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SLIDE 2

Legal Aid in Australia

- Legal Aid delivers approximately 150,000 legal representation grants per year nationally.
- Legal Aid uses a 'mixed model' of service delivery that includes in-house practitioners and external lawyers known as 'private practitioners' for legal representation.
- Over 70% of legal representation is provided by private practitioners.
- The Federal Government provides funding for Family Law & Federal Civil matters (social security, migration, disability appeals, child support, disaster), Federal Criminal matters
- State/Territory Governments provide funding for State/Territory Criminal matters and other state/jurisdictional areas such as domestic & family violence, care and protection, housing & mental health.
- Legal Aid delivers legal assistance alongside Aboriginal & Torres Strait Islander Legal Services, Community Legal Centres and Family Violence Prevention Legal Services. It is the largest provider of legal representation in the country.



Legal Aid Commissions were established in Australia just over 50 years ago.
Legal aid has always delivered services using 'mixed model' that

includes in house lawyers and private law firms. Almost three quarters of legal aid representation is provided by private law firms, which are engaged by Legal Aid Commissions via a registration or panel process, and who receive set fees for the particular type of service delivered. Panels are established according to areas of law, for example, around criminal, family, or civil law or specialist panels around migration, child protection or mental health. Appointments of private lawyers to a panel are typically made after a review process.

Legal Aid legal representation is provided to people experiencing disadvantage who are subject to a means test and merit test. The means test is 'very mean' with only 8% of Australian households eligible (well under the poverty line). Due to resource constraints, clients also often have to meet further criteria, including being at risk of or having experienced family violence, having a disability and/or mental health issue and other vulnerabilities.

Legal Aid funding is provided by the Federal and State/Territory Governments. This funding has remained relatively static, with increases largely provided by State/Territory Governments to continue to meet the need in providing legal aid in criminal matters and state civil areas.

Consequently, Legal Aid fees provided to private practitioners have not meaningfully increased for over 10 years. Legal Aid fees have received criticism as being insufficient for doing legal work. Legal Aid Commissions report that it is increasingly difficult to retain and engage private practitioners to undertake legal aid work.

Concerns have deepened about:

- The consequences of a loss of private lawyers prepared to do legal aid work
- Quality of the work
- Possible shift to reliance on junior lawyers.

Given this and the reliance on private practitioners for service delivery, it was agreed that a priority for National Legal Aid should be to better understand the national private practitioner profile and future sustainability of private practitioner work.

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About the Census

- Landmark initiative of National Legal Aid.
- Drew ideas from the Legal Aid Census conducted in England and Wales.
- Contracted Social Policy Research Centre at the University of New South Wales.
- **Aims** - to understand practitioner characteristics and views.
- **Questionnaire design** - in consultation with National Legal Aid + project advisory group.
- **Recruitment** - primarily via Legal Aid Commissions.
- **Data collection** - 1010 participants over 4 weeks (Aug 2024).
- **Analysis** - focused on all participants, differences among groups. Priority to capture practitioners' voices.
- Design and protocol approved by UNSW Ethics Panel.



The Practitioner Census was an initiative of National Legal Aid. We took inspiration for our approach partly on the Legal Aid Census conducted in England and Wales.

The UK's first-ever Legal Aid Census, conducted by the Legal Aid Practitioners Group (LAPG) in 2021 aimed to understand the experiences and challenges of those working in the legal aid sector. The UK census included questions about backgrounds, daily work, challenges, the impact of COVID-19, and perceptions of the future.

The UK census highlighted the significant financial insecurity faced by the legal aid sector and the need for investment to support practitioners, organizations, and chambers.

