
K Measuring the benefits of legal assistance services

As noted in chapter 21, there are strong qualitative arguments for the expansion in legal assistance funding recommended by the Commission. However, consistent with the policy framework outlined in chapter 4, the impacts of legal assistance services should still be quantified where possible — this appendix aims to broadly illustrate how such quantification can be carried out.

Providing accessible legal assistance services (such as legal aid) can deliver a range of benefits to both the clients receiving services and the broader community (chapter 21). Some of these benefits — such as the enforcement of legal rights and the support of social norms — are challenging to quantify in a monetary sense, making it difficult to weigh them against the costs of service provision.

However, legal assistance may also produce tangible benefits that — with sufficient empirical data and reasonable assumptions — can be more easily measured, including:

- the costs to individuals and the community that can arise from unresolved or escalated legal problems
- the costs to the community from the inefficiencies caused by self-represented people using the legal system, especially the courts.

This appendix first outlines some broad principles that should be followed when analysing these tangible benefits, and surveys the existing literature on the benefits of legal assistance. It then illustrates how these principles can be applied — using the limited empirical evidence available — to estimate the benefits to the community from providing legal assistance to victims of family violence seeking an apprehended violence order. Finally, it queries whether legal assistance is justified on the basis of efficiency gains to the legal process, as a number of inquiry stakeholders have argued.

K.1 A conceptual framework for considering the benefits of legal assistance

When analysing the benefits of any government service, including legal assistance, it is not enough to identify a problem to be addressed (that is, unmet legal need), it is also necessary to assess the extent to which providing assistance would make a difference.

Conceptually, that involves comparing the ex-post outcomes from assistance with what would have happened in its absence (the ‘counterfactual’).

Such an assessment can be challenging with even the best approaches (such as randomised control trials), but it is particularly difficult in the legal assistance sector, where providers have usually not captured data on outcomes that are fit for the purposes of objective evaluation.

When attempting to estimate the benefits of legal assistance, researchers need to be mindful of a number of questions, including:

- what would happen to an individual if legal assistance were not provided?
- how much does receiving assistance affect the legal outcome of a case?
- does obtaining a favourable legal outcome avoid adverse outcomes in the client’s life ‘outside the court room’?
- what are the costs of these adverse outcomes that are avoided?

What would happen to individuals without assistance?

An important step in estimating the benefits associated with providing a service is identifying the scenarios that would be likely to occur if the service were not provided.

In the case of legal assistance, there are a number of possible outcomes that could arise if an individual were not provided with assistance, including:

- no action being taken, leaving the legal problem unresolved, with the potential to escalate
- the individual taking steps to solve the legal problem without assistance
- the individual acquiring legal representation from the private market
- the legal problem being resolved (or not pursued further) by the other party.

The choice of counterfactuals will have a crucial impact on any estimate of benefits. For example, analysis based on the assumption that an individual will never act on a legal problem without legal assistance may substantially overestimate the benefits of such assistance. Conversely, assuming that legal problems will always go away on their own could significantly underestimate the benefits. The appropriate assumptions can vary depending on the demographics of those with a legal problem and the nature or severity of the legal problem itself.

Previous studies into the benefits of legal assistance have adopted various approaches to choosing counterfactuals. In some studies, a single, consistent outcome is assumed to arise. For example, in estimating the benefits of providing legal assistance in family law matters, PricewaterhouseCoopers (2009) assumed that all parties without access to legal representation or family dispute resolution services would go to court as self-represented

litigants. This approach has the benefit of minimising the number of subjective assumptions that must be made. A downside to this approach is that it may not accurately account for differences in behaviours and outcomes between a wide range of parties — for example, some people may decide not to initiate court proceedings in the absence of assistance, rather than appearing as a self-represented litigant.

