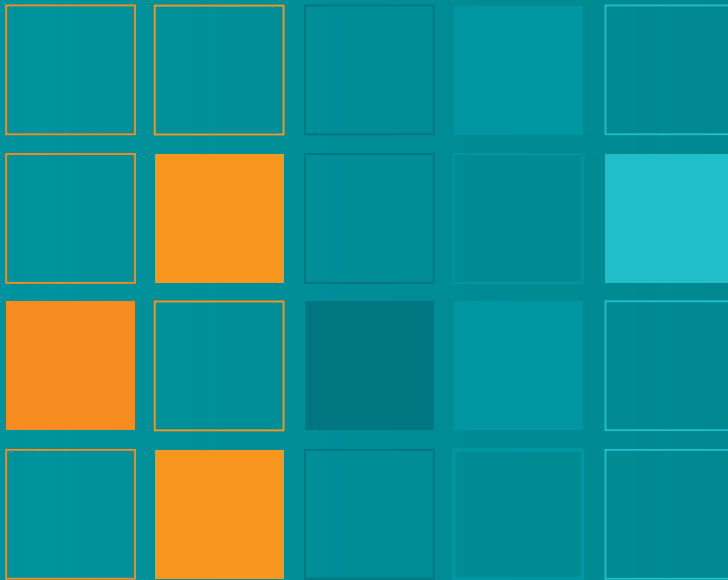


MARCH 2024

Funding Legal Aid

OPTIONS PAPER



About Impact Economics and Policy

Impact Economics and Policy brings together a group of expert economists and policy specialists with experience working for government, non-for-profits and big four consulting. Established at the start of 2022, our mission is to partner with clients for impact through providing robust evidence, fresh analysis, and strategic communication to tackle Australia's biggest public policy challenges

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Acknowledgement of Country

We acknowledge Aboriginal and Torres Strait Islander peoples as the Traditional Owners of Australia and their continuing connection to both their lands and seas. We also pay our respects to Elders – past and present – and generations of Aboriginal and Torres Strait Islander peoples now and into the future.



