



Law and Justice Foundation of NSW response to the draft report of the Productivity Commission inquiry into *Access to Justice Arrangements*

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Enquiries:

Geoff Mulherin
Director
Law and Justice Foundation of NSW



The expertise of the Foundation

The purpose of the Law and Justice Foundation of NSW (the Foundation) is to advance the fairness and equity of the justice system, and to improve access to justice, especially for socially and economically disadvantaged people. The Productivity Commission's draft report into Access to Justice Arrangements already draws heavily on the Foundation's research into access to justice and legal need, and what works to address that need.

In this response the Foundation has focused its comments on those recommendations, findings and information requests concerning the nature of unmet legal need, the access to justice barriers facing disadvantaged individuals experiencing the disproportionate burden of legal need, and the effectiveness of strategies to address this need. The Foundation has also drawn upon its research and evaluation expertise specific to strategic decision making in the legal assistance sector.

Evidence-based practice

Investment in rigorous research to inform the development of strategies and the evaluation of new access to justice initiatives is essential to better inform the optimal allocation of limited resources and best practice service provision (see Coumarelos et al. 2012, Chapter 10; Pleasence et al. 2014, Chapter 7; Forell & McDonald 2013).

However, systemic review of evidence undertaken by the Foundation to date as part of its dedicated 'what works' research strategy has also revealed substantial gaps in knowledge and a paucity of evidence establishing what is effective policy intervention and service provision (see Digiusto 2012; Forell & Gray 2009; Forell, Laufer and Digiusto 2001). Further, the culture and practice of monitoring, evaluation and rigorous evidence-based practice across the institutions of the justice sector and across Australian institutions is embryotic. Justice sector institutions typically have poor evaluation capability as most have little or no evaluation resources or experience. As such, a strategic approach is required to build shared evaluation practice and culture. This is likely to require some resources to encourage and support not only shared purpose, but also a consistent and common understanding of key concepts and how they can be operationalised and measured.

The Foundation welcomes initiatives to promote the collection, analyses and sharing of 'what works' lessons, and supports more widespread efforts to encourage and foster a culture of evaluation and joined-up learning. Policy makers, service providers and researchers need to collaborate and coordinate efforts to improve understanding of effective practice.



A framework for moving forward

In its recent discussion paper *Reshaping Legal Assistance Services: Building on the Evidence Base* (Pleasence, Coumarelos, Forell & McDonald, 2014) the Foundation has drawn upon the previous decade of international research into access to justice and legal need to articulate and explore a conceptual framework for future service delivery. *Reshaping Legal Assistance Services* identified the importance of targeted, joined-up, timely and appropriate services in meeting unmet legal need, noting the concentration of this need among the most disadvantaged with the least capability. Chapter 7 of the report summarises the conceptual framework for the development of future planning, policy, practice and research.

Further references

Coumarelos, C, Macourt, D, People, J, MacDonald, HM, Wei, Z, Iriana, R & Ramsey, S 2012, Legal Australia-Wide Survey: legal need in Australia, Law and Justice Foundation of NSW, Sydney

<http://www.lawfoundation.net.au/ljf/app/&id=FC6F890AA7D0835ACA257A90008300DB>

Digiusto, E 2012, *Effectiveness of public legal assistance services: a discussion paper*. Justice Issues Paper 16, Law and Justice Foundation of NSW, Sydney

<http://www.lawfoundation.net.au/ljf/app/&id=18C587ECBD959D50CA257A91001F76F0>

Forell, S & Gray, A 2009, *Outreach legal services to people with complex needs: what works?* Justice Issues Paper 12, Law and Justice Foundation of NSW, Sydney

<http://www.lawfoundation.net.au/ljf/app/&id=69EBF819BDD1BB8BCA25766A0082208C>

Forell, S Laufer, M & Digiusto, E 2011, *Legal assistance by video conferencing: what is known?* Justice Issues Paper 15, Law and Justice Foundation of NSW, Sydney

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Forell, S & McDonald, HM 2013, *Planning, monitoring and evaluating outreach: a framework*, Law and Justice Foundation of NSW, Sydney.

Pleasence, P, Coumarelos, C, Forell, S & McDonald, H 2014 *Reshaping Legal Assistance Services, Building on the Evidence Base: A Discussion Paper* Law and Justice Foundation of NSW, Sydney

[http://www.lawfoundation.net.au/ljf/site/templates/reports/\\$file/Reshaping_legal_assistance_services_web.pdf](http://www.lawfoundation.net.au/ljf/site/templates/reports/$file/Reshaping_legal_assistance_services_web.pdf)



Chapter 2: Exploring legal needs

DRAFT FINDING 2.1

Based on the most recent data, around 17 per cent of the population had some form of unmet legal need that related to a dispute that they considered substantial.

The Foundation is concerned about the definition and operationalisation of these figures, which are drawn from the Foundation's LAW Survey data. The Foundation will respond separately regarding the reported interpretation of the LAW Survey Data, and in particular, the difficulties in using the LAW Survey data to accurately estimate unmet legal need.

Chapter 2 of *Reshaping Legal Assistance Services* (Pleasence et al 2014) provides an overview of core Australian and international legal need and access to justice research findings, as they pertain to the direction for future policy, practice and ongoing research.

Reference

Pleasence, P, Coumarelos, C, Forell, S & McDonald, H 2014 *Reshaping Legal Assistance Services, Building on the Evidence Base: A Discussion Paper* Law and Justice Foundation of NSW, Sydney
[http://www.lawfoundation.net.au/ljf/site/templates/reports/\\$file/Reshaping_legal_assistance_services_web.pdf](http://www.lawfoundation.net.au/ljf/site/templates/reports/$file/Reshaping_legal_assistance_services_web.pdf)

DRAFT FINDING 2.2

Informal dispute resolution mechanisms such as ombudsmen could be better employed to address a significant share of unmet legal need, potentially reducing the proportion of the population with unmet legal need from 17 per cent to less than 5 per cent.

The Law and Justice Foundation of NSW will respond separately regarding the reported interpretation of the LAW Survey Data.

Ombudsmen and tribunals tend to be issue specific, while research indicates that disadvantaged individuals are vulnerable to multiple and complex legal and other issues. This disjuncture should be factored into strategies to improve access to such services.

In Chapter 6 of *Reshaping Legal Assistance Services* (Pleasence et al, 2014) the Foundation outlined how lower personal capability may adversely affect the success of disadvantaged individuals in particular, in addressing their legal issues. Legal assistance services, institutions *and* informal mechanisms of dispute resolution all need to engage with both the complex needs and the lower capability of some clients and users.