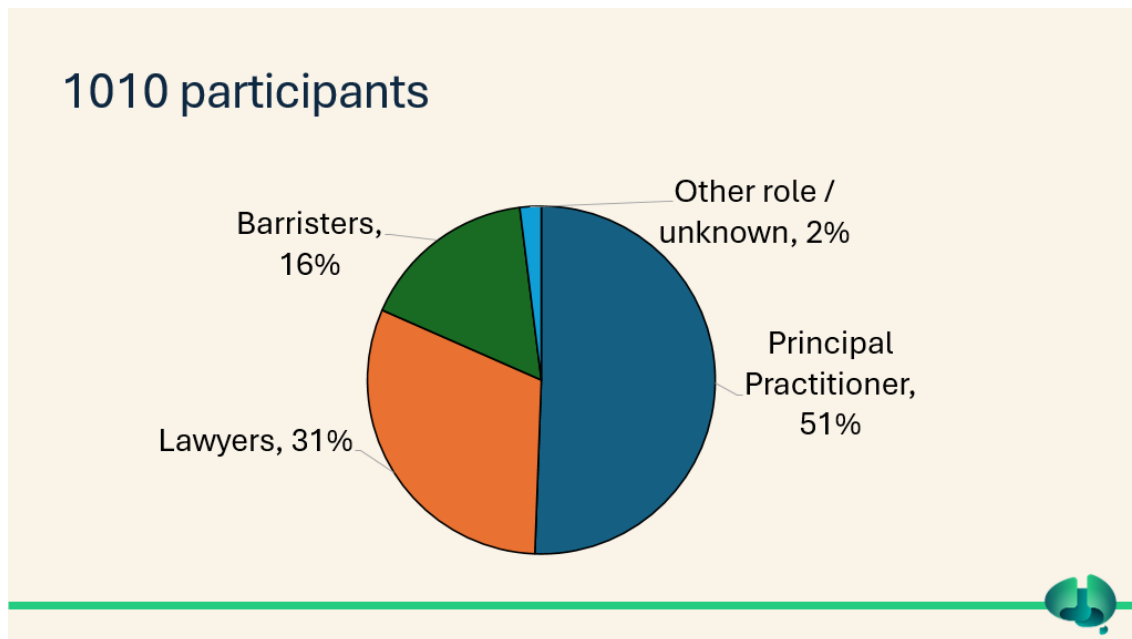
Similarly, our aim for the Australian Legal Aid Census was to better understand the private practitioner profile for both solicitors and barristers, and their characteristics, including how they experience legal aid work. We particularly wanted to capture their views in their own words and frames, including, what has been working well and not so well for them in their legal aid work.

And we are grateful for the many comments and experiences practitioners shared with us.

In terms of how the project was conducted:

- We contracted the Social Policy Research Centre at the University of New South Wales to deliver the project. The University ethics panel approved the design and protocol.
- We designed the questions in consultation with a National Legal Aid Advisory Group across all Commissions.
- Recruitment was primarily:
 - via Legal Aid Commissions who forwarded information about the Census and an invitation to participate to practitioners on their panels or preferred supplier lists, or who had been on their panels or lists in the last 2 years.
 - Law Councils and Law Societies also informed their networks, bolstering the study's reach.
- The survey was open for 4 weeks, over which time we reached our target of 1010 practitioners.
- The analysis sought to understand private practitioners overall and differences between them. In doing so, it was important to us to capture practitioners' voices in the report.

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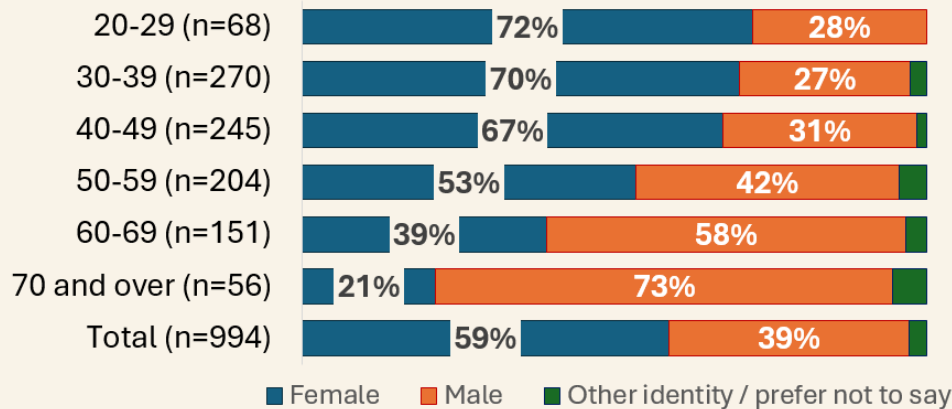
In terms of who they were... half said they were the Principal Practitioner (51%). 31% said they were lawyers, 16% were barristers, and a small number were in another role or didn't report their role.

