

**Discussion Paper:**

**Improving the  
Administration & Processing  
of Appeals in the Provision of Legal Aid**

**STAGE 1 of 2**

**Erin Gough  
Legal Policy Unit**

## Contents:

1	Scope of Paper.....	3
2	Recommendations of this Paper.....	4
3	Background .....	5
	3.1 Impetus for Review.....	5
	3.2 Current Appeals Process: Legislation and Policies.....	6
	3.2.1 Internal Review Process (Redetermination or Variation).....	6
	3.2.2 LARC Process.....	6
4	Key Review Areas.....	7
	4.1 The Appeal Committee Model.....	7
	4.1.1 Models Used in Other Jurisdictions.....	7
	4.1.2 Benefits of Adopting a Single Person Review Model in New South Wales.....	9
	4.1.3 Disadvantages of the Single Person Review Model.....	10
	4.1.4 Discussion.....	11
	4.2 The Administration and Processing of Appeals.....	12
	4.2.1 Lodgement and Tracking of Appeals.....	12
	4.2.1.1 ATLAS Module.....	13
	4.2.1.2 Interim Measures.....	15
	4.2.2 Timeframes.....	16
	4.2.2.1 Notifying Appellants.....	19
	4.3 LARC Secretariat.....	20
	4.3.1 Secretariat Staff.....	20
	4.3.2 Location of LARC Secretariat.....	22
	<u>Appendix A: Random Selection of LARC Files, Nov-Dec 2007.....</u>	25
	<u>Appendix B: Appeals Process Map.....</u>	27
	<u>Appendix C: Number and Type of LARC Appeal Applications in the Last Five Years.....</u>	28

# 1 Scope of Paper

This consultation paper is the first stage in a 2007-2008 review of the Legal Aid Review Committee (“LARC”) appeal process. The review aims to address the issues raised by audits conducted by Deloitte and the NSW Auditor-General in 2006 as well as additional concerns that have been raised during consultation with key stakeholders.

This paper (Stage 1 of the review) makes recommendations in relation to three key areas:

1. The Appeal Committee model
2. The Administration and Processing of Appeals
3. The LARC Secretariat

Stage 2 of the review will consider the following key areas:

1. The Reporting Process

The review will explore making changes to the current process legal officers undertake when preparing reports to LARC. It is hoped a simpler report format can be implemented, which will no longer include a history of the matter, only a list of key dates and materials. This should significantly reduce the amount of time spent by legal officers preparing reports.

2. A Decisions Database

At present, neither background information about the reason for an appeal application nor the reasoning behind a Committee decision is recorded. The review will explore the possibility of establishing a system for recording this information in order to: assist the decision-making process; allow for a better understanding of procedural delays; and improve accountability and transparency.

3. The Development of a Training Module

The review will explore the possibility of developing a training model targeting Review Committee members and Legal Aid NSW representatives assisting the Committees, to improve their understanding of Legal Aid NSW policies and guidelines.

## **2 Recommendations of this paper**

### **The Appeal Committee model**

Recommendation 1: That the current three-member Legal Aid Review Committee model is maintained as opposed to opting for a single person review model.

### **The Administration and Processing of Appeals**

Recommendation 2: That the new ATLAS module enabling the registration of appeals is employed to streamline and monitor the appeals process.

Recommendation 3: That LARC members are given remote electronic access to appeal documents to decrease the number of paper documents needed for each LARC meeting.

Recommendation 4: That prior to the introduction of ATLAS, LARC members are given electronic access to appeal documents by use of a Citrix key.

Recommendation 5: That prior to the introduction of ATLAS, all appeals, once received, are immediately registered on LA Office as “appeal pending” and that this record is updated as the appeal progresses.

Recommendation 6: That Legal Aid NSW implements the timeframes recommended in Appendix B as a guideline for the completion of discrete stages in the appeal process.

Recommendation 7: That Legal Aid NSW establishes a policy of notifying appellants of the result of the internal review where a matter has been referred to a LARC. Notification should also include an estimate of the time it will take for the appeal to be processed, and potential causes of delay.

### **The LARC Secretariat**

Recommendation 8: That a 3/4 Clerk be permanently employed to assist the currently employed 5/6 Clerk in the LARC Secretariat coordinate and manage the Committee processes.

Recommendation 9: That LARC continue to be located within the Strategic Planning and Policy Division to maintain its independence from the original decision makers.

### **3 Background**

The Legal Aid Review Committee (“LARC”) is an independent decision-making committee established under the *Legal Aid Commission Act 1979 (NSW)* (“the Act.”) See in particular Part 3, Divisions 3 and 4. Its function is to consider appeals against determinations made in respect of applications and grants for legal aid.

#### **3.1 Impetus for Review**

In May 2006 Deloitte Touche Tohmatsu (“Deloitte”) conducted an internal audit of the applications process for civil and family law legal aid services and noted that there is no formal process to:

- Ensure that all appeals received within Legal Aid NSW are registered and tracked; and
- Ensure that all appeals received are forwarded to the LARC Secretary before a report is prepared by the appropriate legal officer.

