

**REPORT ON THE SUFFICIENCY OF FUNDING OF
THE LEGAL AID COMMISSION OF QUEENSLAND AND
THE OFFICE OF THE DIRECTOR OF PUBLIC
PROSECUTIONS, QUEENSLAND**

APRIL 1995

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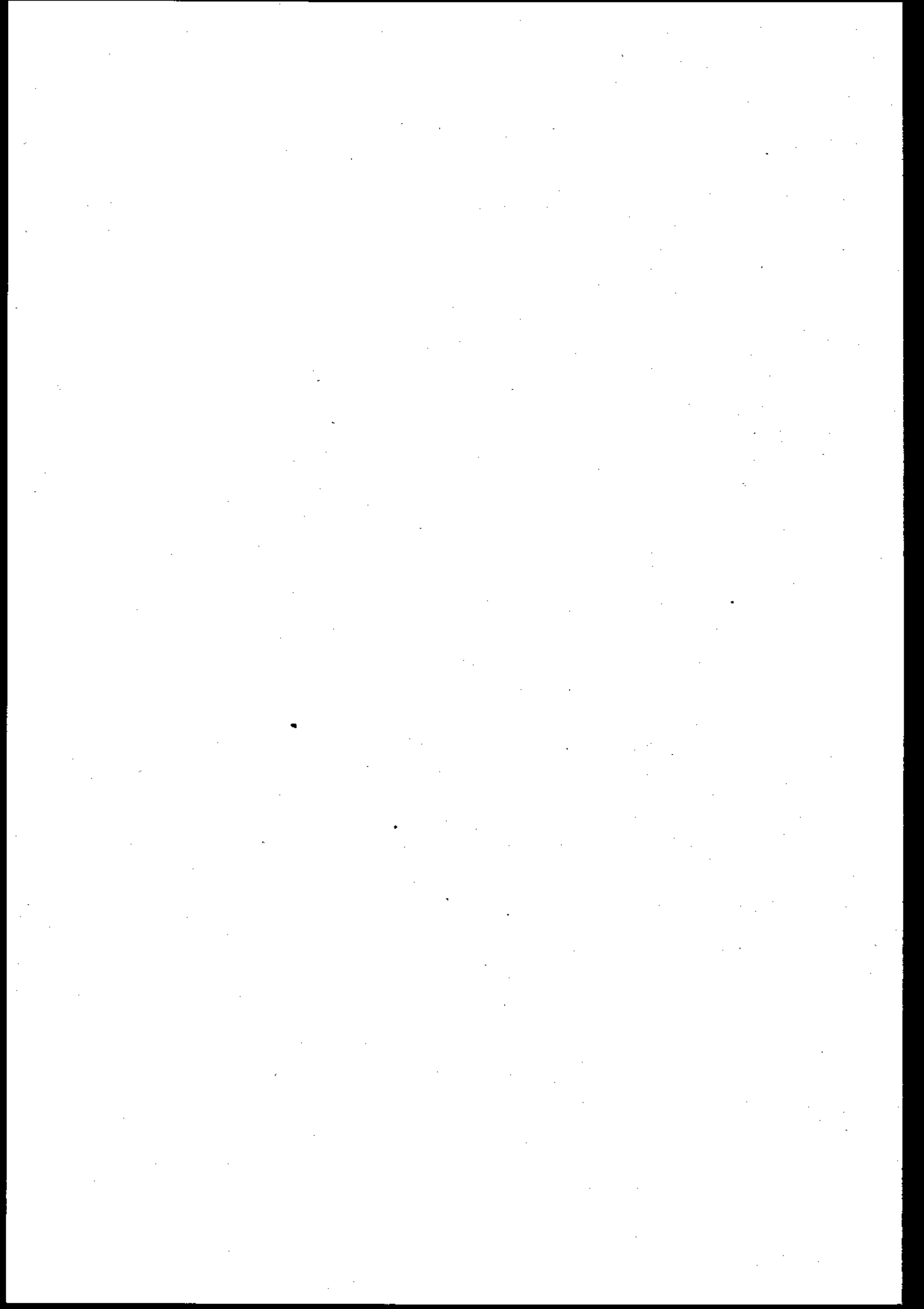
Mr Ken Davies MLA
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Dear Sirs

In accordance with section 26 of the *Criminal Justice Act 1989*, the Commission hereby furnishes to each of you its report on "Report on the Sufficiency of Funding of the Legal Aid Commission of Queensland and the Office of the Director of Public Prosecutions, Queensland".

Yours faithfully

R S O'REGAN QC
Chairperson



FOREWORD

This report examines the funding of the Queensland Director of Public Prosecutions (DPP) and the Legal Aid Commission of Queensland (LAC). It has been prepared pursuant to section 23(c) of the *Criminal Justice Act 1989*, which confers on the Criminal Justice Commission (CJC) the statutory responsibility to monitor and report on:

... the sufficiency of funding for law enforcement and criminal justice agencies including the office of Director of Prosecutions and the Legal Aid Commission (so far as its functions relate to prescribed criminal proceedings within the meaning of the *Legal Aid Act 1978*).

This report provides a detailed analysis of trends in the funding and workload of the two agencies and, where possible, compares Queensland with other jurisdictions. This report also looks at ways in which funding processes and decision-making can be improved and resources utilised more effectively by the agencies concerned. However, this report does not recommend specific increases to the budget of either agency. Quite apart from the practical difficulty of calculating the size of any increases, the CJC does not consider it appropriate to make recommendations of such specificity. Decisions about the appropriate allocation of resources to various agencies can only be taken by Government, in the context of an examination of overall budgetary priorities and consideration of the many competing demands which are made for increased resources. The role of the CJC is to help ensure that funding decisions relevant to the criminal justice system are properly informed, and to suggest ways in which the decision-making process itself can be improved.

Undertaking this review has been a challenging exercise for the CJC. Neither the *Criminal Justice Act* nor the report of the Fitzgerald Commission of Inquiry (1989) provides any guidance as to how "sufficiency" should be assessed. In addition, some issues could not be investigated thoroughly because relevant data were not available. However, the CJC is confident that, within these constraints, it has been able to provide an accurate and relatively comprehensive analysis of the funding situation of each agency. The CJC also believes that the recommendations contained in the final chapter of this report provide a constructive framework for dealing with funding issues relevant to the LAC and DPP over the longer term.

The CJC is conscious that section 23(c) of the *Criminal Justice Act* applies to agencies other than just the DPP and LAC and, moreover, that monitoring requires more than the production of a single, stand-alone, report. As part of its strategy for discharging its responsibilities under this and related sections of the Act, the CJC is currently preparing an annual "Queensland Criminal Justice System Monitor", which, amongst other things, will report regularly on trends in criminal justice agency budgets, workload and staffing. The Commission will also continue to undertake more detailed inquiries into particular components of the criminal justice system when, and if, significant problems in those areas are identified.



R S O'REGAN QC
Chairperson

ACKNOWLEDGEMENTS

Many people have assisted the CJC in the preparation of this report. In particular, the CJC wishes to acknowledge the contribution of the following individuals and organisations:

- The members of the Advisory Committee established to assist the CJC in the preparation of this Report: Ms Ros Williams of the Queensland Association of Independent Legal Services; Mr John Jerrard QC, who represented the Queensland Bar Association; Mr Ken Levy, Deputy Director of the Department of Justice and Attorney-General; Mr Royce Miller QC, the Director of Public Prosecutions; Mr Michael Shanahan, Head of Counsel of the Legal Aid Commission; and Mr John Robertson (now Mr Justice Robertson of the District Court) and Mr Peter Carne, who acted as representatives of the Queensland Law Society. The members of the Committee are not responsible for any of the findings, interpretations or recommendations contained in this report, but the CJC is grateful for the advice and assistance provided.
- Officers of the Office of Director of Public Prosecutions and the Legal Aid Commission, in particular, Mr John Hodgins, Director of the Legal Aid Office and Mr Brendan Butler, Deputy Director of Public Prosecutions, who responded helpfully to our many requests for information and took the time to check and comment on sections of the draft report.
- Those individuals and organisations listed in Appendix 1 who provided written submissions to the CJC.
- Mr Andrew Boe and other legal practitioners who met with staff of the CJC to discuss issues relevant to the Inquiry.
- David Goody, one of the CJC's financial analysts, who provided invaluable assistance in the interpretation of financial data.

The bulk of this report was written by Mr Ted Wright, Visiting Fellow at the University of New England Law School, with the assistance of Mary Burgess of the CJC's Research and Co-ordination Division. Other Division staff who played a significant role in the preparation of the report were: Amanda Carter, who served as a research assistant for the duration of the project; Susan Johnson, who conducted many of the interviews with practitioners and helped in the writing of the final chapter; and Tracey Stenzel, who was responsible for the difficult and time consuming task of preparing the report for publication. The contributions of all staff associated with the project are greatly appreciated by the CJC.

David Brereton
Director
Research and Co-ordination

CONTENTS

FOREWORD	i
ACKNOWLEDGEMENTS	ii
ABBREVIATIONS	vi
EXECUTIVE SUMMARY	vii
 CHAPTER 1	
INTRODUCTION	1
Scope of the Review	1
Which Agencies?	1
Prescribed Criminal Proceedings	2
Determining Sufficiency	2
The Issue of Payments to Practitioners	5
Management and System Issues	6
Data Sources and Consultation Process	7
Report Structure	8
 CHAPTER 2	
THE LEGAL AID COMMISSION OF QUEENSLAND AND THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS	9
Introduction	9
The Legal Aid Commission of Queensland	9
Historical Background	9
Public Defender's Office	10
Legal Aid Commission and Public Defender's Office Merger	11
The Constitution of the Legal Aid Commission and its Statutory Functions	11
Funding of the Legal Aid Commission	13
The Legal Aid Office	17
Office of the Director of Public Prosecutions	20
Functions of the Office of the Director of Public Prosecutions	21
Funding of the Office of the Director of Public Prosecutions	23
Organisational Structure	23
Conclusion	25
 CHAPTER 3	
THE LEGAL AID COMMISSION: FUNDING AND WORKLOAD	26
Introduction	26
Statistical Measures Used	26
Legal Aid Commission Revenue	27
Factors Affecting Revenue	29
Comparisons with Other States	32

Expenditure	38
Total Expenditure	38
Determinants of Legal Aid Commission Expenditure	39
Liquid Assets	41
Levels of Service	43
Level of Service by Law Types	45
Levels of Service in Relation to Measures of Demand	46
Estimated Cost of Maintaining Relative Service Levels	50
Summary of Key Findings	54

CHAPTER 4

THE LEGAL AID COMMISSION AND PRIVATE PRACTITIONERS

55

The Legal Aid Commission's Fee Structures	55
Current Arrangements	55
Issues	56
Changes in Fee Scales	57
Internal Comparisons	58
Interstate Comparisons	60
Comparisons with Privately Funded Criminal Matters	62
Payment Practices	63
Trends in the Use of Private Practitioners	64
The Impact of Legal Aid Commission Funding Changes on Private Legal Practitioners	67
Implications for Quality of Service Provided	68
Summary of Key Findings	70

CHAPTER 5

THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS: FUNDING AND WORKLOAD

71

Introduction	71
Revenue, Expenditure and Workload Trends	71
Revenue and Expenditure Trends	71
Workload Trends	73
Funding Per Matter	75
Comparisons with Other Jurisdictions	77
Comparisons with The Legal Aid Commission	78
Briefing Out Practices	79
Quality of Service Provided	81
Summary of Key Findings	83

CHAPTER 6

ISSUES TO BE ADDRESSED

84

Processes for Determining Legal Aid Funding	84
Fluctuating Revenue/Expenditure	84
Commonwealth and State Funding Levels	85
The Inadequacy of the Funding Arrangements	86
Issues Relating to Practitioner Payments	87
Processes for Setting Fees	88
Quality Control	89

Use of In-house and Private Service Providers	91
Structure of the Legal Aid Commission	92
The Prescribed Crime Workload	93
The Office of the Director of Public Prosecutions: Management and Funding Issues	96
Funding Arrangements	96
General Management Issues	97
Quality Control	99
Use of Private Counsel	99
Improving the Criminal Justice System as a Whole	101
Improving the Quality of Information	104
Conclusion	105
REFERENCES	107

APPENDICES

Appendix 1 – Advertisement Calling for Submissions and List of Non-Confidential Submissions Received	A1
Appendix 2 – The State Government Contribution to Legal Aid Under the Commonwealth/State Agreement	A3
Appendix 3 – Expenditure and Revenue Measures: Base Tables	A7
Appendix 4 – Comparison of Australian Prosecuting Authorities	A13

ABBREVIATIONS

ALAO	Australian Legal Aid Office
CJC	Criminal Justice Commission
Director	Director of Public Prosecutions
DPP	Office of the Director of Public Prosecutions (Queensland)
Fitzgerald Inquiry	Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct
LAC	Legal Aid Commission of Queensland
LAO	Legal Aid Office (Queensland)
PD	Public Defender's Office
PSMC	Public Sector Management Commission

EXECUTIVE SUMMARY

CHAPTER 1: INTRODUCTION

This introductory chapter defines the scope of the report. Section 23(c) of the *Criminal Justice Act 1989* requires the Criminal Justice Commission (CJC) to monitor and report on:

the sufficiency of funding for law enforcement and criminal justice agencies including the office of the Director of Prosecutions¹ and the Legal Aid Commission (so far as its functions relate to prescribed criminal proceedings within the meaning of the *Legal Aid Act 1978*).

In *Boe v Criminal Justice Commission*¹ Mr Justice de Jersey held that the nature of this obligation 'necessitates its being discharged on a more or less continual or regular or recurrent basis' (p. 11). This report is one of a number of initiatives which the CJC is undertaking to discharge this responsibility.

Three issues are relevant to determining the scope of this review:

WHICH AGENCIES SHOULD BE EXAMINED?

Section 23(c) of the *Criminal Justice Act* refers to 'law enforcement and criminal justice agencies' in general. This phrase encompasses not just the Legal Aid Commission (LAC) and the Office of the Director of Public Prosecutions (DPP), but also the Queensland Police Service, the Queensland Corrective Services Commission and the juvenile justice function within the Department of Family Services and Aboriginal and Islander Affairs.

It would be a massive and unmanageable task to comprehensively examine the funding of all of these bodies in a single review. This report therefore focuses only on the LAC and DPP, consistent with the terms of the orders made by de Jersey J in *Boe v Criminal Justice Commission*.²

IN THE CASE OF THE LEGAL AID COMMISSION, TO WHAT EXTENT SHOULD THE FOCUS BE RESTRICTED TO THE FUNDING OF PRESCRIBED CRIMINAL PROCEEDINGS?

Section 23(c) of the *Criminal Justice Act*, read literally, requires the Commission to consider only whether the LAC has received sufficient funds to meet its obligations in regard to prescribed criminal matters. Prescribed criminal proceedings include proceedings in the District and Supreme Courts, and committal proceedings in the Magistrates Court for offences carrying a maximum penalty of 14 years or more. Under the *Legal Aid Act* (s. 29), the LAC is required to fund such matters, subject to the application of a means test.

Such a limited assessment would show that the LAC has granted aid in all cases in which it has been required by law to provide assistance, albeit at levels which some sections of the legal profession and judiciary regard as less than adequate. However, if the report were to focus only on the prescribed crime area, it would not provide an accurate account of the LAC's overall funding situation. As discussed in Chapter 3, in recent years the LAC has sustained its resource commitments to prescribed criminal matters only at the cost of a marked reduction in the level of assistance provided in civil and family law matters and, to a lesser extent and more recently, in the area of non-prescribed crime. These broader developments have not been ignored in this report.

¹ Supreme Court of Queensland 10 June 1993 [93.186], unreported.

² Ibid.

HOW SHOULD THE SUFFICIENCY OF FUNDING BE MEASURED?

The ostensibly simple concept of "sufficiency" raises a host of complex evaluative questions, relating to different interests, processes and outcomes, and involving a number of potentially relevant standards or benchmarks. The manner in which sufficiency is "operationalised" (or defined in measurable terms) significantly affects the conclusions which are reached about the adequacy or otherwise of funding.

In order to avoid the conceptual and practical pitfalls of the various approaches which can be taken to determining sufficiency, this report relies primarily on "real world" benchmarks. These take the form of historical, inter-jurisdictional and inter-agency comparisons.

Historical comparisons involve contrasting current levels of revenue, expenditure and service relative to those of preceding financial years, to determine whether:

- funding for each agency has kept pace with inflation, population growth and service demands
- the level of service has deteriorated, improved or been maintained.

The historical approach provides an approximate indication of whether the agencies have been provided with sufficient funds to keep up with changing demand. Its main limitation is that it does not entail any independent evaluation of whether the benchmark levels of funding and service provision were themselves appropriate.

Inter-jurisdictional comparisons involve comparing current levels of revenue, expenditure and service of the Queensland agencies with those of equivalent organisations in the other two major eastern jurisdictions. Such comparisons give some indication of whether the Queensland agencies have been under-funded relative to their counterparts in other States. The major practical problem with this approach is that differences in agency functions and statistical reporting processes limit the scope for comparisons, especially where prosecuting authorities are concerned.

Inter-agency comparisons involve comparing the LAC and DPP with each other and the criminal justice system as a whole, in terms of funding and workload. This approach provides some indication of whether the "balance" between the different components of the system has been altered over the last few years, although the concept of "balance" is conceptually problematic and difficult to apply empirically.

Through using these various benchmark measures the report is able to provide a relatively comprehensive account of the funding situation of each agency, indicate whether the situation has deteriorated or improved in recent years, and provide some useful comparisons. Where appropriate the report also makes recommendations about structures and processes for setting, adjusting and monitoring funding levels and for ensuring that these funds are used cost effectively. However, the CJC does not see its responsibility under section 23(c) of the *Criminal Justice Act* as requiring it to recommend that funding for either agency be adjusted by some specific amount. The reality of the political and budgetary process is that the amount of money available for distribution among the various government programs is limited and there are many areas (for example, education, health, the environment) where there are equally strong claims for increased funding. It is not for the CJC to say that the LAC or the DPP is more deserving of extra funds than these other areas. This is a decision which can – and should – only be taken by governments. The primary role of bodies such as the CJC is to help ensure that future decisions about funding are properly informed.

It should also be noted that the report focuses primarily on what the agencies concerned are currently required to do, rather than on what they might be doing in the future. There would be much to commend a review of criminal justice agency funding which began with questions about whether the system is as effective, equitable and efficient as it might be, and then worked down from such a model to ascertain the cost of the legal assistance and prosecution services required to support it. However, this sort of exercise would necessarily go well beyond the boundaries of simple "monitoring" of funding sufficiency.

THE ISSUE OF PAYMENTS TO PRACTITIONERS

The issue of the adequacy of payments to practitioners was raised in the CJC's consultations with members of the private legal profession and in a number of the written submissions. In particular, it was argued that legal aid work is inadequately remunerated and that this situation creates the potential for practitioners to provide sub-standard service in order to maintain some profit margins. Concerns were also expressed about the adequacy of DPP briefing-out fees.

Under section 23(c) of the *Criminal Justice Act* the CJC's responsibility is to investigate the sufficiency of agency funding not the adequacy of payments to individual practitioners. However, it is relevant to look at such payments in the context of determining whether the agencies concerned are able to attract suitably qualified practitioners to undertake the work required and to deliver an acceptable standard of service.

The report:

- presents historical data on trends in legal aid payments to legal practitioners, particularly in relation to prescribed criminal matters
- discusses the concerns which practitioners have expressed about the level of payments and the processes for determining and paying fees in individual cases
- compares the fees paid by the LAC and DPP to private practitioners
- reviews and makes recommendations in relation to the mechanisms used by the LAC and DPP to determine practitioner payments.

This material will hopefully contribute to more informed discussion about the issue of whether, and in what ways, existing fee structures and payment practices need to be revised.

CHAPTER 2: THE LEGAL AID COMMISSION OF QUEENSLAND AND THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

This chapter provides a brief overview of the origins, structure, functions and funding arrangements of the LAC and the DPP. Key features of the two organisations include:

- Funding arrangements for the LAC are governed by the 1990 Commonwealth/State Funding Agreement. This Agreement is based on the operational expenditure of the LAC and Public Defender's Office (PD) in 1987/88, adjusted annually for cost increases. Under the Agreement the Commonwealth and State governments contribute 55 per cent and 45 per cent respectively of LAC revenue. LAC revenue derives from six different sources: Commonwealth Government grants; State Government grants from consolidated revenue; interest on solicitors' trust accounts; recoverable costs; client contributions; and interest on investments. In contrast, virtually all of the DPP's income is from annual State consolidated revenue grants administered by the Department of Justice and Attorney-General. This funding is not adjusted according to any specific formula.
- The LAC is an independent commission which includes amongst its membership representatives of various groups with an interest in the provision of legal services. In the case of the DPP, decision-making authority resides with the Director. The Director is generally responsible to the Minister, but is required to act independently in the performance of his or her functions and duties.

- The DPP's workload is largely restricted to criminal proceedings in the higher courts. The LAC provides legal assistance in relation to a much wider range of matters: civil and family law, as well as criminal law matters; including criminal proceedings in the lower as well as the higher courts.

CHAPTER 3: THE LEGAL AID COMMISSION: FUNDING AND WORKLOAD

This chapter presents the results of a detailed analysis of LAC funding and workload trends, and comparisons with other jurisdictions. The key findings are as follows:

REVENUE TRENDS

- LAC and PD revenue has fluctuated significantly over the last decade.
- Revenue has dropped in recent years from a peak reached in 1990/91. However revenue indexed for inflation and population growth has remained above that of 1987/88 (the benchmark level under the 1990 Commonwealth/State Funding Agreement).

FUNDING SOURCES

- LAC and PD revenue has been very sensitive to fluctuations in revenue from interest on solicitors' trust accounts. Income from this source has dropped dramatically in recent years and this drop has not been fully offset by increased contributions from State Consolidated Revenue.
- The State's total contribution to LAC and PD revenue (i.e. grants from State Consolidated Revenue and interest on solicitors' trust accounts) declined sharply between 1989/90 and 1992/93. Although the State's contribution increased significantly in 1993/94, it was still below the 1990/91 peak year by \$2.3m (12 per cent) in real terms.
- In the period 1988/89–1990/91, the State's total contribution significantly exceeded the minimum under the 1990 Commonwealth/State Funding Agreement, due to the high level of trust account income. Since 1990/91, the contribution has, for the most part, continued to exceed the minimum required, albeit by considerably smaller amounts.
- The Commonwealth's grants have exceeded the minimum required under the 1990 Commonwealth/State Funding Agreement in all years since 1989/90. However, it appears that virtually all of this 'surplus' has taken the form of tied grants for specific purposes, such as, for Veterans' Affairs matters.
- Internally generated revenue increased significantly until 1993/94, when it fell by 27 per cent in real terms. This decline was due primarily to the progressive withdrawal by the LAC from providing assistance in civil law matters and family law property matters where successful litigation could enable the LAC to recover its costs.

INTER-STATE COMPARISONS

- The Commonwealth grant to the Queensland LAC, indexed for inflation and population growth, has tended to fall over the last four financial years, and on a per capita basis is now appreciably below the grant made by the Commonwealth to legal aid bodies in New South Wales and Victoria. The difference in 1993/94 was equivalent to revenue of about \$2.7m, if Queensland had been funded on the same per capita basis as New South Wales, or \$4.7m if Victoria is used as a benchmark.
- On a per capita basis, the total State contribution to the Queensland LAC in 1993/94 was slightly above the New South Wales State contribution and only slightly below the Victorian State grant. However, for the four years 1990/91 to 1993/94 the average State contribution was appreciably lower in Queensland than in the other two States, with a particularly marked shortfall in 1991/92 and 1992/93. The net difference over these four years between Queensland and New South Wales was equivalent to \$3.2m, and the difference between Queensland and Victoria was equivalent to \$9.9m.
- In the last three years, total per capita legal aid revenue in Queensland has been significantly below the level of Victoria. However, on a per capita basis Queensland has funded a similar number of grants of aid to Victoria.

DETERMINANTS OF EXPENDITURE INCREASE

- There was a marked rise in real LAC expenditure between 1988/89 and 1991/92. This was primarily the result of a 25 per cent increase in the number of grants of aid between 1988/89 and 1990/91 and a rise of 17.5 per cent in costs per grant between 1988/89 and 1989/90.

DETERMINANTS OF LEGAL AID COMMISSION EXPENDITURE AND LIQUID ASSETS

- The LAC significantly increased grants of aid during the peak income years of 1989/90 and 1990/91 when interest rates were high and interest on funds in solicitors' trust accounts comprised a large proportion of LAC income. With hindsight, it is apparent that inadequate provision was made for a possible decline in income. In addition, the cost of fee increases and the increased number of grants of aid were seriously underestimated. As a result, the LAC's cash reserves were significantly depleted in 1991/92 and 1992/93. The level of reserves has been partly restored, but only by drastic reductions in the level of service provided by the LAC in 1992/93 and 1993/94.

LEVELS OF SERVICE

- The level of service provided by the LAC, as measured by the number of grants of aid approved, has fallen markedly in recent years.
- This dramatic drop in grants of aid has been only partly attributable to falls in revenue. The increase in grants in the peak revenue years of 1989/90 and 1990/91 considerably exceeded the increase which could have been supported from revenue received in those years. The number of grants in 1991/92 was also too high relative to revenue.
- The reduced number of grants of aid in 1992/93 and 1993/94 reflects a substantial correction for the high level of approvals in the previous three years.
- Approvals could have been maintained at their 1987/88 level throughout the period, with the application of a policy of income smoothing and modest additional net expenditure of cash reserves.

LEVEL OF SERVICE BY LAW TYPES

- The dramatic drop in recent years in the total number of grants of aid has been almost entirely at the expense of applicants for assistance in family law and civil law matters. Family and civil law grants have fallen dramatically, both relative to population growth and in absolute numbers. The number of family law grants per 1,000 population is now only 40 per cent of the level in 1987/88. The number of civil law grants per 1,000 population is now less than one-quarter of its level during the period from 1987/88 through 1990/91. If grants of aid had kept pace with increases in population, an additional 9,500 family and 13,300 civil law grants would have been made since 1987/88.
- The increase in prescribed criminal law grants of aid has at least kept pace with, and possibly exceeded, increases in prosecutions of prescribed criminal matters since 1987/88.
- The total number of grants of aid for non-prescribed criminal matters since 1987/88 increased broadly in line with population growth until 1993/94. Grants in the period between 1990/91 and 1992/93 actually ran ahead of increases in population, whereas in 1993/94 they were about 15 per cent below what was necessary to keep pace with population growth.
- The marked change in the legal assistance service profile since 1990/91 has come about, at least partly, because as a matter of law, the LAC has been required to provide aid for all prescribed criminal law matters subject only to a means test. The number of prescribed criminal matters continued to increase significantly after 1990/91 at the same time as revenue fell.
- Had prescribed criminal law matters continued to be funded on the same basis as prior to the merger of the LAC and PD, the LAC would have received several million dollars in additional funds. However, it must be acknowledged that one of the objectives of the merger was to ensure the more efficient use of available funds.

COST OF MAINTAINING SERVICE LEVELS

- In order to maintain increases in grants of aid in line with increases in prescribed criminal matters and population since 1987/88, LAC revenue would have had to continue to increase after its actual peak in 1990/91, to about \$55m in 1993/94. This is around \$12.2m more than the LAC's actual revenue for that year. However, these estimates do not involve any assessment of the potential for meeting the demand for legal assistance in other ways, or of the LAC's capacity to reduce costs per grant.

CHAPTER 4: THE LEGAL AID COMMISSION AND PRIVATE PRACTITIONERS

This chapter examines issues relating to the LAC's payment structures and briefing practices, and the quality of service provided by private legal practitioners. The key findings are:

LEGAL AID COMMISSION FEE SCALES

- Since September 1988 trial fees paid to private practitioners by the LAC for prescribed criminal matters have increased by around 60 per cent, or 40 per cent in real terms.
- The rate of increase for prescribed criminal law fees has generally been higher than for fees for civil and family law and non-prescribed criminal matters, but this is because prescribed crime fees were historically low in comparison with fees for those other matters.
- To the extent that comparisons are possible, there is no indication that fees paid by the LAC are significantly below those paid by legal aid bodies in other Australian jurisdictions.
- LAC fees in the criminal law area are still substantially below those fees set by the LAC for civil and family law matters. On the other hand, there has been a very substantial tightening of eligibility criteria for civil and family law matters. No such restrictions have been imposed in relation to prescribed crime matters and it is only recently that cutbacks have been made in the area of non-prescribed criminal law.
- Practitioners assert that fees for privately funded criminal law work tend to be substantially higher than for matters funded by the LAC. However, the fees paid by private clients do not provide a good benchmark for assessing the adequacy of LAC fees because:
 - * In the criminal law area in particular, the LAC dominates the market for legal services. Few practitioners are in a position to do substantial amounts of privately funded criminal law work for the simple reason that there is not much of that type of work available. Hence it is erroneous to assume that the rates paid by private clients in some way provide a better indication of the "true worth" or "market value" of legal work than the rates paid by the LAC.
 - * If it was left to "the market" to determine rates for criminal law work without the intervention of the LAC (in its capacity as the dominant purchaser of services) it is quite probable that the rates would be below what they are now. Most defendants in criminal matters have only very limited resources at their disposal and, if required to fund their own defence, would almost certainly pay less than the LAC.
 - * Arguably, in the final analysis, the only basis for determining whether fees are adequate is whether practitioners are willing and able to provide an acceptable level of service at the rates offered by the LAC. Clearly, there are still many practitioners willing to take on legally aided work, although many others have dropped out of the market. Whether the service being delivered is of sufficient quality is addressed below.

PAYMENT PRACTICES

- In recent years, there has been a substantial tightening of LAC payment guidelines and practices.
- LAC figures indicate that these changes have contributed to a 16.4 per cent reduction between 1991/92 and 1993/94 in the amount of remuneration received per prescribed criminal matter by private legal practitioners.

EXPENDITURE ON PRIVATE PRACTITIONERS

- LAC expenditure on private legal practitioners rose significantly in real terms, from \$19.3m in 1988/89 to a peak of \$32.1m in 1991/92. Expenditure then declined markedly to \$18.5m in 1993/94.
- Private legal practitioner costs as a proportion of total LAC expenditure have declined from 62.2 per cent in 1991/92 to 48.6 per cent in 1993/94.
- The decline in expenditure on private legal practitioners after 1991/92 has been due primarily to a reduction in the overall number of grants of aid approved, and, secondarily, to a greater proportion of matters being handled in-house by the LAC.
- Private legal practitioners bore virtually the full force of the expenditure cuts imposed by the LAC in 1992/93 and 1993/94. On the other hand, practitioners were the main beneficiaries of the expansion of legal aid services in the late 1980s.
- The shift to a greater reliance on in-house work appears to have been driven by organisational imperatives, specifically the difficulty of reducing staffing levels and the desire of the LAC to increase in-house productivity. The shift does not appear to have produced any identifiable efficiency gains for the LAC.

IMPACT OF FUNDING CHANGES ON PRIVATE LEGAL PRACTITIONERS

- Over the last decade or so there has developed a group of practitioners, especially in the area of criminal law, who have become largely dependent on income from the LAC.
- These practitioners have been particularly affected by the tightening of LAC payment guidelines, reduced flexibility in the administration of these guidelines, and the recent moves by the LAC to handle more matters in-house.
- The CJC was not given any concrete evidence that private practitioners funded by the LAC are providing an inadequate level of service in relation to criminal law matters. However, a situation has developed where there are increasing pressures on practitioners to "cut corners" in some cases, especially in the absence of any systematic monitoring by the LAC of the quality of service being provided.

CHAPTER 5: THE DIRECTOR OF PUBLIC PROSECUTIONS: FUNDING AND WORKLOAD

This chapter focuses on the funding, workload and performance of the DPP. The key findings are:

REVENUE, EXPENDITURE AND WORKLOAD

- Between 1986/87 (the first full year of operation of the DPP) and 1988/89, DPP real revenue fell by 11 per cent. Between 1988/89–1993/94, DPP revenue increased by 84 per cent. For the period 1986/87 to 1993/94, real DPP revenue increased by 64 per cent.
- Between 1989 and 1993 the overall number of staff employed by the DPP increased by 54 per cent and the number of legally qualified staff nearly doubled.

- Between 1986/87 and 1993/94, the number of depositions received by the DPP increased by around 83 per cent, the number of matters proceeding as trials increased by 64 per cent and the number proceeding as sentences increased by 93 per cent. The DPP also took on additional functions which contributed to a further increase in overall workload.
- Real revenue per deposition in 1993/94 was 10 per cent less than it was in 1986/87, but around 23 per cent above the level of 1988/89. Real DPP revenue per deposition decreased in 1992/93 and 1993/94.

INTER-JURISDICTIONAL COMPARISONS

- It is extremely difficult to compare prosecution authorities across jurisdictions, because agencies differ markedly in their structure and the range of functions they perform. The Queensland DPP appears to receive less funding, on a pro rata basis, than prosecuting authorities in other jurisdictions. However, in the absence of more detailed information about the range and complexity of matters handled by the different agencies, and the counting rules which they employ, such comparisons should be regarded with extreme caution.

INTER-AGENCY COMPARISONS

- Since 1986/87, DPP funding has increased at a greater rate than LAC funding, but this may have been from a lower base.
- Since the merger of the LAC and PD in March 1991, DPP total expenditure has increased at a greater rate than LAC expenditure on prescribed criminal matters.
- Given the limited data available, it is not possible to say whether one agency spends more than the other per higher court criminal matter.

BRIEFING OUT PRACTICES

- In contrast to the LAC, only a small proportion of cases are briefed out by the DPP to private legal practitioners.
- DPP briefing out fees are substantially below those paid by the LAC.

QUALITY OF SERVICE

- The DPP's operations appear to require improvement in a number of respects, but these shortcomings may be due more to internal structural and managerial problems, and inefficiencies in the wider criminal justice system, than to inadequate funding of the DPP.
- In terms of the overall higher court acquittal rate, the Queensland DPP currently appears to be performing at least as well as prosecuting authorities in Victoria and New South Wales.

CHAPTER 6: ISSUES TO BE ADDRESSED

This chapter addresses structural and procedural issues relating to the funding of the LAC and DPP. The recommendations put forward in the chapter are as follows:

LEGAL AID COMMISSION FUNDING ARRANGEMENTS

1. The 1990 Commonwealth/State Funding Agreement should be revised, as it has not provided an adequate process for maintaining the original LAC service profile established by the Agreement.

A key objective of any review should be to determine an appropriate service delivery profile for the LAC. This will require consideration of such questions as the appropriate balance of criminal, family and civil law matters; the types of matters within these categories which should be given funding priority, taking into account such things as gender bias considerations; the funding relationship between the LAC and Aboriginal and Torres Strait Islander Legal Services; and an assessment of whether existing merit and means tests need revising. Once issues about the service profile have been resolved, the focus should be on determining what funding arrangements are required to enable the LAC to provide a stable level of service in terms of this profile.

2. Whatever funding arrangement is adopted, provision should be made for the LAC's revenue to be reviewed periodically to take account of: changes in the level of service demand as measured by such factors as population growth and higher and lower court criminal prosecutions; unavoidable cost increases; and external legal and/or administrative changes which affect the LAC's workload.
3. The State Government, in conjunction with the LAC, should develop appropriate indicators, acceptable to the Commonwealth, for measuring changes in LAC costs and workload, and changes in the level of demand for legal services.

LEGAL AID COMMISSION PAYMENTS TO PRACTITIONERS

4. The CJC supports initiatives being developed by the LAC to introduce more competitive discipline in the determination of what the organisation pays for legal services, on the condition that there is proper monitoring of the quality of services being provided under different arrangements, and of the impact of these arrangements on private legal practitioners.
5. Decisions on matters relating to payments to practitioners should be seen as a management responsibility, with representatives of the legal profession having input in an advisory capacity only.
6. If scale fees are to continue to be used to any extent, serious consideration should be given to establishing a clear benchmark relationship between these scales and the cost of providing similar services in-house.
7. The LAC should develop mechanisms for systematically monitoring the quality of service provided across the whole spectrum of legal aid service delivery, both internally and in relation to all assigned, tendered and franchised legal aid work.

USE OF PRIVATE PRACTITIONERS AND IN-HOUSE STAFF BY THE LEGAL AID COMMISSION

8. The LAC should put in place procedures which will enable it to accurately compare the cost effectiveness of, and quality of service provided by private practitioners and in-house staff. Decisions about the appropriate method of delivering legal aid services should be based primarily on the information collected through this process.

STRUCTURE OF THE LEGAL AID COMMISSION

9. Experience shows that decision making by a body which is deliberately made up of representatives for a number of sectional interest groups can be slow, ineffectual and, on occasions, unduly influenced by sectional considerations. Given the critical importance of the issues the LAC will continue to address into the future, serious consideration should be given to reducing the size of, and restructuring, the current LAC. The current structure of the LAC should be reviewed, taking into account the following "minimal" requirements:
 - It is quite appropriate that the LAC should include on its governing board, legal professionals with expertise in the operation of the legal system and the delivery of legal services. However, in order to avoid any possibility of conflict of interest, the professional associations should not have direct representation on the LAC.
 - As at present, the LAC should include at least one member with specific responsibility for representing the interests of legally assisted persons.
 - The LAC should include at least one person from outside the LAC with proven managerial expertise.
 - It is important that an appropriate gender balance on the LAC be maintained, especially given that gender equity is a very significant issue in relation to the allocation of funds for legal assistance.

THE LEGAL AID COMMISSION'S PRESCRIBED CRIME WORKLOAD

10. The CJC supports initiatives aimed at reducing the prescribed crime workload of the LAC provided that there is no detriment to accused persons and there is compliance with the principles articulated by the High Court in *Dietrich's Case*³.

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS FUNDING ARRANGEMENTS

11. The DPP, as a matter of priority, should develop workload measures capable of providing reasonably accurate information about the number of person hours/days associated with various activities undertaken by the Office. This will enable the DPP with Treasury to develop a funding formula which reflects changes in its workloads.

³ (1992) 177 CLR 292.

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS MANAGEMENT ISSUES

12. The Government, in consultation with the DPP, should review, cost out and, where appropriate, implement the recommendations of the Queensland Administration of Criminal Justice Review Committee relating to the restructuring and reorganisation of the DPP. (This committee was appointed by the Queensland Department of Justice and Attorney-General in 1993 to review certain parts of the Queensland criminal justice system, with particular emphasis on the existing processes within the DPP.)

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS QUALITY CONTROL PROCEDURES

13. The DPP should develop processes for routinely and systematically monitoring the quality of work performed by in-house staff and private counsel who do work on behalf of the DPP.

USE OF PRIVATE PRACTITIONERS BY THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

14. Although the bulk of prosecution work will continue to be handled in-house by the DPP for the foreseeable future, there is scope for the DPP to make greater use of private counsel.

To determine whether greater use of briefing out is desirable, the DPP should establish a system of time recording for in-house prosecutors and processes for monitoring the quality of the work performed by both in-house and private counsel. The DPP should also endeavour to ensure that, for the purposes of this evaluation, the matters which are briefed out to private counsel are roughly comparable to those dealt with by in-house prosecutors.

IMPROVING THE CRIMINAL JUSTICE SYSTEM GENERALLY

15. In order to facilitate earlier decision-making in the criminal justice system, some *transitional* funding should be made available to enable agencies such as the DPP and LAC to change their processes and focus more resources at the "front end" of the system.
16. A permanent group, similar to the Criminal Case Management Group should be established to develop, implement and monitor across-agency strategies to improve the criminal justice system. The Criminal Case Management Group was formed in 1994 as an initiative of the Litigation Reform Commission, with the aim of developing some specific strategies that could be implemented on a system-wide basis to improve efficiency in the criminal justice system, .
17. Priority should be given to proposed legislative changes designed to improve the efficiency of the system, particularly in relation to committal proceedings.
18. All criminal justice agencies should give the maximum possible support to initiatives designed to improve the quality, quantity and timeliness of information relating to the operation of the criminal justice system.

CHAPTER 1 INTRODUCTION

This report has been prepared pursuant to the Criminal Justice Commission's (CJC) statutory responsibility under section 23(c) of the *Criminal Justice Act 1989* to monitor and report on:

the sufficiency of funding for law enforcement and criminal justice agencies including the office of the Director of Prosecutions and the Legal Aid Commission (so far as its functions relate to prescribed criminal proceedings within the meaning of the *Legal Aid Act 1978*).

The section gives effect to recommendation BI2(f) of the Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct (Fitzgerald Inquiry 1989).

In *Boe v Criminal Justice Commission*⁴ Mr Justice de Jersey held that the nature of this obligation 'necessitates its being discharged on a more or less continual or regular or recurrent basis' (p. 11).

This introductory chapter outlines the approach which the CJC has taken to discharge this statutory responsibility and describes the data sources and consultative strategies used in the preparation of the report.

SCOPE OF THE REVIEW

Three issues are relevant to determining the scope of this review:

- which agencies should be examined?
- in the case of the Legal Aid Commission (LAC), to what extent should the focus be restricted to the funding of prescribed criminal proceedings?
- how should the sufficiency of funding be measured?

WHICH AGENCIES?

Section 23(c) of the *Criminal Justice Act* refers to 'law enforcement and criminal justice agencies' in general. This phrase encompasses not just the LAC and the Office of the Director of Public Prosecutions⁵ (DPP), but also the Queensland Police Service, the Queensland Corrective Services Commission and the juvenile justice function within the Department of Family Services and Aboriginal and Islander Affairs.

It would be a massive and unmanageable task to comprehensively examine the funding of all of these bodies in a single review. This report therefore focuses only on the LAC and DPP, consistent with the terms of the orders made by de Jersey J in *Boe v Criminal Justice Commission*. However, this should not be construed as indicating that the CJC has not monitored, or is not intending to monitor, the adequacy of the resources provided to other agencies in the criminal justice system. The CJC has undertaken quite extensive research on Queensland Police Service staffing levels (CJC 1994a). In addition, work is well advanced on the preparation of an annual 'Queensland Criminal Justice System Monitor' which, amongst other things, will report regularly on trends in agency budgets, workloads and staffing levels. Under the *Criminal Justice Act*

⁴ Supreme Court of Queensland 10 June 1993 [93.186], unreported.

⁵ Previously the Director of Prosecutions. See *Statute Law (Miscellaneous Provisions) Act (No. 2) 1994*, s. 3 (in force December 1994).

the CJC is also able to undertake more detailed inquiries into the funding situation of particular components of the criminal justice system when significant problems in those areas are brought to the CJC's attention, as in this case in relation to the LAC and the DPP.

PRESCRIBED CRIMINAL PROCEEDINGS

Section 23(c) of the *Criminal Justice Act* refers to funding for the LAC 'so far as its functions relate to prescribed criminal proceedings'.⁶ These include criminal proceedings in the District and Supreme Courts, and committal proceedings in the Magistrates Court for offences carrying a maximum penalty of 14 years or more (see p. 10 for a full definition). Under the *Legal Aid Act 1978* (s. 29), the LAC is required to fund such matters, subject to the application of a means test.

Section 23(c), read literally, requires the Commission to consider only whether the LAC has received sufficient funds to meet its obligations in regard to prescribed criminal matters. Such an assessment would show that the LAC has granted aid in all cases in which it has been required by law to provide assistance, albeit at levels which some sections of the legal profession and judiciary regard as less than adequate. However, if the report was to focus only on the prescribed crime area, it would not provide an accurate account of the LAC's overall funding situation. As discussed in Chapter 3, in recent years the LAC has sustained its resource commitments for prescribed crime only at the cost of a marked reduction in the level of assistance provided in civil and family law matters and, to a lesser extent and more recently, in the area of non-prescribed crime. These broader developments have not been ignored in this report.

DETERMINING SUFFICIENCY

The *Criminal Justice Act* directs the CJC to investigate the sufficiency of funding for criminal justice agencies but does not attempt to prescribe how this should be done. The Fitzgerald Inquiry (1989) also did not provide any guidance in this regard.

The ostensibly simple concept of "sufficiency" raises a host of complex evaluative questions, relating to different interests, processes and outcomes, and involving a number of potentially relevant standards or benchmarks. The manner in which sufficiency is "operationalised" (or defined in measurable terms) will significantly affect the conclusions which are reached about the adequacy or otherwise of funding. In relation to the LAC, for example, any of the following could be considered appropriate research questions:

- Are the services provided in assisted matters sufficiently comprehensive and of high quality? For instance, should the LAC assist more accused persons at the committal stage or pay for more prison visits?
- Is legal assistance available to everyone who should receive it?
- Are LAC fees high enough to provide a reasonable income for legal practitioners?

It is apparent that each of these questions raises difficult policy issues and poses considerable methodological and other problems. This can be illustrated by comparing two of several possible approaches which could be taken to the issue of whether the LAC has sufficient funding to provide assistance to everyone who "should" receive it.

⁶ The Act originally referred to 'the offices of the Director of Prosecutions and Public Defender', using almost exactly the same form of words as contained in the relevant Fitzgerald Inquiry recommendation (1989, p. 372). The Public Defender's Office, prior to being merged with the LAC in 1991, was responsible for aiding all prescribed crime matters.

One answer to this question might be that legal aid should be provided to those persons charged with serious criminal offences who lack the means to pay for their own representation. This answer roughly approximates the standard set by the *Legal Aid Act* in relation to prescribed crime, and the High Court in *Dietrich v The Queen*.⁷ Using this benchmark, funding for legal assistance would appear to be sufficient, given that the LAC is continuing to meet its prescribed crime obligations, but very few people would suggest that this standard is anything other than an absolute minimum. There are many defendants who could also be considered "deserving" of legal aid, but are denied it because of stringent means tests and restrictions on the types of matters the LAC is able to fund.⁸

Another approach might be to construct some sort of "ideal" standard for determining what level of legal assistance should be available to the community. However, there are very considerable practical and methodological difficulties involved in determining what an "ideal" level of service would cost. In the case of the LAC, for example, such an assessment would involve trying to measure the level of currently unmet demand for legal assistance, a very difficult task. The obstacles posed by the policy issues involved are even more fundamental. The demand for some government services is virtually infinite and nearly all agencies could do with more money. For instance, if the LAC had more funds it could relax, or even abolish, its means test and increase the range of matters aided and the level of service provided in relation to each case. With more funding, the DPP could hire additional highly qualified staff, devote more resources to preparing cases and take on more functions. However, governments do not have limitless funds at their disposal. For that reason, in most areas of government service, it is generally acknowledged that the first priority is to provide an *acceptable* – rather than optimal – level of service. Arguably, the same general approach should be used to determine whether the funding of criminal justice agencies is "sufficient".

In order to avoid the conceptual and practical pitfalls of these different approaches to determining sufficiency this report relies primarily on "real world" benchmarks. These take the form of historical, inter-jurisdictional and inter-agency comparisons.

Historical comparisons involve contrasting current levels of revenue, expenditure and service relative to those of preceding financial years, to determine whether:

- funding for each agency has kept pace with inflation, population growth and service demands
- the level of service has deteriorated, improved or been maintained.

The historical approach provides an approximate indication of whether the agencies have been provided with sufficient funds to keep up with changing demand. Its main limitation is that it does not entail any independent evaluation of whether the benchmark levels of funding and service provision were themselves appropriate. In the case of the LAC, for instance, the 1990 Agreement Between the Commonwealth of Australia and the State of Queensland in Relation to the Provision of Legal Assistance (Agreement) establishes levels of service in 1987/88 as a conventional benchmark. However, the provision of legal assistance as a function of government has a comparatively short history in this country. Hence, it has been argued that service levels, even as recently as 1987/88, were significantly determined by the amount of money available from interest on money held in trust by solicitors rather than by any other assessment of community needs for legal assistance.⁹ The CJC acknowledges that this argument has some force and, to this end, later in the report proposes that the basis of this agreement be re-examined by the State and Commonwealth

⁷ (1992) 177 CLR 292.