The principal of a law practice is an Australian legal practitioner who in the case of a sole practitioner—is the sole practitioner; or in the case of a organisation—is a supervising practitioner.

If 51% of private practitioners undertaking legal aid work are Principal Practitioners there are implications if they are to leave or stop legal aid work, without succession planning for this role to be undertaken by other people in the organisation.

It also means that they are the person driving commitment to legal aid work in the organisation which could indicate individual, rather than organisational commitment, indicating further risk to the supply of legal aid private practitioners.

Age and gender



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Overall, more than half of private practitioners were women (59%) – which is slightly more feminised than the wider legal profession (which is around 52% according to the Australian Bureau of Statistics).

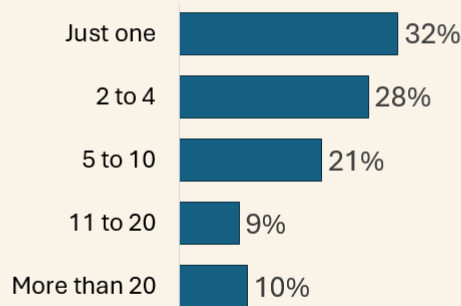
We need to account for the potential gendered implications of private practitioner work such as different experiences of women in the workforce (undertaking parental leave or experiences of vicarious trauma working in family law which involves high correlation with clients experiencing domestic and family violence).

This is also the case when looking at workforce policy for Legal Aid Commissions, as women have always been the majority of the profession.

We also found the gender breakdown differs across age cohorts of private practitioners. Women are the vast majority of legal aid private practitioners in their 20s, 30s and 40s. But men are the majority in the older cohorts. The low proportion of women in the older age cohorts likely reflects the wider legal profession, and its late feminisation, rather than a greater attrition of women from legal aid work.

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Paid staff in the practice (n=1007)



Private practitioners tend to work in very small businesses.

We asked about the number of paid staff in their practice and a third (32%) said just one – they were working on their own. And a further 28% said they were in organisations with 2 to 4 paid staff.

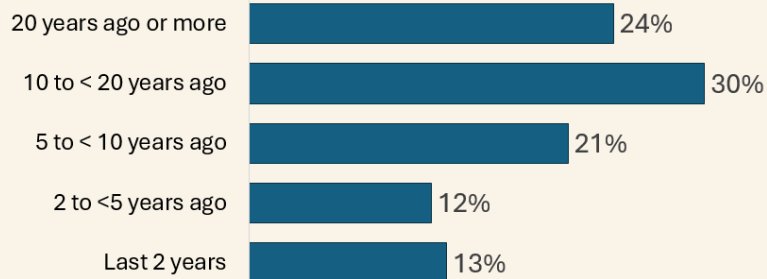
Only 10% of participants worked in practices with over 20 paid staff.

This means that we are engaging with very small organisations that likely have very limited resources and capacity to undertake legal aid work.

These organisations are very much on the opposite spectrum to large corporate law firms.

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Years since first legal aid case (n=996)



Private practitioners have many years, even decades of engagement with legal aid. A quarter (24%) worked on their first legal aid case over 20 years ago, and a further 30% worked on their first case 10 to 20 years ago.

We don't know if practitioners have been engaged with legal aid continuously since their first case, but it does suggest there is a lot of experience accumulated in this group.

This suggests that sustainability planning is critical to maintaining supply, including succession planning and mentoring of more junior lawyers to undertake legal aid work.