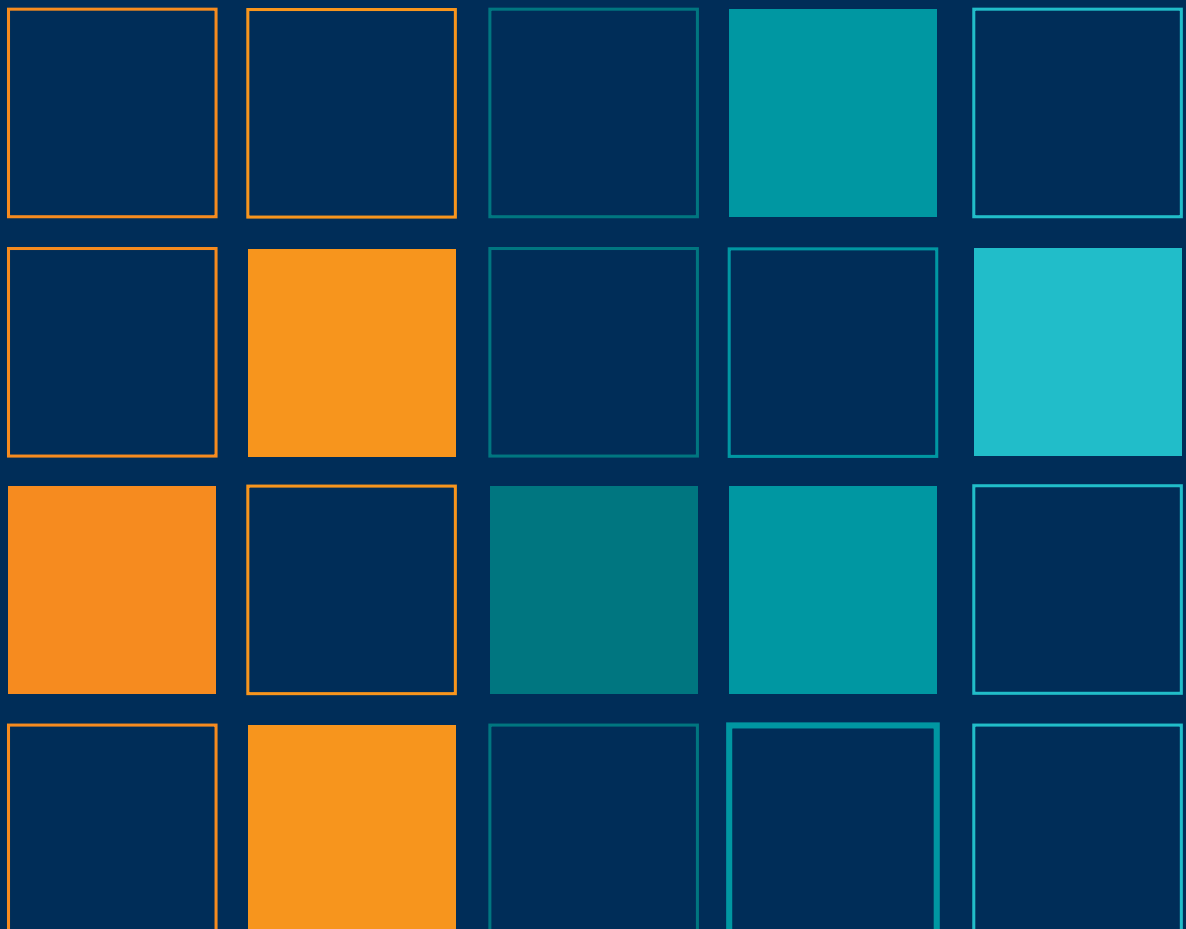
**IMPACT
ECONOMICS
AND POLICY**

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Background

Australia's legal assistance sector is under severe pressure from greater demand for services and chronic underfunding. The need for increased Commonwealth funding for legal assistance was identified a decade ago by the Productivity Commission.¹ Instead, funding has shrunk by 3 per cent in this time. Without action now, the gap between legal assistance need and funding will widen, and the costs of a dysfunctional system will grow.



Legal assistance services are funded by the Commonwealth government under a partnership agreement with the states and territories known as the National Legal Assistance Partnership (NLAP). The current NLAP (2020-25), worth \$2.4 billion, is the subject of an independent review commissioned by the Albanese Government and due to report in early 2024.

In 2023, National Legal Aid commissioned Impact Economics and Policy to model the unmet need for legal assistance and the supply challenges in the sector. The resulting report, *Justice on the Brink*, used the methodology adopted by the Productivity Commission in its 2014 review, finding that a minimum \$484 million in Commonwealth funding was required for the sector to maintain accessibility.

The increased funding modelled by Impact Economics and Policy for *Justice on the Brink* is a minimum only. The methodology was adopted owing to the significant gaps in the collection and analysis of data that would permit a full costing of the increased investment required for a well-functioning legal assistance sector, now and into the future. It presents a conservative funding ask to pull the system back from the brink.

Given the current review of NLAP, and in light of the findings in *Justice on the Brink* identifying an urgent need for increased legal assistance funding, National Legal Aid commissioned Impact Economics and Policy to prepare a short options paper to examine possible funding sources.

1. Productivity Commission (2014). Access to Justice Arrangements.

Introduction

This paper examines several options for increased legal assistance funding. It is intended to encourage conversations with government and other stakeholders concerned with legal assistance about what is possible, and to detail the risks and benefits of the options outlined.

We acknowledge the policy of fiscal discipline under which the government is operating. The majority of economic variations are being returned to revenue, including increased receipts identified in the 2023-24 Mid-Year Economic and Fiscal Outlook. The government is also reluctant to initiate new spending that may create greater inflationary pressure.