Other studies use a weighted set of possible counterfactuals across the population of legal assistance clients based on survey data. For example, a cost-benefit analysis undertaken by the Citizen's Advice Bureau (2010) of legal assistance in the United Kingdom used results from the UK's *Civil and Social Justice Survey* to identify the proportion of people who experience a range of adverse consequences as a result of a civil legal problem. By identifying the number of people for whom assistance would have prevented such adverse problems (see below), the benefits of legal assistance can be more accurately estimated.

In the Commission's view, acknowledging that a number of possible outcomes may arise with varying probability is a desirable approach to identify potential counterfactuals. Where possible, the relative probabilities of these outcomes should be identified from the available data and literature, and the analysis weighted accordingly. In many cases, the available data and evidence may not be able to paint a complete picture of the possible scenarios, at which point informed assumptions should be made.

In contrast, some studies do not use a consistent assumption or methodology to identify the likely counterfactual. For example, a number of inquiry stakeholders pointed to a recent cost-benefit analysis of community legal centres (CLCs) as evidence of the value of CLC services. This study estimated the benefits of legal assistance by making subjective assessments for each of a number of case studies as to what would have happened to CLC clients in the absence of legal assistance (Judith Stubbs and Associates 2012). For some cases, it appears to have been assumed by the authors that without assistance, a client's legal problems would have always remained unresolved, and that with the assistance of a CLC, that the best possible outcome is always achieved. In other cases, it is assumed that without the CLC's assistance, the client may have pursued a resolution to their problem, but via a more expensive or ineffective avenue.

The available evidence suggests that these are not a reasonable set of counterfactuals to assume. For example, the Commission has estimated, based on unpublished *LAW Survey* data, of all finalised problems examined in the *LAW Survey*, just under 20 per cent were resolved because the respondent or the other side did not pursue the matter further. Another 20 per cent of all legal problems were resolved by direct agreement between the parties, without a lawyer or someone else's help. While many of these survey respondents would not have the same characteristics as the clients of legal assistance providers, this nonetheless demonstrates that legal problems can be resolved by parties without legal assistance. It therefore may be unreasonable to assume that without legal assistance, a legal problem would certainly have remained unresolved.

Further, the report by Judith Stubbs and Associates (2012) generally appears to assume that without assistance, clients' legal problems would escalate further, often to what could be

described as a ‘worst case scenario’. No attempt is made within the analysis to account for the possibility that such a scenario may not have occurred. For example, in matters involving violence intervention orders, the study assumes that any intervention order sought would require enforcement comprising a police response and a custodial sentence, costing a total of \$3350. In some cases involving violence, it was also assumed that without a CLC’s assistance, an individual would have required state care costing more than \$1 million. The result is a very high estimated benefit-cost ratio of 18:1.

While some stakeholders described this estimated ratio as conservative (NACLCL, sub. 91 and sub. DR268; Community Legal Centres Tasmania, sub DR294), in the Commission’s view the estimated benefits of many of the case studies represent the most optimistic interpretation of the value of these services. Such ‘optimism bias’ is a common problem in cost-benefit analysis, as noted in the Department of Finance’s *Handbook of Cost-Benefit Analysis*:

Optimism bias occurs when favourable estimates of net benefits are presented as the most likely or mean estimates. It is an endemic problem in cost-benefit analysis and may reflect overestimation of future benefits or underestimation of future costs. ... Varying each parameter to their pessimistic values one by one and collectively can uncover a great deal of the over-optimism that may underpin an analysis. This process must be done honestly and should, if anything, err on the pessimistic side. (Department of Finance and Administration 2006, p. 78)

Accounting for optimism bias is likely to be particularly pertinent when analysing benefits in the legal assistance sector, where there is considerable ambiguity in outcomes. The Commission’s analysis of assistance for family violence matters (outlined below) provides a simple example of this, by providing lower and upper estimates of the parameters for analysis.

How does legal assistance affect the legal outcome of a case?