⁸ As already noted, the High Court's *Dietrich* (ibid.) decision establishes as a general proposition that it will be unfair to proceed with the trial of an 'indigent' accused who 'by reason of lack of means' is without legal representation. However, as Deane J remarked (p. 336), 'in the context of the current level of legal fees, it is arguable that no accused persons should be required to devote a substantial part of their possessions to obtaining legal representation in resisting a prosecution for an alleged offence of which the law presumes them to be innocent'.

⁹ LAC of Queensland 1992, *Annual Report 1991/92*, President's letter of transmission to the Attorney-General.

Governments. However, it is not the role of the CJC to presuppose what the outcome of that re-examination might be.

Inter-jurisdictional comparisons involve comparing current levels of revenue, expenditure and service of the Queensland agencies with those of equivalent organisations in the other two major eastern jurisdictions. Such comparisons give some indication of whether the Queensland agencies have been under-funded relative to their counterparts in other States. This is of particular relevance in the case of the LAC, given the extensive involvement of the Commonwealth Government in the funding of legal aid schemes and the strong presumption that there should be equity between States in the provision of services. The major practical problem with this approach is that differences in agency functions and statistical reporting processes limit the scope for comparisons, especially where prosecuting authorities are concerned.

Inter-agency comparisons involve comparing the LAC and DPP with each other and the criminal justice system as a whole, in terms of funding and workload. This approach provides some indication of whether the "balance" between the different components of the system has been altered over the last few years although, as discussed later in the report, the concept of "balance" is conceptually problematic and difficult to apply empirically.

Through using these various benchmark measures the report is able to provide a relatively comprehensive account of the funding situation of each agency, indicate whether the situation has deteriorated or improved in recent years, and provide some useful comparisons. Where appropriate the report also makes recommendations about structures and processes for setting, adjusting and monitoring funding levels and for ensuring that these funds are used cost effectively. However, the CJC does not see its responsibility under section 23(c) of the *Criminal Justice Act* as requiring it to recommend that funding for either agency be adjusted by some specific amount. Quite apart from the practical difficulty of arriving at a dollar figure, the CJC does not consider that it would be proper to make any such recommendations. As discussed above, the reality of the political and budgetary process is that the amount of money available for distribution among the various government programs is limited and there are many areas (for example, education, health, the environment) where there are equally strongly argued claims for increased funding. It would be presumptuous of the CJC to say that the LAC or the DPP is more deserving of extra funds than these other areas. This is a decision which can – and should – only be taken by governments. The primary role of bodies such as the CJC should be to help ensure that future decisions about funding are properly informed. As recently stated by the Access to Justice Advisory Committee (1994, para. 9.44, p. 243):

... we recognise that legal aid is only one of many important services that governments must fund. Accordingly, there will always be limited resources available to assist people in need. We cannot undertake the balancing of interests that is involved in allocating additional funds to any one area.¹⁰

It should also be noted that the report focuses primarily on what the agencies concerned are currently required to do, rather than on what they might be doing in the future. The CJC has elsewhere recommended that the LAC should provide free legal advice in police stations to people who have been arrested (CJC 1994b). On the CJC's estimates, this scheme would cost somewhere in the vicinity of \$1.55m–\$2.59m per year to operate. There is also a strong case to be made that the DPP should take over the prosecution of all committal hearings in the Magistrates Court. This would quite likely necessitate some additional funding for that agency and the LAC, even if only on a transitional basis. However, the report does not attempt to factor in the cost of these additional activities: the focus is on past and present responsibilities and funding levels. There would be much to commend a review of criminal justice agency funding which began with questions about whether the system is as effective, equitable and efficient as it might be, and then worked down from such a model to ascertain the cost of the legal assistance and prosecution services required to support it.

¹⁰ The approach adopted by the CJC in this report may be compared with the approach of the Access to Justice Advisory Committee (1994, paras 9.41–9.46, pp. 238–243).

However, this sort of exercise would necessarily go well beyond the boundaries of simple "monitoring" of funding sufficiency.

THE ISSUE OF PAYMENTS TO PRACTITIONERS

The issue of the adequacy of payments to practitioners was raised in the CJC's consultations with members of the private legal profession and in a number of the written submissions. In particular, it was argued in these forums that legal aid work is inadequately remunerated and that this situation creates the potential for practitioners to provide sub-standard service in order to maintain a reasonable profit margin. Concerns were also expressed about the adequacy of DPP briefing-out fees, although this issue was less salient than in the case of the LAC because the great bulk of prosecution work is done "in-house".

Under section 23(c) of the *Criminal Justice Act* the CJC's responsibility is to investigate the sufficiency of agency funding not the adequacy of payments to individual practitioners. It is relevant to look at such payments in the context of determining whether the agencies concerned are able to attract suitably qualified practitioners to undertake the work required and to deliver an acceptable standard of service. However, there is no agreed upon methodology for determining what is a fair, or adequate, rate of payment for a legal practitioner.¹¹ In order to address this issue, the CJC would have to make value judgements about the worth of various types of legal work, the relative efficiency of different types of legal practice structures, appropriate profit margins and so on. These are matters well beyond the competence and jurisdiction of the CJC. In any event, the CJC was not able to obtain detailed and reliable information about service delivery costs and the financial structure of legal practices.¹² While it was asserted by some that substandard service was being provided because fees were too low, no concrete evidence to this effect was provided by practitioners or the agencies concerned.

Although the report does not seek to resolve the issue of whether payments to practitioners are adequate, it does:

- present historical data on trends in legal aid payments to legal practitioners, particularly in relation to prescribed criminal matters
- discuss the concerns which practitioners have expressed about the level of payments and the processes for determining and paying fees in individual cases
- compare the fees paid by the LAC and DPP to private practitioners
- review, and make recommendations in relation to, the mechanisms used by the LAC and DPP to determine practitioner payments.

This material will hopefully contribute to more informed discussion about the issue of whether, and in what ways, existing fee structures and payment practices need to be revised.

¹¹ The LAC already pays for services provided by private practitioners by reference to fee scales. Essentially, the suggested approach calls for a review of these scales. The problems associated with using fee scales based on average historical costs plus a "normal" rate of profit to price legal services are now well recognised. See Chapter 6, below. See also Trade Practices Commission 1993, *Study of the Professions - Legal: Draft Report*, p. 203, and Access to Justice Advisory Committee (1994, paras 5.20-5.37, pp. 154-159).

¹² For the purposes of this report a number of private legal practitioners were asked to keep records of the costs associated with handling various legally aided matters, but this exercise failed to generate usable information.

MANAGEMENT AND SYSTEM ISSUES

The primary purpose of this review was to assess the sufficiency of funding, not to examine the internal management practices of the LAC or the DPP. Management matters have already been quite extensively canvassed in a range of reviews undertaken by other bodies, most notably:

Relating to the LAC:

- the Treasury and Public Sector Management Commission 1991, *Review of Legal Aid Commission (Public Defence) Funding*
- Coopers and Lybrand 1992, *Legal Aid Office (Queensland) Assignments Division Revenue Final Report*
- Public Sector Management Commission 1992, *Review of the Legal Aid Office (Queensland)*, confidential document, provided in part to the CJC by the Attorney-General to assist in its inquiry
- The Consultancy Bureau 1993, *Legal Aid Office (Queensland) Service Evaluation: Volume 1 – Report*.

Relating to the DPP:

- Treasury 1992, *Treasury Resource Review of the Department of Justice and Attorney-General and Parts of the Department of Police: Review Report*
- Price Waterhouse Urwick 1989, *Department of Justice Study to Determine the Most Cost Effective and Efficient System for the Management of Criminal Prosecutions: Final Report*
- Public Sector Management Commission 1991, *Final Draft Report on the Review of the Department of the Attorney-General*
- Queensland Administration of Criminal Justice Review Committee 1993, *Report of the Queensland Administration of Criminal Justice Review Committee*.

Although management is not a major focus of this review, it was not possible to divorce the task of assessing the sufficiency of funding completely from any consideration of the way those funds are managed, and the efficiency of the processes which they support. Inevitably, in the course of preparing this report a number of issues about management and policy were brought to the CJC's attention, often on the advice of the two agencies themselves. Some of these matters are discussed in Chapter 6 and, where relevant, recommendations are made.

In considering whether funding for particular criminal justice agencies is sufficient, it also was not possible to ignore the broader context in which these agencies operate. The ability of the LAC and DPP to utilise funds effectively is constrained by – and also has implications for – what happens elsewhere in the criminal justice system: for instance, court listing practices affect, and are affected by, the case preparation and staff

management practices of the DPP and LAC. This report does not address "process" issues such as these in great detail, primarily because most of them have been canvassed, or are currently being dealt with by various other reviews and committees.¹³ However, the report recognises that reforms at this level may well be the most realistic and effective strategy to address funding issues over the medium to longer term.

DATA SOURCES AND CONSULTATION PROCESS

The information on which this report is based is derived primarily from the following sources:

- published information contained in the LAC and DPP annual reports and substantial additional unpublished material provided by these agencies
- extensive consultation with senior officers of these agencies
- submissions from a variety of organisations and individuals, received both as a result of direct approaches made by the CJC and in response to a call for submissions published in the media on 14 and 15 August 1993¹⁴ (see Appendix 1 for a copy of the advertisement and a list of the non-confidential submissions received)
- material put before the Supreme Court in relation to the matter of *Boe v Criminal Justice Commission*¹⁵
- interviews with 15 barristers and 19 solicitors experienced in legal aid work, in Brisbane, the south-eastern region and far north Queensland, undertaken in late 1993 and early 1994
- previously completed external reviews of the LAC and the DPP (see above)
- published and unpublished information obtained from legal aid commissions and directors of public prosecutions in other Australian jurisdictions.

The CJC also established an advisory committee in November 1993 to assist in the preparation of the report. Organisations represented on this Committee were the:

- Department of Justice and Attorney-General
- DPP
- LAC
- Queensland Law Society
- Bar Association of Queensland
- Queensland Association of Independent Legal Services.

¹³ See Chapter 6 (p. 102) for a description of the various committees and the system issues they considered.

¹⁴ Advertisements calling for public submissions appeared in *The Weekend Australian* of 14-15 August 1993 and *The Courier-Mail* of 14 August 1993.

¹⁵ Supreme Court of Queensland 10 June 1993 [93.186], unreported.

The committee met on four occasions and all members were given the opportunity to comment on the report's findings in draft form.¹⁶

In December 1994 staff of the Research and Co-ordination Division attended a meeting of the LAC to discuss the key conclusions of the report. A further meeting was held with a sub-committee of the LAC in March 1995. The DPP was also given the opportunity to comment on those sections of the report which related to the Office.

The CJC received full cooperation from the LAC, DPP and other criminal justice agencies in conducting this review. However, as noted at various points in the report, a number of practical impediments were encountered due to the limited statistical information available concerning the internal operations of the DPP and the LAC, and the criminal justice system generally. These deficiencies are being addressed to various degrees by the agencies responsible and other sections of the government, but progress in some areas has been very slow. This is a matter of considerable concern to the CJC because inadequate information impairs the quality of policy decisions made by the agencies in relation to their operations and planning, and by government in relation to the criminal justice system.

REPORT STRUCTURE

The remainder of this report is organised as follows:

- Chapter 2 describes the evolution, structure and functions of the LAC and DPP and outlines how these agencies fit into the wider criminal justice system.
- Chapter 3 deals with issues relating to the funding focusing, particularly on the various benchmark measures outlined above.
- Chapter 4 deals with issues relating to payments to private legal practitioners by the LAC.
- Chapter 5 examines DPP funding and workload and issues relating to the Office's briefing-out practices, and compares trends in LAC and DPP funding.
- Chapter 6 addresses issues relating to the management of the LAC and DPP and to structures and processes for determining funding levels. Where appropriate, the chapter also puts forward specific proposals.

¹⁶ See acknowledgements for a list of the membership of this Committee. The CJC is grateful for the advice provided by members of this committee. However, the views and interpretations expressed in this report are those of the CJC alone.

CHAPTER 2

THE LEGAL AID COMMISSION OF QUEENSLAND AND THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

INTRODUCTION

This chapter provides an overview of the structure and operations of the LAC and the DPP. The first part of the chapter outlines the history of the LAC and the recent merger of the LAC and the Public Defender's Office (PD) and describes:

- the constitution of the LAC and its statutory functions
- funding arrangements
- the structure of the Legal Aid Office (Queensland) (LAO), the office through which the LAC performs its statutory functions
- the range of services provided by the LAO.

The second part of the chapter is concerned with the DPP. It outlines the history of the DPP in Queensland and then describes its:

- primary functions
- funding arrangements
- organisational structure.

THE LEGAL AID COMMISSION OF QUEENSLAND

HISTORICAL BACKGROUND

The LAC is the body responsible for the provision of legal aid services in Queensland. It is the product of the merger of a number of agencies which at various times have been responsible for the administration of legal aid services in Queensland.

The Legal Assistance Committee of Queensland was established by the *Legal Assistance Act 1965*. It was responsible for establishing and administering a 'scheme for providing legal assistance for persons of limited means' (s. 8) and for providing legal advice. The Committee commenced operation on 16 May 1966 and was funded from interest on solicitors' trust accounts under the provisions of the *Queensland Law Society Act 1952* which set up the Legal Practitioners' Fidelity Guarantee Fund (see p. 14). The Legal Assistance Committee provided legal aid in the areas of civil and family law and in criminal cases dealt with in the Magistrates Court jurisdiction. Although some services were provided by in-house staff, the scheme primarily funded private legal practitioners to provide legal services under the scheme.

The first Australian Legal Aid Office (ALAO) opened in Ipswich in 1975. The ALAO was a division of the Commonwealth Attorney-General's Department. It employed solicitors who gave legal advice and conducted in-house casework. It also funded private practitioner casework assigned by the office via its regional office network. The ALAO was solely funded by the Commonwealth Government.

On 3 December 1979 the *Legal Aid Act* merged the Legal Assistance Committee of Queensland and the ALAO, establishing the LAC of Queensland.

The current form of the LAC of Queensland is the result of the merger of the LAC of Queensland and PD on 28 March 1991 by the *Legal Aid Act Amendment and Public Defence Act Repeal Act 1991*.

PUBLIC DEFENDER'S OFFICE

The PD was the earliest provider of legal assistance to the Queensland community. The position of Public Defender was created in 1916 as part of the Office of the Public Curator. From 1967 the Office operated separately from the Public Curator's Office, although it was not until 1 July 1974, with the enactment of the *Public Defence Act 1974*, that it was established as a separate statutory office.

Section 6 of the *Public Defence Act* defined the functions of the PD. The legislation prescribed certain types of criminal proceedings for which the PD was required to provide legal aid.¹⁷ These matters became known as 'prescribed' criminal proceedings. Prescribed criminal proceedings as currently defined in the *Legal Aid Act* section 6(1) are:

- criminal proceedings in the District and Supreme Courts
- committal proceedings in the Magistrates Court in respect of charges for which the maximum penalty exceeds 14 years imprisonment
- indictable offences prosecuted in the Children's Court at every stage of the proceedings
- breaches of probation and community service orders made in the District and Supreme Courts
- references to the Mental Health Tribunal in respect of prescribed criminal proceedings
- appeals to the Court of Appeal and the High Court with respect to criminal charges
- any other proceeding, not being a civil proceeding, that the LAC determines.¹⁸

Under the *Public Defence Act* the Attorney-General also had the authority to direct that legal assistance be provided in other criminal proceedings in appropriate cases. This Act removed responsibility for deciding who should be granted legal assistance from judges and magistrates. All applications for legal assistance were required to be made through the Under Secretary, Department of Justice.

Applications for legal assistance under the *Public Defence Act* were subject to a means test which required an assessment of the person's income, financial commitments and assets.

¹⁷ These provisions have since been incorporated into s. 29 of the *Legal Aid Act*.

¹⁸ Section 6(1) of the *Legal Aid Act* uses the same definition of 'prescribed crime' as the *Public Defence Act*.

The PD had a large salaried staff which handled casework in-house. It also paid private legal practitioners to provide legal services on its behalf. Initially, the State Government funded the costs of the PD for both its internal operations and its payments to private legal practitioners. However, this funding was later supplemented by monies from the interest earned on solicitors' trust accounts.¹⁹ These monies were required to be used to pay private practitioners' costs for work performed by them on behalf of the PD.

LEGAL AID COMMISSION AND PUBLIC DEFENDER'S OFFICE MERGER

In January 1990 the State Government made a decision in principle to amalgamate the PD with the LAC. The offices officially merged on the 28 March 1991. In his Second Reading Speech to Parliament, the Honourable Dean Wells, Attorney-General of Queensland, said that the merger had two main objectives:

- (1) the delivery of legal aid services by a broad-based, multi-talented group of legal professionals; and
- (2) production of efficiencies which will ensure greater availability of legal assistance and more efficient use of available legal aid funds.

In other words, it will drive the legal aid dollar further. (*Queensland Parliamentary Debates* 1991, p. 6,235)

The latter of these objectives was echoed in a Treasury/Public Sector Management Commission report entitled *Review of Legal Aid Commission (Public Defence) Funding* (Treasury/PSMC 1991, p. 1) where it was stated that the decision to amalgamate the offices was made on the basis that it would save costs and, for the medium term, would obviate the need to increase the consolidated revenue contributions towards legal aid.

The financial effect of the merger and the impact of increases in workload in prescribed criminal proceedings are discussed in some detail in Chapter 3.

THE CONSTITUTION OF THE LEGAL AID COMMISSION AND ITS STATUTORY FUNCTIONS

The LAC performs its statutory functions through the LAO. In practice, the LAC is responsible for legal aid policy and the future direction of the organisation and the LAO is responsible for the day-to-day operations of the organisation and the provision of legal aid services. The LAO is accountable to the LAC through its Executive and, in particular, its Director, who is a Commissioner.

Section 8(1) of the *Legal Aid Act* outlines the criteria for appointment of Legal Aid Commissioners. The LAC has a representative membership, being constituted by:

- two commissioners nominated by the Council of the Queensland Law Society
- a commissioner nominated by the Bar Association of Queensland

¹⁹ These monies are derived from interest on the contribution fund (see later in this chapter). The PD received 35 per cent of the interest earned by this fund.

- a commissioner nominated by the Attorney-General
- a commissioner nominated by the Attorney-General to represent the interests of legally assisted persons
- a commissioner nominated by the Attorney-General who is a registered company auditor or a chartered accountant
- a commissioner nominated by the Queensland Association of Independent Legal Services
- two commissioners nominated by the Attorney-General of the Commonwealth
- the Director of LAO appointed under section 18 of the Act
- a commissioner nominated as prescribed by regulation to represent all officers of the LAC.

The Governor in Council appoints all of the Commissioners except the Director and, on the nomination of the Attorney-General, appoints the President of the LAC [s. 8(2)].

The general function of the LAC outlined in section 9 of the *Legal Aid Act* is to provide legal assistance by:

- arranging for private legal practitioners to provide legal services at the expense of the LAC, or
- employing staff to provide legal services.

The LAC is required to perform its function by providing legal assistance:

- to people who are unable to afford the costs of obtaining legal services from private legal practitioners [s. 29(1)]
- in the most effective, efficient and economical manner [s. 11(1)(a)]
- consistent with, and without prejudice to, the independence of the private legal profession [s. 11(1)(b)].

The Act sets out other duties of the LAC, including to:

- establish local offices and make other arrangements to ensure LAC services are available to persons eligible for legal assistance
- subject to agreements or arrangements made between the Commonwealth and State Governments, determine priorities in the provision of legal assistance as between different classes of persons or classes of matters
- arrange for the provision of duty lawyer services
- provide interpreter, marriage counselling and welfare services to legally assisted persons
- make recommendations to the Minister with respect to law reform
- provide educational programs designed to promote an understanding by members of the public of their rights, powers, privileges and duties under the law.

Subject to any agreement between the Commonwealth and the State Governments the LAC may provide financial assistance to community legal centres and voluntary legal aid bodies.

FUNDING OF THE LEGAL AID COMMISSION

Funding of the LAC comes from six sources:

- Commonwealth Government grants
- State Government grants
- interest on solicitors' trust accounts
- recoverable costs (the LAC has statutory authority to recover professional costs and outlays incurred in actions which were successfully settled or resolved in favour of its clients)
- client contributions (the LAC may seek a financial contribution from its clients towards the cost of legal representation)
- interest on investments.

Commonwealth and State Funding

1979 Funding Agreement

Prior to the *Legal Aid Act* the Commonwealth and State Governments' arrangements for the funding of legal aid in Queensland were based on a "numbers system" whereby the Commonwealth agreed to fund the costs of a specific number of cases referred to private legal practitioners irrespective of the time taken to complete the matters or their cost. The Commonwealth also agreed to pay 76 per cent of the administrative costs incurred by the LAC. The LAC was required by the agreement to expend the Commonwealth monies on the delivery of legal services in the Federal jurisdiction; for example, on behalf of Department of Social Security recipients, migrants and defence forces personnel. This funding arrangement operated in addition to the State Government's responsibility to fund prescribed criminal matters.

1990 Funding Agreement

The current arrangements between the Commonwealth and State Governments for legal aid funding came into effect on 1 July 1989. The basis of these arrangements is the Agreement dated 30 January 1990 which was deemed to operate retrospectively from 1 July 1989.

The Agreement recognised the State Government's intention to merge the LAC and the PD and used the net operational expenditure of those organisations for the 1987/88 financial year as the funding base year. By implication, the Agreement recognised that the merged organisation would assume the State's responsibility to fund prescribed criminal matters.

Under the Agreement the grants for each year are calculated by adjusting the 1987/88 net operational expenditure by the percentage movement in Average Weekly Earnings and the Consumer Price Index for each subsequent year. The annual funding increases based on these indices are the only increases provided under the Agreement. The Agreement makes no provision for funding increases based on workload increases, population growth or demographic changes.

Since the first year of operation of the Agreement,²⁰ the respective contributions of the Commonwealth and State Governments have been 55 and 45 per cent of adjusted operational expenditure. The interest on solicitors' trust accounts paid to the LAC under the *Legal Assistance Act* and the *Queensland Law Society Act* forms part of the State's contribution under the Agreement.²¹ Any amount received by the LAC from interest on solicitors' trust accounts which exceeds the amount payable by the State in that year is to be held in reserve by the LAC. Any reserve accumulated in this way is to be used to reduce the amount payable by the State in any subsequent year.²² This means that if the contribution from the State required by the agreement in a given year is \$10m and the LAC receives \$11m from interest on solicitors' trust accounts in that year, the LAC is required to hold the \$1m excess in reserve and the State's contribution for the following year will be reduced by this amount.²³

Interest on Solicitors' Trust Accounts

The interest earned on solicitors' trust accounts which is paid to the LAC is derived from:

- the Legal Practitioners' Fidelity Guarantee Fund
- the Contribution Fund.

As discussed in Chapter 3, revenue from both these sources has varied substantially due to fluctuations in interest rates and changes in the size of the funds.

Legal Practitioners' Fidelity Guarantee Fund

The Legal Practitioners' Fidelity Guarantee Fund was established by the *Queensland Law Society Act*. This fund is used to reimburse people who have suffered loss through 'stealing or fraudulent misappropriation', committed by a solicitor or his or her employees, of any money or property entrusted to the solicitor. The Act requires solicitors to deposit certain sums of money with the Queensland Law Society which the Society is authorised to invest.

²⁰ The Agreement provided for contributions from the Commonwealth and State on a 60/40 per cent basis for its first year of operation.

²¹ Clause 16 of the Schedule to the Agreement.

²² Clause 16 of the Schedule to the Agreement. This clause will be discussed in more detail later in this report.

²³ The grants required under the Agreement and actual amounts received by the LAC are detailed in Appendix 2.

The earnings on the deposited funds are paid to the Queensland Law Society to reimburse the Society for the costs of administering the fund and of the balance:

- 50 per cent to the Legal Practitioners' Fidelity Guarantee Fund or so much as will maintain the fund at \$5m
- 50 per cent to the Legal Assistance Fund (established under the *Legal Assistance Act*).

Any monies remaining after payment of the above amounts are payable to the Legal Assistance Fund (s. 10(5), *Queensland Law Society Act*).

Contribution Fund

In 1984 the Queensland Law Society made an agreement with all banks in Queensland that they would pay interest on residual monies in solicitors' trust accounts. Section 36B of the *Queensland Law Society Act* established the Contribution Fund, the formal name for the fund to which this interest is paid.

After reimbursement of the Society for its costs and expenses incurred in the administration of the Contribution Fund, fund monies are distributed as follows:

- 75 per cent to the LAC for application to the costs of briefing private legal practitioners to provide legal assistance
- 10 per cent for Supreme Court library facilities
- five per cent to the Grants Fund (established under s. 36F of the Act)
- 10 per cent to the Queensland Law Society for purposes approved by the Minister (including the provision of continuing legal education, s. 36E).

Factors Affecting Revenue From Interest on Solicitors' Trust Accounts

Revenue derived from interest on solicitors' trust accounts will vary as a result of:

- fluctuations in interest rates
- the size of the funds upon which interest is earned.

During the late 1980s and early 1990s, when interest rates were high, a large portion of the LAC revenue was derived from this source. For example, in 1989/90 trust account interest accounted for 36 per cent of the total revenue of the LAC/PD. The high interest earnings of this period resulted in a significant increase in LAC/PD revenue levels compared with the immediately preceding period of lower interest rates. However, with the significant reduction in interest rates which occurred in the early 1990s, and a number of major defalcations which depleted the Legal Practitioners' Fidelity Guarantee Fund, the LAC experienced a commensurate, dramatic contraction in its revenue from this source. In 1993/94 income from interest on solicitors' trust accounts constituted only 15 per cent of the organisation's total revenue.

Recoverable Costs

The LAC has statutory authority to recover professional costs and outlays incurred by it in cases which have been successfully settled or resolved in favour of its clients (ss. 34 and 34A of the *Legal Aid Act*). In most civil proceedings, when the court or tribunal determining a matter has made its judgment, an order is also made regarding payment of the legal costs incurred by the parties in the matter. The usual practice is that the unsuccessful party is ordered to pay the legal costs and disbursements of the other party to the proceedings. Accordingly, when the LAC funds clients who are successful in legal proceedings where costs can be awarded, it is entitled to recover its costs and disbursements.

When the LAC was funding a substantial number of civil law matters, its income from costs recovered was quite considerable. For example, in 1990/91 income from this source amounted to \$6.5m and in 1991/92 it reached \$7.9m. However, as the LAC case profile changed with the dramatic decrease in grants of aid for civil law matters (see Chapter 3), income from costs recovered also contracted. In 1993/94 income from this source had decreased to only \$4.8m.

Client Contributions

Under the *Legal Aid Act* the LAC has the power to require a person who has been granted legal assistance to make an initial financial contribution towards the cost of the legal services to be provided. The LAC can also seek a retrospective contribution at the conclusion of the legal proceedings, or when the person ceases to be legally aided. The amount of the contribution will vary depending upon the applicant's assets and income and the type of legal matter for which assistance has been granted.

Client contributions have never been a significant source of revenue for the LAC. Over the past four financial years, client contributions have averaged \$389,000. In 1991/92, the peak year for this source of revenue, the LAC received \$508,414.

Interest on Investments

During the late 1980s and early 1990s, when interest rates were high, the LAC generated a useful amount of income from interest on its investments. This occurred because the high interest rates resulted in the LAC receiving very large sums in revenue from interest on solicitors' trust accounts. As a consequence the LAC accumulated large cash reserves which, due to the high interest rates, generated revenue for the LAC. For example, in 1989/90 the LAC had short term investments totalling \$15m and generated revenue of \$3.4m. However, the subsequent economic downturn resulted in this source of income severely contracting. By 1993/94 revenue was only \$0.66m, less than 20 per cent of the amount generated in 1989/90.

THE LEGAL AID OFFICE

Structure

As stated earlier in this chapter, the LAC performs its statutory functions through the LAO. The LAO has a Head Office in Brisbane and 13 regional offices throughout the State. Figure 2.1 outlines the current structure of the LAO.

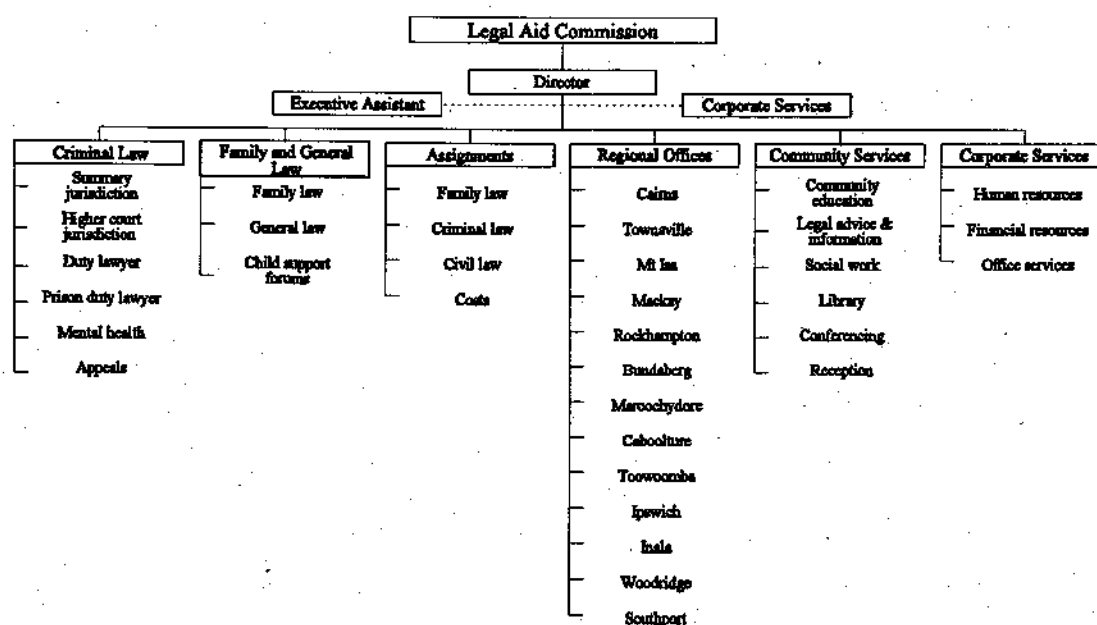


FIGURE 2.1 – LEGAL AID OFFICE ORGANISATIONAL CHART

Source: Legal Aid Commission of Queensland 1994, *Annual Report 1993/94*, p. 7.

Following the merger of the LAC and PD the casework functions of the PD were combined with the criminal law functions performed by the LAO to form the Criminal Law Division. The Criminal Law Division and the Family and General Law Division now form the Legal Practice Division. In-house counsel are now in a section of their own called Counsel Section. The Legal Practice Division currently provides the following services in the criminal law area:

- duty lawyer
- prison duty lawyer
- in-house casework
- representation before the Mental Health Tribunal
- appeals.

The Assignments Division processes applications for legal assistance and oversees funding of private practitioners to conduct criminal casework on behalf of the LAO on matters referred (or “assigned”) to them by that office and to provide duty lawyer services. The processing of applications for legal assistance for

prescribed crime matters, previously performed by the Department of Justice when the PD was in existence, is now conducted by the Criminal Law Section of the Assignments Division. In recent times, assignments work has been decentralised, with assignments officers in most regional offices processing applications for legal assistance.

Forms of Assistance

The LAO provides legal assistance under the following schemes:

- **Legal Advice Scheme**

This service involves giving one-off legal advice for up to 20 minutes. It may include providing assistance to a person to complete an application for legal assistance for an on-going legal matter. Up until 20 July 1992 this service was provided by private legal practitioners (who were reimbursed by the LAO) as well as by LAO staff. From that date, free legal advice could only be obtained at a LAO. The LAO also provides legal advice to people who do not meet the means test at a fee of \$40.

In 1993/94, under the Legal Advice Scheme, legal advice and simple assistance was provided to clients in 36,851 interviews.

- **Duty Lawyer Scheme**

This scheme provides legal representation in Magistrates Courts across Queensland for people who are charged with criminal offences and who would otherwise appear in court unrepresented. Representation by the duty lawyer generally involves providing basic legal advice in respect of the charge/s and representing the defendant in the court on an adjournment or a plea of guilty. The Duty Lawyer Scheme does not provide representation in summary trials or committal proceedings²⁴ nor does the scheme provide representation for people facing their first or second drink driving charge unless a conviction might result in a sentence of imprisonment. Duty lawyer services are provided by LAO staff and private legal practitioners who are paid by the LAO.

In 1993/94, 42,803 defendants were assisted under the Duty Lawyer Scheme.

- **Legal Aid Scheme**

This area of service constitutes the bulk of the LAO workload and involves the greatest commitment of LAC resources. Both LAO staff and private legal practitioners provide on-going legal assistance in matters where legal aid is granted under the Legal Aid Scheme.

²⁴ Except in Magistrates Court No. 5 in Brisbane where in-house LAO lawyers do committal proceedings, mainly by way of hand-up briefs without cross-examination.

In criminal law matters, for example, the legal services provided under this form of legal assistance can include:

- * appearing in court on behalf of the accused
- * applying for bail
- * attending at prison watchhouse to take instructions (where the client is in custody)
- * taking statements from witnesses for the defence
- * appearing at trial
- * preparing for sentence including obtaining psychiatric or psychological reports
- * advising and appearing on appeals.

Excluding the Duty Lawyer Scheme which is restricted to certain types of criminal law matters, the legal assistance provided by the LAO under these schemes is available in respect of criminal, family and civil law matters subject to the LAO's guidelines, means and merit tests.

Another direct service of the LAO is the Telephone Information Service, which commenced operations in October 1991. In 1993/94 this service provided information to 59,022 callers.

The LAO supplements its direct legal services by providing a range of community education and information activities aimed at better informing people of its services and increasing community awareness of legal rights and responsibilities. As part of this commitment the LAC administers funding for 17 community legal centres on behalf of the Commonwealth Government, State Government and the Grants Committee of the Queensland Law Society. Community legal centres are community-based organisations which provide free legal advice and assistance to members of the community in a range of general and specialist legal areas. In 1993/94 the funding provided to community legal centres was \$1.804m, with \$500,000 of this amount coming from the LAC's funds. In 1990/91, funding to community legal centres increased from \$921,000 to \$1.74m, a rise of 89 per cent. Community legal centres historically have had a social justice focus, advocating for disadvantaged groups in the community. The majority of services provided by community legal centres have not involved representing clients in prescribed criminal proceedings.²⁵

Eligibility For Legal Aid

Under the provisions of the *Legal Aid Act* legal aid can only be provided where:

- the person in need cannot afford to pay for a private legal practitioner (as assessed by a means test), and
- it is reasonable in all of the circumstances to provide legal aid (the merit test).

²⁵ Some community legal centres do represent people on criminal charges; some provide duty lawyer services; and the Prisoners' Legal Service provided a bail assistance scheme until funding for the scheme was discontinued

In the case of 'prescribed' criminal matters, a merit test does not apply except in relation to Supreme Court bail applications and appeals. This means that, except for these matters, an applicant for aid in a prescribed criminal law matter who qualifies under the means test is automatically entitled to legal assistance irrespective of the merits of the case (s. 29(8)(c) of *Legal Aid Act*).

The LAO has established guidelines for the granting of legal assistance. The staff of the Assignments Division and the Regional Offices who process and approve grants of aid are trained to interpret and apply the guidelines.

Under the means test, the net income, assets and liabilities of applicants and their spouses are taken into consideration in determining whether legal aid should be granted. The net income of a spouse (including a de facto spouse) is usually treated as part of the applicant's income (except, for example, in family law property disputes where the spouse has a contrary interest in the claim for which the person is seeking legal aid). Applications must be accompanied by documentation verifying income, such as payslips, income tax returns or, for people in receipt of government benefits, pension, benefit or health care cards.

As stated above, the merit test applies in the determination of all applications for legal aid except prescribed criminal matters. Where the merit test applies the following matters are to be taken into account when an application for legal aid is being considered:

- the nature and extent of any benefit that an applicant may gain if aid is approved, or any detriment an applicant may suffer if aid is refused
- whether the applicant has reasonable prospects of success in the proceedings.

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

Queensland was the third Australian jurisdiction, after Victoria and the Commonwealth, to establish the statutory office of the DPP. The *Director of Public Prosecutions Act 1984* (s. 4A) established the Queensland DPP, with the substantive provisions of the Act commencing operation on 1 October 1985. The Attorney-General is the political head of the criminal justice system in Queensland. Prior to 1984 the Attorney-General and the Solicitor-General were Crown Law Officers for the purposes of the *Criminal Code* and were the heads of the prosecution system.

The Director of Public Prosecutions (Director) is appointed by the Governor in Council [s. 5(1)] and discharges his or her statutory responsibilities through the DPP [s. 4A(2)]. The Director must be a lawyer who has been admitted to practise for not less than 10 years [s. 5(1A)].

While the *Director of Public Prosecutions Act* requires the Director to be accountable to the Minister, the Director and Crown Prosecutors are required to act independently. Section 10(2) of the Act states:

In the discharge of his or her functions the Director shall be responsible to the Minister but nothing in this section shall derogate from or limit the authority of the Director in respect of the preparation, institution and conduct of proceedings.

FUNCTIONS OF THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

The functions of the DPP are prescribed in section 10(1) of the *Director of Public Prosecutions Act*. Primarily, the function of the DPP is to prepare, institute and conduct all criminal proceedings in the District and Supreme Courts throughout Queensland on behalf of the Crown. In addition, the DPP appears in:

- Supreme Court bail applications
- hearings before the Mental Health Tribunal
- criminal appeals to the District Court, the Court of Appeal and the High Court
- a small number of committal proceedings and summary prosecutions in the Magistrates Courts
- applications for the acquisition of the proceeds of crime under the *Crimes (Confiscation of Profits) Act 1989*
- applications for listening device warrants
- criminal compensation applications and the provision of advice and information to victims of crime to assist them with their applications
- prosecutions relating to breaches of community based orders.

Details on the amount and type of work done by the DPP under these various headings can be found in the *Annual Report 1994* of the DPP.²⁶

²⁶ In 1992 the State Government provided the DPP with funding of \$800,000 over three years for the Violence Against Women Program. This funding was for four new positions: a liaison officer, two legal officers and a support paralegal. The unit specialises in providing assistance to women who have been the victims of violent assault and their families. The additional staff employed by the program allow contact with complainants to occur much earlier after the committal, with interviews to inform them about the prosecution process. The funding for the program also provides for training for prosecution staff and psychiatric and psychological reports to be obtained where necessary. An amount of \$300,000 per annum has now been incorporated into the base budget to fund this activity on a permanent basis.

To assist readers to gain an appreciation of the role of the DPP, the flow chart below outlines the progress of a typical prosecution of an indictable offence where the matter proceeds to trial:

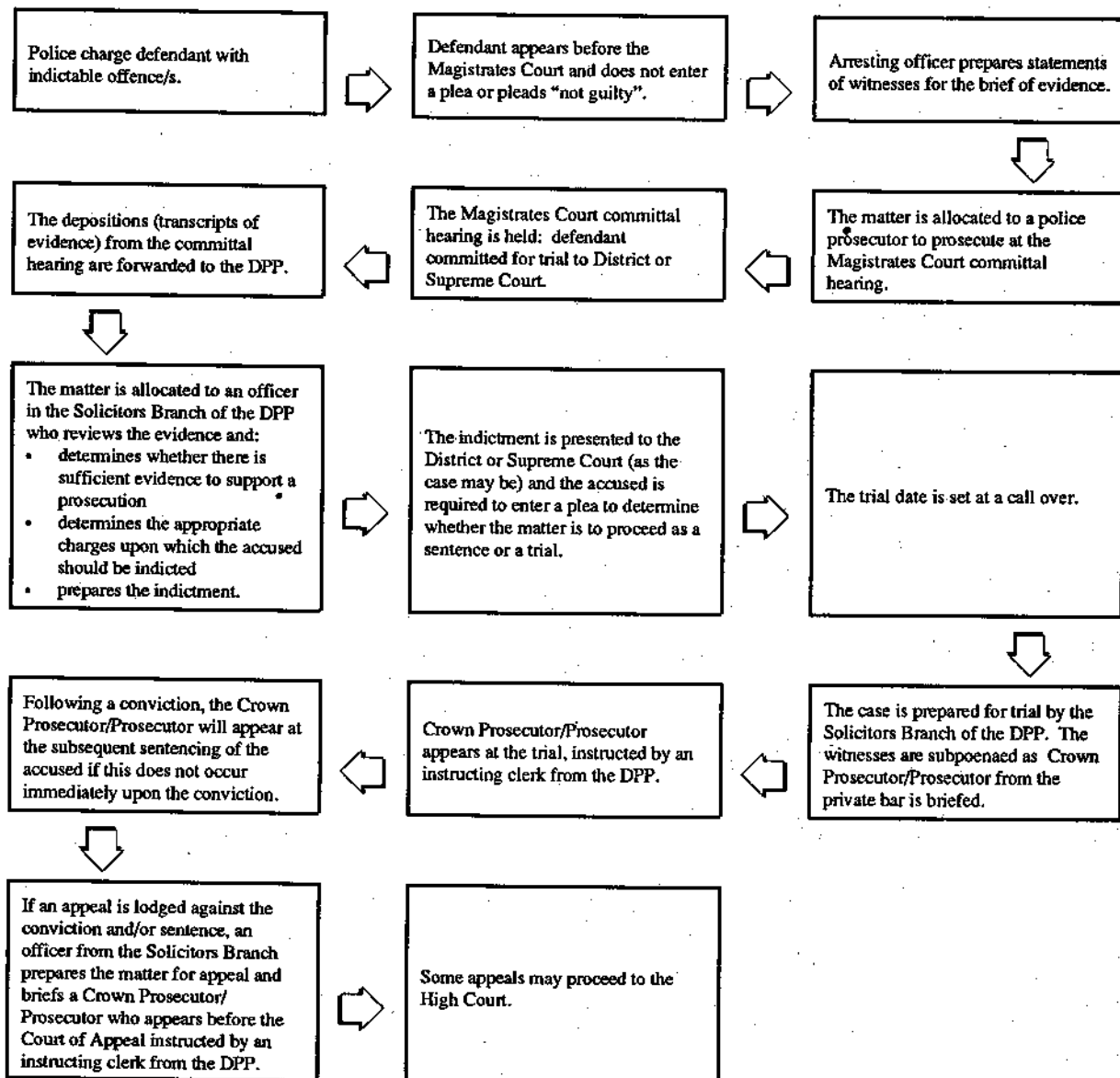


FIGURE 2.2 – FLOW CHART OF THE CRIMINAL PROSECUTION PROCESS

Source: This flow chart was adapted from the Office of the Director of Public Prosecutions New South Wales 1993, *Annual Report 1992/93*, p. 14.

Notes:

1. In the case of those matters that do not proceed all the way to trial:
 - the defendant may be discharged in the Magistrates Court
 - the defendant may, depending on the seriousness of the charge/s, be dealt with summarily in the Magistrates Court
 - the defendant may plead guilty in the Magistrates Court to the indictable charge/s and, again depending on their seriousness, be sentenced or committed for sentence to the District or Supreme Court
 - after committal for trial the accused may enter a plea of guilty (at the presentation of the indictment or at any time up to and including the trial)
 - the Director can, at any stage, discontinue proceedings, e.g. for want of sufficient evidence.
2. Prior to the trial the DPP may be involved in other pre-trial procedures such as applications for orders for body samples and responding to defence applications for bail.

FUNDING OF THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

Under section 32 of the *Director of Public Prosecutions Act*, the Director-General of the Department of Justice and Attorney-General has administrative and financial control of the DPP. Consequently, decisions as to the allocation to the DPP of funds received in the budget are made by the Director-General of the Department in the context of departmental priorities.

The funding of the DPP is adjusted on an ad hoc basis and when additional judges are appointed. The "judges formula", as it is known, provides that the DPP be funded for one additional prosecutor and clerk every time an additional judge is appointed. The formula recognises that the appointment of an additional judge will generate more work for the DPP because of the increased number of cases that can be handled by the court system at any one time.

In recent months two additional District Court judges and a Supreme Court judge have been appointed. The DPP made submissions for additional funding on the basis that these appointments would result in additional workload for the DPP. The funding approved by Treasury was for an additional senior prosecutor and clerk for each judge appointed.

In 1992 the Queensland Treasury undertook a detailed resource review of the DPP. The report of this review was adopted by the Cabinet in February 1993. The review recommended:

- the DPP's budget be increased by \$800,000 per annum to enhance staffing resources in the Major Crime Preparations Section of the Solicitors Branch
- the DPP be exempted from the application of a productivity dividend from 1993/94 (the equivalent of about \$100,000 per annum)
- Treasury and the DPP jointly develop an agreed funding formula for introduction in 1994/95.

The last of these recommendations has not yet been implemented. The DPP and Treasury have been negotiating a new funding formula, but as yet have not reached agreement.

ORGANISATIONAL STRUCTURE

The DPP has its headquarters in Brisbane with regional offices in Cairns, Maroochydore, Rockhampton, Southport, Toowoomba and Townsville. The Office consists of the Directorate and three branches: the Solicitors Branch, the Prosecutors Branch and the Administration Branch. The Director and other senior executive staff (the Directorate) are based in Brisbane.

The members of the Public Prosecutions Directorate are the:

- Director
- Deputy Director
- Solicitor for Prosecutions
- Deputy Solicitor for Prosecutions (Preparations)
- Acting Deputy Solicitor for Prosecutions (Advocacy) and
- Executive Manager.

The Prosecutors Branch and the Solicitors Branch have different areas of responsibility.

The Prosecutors Branch is responsible for:

- conducting criminal trials and sentences in the District Courts, the Supreme Court and the Circuit Courts
- conducting criminal appeals in the District Court, Supreme Court, the Court of Appeal and the High Court.

The Prosecutors Branch is represented in these matters by (in order of seniority):

- Consultant Crown Prosecutors (five in Brisbane and one in Townsville)
- Senior Crown Prosecutors (nine in Brisbane and six in the regions)
- Crown Prosecutors (13 in Brisbane and seven in the regions)

Prosecutions are conducted by barristers employed on a permanent basis within the DPP²⁷ or by members of the private bar who are briefed by the DPP to appear in individual cases or to give advice. As discussed in Chapter 5, in contrast to the operations of the LAO, the DPP handles most of its prosecutions in-house, using employed staff and prosecutors.

The Solicitors Branch is responsible for:

- Preparing all matters conducted by prosecutors for trial, sentence or appeal in Brisbane. Preparation for trial involves examining depositions (i.e. the transcripts of committal proceedings in the Magistrates Courts and accompanying evidence) and determining the charges upon which a person should be indicted, presenting the indictment and obtaining a suitable trial date. Alternatively, a recommendation may be made to the Director that the prosecution not proceed if there is insufficient evidence to sustain a conviction. Preparation also involves:
 - * obtaining necessary additional statements of witnesses and certificates required in evidence
 - * ensuring that the defence has copies of all statements and other relevant evidence
 - * liaising with police to ensure that witnesses will be available and issuing subpoenas.

²⁷ Either as Consultant Crown Prosecutors, Senior Crown Prosecutors or Crown Prosecutors.