In December 2006 the NSW Auditor-General’s Performance Audit on “Distributing Legal Aid in New South Wales” recommended that Legal Aid NSW:

- Consider the option of review of appeals by a member of a review panel rather than an appeal committee; and
- Consider reporting on the time taken to assess appeals

The provision of an appeals process that is fair, efficient, and accessible is important for a number of reasons. Such a system increases the capacity of appellants to access review rights and is a necessary mechanism for the quality-control of agency decision-making. An expeditious appeals system is particularly important in light of a person’s prima facie right under the Act to a court adjournment while an appeal is in progress.<sup>1</sup>

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<sup>1</sup> Under section 57 of the Act a court or tribunal is required to adjourn the proceedings to such a date and on such terms and conditions that it thinks fit provided it is satisfied that: the party has appealed or intends to appeal to LARC; the appeal or intention to appeal is bona fide and not frivolous or vexatious or otherwise intended to improperly hinder or delay the conduct of the proceedings; and there are no special circumstances that prevent the court or tribunal from adjourning the proceedings. See also *Lewis v Spencer [2007] NSWSC 1383*, a recent

## **3.2 Current Appeals Process: Legislation and Policies**

### **3.2.1 Internal Review Process (Redetermination or Variation)**

Pursuant to the Act, Legal Aid NSW may redetermine an application for legal aid that has been refused (section 34) or vary a grant of legal aid (section 38). A redetermination or variation is made by a Legal Aid NSW officer authorised under the delegation instrument. If the officer considering the redetermination or variation concurs with the original decision maker, the officer refers the matter to the LARC Secretariat for external review (Policy Online 12.2.2).

### **3.2.2 LARC Process**

The process of external review, or referral to a LARC, is set out in section 56 of the Act. A person applying for legal aid or a legally assisted person who is dissatisfied with:

- a determination of an application for legal aid
- a variation of a grant of legal aid that adversely affects a legally assisted person
- a redetermination of an application for legal aid
- a redetermination of a variation that terminates the provision of legal aid, or
- a decision to refuse to pay part or all of the costs awarded against a legally assisted person

can appeal to a LARC for a review of the decision. Clients refused legal aid are advised in a letter within 14 days (Sections 34 and 38 of the Act, Policy online 12.2.4) of their right to appeal to a LARC. An appeal form is enclosed in the letter.

Legal Aid NSW has established five LARCs under section 53 of the Act. Section 54 requires the Board of Legal Aid NSW to appoint three members for each LARC, of whom one member is nominated by the Minister; one is nominated jointly by the Law Society and Bar Association; and one is a person who is not a legal practitioner. Each member has an alternate in case

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Supreme Court of New South Wales case which clarifies the right to an adjournment pursuant to s 57.

s/he is unable to attend a particular meeting.<sup>2</sup> All members perform their duties on a voluntary basis.

Two members, one of whom must be a lawyer<sup>3</sup>, make a quorum (Schedule 7, cl 8) and the Chair has the casting vote. Section 60 provides that a decision by a LARC is final and binding, and that once an order is made, the LARC must give written notice of its determination and record its reasons.

Two of the LARCs specialise in appeals in family law matters. The other three consider both civil and criminal matters. A LARC has the functions and discretions that the person whose determination, variation or decision is the subject of the appeal had in respect of the matter the subject of the appeal. The LARC is also required to comply with any policy guidelines with which the original decision maker was required to comply in respect of the matter the subject of the appeal (section 58). For this reason, an experienced Legal Aid NSW solicitor also attends each meeting, not as a member, but to provide guidance on Legal Aid NSW policies. The LARC Secretariat also attends and provides administrative support.

A Family Law LARC sits once a fortnight and a Civil/Criminal Law LARC sits once a fortnight on each alternate week.

## **4 Key Review Areas**

### **4.1 The Appeal Committee Model**

As noted above, in December 2006 the NSW Auditor-General's Performance Audit recommended that Legal Aid NSW consider replacing its current Committee Model with a single person review model. Citing its use in other Australian jurisdictions, it suggested that this approach offered more flexibility than a committee.

#### **4.1.1 Models used in other jurisdictions**

A single person review model is currently used in two other Australian jurisdictions: Queensland and Victoria.

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<sup>2</sup> For current membership of the LARC Committees, see Guideline 6.11.1

<sup>3</sup> Guideline 6.9.1

In Queensland, Legal Aid automatically refers its appeals to a single external review officer once an internal review officer has considered the original decision and agrees with that decision. External review officers are solicitors and barristers in private practice independent of Legal Aid Queensland who make their decisions within the policies and guidelines of Legal Aid Queensland.

In Victoria, when an appellant makes a request for reconsideration, the decision is initially reviewed by the original decision maker. If that person is not minded to change the decision another staff member will reconsider it wherever possible. If that staff member is also not minded to change the decision, an applicant is then entitled to make a request for an independent review. Victoria Legal Aid uses a single member of a panel of three independent reviewers appointed by the State Attorney General to consider appeals in accordance with Legal Aid policies and guidelines. The single member may consult other panel members if necessary. Currently the number of appeals being received by Victoria Legal Aid requires one member of the panel to be available to conduct reviews for an average of half a day a week.