Provision of legal assistance is based on the premise that a client would generally be more likely to obtain a favourable legal outcome when assisted than if they were left to resolve the dispute on their own. However, as noted in chapter 14, evidence on the effect of representation on legal outcomes for parties is patchy. Further, the extent of any improvements in legal outcomes for legal assistance clients is not well understood in the Australian context, as legal assistance providers in Australia do not consistently record the outcomes they have obtained for clients. This undermines the ability for researchers to estimate the benefits that legal assistance brings to clients.

The outcomes of legal assistance are better understood in the United Kingdom, where legal assistance providers are required to report the outcomes obtained for clients. The Citizen’s Advice Bureau (2010) estimated that more than 60 per cent of legal aid work led to outcomes that were of substantial benefit for clients.

While such outcomes data is useful, it must also be compared against how successful clients would be in the absence of representation. There are numerous observational

studies, particularly from the United States, that observe differences in the rates of success between represented and unrepresented parties, and thus infer a positive correlation between representation and success (Engler 2009). However, most of these studies do not use randomised control trials,¹ and so cannot infer a causative relationship between representation and favourable legal outcomes because they do not account for other possible differences between professionally represented and self-represented parties (and their cases).

Where randomised control trials have been used to measure the effect of representation on legal outcomes, the results have been mixed. In a randomised control study of legal aid in a housing court in the United States, Greiner, Pattanayak and Hennessy (2013) found that receiving full representation led to a favourable outcome in two thirds of cases, compared with only one third for those who received ‘unbundled’ assistance. However, in a previous randomised control trial for unemployment benefits appeals, no firm conclusion could be drawn on whether being represented affected the probability that a claimant would prevail (Greiner and Pattanayak 2012). It was found that being offered representation (regardless of whether the offer was accepted) had no statistically significant effect on outcomes.

Based on the available evidence, it would appear that parties are more likely to obtain a successful legal outcome when they receive legal assistance — although the degree of success varies widely between studies, dispute types, and jurisdictions. However, this does not mean that unassisted parties will always be unsuccessful, nor will an assisted party always obtain a favourable outcome. Estimates of the benefits of legal assistance should factor these considerations into their analysis.

Do favourable legal outcomes translate into positive practical outcomes?

While legal assistance is generally provided to address the legal problems of clients, obtaining a favourable legal outcome or decision may not necessarily translate into a positive outcome ‘outside the court room’. While formal acknowledgment of a particular legal right may bring some emotional benefits to the individual in question (which may be important), many of the potential tangible benefits from legal assistance will only arise if the formal acknowledgment actually causes a practical change in circumstances.

For example, obtaining an AVO for a victim of family violence will only produce benefits to the client (and society) if the order actually prevents further violence from occurring. This is not the case, for example, if the offender breaches the order, or if it is likely that the violence may have ceased regardless of whether an order was obtained. This example is discussed in further detail later in this appendix.

¹ Randomised control trials allocate people at random to receive one of a number of interventions (or ‘treatments’), usually along with a randomly assigned ‘control’ group that receives no intervention. This reduces the effect of selection bias between treatment groups, and thus any significant differences in outcomes between the groups can be more conclusively attributed to the interventions received.

Assumptions about the duration of outcomes are also critical. For example, preventing an eviction order against an individual could lead to tangible social benefits in the prevention of homelessness. But the benefits of such an outcome may be overstated if the individual is still unable to secure stable housing in the long run, and becomes homeless despite receiving legal assistance.

What are the costs of the adverse outcomes that may be avoided?

Adverse outcomes that are often suggested to arise from unresolved legal problems can include loss of employment, financial distress, homelessness, relationship breakdown, family violence, mental illness and substance abuse (Coumarelos et al. 2012). These outcomes can lead to substantial costs to individuals, governments and the wider community — costs which may be avoided in some cases by providing legal assistance. The social costs of many of these adverse outcomes have been previously investigated — for example, the social costs of family violence in Australia have been estimated extensively in the past (section K.2).