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	On panel or list	Worked on cases
Domestic and/or Family Violence	50%	45%
Summary crimes	49%	45%
Family law	54%	40%
Indictable or serious crimes	43%	40%
Sexual offences	32%	31%
Youth crime	29%	26%
Child protection	24%	21%
Appellate work	20%	17%
Independent children's lawyer	19%	15%
Mental health law	13%	10%



We asked about the legal panels or lists they were on, and the types of legal aid cases they had done in the last 2 years. This is to provide an overview of the nature of work done by private practitioners, and the law type.

The table is ranked by the cases they worked on, as practitioners can be inactive on panels or lists.

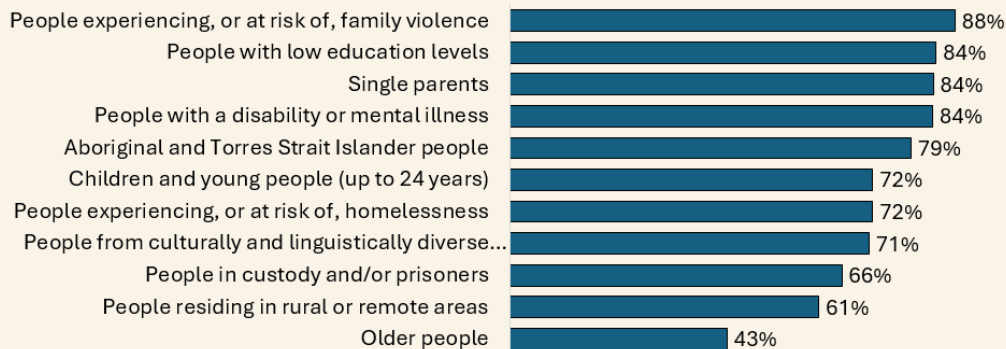
45% had worked on DFV, and the same on summary crimes.

More than half were on family law panels or lists (54%) which indicates the dominance of family law work for Legal Aid Commissions, including private practitioner work.

This contrasts with the rest of the legal sector which includes the dominance of business and corporate law.

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% who worked with each National Priority Client Group, last 2 years (n=962)



Our federal national agreement for legal assistance services sets out the agreement for Commonwealth law type legal services, being family law and civil law legal assistance nationally.

In the agreement, the list of national priority client groups recognise that certain cohorts of vulnerable people facing disadvantage are more likely to experience legal problems, less likely to seek assistance and/or less able to access services for a range of reasons.

This focus on priority groups also aligns with the mission and values of Legal Aid Commissions to ensure we are delivered services to the most disadvantaged people needing legal help.

This also aligns with legislation that established Legal Aid Commissions as statutory bodies. For example, the *Legal Aid Act ACT 1977* outlines that *Commissions determine priorities in the provision of legal assistance as between different classes of people or classes of matters.*

Due to the Legal Aid focus on people experiencing disadvantage, and the strict means test to access legal aid grants of aid, it is unsurprising that private practitioners are working with clients with high disadvantage and who are priority clients as defined by Federal and State/Territory Governments.

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Working with clients

- 74% of practitioners have seen the complexity of cases increase in the last two years.
- 72% have observed that clients' need for non-legal services and supports has grown over the last 2 years
- 65% have observed growth in the level of support required by clients to engage with legal aid.
- 83% say the time they need in order to engage with their legal aid clients has increased.



Most practitioners say working with legal aid clients is becoming more complex.