The other Australian jurisdictions, with the exception of South Australia, use a Committee model similar to New South Wales. The Legal Aid Commissions of Tasmania, Western Australia and the Northern Territory all have a three-member review committee as the final and determinative stage of the review process, consisting of a private legal practitioner, a legal officer of the Commission and another person who is neither of the above but who is deemed to have the qualifications and/or experience to perform the functions of a committee member. The ACT Legal Aid Commission uses an external three-member committee consisting of a solicitor, a barrister and a community representative appointed by the ACT Attorney General.

Uniquely, the Legal Services Commission in South Australia refers appeals to its Board of ten Commissioners for review, rather than having a person or body independent from Legal Aid to review the decision.

Jurisdictions vary in relation to what decisions can be reviewed; whether the applicant must apply a second time for external review if the original decision is upheld at the internal review stage; whether the work of the external

reviewers is paid or unpaid; and whether the applicant has the right to a conference with the reviewer or review panel.

#### **4.1.2 Benefits of Adopting a Single Person Review Model in New South Wales**

The potential benefits of adopting a single person review model in New South Wales are primarily resource-related. The adoption of a model similar to that used in Victoria and Queensland would:

- *Reduce the workload of the LARC Secretariat*
  - All tasks currently undertaken to facilitate the LARC meetings each week would no longer be necessary. This includes preparing an agenda, checking the availability of members, setting a meeting date, arranging for alternates to attend if required, booking a room, organising refreshments, setting up the room and cleaning up after the meeting.
  - In addition, review papers would only have to be sent to a single reviewer in each area of law, rather than copied and sent to three reviewers and one Legal Aid NSW representative for each LARC meeting.
- *Reduce delays*
  - Sometimes the appeal process is delayed because Committee members and their alternates are unable to attend a LARC meeting together on the arranged date. Meetings therefore have to be rearranged to a day later in the week or the following week. The process is also delayed if the Committee is sitting as two-member Committee because one member is unavailable, and then, as often happens, one member declares an interest in a particular matter. A single reviewer would be more flexible. If s/he was unable to participate in the review process due to a conflict of interest, illness or other commitments, another member of the independent panel of reviewers could be appointed to review applications for the relevant period.

These potential resource benefits would create a more efficient appeals process and by extension, assist appellants in gaining access to justice.

#### **4.1.3 Disadvantages of the Single Person Review Model**

The primary disadvantage of the single person review model is that it lacks the safeguards that preserve the integrity of the current process of review:

- *Lacks safeguards of three-member committee*
  - A single person review model does not allow for the breadth of representation that the current three member committee allows for, which means that the perspectives brought to each application are narrower.
  - Because each decision is made by an individual with a single perspective rather than requiring two out of three committee members to agree upon the outcome of each review application, there is neither reason nor opportunity for the reviewer to critically explore a decision with other reviewers. This could increase the likelihood of mistakes being made; increase the risk of bias or possible accusations of bias; and result in a less consistent application of Legal Aid NSW policies.
- *Amendment to the Act required*
  - Changing the existing Committee structure would require an amendment to the Act. The fact that the Act currently requires three different members, who qualify in different ways, to sit on each LARC Committee, suggests that Parliament intended a range of perspectives to be taken into account in the decision-making process. Notably, the review process was streamlined in December 2000, when Parliament replaced a five member committee with the current three member committee (see the *Legal Aid Commission Amendment Act 2000 (NSW)*).
- *Effect upon relationship with wider legal profession and community*
  - The three-member committee fosters a special relationship between Legal Aid NSW, the legal profession and the wider community, who currently enjoy representation on the committee

together with a representative chosen by the State Attorney General. The adoption of a single person review model would affect this relationship, because equality of representation in each appeal would no longer be possible.

- *Remuneration*
  - It is worth noting that unlike NSW, where members of LARC Committees are volunteers, Victoria and Queensland, the only two jurisdictions which currently use a single person review model, both pay their external reviewers. Remunerating reviewers is something that NSW would have to consider if it chose to adopt the single person review model. While there is no reason why a single reviewer would necessarily have a more onerous job in terms of the number of appeals to decide than a LARC Committee member currently does, s/he would not have the benefit of external input from other members when making a decision. Therefore the responsibility of the role is arguably greater. Not only would paying external reviewers for their services be costly to Legal Aid NSW, it would also create difficulties in terms of procedural fairness. The reviewer would effectively become an employee of Legal Aid NSW (the original decision-maker) and the impartiality of the process would therefore be compromised.

#### **4.1.4 Discussion**

A three person committee system with voluntary committee members guarantees a level of procedural fairness that a single person review system cannot guarantee. It also fosters important ties between Legal Aid NSW and those parts of the legal profession and wider community who are represented on the three-member committee.