As noted in chapter 21, not providing legal assistance for civil matters can be a false economy where the costs of unresolved problems are shifted to other areas of government spending such as health care, housing and child protection. It is desirable, from a budgetary perspective, for government to understand the extent to which these costs are avoided through legal assistance. Even within a given set of budget constraints, additional outlays on legal assistance are likely to be justified if they reduce outlays in other areas of government spending by a similar or greater amount.

However, of greater economic significance are the costs to the community as a whole that may be avoided by providing assistance with legal problems. In many types of adverse outcomes, the costs are mainly borne by groups other than the government. For example, more than two thirds of the costs of family violence are estimated to fall upon victims, their families and employers (Access Economics 2004). Thus, reducing the incidence of these adverse outcomes may be welfare-enhancing across society, even if this comes at a net budgetary cost to government and so, in principle, may justify public funding of legal assistance.

K.2 Illustrating costs avoided by providing legal assistance for family violence matters

Prevention of family violence has been featured as a benefit arising from legal assistance in a number of previous studies, both in Australia and overseas (Florida TaxWatch 2010; Judith Stubbs and Associates 2012; Kushner 2012). Legal assistance providers can provide people seeking an apprehended violence order (AVO) with assistance, including preparation and assistance with documentation, and representation at court proceedings.

This section demonstrates how the principles outlined previously in this appendix can be used to estimate the benefits of providing such assistance with AVOs.

What would happen to clients without assistance?

Some previous studies have assumed that a lack of assistance with an AVO will lead to a continuation of violence for victims. However, this does not appear to be a reasonable assumption as:

- some victims may take steps themselves to obtain an AVO without assistance
- in some cases where an AVO is not obtained, the perpetrator may cease to commit violent behaviour anyway
- some victims may undertake other actions to prevent or reduce the risk of further violence.

This is evident in the empirical literature surrounding family violence — discussed further below — which indicates that over time, a significant share of victims do not continue to be subjected to ongoing family violence, even in the absence of legal protections such as AVOs.

However, it is less clear to what extent some individuals would take steps to obtain AVOs without assistance. There is little evidence on how the *presence* of a duty lawyer would affect the decision of an individual to attend court proceedings seeking an AVO. On the one hand, the knowledge that such a service is present could encourage attendance. On the other hand, the knowledge that the service would not be provided in advance, or be particularly tailored to the individual's circumstances may not encourage attendance to any greater degree than if the duty lawyer were not present.

For this analysis, the Commission has assumed that, in the absence of duty lawyer services, victims of family violence would represent themselves in proceedings to obtain an AVO — though it is not assumed they would always successfully obtain an AVO following proceedings. This assumption is based on the fact that duty lawyer services are generally located 'in-court', meaning that at the point at which assistance is received, the victim has already made the decision to attend proceedings.

How effective are legal assistance providers in obtaining AVOs?

Measuring the benefits of legal assistance requires an estimate of how often providers are able to obtain a favourable outcome for their clients, compared with a situation where the individual had received no assistance. In the case of family violence, this could be measured by comparing the rates at which AVOs are successfully obtained by LAC clients and the wider population (bearing in mind both the merit test applied by LACs, and the possibility that a LAC client may be less capable than others of securing an AVO if self-represented).

However, in Australia, the ‘success rate’ of AVO applications does not appear to have been measured. While data is generally available on the number of AVOs granted annually, the number of AVO applications each year is not published. When approached by the Commission, several LACs were also unable to produce data outlining how many of their applications for AVOs were successful. This poses a challenge to measuring the extent to which legal assistance providers affect legal outcomes for clients seeking AVOs.

However, there is some evidence from overseas that legal representation is correlated with success in obtaining a protection order — for example, a study from the United States found that 83 per cent of women who were professionally represented were successful in obtaining an order, compared to 32 per cent of self-represented women (Murphy 2002). This is supported by the broader literature outlined above on the benefits of representation in other case types. Those cases represented by LACs may also be expected to be more likely to be successful given the merit test applied by LACs when considering whether to represent a client.

