

## 33rd Annual Report 2010-11

Legal Services Commission of South Australia

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## 2010-11

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# Appendix 1

## Freedom of Information

### Access to Commission documents

#### Policy documents

The following Commission policy documents may be inspected free of charge:

- Assignments Policy Manual
- Agreement between the Commonwealth of Australia and the State of South Australia in relation to the provision of legal assistance.

#### Other documents

The Commission has a computerised records management system and databases that record details of accounts, clients, legal aid cases, legal aid files, legal advice and duty solicitor attendances. Hard copy files are maintained for each grant of aid and the location of these files is recorded in the computerised records management system. Management and administrative files are also maintained, with their location being recorded on a manual system.

Arrangements can be made to inspect documents available under the *Freedom of Information Act* at 82-98 Wakefield Street, Adelaide between 9.00 am and 5.00 pm on ordinary working days. Copies may be purchased at a fee of 50 cents per page, which may be waived in appropriate cases.

By prior arrangement with the Freedom of Information Officer, these documents may also be inspected and copies purchased at any of the Legal Services Commission's offices:

#### Commission Offices

##### Adelaide

82-98 Wakefield Street,  
Adelaide 5000

##### Elizabeth

Windsor Building,  
Elizabeth Centre,  
Elizabeth 5112

##### Holden Hill

Tenancy 7  
560 North East Road  
Holden Hill 5088

##### Mount Barker

18 Walker Street  
Mount Barker 5251

##### Noarlunga

Noarlunga House  
Colonnades Shopping Centre,  
Noarlunga Centre 5168

##### Port Adelaide

306 St Vincent Street  
Port Adelaide 5015

##### Port Augusta

13 Flinders Terrace  
Port Augusta 5700

##### Whyalla

Tenancy 7  
169 Nicolson Avenue  
Whyalla 5600

## Appendix 2

# Members of the Legal Services Commission 2010-11

### **The Chairman, nominated by the South Australian Attorney-General:**

**Ms Dymphna Eszenyi** *BA, LLB*

Appointed Chairman 20 January 2005.

### **One person to represent the interests of assisted persons, nominated by the South Australian Attorney-General after consultation with the South Australian Council of Social Service Incorporated:**

**Mr Michael Dawson** *BA, Dip Ed*

Appointed 16 February 2006.

### **Three nominees of the South Australian Attorney-General:**

**Mr Michael Burgess** *B Ec, FCA*

Appointed 20 November 1997.

**Ms Wendy Purcell** *BA, LLB*

Appointed 16 February 2006.

**Mr David Mazzone** *B Com (ACC)*

Appointed 17 January 2008.

### **Three nominees of the Law Society of South Australia:**

**Mr David Meyer** *LLB*

Appointed 21 August 1997.

**Ms Maurine Pyke** *QC*

Appointed 24 March 2005.

**Ms Tracee Micallef** *LLB, GDLP, B Com*

Appointed 6 November 2008.

### **One nominee of the employees of the Legal Services Commission:**

**Mr Andrew English** *LLB*

Appointed 16 July 2010.

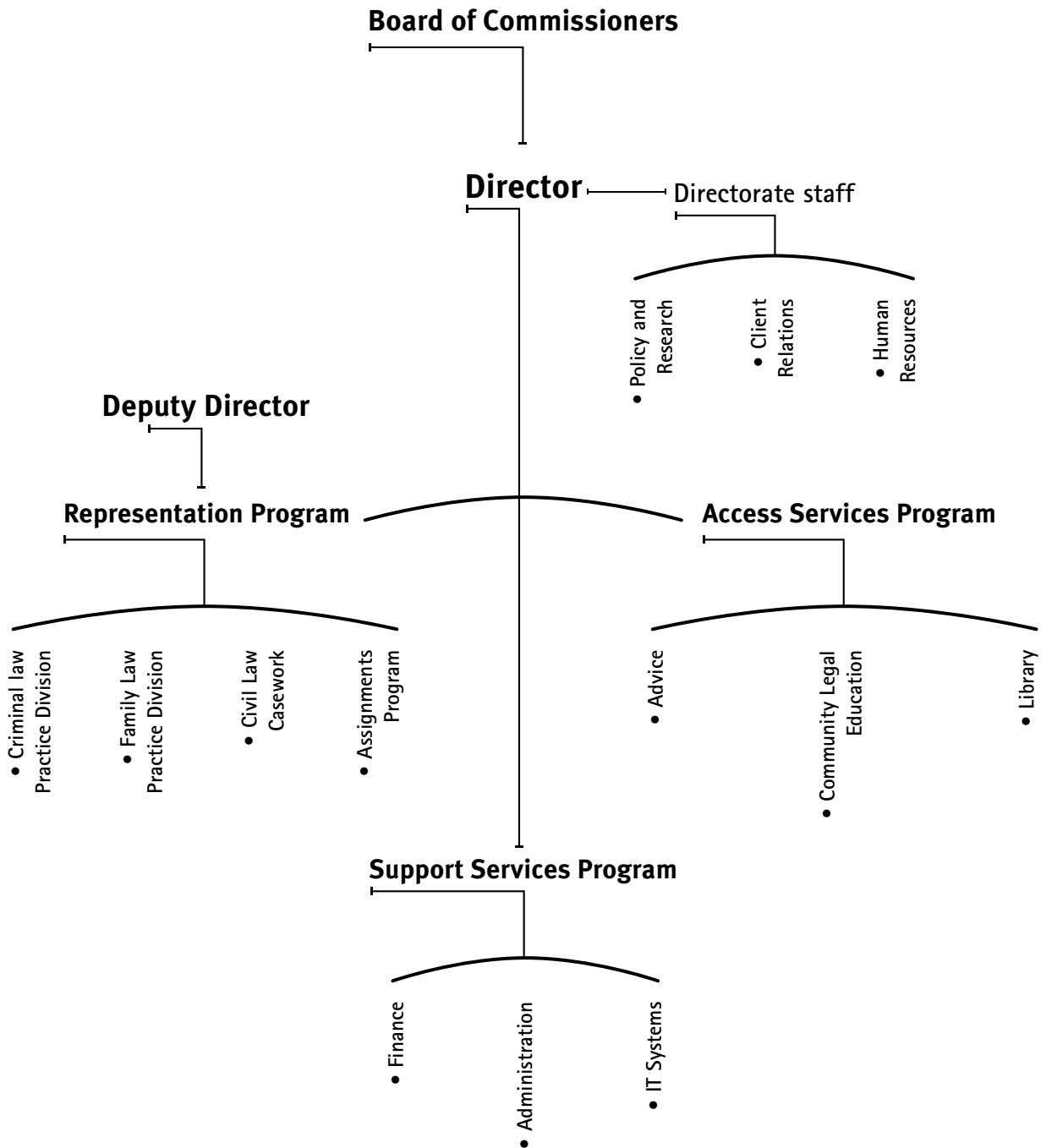
### **The Director of the Legal Services Commission:**

**Mr Hamish Gilmore** *B Ec*

Appointed Director 17 June 1999.

