

40 Years of the Legal Aid Commission (ACT)

Across 2017-18, the Legal Aid Commission (ACT) is celebrating 40 years of service to Canberra and the surrounding region. Over these decades the Commission has provided legal assistance to thousands of people in need of representation at courts and tribunals, and legal advice and education to countless others. Throughout this time, the goal of providing quality legal services to the community has always remained at the heart of the Commission's services.

Establishing the Commission

The Commission was established by the *Legal Aid Ordinance 1977*, an ACT ordinance passed in accordance with the *Commonwealth Legal Aid Commission Act 1977*. As described by the Attorney-General at the time, Bob Ellicott, the Commonwealth Act was to establish a "comprehensive legal aid scheme in Australia involving a co-operative exercise between the Commonwealth and the States in the provision of legal aid".¹ This involved merging the various branches of the Australian Legal Aid Office that had been established in 1973, with the other providers of legal aid in the states and territories, such as Legal Aid Committees and Public Defenders or Solicitors. The Act passed through the Senate on the 3rd of June 1977. Passage through the Senate occurred after much debate over the limited time allotted to discuss the legislation and concerns surrounding the federalisation of the legal aid system in Australia, especially noting there were a number of legal aid offices already operating across the country.

Following the passage of the Commonwealth Act, the states and territories all introduced legislation necessary to set up the various legal aid commissions. In the case of the ACT, this was the *Legal Aid Ordinance* submitted to the ACT Legislative Assembly on the 29th of June 1977 before its passage on the 5th of July. With the Legislative Assembly occupying an advisory role at the time, this represented a formality to the assent of the Ordinance, but an important one nonetheless. The Ordinance was then given assent by Governor-General John Kerr on the 6th of July. Today the Ordinance is known as the *Legal Aid Act 1977*, to reflect the change made to all ACT Acts following the transition to self-governance.

On the 11th November 1977, the first Board of Commissioners was appointed in preparation for the commencement of operations in July 1978. Those appointed were the first Chairman (a position later retitled to President in 1985) the Honourable Justice R Else-Mitchell along with Mr J M Alberto, Mr J D Button, Mr I F Byrne, Mr D J Crossin, Mrs R J Kelly, Mrs E C McGuire, Mr A W Wynne and the first Director (also retitled in 1985, to Chief Executive Officer) Mr P J Sharkey.

The Board of the Commission is designed to bring together a wide variety of views from community, government and legal sectors. The Board includes representatives of the Attorney-General, the ACT Bar Association, the ACT Law Society and the ACT Council of Social Service. Additionally, there are two members who have financial and specialist expertise to help assist the Commission perform its functions. Finally, the Board also

¹ Commonwealth, *Parliamentary Debates*, House of Representatives, 27 May 1977, 2032 (Bob Ellicott).

consists of a President and the current Chief Executive Officer of the Commission. Together, the Commissioners are tasked with ensuring the Commission's compliance with statutory obligations and setting the broad goals and objectives to be achieved by the Commission.

Today, the board continues to represent this diversity of views. The Commissioners as of July 2018 are:

- Jon Stanhope, former Chief Minister of the ACT
- Marcus Hassall, practising barrister, Henry Parkes Chambers
- Genevieve Bolton, Executive Director of Canberra Community Legal Centre
- Kym Duggan, specialist Commissioner in Commonwealth policy
- Walter Hawkins, Principal of Maurice Blackburn Canberra
- Richard Glenn, Deputy Director-General – Justice
- Gail Kinsella, director of Kinsella Partners – Chartered Accountants
- John Boersig, Chief Executive Officer

After the Commission was established, it required a place to live. The Commission's first home was located in Acton House on Edinburgh Avenue. The opening of the office was attended by Peter Durack, who was the Attorney-General at that point, Bob Ellicott, who had become Minister for the Capital Territory, members of the ACT Legislative Assembly and representatives from the ACT Bar Association and Law Society. The Commission stayed at Acton House until September of 1992, when it moved to the North Building on London Circuit. The stay on London Circuit was relatively brief, with the Commission again moving in June 1997 to Mort Street. The Commission remained at Mort Street for 12 years before moving to its current location at 2 Allsop Street in Civic in 2009.

The Commission Then...

The formation of the Legal Aid Commission helped to streamline services provided by the ACT branch of the Australian Legal Aid Office and the Legal Aid Committee of the ACT. The Legal Aid Office operated family and general law services, along with performing the role of the Public Defender in the ACT. As a Territory jurisdiction at the time, legal aid services in the Territory were entirely Commonwealth funded, as opposed to the dual funding arrangements present in the States at the time. In forming the Commission, the respective functions of those offices were amalgamated, with the Commission tasked with providing legal assistance through both in-house lawyers and referral to private legal practitioners. This is known as the 'mixed' legal aid model, and is utilised in all jurisdictions around Australia. Means tests (and merit tests) were introduced as financial restrictions requiring that certain people and matters be prioritised, so that services were provided to the most vulnerable members of the community. Chiefly, this included people in custody and children in family law proceedings.