Other studies have assumed a smaller advantage is gained by being represented. In a previous cost-benefit analysis of legal aid provision in Florida, a success rate of 69 per cent was assumed for legal aid clients securing a restraining order, compared with 55 per cent for those seeking a restraining order without legal aid assistance (Florida TaxWatch 2010). While the authors of this study suggest that these assumptions are based on research, they do not point to any specific sources or studies that comprised this research.

How often do AVOs prevent family violence?

Some previous studies into the benefits of legal assistance have assessed the benefits of an AVO as being the full cost of an avoided case of violence or assault. For example, Judith Stubbs and Associates (2012) estimated the community benefits of assisting an individual with an AVO at \$37 000, based on estimates of the costs of family violence by Access Economics (2004). However, for this to be a reasonable estimate of the benefits of assistance with an AVO, it must also be assumed that:

- the perpetrator will not breach the AVO
- in the absence of the AVO, the perpetrator would have continued to commit abuse
- without the AVO, the victim would not have taken other actions to prevent or reduce the risk of family violence.

The available evidence suggests that these are not reasonable assumptions on which such estimates should be based. First, in practice, perpetrators of family violence are known to breach AVOs — for example, roughly one in three AVOs were breached in Victoria in 2012-13 (Spooner and Butt 2013). Second, as noted above, there may be some cases where an AVO is not obtained, but the perpetrator ceases their violent behaviour anyway. Finally, as acknowledged by Kushner (2012), those that do not obtain an order may still undertake other actions to prevent, or reduce the risk of, further violence.

Empirical research on the effectiveness of AVOs at reducing subsequent violence is limited, especially in the Australian context. While some studies have shown reductions in the incidence of family violence for those who did obtain a protection order, most of these do not include a comparison with the rate of subsequent violence for those who did not obtain a protection order.

A study from the Australian Institute of Criminology of young women (aged 18-23 years) experiencing violence found that among those who obtained both an AVO and police assistance, 55 per cent experienced no subsequent violence. Of those who only received police assistance (without an AVO) this figure was 40 per cent (Young, Byles and Dobson 2000). However, it is worth noting that the study found that after a 12 month period, violence had ceased for similar shares of young women (91 per cent compared with 90 per cent) whether or not they had sought any form of legal protection (such as an AVO or police protection).

The available evidence from Australia can also be compared with similar studies from overseas jurisdictions, such as the United States. A study from Washington State found that in the 12 month period following an initial incident of domestic violence, women who obtained protection orders experienced 11.1 fewer incidents of physical violence per 100 women than a group without protection orders (2.9 incidents of physical abuse per 100 person years for those with protection orders compared with 14.0 incidents of physical abuse for those without orders) (Holt et al. 2002). This study was also used by Kushner (2012) to estimate the number of incidents of abuse avoided by providing legal aid.

Other studies have aimed to establish a direct link between the provision of legal assistance for family violence and reductions in family violence. Farmer and Tiefertalder (2003) found that increased provision of legal services for victims of family violence likely contributed significantly to declines in the incidence of family violence during the 1990s in the United States. Another study, using unpublished evidence from Virginia, found that an expansion of legal aid in Southwest Virginia coincided with a 35.5 per cent reduction over four years in requests for protection orders in that region, compared with a statewide reduction of only 16.2 per cent — while the violent overall crime rate increased by 12.7 per cent (Abel and Vignola 2010).

How much does family violence cost government?

As noted previously, the costs of adverse outcomes such as family violence must be calculated in order to determine the benefits associated with their avoidance. In the case of family violence, the costs to government and society have been the subject of many studies. A frequently cited estimate of the economic and social costs of family violence comes from analysis by Access Economics (2004). They estimated that the annual costs to government from family violence exceeded \$1.3 billion in 2002-03, with broader costs to society of approximately \$8.1 billion. Averaged across the estimated number of victims, this amounted to more than \$3000 per victim in annual costs to government, and almost \$20 000 per victim in annual costs to society.