Reference

Pleasence, P, Coumarelos, C, Forell, S & McDonald, H 2014 *Reshaping Legal Assistance Services, Building on the Evidence Base: A Discussion Paper* Law and Justice Foundation of NSW, Sydney
[http://www.lawfoundation.net.au/ljf/site/templates/reports/\\$file/Reshaping_legal_assistance_services_web.pdf](http://www.lawfoundation.net.au/ljf/site/templates/reports/$file/Reshaping_legal_assistance_services_web.pdf)



Chapter 5: Understanding and navigating the system

INFORMATION REQUEST 5.1

The Commission seeks feedback on the likely effectiveness and efficiency of extending the use of legal health checks to those groups identified as least likely to recognise problems that have a legal dimension. More vulnerable groups include people with a disability, sole parents, homeless people, public housing tenants, migrants and people dependent on income support.

Where greater use of legal health checks is deemed appropriate, information is sought on who should have responsibility for administering the checks. What role should non-legal agencies that have regular contact with disadvantaged clients play? Do these organisations need to be funded separately to undertake legal health checks?

The effectiveness of a legal health check conducted by non-legal workers that have regular contact with disadvantaged clients is based on a number of assumptions, including that:

- non-legal *workers* have the legal capability (see *Reshaping Legal Assistance Services* Pleasence et al, 2014 Chapter 6 p.130-138) to accurately identify the legal needs of their clients and refer appropriately
- non-legal services have the resource capacity to undertake such checks
- there are accessible and appropriate legal services available to refer clients to, once a legal health check has been conducted. Evidence (see following) indicates that legal health checks are effective as part of an integrated service system
- the client is able and ready to use the assistance provided (see *Reshaping Legal Assistance Services* Pleasence et al, 2014 Chapter 5 pp. 105-106 on readiness to act, and Chapter 6 on Capability)

The accuracy of these assumptions, and the resulting effectiveness and efficiency of the legal health check as a tool to identify and address the legal needs of the most vulnerable, can be assessed with ongoing research, monitoring and evaluation. The Foundation is interested in further exploring these assumptions, particularly the baseline capability of non-legal workers to identify legal need among their clients and how to effectively refer clients. This could be undertaken as part of ongoing LAW Survey work (see response to recommendation 24.3).

There has already been some evaluation undertaken of screening tools to identify legal issues. The I-HELP screening tool is one of the first legal health checks developed, and may provide useful guidance about the value of legal health checks and the key features of their use related to beneficial outcomes. The I-HELP tool has been used fairly extensively in the United States within the medical-legal partnership (MLP) model. MLPs typically involve the delivery of legal services within health care settings. In this context, the I-HELP tool has normally been used by health care workers to screen patients for unmet legal and other needs in the areas of Income supports, Housing and utilities, Education and employment, Legal status (e.g. immigration) and Personal and family stability. Patients ‘diagnosed’ with legal needs are then referred to lawyers who provide legal advice within the health care setting. There is some evidence that this model can have considerable benefits, with a number of the studies evaluating MLPs in the United States reporting economic returns on the investment to provide legal assistance in health care facilities (Beeson, McAllister & Regensten 2013;



Pettignano, Caley & McLaren 2012; Rodabaugh, Hammond, Myszka & Sandel 2010; Teufel, Werner, Goffinet, Thorne, Brown & Gettinger 2012) (For publication details of these references, see Coumarelos, C, Pleasence, P & Wei, Z 2013, Law and disorders: illness/disability and the experience of everyday problems involving the law, Justice Issues, no. 17, Law and Justice Foundation of NSW, Sydney.)

The use of the I-HELP tool appears to work well because it is part of an integrated strategy (the MLP model) rather than a stand-alone tool. MLPs rely on strong partnerships between health and legal workers, which aim to transform health and legal practices and institutions. The use of the I-HELP tool is supported via training of frontline health workers to use the tool for screening and referring patients with legal needs, and is only one component of a coordinated service involving joint data tracking of legal and health information and provision of evidence-based recommendations to improve service delivery and to influence policy change.

QPILCH (Queensland Public Interest Law Clearing House) have developed a Legal Health Check tool as part of their Homeless Persons' Legal Clinic (HPLC). See <http://www.qpilch.org.au/cms/details.asp?ID=692>. Again, the Legal Health Check is part of a coordinated response to addressing the legal needs of homeless people, and links directly to the HPLC.

The use of legal health checks in the Australian context should be accompanied by appropriate monitoring and evaluation to determine their utility and inform their improvement.

References

Pleasence, P, Coumarelos, C, Forell, S & McDonald, H 2014 *Reshaping Legal Assistance Services, Building on the Evidence Base: A Discussion Paper* Law and Justice Foundation of NSW, Sydney
[http://www.lawfoundation.net.au/ljf/site/templates/reports/\\$file/Reshaping_legal_assistance_services_web.pdf](http://www.lawfoundation.net.au/ljf/site/templates/reports/$file/Reshaping_legal_assistance_services_web.pdf)

For more information on MLPs and the I-HELP screening tool, see:

National Center for Medical Legal Partnership 2011, *Starting your own medical-legal partnership: a step-by-step toolkit to implementing the MLP model*, NCMLP, Washington, DC. <<http://www.medical-legalpartnership.org>>

Tobin Tyler, E Lawton, E, Conroy, K, Sandel, M & Zuckerman, B (eds) 2011, *Poverty, health and law*, Carolina Academic Press, Durham, North Carolina.

DRAFT RECOMMENDATION 5.1

All states and territories should rationalise existing services to establish a widely recognised single contact point for legal assistance and referral. The service should be responsible for providing telephone and web-based legal information, and should have the capacity to provide basic advice for more straightforward matters and to refer clients to other appropriate legal services. The LawAccess model in NSW provides a working template.

Single-entry point information and referral services should be funded by state and territory governments in partnership with the Commonwealth. The legal professions in each state and territory should also contribute to the development of these services. Efforts should be made to reduce costs by encouraging greater co-operation between jurisdictions.

LawAccess NSW is an important part of the legal assistance sector infrastructure in NSW. Critical to its value is the capacity for effective triage and referral (and where appropriate, warm referral) to legal services which are accessible to the client.



Recognising differences in law, legal services and court and dispute resolution services between jurisdictions, the Foundation supports the suggestion of these triage points being state/territory based. Consideration needs to be given to how such services will integrate with existing legal and non-legal service structures (see Pleasence et al, 2014 Chapter 4). The entry system needs to be well resourced and well connected with the myriad of agencies contributing to the legal service system. It is worth noting that the simplified entry system may involve a few major gateways rather than a single gateway.

Further, and recognising the varying capability of people seeking legal assistance (see Pleasence et al, 2014 chapters, 5, 6 & 7), such services must be considered as complementing rather than replacing face to face legal assistance for those clients who require it. They are a critical part of a broader holistic system capable of appropriately meeting diverse access to justice and legal needs across the community (see Coumarelos et al, 2012).