Originally, the Commission was divided into two sections, the Management Services and Legal Professional Sections. The Management Services Section comprised accounting, reception and office services who were tasked with ensuring the smooth day to day operations of the Commission including administering grants of legal assistance. The Legal

Professional Section was tasked with providing legal assistance in the form of advice, duty lawyers, and representation at court and through referred work to private lawyers.

An important part of the Legal Professional section in the early days of the Commission was the attachment of the office of the Public Defender to the Commission. The Public Defender would act as an impromptu in-house counsel for the Commission, often taking carriage of indictable matters in superior courts either at first instance or on appeal. The Public Defender was a barrister would be briefed by solicitors at the Commission before taking on these matters. The first Public Defender attached to the Commission was Mr H D Palmer, who served in the position until 1985. The last Public Defender appointed was Terry O'Donnell in 1989. Mr O'Donnell served as Public Defender for 8 years until 1997, when the office was ultimately dissolved.

While the Commission has always had a permanent home in Civic, there have also been a number of satellite offices and outreach services in operation. The first of these were three part-time Regional Advice Services established in 1979 in Kambah, Belconnen and Woden. A permanent Tuggeranong Office was later established in December 1990. This was followed by the opening of a Belconnen Office in April of 1996. Shortly after this, the Tuggeranong Office was relocated to Woden in 1997. These offices no longer are in operation with the Woden Office closing in 2010, however the Commission currently operates outreach programs at 12 locations across Canberra including libraries in Gungahlin, Civic, Kippax and Woden, as well as at high schools, colleges, shopping centres, the University of Canberra and the Canberra Hospital.

...And the Commission Now

Much like in its founding days, the Commission's operations are divided into discrete departments with distinct functions; the Legal Practices – the Litigation Practice and the General Practice – the Client Services Unit and Corporate Services. The Corporate section performs many of the same functions as the Management Services section did previously, ensuring the financial and administrative needs of the Commission are met. The Client Services Unit undertakes the task of granting legal assistance and manages Family Dispute Resolution and the Cultural Liaison Unit, important functions in connecting Legal Aid's lawyers with the community.

The Legal Practices continue to provide legal assistance to the community through representation, advice and duty services, as they have done since the Commission's establishment. Critically however, there has been an expansion and specialisation in legal practice areas, resulting in the establishment of information barriers between the Criminal and Family Practices on one hand and the General Practice on the other. The General Practice provides advice and assistance in a wide variety of areas, including civil law, family and domestic violence, and mental health matters. Along with an emphasis on non-legal solutions and effective referrals, this diversification has greatly increased the Commission's capacity to provide assistance to the community.

The expansion of legal practice areas has also led to the establishment of new services dealing with matters emerging from the Commission's mandate:

- The Helpline provides over the phone advice to those who cannot physically attend the office. A Helpline staff member is required to provide information on a wide range of issues, and also to help book appointments if a legal problem requires more contact than a 15 minute phone call. Last year the service took over 15,000 calls, a figure which has risen steadily since the service started in 1998.
- The Cultural Liaison Unit consists of liaison officers who connect with clients from culturally and linguistically diverse backgrounds, Aboriginal and Torres Strait Islander descent, those who are victims of family violence or clients who suffer from addiction. The clients the Unit connects with are some of the most vulnerable members of our community. The liaison officers will often attend court with a client when needed, help them solve non-legal issues surrounding the legal issue affecting them and sometimes just provide a sympathetic ear. With legal aid designed to ensure the most vulnerable in society have access to justice, our liaison officers are crucial in helping achieve that objective.
- While duty lawyer services have always been a critical function of legal aid, their expansion over the years has allowed for a wider proportion of the Canberra community to access courts and tribunals. Duty solicitors are placed at the Family Court, giving advice on a large variety of family law issues, the Magistrates Court where limited representation can be provided allowing for bail applications, and at the Mental Health Unit, where representation is provided at mental health hearings. In 2016-17, 3,786 duty lawyer services were provided, which was an increase of over 700 from the previous year.
- In addition to the duty lawyers described above, a specialist Domestic Violence Unit has also been established at the Magistrates Court. Lawyers can provide advice in relation to family violence or personal protection orders, along with providing emergency representation in interim hearings. The specialised service, and closer relationship formed with the Magistrates Court, resulted in 313 duty lawyer services being performed for domestic violence and personal protection matters in 2016-17. In 2017 this service was extended to the Federal Circuit and Family Court through a specific purpose funding by the Commonwealth of a Family Violence Advocacy and Support Service.
- Finally, the use of family dispute resolution services has been steadily increasing over the years, with 276 conferences held in 2017-18, representing almost double the number held at the start of the decade. Of the 276 held last year, 83% had a positive outcome, preventing the need for litigation thereby saving costs for both the parties involved and the wider community.

