

The Prototype Access to Justice Monitor

Queensland

A joint project of
the Department of Justice, Queensland
and the University of Wollongong

Mary Cunningham & Ted Wright
December 1996

Justice Research Centre

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access to justice & legal services monitor

a joint project of the justice
research centre (NSW) and
the dept of justice (QLD)

1997



foreword

In 1995 the then Director-General of the Queensland Department of Justice, Mr Brian Stewart identified the need for an “Access to Justice Monitor” which would provide the Government and the community with an overview of how accessible justice and legal services were to the people of Queensland. Responsibility for developing this concept was given to Mr Kent Maddock, then Deputy Director-General of the Department who recruited Professor Ted Wright as a research consultant to the project. Together they were successful in obtaining a 1996 Australian Research Council Collaborative Industry Research Grant for the purposes of developing a prototype Access to Justice Monitor. (The grant was to the University of New England but before the funds were made available Ted Wright moved to the University of Wollongong and arrangements were made to transfer the administration of the grant to that institution.)

The full value of the Department of Justice contribution, made largely in the financial year 1995-96 was \$56,000. The Australian Research Council grant was \$21,000 making the full cost of the project \$77,000. Given that much of the input into the project was developmental in nature, a monitor of this type could be maintained at a very low cost.

Mary Cunningham, lawyer and researcher, worked from the beginning of the project as an employee of the Queensland Department of Justice. In September 1996 she joined the Justice Research Centre, Sydney, where the prototype was completed.

Ted Wright is Director of the Justice Research Centre and a Professorial Fellow of the Centre for Court Policy and Administration, Faculty of Law, University of Wollongong.

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and
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Thanks are also due to the staff of the many organisations who provided data for the access measures. The organisations are acknowledged as sources throughout the publication.

Finally, thanks are owed to many people, too numerous to name, who provided advice and other assistance throughout the development of the Prototype Access to Justice Monitor (Queensland).

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preface

what is an access to justice monitor?

Access to justice is one of the most important social issues of this decade. The task of ensuring that all people have access to a fair and equitable justice system underpins policy in every jurisdiction within Australia.

Justice is a major government program at both State and Commonwealth level. Public sector spending on justice (excluding police and corrections) in Queensland alone is in the order of \$500 million.

Reforms designed to improve access to justice have addressed virtually every aspect of the justice system including the courts, the legal profession, legal aid and even the law itself.

But governments lack measures for evaluating the effectiveness of justice system reforms on a system-wide basis. Some important information is not collected at all. For example, recent legal profession reforms were aimed at increasing competition but their effects on legal service prices are not being monitored. Furthermore, while most agencies in the justice system collect information, it is usually only for their own use and is not used to add to a total picture of the justice system. For example, while the courts can monitor the relationship between delays and the volume of cases, they cannot monitor the relationship between these and the availability of legal aid.

The prototype Queensland Access to Justice Monitor has been developed as a periodical modelled on the *Queensland Economic Review*. It is a comprehensive collection of quantitative measures of such things as court delays, legal costs, available services, and related measures of demand, which are equivalents of economic performance indicators like CPI, GDP, interest rates, unemployment figures and balance of payments.

The monitor aims to allow Government and other readers to judge whether justice is becoming more accessible, and to identify trends which may need further investigation.

While the prototype has been developed for Queensland, we believe the model is relevant to other Australian jurisdictions.

defining access to justice

For our purposes, "access to justice" is concerned with access to the legal processes through which legal rights or entitlements can be recognised and enforced. Legal rights and entitlements are prescribed by law. Defining access to justice in this way keeps the monitor clear of political debate about what legal rights people should have. It also accords with general community understanding, and explains why access to justice is universally valued in countries like Australia which have democratic societies and observe the rule of law. If people have legal rights, or believe they do, then they should have access to the legal processes which can secure those rights.

However, while it is useful to define access as being concerned with processes, to some extent it also involves a "fiction" or a degree of arbitrariness which, we concluded, called for a pragmatic rather than a dogmatic response. The meaning, then, that we have given to access to justice can be illustrated by two examples.

First, homosexuals cannot marry, and de facto legislation does not apply to homosexual relationships. In a sense, then, homosexuals do not have access to the same rights and protections as heterosexuals. But this issue was not included in the monitor because the discrimination in entitlements exists due to legislative policy. However much some members of the community might disagree with the policy, the issue is not essentially an "access to justice" issue, but rather one of lack of substantive entitlement.

On the other hand, we did include an analysis of how criminal injuries compensation is distributed to men and women. In this case, less compensation is paid to women as a group than to men mainly because the rules of the scheme provide for higher compensation for physical injury than for psychological harm. As a result, the scheme systematically discriminates between sexual assaults (typically involving women victims and psychological harms) and other assaults (typically involving men and physical harms). This could be viewed as an issue about legal rights, but we chose, for purely pragmatic reasons, to characterise it as an issue about access to criminal compensation because it exposed a bias against women which might be an unintended consequence of the compensation rules. This is an example of how the Access to Justice Monitor might identify issues calling for further research or policy review.

measuring access to justice

methodological issues

Measuring access to justice is by no means easy. In particular, there are two difficulties which we have not wholly resolved.

The first is that while we can easily measure the use of processes, we cannot easily

measure the underlying demand for their use. For example, while we can identify the number of people making complaints of sexual harassment under the *Anti-Discrimination Act 1992* we do not know how many people experience sexual harassment but do not complain, and we do not know how many of those are prevented by some barrier from complaining or freely choosing not to complain. In fact the level of use of justice processes is a product of both access and barriers to access to justice.

The other difficulty concerns issues of quality. Having said that access to justice is essentially about access to legal processes which exist to secure people's legal rights, ultimately it concerns whether those processes are experienced as being fair and achieve correct outcomes. While we can readily measure the use of legal processes, the monitor contains very few examples of measures which are related to their quality.

Traditionally, legal processes have been thought of as conforming to very high standards of "due process" and therefore assumed to reach the correct results. Even this would be conceded by most lawyers to be an idealised model applying in only limited circumstances. In recent times many access to justice reforms or proposals have been directed towards stripping down, or finding substitutes for, what are often called the "Rolls Royce" processes of the law with the hope of finding more affordable justice. In these circumstances, legal procedures should not be assumed to be "quality assured". In the future, more attention must be given to developing measures of quality for both processes and outcomes which could be included in the monitor.

methodology

Despite difficulties in measuring access to justice, there are nevertheless many tangible indices of access and barriers to access. In addition, monitoring these indices annually and noting any relative changes adds to their value as tools of social policy development and research. We have included examples of annual trends in many of our measures.

In constructing the prototype monitor, we conceived of the following access to justice focuses:

- the legal category of the substantive entitlement or right involved, for example, administrative law, consumer law, or criminal law;
- legal services, or the processes and institutions through which substantive entitlements are accessed;
- access groups, or categories of people with particular access needs or difficulties;
- particular access barriers, such as cost, delay, culture, knowledge and skill; and
- reform policy context (that is, social or economic).

These access focuses sometimes overlapped, which in turn affected how the monitor was organised.

In the end the monitor was divided into three major sections — Legal Entitlement Areas, Legal Services and Social Justice Groups. The other two focuses (access bar-

riers and policy context) were reflected in the choice of measures included in these three sections - for example, the Legal Services section includes a costs measure using total industry revenue data (approximating Queensland consumer expenditure on legal services) which is relevant to the micro-economic reform policy focus.

Another consequence of the overlap was that some indices or related groups of indices were relevant to more than one focus, so we have provided cross references.

The measures were mostly quantitative in nature. In each case we tried to present the relevant data in an easy format — generally by graph. We also provided a brief, interpretative commentary to accompany each measure.

We must note that resources for data collection were extremely limited and the availability of relevant data from other sources tended to dictate the measures included. In areas like criminal justice it was possible to include measures which related to delay, costs, availability of assistance and victims' compensation. In other areas, where data collection was less extensive, we were sometimes confined to including only measures of the level of use of relevant processes.

We believe this limited information will become more informative and useful when monitored over time. Where historical trend information was available we included it to demonstrate this potential. We hope ultimately that regular publication of a monitor of this kind will positively influence the quality and extent of data available from justice agencies. We hope also that it will provide its worth as a tool of justice policy development.

1. overview

The following is a summary of the research findings within each access area.

access by legal entitlement area

administrative law

- Requests for a Judicial Review statement of reasons fell by 80 to 164 in 1993-94 with Judicial Review applications to the Supreme Court increasing from 92 in 1993-94 to 102 in 1994-95.
- Non-personal Freedom of Information (FOI) applications increased by 952 to 3,042 in 1994-95 while personal FOI applications dropped by 946 to 4,429. Queensland had the lowest rates in Australia for personal FOI requests and the second lowest rates for non-personal FOI requests in 1993-94.
- In 1994, 67 per cent of applicants before the Administrative Appeals Tribunal had representation, and 80 per cent of those had some form of legal representation.

consumer law

- The Office of Consumer Affairs handled 7,942 complaints in 1994-95, providing some kind of direct assistance in 4,400 cases.
- Of the 6,653 inquiries and complaints to the Australian Competition and Consumer Commission in 1994-95, 380 were pursued, which was 160 less than in 1993-94.
- The number of complaints closed by the Health Rights Commission decreased by 656 to 1,489 in 1994-95.

criminal law

- Legal Aid approved 13,275 grants for criminal matters in 1994-95, which was 810 less than in 1993-94. Grants for prescribed crime increased from 7,511 in 1991-92 to 8,819 in 1993-94 (as they are subject only to the means test) then dropped by 818 to 8,001 in 1994-95. Grants for non-prescribed crime dropped from 6,316 in 1991-92 to 5,233 in 1993-94, before rising slightly in 1994-95 to 5,292.
- In 1994-95, 162 victims of criminal injuries received a total of \$3,597,390 in compensation payments compared to 173 receiving \$3,549,943 in 1993-94 and 136 receiving \$2,073,000 in 1992-93. The average compensation payment increased from \$15,243 in 1992-93, to \$20,520 in 1993-94, to \$22,206 in 1994-95.

employment law

- The number of common law claims lodged with the Workers' Compensation Board rose by 818 to 2,496 in 1994-95.
- The number of sexual harassment complaints in the workplace more than doubled in

1994-95 to 163, making it by far the most common grounds of discrimination. It was followed by 91 discrimination complaints concerning impairment, 63 concerning sex, and 56 concerning race.

family law

- Legal Aid Commission family law grants to women increased dramatically by 3,533 to 5,311 in 1994-95 and to men by 838 to 1,958 in 1994-95. The average grant to men was \$576 higher at \$1,761 than average family law grants to women at \$1,185 in 1994-95.
- A survey of 11 city and suburban law firms indicated that 22 per cent of custody and/or maintenance family law matters were resolved after a contested final hearing in court, 21 per cent settled after a court hearing was set, 9 per cent after court arranged conciliation and 47 per cent settled without court involvement.

human rights and anti-discrimination law

- Sexual harassment (194), impairment (175) and race (108) were the most common grounds of discrimination complaints in 1994-95. The number of matters referred for hearing in 1994-95 increased from 23 to 57.

property law

- In six months of 1995 the Residential Tenancy Authority referred 1,670 cases to mediation with 23 reaching an agreement.

access by legal services

legal profession

- There were 9.3 solicitors and 1.8 barristers per 10,000 population in Queensland in 1994-95.
- Complaints to the Queensland Law Society dropped from 659 to 602 in 1995. Complaints to the Lay Observer remained steady with 84 in 1995, up from 81 in 1994.

cost of legal services

- The number of legal employees in Queensland declined slightly from 3.7 per 1,000 population in 1987-88 to 3.6 per 1,000 population in 1993-94. However, gross income per employee rose in real terms by nearly 14 per cent between 1987-88 and 1993-94.
- The average cost of a criminal injuries compensation claim in 1994-95 was \$2,471 with Legal Aid and \$3,653 with a privately-funded lawyer.
- A survey of family law costs indicated the average price of a fully litigated family law matter was \$16,832 compared to resolving a family law matter without court involvement costing an average of \$1,729.
- A survey of conveyancing costs of residential properties in Brisbane in 1995 showed

the average professional fee charged for the purchase of a property was \$578 and for the sale of property \$387. Up to 83 per cent of conveyancing fees were determined by a fixed quote agreed between conveyancer and client when instructions were taken.

- In 1994-95 the average costs for a plaintiff contesting a common law workers' compensation claim in court was just over \$23,000. In out-of-court settlements the average cost was just over \$7,000.

legal assistance

- In 1994-95 13,275 grants were made for criminal matters by Legal Aid compared to 4,287 family law grants and 2,323 civil grants. In 1993-94 there were 14,085 criminal grants, 3,391 family law grants and 1669 civil grants.
- In 1994-95 there were 13 State- and Commonwealth-funded Community Law Centres and 13 unfunded Community Law Centres in Queensland. The Commonwealth accounted for 81 per cent of government funding to these centres in 1993-94.

court delays

- More than 90 per cent of Magistrate Court civil matters are dealt with in less than three months, while 70 per cent of District Court and Supreme Court civil matters are completed within six months.
- Ninety per cent of Supreme Court and 70 per cent of District Court criminal matters are completed within six months. Magistrates Courts hear more than 90 per cent of criminal matters within three months.

alternative dispute resolution

- In 1994-95 the number of mediations conducted by the Alternative Dispute Resolution Centre increased by nearly 65 per cent to 774. Of those clients involved over the past three years, 90 per cent described themselves as very satisfied or somewhat satisfied with the overall mediation process.
- The number of people taking part in Family Law Court counselling rose by 798 to 5,980 in 1994-95.

access by social justice groups

socio-economically disadvantaged people

- Legal Aid duty solicitors represented 45,579 people in 1994-95, up from 42,803 in 1993-94.
- Legal Aid applications approved in 1994-95 increased to 19,885 from 19,125 in 1993-94 with most approvals being criminal law grants (13,275). Legal Aid applications rejected rose from 10,436 in 1993-94 to 11,696 in 1994-95. Most rejections were for family law applications (4,344), then criminal law applications (3,947) and civil law applications (3,577).

- In 1994-95, 468 Legal Aid applications were rejected because applicants failed the means test, and up to 11,258 applications were rejected for failing to meet merit and/or guideline tests, indicating how many people are unlikely to be able to afford a private solicitor and cannot get government legal assistance.

gender

- Women received 37 per cent of Legal Aid grants in 1994-95, up from 26 per cent in 1993-94. Sixty-three per cent of all grants went to men, with 11,809 (85 per cent) of these criminal grants. In 1994-95, 5311 (73 per cent) of family law grants went to women.
- Of people claiming criminal injuries compensation, 54 per cent were male. They received 61 per cent of total compensation payments. The average criminal injuries compensation grant to men was \$25,727 and to women \$19,394, suggesting women receive less due to the cap on compensation for mental or nervous shock arising from sexual assaults.
- Queensland had 1,263 female and 4,036 male legal service providers in 1995. Of the 77 Senior Counsel and Queens Counsel, two were female. There were more female articled clerks (370) in 1994-95, than male (355). Females accounted for 84 partners and managing partners compared to 1,115 males.
- In a survey of legal and para-legal service providers to women, the cost of using legal services was cited by 63 per cent of respondents as the greatest barrier to access to justice. The second greatest barrier was women feel the legal system is intimidating and hostile to them.

people from culturally and linguistically diverse backgrounds

- In a survey of legal and para-legal service providers to people from non-English speaking backgrounds, language barriers and a lack of information in English was cited by 93 per cent of respondents as the greatest barrier for NESB people accessing justice. Ignorance of rights and a lack of information was given as the second greatest barrier.
- Legal Aid grants to people from non-English speaking backgrounds declined steadily from 6,604 in 1990-91 to 2,739 in 1994-95.

aboriginal and torres strait islander people

- The number of people accessing Aboriginal and Islander Legal Services increased from 37,830 in 1993-94 to 42,217 in 1994-95. Consultations rose by 23,701 to 92,691 in 1994-95.
- Whilst Aboriginal and Torres Strait Islander children comprise 3.6 per cent of the total Queensland population aged between 10-16, they comprised half of the children in custody in 1993-94.

people with disability

- The percentage of people on Disability Support Pensions receiving Legal Aid grants dropped from 6 per cent in 1990-91 to 4 per cent in 1994-95.
- Complaints closed under Federal and Queensland disability discrimination legislation more than trebled in 1994-95 with 195 complaints compared to 58 the previous year.
- A survey identified the need for mainstream lawyers to understand and to take on disability issues.

rural and isolated communities

- The Legal Aid Telephone Information Service fielded 65,187 calls in 1994-95, half of them coming from outside Brisbane. In 81 per cent of calls the matter was clarified and no further referral was necessary. Most calls related to family law matters (31 per cent), consumer and financial law (20 per cent) and tenancy matters (15 per cent).

older people

- A survey identified the need for a generalist advocacy service for older people as well as a need to inform older people of their legal rights.

young people

- Since the *Juvenile Justice Act 1993* increased the scope of police cautioning, the number of arrests has dropped by 2,387 to 16,772 in 1993-94 and the number of cautions has increased by 3,098 to 15,274. Most young offenders continue to be male.
- A survey on barriers highlighted the lack of knowledge by young people on how to access legal services, and the inability of many legal service providers to communicate effectively with young people.

2. legal entitlement area

introduction

As discussed in the preface, the monitor is based on three access focuses. One of these is the nature of typical relationships to which substantive legal entitlements or obligations attach. Within this focus, the law itself is conventionally organised into the following categories, under which we review access indicators:

- administrative law (relations between individuals and government);
- consumer law (disputes between consumers and providers of goods and services);
- criminal law (individual liberty and community safety and security);
- employment law;
- family law;
- human rights and anti-discrimination law; and
- property law.

administrative law

Legal interactions between individuals and government are now a commonplace feature of the modern state, and affect a broad range of the community. Development of laws and procedures regulating decision making by government (administrative law) is largely a twentieth century phenomenon, and an important access to justice focus. The following are summaries of the various avenues through which the public can question administrative law.

judicial review

The *Judicial Review Act 1991* provides for the review of the “legal correctness” of many government administrative decisions by the Supreme Court, and it also modernises procedures for obtaining this review. For example, the provision of a legal right for affected individuals to obtain reasons for certain administrative decisions.

Figure 1 shows the number of requests for statements of reasons to all Queensland Government departments for the years 1992-93 and 1993-94, together with the number of applications made to the Supreme Court for judicial review.

These measures provide limited but useful information about access. The drop in the number of requests for written reasons, from 244 in 1992-93 to 164 in 1993-94, is probably due to government agencies increasingly providing reasons for decisions without formal requests.

On the other hand, the number of people making applications for judicial review in 1992-93 nearly doubled from the previous year.

The introduction of a legislative obligation to provide reasons for administrative decisions might be expected, over time, to reduce the underlying demand for judicial review because it will supply an additional discipline to improve the quality of decision making, and provide a process which increases acceptability of adverse decisions.

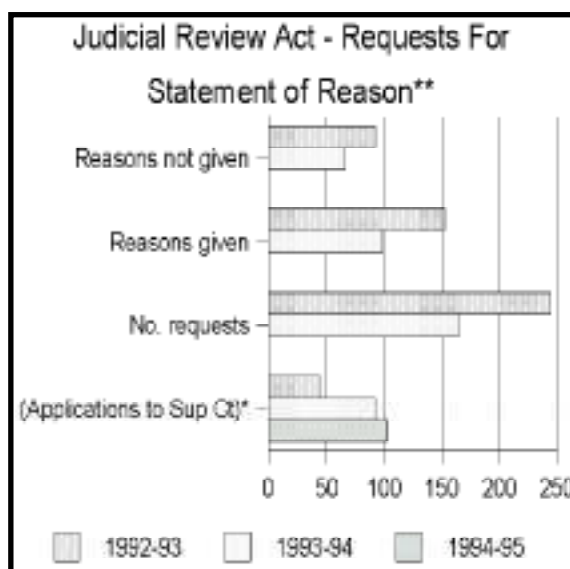


Figure 1. Source: Supreme Court, Trial Division Report on Organisation and Work, 1994-95, and Dept of Justice, Qld. *Applications made for review of decision. **Data in 1994-95 requests for statement of reason not collected.