This paper considers how different funding options would assist in meeting the demands of the community and the supply of legal assistance services. It is divided into two sections. The first outlines revenue funding options that have the strongest merit for further consideration. The second presents other possibilities that we considered, but which have relatively limited impact.

We examine the funding potential of a legal sector levy, enforceable undertakings, legal proceeds (penalties, proceeds of crime and civil damages), a social levy on gambling licensees, a government contracts surcharge, legal insurance, and a HECS-style loan. We also examine the merits of general revenue funding.

We used several criteria to guide our analysis of each funding option, and how they compared. These criteria were:

- **Quantum:** how much funding would the option be likely to generate, now and into the future to respond to increasing legal need?
- **Certainty:** would the funding source be reliable?
- **Efficiency:** would implementation and administration of the option be simple?
- **Fairness:** how aligned is option is with the objectives of legal assistance? Who would pay for the funding?

General revenue financing presents the most significant and reliable source of funding for additional \$484 million required for legal assistance (Table 1). This is a modest ask that would take legal assistance from 0.07 per cent of Commonwealth spending to 0.13 per cent.² There is also potential for other funding options to be used in combination with general revenue to augment it. An initial investment of general revenue funding could be complemented by a legal assistance scheme, for example (see Section 1, Option 2 Awards of civil damages).

2. Impact Economics analysis of National Legal assistance Partnership Review (2023) and Treasury and Finance (2024).

TABLE 1 ASSESSMENT OF FUNDING OPTIONS

	Quantum	Certainty	Efficiency	Fairness
Legal sector levy	Green	Green	Amber	Amber
Social levy	Green	Green	Amber	Amber
Contingent loans	Green	Red	Amber	Red
General revenue	Green	Green	Green	Green
Enforceable undertakings	Amber	Red	Amber	Green
Legal proceeds	Amber	Red	Amber	Green
Government contract surcharge	Green	Green	Red	Red
Legal insurance	Green	Red	Amber	Red

Notes: green represents strongest value for each cell, amber medium value, and red least value. Legal proceeds include penalties, proceeds of crime and awards of civil damages.

Different levies could be used alone or as a boost to general revenue funding. We note, however, that over time the use of industry levies across the Commonwealth, States and Territories has proliferated, creating unseen tax creep, and introducing greater complexity in the tax system. The Productivity Commission has recently noted the increased reliance by governments on levies.³

As outlined in *Justice in the Brink*, investing in legal assistance would deliver \$600 million in economic and social benefits, including cost savings from dispute resolution, improved livelihoods through reduced pain and suffering, and avoided costs to government. It is incumbent on the Government to fully explore potential funding models to enable the justice system to function.

3. Productivity Commission (2023), *Towards Levyanathan? Industry levies in Australia*.

Section 1

Funding options

OPTION 1

LEGAL SECTOR LEVY

Introducing a levy on law firms presents a viable option for bolstering legal assistance funding in Australia. It can be designed progressively. Such a levy needs to recognise existing contributions by firms to legal assistance, and differences in firm revenue.

To recognise contributions already being made by many firms to legal assistance, the levy could provide concessions for legal assistance work, so that law firms do more legal assistance work pay a lower levy.

FOR EXAMPLE, FIRMS THAT DO:

- no legal assistance work would pay the maximum levy rate;
- between 0 and 20 per cent legal assistance work would pay proportionally; and
- over 20 per cent legal assistance work would pay no levy.

The levy should also be adjusted for pro bono work undertaken by firms. We note that pro bono work is a requirement of firms for some types of contracts, such as government work. Any adjustment would therefore need to contemplate this, and not effectively reward what firms are bound to do.

