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Plain language and the law:
Rethinking legal information for vulnerable people in Australia

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Abstract

This thesis evaluates the effectiveness of plain language legal information resources for vulnerable people from the perspective of legal service providers working in the community legal sector in Australia.

Plain language legal information aims to improve individuals' access to the legal system. However, limited research is available that tests the effectiveness of legal information resources. Some studies have considered the effectiveness of self-help legal services, and others have studied the effectiveness of applying plain language to legislation and legal documents such as contracts. This thesis specifically considers the target audience of vulnerable groups, who are more likely to experience unmet legal need, turn to legal assistance services, and be expected to use legal information resources.

The research method involves semi-structured qualitative interviews with 20 participants working in community legal services and legal aid commissions. Participants were asked whether using plain language principles to draft legal information resources helped to make those resources more useful for the people who accessed their services.

The thesis adopts Amartya Sen's capability approach and applies Iris Marion Young's theory of structural injustice in the context of the research. It argues that the limitations of our justice system and access-to-justice reforms create structural disadvantage, particularly for people who are already vulnerable.

My findings show that difficulty in translating legal concepts into plain language comes not only from the concepts themselves, but from their positioning within a complex legal system, which requires specialised knowledge to understand. Funding shortages limit the time participants can spend on community engagement and properly researching, testing, and evaluating resources. Participants did not have the skills required to translate complex legal concepts into plain language. Further, in the context of vulnerability, the availability of plain language legal information is less relevant than other factors, such as an individuals' capability and access to advocacy services.

This thesis shows that using clear and plain language in complex legal matters is more difficult than plain language advocates suggest, and that even clearly presented information is not always used by, or useful for, vulnerable people, even when they have the support of legal advice. Even if vulnerable people receive specific information that is directly related to a legal problem they have sought help to resolve, this does not guarantee that they will read it or have the capability to understand and apply it.

Although the findings show that legal information is not always useful for vulnerable people, whether written in plain language or not, participants felt that providing such information is essential. This is due to an underlying belief across the community legal sector that legal information resources can empower people to help themselves. In the broad access-to-justice landscape, the expectations of personal responsibility placed on vulnerable people are disproportionate, and the expectation that the provision of legal information resources to vulnerable people will empower them to resolve their own legal problems is unrealistic and unjust.

These research findings lead to the recommendation that the burden of legal information provision should be moved away from the services whose target group is vulnerable people, and that other bodies—with the necessary skills and resources—should be funded to create appropriate legal information resources. The thesis encourages a cultural shift within the legal assistance sector away from the idea that legal information can empower vulnerable people. More research should be conducted to consult vulnerable people and engage them in finding solutions that work when determining how best to meet their legal needs. Finally, the study supports a shift in focus to improving the structures that affect access to legal assistance, and the legal system generally, for vulnerable people.

Declaration by author

This thesis is composed of my original work, and contains no material previously published or written by another person except where due reference has been made in the text. I have clearly stated the contribution by others to jointly-authored works that I have included in my thesis.

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Publications included in this thesis

No publications included.

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No manuscripts submitted for publication.

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No other publications.

Contributions by others to the thesis

No contributions by others.

Statement of parts of the thesis submitted to qualify for the award of another degree

No works submitted towards another degree have been included in this thesis.

Research Involving Human or Animal Subjects

Institutional Human Research Ethics Approval

This project complies with the provisions contained in the *National Statement on Ethical Conduct in Human Research* and complies with the regulations governing experimentation on humans.

Behavioural & Social Sciences Ethical Review Committee

Expedited review—low risk

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plain language, legal information, legal need, vulnerable people, access to justice, legal writing, community law, community legal centres, structural injustice, capability approach.

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Introduction: Legal information as a response to legal need in Australia

Decreased funding for individual legal assistance services in Australia—such as advice and advocacy—has led to an increased reliance on alternative methods to meet legal need. One method that has become increasingly prevalent is the provision of written legal information resources. Information about the law, intended to improve the community's knowledge of rights and increase individuals' capacity to resolve legal problems, is a less resource-intensive access-to-justice solution. Efforts to create legal information resources that are accessible to a broad demographic have led to a focus on plain language legal information. Plain language meets the needs of its audience by using language, structure, and design so clearly and effectively that the audience has the best possible chance of finding what they need, understanding it, and using it. Applying plain language principles should generate information that is easy to read, understand, and act on. However, most legal information aimed at a community audience is produced by community legal services and legal aid commissions, non-profit organisations that provide legal assistance services targeted primarily to vulnerable groups within the broader community. This thesis investigates whether the provision of plain language legal information resources by these services is an effective method of meeting legal need for vulnerable groups. Methods include plain language redrafting and qualitative interviews with community legal service professionals, examining their understanding of plain language principles and the capability of their clients to use legal information resources.

This introductory chapter examines the impact of legal need in Australia and the community legal sector's attempts to meet this need. It discusses plain language initiatives that seek to increase access to justice through information and education about the law. Chapter one expands on this discussion by mapping the origin and purpose of legal information. It considers barriers to information use, such as literacy skills, including technology literacy. Chapter one reviews the existing research literature about legal information in Australia, before defining plain language, outlining its benefits and criticisms, and reviewing the research that tests its effectiveness.

Chapter two describes the research design and methods employed. Drawing on Amartya Sen's capability approach, it defines disadvantage and characterises vulnerability. The capability approach evaluates a person's advantage (or disadvantage) in terms of their actual ability to do or be certain things as part of living. Chapter two also outlines Iris

Marion Young's theory of structural injustice—which contrasts theories of personal responsibility with the impact of social structural processes—and why it is important to consider in this project. Finally, this chapter explains my research methods, including the approach to data collection and analysis.

Chapter three reports on the findings from interviews conducted with legal service professionals. Broadly, findings are separated into two groups: findings about legal information resources in the context of vulnerability, and findings about the redrafted legal information resource. I present findings about the characteristics of vulnerable clients and their capacity to use information; the usefulness of legal information as a legal service; the purpose of legal information; impacts of funding and resources on the provision of legal information; and plain language as a special skill. Findings about the redrafted legal information resource include comments on content, length, language, structure, design, and legal accuracy.

Chapter four discusses the study findings, considering the challenges of using plain language in practice, and whether plain language makes a significant difference to the effectiveness of legal information resources. I also consider the usefulness of legal information for vulnerable people.

Chapter five presents recommendations based on the study's findings and concludes the thesis, demonstrating the significance of the study in the continuing search for solutions to inequity faced by vulnerable groups in accessing justice in the Australian legal system.

Legal need in Australia

In Australia, everyday activities such as driving a car, renting a unit, entering into a mobile phone contract, being employed, using public transport, seeing a doctor, or asking for a refund, are regulated by Australian law. The law also regulates how we navigate major life events, such as purchasing property and managing the breakdown of relationships (particularly those that involve property and children). Generally, the law operates unnoticed—in the background of our lives—but it comes to our attention when something goes wrong: we lose our licence, have a dispute with a landlord or neighbour, encounter workplace harassment, enter into an unfair contract, get charged with a criminal offence, become a victim of domestic violence, or find ourselves having to advocate on behalf of our children. When faced with a legal problem, how do we respond?

In 2012, results were released from a survey about legal need in Australia.[1] Over 20 000 Australians participated in the survey, and the results showed that legal problems are common: 49.7% of the respondents said they had experienced at least one legal problem in the twelve months leading up to the survey (Coumarelos et al., 2012, p. 57). Extrapolating from these figures, the researchers estimated that, in Australia, approximately one in three (8 513 000) people will experience a legal problem over a twelve-month period (Coumarelos et al., 2012, p. 57). The most commonly experienced problems are consumer problems (at 20.6%), followed by crime, housing, and government (p. 59). Neighbourhood, employment, and debt disputes are also common (Coumarelos et al., 2012, p. 13). Some people will experience problems in more than one area (McDonald & Wei, 2018, p. 4).

The survey also asked what people do to resolve their legal problems. The most common responses were to seek advice (not necessarily from a lawyer), communicate with the opposing party, consult relatives or friends, or use a website or self-help guide (Coumarelos et al., 2012, p. 93). The authors noted that 'only a minority of people seek advice from lawyers or use the formal litigation system' (Coumarelos et al., 2012, p. 31). Balmer writes that 'we live in a "law-thick" world, where the ability of people to make use of the law to protect their legal rights and hold others to their legal responsibilities underpins the rule of law, ensures social justice and helps address the problems of social exclusion' (2013, p. 1). In this thesis, I investigate how vulnerable people can navigate this 'law-thick' world when they have limited access to legal resources and limited ability to understand and use legal information.

For someone without legal training, who is unable to engage a lawyer, finding information about the law or options for resolving a legal problem can be a difficult task. To successfully resolve a legal problem, they must first be able to identify that their problem is legal in nature. Then they must be able to identify the jurisdiction they fall under, the law that applies, and the process they should follow to seek resolution. They must also possess the necessary literacy and critical thinking skills to apply the law to their personal situation, and the personal skills to advocate for themselves. Resolving legal problems can be time-consuming, stressful, and expensive, adversely affecting the lives of those

[1] This is the most current study on legal need in Australia. At the time of writing, the Law and Justice Foundation of New South Wales were hoping to repeat the study, using a different methodology, in 2018. However, it was not clear if the foundation would have funding to proceed with the study. More information can be found on their website, or by reading their infographic: *2018 Law Survey* (http://www.lawfoundation.net.au/ljf/site/templates/pdf/$file/2018LAWSurveyInfographic.pdf).

involved, and leading to health, social, and financial consequences (Coumarelos et al., 2012, p. xiv, 1; Buck, Balmer & Pleasance, 2005, p. 317; Buck & Curran, 2009, p. 7; Currie, 2009, p.28, 30; Sheldon et al., 2006, p. 254). For those who do not possess the necessary personal skills to resolve legal problems themselves, cannot afford to hire a lawyer, are not eligible for legal aid, and do not have adequate support networks in place, navigating the legal system may seem an impossible task.

The legal needs survey found that 18.3% of people surveyed took no action in response to their legal problem (Coumarelos et al., 2012, p. 96). Ignoring or failing to resolve legal problems often results in unmet legal need (Coumarelos et al., 2012, p. xvii). Defining legal need is problematic (Curran & Noone, 2007, p. 79-81); however, in the survey, unmet legal need was defined as the 'gap between experiencing a legal problem and satisfactorily solving that problem', including problems that remain unresolved because the people involved are not aware of their legal rights, or are not able to assert those rights (Coumarelos et al., 2012, p. 4; Pleasence, Balmer, & Sandefur, 2013, p. 37).

The legal needs survey had some methodological limitations, specifically in relation to assessing Indigenous legal needs. These include the assumption that individuals can identify unmet legal need and the reliance on household telephone interviews (Cunneen, Allison & Schwartz, 2014, p. 221). However, the Indigenous Legal Needs Project (run by James Cook University) addresses some of those limitations and provides valuable information about Indigenous legal need. The project highlights the barriers Indigenous people face in accessing legal services: low levels of literacy and numeracy; high levels of disability; high levels of psychological distress and self-harm; the effects of childhood removal; drug and alcohol issues; and geographical isolation (Cunneen, Allison & Schwartz, 2014, P. 220). A paper about Indigenous legal need in the Northern Territory reported that understanding of civil and family law issues was low, as was the prospect of 'realising legal entitlements': 'for many people the legal system is not seen as a process that might assist in enforcing rights and providing redress' (Cunneen, Allison & Schwartz, 2014, p. 235). Similarly, De Plevitz and Loban state that 'Indigenous people in remote communities have no real means or opportunity to enforce their legal rights in civil law' (2009, p. 22). Aboriginal people in the Northern Territory face barriers to accessing justice that other people living in Australia do not, including geographical remoteness and welfare conditionality. Cunneen, Allison & Schwartz argue that 'the increased legal regulation underpinning welfare conditionality has specifically further marginalised Aboriginal people through lack of access to legal advice and advocacy' (2014, p. 237). My study recruits

participants from Queensland and the Northern Territory, including participants who provide legal services to Aboriginal people.

Studies of legal need have been conducted in other jurisdictions, including England, Wales, Canada, New Zealand, and the United States.[2] Like findings from the Australian legal needs survey, findings from international studies have revealed significant unmet legal need. For example, *The Justice Gap* reported that 71% of low-income households in the United States had experienced at least one civil legal problem in the last 12 months, and that '86% of the civil legal problems reported by low-income Americans in the past year received inadequate or no legal help' (Legal Services Corporation, 2017, p. 6). The report states that more than 60 million Americans are 'low-income'—living in households at or below 125% of the Federal Poverty Level—and that legal aid organisations had provided assistance for only 1 million people in 2017 (2017, p. 8). The report states that 'this "justice gap"—the difference between the civil legal needs of low-income Americans and the resources available to meet those needs—has stretched into a gulf' (2017, p. 9). In Australia, persistent challenges in securing funding for community legal services risks stretching our existing justice gap into a gulf.[3] If justice policies are to rely on alternatives to individual legal assistance services, such as legal information resources, understanding the limitations of those alternatives is essential. This project seeks to add to that understanding.

The Ontario Civil Legal Needs Project reported that more than 30% of Ontarians had experienced a legal problem during the previous three years, and that respondents experienced 'substantial barriers to accessing legal assistance for a number of reasons, including income, language, and geographic access' (2010, p. 18). The project also identified that while demand for help with civil legal problems was growing, the resources

[2] The English and Welsh Civil and Social Justice Panel Survey has been running since 2001; it was first conducted by the National Centre for Social Research and called the *National Periodic Survey of Justiciable Problems* (Cleary & Huskinson, 2012, p.2), but has since been run by the Legal Services Research Centre (LSRC) and the Legal Services Commission. The study 'provides the only large-scale representative overview of the public's experience of civil justice issues and successes in seeking justice when addressing them' (Balmer, 2013, p. i). In Canada, studies include *The Legal Problems of Everyday Life: The Nature, Extent and Consequences of Justiciable Problems Experienced by Canadians* (conducted by Ab Currie for the Department of Justice Canada in 2006), *Listening to Ontarians: Report of the Ontario Civil Legal Needs Project* (conducted by the Ontario Civil Legal Needs Project, report released 2010), and the Cost of Justice project run by the Canadian Forum on Civil Justice (2011-2018). In the United States, the Legal Services Corporation released *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans* in June, 2017. New Zealand's Legal Services Agency released a *National Survey of Unmet Legal Needs and Access to Services* in 2006, before it became the Ministry of Justice.

[3] See, for example, responses to the Australian Government's 2018 budget by the National Association of Community Legal Centres (at http://www.naclc.org.au/cb_pages/news/Budget2018.php) and the Law Council of Australia (at https://www.lawcouncil.asn.au/media/media-releases/budget-boost-to-counter-elder-abuse-welcome-but-greater-funding-required-to-end-justice-crisis).

to support legal assistance services were limited (2010, p. 19). In the English and Welsh Civil and Social Justice Panel Survey (CSJPS), 32% of respondents across England and Wales had experienced one or more legal problems during the reference period (Balmer, 2013, p. ii). Sixteen per cent of respondents took no action to address the problem, and 40% of respondents resolved their problem without seeking advice (Balmer, 2013, p. iii). Wave one of the survey found that approximately one in six people who sought advice 'failed to obtain any. This is in part because the demand for particular advice services, and the manner in which they operate, can make it difficult for some people to access them' (Pleasence, 2006, p. 161). Proximity, opening hours, availability, cost, service integration, and referrals between services can disrupt advice seeking (Pleasence, Balmer, & Sandefur, 2013, p. 37). The surveys also showed that strategies used to resolve problems can become entrenched within individuals and households (Pleasence, Balmer, & Sandefur, 2013, p. 38). The English and Welsh Civil and Social Justice Panel Survey builds on Genn's pioneering work; the methodology used in the *Paths to Justice* survey has been replicated across legal needs studies in many jurisdictions. Genn found that whether people seek advice is influenced by the nature of the problem and the individual's level of education, age, income, and gender (Genn, 1999, p. 141-142). One of Genn's participants stated that 'there is a legal system and I feel that it is just not available to me. If I were poor enough it would be available to me and if I were rich enough it would be available to me and we are one of the 94% of the British population who fall somewhere between the two' (Genn, 1999, p. 233).

Balmer states that 'the ability of people to protect their legal rights and hold others to their legal responsibilities is a prerequisite of the rule of law and underpins social justice' (Balmer, 2013, p. i). However, research shows that—in addition to other barriers—most people do not have knowledge of their legal rights (Denvir et al., 2013, p. 154), and that lack of knowledge, skills, and confidence are barriers to realising legal rights and responsibilities (Buck et al., 2008, p. 676). Knowledge of rights has been considered a relevant factor in assessing competence, or legal capability, when it comes to the ability to resolve legal problems (Denvir et al., 2013, p.140). Knowledge of rights as an indicator of capability—and whether this is a realistic expectation for vulnerable groups—is an issue that I will address in chapters three and four in this thesis.

In the United Kingdom, increasing concern about the public's lack of legal knowledge led to the formation of a Public Legal Education and Support (PLEAS) Task Force in 2006 (Buck, Pleasence, & Balmer, 2008, p. 661). In 2007, this task force recommended

‘creating a coherent focus and identity for public legal education; overcoming the fragmented nature of current provision; developing and spreading good practice; and securing sustainable funding’ (Buck et al., 2008, p. 661). After significant cuts in funding to legal aid programs in the United Kingdom in 2013, community legal education, including the use of legal information, self-help material, and self-representation, has become a key strategy in resolving civil justice problems (Denvir, Balmer, and Pleasence, 2013, p. 139). Moorhead and Pleasence state that ‘legal education and self-help services are becoming increasingly attractive to policy makers wishing to maintain (or extend) legal aid coverage in the face of downward costs pressure’ (Moorhead & Pleasence, 2003, p. 8). In Australia, despite the limited empirical evidence for the effectiveness of community legal education, it continues to be a key strategy in attempting to both increase early resolution of legal problems and decrease costs (Nicoll, 1987, p. 190; Forell & McDonald, 2015, p. 2). This trend has attracted significant criticism:

> …in spite of what appears to be continued need for [community legal education] and whilst simultaneously promoting self-help for the range of problems soon to be out of the scope of legal aid, the government has imposed upon itself no duty to promote knowledge of rights, develop just-in-time legal information, share the third sector’s burden of equipping citizens to better handle their problems alone or for that matter, inform itself as to the need for [community] legal education interventions. (Denvir et al., 2013, p.156)

Buck and Curran, writing about findings from legal needs studies in England, Wales, and Australia, suggest that failing to act on a legal problem indicates a lack of knowledge about the nature of the problem and options for resolving it: ‘not doing anything about the problem points to the lack of knowledge about the seriousness of the problem and what action to take’ (2009, p. 5). Poor legal knowledge is not the only reason for people failing to resolve their legal problems in Australia. Coumarelos et al. also cite personal constraints and systemic constraints as possible reasons (2012, p. xvii). Some people may be aware of their legal problem but unwilling, or unable, to pay for the cost of advice and representation, especially if resolution would require a lengthy court battle. Others might think that it is not worth the effort or be sceptical about achieving a satisfactory outcome. As I will discuss in chapter two, the focus of this thesis is vulnerable people—those who are likely to have poor legal knowledge and experience both personal and systemic constraints.

Responses to legal need

Past justice system reforms have tried to address unmet legal need and poor legal knowledge by attempting to create equal access to lawyers and the court system through legal aid commissions and community legal centres, and clarify the law through plain language initiatives and community legal information and education (Coumarelos et al., 2012, p. 3). There are eight legal aid commissions in Australia, one in each state and territory. They receive funding from the Australian Government, state and territory governments, and interest, contributions and fees (National Legal Aid, 2015). Their purpose is to provide legal assistance for disadvantaged people who are unable to access other legal services.

Community legal centres are 'independently operating not-for-profit, community-based organisations that provide legal services to the public, focusing on the disadvantaged and people with special needs' (National Association of Community Legal Centres, 2017). Community legal centres receive some state and federal government funding, as well as donations from philanthropic organisations, and rely heavily on volunteers to provide the services they offer (National Association of Community Legal Centres, 2017). There are approximately 200 community legal centres in Australia (National Association of Community Legal Centres, 2017). They have made a distinctive contribution to the legal assistance sector in Australia, particularly in comparison to other jurisdictions such as the United States. In the United States, neighbourhood law offices were 'a product of government ideology and funding', whereas in Australia, community legal centres 'were a grass roots, bottom up movement, unstructured, unfunded and fired by a passion for justice' (McCulloch, Blair, & Harris, 2011, p. 10). Early community legal service workers saw themselves as representatives of people for whom the ideals of egalitarianism and equality before the law 'were made meaningless by the inaccessibility of the law' (Chesterman, 1996, p. 8-9). They wanted to 'instil in clients and volunteers the motivation to pursue campaigns where the goal was not simply law reform but participation in the institutions and legal processes that shaped their lives' (Chesterman, 1996, p. 193).

Community legal centres help people facing 'economic, social or cultural disadvantage, are often experiencing multiple inter-related problems, and frequently their legal problem may affect their and their family's entire life circumstances' (National Association of Community Legal Centres, 2018). Community legal centres have had an important role in systemic advocacy and law reform work in Australia since the 1970s (Noone, 2017, p. 28). They 'negotiated the gap between law and justice, creating new ways of doing justice and

new understandings of law, politics and social change…[community legal centres] have expanded *possibilities* for justice and recognised the legal needs of people previously excluded from the benefits of the law' (McCulloch, Blair, & Harris, 2011, p. 2). The early development of community legal centres played a crucial role in shifting government policy to consider access to justice for vulnerable people, and to provide funding for community legal centres and legal aid commissions throughout Australia (Chesterman, 1996, p. 192).

In this project, I interviewed 15 participants from legal assistance services in Queensland, and five from the Northern Territory.

While legal aid commissions and community legal centres work hard to meet the needs of the communities they work in, their services are limited by funding shortages. The 2015-2016 Annual Report published by Community Legal Centres Queensland states that 'despite providing valuable services to almost 60,000 people in Queensland last year, research from the National Association of Community Legal Centres shows that another 60,000 were turned away' (Community Legal Centres Queensland, 2016, p. 4). Nationally, community legal centres turn away approximately 165 000 people a year due to lack of resources (National Association of Community Legal Centres, 2017, p. 18). A clear funding shortfall is compounded by the understanding that community legal services are accessed by less than half of the population: the legal need survey conducted in Australia showed that there are 'sizeable gaps in the awareness of not-for-profit legal services' (Coumarelos et al., 2012, p. xvi). With only 36% of the survey sample being aware of community legal services, there are significant numbers of people who are not even attempting to access these services (Coumarelos et al., 2012. P. xvi). Other barriers to obtaining advice from these services include difficulty making contact, delayed responses, inconvenient opening hours, lack of available appointments, cost, inaccessibility of services (including excessive wait times on telephone help lines), and the individual's lack of knowledge, confidence, power, and resources (Coumarelos et al., 2012, p. xviii-xix; Curran & Noone, 2007, p. 69).

Tension exists in every jurisdiction between the benefit of providing early intervention services, and the restrictions of budgets and competition for resources between different public service areas (Buck & Curran, 2009, p. 23). In 2007, Curran and Noone wrote that 'since 1986 the pre-eminent governmental concern has been to control the growth of legal-aid expenditure and not whether needs are being met. This can safely also be said of the situation in Australia, the United States, the Netherlands, and Sweden in the decade between 1985 and 1995' (2007, p. 78). This concern has not abated. It is widely recognised within the sector that 'the demand for legal assistance services across

Australia always exceeds supply' (Crockett & Curran, 2013, p. 42). Noone states that 'low levels of government funding to Australian LACs [legal aid commissions] have meant that they have always had restrictions on whom and for what legal assistance is provided. This chronic underfunding of legal aid means that restrictive guidelines and the determination of priority areas of law to receive assistance are used as a budgetary measure to ensure organisations remain solvent' (2017, p. 25). Limits on funding and resources mean that services offered by legal aid commissions and community legal centres target the most vulnerable members of the community and tend to focus on cases that are assessed as having merit. Schetzer, Mullins and Buonamano, discussing the barriers faced by people who cannot afford the services of a private lawyer, state that 'the availability of legal aid may only address this barrier to a limited extent given the constraints which exist in relation to grants of legal aid' (2002, p. 9). These constraints include prioritising aid for criminal matters and reducing the level of assistance available for civil law matters such as housing and employment (De Plevitz & Loban, 2009, p. 22; Noone, 2014, p. 40). The 'privileging of criminal law matters over family and civil law has an ongoing impact on the poor's social exclusion and access to justice' (Noone, 2017, p.25). Financial and merit tests are applied to applications for legal aid assistance: financial tests determine who is financially disadvantaged enough to need help, while merit tests determine whether an applicant's case is 'reasonable and worthwhile' (Parker, 1994, p. 149). These restrictions leave many without assistance.

Another strategy to address unmet legal need and poor legal knowledge is to clarify the law through plain language initiatives and community legal information and education. Community legal information and legal education initiatives have attempted to educate people about the law and empower them to handle their own legal problems. Legal information has been described as a key strategy for 'empowering people to take action for their legal problems, thereby enhancing early intervention and prevention' (Coumarelos et al., 2012, p. 210). Greiner, Jimenez, and Lupica argue that 'the volume of litigants who interact with the formal legal system without any form of professional assistance means that effective self-help materials must be part of any reasonable access-to-justice strategy' (2017, p. 1172). Coumarelos et al. acknowledge that the concept of access to justice has expanded to include not just access to lawyers and the court system, but also access to legal information and education (2012, p. 3). Most legal aid commissions have statutory obligations or requirements in their service delivery models to provide community legal education (Buck & Curran, 2009, p. 26). Community legal centres also have legal education programs and provide information resources for their clients; the client-centred

approach of community legal centres aims to remove the barrier of incomprehensible legal language, improving their clients' access to justice (McCulloch, Blair, & Harris, 2011, p. 12).

Community legal education includes both resources and activities. Examples include:

- web-based information in websites, wikis, or apps
- print publications including factsheets, kits, guides, and brochures
- outreach sessions for community members and service providers
- community development projects that focus on particularly remote or vulnerable groups
- participation in public events.

Buck and Curran acknowledge the value of legal education in increasing individuals' capacity to identify and resolve legal problems: 'In order to have a right to an effective remedy, knowledge of that right with the capacity and confidence to be prepared to exercise that right when it is threatened or curtailed, are necessary pre-conditions' (2009, p. 10). Without this knowledge, legal problems result in increased rates of inaction, failure to obtain advice, and decreased rates of obtaining a positive outcome or meeting personal objectives (Buck & Curran, 2009, p. 26).

Meeting information needs with plain language

The Australian legal needs survey identified low levels of legal knowledge within the general community in Australia, and the researchers called for improved public information and education about legal rights and options for resolution: 'the law survey suggests the value of generic legal information and education…it also suggests the value of more tailored legal information and education initiatives focused on the particular needs of different demographic groups' (Coumarelos et al., 2012, p. 38; p. xxi). More specifically, previous studies have found both low levels of legal capability and poor legal knowledge to be prevalent within disadvantaged groups (Coumarelos et al., 2012, p. 30; Balmer et al., 2010, p. 30; Buck, Balmer & Pleasence, 2005, p. 317; Buck, Pleasence & Balmer, 2008, p. 671; Denvir, Balmer & Buck, 2012, p. 595; Pleasence et al., 2004, p. 224). Coumarelos et al. argue that 'the evidence that disadvantaged groups are especially likely to lack legal capability stresses the potential benefits of targeting information, education and advice strategies to meet their specific legal needs' (2012, p. 38). In this thesis, I question the benefit of targeting legal information to vulnerable groups as an access-to-justice solution,

and consider whether plain language drafting does enough to meet the needs of vulnerable groups in providing available, accessible, and appropriate information.

Joh Kirby, in her time as Executive Director of the Victoria Law Foundation, stated that to be effective 'community legal information should apply plain language principles and focus on the needs of the audience, considering and being developed in consultation with the target audience' (2011, p. 31). The purpose of using plain language principles is to create a resource that 'meets the needs of its audience—by using language, structure, and design so clearly and effectively that the audience has the best possible chance of readily finding what they need, understanding it, and using it' (Cheek, 2010, p. 5). The plain language movement has been advocating for clear communication in the legal sector since the 1970s, and has worked towards making legislation, contracts, and forms more easily understood by people with no legal training. Asprey states that 'lawyers need to take a different approach to legal writing. We have an obligation to communicate clearly and efficiently: with our clients, with our colleagues, with our opponents and with the general public. We cannot continue to pretend that legal writing is meant to be read and used only by lawyers' (2010, p. 10). Similarly, Butt argues that 'law is involved with life, with people, and with the community. Legal language should not be a language of coded messages, unintelligible to ordinary citizens' (2013, p. 127). Trudeau and Cawthorne urge us to consider the impact of legal communication: 'clear legal communication is vitally important. Think about how much of people's lives are governed by the ability to read and understand legal information' (2017, p. 249). Because the law regulates so many aspects of our lives, how it is communicated to the public remains an important issue, particularly if information about the law is to be part of a wider access-to-justice strategy.

The purpose of this project is not only to argue that plain language principles should be adopted in the production of legal information materials. Previous research has already recommended these kinds of strategies. Many organisations already have policies that, if not explicitly called plain language policies, encourage the use of clear communication. However, as Butt implies, the law is really about people (2013, p. 127). It regulates the lives of individuals and communities, and it is practiced by individuals and communities, often, in the community legal sector, under pressure and with limited resources.

In addition to advocating for the production of plain language legal information, this thesis explores the effectiveness of legal information resources for vulnerable groups from the perspective of legal service providers working in the community legal sector. Within the community legal sector, there is an increasing focus on preventative legal services:

services intended to prevent or lessen the effects of legal problems. This has led to more support and funding for community legal education initiatives, including the production of legal information resources. However, there is limited research around the effectiveness of legal information in the Australian context. This thesis adds to this body of research.

Project description

This is an interdisciplinary project, drawing on research from the legal sector about legal need, access to justice, self-help legal services and legal information, and research from the broad field of professional communication about plain language. Research about legal need in Australia reveals that there are significant levels of unmet need, with disadvantaged or socially excluded groups 'particularly vulnerable to legal problems', more likely to experience more legal problems overall, and more vulnerable to substantial and multiple legal problems (Coumarelos et al., 2012, p. xvi; Buck, Balmer & Pleasence, 2005, p. 317; Pleasence et al., 2003, p. 19; Currie, 2009, p. 21, 30; Sheldon et al., 2003, p. 254).

Inequality exists in the experience of legal problems: the Law and Justice Foundation's legal needs survey indicates that 9% of people experience 65% of the legal problems (Forell & McDonald, 2017, p. 1). Additionally, once someone experiences a legal problem, the likelihood of them experiencing additional legal problems increases, both as a consequence and cause of vulnerability:

> …vulnerability to problems is not static, but cumulative. Each time a person experiences a problem, the likelihood of experiencing an additional problem increases. This is not just as a consequence of initial vulnerability, but also as a consequence of the increased vulnerability brought about by the impact of initial problems. (Pleasence, 2006, p. 155)

Vulnerable groups face barriers to accessing justice that others do not face. For example, some legislation can contribute or lead to people experiencing homelessness; they may then be targeted by other laws regulating their behaviour, but have more limited options available to them when seeking assistance (Walsh, 2004, p. 38, 40).