## Appendix 3

# Organisation Structure of the Legal Services Commission 30 June 2011



## Appendix 4

# Community Involvement 2010-11

### *Staff membership of various community organisations*

- Adelaide Community Consultative Group
- Administrative Appeals Tribunal User Group Meeting
- AIJA SA Executive Committee
- Alliance For Prevention Of Elder Abuse
- Child Support Agency, Regional Registrars Advisory Panel
- Child Support Issues Group
- Children's Access Program Management Committee
- Domestic Violence & Aboriginal Family Violence Gateway Service Board
- Family Law Section, Law Council of Australia
- Hills Domestic Violence Reference Group
- International Commission of Jurists
- Justice Portfolio Agency Finance Committee
- Justice Portfolio Learning & Development Task Group
- JusticeNet SA
- Juvenile Justice Awareness Group
- Juvenile Justice Detention Options Group
- Law Foundation Scholarship Committee
- Law Society, Advocacy Committee
- Law Society, Criminal Committee
- Law Society, Family Law Committee
- Law Society, Human Rights Committee
- Law Society, Justice Network Meeting, (ex Law Week Committee)
- Law Society, Practical Legal Training Committee
- Law Society, Professional Standards Committee
- Law Society, Public Sector Lawyers Committee
- Magistrates Court Diversionary Program Steering Committee
- Magistrates Court Drug Court Steering Committee
- Magistrate Courts User Groups
- Migration Review Tribunal & Refugee Tribunal, Community Liaison Committee
- National Legal Aid, National Statistics and Grants Management Working Group
- National Legal Aid, Civil Law Working Group
- National Legal Aid, Consumer Credit Working Group
- National Legal Aid, Criminal Law Working Group
- National Legal Aid, CLE Working Group
- National Legal Aid, Family Dispute Resolution Working Group
- National Legal Aid, Family Law Working Group
- National Legal Aid, Finance Working Group
- National Legal Aid, Human Resources Working Group
- Northern Community Legal Centre, Management Committee
- Office of Multicultural & International Affairs, Multicultural Good Practice Network, Reference Group
- Prisoners Advocacy
- School Mock Trials Competition Coaches, Judges
- South Australian Council of Social Service Inc. Policy Council
- South Australian Consumer Law Consultative Forum
- South Australian Pathways Network
- Southern Community Justice Court and Courts User Design Project
- Southern Domestic Violence Action Group Inc
- Southern Justice Network Forum
- Women's Information Service Support Group

## Appendix 5

# Applications

### Applications for Aid received by source 2010-11

Source	Total	%
Child Support Unit	356	1.94%
Community Law Centre	11	0.06%
Direct from Client	5 684	31.03%
Duty Lawyer	2 859	15.61%
Family Court	29	0.16%
Federal Magistrates Service	279	1.52%
Interview	458	2.50%
Other Agency	80	0.44%
Prison	249	1.36%
Private Practitioner	8 285	45.24%
Reciprocity—Transfer Commission	3	0.02%
Unknown	22	0.12%
<b>Total</b>	<b>18 315</b>	<b>100.00%</b>

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### Applications for Aid processed 2010-11

Application Status	Family	%	Crime	%	Civil	%	Total	% All Law Types
Pending	186	5.11%	452	3.25%	18	2.40%	656	3.59%
Assigned	1 537	42.20%	7 538	54.22%	330	44.06%	9 405	51.41%
In-house	894	24.55%	3 627	26.09%	244	32.58%	4 765	26.04%
Refused	977	26.82%	2 066	14.86%	135	18.02%	3 178	17.37%
Withdrawn	48	1.3%2	220	1.58%	22	2.94%	290	1.59%
<b>Total</b>	<b>3 642</b>	<b>100.00%</b>	<b>13 903</b>	<b>100.00%</b>	<b>749</b>	<b>100.00%</b>	<b>18 294</b>	<b>100.00%</b>

21 applications for aid received were not processed by 30 June 2011

## Appendix 5 continued

### Case Matters Approved by Primary Matter Group Category 2010-11

		Inhouse % of all approved	Assigned % of all approved	Total Number approved matters	Total % of all approved matters	
<b>Family</b>	Child Support	97.03	100.00	269	1.90	
	Children	14.69	85.31	1 280	9.03	
	Contempt	8.77	91.23	57	0.40	
	Dissolution	82.61	17.39	23	0.16	
	Family Dispute Resolution	47.51	52.49	461	3.25	
	Independent Children's Lawyer	58.33	41.67	300	2.12	
	Injunctions (Family)	66.67	33.33	3	0.02	
	Maintenance	100.00	0	10	0.08	
	Property Settlement	53.57	46.43	28	0.20	
	<b>Total Law Family</b>	<b>36.77</b>	<b>63.23</b>	<b>2 431</b>	<b>17.16</b>	
<b>Crime</b>	Assaults (excluding Sexual Assaults)	37.07	62.93	2 838	20.03	
	Burglary, Break and Enter	33.13	66.87	1 135	8.01	
	Drugs Commonwealth Offences	57.14	42.86	14	0.10	
	Drugs Dealing and Trafficking	18.08	81.92	437	3.08	
	Drugs Manufacture	19.52	80.48	210	1.48	
	Drugs Possess/Use	20.41	79.59	49	0.35	
	Environmental	53.85	46.15	13	0.09	
	Extortion	0	100	6	0.04	
	Fraud, misappropriation and deception	40.95	59.05	337	2.38	
	Handling, Receiving and Unlawful Possession of Stolen Goods	21.36	78.64	206	1.45	
	Homicide	29.06	70.94	203	1.43	
	Motor Vehicle Driving Offences	31.20	68.80	1 141	8.05	
	Motor Vehicle Other and Related Offences	33.12	66.88	317	2.24	
	Offences against Good Order	38.6	61.4	114	0.80	
	Offences against Government security	0	100	1	0.01	
	Offences against Justice Procedure	29.82	70.18	1 972	13.92	
	Offences against Person	32.63	67.37	95	0.67	
	Offensive behaviour Offences	46.67	53.33	60	0.42	
	Other Criminal Law Matters/Offences	61.54	38.46	13	0.09	
	Property Damage (Criminal)	37.36	62.64	273	1.93	
	Prostitution and related offences	33.33	66.67	3	0.02	
	Rape and Sexual Offences	36.70	63.30	406	2.87	
	Robbery	37.72	62.28	334	2.36	
	Theft and Other Dishonest	29.18	70.82	771	5.44	
	Unlawful Possession of Other Weapons	23.04	76.96	217	1.53	
	<b>Total Law Crime</b>	<b>32.49</b>	<b>67.51</b>	<b>11 165</b>	<b>78.79</b>	
	<b>Civil</b>	Administrative Law	42.18	57.82	571	4.03
		Miscellaneous (Civil)	66.67	33.33	3	0.02
<b>Total Law Civil</b>		<b>42.31</b>	<b>57.69</b>	<b>574</b>	<b>4.05</b>	
<b>TOTAL CASE MATTERS</b>		<b>33.62</b>	<b>66.38</b>	<b>14 170</b>	<b>100.00</b>	