In addition to factoring in existing legal assistance and pro bono work, a law firm levy can be structured

to be progressive, with higher-income firms paying a larger share. Australia's eight largest law firms had a total revenue of over \$5 billion in 2023 across a collective a staff count of around 10,000, or around half a million dollars per head.⁴ One of those firms, Herbert Smith Freehills, had \$1.1 billion in revenue in 2023.⁵

Legal sector revenue has enjoyed consistent growth over the past decade and a half. It has grown steadily from \$20 billion to \$30 billion over the period with only minor periods of diminished growth.⁶ This affords confidence that legal services profit would provide a resilient revenue base that is likely to grow alongside growth in legal assistance need.

Inversely, the levy structure could include exemptions or reduced rates for firms that are new or facing financial hardships. This ensures that those who earn more from the legal profession contribute proportionately more to legal assistance funding.

The most recent ABS Australian Industry report identified that in the 2015-16 financial year, the legal

4. Impact Economics analysis of IBISWorld (2023). Australia's Top 500 Private Companies.

5. IBISWorld (2023). Australia's Top 500 Private Companies.

6. IBISWorld (2023). Legal Services in Australia industry analysis.

service sector had a profit-to-revenue ratio of around 1-to-3.⁷ Applied to 2023 revenue, the legal services sector would have had profits of around \$10 billion. *Justice on the Brink's* recommendation is almost 5 per cent of total legal sector pre-tax profit.

To put that in perspective, the Banking Levy implemented in the Morrison Government's 2017

Budget was designed to raise about \$1.5 billion off the 'Big 5 Banks' then \$160 billion in revenue and \$44 billion in pre-tax profit.⁸ A legal services levy large enough to meet the funding requirement recommended by *Justice on the Brink* would draw down sector revenue at 180 per cent the Bank Levy rate and profit at 150 per cent, as shown in Table 2.

TABLE 2 COMPARING A PROPOSED LEGAL SECTOR LEVY WITH THE 2017 BANK LEVY

	BANKS	LAWYERS
Quantum (\$m)	1500	500
Share of revenue	0.9%	1.7%
Share of profit	3.4%	5.0%

After accounting for concessions provided to firms who are not financially placed to contribute, and those that are already making significant contributions through legal assistance work, the firms who are called on to pay the levy would contribute more than 1.7 per cent of revenue and more than 5 per cent of their pre-tax profit. This is a significant impost that would likely lead to increased legal services costs and potentially aggravate access to justice issues among the middle and upper class.

The levy collection and distribution could be administered by a designated government agency or an independent body. There will be costs associated with this. It is also likely that a levy will be passed onto consumers of legal services in the form of higher fees. Transparency and accountability measures would need to be put in place to ensure that funds are collected efficiently and effectively to support legal assistance initiatives.

7. Australian Bureau of Statistics (2017). Australian Industry Report: Legal Services.

8. Australia Institute (2017). Briefing Note: Of Levies, Profits, and Backstops: The Bank Tax in Context.

OPTION 2 SOCIAL LEVY

Funds from different social levies are routinely applied to mitigate harms of certain conduct, and associated purposes such as community education, for example alcohol and tobacco levies. Given the significant amount of revenue generated by gambling in Australia, and its links with antisocial conduct that flow through to legal consequences, a gambling levy could be used to contribute to increased legal assistance funding.

Australians lose approximately \$25 billion on legal forms of gambling each year, representing the largest per capita losses in the world. Almost half of Australians placed a bet in 2022 and about two thirds of those people are at risk of harm. The gambling industry has an estimated \$50 billion in turnover each year. A 1 per cent levy would cover the recommended increase in legal assistance funding.

In 2023, the House of Representative Standing Committee on Social Policy and Legal Affairs delivered a unanimous report that responded to online gambling consequences in the community. One of the key recommendations was for a gambling levy on wagering service providers.

The gambling industry has an estimated \$50 billion in turnover each year. A one per cent levy would cover the recommended increase in legal assistance funding.