References

Pleasence, P, Coumarelos, C, Forell, S & McDonald, H 2014 *Reshaping Legal Assistance Services, Building on the Evidence Base: A Discussion Paper* Law and Justice Foundation of NSW, Sydney

[http://www.lawfoundation.net.au/ljf/site/templates/reports/\\$file/Reshaping_legal_assistance_services_web.pdf](http://www.lawfoundation.net.au/ljf/site/templates/reports/$file/Reshaping_legal_assistance_services_web.pdf)

Coumarelos, C, Macourt, D, People, J, MacDonald, HM, Wei, Z, Iriana, R & Ramsey, S 2012, *Legal Australia-Wide Survey: legal need in Australia*, Law and Justice Foundation of NSW, Sydney

<http://www.lawfoundation.net.au/ljf/app/&id=FC6F890AA7D0835ACA257A90008300DB>

INFORMATION REQUEST 5.2

Information is sought on the costs and benefits of adopting the legal problem identification training module (being developed by the Commonwealth Attorney-General's Department and Department of Human Services) more widely among non-legal workers who provide services to disadvantaged groups.

Feedback is also sought on which agencies' staff should receive this training and whether funding should be provided to cover training costs.

Access to Justice Research has identified the key place of non-legal workers and agencies as potential pathways to legal assistance, particularly for disadvantaged clients with multiple needs (Coumarelos et al, 2012, Clarke & Forell, 2007, Scott & Sage 2001). To act as problem noticers and referrers, non-legal workers themselves must be able to appropriately identify that problems may have legal dimension and identify an appropriate source of assistance to resolve those issues. Recognising the broad range of functions and more immediate responsibilities of non-legal workers generally, the training messages (and subsequent referral) will be simplified by the availability of a single state-wide legal triage service such as LawAccess). The scope of such a task should not be underestimated, noting the large number and diverse range of service providers who may provide a pathway to legal assistance.

For those workers supporting clients with more complex needs, effective referral may best occur through integrated responses to client needs. Training for these workers should reflect this.



The extent and accuracy of knowledge among potential problem noticers about the legal issues facing their clients and options for resolution is a critical question, informing the development of any strategies to best utilise these pathways to legal assistance. This question should be considered as part of any ongoing research and evaluation into the cost effectiveness of training strategies implemented.

Consideration of who to train and for what types of legal issues should also be informed by existing available research on how problems cluster (e.g., Pleasence et al, 2014 p. 10; Coumarelos et al, 2012; Currie 2009; Pleasence et al. 2004b) and potential future research into 'trigger' problems and 'the transition points' in people's lives around which legal problems may cluster (see Pleasence et al, 2014 p.109)

Further references

Clarke, S & Forell, S 2007, Pathways to justice: the role of non-legal services, Justice Issues Paper 1, Law and Justice Foundation of NSW, Sydney <http://www.lawfoundation.net.au/ljf/app/&id=B0B818584C14F361CA257306000716A2>

Currie, A 2009, 'The legal problems of everyday life', in RL Sandefur (ed.), *Access to Justice*, Emerald, Bingley.

Pleasence, P, Balmer, NJ, Buck, A, O'Grady, A & Genn, H 2004b, 'Multiple justiciable problems: problem clusters, problem order and social and demographic indicators', *Journal of Empirical Legal Studies*, vol. 1, no. 2, pp. 301–329.

Pleasence, P, Coumarelos, C, Forell, S & McDonald, H 2014 *Reshaping Legal Assistance Services, Building on the Evidence Base: A Discussion Paper* Law and Justice Foundation of NSW, Sydney

[http://www.lawfoundation.net.au/ljf/site/templates/reports/\\$file/Reshaping_legal_assistance_services_web.pdf](http://www.lawfoundation.net.au/ljf/site/templates/reports/$file/Reshaping_legal_assistance_services_web.pdf)

Scott, S & Sage, C, Gateways to the Law: an exploratory study of how non-profit agencies assist clients with legal problems, The Law and Justice Foundation of NSW, 2001, p 95. <http://www.lawfoundation.net.au/report/gateways>

INFORMATION REQUEST 5.3

The Commission seeks feedback on how best to facilitate effective referrals for legal assistance between organisations responsible for human service delivery, and, where appropriate, greater information sharing across departments and agencies.

See also response to Information Request 5.1

Pleasence et al (2014) observed in *Reshaping Legal Services* that there appears to be limited appreciation in the broader human services sector about the support that may be provided by legal assistance services in addressing the complex needs of their disadvantaged clients. For this reason we support the investigation of training for non-legal workers in triage and referral for legal issues. However, as suggested in our response to Information request 5.2, we again stress the importance of such training not being developed in isolation. Training may have the most impact on increased and more effective referrals, if developed as part of an integrated approach (see Pleasence et al, 2014 Chapter 4 and Chapter 7).

Getting off the referral roundabout is training resource aimed at improving referral practice. It was developed by Kingsford Legal Centre and funded by the Foundation under its grants program.

See http://www.klc.unsw.edu.au/sites/klc.unsw.edu.au/files/doc/Referral_Roundabout.pdf



Reference

Pleasence, P, Coumarelos, C, Forell, S & McDonald, H 2014 *Reshaping Legal Assistance Services, Building on the Evidence Base: A Discussion Paper* Law and Justice Foundation of NSW, Sydney
[http://www.lawfoundation.net.au/ljf/site/templates/reports/\\$file/Reshaping_legal_assistance_services_web.pdf](http://www.lawfoundation.net.au/ljf/site/templates/reports/$file/Reshaping_legal_assistance_services_web.pdf)

Chapter 7: A responsive legal profession

INFORMATION REQUEST 7.4

How should money from 'public purposes' funds be most efficiently used?

The Foundation's principal source of funding is the NSW Public Purpose Fund (PPF). The Foundation conducts a range of programs, including its important research into legal need, access to justice and what works to address those needs, in accordance with its statutory mandate. In addition, the Foundation has, over many years, been able to launch a range of initiatives that have become important elements within the justice system, including the Public Interest Advocacy Centre (PIAC), Legal Information Access Centre (LIAC) and free online access to legislation and case law through AUSTLII. These initiatives would not have been possible without the ability to independently direct these funds to address important needs that may not have been on the Government's agenda at the time but have nevertheless proven their value.

As a beneficiary of the PPF we are conflicted from commenting further, other than to observe that the best way to ensure efficient and appropriate use of such funds is through maximum transparency. The examples of the PPF equivalents in North America (Law Foundations in Canada, and Interest on Lawyer Trust Accounts (IOLTA) funds in the US) provide a good model. See <http://www.iolta.org/>.

INFORMATION REQUEST 7.5

In what areas of law could non-lawyers with specific training, or 'limited licences' be used to best effect? What role could paralegals play in delivering unbundled services? What would be the impacts (both costs and benefits) of non-lawyers with specific training, or 'limited licences', providing services in areas such as family law, consumer credit issues, and employment law? Is there anything unique to Australia that would preclude the adoption of innovations that are occurring in similar areas of law overseas? If so, how could those barriers be overcome?

The Foundation has no specific comment on the place of 'limited licences' etc. and defer to the professional associations for their understanding of the relevant insurance and liability issues.