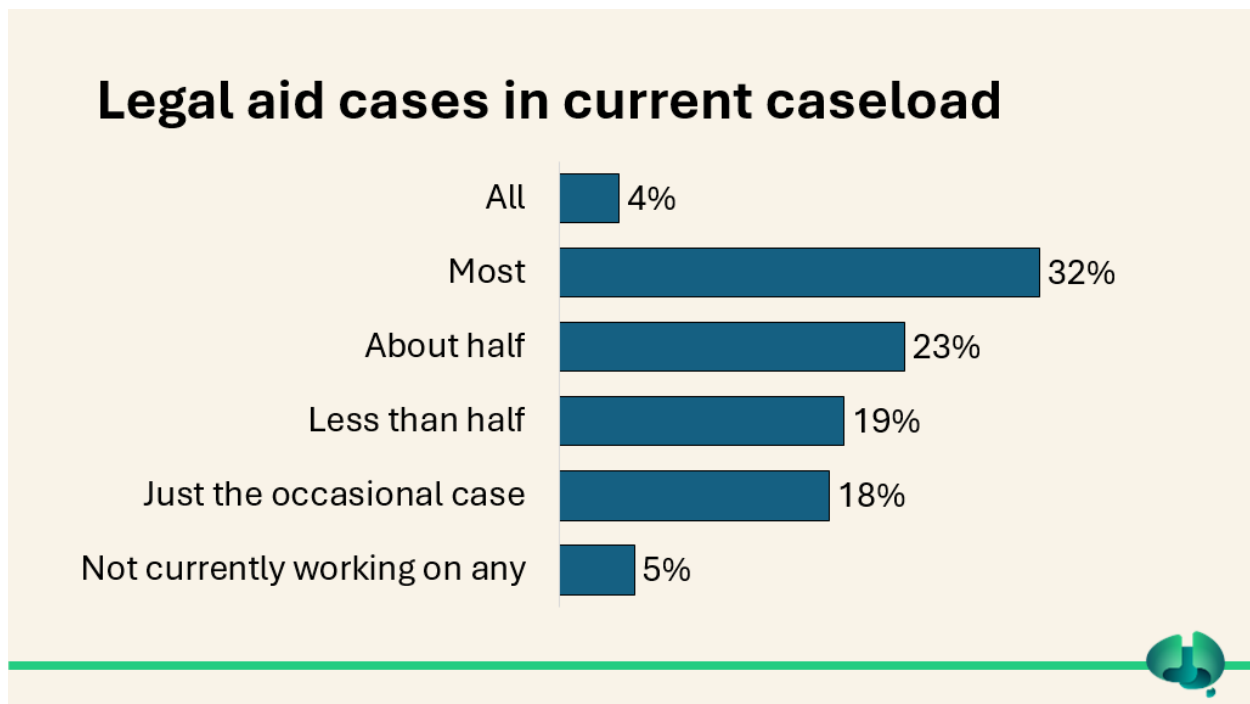
This is due to the increasing multiple increasing barriers faced by clients accessing our services including alcohol and drug challenges and mental health challenges.

- 74% of practitioners have seen the complexity of cases increase in the last two years.
- 72% have observed that clients' need for non-legal services and supports has grown over the last 2 years. This includes services such as mental health support, caseworkers and support for people experiencing domestic and family violence.
- 65% have observed growth in the level of support required by clients to engage with legal aid, such as leaning on practitioners to navigate a range of legal and non-legal supports.
- 83% say the time they need to engage with their legal aid clients has increased.

The consequences are increase in the cost of cases as additional time requires additional resourcing.

In addition, private practitioners play an important but additional role in referring clients to non-legal support.

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Private practitioners do varied amounts of legal aid work.

When we asked about legal aid cases in their current caseload, 4% said they were solely focused on legal aid, that is, it comprised all their caseload. It was most of the caseload for about a third, about half the caseload for a quarter (23%).

19% said legal aid comprised less than half the caseload and about the same (18) said it was just the occasional case.

In the report there is some analysis showing that legal aid tends to be more prominent in the caseloads of practitioners working in small organisations. For example if we just look at sole practitioners, 7% say legal aid work is 'all' their caseload, and 39% say its was 'most' of their caseload. So legal aid tends to be a little more prominent in the caseloads of these very small practices.

This places an importance on maintaining private practitioners where legal aid is most of their caseload, given the sustainability concerns if they were to no longer undertake legal aid work.

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Happy with amount

This is a sustainable amount which allows my practice to remain funded by fee-paying clients.

(Principal, NSW, doing just the occasional legal aid case)

I enjoy the work, but fees limit how much I can do.

(Barrister, NT)

Would like more

I enjoy the Independent Children's Lawyer work and would prefer to do more, but the funding is insufficient and I need to balance the work with private family law work for the viability of my firm.

(Principal, SA, current caseload is mostly legal aid)



These are examples of comments from practitioners who were either happy with their current amount or wanted more legal aid work.