While certain resource and delay disadvantages must be endured to ensure the system is a fair one, most of the issues that Deloitte and the NSW Auditor-General have raised can be addressed using methods that do not discard the three-person committee model.

When considering replacing the committee model with a single person review model one should also be aware that when it was decided what bodies' decision-making processes would be subject to review by the Administrative Decisions Tribunal, Legal Aid NSW decisions were excluded because it already used an independent review committee.

Since the Deloitte and NSW Auditor-General audits were conducted, a number of new procedures have already been implemented to improve the current appeals process. For example, LARC members now record their decisions at the meeting on a Resolution of Appeal form, which means that the LARC Secretariat no longer has to prepare minutes and circulate those minutes to Committee members in order to confirm the precise nature of the decision.

Other means of addressing the resource and delay issues of the current system are explored later in this paper and in Stage 2 of the review.

Recommendation 1: That the current three-member Legal Aid Review Committee model is maintained as opposed to opting for a single person review model.

## **4.2 The Administration and Processing of Appeals**

The other observations and recommendations of the Deloitte and NSW Auditor-General audits relate to how Legal Aid NSW appeals are currently administered and processed.

### **4.2.1 Lodgement and Tracking of Appeals**

The appeal process starts once a person applying for legal aid or a legally assisted person receives, in writing, a letter notifying them about a:

- determination of legal aid
- variation of legal aid
- redetermination of legal aid
- redetermination of a variation, or
- decision to decline payment of whole or any part of costs ordered against legally assisted clients.

A person has 28 days to appeal a decision, starting from the date s/he receives the notice of right of appeal (Policy Online 12.4.4). The LARC may extend the time for an appeal if satisfied that there are special circumstances; for example, where the applicant or legally assisted person has a medical condition that prevents them from completing the appeal on time (Policy Online 12.4.4). The application to appeal must be in writing and can either be lodged by filling out an appeal form or writing a letter to the LARC setting out the ground(s) on which the appeal is being made (Policy Online 12.4.2).

The completed appeal form or letter is usually not sent directly to the LARC, but may be received by<sup>4</sup>:

- the solicitor the appellant had previous dealings with
- the Grants Division
- the Legal Aid regional office near where the appellant lives
- Head Office, or
- the LARC Secretariat

If the appeal is received by the LARC Secretariat, the details are registered. The Secretariat enters the appeal details into a table created in the LARC drive which is only accessible by the LARC Secretariat, and then sends the appeal to Grants. If the application is received directly by the Grants Division or one of the practice groups, it is recorded in the Grant's LARC appeals register on the P Drive by the records staff on Level 4. If the appeal is received by a Legal Aid NSW regional office, however, the paper copy is stamped on receipt but it is not recorded on a central system upon receipt.

As noted by Deloitte, there is currently no formal process to:

- Ensure that all appeals received within Legal Aid NSW are registered and tracked; and
- Ensure that all appeals received are forwarded to the LARC before a report is prepared by the appropriate officer.

#### **4.2.1.1 ATLAS Module**

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<sup>4</sup> see Guideline 6.2.1

Currently a module for redeterminations, variations and LARC reviews is being developed on the ATLAS system. Listed below are some of the features of this module:

- All appeals received can be registered on the centralised ATLAS database. Therefore there will be no need to physically forward all appeals to the LARC Secretariat before a report is prepared, as Deloitte recommends.
- If an appeal is submitted out of the 28 day time period, the system highlights this fact and requires an “Out of Time Review Reason” to be recorded.
- Access to review processes is controlled by distinguishing between users who have the authority to make certain review decisions and those who do not.
- Templates exist for Acknowledgment, Outcome (both at redetermination stage and LARC decision stage), and Appeal letters, with drop down pick-lists, and the capacity to add free-form text if desired.
- Remote access for LARC members can be made available so that they can access the appeal papers electronically. This will reduce the amount of photocopying required by the LARC Secretariat. It is anticipated that not all LARC members will prefer to access appeal documents electronically. For this reason, the LARC Secretariat should still offer the service of photocopying appeal papers for members if they so request.
- The system also enables legal practitioners to lodge appeals electronically, which will reduce the number of applications received by post and therefore the time currently taken by Legal Aid NSW staff to register such applications. It is anticipated that in the future, clients will also be able to lodge appeals electronically.
- ATLAS captures data about the appeals process so that the following information can be accessed:
  - What stage of the appeal process a live file is at
  - How many appeals there are per month/year
  - How many are redetermined/varied and how many continue onto a LARC (currently the number of redeterminations and variations is not recorded at all)

- How many appeals are withdrawn at each stage
- How many family/civil/criminal appeals there are
- How many appeals are allowed/disallowed/deferred
- The length of time between receipt of appeal and date of reconsideration
- The length of time between receipt of appeal and date of LARC determination

This will assist Legal Aid NSW to monitor and audit the appeals process.