However, one factor relevant to the role of non-lawyers/para-legal in assisting clients to resolve their legal problems is the capability of the client. In addition to unbundled legal work, there may be a role for non-lawyers, in assisting more disadvantaged clients with those tasks which might otherwise be undertaken by a more skilled client (see Pleasence et al, 2014, Chapter 5 pp.114-116 and Chapter 6 pp.141-149).



The question of unbundled legal services should also be considered in the context of public and private sector lawyers working together to provide required services to clients (see Pleasence et al, 2014 Chapters 4 & 7). Further research and evaluation would assist in identifying the opportunities for, costs and benefits of such arrangements.

While the Foundation has not examined this issue, advice from the Law Foundation of British Columbia (LFBC) is that paralegals are used in community organisations around that province. They have a legal supervisor, usually a local lawyer, who gets an honorarium to oversee their work. We understand there has been some evaluation of these strategies, although we have not reviewed them at this point.

Reference

Pleasence, P, Coumarelos, C, Forell, S & McDonald, H 2014 *Reshaping Legal Assistance Services, Building on the Evidence Base: A Discussion Paper* Law and Justice Foundation of NSW, Sydney
[http://www.lawfoundation.net.au/ljf/site/templates/reports/\\$file/Reshaping_legal_assistance_services_web.pdf](http://www.lawfoundation.net.au/ljf/site/templates/reports/$file/Reshaping_legal_assistance_services_web.pdf)

Chapter 8: Alternative dispute resolution

DRAFT RECOMMENDATION 8.1

Court and tribunal processes should continue to be reformed to facilitate the use of alternative dispute resolution in all appropriate cases in a way that seeks to encourage a match between the dispute and the form of alternative dispute resolution best suited to the needs of that dispute. These reforms should draw from evidence-based evaluations, where possible.

The Foundation supports investment in evidence-based evaluation as a basis for reform.

DRAFT RECOMMENDATION 8.3

Organisations within jurisdictions that are responsible for preparing information and education materials to improve access to justice and increase general awareness about dispute resolution should incorporate alternative dispute resolution as a central platform in those materials.

The Foundation has not recently conducted any significant research into ADR. However, the general points made throughout this submission concerning the capability of clients or disputants, especially disadvantaged individuals, apply. Planning appropriate strategies must take client capability into account (see Pleasence et al. 2014, Chapter 6).

Reference

Pleasence, P, Coumarelos, C, Forell, S & McDonald, H 2014 *Reshaping Legal Assistance Services, Building on the Evidence Base: A Discussion Paper* Law and Justice Foundation of NSW, Sydney
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Chapter 11: Court processes

DRAFT RECOMMENDATION 11.2

There is a need for greater empirical analysis and evaluation of the different case management approaches and techniques adopted by jurisdictions. These evaluations should consider the impact of different case management approaches on court resources, settlement rates, timing of settlements, trial length (for those matters that proceed to trial), litigant costs, timeliness, and user satisfaction.

The Commission sees merit in courts within and across jurisdictions collaborating to better identify cases in which more or less intensive case management is justified (on a cost-benefit analysis).

The Foundation supports investment in evidence-based evaluation of access to justice strategies. Systemic review of evidence undertaken by the Foundation to date as part of its dedicated ‘what works’ research strategy has revealed substantial gaps in knowledge and a paucity of evidence establishing what is effective policy intervention and service provision (see Digiusto 2012; Forell & Gray 2009; Forell, Laufer and Digiusto 2001).

Evidence-based best practice is informed by the timely publication of evaluation findings. Investment in rigorous evaluation of new access to justice initiatives is therefore essential to not only better inform the optimal allocation of limited resources but also to inform best practice service provision (see Coumarelos et al. 2012, Chapter 10; Pleasence et al. 2014, Chapter 7; Forell & McDonald 2013). However, the culture and practice of monitoring, evaluation and rigorous evidence-based practice across the institutions of the justice sector and across Australian institutions is embryonic. Justice sector institutions typically have poor evaluation capability as they have little or no evaluation resources and little or no evaluation experience. As such, a strategic approach is required to build shared evaluation practice and culture. This is likely to require some resources to encourage and support not only shared purpose, but also a consistent and common understanding of key concepts and how they can be operationalised and measured.

The Foundation welcomes initiatives to promote collection, analyses and sharing of what works lessons, and supports more widespread efforts to encourage and foster a culture of evaluation and joined-up learning. Policy makers, service providers and researchers need to collaborate and coordinate efforts to improve understanding of effective practice.

Further references

Coumarelos, C, Macourt, D, People, J, MacDonald, HM, Wei, Z, Iriana, R & Ramsey, S 2012, Legal Australia-Wide Survey: legal need in Australia, Law and Justice Foundation of NSW, Sydney
<http://www.lawfoundation.net.au/ljf/app/&id=FC6F890AA7D0835ACA257A90008300DB>

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Forell, S & Cain, M 2012 *An evaluation of Legal Aid NSW's Family Law Early Intervention Unit Duty Lawyer Service* Law and Justice Foundation of NSW, Sydney
<http://www.lawfoundation.net.au/ljf/app/&id=6F12D50216DF69D8CA257B1200071FF7>



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<http://www.lawfoundation.net.au/ljf/app/&id=69EBF819BDD1BB8BCA25766A0082208C>

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Chapter 14: Self-represented litigants

INFORMATION REQUEST 14.1

What is the most effective and efficient way of assisting self-represented litigants to understand their rights and obligations at law? How can the growing complexity in the law best be addressed?

An understanding of one's 'rights and obligations at law' is only one of many factors which may drive and guide self-represented litigants. Other factors may include the nature of the legal problem, the litigant's own personal capability and emotional investment in the issue (see Pleasence et al, 2014 Chapter 6), and any informed, personalised guidance available.

The Foundation evaluated an extended duty lawyer scheme in the family law courts at Parramatta (see Forell & Cain, 2012). The evaluation indicated the value of the duty service in both diverting inappropriate matters away from the court and, where appropriate, in supporting the timely progress of other matters through the courts. Importantly, duty lawyer services can not only provide procedural advice about *how* to progress matters, but advice about whether such progress is in fact a sensible option. This approach is worth further investigation.

Also see response to Draft Recommendation 14.2.

Further references

Forell, S & Cain, M 2012 An evaluation of Legal Aid NSW's Family Law Early Intervention Unit Duty Lawyer Service Law and Justice Foundation of NSW, Sydney

<http://www.lawfoundation.net.au/ljf/app/&id=6F12D50216DF69D8CA257B1200071FF7>

Pleasence, P, Coumarelos, C, Forell, S & McDonald, H 2014 *Reshaping Legal Assistance Services, Building on the Evidence Base: A Discussion Paper* Law and Justice Foundation of NSW, Sydney

[http://www.lawfoundation.net.au/ljf/site/templates/reports/\\$file/Reshaping_legal_assistance_services_web.pdf](http://www.lawfoundation.net.au/ljf/site/templates/reports/$file/Reshaping_legal_assistance_services_web.pdf)



For other evaluation reports on extended duty services see:

Clairmont, D & Joyce, I 2006, *Summary advice counsel initiative: assessing its implementation, impact and future directions in two Nova Scotia areas*, Report for Court Services Division, Nova Scotia Department of Justice, Dalhousie University, Nova Scotia, <http://sociologyandsocialanthropology.dal.ca/Files/SUMMARY_ADVICE_COUNSEL_Evaluation_Report.pdf>.