It's important to note here, that even among those who are happy with the amount of legal aid work they do, or among those who would like more, the value of legal aid grants is often an issue and limits the number of cases practitioners take on.

This places a primacy on additional funding, and the amount that we can pay private practitioners, as this is main barrier to taking on additional legal aid work.

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Prefer less legal aid work

- Legal aid work has taken over and is not profitable, it is preventing the firm taking on more profitable work and we need to reduce because it is not economical to be doing so much, given the funding is so poor. *(Principal, caseload mostly legal aid cases, QLD)*
- We are expected to do enormous amounts of highly stressful and traumatising work with compensation that doesn't come close to covering the work that is done. The profound impact on the mental health of professionals is not recognised. Private practitioners carry caseloads well in excess of double in house legal aid employees, and earn less. The system exploits junior lawyers, many of which are women. *(Principal, caseload half legal aid, VIC).*



These examples of private practitioners wanting to do less legal aid work highlights the value of grants as the most prevalent concern, which is the case amongst most of those who want to do less legal aid work.

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This provides important takeaways including

- Planning on the amount of legal aid work by private practitioners due to the impact of the work in creating stress and trauma. This could include placing more lawyers onto panels to undertake work.
- There is also planning that needs to be undertaken to ensure this is not unfairly placed on younger female junior lawyers, especially given the

economic pressures and mental health impacts. This could include additional workforce support by Legal Aid Commissions.

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Funding is a challenge....

- 'The amount of funding provided' is a 'significant barrier' for 70% and a 'slight barrier' for 21%
- 85% find that 'having to perform unremunerated work' is a difficult aspect of legal aid work
- 77% find that 'trying to do quality work with limited time and resources' is a difficult aspect of legal aid work
- 74% agree: 'Legal aid cases are costly for the organisation'



Throughout the survey, practitioners highlighted how funding effectively caps how much legal aid they can do and is the key reason many wish to do less or shed their legal aid caseload altogether.

When asked if the amount of funding provided was a barrier to doing legal aid for their organisation, 70% said it was a significant barrier, and 21% said it was a slight barrier.

85% said having to perform unremunerated work is a difficult aspect of legal aid work and 77% said trying to do quality work with limited time and resources is a difficult aspect.

74% agreed with the statement: "legal aid cases are costly for the organisation."

This places a burden on Legal Aid Commissions to underwrite what private practitioners need to keep undertaking their work. This could include increasing fees, training and improved systems for supporting payment and dissemination of work.

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But many reasons to continue!

I like providing high quality advocacy to Aboriginal clients and those in regional areas generally. *(Barrister, WA)*

I love the ICL work I do and am the only practitioner within a 400km radius to be able to undertake the work. I value the role I have within the Court circuits and I know the Bench also appreciate that work. *(Principal, VIC)*

The work itself can be rewarding and it is very good experience, it is just difficult to balance this in a firm where financials and billing is important. *(Lawyer, QLD)*



But while private practitioners are struggling with funding and many want to do less legal aid, 70% intend to still do at least some in 12 months.

The reasons for wanting to continue reflect practitioners' strong commitment to social justice. They said things like

"I like providing high quality advocacy to Aboriginal clients and those in regional areas generally". *(Barrister, WA)*

And

"I love the ICL work I do and am the only practitioner within a 400km radius to be able to undertake the work. I value the role I have within the Court circuits and I know the Bench also appreciate that work". *(Principal, VIC)*

But often, their commitment was tempered with financial considerations. Comments like this one were typical: The work itself can be rewarding and it is very good experience, it is just difficult to balance this in a firm where financials and billing is important. *(Lawyer, QLD)*

This demonstrates a commitment amongst private practitioners that is admirable but there are practical limits to this commitment.

National Legal Aid is looking at ways to build on this commitment with more systemic support, that looks to create a more sustainable system.

This does involve engaging with the purpose behind why private practitioners are committed to the work and using this to promote undertaking legal aid work.

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Strengthening the system

Primarily about funding: for legal aid grants, the legal assistance sector, community services.