- Responding to applications for bail by accused persons. This includes ensuring compliance with bail conditions and applying for revocation of bail and the apprehension of accused persons where appropriate.
- Extradition proceedings which involve the making of an application to a court in another jurisdiction for an order to have an accused person who has been apprehended in that jurisdiction brought to Queensland for prosecution.

The Sentencing Section of the Solicitors Branch prepares matters for sentence in the superior courts held at Brisbane. The section handles only those matters where an accused has given an early indication of an intention to plead guilty to a charge or charges contained in an indictment. The preparation includes ensuring that the prosecutor who appears at the sentence can provide the court with accurate and up-to-date information about the offence and the offender, so that the court can impose an appropriate sentence.

CONCLUSION

This chapter has provided a brief overview of the structure, functions and funding arrangements of the LAC and the DPP. Some significant features of the two organisations are as follows:

- The LAC is an independent Commission which includes amongst its membership representatives of various groups with an interest in the provision of legal services. Within the DPP, decision-making authority resides with the Director. The Director is required to act independently in the performance of his or her functions and duties, although the Director is generally responsible to the Minister.
- The DPP's workload is largely restricted to criminal proceedings in the higher courts. The LAC provides legal assistance in relation to a much wider range of matters: civil and family law, as well as criminal law matters; and criminal proceedings in the lower as well as the higher courts.
- The LAC's funding arrangements are much more complicated than those which apply in relation to the DPP. Virtually all of the DPP's revenue is from consolidated revenue grants administered by the Department of Justice and Attorney-General. By contrast, the LAC receives its funding from six different sources: Commonwealth Government grants; State Government grants from consolidated revenue; interest on solicitors' trust accounts; recoverable costs; client contributions; and interest on investments. Overall funding for the LAC is regulated by the 1990 Commonwealth/State Funding Agreement, whereas funding arrangements for the DPP are more ad hoc and flexible.

CHAPTER 3

THE LEGAL AID COMMISSION: FUNDING AND WORKLOAD

INTRODUCTION

There can be little doubt that there is a sense of crisis in the community – particularly the legal community – about the level of funding for the LAC. For instance, in *Boe v Criminal Justice Commission*²⁸ de Jersey J referred to 'widespread expressions of dissatisfaction about funding levels' (p. 4) and described the applicant's affidavit as 'provid[ing] a comprehensive and compelling basis for the conclusion that the Government does not adequately fund the Legal Aid Office on the criminal side or the Office of the Director of Prosecutions' (p. 2).²⁹

The purpose of this chapter is to assist in the appraisal of such claims by presenting detailed evidence on the funding of the LAC in recent years. The chapter:

- examines trends in LAC/DPD revenue, expenditure and service levels
- compares legal aid revenue levels in Queensland with those in New South Wales and Victoria
- contrasts changes in service levels with indices of changes in the demand for legal assistance.

STATISTICAL MEASURES USED

This and subsequent chapters make reference to the following statistical measures:

- *Nominal revenue and expenditure.*³⁰ These indices show the actual money value of the amount received and spent each year by the LAC and DPP.
- *Real revenue and expenditure.* These indices take account of the impact of inflation by stating the value of revenue/expenditure for each year in December 1993 dollars. In effect, the indices provide a measure of whether the agency's "buying power" has improved or deteriorated over a given period. "Real" values are calculated by applying the Consumer Price Index for Brisbane to measures of nominal revenue and expenditure, using the October–December 1993 quarter as the base.
- *Per capita measures.*³¹ These measures divide total annual revenue/expenditure of the agency concerned by the population of the State in that year. Per capita measures are particularly useful for comparing the funding of agencies in different States, as the measures control for differences in

²⁸ Supreme Court of Queensland 10 June 1993, unreported.

²⁹ In a later passage, it is added that the applicant's 'substantial affidavit shows that the majority of his work is funded by the Legal Aid Office, and that he is not properly remunerated' (p. 6).

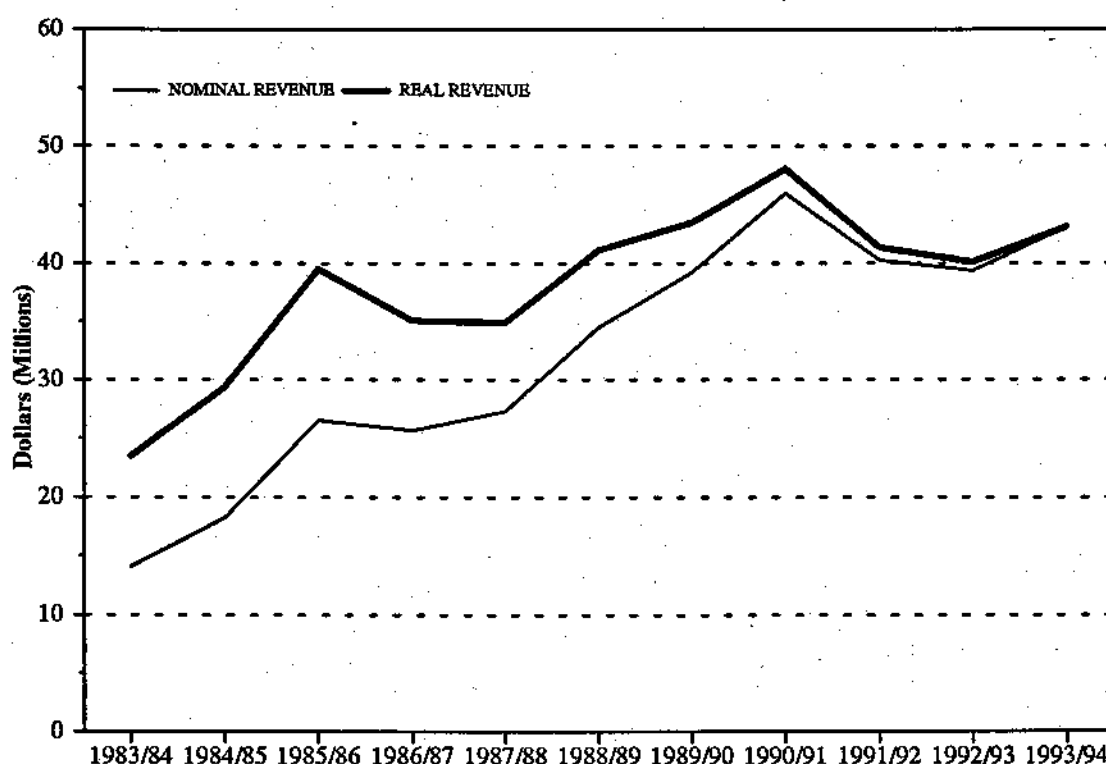
³⁰ Consumer Price Index figures for the October–December quarters for 1983/84–1993/94 were used (see Appendix 3).

³¹ See Appendix 3 for Queensland population figures for 1983/84–1993/94.

population size and, hence, the demand for services. Such measures can also be used as a rough check on whether changes in agency funding within a particular jurisdiction have kept up with the demand for services. This is a very important adjustment to make in the case of Queensland, given the rapid population growth taking place in the State.

LEGAL AID COMMISSION REVENUE

Figure 3.1 shows nominal and real revenue received by the LAC/PD for the financial years 1983/84 to 1993/94. The LAC began accounting on an accrual basis in 1990/91. However, the amounts referred to in this report are based on the cash accounts in all cases, unless otherwise noted. Accrual accounts show expenditure for the year in which the liability was incurred. Cash accounts show the year in which the payment for the liability was actually made. For 1983/84 to 1990/91 the amounts shown represent the combined revenue of the LAC/PD. As discussed in Chapter 2, these two offices were merged in 1990/91.



**FIGURE 3.1 – LEGAL AID NOMINAL AND REAL REVENUE
(1983/84–1993/94)**

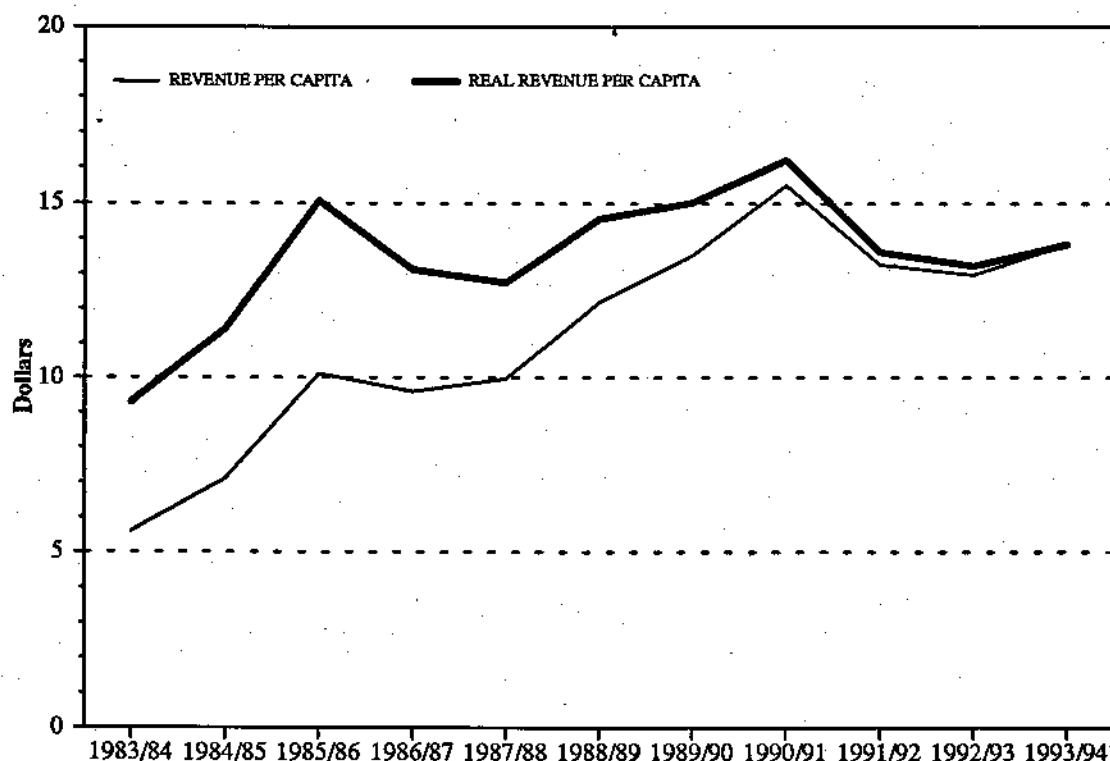
Sources: Legal Aid Commission of Queensland n.d., *Submission to the Treasurer of Queensland on Funding for Prescribed Criminal Proceedings*; Legal Aid Commission of Queensland, Annual Reports 1983/84–1993/94; Department of Justice and Attorney-General information received 10 August 1994.

Notes:

1. Revenue for the period up to and including 1990/91 includes LAC and PD revenue.
2. Although the LAC commenced accounting on an accrual basis in 1990/91, all figures are based on cash transactions.
3. "Real Revenue" is revenue indexed for inflation, using the October–December 1993 quarter as the base.

This graph shows that real revenue has fluctuated significantly over the last decade, reaching a high of \$48.1m (in December 1993 dollars) in 1990/91. Real revenue fell from that peak, by 16.6 per cent, to \$40.1m in 1992/93. In 1993/94 it was \$43.1m, down from the 1990/91 peak by 10.4 per cent. However, revenue has remained well above the levels of the mid-1980s. Real revenue in 1987/88 (the benchmark level under the 1990 Funding Agreement) was just over \$34.9m. In 1992/93 real revenue exceeded this level by 14.9 per cent and in 1993/94 it was 23.5 per cent higher.

Figure 3.2 shows the trend in real per capita combined LAC/PD revenue for the last 10 years. As noted, this measure adjusts for the significant population growth which has occurred over the last decade. On this measure, real per capita revenue reached a peak in 1990/91 of \$16.20, fell to \$13.20 in 1992/93, and then rose modestly to \$13.80 in the last financial year. The 1992/93 per capita figure was just slightly higher than the 1987/88 amount of \$12.80, while the 1993/94 amount was eight per cent higher than in 1987/88.



**FIGURE 3.2 – LEGAL AID NOMINAL AND REAL REVENUE PER CAPITA
(1983/84–1993/94)**

Sources: Castles, I 1993, *ABS Year Book: Australia*, No. 76, ABS, Canberra; Information obtained from ABS; Legal Aid Commission of Queensland n.d., *Submission to the Treasurer of Queensland on Funding for Prescribed Criminal Proceedings*; Legal Aid Commission of Queensland, Annual Reports 1983/84–1993/94; Department of Justice and Attorney-General information received 10 August 1994.

Notes:

1. Revenue for the period up to and including 1990/91 includes LAC and PD revenue.
2. Although the LAC commenced accounting on an accrual basis in 1990/91, all figures are based on cash transactions.
3. "Real Per Capita Revenue" is per capita revenue indexed for inflation, using the October–December 1993 quarter as the base.

KEY FINDINGS: REVENUE TRENDS

- LAC nominal and real revenue has fluctuated significantly over the last decade.
- Revenue has dropped in recent years from a peak reached in 1990/91. However revenue indexed for inflation and population growth has remained above that of 1987/88 (the benchmark level under the 1990 Funding Agreement).

FACTORS AFFECTING REVENUE

In analysing LAC revenue, it is important to break that revenue down into its different components. That way, it is possible to isolate the factors which have been responsible for the significant income fluctuations noted above. As described in the preceding chapter, the main income sources are:

- Commonwealth Government grants
- State Government grants
- interest on solicitors' trust accounts
- internally generated revenue from recovered costs, client contributions and interest on investments.

As discussed, the Commonwealth and State Governments' obligations to fund legal aid services are determined by the 1990 Funding Agreement. Under that Agreement the grants for each year are calculated by adjusting the 1987/88 net operational expenditure by the percentage movement in the Average Weekly Earnings and the Consumer Price Index for each subsequent year. Since the first year of operation of the Agreement,³² the contributions of the Commonwealth and State Governments have been 55 and 45 per cent respectively of adjusted operational expenditure.

The Agreement includes provisions which are designed to stabilise LAC revenue and to reduce its sensitivity to fluctuations in trust account income. Under clause 7, the State is required to contribute certain minimum amounts annually to the LAC. The Agreement also provides that the interest on solicitors' trust accounts paid to the LAC from the Legal Practitioners' Fidelity Guarantee Fund and the Contribution Fund is to be credited to the State's contribution under the Agreement.³³ The effect of this provision is to set a floor, or a minimum level for LAC revenue, regardless of the level of trust account interest earned in any year. For example, in 1990/91, trust account income received by the LAC slightly exceeded the State's required contribution for the provision of legal assistance of \$11.5m. Accordingly, the State was not required to make a contribution from consolidated revenue. However, in 1992/93 when trust account income fell to only \$4.7m, the State was required to significantly increase the contribution from consolidated revenue to meet its obligation to provide the minimum level of funding of \$12.9m to the LAC for that year.³⁴

³² The Agreement provided for contributions from the Commonwealth and State on a 60/40 per cent basis for the first year of operation of the Agreement.

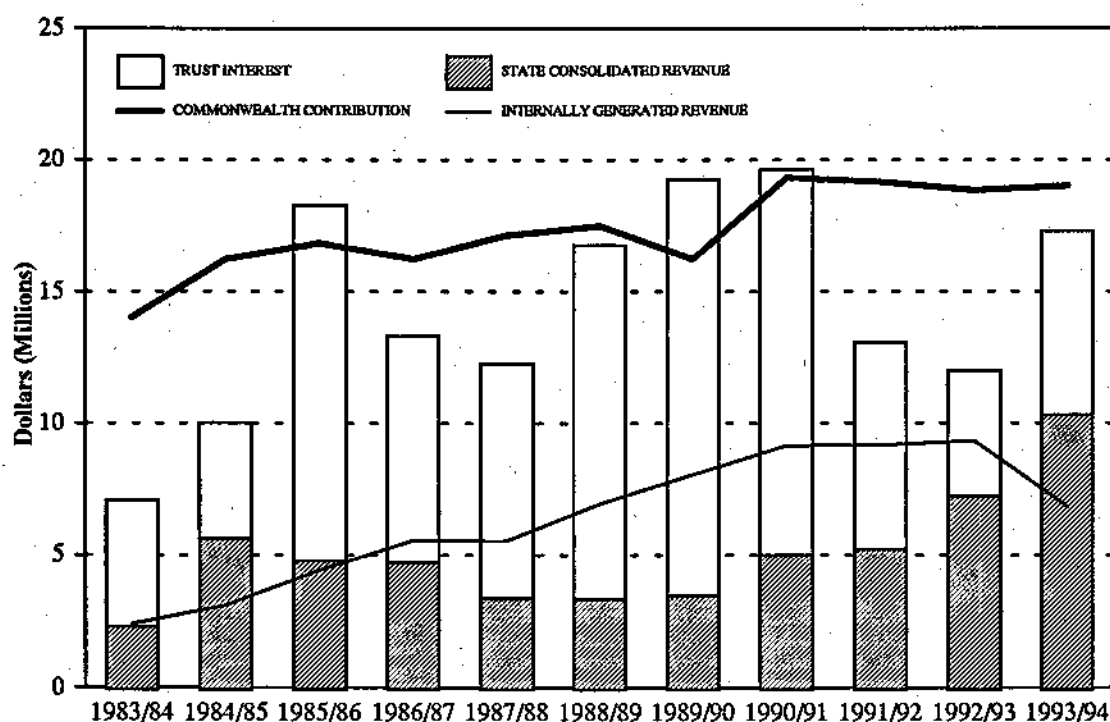
³³ Clause 16 of the Schedule to the Agreement.

³⁴ In fact, the State grant was below the minimum required in that year. See Appendix 2, below.

FUNDING OF LEGAL AID AND PUBLIC PROSECUTIONS IN QUEENSLAND

The 1990 Funding Agreement also provides that when trust account income in a given year exceeds the required State grant, the excess can be credited to the amount payable by the State in any future year. Although the LAC is not a party to the Agreement, the same provision purports to require it to hold any excess in reserve.³⁵ This provision appears to have the object of smoothing LAC income by spreading unusually high levels of income from trust account interest over several years.

Figure 3.3 shows LAC/PD real revenue for 1983/84 to 1993/94, broken down by the different sources of revenue.



**FIGURE 3.3 – LEGAL AID REAL REVENUE BY SOURCE
(1983/84–1993/94)**

Sources: Legal Aid Commission of Queensland n.d., *Submission to the Treasurer of Queensland on Funding for Prescribed Criminal Proceedings*; Legal Aid Commission of Queensland, *Annual Reports 1983/84–1993/94*; Department of Justice and Attorney-General information received 10 August 1994.

Notes:

1. Revenue for the period up to and including 1990/91 includes LAC and PD revenue.
2. Although the LAC commenced accounting on an accrual basis in 1990/91, all figures are based on cash transactions.
3. "Real Revenue" is revenue indexed for inflation, using the October–December 1993 quarter as a base.

The figure shows, firstly, that the LAC/PD's internally generated revenue rose significantly from 1983/84 until 1993/94, when it fell in real terms by 27 per cent. Most internally generated income is derived from costs awarded in assisted litigation. It appears that the 1993/94 downturn was primarily due to the progressive withdrawal of the LAC from providing assistance in civil matters and family law property matters, plus a decline in investment income.

³⁵ Schedule, para. 16.

Second, Figure 3.3 indicates that Commonwealth funding in the last three financial years has fallen modestly from its peak in 1990/91, when it was \$19.3m in real terms. In 1992/93 the grant dropped by 2.6 per cent and in 1993/94 by 1.6 per cent. In every year after 1989/90, Commonwealth funding in nominal terms has been above the agreed minimum level fixed under the Agreement by amounts between \$2.7m and \$4.4m. However, it appears on the basis of information provided by the LAC that the excess is largely, if not entirely, attributable to grants tied to specific purposes (for example community legal centres, veterans' affairs matters).³⁶

Third, Figure 3.3 highlights the extent to which revenue from interest on solicitors' trust account money has fluctuated over the whole period. For instance, total trust account revenue rose from \$8.6m (in real terms) in 1986/87 to a peak in 1989/90 of \$15.8m, before falling to only \$4.8m in 1992/93. Trust account income contributed 30 per cent of total revenue in 1990/91, but only 16 per cent in 1993/94.

The sensitivity of the LAC/PD total revenue to fluctuations in trust account income can be illustrated by noting that:

- The increase in trust account income between 1987/88 and 1988/89 accounted for 71 per cent of the increase in total revenue between these years.
- The increase in total revenue in 1989/90 was almost totally attributable to the rise in trust account interest.
- In real terms trust account income fell by nearly \$6.7m between 1990/91 and 1991/92 and total real revenue also fell by \$6.7m.
- The four years of highest trust account income, in real terms, were 1985/86 (\$13.5m), 1988/89 (\$13.4m), 1989/90 (\$15.8m) and 1990/91 (\$14.6m). These years were also when real per capita revenue was highest.

Fourth, Figure 3.3 shows that the State's consolidated revenue contribution to LAC/PD increased in real terms between 1989/90 and 1992/93, but was not sufficient to fully offset the fall in trust account income. As a result, the total State contribution (i.e. the State consolidated revenue contribution plus interest on solicitors' trust accounts) fell by 40 per cent in real terms between 1990/91 and 1992/93. The total State contribution increased to \$17.3m in 1993/94 but was still below the peak of 1990/91, in real terms, by 13.1 per cent.³⁷

It is important to note that in most years the State contribution has been higher than required under the Agreement, notwithstanding the decline in contributions after 1990/91. Appendix 2 contains data provided by the Department of Justice and Attorney-General and a table compiled by the CJC detailing the minimum State contribution required under the Agreement and the actual amounts received from consolidated revenue and interest on solicitors' trust accounts for 1988/89 to 1993/94. The data show that from 1988/89 to 1990/91 the State contribution to LAC/PD exceeded the minimum required under the Agreement by several million dollars, due to the unusually high level of trust account income in those years. (In fact, revenue from this source alone exceeded the State's minimum required contribution for the provision of legal assistance in all three years.) Since 1990/91, the State contribution has for the most part continued to exceed the minimum required, albeit by considerably smaller amounts. As discussed in Chapter 6, the issue is not one of the State and Commonwealth Governments failing to fulfil their obligations under the Agreement but, rather, the adequacy of the Agreement itself.

³⁶ The Agreement allows the parties to make grants in excess of the minimum for tied purposes. See para. 17 of the Schedule.

³⁷ The LAC has advised the CJC that \$2m of the State grant in 1993/94 was earmarked as a "one-off" top-up of reserves. However, for the purpose of accurately describing the LAC's funding position, this amount should still be included in total revenue for that year.

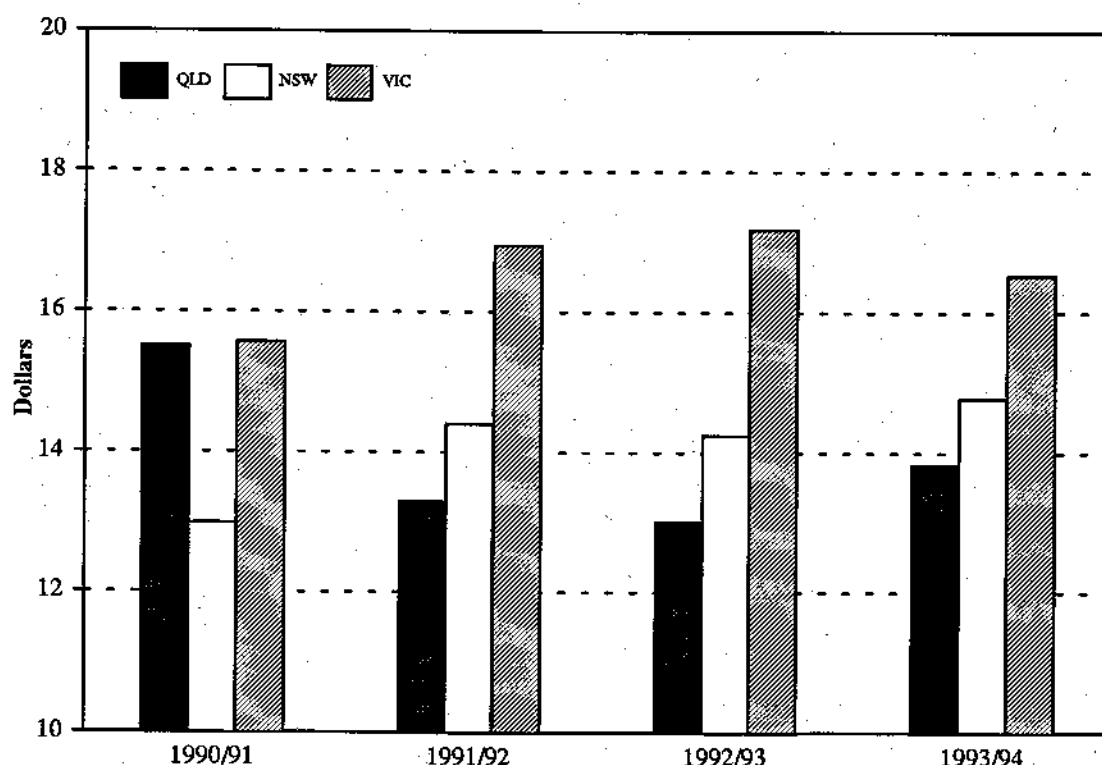
KEY FINDINGS: FUNDING SOURCES

- LAC/PD revenue has been very sensitive to fluctuations in revenue from interest on solicitors' trust accounts. Income from this source has dropped dramatically in recent years and this drop has not been fully offset by increased contributions from State consolidated revenue.
- The State's total contribution to LAC/PD revenue (i.e. grants from State consolidated revenue and interest on solicitors' trust accounts) declined sharply between 1989/90 and 1992/93. Although the State's contribution increased significantly in 1993/94, it was still below the 1990/91 peak year by \$2.3m (12%) in real terms.
- From 1988/89–1990/91 the State's total contribution significantly exceeded the minimum under the 1990 Funding Agreement, due to the high level of trust account income. Since 1990/91, the contribution has, for the most part, continued to exceed the minimum required, albeit by considerably smaller amounts.
- The Commonwealth's grants have exceeded the minimum under the Agreement in all years since 1989/90. However, it appears that virtually all of this "surplus" has taken the form of tied grants for specific purposes.
- Internally generated revenue increased significantly until 1993/94, when it fell by 27 per cent in real terms. This decline was due primarily to the progressive withdrawal by the LAC from providing assistance in civil law matters and family law property matters.

COMPARISONS WITH OTHER STATES

Another useful perspective on LAC funding can be obtained by comparing levels of legal aid funding per capita between States.

Figure 3.4 compares LAC revenue per capita for 1990/91 through 1993/94, in Queensland, Victoria and New South Wales. The figure shows that in 1990/91, per capita revenue in Queensland was appreciably higher than in New South Wales and almost equal to that in Victoria. However, in the last three financial years Queensland's total per capita revenue has been significantly lower than in these other two States. For instance, in 1993/94 the per capita difference between New South Wales and Queensland was \$0.94, while the difference between Queensland and Victoria was \$2.69.



**FIGURE 3.4 – LEGAL AID TOTAL NOMINAL REVENUE
PER CAPITA BY STATE (1990/91–1993/94)**

Sources: Legal Aid Commission of Queensland, Annual Reports 1990/91–1993/94; Legal Aid Commission of Queensland n.d., *Submission to the Treasurer of Queensland on Funding for Prescribed Criminal Proceedings*; Legal Aid Commission of New South Wales, Annual Reports 1990/91–1993/94; Legal Aid Commission of Victoria, Annual Reports 1990/91–1993/94; population data provided by ABS.

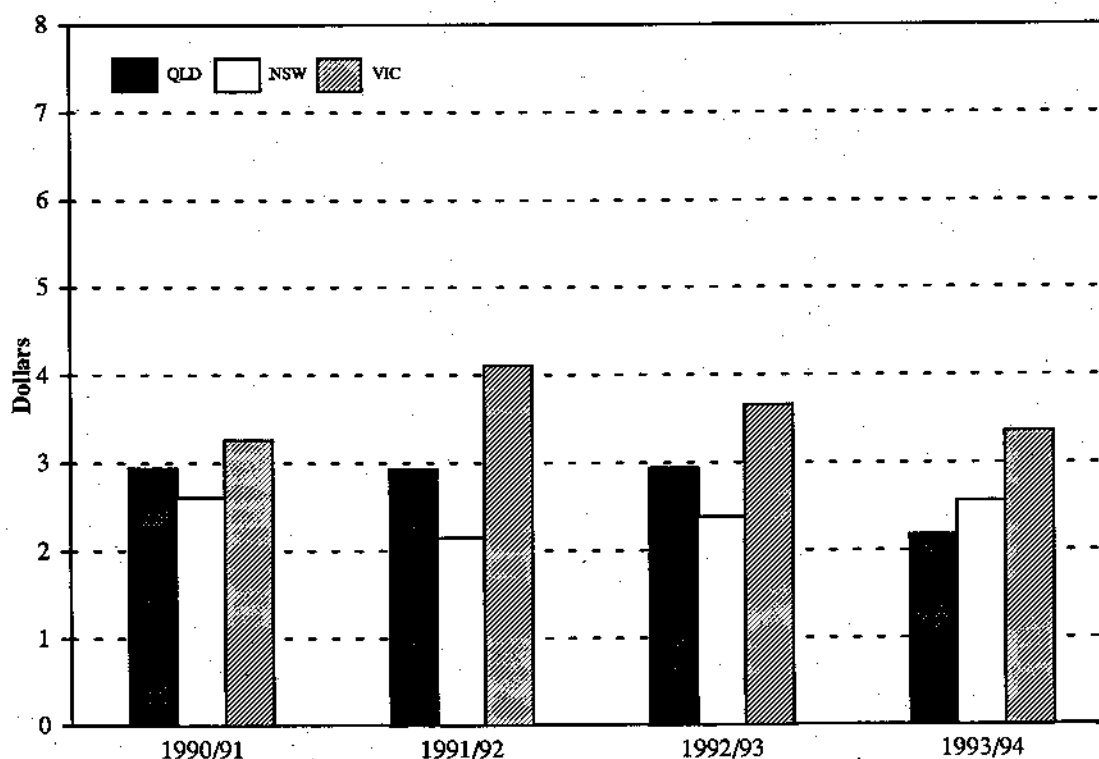
Notes:

1. Queensland revenue for 1990/91 includes LAC and PD revenue.
2. Figures are based on financial statements which have been converted to a cash basis.

To some extent these differences reflect variations in the revenue raising capacity of the various legal aid commissions, rather than differences in government funding. Figure 3.5 compares revenue from “other sources”³⁸ for 1990/91 through 1993/94. It shows that Queensland revenue from this source has tended to be somewhat higher than in New South Wales (an average difference over the four years of \$0.34 per capita per year) but lower than Victoria’s by an average of \$0.83 per capita. The Victorian LAC figure reflects a significantly higher level of client contributions: for instance, in 1992/93 this source contributed 15 per cent of Victoria’s legal aid revenue but less than one per cent in Queensland.³⁹

³⁸ “Other sources” includes revenue from sources such as client contributions, cost recovery and investment income.

³⁹ The Victorian Legal Aid Commission currently requires all recipients of legal aid to make an “up-front” contribution of \$30. Where the person is represented by a private solicitor, it is the solicitor’s responsibility to collect the money, as the \$30 is deducted from the solicitor’s fee.



**FIGURE 3.5 – LEGAL AID NOMINAL “OTHER REVENUE”
PER CAPITA BY STATE (1990/91–1993/94)**

Sources: Legal Aid Commission of Queensland, Annual Reports 1990/91–1993/94; Legal Aid Commission of Queensland n.d., *Submission to the Treasurer of Queensland on Funding for Prescribed Criminal Proceedings*; Legal Aid Commission of New South Wales, Annual Reports 1990/91–1993/94; Legal Aid Commission of Victoria, Annual Reports 1990/91–1993/94; population data provided by ABS.

Notes:

1. Queensland revenue for 1990/91 includes LAC and PD revenue.
2. Figures are based on financial statements which have been converted to a cash basis.
3. “Other Revenue” covers revenue from client contributions, cost recovery and investment income.

By excluding revenue from “other sources” it is possible to directly compare the combined Commonwealth and State Government contributions per capita for each State. Again, in 1990/91 Queensland’s total Government contribution was the highest, on a per capita basis. However, it has been significantly lower in the last three years — the average per capita figure being only \$10.57, compared with \$12.11 in New South Wales and \$13.16 in Victoria. The difference between Queensland and New South Wales in 1993/94 was \$0.55 per person, which was equivalent to nearly \$1.7m, if Queensland had been funded on the same per capita basis. The difference between Queensland and Victoria was \$1.52 per person, which would have been equivalent to \$4.7m in additional funding for Queensland.

Figure 3.6 compares the nominal value per capita of Commonwealth grants to the legal aid commissions in the three States for each of the last four years. It shows a slight downward trend for Queensland, although the 1993/94 figure of \$6.10 is up from the previous year; the other two States show an upward trend. Apart from 1990/91, when the New South Wales grant was lower, the Commonwealth grant to Queensland has been consistently lower, on a per capita basis, than the grant to the other two States. The New South Wales and Victorian grants have risen appreciably and, in 1993/94, were higher than the Queensland grant by, respectively, \$0.88 per capita (equivalent to \$2.7m in additional revenue for Queensland) and \$1.51 per capita

(equivalent to \$4.7m in additional revenue). The net difference in the Commonwealth grant over the whole period between Queensland and New South Wales is equivalent to \$4.6m in Queensland revenue, while the difference between Queensland and Victoria is equivalent to \$13.3m in Queensland revenue.

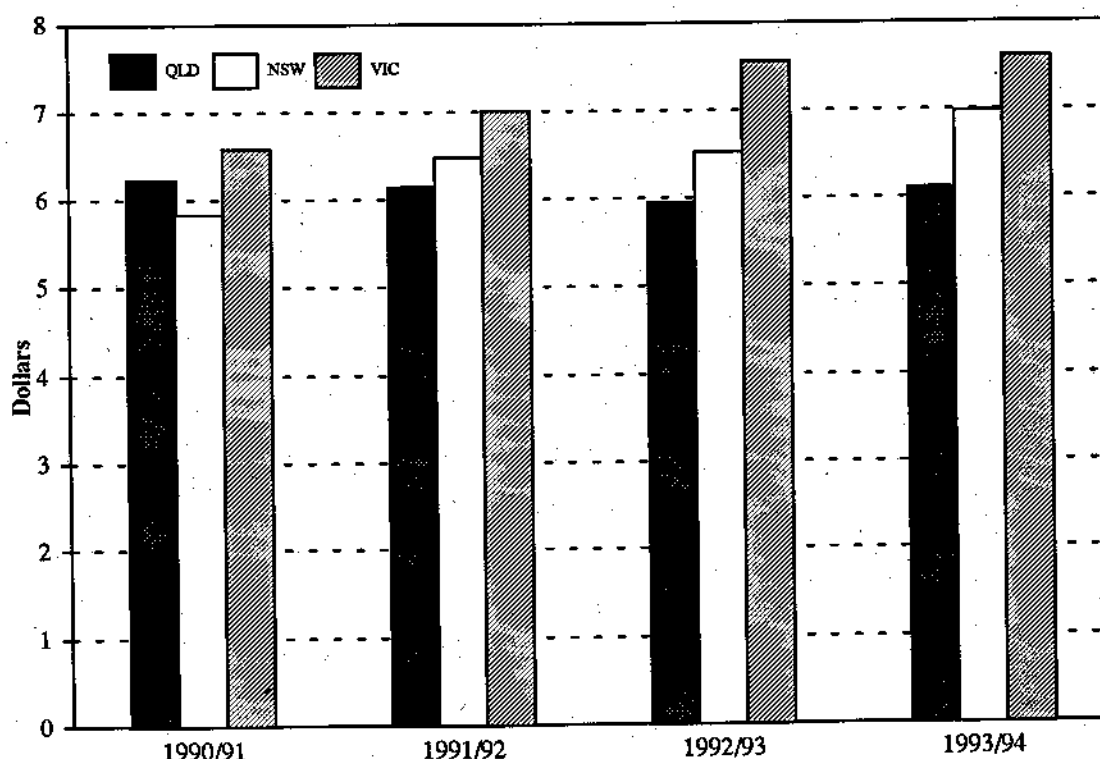


FIGURE 3.6 – LEGAL AID NOMINAL COMMONWEALTH GOVERNMENT GRANT PER CAPITA BY STATE (1990/91–1993/94)

Sources: Legal Aid Commission of Queensland, Annual Reports 1990/91–1993/94; Legal Aid Commission of Queensland n.d., *Submission to the Treasurer of Queensland on Funding for Prescribed Criminal Proceedings*; Legal Aid Commission of New South Wales, Annual Reports 1990/91–1993/94; Legal Aid Commission of Victoria, Annual Reports 1990/91–1993/94; population data provided by ABS.

Notes:

1. Queensland revenue for 1990/91 includes LAC and PD revenue.
2. Figures are based on financial statements which have been converted to a cash basis.

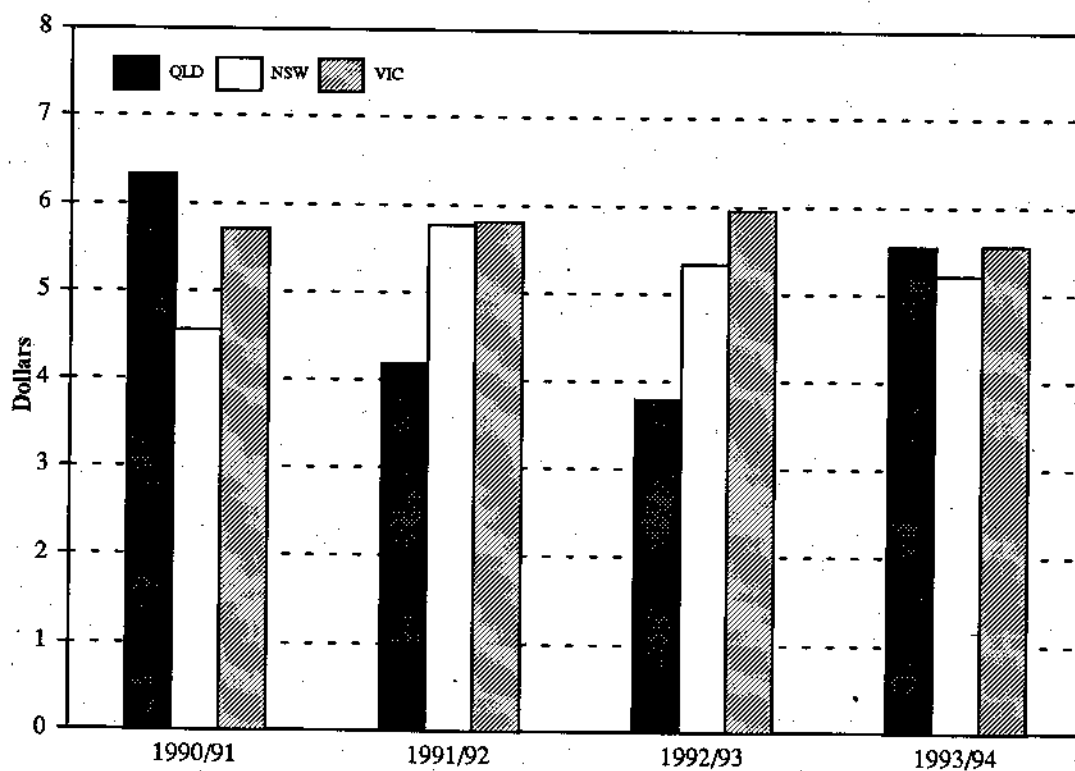
It should be emphasised that these figures compare the *total* Commonwealth grant to each Commission. It is possible that some of the differences *could* be attributable to differences in, for example, extra allowances for long Commonwealth criminal trials, or other tied components of the grant for legal aid services in relation to specified Commonwealth matters. However, information at this level of specificity is not available. The more significant factor is likely to be that the Commonwealth/State funding agreement does not make any allowance for population growth. Between 1990/91 and 1993/94, Queensland's population grew by 5.1 per cent compared to 1.6 per cent in New South Wales and only 1.1 per cent in Victoria.

Figure 3.7 shows the value of total State grants for each Commission, combining revenue from interest on solicitors' trust accounts and contributions from State consolidated revenue.⁴⁰ The figure indicates that in 1990/91 the Queensland State grant was slightly higher, on a per capita basis, than those in Victoria and New South Wales. In 1991/92 and 1992/93 Queensland was well below these two other States and by 1993/94

⁴⁰ Separate figures for these sources are not available for Victoria.

FUNDING OF LEGAL AID AND PUBLIC PROSECUTIONS IN QUEENSLAND

it was on a roughly equal footing. The net difference between Queensland and New South Wales State contributions over the whole period was the equivalent of \$3.2m in additional Queensland revenue, while the net difference between Queensland and Victoria was the equivalent of \$9.9m in additional revenue.



**FIGURE 3.7 – LEGAL AID NOMINAL STATE GRANTS PER CAPITA
(1990/91–1993/94)**

Sources: Legal Aid Commission of Queensland, Annual Reports 1990/91–1993/94; Legal Aid Commission of Queensland n.d., *Submission to the Treasurer of Queensland on Funding for Prescribed Criminal Proceedings*; Legal Aid Commission of New South Wales, Annual Reports 1990/91–1993/94; Legal Aid Commission of Victoria, Annual Reports 1990/91–1993/94; population data provided by ABS.

Note:

1. Queensland revenue for 1990/91 includes LAC and PD revenue.
2. Figures are based on financial statements which have been converted to a cash basis.
3. Revenue from "State Sources" covers income from interest on solicitors' trust accounts and grants from State consolidated revenue.

Overall, if the Queensland LAC had been funded at the same per capita rate as its counterpart in New South Wales it would have received an additional \$7.6m in funding from State and Commonwealth sources between 1990/91 and 1993/94. Had the Queensland LAC been funded at the same rate as in Victoria it would have received an additional \$23.5m over this period.

The striking differences in funding between Victoria and Queensland do not appear to be due to differences in the relative level of service (as measured by grants of aid) being provided in the two States.⁴¹ In fact, the number of grants of aid in Victoria per 1,000 population has been roughly similar to that in Queensland. It is very difficult to compare crime levels and court workloads between States because of differences in definitions and counting rules, but on the limited data available Victoria does not appear to have a higher rate of reported crime than Queensland (ABS 1994) and the amount of crime dealt with in the Victorian higher courts is significantly less (see Chapter 5). Divorce rates – one of the determinants of the demand for aid for family law matters – also do not differ significantly between the two States. It appears that the extra revenue in Victoria has until recently been used primarily to support higher outlays per grant of aid, although in the last two years Victorian expenditure per grant of aid has declined towards the Queensland level.⁴²

KEY FINDINGS: INTER-STATE COMPARISONS

- The Commonwealth grant to the Queensland LAC, indexed for inflation and population growth, has tended to fall over the last four financial years, and on a per capita basis is now appreciably below the grant made to legal aid agencies in New South Wales and Victoria. The difference in 1993/94 was equivalent to revenue of about \$2.7m (using NSW as a benchmark) or \$4.7m (based on Victoria).
- On a per capita basis, the total State contribution to the Queensland LAC in 1993/94 was slightly above the New South Wales State contribution and only slightly below the Victorian State grant. However, for 1990/91 through 1993/94 the average State contribution was appreciably lower in Queensland than in the other two States, with a particularly marked shortfall in 1991/92 and 1992/93. The net difference between Queensland and New South Wales was equivalent to \$3.2m, and the difference between Queensland and Victoria was equivalent to over \$9.9m.
- In the last three years, total per capita LAC revenue in Queensland has been significantly below that in Victoria. However, on a per capita basis Queensland has funded a similar number of grants of aid to Victoria.

⁴¹ It is impossible to be completely confident when comparing data on the level of service and costs between jurisdictions. The New South Wales grant of aid figures are not comparable with Queensland and Victorian figures because New South Wales provides assistance in many cases in the Local Courts through its duty lawyer scheme, which would be provided through the grants program in Queensland and Victoria. No reliable measure of equivalence is available. The grants statistics provided by the New South Wales Legal Aid Commission to the Commonwealth are, apparently, increased by a considerable amount over the figures published in the New South Wales Commission's annual reports, in order to compensate for this difference in administrative procedures.

⁴² Average expenditure per grant of aid over the four year period 1990/91–1993/94 was \$2,223 in Victoria, compared with \$1,932 in Queensland. The information needed to explain these differences in expenditure per grant is not available to the CJC, but they do not appear to be due to differences in case profiles. In the last two years, the mix of criminal, family and civil grants in the two jurisdictions has been roughly the same. As indicated, a higher proportion of Victorian criminal cases are handled in the Magistrates Court. Moreover, the proportion of family and civil grants in 1990/91 and 1991/92 was higher in Queensland than in Victoria. These differences would tend, if anything, to reduce Victoria's average cost per grant of aid. The proportion of grants assigned to the private profession has also been approximately the same in both States for the last four years.

EXPENDITURE

TOTAL EXPENDITURE

Unlike many other public sector bodies, the LAC has had the ability to build up and, conversely, run down its reserves. Revenue and expenditure have at times varied considerably, in response to factors such as fluctuating income levels, unanticipated costs and deliberate policy and management decisions.

Figure 3.8 shows LAC/PD total revenue and expenditure cash flows for 1983/84 to 1993/94. (The \$10m expended in 1988/89 and 1991/92 to purchase and construct an additional floor on the LAC's Brisbane headquarters has been excluded.)

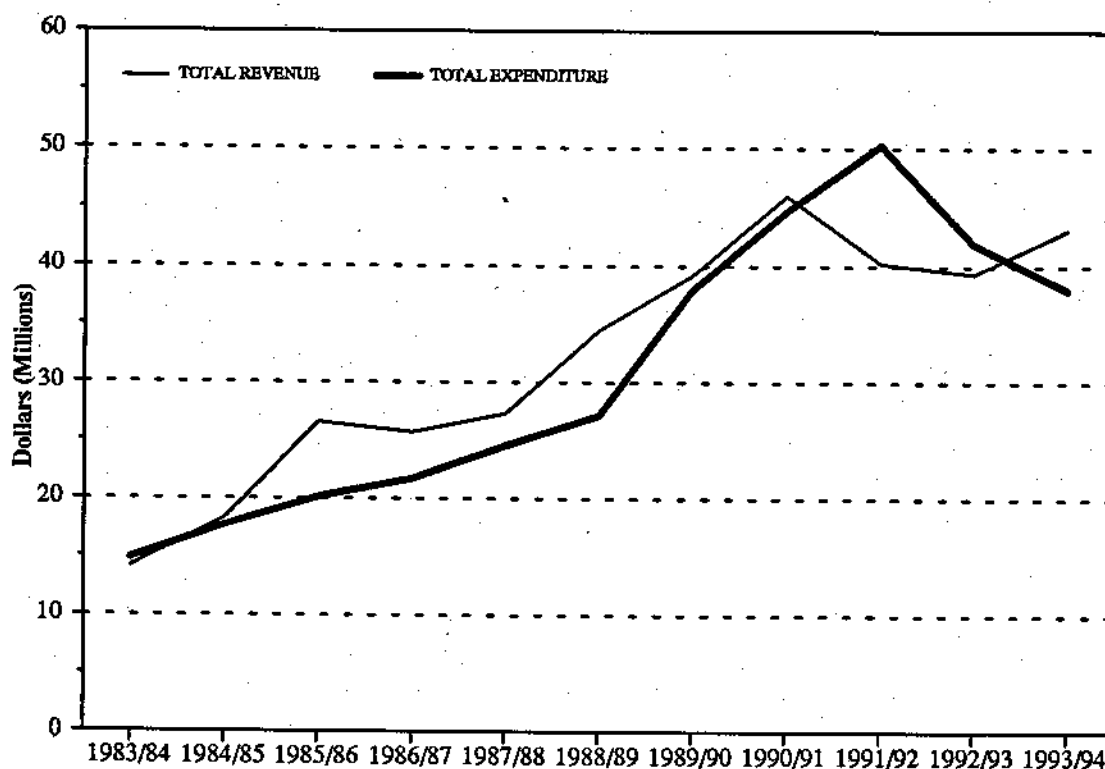


FIGURE 3.8 – LEGAL AID NOMINAL REVENUE AND EXPENDITURE
(1983/84–1993/94)

Source: Legal Aid Commission of Queensland, Annual Reports 1983/84–1993/94; Legal Aid Commission of Queensland n.d., *Submission to the Treasurer of Queensland on Funding for Prescribed Criminal Proceedings*; Department of Justice and Attorney-General information received 10 August 1994.