Legal information has been suggested as a way to meet some of the legal need that underfunded legal assistance services are unable to address; there is 'a need for greater knowledge of the law; individual rights and entitlements; and court processes and time limits, presented in non-legalistic "plain English"' (Denvir et al., 2012, p. 602). Providing

legal information is relatively cost-effective and has been encouraged as a way of maintaining service provision when funding is cut. However, research in the legal assistance sector has started to question whether self-help services are in fact helpful for potential users: '…self-help legal services are a positive development for some, but not so for disadvantaged people for whom these services are a poor—and the only—substitute for the services of experts' (Giddings & Robertson, 2002a, p. 459). My thesis takes up these questions and explores them with a specific focus on vulnerable groups.

Plain language advocates argue that, by adopting plain language principles, written material can be made more accessible and user-friendly. However, Lawler, Giddings, and Robertson argue that while organisations attempt to present content in a 'straightforward and plain English fashion, it is notable that by adopting a written form, the outcome is that only those self-helpers with reasonable levels of literacy could have recourse to any assistance the resources might provide' (2012, p. 206).

In 2011, Joh Kirby published *A study into best practice in community legal information: A report for the Winston Churchill Memorial Trust of Australia*. The study focused specifically on community legal information. Kirby made a number of key recommendations, including that 'further research should be undertaken to investigate the benefits of community legal information and assist with the development of standards for the sector' (Kirby, 2011, p. 9). Kirby visited organisations in Canada, the USA, Sweden, and England, to look at best practice in community legal information around the world (p. 9-10). She found that legal information is not always designed for a community audience, and that there is a continuing tension between being legally accurate and making sure the information is accessible to the target audience (Kirby, 2011, p. 16, 19). Kirby recommended that 'further research is required to more fully document how community legal information is used, its benefits, and what steps can be taken to improve its delivery' (Kirby,2011, p. 28).

This project investigates community legal service providers' understanding and use of plain language, and it questions whether using plain language makes legal information resources more useful and effective for their target audience. The project focuses on vulnerable groups because they are the target client group for legal assistance services, the primary producers of legal information resources. Plain language research has never focused on the groups who are most likely to use information in place of advice and advocacy services because they have no other option. Previous research has identified that self-help resources may not be appropriate for use by disadvantaged groups, but such research has not further explored the use of legal information specifically by

disadvantaged users. This project also focuses on legal information, rather than legislation or other legal documents (such as contracts), because general information resources have not been studied in previous plain language research.

These questions are important to answer not just to fill a gap in our current knowledge, but to understand whether the current solutions are most appropriate for those who are most vulnerable in our communities. Information promoted as being of assistance to the vulnerable should not further disadvantage them.

Chapter one: Plain language legal information

In the previous chapter, I introduced the concept of legal need in Australia and the community legal sector's attempts to meet this need. Legal education and information initiatives are designed to increase individuals' capacity to identify and resolve legal problems, thereby improving access to justice. Applying plain language principles has been suggested as a means of creating more accessible legal information (Coumarelos et al., 2012, p. 3; Kirby, 2011, p. 31). However, in this thesis I question the assumption that applying plain language principles will resolve problems of accessibility, and I question the effectiveness of legal information resources for vulnerable groups.

In chapter two, I will further discuss vulnerability and capability. In this chapter, I examine the origin and purpose of legal information in more detail, taking into account known barriers to information use, such as literacy skills. I also review the existing research literature about legal information in Australia, before defining plain language, outlining its benefits and criticisms, and reviewing the research that tests its effectiveness.

1.1 Legal information: Origins, definition, and purpose

Challenges in securing stable funding for legal assistance services, combined with an increased awareness of inadequate knowledge of legal rights within the population, has led to a focus on providing legal education initiatives, particularly within the community legal sector. Noone and Tomsen write that the 'desire to "stretch the legal aid dollar further", coupled with increasing demand, further encouraged new options in service delivery' (2006, p. 169). Community legal education and information has been an 'integral' part of legal assistance services in Australia since legal aid commissions and community legal centres were established in the 1970s (Forell & McDonald, 2015, p. 1). Early legal information resources included the *Legal Resources Book*, published by Fitzroy Legal Service in 1977, which aimed to 'help to overcome the perceived powerlessness of people on low incomes' (Chesterman, 1996, p. 102). McCulloch, Blair and Harris state that community legal centres were 'trailblazers in terms of packaging legal information: t-shirts, wallet-sized cards, condom wrappers, comics, posters, music video clips, pamphlets, and easy to read but detailed guides to the law were amongst the plethora of ground-breaking community legal education tools developed by [community legal centres]' (2011, p. 15). Giddings and Robertson argue that 'improving community understanding of the law has been an important aspect of the philosophy of Australian CLCs [community legal centres]

since their establishment in the 1970s. This community legal education focus continues to be emphasised by CLCs [community legal centres]' (2001, p. 185). Forell and McDonald state that community legal education and information 'was seen then—and often is now—as a tool to empower individuals to identify, understand and enforce their legal rights, both in specific situations (such as arrest) and as empowered and engaged legal citizens more generally' (2015, p. 1). The idea that legal information can be used as a tool to promote empowerment and self-advocacy among vulnerable groups is one that I will discuss and challenge in chapter four of this thesis.

Denvir, Balmer and Buck describe community legal education[4] as 'an umbrella term used to describe targeted initiatives promoting public awareness and understanding of individual rights, the law and the legal system' (2012, p. 592). These targeted initiatives include things like the production of legal information and self-help kits, audio-visual material, and group information sessions or workshops. Denvir et al. further divide community legal education into two categories: 'rights-based education' and 'self-help' (2012, p. 592). They argue that rights-based community legal education is aimed at empowering people to identify and assess legal problems, in an anticipatory sense, while self-help community legal education is aimed at providing information for a specific legal problem, one that the user may be currently experiencing (Denvir et al., 2012, p. 592). Self-help community legal education is intended to help people handle their legal problems without further assistance: 'considered a "just-in-time" intervention, it aims to provide a layman's guide to the law and how to resolve particular problems at the point at which problems arise' (Denvir et al., 2012, p. 592). Forell and McDonald make a similar distinction, dividing community legal education and information into "just-in-case" resources, developed to assist people 'to "self-help" (or "get help") when it is needed in the *future'*, and "just-in-time" resources, developed to assist people 'to progress through steps required to resolve an *existing* legal problem' (2015, p. 6).

These categorisations encompass the varied expressions that community legal education and information take. However, this thesis examines only the information component of community legal education and information. Legal information is a form of community legal education, designed to inform people about their legal rights and responsibilities, the legal system, and the options for resolving legal problems through the provision of written materials, including print publications, websites, and apps. The distinction applied to

[4] In other countries, such as the United Kingdom, the analogous term 'public legal education' is also used. I will use the term 'community legal education' or 'community legal education and information' throughout this thesis.

broader community legal education and information has also been applied to legal information. Kirby defines legal information as having both the broader purpose of helping people avoid legal issues, and also the narrower purpose of addressing specific legal issues (2011, p. 31). Giddings and Robertson distinguish between the two kinds of written material, arguing that self-help is aimed at achieving a particular outcome, while general information is unlikely to achieve an outcome (2002a, p. 443). They define self-help legal services as enabling people to 'take personal responsibility for some or all of the activities necessary to complete a legal transaction' (Giddings & Robertson, 2002a, p. 436). Lawler, Giddings and Robertson state that the distinction between general information and specific self-help is crucial, although often confused, because it impacts on provider's motivations (2012, p. 207). The distinction between general legal information and self-help legal information often seems to be a discretionary one. This project is concerned with the responses of people who provide these resources to their clients as part of their work, and they do not rigidly define resources, so I will not be following this distinction. I will use "legal information" as a blanket term that describes both general information and specific self-help materials.

While community legal education and information has been used since the 1970s, policy and funding restrictions introduced in the 1980s led to the production of self-help kits and booklets by community legal centres and legal aid commissions as part of their community legal education initiatives (Hunter, Banks, & Giddings, 2009, p. 7-8). These funding cuts limited legal service provision not only by income and assets, but also by area of law. A client could be financially eligible for legal aid or community legal assistance, but not have a problem in an area of law covered by their guidelines (Hunter et al., 2009, p. 9). This situation persists today, as legal aid commissions apply guidelines specifying the types of matters they will fund.

Funding cuts in Australia have pushed legal service providers towards a focus on legal information and self-help legal services, as they look for alternative (and less expensive) ways of providing public legal services (Giddings & Robertson, 2002a, p. 439). Legal information is relatively cost-effective to produce and distribute. Once it has been written and published it can be reused, and further funding is often limited to necessary regular revision. In contrast, a legal advice session is tailored specifically to the person receiving the advice, and their particular circumstances, and cannot be reused in the way that information can. The costs of distributing information are decreasing (Barendrecht, 2011,

p. 6), especially when considering the use of the Internet, but generally legal information cannot be tailored to an individual's situation like advice can.

Community legal education is promoted as both empowering the public to better handle their own problems and as being a significant cost saver to governments: 'longer-term aspirations posit [community legal education] as capable of enabling people to handle their legal problems in a self-sufficient manner, ultimately reducing dependence on publicly funded advice services' (Denvir, Balmer, and Buck, 2012, p. 593). Forell and McDonald write that 'as an empowerment tool and prevention strategy, CLEI [community legal education and information] is sometimes ascribed great, indeed, transformative expectations: improved legal capability, improved access to justice, and prevention of escalating legal need' (Forell & McDonald, 2015, p. 2). In this thesis, I question these transformative expectations; in chapters three and four, I challenge the assumption that legal information improves legal capability and access to justice for vulnerable groups.

Giddings and Robertson argue that community legal education was not originally intended to be a stand-alone service, but to help people make choices about the options they have for pursuing legal action (2001, p. 185): 'it was designed to promote legal literacy and to raise the profile of poverty law issues rather than providing a way to resolve specific immediate problems' (Giddings & Robertson, 2002a, p. 438). Hunter et al. also talk about legal literacy: the self-help kits and information booklets produced in the 1980s were intended to promote legal literacy, especially for marginalised members of the community (2009, p. 8). The provision of legal information is currently considered to be part of a larger access-to-justice strategy; some writers argue that it can be used to empower people to deal with their own legal problems (Barendrecht, 2011, p.1; Buck, Pleasence, & Balmer, 2008, p. 662). They argue that those who are uninformed about their legal rights and responsibilities are ill-equipped to deal with legal problems when they arise. My research supports this, but questions whether legal information is an adequate solution.

Vulnerable groups face the highest risk of not being aware of their legal rights: 'vulnerable groups are typically lacking knowledge of rights, less likely to take action or seek advice when faced with a civil justice problem and more likely to repeat the same behavioural patterns when later facing similar problems' (Denvir, Balmer, and Buck, 2012, p. 596). Some writers argue that legal information improves outcomes for vulnerable groups by educating them about their legal rights and responsibilities. Knowledge about the law means that people are in a better position to take action when they face a legal problem, whereas not knowing 'can lead to, or exacerbate, inequality…' (Buck et al., 2008, p. 663).

If information is directly tailored to the problem, understandable, and delivered at the right time, it can assist vulnerable groups by reducing uncertainty and preventing further legal problems (Barendrecht, 2011, p.17; Buck et al., 2008, p. 663).

Barendrecht argues that, if given appropriate information, people will be able to solve an increasing proportion of legal problems themselves, and that this will allow lawyers to take on more cases because clients can do more work for themselves (2011, pp. 6-8). In contrast, Giddings and Robertson argue that legal information has limited usefulness in dealing with specific legal problems faced by people (2002a, p. 444). They state that 'the mere supply or transfer of information, assuming the intended recipient has access to it, does not guarantee that the consumer will actually receive and comprehend it in a meaningful way, or know how to apply it appropriately' (Giddings and Robertson, 2002a, p. 456). My research supports Giddings and Robertson's position, as I will discuss in chapters three and four.

Previous research suggests numerous possible motivations for the provision of legal information:

- to help spread limited resources
- as the next best alternative when lawyers' services are not available
- because information is better than nothing
- a way of dealing more efficiently with routine work
- a way to relieve voluntary lawyers of having to do the same things over and over again
- a way of helping disadvantaged litigants who would otherwise flounder
- some people will choose to self-help and the provider cannot afford to ignore them
- as a way of enabling and empowering people
- to help the administration of justice
- to provide costs savings for the consumer
- to make profit (for private providers)
- to alleviate pressure on other services
- to meet statutory requirements
- to fill what they perceive to be gaps in the legal system
- as part of community legal education activities
- to ease pressure on advice services

(Giddings & Robertson, 2002a, p. 448-449; Lawler, Giddings, & Robertson, 2012, p. 210, 218-219).

There is continuing tension between the ideals of access to justice and legal empowerment, and the limitations that exist because of funding constraints, and a corresponding recognition that '"justice" and its funding must take its place in the realm of political competition for public funding' (Moorhead & Pleasence, 2003, p. 2). In this thesis, I question whether legal information provision is an effective method of improving access to justice.

1.2 Legal information: Production, access, and use

In Australia, information about the law is produced by a wide variety of organisations. This thesis focuses on information produced in the community legal sector. Legal aid commissions and community legal centres produce print publications for their clients, and these are distributed through other organisations such as community support services, courts, and tribunals. Other distribution methods are by word-of-mouth, or hand-to-hand (Barendrecht, 2011, p.6). A large quantity of information is also available on the Internet, and increasingly through mobile apps.

Using the Internet to deliver legal information is cost-effective and flexible (Denvir, Balmer, & Pleasence, 2011, p. 96). However, information found on the Internet can lack credibility, accuracy, relevance, and impartiality, which inexperienced Internet users may not be able to identify (Denvir et al., 2011, p. 97). Low levels of education preclude the development of research skills needed to effectively search for information, and then assess its quality accurately (Denvir et al., 2011, p.97). Another problem, especially for disadvantaged groups, is that they may not have Internet access at all. Denvir et al. argue that retaining offline access to information is a necessity, especially for disadvantaged groups (2011, p. 98). Research on this subject is limited: 'research as it relates to internet use for problems with a legal dimension is relatively new. Little is known about how people use the internet to look for information about legal problems, how successful they are in obtaining it, or the quality of the information they obtain' (Denvir et al., 2011, p. 98). This is a significant issue, as more and more services are offered online, and organisations are starting to expect people to be able to use the Internet to perform certain tasks. In 2011, 86% of Australian households had internet access, with the leading online activities being communication (at 78%), and research and information (at 77%) (Goggin, 2014, p. 252). By 2012 the number of Australian internet subscribers passed twelve million (Goggin, 2014, p. 251).

The Australian legal needs survey found that of the people who took some action in response to a legal problem, 20% used websites or self-help guides to try to address the problem (Coumarelos et al., 2012, p. xvii). In a study conducted on how consumers retrieve and assess health information on the internet, participants tended to use 'suboptimal' search strategies (Eysenbach & Kohler, 2002, p. 575). Participants did not use Boolean operators or phrase searches, and 'usually chose one of the first results displayed by the search engine and then rephrased their search rather than turning to the second page and exploring further results' (Eysenbach & Kohler, 2002, p. 575). This research also showed that 'none of the participants actively searched for information on who stood behind the sites or how the information had been compiled; often they did not even visit the home page' (Eysenbach & Kohler, 2002, p. 576).

Problems finding information are exacerbated by literacy issues. Literacy is 'the ability to understand, evaluate, use and engage with written texts to participate in society, achieve one's goals, and develop one's knowledge and potential. Literacy encompasses a range of skills from the decoding of written words and sentences to the comprehension, interpretation, and evaluation of complex texts' (OECD, 2013a, p. 4). As I will explain in chapter two, poor literacy is one of the characteristics that contributes to vulnerable persons' disadvantage in attempting to engage with processes required to resolve legal problems; therefore, it is important to consider how literacy affects access to and use of legal information by vulnerable people.

From 2011–2012 the Organisation for Economic Co-operation and Development (OECD) surveyed approximately 166 000 adults aged 16–65 in 24 countries and sub-national regions (OECD, 2013a, p. 25). The Survey of Adult Skills (a product of the OECD Programme for the International Assessment of Adult Competencies (PIAAC)) assessed the proficiency of adults in literacy, numeracy, and problem solving in technology-rich environments (OECD, 2013a, p. 25). Problem solving in technology-rich environments is defined as 'the ability to use digital technology, communication tools and networks to acquire and evaluate information, communicate with others and perform practical tasks' (OECD, 2013a, p. 4). The assessment in the Survey of Adult Skills focused on 'abilities to solve problems for personal, work and civic purposes by setting up appropriate goals and plans, and accessing and making use of information through computers and computer networks' (OECD, 2013a, p. 4).

A lack of literacy, numeracy, and problem solving skills creates significant barriers for people: 'as the demand for skills continues to shift towards more sophisticated tasks, as

jobs increasingly involve analysing and communicating information, and as technology pervades all aspects of life, those individuals with poor literacy and numeracy skills are more likely to find themselves at risk' (OECD, 2013b, p. 6). Results from the Survey of Adult Skills found that 'in all but one participating country, at least one in ten adults is proficient only at or below level one in literacy or numeracy. In other words, significant numbers of adults do not possess the most basic information-processing skills considered necessary to succeed in today's world' (OECD, 2013b, p. 9). In Australia, 12.5% of people are proficient below level one on the literacy scale, and that figure increases to 29.3% if a language other than English is mainly spoken at home.

Initial findings from The OECD Survey of Adult Skills (Australia)

LITERACY SCALE

	Below 1/Level 1 (%)	Level 2 (%)	Level 3 (%)	Level 4/5 (%)
Australia	12.5	29.2	39.5	17.0
Queensland	11.9	27.5	41.1	18.1
English spoken at home	12.8	30.5	39.8	16.9
LOTE spoken at home	29.3	33.6	29.8	7.3

NUMERACY SCALE

	Below 1/Level 1 (%)	Level 2 (%)	Level 3 (%)	Level 4/5 (%)
Australia	20.0	32.2	32.6	13.2
Queensland	18.1	32.0	35.4	13.1
English spoken at home	20.7	33.2	32.9	13.2
LOTE spoken at home	35.8	33.1	23.8	7.4

PROBLEM SOLVING IN TECHNOLOGY-RICH ENVIRONMENTS

	Below level 1 (%)	Level 1 (%)	Level 2/3 (%)	Not classified (%)
Australia	13.0	33.2	30.7	21.2
Queensland	12.8	33.1	30.2	22.5
English spoken at home	13.2	32.6	29.9	24.3
LOTE spoken at home	18.1	27.9	16.5	37.5

(OECD, 2013a, pp. 64, 76, 88)

To score at or below level one for literacy, a person must be able to locate a single piece of specific information in a text, or locate a single piece of information that is identical to or synonymous with information in a question or directive. To score at level two, a person must be able to match pieces of information and paraphrase or make low level inferences. At level three, texts are often dense or lengthy, and one must identify, interpret, or evaluate one or more pieces of information. To score at level four, a person must perform multi-step operations to integrate, interpret or synthesise information from complex or lengthy texts. Complex inferences and background knowledge may be required. In Australia, only 1.3% of adults perform at level five literacy, which requires one to search for or interpret information across multiple, dense texts; construct syntheses of similar and contrasting ideas or points of view; or evaluate evidence-based arguments (OECD, 2013a, pp. 64-65).

Finding information on the Internet to resolve a specific legal problem could require skills at level three for literacy level, including:

- dense or lengthy texts
- continuous, non-continuous, mixed, or multiple pages of text
- navigating complex digital texts
- identifying, interpreting, or evaluating one or more pieces of information
- constructing meaning across larger chunks of text or performing multi-step operations to identify and formulate responses
- disregarding irrelevant or inappropriate content (OECD, 2013a, P. 64).

In terms of problem solving in technology-rich environments, to score below level one, a person can use one function in a generic interface to meet one criterion without reasoning or transforming information. At level one, a person can use familiar technology applications, such as email or a web browser, with little or no navigation required to access information or solve a problem. At level two, tasks require both generic and specific technology applications and navigate across pages and applications to solve a problem. At level three, navigation across pages and applications is required to solve a problem with the use of tools (such as a search function) required to make progress. At this level the task may involve multiple steps and operators, and evaluating the relevance and reliability of information (OECD, 2013a, p. 88).

Finding information on the Internet to resolve a specific legal problem could also require skills at level two for problem solving in technology-rich environments, including:

- navigation across pages
- use of tools (e.g. a sort function)
- tasks involving multiple steps
- problems where the goal is defined by the respondent
- higher monitoring demands
- some unexpected outcomes or impasses
- evaluating the relevance of a set of items to discard distractors (OECD, 2013a, p. 88).

Finding accurate and appropriate content on the Internet will be a difficult task for vulnerable people with limited literacy skills, especially if they also have other characteristics that create disadvantage. The challenges increase when considering that some people will not have access to the internet, or the skills to carry out appropriate searches. This is before considering whether the available information contains content relevant to the specific problem or is presented in a way that enables the person to understand their situation and take the appropriate action.

Using the internet to disseminate information relies on the target audience to actively search for material (Kirby, 2010, p. 21). It also assumes that the target audience knows how to effectively search for material and has the research skills to determine whether what they find is relevant and reliable. Hunter, Banks, and Giddings' research into the effectiveness of self-help legal resources found that '…people with low literacy skills and/or from non-English speaking backgrounds found the information provided difficult to understand and absorb' (2009, p. 16). Giddings and Robertson argue that 'for people with disabilities, literacy problems, language difficulties and with problems gaining access to necessary technology, self-help is simply not an option' (2002a, p. 452). I will return to this point when I discuss my research findings in chapter four.

Other barriers to accessing and using information include:

- A 'frightened emotional state. . . incapable of processing the information' (Hunter, Banks, & Giddings, 2009, p. 18; Greiner, Jimenez, & Lupica, 2017, p. 1128). This is particularly problematic for people experiencing domestic violence or family law problems, where legal problems and personal problems are inextricably linked.
- Cultural background, literacy level and level of education, or inadequate access to technology (Giddings & Robertson, 2002a, p. 454).
- The law's potential complexities (Giddings & Robertson, 2002a, p. 456).

- The user's skills: adequate reading and writing skills; the ability to comprehend and apply the factors relevant to the issue; the ability to devise an argument and present it orally; social skills to obtain cooperation from staff; typing skills; and an ability to adhere to filing and appearance deadlines if appearing in a court or tribunal. Legal information also does not teach legal skills, such as working out what is legally relevant to a case (as opposed to what might be personally relevant), interpreting legislation, or cross-examination (Giddings & Robertson, 2002a, p. 452, 457; Greiner, Jimenez, & Lupica, 2017, p. 1128).

Hunter, Banks & Giddings found some areas of law are less 'amenable' to the provision of legal information. They use the example of family law—family law is not about a finite and discrete set of rules and procedures, but a broad and highly complex subject that relies heavily on judicial discretion, and this makes it more difficult to translate family law concepts into legal information for a general audience (Hunter, Banks & Giddings, 2009, p. 15). They also argue that a reader's ability to absorb information will depend on their existing knowledge of the topic (Hunter, Banks & Giddings, 2009, p.16).

Legal information, like all other information, 'is a product; it is prepared, produced and disseminated in a variety of forms' (Bruce, van Moorst, & Panagiotidis, 1992, p. 279). In the context of this thesis, legal information is prepared, produced and disseminated by legal aid commissions and community legal centres across Australia. Some general barriers to its effective use are detailed in the literature reviewed above and include poor research and literacy skills. In the next section, I review existing research around its use within the community legal sector in Australia.

1.3 Legal information: Reviewing the existing research

There is limited research that considers the effectiveness of legal information as an access-to-justice strategy in the Australian context (Kirby, 2011, p. 9). Forell and McDonald state that there is a '…paucity of evidence demonstrating what CLEI [community legal education and information] "works": for whom, under what circumstances, and at what cost' (2015, p. 2). They suggest that effective community legal education and information should be measured by users either being able to understand laws that affect them and identify options for resolution when issues arise, or users being able to successfully resolve the presenting issue (Forell and McDonald, 2015, p. 5-6). However, they acknowledge that for these outcomes to be realistic and achievable,

consideration must be given to the barriers that prevent people from taking action, the characteristics of the target audience, distribution strategies, and the availability of supporting services (Forell and McDonald, 2015, p. 5-6). Forell and McDonald state that 'while these observations may seem obvious, they are often not reflected in the expectations for CLEI [community legal education and information] that are commonly articulated (2015, p. 6). Relevant existing research has tended to focus on people who use self-help legal services (including, but not limited to, printed or web resources), and the limitations of these services.

In 2001, Giddings and Robertson reported on the first of a series of studies they conducted on self-help legal services in Australia. The first study involved qualitative research with legal service providers, including staff from legal aid commissions and community legal centres. Giddings and Robertson define self-help legal services as 'services that allow or encourage the legal consumer to take personal responsibility for some or all of the activities that are necessary to complete a legal transaction' (2001, p. 185). They interviewed twenty people from Australian legal service providers across three states and one territory (2002a, p. 441). Research questions focused on the nature of the services, the reasons or motivations for them, and the participants' assessments of their merit, utility, and further use (2002a, p. 437). Their main findings were that 'there is a growing and significant category of legal service that contains a self-help dimension, but there is insufficient understanding of the limits of self-help services, when they are best used, and what they can best achieve' (Giddings & Robertson, 2002a, p. 437). My research leads me to concur that self-help legal services are no less prevalent than they were when this research was published, and remain insufficiently understood. This thesis aims to add to this understanding.

Concerns raised during the interviews were that self-help legal services were not suitable for people with literacy problems, the elderly, or people with mental health problems or intellectual disabilities (Giddings & Robertson, 2001, p. 188). The researchers found that most people used self-help options only because they could not afford traditional legal services, and that the use of self-help was 'something forced on the consumer by the circumstances rather than a choice freely made from among other options' (Giddings & Robertson, 2002, p. 450). To be useful, self-help services needed to use plain language and be offered alongside advice (Giddings & Robertson, 2002a, p. 450). Circumstances that affected the impact of these materials were cultural background, literacy level, education level, and access to technology (Giddings & Robertson, 2002a, p. 454). To use

self-help resources, people need to ‘have a reasonable degree of control over their lives, have sufficient confidence in their abilities, possess negotiation skills, and [be] operating in a context in which debilitating emotional issues are not being generated’ (Giddings & Robertson, 2002a, p. 454).

Participants from community legal centres claimed that they had to offer self-help materials because of a lack of resources, even though they had doubts about how helpful the materials were (Giddings & Robertson, 2002a, p. 451). Giddings and Robertson identified the need for further research on the effectiveness of self-help services after participants in the study were unable to say with certainty that their self-help services worked well, or produce any evidence demonstrating their success (Giddings & Robertson, 2002a, p. 458). This thesis goes some way towards addressing this gap in the research.

In another Australian study, Hunter, Banks, and Giddings assessed good practice in legal service design and operation using a qualitative approach (Hunter, Banks, and Giddings, 2009, p. 10). They evaluated legal services (including duty lawyer services, group-based information services, self-help kits and technology-based services) by looking at whether they met their own objectives, and whether they met client needs (Hunter et al., 2009, pp. 8, 10). Hunter et al. interviewed providers, related agencies, and clients of the services (2009, p. 10), and conducted 144 interviews in total. They found that only two of the services met their own objectives, and only one also met client needs (Hunter et al., 2009, p. 11).

In this study, Hunter et al. found that printed self-help kits required a high level of literacy (2009, p. 16), with the clients who found the kits easy to use having completed grade twelve or tertiary education (Hunter et al., 2009, p. 17). Clients who did not find the kits easy to use had literacy problems, were from a non-English speaking background, or had not been educated past grade ten (Hunter et al., 2009, p. 17). Most telling, ‘the majority of the services were more focused in practice on meeting the needs of the provider than on meeting the needs of clients’ (Hunter et al., 2009, p. 22). Providers paid insufficient attention to whether service models could be applied across different areas of law, to developing coordinated approaches with related services, and to ongoing monitoring and evaluation (Hunter et al., 2009, p. 23). Hunter et al. stated that they needed to ‘be seen to be doing something to “drive the legal aid dollar further”, and to offer some kind of service to those with unmet legal needs’ (2009, p. 22). There was no analysis of the documents themselves to see if how they were written had an effect on their usefulness. This thesis analyses and redrafts a legal information resource and evaluates it with participants.

In 2009, Lawler, Giddings, and Robertson presented their findings about a case study that looked at the effectiveness of a particular self-help resource, a probate kit (2009, p. 28). The material was prepared by a private supplier, rather than a community legal centre or legal aid commission, which distinguishes this case study. They did interview clients, but those clients were 'largely well-educated, adept at handling volumes of paperwork and confident in their own abilities to undertake a largely administrative legal process' (Lawler et al., 2009, p. 28). Even though this research was assessing material prepared by a private supplier, and interviewing mostly well-educated clients, its findings remain relevant to this study because they provide an important contrast. Participants in Lawler et al.'s study chose to use the self-help kit because they wanted to save money: 'none expressed the view that they were unable to afford legal representation' (2009, p. 31). They also felt capable of completing the tasks and had support from family members throughout the process (2009, p. 31). Vulnerable people are unlikely to have the freedom to choose in this way or enjoy access to similar financial and personal resources.

The authors acknowledged that 'our understanding of the "utility" of legal self-help from the perspective of the legal self-helper is limited' (2009, p. 27), again identifying the gap in our understanding about self-help legal services. They also stated that 'the effectiveness of legal self-help resources is usually measured through evaluations that focus on the objectives and performances of the service provider or government funding body that produces them' (Lawler et al., 2009, p. 27), echoing ideas expressed by Hunter et al. (2009, p. 22). The authors concluded that 'the educational level and primary employment background profile of the participants may suggest that those most likely to engage in legal self-help of this nature are people with more advanced educational and employment experiences, which imply superior skills in the processing of paper-based transactions' (Lawler et al., 2009, p. 31).

This 2009 case study was part of a larger three-year qualitative research study that had the purpose of gaining 'a much clearer understanding of both the potential for and limits of self-help in the legal landscape' (Lawler, Giddings & Robertson, 2012, p. 186). Lawler et al. note that limited research exists on the suitability of self-help legal services and the capability of people who attempt to resolve their own legal problems (2012, p. 187). Their research examined the utility of the resources as measured by the users themselves (p. 190), through textual analysis and semi-structured interviews with people who provided the resources, people who used the resources, and other relevant stakeholders (p. 195).

Lawler et al. analysed the resources with a focus on developing an understanding of the legal process, assumptions made by the provider, and the intended audience (as evidenced by the language used and the provider's apparent expectations of the user's skill levels and capabilities) (2012, p. 195). Their textual analysis was not a close study of how the materials were written (in terms of word choice, sentence structure, tone, and design features). Rather, it examined the content and language to identify the intended audience for the material and the motivations of the provider (Lawler et al., 2012, p. 206). As part of my project, I conduct a plain language analysis and redrafting exercise, looking specifically at how a legal information resource is written.