Few matters are referred to full trial on the civil list. The ratio of applications to the Supreme Court against requests for statements of reason was higher in 1993-94 than 1992-93.

ombudsman - state

Another avenue for the public to make complaints about government actions is the Parliamentary Commissioner for Public Investigations (the Queensland Ombudsman). This office was established in 1974 with functions to investigate facts surrounding government administrative actions and decisions, to review the legality and fairness of those actions and to make recommendations where legitimate grievances are found.

Figure 2 shows that the number of complaints to the Ombudsman has risen steadily since 1990-91. The graph also shows this increase when the number of complaints is indexed to population growth. It is likely that the increase is indicative of greater knowledge of and access to the Ombudsman's office, rather than an increase in some underlying problems with state administrative action and decision making.

Figure 3 shows that the proportion of complaints found to be groundless by the Ombudsman has remained relatively steady at an average of 64 per cent. The proportion of complaints which are justified has also remained relatively steady, at approximately 11 per cent.

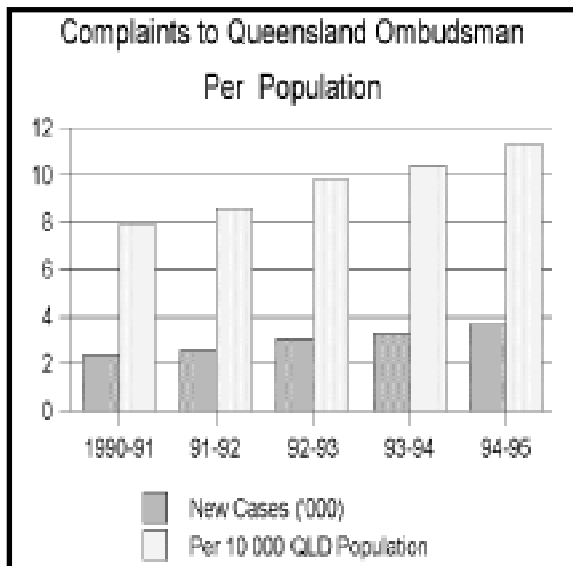


Figure 2. Source: The Queensland Ombudsman 1993-94 Annual Report, Australian Bureau of Statistics, Australian Demographic Statistics. (Cat No. 3101.0)

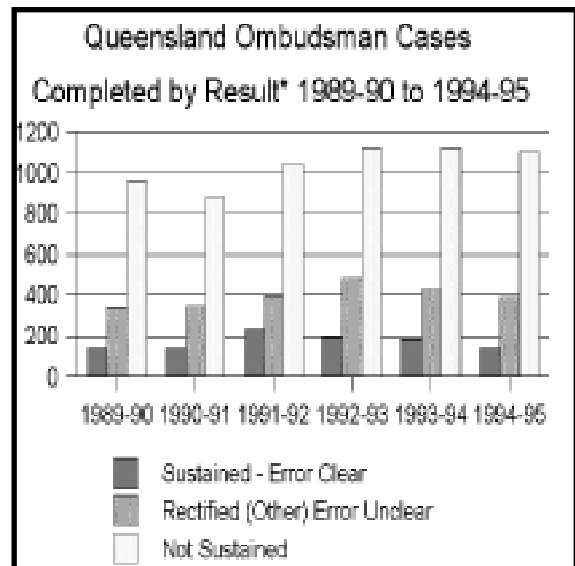


Figure 3. Source: The Queensland Ombudsman Annual Report 1994-95. *Excludes cases outside jurisdiction, declined, withdrawn or in progress.

ombudsman - commonwealth

The Commonwealth Ombudsman has the power to investigate complaints about the administrative actions of Commonwealth Government departments and prescribed authorities. Information from the Commonwealth and Defence Force Ombudsman Annual Reports 1992-93 to 1994-95 found there was a decrease in complaints made in Queensland from 2,626 in 1992-93 to 2,319 in 1993-94, but this number rose to 2,629 in 1994-95. Most complaints to the Ombudsman were made by telephone.

freedom of information

The *Freedom of Information Act 1992* (Qld) allows community members to obtain information about the existence of a broad range of government documents, and get copies of these documents. The Act distinguishes between “personal” requests for documents and “non-personal” applications — the latter usually made by journalists, public or sectional interest organisations and individuals who want to participate in public policy debate, or as a preliminary step to mounting a legal challenge to government administrative action. Figure 4 shows the trend in personal and non-personal applications for the years 1992-93, 1993-94 and 1994-95. The number of personal applications increased in 1993-94 and

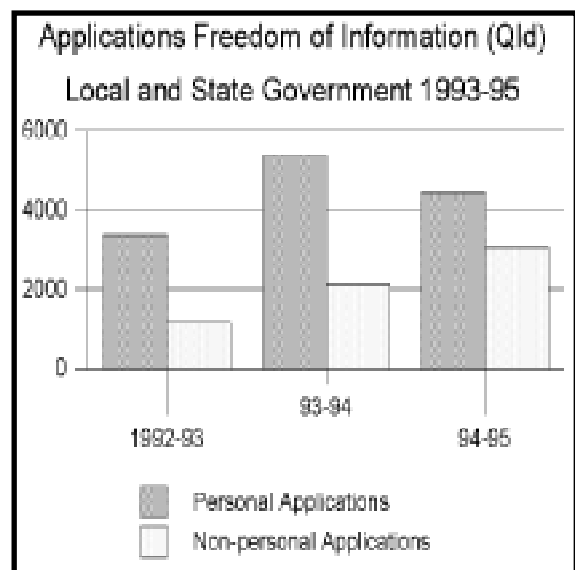


Figure 4. Source: FOI Annual Reports 1992-93 to 1994-95 *Includes withdrawals, procedural errors in applications and ineligibility.

then declined in 1994-95, whilst the number of non-personal applications showed a steady increase. It is likely there was a significant increase in applications in 1993-94 as more people became aware of the legislation. There were few refusals for information in this period. Figure 5 shows the cost in Queensland, compared with other states, of a hypothetical FOI personal application requiring one hour of document retrieval and 20 pages of photocopying. As no application fee is applied to personal applications, Queensland applications of this type are by far cheapest, although several other states have provision for waiving the personal application fee where it would cause hardship. Figure 6 shows, in a similar hypothetical to Figure 5, the cost of an FOI non-personal application in Queensland is the second cheapest in Australia. In non-personal applications extra fees are charged for internal and external review.

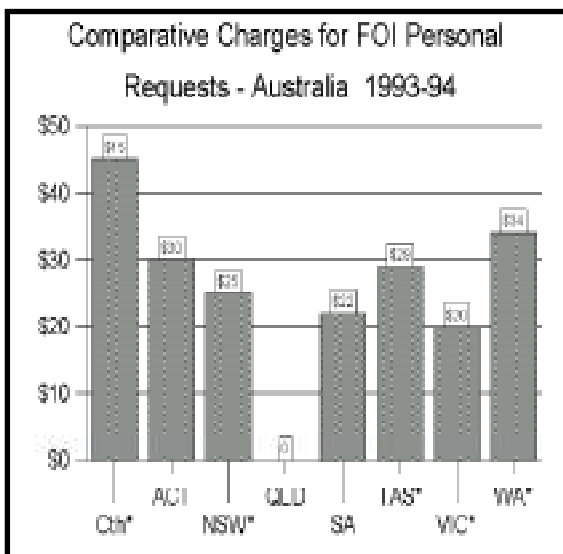


Figure 5. Source: FOI Annual Report 1993-94. *Fees cut or waived in hardship cases. No Commonwealth charge for applicant's income support documents.

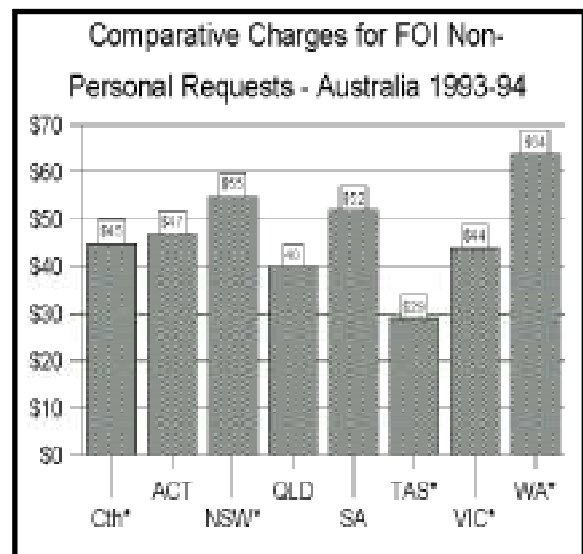


Figure 6. Source: FOI Annual Report 1993-94. *Fees cut or waived in hardship or public interest cases.

administrative appeals tribunal brisbane registry

The Commonwealth *Administrative Appeals Tribunal Act 1975* established the Administrative Appeals Tribunal (AAT) to hear appeals from a broad range of decisions made by Commonwealth administrative agencies and tribunals. The procedures of the AAT were intended to be simple to encourage individuals to appear without professional representation. Agents other than practising lawyers are also permitted to appear on behalf of appellants. The introduction of a system of appeals against administrative decisions, as distinct from the more restricted procedure of judicial review, was a revolutionary step in the common law world. Although there is no corresponding body in Queensland, the establishment of an AAT was recommended by the Electoral and Administrative Review Council. An AAT has been established in Victoria, and one is being established in NSW.

Figure 7 shows the number of applications lodged with the AAT in Brisbane (for Queensland). The rate of applications per 10,000 people has decreased slightly which may indicate that decision making is improving. Other data shows that the proportion of

Brisbane applications (17 per cent) is almost the same as Queensland's share of the national population (18 per cent). While the AAT has been presented as a forum where legal representation is unnecessary, a sample study has shown that in 1994, two-thirds of applicants were represented. Figure 8 shows a slight decrease in the number of represented applicants before the AAT from 72 per cent in 1992 to 67 per cent in 1994.

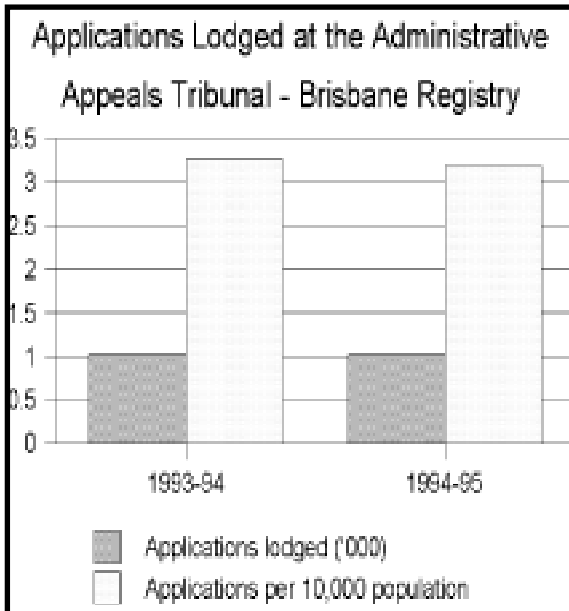


Figure 7. Source: Administrative Appeals Tribunal - Brisbane Registry. ABS, *Australian Demographic Statistics* (Cat No. 3101.0)

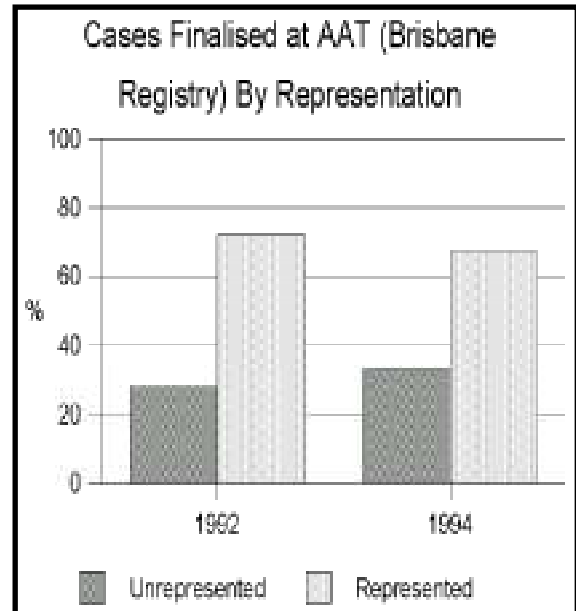


Figure 8. Source: Justice Research Centre, NSW. Note: Cases exclude government department applicants.

A breakdown of the types of representation taken to the AAT in Figure 9 demonstrates that 58 per cent of applicants in 1992 and 80 per cent of applicants in 1994 had barristers, solicitors, Legal Aid or other legal personnel to represent them. This figure correlates with increasing Legal Aid Commission grants for AAT matters which have risen from 133 grants in 1991-92 to 819 grants in 1994-95 (Figure 10).

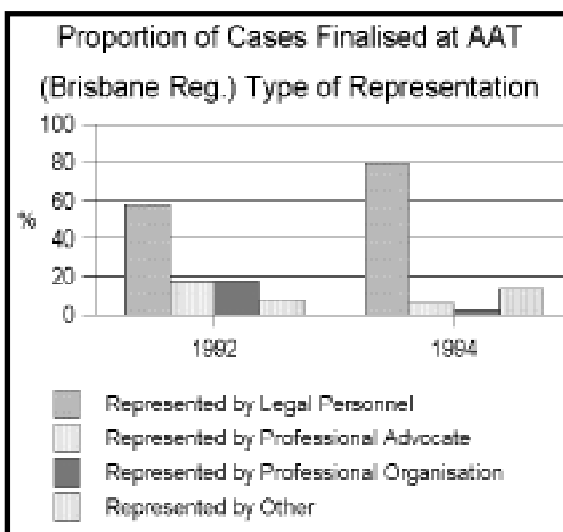


Figure 9. Source: Justice Research Centre - NSW. Note: Excludes government department applicants.

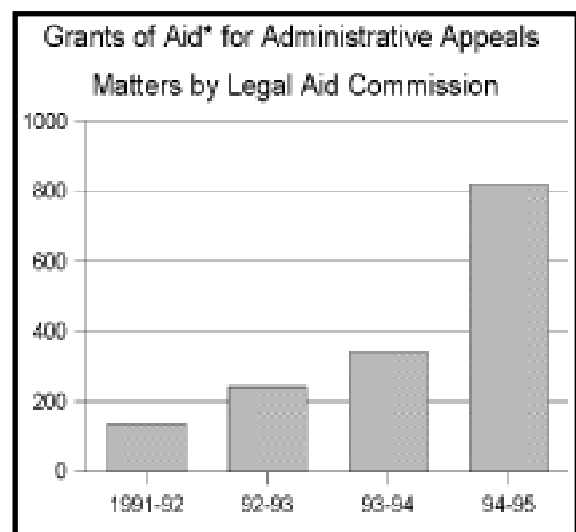


Figure 10. Source: Legal Aid Commission, Qld. *Based on file count - actual number of people assisted.

consumer law

Dealings between providers of goods and services and consumers are common forms of legal interaction. Consumer law is an area in which reliance on civil litigation as a regulatory mechanism has long been recognised as failing, mainly because of access barriers which impede effectiveness. This has led to the development of other mechanisms for protecting consumer interests, namely government regulatory agencies and industry-based Ombudsman schemes which not only act as intermediaries in dispute resolution, but also provide educative functions and, in the case of some government agencies, take on investigatory and prosecutorial roles in relation to regulatory offences.

office of consumer affairs (department of justice)

The Office of Consumer Affairs deals with consumer complaints on a range of transactions. The office has only recently begun to compile statistics on the work of its Investigations Branch. Table 1 shows in 1994-95 the office received 7,942 complaints, of which it finalised 7,715. In more than 4,400 of these complaints the office provided some sort of direct assistance to individual complainants.

Table 1 Consumer complaints and action taken by Consumer Affairs Investigations Branch 1994-95.			
Complaints received		7,942	%
Complaints finalised -	Full redress	1,293	17
	Partial redress	321	4
	Matter clarified	1,773	23
	Specific advice provided to resolve matter	1,074	14
	For information only	784	10
	Outside OCA administration	203	3
	Trader warned	147	2
	Action not taken for various reasons	155	2
	Other action taken (prosecution, claims, referral to other authorities, withdrawn)	1,965	25
	TOTAL	7,715	100

Source: Office of Consumer Affairs, Department of Justice, 1995

australian competition and consumer commission (formerly the trade practices commission)

The Australian Competition & Consumer Commission has broad statutory powers under Commonwealth legislation to investigate anti-competitive market behaviour and various forms of unconscionable and misleading conduct in consumer transactions by trading corporations.

Figure 11 shows the number of complaints and inquiries received and pursued by the ACCC's Brisbane office (complaints are made in writing). It shows the number of inquiries and complaints received declined in 1993-94 compared to the previous year, although the number pursued increased. In 1994-95 the number of inquiries and complaints received remained similar to 1993-94, but the number pursued declined from 540 in 1993-94 to 380 in 1994-95.

Figure 12 shows a breakdown of complaints pursued between consumer complaints and restrictive trade practice complaints. Data shows that the number of inquiries pursued relating to restrictive trade practices has increased from year to year, while the overall decline in complaints and inquiries pursued has been at the expense of consumer complaints. The low proportion of complaints and inquiries pursued by the ACCC partly reflects the need for individual complaints to raise some issue of general public importance in order to justify ACCC intervention, and also increasing budget restrictions in the ACCC's Brisbane office. It would be interesting to know how aware the community is about the ACCC as an avenue for pursuing certain kinds of consumer complaints, and what level of understanding members of the community have about the basis on which their complaints will lead to further action by the ACCC. While the data depicted in Figure 11 are insufficient to suggest any correlation between the number of complaints received, and consumer expectations about the likelihood of their complaints leading to further action by the ACCC, evidence of some correlation might be expected to appear with further monitoring.

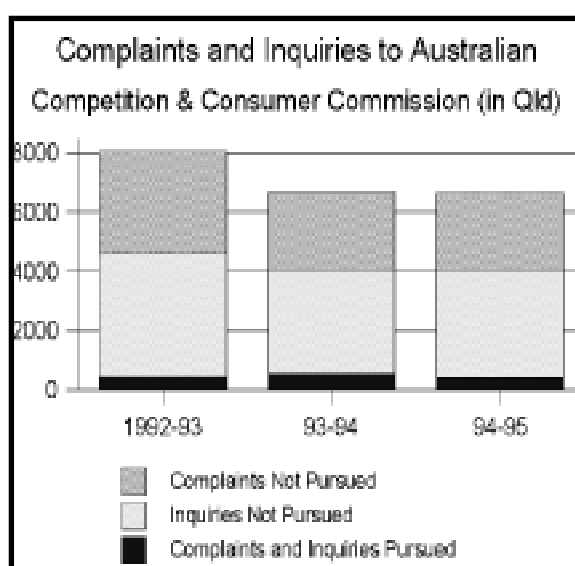


Figure 11. Source: ACCC Annual Report 1994-95.