Focus Consultants 2004, *Evaluation of the Family Duty Counsel Project in six provincial states: final report*, Legal Services Society, Victoria, Canada, <<http://www.lss.bc.ca/assets/aboutUs/reports/familyServices/evaluationFDCSixProvSites.pdf>>.

PRA Inc. 2002, *Evaluation of the Family Law Expanded Duty Counsel Pilot Projects: final report*, Legal Aid Ontario, Canada, <http://www.ilagnet.org/conference/general2003/papers/edc_report.pdf>.

For a recent review of the literature on self-represented litigants see:

Richardson, E, Sourdin, T & Wallace, N 2012, *Self-represented litigants literature review*, Australian Centre for Court and Justice System Innovation, Monash University, Melbourne, <<http://www.law.monash.edu.au/centres/accjsi/projects/self-represented-litigants/self-rep-litigant-lit-review-accjsi-24-may-2012.pdf>>.

DRAFT RECOMMENDATION 14.1

Courts and tribunals should take action to assist users, including self-represented litigants, to clearly understand how to bring their case.

- *All court and tribunal forms should be written in plain language with no unnecessary legal jargon.*
- *Court and tribunal staff should assist self-represented litigants to understand all time-critical events in their case. Courts and tribunals should examine the potential benefits of technologies such as personalised computer-generated timelines.*

Courts and tribunals should examine their case management practices to improve outcomes where self-represented litigants are involved.

All of the legal needs research suggests many in the community have difficulty understanding the legal system, legal processes and legal forms. Therefore, as a matter of general principle, the greater use of plain language in the legal system is to be encouraged.

Consideration should be given to the limits of the advice that can be provided by court personnel and what assistance is required beyond this to assist self-represented litigants to the most efficient and effective use of the legal process. As with other forms of discrete task assistance or unbundled legal services, the appropriateness of self-help and other legal information is likely to also depend upon client capability (see Pleasence et al, 2014, Chapter 6 pp. 144-149). Again, evaluation of new service initiatives would be valuable to determine effectiveness and inform best practice.

See also response to information request 14.1.

Reference

Pleasence, P, Coumarelos, C, Forell, S & McDonald, H 2014 *Reshaping Legal Assistance Services, Building on the Evidence Base: A Discussion Paper* Law and Justice Foundation of NSW, Sydney
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DRAFT RECOMMENDATION 14.2

Governments, courts and the legal profession should work together to develop clear guidelines for judges, court staff, and lawyers on how to assist self-represented litigants within the courts and tribunals of each jurisdiction. The rules need to be explicit and applied consistently, and updated whenever there are changes to civil procedures that affect self-represented litigants.

Governments should consider how lessons from each jurisdiction can be shared on an ongoing basis.

The Foundation fully supports and encourages the collection and dissemination of information concerning what works to better meet access to justice and legal needs. However this needs to go beyond lessons concerning self-represented litigants. Systemic review of evidence undertaken by the Foundation to date as part of its dedicated ‘what works’ research strategy has revealed substantial gaps in knowledge and a paucity of evidence establishing what is effective policy intervention and service provision (see Digiusto 2012; Forell & Gray 2009; Forell, Laufer and Digiusto 2001).

Evidence-based best practice is informed by the timely publication of evaluation findings. Investment in rigorous evaluation of new access to justice initiatives is therefore essential to not only better inform the optimal allocation of limited resources but also to inform best practice service provision (see Coumarelos et al. 2012, Chapter 10; Pleasence et al. 2014, Chapter 7; Forell & McDonald 2013). However, the culture and practice of monitoring, evaluation and rigorous evidence-based practice across the institutions of the justice sector and across Australian institutions is embryotic. Justice sector institutions typically have poor evaluation capability as they have little or no evaluation resources and little or no evaluation experience. As such, a strategic approach is required to build shared evaluation practice and culture. This is likely to require some resources to encourage and support not only shared purpose, but also a consistent and common understanding of key concepts and how they can be operationalised and measured.

There is substantial opportunity to learn lessons from the innovation and service reforms undertaken in any particular Australian jurisdictions. However, this will only be possible through ongoing and consistent evaluation and dissemination of findings.

The Foundation therefore welcomes initiatives to promote collection, analyses and sharing of what works lessons, and supports more widespread efforts to encourage and foster a culture of evaluation and joined-up learning. Policy makers, service providers and researchers need to collaborate and coordinate efforts to improve understanding of effective practice.

Further consideration of the most appropriate way in which to support the dissemination of what works lessons is warranted. For example, support for a national ‘what works’ information clearinghouse, which might also seek to collate and disseminate what works information from similar overseas jurisdictions, has the potential to support joined-up learning, build evaluation capability and culture, and better inform policy and program design.

Further references

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DRAFT RECOMMENDATION 14.3

Governments, courts and tribunals should work together to implement consistent rules and guidelines on lay assistance for self-represented litigants.

The legal needs research identifies differences in a range of processes and procedures within jurisdictions let alone between jurisdictions. Greater clarity and ease of understanding for all parties will come with greater consistency in processes and procedures across courts and tribunals in general. The Foundation therefore supports initiatives to achieve greater consistency in the interests of all citizens.

In any strategies devised to support SRL, recognition must be given to the varying capabilities of those representing themselves in court. Capability will be affected not only by the demographic profile of the litigant, but by the nature and complexity of the matter. Factors such as stress and personal investment in the issue will also affect capacity for effective participation in the legal matter (See Pleasence et al, 2014 Chapter 6).

Reference

Pleasence, P, Coumarelos, C, Forell, S & McDonald, H 2014 *Reshaping Legal Assistance Services, Building on the Evidence Base: A Discussion Paper* Law and Justice Foundation of NSW, Sydney

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Chapter 21: Reforming the legal assistance landscape

DRAFT RECOMMENDATION 21.1

Commonwealth and state and territory government legal assistance funding for civil law matters should be determined and managed separately from the funding for criminal law matters to ensure that demand for criminal assistance does not affect the availability of funding for civil matters.

The Law Survey, together with other access to justice research highlights the high cost and impact of unmet civil law needs and the disproportionate impact of these on disadvantaged individuals. This research is summarised in Chapter 2 of Pleasence et al (2014).

It is appropriate therefore, for resources to be available to address civil, as well as family and criminal law needs. However, it is likely that the available resources for legal assistance services will always be less than required to address this full range of needs. Therefore at some point decisions about allocating relative priorities for available resources must be made. There are many factors that influence such decision making. While separate allocation and management of funds for civil legal assistance may well be appropriate, we should be cautious that in doing so, we do not unacceptably detract from resources available for criminal matters.

