

Select Committee into Elder Abuse - questions on notice

Response by Legal Aid WA



Question 1a: what is the proportion of the legal aid budget allocated to elder abuse matters?

Legal Aid WA provides legal advice, legal task (minor assistance) and grants of legal aid for representation in a wide range of matters.

An identifying flag was introduced to assist us to quantify the number of elder abuse legal assistance services provided to our clients. The true number of these services may not be known if the elder abuse flag has not been used at the time that the service was provided or when it was entered into the data recording system.

No grants of legal aid with the elder abuse flag have been recorded. However, the elder abuse flag was used to record the delivery of legal advice and legal task services (see **Table 1** below). There may be some instances of service delivery in matters involving elder abuse that have not been recorded because the elder abuse flag was not used.

The average cost for legal advice and legal task for all law types has been used to estimate the spending on elder abuse.

Table 1

Combined State & C'wth	Number of Legal Advices on Elder Abuse	Number of Legal Tasks on Elder Abuse	Avg. cost of Legal Advice	Avg. cost of Legal Task	Estimated Cost
2016-17	14	14	\$282	\$238	\$7,280
Financial Year to Date 3 April 2018	8	4	\$285	\$230	\$3,200

Legal Aid WA also administers the Civil Litigation Assistance Scheme (CLAS). This scheme provides funding for plaintiffs in some types of civil litigation. Currently, one elder abuse matter is funded by the scheme.

Question 1b: what is the overall legal aid budget and the proportion allocated to civil, family and crime (and identifying the funding of disbursement only grants of aid in civil law matters)?

The overall legal aid budget for 2017-2018 is \$81,747,652.

The proportions of expenditure for the 3 main law areas is 7% Civil, 43% Family and 50% Crime.

An amount of \$546,302 was budgeted for disbursements only grants of legal aid provided to private practitioners in civil law matters and Civil Litigation Assistance Scheme (CLAS) matters.

Question 1c: what is the number of elder abuse services and SAT (guardianship and administration) services provided?

Table 2

	Number of Legal Advices on Elder Abuse	Number of Legal Tasks on Elder Abuse	Number of Grants of Legal Aid for Guardianship & Administration	Number of Legal Advice & Task for Guardianship & Administration (excluding Elder Abuse)
2016-17	14	14	13	150*
Financial Year to Date 3 April 2018	8	4	7	93*

*Note, some services which have been recorded as guardianship and administration may or may not have been before the State Administrative Tribunal (SAT).

It is possible that some of these services *may* have involved instances of elder abuse, although the service has been recorded with a primary matter type of guardianship and administration.

Question 2: (in the context of a reduced funding environment) does the Infoline keep statistics of the number of people who are turned away (and referred elsewhere) for a civil law service and if so, how many people are turned away (and referred elsewhere) for a civil law service?

Legal Aid WA is currently unable to generate an accurate report to respond to this question.

We can however report that in the current financial year to date, the Legal Aid WA Infoline answered a total of 44,110 calls of which 8,094 (17%) were civil law matters.

Question 3: do you have any views on how misconduct restraining orders might be used, or better used, to respond to elder abuse?

Current legislation does not allow a MRO to be ordered when the perpetrator of the abuse is a family member. In those circumstances, only a FVRO (family violence restraining order) can be made by the court. This leads to a number of practical difficulties:

- Someone is needed to make the application. The older person may be reluctant or unable to make the application to the court. In practice, Police do not make the application for the FVRO, but they do have the power to do so.
- There are severe penalties for breaching a FVRO, including imprisonment and mandatory imprisonment under the "3 strikes rule".

An MRO may be more suitable in the elder abuse context, however, where the perpetrator is a family member, legislative change would be required to allow the making of an MRO.

Although breach of the MRO is punishable only by a fine, this may be a more attractive option for victims of elder abuse seeking protection and not wishing to expose family members to the potential consequences of breach of a FVRO by their family member (i.e. the possibility of imprisonment).

We note some additional current limitations, which include not being able to obtain an interim MRO and the inability for the MRO to include positive obligations on the restrained person.