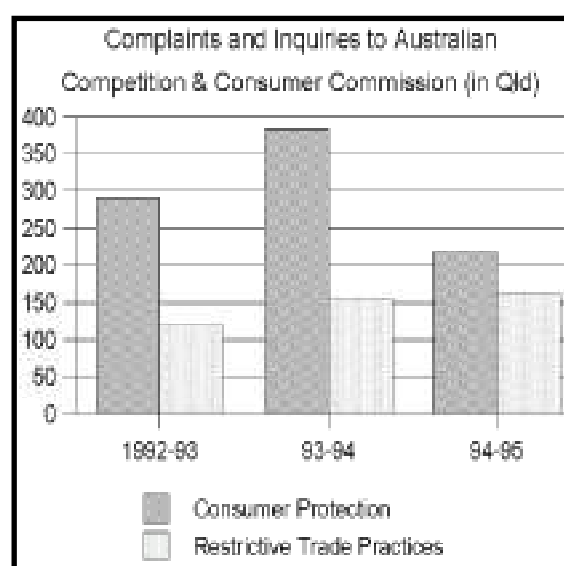


Figure 12. Source: ACCC Annual Report 1994-95.

insurance industry complaints and life insurance complaints board

The Insurance Industry Enquiries and Complaints Claims Review Panel responds to inquiries (about insurance generally) and complaints (which fit within the Panel's terms of reference). If the complaints are not solved at that level they are referred for second tier review at the Claims Review Panel.

Figure 13 shows a decrease in the number of complaints made between 1993 and 1995 which may be due to a policy change in 1995 requiring complaints to first be referred to the insurer's internal dispute resolution process. The number of cases going before the panel increased by 34 to 87 in 1995. Other data shows that in 1995, 48 per cent of claims resulted in favour of the consumer and 52 per cent against.

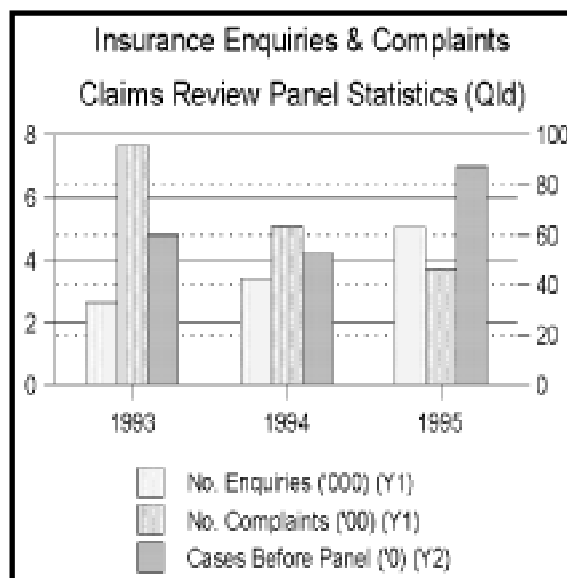


Figure 13. Source: Insurance Enquiries and Complaints Ltd.

The Life Insurance Complaints Board (LICB) is the complaints body of the Life Insurance Industry Association. From information found in the LICB annual reports 1994 to 1995, there has been a gradual increase in complaints from 178 in 1993, to 189 in 1994, to 201 in 1995. This may well reflect the increasing awareness of its function. Most life insurance agencies now give the name of the LICB in any documentation sent to the client.

health rights commission

The Health Rights Commission is a statutory authority with a mandate to investigate a broad range of consumer complaints relating to health service providers. The commission uses a model of conciliation to address health complaints.

Table 2 shows the number of consumer complaints decreased by 656 to 1,489 in 1994-95 compared to the previous year. More than half of all complaints were handled on receipt, with more than four-fifths of these being resolved by the provision of advice or other information. Another quarter were resolved when referred to the service provider, or during assessment. Only 2 and 3 per cent of complaints in 1993-94 and 1994-95 respectively, were determined by professional registration boards and only 1 per cent went to investigation by the Health Rights Commissioner. No information is available for outcome satisfaction levels.

	1993-94	%	1994-95	%
Complaints handled on receipt (resolved)	1,138	53	823	55
Complaints initiated but discontinued before assessment	236	11	118	8
Sent to point of service only (local resolution)	381	18	225	15
Resolved during assessment	223	10	152	10
Determined by professional registration boards	34	2	48	3
Referred to other authorities	25	1	36	2
Conciliation	55	3	73	5
Investigated by Health Rights Commissioner	27	1	14	1
Other	26	1	-	-
TOTAL	2,145	100	1,489	99

Source: Health Rights Commission Annual Reports 1993-94 to 1994-95.

criminal law

Because of the social and legal importance of crime, criminal justice has been a long-standing access to justice focus (see, for example, *Dietrich v R* (1992) 177 CLR 292). Data relevant to access issues available in this area is much more comprehensive than civil law data, and includes, for example, detailed data on criminal proceedings, legal aid, court delays and criminal injuries compensation.¹ Because of the general focus on crime, other agencies have monitored crime statistics and for this reason extensive crime data is not reproduced here.

legal aid commission grants in criminal matters

An obvious access indicator is the number of grants of legal assistance for criminal matters. Figure 14 shows the number of applications and grants made by the LAC for the years 1991-92 (the first full year of operation after the merger with the Public De-

¹ In Queensland more extensive crime data can be obtained from: the Criminal Justice Commission's *Criminal Justice System Monitor*, the Government Statistician's Office Crime Statistics Unit, the police, Corrective Services, and Family Services.

fender's Office) through to 1994-95. The data shows that the number of applications rejected over this period has tended to increase, and that the number of grants approved in 1994-95 was the lowest in the period.

Figure 15 shows the allocation of assistance grants between "prescribed crime" (in general terms, the more serious offences which are dealt with in the higher courts) and "non-prescribed crime" (proceedings in the lower courts). This figure shows that the number of prescribed crime assistance grants consistently increased until 1993-94, while conversely the number of non-prescribed grants decreased. The *Legal Aid Act 1991* requires grants of aid to be made in all prescribed crime cases, subject only to the means test. Other data indicates that very few people who do not meet the means test apply. In criminal proceedings, the accused are not voluntary participants and, therefore, the number of criminal prosecutions is an indicator of the underlying demand for legal assistance. However, in 1994-95 there was a significant decrease in prescribed crime grants with a drop of 818 to 8,001 and a slight increase in grants for non-prescribed crime cases, up by 59 to 5,292.

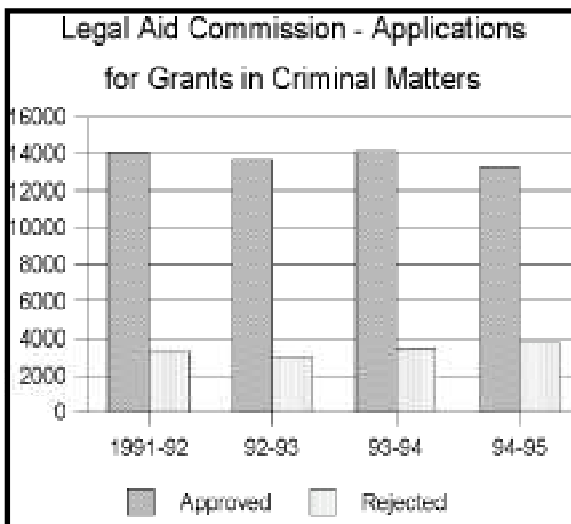


Figure 14. Source: Legal Aid Commission, Qld Annual Reports 1990 to 1995.

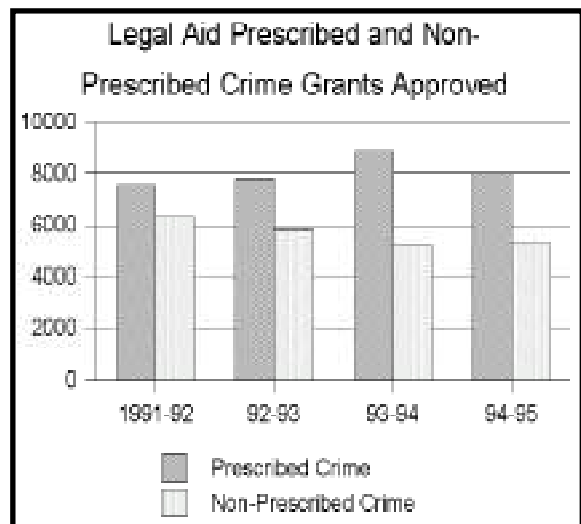


Figure 15. Source: Legal Aid Commission, Qld.

Figure 16 shows the number of prescribed crime aid grants compared with the number of depositions received by the Office of the Director of Public Prosecutions (DPP) for the years 1991-92 through 1994-95. (The number of depositions received is closely correlated with the number of higher proceedings — figures for the latter not being available). This graph shows that the number of prescribed crime aid grants has risen at the same, if not at a faster, rate than the number of higher court prosecutions. (The

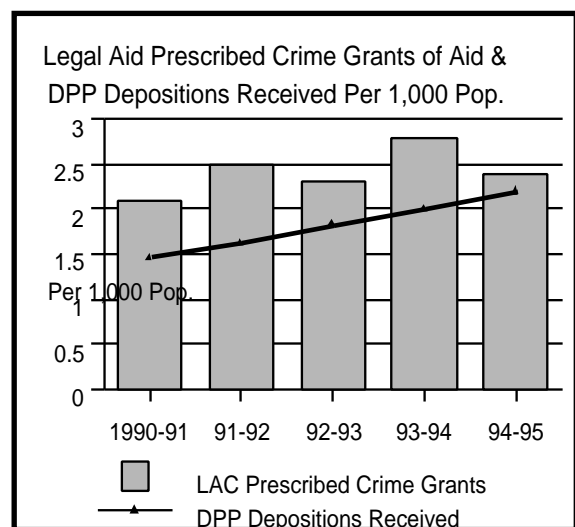


Figure 16. Source: Legal Aid Commission, Qld *Submission to the Treasurer of Qld on Funding for Prescribed Criminal Proceedings*; DPP, Qld Annual Reports 1990 to 1995, Castles, I 1993; ABS, *Australian Demographic Statistics* (Cat No. 3101.0)

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, such as committal hearings, appeals, bail applications, or mental health work). On the other hand, while there is no data on the number of non-prescribed crime proceedings over the relevant period, other data suggest the percentage of non-prescribed crime applications rejected has increased in recent years.² (Applications have also decreased, no doubt influenced by diminishing likelihood of success.)

criminal injury compensation

Since 1969 the *Criminal Code 1900* (Qld) recognised a right of access by victims of personal violence to a criminal injuries compensation scheme. In 1995 the rights conferred by the *Criminal Code* were transferred into legislation for victims of crime. The *Criminal Offence Victims Act 1995* (Qld) replaced the use of both courts and an administrative process for compensation applications to a single court process. The Act is a legislative framework for compensating victims of crime for physical injury and mental or nervous shock. This is a modern justice system entitlement, whereby the state redresses victims to whom it owes a duty of protection from crime. The office of the DPP will now have a greater role in assisting victims of crime making applications for compensation before the courts.

Figure 17 shows the total compensation expenditure for each financial year since 1989-90. The increases from year to year are attributable more to an increasing number of claims than increases in the size of the average claim, which in turn suggests greater community awareness of the benefit. It also shows the average payment per grant. Figure 18 shows the percentage of male and female compensation claimants and the share of total compensation by gender. The graph shows that women are under-represented as claimants, and receive an even smaller proportion of the compensation paid.

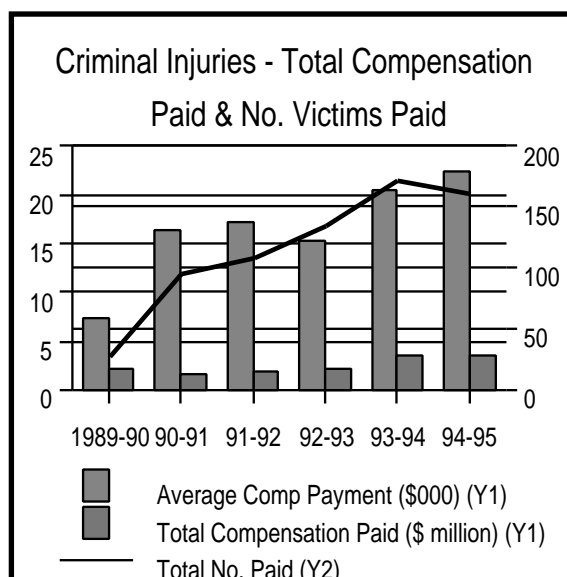


Figure 17. Source: Dept of Justice, Qld.

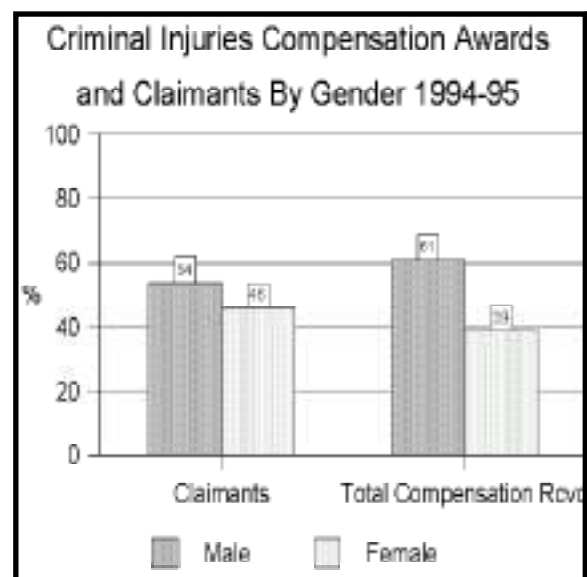


Figure 18. Source: Dept of Justice, Qld.

² See Criminal Justice Commission, *Report on the Sufficiency of Funding of the Legal Aid Commission of Queensland and the Office of the Director of Public Prosecutions*, Queensland, 1995, Brisbane.

This is probably due to several factors, all of which have possible equity of access implications. One is that more than half of the applications by women arose out of sexual and indecent assaults, where the principal injury is mental or nervous shock. The Act sets a cap of \$25,500 on recovery for severe mental or nervous shock. On the other hand, more than 75 per cent of claims by men were for injuries sustained from physical (other than sexual) assaults, where the limit on compensation is \$75,000. Moreover, men are disproportionately represented among victims of physical (other than sexual) assaults. This may be due to the fact that victims of domestic assaults (mostly women) are indirectly excluded from the compensation scheme (because offenders have not been convicted of an indictable offence).

criminal court delays (see section 3)

office of the director of public prosecutions (DPP)

Victims of crime must rely on the police and the DPP to secure convictions against perpetrators of crime. This section has been included as one of the legal processes whereby victims access justice. Figure 19 shows the annual expenditure of the DPP per deposition received for the years 1990-91 through 1994-95. Depositions received is a reasonable benchmark for the annual work of the office in general. The data shows that DPP expenditure per deposition fell in 1993-94 to its 1990-91 level but increased significantly to a new high in 1994-95.

By itself, this data is ambiguous — an increase in expenditure per deposition might suggest that the cost of processing criminal cases has risen for reasons independent of DPP operations (for example, fewer matters being finalised as pleas of guilty); or that the DPP's operations are becoming less cost effective; or that while costs have been increasing, so has the quality of the justice service being provided. A decrease is similarly ambiguous. However, this measure is one of only a few in the monitor which provides trend data on the cost of a legal service.

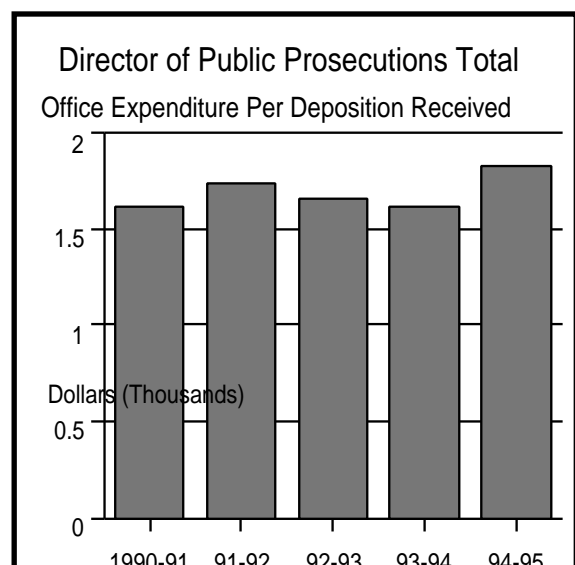


Figure 19. Source: DPP Annual Reports 1990 to 1995.

Other measures, such as comparative trial versus sentence rates, *nolle* rates and conviction and acquittal rates could provide checks on quality issues and clarify some of the ambiguities in the event of either a rising or declining trend in expenditure appearing in the next few years.

employment law

Employment is an area where many basic legal entitlements are attached. Workers' compensation and discrimination in employment are measures which have been included to give an overview on access to justice in the employment area.

workers' compensation

Figure 20 shows that during 1994-95 the number of statutory claims rose by 8.4 per cent, largely reflecting increasing labour market activity during the year. It also shows a steep increase in the number of common law claims lodged, although the number of successful claims has not risen as dramatically because the claims usually take more than 12 months to settle. One can expect the number of successful claims to rise in 1995-96.

Figure 21 shows the average amount of damages awarded in court and out of court, indicating the claims that are contested in court involve significantly higher returns to the plaintiff than out of court settlements.

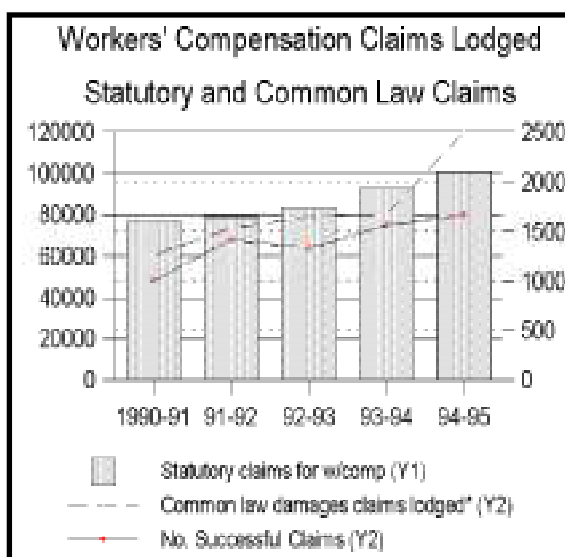


Figure 20. Source: Workers' Compensation Board of Qld Annual Report 1994-95.

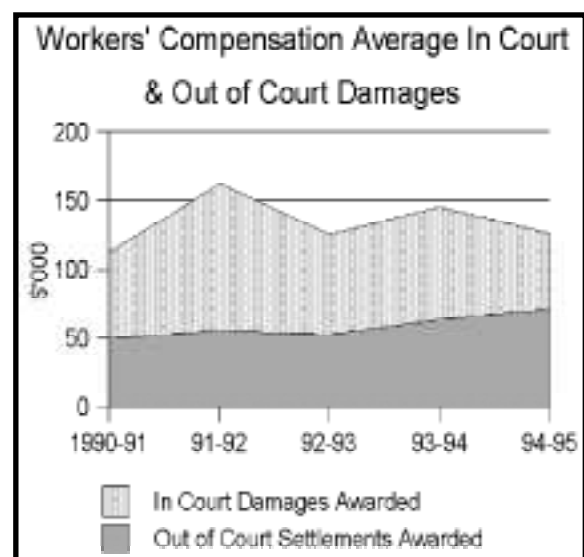


Figure 21. Source: Workers' Compensation Board of Qld.

discrimination in employment

The number of complaints lodged under the *Queensland Anti-Discrimination Act 1991* in the area of employment more than doubled in 1994-95 going from 216 to 500 complaints (see Figure 22).