The estimates by Access Economics for 2002-03 were subsequently updated by KPMG (2009) to project the costs of violence against women in the year 2021-22. They estimated the annual costs to government will be \$7640 per victim, with broader social costs of more than \$40 000 per victim each year in 2021-22.

Such estimates are not without their own shortcomings and uncertainties, especially for an issue such as family violence. Some of the costs associated with violence — such as the pain and suffering experienced by victims — are less tangible (though are nonetheless significant) and thus can be challenging to quantify in monetary terms. Further, as noted by the Access Economics report, many of the costs often attributed to violence are also long-term, such as health costs, premature mortality, loss of income, and effects on children exposed to violence. This can make their quantification more difficult, especially where violence intersects with other complex issues and underlying causes of disadvantage (making it challenging to disentangle the costs and attribute them to any given cause).

However, the drawbacks of such costing approaches are not the primary concern of this appendix. Rather, for a given estimate of the costs of family violence, the more relevant concern is the soundness of the methodology used to calculate how often such costs are avoided by an intervention such as legal assistance. Given the breadth and complexity of conducting such an estimate, the Commission has not attempted to make its own detailed estimates of the costs of violence in 2014-15. Rather, this Appendix has used the Access Economics and KPMG studies to construct two possible bounds (‘lower’ and ‘upper’ estimates) to estimate the costs of family violence in 2014-15 (see table K.1).

Table K.1 Estimating the annual cost to government of family violence

	<i>Access Economics</i>	<i>KPMG</i>	<i>PC lower estimate</i>	<i>PC upper estimate</i>
Year	2002-03	2021-22	2014-15	2014-15
Cost to government	\$1.3 billion ^a	\$2.9 billion	\$1.8 billion	\$2.6 billion
Cost to society	\$8.1 billion	\$15.6 billion	\$12.6 billion	\$13.6 billion
Number of female victims	353 600	385 426	360 000	370 000
Cost to government per victim	\$3 270	\$7 640	\$5 000	\$7 000
Total social cost per victim	\$19 800	\$40 400	\$35 000	\$36 750

^a Calculated by combining the estimated costs to the Australian government of \$848 million and state and territory governments of \$487 million.

Sources: Access Economics (2004); KPMG (2009); Productivity Commission estimates.

It is also worth noting that the use of the Access Economics and KPMG estimates will lead to a small degree of ‘double counting’, as these estimates include some expenses associated with family violence — such as the cost of legal aid — which would still be incurred when legal assistance is provided to victims of family violence. However, given

that such costs appear to be relatively negligible compared to the overall estimates, these are unlikely to substantially affect the results of such analysis.

In the next section, the Commission has used its estimates of costs of family violence to the government and society overall, to approximate the costs that may be avoided where legal assistance with AVO applications may prevent further incidents of family violence.

What are the benefits of providing legal assistance for AVOs?

Based on the evidence outlined above, the Commission has constructed some illustrative estimates of the benefits of providing duty lawyer services to people seeking AVOs in family violence matters. The parameters used to construct these estimates have been based on the empirical literature outlined previously in this appendix. To account for uncertainty arising from a lack of empirical data collection by providers, the Commission has used a range of parameters to construct lower and upper bounds for its estimates.

For those who do receive duty lawyer assistance, the Commission has assumed, based on the literature outlined above, that the probability of successfully obtaining an AVO is increased by between 40 and 60 per cent. Based on the available evidence, the Commission has estimated that further incidents of violence would have occurred without an AVO in between 10 and 20 per cent of cases. These parameters for analysis, and the resulting estimates of expected benefits, are set out in table K.2.