A more efficient system: Role of in-house staff, better administration, communication with Legal Aid Commissions, more online court appearances

In-kind supports: library resources, mental health supports, professional development



To strengthen the system, its not surprising that practitioners made strong calls for decent funding. Funding is what enables them to do work they are committed to.

They want to see proper funding for legal aid grants, to make sure all the activities required are recognised and covered. But they also want to see better funding for Legal Aid Commissions and the legal assistance system overall. And they want a properly resourced community service system, so clients can get the non-legal supports they need (housing, homelessness, health etc) so when they meet with clients they can focus on the legal stuff.

There were other things, too, they thought would make the system work more efficiently, such as reducing the administrative burden of undertaking legal aid work.

Some questioned why legal aid is so heavily weighted toward private provision, and wondered if in-house staff could play bigger roles, helping with upfront paperwork for example, or perhaps private practitioners could brief duty lawyers for some smaller appearances to save on travel costs.

They called for efficient administration processes around grant processes; better communications with Legal Aid Commissions - sometimes through better technology but often, by making it easier to talk with an individual grants officer to get quick responses to urgent questions. And they implored courts to allow more online appearances, some practitioners were spending lengthy time travelling and waiting which wasn't covered by their grants.

Other suggestions were for more in-kind supports, like for Legal Aid Commissions to share library resources and databases with private practitioners, to provide mental health support and help with the vicarious trauma of legal aid cases, and to provide private practitioners with professional development opportunities in convenient locations.

There are comparable findings and themes with the UK Legal Aid Census. In the UK, the low rate of fees was also the major barrier to undertaking work, alongside and despite a highly motivated sector. The UK Census also captured the movement of practitioners leaving legal aid work further along in the process of sustainability crisis, including a third leaving because they found it to no longer be a financially viable area to work in.

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Post-Census National Legal Aid work

- Ongoing media & political advocacy on Legal Aid fees funding
- Continuing Census Advisory Group
- Benchmarking Census every 2 years



National Legal Aid are following up the findings of the Census.

We are calling on the Federal and State/Territory Governments to conduct a review of Legal Aid fees and grants and will continue to advocate on the need for additional funding to help ensure that we can maintain market supply.

We are currently facing issues in retaining and engaging private practitioners, the census indicates that in 5 years time up to 30% of current practitioners will no longer undertake legal aid work – we have five years to fix this issue.

This should also be a critical issue for government, as the main providers of legal assistance, we are critical to the functioning of the court system and the legal system in general.

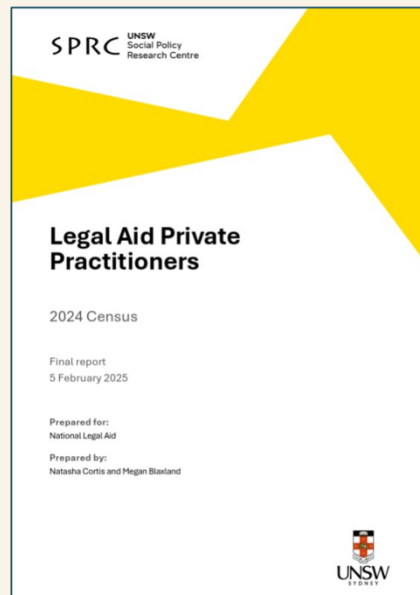
Our advisory group across Commissions were very helpful and passionate and we are looking at continuing this into a national community of practice to find areas to monitor for improvements nationally and look to share good practice and resources nationally.

We are looking at how to establish a regular voice for private practitioners as this was also raised in the census to also engage them in our efforts for improvement.

SLIDE 18

More in the report!

- Private practitioners make important contributions
- There is a huge amount of goodwill and donated labour
- But private practitioners face barriers and many are scaling back
- Ultimately, this holds back access to justice



The report provides a wealth of detail around the experience of being a private practitioner. Those that completed the survey were incredibly generous with their suggestions and experience.

SLIDE 19 – final slide

Find the report at:
nationallegalaid.org.au/
policy-and-advocacy/reports



You can find the full report at the National Legal Aid website.