Notes:

1. Revenue and expenditure for the period up to and including 1990/91 includes the LAC and PD.
2. Although the LAC commenced accounting on an accrual basis in 1990/91, all figures are based on cash transactions.
3. Purchase of and structural improvements to the Herschel Street building are not included in total expenditure.

It is apparent that LAC/PD expenditure rose steadily from the beginning of the period to 1988/89. As indicated, revenue also rose in that period, although the rate of rise varied significantly due primarily to fluctuations in revenue from interest on trust monies. Apart from 1983/84, when there was a small operating

deficit, expenditure was well below revenue until 1988/89. The total surplus of revenue over expenditure in these six years was just over \$20.4m. From 1988/89 to 1991/92 LAC/PD expenditure increased substantially. Up until 1990/91 these increases in expenditure were supported by increases in revenue, but in 1991/92 the LAC incurred a deficit of just under \$10m. In 1992/93, expenditure fell by \$8.3m, resulting in a reduced operating deficit of just under \$2.6m. Expenditure fell again in 1993/94 by \$3.9m, while revenue rose by \$3.7m, resulting in a surplus of nearly \$5.1m.

DETERMINANTS OF LEGAL AID COMMISSION EXPENDITURE

LAC/PD expenditure has been determined primarily by two factors:

- the number of grants of aid approved
- costs per grant, which are determined by factors such as administrative overheads, the salaries and on-costs of in-house legal staff, and payments to private practitioners.

As discussed in Chapter 2, the LAC is also involved in other activities, such as the duty lawyer scheme, provision of legal advice and community education. However, work associated with grants of aid accounts for the bulk of the organisation's expenditure.

Figure 3.9 shows the relationship between the number of grants of aid approved by the LAC for all areas of law, real revenue and real expenditure for the years from 1987/88 (the benchmark under the 1990 Funding Agreement) to 1993/94. This graph shows that the number of approvals increased by 26 per cent from 24,322 in 1987/88 to a peak of 30,528 in 1990/91, when revenue also peaked. The following year approvals fell by 20 per cent to 24,296, but expenditure continued to rise. That increased expenditure reflected the payments which were required to be made in respect of grants of aid made in previous years, particularly civil and family matters. (Those particular types of matters frequently have lengthy periods between the grant of aid and the actual expenditure in respect of the grant.)

The number of grants of aid approved fell further to 18,736 in 1992/93 before rising slightly to 19,145 in 1993/94. In these last two years real expenditure fell by 26 per cent, in line with the earlier reduction in the number of grants approved. There were also reductions in salary and administration costs, and scale fees to practitioners were restructured.

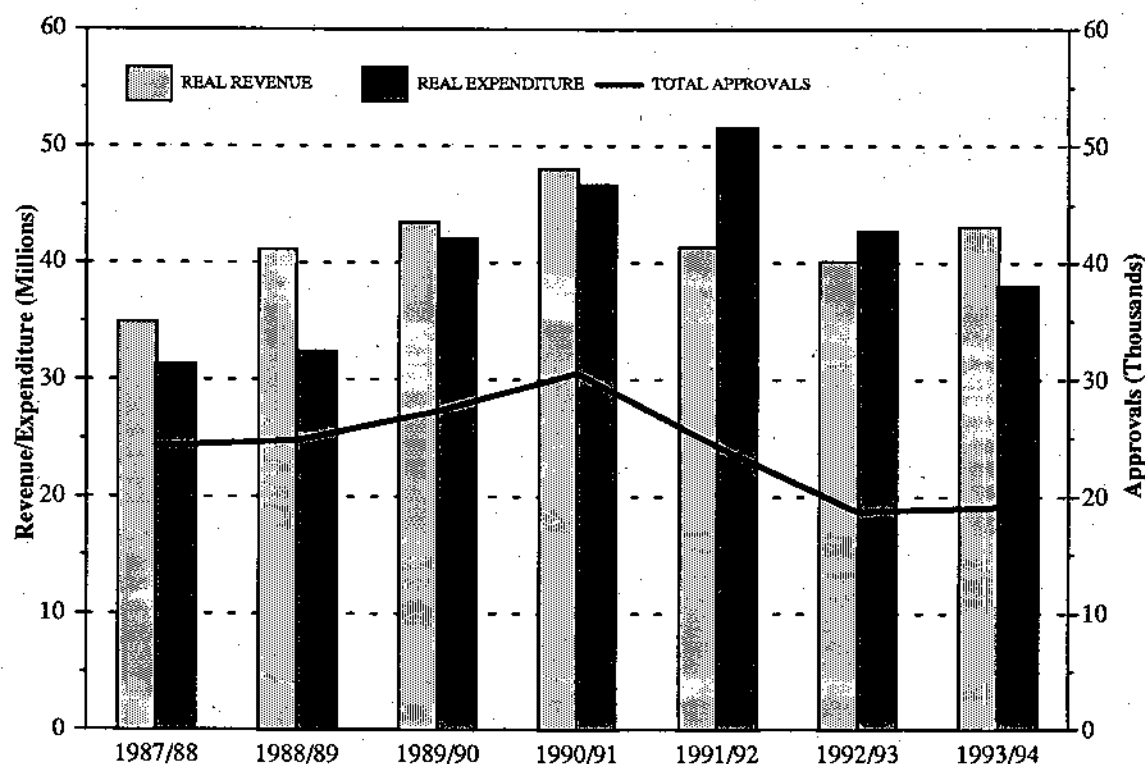


FIGURE 3.9 – LEGAL AID REAL REVENUE AND EXPENDITURE AND TOTAL APPROVALS (1987/88–1993/94)

Sources: Legal Aid Commission of Queensland n.d., *Submission to the Treasurer of Queensland on Funding for Prescribed Criminal Proceedings*; Legal Aid Commission of Queensland, Annual Reports 1987/88–1993/94; Department of Justice and Attorney-General information received 10 August 1994.

Notes:

1. Revenue, expenditure and grants of aid for the period up to and including 1990/91 includes the LAC and PD.
2. Although the LAC commenced accounting on an accrual basis in 1990/91, all figures are based on cash transactions.
3. "Real Revenue and Expenditure" figures are indexed for inflation to their equivalent value at the end of the October–December 1993 quarter.
4. Purchase of and structural improvements to the Herschel Street building are not included in total expenditure.

The large increase in the number of grants of aid in 1989/90 and 1990/91 was substantially due to increases in grants of aid for family and non-prescribed criminal matters and, to a lesser extent, civil cases (see below). PD grants of assistance for prescribed crime also rose significantly in this period. The increase in prescribed crime approvals was presumably due primarily to an increase in applications, although it is noteworthy that the increase in PD approvals was significantly greater than the increase in depositions received by the DPP.

The upsurge in expenditure between 1988/89 and 1991/92 was the result not only of an increase in grants of aid, but also of a marked increase in average costs per grant. Information on the precise cost per grant is not available, but a rough equivalent is the ratio of total expenditure to the total number of grants approved in a given year.⁴³ This measure shows that the average real cost per grant increased between 1988/89 and 1989/90 by 17.5 per cent from \$1,308 to \$1,537. This increase in costs cannot be attributed to changes in the types

⁴³ The total expenditure figures include, of course, expenditure on forms of assistance other than grants of aid, but the ratio does give a total "enterprise cost" of providing assistance which can be compared from year to year.

of cases for which assistance was granted, because in the period 1987/88–1990/91 there was little change in the ratio of crime to family to civil grants of aid (see below). Moreover, the lag between grants of aid and the incurring of costs does not affect the comparison of the expenditure ratio for years when grants have not decreased.

The increase in costs per grant had a significant impact on overall expenditure. Between 1988/89 and 1989/90 LAC real expenditure rose by approximately \$9.5m from \$32.4m to \$41.9m. At most, \$3.2m of this rise can be attributed to the increased number of grants of aid;⁴⁴ the remainder was attributable to increased costs. Payments to private practitioners during this period rose by \$9.1m, of which a minimum of \$5.9m was attributable to increased practitioner costs.⁴⁵ This figure of \$5.9m represented over 14 per cent of the 1989/90 budget, and amounted to an increase of over 30 per cent in expenditure on private practitioners (see Chapter 4). Subsequently there were further increases in the level of fees payable to practitioners, but the effect of these increases on the ratio of expenditure to grants of aid is completely submerged in the flow-on costs of the increased number of grants approved in earlier years.

KEY FINDING: DETERMINANTS OF EXPENDITURE INCREASE

- The marked rise in real expenditure between 1988/89 and 1991/92 was primarily the result of a 25 per cent increase in the number of grants of aid between 1988/89 and 1990/91 and a rise of 17.5 per cent in costs per grant between 1988/89 and 1989/90.

LIQUID ASSETS

Figure 3.10 shows the LAC's liquid assets at the end of each financial year, from 1983/84 through 1993/94. These assets include cash and cash equivalents, including long-term cash deposits for the LAC only, but excluding receivables, as shown in the balance sheets for each financial year end.⁴⁶ The following points should be noted in relation to this graph:

- Between 1983/84 and 1987/88 the LAC's cash reserves increased by over 260 per cent, due to the fact that revenue consistently exceeded expenditure.
- The decline in reserves in 1988/89 and 1989/90 is attributable to the decision by the LAC to purchase its head office at 44 Herschel Street in 1988/89 for \$6.9m.⁴⁷
- In 1989/90 and 1990/91 expenditure substantially increased, both in absolute terms and relative to revenue. As a result, the operating surpluses in those years were below the average of the preceding years, although they were still in excess of \$1m.⁴⁸

⁴⁴ This figure is an over-estimate because it is based on the assumption that all of the cost of the increased number of grants was incurred in the same financial year.

⁴⁵ This figure is likely to be an under-estimate, because it attributes all of the cost of the increase in grants of aid (\$3.2m) to payments to private practitioners.

⁴⁶ A PD accumulated surplus of \$1.9m was carried over to the LAC at the date of the merge of the two bodies in 1990/91.

⁴⁷ Some practitioners interviewed by the CJC were very critical of the LAC decision to purchase the Herschel Street building. However, in light of all of the information available to the LAC at the time, the decision appears to have been reasonable.

⁴⁸ These figures combine PD and LAC operating results. The PD incurred small operating deficits in both of the last two years of its independent operation. A PD accumulated surplus of \$1.9m was carried into the merged LAC in 1990/91.

- In 1989, the LAC apparently formed the view that its cash reserves exceeded what was reasonably required for the future costs of approved grants of aid, and that this excess should be made available in the form of additional legal assistance to the community. As a consequence, the LAC increased grants of aid significantly, apparently with a view not only to spending current income, but also to spending cash reserves. With the benefit of hindsight, it is evident that two things went wrong. First, 1989/90 and 1990/91 were peak revenue years, owing largely to unusually high interest rates and, as a result, high trust account income. The LAC did not adequately provide for a decline in revenue from this source.⁴⁹ Secondly, the costs of the increase in grants was higher than anticipated.⁵⁰ The LAC minutes of the time indicate that it contemplated both risks.⁵¹ However, in the LAC's defence, apart from the desire to increase aid to the community, the decision may have been influenced by some pressure to spend reserves in the lead up to the finalisation of the 1990 Funding Agreement, due to uncertainty about how accumulated reserves would be treated under the Agreement. There may also have been uncertainty about whether 1989/90 expenditure might provide the benchmark. Moreover, as late as September 1991, the Treasury/PSMC, *Review of Legal Aid Commission (Public Defence) Funding* said in reference to the LAC's reserves that:

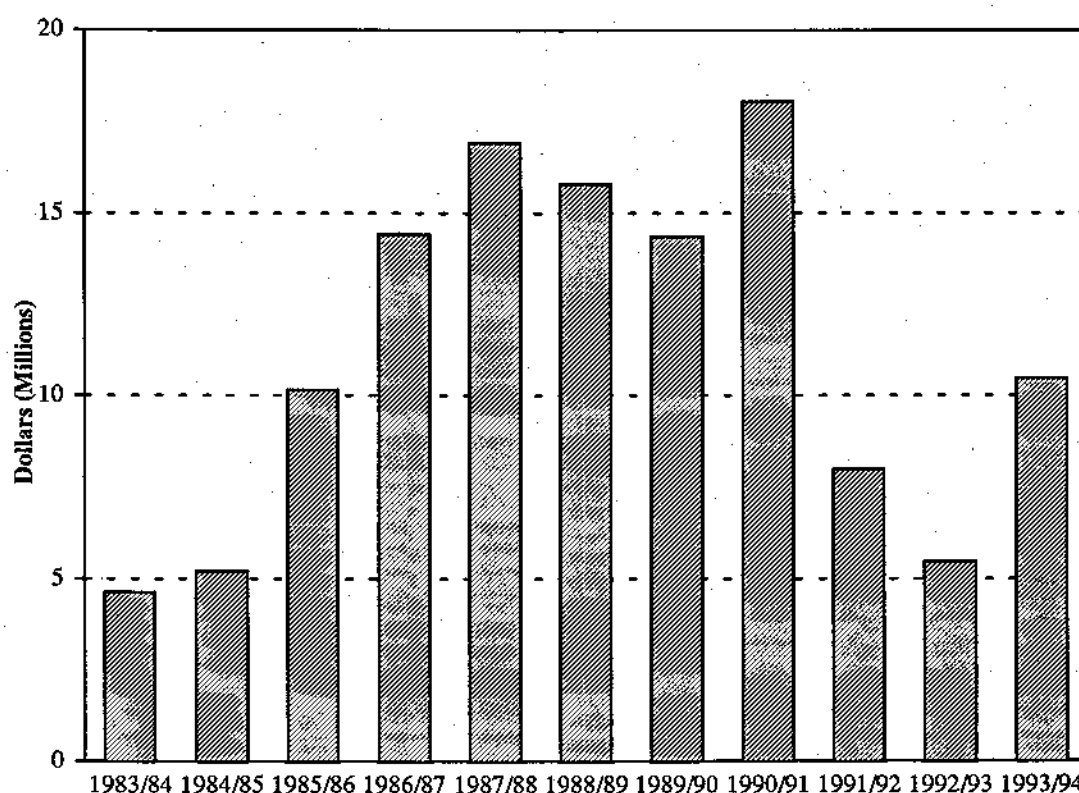
The only ostensible reason for maintaining such large working balances is to provide a capacity to . . . meet a fall in income from changed economic conditions or extraordinary and unanticipated outlays. The LAC has argued that balances are maintained sufficient to allow understanding cases to be dealt with . . . However, given reasonably stable and assured sources of funding, particularly payments from the Commonwealth and State Governments, it is difficult to sustain a strong argument for the level of balances currently held. (p. 5)

- The dramatic decline in cash reserves in 1991/92 and, to a lesser extent, 1992/93, was the direct result of the LAC having to cover operating deficits in those years. The operating deficit in 1991/92 used more than half of the \$18m in the cash reserves that the LAC had started with in that year.
- If the LAC had not drastically reduced its level of service in 1992/93, it would have wholly depleted its reserves and incurred a substantial debt by the end of that year. In fact, if the number of grants of aid in 1992/93 had been maintained at the level of the previous year (24,300), the deficit in 1992/93 would have been in the order of \$10.3m, leaving the LAC with no cash reserves and debts of approximately \$5m (see below).
- In 1993/94 the LAC achieved an operating surplus of \$5.1m which returned the level of cash reserves to about \$10.5m. This was achieved by continuing to restrict the number of grants to a level well below pre 1992/93 levels, reducing expenditure in other areas, and an increase in income.

⁴⁹ 'For several years the State [grant] was in excess of the [minimum under the 1990 Funding Agreement] because of high interest rates; however, no LAO policy existed for offsetting future shortfalls in its share by placing excess funds aside. Services simply expanded to satisfy interest group, client and political pressure' (PSMC 1992, p. 31). See also the President's letter of transmission to the Attorney-General Legal Aid Commission of Queensland 1992, *Annual Report 1991/92*, p. 2.

⁵⁰ President's letter of transmission to the Attorney-General, Legal Aid Commission of Queensland 1992, *Annual Report 1991/92*, p. 2.

⁵¹ See document prepared by Mr D Hook, Acting Director, entitled 'Executive Summary for the Honourable the Attorney-General 5th January 1990 Re: New Fee Structures and Effect of Increased Fees on Legal Aid' attached to LAC minutes of meeting dated 19 January 1990.



**FIGURE 3.10 – LEGAL AID COMMISSION LIQUID ASSETS
(1983/84–1993/94)**

Sources: Legal Aid Commission of Queensland, Annual Reports 1983/84–1993/94.

Note: Liquid Assets include: cash at bank and on hand; Statutory Deposit; Cash Investments; and Bank Overdraft.

KEY FINDING: DETERMINANTS OF LEGAL AID COMMISSION EXPENDITURE AND LIQUID ASSETS

- The LAC significantly increased grants of aid during the peak income years of 1989/90 and 1990/91. With hindsight, it is apparent that inadequate provision was made for a possible decline in income. In addition, the cost of fee increases and the increased number of grants were seriously underestimated. As a result, the LAC's cash reserves were significantly depleted in 1991/92 and 1992/93. The level of reserves has been partly restored but only by drastic reductions in the level of service provided by the LAC in 1992/93 and 1993/94.

LEVELS OF SERVICE

As indicated, the substantial drop in the level of service in 1992/93 and 1993/94 was due less to the decrease in revenue than to the need to make a significant correction for the high increases in levels of service in 1989/90 and 1990/91. The increases in grants were simply unsustainable, even if the high levels of revenue for the provision of legal assistance in those years had continued.

Figure 3.11 compares the actual level of service provided by the LAC (as measured by grants of aid) with the level which the LAC could notionally have afforded, for 1989/90 to 1993/94. Figure 3.11 also shows a five

year average of the "notional" maximum number of grants. (This is the number of grants which could have been made in each year and fully paid for from revenue for that year whether or not the expenditure was actually incurred in that year). The "notional maximum" is calculated by dividing the revenue in each year by the sum of the total LAC expenditure in the last five years divided by the total number of grants over the same period.⁵² It should be noted that this ratio rose sharply between 1990/91 and 1991/92, at the same time as the number of grants of aid declined sharply. This was because an appreciable amount of the expenditure in later years is attributable to grants made in earlier years. Averaging expenditure per approval over the five year period corrects for this flow-on effect.⁵³

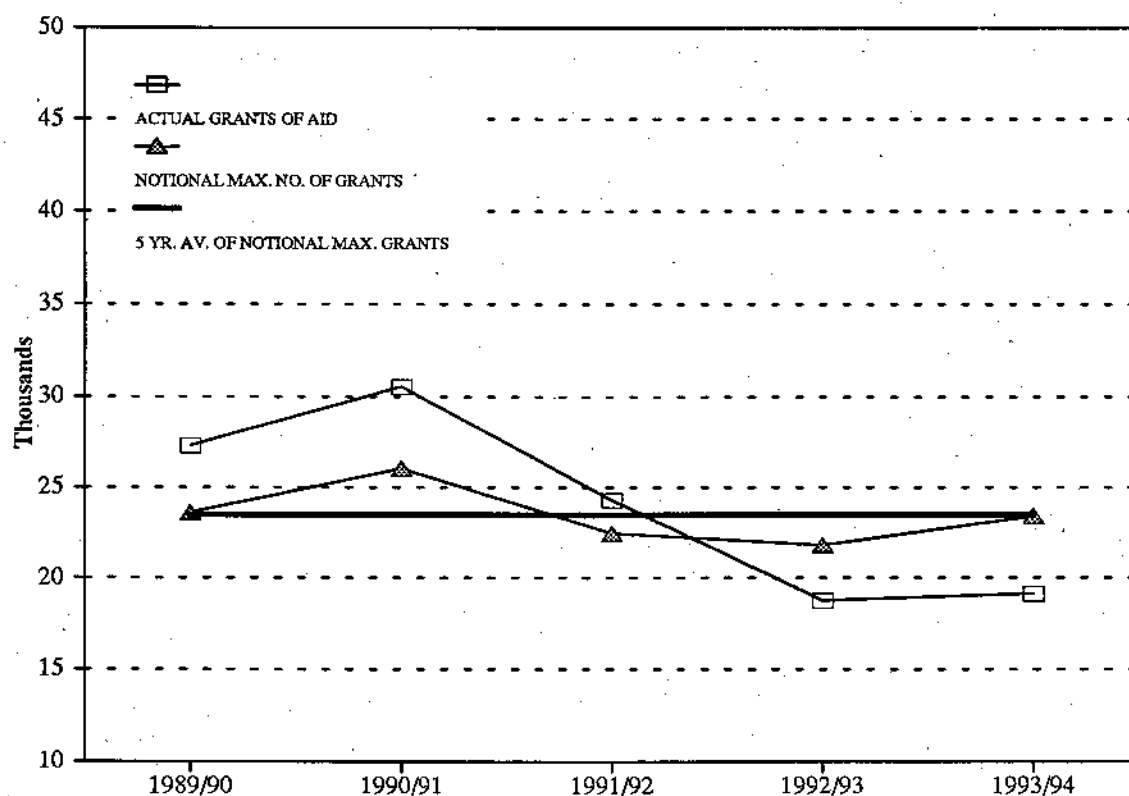


FIGURE 3.11 – LEGAL AID ACTUAL GRANTS OF AID, NOTIONAL ANNUAL MAXIMUM NUMBER OF GRANTS AND FIVE YEAR AVERAGE OF NOTIONAL ANNUAL MAXIMUM GRANTS (1989/90–1993/94)

Sources: Legal Aid Commission of Queensland, Annual Reports 1989/90–1993/94; Legal Aid Commission of Queensland n.d., *Submission to the Treasurer of Queensland on Funding for Prescribed Criminal Proceedings*.

Notes:

1. Financial and grant figures for the period up to and including 1990/91 include the LAC and PD.
2. Although the LAC commenced accounting on an accrual basis in 1990/91, all figures are based on cash transactions.
3. See text for explanation of how the notional maximum numbers of grants is calculated.

⁵² The reason for using the ratio of total expenditure to the number of grants as an index of the "enterprise cost" of grants of aid has been explained above (see p. 40 above).

⁵³ The ratio of expenditure to grants fell from \$2,282 per grant in 1992/93 to \$1,985 per grant in 1993/94. It should be noted that the largest recent rise in the scale of fees payable to practitioners occurred before this period, although fees were also increased in this period. The tendency of the increase in the proportion of criminal law grants in the last two financial years would be to reduce the ratio of expenditure to approvals.

Figure 3.11 indicates that the number of grants of aid approved in 1989/90 and 1990/91 exceeded the number which could have been supported by the revenue received in those years by approximately 8,000. The number made in 1991/92 was, despite a significant reduction, still too high by about 1,850 grants. The expenditure attributable to these additional grants is estimated to be about \$18m. (This estimate is obtained by multiplying the estimated 9,850 "excess" grants by the five year average cost per grant of \$1,842.)

The reduced number of approvals in 1992/93 and 1993/94 reflects a substantial correction for the over-commitment in 1989/90, 1990/91 and, to a lesser extent, 1991/92. The number of grants *which could have been supported* from 1992/93 revenue at current costs per grant was below the 1987/88 benchmark level by 2,530 (10%), and in 1993/94 by 900 grants (4%). However, the *actual number of approvals* in 1992/93 was nearly 5,590 (23%) below the 1987/88 benchmark level, and the *actual number* in 1993/94 was nearly 5,180 (21%) below.

As noted, the flat line in Figure 3.11 shows the average number of grants, in each year which could have been supported from the total revenue of the last five financial years. This line approximates what would have happened if a deliberate policy of income smoothing had been applied by the LAC. The figure indicates that approvals could have been maintained at a level only barely below the 1987/88 benchmark level without incurring any net operating deficit over the whole period at the same time as ensuring a much more stable level of service delivery. Maintaining approvals at the 1987/88 level would have resulted in a net reduction of cash reserves from their level in 1988/89 of approximately \$15.5m to \$7.5m in 1993/94, as opposed to the actual level in that year of \$10.5m. This analysis does not, of course, take into account actual or potential increases in the demand for services. These are considered further, below.

KEY FINDINGS: LEVELS OF SERVICE

- The level of service provided by the LAC, as measured by the number of grants of aid approved, has fallen markedly in recent years.
- This dramatic drop in grants of aid has been only partly attributable to falls in revenue. The increase in grants in the peak revenue years of 1989/90 and 1990/91 considerably exceeded the increase which could have been supported from revenue received in those years. The number of grants in 1991/92 was also too high relative to revenue.
- The reduced number of grants of aid in 1992/93 and 1993/94 reflects a substantial correction for the high level of approvals in the previous three years.
- Approvals could have been maintained at their 1987/88 level throughout the period, with the application of a policy of income smoothing and modest additional net expenditure of cash reserves.

LEVEL OF SERVICE BY LAW TYPES

Figure 3.12 breaks down the total number of grants of aid from 1987/88 to 1993/94 into criminal, family and civil law grants. As this graph strikingly portrays, the drop in grants of aid in recent years has been almost entirely at the expense of applicants for assistance in family and civil law matters. Between 1987/88 and 1990/91 crime and family grants each increased by approximately 30 per cent, while civil grants increased by about eight per cent. Criminal law grants of aid increased again in 1991/92 and thereafter remained at

a level about 36 per cent above their level in 1987/88.⁵⁴ In contrast, family and civil grants dropped dramatically from their peaks in 1990/91, to levels in 1993/94 which were respectively 58 per cent and 72 per cent below their 1987/88 levels. As previously noted, between 1987/88 and 1990/91, the ratio of crime to family to civil grants varied only moderately from an average of (approximately) 9:8:5. However, by 1991/92, this ratio was 9:4:2.5, and in 1992/93 and 1993/94 it was closer to 9:4:1.⁵⁵

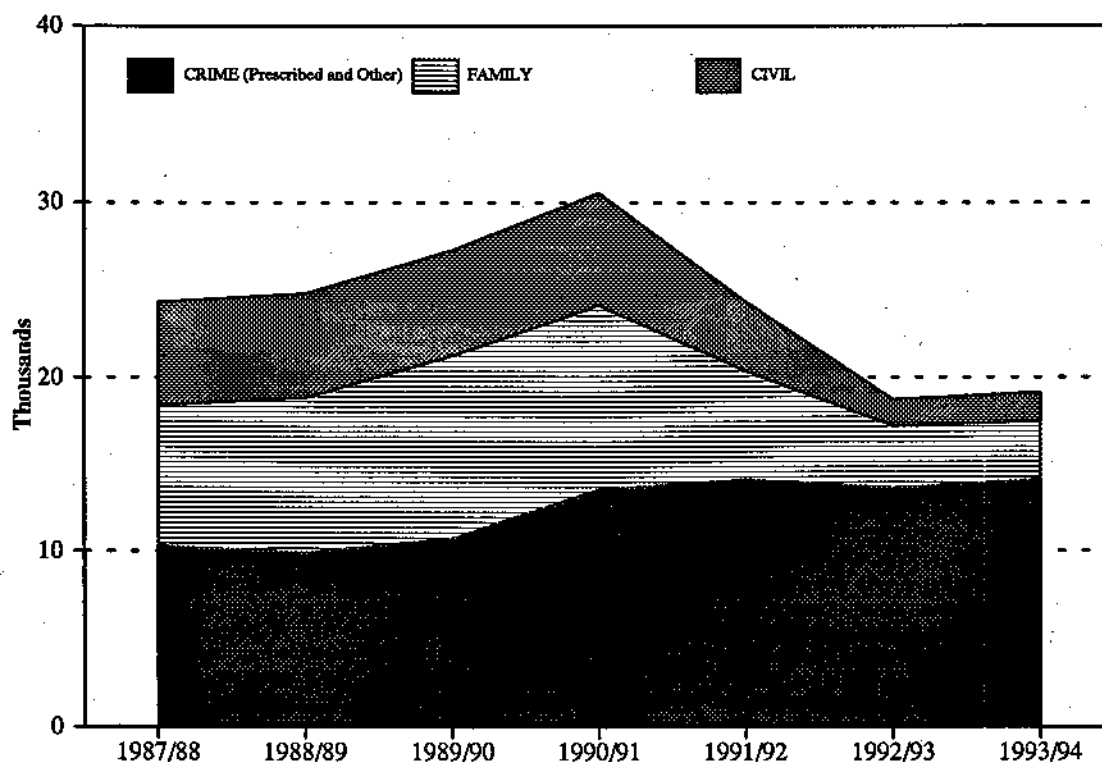


FIGURE 3.12 – LEGAL AID GRANTS OF AID (1987/88–1993/94)

Sources: Legal Aid Commission of Queensland, Annual Reports 1987/88–1993/94; Legal Aid Commission of Queensland n.d., *Submission to the Treasurer of Queensland on Funding for Prescribed Criminal Proceedings*.

Note: Grants of aid for the period up to and including 1990/91 include the LAC and PD.

LEVELS OF SERVICE IN RELATION TO MEASURES OF DEMAND

Table 3.1 shows the number of grants of aid per 1,000 population for prescribed crime, other crime, family and civil law matters for 1987/88 to 1993/94. This provides a rough indication of the extent to which the provision of services in these different areas has kept pace with changes in demand.⁵⁶

⁵⁴ The slight dip in criminal law grants of aid in 1992/93 is entirely attributable to a drop in prescribed crime approvals and was, therefore, due to a tightening of means testing policy in that year.

⁵⁵ Representatives of community legal centres identified an indirect impact on their services from this trend. Workload demands increased in the areas of family and civil law which previously had been funded by the LAC.

⁵⁶ The demand for legal assistance is difficult to measure directly. Application rates are not a good measure because the vast majority of legal aid applications are initiated through solicitors who are reasonably well-informed about the likelihood of success; hence, application and approval rates tend to vary together. It is worth noting, nonetheless, that while the proportion of criminal law applications approved has remained relatively constant, at over 80 per cent, the proportion of family and civil applications approved has fallen by more than 40 per cent since 1990/91.

**TABLE 3.1 – GRANTS OF AID PER 1,000 POPULATION BY LAW TYPE
(1987/88–1993/94)**

	1987/88	1988/89	1989/90	1990/91	1991/92	1992/93	1993/94
Prescribed Crime	1.7	1.7	1.8	2.1	2.5	2.3	2.8
Other Crime	2.0	1.8	1.9	2.5	2.1	2.1	1.7
Family	2.9	3.2	3.6	3.6	2.1	1.2	1.1
Civil	2.2	2.1	2.1	2.2	1.3	0.5	0.5

Sources: Legal Aid Commission of Queensland, Annual Reports 1987/88–1993/94; Legal Aid Commission of Queensland n.d., *Submission to the Treasurer of Queensland on Funding for Prescribed Criminal Proceedings*; population figures provided by ABS.

Note: Figures for the period up to and including 1990/91 include the LAC and PD.

The following points should be noted in relation to this table:

- As discussed in more detail below, prescribed crime grants of aid generally increased at a faster rate than Queensland's population, with the per capita approval rate in 1993/94 being 65 per cent above the 1987/88 rate.
- Grants of aid in family law matters increased significantly relative to population growth until 1990/91 and then plunged, so that by 1992/93 they were only one-third of their peak level. Had family approvals kept pace with population from 1987/88 onwards, the LAC would have funded an additional 8,100 grants.
- Increases in civil law approvals kept pace with population growth until 1990/91, but by 1992/93 were less than one-quarter of their peak level. Had civil law approvals merely kept up with increases in population, an additional 14,000 approvals would have been made in the seven years up to and including 1993/94.
- Per capita approvals for "other crime" matters rose slightly between 1987/88 and 1992/93 (with a noticeably episodic jump in 1990/91, the peak revenue year) and then fell significantly, following a LAC policy change in 1993/94, to about 900 fewer than required to keep pace with population growth.⁵⁷ Until this decline, non-prescribed crime had fared considerably better than the family and civil law areas, even though the LAC had the same discretion in relation to the funding of these matters.

⁵⁷ Data are available on the number of Magistrates Court crime appearances (including dangerous driving but excluding all other traffic offences) for every year up to and including 1992/93. These data show that, between 1987/88 and 1989/90, Magistrates Court appearances increased by over 20 per cent, but by 1992/93 had returned to less than the 1985/86 level. On the basis of this limited information, there is no reason to believe that the number of people being prosecuted for non-prescribed criminal offences has risen at a greater rate than the population.

The high rate of increase in prescribed crime approvals appears to have been partly due to a significant rise in the number of people being prosecuted for offences which fall into the definition of prescribed crime matters. Figure 3.13 compares the number of prescribed crime grants of aid, and the number of depositions received by the DPP, per 1,000 population for 1987/88–1993/94. This latter measure approximates the number of cases committed from the Magistrates Court for trial or sentence in the higher courts and, therefore, provides a reasonable indicator of changes in total higher court crime workloads. The number of prescribed crime grants consistently exceeds the number of depositions, because the former includes grants of aid for matters proceeding other than as trials or sentences (e.g. committal hearings, appeals, bail applications, mental health work, and so on).

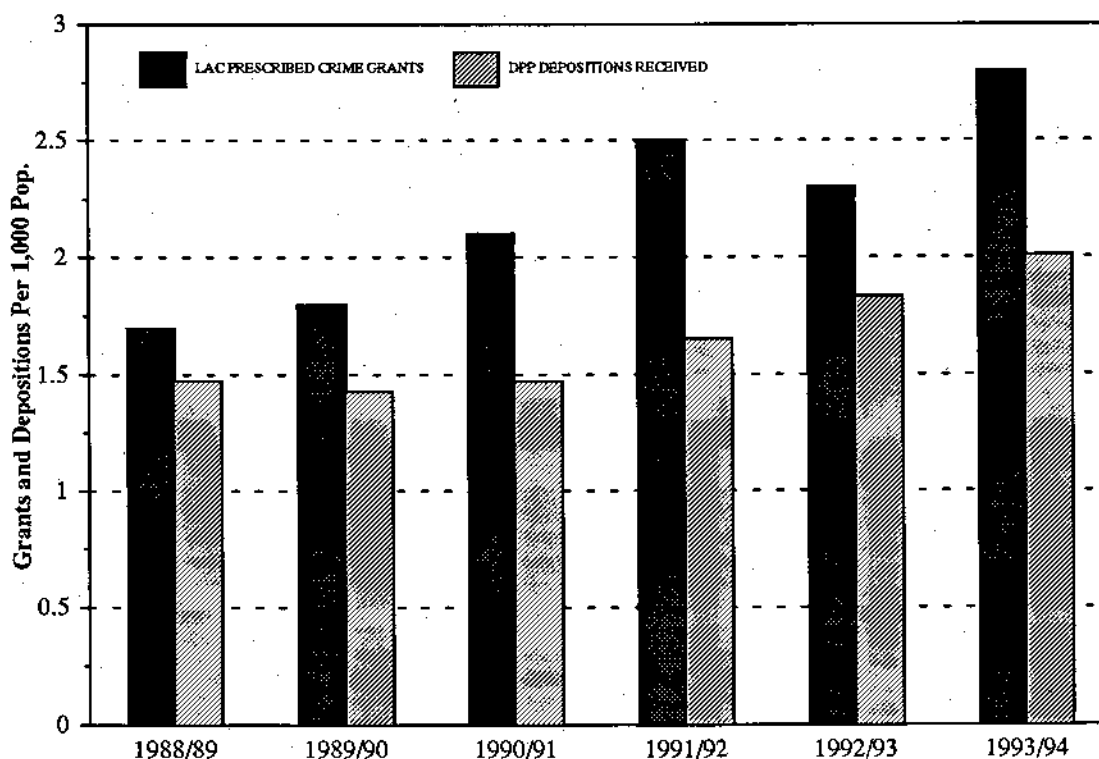


FIGURE 3.13 – LEGAL AID PRESCRIBED CRIME GRANTS OF AID AND THE DIRECTOR OF PUBLIC PROSECUTIONS DEPOSITIONS RECEIVED PER 1,000 POPULATION (1988/89–1993/94)

Sources: Legal Aid Commission of Queensland, Annual Reports 1988/89–1993/94; Legal Aid Commission of Queensland n.d., *Submission to the Treasurer of Queensland on Funding for Prescribed Criminal Proceedings*; Office of the Director of Prosecutions Queensland, Annual Reports 1988–1994; Castles, I 1993, *ABS Year Book: Australia*, No. 76, ABS Canberra; updated population figures provided by ABS.

Notes:

1. Prescribed grants of aid for the period up to and including 1990/91 include the LAC and PD.
2. DPP deposition figures have been converted from a calendar year basis to a financial year basis.

The graph shows that both prescribed crime grants of aid and the number of depositions received by the DPP have tended to increase at a higher rate than population. However, prescribed crime grants of aid have increased more rapidly. In all, over 3,250 more prescribed crime grants were made after 1987/88 than would have been expected had grants increased only in line with increases in the number of depositions received by the DPP. This does not necessarily mean that there has been a “real” growth in prescribed crime assistance.

For instance, it is possible that the number of grants of aid for committals in prescribed crime matters, or for appeals, has increased at a relatively higher rate than prescribed crime overall, although statistics which might directly confirm this are not available. However, it can be said with some confidence that prescribed crime grants of aid *at least* kept pace with the growth in prescribed crime matters during the period under consideration.

The continuing increase in the LAC's prescribed crime workload has been directly associated with the fall in the level of service being provided in the areas of family and civil law and, more recently, in relation to non-prescribed crime matters. Under the *Legal Aid Act*, the LAC must provide assistance for prescribed crime matters, subject only to the means test. In contrast to other areas of law, the LAC has had no discretion to tighten funding guidelines to limit the numbers of grants of aid and consequently the costs of providing services. Thus, when the LAC corrected for the deficits incurred in 1991/92 and 1992/93 by reducing expenditure, the cutbacks were all in areas other than prescribed crime. Even if the LAC had avoided incurring these deficits, it would have been necessary to reduce service in these other areas, given the rising demand for prescribed crime assistance and the fall in revenue available to the LAC.

Under the 1990 Funding Agreement, the merger of the PD with the LAC capped the State's obligation to meet the cost of legal assistance for prescribed crime from consolidated revenue, and transferred real cost increases to the LAC budget. While in most years since the merger the State grant to the LAC has exceeded the minimum required under the Agreement (see above) it has been well short of that required to compensate for the significant increase in prescribed crime matters over the same period.

According to the LAC, the "unfunded" cost of the LAC's increased prescribed crime burden in 1990/91–1993/94 was over \$12.5m.⁵⁸ This figure should be treated with some caution because:

- The LAC itself concedes that this amount is an estimate only, as it has not been able to obtain an accurate breakdown of the cost of servicing the prescribed crime area since the merger.
- \$4.9m of the "shortfall" estimated by the LAC was incurred in 1990/91, largely prior to the merger, when it was possible to cover this amount from high trust account earnings.
- One of the objectives of the merger was to reduce administrative and related costs. It was never intended that the LAC should be fully compensated for any increase in prescribed crime costs following the merger (see Chapter 2).⁵⁹

However, the CJC accepts that the merger of the two organisations in 1991 imposed a substantial additional financial burden on the LAC which has been further exacerbated by the continuing increase in the prescribed crime workload. This combination of circumstances has had significant consequences for the LAC's service delivery profile, particularly in relation to the family law and civil law areas.

⁵⁸ Correspondence from Director of the LAO, 23 January 1995.

⁵⁹ See also correspondence from the Honourable Minister for Justice and Attorney-General and Minister for the Arts, Mr D Wells MLA to Mr S Keim, President, LAC, 10 December 1991.

KEY FINDINGS: LEVEL OF SERVICE BY LAW TYPES

- The dramatic drop in recent years in the total number of grants of aid has been almost entirely at the expense of applicants for assistance in family law and civil law matters. Family and civil law grants have fallen dramatically, both relative to population growth and in absolute numbers. The number of family law grants per 1,000 population is now 40 per cent of the level in 1987/88. The number of civil law grants per 1,000 population is now less than 25 per cent of the level during the period 1987/88 to 1990/91. If grants of aid had kept pace with increases in population, an additional 8,100 family and 14,000 civil law grants could have been made since 1987/88.
- The increase in prescribed criminal law grants of aid has kept pace, and possibly exceeded, increases in prosecutions of prescribed criminal matters since 1987/88.
- The total number of grants of aid for non-prescribed criminal matters since 1987/88 increased broadly in line with population growth until 1993/94. Grants in the period between 1990/91 and 1992/93 actually ran ahead of increases in population, whereas in 1993/94 they were about 15 per cent below what was necessary to keep pace with population.
- The marked change in the legal assistance service profile since 1990/91 has come about, at least partly, because as a matter of law the LAC has been required to provide aid for all prescribed criminal law matters subject only to a means test. The number of prescribed criminal matters continued to increase significantly after 1990/91 at the same time as revenue fell.
- Had prescribed criminal law matters continued to be funded on the same basis as prior to the merger of the LAC and PD, the LAC would have received several million dollars in additional funds. However, it must be acknowledged that one of the objectives of the merger was to ensure the more efficient use of available funds.

ESTIMATED COST OF MAINTAINING RELATIVE SERVICE LEVELS

At present cost levels the LAC clearly could not have sustained increases in grants of aid in line with the measures of demand used above.

Figure 3.14 shows the total number of grants of aid actually approved in 1987/88–1993/94 and compares this with the required total number of grants which would have been made in each year had grants of aid for prescribed criminal law matters increased in line with higher court criminal prosecutions and if grants for all other law types had kept pace with population growth. This figure indicates that the number of grants of aid approved in 1993/94 was approximately 11,000 less than required to maintain the relative level of service at the level of the late 1980s.

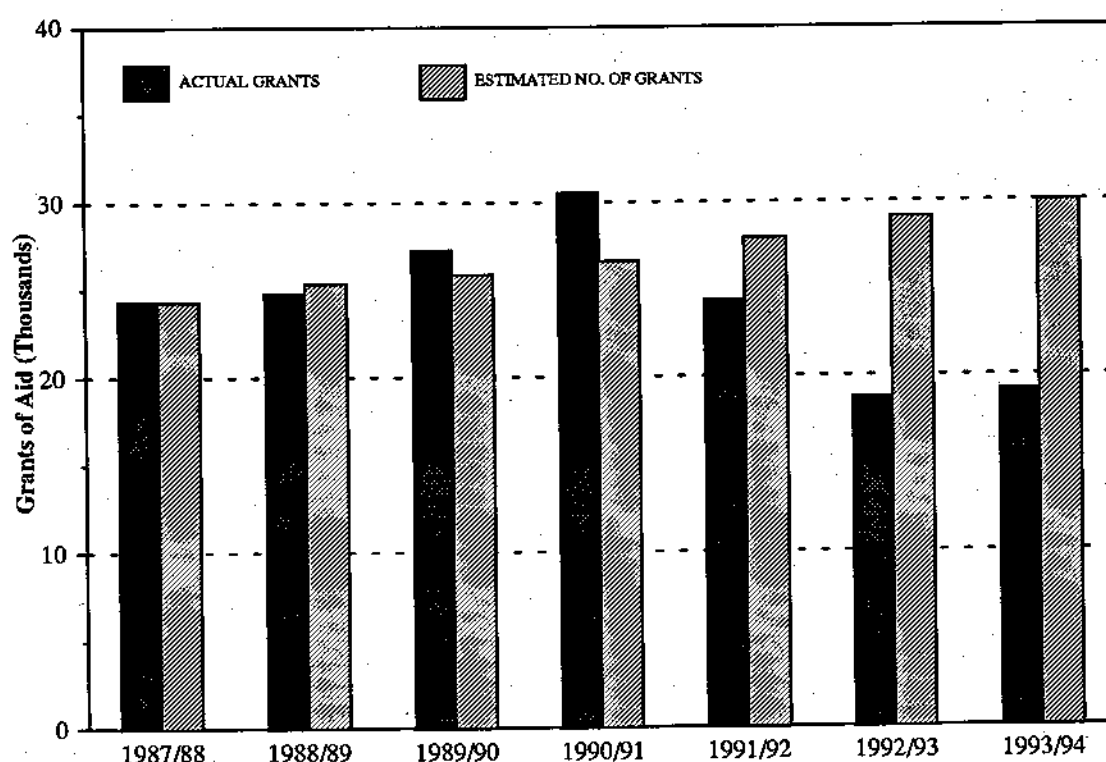


FIGURE 3.14 – ACTUAL GRANTS OF AID APPROVED COMPARED WITH ESTIMATED NUMBER REQUIRED TO MAINTAIN RELATIVE LEGAL AID SERVICE LEVELS (1987/88–1993/94)

Sources: Legal Aid Commission of Queensland Annual Reports 1987/88–1993/94; Legal Aid Commission of Queensland n.d., *Submission to the Treasurer of Queensland on Funding for Prescribed Criminal Proceedings*; Office of the Director of Prosecutions Queensland 1994, *Annual Report 1994*; Castles, I 1993, *ABS Year Book: Australia*, No. 76, ABS, Canberra; unpublished information obtained from ABS.

Notes:

1. Grants of aid for the period up to and including 1990/91 include the LAC and PD.
2. The estimated number of grants required to maintain service levels is calculated by adjusting the number of grants of aid approved in 1987/88 in line with increases in the number of depositions received by the DPP (for prescribed crime) and population growth (all other grants of aid).

Figure 3.15 compares real LAC/PD revenue in 1987/88–1993/94 with the estimated real expenditure required to maintain the same relative level of service over this period. These figures suggest that the LAC could have continued to increase service levels in line with increased demand until the end of 1991/92, but only by completely exhausting reserves. The expenditure required in 1992/93 to maintain grants in line with these measures of demand would have been in the order of \$53.6m, exceeding revenue in that year by about \$13.5m. Similarly, the required expenditure in 1993/94 of approximately \$55.3m would have exceeded actual revenue by about \$12.2m.