Table K.2 Estimating the benefits of providing legal assistance for Apprehended Violence Order applications in 2014-15

	<i>Lower estimate</i>	<i>Average estimate</i>	<i>Upper estimate</i>
Parameters			
Cost to governments per victim	\$5 000	\$6 000	\$7 000
Cost to the community per victim	\$35 000	\$35 875	\$36 750
Additional probability of obtaining an AVO with legal assistance	40 per cent	50 per cent	60 per cent
Probability that an incident of violence will be avoided due to obtaining an AVO	10 per cent	15 per cent	20 per cent
Estimated benefits			
Expected avoided cost to government per instance of assistance for an AVO application	\$200	\$450	\$840
Expected avoided cost to society per instance of assistance for an AVO application	\$1 400	\$2 690	\$4 410

Source: Productivity Commission estimates.

The above estimates suggest that the expected benefits to the wider community from providing assistance with family violence matters may be substantial — ranging from \$1400 per case to more than \$4400 per case, depending on the parameter values chosen.

However, even if the significant potential benefits to the whole community — including victims of family violence — are overlooked, the above results suggest that funding legal assistance in these matters is likely to be justified from a budgetary perspective alone. The Commission has estimated that providing duty lawyer assistance for AVOs may, on average, generate expected savings to government of approximately \$450 per case (noting that this figure may range between \$200 and \$840, depending on the assumptions adopted). Based on cost data from legal assistance providers, this is likely to more than offset the cost of providing a duty lawyer in each case (chapter 14).

Another implication from this analysis is that the estimated benefits vary widely based on the parameters that are used — this illustrates the sensitivity of such approaches, and the vulnerability of these results to being skewed by spurious assumptions. While the above parameters have been informed where possible by existing studies into family violence and legal representation, they remain imperfect approximations in the absence of a consistent evidence base. The Commission has made numerous recommendations to improve the collection of relevant and consistent data in the civil justice system (chapter 25). Without improved data collection, the reliability of such analysis will continue to be limited by a lack of evidence, and the benefits of legal assistance will continue to be poorly quantified.

K.3 Do the costs of self-represented litigants justify legal assistance funding?

It is often suggested that self-represented litigants (SRLs) can impose a resource burden on the courts and the legal process — and especially so in superior courts, where procedures generally operate on the assumption that parties are represented (chapter 14). Some have thus argued that providing publicly-funded legal representation can save the government money through more expedient court processes.

Numerous stakeholders to this inquiry have pointed to PricewaterhouseCoopers' (PwC) report *The Economic Value of Legal Aid* as evidence of the benefits of legal aid funding (Law Council of Australia, sub. 96, sub. DR266; Law Institute of Victoria, sub. DR221; Law Society of Western Australia, trans., p. 489). This report focused on quantifying the benefits of such efficiency gains, and concluded that there are net efficiency benefits — with a reported benefit-cost ratio of 1.60 to 2.25 — from providing the existing legal aid service mix of Family Court representation, duty lawyers and family dispute resolution (FDR) services (PwC 2009).

However, in the Commission's view, the PwC report does not, in and of itself, provide a compelling case for the benefits of legal assistance for two main reasons:

- the findings of PwC's analysis rest largely upon an assumption regarding the inefficiency of SRLs which may not be generally applicable
- the figures contained within the report indicate that legal aid representation and duty lawyer services do not deliver a positive net benefit (in terms of efficiency gains).

The Commission has previously noted that any additional costs imposed by SRLs on the courts are not well quantified (chapter 14). Thus PwC's analysis is underpinned by a key assumption that cases involving SRLs are assumed to take 20 per cent longer to resolve. This figure was also used by Judith Stubbs and Associates (2012) to estimate the costs of SRLs for a cost-benefit analysis of CLCs. This assumption is based on a single finding for civil appeals cases in a 2004 annual review of the Western Australian courts. The annual review does not report the sample size, measurement approach, or any other details as to how this figure was calculated.