The proceeds from a gambling levy are generally applied to the direct harms from gambling itself. For this reason, Standing Committee's report recommended that the Commonwealth Government levy online wagering service providers to fund a national harm reduction strategy for measures which the Commonwealth has responsibility.⁹

It is not a large extension for a gambling levy to apply to legal assistance. Gambling harm contributes to social costs.¹⁰ Social costs, in turn, place pressures on the legal system – for example, antisocial behaviours and family breakdown resulting from addiction can create the need for legal assistance. given the clear links between gambling and issues such as family and domestic violence. Gambling companies already pay taxes that directly fund healthcare, education, and other core social services.¹¹

Finally, unlike taxes that fall primarily on those with greatest gambling losses, a gambling levy falls on providers.¹² This is a fairer than placing the burden onto individual gamblers, targeting institutions benefiting from gambling, and with deeper pockets.

9. House of Representatives Standing Committee on Social Policy and Legal Affairs (2023).

You Win Some, You Lose Some More – Online Gambling and its Impacts on Those Experiencing Gambling Harm. Recommendation 3.

10. Adverse financial impacts, emotional and psychological costs, relationship and family impacts, and productivity loss and work impacts have been estimated at around \$7 billion in Victoria alone: Australian Institute of Health and Welfare (2023). Gambling in Australia.

11. Henry Belot (2023). Advocates call for levy on gambling company earnings to fund addiction rehab.

12. The UK government has previously taxed the winnings of gamblers. However, this tax effectively increased the overall net losses of gamblers, because any wins were shrunk by the incidence of the tax: Philip W.S. Newall and Matthew J Rockloff (2022). Risks of using taxation as a public health measure to reduce gambling-related harms.

OPTION 3

CONTINGENT LOANS

Publicly financed contingent loans are another tool that could be leveraged to cover legal costs and limit additional government funding for legal assistance. These were proposed as an alternative option to improve access to justice in the PC's 2014 review.¹³

Contingent loans provide upfront financial assistance for certain activities. A well-understood domestic example is the Higher Education Contribution Scheme (HECS), which provides loans to students studying approved higher education courses. HECS allows students to defer the costs of tuition until their taxable income reaches a certain level at which repayments commence.

This funding option would have the benefit of building on established schemes. LACs already have arrangements in place for clients to make contributions to their legal costs where they are able to.

The option is uncertain, with no guarantees about uptake. Potential legal assistance recipients may be reluctant to take on debt, informed by the established tendency of those living under financial pressure to focus on immediate costs.¹⁴ There will also be new costs for the sector in administering the loans.

OPTION 4

GENERAL REVENUE

Allocating funds from the Commonwealth Budget to increase legal assistance funding in Australia offers the fairest and most efficient way of meeting the increased funding ask. The positive impact of legal assistance beyond that experienced by individuals in receipt of it are well documented. The impact of increased investment would be improved, not diminished, national finances.¹⁵

Commonwealth funding to legal assistance providers in 2021-22 was \$466 million compared to \$731 million collectively from the States and Territories.¹⁶ Total Commonwealth spending across all areas in 2023 was \$686 billion.¹⁷

The additional funding ask of \$484 million in *Justice on the Brink* report is modest. Meeting the *Justice on the Brink* recommendation would take legal assistance from 0.07 per cent of Commonwealth spending to 0.13 per cent of Commonwealth spending.¹⁸ This increase in funding has the potential to deliver over \$639 million in economic and social benefits.¹⁹

The Commonwealth government would provide a more certain revenue stream than any other channel available to legal assistance. The amount can also be scaled more comfortably than through any other option assessed in this report and would not distort incentives of any individual or groups.

Funding legal assistance through general revenue is also inherently progressive, with revenue derived from various sources which are targeted and stepped, dependent on the ability of the taxpayer to contribute.

This option also aligns with the Australian government's new Wellbeing Framework and its cross-cutting dimensions of inclusion, equity, and fairness. It supports a holistic approach to budget decisions that considers the positive economic and social impacts of supporting legal assistance beyond the direct beneficiaries.