In examining resources prepared by Legal Aid Queensland, Lawler et al. found that their objective in preparing a consumer guide was 'to ensure that users not only know "what" to do, but "why"… as a means to "empower" citizens through increasing public awareness about law and legal processes generally' (2012, p. 220). Their research suggests that 'when providers are motivated to develop and offer their resources in order to create "informed citizens", rather than "effective legal self-helpers", there is a risk that the product may hinder rather than aid those in need' (Lawler et al., 2012, p. 226). Data collected from users suggested 'a desire for a greater focus on useful "know-how" information rather than information which explains to them the relevant substantive law' (Lawler, Giddings, & Robertson, 2012, p. 216). The authors identified that in prioritising the need to inform and empower people when developing resources, providers are overlooking the need for practical, straightforward procedural information about the law and process that people need when they are trying to resolve a particular problem. Users do not necessarily want or need to know why their problem exists, or an entire background on the law around that topic. They are most interested in what they need to do to resolve the problem they are currently facing. This is a theme that runs through the discussion based on research around self-help material. Other research has identified this ongoing tension between creating a comprehensive overview of the law and an accessible publication (Kirby, 2010, p. 19; Scott, 1999, p. 28).

Lawler et al. acknowledge the belief within the community legal sector in Australia that services should engage in community legal education as a means of empowering citizens. However, they caution that when designing self-help resources, the focus should be on the needs of the user and the legal process they are currently engaged in, rather than trying to develop a broad understanding of the law (Lawler, Giddings, & Robertson, 2012, p. 227). In fact, their research found that people using self-help legal services were not interested

in developing their understanding of the legal system beyond what they needed to know to navigate through their current problem (Lawler, Giddings, & Robertson, 2012, p.22). There was actually a 'level of disengagement with the very legal processes that the participants were seeking to rely upon' (Lawler, Giddings, & Robertson, 2012, p. 212).

Therefore, a focus on community legal education and information to the exclusion of other forms of legal assistance, such as advice, can hinder rather than help. Assuming that people can handle their legal problems without professional assistance anticipates a level of competence that may not exist, especially among people who cannot pay for legal services, but are also not eligible for legal aid. Giddings and Robertson have stated that 'too much emphasis is being placed on the capacity of consumers to help themselves without really knowing that they are able to do so. More information is needed about who is best able to benefit from these services, and under what circumstances' (2002a, p.437).

In the United States context, Greiner, Jimenez, and Lupica have made similar observations about the lack of research addressing the use of self-help legal resources:

> Given the prominent, perhaps even dominant, role that self-help materials play in the United States' response to the justice gap and their long history in the United States, one might expect that those interested in access to civil justice would have developed theories of what works, and why, in guided self-help. One might also expect that those theories would have been tested in at least some of the dizzying variety of legal settings in which litigants currently proceed without lawyers, including eviction proceedings, government benefits hearings, and family law contests. Such is not the case. Indeed, it appears that there has been little analysis of, and no rigorous testing of, self-help materials in the legal context. (Greiner, Jiminez, & Lupica, 2017, p. 1121-1122)

Greiner, Jiminez, and Lupica note that adequate attention has not been given to whether or not self-help resources are able to be used by those who access them, and suggest that barriers to effective use include a 'lack of self-agency, a lack of knowledge of how to negotiate, and… a struggle against debilitating emotions such as fear, shame, guilt, or hopelessness' (2017, p. 1124).

Before I set out the aims of my research project, there is another area of literature to review. Researchers have suggested that to be useful, legal information should apply plain language principles (Giddings & Robertson, 2002a, p. 450). Coumarelos et al. state that 'legal information and advice are of value only if they are easy to access, understand and

translate into practice. Laws, legal instruments and guides, online legal information and face-to-face legal advice must therefore be framed in the simplest, clearest language' (2012, p. 212). The next section will review the literature on the development, use, and criticisms of plain language.

1.4 Plain language: Development and definition

The plain language movement has worked to address inequity in the provision of written information since the 1970s, in Australia and internationally, including the United States, Canada, the United Kingdom, New Zealand, Sweden, Denmark, South Africa, and India (Asprey, 2010, p. 64). Its advocates have been concerned with access and equity issues, arguing for the right to access relevant information, especially when the way information is expressed disadvantages one person or a group of people (Brown and Solomon, 1995, p. 2; Eagleson, 1998, p. 134; Jensen, 2010, p. 807). Advocates for plain language have linked the provision of information with access-to-justice motivations:

> Most importantly, plain language is about justice. Everyone has the right to understandable information, especially when they will make choices based on it. This is true whether the information is about finances and credit, health, housing, jobs or legal rights. (Pringle, 2006, p. 6)

While it is often referred to as a movement, plain language is a fragmented field. It has developed through advocacy groups, consumer movements, professional consultancies, and the work of individuals (Brown and Solomon, 1995, p. 1). Its origins are sometimes traced back to George Orwell's *Politics and the English Language* (1946), and Ernest Gowers' *Plain Words* (1948), but plain language gained prominence in the early 1970s, when First National City Bank (Citibank) produced plain language consumer loan documents in response to escalating costs associated with poor drafting. The Plain English Campaign, a campaigning and consultancy organisation, was founded in the United Kingdom in 1979, followed by Clarity in 1983; in Australia, the influential *Plain English and the Law* Victorian Law Reform Commission report was published in 1987. In 2010, an International Plain Language Working Group 'Options Paper', published in *Clarity Journal*, suggested that the plain language movement work towards defining and

professionalising plain language. (Asprey, 2010, p. 64-89; Butt, 2013, p. 117-119; Cutts, 2013, p. xv-xxv; Kimble, 1992a, p. 2; Stewart, 2010, p. 52).[5]

Plain language advocates vary in their opinions about what plain language is (Adler, 2008, p. 2), and often provide their own definition. Mazur acknowledges that the lack of a standard definition has been a long-term problem for the plain language movement (2000, p. 206). Cheek identifies three approaches to defining plain language: an outcomes-focused approach, an elements-focused approach, and a numerical or formula-based approach (2010, p. 6). An outcomes-focused approach defines plain language by the outcomes it produces: that is, how well a reader can understand and use a document (Cheek, 2010, p. 6). Often expressed in the literature is the idea that plain language is a style of writing where the primary goal is to communicate to your chosen audience in a way they can understand; it places the audience's needs, rather than the writer's needs, as its primary objective. For example, Cheek states that 'the purpose of language is to communicate. The purpose of plain language is to communicate clearly and effectively. It places the needs of the audience over any other consideration' (2010, p. 9). Similar thoughts are expressed by other writers when talking about plain language (Asprey, 2010, p.13; Balmford, 1994, p. 516; Balmford, 1995, p. 27; Cheek, 2010, p.5; Eagleson, 1998, p. 134; Macdonald & Clark-Dickson, 2010, p. 1; Trudeau, 2011, p. 121). One of the challenges with this approach is how to know if you have been successful in meeting the audience's needs. One method used is document testing, which checks whether people can act on the information provided (Barnes, 2006, p. 127-8).

An outcomes-focused approach can also be found in the literature on legal information. Hunter, Banks and Giddings suggest that 'potential clients themselves should be involved in the design of the service by means of consultation and/or piloting, particularly in relation to services involving the provision of information as opposed to advocacy' (2009, p. 23). In her study into best practice in community legal information, Kirby argues that it is important to clearly identify the audience for a publication and develop it to directly address their needs, engaging with them to check you have an accurate understanding of their characteristics and needs (Kirby, 2010, p. 18). Kirby suggests implementing strategies like using reference groups, active involvement in the relevant sector, involvement in direct service delivery, direct contact with members of the target audience, and other forms of

[5] For a comprehensive outline of the development of the plain language movement around the world, see "Plain language around the world", an extended summary from Michele Asprey's *Plain language for lawyers*, available at www.federationpress.com.au. Other summaries can be found in the work of Michele Asprey, Peter Butt, Martin Cutts, Joe Kimble, and Johanna Stewart.

research (Kirby, 2010, p. 18). However, when Kirby investigated best practice in legal information production, she found that while most organisations she spoke to desire to use tools such as focus group testing, and do consider it best practice, they simply do not have the time or resources to develop materials in conjunction with audiences, or to do user testing.

Elements-focused approaches define plain language by the elements that writers work with and provide tips and techniques to guide the writer in using a plain language style. For example, plain language is defined by Brown and Solomon as 'the use of language and design features so that a document is appropriate to its purpose, the subject matter, the relationship between reader and writer, the document type and the way the document is used' (1995, p. 9). Often, guidelines will be provided, such as:

- Use short sentences (Asprey, 2010, p. 118; Adler, 2012, p.76; Eagleson, 1990, p. 8-9).
- Divide the document into sections, and use headings (Kimble, 1992a, p. 12; Macdonald & Clark-Dickson, 2010, p. 10).
- Use a readable typeface and white space, avoid capital letters, and use diagrams, tables and charts (Kimble, 1992a, p. 12; Macdonald & Clark-Dickson, 2010, p. 49; Eagleson, 1990, p.8-9).
- Prefer the active voice (Macdonald & Clark-Dickson, 2010, p. 20).
- Prefer familiar words and avoid jargon including legalese (Macdonald & Clark-Dickson, 2010, p. 15).

The main benefit of this approach is that providing guidelines for writers to follow assists them in designing and writing their documents. It is also easy to see whether those guidelines are being followed. However, an elements-focused approach can be too rigid if it ignores factors such as the context of the documents and the needs of the audience.

Numerical or formula-based approaches define plain language by focusing on readability, specifically with the use of readability formulas (Adler, 2012; Cheek, 2010, p.5). Many formula-based tests have been developed to assess the readability of text. Examples are the Flesch Reading Ease Test, Flesch-Kincaid Grade Level, Gunning FOG index, SMOG formula, CLEAR analysis formula, Coleman-Liau Grade Level, and the Bormuth Grade Level (Asprey, 2010, p.322). The benefit of this approach is that formulas are relatively easy to use, and they provide a score that can be measured against the scores of other documents. However, the sole use of tests like these to assess the readability of text has

been criticised (Schriver, 2000; Redish, 2000; Benjamin, 2012). Critics of readability formulas make these points:

- The grade levels of readability formulas are not equivalent across all formulas.
- Formulas ignore text structure and organisation.
- Writers can use short sentences and short words and still be obscure.
- Formulas do not consider readers as motivated individuals with different cultural backgrounds.
- Numerical formulas cannot provide sufficient guidelines for writers.
- Formulas do not consider reading skill, subject-matter knowledge, genre, context, or purpose for reading.

(Asprey, 2010, p. 323; Douglas, 2012, p.30; Redish, 2000, p.134-5; Schriver, 2000, p. 138-9; Benjamin, 2012, p. 64).

Plain language is difficult to define, because its nature is contested even by its proponents. Macdonald and Clark-Dickson argue that writing in plain language is not about applying a set of inflexible rules, but using a range of different elements 'in ways that concentrate on meeting the needs of the readers for whom the document is designed' (2010, p. 1). Many writers argue for a balanced view of writing that does not focus too much on any particular approach or element (Kimble, 1992, p. 18). My preferred definition of plain language is one that takes a balanced approach, considering both textual elements and the needs of the audience. Every time a writer prepares a document, they will be addressing a particular audience, and possibly a different audience each time. Sullivan states that 'if effective communication is the goal, there are no universals and endless adaptation is unavoidable' (2001, p. 126). Any standard definition must be flexible enough to cover the endless combinations of writers, audiences, and instruments that would claim to use or require a plain language style.

In 2010, a working definition was suggested by the International Plain Language Working Group that attempts to tie together all the elements that plain language advocates support:

> A communication is in plain language if it meets the needs of its audience—by using language, structure, and design so clearly and effectively that the audience has the best possible chance of readily finding what they need, understanding it, and using it. (Cheek, 2010, p. 5)

This definition is compelling for its balanced approach, and one that I use throughout this thesis.

1.5 Plain language: Benefits and criticisms

Two of the most commonly listed benefits of using plain language are the provision of equitable access to information for consumers and the economic savings by organisations (Brown & Solomon, 1995, p. 2; Australian Language and Literacy Council, 1996, p. 36-7; Balmford, 1994, p. 514; Trudeau & Cawthorne, 2017, p. 250). Plain language is said to have many other benefits:

- It is more precise (Adler, 2012, p. 71; Macdonald & Clark-Dickson, 2010, p. 5-6).
- It leads to fewer errors (Adler, 2012, p. 71; Butt, 2002, p. 21; Eagleson, 1998, p. 145).
- It is quicker and cheaper for everyone, saving time and money for business and governments by reducing administration costs (Adler, 2012, p. 72; Asprey, 2010; Butt, 2013, p.108; Eagleson, 1998, p. 145; Balmford, 1994, p. 514; Kimble, 1996-97, p. 7; Macdonald & Clark-Dickson, 2010, p. 5-6).
- It is more persuasive (Adler, 2012, p. 72).
- It leads to better public relations and a better image of the legal profession (Balmford, 1994, p. 534; Butt, 2002, p. 21; Macdonald & Clark-Dickson, 2010, p. 5-6; Trudeau, 2011, p. 147).
- It is more democratic (Adler, 2012, p. 72).
- It is more pleasant to use (Adler, 2012, p. 72; Kimble, 1996-97, p. 19).
- It is more efficient (Balmford, 1994, p. 534; Butt, 2002, p. 21; Butt, 2013, p. 108; Eagleson, 1998, p. 134; Macdonald & Clark-Dickson, 2010, p. 5-6).

Despite the perceived benefits of plain language, there remains substantial criticism about its use. Criticism of plain language tends to fall into the following categories: style, content, and supporting evidence. Plain language advocates have attempted to answer these criticisms.

1.5.1 Style

Those who object to using a plain language style argue that it just means using simple language, replacing jargon with familiar words, and adopting a rigid style (Adler, 2012;

Asprey, 2010), which debases the language (Kimble, 1994, p. 51; Douglas, 2013, p.30). Douglas argues that plain language guidelines place too much emphasis on word choice, a single textual element of a document, and not enough on the syntactic and organisational elements of a document (Douglas, 2012, p. 29). He also states that 'these guidelines, like virtually every article on written communication, ignore a substantial and significant body of neuroscience research on the way our minds process written language' (Douglas, 2012, p. 29). I take these points up in chapter four.

While the plain language movement may have started with a stronger focus on certain textual elements (Penman, 1993, p. 122), it has since shifted its focus to encompass all elements of a document, including lexical, syntactical, and organisational elements, as well as considering the audience for the document (Cheek, 2010, p. 9). For some time now, plain language advocates have been emphasising the importance of a more balanced approach. As early as 1995, Brown and Solomon stated that plain language is 'the use of language and design features so that a document is appropriate to its purpose, the subject matter, the relationship between reader and writer, the document type and the way the document is used' (p. 9).

Using plain language is a more complex process than applying a set of guidelines to a piece of writing. It is necessary to consider the purpose of the document, the needs of the audience, and the goals of the writer, as well as elements of organisation, design, language, and grammar, and weigh up the importance of each of these to the production of each new document. MacDonald and Clark-Dickson summarise the process: 'writing in plain English does not mean applying a set of inflexible rules. Nor does it consist solely of simplifying your language. Writing in plain English means using a range of different elements—language, structure, content, style and presentation—in ways that concentrate on meeting the needs of the readers for whom the document is designed' (2010, p. 1). My thesis considers all these aspects.

Some critics say that plain language makes writing 'anti-literary, anti-intellectual, unsophisticated, drab, ugly, babyish, or base' (Kimble, 1994, p. 52). For certain kinds of documents, writers should not be attempting to be literary, intellectual, or sophisticated, but writing does not need to be overly simplistic to be clear. Advocates such as Balmford reject the notion that plain language debases the language (1994, p. 533). Plain language advocates have never argued for a 'dumbing-down' approach. The idea is not to make the writing as simple as possible, but rather to make it easy to understand for the intended audience. For a specialist audience, that might mean using a lot of technical language. For

a non-specialist audience, that might mean using some unavoidable technical language and providing appropriate definitions. A document can include technical language and still be clear and well-written. As Asprey states: ‘plain language is just the practice of writing…in a clear and simple style. That’s all…simple in this doesn’t mean simplistic. It means straightforward, clear, precise. It can be elegant and dramatic. It can even be beautiful’ (2010, p. 12).

1.5.2 Content

Those who criticise the content of plain language documents argue that plain language advocates do not recognise the true complexity of the material they are trying to simplify, especially for legal documents. They say that plain language advocates do not recognise the training and expertise involved in legal practice, and that the law is complicated and cannot be simplified because when it is simplified, precision is lost (Bennion, 2007, p. 63; Balmford, 1994, p. 524; Kimble, 1994, p.51).

Critics argue, especially in the context of the law, that legal language is interpreted by the courts, and therefore its meaning is known and certain (Balmford, 1994, p. 524). Plain language advocates recognise that sometimes it is necessary to use technical terms, and there are some words that cannot be replaced or explained (Macdonald & Clark-Dickson, 2010, p. 2). For example, Balmford recognises that the word ‘domiciled’ has a particular legal meaning and ‘has developed an extraordinary level of precision through a series of judicial decisions and legislative provisions’ (1994, p. 532). However, this does not mean that a writer should give up on any attempt to simplify their documents. Complicated material does not need to be expressed in a complicated way: ‘in short, experience to date suggests that no area of law is too complex for plain language. Plain language may not be able to simplify concepts, but it can simplify the way concepts are expressed. Used properly, plain language helps clarify complex concepts’ (Butt, 2002, p.19). Plain language advocates agree that using plain language does not guarantee the removal of all uncertainty, nor does it guarantee that there will never be disputes around the meaning of legal documents (Balmford, 1994, p. 530; Barnes, 2006, p. 130). There are also sources of confusion other than the language used in a document, such as human error, judicial interpretation, and conflicting objectives (Barnes, 2006, p. 703).

The law has complexities that cannot be eliminated by changing the language used (Assy, 2011, p. 378). Some material may be unable to be understood by non-lawyers, not

because it has not been written well (or in a plain language style) but because the ideas are ‘inherently difficult’ and need a specialist to interpret them (Adler, 2012). ‘The law can be expressed more plainly, but it is unlikely that ordinary citizens will ever understand it completely’ (Tiersma, 2006, p. 48). Plain language advocates do not deny that lawyers are still necessary: ‘the hope that every man can be his own lawyer, which has existed for centuries, is probably no more realistic than having people be their own doctor’ (Tiersma, 1999, p. 213). As Eagleson states, ‘writing plainly…does not turn the clients into lawyers: they need training for that’ (1998 p. 146). Tension remains between advocates wanting the law to be accessible and understandable to all people, and the reality that this will not necessarily solve a person’s legal problem. This reality does not invalidate the usefulness of a plain language approach.

There has long been debate, especially in the legal sector, about the apparently conflicting goals of clarity and precision. The plain language movement has been accused of favouring clarity over precision (Assy, 2011, p. 392-393; Kimble, 1994, p. 53). Plain language advocates have fought for clearer legislation and legal documents that can be more easily understood by the average person. Critics of plain language have resisted plain language redrafting because they believe it removes the precision of legislation and legal documents, and that plain language is not accurate or certain enough (Bennion, 2007, p. 67). This argument is often rebutted by arguing that clear and concise writing allows the writer to more easily check if something is accurate or certain, and it can uncover errors that have previously been hidden by unclear writing (Kimble, 1994, p. 55). Using plain language allows a document to be checked more thoroughly for precision, because it is clearly expressed (Balmford, 1994, p.530).

Using plain language does not necessarily mean trying to write so that everyone will understand your text: ‘this objective is obviously impossible given the rates of illiteracy and low literacy, even in developed countries such as Canada and the UK’ (Keyes, 2001, p. 16). Believing that legislation should speak directly to the people whose lives it affects may not be a realistic ambition (Sullivan, 2001, p. 101). It is very difficult to write for as diverse an audience as the ‘general public’ — a very large audience with varied and competing interests and goals. Using a plain language style cannot remove all doubt from legal documents, and redrafting legislation will not make it easily understandable to every person. ‘It is naïve to claim or assume, as so many less compromising advocates of plain English do, that legislation has the capacity to ‘communicate’ the law, across the board, unhindered by sources of doubt. The cases and the general literature on legislation

demonstrate that there are simply too many uncontrollable factors potentially at work.' (Barnes, 2010, p. 706).

1.5.3 Supporting evidence

The most serious criticism of plain language, particularly when applied to legal documents, comes from writers who argue that not enough critical thought has been given to what plain language can actually achieve, that there is no empirical evidence it improves comprehension, and that a plain language approach to communication is just too narrow (Assy, 2011, p. 377; Penman, 2002, p. 66; Kimble, 1994, p. 51). Some studies have tested readers' preference for a plain language style, such as those conducted by Trudeau (2011) and Trudeau and Cawthorne (2017). Both of these studies found that the 'vast majority' of participants preferred plain language (Trudeau, 2011, p. 151; Trudeau & Cawthorne, 2017, p. 281). However, critics argue that there is insufficient evidence about whether plain language does really make documents easier to understand, and that there is not enough critical analysis of the movement's claims (Assy, 2011, p. 375, 384).

Previous studies involving the redesign and testing of jury instructions, medical-consent and application forms, legislation, and legal documents (such as insurance policies) suggest that plain language does improve comprehension (Kimble, 1994, p. 63), although there are limits to the level of comprehension that can be attained through the revision of documents (Kimble, 1994, p. 65). Legal concepts will still be complex, even if they are simply worded.

Martin Cutts, a plain language advocate, carried out an independent research project in London in the mid-1990s, in which he rewrote a piece of legislation and then tested it on readers. Cutts made revisions to the language, structure, and typography of the *Timeshare Act*. After redrafting the Act, Cutts tested the two versions with 91 students, most of those being law students (1995, p. 45). Results showed that 56% of participants rated the revision as being 'much clearer', and 32% rated it as being 'clearer' (1995, p. 45). Cutts also tested the participants with questions about the Act. He found that improvement in answering the questions from the redrafted version was slight compared to the original, except for one question in which there was a marked improvement in correct answers from 48% correct to 94% correct. The two versions of the Act were also tested with another group of 40 participants, who were employees or volunteers at an advice bureau, ecology centre, and research centre. They were asked which version they preferred, and 80% said

that the redrafted version was ‘much easier’ to read (1995, p. 46). Cutts stated that his project proved that ‘the law can be substantially clarified without significant loss of accuracy (1995, p. 45).

Cutts’ study asked participants to provide an opinion about whether they thought the plain language revisions yielded legislation that was clearer or easier to read. However, this does not represent a reliable indication of whether the revisions retained an accurate representation of the law. Additionally, when testing for understanding, Cutts found only that ‘improvement was slight’ (1995, p. 43). A slight improvement is not the equivalent of a substantial clarification.

Tanner conducted a similar study, investigating whether using plain language guidelines improved comprehension of a passage of conventional legal English (2000, p. 54). Tanner used three versions of an ANZ bank guarantee: the first 80 lines unrevised, a plain language version, and another redraft of the plain language version with less complicated syntax (Tanner, 2000, p. 54). The study used multiple choice questions to test reader comprehension (p. 57). Participants were undergraduate and postgraduate students, and a small group who did not have a university qualification (p. 59). Results showed an overall improvement in comprehension, but that the participants still had difficulty in comprehending some parts of the revised documents (p. 72). Tanner concluded that ‘plain English does not necessarily guarantee successful communication’ (p. 72).

In the mid-1990s, Masson and Waldron tested redrafted legal documents, aiming to identify what kinds of textual changes are most effective in improving reader comprehension. In doing so, they were also investigating the limits of plain language as a way of increasing comprehension (Masson & Waldron, 1994, 69). The participants read four different versions of legal documents. The documents were examples of legal agreements that members of the public could reasonably be expected to encounter: a mortgage, sale of property, bank loan, and renewal of lease (1994, p. 71). There was an original, and then the other three versions had been redrafted, each with a different level of simplification (Masson & Waldron, 1994, p. 69). There was no restructuring of ideas in the documents, or change in the design (1994, pp. 71-2). They stated that the purpose of their redrafting process was not to improve the documents as much as possible, or to write a perfect draft, but to make staged changes that could be tracked and tested in relation to changes in comprehension (1994, p. 71). The four stages of redrafting were:

1. The original.

2. The original with archaic terms removed.
3. A revised version with long sentences broken into shorter sentences, and difficult words replaced with simpler words. Personal pronouns were also inserted into this version.
4. A version with specialised legal terms replaced by simpler phrases or defined in the text.

(Masson & Waldron, 1994, p. 69).

Masson and Waldron assessed the effectiveness of the modifications by measuring how quickly the participants could read the documents and how well they understood the content of the documents (1994, p. 69). They tested understanding by asking the participants to paraphrase sections of the document and answer questions using the documents based on hypothetical scenarios (p. 70). Participants were clerical staff at the University of Victoria and people who were taking courses through the university. The results showed that a simplified drafting style does increase comprehension, but that even using plain language cannot remove all of the law's inaccessibility: 'however much of law's inaccessible nature may be explained by obscurantism, not all of it melts away in the face of plain language' (Masson & Waldron, 1994, p. 77, 79). Masson and Waldron suggest that to make the law more broadly understood, plain language drafting must be supported by other measures such as public legal education and advice (p. 79).

Campbell (1999) was motivated by Masson and Waldron's research and ran a study in New Zealand testing comprehension of revised bank contracts (p. 335). Campbell's study revised the documents by making clear lexical and syntactical changes, and added a qualitative component, where participants were also interviewed about the documents (p. 341). Campbell employed similar methodology to Masson and Waldron, using multiple versions of the text with staged changes, including a final 'formatted version' that introduced document design changes such as the use of headings, bullets, and logical ordering of information (p. 343).

Campbell recruited sixty participants for her study, but lawyers, law students, and bank officers were excluded because of their familiarity with the type of document and writing style being studied (p. 342). All of the participants had at least a secondary education, with 43% having at least a bachelor's degree (p. 342). To test the participants' understanding, they were asked to paraphrase certain sections of the documents, and to answer questions about a hypothetical scenario (p. 344). Participant responses were analysed with reference to reading rate, completeness of paraphrase, and accuracy of answers (p.

346). Campbell found that reading rate tended to be slower for the revised documents, but hypothesised that participants were more likely to read the revised documents for understanding, and skim the original documents because their difficult style discouraged thorough reading for understanding (p. 347).

Research conducted on the effectiveness of plain language redrafting is not without limitations. The main limitations have been in the participant group selected for the study, the type of document analysed, and the type of testing performed. Previous studies conducted by Cutts (1995), Tanner (2000), and Masson and Waldron (1994) all used university students as participants. In Cutts's study most of the participants were law students (1995, p. 45); Tanner's participants consisted mainly of undergraduate and postgraduate students (2000, p. 59); and Masson and Waldron recruited university staff and students. Findings from these studies cannot be generalised to vulnerable groups who do not have the same levels of literacy, education, employment, and other capabilities. Trudeau and Cawthorne identified that clients have 'long been neglected in the discussions of how to convey legal information' (2017, p. 251). Further to this, if plain language is to succeed in addressing inequity in the provision of written information, then further research must be done involving participants who are actually experiencing inequity. Most studies do not involve vulnerable participants because of the difficulty in recruiting participants and obtaining ethical clearance. Community legal services do not generally have the resources to conduct this research and involve their target readership in participatory development or document testing. Although my thesis does not explicitly address this gap, it does involve participants who work directly with people experiencing inequity.

Because of work done by plain language advocates in the legal sector, much of the research has been focused around the redrafting of legislation and legal documents. Previous studies have applied plain language principles in redrafting legislation (Cutts, 1995, p. 45), and legal documents such as mortgages, sales of property, bank loans, leases, bank guarantees, and contracts (Masson & Waldron, 1994, p. 71; Tanner, 2000, p. 54; Campbell, 1999, p. 335). There is a gap in the research when it comes to the effect of applying plain language principles to the writing of general legal information. My study focuses on general legal information about common legal problems, rather than legislation or legal documents such as contracts.

Testing for participant comprehension of redrafted documents has included opinion scales (Cutts, 1995, p. 45), reading speed (Masson & Waldron, 1994, p. 69-70; Campbell, 1999,

p. 341), multiple-choice questions (Tanner, 2000, p. 57), paraphrasing (Masson & Waldron, 1994, p. 69-70), and questions based on hypothetical scenarios (Cutts, 1995, p. 45; Masson & Waldron, 1994, p. 70; Campbell, 1999, p. 341). Only one study has included a qualitative interview component where participants were asked for their thoughts about the documents (Campbell, 1999, p. 344). I address this limitation by conducting qualitative interviews with the participants in my project.

Results from research about plain language redrafting have been mixed. Cutts and Campbell found that plain language redrafting did improve comprehension (Cutts, 1995, p. 45; Campbell, 1999, p. 348). However, Tanner concluded that using plain language does not guarantee successful communication (2000, p. 72); similarly, Masson and Waldron found that using plain language does not address the underlying complexity of some legal concepts (1994, p. 79). Some critics argue that the plain language movement's approach to communication is too narrow because the problem it is trying to address is a problem of understanding, which cannot be solved by simplifying words and styles (Penman, 2002, p. 66). My research investigates this criticism, questioning whether the principles of plain language are a useful approach for attempting to increase understanding, particularly in the provision of legal information to disadvantaged groups.

Chapter two: Research design and theoretical grounding

This thesis explores the effectiveness of plain language legal information resources for vulnerable people from the perspective of legal service providers working in the community legal sector in Australia. To do that, my project investigates community legal service providers' understanding and use of plain language, and their perception of the effectiveness of legal information resources for their clients, by using a qualitative approach. Vulnerability is defined in terms of disadvantage; this chapter defines vulnerability by examining the nature of disadvantage. I then ground the study in theories of disadvantage and capability, and consider the theory of structural injustice and its relevance to the community legal sector. Finally, I outline my research methods.

2.1 Defining vulnerability

In the previous chapter, I established that disadvantaged or socially excluded groups are 'particularly vulnerable to legal problems', more likely to experience more legal problems overall, and more vulnerable to substantial and multiple legal problems (Coumarelos et al., 2012, p. xvi; Buck, Balmer & Pleasence, 2005, p. 317; Pleasence et al., 2003, p. 19; Currie, 2009, p. 21, 30; Sheldon et al., 2003, p. 254). As this project focuses on the effectiveness of legal information as a tool for use by vulnerable groups, I start this chapter with a discussion of vulnerability, which is generally characterised by experiences of disadvantage.

A 2015 report published by Jesuit Social Services and Catholic Social Services Australia found that 'four waves of research over a 15 year period (1999-2014) have served to confirm the enduring cumulative social disadvantage of a relatively small number of localities across Australia' (Vinson, Rawsthorne, Beavis, & Ericson, 2015, p. 115). *Dropping off the edge 2015* focuses on the geographic distribution of disadvantage in Australia and demonstrates that, despite the significant prosperity[6] experienced by certain areas in Australia, there are areas where significant long-term disadvantage is consistently found (Vinson et al., 2015, p. 115). In the report, Vinson et al. refer to what they term the *web of disadvantage*, and how 'the opportunity constraining effect of one form of

[6] It should be noted that in this study a range of material, behavioural, health, and educational forms of disadvantage are considered, not just economic well-being.

disadvantage can reinforce the impact of one or more other forms of disadvantage' (2015, p. 10).