Further, as acknowledged by PwC, the procedures and requirements of a civil appeals court are different to (and are likely to be more onerous than) those of family law courts. Yet their analysis goes on to assert that this 20 per cent figure is 'considered to be a conservative estimate' (p. 29). There are no comparisons with other evidence or studies on SRLs to determine whether this assumption is reasonable, or indeed conservative.

The PwC report also assumes an efficiency gain of 5 per cent where parties are assisted by duty lawyers. No evidence is used to form the basis of this assumption, and thus it may be a significant over- or under-estimation of any such efficiency benefits.

For FDR services, PwC assume that without FDR the parties would bring their dispute to the courts as SRLs. This is calculated as an efficiency cost of 120 per cent — the full cost of the court proceedings that may have otherwise been avoided, plus the 20 per cent efficiency cost of the parties self-representing.

However, even if these efficiency benefit assumptions are accepted, the net efficiency benefits of providing representation are not strongly supported by PwC's own analysis. While the existing legal aid case mix — comprised of representation, duty lawyers and FDR — is found to deliver a positive net benefit, these benefits primarily stem from the provision of FDR, rather than representation or duty lawyers. This echoes analysis by KPMG (2008), who found that the benefits of FDR exceeded the costs of the service.

Disaggregating the figures from PwC's analysis by each service type suggests that the assumed efficiency benefits do not outweigh the costs of providing representation in family law matters (table K.3). Further, the provision of duty lawyers only provides a cost saving where average court costs are assumed to be higher (and thus the efficiency gain is greater). Indeed, PwC's own analysis of a scenario where only representation services are funded delivers a negative net benefit (in terms of the efficiency of proceedings).

Put more simply, it may be easy to misinterpret PwC's finding that the current legal assistance service mix overall provided a net benefit to mean that each component — representation, duty lawyer services and FDR — was also found to have produced a net benefit. But a more thorough examination of PwC's findings indicates that this is not the case for representation services, and possibly duty lawyers. This highlights the importance of effectively communicating what can ultimately be a complicated message regarding the benefits of legal assistance, and the need for stakeholders to carefully scrutinize the available evidence.

Table K.3 Disaggregating the results of *Economic Value of Legal Aid*
By legal aid service type

	<i>Family law representation</i>	<i>Duty lawyer</i>	<i>Family dispute resolution</i>
Legal Aid service cost per case ^a	\$4 143	\$615	\$1 411
Efficiency cost of SRLs in court ^b	20 per cent	5 per cent	120 per cent
Case outcome assumption A^c			
Cost to courts per case ^d	\$10 763	\$10 763	\$10 763
Efficiency benefit per case ^e	\$2 153	\$538	\$12 916
Benefit-cost ratio ^f	0.52	0.88	9.15
Case outcome assumption B^c			
Cost to court per case ^d	\$15 106	\$15 106	\$15 106
Efficiency benefit per case ^e	\$3 021	\$755	\$18 127
Benefit-cost ratio ^f	0.73	1.23	12.85

^a From table 5.1, p. 30 of PwC report. ^b From p. 29 of PwC report. ^c Two case outcomes assumptions are used to calculate court costs, with the share of cases finalised by mediated and final agreements varied (see pp. 30–34 of PwC report). ^d From table 5.5, p. 34 of PwC report. ^e Calculated by multiplying the efficiency cost of SRLs by the cost to the courts per case. ^f Calculated by dividing the efficiency benefit of each legal aid service by the legal aid service cost per case. A ratio below 1 implies that costs exceed benefits.

Source: Commission estimates based on figures and results contained in PwC (2009).

This is not to suggest that the overall benefits of providing legal representation are necessarily outweighed by the costs — rather, it indicates that the cost of providing legal aid representation is not justified by these assumed efficiency gains alone. However, as noted above, other benefits to the community — such as avoiding greater costs to government that can arise from an unresolved legal problem — may outweigh the costs of providing legal assistance.