13. Productivity Commission (2014). *Access to Justice Arrangements*.

14. When living in poverty, research has shown, individuals enter a "scarcity mindset" which leads to a highly preferential focus on the immediate task at hand, to the exclusion of long-term goals. Joseph Rowntree Foundation (2015). *Psychological Perspectives on Poverty*.

15. Cf. PwC (2023). *The benefits of providing access to justice*.

16. National Legal Assistance Partnership Review (2023). *Issues Paper*.

17. Treasury and Finance (2023). *Mid-Year Economic and Fiscal Outlook 2023-24*.

18. Impact Economics analysis of National Legal Assistance Partnership Review (2023) and Treasury and Finance (2024).

19. Impact Economics and Policy (2023). *Justice on the Brink*.

Section 2

Other funding options considered

OPTION 1

ENFORCEABLE UNDERTAKINGS

Parties may enter legally enforceable undertakings in a wide range of circumstances. One set of circumstances is a court enforceable undertaking for an administrative sanction, used by a regulator for criminal and civil legal contraventions of law that the regulator administers.

At the Commonwealth level, examples of enforceable undertakings are section 87B of the *Competition and Consumer Act 2010 (CCA)*, which gives the ACCC the ability to accept written undertakings in the exercise of its powers under the CCA, and sections 93A and 93AA of the *ASIC Act 2001*, which gives the Australian Securities and Investments Commission (**ASIC**) the power to accept enforceable undertakings under the ASIC Act.²⁰

Enforceable undertakings must be referable to a regulator's power under the relevant legislation. This option therefore necessitates a review of regulatory powers for it to be implemented. Regulators are also guided by their respective policies, which may serve to limit their use and their scope for providing a funding pool. ASIC's policy, for example, states that the regulator will 'generally only consider accepting a court enforceable undertaking after we have weighed up the effectiveness of the regulatory outcome offered by the undertaking compared to outcomes offered by other available enforcement remedies.'²¹

The use of enforceable undertakings for payments to the legal assistance sector would be a more creative use of enforceable undertakings, not having been done before. While this doesn't preclude their use for this purpose, it would need to be navigated. The Australian Law Reform Commission has recommended that the terms of an enforceable undertaking must bear a clear or direct relationship with the alleged breach and be proportionate to the breach.²² This policy may serve to limit their use for the legal assistance sector.

ASIC has used enforceable undertakings to include payment of a sum of money to fund community services initiatives under the **Community Benefit Payment (CBF)**. There is a strong fairness argument for channelling payments from egregious conduct, particularly of entities with deep pockets, to legal assistance is.

But amounts spent under the CBF have been relatively small. The CBF has funded philanthropic and not-for-profit organisations to promote

20. State-based regulators that have adopted enforceable undertakings include the NSW and Queensland Offices of Fair Trading, Consumer Affairs Victoria, and the Environmental Protection Authority Victoria

21. ASIC (2021). Regulatory Guide 100, Court Enforceable Undertakings.

22. ALRC (2003). Report 95: Principled Regulation, Recommendation 16-2.

consumers interests in the financial system. The financial wellbeing foundation, Ecstra, received the largest single payment under the CBF of \$55 million in 2019. It provides grants, community financial education and wellbeing programs, and partnerships focused on improved consumer outcomes, and measuring and sharing evidence and insights. The not-for-profit independent advocacy body, Superannuation Consumers Centre, received \$2.5 million in 2018 under the Community Benefits Payment, from penalties of the superannuation businesses of ANZ and the Commonwealth Bank.

In addition to the relatively small amounts of money allocated under the CBF, enforceable undertakings are an uncertain source of funding, subject to the frequency of use and the significance of any payments agreed. ASIC's use of enforceable undertakings has been variable, diminishing over time following criticism by the Financial Services Royal Commission.²³ In the last five years, ASIC accepted between one and 5 enforceable undertakings per year, against 20 in 2018.