In their study of legal need in Australia, Coumarelos et al. define socioeconomic disadvantage as some sort of deprivation, hardship or inequality concerning a person's standard of living, well-being, capabilities or other life opportunities resulting from the person's socioeconomic status' (Coumarelos et al, 2012, p. 5). However, they also acknowledge that there is no agreement about what specific characteristics constitute disadvantage, or how it can be measured (2012, p. 5). Key indicators often cited are low income, levels of education, occupational status, or unemployment. Other indicators have been used, including:

- poor health
- single parenthood
- family breakdown
- poor housing
- poor literacy
- ethnic minority
- geographical location
- residential mobility
- victim of crime status
- lack of transport
- no internet access (Coumarelos et al., 2012, p.5).

Disadvantage is often associated with poverty, low income or lack of access to resources. Using low income as a measure of disadvantage is easy to apply and interpret, but it has limitations (McLachlan, Gilfillan & Gordon, 2013, p. 35). The problems arising from disadvantage are not caused simply by a lack of money (even if money is a significant factor). Disadvantage is 'multi-faceted' and 'plural in nature' (Wolff & De-Shalit, 2007, p. 4). Wolff and De-Shalit argue that we need to 'understand wellbeing in such a way that everything that affects people for good or ill can figure in an understanding of their level of advantage and disadvantage' (Wolff & De-Shalit, 2007, p. 8). While everything that affects wellbeing should be considered in understanding disadvantage, some indicators may be more likely to have a significant long-term effect, such as poor literacy, health, or access to financial resources.

Despite the understanding that disadvantage has a multi-faceted nature, emphasis is often placed on financial disadvantage when it comes to eligibility for community legal services; financial disadvantage is a convenient indicator to use when organisations are required to place limits on their services. For example, Legal Aid Queensland's website states that 'we give legal help to financially disadvantaged people about criminal, family and civil law matters' (Legal Aid Queensland, 2018). Using low income measures is the only approach to assessing disadvantage that relies on a single dimension (Heady, 2006, p. 7). The problem with looking only at income is that this approach does not uncover why people are poor, consider other dimensions of disadvantage, or indicate possible policy interventions or remedies (Heady, 2006, p. 8). Figures for measuring poverty in Australia are also based on 'relative poverty' rather than 'absolute poverty' and tend to be arbitrary (Heady, 2006, p. 8). Although Heady argues that the time for 'unidimensional poverty measures' may have ended, he recognises that 'low income is one important dimension of disadvantage and is, in fact, included in virtually all sets of multidimensional indicators' (2006, p. 8-9). Three key approaches to a broader concept of disadvantage are the deprivation approach, the capability approach, and the concept of social exclusion (McLachlan, Gilfillan & Gordon, 2013, p. 35). This project draws on the capability approach.

Amartya Sen's capability approach evaluates a person's advantage (or disadvantage) in terms of their actual ability to achieve various 'functionings' as part of living (Sen, 1993, p. 30). In contrast with other approaches that focus on happiness, desire fulfilment, or primary goods or resources, a 'functioning' is a thing a person can do or be, such as to be nourished, have good health, experience social integration, or avoid premature mortality (Sen, 1993, p. 31, p. 48; Sen, 1995, p. 39). Poor functioning is likened to the consequences that stem from low capabilities, such as lower material standards of living, joblessness, welfare reliance, and poor mental and physical health (Heady, 2006, p. 10).

Other measures of disadvantage, such as access to primary resources, allow people to achieve well-being, while functionings are 'constitutive elements of well-being' (Sen, 1995, p. 42). This is an important distinction because converting primary resources into the ability to choose freely from combinations of functionings may vary depending on a person's capability, and having primary resources does not mean that a person will have freedom of choice: 'equality of holdings of primary goods or of resources can go hand in hand with serious inequalities in actual freedoms enjoyed by different persons' (Sen, 1995, p. 81). It is important to distinguish capability from resources—for example, a person with

a disability may have access to more resources but have less capability to achieve certain functionings because of their disability (Sen, 1983, p. 160; Sen, 1995, p. 81).

Sen writes that the 'freedom to live different types of life is reflected in the person's capability set,' which depends on a variety of factors, including personal characteristics and social arrangements (1993, p. 33). In the context of this project, a functioning might be to effectively engage with the legal system. Legal information resources are commodities that some people can use to navigate the legal system, but effective use of those commodities depends on their individual capability to do so. This approach allows for the consideration of multiple capabilities that will affect a person's functioning and is broader than just considering their access to financial resources, although financial resources do play a part. It also acknowledges that the commodities required to reach capability will vary between people, and within communities and countries (Sen, 1983, p. 164).

At the core of Sen's theory is the belief that

> …in order to *function* effectively in a modernising or modern country, people require a fairly wide range of *capabilities,* and not just adequate income. If they lack or rate low on several capabilities, then their life choices will be severely constrained. They will be "disadvantaged" and their "functionings" will be unsatisfactory. (Heady, 2006, p. 9)

Sen also discusses the importance of freedom of choice: '…freedom of choice can indeed be of direct importance for the person's quality of life and well-being. . . Acting freely and being able to choose are, in this view, directly conducive to well-being' (1995, p. 51). A person's capability reflects their freedom to achieve functionings; here, their capability will reflect their freedom to engage with the legal system in various ways. For those with lower capability, their freedom to choose from a variety of actions will be restricted. Heady states:

> A person has no genuine freedom to choose among different ways of living out his/her life—different careers, leisure activities, family arrangements etc.—unless he/she has 'capabilities' such as are likely to be conferred by reasonable levels of education, health, material resources and social networks. In this view to be poor is to lack freedom, to have impoverished choice in the context of the society in which you live. (2006, p. 9-10)

In the context of this study, vulnerable people lack genuine freedom to choose how they will engage with the legal system; I will return to this point in chapter four.

Heady argues that in research addressing disadvantage, it is important to have a 'differentiated understanding' of both the causes (low capability) and consequences (low functioning) of disadvantage, or it will be difficult to see how policy changes can best target these issues (2006, p. 16). Sen does not provide a list of capabilities, but Heady suggests three areas that would be considered a high priority: adequate education, material standard of living, and reasonable health (Heady, 2006, p.10). If these capabilities are lacking, then an individual's life choices will be constrained; they will be disadvantaged (Heady, 2006, p. 9). The capability approach has wide relevance because it shows 'the cogency of a particular space for the evaluation of individual opportunities and successes. In any social calculus in which individual advantages are constitutively important, that space is of potential significance' (Sen, 1993, p. 30).

Similarly, in their writing about disadvantage, Wolff and De-Shalit use the term functionings as 'components of well-being; dimensions by which people can be advantaged or disadvantaged, both relatively or absolutely' (Wolff and De-Shalit, 2007, p. 61). Wolff and De-Shalit expand on Sen's approach, defining disadvantage as 'a lack of genuine opportunity for secure functioning' (2007, p.9). 'Secure functioning' refers to a person's ability to maintain or sustain their level of personal capability to achieve continuous enjoyment of that functioning. They use the example of someone being under the permanent threat of eviction. That person has shelter, but could lose that shelter at any time (Wolff and De-Shalit, 2007, p. 68). Wolff and De-Shalit state that 'one central way of being disadvantaged is when one's functionings are or become insecure involuntarily, or when, in order to secure certain functionings, one is forced to make other functionings insecure, in a way that other people do not have to do' (2007, p. 72).

One functioning they consider necessary for experiencing advantage is being able to understand the law, including 'having a general comprehension of the law, its demands, and the opportunities it offers to individuals. Not standing perplexed before the legal system' (p. 59). Wolff and De-Shalit state that '…knowledge of legal rights and duties is part of what can make day-to-day life run roughly or smoothly' (2007, p. 48). This suggests that poor legal knowledge can be a disadvantage in itself. Poor legal knowledge has been suggested as a contributing factor to unresolved legal problems and unmet legal need (Balmer et al., 2010, p. 30; Buck, Balmer & Pleasence, 2005, p. 317; Buck, Pleasence & Balmer, 2008, p. 671; Denvir, Balmer & Buck, 2012, p. 595; Pleasence et al., 2004, p. 224). One of the consequences of being unaware of legal rights is a sense of exclusion

from participation in the legal system. It is impossible for a person to enforce rights if they are unaware of the existence of those rights.

Disadvantage has a pervasive and compounding influence on people's lives: 'the longer someone experiences disadvantage, the lower the probability of exit and the higher the probability of re-entry' (McLachlan, Gilfillan & Gordon, 2013, p. 55; McDonald & Wei, 2018, p. 2). In Australia, groups who are more likely to experience multiple or persistent disadvantage are:

- Indigenous Australians
- people who are unemployed
- people who are dependent on income support
- people with low education levels
- people with a long-term health condition or disability
- people who are single, including single parents and older people (McLachlan, Gilfillan & Gordon, 2013, p. 57).

Research shows that people who experience disadvantage are more vulnerable to legal problems (Coumarelos et al., 2012, p. xiv; Buck, Balmer & Pleasence, 2005, p. 317; Pleasence et al., 2003, p. 19; Currie, 2009, p. 21, 30; Sheldon et al., 2003, p. 254). In the Australian context, 'disadvantaged groups are typically the sections of the community that are most vulnerable to legal problems and often struggle with the weight of the multiple legal problems they experience' (Coumarelos et al., 2012, p. 206).

This project considers the effectiveness of legal information resources not for members of the public generally, but for vulnerable people. Drawing on a capability approach, vulnerable people are those who are disadvantaged in their ability to access and engage with the legal system because of low capability in one or more areas, including but not limited to access to financial resources. The target group is also limited in some ways by what legal aid commission and community legal centre staff define as 'vulnerable'—that is, eligible to access their services. I will return to this point when I discuss participant recruitment.

2.2 Structural injustice

In their discussion about the nature of disadvantage, Wolff and De-Shalit make the statement that 'in short, redistribution of money cannot in itself end oppressive social

structures' (2007, p. 5). They are commenting on whether egalitarianism should focus on redistribution of resources to the most disadvantaged, or whether it should look at questions of social structure. The constraining effect of social structures on both vulnerable groups and the services that work with them must be acknowledged in this thesis.

Legal information is intended to empower people to handle their own legal problems—to encourage individual autonomy, self-interest, self-assertion, and self-help. This ideal of personal responsibility runs through the literature on legal self-help. Giddings and Robertson describe the self-directed legal services consumer as 'someone willing to take responsibility to service their own legal needs' (2002a, p. 440). They state that this 'presupposes the currency of a political ideology in which individual autonomy, ability, self-interest and self-assertion are key formal characteristics' (2002a, p. 440). Here there is an emphasis on the 'willing' consumer, who agreeably takes responsibility for their own legal interests.

Iris Marion Young, in her writing on structural injustice, explains how theories of personal responsibility emphasise the individual's responsibility for their own actions and consequences, ignoring 'large-scale social structural processes' (Young, 2011, p. 11). She describes the shift in the early 1980s to a discourse that 'the causes of being poor are largely traceable to attributes and behaviour of the poor people themselves', and states that welfare policy discourses in most advanced capitalist societies (including Europe, Canada, Australia, and New Zealand) 'now focus to a large extent on the attributes and behaviour of poor individuals and what can be done to encourage more personal responsibility' (Young, 2011, p. 4-5).

Young challenges three assumptions made about theories of personal responsibility. First, that poverty is embedded either in personal responsibility or structural causation, but not both. Young argues that accounts of poverty and opportunity should consider both structural causation and personal responsibility because people exercise agency in different ways in response to structural conditions (2011, p. 18). There is an interaction between the person and their environment—Young states that 'structures describe a set of socially caused conditions that position a large number of people in similar ways' (2011, p. 18). While individuals do retain agency to make their own decisions, the range of possible decisions they can make is limited by their position within a set of social conditions. I will return to this point in chapter four.

While Sen focused on the individual's personal capabilities and their ability to achieve certain functionings, Young looks also at the outward conditions within which an individual functions. In this project, it is important to consider both how personal capabilities might limit an individual's range of choices and increase vulnerability, and how individuals are positioned within social structures. Circumstances that unfairly disadvantage some people 'are conditioned by institutionalised rules and social practices that put people in differential positions of power in relation to others, give some people higher status than others, or afford them a wide range of options for their actions as compared to others' (Young, 2011, p. 39).

The second assumption is that the background conditions within which people experiencing poverty act are not unjust (Young, 2011, p. 4). Here, Young is challenging the assumption that truly equal opportunity exists. She uses the example of education, pointing out the disparities in the quality of education students have access to, and the fact that people usually only have one opportunity to develop the skills required for well-being as an adult that are taught in the classroom (2011, p. 21-22). Young challenges scholars who 'assert that in the twentieth century truly equal opportunity has been achieved, by which they imply that disadvantaged people face no injustice', arguing that this assumption cannot be sustained (2011, p. 22). In Australia, there are geographic locations in which disadvantage is persistent, entrenched, and long term (Vinson, Rawsthorne, Beavis, & Ericson, 2015, p. 115). It would be disingenuous to claim, for example, that children raised in disadvantaged families would be exposed to the same opportunities as children raised in areas of advantage.

Third, Young challenges the assumption that everyone else acts responsibly, but people experiencing poverty do not, unfairly creating costs for others (2011, p. 4). Welfare discourses of personal responsibility argue that people experience poverty because they are not personally responsible, and the evidence that they are not responsible is that they depend on public assistance. But not only people who experience poverty behave irresponsibly. In fact, Young argues that 'it is doubtful that people of any class, race, gender, religion, or other general category are, as a group, any more or less responsible. . . than people of another group generally are' (Young, 2011, p. 25). By saying that people experiencing disadvantage are solely responsible for their own position because of the choices they have made, and are therefore responsible to help themselves out of their own problems, we deny any responsibility for helping them, and ignore the fact that structural

processes contribute to their position and the choices that they make (Young, 2011, 39-40; 106-108).

Young illustrates her theory with the description of ‘Sandy’, a fictional character who encounters difficulties when looking for a new rental property that meets her needs (2011, p. 43). In the narrative, Sandy suffers injustice not because of her life history, but because of the position she is in, defined as the social-structural position of being vulnerable to homelessness (Young, 2011, p. 45). Young states that ‘persons in this position differ from persons differently situated in the range of options available to them and in the nature of the constraints on their action’ (2011, p. 45). Similarly, a character such as Sandy could illustrate the social-structural position of being vulnerable to inadequate access to the legal system. There are many actors in and around the legal system who, individually, do not necessarily act unjustly. It is accepted that lawyers will charge for their services, just like any other service; it is expected that their firms will operate on a business model. It is accepted that people will pay for those services. It is accepted that the government will have limited policies and spending power. It is accepted that community organisations will also have limits on what they can do with the funding they have and so on. But for some people, the combination of people and organisations pursuing their individual goals leads to an unjust outcome.

The people who would be most likely to have the capability and self-assertion to effectively use legal information are those who are highly literate, educated, have support networks to turn to, financial resources to access specialised advice, and the ability to have a lawyer take over if the problem grows beyond their capability. When people who have the economic capability to access private legal services do so, they are not criticised for this decision, or for failing to resolve the problem themselves. Vulnerable groups who use legal information resources because they do not have any other option are not choosing to exercise autonomy; they are forced into a particular course of action because they are unable to make use of other options, such as paying for the services of a lawyer, as opposed to people who are more economically advantaged. I will return to these ideas in chapter four, when I discuss my findings.

2.3 Research methods

2.3.1 The transformative research paradigm and questions of ethics

Previous research on the provision of written legal resources has tended to start from the perspective of the provider, looking at their motivations and methods of production (Giddings & Robertson, 2002a, p. 437; Hunter, Banks & Giddings, 2009, p. 8). Studies have identified that self-help resources may not be appropriate for use by vulnerable groups, but have not further explored the use of these materials specifically by vulnerable users (Lawler et al., 2009, p. 28; Giddings & Robertson, 2002a, p. 458). As noted in chapter one, previous research on the use of plain language has tended to focus on textual elements but overlook the context of the documents or fail to test on 'ordinary people' (Cutts, 1995, p. 45; Masson & Waldron, 1994, p. 69; Campbell, 1999, p. 342). Greiner, Jimenez, & Lupica, discussing the testing of self-help legal resources, state that 'what matters is whether the target audience finds the material easy to read, understand, and use. Consequently, testing the material with the target audience must be a critical component of any plain-language writing' (2017, p. 1157). Although vulnerable groups are most likely to use these kinds of legal resources—a point I will come back to in later chapters—they are underrepresented in research addressing their effectiveness.

Missing from these studies is research with end users of plain language resources, in a real-life setting, and including participants who are not connected with or familiar with the legal system because of their occupation or education (for example, law students). Also missing is a focus on how vulnerable groups respond to legal information resources. This is important because legal information resources are produced primarily by organisations who work with vulnerable groups, for people who may be current or potential clients of their service. Because I am interested in how effective legal information is for vulnerable groups in particular, I was initially drawn to the methodological approach of the transformative research paradigm.

In her writing about the transformative research paradigm, Donna Mertens argues that in research addressing issues of social justice, 'the role of the researcher in this context is reframed as one who recognizes inequalities and injustices in society and strives to challenge the status quo, who is a bit of a provocateur with overtones of humility, and who possesses a shared sense of responsibility' (2007, p. 212). When Mertens talks about the researcher as a provocateur, it is in the sense that they facilitate the inclusion of diverse

groups in the research process. She writes that the transformative paradigm ‘places central importance on the lives and experiences of communities that are pushed to society’s margins [such as] women, racial/ethnic minorities, people with disabilities, those who are poor, and more generally, people in nondominant cultural groups’ (Mertens, 2009, p. 48). Initially, it was my aim to try to include people in my research that may have been excluded in previous studies in this field.

The transformative paradigm is a ‘tool that directly engages the complexity encountered by researchers and educators in culturally diverse communities when their work is focused on increasing social justice’ (Mertens, 2009, p. 10). It focuses on tensions that arise when unequal power relationships surround the investigation of what seem to be intransigent social problems, and the strength found in communities when their rights are respected and honoured (p. 10).

The transformative paradigm directs the researcher to recognise inequality and injustice in society, and to work to give equal weight to the ‘voices of the least advantaged groups in society, who may not have sufficient power for accurate representation among stakeholder groups’ (Mertens, 2007, p. 212, 222). An important aspect of the transformative paradigm is engagement with participants and stakeholders, particularly the conscious inclusion of people who have been excluded from mainstream society (Mertens, 2009, p. 14). The ability of marginalised groups to access appropriate services is one area where the need for transformative research is evident: ‘we need good research and evaluation because there are real lives at stake that are being determined by those in power’ (Mertens, 2009, p. 26, 29).

In the legal assistance sector, access to appropriate legal services is determined by those in power: those who dictate who is eligible for those services. Further, the organisations that prepare legal information resources determine what information is included and how it should be framed, shaping their audience’s perceptions of the legal system and their legal options. There is an unequal power relationship involved, and real people are affected by these decisions. The transformative paradigm focuses on the tension that exists in unequal power contexts, such as those associated with economic status, religious beliefs, immigrant status, race/ethnicity, tribal identity, gender, disability, and status as an indigenous person or a colonizer (Mertens, 2012, p. 804). Mertens suggests that researchers establish ‘interactive link[s] with community members…building relationships that acknowledge power differences and support the development of trust amongst the involved parties’ (Mertens, 2012, p. 807).

I wanted this project to include people who are least advantaged, may not have power to represent themselves in stakeholder groups, and are traditionally pushed to the margins of their communities. However, there are risks associated with a methodology that involves recruitment of vulnerable people for the purposes of qualitative research. One challenge is establishing trust with a community of people who depend on government or community assistance when I am asking them to critique the system that provides their only source of help (Mertens & Ginsberg, 2008, p. 487). Mertens and Ginsberg write that '…potential participants in research that targets reform of systems known to be inefficient, if not unjust, are likely to be highly vulnerable' (2008, p. 491). Participants may have worried about expressing negative or critical views of legal services that were assisting them and losing access to those services as a result.

Aside from concerns about whether any past clients would be interested in participating (which was a significant concern), community legal centres were concerned about breaching client confidentiality by allowing me access to their client records for the purpose of recruitment. They were also aware of the administrative burden already placed on their clients' lives—many of whom had limited capacity—by asking them to participate in a research exercise when they had difficulty engaging with the legal service and the legal process they were involved in. The legal services were also concerned about breaching their clients' trust; trust that was hard to build with people distrustful of government institutions.

Further, there were concerns about retraumatising people by asking them to think, even peripherally, about the potentially traumatic life events that had led them to have to engage with the legal system, and the possible trauma of engaging with the legal system itself. Finally, it was recognised that many vulnerable people lead chaotic lives with many pressures, and that asking them to engage in a lengthy interview could create further stress with no immediate benefit to them.

Is it potentially exploitative for researchers to persuade disempowered people to participate in empirical studies? Or is it more disempowering to exclude them from research? Mertens argues that ignoring the issues just maintains a lack of awareness and prevents those issues being addressed, leaving people at risk of further disadvantage (2008, p. 487). As Mertens & Ginsberg state, 'the gap-made-chasm by multiple differences, especially those between researcher and participant, is typically an unspoken one that, unless the target of deliberate ethical scrutiny, can be invisible to the researcher while being all too apparent to the participant' (2008, p. 491). The *National Statement on*

Ethical Conduct in Human Research states that 'while benefit to humankind is an important result of research, it also matters that benefits of research. . . involve no unjust burdens' (National Health and Medical Research Council, 2007, p. 9). I decided not to engage directly with vulnerable people in this study because the ethical concerns outweighed the benefits I could offer participants at the time. Due to lack of resources, I could not have paid participants for their time, and they would not have derived any direct benefit from being interviewed. I was concerned that asking vulnerable people to participate in research, during a time of crisis in their lives, would seem insensitive and dismissive of their distress and anxiety regarding their legal and other difficulties. I was also concerned that an encounter like this might dissuade them from seeking legal assistance in the future. I also could not find a legal service that was willing to assist me to engage in this kind of study; services had their own concerns around client confidentiality and vulnerability. These ethical concerns led to a significant change in project plan. Instead of trying to recruit participants who were vulnerable, I recruited participants who worked with vulnerable people very closely.

2.3.2 Plain language redrafting: The Disability Support Pension—Medical Criteria factsheet

As part of the interview process, I presented participants with an original fact sheet and a redrafted, plain language version of the same fact sheet, and asked them to comment on which one they preferred and which one would be more helpful for their clients. I used a fact sheet that had been produced in the participants' jurisdiction and was currently in use within the community legal sector. The fact sheet explained the medical requirements used to determined eligibility to receive the Disability Support Pension[7] (see appendix 7 for the original fact sheet). I selected this one because it was most often referred to or provided to clients by the service that produced it. The content of the fact sheet described an area of Commonwealth law, so it applied equally in Queensland and the Northern Territory, the two regions from which I recruited participants. I conducted a micro-level textual analysis[8]—a detailed study of the textual features of the resource—and drafted a version

[7] A social security payment provided by the Australian Government.

[8] I trained under a plain language expert while completing a Master of Arts (Writing, Editing and Publishing); that degree included a research project component in which I conducted a plain language analysis of 100 legal aid decision letters. I have also worked on a variety of plain language projects for different legal services. None of the participants in this study had similar training, experience, or knowledge about plain language. Even with my training and experience, the redrafting was a complex exercise, and could be approached a number of ways; it would be even more difficult for someone without training.

that used more elements of plain language (see appendix 8 for the redrafted version). The elements of plain language most often discussed by advocates and scholars fall broadly into five categories: planning; organisation and structure; document design; language and style; and editing and testing. I analysed the original fact sheet with reference to these five categories, identifying elements that could be redrafted or redesigned to meet plain language guidelines.

For example, I identified that the original fact sheet could be improved with more attention to signposting and logical ordering of information. In the revised fact sheet, I introduced numbered headings and grouped related information together. The original fact sheet was dense and text-heavy, so in the revision I created more white space. The legal content of the original fact sheet was complex, and used technical language, legal jargon and complex sentence structure. In the revision I used simple words and sentence structure and introduced bullet points to set out some information. One of the sentences in the original fact sheet stated:

> Reasonable treatment is defined as treatment that is of a type regularly undertaken, reasonably accessible, at a reasonable cost, low risk, with a high success rate and where substantial improvement in functional capacity can be reliably expected.

The revised fact sheet stated:

> A treatment is reasonable if
>
> - people with your condition regularly have it
> - you can access it
> - the cost is fair for someone in your position
> - it has a low risk
> - it has a high success rate
> - it will improve your ability to function.

This example also demonstrates the change in tone recommended by plain language advocates. The original fact sheet is very formal, where the revised version is warmer and addresses the reader directly. These examples illustrate some common changes made in plain language redrafting. My analysis of the original fact sheet is documented more fully in appendix 9[9].

[9] Please note that identifying elements, such as logos, names, and contact details, have been redacted from the fact sheets.

2.3.3 Data collection and analysis

Participant recruitment

I sought ethical clearance through the Behavioural and Social Sciences Ethical Review Committee (expedited review—low risk). The application was approved (see appendix 1) and I began to recruit participants. I sent participation request letters to managers of community legal centres and Legal Aid Queensland to generate further interest in the project and recruit participants. These letters set out the objectives of the study and what participation would involve. People who expressed interest in participating in the project were sent the invitation letter. I was asked to present my research at forums in Queensland and the Northern Territory; while recruitment was initially focused on services in Queensland, the study then expanded to include services in the Northern Territory after they became aware of the study. Sampling methods included both purposive (conceptually driven sequential sampling) and snowball sampling (Harding, 2013, p.17-18; Miles et al., 2014, p. 31). Once an interview had been arranged, participants received a copy of the information sheet, informed consent form, and interview schedule in advance.

Researchers do not agree on a recommended number of participants required to form a sample size in qualitative research (Mason, 2010, para 10). In qualitative studies, more data does not lead to more information, and large amounts of data can be repetitive and superfluous (Mason, 2010, para 1-2). Sample size should aim for saturation: 'when the collection of new data does not shed any further light on the issue under investigation' (Mason, 2010, para 2). One previous Australian study recruited 18 participants from across three states and one territory (Giddings & Robertson, 2002a, p. 441). In another project by Lawler, Giddings and Robertson, four case studies recruited 21, 26, 19, and 16 participants respectively (2012, p. 197). Previous plain language studies recruited larger numbers: Cutts' 1995 study involved 91 students (p. 45), and Tanner's 2000 study had 75 participants (p. 59). Masson and Waldron worked with two sample groups, each with 24 participants (1994, p. 71). Even allowing for the potentially different perspectives of community legal service providers in the Northern Territory, I felt I had reached saturation for this study at 20 participants. Once a participant had agreed to an interview, I arranged a date and time to meet with them at their organisation.

The interviews

To address identified gaps in existing research, I framed my interview questions to focus on the participant's understanding of their clients' experiences. I first asked participants to think about the characteristics of their clients, and then to comment on their clients' apparent capacity to use legal information resources.

Before I recruited participants, I developed the following documents (see appendices 2 – 6):

- participation request letter
- invitation letter
- information sheet for participants
- informed consent form
- semi-structured interview schedule.

My questions were based on the aims of my study, and were divided into four sections: *participant context*, *legal information in your organisation*, *fact sheets*, and *final comments*. Questions in the *participant context* section established the participant's role in their organisation, the nature of their interaction with clients, when and how they provided legal information to clients, and their assessment of their clients' characteristics. Questions in the *legal information in your organisation* section asked about how legal information was produced and distributed in the participant's organisation, and how useful participants felt legal information resources were for their clients. Questions in the *fact sheets* section asked participants to comment on an original and redrafted fact sheet, and their thoughts on the use of plain language in the legal sector. Questions in the *final comments* section asked about the purpose of legal information resources and issues for further research.

During interviews, participants were presented with two different versions of a fact sheet, both in full colour. Fact sheet A was an original fact sheet that was being used in a community legal service in Brisbane (see appendix 7: Disability Support Pension – Medical Criteria). The fact sheet sets out what evidence is required to prove that an applicant satisfies the medical requirements to receive a Disability Support Pension. Fact sheet B was a redrafted version I had produced by applying plain language principles to the original, focusing on simplifying the language (see appendix 8: Meeting the medical criteria for the Disability Support Pension). Participants were asked to respond to the different versions of the fact sheets. The first page of each fact sheet is reproduced on the next two pages. For the complete fact sheets, please see appendices 7 and 8.

Disability Support Pension - Medical Criteria

This fact sheet outlines information to help you collect the evidence you need to prove you satisfy the medical requirements for Disability Support Pension (DSP). There are other requirements you have to meet to qualify, (e.g. residence requirements, income and assets test), are not discussed here.

What are the medical criteria for Disability Support Pension?

To be eligible for the DSP you must meet the following criteria at the date of claim (or within the subsequent 13 weeks):

- have a condition that has been **fully diagnosed, treated and stabilised** in order to be assessed under the impairment tables;
- be awarded **20 points or more** under one or more of the "impairment tables";
- have a **continuing inability to work**;
- have **actively participated in a Program of Support**, unless exempt from this requirement.

Fully diagnosed, treated and stabilised

A condition is considered **fully diagnosed** if no further medical confirmation/testing is required. Some conditions require mandatory specialist confirmation. If this is required, it is listed at the beginning of the relevant impairment table. For example, mental health conditions require confirmation of diagnosis from a Psychiatrist or Clinical Psychologist (endorsed as such with APHRA).

A condition is considered **fully treated** if a person has received all **reasonable treatment** or rehabilitation for the condition.

Reasonable treatment is defined as treatment that is of a type regularly undertaken, reasonably accessible, at a reasonable cost, low risk, with a high success rate and where substantial improvement in functional capacity can be reliably expected. A treatment may not be considered *reasonable* if there is a medical or compelling reason for the patient not to pursue that treatment (which can include religious/cultural beliefs, genuine fear/lack of insight or the ability to make appropriate judgements due to a medical condition where the person is unlikely to comply with treatment).

A condition is considered **fully stabilised** if reasonable treatment for the condition has been undertaken and it is not expected that any further reasonable treatment will result in **significant functional improvement** in the next 2 years.

Significant functional improvement is defined as improvement to a level enabling the person to work within 2 years.

The 20 Point Requirement

Centrelink uses the Impairment Tables to assess how your disability impacts on your functioning. There are 15 different tables that cover different areas of functioning.

The current tables are available at:

https://www.dss.gov.au/sites/default/files/documents/05_2012/dsp_impairment_final_tables.pdf

If your condition is **not fully diagnosed, treated and stabilised** it will not be rated under the impairment tables.

Two or more conditions which cause common/combined impairment should be assigned a single rating under a single table. Ratings that fall short of a higher rating must be rounded down to the lower rating. Also, note that a person is only considered able to perform

Fact sheet A

[Insert logo]

Meeting the medical criteria for the Disability Support Pension

To get a Disability Support Pension (DSP) from Centrelink, you have to show that you meet the medical criteria. This fact sheet contains information about what the medical criteria are and how to prove that you meet them.

