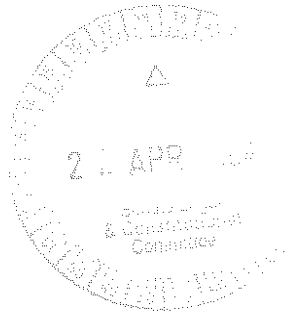


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**Australian Government**  
**Attorney-General's Department**

**Family Law and  
Legal Assistance Division**



04/3378

*20* April 2004

Mr Philip Bailey  
Principal Research Officer  
Senate Legal and Constitutional Committee  
Room S1.61  
Parliament House  
Canberra ACT 2600

Dear Mr Bailey

**Previous negotiations and the funding model factor**

I attach responses to two further questions on notice taken at the 9 February 2004 hearing of the Senate Legal and Constitutional Committee's Inquiry into Legal Aid and Access to Justice. These responses relate to previous negotiations and the funding model factor – people from non-English speaking backgrounds.

If you have any questions about these responses please direct them to myself, Philippa Lynch on (02) 6250 6883 or Garry Burlingham, Director, Legal Aid Program Section (02) 6250 5602.

Yours sincerely

Philippa Lynch  
First Assistant Secretary  
Family Law and Legal Assistance

**Question 1 (to Ms Lynch) (p.11, proof Hansard)**  
 Funding model factor – people from non-English speaking backgrounds

**Ms Lynch**—I accept Victoria's comment that the figures in the data in the model suggest that there were more males than females, which may not in fact have been the case. Originally when it was raised with us—and I think this is noted in the submission—Victoria thought that might have been a problem caused by the interpolation of the data from the ABS statistics, which are based on five-year age groups, into the different age groups for identifying legal aid recipients. As I have said, I think Victoria at one stage may have been suggesting that the figures had been swapped between male and female or that only male figures had been used. We have looked at the original 1999-2000 model and that does not appear to be the base but we are left with the fact that the data does suggest what they suggest, which is that there are more males than females. According to the report of the model, those figures were taken from an ABS database at the time.

**CHAIR**—What about people from a non-English-speaking background?

**Ms Lynch**—I think the issue there is that the model used is a Commonwealth Grants Commission definition of 'non-English-speaking background' because the methodology used to develop the model paralleled that used by the Commonwealth Grants Commission in determining its general revenue grants relativities. I also understand that, at the time the model was introduced, issues about the NESB data were raised, and Mr Walker checked the data and advised that he thought the figures used were correct in relation to NESBs. I am happy to take that on notice and look further into it for you.

Victoria in its submission expressed concern that the legal aid funding model uses a Commonwealth Grants Commission (CGC) definition of non-English speaking background (NESB) that undercounts the NESB population in each State and Territory.

The socio-economic composition factors used in the model are based on those described in the CGC general revenue grants working papers. Different weightings and variables are used by the CGC to reflect the additional costs of providing services to groups in the community such as Aboriginals and Torres Strait Islanders and people from non-English speaking backgrounds, including the costs of providing interpreters and cultural specialists.

The legal aid model is based on the CGC approach for Administration of Justice. Although the model uses the term NESB, it uses a definition of people with low English fluency, not a definition of NESB. The definition used is the same as the one used by the ABS in the 1996 Census. CGC staff have advised that low English fluency provides a more accurate reflection of the additional cost of providing legal aid services to this group. Many people from non-English speaking backgrounds are fluent in English and providing services to them will not cost as much providing services to those who are not fluent (eg they will not need interpreters).

In evidence to the Committee I suggested that when issues were raised about NESB population data Mr Walker checked the data and advised that he thought the figures used were correct. In fact, there was a query by the Northern Territory about whether the weightings for the NESB and Aboriginal and Torres Strait Islander populations had been reversed. Our records show that the Department checked this with Mr Walker who advised that the weightings had not been reversed. The Northern Territory also asked that the factors and weightings used in the model be checked to ensure they were current. Our records show that Mr Walker confirmed at a meeting with commissions on 9 February 2000 that he had contacted the CGC prior to finalising his work on the model and that the weightings/factors were still current at that time.

## Question 2 (To Ms Lynch) (p.15, *Proof Hansard*)

Previous negotiations

**Senator LUDWIG**—How long is it envisaged that the negotiations will take, given past practice? How long did they take last time?

**Ms Lynch**—I think that it varied a bit between commissions. I was not involved in those discussions last time. I am happy to take that on notice.

The Australian Government foreshadowed the negotiation of the current four year legal aid funding agreements on 24 September 1999 when the former Attorney-General the Hon. Daryl Williams AM QC MP wrote to all jurisdictions advising of his intention to replace the legal aid agreements scheduled to expire on 30 June 2000.

This advice was followed by a letter from the Attorney-General's Department in December 1999 to each jurisdiction which advised of the Commonwealth's funding offer for each year of the 2000-04 agreements. This letter initiated the re-negotiation process and by the end of March 2000, with the exception of the ACT, all jurisdictions had commenced discussions with the Commonwealth. Agreements were signed as follows:

Queensland	23 June 2000
NSW	14 August 2000
South Australia	12 October 2000
Northern Territory	18 October 2000
Tasmania	07 November 2000
Western Australia	09 January 2001
Victoria	29 July 2001
ACT	14 September 2001

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