In both years, sexual harassment in the workplace was the most common grievance, constituting 36 per cent of total complaints in 1993-94 and 33 per cent in 1994-95. Discrimination on the grounds of impairment was the second most common grievance, followed by sex, race, pregnancy and age discrimination. Federal legislation now covers race, sex, age and impairment discrimination. The increase in the number of complaints being lodged may be due to the increase in discrimination, but it is more likely due to increased awareness people have of their rights. Anti-discrimination legislation aims to modify the community's behaviour and monitoring trends in complaints can indicate whether the legislation is having its desired effect.



Figure 22. Source: Human Rights and Equal Opportunity Commission Annual Reports 1993-94 to 1994-95.

family law

Family law is the legal area most likely to directly, or indirectly, touch the lives of Queenslanders. It covers the breakdown of marriages, the custody and access of children, maintenance agreements and property settlements. The high demand on this area of law has necessitated a shift from adversarial court proceedings to attempts at counselling and conciliation solutions. Quantitative measures show us the number of people accessing their legal entitlements. However, there is no evaluation of whether people are as satisfied with the outcomes of conciliation as they would have been with a fully litigated matter in a courtroom. On the face of it, the streamlining of justice will increase access by decreasing costs and delays.

family court of australia - queensland registries

The Family Court of Australia was established in 1975 under the *Family Law Act 1975*. Many more people come into contact with the Family Law Court at some stage in their lives than any other court in Australia. To deal with its large workload the court has developed counselling services and streamlined court procedures. The counselling service helps make the court a conciliation forum rather than a court of litigation (see Family Court counselling data in section 3). The Family Court has jurisdiction over the dissolution of marriage, the guardianship and custody of children (now known as residence and/or contact and/or specific issues orders), spouse maintenance and the review of child maintenance and property settlements.

Figure 23 shows gradual increases in the number of files opened, rising from 9,710 in 1989-90 to 12,962 in 1994-95. Applications made in Queensland Family Court Regis-

tries between 1989 to 1995 also increased. But there is a decrease in the number of orders sought in 1994-95. Figure 24 shows decreases in the number of custody/guardianship, maintenance and access orders sought, and a sharp drop in the number of property orders sought.

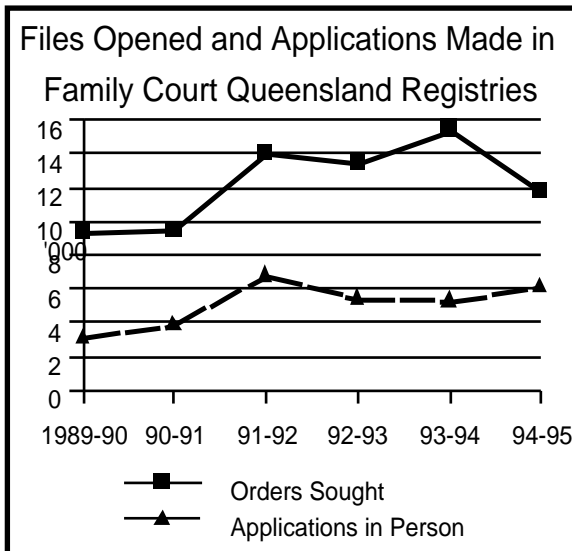


Figure 23. Source: Family Court of Australia Annual Report 1994-95.

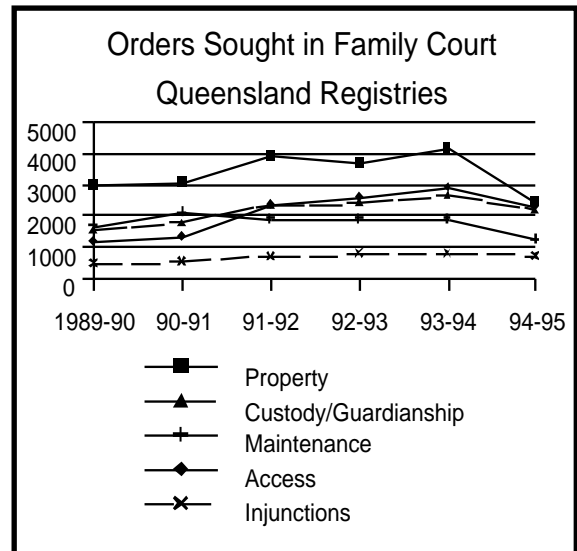


Figure 24. Source: Family Court of Australia Annual Report 1994-95.

legal aid commission grants in family law matters

Figure 25 shows the number of grants for family law matters dropped after 1991-92 but increased in 1994-95. There was a 200 per cent increase in grants to women in 1994-95. No explanation can be given at this stage.

survey of family law costs (see cost of legal services in section 3)

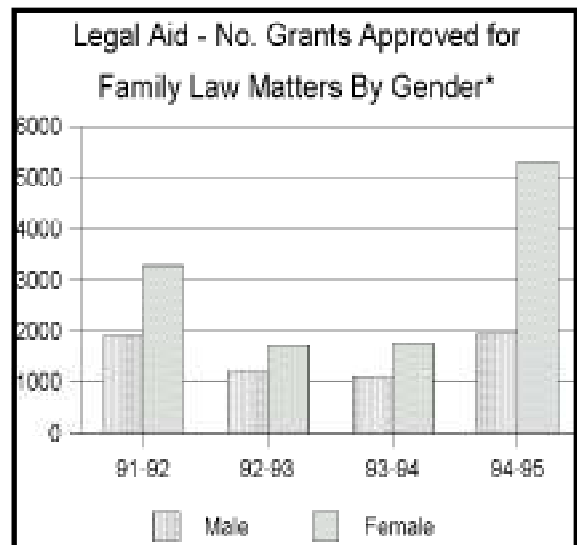


Figure 25. Source: Legal Aid Commission. *Excluding data where gender not stated.

human rights and anti-discrimination law

Anti-discrimination legislation provides an avenue of legal redress for people who have been treated differently due to their personal attributes such as race, gender or reli-

gious beliefs. While use of anti-discrimination legislation appears to be an obvious means to access justice, people do face barriers to the processes. In this section quantitative data is given regarding those who do use anti-discrimination laws. The section also provides “access by social justice groups”, qualitative data which highlights some of the barriers people face in accessing their substantive anti-discrimination entitlements.

human rights and equal opportunity commission and the queensland anti-discrimination commission

The Queensland Anti-Discrimination Commission and the Federal Human Rights and Equal Opportunity Commission previously administered state and federal anti-discrimination laws respectively whilst operating out of joint offices in Brisbane, Rockhampton and Cairns under an agreement between Federal and State Governments. In relation to access to justice, this provided a single point of contact for discrimination complaints.

Figure 26 shows a sharp increase in the incidence of sexual harassment, impairment and race discrimination complaints opened. In the three years recorded, sexual harassment has been the leading grounds of complaint. Queensland’s *Anti-Discrimination Act 1991* is broad in scope prohibiting sexual harassment in any situation. This may contribute to more people making complaints under this ground. Relatively few complaints are referred for hearing (see Figure 27), however, the number has increased to 57 in 1994-95. Most complaints are conciliated. In 1994-95 some 40 per cent of complaints were not dealt with, down from 50 per cent in 1993-94 and up from 25 per cent in 1992-93.

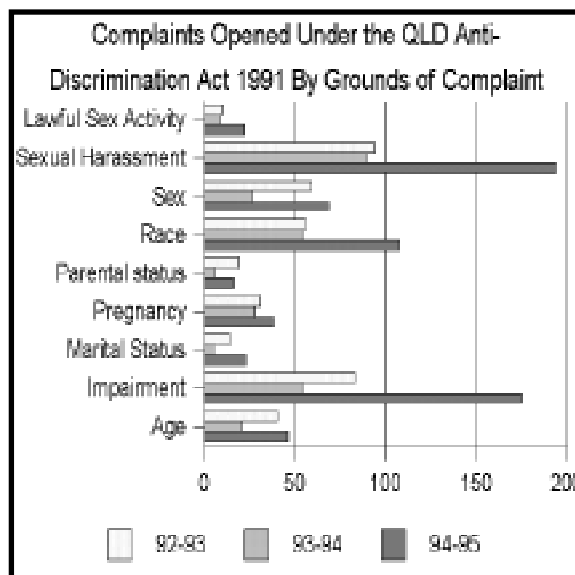


Figure 26. Source: Human Rights and Equal Opportunity Commission Annual Report 1994-95. (Grounds of association, political activity, political belief, religion, and trade union activity are not included as each received less than ten complaints in each year.)

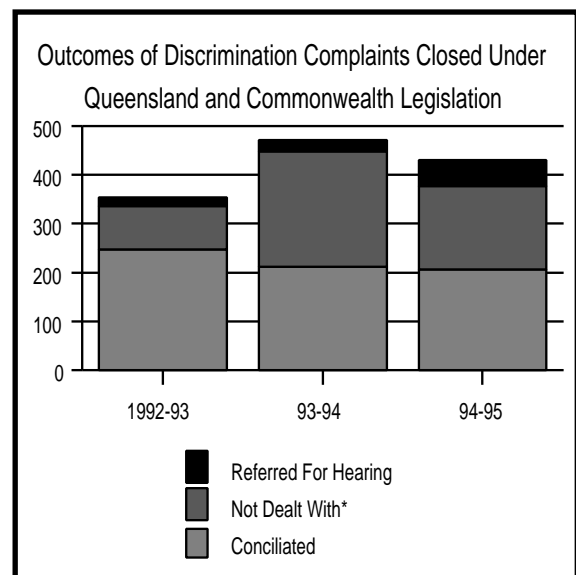


Figure 27. Source: Human Rights and Equal Opportunity Commission, Annual Report 1994-95. *"Not dealt with" includes matters not referred for hearing, referred elsewhere, outside jurisdiction, withdrawn by complainant and no contact from complainant.

property law

residential tenancies

The *Residential Tenancies Act 1994* became operational in April 1995 giving the Small Claims Tribunal (SCT) jurisdiction to resolve residential tenancy disputes. The SCT, previously hearing disputes on rental bond refunds, now has a dispute resolution process for lessors and tenants both during and after the tenancy. The Residential Tenancy Authority (which administers the Act) also provides the public with legal entitlement information. While full year data is not yet available, some monthly data indicate possible areas for the future monitoring of residential tenancy disputes.

In the six months from April to September 1995, 1,670 cases were referred for mediation. Of these, 23 per cent reached an agreement (14 per cent reached agreement without mediation); 60 per cent were unsuccessful (with 32 per cent being where Party B refused to mediate and 18 per cent considered unsuitable for mediation); 5 per cent were withdrawn; and 12 per cent remain on hand — unresolved.

survey of conveyancing costs (see cost of legal services in section 3)

3. legal services

introduction

Another access focus is the legal processes and institutions through which substantive rights are realised or made effective. This section includes indicators which relate to:

- legal profession
- the cost of legal services
- legal assistance
- court delays
- alternative dispute resolution
- (legislation)

legal profession

legal service providers

Figure 28 shows the number of legal practitioners per 10,000 population in Queensland during 1995. The figure for “other” combines approximately equal numbers of practitioners acting for single clients (corporations and local governments) and lawyers not engaged in full time practice. The figure for solicitors is very close to the standard industry benchmark of one lawyer in private practice per thousand population. The proportion of barristers in private practice (nearly one for every five solicitors in private practice) is also in line with the ratio in NSW and Victoria but significantly higher than in the “fused profession” states. It will be interesting to monitor trends in these figures generally, and in light of both recent increases in university students studying law and anticipated changes in the structure of the legal profession.



Figure 28. Source: Qld Law Society 1995 and Qld Bar Association (Sept 1995) ABS, *Australian Demographic Statistics* (3101.0)

complaints about lawyers to the law society and to the lay observer

Lawyers and legal services are critical components of the justice system. The integrity of lawyers, the quality of their services and client satisfaction are important access to justice issues. Under the *Queensland Law Society Act 1952* there is provision for any person aggrieved by reasons of alleged malpractice, professional misconduct, or unprofessional conduct or practice by any practitioner to make a written complaint to the Queensland Law Society and it will be investigated. If a client is not satisfied with the outcome of the internal investigation there is a limited provision for external review by the Lay Observer's Office. The Lay Observer must be satisfied that the Law Society has adequately responded, or they may ask for further information.

Figure 29 shows that complaints in writing to the Law Society about practitioners rose to a peak in 1992 of more than 1,000 — representing approximately one formal complaint for every three solicitors in practice. This number then fell significantly to just over 600 in 1995, no doubt largely due to the introduction of the Client Care Rule which required practitioners to implement better procedures for resolving client dissatisfaction directly, without formal complaint.

Law Society records indicate that more than one-third of complaints in 1995 related to costs and delay, while nearly one-quarter involved allegations of professional misconduct.

The number of complaints to the Lay Observer, shown in Figure 30, rose to just over 80 in 1993 and has remained at that level.



Figure 29. Source: Lay Observer Eighth Annual Report 1994-95.



Figure 30. Source: Lay Observer Eighth Annual Report 1994-95.

Figure 31 shows more than half of these complaints in 1995 resulted in no further action being taken.

The previous government proposed to introduce comprehensive reforms to the structures for handling complaints against lawyers, which included the establishment of a much more powerful Legal Services Commissioner's Office, based on the NSW model. It will be interesting to monitor trends in complaints in light of these proposals and the NSW experience.

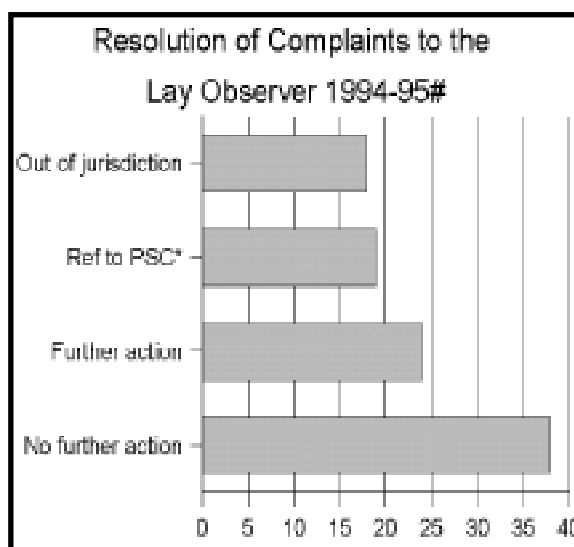


Figure 31. Source: Lay Observer Eighth Annual Report 1994-95. *Referred to Professional Standards Committees. # Includes 15 complaints from 1993-94.

cost of legal services

expenditure on legal services in queensland

The Australian Bureau of Statistics intends to survey the legal service industry every four years and monitor trends in the number of legal businesses, the number of people employed and the income of legal services Australia wide.

Figure 32 shows gross business income for Queensland legal businesses in the first (1987-88) and second (1992-93) survey years, both in nominal dollar terms and with the 1987-88 income figure adjusted by CPI to its equivalent 1992-93 value. The figure shows that gross income of legal businesses rose by 25 per cent in real terms over the four years between surveys.

This compares with the 20 per cent rise in the Gross State Product (GSP)¹ between 1987-88 and 1992-93. Gross income of legal businesses represented 1.04 per cent of GSP in 1987-88, and this rose to 1.09 per cent in 1992-93, suggesting a rise in the relative cost of legal services to the community.

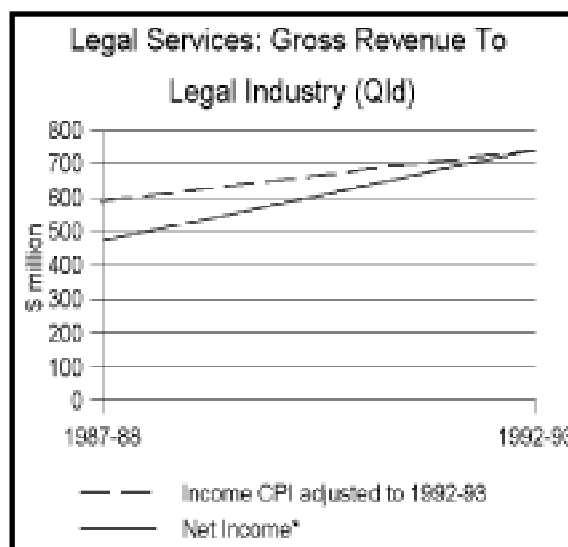


Figure 32. Source: ABS, Legal and Accounting Services, 1992-93 (Cat No. 8678.0). ABS, CPI (Cat No.6401.0). * Net income is gross income minus interest income.

¹ Australian Bureau of Statistics, *Australian National Accounts: State Accounts*, (Catalogue Number 5220.0).

Figure 33 shows the number of persons in legal employment per 1,000 population and gross income (in real terms) of legal businesses per employee, calculated using the results of the ABS surveys. This figure shows the number of legal employees has declined slightly relative to the Queensland population but gross income per employee has increased in real terms by nearly 14 per cent. The increase might be explained by an increase in the use of legal services or a rise in service price, or both. To the extent that an increase in consumption levels is not attributable simply to population growth, it suggests an overall increase in accessibility of services to the community. However, it would appear that the bulk of the increase in industry gross income is attributable to price rises at rates higher than CPI, indicating a decline in accessibility. It is more likely that the number of employees is linked to level of use of legal services, and this number has declined slightly relative to population. While it must also be conceded as a theoretical possibility that the same number of employees might have delivered more services through greater efficiency, other research also suggests that the costs of legal services increased at higher than CPI rates during this period.

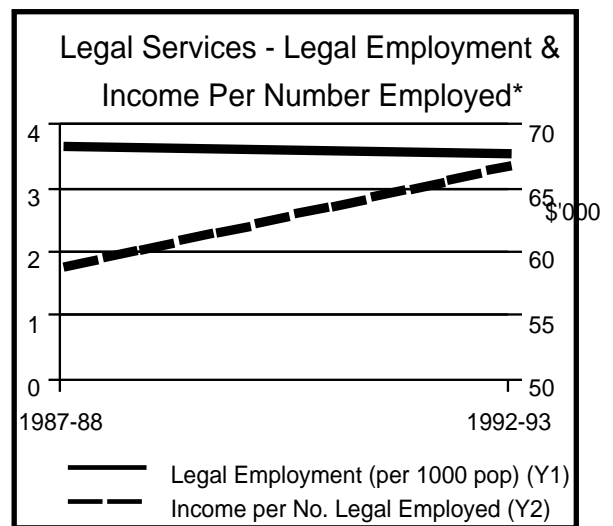


Figure 33. Source: ABS, Legal and Accounting Services, 1992-93 (Cat No. 8678.0). *All staff in a legal practice.

legal costs of criminal injuries compensation claims

Figure 34 shows the average legal cost (including disbursements) of a Legal Aid funded criminal injuries compensation claim was \$2,471 while the average cost for a privately funded claim was \$3,653, a difference of nearly 48 per cent. However, while privately funded claims cost more, Figure 35 shows that they also involved significantly higher



Figure 34. Source: Human Rights and Administrative Law Division, Department of Justice, Qld 1995.



Figure 35. Source: Human Rights and Administrative Law Division, Department of Justice, Qld 1995.

average recovery (\$27,117 compared to \$19,663). The proportion of the average cost as a percentage of the average recovery was 13.5 per cent for privately funded claims and 12.7 per cent for legally assisted claims. With plans to involve the DPP in providing assistance to claimants, it will be interesting to monitor trends in costs relative to compensation in the future.

survey of family law costs

In a pilot survey of city and suburban law firms, 11 firms yielded data on 100 files indicating trends in the legal costs of family law files. The survey results covered 27 custody, access and/or child maintenance matters, 56 spouse maintenance and/or property divisions and 17 files involved both custody and spouse maintenance matters.

Table 3 shows the average fees paid by clients depending on when their dispute was resolved. Average fee paid (including disbursements) for matters resolved by negotiation or mediation without court involvement was less than \$1,800, while the average fee paid for fully litigated disputes was nearly \$17,000. The 24 with the highest disbursement costs all had employed counsel. The costs for counsel ranged from \$180 to \$25,000.