#### **4.2.1.2 Interim measures**

ATLAS will go live in March 2009. It is recommended that in the interim the following processes are put into place:

- That LARC members are given a Citrix key that enables them to access appeal documents electronically in a folder on the Legal Aid NSW computer system without enabling them to access the parts of the system that do not concern the LARC.
- That all appeals, once received, are registered on LA Office as “appeal pending”. Currently different practice groups have different ways of registering appeals. The LARC Secretariat only registers appeals on LA Office once a determination has been made. If all appeals are registered on LA Office from the time of receipt this would: enable all staff to access information regarding a pending appeal; facilitate statistical analysis; and establish a procedure that can be transferred to ATLAS once introduced. Details could be updated throughout the appeals process using the following procedure:

##### *Steps to Registering an Appeal*

##### When an appeal is first received:

1. Open LA Office
2. Choose “Case Inquiry”
3. Type in the file number
4. Choose “Reviews” tab at bottom of screen
5. In the first box, select “reconsideration”
6. In the second box, for “reviewed by”, select name of legal officer
7. In the third box, complete relevant details. For “decision” choose “appeal pending”.

Once an appeal is redetermined/varied:

1. Open LA Office
2. Choose “Case Inquiry”
3. Type in the file number
4. Choose “Reviews” tab at bottom of screen
5. In the first box, select “review”
6. In the second box, for “reviewed by”, select “Review Committee” (this selection is currently not an option but Mary Whitehead advises it would be a simple task to make this an option.)
7. In the third box, complete relevant details. For “decision” choose “appeal pending”.

Once the appeal is received by the LARC Secretariat, the Secretariat can update LA Office with details of the relevant Review Committee and the anticipated date of appeal.

Recommendation 2: That the new ATLAS module enabling the registration of appeals is employed to streamline and monitor the appeals process.

Recommendation 3: That LARC members are given remote electronic access to appeal documents to decrease the number of paper documents needed for each LARC meeting.

Recommendation 4: That prior to the introduction of ATLAS, LARC members are given electronic access to appeal documents by use of a Citrix key.

Recommendation 5: That prior to the introduction of ATLAS, all appeals, once received, are immediately registered on LA Office as “appeal pending” and that this record is updated as the appeal progresses.

#### **4.2.2 Timeframes**

Currently, once an appeal form or letter of appeal is received by Legal Aid NSW, there are no set timeframes to:

- acknowledge receipt of the client’s appeal form or letter and register its receipt;
- conduct an internal review;
- prepare and send a report to the LARC secretariat for LARC review;
- prepare for the LARC meeting;
- table the LARC decision; and

- notify the client of the outcome of the decision

The time taken by Legal Aid NSW staff to prepare an appeal report for LARC review varies widely, both within the same section and between different sections of Legal Aid NSW. A random check of files conducted in 2006 revealed that the timeframe for preparing reports in 2005 ranged from 1 to 81 working days, with a median time of 13 working days. A recent random check of appeal matters heard by a LARC in November or December 2007 revealed that the timeframe for preparing reports at the end of 2007 ranged from 2 working days to 162 (not including an unusual case of just over 1 year), with a median time of 13 working days.

The time lapse between the LARC Secretariat receiving an appeal and that appeal being determined by a Committee ranged from 2 to 26 working days, with a median time of 10 working days. A deferral by a Review Committee could lengthen the appeal process by as many as 114 working days. For further details see [Appendix A](#).

Due to the nature of the appeals process, it is difficult to set stringent timeframes. Delays can occur, for example, if at any stage of the appeal process the appeal is deferred to obtain further information from the applicant. The delay will be particularly lengthy if an application is deferred for this reason at the LARC Committee stage, because when possible an effort is made to have the matter reconsidered by the LARC which originally considered it (Guideline 6.6). Therefore often a matter will not proceed until that particular Review Committee sits again. Each Family LARC sits once a month and each Civil/Criminal LARC sits only once every six weeks.

The amount of time it can take to process an appeal will also depend upon what stage in the meeting cycle the appeal reaches the LARC Secretariat. The deadline for receipt of appeals is the Monday of the week prior to the Review Committee meeting. On that Monday the LARC Secretariat prepares and circulates the Agenda for meetings (see Guideline 6.4). The Secretariat will endeavour to place any urgent matters on the next appropriate LARC

agenda provided that it is received at least 48 hours before the next meeting (see Guideline 6.5). So if, for example, a Criminal Law appeal arrives at the LARC Secretariat less than two days before the next Criminal/Civil Law LARC committee meeting, it is too late to add it to the next meeting agenda and the matter is not considered by a committee for another 12 working days. If, on the other hand, the application arrives just prior to the agenda being settled, the matter is considered within two or three days.

Nevertheless, it is important to have recommended timeframes as a guide, in order to improve the time in which decisions are made and appellants notified. It is recommended that the timeframes set out in the process chart at [Appendix B](#) are established as the recommended timeframes for the appeals process. They are also set out below. Note that these timeframes relate to business days only and do not include weekends or public holidays.