WHAT ARE THE MEDICAL CRITERIA FOR DISABILITY SUPPORT PENSION?

There are four parts to the medical criteria. Each part includes words or phrases that have a special meaning; these are in **bold type** and will be explained.

1. You must have a condition that has been **fully diagnosed, treated and stabilised**.
2. You must be given **20 points or more** under one (or more) of the Impairment Tables.
3. You must have a **continuing inability to work**.
4. You must have **actively participated in a program of support**.

You must meet these criteria on the date you make your claim, or within the 13 weeks that follow this date.

HOW CAN I SHOW THAT I MEET THE MEDICAL CRITERIA FOR DISABILITY SUPPORT PENSION?

1. YOUR CONDITION MUST BE **FULLY DIAGNOSED**, **TREATED** AND **STABILISED.**

Your condition is **fully diagnosed** if you don't need to have any more medical testing or confirmation that you have the condition. For some conditions you must get confirmation from a specialist. If you need this, it will be stated at the beginning of the Impairment Table that applies to your condition. For example, if you have a mental health condition, you must get confirmation of your diagnosis from a psychiatrist or clinical psychologist who is registered with the Australian Health Practitioner Regulation Agency.

Your condition is **fully treated** if you have had all the treatment or rehabilitation that is reasonable for your condition.

A treatment is reasonable if

- people with your condition regularly have it
- you can access it
- the cost is fair for someone in your position
- it has a low risk
- it has a high success rate
- it will improve your ability to function.

A treatment is not reasonable if there is a good reason for you to not have it. Some examples of good reasons:

- medical reasons
- religious or cultural belief
- genuine fear
- lack of insight
- you are unlikely to follow the treatment plan because you have a medical condition that affects your ability to make appropriate judgements.

Your condition is **fully stabilised** if you have already had reasonable treatment and more treatment will not lead to enough improvement in your condition to enable you to work in the next two years.

2. YOU MUST BE GIVEN **20 POINTS OR MORE** UNDER THE IMPAIRMENT TABLES.

Note: If your condition is not fully diagnosed, treated and stabilised it will not be assessed under the Impairment Tables.

Centrelink uses Impairment Tables to look at different parts of your body and assess how your condition affects your ability to function. There are 15 different tables that cover different areas of functioning. Part of assessing your ability to function includes deciding whether you can complete specific activities. You must be able to do the activity for more than a few minutes, whenever you try it. You will be unable to do the activity if after a few minutes you:

- have to rest
- suffer significant pain
- cannot do the activity for the rest of the day.

Fact sheet B

Informed consent, data collection, data storage, and anonymity

At the beginning of each interview, I talked the participant through the information sheet and the consent form and explained what I would do with the data I collected. I checked for understanding and encouraged participants to ask questions before we both signed the consent form. All participants agreed to having their interview recorded. Interviews ranged from 17 minutes to 60 minutes in duration, with an average length of 41 minutes. The interviews were semi-structured, and I used a series of prompt questions to guide the discussion (see appendix 6).

I transcribed nine of the interviews and employed a transcription company to transcribe the remaining eleven. I sent transcripts back to participants, providing them an opportunity to read the interview and edit or supplement their comments. Only one participant edited their transcript. Then I removed all identifying elements from the transcripts, including names of organisations and information resources if they would point to the identity of the participant. To protect participants' privacy, when I report my findings any references to the name of an organisation, resource, or person have been removed and replaced with square brackets: [name]; [organisation]; [resource].

Data analysis

This research project did not state a hypothesis and seek to prove it; instead, it asked a research question, and answered that question through the collection and analysis of qualitative data. To analyse the data, I used qualitative content analysis in the grounded theory tradition, including hand coding and memo writing to identify categories (Miles, Huberman & Saldana, 2014, p. 8). After going through the transcripts and assigning descriptive codes to the data (Miles, Huberman & Saldana, 2014, p. 74), I grouped categories into themes and recorded quotations from the transcripts to support my analysis. Writing memos allows the researcher to identify patterns, engage in conversations with themselves about the data, and record analytical progress (Bryant & Charmaz, 2007b, p. 249).

The following categories developed through the coding process:

- participant role
- types of information resources used
- frequency of information resources used
- dissemination methods
- personal and structural access-to-justice frameworks

- purpose of information
- use of information
- effectiveness of information
- plain language in theory
- plain language in practice
- provider characteristics
- user characteristics.

These were further refined and developed into six key themes for discussion in my results chapter:

- client characteristics and capacity to use information
- the usefulness of legal information as a legal service
- the purpose of legal information
- impacts of funding and resources on the provision of legal information
- plain language as a special skill
- response to redrafted fact sheets.

Strengths and limitations of this methodology

The research problem I have articulated in this study is complex, interdisciplinary, and concerns a range of different people, processes, organisations, and structures. A qualitative research methodology is particularly well suited to this kind of work, where the researcher aims to 'gain a deep and comprehensive understanding of the problem and its origins. This is one of the places where qualitative research can be really valuable' (Horvat, 2013, p. 8). Qualitative research allows for a more holistic approach, in which the researcher can explore issues and understand perspectives of the people involved (Harding, 2013, p. 10).

Qualitative methods 'allow respondents to demonstrate what is important to them, rather than data collection focusing on the concerns of the researcher. Quite often, qualitative studies will identify a range of different perspectives on one situation or issue' (Harding, 2013, p. 10). Using semi structured interviews in this study gave participants the opportunity to talk about what was important to them, revealing ideas and motivations that I may not have captured with a more rigid data collection tool. The way the interviews were structured allowed me to ask unplanned questions in response to participants' comments, which in this study revealed important and unexpected information. Interviews also allowed

me to examine the broader context of the legal assistance sector through the experiences of participants.

Qualitative methods allow researchers to investigate social reality (Cho & Lee, 2014, p. 17), gaining insight into real life. As Miles, Huberman and Saldana write, studying 'naturally occurring, ordinary events in natural settings' can uncover the meaning that people place on events, processes, and structures, and connect those meanings to the social world (2014, p. 11). One limitation of my research design was that it did not allow me to follow up with participants to ask further questions. While the interviews provided rich data, in further studies I would plan for follow-up interviews with participants, giving them an opportunity to elaborate on their responses and to comment on further versions of the fact sheet, incorporating revisions based on their previous comments.

My research methods included some documentary analysis. The advantage of using existing documents, such as fact sheets developed and used by community legal services, is that these documents are contextually relevant and grounded in the contexts they represent (Lindlof & Taylor, 2011, p. 235; Silverman, 2006, p. 157). They are also available and accessible; there are no gatekeeper approvals required to access documents that are available to the general public on organisational websites. Published texts document what participants are doing in the real world: they are stable, naturally occurring, and nonreactive (Silverman, 2006, p. 157). Conducting a plain language analysis of an existing fact sheet helped to reveal the extent to which the drafters of those documents understood plain language principles. However, document analysis alone would not have allowed me to explore questions around the effectiveness of the documents or motivations for producing them.

There is no consensus around agreed methods for measuring validity in qualitative research (Harding, 2013, p. 5). Not using triangulation methods can affect validity, but as was the case in this study, triangulation is not always possible with the time and resources available (Harding, 2013, p. 172). Validity can be increased by having more coders analysing the data, but validity is also increased through systematic research, transparent procedures and reasoning, appropriate design and methods for the research question, and taking negative cases and alternative interpretations into account (Schreier, 2012, p. 27).

The sampling method used in this study allowed me to recruit participants from a variety of services, who worked in a variety of roles. This provided a wide range of responses and data for analysis. However, sampling was limited by which organisations I could negotiate

access to, and some organisations were not responsive to my invitations, which meant that the participant pool was narrowed. I was able to interview participants in both Queensland and the Northern Territory, but in both states I was limited to people working in the capital cities of Brisbane and Darwin. Both the Northern Territory and Queensland cover large geographical areas, and their regions are quite distinct. Including participants from the Barkly region, Central Australia, and regional and remote Queensland could have offered different perspectives. It is important to note that Queensland and the Northern Territory, while similar in terms of size, are quite different when it comes to population and demographic makeup. Queensland is 1.853 million kilometres squared and populated with 4.9 million people, while the Northern Territory is 1.421 million kilometres squared but populated by only 244 500 people. Aboriginal and Torres Strait Islander people make up 3.6% of Queensland's population, and 26.8% of the Northern Territory population.

Future studies could be improved not only by recruiting participants from more varied locations within states, but also by recruiting participants from all states. Other studies could also look for international participants who work in jurisdictions with similar approaches to legal service provision. Most importantly, future studies should recruit participants from vulnerable groups, who are directly affected by the questions considered in this study.

Chapter three: Results—Perspectives on legal information

Chapter two defined vulnerability in terms of disadvantage and described the theoretical framework for this thesis: the capability approach. This chapter reports on the findings from interviews conducted with legal service professionals. Findings on participants' views concerning the use of legal information resources in the context of vulnerability address client characteristics and their capacity to use legal information; the usefulness of legal information as a legal service; the purpose of legal information; impacts of funding and resources on the provision of legal information; and plain language as a special skill. Findings on participants' reactions to the redrafted legal information resource address content, length, language, structure, design, and legal accuracy.

3.1 Participants

From August to October 2016, I conducted 20 semi-structured interviews with community legal service professionals from community legal services and legal aid commissions in Queensland and the Northern Territory. Fifteen participants (75%) worked in community legal centres, and five participants (25%) worked in legal aid commissions. The community legal sector is small, and individuals within it are well known to each other, so it is important to maintain participants' confidentiality by not stating which organisations they worked for.

With eight male (40%) and twelve female (60%) participants overall, there was a higher percentage of men who participated in interviews than tend to be represented in the community legal sector. The 2013 national census of community legal centres reported that 79.5% of paid staff were female, and only 20.5% were male (National Association of Community Legal Centres, 2014, p. 9). Similar data was not reported in the latest census. In my study, of the fifteen community legal centre participants, nine were female and six were male. Of the five legal aid commission participants, three were female and two were male.

Participants were asked to describe their role and how they interacted with clients. Participants worked in a variety of roles, and some had more than one role within their organisation. Fourteen participants stated that they were employed as lawyers. Of those

fourteen, five had a community legal education component to their role, and three had duties as principal legal officers, deputy directors, or executive officers at their organisation. Two participants were employed as social workers and had social work qualifications. Four participants were employed as community legal education workers and did not have legal qualifications, but had combinations of other skills, including communications, project management, writing, editing, design, and community engagement.

Nine participants (45%) described the nature of their work as being primarily advice, casework, and advocacy, although most included information and referral provision as part of their work. The remaining 11 participants (55%) described the nature of their work as being primarily information or education focused, including community legal education, non-legal advocacy, events, policy, and information production.

Five participants (25%) provided telephone advice on a regular basis, and seven (35%) provided face-to-face advice on a regular basis. All participants provided legal information resources to clients as part of their role, although some did this directly, by interacting with clients of their organisation, and some did this indirectly, by providing resources to other service providers who work with their target groups. Eighteen participants (90%) worked for organisations that produced their own legal information resources for clients. All participants worked for organisations with vulnerable people as the primary client group.

Although participants worked in a variety of roles, and for a variety of organisations, they all worked with vulnerable clients and produced and/or provided legal information as part of their role. Each participant was asked a series of questions about legal information provision. Results from the interview data will be presented under each theme in turn for the remainder of this chapter.

3.2 Participants' views on the use of legal information resources in the context of vulnerability

3.2.1 Client characteristics and capacity to use information

Client vulnerability

All participants identified their organisation's primary client group as being vulnerable people. They considered vulnerable people to be those who are experiencing some, and often multiple, form(s) of disadvantage. As one participant stated:

> '…so many of the people that we assist are what we would define as vulnerable. Very disadvantaged in a number of different areas' (P4).

Participants acknowledged that their clients often experience more than one form of disadvantage:

> '…typically the focus is on people who are low income or might be Centrelink[10] recipients, but we also—perhaps our clients may be in a category of some other form of disadvantage. So we also try and focus on assisting people who may have some other issues in terms of navigating the system. I guess focus on our Indigenous communities, other people with CALD [culturally and linguistically diverse] backgrounds, people with disabilities, and so forth' (P15).

> '…people experiencing socioeconomic disadvantage or financial hardship, and people who are ill or disabled…and then a small amount of people that are elderly, living in regional areas, and at risk of homelessness' (P3).

Some of the participants worked exclusively in particular legal areas, and participants talked about helping clients with particular types of disadvantage:

> 'they always have either family law or DV [domestic violence] matters…' (P13).

> 'clients of all kinds of vulnerability, but particularly people who are experiencing homelessness, young people transitioning from the child protection system, people with mental illness, refugees' (P2).

[10] Centrelink is part of the Department of Human Services. Centrelink delivers social security payments and services to Australians.

> ‘I would say the common theme running through the majority of clients that I see—and my brief is to see the more vulnerable clients—would be mental health issues, which either are the primary issue or a secondary issue in addition to physical health issues’ (P4).

Participants also identified low levels of education and literacy as two of the characteristics that lead to vulnerability in their clients:

> ‘…there’s also challenges around low literacy, English as another language, so there’s lots of challenges in that too’ (P6).

One participant stated that it was ‘probably pretty unlikely’ that their clients have a high level of education or good reading skills (P3). Another said that ‘the vast majority’ of their clients were ‘functionally illiterate’ (P18).

Some participants noted that they would only ever see vulnerable clients due to the eligibility restrictions that applied to their service. One participant stated:

> ‘…we have a process before we can represent someone, a criteria [sic], and it’s around vulnerability, basically… whether or not they can advocate for themselves’ (P1).

Other participants made similar comments:

> ‘Part of our criteria for accessing our service is that you have multiple levels of disadvantage, in that you can’t afford a private lawyer and you’re not eligible for legal aid, so they’re pretty much, we’re their last option for legal assistance’ (P13).

> ‘Our Constitution requires us to target our services at the most disadvantaged and marginalised clients. So that, of course, includes people on Centrelink benefits, sole parents on limited incomes (or benefits), as well as pensioners, people with mental illness, people who have English as a second language (who are really struggling too). It includes those who are also culturally diverse (who may be struggling to interface with the legal system in Australia), young people, and other marginalised groups. So it’s that marginalised, poor, and socioeconomically disadvantaged group.’ (P10)

While most participants talked about characteristics that made it hard for their clients to navigate the legal system, one participant identified a second group of clients who had different characteristics. They described this group as the ‘working poor’, people ‘who

mostly fall between the cracks; people who are not able to get legal aid but they cannot afford private lawyers' (P10).

> 'Then there is a group that I describe as the working poor, who are not necessarily disadvantaged in terms of their intellectual ability or their 'get up and go'—in fact, those people have a lot of get up and go—but they just are either on poor wages or they've got a lot of dependants and there is only one person earning for the group. The working poor are the people who mostly fall between the cracks; people who are not able to get legal aid but they cannot afford private lawyers' (P10).

However, this was the only participant who made this distinction, and all participants talked about their clients as people who:

- are experiencing homelessness
- are transitioning from the child protection system
- suffer from physical or mental illness, or have a disability
- are refugees, or from culturally and linguistically diverse backgrounds
- experience socioeconomic disadvantage
- have low levels of education and literacy
- are victims of domestic violence.

These were the characteristics most often mentioned when participants were describing their client groups and explaining what they thought it meant to be vulnerable when dealing with legal problems.

Lack of legal knowledge and research skills

Another characteristic that participants identified as increasing their clients' vulnerability was their lack of legal knowledge and research skills. Participants expressed concern that clients seemed to come to their service with very little basic knowledge about the legal problems they were dealing with, and that they sometimes received inconsistent information from other sources. They felt that clients were not given enough information about the legal processes they were going through:

> 'the majority of clients do not have any—or they have very, very scant—information about what they're doing' (P1)

> '…people are completely in the dark about what the rules are' (P3)

> ‘The level of understanding of your average Australian that’s gone through school about things as basic as government, let alone the law, is woeful’ (P2).

Nine participants mentioned that just finding relevant, reliable information could be a challenge. Participants felt that although there was helpful information available, clients had trouble finding it:

> ‘…there’s a lot of information out there, online, that I think is really good and really helpful, but it seems that people have difficulty finding it’ (P3)

> ‘…we’ve actually just looked at some of our statistics about how often people access the fact sheets, and the fact sheets have really been only available online since late last year, or I think at least all the statistics that we can grab are only available from say September last year. They were a lot, like a lot less than what I thought, those numbers… certainly our tenancy material is very popular, but, yeah, I think they’re not accessed as much as I thought they would [be]’ (P15).

Participants also said that clients have trouble assessing information for accuracy or credibility, or even checking whether it is from a reliable source. One participant gave the example of seeing clients who come in with information they have found online that is actually an advertising ploy:

> ‘Some clients are quite good, they will come and say, I’ve looked at the website. An example of why it’s a problem is someone could show me something and I thought, that’s just not right. And eventually I have looked at what they’ve got and they have got an advertised thing’ (P9).

In a closely related point, one participant revealed that clients also do not know to check whether the information they have found is relevant for their jurisdiction. For example, this participant talked about a client who came to an appointment with information they had found on the internet for people living in Victoria, rather than for people living in Queensland (P9).

When and how vulnerable people access information

Participants said that clients were unlikely to access information before they had to deal with a particular problem, or before they asked a legal service for help.

> ‘nobody really pre-empts problems…when you’re talking about client bases that are, you know, vulnerable, it’s the last thing that they—what they do is pretty

reactive. And what we do is pretty reactive, ‘cause even though we try and be proactive in this information area, it’s still… I guess to… enable people who are having a reaction, you know’ (P1).

‘It’s very difficult when you’ve got so much going on in your life as an individual to think oh I might just pop that fact sheet away for later for reference for later’ (P6).

Participants felt that their clients were most interested in legal information when they were experiencing a legal problem, and that they would only be interested in information that was relevant to that particular problem.

‘…they’re most interested, you know, at the time you’re talking about it’ (P4).

‘Like people only need the information when they need it, and they’re often on some continuum that could end up at a crisis point…’ (P6).

‘if you’re useful in responding to what people want, and you’re giving them the information and support at the time they need, they will absorb it. And if you’re telling people stuff they don’t want to know they’re not going to absorb it and they’re not going to be interested’ (P18).

One participant felt that clients were unlikely to access information at all:

‘…our clients aren’t going to access legal information resources themselves, and they are not going to, even if they did, they are not going to access them at a useful time for them, and they’re often not going to be able to engage with a written resource sometimes either’ (P2).

One participant thought it was unlikely that particular client groups had ever used their organisation’s resources:

‘I would probably venture as far as to say that no person from a remote community has accessed those. I don’t know but that would be my guess’ (P17).

Participants who gave telephone advice, rather than seeing clients for face-to-face appointments, provided information to their clients by both email and post, recognising that their clients did not always have the capacity or resources to access the internet or print information from a website:

‘…but again with the more vulnerable clients they’re usually not on the internet either…’ (P1).

> ‘there’s a strong push to see whether people can receive information by email. If they have difficulties being able to print off that information, or they just don’t, they don’t have the resources or the savvy to use the technology then it’s done by post’ (P7).

> ‘So if they’re able to access the internet and they feel comfortable doing that, then I’ll send it by email, but we do get a lot of people that would prefer it by post, so either they don’t access the internet at home, or they’re not too comfortable with it’ (P3).

One participant stated that about half of their clients would not have internet access at home ‘I think it’s probably about a half split I’d say’ (P3). Participants noted that even clients who do have internet access at home may not have a printer:

> ‘…even if you send it by email I’m conscious of the fact that a lot of people don’t have a printer’ (P3).

> ‘…more often than not they don’t have access to a printer, and so they’re not able to print things off’ (P1).

One participant said that getting the information to clients was not usually problematic: ‘people tend to get it, physically get it in their hands’ (P3).

Capacity to use information

Fifteen participants discussed client capacity as a barrier to using legal information resources—it was an important consideration. Participants commented that sometimes the problem was not in access to information, but in clients’ capacity to use it. One participant said that ‘sometimes people do find information, but they lack the skills to apply it to their situation or they lack the skills to know what is relevant or what actually maybe what their problem is’ (P3).

Some participants suggested that clients may not read the information provided because either the information or the clients’ circumstances were just too overwhelming:

> ‘You know, just give them all these brochures and you send them out with fact sheets and booklets and samples and like a show bag, and I don’t know whether they just [think] “this is all too hard” and they just might put it all in the bin’ (P13).

> ‘But, you know, when you’ve got, you know, kids at home, you’re on your own, you’ve got no money, you’ve got no support, like you don’t have the time or the energy to sit down and read through, you know, a supposed plain language resource about a concept that’s or, you know, just doesn’t even compute. Doesn’t even make sense’ (P12).
>
> ‘I think the challenge is that the client will be able to read that and understand everything themselves, independently, and kind of be able to take steps once they get it. I think a lot of our clients have a lot of other issues going on at the time and other stressful events happening, so just being able, for them to be able to actually use it to help them, to actually take positive steps’ (P11).
>
> ‘I think we have to recognise that for people in crisis, it’s really difficult to expect them to self-educate around that stuff. I think it’s almost impossible’ (P20).

Others thought that clients did not read information because they did not understand why it was important to do so:

> ‘You know, people are given the written information but without any explanation of why it’s important. And people will have preconceived ideas about what a service does so they won’t even look at it, if they don’t think it’s relevant’ (P16).
>
> ‘So one, I mean one of the reasons they might not do it is because they’re not aware that it’s useful or as useful as I think it would be, or they might be too overwhelmed and too emotional to even read it, or they might not have the internet or they might not be able to, like they [may] not actually be literate. So there’s lots of reasons why they do not’ (P13).

Participants talked about the literacy and education levels required to absorb and use legal information:

> ‘But, you know, we make a lot of assumptions, because I’m a legal person, and even if I had a matter that was completely non-legal, or not in relation, nothing to do with the area that I specialise in, if I had a debt matter a tenancy matter, I’d just like get online and do lots of research and I’d just – because I research, that’s what I do, and I know how to write documents and I’m not intimidated by ringing people asking for help and I can present what I think in a document. So I think if it was me, I’d find them really useful, but we’re assuming that clients are capable of absorbing

information and you know, applying it to their situation and like, even that they're literate and having to access and can understand all of the terminology' (P13).

This participant also talked about contexts in which their clients lacked the *confidence* to apply information, which translated to a lack of the capacity to use information, whether it was presented in plain language or not:

> 'So I think that's something that's frustrating, when you produce documents and you think that clients are capable of absorbing it and applying it to their situation and coming up with the answer, whereas they feel that they need to double check and get a lawyer to check what they think is right' (P13).

Here, the participant described lawyers having to provide "advice" that consists of basic information, which clients could get from reading information and applying it to their own situation. The participant described providing a fact sheet about parenting and drug-affected parents to a client dealing with an alcohol-affected parent. The client was unable to see the similarities and apply the information to their own circumstances.

One participant talked about the experience of clients who have previous interactions with the legal system that have caused them to lose confidence in their ability to exercise agency in their own situation:

> 'I guess that concept of people who can self-advocate and who can't self-advocate and that's, and I don't mean that in relation to their innate ability to self advocate, but who have been essentially taught by repeated experiences with the system that their efforts will make no difference; versus people who have the belief that I can influence my circumstances because they have seen through work and through other life experiences that they can influence their circumstances' (P19).

Participants thought that some clients will have capacity to use information, but some will not:

> 'look, I think it really comes down to the person's capacity and I've seen people with what I would have perceived as fairly low capacity to self-represent, do an okay job in court and get somewhat of the outcome they wanted' (P12).

> 'I think some clients would probably grasp it. But many of the clients, the more vulnerable clients, wouldn't' (P4).

> 'I mean, there's self-help stuff which can happen and it's good but they're for people who've got the capacity to read and then to go through the processes' (P8).

‘But when you’ve got someone that, you know, maybe they’re not reading all the time, or they’re not educated to a higher level, I think it’s gonna be pretty difficult to get it across to them’ (P3).

‘because if they’re extremely depressed, one of the criteria for qualifying is that they have poor memory and concentration. They find it difficult to read and retain information. So it probably wouldn’t help them very much at all’ (P4).

‘it also depends on the client, and like we deal with very, very disadvantaged clients, and so I think it’s really important to engage with them verbally…for the majority of clients I think that they find that easier than reading technical information, so whereas a different client group, you know, corporate law, you might be dealing with somebody who’s very highly educated and will interrogate the information that you provide, and will understand it all, and will look at all the links, and come back to you with more information then, you know, become their own experts’ (P4).

3.2.2 The usefulness of legal information as a legal service

Use of legal information by vulnerable client groups

Participants were asked how useful legal information resources were for their client groups. Some participants were firm in their opinion that written legal information is not useful for their client groups:

‘The vast majority of them, almost useless’ (P18).

‘I think pretty limited. . . I think a lot of legal information doesn’t speak to the user in terms that they understand. Also it sort of presumes that by giving people information that that’s it, that solves problems. And information can solve some problems but not everything, you know’ (P14).

‘What particularly vulnerable communities needed was not more information, but it was a chance for them to participate themselves in shaping their environment; basically, ways for people to gain control over their own lives. And at some stage, information will become part of that but the information, the legal content, is fifth or sixth in terms of priorities, not your top priority’ (P19).

> ‘For the client groups I have worked with? Not useful at all.’ (P19).
>
> ‘…if we’re really wanting to target the most disadvantaged and vulnerable people, a lot of those resources could be better spent or much better utilised’ (P19).

Some participants said that written legal information is useful, but were not sure if their own clients were able to use it:

> ‘I think they’re useful, but what I always am concerned with is that the law, in particular, is so complicated, you know, can there be a way of presenting it in a way that’s easy to understand, or is it just always gonna be really complicated. Because it seems like even with people that you speak to multiple times and give multiple advices to at the end of it all they still don’t kind of actually understand…. I mean what you want is that the person understands at the end of it. But sometimes I find that, despite being given fact sheets and reading through things, people don’t. But I think that it can be helpful’ (P3).

This participant acknowledges that even with information and multiple advice sessions, some clients still do not understand what the participant is trying to tell them about their legal problem.

Participants agreed that even if information is given directly to clients, this does not guarantee that they can or will read it:

> ‘and there’s also this kind of problem of will they actually read it. And I don’t know how you get across to them…we do get people calling back and what we’ve said last time is have a look through the information or have a look at the tables and they’ll say well I’ve received it but I haven’t looked at it’ (P3).

Two participants said that it was so uncommon for clients to read information they had been given that it was like a ‘dream’ if they did:

> ‘a lot of people don’t, you know, it would be a dream situation where okay I’m going to send you this information out and we’re going to book you in for a couple of weeks for further advice’ (P7).
>
> ‘I mean that’s, you know, a lawyer’s dream client if they’ve read the information beforehand, come in with a list of questions from the resources that they’ve been given. That would be like…it doesn’t happen very often, but when it does it’s just been a beautiful thing’ (P12).

Some participants recognised that their desire for the information they provided to be useful conflicted with their experience that information was not the most appropriate solution for their clients:

> ‘One of the things I find really difficult around giving out, the usefulness of the information, is giving out things like the [resource], which are important for the client to have to refer to the criteria, but are very sort of complicated and use quite difficult words. But it’s something that’s actually used to determine eligibility, so it’s important that they have that as a reference. So I do worry about clients’ ability to understand the [resource] when we’re sending it out, but then on the other hand I think it’s really important that they have access to that. To know what [organisation] are actually looking at when they’re making these decisions about their lives’ (P11).

> ‘I think that all community lawyers live in that tension, because, that’s right, in the end it’s inappropriate that someone should be having to absorb this level of information this way, I think. And hopefully they’re not doing it alone’ (P2).

> ‘And so those legal information resources will benefit them, the people who feel able to self-advocate. The horrible irony of it is that the legal information resources are probably benefiting the people who are least in need of it so to speak. I mean, they’re still good, to have them, and even as a lawyer I access legal information resources for things that are outside my direct experience but I am not the intended recipient of these resources… so at one level I would say they do serve a broader function in society, but they probably don’t serve the function we think they are serving’ (P19).

The potential value of written legal information to legal service providers

Some participants measured the utility of information from the organisation’s perspective:

> ‘Well I think they’re incredibly useful, that’s why I’ve drafted them, that’s why we created the resource, so from our point of view we think if we’re them we would consider it to be really useful’ (P13).

> ‘I mean obviously we wouldn’t do it if we did not think it was useful. How useful is a difficult thing to answer’ (P20).

Others stated that their organisation’s services did not align with their clients’ needs:

> ‘Sometimes I think that the resources given or sent to a client are more for the service’s benefit than the client. That it’s about protecting our own, you know, from a professional indemnity perspective, and not really about what serves the needs of the client’ (P12).
>
> ‘one of the problems with an informational approach is that the people sitting in the office pre-determine what information they think people need to know’ (P19).
>
> ‘most legal information resources are information driven. So people write them thinking “how do we get all this information in there” without thinking about the user, and what their perspective is, and how they process information, their language, their level of literacy, their experience of the world. So I think a lot of legal information doesn’t speak to the user in terms that they understand’ (P14).

Participants tended to agree that information had a better chance of being useful if it were accompanied by legal advice or a chance to engage with someone face-to-face or over the phone, and not presented as a standalone service:

> ‘it’s probably more useful in conjunction with some advice about their specific situation’ (P3).
>
> ‘I think often people do need it kind of talked through with them as well. I’m not satisfied that maybe just reading the fact sheet is going to make people understand’ (P3).
>
> ‘Actually many of the more vulnerable clients really need the verbal explanation I think’ (P4).
>
> ‘But I think, and maybe in addition to a verbal explanation it’s more valuable, but for many people the verbal explanation and the engagement and discussion with me, you just feel this light bulb go off’ (P4).

One participant described sitting with a client and talking them through the information, giving advice as they went along, and said that they ‘find that a very effective way of the client understanding their position and their legal problem’ (P7). Other participants talked about information working as a support for their advice services:

> ‘…often that can be a lot for the client to take in when they’re talking on the phone, so sending out a fact sheet which kind of goes through that again can help to just like reiterate the main issue, the main points that we cover’ (P11).

> ‘And one of the things I guess that we know is information resources as a stand-alone don’t do that. But working in conjunction with educators who are delivering messages, who are running activities, engaging people, working together with, you know, people providing information that’s tailored to someone’s situation or lawyers providing legal advice for people’s situation, then information resources can maybe support some of those other processes as well’ (P14).

> ‘…I don’t actually think the role of legal information that’s printed should be that it takes the role of a person being able to actually see a lawyer as well’ (P15).

Participants said that information can also be useful when it is provided to a support person who is working with the client, because community workers or other intermediaries are often in a better position to engage the client in a legal response:

> ‘…a lot of the people we talk to have disabilities or impairments and some of those impact on people’s attention and concentration capacity. So, if you’re sending out someone with severe mental health problems something perhaps they can’t concentrate to read the fact sheet. So, then the usefulness might be that they can provide it to their doctor or someone else that they know’ (P3).

> ‘…often the people that will be in touch with that person around that crisis point around the legal problem issue would be the community worker, case worker, some support worker…’ (P6).