For this reason, the recommendation needs to be more nuanced than is currently stated.

Reference

Pleasence, P, Coumarelos, C, Forell, S & McDonald, H 2014 *Reshaping Legal Assistance Services, Building on the Evidence Base: A Discussion Paper* Law and Justice Foundation of NSW, Sydney
[http://www.lawfoundation.net.au/ljf/site/templates/reports/\\$file/Reshaping_legal_assistance_services_web.pdf](http://www.lawfoundation.net.au/ljf/site/templates/reports/$file/Reshaping_legal_assistance_services_web.pdf)

DRAFT RECOMMENDATION 21.2

The Commonwealth and state and territory governments should ensure that the eligibility test for legal assistance services reflect priority groups as set out in the National Partnership Agreement on Legal Assistance Services and take into account: the circumstances of the applicant; the impact of the legal problem on the applicants life (including their liberty, personal safety, health and ability to meet the basic needs of life); the prospect of success and the appropriateness of spending limited public legal aid funds.

Legal needs and access to justice research indicates the importance of also factoring client capability into decisions about service delivery priorities (see Pleasence et al, 2014 Chapters 6 & 7). Legal service provision should match both the needs and capability of the client.

Reference

Pleasence, P, Coumarelos, C, Forell, S & McDonald, H 2014 *Reshaping Legal Assistance Services, Building on the Evidence Base: A Discussion Paper* Law and Justice Foundation of NSW, Sydney
[http://www.lawfoundation.net.au/ljf/site/templates/reports/\\$file/Reshaping_legal_assistance_services_web.pdf](http://www.lawfoundation.net.au/ljf/site/templates/reports/$file/Reshaping_legal_assistance_services_web.pdf)



DRAFT RECOMMENDATION 21.3

The Commonwealth and state and territory governments should use the National Partnership Agreement on Legal Assistance Services to align eligibility criteria for civil law cases for legal aid commissions and community legal centres. The financial eligibility test for grants of legal aid should be linked to some established measure of disadvantage.

Legal needs research highlights that a different mix of services will be needed to address the variety of legal needs experienced by different individuals in different locations across Australia. In this context it is likely that different service providers will, with different resources, provide different services for different purposes. While at face value it is logical that a common eligibility test may be appropriate, in fact, it is likely that some variation to this will be appropriate depending on the client, the legal issue, the service to be provided and the resources available to do so. Thus, it would not be inappropriate for, say, a LAC to have a different eligibility for a representation service than a CLC may have for a minor assistance service or advice.

At this point the Foundation is unable to comment on the efficacy of linking the financial eligibility test to any particular established measure of disadvantage.

DRAFT RECOMMENDATION 21.4

The Commonwealth Government should:

- *discontinue the current historically-based Community Legal Services Program (CLSP) funding model*
- *employ the same model used to allocate legal aid commissions funds to allocate funding for the CLSP to state and territory jurisdictions*
- *divert the Commonwealth's CLSP funding contribution into the National Partnership Agreement on Legal Assistance Services and require state and territory governments to transparently allocate CLSP funds to identified areas of 'highest need' within their jurisdictions. Measures of need should be based on regular and systematic analyses in conjunction with consultation at the local level.*

As a general point the Foundation endorses the proposition that resources should match priority need, which may involve consideration of the nature and potential impact of the legal problems experienced, the capability of the clients to be assisted and the geographic and service context.

We draw the Commission's attention to the observations made in Pleasence et al (2014, p. 98 & p.170; also Chapter 4) about the potential impact of replacing existing services, that have established connections within the broader legal assistance sector and related non-legal services, and with the communities they serve:

...the joint procurement (by the Legal Services Commission and local government) of one-stop shop Community Legal Advice Centres (CLACs) in England and Wales provided the impetus for real and seemingly positive change in the structure of local services. Although, it also demonstrated the disruption to inter-service relationships and local markets (involving sometimes substantial reductions in market diversity, where losers in the process sometimes exited the market) that can be brought about by major change in funding policy and the vulnerability of whole-system change to policy reversal. The cuts to legal aid in England and Wales that followed the global financial crisis saw CLACs abandoned and realised the risks of a policy 'U-turn'. As the CEO of Citizens Advice observed (Ricketts 2008):

"Strong local organisations take decades to build up. If that is then swept away, you cannot instantly bring it back if the contract provider fails."



Beyond this, we draw attention to the whole of chapter 7 in Pleasence et al (2014), where these themes and issues are discussed. In particular, chapter 7 notes the value of local partnerships (CLSDs) in identifying and responding to legal need identified as a priority at the local level. Further evaluation would inform the potential expansion of this model.

Reference

Pleasence, P, Coumarelos, C, Forell, S & McDonald, H 2014 *Reshaping Legal Assistance Services, Building on the Evidence Base: A Discussion Paper* Law and Justice Foundation of NSW, Sydney
[http://www.lawfoundation.net.au/ljf/site/templates/reports/\\$file/Reshaping_legal_assistance_services_web.pdf](http://www.lawfoundation.net.au/ljf/site/templates/reports/$file/Reshaping_legal_assistance_services_web.pdf)

INFORMATION REQUEST 21.3

The Commission seeks feedback on how Community Legal Centre (CLC) funds should be distributed across providers while at the same time ensuring providers are of sufficient scale and the benefits of the historic community support of CLCs are not lost. Competitive tendering might be one possible method for allocating funds. The Commission seeks feedback on the costs and benefits of such a process and how they compare with the costs and benefits of alternative methods of allocating CLC funding.

The issue of how best to allocate funding and responsibility for the provision of legal assistance services in the most appropriate holistic manner to disadvantaged clients requires further investigation. In *Reshaping Legal Assistance Services* (Pleasence et al, 2014) the key themes emerging from the international legal needs research suggest the provision of more client focused services which in turn suggest a level of flexibility and cross government funding arrangements not suited to standard contracting arrangements. For further discussion see the foreword to *Reshaping Legal Assistance Services*.

We acknowledge the historic and current community support for CLCs, and again draw the Commission's attention to the observations made in Pleasence et al (2014 p. 98 & p.170) about the potential impact of replacing existing services that have established connections within the broader legal assistance sector and related non-legal services, and with the communities they serve:

...the joint procurement (by the Legal Services Commission and local government) of one-stop shop Community Legal Advice Centres (CLACs) in England and Wales provided the impetus for real and seemingly positive change in the structure of local services. Although, it also demonstrated the disruption to inter-service relationships and local markets (involving sometimes substantial reductions in market diversity, where losers in the process sometimes exited the market) that can be brought about by major change in funding policy and the vulnerability of whole-system change to policy reversal. The cuts to legal aid in England and Wales that followed the global financial crisis saw CLACs abandoned and realised the risks of a policy 'U-turn'. As the CEO of Citizens Advice observed (Ricketts 2008):

"Strong local organisations take decades to build up. If that is then swept away, you cannot instantly bring it back if the contract provider fails."