## Appendix 5 continued

# Applications

### Applications for Aid Refused by Reason 2010-11

Reason Refused	Family	%	Crime	%	Civil	%	Total	% Total Refused
Guidelines	243	24.87%	883	42.74%	81	60.00%	<b>1 207</b>	37.98%
Guidelines and Means	68	6.9% <sup>6</sup>	338	16.36%	7	5.19%	<b>413</b>	13.00%
Means	485	49.64%	689	33.35%	32	23.70%	<b>1 206</b>	37.95%
Means and Merit	9	0.92%	4	0.19%	1	.74%	<b>14</b>	0.44%
Means, Merit and Guidelines	44	4.51%	100	4.84%	1	.74%	<b>145</b>	4.56%
Merit	24	2.46%	44	2.13%	7	5.19%	<b>75</b>	2.36%
Merit and Guidelines	74	7.57%	5	0.24%	6	4.44%	<b>85</b>	2.67%
No Jurisdiction	29	2.97%	3	0.15%	0	0.00%	<b>32</b>	1.01%
Other	1	0.10%	0	0.00%	0	0.00%	<b>1</b>	0.03%
<b>Total</b>	<b>977</b>	<b>100.00%</b>	<b>2 066</b>	<b>100.00%</b>	<b>135</b>	<b>100.00%</b>	<b>3 178</b>	<b>100.00%</b>

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### Protection Applications 2010-11

	Assigned	In-House	Refused/Withdrawn	Pending	Total
<b>Adult</b>	269	1	53	10	<b>333</b>
<b>Child</b>	39	241	3	0	<b>283</b>
<b>Total</b>	<b>308</b>	<b>242</b>	<b>56</b>	<b>10</b>	<b>616</b>

## Appendix 6

# Duty Lawyer Services

### Duty Lawyer Criminal Law Services by Court location and Work Type 2010-11

Court Location	Advice only	Advice and Information	Adjourned/Mention	Contested Bail Application	Hearing	Legal Aid Application	Mention	Minor Legal Assistance	Negotiations Draft/Terms	Other	Plea	Referral	Total
Adelaide	1 785	382	128	642	2	8	1 817	2	1	316	439	10	5 532
Amata	0	0	4	1	1	0	2	0	0	0	8	0	16
Berri	97	24	54	37	2	0	85	0	0	3	48	0	350
Christies Beach	105	67	47	374	0	0	248	1	0	13	90	0	945
Cooper Pedy	3	0	29	2	0	0	12	0	0	0	28	0	74
Elizabeth	444	30	91	972	1	1	785	2	0	55	240	0	2 621
Ernabella	0	0	8	0	0	0	2	0	0	0	10	0	20
Fregon	0	0	2	0	1	0	2	0	0	1	6	0	12
Holden Hill	385	58	28	421	1	0	744	0	0	156	114	0	1 907
Indulkana	0	0	16	1	1	0	3	0	0	0	20	0	41
Kanpi	0	0	0	0	0	0	0	0	0	0	1	0	1
Leigh Creek	2	0	7	1	0	0	0	0	0	0	6	0	16
Maitland	0	0	0	0	0	0	1	0	0	0	0	0	1
Marla	0	0	3	0	0	0	0	0	0	0	1	0	4
Millicent	5	1	2	0	1	0	5	0	0	0	8	0	22
Mimilli	0	0	1	0	0	0	2	0	0	0	8	0	11
Mount Barker	22	4	1	7	0	0	72	0	0	2	14	0	122
Mount Gambier	8	3	19	11	12	0	33	0	0	0	47	0	133
Murray Bridge	3	0	4	3	0	0	35	0	0	0	8	0	53
Noarlunga	0	0	0	1	0	0	1	0	0	0	0	0	2
Pipalyatjarra	0	0	1	0	1	0	3	0	0	0	2	0	7
Port Adelaide	24	200	248	402	3	0	590	0	3	47	145	0	1 662
Port Augusta	46	0	190	127	5	0	44	0	0	12	104	0	528
Victor Harbor	12	2	0	0	0	0	15	0	0	0	0	0	29
Waikerie	28	6	9	0	0	0	4	0	0	1	6	0	54
Whyalla	56	8	154	166	20	0	47	0	0	8	95	0	554
<b>Total</b>	<b>3 025</b>	<b>785</b>	<b>1 046</b>	<b>3 168</b>	<b>51</b>	<b>9</b>	<b>4 552</b>	<b>5</b>	<b>4</b>	<b>614</b>	<b>1 448</b>	<b>10</b>	<b>14 717</b>

## Appendix 6 continued

# Duty Lawyer Services

### Duty Lawyer Services All Types by Court and Work Type 2010-11

Work Type	Youth Court	Magistrates Court	Family Court	Federal Magistrates Court	Not applicable to a court	Total
Adjourned/Mention	45	1 004	1	86	6	1 142
Advice and Information	72	697	86	662	327	1 844
Advice Only	34	3 006	2	24	9	3 075
Contested Bail Application	128	3 023	1	13	4	3 169
Explaining Consent Orders	1	2	3	9	2	17
Hearing	1	50	0	3	2	56
Legal Aid Application	0	10	1	54	24	89
Mention	648	3 884	0	22	10	4 564
Minor legal Assistance	3	5	11	157	20	196
Negotiations/Draft Terms	1	3	1	38	2	45
Other	0	593	0	14	13	640
Plea	153	1 294	0	1	0	1 448
Referral	9	0	2	49	19	79
Urgent Hearing	0	0	0	75	4	79
<b>Total</b>	<b>1 115</b>	<b>13 571</b>	<b>108</b>	<b>1 207</b>	<b>442</b>	<b>16 443</b>