However, one participant commented that community workers and members of the community (as distinct from clients) also have a level of ignorance about identifying legal problems. The usefulness of legal information to support services is also limited by lack of understanding about the law:

> ‘what we also found was that the community workers also had the same level of ignorance about what was a legal issue. And that’s actually true for the average member of the community, that they can’t identify what a legal issue is’ (P2).

Participants had mixed opinions about what kind of content should be included in legal information resources to ensure their usefulness. Most participants felt that clients are not really interested in what the law is, they just want to know what to do to resolve their problem. Clients do not care about why the law is the way it is, or even what the background is to their problem, they just want a solution:

> ‘the more vulnerable someone is the more they need something very specific and process-oriented. They don’t need information—what I call law 101—they don’t need that. They need “what do I do next?” information’ (P2).
>
> ‘That’s a key I think, that is a key truth of legal information, is that the client doesn’t care what the legislation is…’ (P2).
>
> ‘I think often the material is just far too complex and wordy. You don’t need to know that it’s Section 23 of blah, blah, blah; you just need to know what the thing is’ (P8).
>
> ‘…but you can write content for people that is actually just this is what you need to do. If you get put into this situation, you can contact this person, you can contact that person, yes you might need a lawyer, and this is what the lawyer you might need to provide for them and like it just gives them that kind of framework of them getting, yeah like you said the stepping stone, I think it really is that kind of thing’ (P5).

Some participants thought it was important that information tell clients where they can go for help with their particular problem:

> ‘I think everybody should have a certain level of understanding of the systems at least and should have enough understanding to know where to go to get further information if they are in that position’ (P20).
>
> ‘So helping people to understand or feel confident that this isn’t just something I have to put up with, it is something that I can get help with, that it is a legal issue. Helping them identify that it is a legal issue and knowing where to get help’ (P6).

When addressing the usefulness of legal information as a legal service, participants said that information was not useful for their client groups, and that clients often did not use resources even when directly supplied with material relevant to their situation. Participants said that they wanted information to be useful, but that this was often not the reality of their experience with clients. Participants also commented that information was more useful when accompanied by other services.

3.2.3 The purpose of legal information

The purpose of legal information is to empower people

When asked about the purpose of legal information resources, some participants talked about using legal information as a tool to empower their clients:

> '…basically, to inform and hopefully empower people. I mean, they're old-hat concepts, but I still see the community sector as empowering people, rather than attracting clients…it's empowering people to help themselves. Obviously, when you're dealing with very vulnerable clients that's not realistic, but for those who are not in the vulnerable category, you're empowering them to actually try' (P1).

Of the twenty participants, eight did not address empowerment directly, but nine participants supported empowerment perspectives:

> 'So it provides a framework for people to understand, and I think in giving people information, you're actually empowering them, in a way, they're making sense of the situation' (P4).

> 'Because a lot of this is about just getting the people to be aware that there is a legal problem; sort of to recognise it and maybe to try and negotiate their way out of it if they can' (P8).

> 'It's empowering because it means that they understand the process they're going through. They're not just putting it on someone else, so they're not just saying I don't know, my lawyer just told me to do this, like they know what step of the process they're at, what the goal is, what they have to prove, what facts they need, why they have to prove it. You know, it's just, it's empowering and it's also making them part of the process because it's their life' (P13).

Participants who supported empowerment perspectives wanted people to use legal information to develop an understanding of the law and the legal system to the extent required for the problem they were facing. Participants wanted clients to understand where they are in the legal process, and thought that information should help by positioning the reader and being clearly relevant:

> 'there needs to be something where a client immediately goes this is where I am with the picture. This is why this is relevant' (P2).

> ‘But yeah I guess overall as a way for them to understand their situation or what’s happening to them’ (P3).
>
> ‘…I think that it’s a really important thing for people to understand their legal rights…I think there’s a very significant benefit to assisting clients to understand their situation even if they don’t get the outcome that they want…’ (P4).
>
> ‘…if they’re trying to qualify for a payment, you know it’s important that they do understand what those words mean’ (P11).
>
> ‘I think there’s a fundamental importance on that information being available to people. I think it’s crucial for people who are in at the pointy end of systems, to really understand and the system is just a reflection of the law that builds it. So if you don’t understand the law the builds the system, you’re not going to understand how you sit in that system’ (P20).

Participants saw information as providing a necessary access point to a complex and inaccessible legal system:

> ‘…I like to think it’s kind of taking away the fear of what the legal world is and going, ‘cause people probably think oh you know it’s this world of elite people, and you need to be a lawyer to understand it, and well, you kind of do, the law, but you can write content for people that is actually just this is what you need to do’ (P5).

Participants also wanted clients to be able to engage with the legal system:

> ‘…it is also important to enable people to participate and to have access to justice; to participate in achieving to the extent they can in a meaningful way. That’s what I would say it is’ (P10).
>
> ‘Well, from my point of view it’s about making good on that promise which is central to our functioning democracy that all people are equal before the law, and to be equal before the law you have to know that you have a legal problem and know that you have rights to use the law to protect your own interests. So ultimately, it’s about accessing the mainstream legal system and interacting within it’ (P17).

Participants believed that clients should have access to information that is used to make decisions about things that will have a significant effect on their lives. Free access to information was important to enforcing individual rights and constraining the power of the state:

> ‘If you have got a crap legal system, nothing works properly. People’s rights get just completely trampled and government takes over and you end up in situations where the power of the state becomes out of control and the rights of the individuals just go, whatever. So I think it’s important that that information is there and I think it should be free, it should be widespread and I think people should be encouraged to engage with the law. They should be encouraged to look at legislation that impacts on them’ (P20).

> ‘So, I think it’s just, it’s important for people generally to know about legal resources, to understand where to get them and to know a certain amount about certain systems. It’s important for people who are in those systems, it’s crucial for people in those systems to know about that stuff but I don’t think you can just expect that they will somehow self-educate on that stuff. And I think it’s important that particularly when people are at risk of, for example losing their liberty, prosecution, that they absolutely understand as much as they can, what’s going on’ (P20).

Some participants talked about the idea of empowerment as something that motivates or fulfils them in their work:

> ‘And also, I believe that arming clients with information and empowering them, is actually part of the reason why I do my job’ (P7).

> ‘Because I have represented or advised clients for the lower socio-economic group or a certain vulnerability all my career, so I’ve found that I get a great satisfaction about empowering people’ (P7).

However, three participants questioned the relevance or applicability of empowerment ideals in this context. One participant stated that the strong empowerment ethos within the community sector is idealistic and sometimes inappropriate for the clients these services work for:

> ‘and there is also a view in the sector, what I would call the empowerment view, which suggests that you shouldn’t prejudge the client’s capabilities and you should offer them as much information so that they can navigate their own way through the system. That’s a very strong ethos that was part of the creation of the community legal sector. I found over time that I found myself at odds with that, in that I think that it’s an idealistic picture, and especially the more, again the more vulnerable someone is the more that picture is not appropriate’ (P2)

> ‘I do think, for all sorts of reasons, we need to maximise clients’ choice and agency in any given situation, but that the way to do that is not by saying here’s a load of information’ (P2).
>
> ‘If we want information, you know that old thing about “knowledge is power” sort of thing, or if you want knowledge really to be usable, then you’ve got to allow space for people to absorb it and process it and try it or apply it somehow. If you’ve dumped a whole lot of information on people—too much at once—then often that’s disempowering because people think I can’t possibly remember all this, I can’t possibly know everything that I need to know about family law, or child protection, or whatever the topic is, so I give up. I’ll just hand over to—my destiny’s in the hands of the gods or government or a lawyer, you know, if I have to’ (P14).

In summary, participants said that the purpose of legal information was a tool to empower clients; an access point to a complex and inaccessible legal system; and a support for individuals to enforce their rights.

3.2.4 Impacts of funding and resources on the provision of legal information

Resource constraints drive the production of legal information

Participants work in a sector where their work is limited by funding restrictions. As one stated:

> ‘…the community legal sector, including legal aid, is generally a crisis-driven, under-resourced sector’ (P2).

Participants stated that limits on funding to their organisations affect their service provision:

> ‘It constantly comes down to funding. Funding, funding, funding for people who cannot afford a private lawyer. You know, they need to at the earliest possible opportunity, have access to a lawyer and at least on two, at least two separate appointments, at least two. But that’s yeah, comes down to funding and government policy’ (P12).

Participants who have worked in the community legal sector for significant periods have seen a move away from providing face-to-face advice and towards providing written resources. One participant stated:

> ‘and I saw the move from I guess reducing the amount—numbers of people who could actually see a lawyer face-to-face, and then I guess the rise of just handing people legal information’ (P15).

Another said:

> ‘I think it’s resources. I think it’s, having worked in the courts, I know that self represented litigants can be quite a big drain on the courts, whether it is because they don’t know, they don’t have the expertise to narrow the issues, or they’re litigating something with absolutely no prospect. So the courts, all the way through, and as everybody’s resources that rely on public funding have dwindled since I first started in 1993, that there has been a greater reliance on legal information and self-help kits’ (P7).

Some participants felt that, to some extent, the production of legal information was driven by funding constraints, which limited the advice services they could offer, and that legal information should not take the place of advice services:

> ‘I think legal information resources are a stop-gap measure when someone doesn’t have access to a lawyer, and they are intended to help a client better navigate a complex situation’ (P2)

> ‘I mean I don’t actually think the role of legal information that’s printed should be that it takes the role of a person being able to actually see a lawyer as well. . .but I feel like a lot of organisations have thought that you can maybe try and address unmet need with providing legal information in printed form. Those are issues, yeah’ (P15).

Participants also thought that possessing limited personal resources drives the use of legal information by clients. One participant asked:

> ‘Is it generally that people of a lower socio-economic background are using legal information because they are less likely to be able to afford a consultation with a private solicitor? And if that’s the case are there these other factors associated with it that make it difficult for them to comprehend the information? So I guess that’s a bit of a like double-edged sword, because they use the information because they

> can't maybe go to a private solicitor, but then because of those other reasons it's more difficult for them to comprehend the information?' (P3).

Some participants recognised the inequity of expecting people without financial resources to use legal information when people with financial resources are not required to do this. One participant said:

> 'I think that's a really inequitable response. And I guess the core of the inequity that I feel is that we don't say that to paying clients. Paying clients can walk into a lawyer and the lawyer will do everything for them' (P2).

Another participant talked about the irony of people with limited personal resources having less access to face-to-face assistance than well-resourced people:

> 'I mean in an ideal world everyone would have representation. I certainly think self-representation should be possible because well I mean it just has to be, unless the government's going to, you know, going to give us twenty times the funding we've got. It just has to be possible because so many people are, you know, not eligible for legal aid funding or case work through us or any other community service and simply cannot afford or don't want to pay, you know, tens of thousands of dollars for a private lawyer' (P12).

The quality of legal information is affected by resource constraints

While limited funding for legal assistance services drives the production of legal information resources to some extent, it also limits the quality of those resources. Comments from participants show that funding limitations already restrict the general work of community legal services. Participants have noticed a move towards providing written information resources as one way of filling the gap in service provision. For vulnerable people, a lack of personal and financial resources motivates the use of written information resources, particularly where people cannot afford other services, and cannot get help from a community legal service. The limited funding for legal assistance services also means that community legal service providers do not have the money or time to effectively prepare, produce, update, or evaluate legal information resources. Participants said that their organisations do not always have adequate time or funding to produce legal information:

> '…you need the resources to produce them [good legal information resources], you know. And we're a bit short on that in this organisation' (P4).

Some organisations have no resources to produce information for their clients. One participant stated that 'I simply don't have the resources to do it and won't have in the foreseeable future' (P17).

Participants felt that they were also limited in their ability to update information resources:

> 'You know it's any CLC [community legal centre], not just us. We're the same. We're all time constrained. And we're all resource constrained. So you're looking at very infrequent updates' (P1).

> 'I guess we're really dependent on funding. Especially with printed materials, it's really hard to remain on top of that stuff sometimes' (P15).

> 'And then of course the thing is to update information. Because sometimes we have flyers out there that are really out of date and the information is actually not accurate anymore' (P16).

Participants said their services do not have funding or time to spend on evaluating how useful their legal information resources are for their clients:

> 'so they've done a bit of that but they haven't done lots of it because it just takes time and money and that sort of stuff' (P8).

> 'The challenges. Time. You know, time to sort of research and develop things, you know, thoroughly, and test them and evaluate them. And I guess associated with that is having resources, having people, you know human resources, and funding to take the time to do that properly, to engage people with the communications skill or the, you know, community engagement skills to identify what's going to be the best way to get that information across' (P14).

> '…we just, we don't get a lot of specific feedback about particular bits of legal information, sometimes we get a few… but it would be good to know whether it's useful, because we spent quite a lot of time and effort putting them together' (P13).

> '…we put a lot of focus on the accuracy of it, how well it communicates; but we don't do a lot of assessment in terms of how many wrong ideas have people taken away from what we've just created. We think about in terms of how much did they understand but we ignore the misunderstood' (P19).

Participants felt that they were restricted from exploring other ways of improving the services they could offer clients:

> '…in the community legal sector there are just so many skilled, capable lawyers in the sector, and they're all working really hard, but resources are very tight, and there's not a lot of, lots of things aren't funded. So good collaboration isn't really funded, and giving your client more than just what they came in for is not really well funded. So I think there are a whole lot of structural things that I think are barriers to true client-centred practice in the community legal sector. It's not an impossible situation, it's just I think generally the difficulties are structural issues' (P2).

Participants said that limits on funding affect legal service provision and have led to an increased focus on the provision of legal information. Participants stated that these resource constraints also limit the ability of community legal services to effectively prepare, produce, update and evaluate legal information resources.

3.2.5 Plain language as a special skill

Participants recognised that plain, accessible language was an important legal tool, however they found it difficult to use plain language:

> 'I mean there's always been, as long as I've been a lawyer, there's been this push of plain language and of course I think that, you know, we need to make the legal world as accessible to as many people as [possible]. Yes, certainly my view is that, you know, the language that the law uses makes it so out of reach for the vast majority of people, and we need to make it as accessible to as many as people as possible, everybody ideally' (P12).

> 'It's very difficult. It's a very difficult thing to do. And especially when concepts are quite complex and they have a really particular meaning it can sometimes be hard to put that into layman's terms or terms that are easier to understand' (P11).

> '…it gets down to things like plain language, and everybody struggles with that' (P1).

> 'I'm definitely for having legal information that's in plain language. I think it's difficult because some legal terms are difficult to define and describe. And that can be—they're not clearly defined even in law. I feel like sometimes there's a sense that it

takes a long time, or it takes a lot of space to be able to define things in a way that's understandable. And I think that's hard to put on a short resource' (P15).

Participants struggled to translate the complex concepts that they worked with into accessible language, especially when they felt that those concepts were not clearly defined even for experienced legal service professionals.

Participants also found it difficult to reduce the quantity of information required to get a message across into something accessible for clients with limited literacy or education, particularly those in crisis: 'trying to reduce everything down, reduce, reduce, reduce is really important but reducing it without completely diluting the message is really, really hard, I think, really, really hard' (P20). This participant also noted that long and complex information is unhelpful for vulnerable people in crisis: '. . .if they're in crisis, particularly, that's useless to them, giving them a dissertation on the law of trespass isn't going to help' (P20).

Participants felt that certain skills were required to effectively translate legal concepts into plain language, and that they did not necessarily possess those skills:

> 'I think it's a certain skill in translating a legal concept into a fact sheet in plain English. I think I would, I like to think that I could do that, but I probably wouldn't be that good at it, because I don't have the expertise in, for example, knowing what's the best layout for a person to be attracted to that document. I know what I know from looking at this, but the decision to make it like that, I don't have the expertise to translate that' (P7).

> '…I don't think that I would be particularly good at it, even if I'm good at giving advice in language that people understand. I think that's a completely separate skill and I think it's a real trap' (P7).

One participant compared using plain language to translating material into other languages, commenting on the linguistic concepts required to do an adequate translation:

> 'And so this is probably too harsh a view but what we have, I think, are a lot of amateurs doing something that is actually a professional task. So we have people who are trained as lawyers or trained as educators but have no understanding of the actual linguistic language translation concepts involved. Because plain English is actually a translation exercise; you are changing it from one form of language into another form of language, and to do it well, you need to know what are the basic

principles of translation, you need to understand both languages, and what are the features of both languages. And so we have a lot of people who don't actually have the technical skills to produce plain language information' (P19).

Participants talked about finding it difficult to step outside of their knowledge base and produce information that is accessible to people outside of their professional community:

'it can be difficult to do because we have to be aware of what we know and when we're speaking, and be aware, you have to imagine that you're a person who doesn't know what you know' (P13).

'I think that even though our resources try to be written in an accessible way that could be understood by a lay person, they're actually—it is a challenge to write about legal issues and talk about navigating the legal system in a way that I think makes sense for somebody who isn't familiar, or hasn't had experience or already going through the system in one way or another' (P15).

Participants also talked about the complexity of the Australian legal system, and that sometimes using plain language is not enough to overcome that complexity:

'But certainly in Australia we live in such a highly administrative legal system that I don't know how that's possible, you know, with such a high number where English is not their first language. I mean even for people with, you know, lower levels of education where English is their first language, they have difficulty with these concepts. So I just, I can't even sometimes wrap my head around how a non-English speaking person could even understand it' (P12).

'You might be focused on one legal point but you can't actually get there unless you go through seven gates to get to that final spot and it's so easy to lose the message at the end with all of fuzz at the beginning. But you can't actually do that. You can't, from a legal point of view, you can't make sense of that final spot without going through all of this other stuff but you can lose reader at point three. So I think there's a lot of challenges around that. Around working out what is the actual message and what is the really important bit and how do you express that without comprising the context? We as lawyers know that context is everything and that A plus B doesn't always equal C because sometimes you have to go to Z to come back to C. And so that's the complexity I think just in relation to the legal framework that you are operating in' (P20).

Seven participants recognised that even legal information written in plain language can be hard to comprehend. What is useful for one group may not be useful for another; using plain language means applying different approaches for different audiences (P19). One participant said that even when plain language is used, written materials are still difficult to understand because there are 'just a lot of words on the page' (P18). The same participant also acknowledged that the challenge of choosing between different legal options remains, regardless of the words used to describe them. Other participants noted that clients are unfamiliar with the legal system and the concepts that are a foundation and context for the information they are trying to process:

> '…even though we have this idea that it's written in lay language, I see people, I see my clients' reactions and responses and it's just this kind of glazed over look of "you've lost me"' (P12).

> 'No matter how plain language we say a resource is, I think sometimes it just can be too much. And then I guess you forget as well that you have the familiarity, like you're thinking and talking about this stuff every day for years and years' (P12).

There are some concerns about plain language within the sector

Two participants said they had experienced some trouble having plain language resources accepted by their organisation:

> 'Plain language is, what I'm talking about, is very, very difficult. And the difficulty's not so much in actually writing things in plain language, it's having other organisations, or other parts of your organisation, accepting the plain language, 'cause, especially if you give it to lawyers, they always want to correct things' (P1).

> 'At first I think there was a little bit of kind of push and pull, because a lot of the content had been up for a long time, it had been written in a very legal way, and I think it was really just a process of getting them [the lawyers] on board and letting them understand and working with them to say that we're not actually changing the content, of like the legal meaning of the content, we're just trying to make it easier for people to read and understand what they have to do, kind of thing…I think they're now kind of understanding the process as well' (P5).

Four participants—one social worker and three lawyers—expressed concern about not being able to adequately convey a legal message when using plain language, and the potential consequences of people misusing or misinterpreting information:

> ‘We’re not prepared to reduce it down too much, because then we’re at risk of people, of it being oversimplified. And if we start doing that, people start making decisions based on an oversimplified understanding of their situation’ (P4).
>
> ‘I think the other thing is you can simplify this stuff to a point but in a written document you really don’t want to be putting out something that’s simplified to the point that it’s devoid of meaning’ (P17).
>
> ‘…so trying to be honest I guess without misleading people is a real challenge for writing up that stuff in a way that’s meaningful and not missing information that sometimes can counter the message in a way and I think that’s really, really hard, really difficult to do well’ (P20).

One participant, a social worker, was quite concerned about the risk to themselves or their organisation if information was misinterpreted:

> ‘If there’s a complex concept, should it really be in a fact sheet? And I’m starting to think that you’re potentially risking misinterpretation and opening yourself up to risk if you try and explain complex topics in a simple way, in a too simple way’ (P4).

Another participant acknowledged that this fear existed, but felt that this fear was exaggerated:

> ‘And you know, everybody’s scared about getting things wrong or getting sued. Well, you know the reality of that is that people get things wrong every day. You gotta get over that. You gotta get over that’ (P1).

Participants said that plain language was an important legal tool, but that it was difficult to use, and that they did not have appropriate skills or training. Participants stated that it was hard to translate complex legal concepts, and that concerns remained about the potential misinterpretation of information.

3.3 Participants’ reactions to redrafted legal information resource

Once participants’ views regarding the use of legal information resources were obtained, participants were then provided with two factsheets: ‘A’ was the original version, and ‘B’ was an alternative version, redrafted using plain language principles. Twelve participants provided an opinion about which fact sheet they thought would be more appealing to their clients. Of the twelve, six preferred fact sheet A (the original), four preferred fact sheet B

(the redrafted version), and two preferred neither, making suggestions for further revisions that would make the fact sheet more appealing. Participants' views varied widely as to which factors contributed to a useful information resource.

3.3.1 Content, length, and language

When asked to comment on why they preferred a particular fact sheet, some participants were concerned about the longer length of the redrafted fact sheet:

> 'Yeah okay so that one's three pages over two, which, yeah to me would definitely be a no. Any more than two pages on a fact sheet…you know I prefer a fact sheet to be one page, any more than two I think people will just, I don't know I'm probably making a generalisation, would switch off, 'cause it's just too much information to read' (P5).

Some participants, though concerned about the length of B, acknowledged that a longer fact sheet might be preferable to one that squeezes too much information onto fewer pages:

> 'That's three pages. And that would probably be the only disadvantage, although it's not necessarily a disadvantage because of the volume of information. The trouble with fact sheet A as always is trying to squeeze too much into one sheet' (P1).

> 'B is better, in that it's just, even though it's slightly longer, it is just a little bit easier to engage with on the eye' (P2).

Some participants preferred fact sheet B because they felt it used simpler language to fact sheet A:

> 'Yeah, it's very, very dense and it's very hard. Basically, fact sheet A is taken pretty much straight off the legislation. And fact sheet B's been worked a bit and it's actually sort of, I think, simplified. You know I think simplified and more importantly the language is simple' (P1).

> 'And I think that the language on fact sheet B is a bit more, it seems to me a bit more simple. And I think that's going to be perhaps a bit better for clients to understand' (P3).

One participant disliked the writing voice used in fact sheet A:

> ‘A chops and changes. A, I’ve seen that sort of sheet a million times and one of the things I would say about it is it chops and changes between talking directly to the client and then having kind of a third person voice. And I would say, for all clients of community legal services, you should always talk directly to the client, so these are much better questions. But even then, I think that all that kind of stuff is important’ (P2).

Some participants felt that there was too much text on fact sheet A:

> ‘I find that fact sheet A is really text heavy. I prefer that there are actual questions asked in these’ (P15).

> ‘There’s just a lot of words on the page and I guess as I go on and on in this job I just think you just don’t want a lot of words on the page’ (P2).

However, another participant thought that fact sheet B was the version that had too much text on its pages:

> ‘The text looks pretty good on fact sheet A as well. Fact sheet B just looks a little bit busy to me’ (P5).

3.3.2 Structure and design

Some participants preferred fact sheet A because of the way it looked. One participant said they preferred A ‘’cause I like the colours’ (P5). Others said:

> ‘Right off the bat I would say, fact sheet A. Its colour, its larger font. It’s less print, yeah; whereas the others just look really wordy’ (P16).

> ‘So I just prefer the layout of this one [A], I think it looks better’ (P4).

Participants who preferred fact sheet A often talked about the headings and coloured boxes used:

> ‘Fact sheet A—I prefer the use of your headings, the way you’ve done your headings. For me, writing headings in full capitals is a no, but it’s a thing online, obviously that’s shouting, when you’re writing in capitals online, and it’s hard for people to read capitals. So I suppose thinking, if I was to put this up, this factsheet up on the web, you’ve gotta remember that people scan information on the web rather than read, so I like the blue box on fact sheet A and the fact you’ve used the dot points. Yeah’ (P5).

‘Because to me the headings, it explains, it’s very easy to see the heading. Yeah I don’t like the top of this one, fact sheet B. Also you’ve got these in a box[11] here’ (P4).

‘Yeah, in the box at the bottom [participant is referring to fact sheet A]. It’s like really easy to find, where the phone number is. Easy to identify who you are. What the fact sheet is about’ (P5).

‘I think this one [participant indicated fact sheet A] is more visually appealing. Because the heading is like large and just like the use of colour blocks. Yeah for some reason this [fact sheet B] just looks a bit more like wordy, even though there’s probably less text on there’ (P11).

‘I think in A […] I like the band up the top, that makes it a bit clearer about what it’s about. And I find that it a difficult for my clients, particularly when we’re over the phone and they have to read a document to me, or they’ve got a lot of documents and they’re trying to find something. They, a lot of them have difficulty even identifying the title of the document and so that’s why this, A has drawn my attention, because I think just getting them started with a title is very bold and obvious’ (P12).

Some participants preferred the white space and bullet points used in fact sheet B:

‘I think fact sheet B I quite like the dot point approach. I think that that makes it easier to read. I think when there’s a block of text that visually it’s quite difficult to get in there and get in what the actual points are. But, for example, when you look at the reasonable treatment, on fact sheet B it pretty easily sets out those in points that are easy to look at, rather than in a big lump’ (P3).

I think the spacing on here is better and so the spacing on B is better between the lines it’s not so overwhelming’ (P12).

‘Well I think, I actually think aesthetically it’s [referring to fact sheet B] appealing to the client to be able to read. There’s lots of spaces and dot points. There is more examples I think in this one than there are, no, it’s the way it’s set out. It’s set out in point form. I just think it’s angled the set, the layout seems to be a bit more, you know, to me it’s more approachable’ (P7).

[11] Please refer to the original fact sheet in Appendix 7. This participant is referring to the green box containing the medical criteria on page one of the fact sheet.

3.3.3 Legal accuracy and revisions

Participants were asked to comment on whether both versions of the fact sheet provided an accurate representation of the legal concepts covered. Some participants said that both versions were accurate:

> 'Yeah, I think so. I think they both pretty much cover accurately what the criteria are' (P3).

> 'I think it's [all] there' (P1).

One participant felt that the redrafted version did not accurately represent one of the concepts:

> 'I think the actual accuracy of it is… that you can't really separate fully treated and fully stabilised, they kind of go together, so to try and conceptually separate them and—I think it doesn't represent that they really are a package. So they've been separated here [in fact sheet B] and dot pointed as separate things. No, I don't think they can be thought of in that way' (P4).

One participant commented that regardless of whether the concepts were in plain language or not, they were still difficult to understand:

> 'I definitely thought this was better [fact sheet B]. But I still think it's…they're difficult concepts for clients to understand. Especially if… there's all sorts of reasons why someone can be applying for DSP, but you know they're generally already marginalised people. I think some of these concepts are still quite complex' (P2).

Some participants emphasised the importance of the visual elements of fact sheets, and made the following suggestions for improvements:

> 'I think I would have liked to have seen a diagram. And I do think that people respond very well to diagrams and they're very easy for people to absorb. And I think a diagram that was like a very, very simple flow chart and then when people want, well they can easily then identify where they are in the diagram, and then they might choose then to absorb more information about that part of the diagram. So I would have liked to have seen a diagram, especially… this information lends itself very well to some kind of a flow chart. I think that was one comment. Even with the

one that's got the better words. And yes. There's no harm in separating, in having four fact sheets for the one topic, rather than just trying to whack it all…' (P2).

'But I think, yeah, something that's visual or some sort of, you know, a flow chart, could be useful' (P3).

'I'm a big fan of bigger font for a start. I think having key concepts in either boxes or in little shaded, brightly shaded yellow or blue sections or in boxes with cartoons' (P10).

'I think pictorial representation is probably a way to get information across to an audience that is not going to engage with text necessarily' (P20).

In responding to the redrafted legal information resource, participants were concerned about the length of fact sheet B. Some also stated that they preferred the original (fact sheet A) because of its design elements. Participants commented that even with the use of plain language, the concepts in the fact sheet were difficult to understand.

3.4 Summary of findings

All participants identified their primary client group as people who were vulnerable, experiencing multiple forms of disadvantage. Clients lacked prior knowledge of the law and the skills necessary to find relevant information. They were unlikely to access information before facing a problem and often unlikely to access it independently once a problem was encountered. If information was provided to them, clients did not always read the information, or had limited capacity to apply it.

Regarding the usefulness of legal information as a legal service, some participants felt that information was not useful for their clients; others said it depended on client capacity and the type of legal problem. Information was considered more useful when it accompanied advice or was aimed at third parties. Information was most useful when covering a legal process, rather than the content of the law.

When discussing the purpose of legal information resources, participants' responses were primarily around legal information as a tool to empower people, helping them understand and engage with the legal system.

Participants commented on funding shortages in the community legal sector, and how this affects the production and use of legal information. They said that limited funding for other

services encourages the production of legal information, but that the quality of legal information is affected by these same funding limits.

Participants faced challenges in identifying and using plain language. Although they acknowledged the importance of plain, accessible language as a legal tool, using plain language techniques required a skill set that participants did not possess. Participants found the exercise of translating legal concepts into plain language difficult, and this was compounded by the complexity of the content and their familiarity with it. Participants also reflected on attitudes to plain language within the sector, and some expressed concern about oversimplification.

Fifty per cent of participants who responded to the original and redrafted fact sheets preferred the original fact sheet and not the plain language version. Participants commented on content, length, language, structure, design, and legal accuracy. Visual effect was a priority element for participants.

I will discuss these findings in the next chapter, drawing comparisons with existing research in the field, and contextualising my findings in relation to the participants' cultural and geographic context in Australian community legal services. I will also draw out the assumptions and principles that underpin both their comments and the theoretical perspectives that ground this thesis.

Chapter four: Discussion—Perspectives on legal information

In the previous chapter I reported on the findings from interviews conducted with community legal service professionals. Findings addressed the textual, structural, and visual elements of the original and redrafted fact sheet, including participants' comments about content, length, language, structure, design, and legal accuracy. I also reported findings about legal information resources in the context of vulnerability, including participants' comments about their clients' characteristics and capacity to use information, the usefulness of legal information as a legal service, the purpose of legal information, impacts of funding and resources on the provision of legal information, and plain language as a special skill. In previous chapters I have examined the nature and effect of legal need in Australia, and the community legal sector's attempts to meet this need, including through plain language initiatives designed to increase access to justice through information and education about the law. I have also outlined Amartya Sen's capability approach and Iris Marion Young's theory of structural injustice. In this chapter, I will draw these threads together, discussing the practical application and effect of plain language, the usefulness of plain language legal information resources for vulnerable people, and the underlying motivations for their continued use.