How dispute resolved (1 not stated)	No	Average Professional Costs	Average Disbursements	Average Total
By an order of the court after a contested final hearing	22	\$11,868	\$4,913	\$16,832
After a final court hearing was scheduled, by settlement between the parties	21	\$5,505	\$1,698	\$7,204
After a court arranged conciliation or counselling session	9	\$4,271	\$188	\$4,459
By mediation or negotiation without court involvement	47	\$1,545	\$184	\$1,729

Source: Law Society of Queensland and Dept of Justice Family Law Costs Survey, January 1996.

Figure 36 shows that the professional fees paid to city practitioners were higher than those paid to suburban practitioners by more than \$1,000. Figure 37 indicates that the fees in nearly two-thirds of the sample were determined by reference to the Family Court Scale while nearly one-quarter involved some component of time charging.

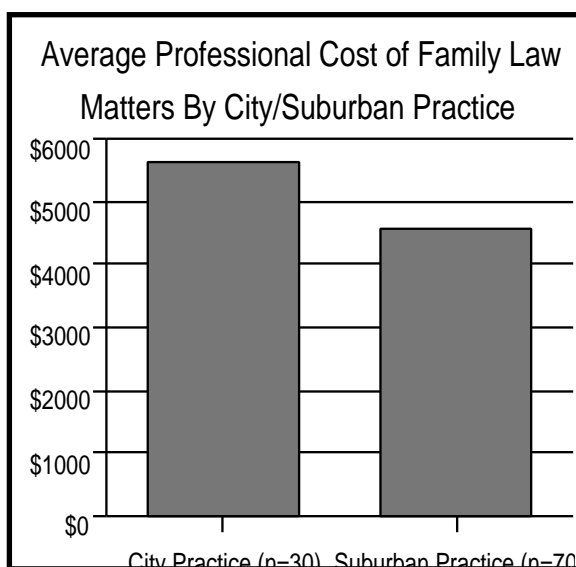


Figure 36. Source: Law Society of Qld and Dept of Justice Family Law Costs Survey January 1996.

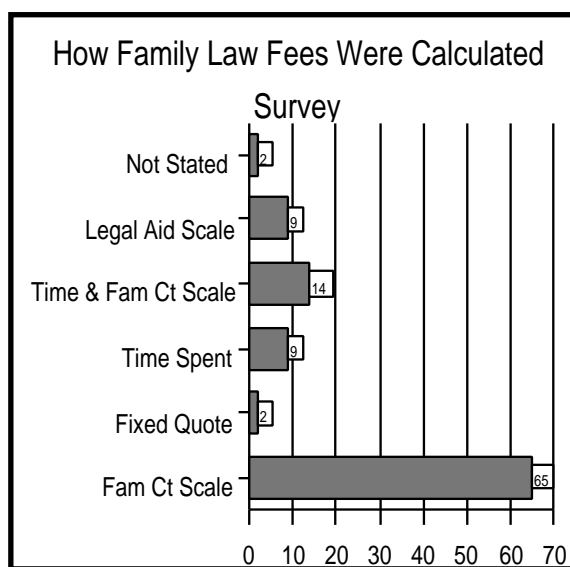


Figure 37. Source: Law Society of Qld and Dept of Justice Family Law Costs Survey January 1996.

survey of conveyancing costs

In a survey of conveyancing costs conducted by the Law Society of Queensland, 138 responses were received from nine suburban and five city legal firms in Brisbane. Respondents were required to provide data on professional fees for the conveyance of a residential property in Brisbane where the firm acted from the initial instructions from the client until the conclusion of the matter. Seventy-six responses related to the purchase of a property and 62 related to the conveyancing involved in a property sale. For the purposes of the pilot study the survey was only tried out on urban conveyances with the view to expanding the scope of the survey if viable.

Table 4 shows the average (mean), median and mode fees charged for purchases and sales, as well as the average total costs including disbursements (which included stamp duty for purchases). Table 5 shows that the professional fee component in the majority of cases was based on fixed quotes given prior to the conveyance, and this is reflected in the median and mode figures in Table 4. The fees were between \$550 and \$600 for a purchase and between \$300 and \$400 for a sale.

	Purchasing	Selling
Average professional fees	\$578	\$387
Average professional fees and disbursements	\$3,479	\$459
Mode professional fees	\$550	\$300
Median professional fees	\$580	\$382
Average disbursements (including Stamp Duty)	\$2,902	\$72

Source: Law Society of Queensland and Dept of Justice Conveyancing Costs Survey January 1996.

Table 5 How Fees Were Calculated		
	Purchasing	Selling
Fee calculated by fixed quote agreed with client when instructions were taken	61	53
Fee determined mainly by time spent	9	2
Fee based on Residential Property Scale	3	6
Not stated	3	1
Total	76	62

Source: Law Society of Queensland and Dept of Justice Conveyancing Costs Survey January 1996.

workers' compensation legal costs

During 1994-95 the number of statutory claims for workers' compensation rose by 8.4 per cent (see section 2, employment law), largely reflecting the increasing labour market activity during the year. Figure 38 shows the average cost for a plaintiff contesting a workers' compensation matter in court was \$23,569 in 1994-95 with \$12,195 being spent on professional fees in 1994-95 and \$11,374 on outlays. In out-of-court settlements the average costs were less, with plaintiff's professional costs averaging \$5,925 in 1994-95 and outlays averaging \$3,920.

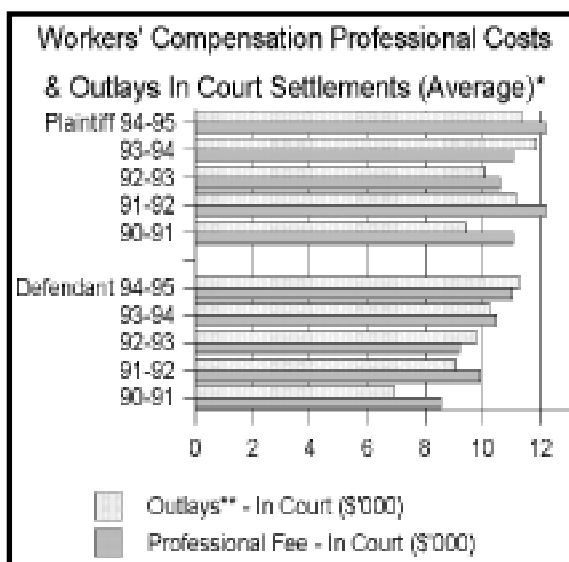


Figure 38. Source: Workers' Compensation Board of Qld. *Plaintiff's costs based on a *party-party* scale. Costs above that are paid by plaintiff and not included. Defendant's costs based on *solicitor-own* client fee. **Outlays include disbursements and barrister's fees.

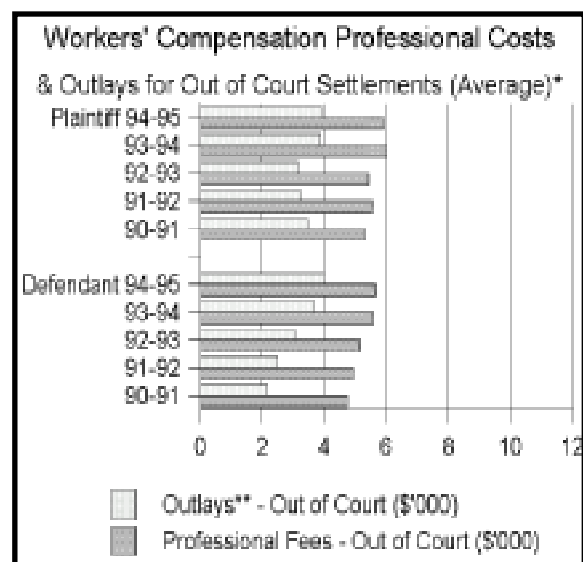


Figure 39. Source: Workers' Compensation Board of Qld. *Plaintiff's costs based on *party-party* scale. Costs above that are paid by plaintiff and not included. Defendant's costs based on *solicitor-own* client fee. **Outlays include disbursements and barrister's fees.

legal assistance

An important aspect of access to justice is ensuring that those who have a legal entitlement can have that right recognised or protected. There can be financial, cultural or other barriers which prevent people from enforcing their rights. The provision of legal services for financially disadvantaged people or the provision of specialist legal services to groups (such as young people) can overcome some of these barriers.

legal aid grants

Figure 40 shows the number of grants of Legal Aid by law type for the years 1990-91 through to 1994-95. The total number of grants is shown in Figure 41. The graphs illustrate that the number of grants has declined significantly from a peak of 25,863 in total in 1990-91, although the number has begun to rise slightly in recent years, to 19,885. The decline is almost entirely at the expense of grants for civil and family law matters while the commission has continued to meet its statutory obligation to fund criminal offences. Figure 41 shows the annual expenditure (indexed to December 1993) of Legal Aid as a ratio of the number of grants of aid. The graph shows that the ratio was just over \$1,600 per grant in 1990-91, while it was just over \$2,000 in 1994-95. Expenditure in a given year includes some indeterminate proportion of expenditure attributable to grants made in previous years, and the rise in 1991-92 and 1992-93 followed by the decline in 1993-94 and then another rise in 1994-95, is partly due to the significant fluctuations in the number of grants, and does not entirely reflect changes in average costs per grant.

However, the lag between grants of aid and the incurring of costs does not affect the comparison of the ratio for years when grants have not decreased. A continuing upward trend in the ratio of expenditure to grants of aid while the number of grants is stable or increasing indicates that the cost of providing assistance is increasing, in real

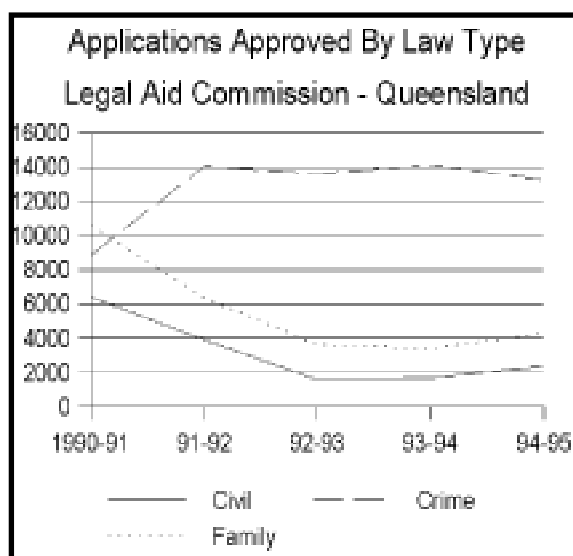


Figure 40. Source: Legal Aid Commission of Qld Annual Reports 1990-91 to 1994-95.

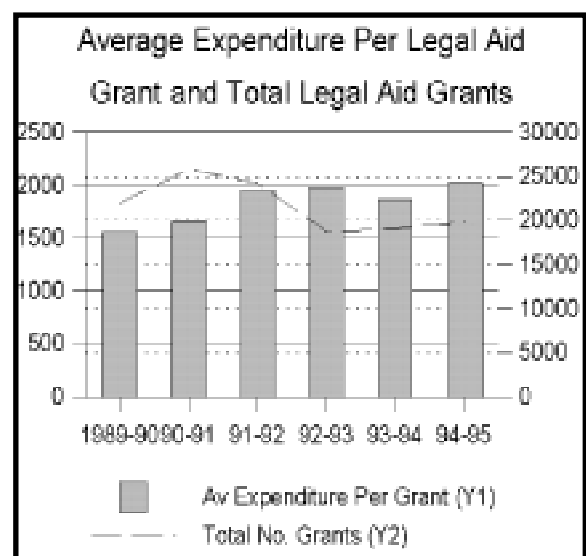


Figure 41. Source: Legal Aid Commission of Qld Annual Reports 1989-90 to 1994-95.

terms. (Information on the precise cost of grants is not yet available, but this ratio is a rough equivalent. Total expenditure includes expenditure on forms of assistance other than grants of aid, but this other expenditure makes up a small proportion of Legal Aid activity, and the ratio does provide an “enterprise cost” of providing assistance which can be compared from year to year.)

community legal centres

Community Legal Centres (CLCs) may service people who cannot afford private legal services yet get turned away from Legal Aid for not meeting merit or guidelines tests. Courts and tribunals often refer unrepresented people to CLCs. Relying heavily on volunteer support, CLCs often provide written information for people to help themselves. CLCs also engage in substantial law reform and community legal education activities directed at increasing access to justice.

Figure 42 shows that the amount of money applied to legal assistance through CLCs has trebled between 1990-91 and 1994-95.

The State’s contribution is well short of the Commonwealth funding (of 81 per cent in 1994-95) but it is expected this will change as the Commonwealth shifts some of the burden back to the states.

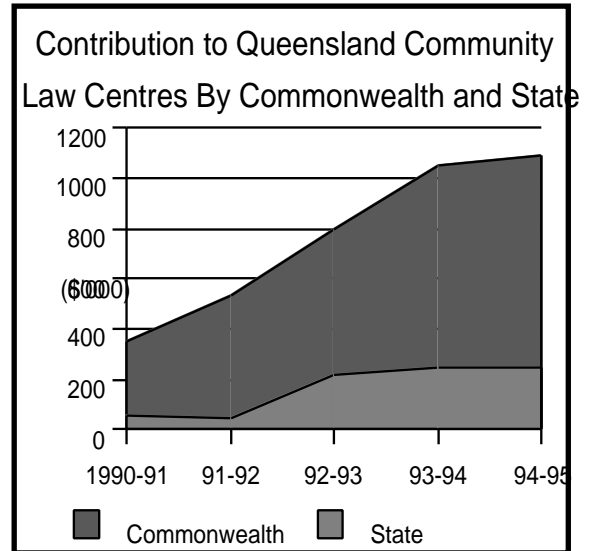


Figure 42 Source: Access to Justice Advisory Committee, *Access to Justice: An Action Plan*, 1994, p.236.

court delays

A basic barrier to access to justice is court delay. Delay statistics for Queensland courts are not generally available. However, some figures have been produced for the national bench-marking exercise undertaken by the Australian Courts and Administrators Group under the auspices of the Council of Australian Governments (COAG).

court delays in criminal and civil proceedings

Figure 43 shows the distribution of completion times from readiness to judgement for civil cases finalised in March 1994 in the Supreme, District and Magistrates Courts. The graph shows that more than 90 per cent of Magistrate Court civil matters are dealt with in less than three months, and about 70 per cent of District and Supreme Court matters within six months. The 90th percentile time for the District Court is about 12 months while the same figure for the Supreme Court is more than one year. It should be noted that the time after “readiness” is generally accepted as the delay for which the court is responsible under the used listing systems in Queensland, but that readiness

occurs well after the time of commencement. It is not known whether the courts intend to continue to monitor civil case processing times.

Figure 44 shows the distribution of completion times from commencement for criminal proceedings completed in March, 1994, in the Supreme, District and Magistrates Courts. The graph shows that approximately 90 per cent of Supreme Court matters are completed in less than six months, whereas less than 70 per cent of District Court matters are completed in that time. The Magistrate Court figures (from first appearance in court until verdict/sentence), although indicating more than 90 per cent of matters are completed within three months, combine times for committal and summary proceedings and it is likely that committal proceedings are disproportionately represented in the longer completion times. Commencement in the higher courts refers to the date the indictment is presented. The delay from arrest is appreciably longer but cannot be estimated from these data. Criminal delay data will be more informative when it is possible to track matters from arrest to completion and to monitor annual delay trends. The Government Statistician's Office is determining whether such indices are measurable.

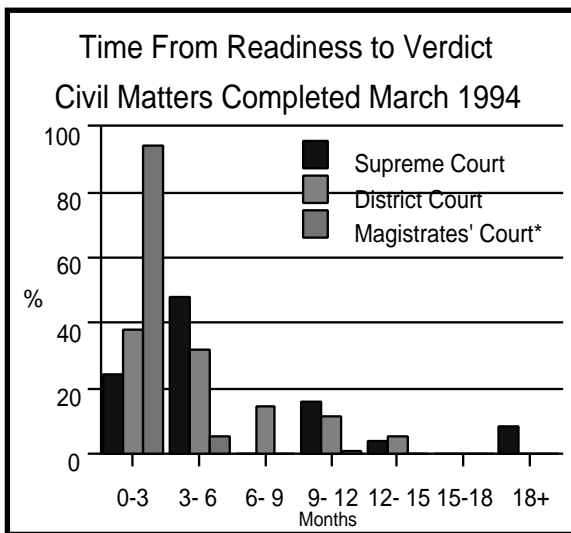


Figure 43. Source: Australian Courts' and Administrators' Group, *National Benchmarking Exercise 1993/94*. *From readiness to judgment.

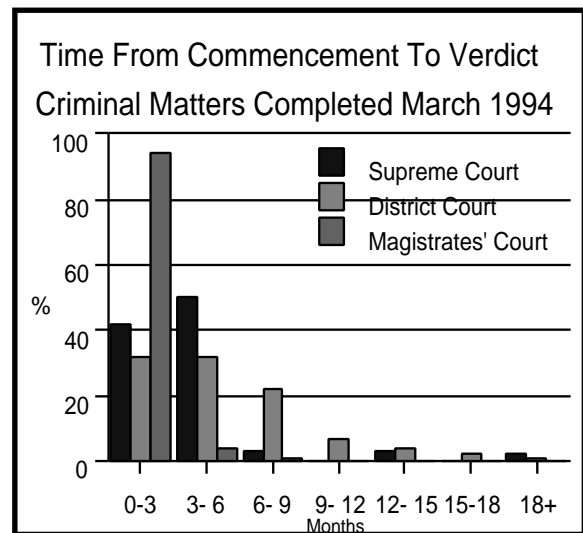
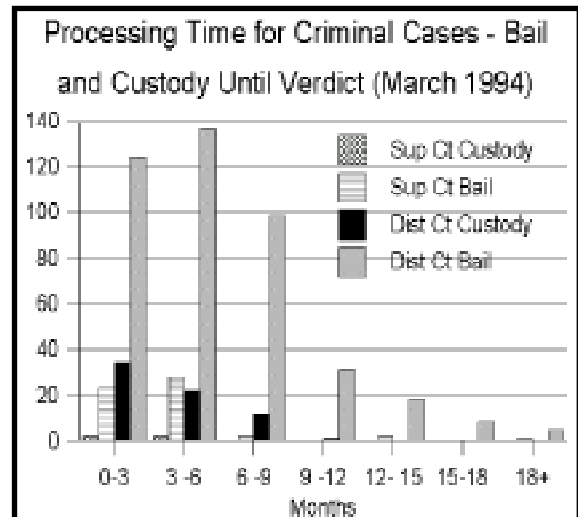


Figure 44. Source: Australian Courts' and Administrators' Group, *National Benchmarking Exercise 1993/94*.

Figure 45 shows the distribution of completion times in the higher courts for accused persons on bail and in custody. As might be hoped, proceedings in relation to people in custody are speedier. Commencement in the higher courts refers to the date the indictment is presented. The delay from arrest is appreciably longer but cannot be estimated from these data.

Figure 45. Source: Australian Courts' Administrators' Group, *National Benchmarking Exercise 1993/94*.