A further caution is that in many areas the availability of legal assistance service providers or alternative providers of legal assistance services will be low. For example in NSW there are 19 local government areas where no solicitor has their principal place of work (see Cain, Marcourt & Mulherin, 2014, Forell, Cain & Gray, 2010). Further, Foundation research has consistently indicated the central importance of strong local relationships and trust in establishing and maintaining legal assistance services to disadvantaged communities, through outreach or similar models (Forell & Gray, 2009; Forell, McDonald, Ramsey & Williams, 2013). Therefore, in many cases competitive tendering may be problematic.



References

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INFORMATION REQUEST 21.4

The Commission seeks feedback on the extent of, and the costs associated with, meeting the civil legal needs of disadvantaged Australians, and the benefits that would result.

Legal needs surveys around the world, including the LAW Survey in Australia, invariably demonstrate that legal needs, including civil legal needs, can change life circumstances dramatically. These surveys confirm the adverse impacts that legal problems can have on a broad range of economic, health and social outcomes. For example, the LAW Survey examined the impacts of up to three of the most serious legal problems reported by respondents and found that 29% of these problems led to income loss or financial strain, 20% led to stress-related illness, 19% led to physical ill health, 10% led to relationship breakdown and 5% led to having to move home. Thus, not only does socioeconomic disadvantage increase the likelihood of experiencing legal problems, but experiencing legal problems can create, perpetuate or further entrench social exclusion (see Coumarelos et al. 2012).

In addition, some studies have specifically examined the flow-on benefits of providing legal advice. For example, in the United Kingdom (UK), a survey of the clients of youth advice agencies examined the benefits they experienced after receiving legal advice for their social welfare related legal problems (Balmer, NJ & Pleasence, P 2012, Youth Access, London). The young people reported that the advice they received led to substantial improvements in their stress levels, health, housing situations, relationships with parents or partners, education or employment. The authors reported that the advice appeared to be cost-effective on the basis of the improvements obtained, either in mental health or housing circumstances.



Thus, the literature indicates that promoting access to justice is likely to have flow-on effects in tackling social exclusion, and adds weight to the proposal that disadvantaged people may benefit from joining up legal services with broader human services, such as health, housing, financial counselling, social, welfare, family and crime victim services. The considerable negative impacts that legal problems can have on people's personal circumstances have been argued to translate to an enormous cost to society at large. In the UK, using CSJS data, the economic impact on health and other public services of the adverse consequences of legal problems was estimated to be at least £13 billion over a 3.5-year period and prompted the Lord Chancellor to state that solving people's legal problems must remain a priority across government (see Pleasence 2006, *Causes of Action*, p. i).

Further and robust research, specific to the Australian context would provide more insight and direction on this question.

References

Coumarelos, C, Macourt, D, People, J, MacDonald, HM, Wei, Z, Iriana, R & Ramsey, S 2012, *Legal Australia-Wide Survey: legal need in Australia*, Law and Justice Foundation of NSW, Sydney
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Balmer, NJ & Pleasence, P 2012, *The legal problems and mental health needs of youth advice service users*, Youth Access, London

Pleasence, P 2006, *Causes of action: civil law and social justice*, 2nd edn., Stationery Office, Norwich.

DRAFT RECOMMENDATION 21.5

The Commonwealth and the state and territory governments should renegotiate the National Partnership Agreement on Legal Assistance Services (following the current one expiring) and seek agreement on national core priorities, priority clients, and aligned eligibility tests across legal assistance providers.

The Foundation supports the recommendation to renegotiate the National Partnership Agreement on Legal Assistance Services and seek agreement on national core priorities and priority clients. We suggest further consideration of the issues raised above in relation to aligned eligibility tests.

As a principle the Foundation suggests an approach which is responsive to client need and capability. We agree that core priorities should be articulated at the national level but that there be enough flexibility to take account of variability both in legal need and client capability, as well as socio-economic, geographical, service infrastructure and political contexts.



Chapter 22: Assistance for Aboriginal and Torres Strait Islander people

DRAFT FINDING 22.1

Specialised legal assistance services for Aboriginal and Torres Strait Islander people remain justified.

The Foundation supports this finding.

DRAFT RECOMMENDATION 22.1

The Commonwealth Government should:

- *establish service delivery targets (as currently apply to Aboriginal and Torres Strait Islander legal services (ATSILS)) within service plans for family violence prevention legal services (FVPLS)*
- *develop and implement robust benchmarks with ATSILS and FVPLS to better measure performance. These agreed benchmarks should be a consideration in framing the administrative data collection for ATSILS and FVPLS.*

Any service delivery targets and benchmarks should also reflect the needs and priorities of the communities that they serve.

Service delivery targets and benchmarks are only useful if there are sufficient resources to allow decision making in response to them. Where scarce resources are completely committed and allow little flexibility in service delivery, we question whether such targets and benchmarks will be effective.

The Foundation is also concerned that unless service delivery targets and benchmarks are well considered, they may in fact hinder the flexibility required to provide targeted, joined-up, timely and appropriate services for this target group.



INFORMATION REQUEST 22.3

The Commission seeks feedback on whether the National Partnership Agreement on Legal Assistance Services should include state and territory government funding for Aboriginal and Torres Strait Islander legal services and family violence prevention legal services to provide a greater incentive for state and territory governments to consider the impact of changes in state or territory based policies on the demand for these services. Are there other ways this could be achieved? Where state and territory governments do not provide funding, or only provide limited funding, what role should they play in influencing service delivery and reporting requirements?

In order to improve transparency and coordination among all legal assistance services, a clear picture of funding sources and priorities is needed. Such a picture might come from the inclusion of various funding arrangements within a single overarching framework. However, if doing so detracts from the flexibility of the services to respond to particular needs, this would not be a positive outcome.

Chapter 24: Data and evidence

DRAFT RECOMMENDATION 24.1

All governments should work together and with the legal services sector as a whole to develop and implement reforms to collect and report data (the detail of which is outlined in this report).

To maximise the usefulness of legal services data sets, reform in the collection and reporting of data should be implemented through:

- *adopting common definitions, measures and collection protocols*
- *linking databases and investing in de-identification of new data sets*
- *developing, where practicable, outcomes based data standards as a better measure of service effectiveness.*

Research findings on the legal services sector, including evaluations undertaken by government departments, should be made public and released in a timely manner.

The Foundation supports the recommendation. Our experience is that standardisation and harmonisation of measures between services providers is possible, but has its challenges – particularly where services are providing very different roles as in intensity of assistance or area of law.

However, we doubt the feasibility of measuring service effectiveness through outcome based data standards, as there is no agreement on what is an effective outcome in the sector. Even where outcomes are measurable, there are too many extraneous factors influencing these to identify those attributable to the legal intervention. Given these issues, we suggest a focus on measuring client ‘need’ [refer to discussion elsewhere about flexibility in defining need according to disadvantage, capability etc.] and outputs, rather than outcomes, would give a more reliable indicator of the effectiveness of service delivery.