#### *Redetermination/Variation Stage (Internal Review)*

- Appeal received (Day 1)
- Appeal registered on electronic appeals register (Day 2)
- Appeal sent to appropriate officer for review. Officer sends letter of acknowledgment to client (Day 3)
- Internal review (Days 4-8)
- Review finalised and client notified of result in a letter, regardless of outcome. If matter to be referred to LARC, letter to set out LARC appeal process. (Days 9-10)

If the internal reviewer agrees with the original decision-maker, the matter proceeds to the LARC appeal stage.

#### *LARC Appeal Stage*

- Preparation of Report for LARC Committee (Days 1-4)
- Report sent to LARC Secretariat (Day 5)
- Report received by LARC Secretariat (Day 6)

- Report added to Committee agenda, members' attendance confirmed, appeal documents/files photocopied and then sent to LARC members (Days 7-17)
- LARC meeting (Day 18)
- Client/practitioner/legal officer notified of outcome of appeal. Result letters and meeting minutes typed and appeal documents returned to relevant section (Days 19-20)

#### **4.2.2.1 Notifying appellants**

Currently appellants are given no indication of how long the appeal process will take. And while applicants are informed if the internal review process has resulted in a changed decision, it is not uniform practice to inform clients of the result of the internal review where the result is that the matter is referred to a LARC.

It is recommended that when an appeal has been internally reviewed and then referred to a LARC, a client is notified of this decision. This procedure is followed by Legal Aid Queensland, which contacts the applicant once a matter has been referred to an external review officer and advises the applicant of the date of the review.<sup>5</sup> South Australia, the Northern Territory, Western Australia and Victoria also follow this procedure; although in these jurisdictions the difference is that a person is required to make a second application if dissatisfied with the outcome of the internal review, rather than having his or her application automatically referred for external review.

Notification after internal review is important for a number of reasons. Section 34(2) provides: "The Commission shall give notice to the applicant of the determination *or redetermination* of the application as soon as practicable (and in any case not later than 14 days) after the determination *or redetermination* is made" [emphasis added]. Notification also enhances the transparency of the appeals process. Furthermore, if appellants are made

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<sup>5</sup> See Legal Aid Queensland's Grants Handbook, Internal Review Procedures Chapter, online at <http://grantshandbook.legalaid.qld.gov.au>

aware that an appeal can involve a number of different steps, they are more likely to understand the likely timeframes involved.

Notice to appellants of the results of an internal review should, in the case where the appeal has been referred to a LARC, include an estimate of how long the process will take. The notification should also explain that in certain circumstances an appeal might be delayed, for example if additional materials are required from the client.

The additional work involved in notifying an applicant that his or her appeal has been referred to a LARC will be minimal because a standard letter can be used.

Recommendation 6: That Legal Aid NSW implements the timeframes recommended in Appendix B as a guideline for the completion of discrete stages in the appeal process.

Recommendation 7: That Legal Aid NSW establishes a policy of notifying appellants of the result of the internal review where a matter has been referred to a LARC. Notification should also include an estimate of the time it will take for the appeal to be processed, and potential causes of delay.

### **4.3 LARC Secretariat**

#### **4.3.1 Secretariat Staff**

Since 2000 there has been only one permanent employee of the LARC Secretariat: a Clerk who has had sole responsibility for managing and coordinating all pre and post preparation for LARC meetings. This position has been graded as a 5/6 Clerk since 2005 (prior to this time it was a 3/4 position).

There is generally one Committee meeting per week and a total of 48 meetings every year. An average of 15-25 appeals are considered at each meeting. Should Recommendation 1 of this review be approved, this will continue to be the case. In the 2006-2007 financial year, the LARC Secretariat

processed a total of 823 appeals. For further details about the number of appeals heard by a LARC each year for the last five years, see Appendix C.

Preparation before and after each meeting involves extensive administrative work including: preparing labels and documents for each Committee member; arranging and preparing files for photocopying by Operational Support; preparing meeting agendas; arranging for the distribution of material to Committee members; obtaining urgent decisions by teleconference (in addition to the sittings) as the need arises; drafting Committee resolutions; informing clients in writing of Committee decisions; summarising and recording the resolutions on the LA Office; attending to incoming mail on a daily basis; handling inquiries and complaints in respect of decisions reached by the Committees including making referrals to LawAccess and pro bono legal services; conducting annual audits of outstanding deferred appeals; and reporting on LARC activities for the Annual Report.

The LARC Secretariat is also required to attend each Committee meeting and has the responsibility for ensuring that: all LARC resolutions are recorded; appellants and the relevant legal officer are informed in writing of LARC decisions; resolutions are recorded on Legal Aid NSW's database (LA Office), files are returned and their movements are recorded on LA Office.

The Committee coordination and management tasks need to be carried out for each Committee meeting. With a meeting every week the preparation for the next meeting must begin before the Secretariat completes the processes for the last meeting.

Having no Secretariat back-up also has the potential to compromise the appeal process when the Committee Clerk is absent due to illness or other leave. This is of particular concern when an appeal requires an immediate decision to be made. For example, if an appeal concerns a decision regarding a grant of Legal Aid for representation at a sentencing hearing scheduled in two days time for a serious indictable offence.