*'Not Applicable to a Court' includes Family Law Duty Services where no Court was nominated*

## Appendix 7

# Client Relations

### Client Relations Contacts 1 July 2010 - 30 June 2011

Basis of contact	Protection Application	PDR	Child Support	Family	Criminal	Civil	General	Total	% of all Contacts
Refusal of aid	16	0	4	392	272	0	0	<b>684</b>	50.4%
Entitlement to legal aid	0	0	4	264	104	12	0	<b>384</b>	28.3%
Child representation	0	0	0	0	0	0	0	<b>0</b>	0.0%
Commission service	0	32	4	32	0	0	0	<b>68</b>	5.0%
Statutory charge	0	0	0	0	4	0	0	<b>4</b>	0.3%
Private practitioner service	4	0	0	48	16	0	0	<b>68</b>	5.0%
Discrimination	0	0	0	24	0	0	0	<b>24</b>	1.8%
Conditions of aid (other than statutory charge)	0	0	0	0	4	0	0	<b>4</b>	0.3%
CAP	0	0	0	32	0	0	0	<b>32</b>	2.4%
Complaint to MP, Ombudsman etc.	0	0	0	16	12	4	0	<b>32</b>	2.4%
Other	0	0	0	16	12	12	16	<b>56</b>	4.1%
<b>Total</b>	<b>20</b>	<b>32</b>	<b>12</b>	<b>824</b>	<b>424</b>	<b>28</b>	<b>16</b>	<b>1356</b>	<b>100.0%</b>

## Appendix 7 continued

# Client Relations Notes

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### **Refusal of aid**

In 2009-10 and again in 2010-11 complaints about the refusal of aid made up 50% of all contacts received. Enquiries about entitlement to aid rose from 26% in 2009-2010 to 28% in 2010-11.

Family Law remains the chief source of complaint about the refusal of aid (57% this year, 52% last year). The proportion of complaints in criminal matters about refusal of aid has fallen to 40% in 2010-11 from 47% in 2009-10. Complaints about aid refusal in civil matters have remained very low. There were no complaints about the refusal of aid in civil law matters this year however there were 12 enquiries about entitlement to aid in civil law matters. The level of complaints about refusal of aid in civil matters has fallen dramatically over the past 12 years, reflecting the fact that the guidelines restricting access to aid in civil matters have now been in place for some years.

Of the family law refusal complaints, 192 (43%) were on means, 132 (30%) were on merits and 120 (27%) were on guidelines. Note, some applications are refused on more than one ground.

Of the criminal aid refusal complaints 60 (20%) related to guidelines, 216 (73%) related to means, and 20 (7%) related to merit.

There were four complaints about refusal of aid in child support matters.

### **Entitlement to legal aid**

As in previous years majority of enquiries regarding entitlement to legal aid were in family law matters, (70%). 26% of enquiries related to criminal matters, 3% of complaints were received in civil matters, 1% in child support matters.

### **Child representation**

Child representation complaints rose this year from eight complaints last year to 12 complaints this year.

### **Commission service and process**

Complaints about Commission service and processes totaled only 68 this year and represented only 5% of all complaints and enquiries received. In view of the vast number of client contacts occurring per year in case work and advice services, the number of service and process complaints is low and reflects a very good level of service.

### **Statutory charge**

Statutory charge complaints or enquiries in 2009-10 numbered 11, with only four enquiries received in 2010-11.

### **Private practitioner services**

We continue to receive a small number of complaints (68) which more appropriately belong to the private practitioner or Legal Practitioners Conduct Board, reflecting a lack of understanding of the respective roles of the Commission, the Law Society and the Legal Practitioners Conduct Board.

### **Discrimination**

This year we received 24 complaints of discrimination, however the majority of those complaints related to just one applicant.

### **Cap**

There were 32 complaints relating to Cap issues. All of these complaints related to Family Law matters. These are very difficult matters to assist with given that there are generally serious family law concerns involved.

### **Complaint to Ombudsman, Attorney-General, Members of Parliament**

The number of complaints and enquiries made through the Ombudsman, Members of Parliament, the Attorney-General etc varied from 41 enquiries last year to 32 enquiries made in 2010-11.

Of the total of 32 complaints or enquiries received, 16 related to Family Law matters, 12 to Criminal Law matters and four to Civil Law.

### **Other**

There were also, as always, a few complaints inappropriately brought to us, such as complaints against the Family Court, and Community Legal Centres. Also, as usual, many matters presenting as complaints when examined turn out to be enquiries either for advice or to discover the progress of an application for aid or appeal.

## Appendix 8

# Energy Use/Energy Management

As part of the Government's commitment to energy efficiency, Government agencies are required to undertake a range of measures to reduce their output of greenhouse gases. In particular, energy use in Government buildings must be cut by 15% over the ten years from 2000-01 to 2009-10 (as an interim target) and a further 10% by 30 June 2014.

In the year 2009-10, the Legal Services Commission had a 0.38% per cent decrease or 7 Gigajoules (Gj) of energy used in buildings.

During 2004-05, as part of the energy audit, it was determined that the Commission had not been billed by the landlord, as specified in the lease, for electricity on an area first leased by the Commission since May 2003. In 2010-11 this has resulted in an increase in 416 Gj (\$30 263).

The Commission increased the size of its Adelaide Office by 263 square meters on 1 July 2004, the specific energy consumption for this area cannot be isolated. On a pro rata basis this was 103 Gj (\$6673).

2006-07 was the first full year of the Mount Barker Office which in 2010-11 consumed 51 Gj (\$3709) of energy.

2007-08 was the first full year of the Port Augusta Office which in 2010-11 consumed 47 Gj (\$3429) of energy.

In January 2009 the Whyalla Office moved to a new area of 646 m<sup>2</sup> from an area of 263 m<sup>2</sup> this was an increase in area of 383 m<sup>2</sup> or 242%. In July 2009 333 m<sup>2</sup> was subleased leaving an increase area of 50 m<sup>2</sup> that on pro rata basis would consume 12 Gj (\$827) of energy.