However, we are aware that there needs to be increased consistency in how outputs are measured, particularly to allow for adequate assessment of the intensity of service provision, be it in financial cost per case, staff time or some other common measure.

DRAFT RECOMMENDATION 24.2

As part of draft recommendation 24.1, existing data systems should be overhauled so that providers can track outcomes for intensive users of legal assistance services over time.

The Foundation agrees that being able to distinguish disadvantaged and intensive users of legal assistance services is crucial to assessing the extent to which services are targeting their services effectively. We strongly support the inclusion of unique identifiers in de-identified legal assistance datasets for this purpose, as this will also allow for an assessment of the extent of repeat service use and clusters of problems for which individuals seek assistance – both essential information in the planning of efficient services. But further work is undoubtedly required to reach agreement on common measures of service intensity that takes account of both the type (advice, minor assistance, representation) and amount of support provided.

INFORMATION REQUEST 24.1

The Commission seeks feedback on where a data clearinghouse for data on legal services should be located. Such a clearinghouse needs to be able to coordinate data collection from multiple civil justice stakeholders and disseminate the information in a timely fashion. It should also have some expertise in linking, using and presenting data, especially administrative data. Ideally, the clearinghouse should also have experience in liaising with legal service providers and different levels of government, have an understanding of the operation of the civil justice system and understand the principles behind benchmarking.

The Law and Justice Foundation supports the concept of a data clearinghouse, working with service providers to agree harmonised data definitions and minimum datasets, and undertaking at least annual data collection, processing and reporting. To a limited extent the Foundation already provides this service for three NSW legal assistance services. Data collation is currently determined by what each service collects and is able to share. Our experience suggests:

- The setting up of a clearinghouse will be a resource intensive exercise given the current state of data in the sector and progress will be moderated by the likely changes required to existing practices and technical systems.
- Harmonising data collection between services is particularly challenging where services are providing very different roles and have different data interests, such as the courts vs. legal assistance providers.
- The requirement to deposit data should probably be a statutory obligation. Agreement on data sharing and data use (linking, publication etc.) should be incorporated into the requirement to ensure effective use of data.
- There are currently few, if any, incentives for services to improve the quality of their data capture – particularly the smaller organisations that have no capacity to interrogate or use the data for their own



purposes. Publishing aggregated summary findings on a routine basis in a format valued by the data providers should facilitate improved data capture.

- Regular liaison with service providers is essential to understand the factors influencing data patterns, and report on these when data is published or otherwise released. For instance, where indicators are used to inform funding decisions this inevitably creates perverse incentives that have an impact on the comparability and continuity of data over time and between services.

For those areas of law that differ at a state level there may be advantages to maintaining state based collections. However, much of the data collected could be harmonised into broader categories for national comparison purposes. We note the work that the Commonwealth Attorney General's Department has been doing in support of standardised data collection and improving the civil justice evidence base.

The Foundation would welcome the opportunity to be involved in any discussions regarding where a data clearinghouse should be located.

DRAFT RECOMMENDATION 24.3

The Commission recommends that the LAW Survey, or a survey of similar scope and detail, be undertaken on a regular basis at least every 5 years. The results of, and underlying data from such surveys should be made publicly available.

Legal needs surveys in Australia and overseas (including the LAW Survey) have produced broadly similar findings, suggesting that patterns of legal problem experience are fairly consistent between jurisdictions, and over time. Thus, considerable changes in legal problem experience are unlikely to be detected by such broad-brush instruments in the short term. Nonetheless, in the context of continuous service development and change, it would be useful to keep monitoring the broad public experience of legal problems over time in order to identify any changes in details or any complications. However, it is important to recognise that conducting a regular equivalent of the LAW Survey every five years would be a huge and expensive undertaking. The LAW Survey was conducted by telephone, with the fieldwork taking almost one year to be completed by one of Australia's premier market research companies – a substantial cost in itself. Following the fieldwork, and before work could commence on statistical analysis and reporting of the data, 'cleaning' or preparation of the data for analysis was also a mammoth task, which included categorising hundreds of thousands of open-ended responses.

The value of legal needs surveys such as the LAW Survey is in their ability to provide 'representative' or accurate estimates of the prevalence of legal problems in the population. The LAW Survey achieved a sample that was representative of the population in 2008 by using random digit dialling (RDD) to ensure an unbiased coverage of resident landline telephones in all geographic areas of the country. RDD involves randomly generating a list of potential household telephone numbers (both listed and unlisted) from all active telephone exchanges across the country. In order to generate these numbers, a list of telephone prefixes covering all geographic areas is first obtained. The remaining digits for the potential telephone numbers are then randomly generated and attached to the prefix.



However, with the rapid declining use of landlines in favour of the convenience of mobile telephones, conducting a representative telephone survey of the population is not currently practicable. At present, there is no geographic information linked to mobile numbers. Until this situation changes, alternatives to representative telephone landline surveys would need to be considered. Dual-frame surveys involving both landline and mobile telephone interviews, while likely to provide some improvement on the representativeness of landline-only surveys, would still not ensure accurate representation of the population.

Another option is to use face-to-face interviews based on an address-based sampling approach, similar to that used for the census. This option has the capability of accurately representing the population, but the practical disadvantage that it would add considerably to the expense of a large-scale legal needs survey conducted every five or even 10 years. A variation of the face-to-face option is the use of more regular, smaller sample representative legal needs surveys, which could then be rolled-up every few years or so for analysis.

This method has the potential advantage of providing early warning of any changes. Another variation of the face-to-face option may be to add a few questions regarding legal need to an existing face-to-face survey (e.g. an omnibus survey), which again could possibly be done on a fairly regular basis, rather than to conduct a separate legal needs survey.

There are also possibilities of expanding understanding of legal need via methodologies other than representative legal needs surveys, as is discussed in *Reshaping Legal Assistance Services* (Pleasence et al. 2014). There remain gaps in knowledge about the legal needs of significant disadvantaged groups who are hard to reach via representative legal needs surveys, such as children, rough sleepers, prisoners, people in hospital/care, people (especially Indigenous people) living in remote areas and people who do not speak English. In addition, while most legal needs surveys have focused on individuals, there is still much to learn about the social and economic cost of legal problems faced by businesses. In addition, knowledge of legal need could be furthered by better understanding of the life course of legal problems, such as how they are triggered, how they cluster around significant transition points or crisis points in people's lives (e.g. family breakdown, loss of employment, imprisonment, onset of sudden illness, chronic illness and aging), and how they endure or change over time.

The Foundation would welcome the opportunity to be involved in any discussions regarding future legal need survey and related research.

References

Coumarelos, C, Macourt, D, People, J, MacDonald, HM, Wei, Z, Iriana, R & Ramsey, S 2012, *Legal Australia-Wide Survey: legal need in Australia*, Law and Justice Foundation of NSW, Sydney

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