Although the introduction of ATLAS will streamline the appeals process to some extent, there will still be demands to schedule and prepare meetings, as outlined above. Adopting stricter timeframes as in Recommendation 6 also makes it important to have staff available at all times. Another consideration is the provision of a succession plan. Having an additional staff member on the LARC Secretariat ensures that someone is already trained in Committee processes should the 5/6 Clerk leave the position.

In the past a Clerk 1/2 employed within the Publications Unit provided some administrative assistance to the LARC Secretariat. This assistance ended on 11 May 2007, which left the Committee Clerk with no support. On 7 January 2008 a 3/4 Clerk was appointed to provide administrative assistance, but only on a temporary basis.

It is recommended that Legal Aid NSW employ a 3/4 Clerk on a permanent basis to work in LARC. The Clerk would assist the LARC Secretariat to coordinate and manage the Committee processes. This would enable the LARC Secretariat to meet the proposed stricter timeframes.

The appointment of another permanent staff member will also eliminate the difficulties of finding available and trained staff to assist the Secretariat at short notice in the event that the Committee Clerk is absent.

<p><b>Recommendation 8:</b> That a 3/4 Clerk be permanently employed to assist the currently employed 5/6 Clerk in the LARC Secretariat coordinate and manage the Committee processes and assist with special LARC projects as required.</p>
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#### **4.3.2 Location of LARC Secretariat**

In 2003 LARC moved from being situated in the Grants Division to the Legal Policy Branch within the Strategic Planning and Policy Division. The position was relocated to improve the independence of LARC from the original decision makers in the Grants Division.

The LARC's independence from the original decision making process remains a key priority and the Secretariat should continue to be situated on Level 20. This location also provides easy access to Legal Policy Officers who assist the Secretariat with policy advice.

Recommendation 9: That LARC continue to be located within the Strategic Planning and Policy Division to maintain its independence from the original decision makers.

### **Comments**

Comments and submissions on the issues raised in the Paper should be sent to:

Erin Gough  
Senior Policy Officer, Legal Policy Branch  
Strategic Planning and Policy Division  
Legal Aid NSW  
Erin.Gough@legalaid.nsw.gov.au

## **APPENDIX A: Random Selection of LARC Files, Nov-Dec 2007**

### **Civil Matters**

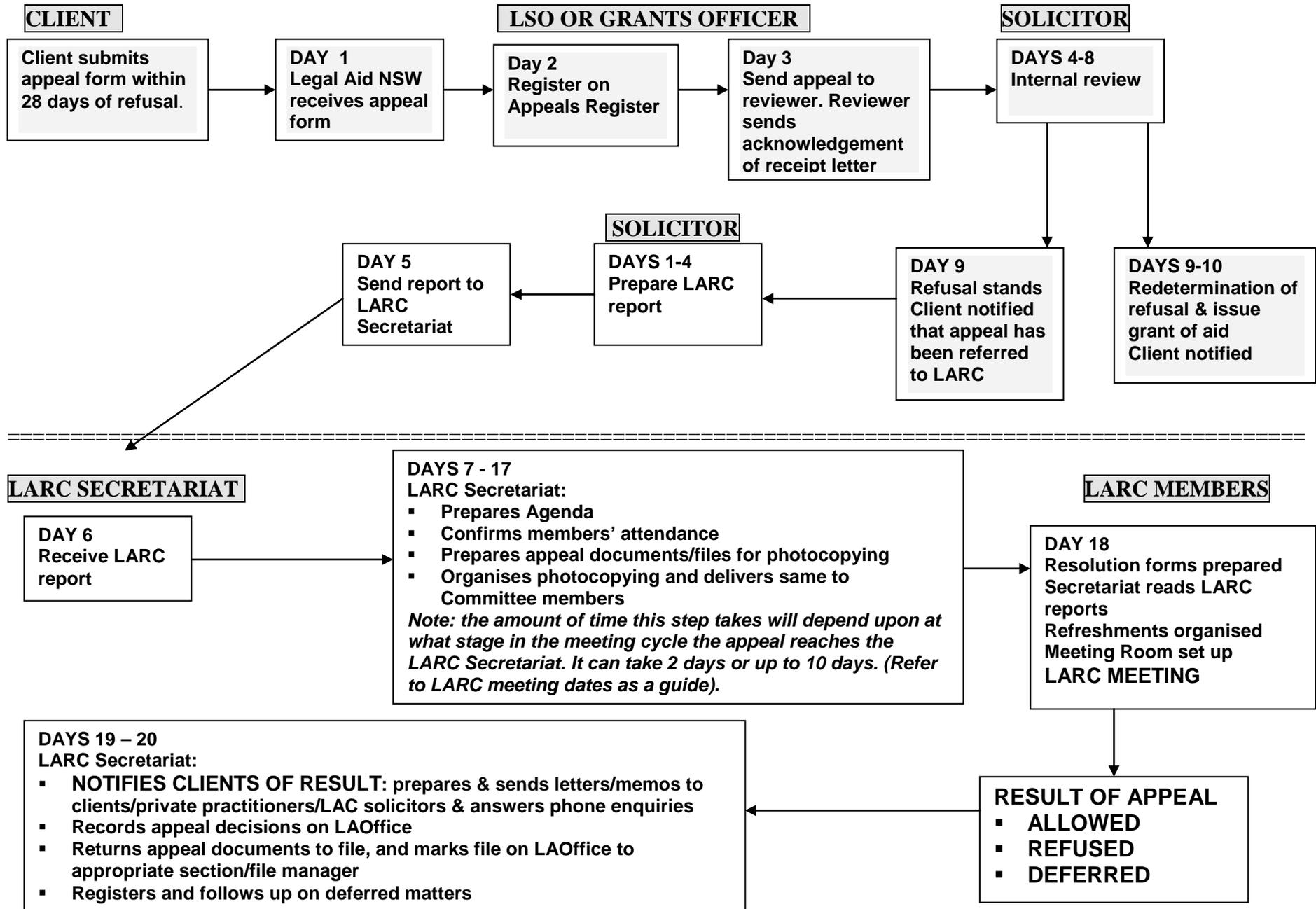
<b>File</b>	<b>Time (in working days) between receipt of appeal by Legal Aid NSW &amp; receipt of appeal by LARC Secretariat</b>	<b>Time (in working days) between receipt of appeal by LARC Secretariat and determination of appeal by Review Committee</b>	<b>If deferred, time (in working days) between first LARC meeting and final determination</b>
1	18	14	
2	4	11	
3	84	6	
4	9	5	
5	12	18	60 for first deferral. Deferred again. Ongoing.
6	10	10	114 for first deferral. Deferred again. Ongoing.
7	3	6	
8	9	6	
9	9	7	
10	9	10	50
11	4	7	55
12	15	8	
13	2	10	
14	8	10	
15	11	14	
16	76	6	
17	12	5	
18	3	2	Still awaiting determination after deferral