OPTION 2

LEGAL PROCEEDS

Penalties

Significant penalties have been awarded against large financial institutions by regulators in recent years. ASIC reported \$185.9 million in civil penalties imposed by the courts and \$6.2 in infringement notices.²⁴ ACCC made public comment relating to over \$570 million in penalties through the 2023 calendar year.²⁵ While these penalties can be significant, they are unlikely to represent a stable funding source for legal assistance.

November 2022 saw significant increases in maximum penalties for breaches select of provisions of the CCA including the Australian Consumer Law. Where the maximum pecuniary penalty was \$10 million, the newly introduced cap is \$50 million. The increase for individuals was also five-fold, going from \$500,000 to \$2.5 million. Given how recent these increases are, it is still too early to determine their effectiveness, their impact on corporate behaviour, and the resulting funding pool.

Proceeds of crime

Under the *Proceeds of Crime Act 2002 (PCA)* state and territory legal aid commissions may make grants of legal assistance to persons in relation to legal proceedings covered by the PCA if the person has property covered by a restraining order made under the PCA. Under section 298 of the PCA, confiscated proceeds of crime can be re-invested in programs for relevant purposes, including crime prevention and law enforcement. It would be in keeping with the relevant purposes of section 298 for moneys to be invested in legal assistance given its role in promoting the healthy functioning of the legal system.

However, the quantum that would be derived from proceeds of crime is unlikely to be significant given that only some portion of total proceeds would be apportioned to legal assistance. For an indication of possible quantum under the state legislation, in 2021-22 financial year, the most recent year for which data is available, the Victorian Proceeds of Crime Unit confiscated \$37.3 million in illegally used assets and proceeds of crime.²⁶

23. ASIC's 2021-25 Corporate Plan, states that the regulator is focused on 'achieving targeted regulatory solutions' and to 'use its full suite of enforcement tools', suggesting that enforceable undertakings may resume a greater role in its actions than in the immediate past.

24. ASIC (2023). Summary of enforcement outcomes.

25. ACCC (2023). Various media releases.

26. Office of Public Prosecutions Victoria (2022). Annual Report 2021-22. Commonwealth grant reporting does not differentiate between what is funded by the Confiscated Assets Account and grants programs more broadly, making an estimation of likely Commonwealth quantum beyond the scope of this paper.

Awards of civil damages

Funding from damages awarded in civil proceedings is not a certain or significant funding source. The main form of damages awarded in Australian courts are compensatory, concerned with providing a remedy to parties in a proceeding and not for a wider purpose. Exemplary damages, which are punitive, would be the most natural source for funding of legal assistance, however these are rarely awarded. Amounts of exemplary damages also tend to be low – the largest award of these damages ordered in Australia was in the amount of \$300,000.

One way that civil damages could be used is to be tied to the parties to proceedings, rather than providing a pool of funding for wider uses, leverage any initial government funding. This does limit their use for legal assistance funding and would be most suited to awards of small amounts.

State-based litigation assistance programs provide examples of how tied damages could operate. South Australia operates the South Australian Litigation Assistance Fund (**LAF**), established as a non-profit charitable trust for which the Law Society acts as trustee. The LAF received an initial government grant of \$1 million in 1992. It became self-sustaining by receiving a portion of the proceeds from the successful claimants it assists. The LAF is used to assist plaintiffs to proceed with civil litigation where they would otherwise be unable to afford to sue. Claimants under the LAF may receive cover for disbursements or for damages.

The amounts generated for claimants under the LAF are, however, limited. It is mainly used for personal injury claims and is subject to means and merits tests. The scheme is also limited to residents of South Australia with claims that have a sufficient connection to the state. The LAF does not pay costs awarded in favour of another party against the claimant. Since it commenced in 1992, the LAF provided approximately 1,500 civil claimants in South Australia, in the relatively limited total amount of \$200 million.

A similar example is the Queensland Civil Law Legal Aid Scheme (**CLLAS**), a scheme helping financially disadvantaged people get access to justice for civil law claims where Legal Aid Queensland does not give grants of aid. Like the LAF, the CLLAS applies to relatively small expenses (outlays) like expert investigations, medical reports, and court filing fees. It does not cover legal professional fees and lawyers must agree to act on a no win, no fee basis.