In expanding its services, the Commission considered both the importance of holistic services, and the need to provide accurate legal advice to clients. This balance has led to the establishment of informative services such as the Youth Law Centre and the Small Business Clinic and a number of other Legal Aid Clinics (such as the Employment, Social Security and Immigration Clinics). These clinics often help to pre-empt legal issues before they go to court, recognising that prevention is better than cure, both for citizens and legal assistance providers. The clinics are often supported by student volunteers in the later years of

university or recent graduates who are building practical experience as part of a legal practice diploma. Some clinics are run in conjunction with ANU and the University of Canberra staff.

Strengthening partnerships with community legal and non-legal services has allowed the Commission to offer a wraparound service which addresses a client's legal and non-legal needs. Often lawyers and liaison officers will engage with services such as the Red Cross, the ACT Disability Aged and Carer Advocacy Service, the Domestic Violence Crisis Service or the Migrant and Refugee Settlement Services. Additionally, the Commission provides outreach services at high schools and colleges around Canberra, the Canberra Hospital, ACT Libraries and Winnunga Aboriginal Health service. These outreach sessions help to promote early identification and resolution of legal problems by educating the wider community about the services available through Legal Aid and our partners in the community service and legal assistance sectors.

Outreach and education to the wider community is coordinated through our Community Legal Education Unit. The Commission is required to provide community legal education services, however for many years operated without a dedicated officer coordinating these services. Since the appointment of a community legal education officer in the late 1990s, the Commission's capacity to provide training, sessions, talks and other events has increased remarkably. Many of these events allow volunteers to learn more about the Commission's activities and gain experience working at the Commission. Student volunteers have always been well-utilised by the Commission. While students from the Australian National University have historically provided a large proportion of the volunteers at the Commission through clinical programs and internships, the Commission has also looked to source more volunteers from the University of Canberra. Recent years have seen agreements with the University of Canberra to institute formal programs where students volunteer at the Commission as part of a course at the University. This has only helped to widen the pool of volunteers available to the Commission.

In more recent years the Commission has had the benefit of highly experienced lawyers undertaking pro bono work. This often sees the development of highly valuable partnerships between experienced lawyers and students (particularly in the Youth Law Centre).

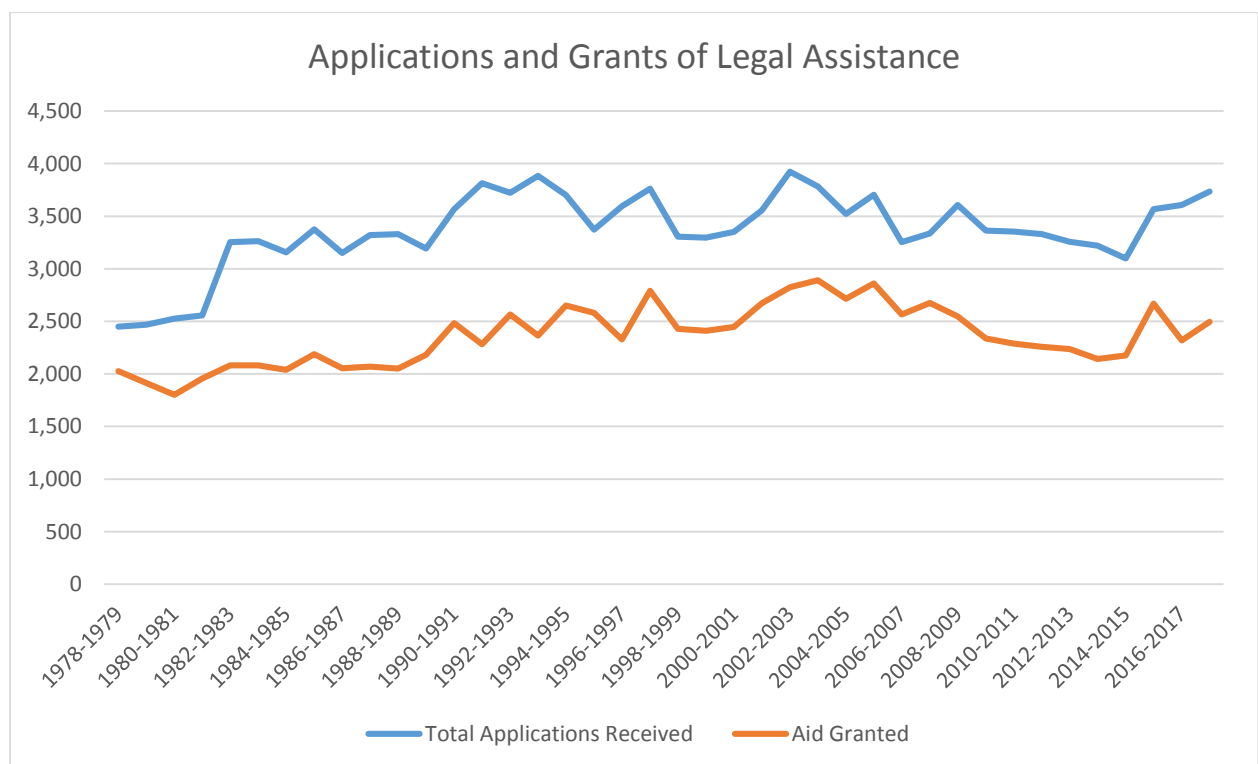
Perhaps the largest change to the Commission is the increasing use of technology, though this is not unique to Legal Aid. Moving from rotaries and typewriters to mobiles and tablets has led to a dramatic increase in the efficiency of the services provided by the Commission. Whether it is through the use of online databases negating the need to spend hours in the library, or using the case management system Visualfiles to easily keep track of clients, technology has provided staff with the time and means to produce the highest quality of work. In line with these changes, the Commission is currently developing a 24/7 legal access platform (incorporating the ACT Law Handbook) along with a 'chatline' to be operated by the Helpdesk.