4.1 Plain language and access to justice

In this chapter, I question whether using plain language to produce legal information helps make information resources more accessible for vulnerable people. Plain language has been said to provide many benefits, including equitable access to information for consumers and economic savings for organisations (Brown & Solomon, 1995, p. 2; Australian Language and Literacy Council, 1996, p. 36-7; Balmford, 1994, p. 514). In 1987, the Law Reform Commission of Victoria published a report, *Plain English and the Law*, that stated 'laws confer benefits and impose obligations on people. If laws are not written in clear and easily comprehensible language those who are affected by them may be deprived of those benefits or fail to discharge their obligations' (p. 63). In 1992, Penman wrote that legal documents must be understandable by the 'ordinary people' who use them if we are to improve equity in society (1992, p. 122).

In 2012, when the Law and Justice Foundation published the results of their legal needs research, they reported that:

> …in line with new waves of reforms to establish a variety of preventative and early intervention strategies, the concept of access to justice has successively extended beyond access to the formal justice system to additionally include access to legal information and education, non-court-based dispute resolution and law reform. (Coumarelos et al., 2012, p. 207)

If legal documents should be understandable to ordinary people to improve equity; if access to justice includes access to legal information; and if plain language provides equitable access to information, then the application of plain language to legal information should improve equity and access to justice. Since the plain language movement developed, the use of plain language has been linked with access to justice. Plain language is about justice because, as Pringle states, everyone should have access to information they can understand when they make choices about money, housing, health, employment, or legal rights that are based on that information (2006, p. 6). Similarly, Petelin argues that a commitment to clear information achieves the goals of democracy, equity, and transparency (2010, p. 212).

Researchers looking at legal need and legal information have commented about the need for legal information to be in plain language. Coumarelos et al. state that legal information only has value if it is easy to access, understand, and use, and that it must be communicated in simple, clear language (2012, p. 212). Kirby writes that successful legal information applies plain language principles and addresses the needs of the target audience, preferably being developed in consultation with the intended audience (2011, p. 29). In a 2002 study on the nature and utility of legal self-help, Giddings and Robertson found that 'self-help kits were enormously helpful to consumers *provided* that they used clear and plain language…' (Giddings & Robertson, 2002a, p. 450).

This emphatic support for the use of plain language assumes that plain language will ensure legal information successfully communicates legal messages to people in ways that they can understand and use to make choices about their legal problems. In this project, I have questioned this assumption, particularly in the context of legal information produced for vulnerable groups. This thesis has investigated whether using plain language principles when drafting legal information resources helps to make that information more accessible for the vulnerable clients of community legal services. In this chapter, I discuss

the findings reported in chapter three and advance an argument that counters the assumption that plain language legal information is an effective tool for use by vulnerable groups.

In chapter three, I presented results from interviews conducted with legal service professionals working in community legal services. The concept of plain language was familiar to my participants; no participant asked me what plain language was, and all spoke confidently of their opinions about plain language. Participants tended to support the use of plain language. They acknowledged that it was important to try to make the law more accessible for the people whose lives it affects. Yet, although there was general support for the concept of plain language, participants experienced difficulty applying its principles and, in some cases, identifying it in practice.

4.1.1 Challenges in using plain language

Critics of the plain language movement have argued that plain language advocates do not recognise the true complexity of the material they are trying to simplify, and that they fail to recognise the training and expertise required to practice law (Bennion, 2007, p. 63; Balmford, 1994, p. 524; Kimble, 1994, p.51). I do not find this criticism persuasive, considering that many plain language advocates are lawyers and judges themselves. In 2008, Adler wrote that '…the plain language movement is composed of many individuals and organisations around the world. Clarity alone has about 1,000 members, almost all lawyers or law institutions…' (p. 2). Within my interview group, fourteen of whom were employed as lawyers, there were participants who both encouraged plain language use and understood the complexity of the content they were trying to convey.

Participants acknowledged that the legal content they were working with was complex, and that this complexity was difficult to capture in simple terms. Not only are some concepts complex in themselves, but concepts also build on each other, requiring understanding of information that is potentially unrelated to a client's current problem, but required to inform understanding about the current problem. Participants also noted that sometimes concepts or terms are not clearly defined in law, and so are very difficult to define in clear, simple, unambiguous language.

Plain language redrafting efforts have been focused around making legislation and legal documents more accessible to the public (Cutts, 1995, p. 45; Masson & Waldron, 1994, p. 71; Tanner, 2000, p. 54; Campbell, 1999, p. 335). The plain language movement has

concentrated on government forms, consumer documents, and legislation because it is committed to the idea of 'making the law speak directly to its subjects' (Assy, 2011, p. 377). Assy states that 'the fundamental idea promoted by the PEM [plain English movement] is that since the law is addressed primarily to ordinary citizens, rather than lawyers and judges, it should be drafted so as to be fully intelligible to those affected by it' (2011, p. 377). Critics of the plain language movement have expressed concerns about the possible legal ramifications of oversimplification (Bennion, 2007, p. 63; Balmford, 1994, p. 524; Kimble, 1994, p.51).

While my study focused on legal information, rather than legislation or forms, some participants I interviewed expressed concerns about oversimplification, misunderstanding, and the risk of resulting liability. Participants commented about the risk of oversimplifying documents to the point where they become devoid of meaning, which risks people making decisions based on an inadequate understanding of their situation. However, participants still supported the use of plain language. The same participants who talked about oversimplification also expressed concern about fact sheets being too complicated, or not being useful because they are too complex. While they might have had some reservations, participants remained focused on trying to create something simple enough for their clients to understand.

This balance between 'plain' and 'simple' is difficult, because although concepts may be expressed in plain language, the law remains complex (not simple); participants worried about misunderstanding, misinterpretation, and the risk of clients then making ill informed decisions. One might argue that with basic legal information it should be easy to avoid misunderstanding—presumably, the legal writer is not trying to set out all the possible scenarios that need to be covered in a piece of legislation. However, some legal concepts are unavoidably complex.

For example, in the fact sheets presented to participants during my interviews, one of the concepts defined was 'reasonable treatment'. One participant, commenting on just this point in the fact sheet, said 'this stuff about reasonable treatment, you know, is quite complicated. You could write pages about what is reasonable treatment' (P3). The concept of 'reasonable treatment' is part of determining whether or not a person will meet the medical criteria to receive a disability support pension from the Australian Government. Another participant asked, 'If there's a complex concept, should it really be in a fact sheet' (P4)? However, some complex concepts are at the centre of clients' legal problems, and if they do not understand the concept, they may not understand the problem or its solution.

A legal service that helps clients with Centrelink problems cannot avoid this concept in their information services; it is central to their work.

The findings of my empirical research demonstrate that there are further challenges to plain language drafting than the questions around simplifying content that are often the focus of plain language advocates and critics. One is that some of the difficulty found in trying to simplify legal content does not come from the concepts themselves but from their position within a complex legal system, background knowledge of which is required to understand the concept. One participant commented that

> . . . even though our resources try to be written in an accessible way that could be understood by a lay person…it is a challenge to write about legal issues and talk about navigating the legal system in a way that I think makes sense for somebody who isn't familiar, or hasn't had experience or already going through the system in one way or another. (P15)

This participant is making the point that even if a writer can present information about a concept in way that people can understand, their audience will struggle to use that information when faced with navigating a complex legal system. There are multiple levels of complexity—linguistic, conceptual, administrative, structural—and simply applying plain language principles to a text will not resolve all levels of complexity. The text is only part of the picture.

A related challenge that emerged from the data is that the legal content may be too familiar to the people who are trying to simplify it. Garwood states that it is very difficult to detect our own implicit assumptions: 'even when we are consciously writing for a general audience, it can be difficult to "see" how language shuts out readers' (2013, p. 176). Participants talked about the difficulty of trying to forget their knowledge and experience to imagine being someone for whom the information they are expressing is completely unknown. Participants recognised that their level of familiarity came from years of experience of thinking and talking about the legal concepts they were attempting to describe. Greiner, Jimenez, & Lupica write that legal professionals have the ability to 'organise a vast body of knowledge and recognise patterns in factual circumstances and possible solutions' (2017, p. 1164). In contrast, 'a layperson has no experiences to draw on, nor the knowledge base from which to organise information and recognise patterns', which is a barrier to understanding the legal information required to resolve a problem (Greiner, Jimenez, & Lupica, 2017, p. 1164). Plain language drafting advice often

encourages writers to see things from the perspective of their audience, and to test documents on prospective users (Balmford, 1994, p. 517; Adler, 2012, p. 7; Kimble, 1992, p. 11; Asprey, 2010, p. 90). Participants who were providing advice and casework found it difficult to step outside of their professional capacity and forget what they knew. They found it challenging to engage with the experience of someone without their knowledge and skills.

This kind of engagement is time consuming and difficult for services that already face resource shortages in their service delivery. Some services spend significant time trying to maintain their funding: the National Association of Community Legal Centres reported that 118 community legal centres across Australia spent 2477 hours every week on funding-related activities in 2016 (National Association of Community Legal Centres, 2017b, p. 2). ref). In their 2016-2017 annual report, the peak body for community legal centres in Queensland said that during the 2016-2017 period they had spent 'hundreds of hours advocating to retain funding so that our member community legal centres could continue to provide legal help to ordinary people across Queensland—advocating just to maintain the status quo' (National Association of Community Legal Centres, 2017a, p. 5). If community legal centres are fighting just to maintain funding for their core services, they will not have time or energy to invest in user testing or exploring community development approaches to inform their information development. Similarly, my participants recognised that they did not have the time to research, develop, test, or evaluate resources.

My research further suggests that a compounding reason for the difficulty legal service professionals experience in using plain language is that they do not have the technical skills required for the task. While critics of the plain language movement focus on the complexity of the legal content, an underestimated problem is in the complexity of the task of plain language drafting. Participants expressed a lack of confidence in their ability to use plain language, recognising their own lack of skills and training. One participant compared the act of redrafting a piece of text into plain language to a translation exercise, because in changing the content from one form of language to another, an understanding of both the features of plain language and of legal drafting is required. Garwood writes that 'plain language work is, ironically, far from simple. Writers must account not only for problems in the text, but also for problems caused by what is left out' (2013, p. 177). Here, Garwood is referring both to the problem of assuming that non-expert readers can understand implied information, and to the problem of writers not recognising that they have included implied information in a written resource.

Plain language advocates offer advice to help writers with the exercise of re/drafting using plain language. They encourage people to work on changing the way they write, arguing that 'the bad kind of legal writing is merely a bad habit' (Balmford, 1994, p. 538), and that failing to employ plain language 'comes down to the lack of will and lack of skill' (Bowman, Dieterich, Mahon, Pogell, 2005, p. 154). As exemplified by my participants, professionals working in positions within community legal services where they might be expected to draft a fact sheet are unlikely to have plain language training (or the associated range of helpful writing, editing, and design skills) that would equip them to produce a resource appropriate for their target readership. This may be due to a lack of skill, but certainly does not reflect a 'lack of will' and is only a 'bad habit' in the way that any learned behaviour could be called a bad habit until change is produced through training and practice. Garner acknowledges that improving your writing takes effort. 'First, though anyone can learn to write effectively, it takes hard work' (Garner, 2001, p. xvii). Asprey, on the other hand, claims that it is easy to learn: 'The good news is that it is not at all difficult to learn the principles of plain language writing, even if we are talking about plain language drafting by lawyers. Those principles are simple, as I hope you'll see' (Asprey, 2010, p. 3). Asprey does qualify her statement by saying that the hard part is unlearning bad habits and putting the principles into practice when under stress; however, my study indicates that learning to use plain language is also challenging. Learning to use plain language effectively requires not just training in what plain language is, but an understanding of how to approach different audiences, and the opportunity to practice writing skills and receive feedback and direction. As my participants noted, they did not have the training, experience, or time required to develop these skills.

Advice for writers often comes in lists of things to practice and things to avoid, in areas such as planning, structure, design, language, grammar, style, and editing. Instructions like these are common:

- 'Keep subject, verb, and object close together, and generally in that order' (Adler, 2012, p. 6).
- 'In most sentences, put the subject near the beginning; keep it short and concrete; make it something the reader already knows about; and make it the agent of the action in the verb' (Kimble, 1992, p. 13).
- 'Prefer the active voice. Use the passive voice if the agent is unknown or unimportant' (Kimble, 1992, p. 13).
- 'Use parallel structure for parallel ideas' (Kimble, 1992, p. p13).

- ‘Elegant sentences—not convoluted, rambling with “and-ness”, awkwardly embedded sentences introduced with expletives and heavy with nominalisations’ (Petelin, 2010, p. 213).

Sometimes instructions to writers will come with an explanation. For example, Cutts advises writers to transform the passive voice to the active voice, provides a sentence in passive voice and a sentence in active voice, and then the following explanation: ‘to spot passives easily, look for a combination of part of the verb *to be* and a past participle’ (Cutts, 1991, p. 42). All of these instructions use their own form of technical language and assume that the reader understands the concepts listed.

Recommendations for writing in plain language can be extensive, with long lists of tips requiring an understanding of grammar, style, document design, and evaluation. There are guides available, such as *Plain language for lawyers*, by Michele Asprey, which is in its fourth edition (first published 1991). It is a comprehensive guide to using plain language, written for lawyers working in an Australian context. It is also 355 pages long. This suggests that understanding and applying plain language principles does require skill and training.

4.1.2 Redrafting and plain language in practice

Through talking to participants, I identified that challenges in using plain language come from the complexity of legal content; the complexity of the legal system; legal service professionals’ familiarity with the content; limited resources available to do user testing and community engagement; and the technical skills required to use plain language principles. During interviews, I presented participants with an original and redrafted version of a legal information resource, which allowed me to investigate participants’ responses to plain language when faced with a real-world example. In their responses, fifty percent of participants who responded to the redrafted fact sheet stated that fact sheet A, the original, would be more appealing to their clients. Participants’ preference for fact sheet A (the original) did not align with their support for plain language; however, it did reflect the difficulty participants had using plain language due to their familiarity with the content and lack of training, as discussed in the previous section.

Previous plain language studies have typically tested comprehension by showing participants original and revised versions of documents and checking for understanding. Studies by Cutts (1995); Tanner (2000); Masson and Waldron (1994); and Campbell

(1999) reported mixed findings, with some success in improving comprehension (Cutts, 1995, p.45; Campbell, 1999, p. 348), and some remaining questions around whether using plain language guarantees successful communication or is able to completely remove barriers to accessing the law (Tanner, 2000; Masson & Waldron, 1994).

I did not test understanding in this study, because I assumed understanding given participant's roles in their organisations. Instead, I showed two versions of a fact sheet and asked participants what their preference was. Specifically, I asked the following questions:

- Which fact sheet would be more appealing to one of your clients?
- Which fact sheet provides a more accurate representation of the law?

As discussed in chapter two, one of the fact sheets (A) was an original that was in use by a community legal service in Queensland (see Appendix 7). The other (B) was a redrafted version, where I had applied plain language principles to simplify the content (see Appendix 8). While I was not specifically testing for plain language recognition, my findings show that participants were most commonly drawn to certain elements of the fact sheets, and that those elements did not necessarily indicate whether a fact sheet was in plain language or not. Priority features for participants were length, language, and appearance.

The original fact sheet was two pages long and presented as one double-sided A4 sheet. When I redrafted it, breaking down some of the more complex concepts resulted in a longer fact sheet of 3 pages. Participants expressed concern about the length of the redrafted version, even though trying to squeeze too much dense information into one page was a problem with the original version, as acknowledged by participants. Length was still an important feature to participants even when the disadvantage of a longer fact sheet was outweighed by the benefit of one that was easier to read.

Participants made comments about the amount of text on the page and the language used, but the majority of their comments focused on the appearance of the fact sheets. They talked about colour, font, layout, headings, use of bullet points, line spacing, and white space—all visual cues. When participants gave reasons for preferring fact sheet A or fact sheet B, they talked about the visual or aesthetic elements, rather than the language used, regardless of their preference.

Brown and Solomon state that plain language is 'the use of language and design features so that a document is appropriate to its purpose, the subject matter, the relationship between reader and writer, the document type and the way the document is used' (1995, p. 9). Design features are an important element in plain language drafting, but good design

without attention to the words on the page cannot be plain language. The focus on design also creates a further burden on community legal services to use good design, another skill set not usually required of lawyers, and for which they do not receive training.

4.1.3 What difference does plain language make?

I started this chapter by demonstrating how plain language advocates and researchers link plain language with access to justice. For people to be able to understand and use legal information, it must be presented in plain language. I have discussed the challenges legal service professionals face in trying to adopt plain language: the complexity of legal content; the complexity of the legal system; legal service professionals' familiarity with the content; limited resources available to do user testing and community engagement; and the technical skills required to use plain language principles. I have also questioned my participants' preference for plain language and their ability to identify it in practice. Now, I want to question whether using plain language makes a significant difference to clients' capacity to understand and use legal information.

I will come back to some of these points when I discuss the usefulness of legal information resources for vulnerable people in the next part of my discussion, but it is important to address them here. Even if information is in plain language, questions remain about whether the plain language will create more understanding and therefore more agency for the people using it, and whether people will read the information at all, plain language or not.

Previous empirical research on plain language has tested documents on law students, university students, and professional and clerical staff. No studies in the legal sector have investigated whether plain language is helpful for the groups it is most necessary for—vulnerable groups who, because of their personal characteristics or circumstances, may have difficulty absorbing and understanding complex information. These groups are also less likely to be able to access support.

There were ethical questions that prevented me from doing this work; future studies would benefit from engaging with these participants if there is a need for further research in this area. However, my participants work very closely with vulnerable groups, and I asked them about how their clients responded to plain language information. From the perspective of participants, legal information resources were overwhelming for their clients. Participants described clients reacting with glazed expressions in response to being

presented with information. Participants felt that their clients would have trouble understanding information even if it was drafted in plain language. There are various reasons for this, which I will explore later in this chapter. Personal capability, personal support, context, the nature of the individual's problem, and the complexity of the legal system all contribute to understanding. Barnes states that:

> …it is naïve to claim or assume, as so many less compromising advocates of plain English do, that legislation has the capacity to "communicate" the law, across the board, unhindered by sources of doubt. The cases and the general literature on legislation demonstrate that there are simply too many uncontrollable factors potentially at work. (Barnes, 2010, p. 706)

Barnes's point applies to general information as well as legislation.

Penman argues that plain language is trying to address a problem of understanding that cannot be resolved by simplifying words and styles (2002, p. 66). She says that the focus on plain language 'hinder[s] serious questioning about whether the real problems of citizens' capacities to understand and use public documents have been dealt with. Believing in plain English can mean that all you have to do is apply plain English principles and it is better—by definition' (Penman, 1993, p. 130). A narrow focus on plain language as the solution for misunderstanding precludes further investigation. Support for plain language is now widespread, and its use is encouraged in government and the legal system.

I do not suggest that we abandon the idea of plain language. There is merit in the movement because information must be intelligible to those who are affected by it, and there is a clear need for accessible, public information targeted at those who have the capability to use it. However, we need to move away from the idea that using plain language will solve problems of understanding, particularly for vulnerable groups.

In this section, I have discussed some of the challenges faced by participants in using plain language. These include the complexity of the legal content; the difficulty of expressing complex concepts in simple terms balanced against the risk of oversimplification; the background knowledge about legal systems and processes required to understand some concepts; participants' familiarity with the content; and their lack of technical skills and training. In the next section, I will discuss whether legal information resources are useful for vulnerable groups.

4.2 Are legal information resources useful for vulnerable people?

As discussed in earlier chapters, vulnerable people are more likely to experience legal problems and to be more vulnerable to substantial and multiple legal problems (Coumarelos et al., 2012, p. xvi; Buck, Balmer & Pleasence, 2005, p. 317; Pleasence et al., 2003, p. 19; Currie, 2009, p. 21, 30; Sheldon at al., 2003 p. 254). Vulnerable people are most likely to be affected by the utility of legal information resources, because they are less likely to be able to access private legal services or advocate for themselves. Vulnerable people are also less likely to have the capability to effectively use legal information to resolve their legal problems.

As discussed in chapter two, when I have talked about vulnerable people in this thesis, I have been referring to people who experience disadvantage when they try to access the legal system (or access justice) because of their personal characteristics or circumstances. A common barrier is financial circumstances; people who are on a low income or rely on social security benefits do not have the financial resources to pay for legal help, which leaves them in a disadvantaged position compared to people who can pay for legal help. For many common legal problems, this means that people may not be able to pursue their legal rights. However, there are other forms of disadvantage that affect a person's ability to advocate for themselves. Participants in this study identified the following characteristics as creating disadvantage for their clients:

- CALD or Indigenous background
- low levels of literacy and education
- physical or mental illness, or disability
- experiences of homelessness
- transition through child protection system
- experiences of domestic violence.

The participants' primary client group often experiences multiple forms of disadvantage. As one participant stated, '…so many of the people that we assist are what we would define as vulnerable. Very disadvantaged in a number of different areas' (P4). Some community legal services restrict their services to clients who are demonstrably unable to afford legal representation or who present with vulnerabilities. Often clients present with multiple forms of disadvantage, and this has a compounding effect (McDonald & Wei, 2018, p. 2). For example, vulnerable people in the Northern Territory may be disadvantaged by isolation and distance from services that can help, lack of reliable internet or phone service, limited

education, economic resources, and English language proficiency. It is important to recognise that characteristics such as low literacy, poor health, and difficult personal circumstances can create significant barriers to accessing and using the legal system, and to using legal information.

Participants in this study used a range of legal information resources as part of their work, including print and online resources (some in plain language, some not). When I asked participants if they thought legal information resources were useful for their client groups, no participants responded with an unqualified yes. Three participants did not address the question directly during their interview. One was unsure. Three said that they could not answer the question because they could not speak from the clients' perspective and did not get much feedback about their resources. Four participants gave a strict negative response (a no), using phrases such as 'pretty limited' (P14); 'almost useless' (P18); 'not useful at all' (P19); and 'I would probably venture as far as to say that no person from a remote community has accessed those' (P17) to describe the utility of legal information for their client groups.

The remaining nine participants responded with a qualified yes. They stated that information was useful only under certain circumstances, or that it was useful, but not for their clients (a contradiction that I will explore later). Participants provided a variety of reasons why legal information resources were not useful for their clients, which I will discuss below. These reasons are grouped into three main points:

- vulnerable people are not likely to access legal information resources
- vulnerable people are not likely to engage with legal information resources
- information resources serve the needs of organisations rather than clients.

4.2.1 Vulnerable people are not likely to access information

Participants expressed two perspectives when addressing the issue of access to information. They reflected on their clients' ability to practically access copies of the information resources, whether that was physical copies or electronic copies; then they considered whether clients would realistically seek to access information resources independently before problems arose, or in the initial stages of identifying a problem.

My results showed that participants believed it was important to provide accessible legal information resources online or by email, unless clients lacked the resources or skills to use technology (P7). Participants noted that the more vulnerable clients do not have

internet access (P1), while some prefer post or are uncomfortable with using the internet (P3). One participant stated that about half of their clients would not have internet access at home (P3).

Comparatively, 85% of Australians aged 15 years and over are internet users, while 86% of households have access to the internet (Australian Bureau of Statistics, 2018). One commentator stated that '…as more and more Australians are online, the disadvantage of being offline grows. So as the divide narrows, it gets deeper' (Ewing, 2016, np). The Australian Digital Inclusion Index reported that 'across the nation, digital inclusion follows some clear economic and social contours. In general, Australians with low levels of income, education, and employment are significantly less digitally included. There is consequently a substantial digital divide between richer and poorer Australians' (Thomas et al., 2018, p. 5).

In this study, my participants noted that even clients who do have internet access at home may not have access to a printer (P1). Practically, there are still some challenges in getting information to people, but the stronger response from participants was around whether clients had the capability to access information. Some emphasis has been placed on the possibility that access to legal information can prevent, or minimise, legal problems (Coumarelos et al., 2012, p. 210; Forell & McDonald, 2015, p. 2; Barendrecht, 2011, p. 17; Buck et al., 2008, p. 663). However, in this study participants said that their clients do not access legal information, particularly in a pre-emptory or preventative sense, because they are reactive, as are the legal services that provide information and advice (P1). Vulnerable clients may be less likely to expect or prepare for legal problems but react when problems arise; vulnerable clients are more likely to ignore the problem, or fail to identify its nature, until it has progressed and is more serious, and usually more difficult to resolve.

Vulnerable clients are often reactive, but so are legal service providers. Their work is crisis-driven, responding to the client who has called them because they have received a final notice, a court summons, or have just separated from their partner. Even though services attempt to be proactive or encourage prevention of legal problems through legal information, the core of their work is to provide a service, a response, to people who are reacting to a problem that has arisen. The very nature of community legal service delivery is to be reactive: organisations respond to people who come to them with problems.

In this context, legal information is used at the time people have a legal problem, and not before. While participants would like their clients to be informed about, for example, their

rights when dealing with police before they get arrested, clients do not tend to inform themselves about potential problems in this way. Participants reflected that it is difficult to plan for future problems when clients already have so much happening in their lives (P6). Similarly, clients tend to be uninterested in information that is not relevant to their current circumstances (P18). While some participants agreed that their clients were only interested in information relevant to a particular problem they were experiencing at a particular point in time, some thought that their clients were unlikely to access information at all—and even if they did, they were not going to be able to engage with a written resource (P2). This point was raised throughout the series of interviews.

4.2.2 Vulnerable people will not engage with legal information resources

Once a vulnerable person does access information or has it provided by a legal service, participants' responses indicated that clients do not engage with legal information. Why is it so uncommon for clients to read information resources? One reason is that people who are engaging with community legal services are often in crisis, lacking support, and overwhelmed by their circumstances (P12). Clients may also feel overwhelmed by the information itself, particularly when they are presented with a lot of information from various sources, such as fact sheets, booklets, and contact information from multiple organisations (P13).

Sometimes, clients will not understand how the information that has been provided to them can be helpful for them as they try to resolve their problem. This can be caused by a lack of communication from the organisation as well as the client's own understanding. One participant noted that sometimes people are given written information without any explanation of why it is important (P16). Other participants expressed frustration about clients not reading information after it had been provided, particularly if participants had specifically asked clients to do so in preparation for further advice sessions (P3). Two participants said that it was so uncommon for clients to read information they had been given that it was like a 'dream situation' or a 'lawyer's dream client' (P7; P12). In an exploratory study of self-help legal services in Australia, Giddings and Robertson stated that merely supplying information does not guarantee that consumers will receive or comprehend it, or know how to use it (2002a, p. 456). My findings support this, demonstrating that even if clients receive specific information from a lawyer that is directly relevant to a legal problem they have sought help to resolve, this does not guarantee that they will read it.

Clients may be unable to engage with information because they have low capability; they might not have the literacy, education, or practical skills needed to absorb and use the information. One participant said that ‘sometimes people do find information but they lack the skills to apply it to their situation or they lack the skills to know what is relevant or what actually maybe what their problem is’ (P3). To understand and use information, people need not just practical skills, but also personal skills.

Greiner, Jimenez, and Lupica argue that problems in using self-help legal resources are the result of cognitive, emotional, and behavioural difficulties, including feelings of shame, guilt, or hopelessness; a lack of self-agency; and the inability to make and implement plans (2017, p. 1125). In one of their early studies of legal self-help, Giddings and Robertson suggested that to use self-help resources, people need to have a degree of control over the circumstances of their lives, confidence in their abilities, and not be experiencing debilitating emotional issues (2002a, p. 454). It is clear from my interviews that many of the clients of community legal services are in a position—whether temporary or long-term—where they have none of the characteristics identified by Giddings and Robertson. In the words of participants, clients might have ‘a lot of other issues going on at the time and other stressful events happening’ (P11), or ‘they might be too overwhelmed and too emotional to even read it [information]’ (P13). Low capability can also be a result of physical or mental health problems or disabilities, such as depression. One participant noted that ‘…a lot of the people we talk to have disabilities or impairments and some of those impact on people’s attention and concentration capacity. So if you’re sending out someone with severe mental health problems something perhaps they can’t concentrate to read the fact sheet’ (P3). Not only are vulnerable people unlikely to read information resources, they are likely to have low capability to process information if they are experiencing emotional stress, physical or mental health problems, or disabilities. My findings show that participants have some awareness that clients do not have the capacity to read and use the information provided. However, community legal services continue to provide information resources with the expectation that their clients will read and use them, despite previous findings such as those by Giddings and Robertson.

The interviews with legal service providers presented in this thesis indicate that vulnerable clients may not have the necessary skills, such as the negotiation skills identified by Giddings and Robertson, to know what information is relevant or to apply the information to their situation. Clients are unfamiliar with the foundational legal concepts sometimes required to understand the information, do not have the research and writing skills that

legal training provides, and lack personal confidence and agency. As one of my participants acknowledged, providing legal information to clients makes assumptions about their capacity to conduct their own research, make phone calls eliciting information, present written arguments, and understand and use the terminology they will encounter (P13). Whether information is presented in plain language is irrelevant when people do not have the professional and personal skills required to use that information.

Even the clients who are perceived as having the capacity to use legal information resources and represent themselves do not necessarily achieve “good” outcomes. Participants felt that self-represented clients had been successful if they had done an ‘okay job in court’ and gotten ‘somewhat of the outcome they wanted’ (P12). These statements, full of qualifying language, highlight how low expectations are of client capacity; even when clients exceed expectations they are still far below what is required to get a good outcome. A full assessment of what a “good” outcome is would consider the actual facts of the case and whether it had merit. Not all clients who work through a court process are going to achieve an outcome they are happy with, whether they are represented or not. However, it is problematic when the best outcome a service provider expects is that a client with higher levels of capacity does not fail entirely in their attempts to represent themselves. It is clear from my findings that the expectations placed on vulnerable clients to use legal information resources do not align with the realities of their circumstances, skills, and capability. Unfortunately, it also seems clear that while some legal service providers acknowledge the low capability of their clients, service providers are still limited (both by funding constraints and lack of other options) to the provision of written information resources in response to the legal need they face.

4.2.3 Information serves the needs of organisations rather than the needs of vulnerable people

In an influential study of the provision of self-help legal resources, Lawler, Giddings and Robertson:

> suggest that it behoves all providers to evaluate carefully the reasons why, and the methods by which, they engage in the development and delivery of these resources. This is particularly important for traditional providers of legal services for the wider community, who with the best intentions may unwittingly construct unnecessary barriers to effective legal self-help. (2012, p. 226)

They found that legal service providers should evaluate the reasons and methods for delivering self-help legal resources, to avoid inadvertently creating further barriers for their clients. A similar theme emerged from my interview data, indicating that there is still work to be done in this area. For instance, in line with Lawler, Giddings, and Robertson's findings, my study demonstrated that one of the reasons legal information resources are not useful for vulnerable clients is because they serve the needs of organisations rather than the needs of clients. One participant stated that 'one of the problems with an informational approach is that the people sitting in the office pre-determine what information they think people need to know' (P19). One of the most important elements in creating plain language resources is considering the needs of the audience, and advocates suggest drafting with a user-centred approach, consulting with the target readership where possible. As I discussed earlier in this chapter, the legal service professionals developing legal information do not have a working knowledge of plain language principles, or the funding to properly develop and evaluate their information resources, which makes it difficult to carefully consider why and how they deliver information.