Without the last five changes the Commission's energy consumption would have been 1188 Gj. In the 2010-11 year the Commission has decreased energy consumption by 7 Gj.

Legal Services Commission	Energy Use (Gj)	Expenditure	Greenhouse Gas Emissions (Tonnes CO <sub>2</sub> )
<b>2000-01</b>	2 116	\$85 795	652
<b>2007-08</b>	1 965	\$104 302	458
<b>2008-09</b>	1 850	\$107 813	432
<b>2009-10</b>	1 825	\$112 134	425
<b>2010-11</b>	1 818	\$119 849	424
<b>Target 2012</b>	<b>1 693</b>		<b>522</b>

## Appendix 9

# Expensive Criminal Cases Funding Agreement

DATED 2<sup>ND</sup> DAY OF DECEMBER 2004

## DEED OF AMENDMENT

BETWEEN

THE HONOURABLE MICHAEL ATKINSON,  
ATTORNEY-GENERAL  
FOR THE STATE OF SOUTH AUSTRALIA  
("Attorney-General")

-AND-

THE LEGAL SERVICES COMMISSION  
("Commission")



CROWN SOLICITOR  
Level 9, 45 Pirie Street, Adelaide SA 5000

# Appendix 9

## Expensive Criminal Cases Funding Agreement

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### ANNEXURE A THE PRINCIPAL AGREEMENT

# Appendix 9

## Expensive Criminal Cases Funding Agreement

Page 1 of 3

----- End of Receipt -----  
 Review Please Print  
 THIS DEED is made the *SECOND* day of *DECEMBER* 2004

**BETWEEN:**

**THE HONOURABLE MICHAEL ATKINSON, ATTORNEY-GENERAL FOR THE STATE OF SOUTH AUSTRALIA** of 45 Pirie Street, Adelaide, 5000, in the State of South Australia (the "Attorney-General")

**AND**

**THE LEGAL SERVICES COMMISSION** a body corporate pursuant to the Legal Services Commission Act 1977 of 82-98 Wakefield Street, Adelaide, 5000, in the State of South Australia (the "Commission")

**RECITALS:**

- A. The Attorney-General and the Commission entered into a deed dated 29 January 2003 (the "Principal Agreement"), and described as the Expensive Criminal Cases Funding Agreement, a copy of which is annexed hereto.
- B. The parties have agreed to vary certain of the terms and conditions of the Principal Agreement and to record the same in this Deed.

**THE PARTIES AGREE AS FOLLOWS:**

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 Words and expressions defined in the Principal Agreement have the same meanings in this Deed unless the contrary is clearly intended.
- 1.2 Rules for the construction and interpretation of the Principal Agreement also apply in the construction and interpretation of this Deed.

# Appendix 9

## Expensive Criminal Cases Funding Agreement

2. **RECITALS**

The parties hereto agree that the matters referred to in the recitals of this Deed are true and correct in every particular and that the recitals shall form part of this Deed.

3. **OPERATION OF AMENDMENTS**

This Deed shall have effect from and including the date hereof, and is supplementary to and shall be read in conjunction with the Principal Agreement.

4. **AMENDMENT TO CLAUSE 6**

The Principal Agreement shall be amended by adding the following two clauses after clause 6.4:

*“6.4A Except where a Case Management Plan expressly provides that this clause does not apply, a Case Management Plan shall be deemed to be varied automatically to take account of any new scale of fees approved by the Commission pursuant to section 19(2) of the Legal Services Commission Act, 1977 (S.A.). Such a variation of a Case Management Plan shall take effect from the date that the Commission approves that the new scale of fees shall become operative. This clause 6.4A shall apply to all new scales of fees which are operative on or from 1 September 2004.”*

*6.4B The Commission shall, as soon as practicable after approving a new scale of fees, inform the Attorney-General in writing of the financial impact on each Case Management Plan to which a new scale of fees applies.”*

5. **COSTS AND STAMP DUTY**

5.1 Each party hereto shall bear its own costs incurred in respect of the negotiation, preparation and execution of this Deed.

5.2 The Commission shall be responsible for and pay any stamp duty assessed or charged in respect of this Deed.

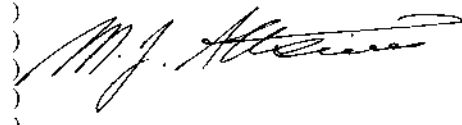
# Appendix 9 Expensive Criminal Cases Funding Agreement

6. **CONFIRMATION OF PRINCIPAL AGREEMENT**

Subject only to the amendments contained in this Deed, the parties hereto confirm the terms and conditions of the Principal Agreement in all other respects.

**EXECUTED** by the parties unconditionally as a deed.

**SIGNED** by **THE HONOURABLE** )  
**MICHAEL ATKINSON,** )  
**ATTORNEY-GENERAL FOR THE STATE** )  
**OF SOUTH AUSTRALIA** in the presence of: )



.....  
 Witness  
 [Print Name: Susan Decca ]

**THE COMMON SEAL** of **THE LEGAL** )  
**SERVICES COMMISSION** )  
 was hereunto affixed in the presence of: )

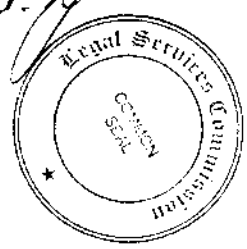


.....  
 Chairperson COMMISSIONER  
 [Print Name: ]

.....  
 Director  
 [Print Name: Helen James Giorio ]



.....  
 Director/Secretary  
 [Print Name: Peter John Tassett ]



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# Appendix 9

## Expensive Criminal Cases Funding Agreement

### Annexure A: The Principal Agreement (pages 1-9)

**EXPENSIVE CRIMINAL CASES FUNDING AGREEMENT**

COPY

AGREEMENT dated

29th January

2003

BETWEEN:

COMMISSIONER OF STATE TAXATION

THE HONOURABLE MICHAEL ATKINSON, ATTORNEY-GENERAL FOR THE STATE OF SOUTH AUSTRALIA of 45 Pirie Street, Adelaide, 5000, in the State of South Australia (the "Attorney-General") ("Attorney-General")


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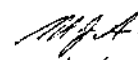
AND

THE LEGAL SERVICES COMMISSION a body corporate pursuant to the Legal Services Commission Act 1977 of 82-98 Wakefield Street, Adelaide, 5000, in the State of South Australia (the "Commission")

RECITALS:

- A. The State of South Australia has enacted the Criminal Law (Legal Representation) Act 2001 ("the Act") to ensure that legal representation is available for persons charged with serious offences, and for other purposes.
- B. Section 18 of the Act provides that an Expensive Criminal Cases Funding Agreement is to be made between the Commission and the Attorney-General governing the approval of case management plans for cases to which the Act applies.
- C. The parties wish to enter into this Agreement in order to give effect to section 18 of the Act.