Assistance and Grants Provided From 1978 through to 2018

While grants of legal assistance for litigation certainly are not the only function performed by the Commission, they remain at the core of the Commission’s services. Since the first full year of the Commission’s operations, the Commission has regularly provided over 2,000 grants of assistance in a year.

In 2017-18, a total of 2,496 grants of legal assistance were provided. Primarily these grants were provided to criminal and family matters, reflecting the large number of applications received in these areas, and the Commission’s objective of prioritising matters involving potential gaol time or matters where children are involved or are at risk. However, the last two years have also seen an increase in the number of civil applications. This has resulted in the number of approved civil grants almost doubling to meet the growing needs of the community.

While there has been a stabilisation over recent years in the number of grants, for a period in the late 1990s to early 2000s the Commission was regularly granting assistance to over 2,500 people. This culminated in a high of 2,903 grants made in the 2003-04 financial year. As can be seen in the graphs below the amount of grants provided, though with some variation, are generally proportionate to the amount of applications for assistance made. However in recent years, there has been an uptick in the amount of assistance granted with the amount of applications refused decreasing.



Being able to meet the demand for grants of assistance has been a constant challenge for the Commission. With funding from the Statutory Interest Account trending downwards over the past few years, the Commission has had to be creative and proactive in meeting the need for legal assistance in the community. Redirecting more resources to frontline and preventative services can help to ensure people resolve issues before needing to apply for a grant of assistance. Despite this, the Commission will always need to maximise the number

of grants of assistance for litigation. To ensure the Commission can provide the maximum level of assistance possible, staff have become incredibly flexible and creative in how they use both the time and resources they have available to them. Additionally, the generosity of the private legal sector in providing their services at reduced rates has been critical in meeting the community's need for legal assistance.

40 Years On...

There have been many new initiatives, innovations and changes to the operation of the Commission since 1977. It is fair to say that they have always aimed to enhance the Commission's primary goal of providing quality legal assistance to the most vulnerable and disadvantaged in the community. This has been the goal for the past 40 years, and given the continuing needs of our community, will likely remain our goal for the next 40 years.

On a lighter note we have published a photo collage of some Commission staff – can you guess who is in the photo and when it was taken?

And for historical interest below is a list of Chair/President and CEO since inception:

List of Presidents/Chairpersons of the Commission

1. Justice R Else-Mitchell CMG – 10 November 1977 to 29 January 1980
2. Justice J E Ellis – 20 February 1980 to 18 February 1985
3. Mr R M Bannerman AO - 19 February 1985 to 18 February 1993
4. Mr R K Todd – 5 May 1993 to 4 May 1998
5. Mr T Sherman AO – 13 August 1998 to 21 June 2004
6. Mr D Farrar – 13 June 2003 to 12 June 2009
7. Mr M Peedom – 14 December 2009 to 13 December 2014
8. Mr J Stanhope AO – 14 December 2014 to present

List of Chief Executive Officers/Directors of the Commission

1. Mr P J Sharkey – 10 November 1977 to 1 May 1981
2. Mr G M Wheeler – 29 September 1981 to 6 February 1984
3. Mr A A Hardiman – 6 February 1984 to 9 October 1988
4. Mr C J Staniforth – 10 October 1988 to 30 November 2006
5. Mr A Crockett – 1 December 2006 to 30 November 2013
6. Mr J Boersig – 1 December 2013 to present.