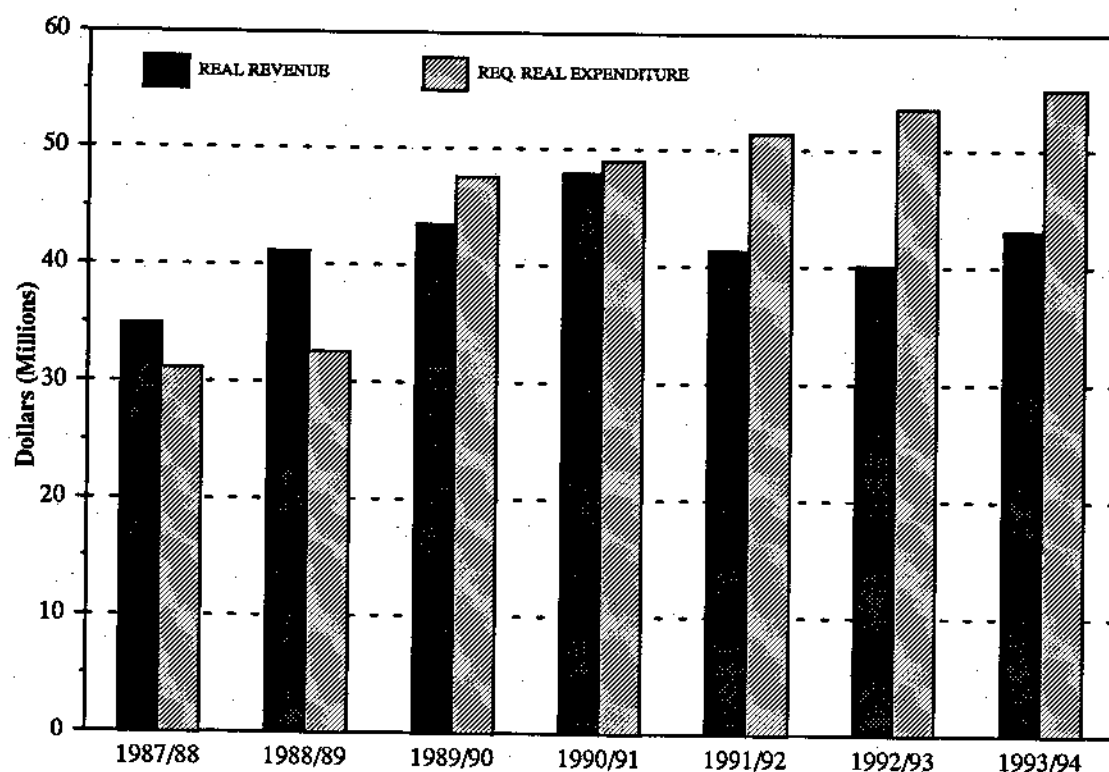


FIGURE 3.15 – REAL REVENUE RECEIVED COMPARED WITH ESTIMATED REAL EXPENDITURE REQUIRED FOR THE LEGAL AID COMMISSION TO MAINTAIN RELATIVE SERVICE LEVELS (1987/88–1993/94)

Sources: Legal Aid Commission of Queensland, Annual Reports 1987/88–1993/94; Legal Aid Commission of Queensland n.d., *Submission to the Treasurer of Queensland on Funding for Prescribed Criminal Proceedings*; Office of the Director of Prosecutions Queensland 1994, *Annual Report 1994*; Castles, I 1993, *ABS Year Book: Australia*, No. 76, ABS, Canberra; unpublished information obtained from ABS.

Notes:

1. Annual required real expenditure is the real average cost per grant multiplied by the estimated number of required grants (as shown in Figure 3.14). For 1988/89, the real average cost per grant is the ratio of real expenditure to the number of grants in that year. For 1989/90 to 1993/94 the estimate is based on the ratio of total actual expenditure, in real terms, to the total number of grants for the whole period.
2. Revenue for the period up to and including 1990/91 includes LAC and PD.
3. Although the LAC commenced accounting on an accrual basis in 1990/91, all figures are based on cash transactions.
4. "Real Revenue" is revenue indexed for inflation, using the October–December 1993 quarter as the base.

In interpreting this figure it is important to be aware that the actual increase in demand for legal assistance since the 1987/88 benchmark was established could have been either less or greater than the above analysis assumes. Community needs for legal assistance are affected by many factors. Increases in population and serious crime, although simple and useful indicators, are incomplete measures of real changes in these needs. Other social and economic factors are obviously important. Moreover changes in the law can increase or decrease demand for litigation assistance. For example, the introduction of domestic violence orders, criminal injury compensation, and possible statutory recognition of de facto relationships increases the demand for

legal assistance whereas provision for a "no fault" component for accident compensation reduces demand. Similarly, the introduction of new government services and programs can decrease the demand for litigation in some cases,⁶⁰ and increase it in other cases.⁶¹ Unfortunately, the information required to take account of all of these changes is simply not available.

Second, this analysis assumes that it would have been appropriate to increase levels of service over this period in line with demand. This obviously begs significant policy questions which, for reasons given in the introduction to this report, the CJC is not well placed to answer. However, it should be noted that increasing funding for legal assistance is only one way in which government can improve access to justice. The recent establishment of a litigation disbursement lending scheme (with available capital of \$4m provided by the Public Trust Office), and the proposal to liberalise the restrictions on contingency fees, are two examples of a different strategy designed to encourage private practitioners to take on more civil litigation on a speculative basis.⁶² Promoting the many other "substitutable services" (to use the economist's term) for litigation, such as informal tribunal proceedings, community mediation services and other public and private sector dispute resolution services,⁶³ is another strategy, as is directing resources towards "preventative" and education services. The CJC is not in a position to assess the relative merits of these approaches but it does think it desirable to emphasise the complexity of the policy questions which underlie them.

Third, the above analysis is based on the LAC/PD's historical costs and service configurations. As noted above, in the period under consideration – particularly the late 1980s – there were substantial increases in the cost of providing legal assistance. The CJC does not have the means, and has not attempted, to systematically evaluate what strategies might be available to the LAC to lower service costs or improve service effectiveness, for example, by changing its price structures through means such as competitive tendering, or altering service configuration by directing more resources to activities such as mediation, advice services, community legal centres and other programs.⁶⁴

KEY FINDING: COST OF MAINTAINING SERVICE LEVELS

- In order to maintain increases in grants of aid in line with increases in prescribed criminal matters and population since 1987/88, it is estimated that LAC revenue would have had to continue to increase after its actual peak in 1990/91, to about \$55m in 1993/94. This is around \$12.2m more than the LAC's actual revenue for that year. However, these estimates do not involve any assessment of the potential for meeting the demand for legal assistance in other ways, or of the LAC's capacity to reduce costs per grant.

⁶⁰ Countless examples could be given, including mediation services in the Family Court and community justice programs, law enforcement programs like Neighbourhood Watch and the introduction of speed cameras, and services like those offered by the Ombudsman and the Consumer Affairs Commissioner.

⁶¹ Some types of law enforcement programs are prominent examples. Community education programs relating to issues like sexual harassment and other work-place issues might be others.

⁶² This is sometimes referred to as "privatised legal aid". Similar examples include establishing a contingent legal aid fund, or "CLAF" in the Western Australian model, or encouraging the creation of legal expenses insurance schemes, like that offered by the Public Service Association in South Australia.

⁶³ Compare the Banking Industry Ombudsman.

⁶⁴ The issue of whether litigation assistance is provided more effectively by the in-house service or by referring assisted cases to private practitioners is considered in some more detail in Chapters 4 and 6.

SUMMARY OF KEY FINDINGS

The key findings of this chapter may be summarised as follows:

- Between 1987/88 (the benchmark year under the 1990 Funding Agreement) and 1993/94 grants of aid for prescribed crime matters at least kept pace with increases in prosecutions of prescribed crime offences, as measured by the number of depositions received by the DPP.
- Until 1993/94, grants of aid for non-prescribed crime increased broadly in line with population.
- Grants of aid made in the areas of family and civil law have declined dramatically – both in absolute and per capita terms – from the benchmark levels of 1987/88.
- The decline in approvals for civil, family and recently, non-prescribed crime matters, has been due to:
 - ★ constraints on the LAC imposed by its statutory obligation to grant aid in all prescribed criminal matters
 - ★ a significant increase in the prescribed crime workload and a change in the LAC funding base following the merger of the LAC and PD
 - ★ significant real increases, particularly in the late 1980s, in the cost of providing legal assistance
 - ★ unanticipated deficits incurred by the LAC due to the very large increases in the number of grants of aid in 1989/90 and 1990/91, resulting in the need for substantial corrections in the commitment of resources in later years
 - ★ a fall in real revenue from peak levels in 1989/90 and 1990/91, due primarily to falling income from interest on solicitors' trust accounts.
- In recent years, per capita legal aid funding in Queensland has tended to be lower than in New South Wales and particularly Victoria, due to:
 - ★ generally lower levels of Commonwealth funding
 - ★ lower levels of funding from State sources in 1991/92 and 1993/94
 - ★ significantly lower levels of client contributions (relative to Victoria).
- Given *existing* cost and service delivery structures and policies, the LAC would require substantial additional funding to enable it to provide the same service profile, as measured by grants of aid, as it provided in 1987/88.

CHAPTER 4

THE LEGAL AID COMMISSION AND PRIVATE PRACTITIONERS

Private legal practitioners have played a central role in the delivery of legal aid services in Queensland. In 1993/94, for example, 70 per cent of all grants of aid were handled by private practitioners and payments to practitioners accounted for just under half of total LAC expenditure. In earlier years, these proportions were even higher.

As part of the research for this project, CJC researchers conducted interviews with 15 barristers and 19 solicitors who do substantial amounts of legal aid work in crime-related areas. A meeting was also organised with a number of solicitors and barristers of the Far North Queensland Defence Lawyers Association. In addition, the CJC referred to the extensive material contained in the affidavits filed by Mr A Boe and other solicitors in the matter of *Boe v Criminal Justice Commission*⁶⁵ and to several written submissions made by practitioners to the CJC.

Practitioners from the Gold Coast, Ipswich, Toowoomba, Sunshine Coast, Brisbane, Townsville and Cairns were interviewed with a view to identifying any regional issues which might have been of concern to practitioners. The concerns expressed about the current funding levels and payment practices were generally consistent across the State. Issues raised which were specific to practitioners in the regional areas related primarily to the impact of remoteness and how this affected the operation of regional offices.

It is clear from interviews and submissions that private practitioners are highly critical of many aspects of the LAC's operations and, in particular, its scales of fees and payment practices. The primary purpose of this chapter is to document and evaluate these concerns. The issues to be considered will be dealt with under four main headings:

- issues relating to fee structures
- LAC payment guidelines and practices
- recent trends in the use of private practitioners by the LAC
- the impact of LAC expenditure constraints on private practitioners and the quality of service provided.

THE LEGAL AID COMMISSION'S FEE STRUCTURES

CURRENT ARRANGEMENTS

Since its inception the LAC (and the PD when it was a separate entity) has had a practice of "assigning" or referring grants of legal aid to members of the private legal profession to perform legal services on its behalf. In fact, the provisions of the *Queensland Law Society Act*, which provide for payments to the LAC (and previously to the PD) from the Contribution Fund, require all monies received from this source to be expended on payments to private legal practitioners for work performed on assigned legal aid matters.

⁶⁵ Supreme Court of Queensland 10 June 1993 [93.186], unreported.

Under the *Legal Aid Act*, the LAC has the authority to determine the fees payable to private legal practitioners for performing work on its behalf. Section 10B of the Act establishes a Fees Committee to make recommendations to the LAC on fees to be paid to private legal practitioners for services performed on behalf of legally assisted persons. The Fees Committee is a sub-committee of the LAC constituted by the following Commissioners:

- a chartered accountant, who is the presiding officer
- a Queensland Law Society nominee
- a Bar Association nominee
- the Director of the LAO
- the State Attorney-General's nominee
- the Commonwealth Attorney-General's nominee.

The Committee consults with the Queensland Law Society and the Bar Association when reviewing the LAC's scales of fees. The LAC is required to consult with and take into account the recommendations of the Fees Committee when determining new scales of fees (ss. 33(19) and (20) of the *Legal Aid Act*).

The standard practice of the LAC has been to pay practitioners a fixed rate for different types of legal work. Historically, in respect of civil and family law matters, the fee scales adopted by the LAC have been based on the statutory Scales of Costs set by the Government.⁶⁶ The statutory Scales of Costs are revised and adjusted from time to time, taking into account changes in the Consumer Price Index and other costs indices.⁶⁷ There is no statutory Scale of Costs for criminal law matters. Prior to the merger of the LAC and PD, the PD's Scales of Fees were set by Cabinet. However, the 'State Government has no role in setting fees paid by the LAC' (Treasury/PSMC 1991, p. 8). Accordingly, the LAC sets its own scales of fees for the payment of private legal practitioners who perform legally aided criminal law work.⁶⁸

ISSUES

As indicated, many private practitioners who do legal aid work are highly critical of the LAC's scales of fees and payment practices. To a considerable extent, this discontent appears to relate to the administration of payment guidelines, rather than to the scales themselves. However, it is certainly a widespread view, particularly among solicitors, that the LAC does not pay enough for some forms of legal work.

The introduction to this report made it clear that the CJC is not in a position to make judgments about the appropriate level of remuneration for private legal practitioners, nor to assess the inherent worth of different

⁶⁶ For many years the LAC had a policy of paying 80 per cent of the statutory scale for family and civil law matters. Following a decline in income the LAC amended its fees to 72 per cent of the statutory scale for civil law matters and to a fixed rate of \$88 per hour for a maximum number of hours per stage of matter for family law matters (unpub. information received from the LAC 20 June 1994).

⁶⁷ For an example of the method of calculation of proposed increases in scales of costs see Meredith 1993.

⁶⁸ Issues raised by practitioners regarding the disparity between the Scales of Fees for criminal law work and those paid by the LAC for family and civil matters are discussed later in this chapter.

types of legal work. Instead, as indicated, the CJC's preferred approach is to rely on "real world" benchmarks. The measures to be examined for this purpose are:

- changes over time in the value of fees paid by the LAC for particular types of work
- comparisons between fees paid for prescribed criminal matters and other types of matters funded by the LAC
- comparisons with fees paid by legal aid bodies in other jurisdictions
- comparisons between what practitioners receive from the LAC and what they consider they can obtain privately for similar types of work.

CHANGES IN FEE SCALES

Over the past several years there have been numerous changes to the LAC/PD Scales of Fees.

Table 4.1 summarises the changes to the scales of fees payable for trials in prescribed criminal matters since 1988. Trial fees have been used as the basis for comparison because they represent the substantive legal work connected with representing defendants in prescribed criminal matters. The table shows that trial fees for such matters increased by around 60 per cent between September 1988 and July 1992. Allowing for the effects of inflation, there has been a "real" increase since 1988 of around 38 per cent.

**TABLE 4.1 – CHANGES IN PUBLIC DEFENDER AND LEGAL AID COMMISSION
SCALES OF FEES FOR PRESCRIBED CRIMINAL MATTERS**

	SEPT 1988	MARCH 1992	JULY 1992 TO PRESENT	CHANGE FROM 1988
	\$	\$	\$	%
SUPREME COURT TRIALS				
Barrister				
Preparation	200	290	320	60
Per Day	350	500	556	59
Solicitor				
Preparation	180	260	286	59
Instructing Per Day	250	360	396	58
DISTRICT COURT TRIALS				
Barrister				
Preparation	132	190	210	59
Per Day	255	365	402	58
Solicitor				
Preparation	165	240	264	60
Instructing Per Day	215	310	340	58

Sources: Legal Aid Office (Queensland), *Scales of Fees in Legally Aided Cases*, effective 1 March 1992 and 20 July 1992; correspondence from Ms B Newton, Public Defender, 9 September 1988 to the Bar Association of Queensland and correspondence from Ms B Newton, Public Defender, 12 September 1988 to the Queensland Law Society.

Note: The fees for September 1988 are PD's fees.

It is noteworthy that fees for prescribed criminal matters rose by around 10 per cent between March and July 1992, at a time when the LAC was experiencing a substantial deficit. The LAC has indicated that these increases were made in response to the 1991 Treasury/PSMC report and that the increases had the approval of the State Government. The Treasury/PSMC report noted that 'scheduled PD fees are among the lowest in the Commonwealth' (1991, p. 7), despite a 20 per cent increase in the schedule in 1990. The report suggested a number of options for fee increases which ranged from the LAC funding any fee increases which it adopted, to the State fully funding fee increases to a level on a par with the civil fees schedule. The report also noted that the State Government had given an "in principle" commitment to funding a 20 per cent increase in the Scale of Fees.

Although these fee increases have been very substantial in percentage terms, it should be noted that fees paid by the PD were generally below those paid by the LAC prior to the merger. Hence, much of the increase in prescribed crime trial fees after the merger was for the purpose of reducing the disparity between prescribed criminal matters and other matters funded by the LAC. For the most part LAC fees for family and civil law matters appear to have increased at a slower rate, although they are still substantially higher than fees for prescribed criminal matters (see below).⁶⁹ In addition, as also discussed below, in recent years the increases in fees payable have been offset to a considerable extent by a reduction in the flexibility with which payment guidelines are administered⁷⁰ and the inclusion in the category of "preparation" of some items which were previously the subject of separate payment. These initiatives have had a significant impact on the income generated by those private practitioners who do substantial amounts of legal aid work.

INTERNAL COMPARISONS

Many of the practitioners spoken to by CJC researchers expressed concern about what they saw as a substantial disparity between the fees paid for prescribed criminal matters and fees paid for other matters. There was a general view among practitioners that the remuneration for prescribed criminal matters was considerably lower than that paid for family and civil law matters. For instance, in a submission to the CJC, a barrister who does a substantial amount of legal aid work pointed out that he was paid \$1,714 to appear in the Supreme Court on a two day murder trial, but could have received up to \$3,939 had he been funded by the LAC to appear in a two day civil law trial in the Supreme Court.

Until mid-1992 there was also a disparity between rates of remuneration for prescribed criminal matters (traditionally funded by the PD) and for non-prescribed criminal matters (which had been funded by the LAC). Historically, rates of remuneration for private legal practitioners undertaking non-prescribed criminal law matters on behalf of persons assisted by the LAC were higher than the rates paid by the PD for prescribed criminal matters. Despite significant fee increases in relation to prescribed criminal matters, parity was not achieved until 20 July 1992, when fees for non-prescribed criminal matters were reduced to the level of fees paid for prescribed criminal matters. The Bar Association, in its submission to the CJC (dated 29 July 1993) stated that a comparison with civil fees 'underlines how appallingly low Public Defence/Legal Aid fees have been'.

⁶⁹ It is not possible to give a single percentage measure of change for family and civil law fees because the rate of increase has varied markedly depending upon the item, ranging from an 80 per cent increase (for a solicitor instructing on the second day of a Family Court trial) to a 27 per cent decrease (for counsel appearing on a Family Court trial).

⁷⁰ The Treasury/PSMC report was not supportive of the broad discretion which was exercised by the PD and later the LAC in relation to fees for prescribed criminal matters. It proposed that 'a significant across-the-board increase in the scheduled fees should eliminate or greatly reduce the need for discretionary increases in fees above the schedule' (1991, p. 7).

Many of the practitioners who were interviewed believed that the disparity between fees paid for criminal law matters and those paid for other types of legal work has, to a large degree, been due to the fact that there is no statutory Scale of Costs for criminal law matters. These practitioners argued that the absence of the statutory Scale of Costs has adversely affected criminal law practitioners who perform legal aid work by allowing the LAC to fix fees for criminal law matters according to its financial circumstances, whereas civil and family law fees historically had been paid at a percentage of the statutory Scales of Costs.⁷¹

In its submission to the CJC, the LAC supported the establishment by the Government of a statutory "Scale of Costs" for criminal law matters. The LAC stated its belief that '... if proper fees are paid, proper representation for disadvantaged people will be achieved' (LAC 1993, p. 12).

The LAC indicated it believed that:

... fees for representation in the criminal law area should be equal to those fees for family law and civil law cases. [The LAC] certainly does not accept that in an area where the liberty of the subject is at stake lesser fees in comparison to other areas should be paid.

Nor can social justice be achieved if funding is based on an underlying assumption that the private legal profession will continue to do legal aid criminal law work at a rate of return that is abysmally low. (1993, p. 13)

There still appears to be a substantial disparity in fees paid for criminal, family and civil law matters. Although it is difficult to compare across the scales because of the different ways in which fees are itemised in each scale, there are some items which appear to entail similar amounts of work. These are set out in Table 4.2 below.

TABLE 4.2 – COMPARISON OF SELECTED ITEMS FROM THE CRIMINAL, FAMILY AND CIVIL LAW SCALES (1993)

	FAMILY \$	CIVIL (DISTRICT COURT) \$	CRIME (DISTRICT COURT) \$
Solicitor Instructing (2nd day)	528	408	340
Counsel Refresher	800	500 (for claims < 50,000) 833 (for claims > 50,000)	402
Solicitor Preparation and Brief and 1st Day Attendance	1,760 ¹	998 ²	604 ³

Source: Legal Aid Office (Queensland) 1993, *Scale of Fees in Legally Aided Cases*.

Notes:

1. Item F42 of the family law fees.
2. Combines the trial preparation and brief fee (\$590) and solicitor's instructing fee (six hours at \$68 per hour).
3. Combines the trial preparation fee (\$264) and solicitor's instructing fee (\$340).

⁷¹ The LAC had historically paid 80 per cent of the statutory Scales of Costs for family and civil law matters. More recently, these rates were reduced to 72 per cent of scale for civil law matters. Family law matters are now remunerated at a rate of \$88 per hour for a maximum number of hours per stage of matter.

It is apparent from the above table that, depending on the item, fees for criminal law matters are currently 34 to 64 per cent of those paid for family law matters. The disparity in relation to civil matters is less, but still substantial.⁷² Of course, it is also the case that funding for civil and family law matters has been cut back substantially in recent years, whereas prescribed crime funding has accounted for an increasing proportion of total LAC outlays. In addition there have been fewer cutbacks in spending on non-prescribed crime than in relation to family and civil law matters.

INTERSTATE COMPARISONS

Table 4.3 compares legal aid fees currently payable by various State legal aid commissions for criminal law matters at the District and Magistrates Court level, the two levels of court where the bulk of legal aid work is performed.⁷³ Due to the different payment structures used in the various States, care should be exercised in interpreting the data presented in this table. A further complicating factor is that legal aid commissions in some jurisdictions (such as Queensland and Victoria) have now introduced schemes such as the "maximum fee per stage of matter", which limit the amount that a legal representative may claim for work during each stage of a case. However, the table does provide a broad indication of where Queensland stands relative to other States.

Table 4.3 shows that fees for barristers undertaking work for the Queensland LAC are in about the middle of the range across the four jurisdictions. Fees for work performed in the District Courts are less than those paid to barristers by the New South Wales Legal Aid Commission, within the range for barristers performing legal aid work in Victoria, and exceed those paid by the South Australian Legal Aid Commission. Solicitors acting in the District Court jurisdiction on legal aid matters are paid more by the Queensland LAC than their New South Wales counterparts, but less than solicitors performing the same work in South Australia.⁷⁴ Fees paid to solicitors in Queensland Magistrates Court matters tend to be towards the upper end of the range.

⁷² The preceding discussion should not be construed as indicating support by the CJC for the introduction of a statutory Scale of Costs for criminal law, or for further increasing fees for criminal law matters to the level for civil and family law matters. On the contrary, the CJC in Chapter 6 recommends that the LAC should move away from an itemised fees model (which is the basis of statutory Scales of Costs).

⁷³ The inter-jurisdictional differences in fees paid for Supreme Court work are similar to the differences in District Court fees.

⁷⁴ Comparisons with County Court solicitors' payments in Victoria are not possible, due to the different system of payments employed in that State.

**TABLE 4.3 – INTERSTATE COMPARISON OF LEGAL AID COMMISSION
CRIMINAL LAW FEES AT 1 AUGUST 1994**

	QLD \$	NSW \$	VIC \$	SA \$
DISTRICT COURT				
TRIAL				
Barrister				
Fee on brief	612	800	470–756	592
Refresher	402	560	Two thirds of fee on brief	392
Solicitor				
Preparation fee	264	172	Flexible	336
Court instructing, first day	340	430	315	
PLEA				
Barrister				
Fee on brief	306	352	Two-thirds of fee on brief	140 after committal hearing or 200 includes hand-up committal
Solicitor				
Preparation fee	132	172	Flexible	116 after committal hearing 144 includes hand-up committal
Instructing, up to 3 hrs	170	258	158	No provision
MAGISTRATES COURT				
SUMMARY TRIAL				
Solicitor Fee, one day trial	622	430	480	760
PLEA				
Solicitor Court time, 3 hrs.	308	258	321	224

Sources: Legal Aid Office (Queensland) 1993, *Scales of Fees in Legally Aided Cases*; Legal Aid Commission of New South Wales, correspondence received June 1994; Legal Aid Commission of Victoria 1993, *Legal Aid Commission Handbook*; Legal Aid Commission of South Australia 1994, *Legal Services Commission Assignments Manual*.

Notes:

- QLD District Court Trial – Barrister's fee includes preparation (\$210) and court time (\$402).
District Court Plea – Barrister's fee includes (\$105) preparation and court time (\$201).
Magistrates Court Summary Trial – Solicitor's fee includes \$226 preparation, and per day solicitor alone (\$396).
Magistrates Court Plea – Solicitor's fee includes \$110 preparation, and three hours solicitor alone (\$198).
- NSW District Court Trial – Lump sum fee system is used.
Magistrates Court fees based on \$86 per hour. A preparation fee is not paid.
- VIC District Court fees have been calculated at 80 per cent of the scale which is the actual fee paid.
- SA District Court fees have been calculated at 80 per cent of the scale which is the actual fee paid.

COMPARISONS WITH PRIVATELY FUNDED CRIMINAL MATTERS

A common view of practitioners is that the rates paid by the LAC in the criminal law area compare unfavourably with what private clients are prepared to pay: in part, because it is possible to charge for more preparation time and, in part, because hourly and daily rates for private work are significantly higher.

The CJC was unable to obtain any detailed records from practitioners to enable a systematic comparison of the rates paid for private and legally aided work. Moreover, there appears to be no consistent approach to the setting of the fees for private criminal law work. Solicitors interviewed by CJC staff asserted that fees were determined on a case by case basis, with the overriding consideration being the client's ability to pay. Some of the approaches to the calculation of private fees by solicitors for criminal matters were:

- based on the LAC scale
- based on the LAC scale plus 20 per cent
- based on the statutory Scales of Costs (for civil matters) for the Magistrates, District and Supreme Courts
- a fixed fee for preparation depending upon complexity – anything from \$2,000–20,000 and an hourly rate for attendance in court
- an hourly rate for preparation and a fixed daily fee for attendance in court.

Hourly rates quoted included:

- \$140–190 per hour for principals and partners
- \$100–150 per hour for employed solicitors
- \$80–110 per hour for law and articulated clerks.

There appeared to be a more consistent approach to the calculation of fees for privately paying criminal clients on the part of the barristers interviewed. Many of the barristers indicated that they estimated their fees with reference to the “general market”, establishing the market rate by consultation with peers and negotiation with solicitors. Generally, the counsel interviewed quoted fees per day between \$1,000 and \$1,500 for a District Court trial. However, like the solicitors who were interviewed, most said that the client's ability to pay was a major consideration.

Practitioners may well be correct when they say that privately funded criminal law work is generally better paid than legally aided work. However, the following points should be noted:

- In the criminal law area in particular, the LAC dominates the market for legal services. Few practitioners are in a position to do substantial amounts of privately funded criminal law work for the simple reason that there is not much of that type of work available. Hence it is erroneous to assume that the rates paid by private clients in some way provide a better indication of the “true worth” or “market value” of legal work than the rates paid by the LAC.
- If it was left to “the market” to determine rates for criminal law work without the intervention of the LAC (in its capacity as the dominant purchaser of services) it is quite probable that the rates would be below what they are now. Most defendants in criminal matters have only very limited resources at their disposal and, if required to fund their own defence, would almost certainly pay less than the LAC.

- Arguably, in the final analysis, the only basis for determining whether fees are adequate is whether practitioners are willing and able to provide an acceptable level of service at the rates offered by the LAC. Clearly, there are still many practitioners willing to take on legally aided work, although many others have dropped out of the market. Whether the service being delivered is of sufficient quality is an issue which is addressed below.

It should also be acknowledged that many practitioners indicated that they did not expect the LAC to pay the same rates as private clients.

KEY FINDINGS – LEGAL AID COMMISSION FEE SCALES

- Since September 1988 trial fees paid to private practitioners by the LAC for prescribed criminal matters have been increased by around 60 per cent, or 40 per cent in real terms.
- The rate of increase for prescribed criminal law fees has generally been higher than for fees for civil and family law and non-prescribed criminal matters, but this is because prescribed crime fees were historically low in comparison with fees for those other matters.
- To the extent that comparisons are possible, there is no indication that fees paid by the LAC are significantly below those paid by legal aid bodies in other Australian jurisdictions.
- LAC fees in the criminal law area are still substantially below those fees set by the LAC for civil and family law matters. On the other hand, there has been a very substantial tightening of eligibility criteria for civil and family law matters. No such restrictions have been imposed in relation to prescribed criminal matters and it is only recently that cutbacks have been made in the area of non-prescribed criminal law.
- Practitioners assert that fees for privately funded criminal law work tend to be substantially higher than for matters funded by the LAC. However, the fees paid by private clients should not be used as a benchmark for assessing the adequacy of LAC fees.

PAYMENT PRACTICES

The remuneration received by private practitioners from the LAC is a function not only of the fees formally set by the LAC, but of the manner in which the rules relating to payment are administered. Many practitioners expressed concern about what they saw as the excessive bureaucracy and lack of flexibility associated with the LAC's payment practices and the perceived failure of the LAC to remunerate practitioners for work which they considered was required in preparing cases. Unfavourable comparisons were made between the current regime and that which had applied in the days of the PD. For example, a number of practitioners cited problems with getting accounts approved for payment by the LAC. Many referred to 'the old PD days' when they could ring the PD and 'sort the matter out' on the telephone. Now, some practitioners argued, a great deal of time is spent dealing with correspondence and pro-forma letters. This bureaucracy is considered to be highly annoying, especially when 'you are being paid a pittance'. According to one practitioner 'you have to go through so many hoops to get them [fees] that it makes it more and more unattractive for practitioners to do Legal Aid work'.

There is no doubt that there has been a significant tightening of payment rules and practices by the LAC. Moreover, the discretion to grant aid in borderline cases is now far less frequently exercised than in the past. Traditionally, the LAC and the PD had been more flexible about paying private legal practitioners for additional work performed in respect of a matter. The tightening of the guidelines which has occurred in recent times is a response to:

- the LAC funding crisis

- the criticisms contained in the Treasury/PSMC report (1991) of the extensive use by the PD of discretionary fees.

Under the new "provisional estimates scheme" introduced by the LAC, work performed outside of the specified items for which payment has been negotiated at the commencement of each stage of a matter will no longer be paid for by the LAC. This new scheme has been strongly criticised by private practitioners who argue that the rules make no allowance for 'the number or seriousness of the charges on the indictment, the volume of depositions, the duration of attendances to take instructions, whether the charges have proceeded on an ex-officio basis or any other variable or circumstance'.⁷⁵ For instance, one common complaint is that the LAC will pay for only one visit with a client who is in custody, regardless of the seriousness or complexity of the charges.

It was argued by practitioners that more discretion is required, as the present fixed fee approach does not adequately cover the preparation of complex matters. Only one practitioner reported having successfully claimed an extension of aid for a matter on the basis of it being extraordinary. In the words of one interviewee:

another major problem with the office is their inflexible attitude, especially in cases like rapes and indecent dealings etc... They [LAO officers] are really constrained by this pro-forma account system which in my view does not allow appropriate discretion.

According to practitioners, the effect of the tightening of guidelines has been to substantially reduce the amount of remuneration which they receive per LAC funded matter. Some support for this view is provided by the LAC's own figures. The LAC provided the CJC with figures for 1991/92 and 1993/94 detailing the total amount of legal fees paid to barristers and solicitors and disbursements and the number of grants of aid for prescribed criminal matters to which the payments applied. The data show that in 1991/92 the LAC paid an average of \$1,291.20 per grant, whereas in 1993/94 it paid an average of \$1,079.30 per grant. The 1993/94 average payment represents a 16.4 per cent decrease in the fees paid to private legal practitioners over a three year period.

KEY FINDING – LEGAL AID COMMISSION PAYMENT PRACTICES

- In recent years, there has been a substantial tightening of LAC payment guidelines and practices.
- LAC figures indicate that these changes have contributed to a 16.4 per cent reduction between 1991/92 and 1993/94 in the amount of remuneration received per prescribed criminal matter by private legal practitioners.

TRENDS IN THE USE OF PRIVATE PRACTITIONERS

Figure 4.1 shows the level of LAC expenditure, in real terms, on private practitioner payments and on salaries and administration for 1983/84 through 1993/94. As this graph strikingly portrays, payments to private practitioners rose significantly, in real terms, from \$19.3m in 1988/89 to a peak of \$32.1m in 1991/92.⁷⁶

⁷⁵ Affidavit of Andrew Boe dated 22 April 1993, p. 21 filed in the matter of *Boe v Criminal Justice Commission*.

⁷⁶ Some payments to private practitioners are made for duty lawyer service and advice, rather than for grants of aid. Duty lawyer payments reached a peak, in real terms of a little over \$1.3m in 1990/91. In 1993/94 they were just under \$1m. Payments for advice peaked in 1990/91 at \$1.25m (in real terms) and have since been virtually eliminated (the figure in 1993/94 was \$58,000).

Payments to private practitioners then dropped sharply to \$22.4m in 1992/93 and then to \$18.5m in 1993/94. Given the magnitude of this drop, it is not surprising that many members of the private legal profession have formed the view that the funding of legal assistance in Queensland is in crisis.

The marked reduction in payments to private practitioners has not been matched by reductions by the LAC in other areas. As shown in Figure 4.1 expenditure on salaries rose steadily from \$8.2m (in real terms) in 1988/89 to just under \$12m in 1992/93, and then fell slightly to \$11.6m in 1993/94. This represented a net real rise in salary expenditure over the period of nearly 41 per cent.⁷⁷ Administration expenditure increased over the same period by a much smaller 15.5 per cent. By contrast, 1993/94 real expenditure on private practitioners was slightly below the level of 1988/89.

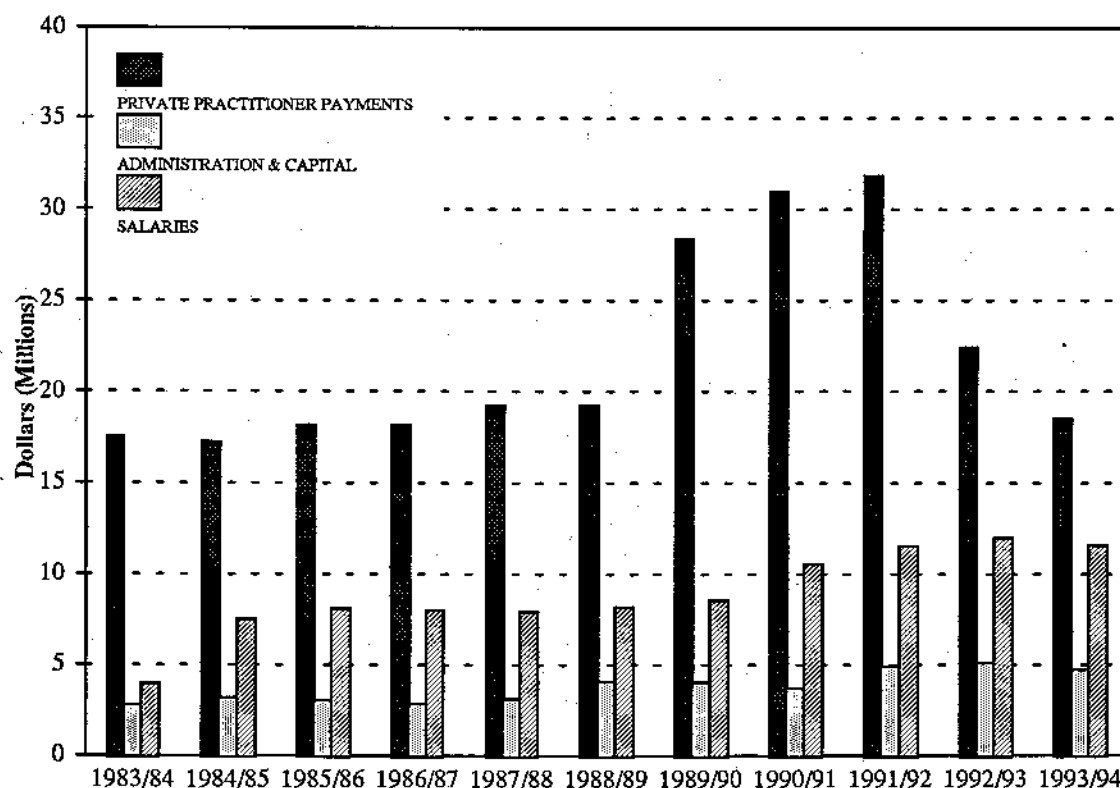


FIGURE 4.1 – LEGAL AID REAL EXPENDITURE BY
TYPE OF EXPENSE (1983/84–1993/94)

Sources: Legal Aid Commission of Queensland n.d., *Submission to the Treasurer of Queensland on Funding for Prescribed Criminal Proceedings*; Legal Aid Commission of Queensland, Annual Reports 1983/84–1992/93; Department of Justice and Attorney-General information received 10 August 1994.

Notes:

1. Figures for the period up to and including 1990/91 are for the LAC and PD combined.
2. Although the LAC commenced accounting on an accrual basis in 1990/91, all figures are based on cash transactions.
3. Large capital expenditure items are not included in total expenditure.
4. "Real Expenditure" is expenditure indexed for inflation using the October–December 1993 quarter as the base.

⁷⁷ A modest amount of this increase can be attributed to an increase in the salaries of former PD staff, due to position reclassifications made at the time of the merger in order to bring these positions into line with LAC pay rates. The rest of the increase is attributable to staff and general wage increases.

The dramatic decline in expenditure on private practitioners, back to the level of the late 1980s, was primarily the result of a marked reduction in the overall number of grants of aid in the areas of family and civil law (see Chapter 3). However, this trend has been exacerbated by a substantial tightening of payment guidelines (see above) and a shift towards a greater reliance on in-house work.

LAC figures on the assignment of grants of aid between private practitioners and in-house professionals do not include data on grants of aid for prescribed criminal matters before the first full year of operation after the merger. The percentage of grants of aid handled by the LAC in-house rose from 13 per cent in 1988/89 to 17 per cent in 1990/91.⁷⁸ In 1991/92 the proportion rose to 21 per cent, due largely to the merger with the PD, which historically handled a large number of matters in-house. The proportion further increased to 31 per cent in 1992/93 and remained at about this level in 1993/94.

The percentage of grants of aid for criminal law matters, including non-prescribed criminal matters handled in-house increased from 30 per cent in 1991/92 to just under 35 per cent in 1993/94. (Disaggregated figures for prescribed crime and non-prescribed crime are not available.) The number of criminal law grants of aid handled by the Brisbane Criminal Law Division (which handles a high volume of prescribed criminal matters) has decreased by 18 per cent since 1991/92, but the number of criminal law grants handled in the regional offices increased by 114 per cent in the same period.

The LAC's move towards handling more matters in-house appears to have been largely a function of organisational factors. It was difficult for an organisation with a substantial permanent staff to respond to fluctuations in income by suddenly decreasing staff according to the economic climate. Instead, it was easier for the LAC to deal with its revenue shortfall by reducing payments to practitioners. LAC management also took the view that there was excess capacity within the organisation and that existing staff could be utilised to handle a greater number of cases.

While there may have been good organisational reasons for the shift to more in-house work, the shift is unlikely to have produced any efficiency gains. Accurate data are not available on the cost of assignment, as opposed to handling matters in-house, but taken at face value there would appear to be some advantage in using private practitioners. In 1993/94, for instance, private practitioners handled 70 per cent of all grants of aid approved by the LAC, but the direct cost of these grants was only 45 per cent of total LAC expenditure.

In interpreting these figures it is important to note that:

- there *may* be significant qualitative differences between the grants of aid handled in-house and assigned to private practitioners
- some part of the LAC's salary costs is attributable to activities not related to grants of aid handled in-house
- the cost of grants of aid (being payments to private practitioners) assigned to private practitioners does not include any administrative overheads incurred by the LAC in relation to these grants.

However, very significant amounts would have to be attributed to these other variables in order to close the apparent gap between the cost of legal aid matters handled by private practitioners and those dealt with in-house.

⁷⁸ It should be noted that at this time the LAC was not handling prescribed criminal matters.

KEY FINDINGS – EXPENDITURE ON PRIVATE PRACTITIONERS

- LAC expenditure on private legal practitioners rose significantly in real terms, from \$19.3m in 1988/89 to a peak of \$32.1m in 1991/92. Expenditure then declined markedly to \$18.5m in 1993/94.
- Private legal practitioner costs as a proportion of total LAC expenditure have declined from 62.2 per cent in 1991/92 to 48.6 per cent in 1993/94.
- The decline in expenditure on private legal practitioners after 1991/92 has been due primarily to a reduction in the overall number of grants of aid approved and, secondarily, to a greater proportion of matters being handled in-house by the LAC.
- Private legal practitioners bore virtually the full force of the expenditure cuts imposed by the LAC in 1992/93 and 1993/94. On the other hand, practitioners were the main beneficiaries of the expansion of legal aid services in the late 1980s.
- The shift to a greater reliance on in-house work appears to have been driven by organisational imperatives, specifically the difficulty of reducing staffing levels and the desire of the LAC to increase in-house productivity. It is doubtful that the shift has produced any efficiency gains for the LAC.

THE IMPACT OF LEGAL AID COMMISSION FUNDING CHANGES ON PRIVATE LEGAL PRACTITIONERS

As described in Chapter 3, the late 1980s and early 1990s saw a dramatic growth in LAC/PD revenue and the consequent expansion of services. During this period, the LAC/PD employed the services of private legal practitioners to increase service levels when revenue levels and demand outstripped their ability to service clients using in-house staff. This arrangement allowed the LAC/PD to quickly adjust service levels to respond to fluctuations in revenue and demand without varying in-house staffing levels.

As the legal aid industry grew during the 1980s, there developed private legal practices which specialised in legal aid work, mainly in the areas of family and criminal law.⁷⁹ These practices were substantially reliant on the legal aid system for income. This new financial relationship between the LAC and sections of the private profession was sustained without any significant problems until the LAC began to experience budget problems towards the end of 1991/92. Since then, as indicated, private practitioners have borne virtually the full force of the LAC's economic "belt tightening", with outlays on private practitioners falling by 40 per cent in two years. As payment guidelines tightened, some practitioners undertook more legal aid work to compensate for declining returns per matter. This further increased the financial dependence of these practitioners on the LAC, making them even more vulnerable to the LAC's expenditure reduction measures.

The changes introduced by the LAC to deal with its financial difficulties have had a significant effect on the income of those legal practitioners who continue to provide services on behalf of the LAC to defendants in criminal matters. Predictably these changes have damaged relations between the two bodies.

⁷⁹ In the criminal law area particularly, the percentage of paying clients is generally low in private legal practice.

Of the practitioners interviewed, it was the solicitors who were most critical of the rate of remuneration for legal aid work. It was widely asserted that it was virtually impossible to survive solely on legal aid work. Some practitioners said this could only be done by doing great volumes of legal aid work, which necessarily means working long hours. One practitioner stated:

Because I do a volume of work in legal aid crime, I can make it work to pay in my office. However, I can do that because I employ legal clerks who work until eight or nine o'clock at night. I'm not sure that I'll be able to afford to continue to employ them once they are finished their clerkships.

It is generally acknowledged that those practitioners who handle large numbers of legally aided matters have workload demands which may require their attendance in several courts on any day. It appears that sometimes this level of workload results in "double booking" of court appearances, i.e. having matters listed for hearing or mention in more than one court at the same time. Matters must then be "stood down" or delayed until the solicitor has concluded his or her appearances in the other courts. This situation creates delays in the courts. It also raises concerns about how adequately practitioners with such large workloads are able to prepare and present cases.

Some practitioners said that the only way to make ends meet was to subsidise legal aid work through commercial litigation and private paying clients. Many asserted that without such work there was no way their firms could survive on legal aid fees. These practitioners suggested that they only continued to do legal aid work because of a philosophical commitment. Several practitioners said that while they were generally satisfied with the current Scale of Fees, they were concerned that there was a range of matters for which no payment was allowable under LAC guidelines. Other practitioners indicated that they no longer do LAC funded work, with a member of one firm stating: 'This firm made a decision that it was not financially viable to do legal aid, and in fact would cost the firm'.

Relations between the LAC and private legal practitioners have been further strained by the manner in which the LAC has communicated some of its decisions to the profession. For instance, several criminal law practitioners told CJC researchers that in 1994 the LAC decided to increase the in-house criminal law caseload by 500 cases with virtually no forewarning. The effect of the changes announced by the LAC was to reduce the incomes of practitioners who relied primarily on legal aid work by about 20 per cent until the LAC reached its designated number of in-house files. Private legal practitioners were unclear as to the basis of the LAC's decision to increase in-house case numbers and there appears to have been no consultation prior to the announcement, even though the decision had the potential to dramatically affect the incomes of those practitioners. Arguably, it is not good business practice for the LAC to manage relations with its "suppliers" in this fashion.

At the same time, there appears to be a general lack of appreciation on the part of some of the private legal practitioners interviewed of the financial circumstances of the LAC and its responsibility to introduce realistic measures to respond to the funding constraints. The LAC has suggested that, to at least some degree, this attitude has contributed to the strained relations between the two. The LAC, for its part, has indicated that it is sensitive to the situation of members of the private legal profession and is developing strategies, including consultative mechanisms, to improve relations.

IMPLICATIONS FOR QUALITY OF SERVICE PROVIDED

There is no doubt that the situation described above could potentially have serious consequences for the quality of services provided in LAC funded matters. Practitioners who depend primarily on the LAC for their income have found profit margins being squeezed as payment guidelines have been tightened and funding has been cut back. These practitioners have, in turn, taken on more matters to achieve greater economies of

scale. This has created a situation where there must be a temptation for some practitioners to "cut corners" in the preparation of cases, especially as the LAC does not engage in any systematic quality control (see Chapter 6). In addition, as discussed above, the heavy workloads of some practitioners may have adverse consequences for the administration of the criminal courts as a whole.

The Bar Association of Queensland submitted that 'because of a lack of funding, matters are often under prepared' (submission, 29 July 1993). Various practitioners interviewed by CJC researchers also expressed concern about the quality of the service being provided in some LAC funded criminal cases. For instance, one practitioner, when asked whether he had been involved in a case where an injustice occurred because a person was not adequately aided, stated:

It happens regularly. No matter how motivated you are to do a proper preparation [for a trial] for \$350, the fact is you just don't do it.

A number of practitioners supported this view, suggesting that compromises are made in the preparation for trial of LAC funded cases because the preparation fees are so low. However, the vast majority of the solicitors interviewed did not agree with this statement. Almost all stated that they committed the same amount of effort to the preparation of legally aided matters as to private matters, although in many cases they were not paid for the work which they saw necessary for the proper preparation of the case. Most were of the view that injustices did not occur, because in the words of one practitioner 'at the end of the day we do what has to be done, whether we get paid for it or not'.

The issue of the adequacy of preparation fees was also canvassed in some of the submissions received. For example, the Far North Queensland Defence Lawyers Association, in its submission, stated:

Despite the conscientious efforts of the practitioners in this Association . . . there has to be a limit to the amount of preparation which can possibly be done in order to prepare a matter for trial. These constraints are imposed by simple economics. With the best will in the world one cannot expend too much time on a particular matter at the rate of pay involved [at LAC rates] because the result will be that one cannot pay the rent. That being the situation, there must be cases which could be better prepared . . . In other words the fees currently paid really only cover expenses. This is not the way such funding should be structured. The long and the short of it is that a proper conscientious job cannot be done at the rates which are currently paid. Examples are available wherein further inquiries may have provided evidence in support of an accused's version but have not been undertaken because of the costs involved.

In addition, many practitioners expressed concerns about the justice implications of the restrictions by the LAC on the availability of funding for committals and the strict application by non-legally trained LAC staff of merit tests for applications of aid to defend charges in the Magistrates Court.