Delay information will be much more informative when it becomes possible to track matters from arrest to completion and to monitor year to year delay trends.²

alternative dispute resolution

Because of the seemingly intractable nature of the problems of costs and delays in litigation, alternate dispute resolution (ADR) has emerged in the past decade as a significant strategy for improving access to justice. In 1993-94 some 89,097 civil matters were lodged in Queensland courts. Increasingly, courts are encouraging litigants to resolve their disputes by settlement.

alternative dispute resolution centre - department of justice

As Figure 46 shows, there has been an increased use of alternate dispute resolution services provided by the Alternative Dispute Resolution Centre (ADRC) of the Community Justice Program. The services are wide ranging, but the most common involve neighbour, family and business disputes. In 1994-95 the number of mediations conducted by the ADRC jumped by 303 to 774, up by nearly 65 per cent. This is one of the few areas in which a measure of the quality of justice is available in the form of participants' satisfaction with the process. The ADRC routinely seeks feedback from its clients after approximately three months after the mediation. Figure 47 indicates that over three years the number of people very satisfied with the service stayed at approximately two-thirds, and the proportion of those clients who said they were very satisfied or somewhat satisfied was at least 90 per cent.

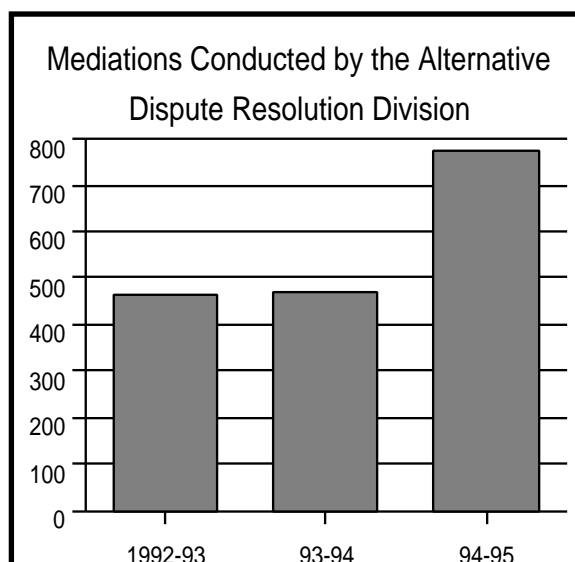


Figure 46. Source: Alternative Dispute Resolution Division, Dept of Justice, Qld, Annual Reports 1993-95.

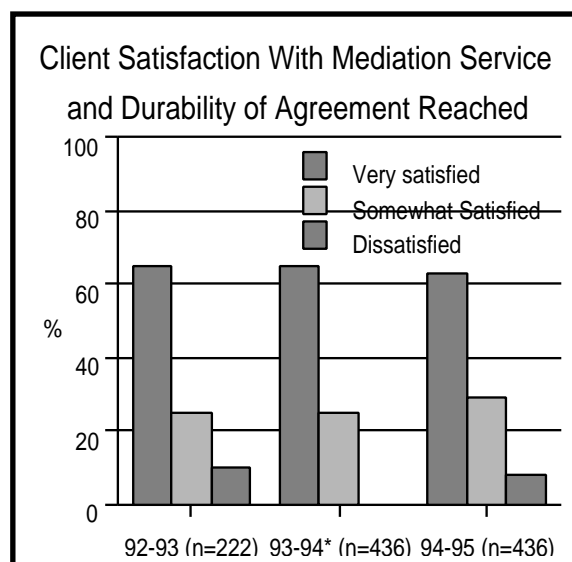


Figure 47. Source: Alternate Dispute Resolution Division, Dept of Justice, Qld, Annual Report 1992-93 to 1994-95. (No "dissatisfied" clients were recorded in '93-94.)

² Some criminal delay trends are being developed by the Government Statistician's Office.

family law alternate dispute resolution

As mentioned in section 2, the Family Court has developed counselling services and streamlined court procedures to help with its large workload. The court has jurisdiction over dissolution of marriages, guardianship and custody of children, spouse maintenance, child maintenance and property settlements.

The number of people participating in the counselling sessions increased by 798 in 1994-95 as shown under 'interventions' in Figure 48. The number of sessions increased in proportion to the number of persons attending. It will be interesting to monitor trends in the relationship between counselling and litigated outcomes in the Family Court in the future when data becomes available. Figure 49 shows Legal Aid increased the number of family law conferences held, and an increasing number reached settlement.

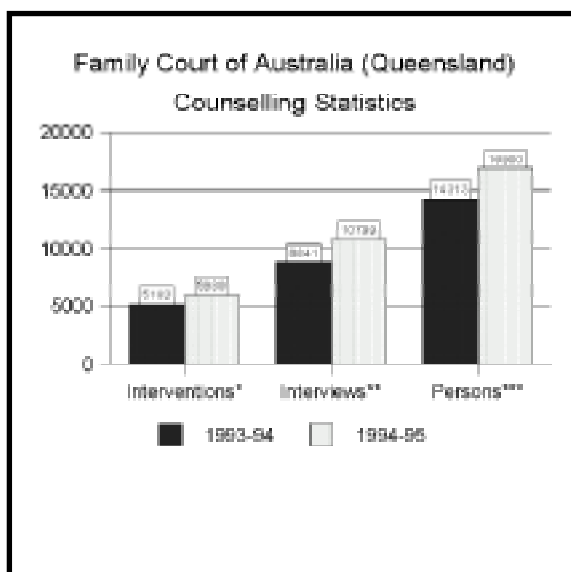


Figure 48. Source: Family Court of Australia Annual Reports. * Interventions - First time person seen, **Interviews - No. of counselling sessions, *** Persons - No. of people interviewed.

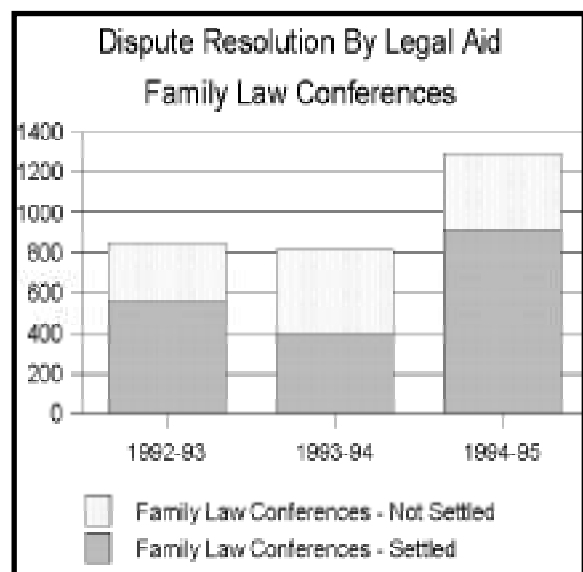


Figure 49. Source: Legal Aid Commission of Qld Annual Reports 1992-93 to 1994-95.

4. social justice groups

introduction

Access to justice can be hampered by factors such as a person's culture, financial position, disability, age, race, gender, language skills and other such characteristics. Below, several social justice target groups have been identified as facing barriers to access to justice. However, people do not fall easily into allocated categories and members may face further barriers due to a combination of factors.

Concern has been expressed about measuring access to justice for disadvantaged groups by counting the number of people fronting legal services, because the quality of that service may not address the person's legal need — particularly due to their status. To address this concern we surveyed organisations asking for comments regarding barriers to access to justice for the client group they serve. A comprehensive survey of legal service users themselves would have been advantageous but remains beyond the scope of the monitor. Comments made in the responses have been reproduced to give a fuller picture of access to justice barriers.

In the pilot monitor, Legal Aid Commission data has been heavily relied upon to depict access to justice for people who are socially and economically disadvantaged. There are two reasons for this. Firstly, the Legal Aid Commission has the role of providing legal services to those who cannot afford them. Secondly, given the lack of other data in this area, we have relied more heavily on trends derived from Legal Aid data. As further funding cuts are made to Legal Aid it will be useful to monitor any trends developing in service provision to disadvantaged people.

Important to the future monitoring of access to justice will be Community Legal Centre (CLC) data to be made available through the National Information Scheme (NIS). Data collection for this scheme began in July 1995 but retrieval of the data is not yet possible. CLCs have an important role to play in access to justice and legal services. Specialist services such as the Youth Advocacy Service or the Women's Legal Service are more accessible to the client groups they serve. They also have an important outreach role in taking services and education about legal rights and entitlements to the community. This function is more difficult to measure although there was some attempt to do it in the Queensland section of NIS. CLCs also have an important role in lobbying for law reform to increase access to justice.

socio-economically disadvantaged people

In 1995 just under 13 per cent of Queenslanders — or about 388,000 people — were living below the poverty line according to a study by the National Centre for Social and Economic Modelling. It reported that the poverty risk for younger single people, and families with children, was higher than the national average. When socio-economically disadvantaged people need to access legal services they may be prohibited by the costs of these services along with other factors such as the lack of information about legal entitlements. The Legal Aid Commission attempts to meet the legal needs of low income earners but its funds are limited and distributed, not according to need, but according to its guidelines which place priority on criminal law matters. Community Legal Centres also provide free legal advice but may be limited to providing information to help people help themselves.

Some legal areas have been streamlined to provide “cheap justice” such as the Family Court counselling program. This streamlining poses the question of whether people being dealt with by internal review mechanisms or mediation are getting as much justice as a fully litigated matter in front of a judge. Throughout the monitor Legal Aid indicators are provided as a measure of the extent to which low income people can access the law. However, given the large amount of Queenslanders living below the poverty line and the controls on Legal Aid, it is likely that many socio-economically disadvantaged people are excluded from the system.

legal aid advice and information, and duty lawyer scheme

In Figure 50, the 33 per cent decrease in advice given by Legal Aid in 1992-93 was the result of a policy change in July 1992 — to no longer fund private solicitors to provide legal advice as part of the Legal Aid Scheme. While access to legal advice was restricted in rural and remote areas, the Telephone Information Service (TIS) attempts to help these people (discussed later in this section). The Legal Aid Commission also disseminates information via community legal education and by distribution of explanatory leaflets and booklets. Staff solicitors also provide information to people in prisons and psychiatric hospitals.

The duty lawyer services exist in more than 100 Magistrates and Childrens Courts throughout Queensland. The aim of the scheme is to provide people appearing in court after being charged with access to independent advice and representation. The drop in the total representation of defendants in 1991-92 (Figure 51) resulted from service cuts in 1991. Duty solicitors were no longer to represent people on first and second drink driving charges under the *Traffic Act*. In February 1993 the Commission also themselves). Regional representations (courts outside Brisbane) con-decided to no longer represent people wishing to remove driver’s license disqualifications. (In both instances a do-it-yourself booklet was produced to help people represent

stituted 9 per cent of total duty lawyer representations in 1989-90, increasing steadily to 25 per cent in 1994-95 (Figure 51).

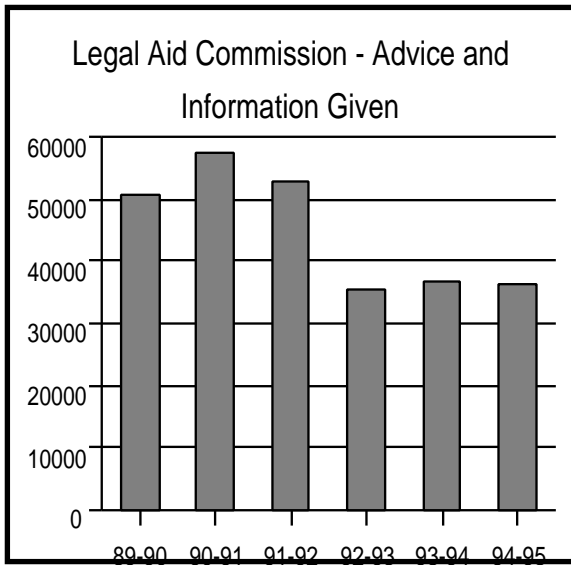


Figure 50. Source: Legal Aid Commission of Qld, Annual Report 1994-95.

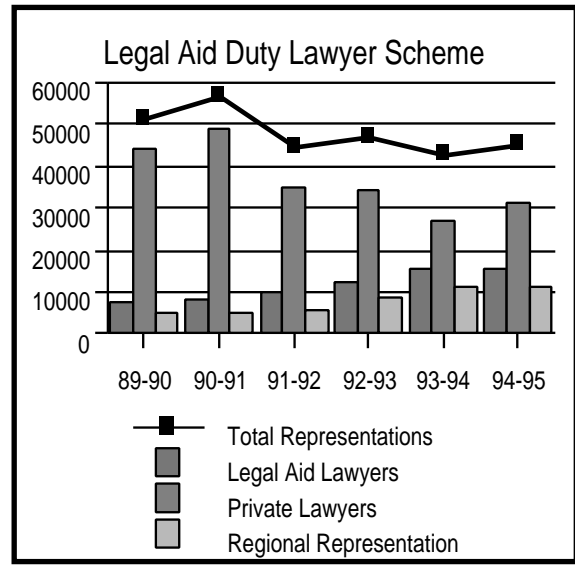


Figure 51. Source: Legal Aid Commission of Qld Annual Reports 1989 to 1995.

legal aid commission grants of aid

Legal Aid provides legal assistance to financially and socially disadvantage people. Eligibility for Legal Aid is determined by means and merit tests (except in prescribed crime) and policy guidelines (governed by funding). In 1992-93 the number of applications for Legal Aid grants (Figure 52) dropped due to policy changes in 1992 to address a funding shortage. Civil law applications dropped by half, family law applications decreased by a third and criminal law applications decreased slightly by 4 per cent (see Figure 53).

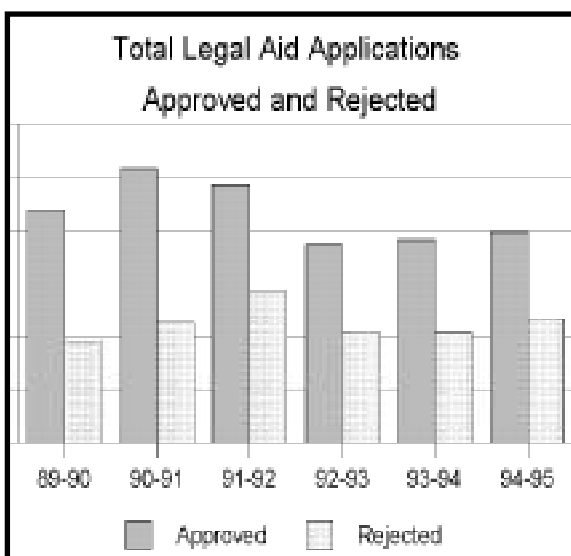


Figure 52. Source: Legal Aid Commission of Qld Annual Reports 1990-91 to 1994-95.

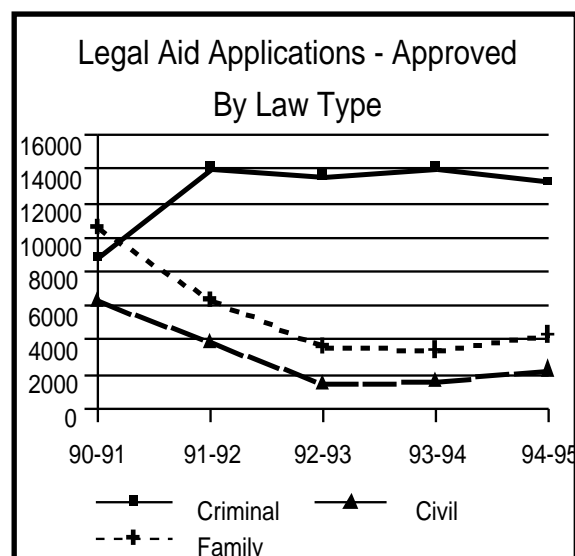


Figure 53. Source: Legal Aid Commission of Qld Annual Reports 1990-91 to 1994-95.

Figure 55 shows that in 1993-94 and 1994-95 only a small proportion of rejections were because the applicants failed the means test. This may be because people who think they will fail do not apply. This indicates the test itself is a barrier to accessing justice. In 1994-95 there was a significant increase in the percentage of applications rejected for failing to meet the guidelines. This demonstrates that many people who are without means still cannot access the legal system because their cases do not fit commission policy.

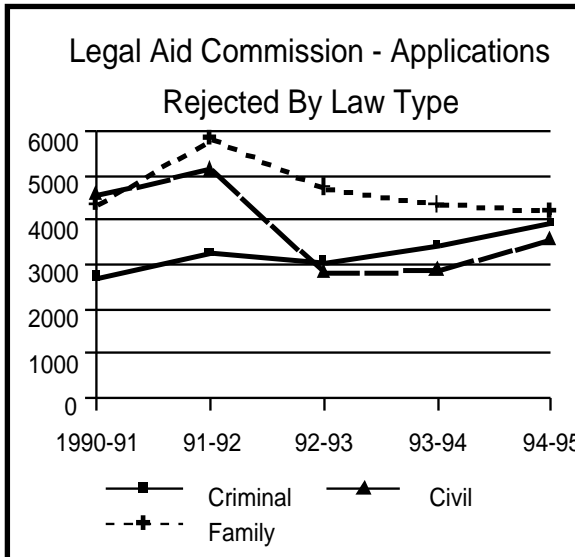


Figure 54. Source: Legal Aid Commission of Qld Annual Reports 1990-91 to 1994-95.

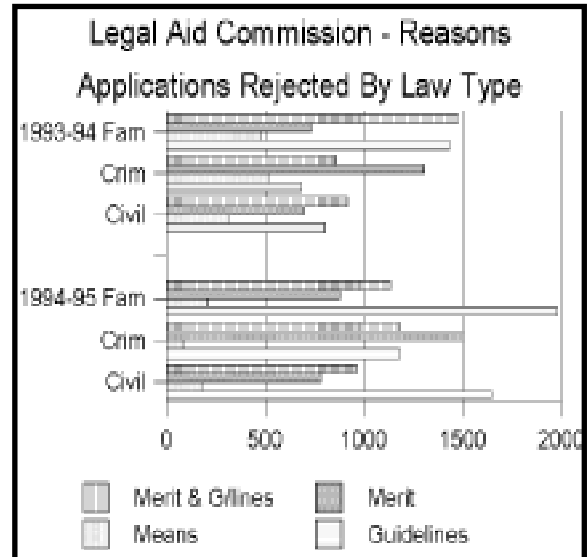


Figure 55. Source: Legal Aid Commission of Qld Annual Reports 1990-91 to 1994-95.

community legal centres

In Queensland there are 26 Community Legal Centres (CLCs) — only half of which are government funded. Data on the number of clients seen and the nature of advice given are recorded on the National Information Scheme although this data is not yet available. CLCs play a large role in meeting the legal needs of low income people.

gender

There are marked differences in how women and men access the legal system, often reflecting the unequal social status women and men have in society. Some gender indicators are used in various parts of the monitor to indicate the differences in women and men accessing their legal entitlements. The Law Reform Commission Report No. 69 *Equality Before the Law: Justice for Women*, and *Equality Before the Law: Women's Equality*, 1994, explores thoroughly many of the problems faced by women gaining access to the legal system. This monitor will track several measures to indicate any changes in the situation.

legal aid expenditure by gender

While the number of Legal Aid grants are dropping overall, women's share of Legal Aid remains under 40 per cent.¹ As Figure 56 shows, women received 45 per cent of grants in 1990-91, 31 per cent in 1991-92, 25 per cent in 1992-93, rising slightly to 26 per cent in 1993-94 and increasing to 37 per cent in 1994-95 (mainly due to the large increase in family law grants to women in that year). The decline in 1992 is due to policy changes made in that year restricting aid in civil and family matters (for which women are more likely to need assistance. The *Legal Aid Act* gives priority to "prescribed" (generally more serious) criminal matters (cf. *Dietrich v R* (1992) 177 CLR 292) where the High Court suggested that such an "approach is not likely to impose a substantial financial burden on government and it may require no more than a reordering of the priorities according to which legal aid funds are presently allocated" (Per Mason CJ and McHugh J at 312). Figure 57 shows most Legal Aid grants go to

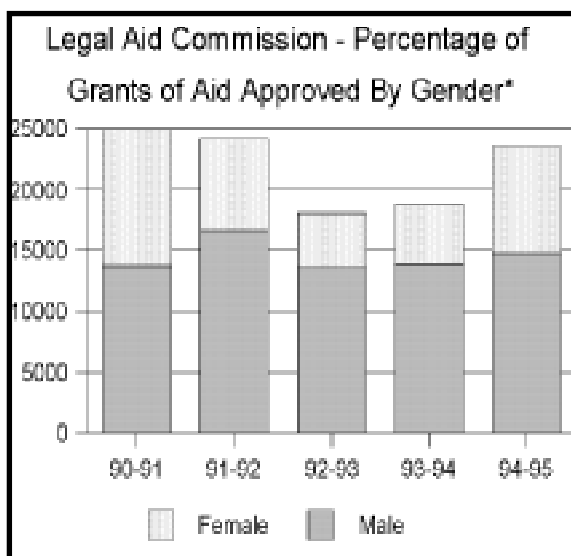


Figure 56. Source: Office of Legal Aid and Family, Attorney General's Dept. *Legal Aid in Australia Statistical Yearbook* 1994-95. *680 cases did not state gender.