## Family Matters

File	Time (in working days) between receipt of appeal by Legal Aid NSW & receipt of appeal by LARC Secretariat	Time (in working days) between receipt of appeal by LARC Secretariat and determination of appeal by Review Committee	If deferred, time (in working days) between first LARC meeting and final determination
1	19	26	
2	50	20	
3	18	20	
4	14	13	
5	8	17	
6	22	20	
7	19	20	
8	19	17	
9	14	17	
10	41	15	30
11	9	8	
12	54	7	78
13	7	17	
14	29	7	Still awaiting determination after deferral
15	15	8	
16	10	8	
17	162	7	Still awaiting determination after deferral
18	2 weeks short of 2 years	12	Still awaiting determination after deferral

## APPENDIX B - TIMELINE FOR APPEALS PROCESS – 30 BUSINESS DAYS (6 WEEKS)

*REDETERMINATION – 9-10 BUSINESS DAYS LARC APPEAL – 20 BUSINESS DAYS*



**APPENDIX C: Number and Type of LARC Appeal Applications in the Last Five Years**

**Total appeal applications received and determined for 2002/3-2006/7**

<b>Appeals allowed</b>	<b>741</b>
<b>Appeals disallowed</b>	<b>3324</b>
<b>Appeals withdrawn</b>	<b>77</b>
<b>TOTAL</b>	<b>4142</b>

**Appeal Applications for 2006-2007**

	<b>Appeals Allowed</b>	<b>Appeals Disallowed</b>	<b>Appeals Withdrawn</b>	<b>Appeals Deferred</b>	<b>Total</b>
<b>Family Law</b>	65	311	25	14	415
<b>Criminal Law</b>	52	211	8	3	274
<b>Civil Law</b>	13	105	12	4	134
<b>Total</b>	130	627	45	21	823

**Appeal Applications for 2005-2006**

	<b>Appeals Allowed</b>	<b>Appeals Disallowed</b>	<b>Appeals Withdrawn</b>	<b>Appeals Deferred</b>	<b>Total</b>
<b>Family Law</b>	72	370	2	26	470
<b>Criminal Law</b>	58	192	3	6	259
<b>Civil Law</b>	7	114	3	11	135
<b>Total</b>	137	676	8	43	864

### Appeal Applications for 2004-2005

	Appeals Allowed	Appeals Disallowed	Appeals Withdrawn	Appeals Deferred	Total
Family Law	81	377	8	36	502
Criminal Law	76	201	3	19	299
Civil Law	8	114	3	16	141
<b>Total</b>	165	692	14	71	942

### Appeal Applications for 2003-2004

	Appeals Allowed	Appeals Disallowed	Appeals Withdrawn	Appeals Deferred	Total
Family Law	66	305	2	20	393
Criminal Law	64	193	3	22	282
Civil Law	25	148	1	32	206
<b>Total</b>	155	646	6	74	881

### Appeal Applications for 2002-2003

	Appeals Allowed	Appeals Disallowed	Appeals Withdrawn	Appeals Deferred	Total
Family Law	65	207	2	22	296
Criminal Law	74	316	2	16	408
Civil Law	15	160	0	46	221
<b>Total</b>	154	683	4	84	925