However, it must be emphasised that no-one who was interviewed or made submissions provided the CJC with concrete examples of specific cases where the quality of the service provided to LAC funded clients by themselves or other practitioners had been less than acceptable. The LAC was also unable to provide the CJC with any information bearing on this issue because, as indicated, the LAC currently does not monitor in any systematic way the quality of service being provided by private practitioners in criminal law matters.

KEY FINDINGS – IMPACT OF LEGAL AID COMMISSION FUNDING CHANGES ON PRIVATE LEGAL PRACTITIONERS

- Over the last decade or so there has developed a group of practitioners, especially in the area of criminal law, who have become largely dependent on income from the LAC.
- These practitioners have been particularly affected by the tightening of LAC payment guidelines, reduced flexibility in the administration of these guidelines, and the recent moves by the LAC to handle more matters in-house.
- The CJC was not given any concrete evidence that private practitioners funded by the LAC are providing an inadequate level of service in relation to criminal law matters. However, a situation has developed where there are increasing pressures on practitioners to “cut corners” in some cases, especially in the absence of any systematic monitoring by the LAC of the quality of service being provided.

SUMMARY OF KEY FINDINGS

The key findings of this chapter may be summarised as follows:

- LAC fees, particularly for prescribed crime work, have increased significantly since the late 1980s.
- The fees paid by the Queensland LAC are roughly in the middle of the range, compared with those paid by legal aid bodies in other jurisdictions.
- In recent years there has been a significant tightening of LAC payment guidelines, which has led to a reduction in the remuneration per legally aided matter received by practitioners.
- LAC expenditure on private practitioners rose significantly in real terms until 1991/92 and then dropped by over 40 per cent in the ensuing two years. Private practitioners bore virtually the full force of the expenditure cuts imposed in those years.
- The LAC is now handling a greater proportion of matters in-house due to the difficulty of reducing staffing levels and a commitment on the part of management to increasing in-house productivity.
- At this stage, there is no evidence that in-house work is more efficient than briefing-out on a cost-per-matter basis.
- Over the last decade or so there has developed a group of private practitioners, especially in the area of criminal law, who receive the bulk of their income from LAC funded work. This group has been adversely affected by the LAC's cost reduction measures and by the move to handle more matters in-house.
- A situation has developed where some practitioners find themselves under increasing pressure to reduce the level of service which they provide in LAC-funded matters, particularly in the absence of any systematic quality control monitoring by the LAC.

CHAPTER 5

THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS: FUNDING AND WORKLOAD

INTRODUCTION

This chapter examines issues relating to the funding, workload and performance of the DPP. The chapter:

- presents data on revenue, expenditure and workload trends for the DPP over the last eight financial years
- compares the structure, funding and workload of the Queensland DPP with that of prosecuting authorities in other Australian jurisdictions
- compares funding trends for the LAC and the DPP
- presents information on the DPP's briefing out practices
- discusses issues relating to the quality of service provided by the DPP.

The chapter is substantially shorter, and the analysis less complex, than the preceding discussion of the LAC's financial situation. This should not in any way be interpreted as indicating that the CJC regards the DPP as a less important organisation. It is simply that funding arrangements for the DPP are much more straightforward. The DPP is funded out of consolidated revenue on the same basis as most other State Government activities: there is no need, for instance, to take account of the vagaries of statutory interest, or to unravel the complexities of a Commonwealth/State funding agreement. The DPP also performs a less diverse array of functions than the LAC, its work being largely restricted to the area of prosecuting criminal cases in the higher courts.

REVENUE, EXPENDITURE AND WORKLOAD TRENDS

REVENUE AND EXPENDITURE TRENDS

Figure 5.1 shows trends in DPP nominal and real revenue and nominal expenditure, from 1986/87 (the first full year of operation of the DPP) to 1993/94. Not surprisingly, given the funding basis of the DPP, expenditure in most years virtually matches revenue, with the exception of 1987/88 when expenditure was below budget by \$809,000, or 15 per cent.

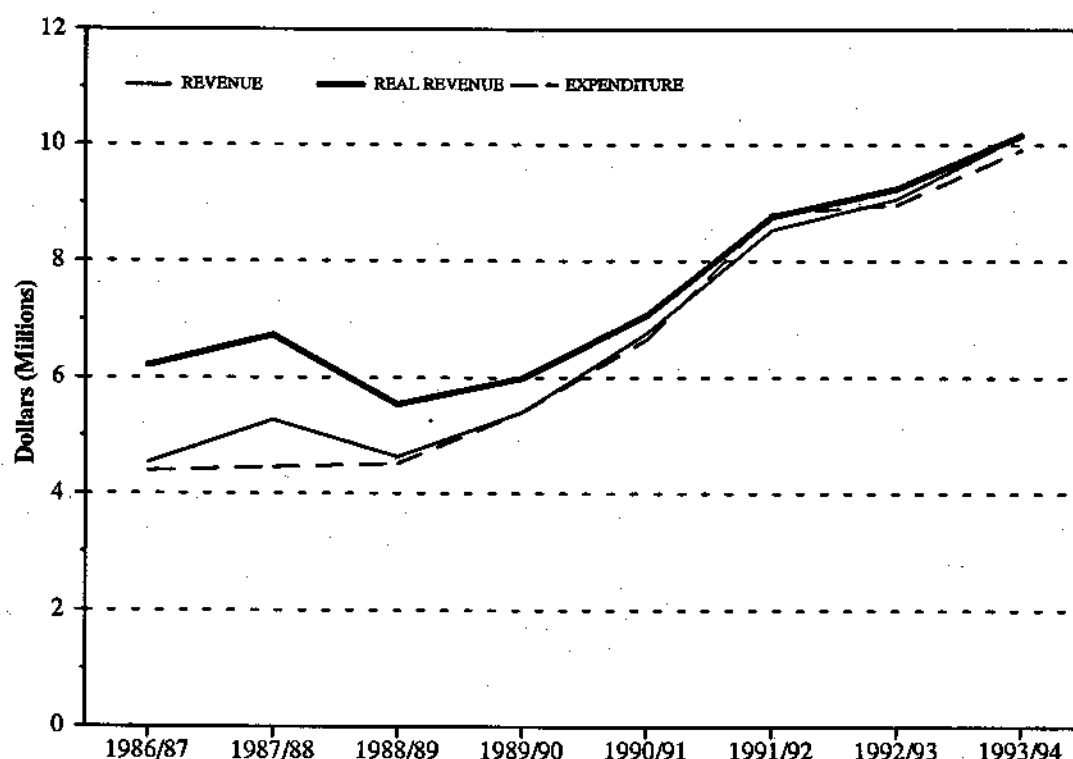


FIGURE 5.1 – OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS NOMINAL AND REAL REVENUE AND NOMINAL EXPENDITURE (1986/87–1993/94)

Sources: Unpub. information received from the Director-General of the Department of Justice and Attorney-General July 1994; revenue and expenditure figures for 1986/87–1988/89 from the Queensland Administration of Criminal Justice Review Committee 1993, Appendix 19.

Notes:

1. A revenue figure was not available for 1989/90; therefore it was assumed revenue equalled expenditure in that year.
2. The expenditure figure for 1992/93 excludes \$199,000 expended on salaries in the Special Prosecutor's Office.
3. Revenue for 1993/94 excludes revenue of \$1,311,100 received for property maintenance. An amount of \$1,311,129 was actually expended. Liability for this item had previously been the responsibility of the Department of Administrative Services.
4. Real revenue was calculated by using the Brisbane Consumer Price Index figures for December 1993.

Figure 5.1 shows that between 1986/87 and 1988/89 DPP real revenue actually fell by 11 per cent, even though there was a substantial increase in the number of depositions received by the DPP (see below). The drop in real revenue appears to have been due to the DPP spending less than its budget allocation in 1987/88, with the result that revenue for the following year was reduced by \$630,000. However, after 1988/89 real revenue increased every year, with particularly large rises in 1990/91 and 1991/92. By 1993/94, real DPP revenue was 84 per cent higher than it had been in 1988/89 and 64 per cent higher than in 1986/87.

The bulk of the additional revenue received by the DPP has been expended on additional staff. This is to be expected, given that the DPP handles almost all of its work in-house. As shown by Table 5.1, between 1989 and 1994 the overall establishment increased by 72 per cent, with the number of legally qualified staff (i.e. prosecutors and other legal officers) nearly doubling. The greatest percentage growth was in the category of "other legal", consisting predominantly of solicitors employed in the preparations area.

TABLE 5.1 – STAFFING LEVELS OF THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS (1989–1993)

YEAR	DIRECTOR/ DEPUTY OF PROS'NS	CROWN PROSECUTORS		OTHER LEGAL	OTHERS	ACTUAL STAFF TOTAL
		Brisbane	Regions			
1989	3	23	8	1	58	93
1990	2	20	6	12	60	100
1991	2	23	11	19	71	126
1992	2	25	11	16	79	133
1993	2	25	11	16	77	131
1994	2	28	10	28	92	160

Sources: Data for 1989–1992 from Queensland Administration of Criminal Justice Review Committee 1993; data for 1993–1994 from personal communication from the Office of the Director of Prosecutions 30 March 1995.

Note: Staff figures do not include staff on extended leave or secondment but do include temporary appointments.

WORKLOAD TRENDS

The Director of Public Prosecutions, Mr R. N. Miller QC, in his submission to the CJC, acknowledged that:

An analysis of budgets and expenditures since 1989 discloses a significant increase in gross expenditure. This represents a significant commitment by the government during a period of economic difficulty when overall public service growth was being minimised (Director of Prosecutions 1993).

However, in his submission the Director also stated that 'the increase in gross funding did not translate directly into sufficient resources to allow the DPP to adequately meet its core function of dealing with the workload in the superior courts'. This was because:

- the post-1989 increases in funding were from a very low and inadequate base
- the general workload of the DPP has grown substantially since 1989
- some of the additional funding received after 1989 was dedicated to new obligations arising as a result of legislative change or policy decisions (for instance, the introduction of proceeds of crime legislation, the establishment of the CJC and the development of sexual offence protocols).

In relation to the first of these factors Price Waterhouse Urwick, in their 1989 report on the DPP, observed that: 'the ODP [DPP] – as with other State Government sub-departments – is being asked to achieve more with fewer resources' (p. 20). However, Price Waterhouse Urwick emphasised that the problems encountered by the DPP were not attributable simply to under-resourcing:⁸⁰

While recognising the resources problem, in balance though, we find there has been a neglect of fundamental management practices within the ODP [DPP] which has its realisation in the generally held acknowledgment by all parties to the criminal justice system – including the ODP [DPP] – that the ODP [DPP] is not performing its vital role either effectively or efficiently. (p. 20)

⁸⁰ Similar views were expressed by the PSMC (1991) and Treasury (1993), in their respective reviews of the DPP.

The second argument advanced by the Director is that DPP workload has increased at a greater rate than funding. The most readily available and reliable measure of workload trends is the number of depositions received by the DPP. This covers all matters committed to the higher courts from the Magistrates Court, plus a number of ex officio indictments (393 in 1993). Most depositions are finalised as trials or sentences, although discontinuances, or "*nolle prosequi*", are also reasonably common.

Figure 5.2 shows that the number of depositions received by the DPP increased by 83 per cent between 1986/87 and 1993/94 from 3,420 to 6,260, with the greatest growth occurring in the last three years. As noted in Chapter 3, this increase has been substantially greater than the rate of population growth in Queensland over the same period. Hence the number of depositions per 1,000 population rose from 1.28 in 1986/87 to 1.92 in 1993/94. On the limited information available, it would appear that the increase in workload has primarily been in prosecutions for property crime offences, robbery and serious assault.

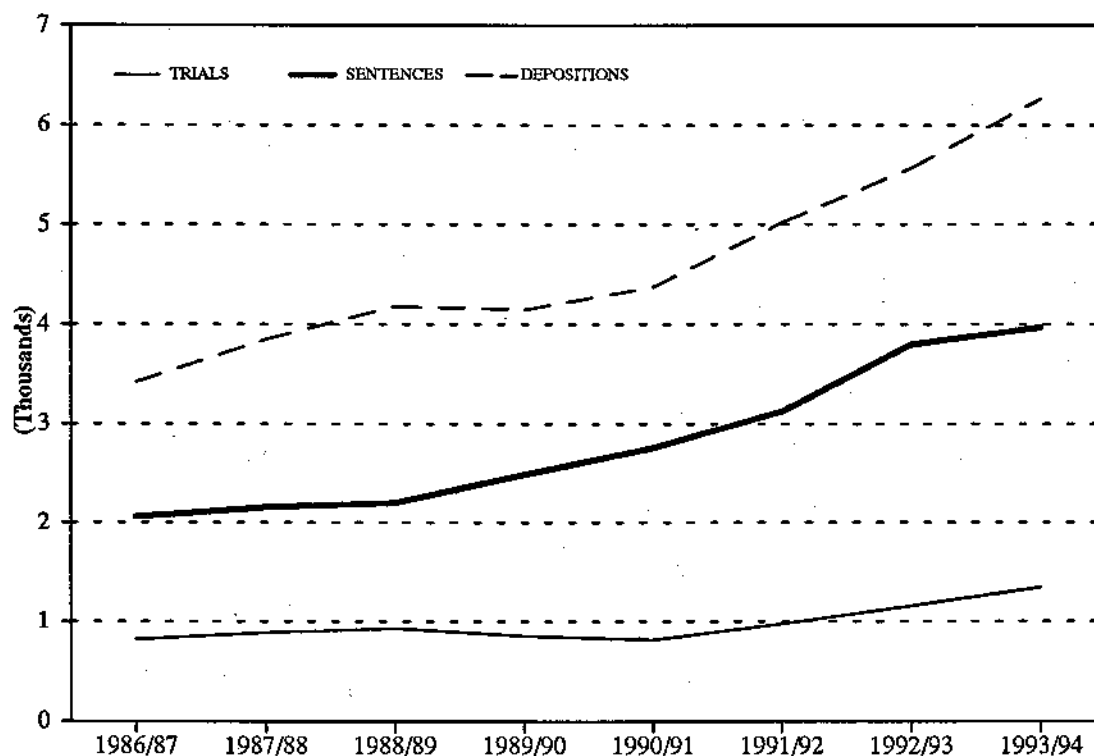


FIGURE 5.2 – OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS WORKLOAD, TRIALS, SENTENCES AND DEPOSITIONS (1986/87–1993/94)

Sources: Director of Prosecutions Queensland, Annual Reports 1986–1994; additional information provided by personal communication with Office of the Director of Public Prosecutions December 1994 and March 1995.

Note: The DPP calculates workload statistics on a calendar year. In order to present workload statistics on a financial year basis, the totals for each year have been divided in half, then halves from adjoining years have been combined. Adjusting calendar year figures to financial year figures may introduce small errors in annual totals but does not involve any overall distortions.

Figure 5.2 also shows trends in the number of trials and sentences conducted between 1986/87 and 1993/94. It is apparent that the growth in trials has been somewhat less rapid than the growth in sentences. According to statistics compiled by the DPP, the number of trials increased over this period by 64 per cent as opposed to a 93 per cent increase in sentences. This was due to a reduction in the proportion of defendants pleading not guilty. However, it is not possible to say whether the reduction in the proportion of matters going to trial

has had a significant impact on the overall workload of the DPP. Much depends on whether guilty pleas are identified at a relatively early stage, or only after a matter has been prepared for trial.⁸¹ It was also suggested to the CJC that while a smaller proportion of matters may be going to trial there has been an increase in the length and complexity of trials. However, no data are available to support this assertion.

Another factor which impacts on the overall workload of the DPP is the number of appeals in which the Crown⁸² appears. These appearances are mostly in response to an appeal by the accused against conviction or sentence, although in around 10–20 cases a year the Crown itself initiates an appeal against sentence. In 1989, the DPP appeared in 250 appeals in the Court of Criminal Appeal, of which 68 were appeals against conviction and 182 were appeals against sentence. In 1993, 440 appeals were heard in the Court of Appeal,⁸³ of which 150 were appeals against conviction and 290 were appeals against sentence. This represents an increase between 1989–1993 of 76 per cent in the number of appeals heard in the Court of Criminal Appeal/Court of Appeal and a 121 per cent increase in the number of appeals against conviction. However, while these are very large increases in percentage terms, it must be emphasised that the increase was from a low base and that appeal work makes up only a small proportion of total DPP workload.

The Director also submitted that, in addition to the increase in the DPP's mainstream workload, the DPP has been required to take on substantial additional functions over the last few years. For instance, the DPP has adopted a policy of consulting with victims of crime before important decisions are made in relation to proceedings for those crimes; it provides assistance with criminal compensation applications to a small number of claimants who are not eligible for legal aid; and has recently participated in the development of protocols in relation to sexual offences against women. In addition, the DPP provides advice in relation to investigations by the Queensland Police Service and CJC, now appears for the Crown in appeals from the Magistrates Court, prosecutes breaches of community orders under the *Penalties and Sentences Act 1992* and routinely takes action in the superior courts under proceeds of crime legislation.⁸⁴ The CJC acknowledges that these additional functions have added to the workload of the DPP, but does not have the information which would enable it to quantify the impact of these changes.

FUNDING PER MATTER

In analysing funding trends, the key issue is whether increases in DPP resources have kept pace with the increases in workload. The best available measure for this purpose is *real revenue per deposition*. Although "depositions received" does not provide a complete measure of DPP workload, it does cover the main areas of activity. As previously discussed, the reason for using real as opposed to nominal revenue is to take account of the impact of inflation.

Figure 5.3 shows real revenue per deposition received for the eight financial years between 1986/87 through 1993/94. As noted, between 1986/87 and 1988/89 total real revenue fell at the same time as the number of depositions received was increasing, resulting in an overall drop of 27 per cent in real revenue per deposition. Real revenue per deposition then rose by 32 per cent between 1988/89 and 1991/92 from \$1,324 to \$1,744, before falling to an estimated \$1,620 in 1993/94. Overall, real revenue per deposition in 1993/94 was 10 per cent below its 1986/87 level, but around 23 per cent above what it had been in 1988/89.

⁸¹ There is a generally held view that the proportion of "late" pleas of guilty is unduly high. See the Queensland Administration of Criminal Justice Review Committee (1993, pp. 34–37).

⁸² Appeals are conducted by the DPP on behalf of the Crown.

⁸³ In 1992 the Court of Criminal Appeal became the Court of Appeal.

⁸⁴ The number of proceeds of crime orders obtained has ranged from 70 in 1991 to 100 in 1992 to 67 in 1993. In 1993, 340 breaches of community-based orders were referred to the DPP. There were 77 appeals determined by the District Court in 1993 (Director of Prosecutions (Queensland) 1994, *Annual Report 1994*).

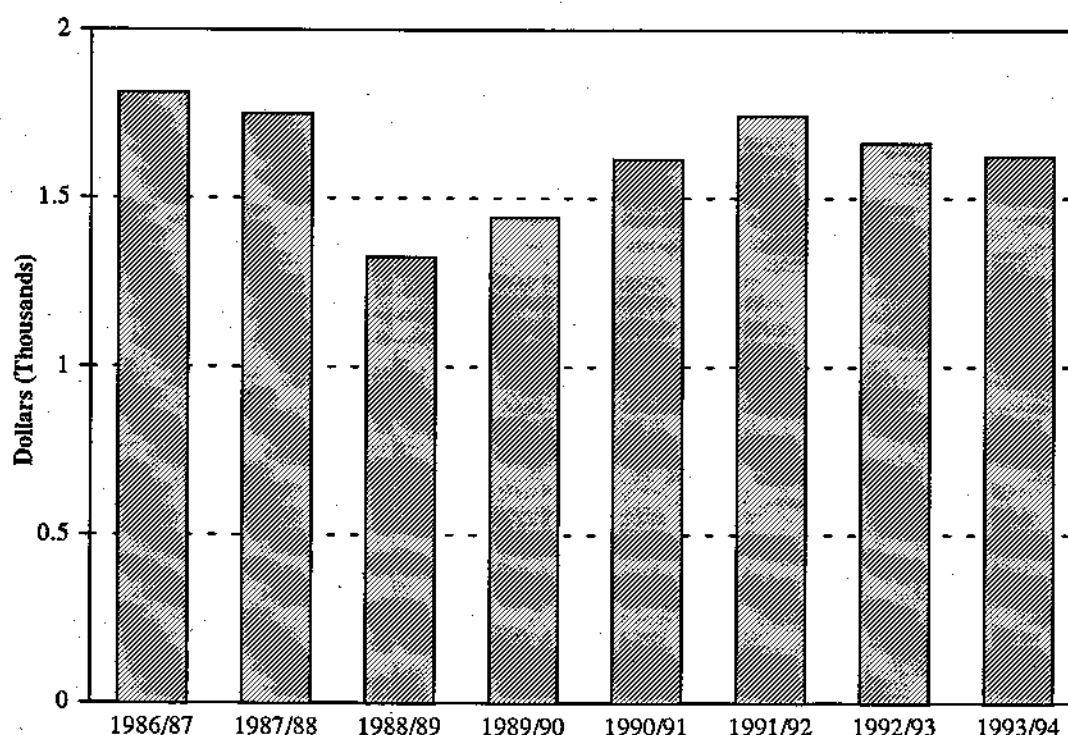


FIGURE 5.3 – OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS REAL REVENUE PER DEPOSITION RECEIVED (1986/87–1993/94)

Sources: Revenue figures for 1986/87–1988/89 from the Queensland Administration of Criminal Justice Review Committee 1993, Appendix 19; additional information provided by personal communication with Office of the Director of Public Prosecutions Dec. 1994 and March 1995.

KEY FINDINGS – OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS REVENUE, EXPENDITURE AND WORKLOAD

- Between 1986/87 (the first full year of operation of the DPP) and 1993/94 real DPP revenue increased by 64 per cent. For 1988/89–1993/94, the increase was about 84 per cent.
- Between 1989 and 1993 the number of staff employed by the DPP increased by 54 per cent and the number of legally qualified staff nearly doubled.
- Between 1986/87 and 1993/94, the number of depositions received by the DPP increased by around 83 per cent, the number of matters proceeding as trials increased by 64 per cent and the number proceeding as sentences increased by 93 per cent. The DPP also took on functions which contributed to an increase in workload.
- Real revenue per deposition in 1993/94 was 10 per cent less than it was in 1986/87, but around 23 per cent above the level of 1988/89.
- Real DPP revenue per deposition decreased in 1992/93 and 1993/94.

COMPARISONS WITH OTHER JURISDICTIONS

In the DPP's 1989 annual report the then Director of Prosecutions, Mr D. Sturgess, compared workload and expenditure data for prosecuting authorities in Queensland, New South Wales and Victoria, in order to show that the Queensland body was substantially under-funded (pp. 12-13; referred to in a submission to the CJC by the current Director, Mr R. N. Miller QC 1993). That same year, the Price Waterhouse Urwick report presented data showing that prosecutors employed by the Queensland DPP were remunerated at rates substantially below those paid to their counterparts in other Australian jurisdictions.

As documented above, since 1989 the funding and staffing position of the DPP has improved substantially. To obtain more up-to-date comparative information, in mid-1994 the CJC wrote to each State DPP and the Commonwealth DPP, seeking data on such matters as: the functions carried out by their offices, workload measures, budgetary arrangements and expenditure levels, office structures, and salaries paid to legal staff.

The information obtained through this process is summarised in Appendix 4. Probably the most important conclusion to be drawn from the exercise is that interstate comparisons of the workloads and funding of prosecution authorities are extremely problematic. This is because:

- The agencies differ substantially in the type of work which they undertake. For instance, the New South Wales Office of the Director of Public Prosecutions is responsible for the conduct of all committals in that State, whereas in South Australia, Queensland and Western Australia the Office of the Director of Public Prosecutions is rarely involved in matters at this level. Summary prosecutions account for a large proportion of the work of the Commonwealth Office of the Director of Public Prosecutions but are undertaken only occasionally by State-level bodies. There are also substantial differences in the amount of appellate work handled by the different organisations. For example, in Victoria – a system in which there is a very large summary jurisdiction – the Office of the Director of Public Prosecutions handled 2,340 appeals against magistrates' decisions in 1992/93. By contrast, in Queensland in 1993 the DPP handled only 517 appeals from the Magistrates and District Courts combined.
- Agencies differ considerably in their use of private practitioners. For example, in Victoria virtually all trial work is briefed out to the private bar, whereas in New South Wales all matters are handled in-house.
- Officers designated as "prosecutors" do not necessarily undertake the same type of work in each jurisdiction. These differences make it very difficult to compare salary levels.
- The matters handled by the agencies vary considerably in length and complexity as illustrated by the difference in average trial lengths. In New South Wales in 1990, the average length of a District Court trial was estimated to be 'just over four days' (New South Wales Bureau of Crime Statistics and Research 1992, p. 3). By contrast, in 1992/93 the average length of a District Court trial in Brisbane was only 2.4 days (unpub. data provided by the Supreme and District Courts Administrator).
- It is unclear whether the different agencies have used the same counting rules to determine the number of matters which they process.

Notwithstanding these very substantial comparability problems, there is some limited support for the view that the Queensland DPP has not been as well funded as prosecuting authorities in other jurisdictions. A rough comparative measure of workload can be obtained by adding together the number of higher court prosecutions, summary prosecutions, committal hearings and appeals conducted by each prosecuting authority and dividing this figure into the total budget for the agency. On this measure, in 1992/93 the

Queensland DPP had by far the lowest expenditure per matter of any of the States: \$1,560 per matter compared with \$3,050 in South Australia, \$2,660 in New South Wales and \$3,360 in Victoria. A related measure, for those agencies which do the bulk of their work in-house, is the number of matters disposed of per employed prosecutor/legal officer. In Queensland there were 96 matters per officer, compared with 38 in South Australia and 51 in New South Wales. The main limitation of both measures, of course, is that they give no weight to inter-jurisdictional differences in the complexity of matters handled and the range of other functions which are carried out. Also, comparisons based on total matters processed do not account for the fact that some types of work (such as trials and higher court appeals) are substantially more time consuming than other activities (such as hand-up committals and sentences).

In relation to salary levels, it is evident that prosecutors employed by the New South Wales and Commonwealth Offices of the Director of Public Prosecutions are generally paid more than prosecutors employed by Offices of the Director of Public Prosecutions in Queensland, South Australia and Western Australia.⁸⁵ However, on the limited information available it is not possible to rank Queensland in terms of these other two States. There appears to be much less inter-jurisdictional variation in the salaries paid to legal officers.

KEY FINDINGS – INTER-JURISDICTIONAL COMPARISONS

- It is extremely difficult to compare prosecution authorities across jurisdictions, because agencies differ markedly in their structure and the range of functions they perform. The Queensland DPP appears to receive less funding, on a pro rata basis, than other prosecuting authorities. However, in the absence of more detailed information about the range and complexity of matters handled by the different agencies, and the counting rules which they employ, such comparisons should be regarded with extreme caution.

COMPARISONS WITH THE LEGAL AID COMMISSION

During the course of its inquiry, one argument put to the CJC was that, in a fair system of funding, the DPP and the LAC ought to be able to devote roughly similar resources to each case. In practice it is extremely difficult to establish whether such parity exists, given that neither the DPP nor the LAC can provide accurate data on precisely how much they spend on prosecuting/defending higher court criminal cases, as opposed to discharging their other functions. This problem aside, it should not necessarily be assumed that each agency ought to be funded on a similar basis. On one argument, the prosecution requires more resources because it has the responsibility for proving the charges, whereas all that the defence must do is raise a reasonable doubt. On another view, however, the defence deserves more resources because it must counter the "full might of the State". Depending on which of these views is accepted, quite different conclusions could be reached about the relative adequacy of funding. Even if these technical and conceptual problems could be resolved, the information obtained would not establish whether funding for either agency was sufficient to enable them to discharge their functions adequately. Thus, it is easily possible to imagine a situation where there was a "balance" between the funding of the two agencies, but there was an unacceptable risk of miscarriages of justice occurring because neither side had adequate resources to prepare matters properly.

⁸⁵ Victoria is not included in this comparison as the great bulk of court appearance work is briefed out to the private bar.

To the extent that comparisons between the two agencies are possible, they show the following:

- Between 1986/87 and 1990/91, DPP real revenue increased by 14 per cent, compared with an increase in total LAC/PD revenue of 23 per cent and an increase specifically in PD revenue of approximately 20 per cent.⁸⁶ After 1990/91 DPP real revenue continued to increase steadily, whereas LAC real revenue fell. Over the entire period DPP real revenue increased by 64 per cent, compared with a 35 per cent rise for the LAC.
- In 1991/92–1993/94 average DPP real expenditure per deposition was \$1,670. By comparison the LAC's average estimated real expenditure per prescribed crime grant was \$1,360.⁸⁷ However, these figures do not necessarily show that the DPP spent more per case than the LAC, as some part of DPP revenue was spent doing work not directly related to the processing of depositions.
- Between 1990/91 and 1993/94, the LAC's estimated expenditure on prescribed criminal matters increased by about 10 per cent whereas DPP expenditure, the great bulk of which was related to higher court prosecutions, increased by 44 per cent.

KEY FINDINGS – INTER-AGENCY COMPARISONS

- Since 1986/87, DPP funding has increased at a greater rate than LAC funding, but this may have been from a lower base.
- Since the merger of the LAC and PD in March 1991, DPP total expenditure has increased at a greater rate than LAC expenditure on prescribed criminal matters.
- Given the limited data available, it is not possible to say whether one agency spends more than the other per higher court criminal matter.

BRIEFING OUT PRACTICES

In contrast to the LAC, the great bulk of the DPP's work is handled in-house. In 1993/94 the DPP budgeted for \$351,000 in briefing out costs and spent \$426,000, representing 4.3 per cent of the total budget of the DPP. The DPP expects to spend close to \$600,000 on briefing out in 1994/95 (unpub. information provided by DPP, March 1995). In 1993, the most recent year for which data are available, private practitioners were briefed to appear in 74 higher court trials – six per cent of all trials conducted by the DPP – and 30 sentence matters (DPP 1994, p. 67).

Due to the very limited use of private counsel by the DPP, there are few, if any, practitioners for whom the DPP is a primary source of income. Nonetheless, many of the practitioners interviewed were highly critical of the briefing out practices of the DPP. These concerns related to:

- the perceived inadequacy of the fees paid by the DPP relative to those paid by the LAC
- the DPP's practice of "late briefing".

⁸⁶ PD revenue is recorded separately only until 21 March 1991, when the LAC and PD merged. For the purposes of calculating the percentage change in annual revenue, PD revenue for the first nine months of 1991 was extrapolated to the full year.

⁸⁷ Estimates of the proportion of the LAC budget spent on prescribed criminal matters were provided to the CJC by the Director of the LAO of Queensland in correspondence 23 January 1995. As discussed in Chapter 3, these estimates are approximate only, but no other information is available for comparative purposes.

As is apparent from Table 5.2, LAC fees for preparation and appearance at trial or sentence are about one third above the fees paid by the DPP, and for some other matters are substantially higher. The practitioners interviewed were adamant that these differences do not reflect variations in the work required to prosecute rather than defend. In fact, many were of the view that there was more work involved in a prosecution because the brief was not as well prepared as a legal aid brief and was often received the afternoon before the trial (see below). The practitioners also pointed out that the DPP does not pay for a conference with witnesses unless a special application is made to the Director for payment, whereas the LAC pays a standard \$94 for a conference with witnesses. A further complaint was that the DPP does not pay for negotiating with the defence, whereas the LAC pays \$94 for negotiating with the Crown. The practitioners considered that conferences with witnesses and negotiations with the other side were equally important, regardless of whether counsel was representing the Crown or the accused.

TABLE 5.2 – COMPARISON OF FEES PAID BY OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS AND LEGAL AID COMMISSION

DISTRICT COURT

ITEM	DPP \$	LAC \$	LAC EXCEEDS DPP %
Fee on brief	465	612	32
Refresher	305	402	32
Additional Accused	25 for entire trial	105 preparation and 201 per day	1,124 first day only
Plea of Guilty	230	306	33
Mention	28	77	175

SUPREME COURT

ITEM	DPP \$	LAC \$	LAC EXCEEDS DPP %
Fee on brief	660	876	33
Refresher	420	556	32
Additional Accused	45 for entire trial	160 preparation and 278 per day	873 first day only
Plea of Guilty	330	438	33
Mention	36	94	161

Sources: Information provided by LAC and DPP.

The other major concern of practitioners was that matters were often not briefed out to counsel until the day before the trial, sometimes as late as the afternoon before, thereby making it very difficult to adequately prepare cases prior to trial.

Late briefing was a common practice at the time these interviews were conducted (Queensland Administration of Justice Review Committee 1993). However, the CJC understands that the DPP has now taken some steps to address this problem and that since mid-1994, it has been the practice for most matters to be briefed out at least 10 days prior to the listed trial date (see Chapter 6)

KEY FINDINGS — OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS BRIEFING OUT PRACTICES

- In contrast to the LAC, only a small proportion of cases are briefed out by the DPP to private legal practitioners.
- DPP briefing out fees are substantially below those paid by the LAC.

QUALITY OF SERVICE PROVIDED

As discussed in Chapter 1, a central issue is whether the DPP's funding has been sufficient to enable the organisation to provide a reasonable quality service. In his submission (1993) to the CJC, the Director stated that:

The view of the Office is that additional staff and resources are necessary if it is to meet its obligations to the courts and victims of crime and to prepare and prosecute offences at a necessary level of effectiveness.

The Director also noted that:

The heavy case loads carried by legal staff mean that insufficient time is devoted by senior officers to management, supervision and training. An effective system of supervision and quality control is necessary to ensure that charges are correct, cases are properly prepared and full and early disclosure occurs.

In the view of the Crown Prosecutors Association of Queensland:

The office of the Director of Prosecutions should be a dynamic, well-resourced agency which operates at a level equal to, if not higher than, equivalent agencies around the country and the best private law firms. Regrettably, this office falls considerably below that standard, despite the best efforts of its dedicated staff (1993).

On occasions, the performance of the DPP has also been the subject of adverse public comment by members of the judiciary. For example, Mr Justice Demack of the Supreme Court made the following remarks in a 1994 case, in which an adjournment was necessitated because the DPP had failed to provide material to the defence sufficiently in advance of the trial:

Regrettably it seems that part of the Office or part of those who support the Office of Director of Prosecutions is hopelessly under-resourced and proper preparation of trial of criminal cases is not happening. (transcript, *R v Scriven and Cook*, Rockhampton, 19 April 1994)

It appears to be generally accepted that while the performance of the DPP has improved considerably since the 1980s, there are still substantial shortcomings in the day to day operations of the organisation, which, in turn, impact adversely on the operation of the rest of the criminal justice system. These problems have been documented in a series of reviews, of which the most recent was the report of the Queensland Administration of Criminal Justice Review Committee (1993). This report provided a comprehensive blueprint, much of which has not yet been implemented, for the re-structuring of the DPP and of the criminal case management process generally (see Chapter 6). As indicated above, the Director himself has also openly acknowledged that there are areas in which the performance of the DPP could be substantially improved.

Although it appears to be generally accepted that there are problems in the operation of the DPP, it is a matter of some contention whether this is primarily due to inadequate funding – as is the view of the Director and the Crown Prosecutors Association and, apparently, some members of the judiciary – or whether the problems are more the result of the structure of the DPP, its internal management practices and inefficiencies in the wider criminal justice system. The various reviews which have conducted of the DPP have inclined more towards this latter view. While the reviews have recognised the need for some additional funding of the DPP, they have recommended relatively modest, targeted increases, rather than large-scale changes to the funding base. It is very difficult to disentangle funding issues from those which relate to management, but the CJC agrees that funding may only be a secondary issue.

Although there are shortcomings in the operation of the DPP, on at least one measure the Queensland DPP appears to perform quite well when compared to its counterparts in other jurisdictions. This measure is the overall acquittal rate, that is, the number of acquittals expressed as a proportion of all matters finalised (either by trial or a plea of guilty). While this measure obviously must be treated with some caution, it does provide some indication of the effectiveness of the agency in screening-out matters prior to trial (whether this was done by discontinuing the matter or negotiating a guilty plea) and of the quality of preparation of those matters which do go to trial.⁸⁸

In 1992/93 and 1993/94, the overall acquittal rate for the Queensland District Court averaged around nine per cent, according to statistics provided by the District Court.⁸⁹ By comparison, in Victoria in 1992/93, the equivalent acquittal rate for the County and Supreme Court combined was 13 per cent (Office of the Director of Public Prosecutions of Victoria 1993, p. 80) and in New South Wales in 1993, the rate for the Supreme and District Courts combined was 14 per cent (New South Wales Bureau of Crime Statistics and Research 1994, p. 65). Of course, acquittal rates can be affected by factors largely unrelated to the performance of the prosecuting agency, such as: the types of offences being dealt with in the higher courts, the sentencing policy in relation to accused who plead guilty, the level of resourcing provided to the defence side, and so on. However, taken at face value these data seem to indicate that the Queensland DPP, although possibly less well-resourced than these other bodies, may be no less effective in screening-out weak cases and obtaining convictions. On the information available, it is not possible to say how Queensland compares to other jurisdictions in terms of other performance measures.

⁸⁸ It is important that the acquittal rate is stated as a proportion of all matters finalised, rather than simply as a ratio of those matters in which the defendant pleads not guilty and a trial is held. A high trial acquittal rate may not indicate poor performance by the agency. In fact, if the agency is effective in screening out weak cases and identifying guilty pleas, the trial acquittal rate is likely to be comparatively high, because only those matters where there is a genuine doubt about the guilt of the accused will end up being contested.

⁸⁹ According to District Court data, in these two years, 18 per cent of defendants pleaded not guilty and, of these, 48 per cent were found not guilty. District Court data have been used in preference to DPP data because the DPP's annual report does not include information on the proportion of trials resulting in an acquittal.

KEY FINDINGS – QUALITY OF SERVICE

- The DPP's operations appear to require improvement in a number of respects, but these shortcomings may be due more to internal structural and managerial problems, and inefficiencies in the wider criminal justice system (see Chapter 6) than to inadequate funding of the DPP.
- In terms of the overall higher court acquittal rate, the Queensland DPP currently appears to be performing at least as well as the Victorian and New South Wales Offices of the Director of Public Prosecutions.

SUMMARY OF KEY FINDINGS

The key findings of this chapter may be summarised as follows:

- It is generally accepted that prior to 1989 the performance of the DPP was poor and its funding base inadequate.
- Between 1986/87 and 1988/89 DPP real revenue fell, although workload increased over this period.
- Between 1988/89 and 1993/94 DPP real revenue increased substantially and the number of legally qualified staff employed nearly doubled.
- Over the same period there were substantial increases in the workload of the DPP. Between 1988/89 and 1991/92 funding increased at a considerably greater rate than the number of depositions received. However, in the last two years this trend has reversed with depositions increasing at a greater rate than funding. As a result, there has been a fall in real revenue per deposition even though aggregate real revenue continued to rise.
- Since 1986/87, funding for the DPP has increased at a greater rate than funding for the LAC, although it could be argued that the DPP started from a lower base.
- Inter-jurisdictional comparisons are extremely difficult, but there is *some* evidence that the Queensland DPP still receives less funding, on a pro rata basis, than prosecuting authorities in other jurisdictions.
- On at least one performance measure – the overall acquittal rate for the higher courts – the Queensland DPP appears to be performing at least as well as its counterparts in Victoria and New South Wales.
- DPP internal processes appear to require improvement in a number of respects, but the extent to which these deficiencies are the result of inadequate funding is open to argument. Internal processes have also been affected by the structure of the organisation, management practices and under inefficiencies and structural problems in other parts of the criminal justice system.

CHAPTER 6

ISSUES TO BE ADDRESSED

As indicated in the Introduction, the CJC does not consider it appropriate to make specific recommendations about the extent, if any, to which funding for the DPP or LAC should be increased. This is a matter to be worked out between the State Government and the agencies concerned, taking account of the findings and analyses contained in this report. However, in the course of this review the CJC has identified a number of issues relating to structures and processes which are relevant to the funding question. This chapter discusses these issues and, where appropriate, puts forward specific proposals. The issues fall under five main headings:

- the basis for determining and adjusting LAC funding
- the LAC's processes for setting and administering payments to practitioners
- other LAC management issues
- management and funding issues related to the DPP
- improving the efficiency and effectiveness of the criminal justice system generally.

PROCESSES FOR DETERMINING LEGAL AID FUNDING

The analysis of legal aid funding presented in Chapter 3 has highlighted three main problems with the LAC's current funding arrangements:

- revenue and expenditure have fluctuated considerably
- in recent years, Commonwealth and State funding of the LAC in Queensland has tended to be below that of the other major States on a per capita basis
- most importantly, the funding arrangements under the 1990 Commonwealth/State Funding Agreement have been insufficient to enable the LAC to sustain the service profile on which the Agreement was based.

FLUCTUATING REVENUE/EXPENDITURE

One of the most significant findings to emerge from this review is that grants of legal assistance have increased and fallen substantially from year to year in line with what the LAC could afford or, as in the 1988/89-1990/91 period, thought it could afford. This situation raises serious access and equity concerns: the prospects of a person obtaining legal assistance should not vary from year to year simply because more or less money is available in a particular year.

As documented in Chapter 3, over the last decade or so LAC revenue has been very sensitive to fluctuations in the income received from trust account interest. One suggestion for reducing income volatility is to eliminate the LAC's reliance on trust account income by funding the LAC directly out of consolidated revenue according to some agreed formula. Interest from trust accounts could then be diverted to other uses,

or paid straight into consolidated revenue. However, as a matter of practicality it may not be necessary to take this step. Firstly, income from trust account interest is likely to be less important in the future, as innovations in banking services make the use of solicitors' trust accounts less attractive and less necessary.⁹⁰ Second, the provisions of the Agreement, if strictly applied, are already sufficient to stabilise LAC revenue to some extent and to reduce its sensitivity to fluctuations in trust account income, although these provisions tend to impose a conservative policy in relation to expenditure of income and the maintenance of reserves. The key issue to be addressed is not where the LAC obtains its revenue from, but the establishment of funding arrangements which will enable the organisation to maintain a stable service delivery profile (see below).

Management decisions in past years have also impacted significantly on the level and range of services provided by the LAC. The severe downturn in service levels in 1991/92 and 1992/93 was partly due to the LAC's decision to increase grants of aid during the high income period between 1988/89 and 1990/91 to a level which could not be sustained, even at the unusually high income levels of those years. However, it is only fair to point out that long term forecasts of trust account income are susceptible not just to the vagaries of interest rates and other immediately related economic factors, but also to less predictable solicitor defalcations. It is doubtful that anyone in the position of the members of the LAC could have foreseen how sharply trust account income would fall between 1990/91 and 1992/93. In any event, the CJC understands that the LAC has now addressed the underlying management issues relating to its costs estimates and provisions and that expenditure over-runs of the magnitude of those of 1991/92 are unlikely to occur in the future.

COMMONWEALTH AND STATE FUNDING LEVELS

This report has shown that in recent years the LAC has received less Commonwealth and State funding on a per capita basis than its counterparts in New South Wales and Victoria, even though, in the case of Queensland, both Governments have tended to provide above the minimum grant required under the Agreement. As discussed in more detail in Chapter 3, if the Commonwealth had funded Queensland at the same per capita rate as Victoria, the LAC would have received an additional \$4.7m in 1993/94. If it had been funded on the same basis as New South Wales, it would have received an extra \$2.7m.

It may be that some additional Commonwealth funding to Victoria and New South Wales is attributable to differences, for example, in the number and length of Commonwealth trials in those States. However, in the absence of any direct evidence to this effect, serious questions must be raised about the equity of current Commonwealth/State funding arrangements for legal assistance. Of particular concern is the fact that under the current Agreement the annual Commonwealth contribution is essentially adjusted only for cost of living increases, not for population growth or increases in demand for particular types of assistance. This arrangement has operated very much to the detriment of Queensland because of the rapid growth in the State's population since the Agreement came into effect.

⁹⁰ Both the LAC and the PSMC have drawn attention to this fact. It is noteworthy that trust account income accounted for only 16 per cent of the LAC'S total revenue in 1993/94.

THE INADEQUACY OF THE FUNDING ARRANGEMENTS

The main problem now confronting the LAC is that the level and range of services which it provides have been radically altered from the service profile on which the Agreement was based. This has occurred primarily because the funding arrangements provided for under the Agreement have been insufficient to sustain the original service profile in the face of increased demand for legal assistance, particularly in relation to prescribed criminal matters, and the increased cost of providing that assistance. The dramatic decline in funding for family law and civil law matters has effectively come about through default, rather than as the product of some conscious and explicit government policy on the provision of legal assistance to the community.

In the CJC's view, the State Government, in conjunction with the Commonwealth, should review the benchmarks on which legal aid funding has been based and set in place funding arrangements which will provide for sustainable levels of legal assistance according to an agreed service profile.⁹¹ It is not for the CJC to say what the outcome of this review should be, but obviously consideration will need to be given to the appropriate case distribution of criminal, family and civil law matters; the types of matters within these categories which should be given priority taking into account such things as gender bias issues;⁹² the funding relationship between the LAC and Aboriginal and Torres Strait Islander Legal Service;⁹³ and the suitability of existing merit and means tests. Mechanisms also need to be developed to enable LAC funding to be reviewed periodically (say, on an annual or bi-annual basis) to take account of:

- changes in the level of service demand, as measured by such factors as population growth, and higher and lower court criminal prosecutions
- unavoidable cost increases
- external legal and/or administrative changes which affect the LAC's workload.

This does not mean that the LAC should be guaranteed a fully indexed budget but simply that there should be a regular and orderly assessment of the impact of changes in factors external to the LAC on the organisation's ability to maintain an appropriate service delivery profile. It would still be incumbent on the LAC to provide evidence that relative service levels could only be maintained by additional funding rather than by internal savings.

RECOMMENDATIONS – LEGAL AID COMMISSION FUNDING ARRANGEMENTS

1. The 1990 Commonwealth/State Funding Agreement should be revised, as it has not provided an adequate process for maintaining the LAC service profile established by the Agreement.

A key objective of any review should be to determine an appropriate service delivery profile for the LAC. This will require consideration of such questions as the appropriate balance of criminal, family and civil law matters; the types of matters within these categories which should be given funding priority, taking into account such things as gender bias

⁹¹ Compare the comments and recommendations of the Access to Justice Advisory Committee 1994, paras 9.41–9.46.

⁹² Commonwealth Attorney-General's Department 1994.

⁹³ The Director of the Legal Aid Office (Queensland) has informed the CJC that, due to funding difficulties being faced by the Aboriginal and Torres Strait Islander Legal Service, the LAC and other legal aid bodies, particularly in Western Australia, South Australia and New South Wales, are increasingly being asked to provide services to Aboriginal and Torres Strait Islander people which they should be receiving through Aboriginal and Torres Strait Islander Legal Services (correspondence 28 March 1995).

considerations; the funding relationship between the LAC and Aboriginal and Torres Strait Islander Legal Services; and a reassessment of existing merit and means tests. Once issues about the service profile have been resolved, the focus should be on determining what funding arrangements are required to enable the LAC to provide a stable level of service in terms of this profile.

2. Whatever funding arrangement is adopted, provision should be made for the LAC's revenue to be reviewed periodically to take account of factors such as: changes in the level of service demand; unavoidable cost increases; and external legal and/or administrative changes which affect the LAC's workload.
3. The State Government, in conjunction with the LAC, should develop appropriate indicators, acceptable to the Commonwealth, for measuring changes in LAC costs and workload and changes in the level of demand for legal services.

