and relationship building over time. Overall, it is our expectation that success of the initiative will see thriving local care and protection panels, increasing efficiencies for Legal Aid NSW, DCJ and the Children's Court and improve experiences and outcomes for children and families involved in care and protection proceedings.