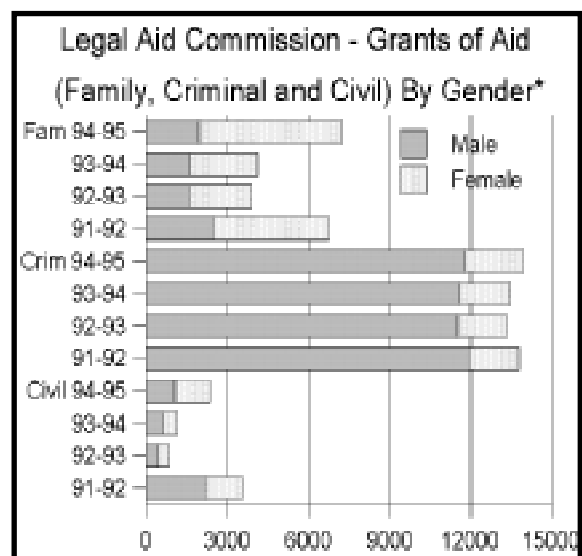


Figure 57. Source: Legal Aid Commission of Qld Annual Reports 1991-92 to 1994-95. *221 family, 76 criminal and 18 civil grants did not state gender.

men for criminal matters.

share of criminal injuries compensation by gender

Figure 58 shows the average compensation grant paid to men is \$25,727, and to women is \$19,394. Of the criminal injuries claims by women, 57 per cent are for sexual assault and indecent assault. As the former *Criminal Code* (and the new *Criminal Offence Victims Act 1995* (Qld)) has a prescribed amount for mental or nervous shock at \$25,000, women's total payments for criminal injuries compensation is significantly less than men's. Of men's injuries, 77 per cent come from assault occasioning bodily harm, grievous bodily harm, and unlawful wounding, where there is a \$75,000 limit on compensation payable. Up to 31 per cent of women claimants

¹ For greater discussion of women's access to Legal Aid see The Law Reform Commission Report No. 60 *Equality Before the Law: Justice for Women*, 1994, Chapter 4.

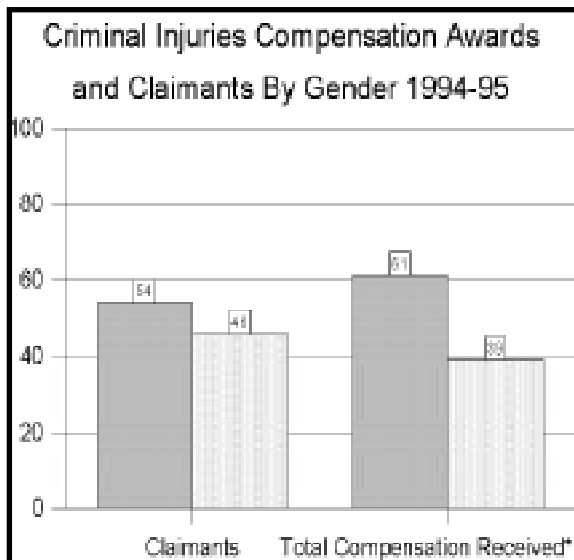


Figure 58. Source: Dept of Justice, Qld. *Total compensation for 1994-95 was \$3,357,564.

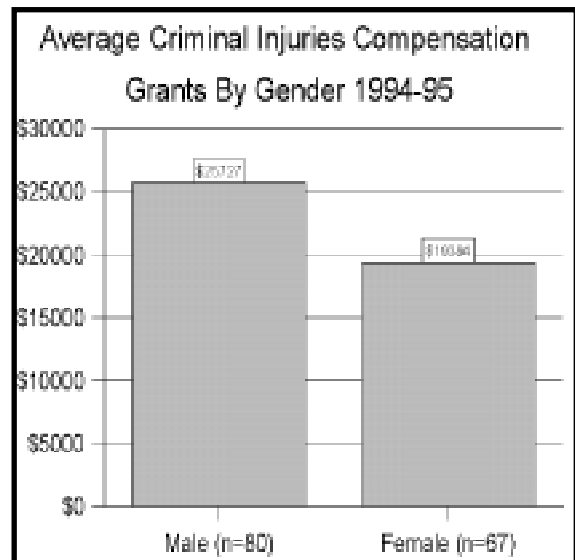


Figure 59. Source: Dept of Justice, Qld.

claim for these forms of assault and only 10 per cent of men claim for sexual and indecent assault. A more detailed commentary on this data is set out under Criminal Law in Section 2.

female/male legal service providers

As Figure 60 shows, men compose the majority of all sectors of the legal profession except for articulated clerks. There are few women barristers, Queens Counsel, Senior Counsel, or partners. This could reflect an access to justice issue. A survey of women's services showed women felt the legal system was intimidating and hostile, and that ignorance, insensitivity and the negative attitudes of legal system personnel towards women and women's legal issues were barriers to accessing justice. Given the number of articulated clerks from both genders is equal, it will be interesting to monitor whether numbers even up at more senior levels of the profession. The figures will also show movement of women working in the legal system.

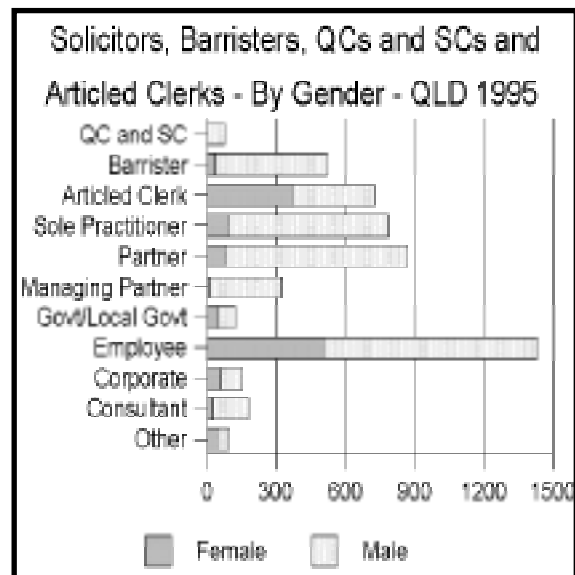


Figure 60. Source: Qld Law Society 1995 and Qld Bar Association (13.9.95).

survey of legal and para-legal service providers to women

As part of the prototype monitor, a survey was conducted of 67 women's community and para-legal organisations, to which 30 organisations responded (45 per cent).

Organisations were asked to identify the main barriers to access to justice and legal services for women. The top five responses follow.

Table 6 Barriers to access to justice for women (Responses to Access to Justice and Legal Services Survey for Women, November 1995)

Top five issues identified	No. & % of organisations which identified a barrier
1. Cost of using law	19 63%
2. Women feel legal system intimidating and hostile to them	17 57%
3. Lack of information about law and rights	16 53%
4a. Ignorance, insensitivity and negative attitudes of personnel in legal system towards women and women's legal issues	14 47%
4b. Cultural differences, language barriers, lack of access for diversity, eg. for women with disabilities, young women, lesbians, women from non-English speaking backgrounds	14 47%
5. Inadequate funding to legal services, lack of access to legal services	12 40%

Thirty out of 67 (45 per cent) of service providers to women responded to the questionnaire.

The following are examples of typical responses in the survey outlining barriers to access to justice for women:

- "Ill-informed knowledge and understanding of dynamics of sexual assault and its impact on victims";
- "Lack of 'understandable' plain English information about avenues of legal recourse and processes";
- "Gender bias within the law and [amongst] legal workers/administrators, that is, lawyers, legal clerks and police";
- "Lack of understanding of the issues involved with violence against women";
- "Access to free legal advice";
- "Judges/Magistrates allowing solicitors and barristers to badger victims, do not seem to stop abusive conduct in their courts";
- "A criminal code that discriminates against women";
- "No statutory right to interpreters for NESB women"; and
- "Unwillingness to face courts where the victim is subject to intimidation eg. rape cases".

domestic violence protection orders

Figure 61 indicates that the number of applications for Domestic Violence Protection Orders increases by over a thousand each year. Whilst there is currently no complete breakdown of gender of persons making applications for protection orders, a sample of 11,265 applications taken by the Department of Family Services, since May 1993, shows that in 88 per cent of cases, women were the aggrieved party.

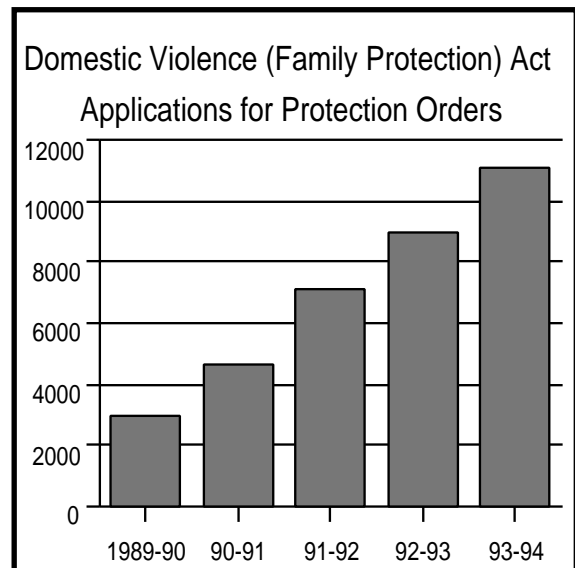


Figure 61. Source: Dept of Family and Community Services, Qld, 1995.

In the survey of women's organisations, domestic violence and family protection orders were the most common legal area inquired about (19 per cent of all inquiries).

people from culturally and linguistically diverse backgrounds

Australian society is made up of people from many different ethnic groups. In 1992 the Australian Law Reform Commission produced a report *Multiculturalism and the Law* which addressed whether Australian law was relevant to people from diverse cultural backgrounds. It found a number of barriers to accessing justice arising from language, and from a lack of knowledge about rights, duties and responsibilities, the role of the state, and the role of courts and the justice system.

A survey of services for people from non-English speaking backgrounds (below) shows some barriers to accessing justice. Information from the Community Legal Centre's National Information Scheme is also expected to assist measuring access to justice in the future.

survey of legal and para-legal service providers to people from non-English speaking backgrounds

The following is a survey of access to justice issues made for the prototype monitor.

Table 7 Barriers to access to justice for people from non-English speaking backgrounds (NESB) (Responses to Access to Justice and Legal Services Survey for NESB People, Nov 1995)

Top Five Issues Identified	No. & % organisations which identified a barrier	
1. Language barriers and lack of legal information in English	14	10%
2. People's ignorance of their rights and lack of information	13	93%
3. Lack of access to interpreters	8	57%
4. Need for cultural diversity training in police and legal services	6	43%
5. Cultural differences	5	36%

Fourteen (32 per cent) out of 44 service providers to NESB people responded to the questionnaire.

Below are examples of typical responses in the survey.

- "Lack of interpreters available at court or in legal information sessions";
- "Legal services officers should have cross-cultural training to understand better how to work with NESB people";
- "Kits and other information are in English only";
- "Lack of knowledge about the legal system in Australia"; and
- "Legal services, police, courts and judiciary have no training in cross-cultural issues and communication skills".

legal aid grants to people from non-English speaking backgrounds

Figure 62 shows that there has been a dramatic decline in the number of grants of Legal Aid to persons of non-English speaking backgrounds, wholly out of proportion to the decline in grants of aid overall. In 1994-95 grants dropped by 42 per cent. Currently, no explanation can be given for this.

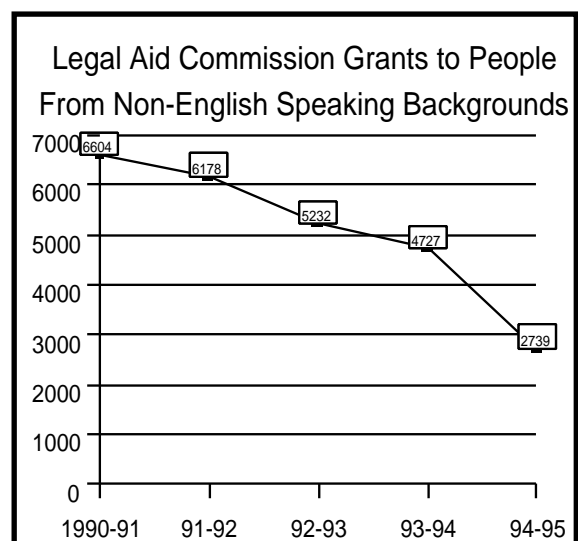


Figure 62. Source: Legal Aid Commission, Qld.

aboriginal and torres strait islander people

As the Royal Commission into Aboriginal Deaths in Custody revealed, Aboriginal and Islander people are over-represented in the criminal justice system and are jailed at higher rates than non-Aboriginal and Islander people.

The Aboriginal and Islander Legal Services supply most legal advice to Aboriginal and Islander people in Queensland. However, data on legal areas where advice is sought is not collected.

aboriginal and islander legal services

The Aboriginal and Torres Strait Islander Commission (ATSIC) funds the Aboriginal and Islander Legal Services. ATSIC administers the 14 Aboriginal and Islander Legal Services around the state.

Figure 63 shows that in 1994-95 consultations rose by 23,701 and the number of people accessing services increased by 4,387. No data is available on the areas of law people seek assistance in, or by, gender.

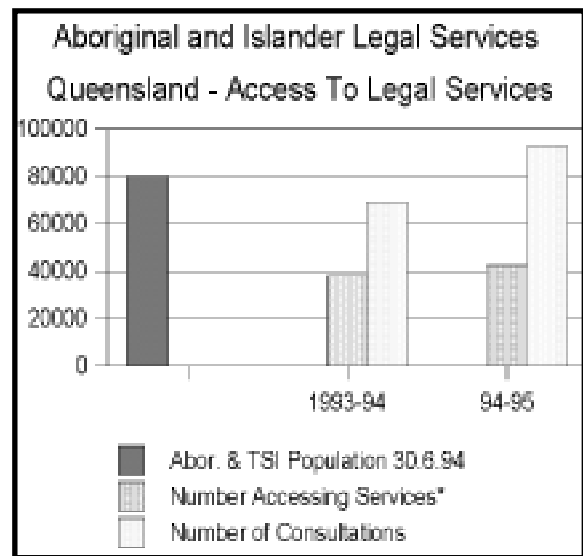


Figure 63. Source: Aboriginal and Torres Strait Islander Commission data and ABS Brisbane Regional Statistic Book. Cat No. 4196.0.00.009. *People using the service have more than one consultation.

legal aid grants to aboriginal and islander people

In 1993-94 1,028 Aboriginal and Islander people used Legal Aid (Figure 64) compared to 37,830 using the Aboriginal and Islander Legal Service (AILS) (Figure 63). The following year the figures were 1,277 and 42,217 respectively. The percentage of Aboriginal and Islander people as part of the total of all people using Legal Aid is increasing (Figure 65) with the greatest rise being in criminal law. AILS no longer handles civil law or family law, so Aboriginal and Islander people not using private legal services must rely upon Legal Aid for civil and family law matters.

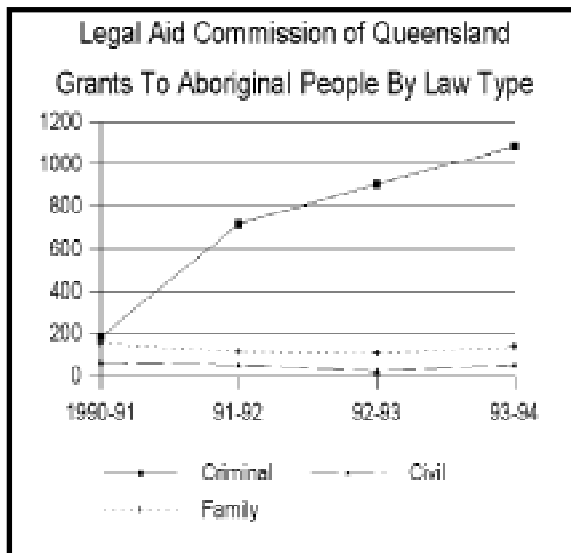


Figure 64. Source: Legal Aid and Family Services, Legal Aid in Australia 1993-94 Statistical Yearbook.

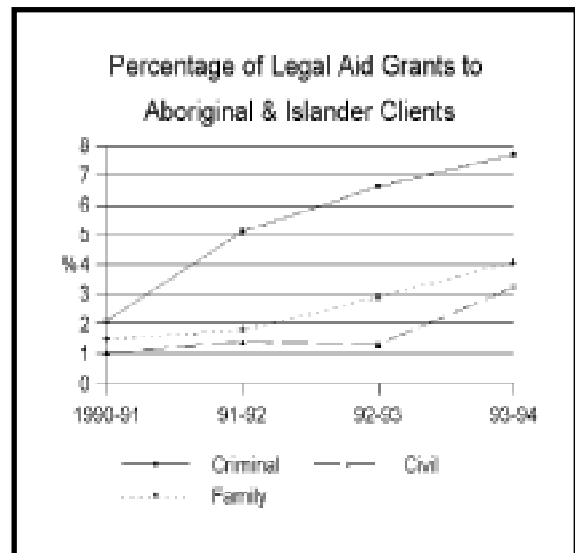


Figure 65. Source: Legal Aid and Family Services, Legal Aid in Australia 1993-94 Statistical Yearbook.

young aboriginal and torres strait islander people and crime

While Aboriginal and Torres Strait Islander young people constitute 3.6 per cent of the Queensland population between 10-16 years, the Department of Family and Community Services Court Statistical System data show they constituted 33.7 per cent of all final appearances of young people in Queensland Courts in 1993-94.

Table 8 indicates the higher rate of appearances for Aboriginal and Torres Strait Islander children. The President of the Children's Court in Queensland, Judge McGuire, believes this is not due to harsher treatment by the courts, but due to Aboriginal children being vulnerable and more prone to criminal conduct resulting in court appearances.²

Table 8 Rate of finalised appearances and juvenile justice orders — Aboriginal and Torres Strait Islander and other children: Queensland 1993-94

	Rate Per 1,000 Population Aged 10-16	
	ATSI	Non-ATSI
Finalised Appearances	139.3	10.2
Proven Appearances	122.7	9.2

² Children's Court of Queensland: Second Annual Report 1994-95, p 36.