ISSUES RELATING TO PRACTITIONER PAYMENTS

The LAC's processes for setting and administering payments to practitioners are important for several reasons. First, payments to private practitioners make up a large component of total expenditure. In 1993/94, for example, such payments accounted for 49 per cent of the total LAC budget (not including assignment costs and costs associated with administering these payments). Second, as discussed in Chapter 3, in the late 1980s and early 1990s increases in payments to practitioners contributed significantly to the increased cost of providing legal assistance. Third, from another perspective, many of the practitioners spoken to by the CJC expressed concerns about the level of payments and the manner in which they were administered, a common argument being that payments in respect of criminal law matters were insufficient to enable practitioners to provide quality legal assistance at a fair rate of return. De Jersey J, in *Boe v Criminal Justice Commission*,⁹⁴ also observed that the applicant's 'substantial affidavit shows that the majority of his work is funded by the Legal Aid Office, and that he is not properly remunerated'.

For reasons discussed in the Introduction, the CJC is not in a position to determine whether the prices currently paid by the LAC for legal services are appropriate or not. However, the CJC does have some concerns about the process whereby fees for private practitioners are set and adjusted. In particular the CJC considers that there needs to be:

- more competitive discipline in the determination of the prices which the LAC pays for legal services
- improved mechanisms for monitoring the quality of service being provided by private practitioners and in-house legal staff.

⁹⁴ Supreme Court of Queensland 10 June 1993 [93.186], unreported.

PROCESSES FOR SETTING FEES

Traditionally, the LAC has set fees for practitioners by reference to established professional fee scales approved by Government in relation to family and civil law. Currently, the benchmark for the LAC's fees is 72 per cent (recently reduced from 80%) of the statutory scale. However, recent reviews of the legal services market by the Trade Practices Commission and the Commonwealth Access to Justice Advisory Committee have suggested that fee scales are subject to a number of inherent defects as pricing mechanisms. These defects differ in kind and extent, depending on the type of scale,⁹⁵ but the essential flaw, as summarised by the Trade Practices Commission (1993, p. 203), is that:

by maintaining fees which may be higher and less variable than they would otherwise be, fee scales can reduce the incentive to economise on costs, and to adopt cost saving and/or service enhancing innovations in practice management, service delivery and business structure . . . Fee scales which are binding on practitioners and are set at lower levels than market determined fees [can] restrict supply of an adequate level of legal services or result in perverse outcomes such as utilising the scale to justify over-servicing of clients.

These concerns have particular force when fee scales are derived and varied on a basis which does not adequately reflect prevailing conditions in the market . . . [F]ee scales based on average historical costs plus an across-the-board allowance for a 'normal' rate of profit will not reflect prevailing conditions of supply and demand in the legal services market or the range of cost and charging structures of individual legal practices. As a result they may permit abnormally high profits by efficient firms while protecting less efficient firms from vigorous price competition.⁹⁶

A more specific concern about current fee setting arrangements is that decisions about fees are taken by the Fees Committee, a sub-committee of the LAC. Three of the six members of the Fees Committee are private practitioners. Nine of the 11 members of the LAC are members of the legal profession, and four of them are private practitioners. Without in any way reflecting on the integrity of the LAC members who have been, or currently are, members of this committee, it is not sound organisational practice for the LAC, as a major purchaser of legal services, to have its price scales effectively determined by a committee of which half the members represent the suppliers of those services. Indeed, the PSMC has described this arrangement as 'dangerous' (1992, p. 39). A better arrangement would be for issues about fees to be seen as a management decision, with representatives of private legal practitioners having input in an advisory capacity only.

Although ostensibly the LAC's fees are only 72 per cent of the "proper" fee as defined by the scale, it has been suggested that the LAC fees may be above the "market rate".⁹⁷ At the very least, if scale fees are to continue to be used to any extent, serious consideration should be given to establishing a clear benchmark relationship between these fees and the cost of providing similar services in-house.

It is understood that the LAC is currently considering a range of options for introducing more competitive discipline into the determination of what it pays for legal services. These initiatives include arrangements for tendering and franchising its work and for costing-out the LAC's in-house casework to determine whether the LAC itself is more or less cost effective than private practitioners (see below). The CJC believes that these initiatives should be given every possible support, *provided* there is proper monitoring of the quality of the services delivered under the different approaches.

⁹⁵ For example, so-called "event-based" scales, such as the scale now used by the LAC for criminal matters, do not provide the same incentives to over-service matters that the so-called "itemised" scales do. The current Supreme and District Court scales are itemised scales, and they provide the basis for the LAC civil fee scale. On the other hand, event-based scales can encourage under-servicing or substandard service, if the amount allowed for certain activities is too low. This problem is a general complaint made by private practitioners in relation to the LAC criminal scale. See also Trade Practices Commission (1994, Chapter 8, pp. 137-170).

⁹⁶ See also Access to Justice Advisory Committee 1994, paras 5.20-5.37.

⁹⁷ The PSMC has suggested that the LAC might be a "price setter" in certain segments of the market. This suggestion was made before the recent reduction in LAC fees but the underlying point of principle is nevertheless valid (1992, p. 39).

In supporting the LAC's moves towards greater competition in the provision of legal assistance the CJC is mindful of the concerns expressed by private legal practitioners about the present level of remuneration for services performed on behalf of the LAC. It is important that the LAC is aware that whatever fees are set, it would not be in the interests of the organisation or its clients if the rates of remuneration for work performed by private legal practitioners were so low that the quality of service was affected or experienced suppliers of legal services did not remain in the market for legal aid work. It is essential to the LAC's ability to meet demands for legal assistance and to provide legal services across the State that fees for LAC funded work are sufficient to maintain the viability of the private legal firms that undertake such work.

The CJC also considers it desirable to make some comment on the complaints by lawyers about the fact that they regularly perform what they consider to be necessary work on LAC funded matters for which they are not remunerated. To appreciate the basis of these complaints, it is necessary to be aware of the traditional legal method of calculating costs based on the Statutory Scales of Costs. This method of costing uses the Scales which set a fee for each individual item of work comprising a particular legal service. For example, while the defence of a person charged with a prescribed crime offence would appear to involve a single, distinct legal service for the purposes of costing the work can be broken down into its component parts with a fee for each individual item.⁹⁸ This could include charging for each attendance on the client to take instructions, each attendance with witnesses, each attendance at court for mentions and adjournments, for each document (such as depositions) perused, for attending at conferences with counsel and so on. These individual items may be charged at a set rate per item or on an hourly basis. The LAC method of setting fees has tended to reinforce the view of practitioners that fees should be charged on an itemised basis, by, for example, listing separate fees for items such as a prison visit or a conference.

In the CJC's view, it is not necessary, nor for that matter appropriate, that lawyers performing work funded by the LAC be remunerated on the basis of each individually identifiable item of work performed on a matter. It is the case that in most businesses, trades and professions a quote for a "job" means giving a total figure for the costs of providing the service. These quotes rarely, if ever, include itemised costings for the labour involved in the individual components of the service. Allowances for unanticipated additional work are normally factored into the quotes, although contracts may make provision for exceptional cost increases which are outside the control of the supplier. There is no reason why a similar approach could not be taken for the supply of legal services in the criminal law area, again provided that there is appropriate quality control. The benefits of this approach to costing are that:

- the LAC could more accurately estimate its costs of grants of aid and therefore more effectively manage its budget
- it should reduce the administrative costs which the LAC and practitioners currently incur in dealing with disputes about whether the LAC will pay for certain items claimed in legal practitioners' bills of costs.

QUALITY CONTROL

As discussed in Chapter 4, the CJC was not provided with any specific examples of inadequate service being provided to LAC clients in criminal matters. However, it was pointed out that a situation had developed where there was increasing pressure on some practitioners to "cut corners". In addition several submissions expressed concern, in general terms, about the quality of service being provided in some legally aided cases.

⁹⁸ It should be noted that, as pointed out in Chapter 4, there is no Statutory Scale of Costs for criminal law matters. The itemised method of costing legal work has been adopted from the civil and family law areas, which have traditionally had Statutory Scales of Costs.

The LAC has never had an established process for systematically monitoring the quality of services delivered to the recipients of legal assistance. Until shortly after the merger of the PD with the LAC, private legal practitioners were required to forward the brief to counsel to the PD or LAC at the conclusion of a prescribed criminal matter. The purpose of this requirement was to allow the brief to be checked by staff to ensure that the solicitor assigned the file had adequately prepared the matter, and also to determine whether additional fees should be paid. It is not clear how effective this process was as a quality control measure, or whether the PD or LAC ever provided direct feedback to practitioners on the quality of their case preparation.

In its recently released discussion paper on the *Tendering of Assigned Matters* the LAC has acknowledged that there are no formal quality control mechanisms in place to monitor the work of private practitioners. Instead, it 'currently relies on practitioners' professionalism and . . . on the mechanisms the profession itself has in place to maintain quality: the profession's barriers to entry, professional and ethical standards and disciplinary mechanisms' (1994 p. 10).

The CJC is strongly of the view that formal processes of quality control are necessary for ensuring that the services provided to legally assisted persons are of an acceptable standard. The LAC has already foreshadowed these concerns in its tendering discussion paper in which it states that it 'has now introduced internal quality standards and intends to include quality standards into any proposed tender' (p. 10). The LAC is proposing that the tendering pilot project be monitored through the following processes:

- regular monthly reports to the LAC by the tenderer
- file audits to check that there is compliance with established process measures
- a well advertised complaints mechanism
- a survey of clients about their level of customer satisfaction.

The CJC supports these proposals for the introduction by the LAC of quality standards and controls. However, these requirements should apply across the whole spectrum of legal aid service delivery, both internally and in relation to all assigned, tendered and franchised legal aid work. The establishment of clearly defined quality standards and controls serves a number of purposes. The most obvious is that these measures protect the rights and interests of persons who receive legal assistance. Further, they are particularly important where franchising and tendering arrangements are in use, given that one of the objects of the LAC in adopting such arrangements is to negotiate the provision of legal services at a lower cost. Finally, where the quality standards and controls are clearly defined, both the LAC and the practitioner have a better understanding of their obligations and entitlements. This helps ensure that expectations are clear at the outset and reduces the likelihood of disagreements about the provision of services and the obligations of either party.

RECOMMENDATIONS – DETERMINING PAYMENTS TO PRACTITIONERS

4. The CJC supports initiatives being developed by the LAC to introduce more competitive discipline in the determination of what the organisation pays for legal services, on the condition that there will be proper monitoring of the quality of services provided under different arrangements, and of the impact of these arrangements on private legal practitioners.
5. Decisions on matters relating to payments to practitioners should be seen as a management responsibility, with representatives of private legal practitioners having input in an advisory capacity only.

6. If scale fees are to continue to be used to any extent, serious consideration should be given to establishing a clear benchmark relationship between these scales and the cost of providing similar services in-house.
7. The LAC should develop mechanisms for systematically monitoring the quality of service provided across the whole spectrum of legal aid service delivery, both internally and in relation to all assigned, tendered and franchised legal aid work.

USE OF IN-HOUSE AND PRIVATE SERVICE PROVIDERS

As discussed in Chapter 4, in recent years the LAC has made greater use of in-house professionals, in lieu of assigning matters to private legal practitioners. This shift has been primarily due to the need of LAC management to make large adjustments to expenditure within a very short period of time and the LAC's desire to more fully and effectively utilise existing staff. As pointed out in Chapter 4, there are currently no statistics available with which to compare the cost effectiveness of assigning grants of aid to private practitioners as against using in-house professionals.

Section 12 of the *Legal Aid Act* states that the LAC shall determine guidelines for the allocation of work between officers of the LAC and private legal practitioners having regard to the following considerations:

- the need for legal services to be readily accessible to disadvantaged persons
- the need to make the most efficient use of the monies available to the LAC
- in relation to proceedings other than prescribed criminal proceedings – the desirability of enabling a legally assisted person, so far as is practicable, to obtain the services of the legal practitioner of the person's choice
- the desirability of maintaining the independence of the private legal profession
- the desirability of enabling officers of the LAC to utilise and develop their expertise and maintain their professional standards by conducting litigation and doing other kinds of professional legal work.

A number of the matters which should be taken into account in determining the allocation of work are competing considerations. Section 12 neither recognises this fact, nor specifies a hierarchy or priority for the application of these different criteria. For example, it may be that the most efficient use of the monies available to the LAC is to adopt competitive price setting schemes such as tendering. On the other hand it has been suggested by some practitioners that tendering of LAC services undermines the independence of the legal profession. (It should be noted that section 12 excludes prescribed criminal proceedings from any presumption that the principle of "practitioner of choice" should apply. However it is possible that this section as currently worded might preclude the LAC from tendering family and civil law work.)

It is difficult to envisage a situation where the LAC, in its operations, could be simultaneously satisfying all of the above criteria. As a consequence, while all of the considerations contained in the provision are individually important, the provision, as it is presently drafted, is of little use in assisting the LAC to discharge its statutory responsibilities.

In the CJC's view, decisions about the appropriate mix of in-house and private practitioner work should be based primarily on a thorough assessment of the most cost effective method of providing legal assistance. However, a proper evaluation of this issue is not a simple matter. The comparison between the two modes

of service delivery will need to be undertaken on a continuing basis, particularly as other initiatives are implemented within the LAC and in the area of private practice. Second, as emphasised above, it will be necessary to assess the quality of service provided under the different modes of delivery. Third, there are broader policy considerations which will have to be considered, such as the benefits of maintaining private practitioner participation in the market for legal assistance.

To assist in making an informed decision about this matter, the LAC requires an accurate time costing system compare the cost of in-house casework with the cost of referrals to private practitioners. The CJC understands that in 1993 the LAC management moved to establish such a system, in response to a recommendation of the PSMC and a commitment by legal aid bodies throughout Australia to adopt the concept of time costing. However, it appears that a significant number of the LAC's staff are still not complying with the required record keeping procedures.

RECOMMENDATION – USE OF PRIVATE PRACTITIONERS AND IN-HOUSE STAFF

8. The LAC should put in place procedures which will enable it to accurately compare the cost effectiveness of, and quality of service provided by, private practitioners and in-house staff. Decisions about the appropriate method of delivering legal aid services should be based primarily on the information collected through this process.

STRUCTURE OF THE LEGAL AID COMMISSION

Membership of the LAC is largely made up of representatives of different groups with an interest in the provision of legal assistance. Most of the Commissioners are members of the legal profession, although this is not a requirement of the *Legal Aid Act*. It is possible that the current composition of the LAC reflects sensitivity to the independence of the legal profession although it is difficult to see how that principle requires the profession to be given a controlling voice in the management of a statutory body independent of government (albeit dependent on government funding). It is also possible that the current arrangement may be a carry-over from the LAC's early history, when its main source of funding was trust account income, and this contribution was generally regarded as in some way entitling the legal profession to a special voice.⁹⁹

The CJC has doubts about the appropriateness of the current structure of the LAC. Members of the legal profession are well qualified by their training and experience to understand what is involved in providing legal services to clients in need, and to understand the importance of legal aid within our legal system. However, they do not necessarily have all of the knowledge and skills, individually or collectively, that are desirable in managing a large, public sector enterprise engaged in delivering legal assistance to the community. In addition, the present structure raises the possibility of conflict between the representational interests of some members of the LAC and the management interests of the LAO. Policy in relation to legal fees is only the area where such conflicts can arise. Examples of other policy issues which the LAC is addressing or will address in the future include:

- the allocation of legally assisted matters between in-house lawyers and private practitioners
- the introduction of tendering and franchising of legal work and other strategies for increasing competition among its service providers

⁹⁹ Trust account income is not, of course, a contribution made by lawyers to the LAC, but income-generated interest on funds of clients of lawyers. As noted above, this source now makes up only a relatively small proportion of LAC revenue.

- improvement of quality management, for example by introducing specialist panels and other audit procedures
- the allocation of expenditure between grants of aid and other forms of legal assistance.

Clearly, as part of the policy process, there needs to be extensive consultation about such issues with concerned groups. However, experience shows that decision making by a body which is deliberately made up of representatives for a number of sectional interest groups can be slow, ineffectual and, on occasions, unduly influenced by sectional considerations. Given the critical importance of the issues the LAC will continue to address into the future, serious consideration should be given to reducing the size of, and restructuring, the current LAC. In any restructuring the following "minimal" requirements should be satisfied.

- It is quite appropriate that the LAC should include on its governing board legal professionals with expertise in the operation of the legal system and the delivery of legal services. However, in order to avoid any possibility of conflict of interest, the professional associations should not have direct representation on the LAC.
- As at present, the LAC should include at least one member with specific responsibility for representing the interests of legally assisted persons.
- The LAC should include at least one person from outside the LAC with proven managerial expertise.
- It is important that an appropriate gender balance on the LAC be maintained, especially given that gender equity is a very significant issue in relation to the allocation of funds for legal assistance.¹⁰⁰

RECOMMENDATION – STRUCTURE OF THE LEGAL AID COMMISSION

9. The current structure of the LAC should be reviewed, taking account of the considerations referred to above.

THE PRESCRIBED CRIME WORKLOAD

As discussed in Chapter 3, under the *Legal Aid Act* persons whose matters fall within the definition of prescribed crime are automatically entitled to legal assistance, subject only to the means test. Applications for assistance in relation to such matters have increased significantly over the past several years. The LAC has been able to meet this demand only at the cost of a substantial reduction in the funding provided to other LAC activities. Had the State Government continued to fund the prescribed crime activities of the LAC on the same basis as prior to the merger of the LAC/PD, the LAC would have received several million dollars in additional funding.

The number of grants of aid for prescribed criminal matters is primarily, although not exclusively, a function of the number of criminal matters prosecuted in the District and Supreme Courts. The proportion of criminal cases which are proceeded with by indictment in the District Court is very high in Queensland, compared with

¹⁰⁰ A recent review of the Legal Aid Commission of Victoria proposed splitting the Board of the Commission into a five person Board of Management and a larger Advisory Board consisting of the stakeholders represented on the existing Board, as well as other interests not hitherto represented. Under this proposal, the role of the Advisory Board would be to advise the Board of Management on such matters as priorities of delivery and legal services, guidelines for assessing means and merit, franchising and tendering, continuing legal education and specialist panels (Cooper, D. L. 1994, *Review of the Delivery of Legal Aid Services in Victoria*). The Legal Aid Commission of Victoria has indicated its agreement to these particular recommendations, with the proviso that the proposed Management Board should include a person knowledgeable in the provision of services to needy persons (Legal Aid Commission of Victoria 1995, *Response to Report of the Review of the Delivery of Legal Aid Services in Victoria*). It should be emphasised that, in drawing attention to this report, the CJC does not necessarily endorse the proposed model.

the numbers in Victoria and New South Wales.¹⁰¹ This appears to be due, at least in part, to there being a greater range of indictable offences under Queensland law.

Another factor which affects the higher court workload is the proportion of defendants charged with so-called "hybrid offences" (that is, offences which can be proceeded with either by indictment or by way of summary hearing in the Magistrates Court) who elect to have the matter dealt with in the higher courts on indictment.¹⁰² No statistics are available on the number of "hybrid offences" dealt with in the higher courts, but experienced criminal law practitioners contend that such cases are reasonably common. There are said to be two main reasons for this. The first is that section 29 of the *Legal Aid Act* (and the *Dietrich*¹⁰³ decision) virtually guarantees full legal assistance to an accused who elects to be dealt with on indictment (subject to the means test). By contrast, an accused who elects to have a matter heard before a magistrate could well be denied legal aid under the merit test which currently applies in relation to all lower court trials. The second factor is that there appears to be a widely held view within the legal profession that an accused is likely to get a more favourable sentence from a District Court judge than from a magistrate. This belief may not necessarily be correct, but, as a result of it, some clients may be advised to elect to have their matter dealt with in the higher court even if they intend to plead guilty.

Whatever the explanation, it is apparent that many matters which appear to be fairly minor are being routinely handled by the higher courts. The LAC has provided the CJC with details of the outcomes of over 450 higher court criminal matters handled in-house by the LAC in the latter part of 1994. Table 6.1, which summarises these data, shows that in 54 per cent of cases where the defendant was found guilty the court did not impose a custodial sentence. Moreover, in 67 per cent of cases where there was a custodial sentence, the penalty was less than or equal to two years, meaning that theoretically it was no greater than the penalty which a magistrate could have imposed.

**TABLE 6.1 – SENTENCES IMPOSED FOR IN-HOUSE PRESCRIBED CRIMINAL MATTERS
LEGAL AID COMMISSION (JULY–DECEMBER 1994)**

PLEA	OUTCOME (no. of defendants)			TOTAL
	Non-custodial Sentence	≤ 2 Yrs	> 2 Yrs	
Not Guilty (%)	35.4	38.4	26.2	n=99
Guilty (%)	63.6	26.1	10.3	n=253
Total (%)	55.7	29.5	14.8	n=352

Source: Information received from LAC.

Notes:

1. Table shows outcomes only for cases where the defendant was convicted.
2. "Not guilty" includes six "no pleas".

¹⁰¹ The number in Queensland is approaching 6,000 cases per year. The number in New South Wales is similar but is a much smaller proportion of the total number of criminal proceedings. The number of proceedings by indictment in Victoria is now less than 2,000 per year.

¹⁰² The Magistrates Court also has the power in such cases to commit a matter to the higher court if it is of such seriousness that it would be inappropriate for the offence to be dealt with by a magistrate.

¹⁰³ (1992) 177 CLR 292.

The draft Criminal Code Bill circulated at the end of 1994 proposed:

- a substantial increase in the range of indictable offences which can be decided summarily
- removal of the defendant's right of election for all hybrid offences, so that it is for the court to decide, in all cases, whether the charge should be decided summarily.

At this stage, it is impossible to quantify the likely effect of these changes, given that it is not known how many defendants will be affected by the new provisions, or how magistrates will choose to exercise their discretion. However, it seems reasonable to hypothesise that, if these changes are implemented, there should be some reduction in higher court workloads and a commensurate easing of the LAC's budgetary pressures. There is no doubt that it is cheaper to provide assistance for proceedings in the Magistrates Court than the District Court, all other things being equal. Also the LAC has more discretion to decline to provide assistance, or to provide only limited assistance, in relation to Magistrates Court proceedings.¹⁰⁴

The CJC has expressed to the Attorney-General its concern about aspects of the proposed provisions relating to hybrid offences. In particular, the CJC does not favour the removal of the defendant's right of election where he or she has been charged with a hybrid offence. However, as a matter of general principle the CJC acknowledges that a range of cases are currently being handled in the higher courts which could be dealt with adequately in the lower courts, without detriment to the accused and without breaching the general principles articulated by the High Court in *Dietrich's Case*.¹⁰⁵ This situation can be dealt with partly by reclassifying offences, but it will also require addressing issues such as the perceived (and possibly real) differential in sentencing between the District and Magistrates Courts, current LAC policies in relation to the funding of Magistrates Court matters, and the reform of committal proceedings to make them more effective in screening out cases which are suitable to be decided summarily.

RECOMMENDATION – REDUCING THE PRESCRIBED CRIME WORKLOAD

10. The CJC supports initiatives aimed at reducing the prescribed crime workload of the LAC provided that there is no detriment to accused persons and there is compliance with the principles articulated by the High Court in *Dietrich's Case*.¹⁰⁶

¹⁰⁴ Although the comments made in *Dietrich's Case* are *obiter dicta*, the High Court clearly felt there were few, if any, circumstances in which it was essential in the interests of justice that an accused person be represented by counsel in summary proceedings. It should be noted that, under the Code proposals, one of the factors which the magistrate will be required to consider in deciding whether to deal with a matter summarily is whether the accused person is represented before the court by a legal practitioner. This may act as an incentive for the LAC to make legal assistance more readily available in such cases.

¹⁰⁵ (1992) 177 CLR 292.

¹⁰⁶ (1992) 177 CLR 292.

THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS: MANAGEMENT AND FUNDING ISSUES

FUNDING ARRANGEMENTS

As discussed in Chapter 5, DPP funding has increased substantially since 1988/89, both in "absolute" terms and on a per deposition basis. However, in 1992/93 and 1993/94 revenue increased at a slower rate than the number of depositions.¹⁰⁷ The DPP has also expressed concern that the funding increases to date have not taken sufficient account of overall workload increases within the office.

The 1992 Treasury Resource Review of the DPP recommended that Treasury and the DPP develop an agreed funding formula for introduction in 1994/95, to ensure that future funding for the DPP kept pace with increases in workloads (DPP 1994, p. 60). As of March 1995 the two organisations had not yet reached agreement on this matter, making it highly unlikely that a formula will be settled in time for the 1995/96 financial year.

There are advantages and disadvantages associated with adopting a formula. On the positive side, a formula would enable the organisation to predict future funding levels with a fair degree of certainty and would remove the need for the DPP, Department of Justice and Attorney-General and Treasury to be involved in protracted budget negotiations each year. On the negative side, there is a danger that the DPP could be locked into a formula which does not adequately take account of workload changes (as has been the experience of the LAC). It also may not be helpful, from the point of view of encouraging agencies to improve their efficiency and performance, for funding to be *automatically* adjusted in line with workload changes. Some process of annual review, which takes account of workload changes, internal efficiency gains and other factors impacting on the organisation, would seem to be more appropriate.

Whatever approach is taken to the question of the funding formula, it is important that the DPP be in a position to provide accurate information about its workload. At present, workload is measured primarily in terms of the number of depositions received each year by the DPP. As discussed in Chapter 5, problems with this measure include:

- it takes no account of possible changes in the length and complexity of matters being handled by the DPP
- the workload associated with a particular deposition can vary substantially depending on whether, and at what point, the prosecution is discontinued or the defendant enters a plea of guilty
- the measure provides no information about the DPP's workload in other areas, such as proceeds of crime applications and the provision of services to victims.

The DPP is well aware of these information gaps, but at present has no means of calculating how many person hours/days are spent on different activities. Hence the DPP is not able, for example, to provide quantitative evidence to substantiate the claim that trials are becoming lengthier and more complex, or that proceeds of crime legislation has imposed substantial additional workload requirements on the organisation.

¹⁰⁷ During the present financial year the DPP has received additional funding in response to the appointment of three extra judges. At this stage, it is not possible to determine whether the increased funding has been sufficient to take account of the increase in workload associated with these appointments.

The CJC understands that the DPP is developing a "matters management system" which should be capable of generating substantially more sophisticated workload measures. However, until these measures are in place and have been verified, the DPP will continue to have difficulty pressing its claims for additional resources.

RECOMMENDATION – OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS FUNDING ARRANGEMENTS

11. The DPP, as a matter of priority, should develop workload measures capable of providing reasonably accurate information about the number of person hours/days associated with various activities undertaken by the DPP.

GENERAL MANAGEMENT ISSUES

Several management issues were drawn to the CJC's attention by the Director in his submission to the CJC. The Director indicated that he believed that the DPP needs to be able to offer better employment conditions, with improved career paths in order to attract and retain competent and experienced lawyers (although he noted that staff turnover in recent years has declined). The Director also stated that, because of the pressures of heavy and increasing workloads:

- staff are not able to participate in training and professional development programs to the extent that is desirable
- insufficient time is devoted by senior officers to management, supervision, training and quality control
- the DPP does not adequately contribute to improving the investigation and preparation of cases by the Police Service, by providing feedback and advice (DPP submission 1993).

Issues relating to the management of the DPP were comprehensively explored in the report of the Queensland Administration of Justice Review Committee (1993). Specific problems identified by the Review Committee were as follows:

- The system does not allow enough early intervention by decision-makers.
- There is inadequate pre-trial preparation.
- Most problems or considerations which may lead to *nolle prosequis*, adjournments, or pleas of guilty to lesser or fewer charges are identified only when the trial prosecutor actually examines the file, which will ordinarily not be until the week before the trial.
- Solicitors and counsel acting for the defence have little or no understanding of the basis upon which the DPP exercises prosecutorial discretion, nor of the criteria applied by the DPP. Consequently, there is little confidence in the "submissions" procedure.
- It is widely perceived that realistic decisions about a case will not be made until the file comes into the hands of the prosecutor who is to conduct the trial.
- Staff in the Preparations Section are physically and psychologically isolated from the rest of the DPP (1993, pp. 45-46).

The Review Committee provided a comprehensive blue-print for addressing the problems which it had identified in relation to the DPP. These included:

- the DPP should be re-organised into Prosecution Teams, which would have responsibility for the conduct of files from receipt of depositions to conclusion of the matter
- depositions should be assessed by a senior qualified legal officer (solicitor) within each team as they are received from the Registry and, at an early stage, be sorted into major and minor cases
- there should be early examination of files by professional staff able to take any actions or decisions required in relation to these matters
- where the Crown decides that it may accept a plea to a lesser charge or to only some charges, the responsible officer in the prosecution team should be authorised to contact the defence and indicate this attitude
- members of each prosecution team should be physically located together
- prosecutorial discretion should be more widely devolved and most decisions be subject to an exercise of prosecutorial discretion made by a proposed Consulting Prosecuting Solicitor or by a Consultant or Senior Crown Prosecutor
- a statement of "Prosecution Policy and Guidelines" should be published as a matter of priority (1993, p. 4).

The Review Committee did not give detailed consideration to the issue of resources, but it did acknowledge that restructuring and reorganising the DPP would:

necessitate consideration of staffing levels, position classifications, and salary levels, and the formulation of new job descriptions where appropriate [and] . . . would lead to a need to recruit staff for critical positions (particularly Prosecutions Solicitors or Senior Prosecution Solicitors). (p. 75)

The DPP has made progress in implementing several of these recommendations, but the organisation has not yet re-organised into prosecution teams as recommended by the Review Committee. The DPP has raised concerns about the workability of certain proposals, particularly outside of Brisbane. The DPP has also pointed out that aspects of the Review Committee's proposals may need to be revised in the light of proposals for the DPP to become more involved in the committal process (see below). However, the main obstacle to date appears to have been the reluctance of the DPP to proceed further without additional funding.

The CJC does not have the information or expertise necessary to undertake detailed costings of the Review Committee's proposals, or to determine which recommendations are workable and which require modification. These issues are better addressed by the DPP in conjunction with departments of Government, such as the PSMC, Treasury and the Department of Justice and Attorney-General. However, there seems to be little dispute that there is scope for significantly improving the internal performance of the DPP; it also seems to the CJC that the report of the Review Committee provides a valuable starting point. What is now required is a clear commitment by the Government to closely examine the Review Committee's recommendations in conjunction with the DPP, identify what action is required, and work out the cost, if any, of giving effect to these changes. The DPP is a crucial part of the criminal justice system. Unless its organisational shortcomings are identified and remedied, it will be very difficult to achieve significant improvements in the overall efficiency and effectiveness of the system.

RECOMMENDATION – MANAGEMENT ISSUES RELATING TO THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

12. The State Government, in consultation with the DPP, should review, cost out and, where appropriate, implement the recommendations of the Queensland Administration of Criminal Justice Review Committee (1993) relating to the restructuring and reorganisation of the DPP.

QUALITY CONTROL

The DPP currently has few mechanisms in place for monitoring the quality of the work performed by staff within the DPP, or by private counsel to whom work is briefed out. This obviously hampers effective management of the DPP. Moreover, it is very difficult for the organisation or those outside of it to quantify deficiencies in the organisation's performance or monitor changes over time.

The DPP has formally adopted some performance indicators as part of the corporate planning process, but these are pitched at a very general level and focus more on outcomes than processes. What is also required is some way of reviewing individual matters to determine whether: they have been prepared within agreed time standards; the briefs are complete; significant legal and evidentiary issues have been identified and resolved; there has been full and proper disclosure to the defence; the case has been properly presented in court; and so on. This does not necessarily mean that each and every file must be checked – a system of random auditing would probably be quite adequate – but some mechanism needs to be put in place so that the organisation has access to reliable and useful information about how well it is performing.

RECOMMENDATION – OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS QUALITY CONTROL PROCEDURES

13. The DPP should develop processes for routinely and systematically monitoring the quality of work performed by in-house staff and private counsel who do work on behalf of the DPP.

USE OF PRIVATE COUNSEL

Since the establishment of the DPP, the great bulk of prosecution work has been handled in-house. Private counsel are basically only used to deal with the "overflow" in trial work and appeals, when there are no in-house prosecutors available. Also, as discussed in Chapter 5, DPP briefing out fees are substantially below those paid by the LAC. As a result, private practitioners state that they will generally only accept DPP briefs if no other work is available.

The briefing-out practices of the DPP were the subject of critical comment in the report of the Queensland Administration of Criminal Justice Review Committee (1993). As a means of addressing these problems, the Committee recommended that the Bar Association be encouraged to change its rules to allow counsel to be retained by the DPP on a weekly or daily basis to do all such work as may be required during a particular week or fortnight (p. 6). It was envisaged that this change would have three main effects:

- there would be less incentive for the DPP to defer briefing out until the last minute, as the DPP would no longer run the risk of paying for work which is not performed
- counsel would receive briefs earlier and have more time to prepare
- prosecution work would be more financially attractive to practitioners as they would be offered work for a substantial block of time.

The CJC understands that the DPP is continuing to pay counsel on a per matter, rather than a daily or weekly, basis.¹⁰⁸ However, the DPP has now adopted the practice of briefing out several listed trials to a single barrister, generally at least 10 days prior to the date on which the matters are listed for trial. The CJC does not have specific information about the efficiency of these new arrangements, but it is obviously in the interests of the criminal justice system as a whole that initiatives designed to minimise the incidence of late briefing continue.

A broader issue which needs to be addressed is whether the DPP should make greater use of private counsel. The DPP is in a rather different position to the LAC in this regard, because traditionally relatively little of the DPP's work has been briefed out. If the DPP were to move more towards a Victorian model, where most prosecution trial work is done by the private bar, it would be necessary to make substantial cutbacks to existing staff levels. This would involve very considerable transitional costs for what might, in the end, prove to be marginal financial gains. Nonetheless, serious consideration needs to be given to whether *future* growth in workload should be met primarily by appointing more permanent staff to the DPP, or by making greater use of private counsel.

The potential benefits of using private counsel include:

- the organisation would be able to adapt more quickly to fluctuations in workload levels
- there would be fewer "on-costs" involved (for example, leave entitlements, superannuation, provision of accommodation and other organisational support)
- most importantly, private practitioners, if assigned comparable cases to those handled by in-house staff, could provide a benchmark against which to compare the quality and quantity of work being performed in-house.

The 1989 review of the DPP undertaken by Price Waterhouse Urwick identified three main disadvantages of briefing out:

- there would be a lack of specialisation among barristers, as they would practise as both prosecutors and defenders
- it would not be possible to attract suitably experienced counsel at the rates the DPP pays
- prosecution services in Queensland would become more fragmented and more difficult to coordinate (1989, p. 51).

The CJC does not regard any of these objections as insurmountable. First, it is not clear why it is necessary, or even desirable, for barristers to specialise exclusively in prosecution or defence work. In any event, there are a substantial number of barristers who are well qualified to undertake prosecution work, especially those who were previously employed as prosecutors by the DPP. Second, it should not be assumed that existing fee scales are non-negotiable. If the DPP were to open up its work more to the private profession, it could give consideration to adopting some form of tendering or contract system as a means of establishing the rates at which suitably qualified practitioners were prepared to undertake prosecution work on a regular basis. Third, while there may be some problems of coordination, it should be possible to overcome these with proper management.

¹⁰⁸ The Bar Association has agreed to changing its rules subject to satisfactory daily and weekly fees being negotiated. There is as yet no agreement between the DPP and the Bar Association in relation to this matter.

In the final analysis, however, an increase in the amount of briefing out can only be justified if it can be shown to be cost effective relative to the present arrangements. At present, it is not possible to make such an assessment because:

- the DPP does not have any systems in place for costing out the amount of time which in-house prosecutors spend preparing and processing particular matters
- there are no processes for monitoring the quality of the work performed by in-house or private counsel
- the matters which are currently briefed out appear not to be representative of the matters handled in-house; hence it is not possible to compare like with like.

Until a properly designed trial is conducted, and the appropriate information collected, the DPP will not be in a position to determine whether it is making the best use of its available funds and whether it should continue with the policy of hiring additional permanent staff to deal with increases in workload.¹⁰⁹

RECOMMENDATION – USE OF PRIVATE PRACTITIONERS BY THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

14. Although the bulk of prosecution work will continue to be handled in-house by the DPP for the foreseeable future, there is scope for the DPP to make greater use of private counsel.

To determine whether greater use of briefing out is desirable, the DPP should establish a system of time recording for in-house prosecutors and processes for monitoring the quality of the work performed by both in-house and private counsel. The DPP should also endeavour to ensure that, for the purposes of this evaluation, the matters which are briefed out to private counsel are roughly comparable to those dealt with by in-house prosecutors.

IMPROVING THE CRIMINAL JUSTICE SYSTEM AS A WHOLE

The primary focus of this report has been on assessing the adequacy of funding of the LAC and DPP. However, as noted in Chapter 1, the ability of these agencies to utilise funds effectively is constrained by, and has implications for, what happens elsewhere in the criminal justice system. Reforms of the broader criminal justice system may well be a more realistic and effective strategy to address the resourcing problems of these agencies in the medium to longer term.

Over the past few years numerous proposals have been developed to enhance the efficiency of the Queensland criminal justice system and its component agencies. These proposals have addressed the jurisdiction of the Magistrates Court, the committal process, the process of listing matters for trial and many other aspects of the system.

¹⁰⁹ Price Waterhouse Urwick concluded that briefing-out would not be cost effective if prosecutors increased the amount of time they spent in court from 43 per cent of available days to 60 per cent. According to Price Waterhouse Urwick, even assuming no rise in productivity, briefing-out would be uneconomic if fee scales increased by more than 20 per cent. A major shortcoming of this analysis is that it did not allow for the possibility that prosecutors' salaries might also rise, even though the report was supportive of substantial salary increases being paid to prosecutors. In addition, Price Waterhouse Urwick do not appear to have factored in the on-costs associated with employing permanent staff (1989, pp. 52-53).

Some of the more important reviews have been:

- the Criminal Code Review Committee (1992)
- the Queensland Administration of Criminal Justice Review Committee (1993)
- the Committals Committee (1993)
- the Criminal Case Management Group (1994).

There appears to have been broad agreement among these bodies as to the problems confronting the Queensland criminal justice system. Generally, it is considered that:

- many matters are being dealt with in the higher courts which could adequately be handled in the Magistrates Court where the costs to the system are lower
- decision-making occurs too late in the process, involving agencies in work that may be unnecessary – for example, preparation of the matter as a trial when a decision could have been made earlier as to an appropriate plea of guilty
- the committal process is ineffective in screening out matters and identifying guilty pleas at an early stage, due largely to the high incidence of hand-up committals without cross-examination and the fact that the DPP and LAC are generally not involved until later in the process
- court listing practices need to be improved to ensure greater predictability and certainty as to when a trial is going to commence.

The issue of enlarging the Magistrates Court jurisdiction has been addressed in the draft Criminal Code Bill (see above). However, less progress has been made in relation to other areas.

It is generally recognised that there is a need for coordination and cooperation among agencies at all levels 'to ensure that each component part, and the system as a whole, is performing as justly, efficiently and effectively as possible' (Queensland Administration of Criminal Justice Review Committee 1993, p. 71). In an effort to promote a "system" approach, the Criminal Case Management Group was established in August 1994, as an initiative of the Litigation Reform Commission. The members of the group were drawn from all major participants in the criminal process – the Supreme and District Court judiciary, the Magistracy, DPP, LAC, Queensland Police Service, Department of Justice and Attorney-General, the private profession and court administration staff. The aim of the group was to develop some specific strategies that could be implemented on a system-wide basis to improve efficiency. The group focused particularly on ways of reducing backlogs in the courts and reducing the time taken to dispose of matters.

The group established a number of guiding principles. Among them were:

- *Successful reform must be based on consultation and reaching consensus among people, with appropriate authority, from all parts of the criminal justice system.* All of the decisions of the group were to have unanimous support, requiring members to compromise so as to achieve the goal of system reform.
- *The criminal justice system should be considered in its entirety.* The group stressed the need to introduce connecting links between the Magistrates Court and the higher courts so that the courts maintain control of the progress of criminal proceedings from the earliest stage until completion. The group considered it essential to look at costs and savings to the system as a whole.

- *It was necessary to encourage earlier indication of guilty pleas.* The group made it clear that they did not seek to increase the number of guilty pleas, but to bring forward the time when such pleas are indicated.

The group produced a report in November 1994. The report contains a model for the criminal process that was unanimously agreed upon by all agencies represented in the group. Essentially the model relied on findings in other jurisdictions in Australia and North America that the single best means of reducing delay and cost in the criminal justice system is for there to be intervention at the earliest possible time by the court, the DPP and the LAC.

The group established time standards for the progress of matters from arrest to disposition by trial, sentence or otherwise. The proposed model relied upon an intensive resource commitment from the agencies between the first appearance in court and the committal or summary hearing.

The group recommended that there be a pilot program established in the Brisbane Magistrates Court of six months duration, to test the proposition that early intervention is the key to success. The pilot was proposed to commence in February 1995 but it has not yet proceeded as the agencies, particularly the DPP and the LAC, have indicated that they require additional resources to implement the pilot project.¹¹⁰

The CJC agrees that the key to a more efficient system is to inject more resources at the "front-end" of the criminal justice process. However, such an approach will require some major adjustments to the current processes of the agencies involved which may, in turn, require some transitional funding and some legislative change. Many of the efficiency gains or cost savings may benefit one part of the system while the costs will be incurred by another part of the system. To date, this has discouraged agencies from taking steps that may improve the overall efficiency of the system.

Changing the system will require:

- A commitment of resources in the first instance to enable agencies, in particular the DPP and LAC, to change their processes and focus more resources at the "front end" of the system. This transitional funding need not be an ongoing commitment. The injection of resources at the early stages should ultimately result in overall efficiencies and savings for the agencies, although it may take a year or two before these benefits are identifiable.
- Creation of an ongoing mechanism for developing, implementing and monitoring across-agency strategies to improve the system. The establishment of a permanent group similar to the Criminal Case Management Group was recommended by the Administration of Criminal Justice Review Committee in 1993. The CJC endorses this recommendation as it will provide the necessary institutional underpinning of inter-agency cooperation and liaison.
- Priority to be given to implementing proposed legislative changes designed to enhance the efficiency of the system, particularly in relation to committal proceedings. The Committals Committee, which reported to the Government in 1993, proposed a range of changes to existing legislation relating to committals. However, the recommendations of this Committee have not yet been acted on by the Government and the report itself remains confidential.

¹¹⁰ Since October 1994, a pilot committals project has been running in Ipswich, as an initiative of the DPP, the LAC and the Queensland Police Service. This project involves participation by the DPP and LAC in committal proceedings. The project is still being evaluated.

IMPROVING THE QUALITY OF INFORMATION

If the criminal justice system is to operate efficiently and effectively, it is essential that decision-makers have access to comprehensive and reliable data about the operation of that system and its component parts. Without such information, it is extremely difficult to quickly identify and respond to problems, make sensible decisions about the allocation of resources, and evaluate the impact of changes to the system.

This review has highlighted a number of significant gaps and shortcomings in the information which is currently available about the Queensland criminal justice system and the operations of particular agencies within that system. For instance:

- neither the LAC or the DPP is at present able to provide accurate information about the amount of time and resources which they devote to dealing with different types of matters and neither organisation systematically collects information about the quality of service which it provides
- the most recently available Magistrates Court statistics for Queensland are now nearly three years out of date
- it is impossible to determine the proportion of matters currently heard in the District Court which could have been dealt with in the Magistrates Court and, likewise, it is impossible to quantify the effect of the changes to "hybrid" offence provisions proposed in the draft Criminal Code
- no data are available to test the widely held perception that District Court judges take a more lenient approach to sentencing than magistrates
- very little information is publicly available about the stage of proceedings at which guilty pleas are being entered, even though this is a crucial measure of system efficiency
- there are unresolved inconsistencies in the statistics on guilty plea rates collected by different agencies
- there is no publicly available data which might indicate whether trials have become lengthier and more complex in recent years.

Some of these deficiencies are in the process of being addressed by the agencies concerned. For instance, the LAC has moved to implement a system of time costing and the DPP is currently developing a matters management system which should be capable of providing more detailed workload information for the organisation. In the longer term, it is to be hoped that there will be a significant improvement in the quality, quantity and timeliness of criminal justice data, as a result of the establishment, in late 1994, of a Crime Statistics Unit within the Government Statistician's Office. However, it will require time, planning, resources and, most importantly, the cooperation of the criminal justice agencies themselves, to bring about these improvements.

RECOMMENDATIONS – IMPROVING THE CRIMINAL JUSTICE SYSTEM GENERALLY

15. To facilitate earlier decision-making in the criminal justice system, some *transitional* funding should be made available to enable agencies such as the DPP and LAC to change their processes and focus more resources at the “front end” of the system.
16. A permanent group, similar to the Criminal Case Management Group, should be established to develop, implement and monitor across-agency strategies to improve the criminal justice system.
17. Priority should be given to proposed legislative changes designed to improve the efficiency of the system, particularly in relation to committal proceedings.
18. All criminal justice agencies should give the maximum possible support to initiatives designed to improve the quality, quantity and timeliness of information relating to the operation of the criminal justice system.

CONCLUSION

The CJC's primary objective in preparing this report has been to assess the sufficiency of the funding of the LAC and DPP, with a view to enabling future decisions about the funding of these agencies to be better informed. Consistent with this approach, the bulk of the report has been taken up with analysing data and presenting findings, rather than developing detailed recommendations. However, as discussed in this chapter, there are several procedural and structural matters which must be addressed if funding issues relating to these agencies are to be satisfactorily resolved over the longer term.

First, funding decisions need to be made on the basis of accurate information about the workload of each agency and broad agreement about the level and range of services which they are expected to deliver. This requires that both the LAC and DPP develop suitable measures of changes in workload, costs and the demand for services. An additional issue for the LAC is the current Commonwealth/State Agreement, which has proved to be inadequate as a basis for maintaining the service profile originally established by the Agreement. The State and Commonwealth Governments must decide on an appropriate service delivery profile for the LAC and ensure that LAC funding arrangements enable the organisation to provide a stable level of service in terms of this profile.

Second, both agencies need to ensure that the resources which are allocated to them are used cost effectively. Given the wider budgetary constraints under which the Government operates, the LAC and DPP will have difficulty securing additional budget allocations unless they can demonstrate that they are utilising existing funds as effectively and efficiently as possible. Greater cost effectiveness can only be achieved if the agencies:

- have accurate information about what it costs them to provide services in-house compared with using private practitioners
- are willing to trial and evaluate different methods of delivering services with a view to determining which method, or mix of methods, is most cost effective
- have organisational structures which limit the ability of sectional interest groups to influence decisions about how resources can best be utilised (this issue is primarily relevant to the LAC).

Third, both agencies need to develop systematic quality control and monitoring mechanisms so that a proper standard of service can be maintained and the quality of different modes of service delivery can be evaluated. These procedures should apply equally to work carried out in-house and that performed on behalf of the agency by private practitioners. Effective quality control is crucial for ensuring that moves to promote greater cost effectiveness do not result in any diminution of standards.

Finally, it is important to recognise that the ability of both agencies to utilise funds effectively is constrained by, and has implications for, what happens elsewhere in the criminal justice system. Over the longer term, reform of the wider criminal justice system is likely to be the most productive way of addressing funding issues relating to these agencies. Amongst other things, the promotion of systemic reform requires:

- some transitional funding to be made available to agencies, particularly the DPP and LAC, to facilitate earlier decision-making in the criminal prosecution process
- introduction of legislative changes, particularly in relation to committal proceedings
- establishment of a permanent management group to develop, implement and monitor across-agency strategies
- improvements in the quantity, quality and timeliness of the information which is collected about the operation of the criminal justice system.