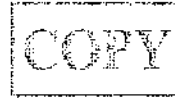
  
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# Appendix 9

## Expensive Criminal Cases Funding Agreement

AGREED TERMS:



1. DEFINITIONS

In this Agreement unless a contrary intention is evident:

- 1.1 "Act" means the Criminal Law (Legal Representation) Act 2001;
- 1.2 "Agreement" means this Expensive Criminal Cases Funding Agreement and includes the Schedules;
- 1.3 "approved case management plan" means a case management plan, including any variations to that plan, which has been approved by the Attorney-General in accordance with clause 5 of this Agreement;
- 1.4 "case management plan" or "plan" means a case management plan prepared by the Commission in accordance with clause 6 of this Agreement;
- 1.5 "certificate of commitment" or "certificate" means a certificate, incorporating an invoice, issued by the Commission to the defendant's lawyer, authorising him or her to provide a level of legal assistance up to the gross cost specified in the certificate;
- 1.6 "Commencement Date" means the date upon which the Act came into operation;
- 1.7 "Commission" means the Legal Services Commission, established pursuant to the Legal Services Commission Act 1977;
- 1.8 "defence proposal" means the report prepared by the defendant's lawyer on the scope and nature of the proposed defence containing the information described in Schedule 1;
- 1.9 "Treasurer" means the Treasurer of the State of South Australia.

2. INTERPRETATION

2.1 In this Agreement unless a contrary intention is evident:

- 2.1.1 words and expressions defined in the Criminal Law (Legal Representation) Act 2001 shall have the same respective meanings herein;
- 2.1.2 the clause headings are for convenient reference only and they do not form part of this Agreement;

*M.A.A.*  
21/11/2002

# Appendix 9

## Expensive Criminal Cases Funding Agreement

- 2.1.3 a reference to a clause number is a reference to all of its sub-clauses;
- 2.1.4 a reference to a clause, sub-clause, schedule or annexure is a reference to a clause, sub-clause, schedule or annexure of this Agreement;
- 2.1.5 a word in the singular includes the plural and a word in the plural includes the singular;
- 2.1.6 a word importing a gender includes any other gender;
- 2.1.7 a reference to a person includes a partnership and a body corporate;
- 2.1.8 a reference to legislation includes legislation repealing, replacing or amending that legislation; and
- 2.1.9 where a word or phrase is given a particular meaning other parts of speech or grammatical forms of that word or phrase have corresponding meanings.

2.2 This Agreement incorporates the attached schedule.

### 3. TERM

The term of this Agreement commences on the Commencement Date and shall continue to operate for so long as an Expensive Criminal Cases Funding Agreement is required under section 18 of the Act.

### 4. AGREEMENT OPERATES AS A DEED

This Agreement operates as a deed between the Attorney-General and the Commission.

### 5. APPROVAL OF A CASE MANAGEMENT PLAN

- 5.1 For the purposes of section 18 of the Act, the Attorney-General shall approve a case management plan or a proposal to vary a case management plan if it complies with this Agreement.
- 5.2 Approval is effected by the Attorney-General returning a signed copy of the approved plan or approved variations to the plan to the Commission.

*M.J.A.*  
21/11/2002

# Appendix 9

## Expensive Criminal Cases Funding Agreement

### 6. CASE MANAGEMENT PLANS

COPY

- 6.1 A case management plan must be submitted to the Attorney-General by the Commission in writing as soon as possible after the Commission becomes aware that the costs of the case may exceed the legal aid funding cap AND as soon as practicable either after the defendant has been arraigned or after a direction of the court pursuant to section 8(3) of the Act.
- 6.2 A case management plan must contain:
- 6.2.1 the names of the legal representative(s) (solicitors, lead counsel, junior counsel (if one is to be engaged) to whom the Commission has assigned this case;
  - 6.2.2 a defence proposal in the terms set out in Schedule 1;
  - 6.2.3 a statement that it is anticipated that the costs of legal assistance will exceed the legal aid funding cap and identifying those parts of the defence proposal which the Commission proposes to be funded under the plan;
  - 6.2.4 a memorandum:
    - (a) identifying measures taken or to be taken to minimise costs or reduce the length of the trial; and
    - (b) addressing any part of the defence proposal which might make the proposed plan non-compliant in terms of clause 6.3;
  - 6.2.5 the Commission's estimate, on the information reasonably available to it, of:
    - (a) the cost of each separate item proposed to be funded, including solicitors' fees, counsel fees, disbursements for expert evidence, disbursements for travel, fees for pre-trial applications, other disbursements, including how each is calculated; and
    - (b) the extent to which these estimated costs will in total exceed the legal aid funding cap and require reimbursement under the Act.
- 6.3 A case management plan will not comply with this Agreement if it proposes:
- 6.3.1 to use expert evidence from outside Australia; or
  - 6.3.2 to require repeat forensic testing or examination of evidence already so tested or examined; or

*M.A.A.*  
21/11/2002

## Appendix 9

# Expensive Criminal Cases Funding Agreement

6.3.3 to proof distant expert witnesses other than by telephone, video-link, email or other methods of long distance communication; or

6.3.4 to prove formally any aspect of the defence case which the prosecution will agree; or

6.3.5 to call evidence in person where the prosecution will agree to the tender of documentary evidence to the same effect, and this is permitted by the rules of evidence,

unless the Attorney-General is satisfied, on the basis of the explanations given in the defence proposal, that this course of action is necessary for the defence and is a responsible use of public funds.

6.4 The Commission may from time to time submit in writing to the Attorney-General a proposal to vary an approved case management plan to reflect developments in the case which may affect its cost.

6.5 While the Attorney-General may approve expenditure retrospectively, the Commission is to use its best endeavours to avoid this by presenting proposals for variation as soon as possible after it becomes apparent that variation is necessary.