OPTION 3**GOVERNMENT CONTRACTS
SURCHARGE**

The government's extensive procurement activities present an opportunity to introduce a marginal surcharge. The government could look to raise the \$484 million required for legal assistance funding by strategically implementing a reasonable and transparent additional cost structure. The charge could be set as a per cent of the total value of all government contracts.

The Commonwealth is a major contractor of legal services. In 2021-22 the Commonwealth spent over \$380 million on legal services, not including payment made to the Australian Government Solicitor.²⁷ The total value of contract procurement by the Commonwealth government was \$75 billion in 2022-23.²⁸

Despite the potential for revenue generation, implementing an additional cost on government contracts the policy would result in contract price inflation as contractors pass the burden of the additional cost back to the government. Ultimately, the cost of the surcharge would be returned to government. This inflationary pressure could also undermine competition for government contracts if smaller business and new entrants are unable to meet the costs of the charge.

OPTION 4**LEGAL INSURANCE**

Individuals, families, unions, and businesses with legal expense insurance receive a commitment from an insurer to cover some or all the legal expenses associated with specific legal scenarios. Around 40 per cent of Europeans have legal expense insurance and almost 60 per cent of households in the UK have some level of coverage, often through their home insurance.²⁹ Uptake of legal expense insurance in Australia has been stymied by uncertainty over legal costs and limited consumer appetite.³⁰

However, the cost of paying weekly or monthly premiums is beyond the reach of many Australian

households. Government agency Study Australia's cost of living calculator advises that a single student living in a single bedroom apartment in Sydney using only public transport and eating as economically as possible will need to budget \$52,000 for all expenses.³¹ The maximum assessable income in NSW for legal aid is \$23,000.³² Legal assistance recipients cannot afford insurance premiums; this is why the Productivity Commission inquiry only considers legal expense an "option for making legal services more accessible to the missing middle".³³

27. Attorney Generals Department (2023). Legal Services Expenditure Report.

28. Department of Finance (2023). Statistics on Australian Government Procurement Contracts.

29. International Bar Association (2019). Legal Expenses Insurance and Access to Justice.

30. Productivity Commission (2014). Access to Justice Arrangements.

31. Study Australia (2024). Cost of living calculator.

32. NSW Legal Aid (2024). Eligibility Test - Means Test - Income Test.

33. Productivity Commission (2014). Access to Justice Arrangements.

Conclusion

This paper has canvassed several options for increased legal assistance funding. An additional \$484 million per year is required as a minimum to keep a sclerotic system functioning.

General revenue funding is the most certain, efficient, and fair way of raising increased funds. It is administratively simple. This is especially stark when general revenue is cast against the other financing options we examined. Ultimately, whether the government commits to legal assistance is a question of choices and priorities. Its proposed changes to the Stage 3 Tax Cuts illustrate this.

However, a key driver for this paper was an acknowledgment that increased government funding for legal assistance from general revenue is a difficult path. A law firm levy represents the second-best option, but it is important that the design of a levy acknowledges existing legal aid and pro bono work conducted and does not treat all firms the same. An income contingent loans scheme builds on existing LAC policy but does suffer from uncertainty in take-up.

The other options we explored have potential but fall beneath at least one of our criteria. Some, like a gambling levy may generate large sums but are unlikely to be applied to legal assistance because it is less proximate than direct gambling harm. Others, like enforceable undertakings, are uncertain in terms of funding generated. Yet others will have distortionary impacts such as a charge on government contracts.

The value of legal assistance is immense and well documented.³⁴ Finding money to save our legal assistance system from failure will deliver a social win and significant economic benefits. Notwithstanding, this paper has shown that some win-wins are better than others.

34. Cf. PwC (2023). The benefits of providing access to justice.