Table 8 **Rate of finalised appearances and juvenile justice orders —
Aboriginal and Torres Strait Islander and other children:
Queensland 1993-94 (cont.)**

	Rate Per 1,000 Population Aged 10-16	
	ATSI	Non-ATSI
Sentences:		
Reprimand	31.0	3.5
Good Behaviour Order	1.9	0.2
Fine	3.5	0.5
Probation	31.0	1.9
Community Service	18.1	0.7
Detention	7.8	0.2

Source: Department of Family and Community Services, Table 31.33 Children in Court: Appearances for Offenders in All Courts. Criminal Justice Commission, Research Paper Series 2, *Children, Crime and Justice in Queensland*, Sept 1995.

people with disability

The Disability Discrimination Commissioner estimates that some 16 per cent of Australians have a disability, be it “physical, intellectual, psychiatric, neurological, sensory or a learning disability, or one caused by disfigurement or disease”.³

Many people with a disability and their families face barriers to accessing justice and legal services. They may experience, or are vulnerable to, discrimination, neglect, exploitation or abuse.⁴

While the rights of people with disability are protected by law, it may be difficult to get those rights enforced or access the legal means to uphold those rights. Where demographic data is kept by legal services, disabilities are often unseen or not recorded, making quantitative measures ill-equipped to deal with access to justice issues for this group. For some people in the community, for example those living in institutions, there is often very little chance of seeing a lawyer to enforce any legal entitlements which may be breached.

³ Human Rights and Equal Opportunity Commission, *Annual Report 1992-93*.

⁴ Fitzgerald, J. *Include Me In: Disability, Rights and the Law in Queensland*, Queensland Advocacy Inc. Brisbane, 1994, p 17.

legal aid to people on disability support pensions

Figure 66 shows the number of legal aid grants given to clients on Disability Support Pensions (DSPs) decreased from 1990-91 to its lowest point in 1992-93 before gradually increasing again. However, total Legal Aid grants in 1992-93 were lower and the number of DSPs was 5 per cent of the total grants given. The percentage of people on DSPs receiving grants has dropped from 6 per cent in 1990-91 to 4 per cent in 1994-95.

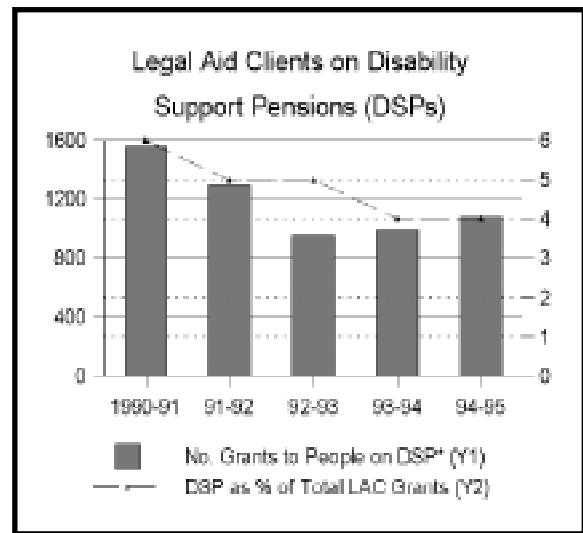


Figure 66. Source: Legal Aid Commission, Qld.

disability and impairment discrimination

The *Disability Discrimination Act (Cth)* was enacted in 1993 adding to the existing State *Anti-Discrimination Act 1991* making discrimination against people with disabilities unlawful. In Queensland, four people made complaints under the Commonwealth legislation in its first year of operation increasing to 20 in the following year. There was a dramatic increase in complaints closed under state legislation, more than trebling from 53 in 1993-94 to 175 in 1994-95 (Figure 67). It is likely that people made more complaints given the increasing awareness of the legislation.

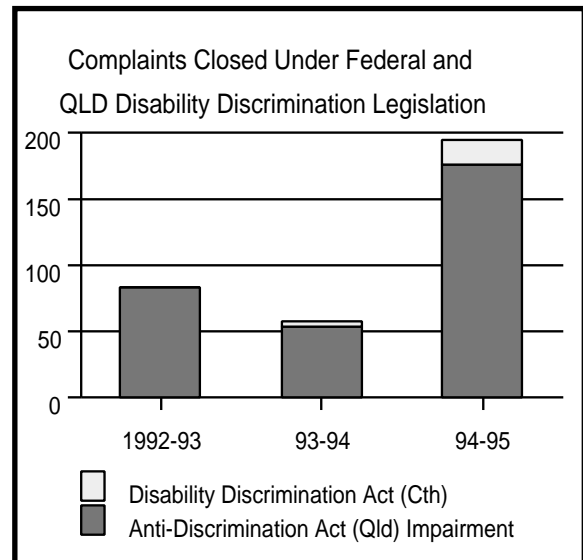


Figure 67. Source: Human Rights and Equal Opportunity Commission Annual Report 1994-95.

survey of legal and para-legal service providers to people with disability

In a survey of organisations providing services to people with disability, five out of eight surveys were returned. The following are some of their comments identifying barriers to accessing justice.

- "Lack of ability of mainstream lawyers to communicate or understand disabilities issues";
- "Non-preparedness of lawyers to take on the legal issues irrespective of 'disabil-

ity”;

- "The institutionalisation of thousands of people with disability. Isolated, segregated and congregated in this way, most will never see an advocate or legal advocate in their lives";
- "The lack of exposure and training of legal people around disability issues including: designing premises to improve access; providing TTY [Telephone Typewriter] and other services; and communication techniques";
- "If [people with disability] have to access legal services they often need physical or emotional support to attend meetings. This is often not available";
- "Parents, carers or advocates rarely follow through with complaints of abuse because the police, CJC and DPP fail to deal at all well with victims as witnesses with disability";
- "Not aware of their rights";
- "Lack of appropriate, independent and accessible legal advocacy. For example, the Legal Aid Office does not provide lawyers at police stations and has not made plans for an increase in civil matters, eg. guardianship, discrimination, negligence, etc"; and
- "The contradictory nature of laws, eg. in Queensland there is no tenancy law protection for boarders and lodgers who can still be charged with vagrancy if they are made homeless (eg. evicted with five minutes notice)".

people living in rural and isolated areas

In future monitors we envisage a map indicating the number of legal services available per population in Queensland by geographical area. People living in rural and isolated areas, or living in urban areas with no access to legal services, often rely on the telephone for any legal advice. For example, in the survey of older people it was revealed that many older people would not venture out at night to seek legal advice when Community Legal Centres were open.

So far the Legal Aid Telephone Information Service is the only measure of access to justice we have used for rural and isolated people. In the monitor it may be possible to review legal services and access to legal areas by geographical location, which will indicate how trends may vary between urban areas and rural and isolated parts of Queensland.

legal aid commission services

Overall the number of calls to the Legal Aid Telephone Information Service is in-

creasing each year. For the past three years, 50 per cent of callers have come from outside Brisbane. In 1993-94 and 1994-95 women made greater use of the service. In 1994-95, 81 per cent of matters required no further referral. This is up from 63 per cent the year before and 56 per cent in 1992-93. A legal advice telephone information provides a service not only to rural people but to people living in cities in isolation who are unable to attend a legal service for information.

Table 9
Information Service

Legal Aid Telephone Infor-

	1992-93	1993-94	1994-95
1. Calls taken	56,686	59,022	5,187
2. Calls from outside Brisbane	27,776 (49%)	29,511 (50%)	32,593 (50%)
3. (a) Female callers	28,343 (50%)	38,364 (65%)	42,372 (65%)
(b) Male callers	28,343 (50%)	20,658 (35%)	22,815 (35%)
4. No further referral to other agencies necessary	31,744 (56%)	36,594 (63%)	2,801 (81%)
5. (a) Referred to other community resources	9,637 (17%)	11,804 (20%)	6,519 (10%)
(b) Referred to Legal Aid Offices	7,936 (14%)	5,902 (10%)	5,867 (9%)
(c) Referred to private solicitors	567 (1%)	6,492 (11%)	NA
(d) Referred to Legal Aid Panel	6,802 (12%)	NA	NA

Source: Legal Aid Commission, Qld, Annual Reports 1992-93 to 1994-95.

As Table 10 below shows, most telephone inquiries in each year were regarding family or related law.

Consumer and financial law were second, with tenancy law the third most inquired about area.

Table 10 Legal Aid Telephone Information Service - Major Topics of Inquiry

	1992-93	1993-94	1994-95
Family and related law	15,872 (28%)	17,707 (30%)	20,208 (31%)
Consumer and financial law	13,038 (23%)	11,804 (20%)	13,037 (20%)
Tenancy	7,936 (14%)	9,444 (16%)	9,778 (15%)

Motor vehicles/traffic offences	4,535 (8%)	4,722 (8%)	5,867 (9%)
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Table 10 Legal Aid Telephone Information Service - Major Topics of Inquiry (cont)

	1992-93	1993-94	1994-95
Neighbours	5,669 (10%)	5,312 (9%)	5,215 (8%)
Criminal Law	2,834 (5%)	3,541(6%)	4,563 (7%)
Other	6,802 (12%)	6,492 (11%)	6,519 (10%)

Source: Legal Aid Commission, Qld, Annual Reports 1992-93 to 1994-95.

older people

Some older people are marginalised in the community making access to justice difficult. Often assets-rich older people cannot afford private lawyers yet do not qualify for Legal Aid. A survey indicated that there appears to be a lack of knowledge about the use of free legal resources and there was a lack of knowledge of legal rights.

survey of legal and para-legal service providers to older people

Below are examples of typical responses in the survey in which three out of the five service providers responded.

- "The need for a generalist advocacy service for older people";
- "Unawareness of rights and legislation. The lack of easily accessible protection orders for people abused by family members other than a spouse. Older people were extremely reluctant to pursue protection through the *Peace and Good Behaviour Act*";
- "Fear of high costs of legal services";
- "Many older people are not aware of avenues for accessing free or low cost legal advice. In addition, community legal services mostly operate free legal advice sessions in the evenings and many older people are reluctant to go out in the evenings";
- "Many older people who are not eligible for Legal Aid are unable to afford the fees of private solicitors"; and
- "There are few support services to assist older people understand their rights, both legal and general. Older people often stated the need for someone (not necessarily a solicitor) to assist them to understand the legal process".

young people (10 – 17 years)

Youth workers have commented that there is a lack of specialist services for young people and that young people are often not aware of legal services available. An access to justice monitor may track the number of young people making contact with legal processes, but it may be more useful to measure those not accessing their legal entitlements. When measuring access to justice, we have concentrated on children aged 10 and above, this being the age where a child is capable of becoming criminally responsible.⁵ It may be useful to broaden the age range measuring access to justice as children often have their rights infringed, for example as victims of sexual abuse, although quantitative data in this area is difficult to obtain. Duty solicitors at the Children’s Court undertake a significant role in representing young people although there is currently no data available measuring this.

cautioning data

Police cautioning for juvenile offenders was introduced with the *Juvenile Justice Act* in 1993. Police may issue a caution not only for simple offences but also for indictable offences. A person must admit to the commission of an offence before a caution can be issued. When this legislation was introduced the number of arrests for juvenile offenders dropped initially, but in 1994-95 arrests again increased, although not to their former levels (Figure 70). There was an obvious increase in cautions as the legislation intended. Figure 70 shows an overall increase in the number of offenders who were cautioned, arrested or summonsed in 1994-95, by 17 per cent to 32,278. A breakdown of these figures shows a 50 per cent increase in summons, a 19 per cent increase in arrests and a 7 per cent increase in cautions in 1994-95. Figure 69

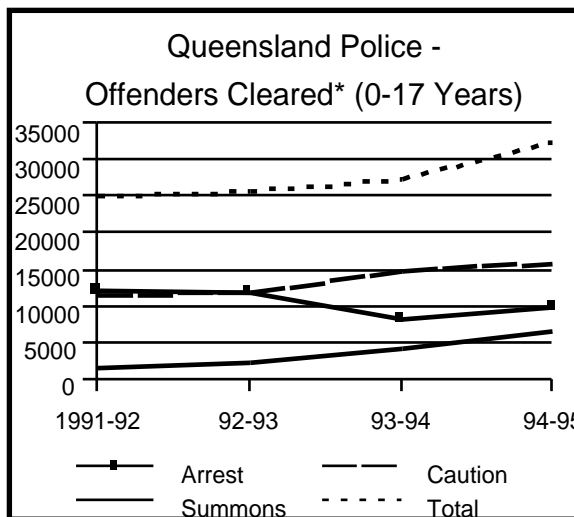


Figure 68. Source: Qld Police Service, Statistical Services Information Resource Centre. *Cleared means offences where police cautioned, summonsed or arrested the offender.

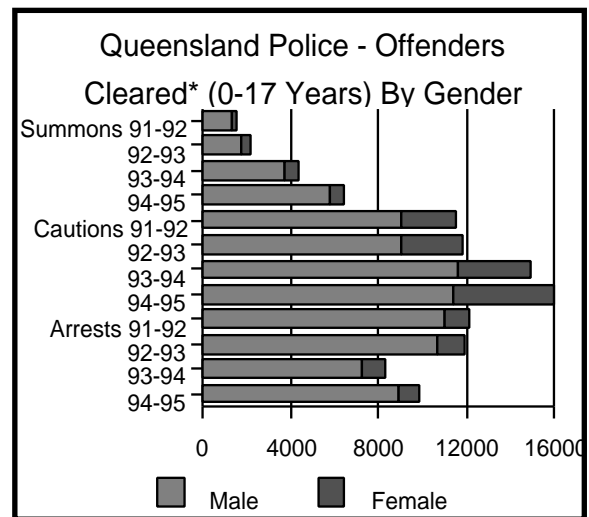


Figure 69. Source: Qld Police Service, Statistical Services Information Resource Centre. *Cleared rmeans offences where police cautioned, summonsed or arrested offender.

⁵ In the area of crime in Queensland there is an irrefutable presumption that a child under 10 years is not criminally responsible. For children under 15 years there is a rebuttable presumption that they are not criminally responsible. To rebut the presumption the prosecution must prove the child between 10-14 years knew at the time of the commission of the offence that the act was wrong.

reflects the large percentage of young males in the criminal justice system. The number of cautions increased for both genders in 1993-94 but decreased slightly for males in 1994-95.

legal aid grants to young people

Figure 70 shows the Legal Aid Commission has increased its grants to young people yearly except for a slight decrease in grants in 1994-95. There is no breakdown available of the legal areas these grants are in.

Legal Aid now has a Youth Bureau to specialise in work with young people thus increasing access to legal services.

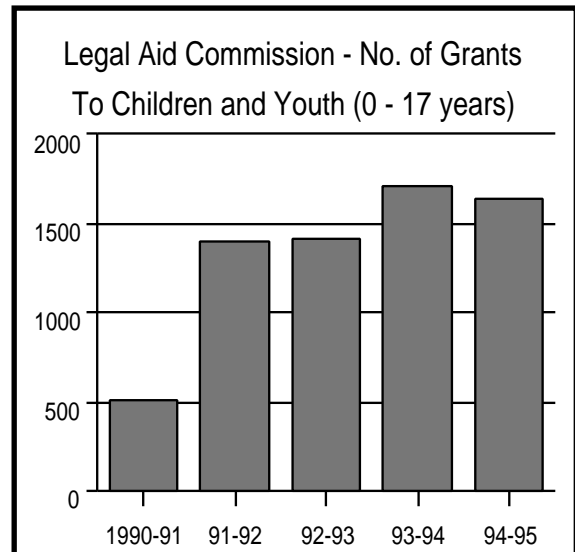


Figure 70: Source: Legal Aid Commission, Qld.

survey of legal and para-legal service providers to young people

In a survey of organisations which service youth, nine out of 26 (35%) surveys were returned. Issues seen as barriers to justice for youth include:

- "Lack of knowledge of how to access legal services";
- "Inability of legal providers to communicate effectively with young people or to provide services in a way which are user friendly to young people";
- "Most youth service providers themselves are unaware of legal issues for young people and therefore fail to assist young people to take the appropriate action";
- "Young people need legal advice at the police station when being questioned prior to being charged. Presently there are few services offering this service. Independent people at police interview with young people are not properly trained"; and
- "Lack of specialist services available to young people, in Queensland there are only two specialist children's legal services, ie. Youth Advocacy Centre and the Logan Youth Legal Service".

future directions

The following measures were proposed but need further development or were unobtainable through complexity, lack of data, or lack of funds at the time of writing the prototype monitor. We mention them here to add a dimension of completeness to the project.

further measures – legal area

administrative law

- Commonwealth Judicial Review access and costs; and
- Legal Aid and Community Legal Service aid for State and Commonwealth judicial review.

consumer law

- Banking Ombudsman use;
- Telecommunications Industry Ombudsman use; and
- Superannuation Complaints Tribunal.

criminal law

- Delays — average time from charge to committal (time on bail/custody). The percentage that fall above and below average time;
- Delays — average time from committal to finalisation (on bail/custody). The percentage that fall above and below average time;
- Delays — average time from charges to finalisation — summary offences (excluding traffic); and
- Victims' measures.

employment law

- Income Tax — investigate tax agent v lawyer representation in AAT — cost.

family law

- Matters before family court contested per head of population; and
- Counselling and mediation outcomes.

human rights and anti-discrimination law

- Human Rights and Equal Opportunity Commission — types of representation.

property law

- Average cost of administration of estate; and
- Tenancy law — awareness issue, number of Community Legal Centre inquiries (NIS).

small business law

- Survey of small business (state) monitor what is spent in year on legal services;
- Survey of legal firms — costs of incorporation; and
- Average cost of debt collection.

further measures – legal services

legal profession

- Make up of practitioners — geographic situation.

cost of legal services

- Awareness and needs survey;
- Courts /transcript costs; and
- Costs of services: wills, simple mutual wills, litigation, hourly rate for personal injury case, incorporation, mediation, debt collection.

legal assistance

- Comprehensibility of law/legislation — without lawyer.

court delays

- Delays Average time from charge to committal (custody/ bail). Per cent that fall above and below average time. Average time from committal to finalisation (custody/bail). Per cent that fall above and below average time. Average time from charges to finalisation - summary offences (excluding traffic).

alternate dispute resolution

- Follow up surveys.

further measures – social justice groups

socio-economically disadvantaged people

- Per cent of Queensland population who are eligible for legal aid; and

- Participation by low income groups in civil process. Percentage of civil matters legally aided against percentage of population with low incomes.

gender

- Domestic violence — equality of access by geographic region/racial background;
- Policy issues: eg. awareness of services, awareness that behaviour is wrong;
- Sexual assault — failure to take report through to completion. Why complainants drop out of system. Survey of victims through Director of Public Prosecutions. Number of sexual assaults reported to police against number court convictions; and
- Sexual assault — equality of access by geographic region/racial background.

people from culturally and linguistically diverse backgrounds

- People from non-English speaking backgrounds — availability of interpreters, costs and use; and
- National Information Scheme (NIS) data.

aboriginal and torres strait islander (TSI) people

- AILS area of legal grants — gender;
- Unmet legal need survey;
- AILS grants of assistance per 1000 Aboriginal and TSI population; and
- Aboriginal and TSI witnesses in court.

people with disability

- People with intellectual disabilities as complainants and witnesses;
- Number of people in institutions versus the number of people receiving support in the community. In de-institutionalisation process - access to justice issues;
- Unmet legal need;
- Assisted and substituted decisions; and
- Monitor level of funding to social and legal advocates. (Commonwealth/State).

people from rural and isolated areas

- Law Society — Number of lawyers by region (exclude CBD). Analyse practitioners per 1,000 population. By census area in state;
- Court houses by census area - geographic accessibility. Justices of the Peace/police by area; and
- Access to legal services — map of Queensland, population distribution, expenditure, NIS data.

older people

- Safety. Financial security pensions/housing — vulnerability; and
- NIS data.

young people

- Awareness of legal rights;
- Access to legal services, NIS data; and
- Sexual abuse — access to services.

gays/lesbians/bi/transgender

- Survey legal needs/barriers to accessing justice; and
- Lack of substantive legal protection.