6.6 A proposal to vary a plan will:

6.6.1 describe how the plan is proposed to be varied, and the reasons for the proposed variation(s);

6.6.2 if any aspect of the proposed variation might be thought to make the plan non-compliant in terms of clause 6.3, include a memorandum to the Commission from defence counsel giving the reasons why this is necessary for the defence;

6.6.3 include an estimate, on the information reasonably available to the Commission, of the cost of each separate new item proposed to be funded, including counsel fees, disbursements for expert evidence, disbursements for travel, other disbursements, and solicitor's fees, including how each is calculated; and

6.6.4 if the variation proposes a change in defence counsel, a written undertaking from the new defence counsel in terms of clause 5 of Schedule 1.

*M.A.A.*  
21/11/2002

# Appendix 9

## Expensive Criminal Cases Funding Agreement

Page 6 of 9

COPY

### 7. COMMISSION'S OBLIGATIONS

- 7.1 The Commission shall manage each case for which a case management plan is approved, efficiently and effectively, and shall ensure that the management and cost of the case are kept under constant review.
- 7.2 The Commission shall make it a term of the assignment of a serious criminal case that should the case become subject to a case management plan, the assisted person's assigned solicitor (whether a legal practitioner in private legal practice or employed by the Commission) will provide to the Commission, on a monthly basis following approval of the plan:
- 7.2.1 an indication of and explanation for any current or anticipated expenditure that may exceed the estimates of expenditure in the approved case management plan; and
- 7.2.2 any information that may suggest that the trial will last longer than the estimated time given in the approved case management plan.
- 7.3 Where the Commission has terminated legal assistance in accordance with section 6(4) of the Act, all obligations pursuant to the case management plan will cease to exist and the Commission may seek reimbursement of the cost of providing legal assistance prior to the termination of that assistance.

### 8. REIMBURSEMENT OF COSTS

- 8.1 If the Commission seeks reimbursement of the cost of providing legal assistance, it shall submit to the Attorney-General:
- 8.1.1 a copy of the relevant invoices signed by the defendant's lawyer;
- 8.1.2 a memorandum explaining any increase in the costs of the case from the estimates provided in the approved case management plan;
- 8.1.3 a report detailing the outcome of any investigation or enquiry into the financial affairs of the assisted person or a financially associated person, and the contribution that the Commission has received or has a reasonable prospect of recovering from the assisted person or a financially associated person.
- 8.2 In the case of an exceptionally long trial, the Commission may seek interim reimbursements of the cost of providing legal assistance.

*M.A.A.*  
21/11/2002

# Appendix 9

## Expensive Criminal Cases Funding Agreement

COPY

9. APPLICATION OF CONTRIBUTIONS

A contribution received or recovered by the Commission from the assisted person or a financially associated person shall be applied as follows:

- 9.1 the Commission shall be entitled to retain the contribution up to the amount of the funding cap, plus the amount of any costs incurred by the Commission in investigating the financial affairs of an assisted or financially associated person, plus the amount of any costs incurred by the Commission in recovering any contribution, including court costs;
- 9.2 the balance of the contribution received (if any) or recovered shall be paid by the Commission to the Treasurer.

10. CONFIDENTIALITY

- 10.1 The Attorney-General may disclose the anticipated cost of the case, including legal fees, expert's fees, and any other associated costs, in order to secure funding for the trial under the terms of an approved case management plan.
- 10.2 Except as provided in Clause 10(1), the Attorney-General must not disclose any information received pursuant to this Agreement without the consent of the assisted person.

11. AUDIT

Nothing in this Agreement derogates from the powers of the Auditor-General under the Public Finance and Audit Act 1987 (South Australia).

12. NO ASSIGNMENT

The Commission must not assign or encumber any of its rights and obligations under this Agreement.

13. SURVIVAL

The clauses of this Agreement relating to confidentiality survive the expiry or termination of this Agreement and continue to apply unless the Commission notifies

*MJA*  
21/11/2002

# Appendix 9

## Expensive Criminal Cases Funding Agreement

Page 8 of 9

the Attorney-General that the assisted person has agreed to the Attorney-General's being released from his or her obligations of confidentiality.



14. COUNTERPARTS

This Agreement may be executed in any number of counterparts each of which is taken to be an original. All of those counterparts taken together constitute one instrument. An executed counterpart may be delivered by facsimile.

15. ENTIRE AGREEMENT

15.1 This Agreement contains the entire agreement between the parties with respect to its subject matter.

15.2 This Agreement supersedes any prior agreement, understanding or representation of the parties on the subject matter.

16. PROPER LAW

The laws in force in South Australia, including law with respect to capacity to contract and manner of performance, apply to this Agreement.

17. JURISDICTION OF COURTS

The courts of South Australia have exclusive jurisdiction to determine any proceeding in relation to this Agreement.

18. MODIFICATION

Any modification of this Agreement must be in writing and signed by an authorised representative of each party.

19. SEVERANCE

If any provision or part of a provision of this Agreement is invalid or unenforceable in any jurisdiction:

*M.A.A.*  
21/11/2002

# Appendix 9 Expensive Criminal Cases Funding Agreement

- 19.1 the provision must be read down for the purposes of the operation of that provision in that jurisdiction, if possible, so as to be valid and enforceable; or
- 19.2 if the provision cannot be read down, it must be severed if it is capable of being severed without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction and the parties must consult in good faith to determine whether any amendment or substituted provision is required.

COPY

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EXECUTED by the parties unconditionally as a deed.

SIGNED by THE HONOURABLE )  
MICHAEL ATKINSON, )  
ATTORNEY-GENERAL FOR THE STATE )  
OF SOUTH AUSTRALIA in the presence of: )



Witness [Signature] 21/11/02  
 [Print Name: HELEN WIGGTON ]

THE COMMON SEAL of THE LEGAL )  
SERVICES COMMISSION )  
 was hereunto affixed in the presence of: )



[Signature] )  
 Chairperson  
 [Print Name: BRIAN WITHERS ]

## Appendix 9

# Expensive Criminal Cases Funding Agreement

## Schedule 1: Contents of Defence Proposal *(pages 1-2)*

Page 1 of 2

### SCHEDULE 1

COPY

#### Contents of Defence Proposal

A defence proposal shall contain the following material:

1. A copy of the Information upon which the defendant has been arraigned.
2. The name of the court in which the matter is to be heard.
3. The following information:
  - (a) the number of witnesses who have provided declaration statements;
  - (b) whether any expert testing and evidence will be needed, and if so, in relation to what issues and for what purpose;
  - (c) if it is proposed to use an expert witness whose fees or expenses exceed Commission scale fees and expenses, or who is from outside South Australia, the reasons why this is necessary;
  - (d) if the case entails the use of an expert witness from outside Australia, an account of the enquiries made to identify any expert within Australia and the reasons why any identified expert is not available to the defence;
  - (e) where documentary evidence is significant, an indication of its volume;
  - (f) a preliminary estimate as to the length of pre-trial proceedings and the trial;
  - (g) any legal issues which are considered likely to impact upon the length of the trial;
  - (h) if the case requires senior or multiple counsel, the reasons;
  - (i) whether the case requires travel, additional reading time, conference time and viewing time or has any other features likely to add to the cost; and
  - (j) if the case entails travel outside South Australia, the reasons.
4. If it is proposed:
  - (a) to use expert evidence from outside Australia; or
  - (b) to require repeat forensic testing or examination of evidence already so tested or examined; or

*[Handwritten signature]*  
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## Appendix 9

# Expensive Criminal Cases Funding Agreement


Page 2 of 2

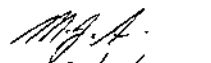
- (c) to proof distant expert witnesses other than by telephone, video-link, email or other methods of long distance communication; or
- (d) to prove formally any aspect of the defence case which the prosecution will agree; or
- (e) to call evidence in person where the prosecution will agree to the tender of documentary evidence to the same effect, and this is permitted by the rules of evidence;

transcript of anything said by the court about this course of action, and the reasons why such course of action is necessary for the defence.

5. A written undertaking by defence counsel to the Commission that he or she will:
- (a) present the defendant's case as quickly and simply as may be consistent with its advancement;
- (b) avoid unnecessary delay or unnecessary complication or prolongation of the proceedings;
- (c) inform the defendant about the reasonably available alternatives to fully contested adjudication of the case;
- (d) advise the defendant to agree matters as to which the prosecution case is overwhelming and the defence has no countervailing evidence, or matters which are purely formal;
- (e) encourage consultation between defence and prosecution experts with a view to defining and confining the issues in dispute.

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# Terms of Reference for the LSC Review 2010-11

### 1. BACKGROUND

- 1.1. On 17 May 2010 Cabinet approved additional funding for the Legal Services Commission (LSC) as follows:
- 2009-10: \$1 million
  - 2010-11: \$2 million
  - 2011-12: \$2.191 million
  - 2012-13: \$2.479 million
  - 2013-14: \$2.831 million
- 1.2. This approval was subject to and on the basis that the Commissioner agreed to a comprehensive review of its legal fee structure payable for legal aid work done in the State's criminal courts, its related operations and the provision of related legal services; and
- 1.3. The Legal Services Commission Review (LSCR) has been established for this purpose.

### 2. RESPONSIBILITIES / TERMS OF REFERENCE

- 2.1. The terms of reference assume an ongoing commitment to Section 11 (a) and (b) of the Legal Services Commission Act 1977 and a review of subsection (d).
- 2.2. **Section 11—Principles on which Commission operates**
- In the exercise of its powers and functions the Commission must:
- (a) seek to ensure legal assistance is provided in the most efficient and economical manner;
  - (b) use its best endeavours to make legal assistance available to persons throughout the State; and
  - (d) have regard to the following factors:
    - (i) *the need for legal assistance to be readily available and easily accessible to disadvantaged persons;*
    - (ii) *the desirability of enabling all assisted persons to obtain the services of legal practitioners of their choice;*
    - (iii) *the importance of maintaining the independence of the legal profession; and*
    - (iv) *the desirability of enabling legal practitioners employed by the Commission to utilise and develop their expertise and maintain their professional standards by conducting litigation and doing other kinds of professional legal work.*
- 2.3. The Committee is required to provide a report by 30 July 2011 setting out recommendations as to the following topics. It should be noted that, at the request of the Committee the Attorney-General may amend the terms of reference to meet the objectives of the review.
- 2.4. In particular, the review will report on the following specific issues:
- 2.4.1. (i) Fee Structure**
- Including:
- a) Review current fee structure;
  - b) Consider possible modifications to the fee structure, which would create incentives to counsel to read and consider material and advise their clients accordingly in line with the proposed discounted guilty plea scheme;
  - c) Recommending options to implement a new structure; and
  - d) Consider requirements as to any policy or legislative changes, which would be required as a result of modifications (if any) to the fee structure.

## Terms of Reference for the LSC Review 2010-11

### 2.4.2. (ii) Provision of Legal Assistance

Including:

- (a) Review of the current policy, which gives defendants the choice to apply for legal aid directly to the LSC or, if a defendant wishes to be represented by a particular private lawyer, where possible, granting that request;
- (b) Consider the implementation of a policy where:
  - (I) Defendants are allocated a lawyer designated by the LSC; and
  - (II) Lawyers who do legal aid work need to:
    - A. comply with an accreditation process;
    - B. be subjected to ongoing review;
    - C. be subject to termination and exclusion of further legal aid work upon failure to comply with a mandatory review or in the event that a determination has been made regarding a failure to meet an adequate standard of service; and
- (c) Consider recommendations as to the content and implementation of such a policy.

### 2.4.3. Operation of LSC

Including:

- (a) Collect, analyse and provide data (and relevant budget details) as to the assignments of criminal matters in the 2009-10 period to in-house LSC lawyers as compared to external lawyers;
- (b) Analyse the ten external lawyers who, in the 2009-10 period received the highest amount of assignments and provide the details of the assignments and the payments to them;
- (c) Consider reforms in legal aid undertaken in other jurisdictions (e.g. Public Defender Services in New Zealand and New South Wales) and recommend any options that may be beneficial in South Australia; and
- (d) Review the funding model for the LSC and recommend any changes that could be implemented.

## 3. MEMBERSHIP

A LSCRC committee will be established to oversee the review and shall comprise of:

- Martin Hinton QC - Solicitor General (Chair)
- Michael Abbott QC - Barrister
- Ralph Bonig - President of the Law Society of South Australia
- Paul Muscat SC - Legal Services Commission
- Representative from the Office of the Director of Public Prosecutions
- Project Secretariat - Tanya Brooks and Jay McGrath - Attorney-General's Department
- External Consultant

## 4. MEETING FREQUENCY

The LSCRC will meet as required and as determined by the Committee.

## 5. REPORT AND TIMEFRAME

The LSCRC will provide a written report to the Attorney General prior to 30 July 2011.

The report is to be prepared as a briefing paper specifically for the use of the Attorney-General in relation to the review of the Legal Services Commission with the purpose of making a submission to Cabinet.