The CJC is strongly supportive of recent initiatives to promote system-wide improvements and, pursuant to its statutory responsibilities under the *Criminal Justice Act*, will be actively monitoring future developments in this area.

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APPENDICES

100

101

102

103

104

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107

108

109

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113

114

115

116

117

118

119

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APPENDIX 1 ADVERTISEMENT CALLING FOR SUBMISSIONS AND LIST OF NON-CONFIDENTIAL SUBMISSIONS RECEIVED

CALL FOR PUBLIC SUBMISSIONS ON THE SUFFICIENCY OF FUNDING FOR THE OFFICE OF THE DIRECTOR OF PROSECUTIONS AND THE LEGAL AID OFFICE, QUEENSLAND

The Criminal Justice Commission's statutory responsibilities include the responsibility to monitor and report on the sufficiency of funding for criminal justice agencies including the Office of the Director of Prosecutions and the criminal law functions of the Legal Aid Office (Qld).

In undertaking that responsibility the Criminal Justice Commission invites submissions in writing on the sufficiency of funding for the Office of the Director of Prosecutions and the criminal law functions of the Legal Aid Office (Qld). In particular, submissions should address the following issues:

- the extent to which and ways in which the operation of these agencies has been affected by their level of present funding, including the implications for the availability and type of representation provided to persons charged with criminal offences;
- the implications for the criminal justice system as a whole of the current funding levels of these agencies;
- any possible changes to the organisation of the criminal justice system or its component parts which might enable the more efficient use of resources by these agencies;
- the criteria to be applied in determining appropriate funding levels for these agencies.

Responses should be forwarded by 24 September 1993 to:

Criminal Justice Commission
PO Box 137 Albert Street
BRISBANE QLD 4002

Submissions to the Commission will be treated as public documents unless marked "Confidential".

LIST OF NON-CONFIDENTIAL SUBMISSIONS RECEIVED

The CJC received submissions in response to correspondence forwarded to various people and organisations who were considered to have an interest in the issue, as well as in response to the advertisement seeking submissions published in *The Courier-Mail*, *Sunday Mail* and *The Weekend Australian* on 14 and 15 August 1993.

Crown Prosecutors Association of Queensland

Director of Public Prosecutions

Department of Family Services and Aboriginal and Islander Affairs

Far North Queensland Defence Lawyers Association

The Honourable Minister for Justice and Attorney-General and Minister for the Arts

Legal Aid Commission

Queensland Police Service

State Public Services Federation

Victims of Crime Association of Queensland Inc.

Mr P Apel (Solicitor)

Mr K J Barker

Mr A Boe (Solicitor)

Mr J T Bradshaw (Barrister)

Ms S M Coates (Solicitor)

Mr L Haines

Mr L J Matthews

Mr P Richards (Solicitor)

Mr M Thompson (Solicitor)

Two confidential submissions were received.

APPENDIX 2

THE STATE GOVERNMENT CONTRIBUTION TO LEGAL AID UNDER THE COMMONWEALTH/STATE AGREEMENT

This Appendix contains calculations of the difference between the amount actually paid by the State Government to legal aid in the period 1988/89–1993/94 and the amount it was required to pay under the 1990 Commonwealth/State Funding Agreement.

Under clause 7 of the Agreement, the State is required to contribute a minimum amount to legal aid. Income from solicitors' trust accounts is credited to the State's contribution, but the effect of the State's obligation is to set a floor for the LAC's revenue, regardless of the level of trust account revenue. The 1990 Funding Agreement also provides that when trust account income in a given year exceeds the required State grant, the excess can be credited to the amount payable by the State in any future year. Although the LAC is not a party to the Agreement, the same provision purports to require it to hold any excess in reserve.¹¹¹ The effect of applying this provision would be to spread unusually high interest income from solicitors' trust accounts over several years.

It is a fairly straightforward exercise to calculate the difference between the State's contribution to the LAC and its obligation under the Agreement in each of the financial years after the LAC/PD merger. The application of the relevant provisions prior to the merger is unclear, but according to a literal reading of Schedule paragraphs 15 and 16, trust account income received by the PD prior to the merger was not credited to payment of the State grant to the LAC, whereas payments from consolidated revenue to the PD were.¹¹² Moreover, the provision relating to "excess" trust account income, read literally, applied only to trust account income received by the LAO in excess of the State's required contribution to both the LAC and the PD.¹¹³

Table A2.1 shows the relationship between the minimum State grant required by the Agreement, trust account income and the actual State contribution for the period 1988/89¹¹⁴ to 1993/94. The figures are based on cash receipts and have not been indexed for inflation. This table shows that the State's total contribution increased sharply between 1988/89 and 1990/91, primarily because of large increases in trust account income. The contribution declined significantly between 1990/91 and 1992/93, largely because of a steep decline in trust account income. However, in terms of the parameters fixed by the Agreement, the three financial years from 1988/89 through 1990/91 were "unusually" high trust account and total income years. The component of the State's contribution which is actually credited to the grant required by the Agreement exceeded the State's obligations in those years by amounts between \$3.3m and \$5.4m.¹¹⁵ The State's grant was just above the minimum in 1991/92, and was actually below the minimum in 1992/93. The deficit of

¹¹¹ Schedule, para. 16.

¹¹² An effect of the merger was to increase the proportion of income from solicitors' trust accounts credited to the State's obligation to fund LAC.

¹¹³ The relevant passage of paragraph 16 refers to trust account income 'received [in a year] by the Commission . . . which is in excess of the amount payable by the State, under paragraph 2 in respect of that year . . .' [emphasis added]. There is some scope for arguing that the words 'to the Commission' after the word 'State' are implicit, and that the provision was intended to apply to the amount in excess of the State grant payable to the LAO after payments to the PD were taken into account.

¹¹⁴ This retrospective comparison is suggested by the terms of the Agreement itself. Moreover, it is arguable that the provision relating to excess trust account income was intended to apply to trust account income received by the LAO in 1988/89. Clause 15 of the Agreement stipulates that it is to operate from 1 July 1989, although the document was not signed until 30 January 1990. However, the Schedule, para. 4, provides for an amount the parties 'agree [is] payable' under Schedule, para. 2 in 1988/89. Para. 16 of the Schedule applies generally to 'amounts payable by the State under this Agreement in respect of a year' and specifically to trust account income 'in excess of the amount payable by the State, under paragraph 2 in respect of that year . . .'.

¹¹⁵ The amounts described as "credited" are based on the onerous construction of the State's obligations under Schedule paras 15 and 16 discussed above.

FUNDING OF LEGAL AID AND PUBLIC PROSECUTIONS IN QUEENSLAND

\$1.266m in this year is based on cash accounts. As discussed below, the accrual figure is lower and, conversely, the surplus for 1993/94 is lower than that shown in 1993/94. It should also be noted that formally, under the Agreement, the State could have offset excess trust account income credits from the previous year.

**TABLE A2.1 – REQUIRED AND ACTUAL TOTAL STATE CONTRIBUTION
TO LEGAL AID**

	1988/89 \$m	1989/90 \$m	1990/91 \$m	1991/92 \$m	1992/93 \$m	1993/94 \$m
Minimum	7.895	9.535	11.499	12.214	12.899	13.197
Trust income (LAC)	8.406	11.156	12.089	7.420	4.552	6.755
Cons. rev. (LAC)			0.601	5.071	7.081	10.300
Cons. rev. (PD)	2.801	3.109	4.165			
Total credited grant ¹	11.207	14.265	16.855	12.491	11.633	17.055
Total income (PD) ¹	2.806	3.074	1.920			
Total State contrib.	14.013	17.339	18.775			
Credited grant excess ²	3.312	4.730	5.356	0.277	(1.266) ⁶	3.858
Total contrib. excess ³	6.118	7.864	7.276	0.277	(1.266)	3.858
Credited trust excess ⁴	0.511	1.621	0.590			
Total trust excess ⁵	3.317	4.695	2.510			

Source: Table compiled from financial data supplied by LAC.

Notes:

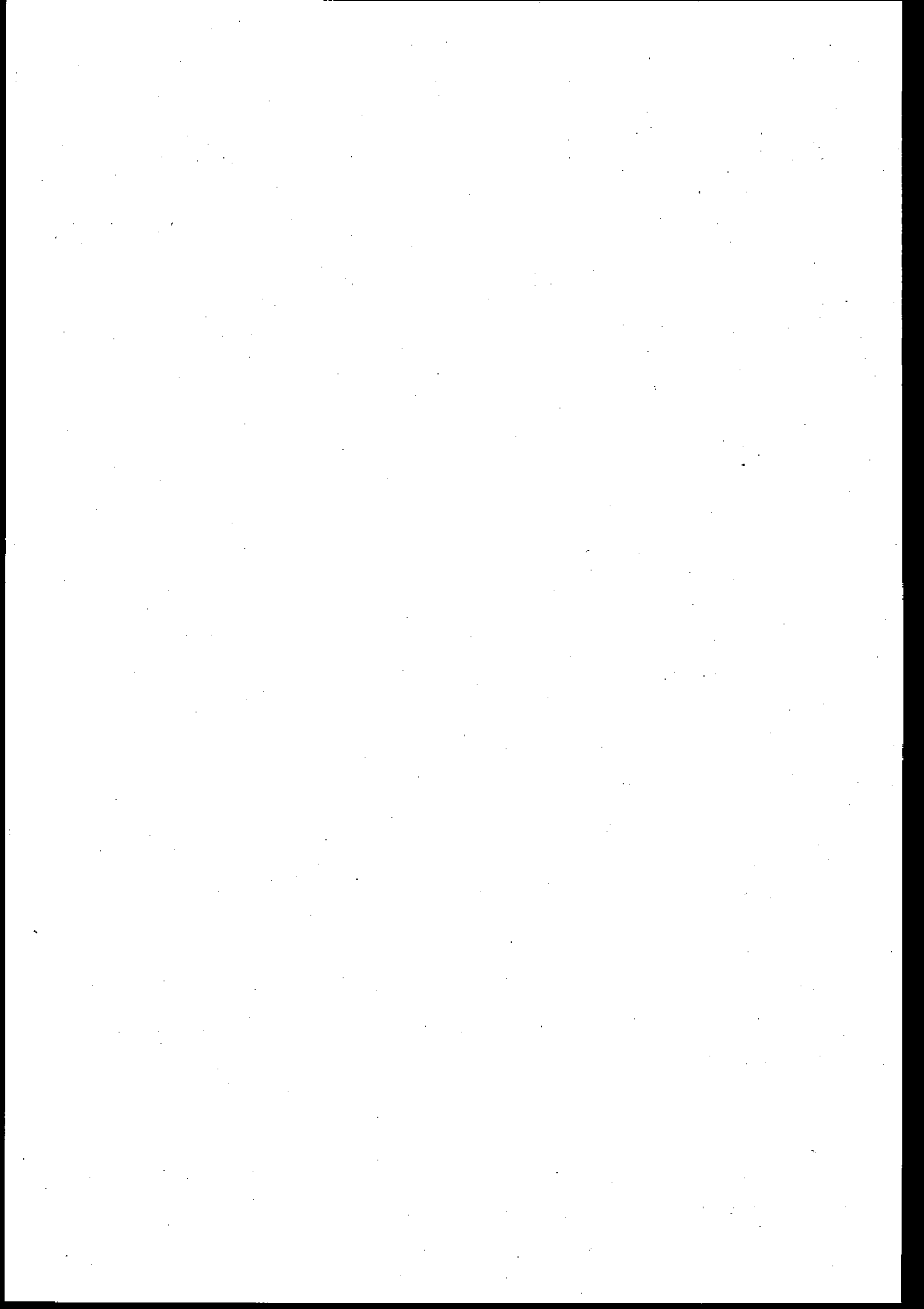
1. The total credited grant is the consolidated revenue grant and the amount of trust account revenue credited to the State's obligation under the 1990 Agreement. Trust account income paid to the PD prior to the merger was not credited to the State for this purpose.
2. The credited grant excess is the difference between the minimum required contribution under the Agreement and the total credited grant.
3. The total contribution excess is the difference between the minimum required under the Agreement and the total account (including PD trust income) actually paid to Legal Aid.
4. Credited trust excess is the amount of trust account income paid to the LAC (excluding PD) which exceeded the minimum total State grant to Legal Aid.
5. Total trust excess is the amount by which total trust account income paid to the LAC and PD exceeds the minimum State grant.
6. Indicates a deficit.

It should be pointed out that the amounts shown in the above table as 'credited grant excess' are different from the official 'over' and 'under' figures provided to the CJC by the LAC for the years 1990/91-1993/94. According to the LAC,¹¹⁶ the amounts for each of these years are:

1990/91	\$915,853
1991/92	(\$163,746)
1992/93	(\$226,211)
1993/94	\$2,141,198

The marked discrepancy between the CJC and LAC figures for 1990/91 is attributable primarily to the fact that the LAC did not include in its calculations the \$4.2 m paid out of Consolidated Revenue to the Public Defender in that year. The relatively minor discrepancies in the later years would appear to be primarily due to the fact that Table A2.1 is based on cash accounts, whereas the LAC has used accrual accounts.

¹¹⁶ Correspondence received 23 January 1995, from Mr J Hodgins, Director, Legal Aid Office (Queensland).



APPENDIX 3

EXPENDITURE AND REVENUE MEASURES: BASE TABLES

TABLE A3.1 - LEGAL AID COMMISSION OF QUEENSLAND AND PUBLIC DEFENDER'S OFFICE
REVENUE AND EXPENDITURE (1983/84-1993/94)

	1983/84	1984/85	1985/86	1986/87	1987/88	1988/89	1989/90	1990/91	1991/92	1992/93	1993/94
LEGAL AID REVENUE											
Civil Govt Fund	8,357,700	9,982,894	11,143,200	11,649,713	13,097,200	14,327,200	14,302,000	18,125,265	18,007,157	17,668,288	18,067,480
Civil Grants Community Legal Centres	67,500	113,650	163,450	227,038	283,684	311,385	332,806	354,438	630,999	791,871	950,634
Civil Govt Fund Total*	8,425,200	10,096,544	11,306,650	11,876,751	13,380,884	14,638,585	14,634,806	18,479,703	18,638,156	18,460,159	19,018,114
Qld Law Soc. Interest	2,875,000	2,748,500	3,623,022	3,500,109	2,790,831	5,198,634	6,892,979	8,282,763	3,281,450	1,603,250	1,541,000
Qld Law Soc. Contribution Fund **			2,900,000	1,490,300	2,233,390	3,207,276	4,263,122	3,806,944	4,138,804	2,948,247	5,213,537
Grants Fund									229,730	141,433	232,012
Qld Law Soc. Monies Total	2,875,000	2,748,500	6,523,022	4,990,409	5,024,221	8,405,910	11,156,101	12,089,707	7,649,984	4,692,930	6,986,549
State Govt Fund								600,809	5,071,000	7,081,000	10,300,000
Other***	1,432,018	1,924,722	2,923,398	3,997,370	4,221,093	5,706,170	7,112,242	8,672,324	8,907,370	9,140,473	6,807,038
PD Trust Fund								1,913,221			
SUB TOTAL LEGAL AID REVENUE	12,732,218	14,769,766	20,753,070	20,864,530	22,626,198	28,750,665	32,903,149	41,755,764	40,266,510	39,374,562	43,111,701
Less PD Trust Fund								1,913,221			
TOTAL LEGAL AID REVENUE	12,732,218	14,769,766	20,753,070	20,864,530	22,626,198	28,750,665	32,903,149	39,842,543	40,266,510	39,374,562	43,111,701
PUBLIC DEFENDER REVENUE											
Qld Law Soc. Contr.			2,537,500	1,303,263	1,953,716	2,806,367	3,074,000	1,920,338			
Client Contr.			43,770	54,792	85,631	87,542	114,523	56,662			
State Cons. Rev. to Trust Fund	1,373,961	1,645,487	1,367,207	1,355,000	500,000	500,000	500,000	1,000,000			
Total Revenue for Briefing Out	1,373,961	1,645,487	3,948,477	2,713,055	2,539,347	3,393,909	3,688,523	2,977,000			
Cons. Rev. Admin.		1,848,270	1,843,231	2,087,000	2,125,574	2,301,117	2,609,400	3,165,162			
TOTAL PUBLIC DEFENDER REVENUE	1,373,961	3,493,757	5,791,708	4,800,055	4,664,921	5,695,026	6,297,923	6,142,162			
TOTAL REVENUE	14,106,179	18,263,523	26,544,778	25,664,585	27,291,119	34,445,691	39,201,072	47,897,926	40,266,510	39,374,562	43,111,701

TABLE A3.1 cont'd

	1983/84	1984/85	1985/86	1986/87	1987/88	1988/89	1989/90	1990/91	1991/92	1992/93	1993/94
LEGAL AID EXPENDITURE											
Salaries	2,382,518	3,276,373	3,877,883	4,137,230	4,511,805	5,088,609	5,882,015	7,456,592	11,257,733	11,736,068	11,599,906
Admin. & Capital Expenditure ^a	1,703,845	1,532,924	1,771,269	1,688,531	2,014,403	2,867,277	2,873,678	3,004,275	4,797,675	5,006,517	4,694,843
Disbursements	116,554	197,092	202,502	237,010	374,426	257,709	228,199	478,482	1,471,757	1,422,288	1,421,214
Private Practitioners Costs	9,146,168	9,049,599	9,735,150	10,781,708	12,786,384	13,712,632	21,786,669	26,282,124	30,990,652	22,007,387	18,478,572
Community Legal Centres	104,170	139,150	203,250	261,012	442,072	490,460	731,806	920,974	1,741,983	1,770,615	1,803,932
TOTAL LEGAL AID EXPENDITURE	13,453,255	14,195,138	15,790,054	17,105,491	20,129,090	22,416,687	31,502,367	38,142,447	50,259,800	41,942,875	37,998,467
Herschel Street Building Expenditure						6,957,355	2,875,049				
PUBLIC DEFENDER EXPENDITURE											
Total Briefing Fees Incurred ^{aa}	1,373,961	1,645,487	2,471,327	2,503,168	2,235,805	2,407,013	3,798,400	3,390,430			
Administrative Exp. ^{aaa}											
Salaries		1,387,843	1,562,325	1,688,632	1,673,612	1,753,645	1,827,185	2,610,970			
Administration		460,427	280,906	398,368	451,962	547,472	782,215	554,192			
Total Administrative Exp.		1,848,270	1,843,231	2,087,000	2,125,574	2,301,117	2,609,400	3,165,162			
TOTAL PUBLIC DEFENDER EXPENDITURE	1,373,961	3,493,757	4,314,558	4,590,168	4,361,379	4,708,130	6,407,800	6,555,592			
TOTAL EXPENDITURE	14,827,216	17,688,895	20,104,612	21,695,659	24,490,469	27,124,817	37,910,167	44,698,039	50,259,800	41,942,875	37,998,467
SURPLUS/(DEFICIT)	(721,037)	574,628	6,440,166	3,968,926	2,800,650	7,320,874	1,290,905	3,199,887	(9,993,290)	(2,568,313)	5,113,234

Sources: Legal Aid Commission of Queensland n.d., Submission to the Treasurer of Queensland on Funding for Prescribed Criminal Proceedings and Legal Aid Commission of Queensland, Annual Reports 1983/84-1993/94; Dept of Justice and Attorney-General correspondence received 10 August 1994

Notes:

- ^a Includes referrals to private legal practitioners, administration expenses and grants to community legal centres.
- ^{aa} Queensland Law Society Contribution Fund; pursuant to s. 36E of the Queensland Law Society Act 1952 the LAC receives 40 per cent of the moneys available in the Contribution Fund. Distributions from the Fund were commenced in 1985/86.
- ^{aaa} Includes interest on investments, Legal Advice Fees, Client Contributions, Sale of Assets, Rents received, Revenue Misc., Sundry Debtors. In 1992/93 this figure also included proceeds from vehicle and equipment sales and net increase in trust funds.
- ^A 1988/89 and 1989/90 do not include major capital outlays on the Herschel Street Building.
- ^{AA} Increase in payments to private practitioners is due to a State Government approved fee increases
- ^{AAA} Administrative Expenditure is from Public Defender Annual Report 1989/90, Appendix
- 1. LAC figures were prepared on a cash basis to 1989/90 and on an accrual basis for 1990/91. To ensure uniformity, a financial analyst converted the income and expenditure accounts for the financial years 1990/91 onwards from an accrual basis of accounting to a cash basis.
- 2. The PD merged with the LAC on 28 March 1991; therefore there are no revenue and expenditure figures for the PD after this date.

**TABLE A3.2 – QUEENSLAND POPULATION AND CONSUMER PRICE INDEX
FIGURES USED (1983/84–1993/94)**

	QUEENSLAND POPULATION	CPI INDEX 31 DECEMBER
1983/84	2,523,850	66.20
1984/85	2,571,218	68.50
1985/86	2,624,595	74.00
1986/87	2,674,473	80.60
1987/88	2,739,557	86.10
1988/89	2,828,337	92.20
1989/90	2,899,642	99.30
1990/91	2,966,090	105.40
1991/92	3,037,405	107.30
1992/93	3,032,800	108.10
1993/94	3,116,200	110.20

Sources: Castles, I 1993, *ABS Year Book: Australia*, No. 76, ABS Canberra; additional information received from ABS.

**TABLE A3.3 – OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS QUEENSLAND
REVENUE AND EXPENDITURE (1986/87–1993/94)**

	1986/87	1987/88	1988/89	1989/90 ¹	1990/91	1991/92	1992/93 ²	1993/94 ³
Revenue	4,533,000	5,259,000	4,625,000	5,390,370	6,757,520	8,529,480	9,071,200	10,165,000
Expenditure	4,385,000	4,450,000	4,507,219	5,390,370	6,654,577	8,820,729	8,964,040	9,909,309

Source: Unpub. information received from the Director-General of the Department of Justice and Attorney-General July 1994.

Notes:

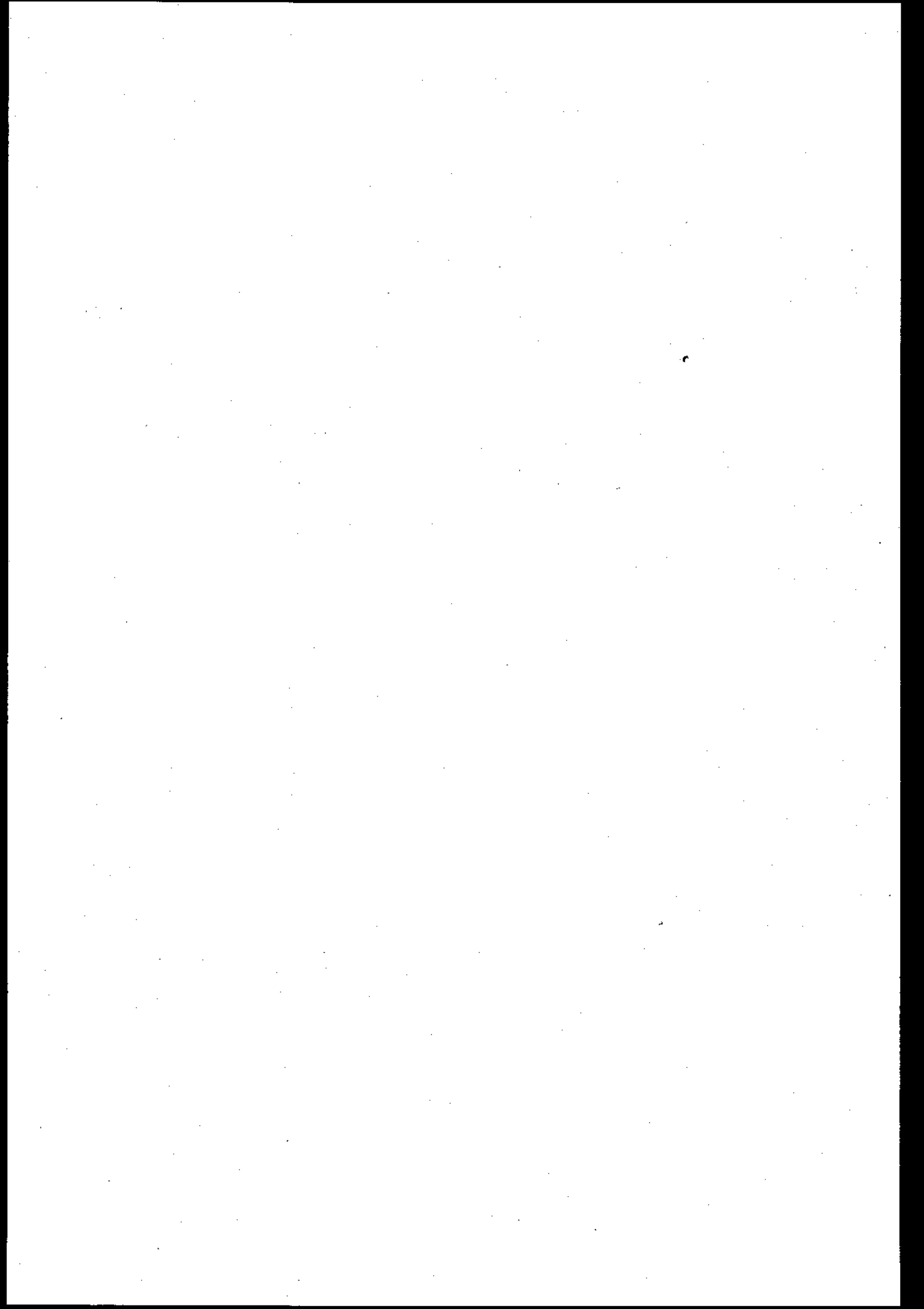
1. A revenue figure was not available for 1989/90; therefore it was assumed revenue equalled expenditure.
2. The expenditure figure excludes \$199,000 expended on salaries in the Special Prosecutor's Office.
3. This figure excludes revenue of \$1,311,100 received for property maintenance. An amount of \$1,311,129 was actually expended. Liability for this item had previously been the responsibility of the Department of Administrative Services.

**TABLE A3.4 – OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS QUEENSLAND
WORKLOAD (1986/87–1993/94)**

	1986/87	1987/88	1988/89	1989/90	1990/91	1991/92	1992/93	1993/94
Trials	821	887	934	852	813	976	1,152	1,343
Sentences	2,060	2,156	2,197	2,486	2,756	3,124	3,797	3,971
Depositions	3,421	3,848	4,176	4,145	4,373	5,024	5,564	6,263

Source: Director of Prosecutions Queensland, Annual Reports 1986–1994.

Note: DPP workload figures have been converted from a calendar year basis to a financial year basis.



APPENDIX 4

COMPARISON OF AUSTRALIAN PROSECUTING AUTHORITIES

Sources: Director of Prosecutions Queensland, *Annual Report 1994*; Director of Public Prosecutions South Australia, *Annual Report 1992-93*, Director of Public Prosecutions corres. received May 1994; Office of the Director of Public Prosecutions New South Wales, *Annual Report 1992-93*, Director of Public Prosecutions correspondence received Aug. 1994; Office of the Director of Public Prosecutions Victoria, *Annual Report 1992/93*; Office of the Director of Public Prosecutions Western Australia, *Annual Report 1992/93*, Director of Public Prosecutions correspondence received May 1994; Commonwealth Director of Public Prosecutions, *Annual Report 1992/93*, *Review of the Office of the Commonwealth Director of Public Prosecutions Report*, March 1994, Commonwealth Director of Public Prosecutions correspondence received June 1994.

Notes:

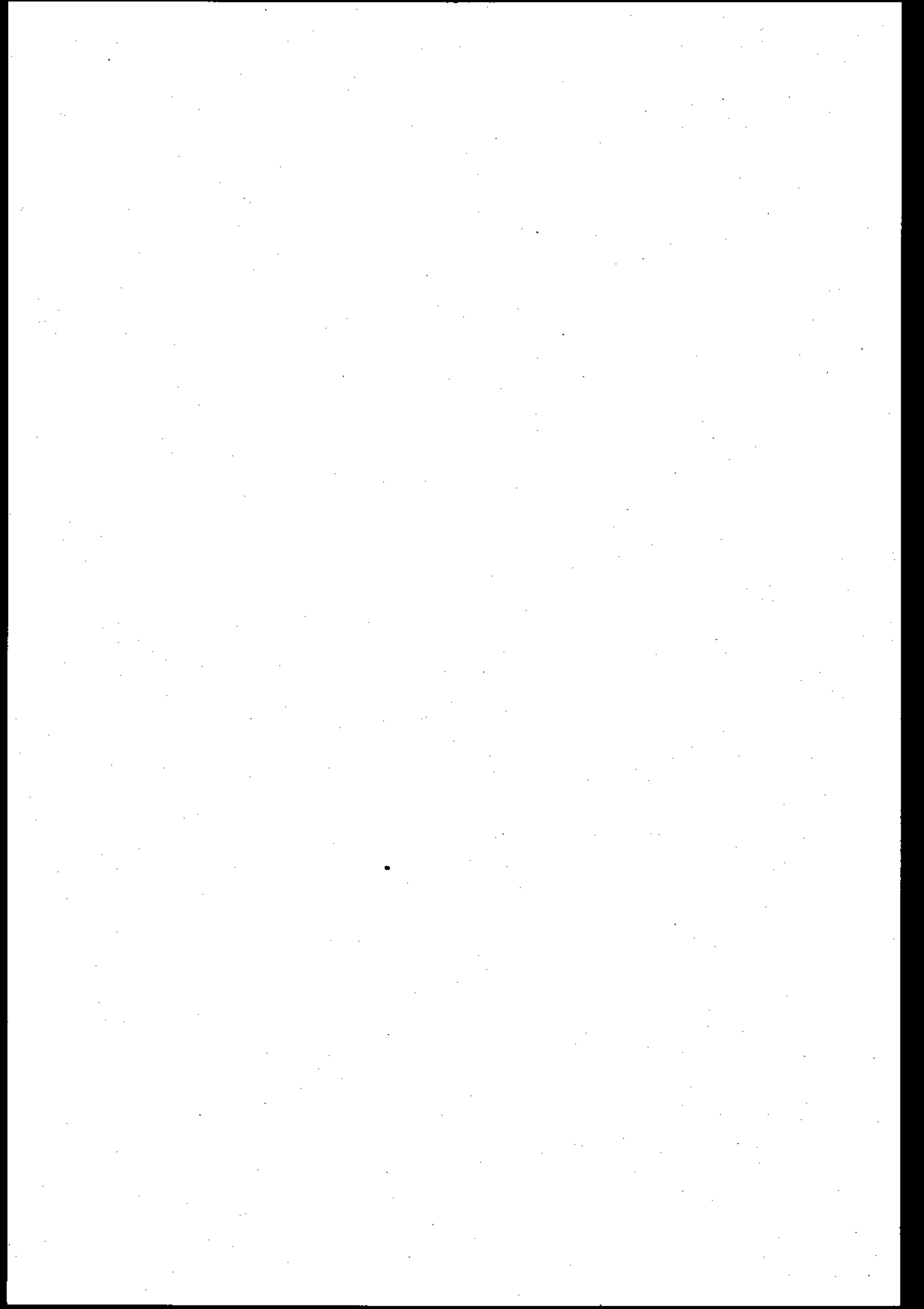
1. This table contains data showing the workload of the Offices of the Director of Public Prosecutions in selected areas. These offices perform a variety of functions which make strict comparisons difficult. The workload statistics contained in the table do not include the work of the various offices in the areas of recovery of proceeds of crime, advice and policy, indemnities from prosecution. Additionally, the differences in the jurisdictions of the courts in each of the States impact upon the workloads, and consequently the staffing and resourcing of the respective Offices of the Director of Public Prosecutions. This table should be used as an outline rather than for comparison purposes.
2. Appeal figures represent the total number of appeals conducted by the Office of the Director of Public Prosecutions in each State and the Commonwealth. This is because of the difficulties in disaggregating the numbers of appeals in the various courts which hear appeals in each State.

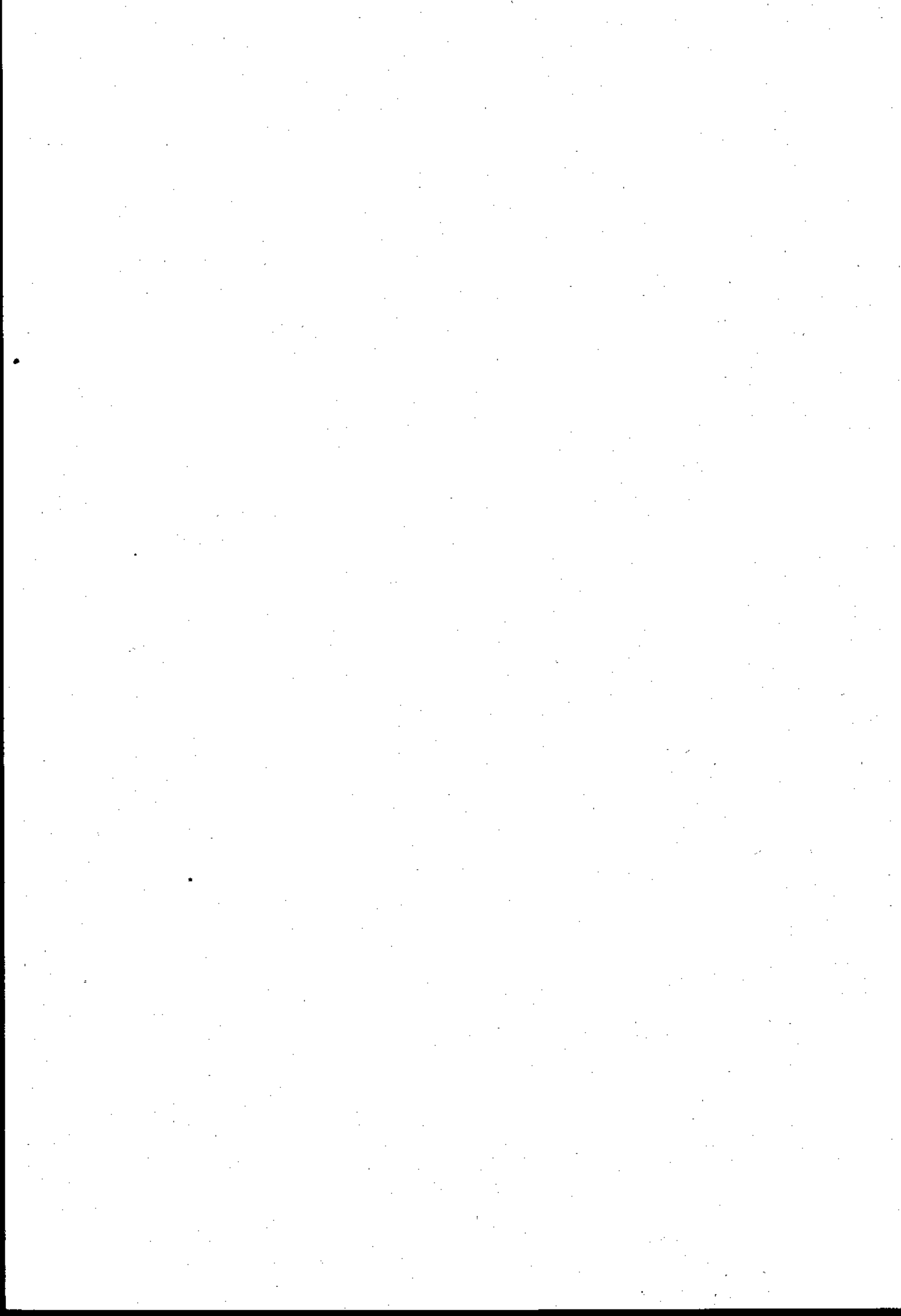
TABLE A4.1 - COMPARISON OF AUSTRALIAN PROSECUTING AUTHORITIES

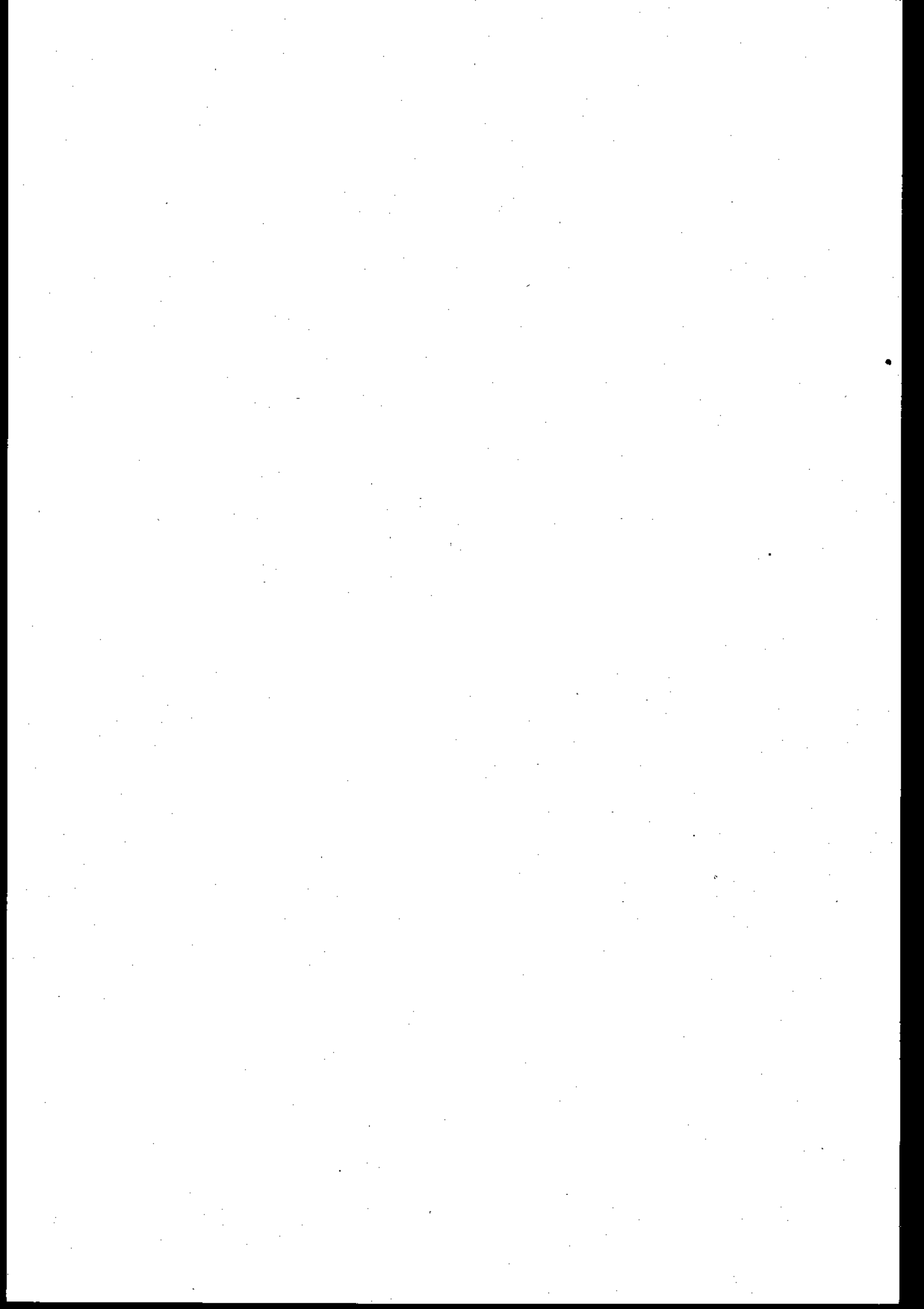
	QLD	SA	NSW	VIC	WA	CWLTH
FUNDING BASIS	The 'judges formula' was previously used; funding currently adjusted on an ad hoc basis.	No funding formula, funding is determined on an historical basis.	No funding formula, funding is determined on an historical basis.	No funding formula, funding is determined on an historical basis.	No funding formula, funding is determined on an assessment of needs.	No funding formula, funding is determined on an historical basis.
RECURRENT EXPENDITURE 1992/93	\$8,966,421	\$3,594,000	\$41,222,000	\$16,425,257	\$8,538,936	\$46,041,063
WORKLOAD 1992/93						
Higher Crt's & Circuit Crt's						
New matters	6,551 ^A	1,502	5,021	N/A	1,936	561
Trials	1,203	416	3,785	1,739 (trials and sentences)	548	105
Sentences	4,086	556	1,666		1,191	528
Summary Crt						
Trials/Sentences			147	74		6,077
Committals	19	63	8,089	577		304
Appeals	408	148	5,885	2,540	87	262
	^A Includes ex officio indictments			Note: Exact figures were difficult to identify, therefore the figures are approximates.		

TABLE A4.1 cont'd

	QLD	SA	NSW	VIC	WA	CWLTH
NUMBER OF PROSECUTORS AND SOLICITORS EMPLOYED	39 Consultant/ Smr/Crown Pros. 21 Legal Officers	21 Prosecutors 10 Solicitors	85 Statutory Appointees/SES 217 Legal Staff	11 Prosecutors 86 Legal Officers	36 Counsel 5 Solicitors	SES 2 x Band 3 8 x Band 2 32 x Band 1 81 x Legal 2 92 x Legal 1
NO. MATTERS BRIEFED TO PRIVATE PRACTITIONERS	A little over 100 matters were briefed out.	Close to 80 matters were briefed out.	All prosecutions over past 2 years handled in-house.	Almost all trial work is briefed out to the private bar	Over 200 matters were briefed out.	The States use individual briefing practices.
RANGE OF COURT WORK DONE IN-HOUSE	Criminal trials and sentences in District, Supreme and Circuit Courts. Appeals relating to criminal matters in the District and Supreme Courts, Court of Appeal and High Court. Some committals. Solicitors' court work is largely restricted to mentions.	Fused profession. Mainly trials and appeals; increasing number of committals in serious offences.	Trials and Supreme Court appellate work. Solicitors generally prosecute indictable and some summary matters before the Local Courts; do District Court appeals and sentences; instruct Crown Prosecutors in trials.	High Court and some full Court matters; Supreme Court trials, appeals and chamber matters, very little County Court work done in-house. Solicitors are doing an increasing number of committals and sentence appeals, pleas and sentences in County Courts, bail breaches and Supreme Court bail applications.	Fused profession. Legal officers are expected to perform a broad range of prosecutorial work including appearances on short matters (pleas etc.), trial work, appeals and proceeds of crime work. In the higher ranks there is a greater degree of specialisation where prosecutors may focus more fully on either counsel (trial) work or on solicitorial work.	Matters requiring specialist skills of experienced counsel e.g. major drug, fraud, corporations cases, constitutional and taxation law are generally briefed out at committal, as well as for trial. However, the application of this policy varies according to the various Director of Public Prosecutions Offices.







**Published Reports and Papers of the
Criminal Justice Commission**

<u>Date of Issue</u>	<u>Title</u>	<u>Availability</u>
May 1990	Reforms in Laws Relating to Homosexuality - an Information Paper	Out of Print
May 1990	Report on Gaming Machine Concerns and Regulations	In stock as at time of printing of this report
September 1990	Criminal Justice Commission Queensland Annual Report 1989-1990	Out of Print
November 1990	SP Bookmaking and Other Aspects of Criminal Activity in the Racing Industry - an Issues Paper	In stock as at time of printing of this report
November 1990	Corporate Plan	Out of Print
February 1991	Directory of Researchers of Crime and Criminal Justice - <i>Prepared in conjunction with the Australian Institute of Criminology</i>	Out of Print
March 1991	Review of Prostitution - Related Laws in Queensland - an Information and Issues Paper	Out of Print
March 1991	The Jury System in Criminal Trials in Queensland - an Issues Paper	Out of Print
March 1991	Report of an Investigative Hearing into Alleged Jury Interference	Out of Print
April 1991	Submission on Monitoring of the Functions of the Criminal Justice Commission	Out of Print
May 1991	Report on the Investigation into the Complaints of James Gerrard Soorley against the Brisbane City Council	Out of Print
May 1991	Attitudes Toward Queensland Police Service - A Report (Survey by REARK)	Out of Print
June 1991	The Police and the Community, Conference Proceedings - <i>Prepared in conjunction with the Australian Institute of Criminology following the conference held 23-25 October, 1990 in Brisbane</i>	Out of Print
July 1991	Report on a Public Inquiry into Certain Allegations against Employees of the Queensland Prison Service and its Successor, the Queensland Corrective Services Commission	Out of Print

(ii)

<u>Date of Issue</u>	<u>Title</u>	<u>Availability</u>
July 1991	Complaints against Local Government Authorities in Queensland - Six Case Studies	Out of Print
July 1991	Report on the Investigation into the Complaint of Mr T R Cooper, MLA, Leader of the Opposition against the Hon T M Mackenroth, MLA, Minister for Police and Emergency Services	In stock as at time of printing of this report
August 1991	Crime and Justice in Queensland	In stock as at time of printing of this report
September 1991	Regulating Morality? An inquiry into Prostitution in Queensland	In stock as at time of printing of this report
September 1991	Police Powers - an Issues Paper	In stock as at time of printing of this report
September 1991	Criminal Justice Commission Annual Report 1990/91	In stock as at time of printing of this report
November 1991	Report on a Public Inquiry into Payments made by Land Developers to Aldermen and Candidates for Election to the Council of the City of Gold Coast	In stock as at time of printing of this report
November 1991	Report on an Inquiry into Allegations of Police Misconduct at Inala in November 1990	In stock as at time of printing of this report
November 1991	Corporate Plan 1991-1993	In stock as at time of printing
December 1991	Report on an Investigation into Possible Misuse of Parliamentary Travel Entitlements by Members of the 1986-1989 Queensland Legislative Assembly	Out of Print
January 1992	Report of the Committee to Review the Queensland Police Service Information Bureau	Out of Print
February 1992	Queensland Police Recruit Study, Summary Report #1	In stock as at time of printing of this report

<u>Date of Issue</u>	<u>Title</u>	<u>Availability</u>
March 1992	Report on an Inquiry into Allegations made by Terrance Michael Mackenroth MLA the Former Minister for Police and Emergency Services; and Associated Matters	Out of Print
March 1992	Youth, Crime and Justice in Queensland - An Information and Issues Paper	Out of Print
March 1992	Crime Victims Survey - Queensland 1991 <i>A joint Publication produced by Government Statistician's Office, Queensland and the Criminal Justice Commission</i>	In stock as at time of printing of this report
June 1992	Forensic Science Services Register	Out of Print
September 1992	Criminal Justice Commission Annual Report 1991/1992	In stock as at time of printing of this report
September 1992	Beat Area Patrol - A Proposal for a Community Policing Project in Toowoomba	Out of Print
October 1992	Pre-Evaluation Assessment of Police Recruit Certificate Course	In stock as at time of printing of this report
November 1992	Report on S.P. Bookmaking and Related Criminal Activities in Queensland <i>(Originally produced as a confidential briefing paper to Government in August 1991)</i>	In stock as at time of printing of this report
November 1992	Report on the Investigation into the Complaints of Kelvin Ronald Condren and Others	Out of Print
November 1992	Criminal Justice Commission Corporate Plan 1992-1995	Out of Print
January 1993	First Year Constable Study Summary Report #2	Out of Print
April 1993	Submission to the Parliamentary Criminal Justice Committee on the Use of the Commission's Powers Under Section 3.1 of the Criminal Justice Act 1989	Out of Print
May 1993	Report on a Review of Police Powers in Queensland Volume I: An Overview	In stock as at time of printing of this report

<u>Date of Issue</u>	<u>Title</u>	<u>Availability</u>
May 1993	Report on a Review of Police Powers in Queensland Volume II: Entry Search & Seizure	In stock as at time of printing of this report
July 1993	Cannabis and the Law in Queensland A Discussion Paper	Out of Print
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