Participants develop information resources because they think those resources will be useful, but their approach is based on what *they* would consider useful, if they needed information. A legal service professional's perspective—and what kind of information resource would be useful—is quite different from a vulnerable person's perspective. One participant stated '…from our point of view we think if we're them we would consider it to be really useful' (P13). Another said '…obviously we wouldn't do it if we did not think it was useful. How useful is a difficult thing to answer' (P20). These comments demonstrate that participants' perspectives on legal information are framed by their own experiences as professionals and service providers working within organisations. Participants seemed unable to step outside of their own perspective when drafting legal information resources, and unable to test the information with any potential users. Some participants said that their organisations do not get specific feedback about their materials, which means that their frame of reference is limited to their organisation's perspective.

Some participants were able to recognise the limitations of focusing on the organisation's goals—an approach that fails to consider the user's perspective, how they process information, their language, their level of literacy, and their experience of the world (P14)—leading to information that does not speak to readers in terms they understand. While some individual participants had started to evaluate how and why they produce legal

information resources, most had not, continuing to work based on the perspective of their organisation rather than the needs of their client groups. This is problematic as it does not meet established best practice standards for the production of plain language legal information. It also means that community legal services do not know if the resources that they invest money and time into are beneficial for the groups they are trying to help.

4.2.4 Under what circumstances can legal information resources be useful?

In a 2002 study on the nature and utility of legal self-help, Giddings and Robertson found that self-help kits were helpful as long as they used plain language and it was always possible for users to get legal advice supporting their use (Giddings & Robertson, 2002a, p. 450). Ten years later, Lawler, Giddings and Robertson qualified this, stating that 'the utility of these resources is heavily dependent upon a clear and close alignment between the goals and motivations of the providers and the immediate practical needs of the users' (2012, p. 226). As discussed in the previous section, my research suggests that this alignment has not yet been achieved. In my study, participants were reserved about the possible helpfulness of legal information resources. Participants stated that legal information could be useful when accompanied by legal advice, but their emphasis was on the human interaction, the face-to-face explanation. Participants were not satisfied that provision of information without advice would lead to understanding in their client groups (P3). They prioritised verbal explanation, whether that was through advice with a lawyer, engagement with a social worker, or messages delivered by educators tailoring information to a particular situation or group (P3; P4; P14).

Some participants questioned their clients' capability to use legal information and develop an understanding of their legal issue even with the availability of advice services, noting that even with multiple advice sessions people did not gain sufficient understanding (P3). Some participants said that information can be useful when it is provided to third party support people; however, there was concern that these people also have a level of ignorance about identifying legal problems, and that the usefulness of legal information is therefore limited by their lack of understanding. One participant commented that their experience was that vulnerable people, community workers, and average members of the community all had the same level of ignorance in identifying legal issues (P2).

As I mentioned at the beginning of this section, none of the participants in this study gave an unqualified 'yes' response when asked if they thought legal information resources were

useful for their client groups. For many participants, whether information will be useful depends on access to legal advice and advocacy and individual client capacity. Some participants seemed conflicted, saying that legal information is useful, but that they are unsure if their own clients were able to use it. Some participants returned to this point multiple times.

While some participants made clear comments about the limited usefulness of legal information resources (P14; P18; P19), and others weren't sure or gave qualified responses, no participants suggested that community legal services should stop producing legal information, or that legal information should no longer be provided to their clients. I will explore this dynamic further in the next section, where I question why services continue to use legal information resources if they are not useful for their client groups.

4.3 If plain language legal information resources are not useful, why do we continue to use them?

In 2003, Giddings and Robertson said that 'legal information on its own seems seldom to be much of a substitute for anything worthwhile' (2003b, p. 53). In later studies, they continued to question the utility of self-help resources. Despite research in this area—limited though it is—legal services continue to rely on legal information as a way of informing their clients about the law and legal processes, and a means of supporting them to resolve their own legal problems. As I have discussed, my research findings show that legal service providers themselves question the effectiveness of the legal information resources they draft and distribute, particularly for their vulnerable clients. Yet they continue to use them. What then is the motivation for producing and using legal information?

As I analysed the data collected in this project, commonalities emerged around participants' motivations for producing and using plain language legal information. Participants wanted their clients to understand the legal system, engage with the legal system, and be empowered to help themselves resolve their legal problems. Participants had a strong desire for their clients to understand the law and the legal system, so they could know why they had ended up in the situation they were dealing with and how they would move through the legal process. They felt that if people did not understand underlying legal concepts and systems, they would not understand how they fit within those systems (P20).

Participants wanted their clients to build this understanding even if they were not going to have a successful outcome. One said ‘there’s a very significant benefit to assisting clients to understand their situation even if they don’t get the outcome they want’ (P4). Participants recognised that if their clients understood their position, this could quell the frustration they felt about negative experiences with systems or about not getting the outcome they had hoped for.

In interviews, participants expressed concern that clients of their services come looking for help with very limited understanding of the legal system, the law that applies to their problems, and where they are in whatever process they are going through. For some, that concern extended to the wider audience of ‘your average Australian’, whose level of understanding one participant described as ‘woeful’ (P2). For participants, another benefit of clients having some level of understanding is not only so that they can know their rights and uphold them, but also so that they know they can access legal assistance when they need help with their legal problems (P6; P20). Participants also mentioned that it was important for people to have access to unbiased information, suggesting that community legal services were able to provide neutral information, in contrast to government or police information, which might be perceived as having some bias. Some participants wanted their clients to have a full understanding of the law to avoid the risk of people making decisions that were based on an oversimplified understanding of their position.

The idea of actively engaging with the legal system was also important to participants. Participants wanted clients to experience meaningful participation in the legal system. Participants talked about democracy and equal standing before the law, and the importance of being able to recognise legal problems and enforce individual rights. They wanted their clients to access the legal system and engage with the law, including legislation. The problem with statements like this is that information provision does not lead to active engagement with the legal system. Previous research has shown that even the act of working through a legal process does not lead to either temporary or ongoing engagement with the legal system. In their study on legal self-help, Lawler, Giddings and Robertson found that:

> …users saw self-help as a one-way ticket through a “necessary” legal process and, regardless of whether they had chosen to take the journey or felt forced by circumstance, or the system itself to do so, they did not anticipate returning to the system again. Nor did they see that the process of engagement provided them with transportable skills which might be useful in other legal and non-legal processes. . .

> we were also able to observe in all case studies a level of disengagement with the very legal processes that the participants were seeking to rely upon. (2012, p. 212)

This work by Lawler, Giddings and Robertson shows that people do not want to engage with the law beyond what is necessary to resolve their current problem. They do not want to know why they are there, but just how to get through the process. Contrast this with the perspective of this participant:

> I think it's important that that information is there and I think it should be free, it should be wide spread and I think people should be encouraged to engage with the law. They should be encouraged to look at legislation that impacts on them. (P20)

Thinking that legal information will lead to people engaging with the law to the point of looking at legislation is an unrealistic expectation, particularly when your primary audience is vulnerable clients, and contradicts the realities of participants' understanding of client capacity to do so.

A strong theme that came through in my interview data was that community legal services continue to produce and use legal information resources because they believe that these resources empower their clients to help themselves; providing information gives a people a framework that enhances their own understanding and empowers them to recognise, take responsibility for, and deal with legal problems (P4; P8; P13). Participants want to empower their clients, so they can participate in resolving their own legal problems, with or without outside assistance.

With empowerment often comes the idea of prevention: preventing legal problems, either from happening at all or from getting worse, by educating people about the law through information provision. There is a tension here, between what legal service providers say they want information and other services to do for their clients, and how useful these services are in practice. Participants said that clients were unlikely to access information in a pre-emptive way, and that if given information at the time they access a service, they were unlikely to read it, and then unlikely to be able to use it. Some participants talked about wanting to empower people but also acknowledged that this is not a realistic goal for those who are vulnerable. The underlying conflict lies in the fact that the people who fall into the target client groups for community legal services tend to be very vulnerable. The limited resources available to these services are targeted primarily at vulnerable groups. Therefore, while the ideal might be to empower people to help themselves, for the majority of clients who my participants work with, that ideal is unrealistic.

Another problem with empowerment approaches is that in crisis-driven service provision there are rarely resources to develop significant long-term relationships with individuals and communities. The empowerment model relies on trust, relationships, and resourcing, and this may not be an approach that community legal services can practically take, because they do not have the time, resources, or skills. Finally, an empowerment approach encourages clients to take personal responsibility for their circumstances and for educating themselves to the point where they can engage with the legal system and advocate for themselves. In their earlier work on self-help legal services, Giddings and Robertson expressed doubt about this perspective, saying:

> …we have asserted that the provision of self-help legal services to legal aid consumers without the availability of expert support may not meet their needs properly. Rather than being empowered by the availability of such services, they may end up being abandoned to navigate a complex legal map without the necessary knowledge, skills, and confidence. (Giddings and Robertson, 2003a, p. 115)

Here, Giddings and Robertson suggest that the mere provision of self-help services to people who do not have the knowledge, skills, confidence, or expert support to use them cannot be empowering. This acknowledges that expecting vulnerable people to take personal responsibility for their legal position neglects to consider individuals' personal capability and the structural factors that affect their position, such as their education, experience, personal circumstances, and available personal and social supports. However, in later work, they seem to move back towards ideas of personal responsibility. In a case study examining how self-represented people handle their disputes, Giddings and Robertson found that they could divide their participants into two categories, which they termed 'engagers' and 'avoiders' (2014, p. 133-134). They characterised the engagers as active participants who were motivated, 'committed, skilful, resourceful, conscientious. . . willing to conduct research and to seek information from the online and written resources available to them' (Giddings & Robertson, 2014, p. 137). In contrast, the avoiders lacked motivation and commitment, displaying a detachment 'often fuelled by a general lack of belief or trust in their own abilities, in their own position, in the other players in the system such as other parties or officials, and therefore in the system itself' (p. 140).

All except one of the individual participants described in their engager group had completed high school, displayed competent or high levels of literacy, and were employed or engaged in tertiary study; one was a retired businessman, and one was unemployed

and receiving Centrelink benefits. In contrast, the avoiders had lower levels of education and employment and histories of negative engagement with the particular legal process studied. Particular participants described in the avoider group had not completed high school, were unemployed or working in low-skilled jobs (e.g. as a labourer), and one was described as ‘a pensioner and an immigrant, his English language abilities were limited’ (p. 138). Some avoiders were also described as ‘repeat players’, bringing ‘to the dispute an attitude of “I can’t possibly win this” or “the system is against me”. . . most believed, rightly or wrongly, that they were in a weak or even hopeless position’ (p. 144).

After going through the characteristics of both groups, Giddings and Robertson argue that the characteristics of avoiders are not a result of learning styles, or inadequate skills or abilities, but that ‘some users who avoid the issues and seemingly choose to disengage from insufficient or meaningful involvement do so as a result of their own negative attitudes and beliefs’ (2014, p. 144). The authors do not examine where these attitudes and beliefs come from, or question why the participants might hold them. They might not have had the data to do this, but their report on the characteristics of individual participants, in both the engager and avoider group, provide substantial reasons why the ‘avoiders’ might not engage, conduct research, or seek information (p. 149). While an individuals’ attitude is a contributing factor, it is important to consider the range of factors that might lead a person to develop such an attitude or disengage from the legal system.

As discussed earlier in this chapter, findings from my study indicate that vulnerable clients do not access and use legal information for various reasons, including low levels of literacy and education, limited practical skills, lack of support, being in crisis, and feeling overwhelmed by their circumstances. One of my participants made the point that clients who cannot self-advocate are not in a weaker position because of their ‘innate ability’, but because they ‘have been essentially taught by repeated experiences with the system that their efforts will make no difference’ (P19). They noted that people who can self-advocate ‘have the belief that I can influence my circumstances because they have seen through work and through other life experiences that they can influence their circumstances’ (P19). These factors create disadvantage for vulnerable clients who engage with the legal system.

The people who would be most likely to have the capability and self-assertion to effectively use legal information are those who are highly literate, educated, have support networks to turn to, financial resources to access specialised advice, and the option to have a lawyer take over if necessary. However, it is those who are least likely (particularly vulnerable

clients, as the focus of this study) to have the capability and self-assertion to effectively use legal information who tend to be in a position where they are required to advocate for themselves. Legal information use is often forced on people because they do not have any other options—they are not choosing to exercise their autonomy, they just have fewer options to choose from. As one participant commented, 'I think that's a really inequitable response. And I guess the core of the inequity that I feel is that we don't say that to paying clients. Paying clients can walk into a lawyer and the lawyer will do everything for them' (P2). Young states that disadvantage is created by rules and social practices that position people in unequal positions of power, limiting the range of options available to some people in comparison with others (Young, 2011, p. 39). It is inequitable to place a burden of personal responsibility on vulnerable clients who face disadvantage when entering the legal system to access information resources and resolve their own problems that is not placed on people who are not vulnerable or disadvantaged.

Vulnerable clients are positioned to act by the social conditions that define their lives. While they have some agency to make their own decisions, the range of possible decisions they can make is limited by the position given to them by their social conditions. Young argues that the assumption that we have achieved truly equal opportunity, and therefore that disadvantaged people face no injustice, cannot be sustained (2011, p. 22). As I discussed in my methodology chapter, there are areas in Australia where disadvantage is persistent, entrenched, and long-term, and the vulnerable clients of community legal services experience many forms of disadvantage.

In the context of this study, there are many actors (lawyers, law firms, government bodies, community services, and other people in positions of power in clients' lives) who, individually, do not necessarily act unjustly. It is accepted that lawyers will charge for their services, just like any other service; it is expected that their firms will operate on a business model. It is accepted that people will pay for those services. It is accepted that the government will have limited policies and spending power. It is accepted that community organisations will also have limits on what they can do with the funding they have. But for vulnerable members of society, the combination of all these people and organisations pursuing their individual goals may lead to an unjust outcome.

For vulnerable people, that unjust outcome may mean unequal access to the legal system compared with others who are less vulnerable, whether that is due to financial resources, social support, or other capabilities. One of my participants commented:

> …in an ideal world everyone would have representation. I certainly think self-representation should be possible because well I mean it just has to be. . . it just has to be possible because so many people are, you know, not eligible for legal aid funding or case work through us or any other community service. (P12)

Unless there are significant changes to funding models, legal service providers will continue to produce information as a response to the understanding that it is not possible to help everyone, and that self-representation has to be possible because some people will have no other choice.

I am not arguing that vulnerable clients should not have any agency or personal responsibility, but in the broad access-to-justice landscape, the expectations of personal responsibility placed on vulnerable clients is disproportionate, and the expectation that the provision of legal information resources to vulnerable clients will empower them to resolve their own legal problems is unrealistic and unjust. It is unrealistic because vulnerable clients are unlikely to have the capability to use the resources; it is unjust because a similar expectation of personal capability and responsibility is not placed on people who have the means to pursue other options. In some ways, the production of legal information resources has become a symbol of legal service providers' commitment to access to justice, and their desire for people to engage with the legal system and not feel isolated and confused. However, the vulnerable groups that community legal services are working with need face-to-face advice and support services to engage with the legal system and resolve their legal problems. Low literacy and education, English language proficiency, mental and physical health, experiences of disability, and personal circumstance can create significant barriers to accessing and using the legal system. There is a burden of responsibility on individuals to maintain the ability to use the legal system in its current form. This puts more pressure on those who are already vulnerable. The underlying problems are systemic, and more responsive solutions are needed for the wide range of people who make up our communities.

Chapter five: Conclusion and recommendations

The purpose of this thesis was to evaluate the effectiveness of plain language legal information resources for vulnerable people from the perspective of legal service providers working in the community legal sector in Australia. Plain language meets the needs of its audience by using language, structure and design effectively so that the audience can find the information they need, understand it, and use it. Legal information, as defined in this thesis, is written information about the law, intended to inform people about their legal rights and responsibilities, the legal system, and their options for resolving legal problems.

In the introduction, I explored the nature of legal need in Australia. In Australia, legal problems are common, and many people are unable to access private legal services. Insecure funding for community legal services has led to increased reliance on early intervention services, including the provision of legal information. Legal information is intended to meet some of the need that community legal services are unable to address through advice and representation services, by educating people about the law and empowering them to resolve their own legal problems, and the use of plain language has been encouraged to ensure that legal information is widely accessible.

To investigate the effectiveness of plain language legal information resources, I conducted semi-structured interviews with legal service professionals working in community legal services across Queensland and the Northern Territory. Participants were working as lawyers, social workers, and community legal education officers, across a range of generalist and specialist community legal services and two legal aid commissions. Findings from the interviews addressed the characteristics of clients who approach community legal services and their capacity to use information; the usefulness of legal information as a legal service; the purpose of legal information; the impact of funding and resources on the provision of legal information; and the application of plain language principles as a special skill. Participants also responded to the content, length, language, structure, design, and legal accuracy of a fact sheet redrafted using plain language principles.

Previous research has suggested that the evidence indicating the prevalence of low legal capability within vulnerable groups necessitates targeting legal information to their particular needs. However, my research shows that not only are legal information

resources not developed to meet the needs of vulnerable people, they are unable to meet the needs of vulnerable people. I found that vulnerable people do not have the capability to find, understand, and use legal information resources in the way that legal service providers hope they can. This finding confirms similar questions raised in previous research.

As discussed in chapter one, vulnerable groups are more likely to experience multiple legal problems. My findings may be generalisable to other jurisdictions where access to the legal system is affected by vulnerability. However, the findings are particularly relevant for countries with established systems of legal assistance for vulnerable groups to access the legal system, countries where funding restrictions potentially limit the scope of that legal assistance, and where knowledge of legal rights has been acknowledged as affecting understanding of the law and access to the legal system. As discussed in the introduction, this would include the United States, United Kingdom, Canada, and New Zealand. My findings are also relevant nationally, where the funding and organisational structures of community legal services are relatively consistent across all jurisdictions in Australia. The disadvantage experienced by vulnerable groups across Australia is also consistent (of course with some exceptions for demographic variation, such as in the Northern Territory where a much higher proportion of the population are of Aboriginal and Torres Strait Islander descent). The participants recruited in my study are representative of people who would be working in community legal services around the country.

In the capability approach, outlined in chapter two, Amartya Sen suggests that having access to resources does not mean that a person will have the individual capability to use those resources and be able to maintain secure functioning. My research shows that merely having access to legal information resources does not mean that a vulnerable person will have the capability to use those resources and use the legal system to enforce their legal rights. Moreover, lacking the freedom to choose from various options restricts vulnerable people's ability to achieve functionings (Heady, 2006, p. 9-10; Sen, 1995, p. 51), entrenching the disadvantage already experienced by vulnerable groups and making them vulnerable to experiencing further legal problems. Simply making legal information resources available is an inadequate solution to the problem of access to justice for vulnerable groups. Vulnerable people must be supported through sufficient face-to-face advice and advocacy, and not left to navigate the legal system alone.

I found that despite legal service providers' understanding of their clients' low legal capability and their acknowledgement that legal information resources are of limited value

for vulnerable people, participants maintain the attitude that legal information resources should be provided to their clients, and that clients should be encouraged to use them. One of the reasons for this incongruous insistence is my finding that empowerment ideals continue to inform community legal service providers' approaches to information provision. This is an important finding because as long as those ideals are sustained, legal service providers may lack a realistic understanding of what their clients are capable of, and continue to offer services that have the potential to further disadvantage their clients, instead of providing the real help that they intend to provide. Services will continue to direct funding into text-based legal information projects that cannot address the needs of their client groups. Funding bodies will continue to limit funding provided for advice and advocacy services and encourage the production of information resources as a substitute, based on the assumption that vulnerable people are capable of empowering themselves and resolving their own legal problems.

Empowerment is a worthy ideal, and possible to achieve, even within the legal sector, but not within the current model of community legal service provision. The circumstances under which people are expected to become empowered as they move through the legal system are not conducive to reaching empowerment. Legal services are not funded, skilled, or organised to provide the intensive, consistent, long-term support that people need to develop the skills and confidence required to act as empowered individuals. Even the provision of advice services can be a disempowering experience. Parker writes that relationships between lawyers and vulnerable people are characterised by the sense of being 'overwhelmed by a structure that encourages professional dominance' (1994, p. 162). She argues that community legal service professionals do not make decisions from the perspective of empowerment or rights, but are constrained by limited time, funds, and the power imbalance created by the lawyer's control of resources and superior knowledge and the personal characteristics of the vulnerable person they are trying to help (Parker, 1994, p. 150, 163). The empowerment ideal creates further burden on both the strained legal service and the vulnerable person already in crisis: 'paradoxically, then, while lawyers serving the disadvantaged aim to provide greater access to justice, they probably exercise more power over who they will and will not help than other lawyers' (Parker, 1994, p. 150). If the legal sector wants to create empowered individuals, the service model needs to change, and that is only possible with dramatic change to the funding models, or the increased use of integrated services.

Part of the reason that community legal services hold so strongly to empowerment ideals is that they have assumed responsibility for providing free, unbiased information—participants in this study recognised that if they do not provide this information, no one else will. There is a shift in responsibility here from government to the legal services. The burden of educating and training individuals to navigate the legal system is shouldered by already poorly funded, under-resourced, strained, time-poor legal services. It should also be noted that 'free access' to information costs more over time. For example, Kinder notes that the Australasian Legal Information Institute provides free access to information, but at a cost of over one million dollars each year (2017, p. 48). Additionally, the future of free access to information is not secure, as illustrated by funding cuts to organisations such as Trove[12]; future progress in this area requires stronger funding commitments (Kinder, 2017, p. 48).

Policy makers must understand the limitations of current approaches to access to justice, particularly as disadvantage continues to be entrenched in the Australian population. McDonald and Wei call for person-centred approaches to justice policy 'appropriate to the legal need and capability of anticipated users' (2018, p.11). Funding bodies must recognise that continuing to reduce funding for legal assistance services only serves to further entrench disadvantage and reduce the ability of providers to help vulnerable people enforce their legal rights. Community legal services were founded on empowerment ideals. A cultural shift is also required to move away from the idea that legal information can empower vulnerable people. It is important to balance these findings with the drive for empowered citizens—people should be aware of the law and their rights and feel empowered to enforce those rights or access justice. The goal is not unreachable, but the provision of legal information resources as a method to achieve this goal is not realistic for vulnerable people.

Parker suggests that the empowerment of vulnerable people in a legal context is most likely to occur when legal services are offered not as a primary service, but as part of a more holistic service that aims to empower vulnerable groups (1994, p. 165). Similarly, Noone encourages the integration of legal services with health and welfare services (2017, p. 36). For legal assistance services to be most efficient and effective for vulnerable people, they should be targeted, integrated, timely, and appropriate (Noone, 2017, p. 36). Inadequate resources and unrealistic expectations are two of the barriers to successful

[12] Trove collects content from libraries, museums, archives, and other research and collecting organisations. Find out more at www.trove.nla.gov.au.

integrative service provision, and partnerships can risk overlooking the complex characteristics of their potential clients in focusing on the complexity of systemic problems (Noone, 2017, p. 36). Adequate funding for research and evaluation is required to understand how to appropriately develop integrated legal services to meet the needs of vulnerable people:

> to achieve best possible outcomes in addressing multiple, complex and interconnected legal, health and social problems, community-based legal organisations require an understanding of the way their community interacts with services so that they can adapt and develop holistic services and supports which will engage the community. (Noone, 2012, p. 30)

Turning to the production of legal information resources, I found that legal service professionals in my study did not really understand what plain language was, nor did they have the skills to use it. This is important because services that do not have capacity to train legal professionals or employ plain language specialists are unable to produce effective plain language resources. Further, I found that the application of plain language principles does not guarantee that the resources will actually be effective. There are too many other factors at play to support the broad claims that the plain language movement makes.

While the continued use of plain language should be supported—accessible, understandable information must be available to support democracy and the rule of law—all the complexity of legal concepts and the legal system itself cannot be mitigated simply by the application of plain language principles. In some ways, plain language is a superficial response to a complex problem. It is not that the idea of plain language should be abandoned, but that it must be considered as one response in a range of necessary responses to the problem of access to justice. Having said that, if community legal services continue to produce plain language legal information resources—which, in reality, can be used by any Australian, not just by the vulnerable people who access their services—they need to be adequately trained and resourced for the task.

The burden of information provision should be moved away from the legal services whose target client group is vulnerable people. These services should be able to focus on service provision in the form of advice and advocacy services. Other bodies with the necessary skills and resources should be funded to produce plain language information resources. Alternatively, community legal services should be funded adequately, with specialist

positions additional to (and not detracting from) their existing legal assistance or social work positions. Often the legal service professionals producing legal information are performing the role as a secondary responsibility alongside their role as lawyer or social worker.

One of the assumptions underlying the provision of legal information resources in this context is the idea that vulnerable people should take personal responsibility for their situation and for resolving their own problems, which ignores the impact of large-scale social structural processes, as articulated by Iris Marion Young (2011, p. 11). Structural processes contribute not only to the difficulties experienced by vulnerable groups in resolving legal problems, but may also contribute to creating those legal problems to begin with. For example, someone who is homeless or living in insecure housing may experience difficulty accessing legal information or other assistance: they may not have access to a computer with internet access to find information; a phone to make calls and investigate options for resolving their problem; a secure mailing address to receive legal documents; or a means of transport to attend appointments (Coumarelos et al., 2012, p. 30). Further, the legal problem they are trying to resolve may be a consequence of homelessness or insecure housing; a simple example would be someone who has a series of fines for their behaviour in public spaces because they are unable to access the private spaces created by secure housing (Walsh, 2004, p. 38-40; Walsh & Douglas, 2008, p. 367).

In chapter two, I discussed the transformative research paradigm and the work of Donna Mertens, who argues that in research addressing issues of social justice, the researcher should possess a ‘shared sense of responsibility’ (Mertens, 2007, p. 212). Iris Marion Young, whose work on structural injustice was discussed in chapters two and four of this thesis, also talks about the idea of shared responsibility. She outlines a social connection model of responsibility, which ‘finds that all those who contribute by their actions to structural processes with some unjust outcomes share responsibility for the injustice’ (Young, 2011, p. 96). The model does not seek to apportion blame; instead, it advocates for a forward-looking responsibility, which asks individuals to ‘join with others who share that responsibility in order to transform the structural processes to make their outcomes less unjust’ (2011, p. 96).

In the context of my research, every organisation and structure that makes up the legal system is collectively responsible for the particular injustices experienced by vulnerable people. The participants interviewed in this project already bear a weight of personal

responsibility: they were all working in organisations that explicitly seek to advocate on behalf of those who are both personally vulnerable and made vulnerable by the demands of a system they cannot navigate on their own. However, by continuing to hold to empowerment ideals and expecting vulnerable people to use legal information resources to resolve their own problems, legal service providers may, despite their best intentions, be contributing to vulnerable people's experiences of injustice. The purpose of identifying this contrast is to see the relationship between actions, practices, policies, and structural outcomes (Young, 2011, p. 109), an exercise that applies not just to the participants in this study, but broadly across the legal assistance sector in Australia.

Young's social connection model distributes responsibility that can be discharged only through collective action:

> Most of us are objectively constrained by the rules, norms, and material effects of structural processes when we try to act alone. These processes can be altered only if many actors from diverse positions within the social structures work together to intervene in them to try to produce other outcomes. (Young, 2011, p. 111)

Progress in this area will require all who are involved across the legal sector to work together to pursue better outcomes. Young describes a 'solidarity' in which people share responsibility to make the social institutions and practices they enact and support just (2011, p. 121). She encourages individuals and organisations to act where they have capacity to influence structural processes (2011, p. 144). Young also emphasises the importance of involving people who experience injustice in finding solutions: 'unless the victims themselves are involved in ameliorative efforts, well-meaning outsiders may inadvertently harm them in a different way, or set reforms going in unproductive directions' (2011, p. 146). Work is required not just to improve structures that increase access to the legal system for vulnerable people, but also to include vulnerable people in this task.

I found that previous research on the effectiveness of legal information for vulnerable groups is limited. If information provision is going to remain a key part of access-to-justice strategies in Australia, further research should investigate how it can be made more effective, particularly with the understanding that plain language is not enough. Any future research that considers the effectiveness of services for vulnerable people should engage vulnerable people in that research, something that is lacking in the existing literature. Groups who are normally excluded from these research studies must be included. Vulnerable people should be involved not just as participants in research, but also in

designing research projects that answer questions relevant to their experiences and needs. Vulnerable people should be involved not just in research design and data collection, but also in making and implementing recommendations in order to create sustainable change. This is particularly important because it is vulnerable groups who are most affected by the way legal services are structured and funded, and by the way legal information is produced and distributed.

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Appendices

Appendix 1: Ethics approval

THE UNIVERSITY OF QUEENSLAND

Institutional Human Research Ethics Approval

Project Title:	Plain Language and the Law: Legal Information in Australia
Chief Investigator:	Ms Dorothy Fauls
Supervisor:	A/Prof Roslyn Petelin, A/Prof Tamara Walsh
Co-Investigator(s):	None
School(s):	School of Communication and Arts
Approval Number:	2016000948
Granting Agency/Degree:	Doctor of Philosophy
Duration:	30th June 2017

Comments/Conditions:

Expedited Review - Low Risk

Note: if this approval is for amendments to an already approved protocol for which a UQ Clinical Trials Protection/Insurance Form was originally submitted, then the researchers must directly notify the UQ Insurance Office of any changes to that Form and Participant Information Sheets & Consent Forms as a result of the amendments, before action.

Name of responsible Committee:
Behavioural & Social Sciences Ethical Review Committee
This project complies with the provisions contained in the *National Statement on Ethical Conduct in Human Research* and complies with the regulations governing experimentation on humans.

Name of Ethics Committee representative:
Associate Professor Elizabeth MacKinlay
Chairperson
Behavioural & Social Sciences Ethical Review Committee

Signature Liz MacKinlay Date 28/7/16.

Appendix 2: Participation request letter

THE UNIVERSITY OF QUEENSLAND
AUSTRALIA

Dorothy Fauls
d.fauls@uq.edu.au
0424 933 388

Request for circulation of information about a research study

As part of a doctoral thesis project, I am conducting a research study exploring how legal information is produced, distributed, and used. I am contacting you to ask if your organisation would be interested in participating in the study, and if you would agree to circulate information about the project to your staff.

What are the objectives of the research study?
The purpose of this study is to explore whether legal information effectively communicates the law to the Australian public, and particularly improves access for disadvantaged groups within the wider community. I will do this by exploring the production, dissemination, and consumption of legal information in your organisation. This project has the potential to evaluate legal information materials and offer recommendations for improving the way organisations communicate the law to disadvantaged groups.

What will participation involve?
Participation in this project involves answering some questions about legal information in a brief, informal interview. I have attached a Participant Information Sheet, which contains more information about the study.

How do I participate?
If you would like to be involved, please contact me and I will provide you with further information. If you have the consent of your employees to contact them about participation in research, I will provide you with a letter of introduction and a Participant Information sheet (attached for your information) that you can forward to the professional staff in your organisation. This study adheres to the guidelines of the ethical review process of The University of Queensland and the National Statement on Ethical Conduct in Human Research. This research study is being supervised by Dr Roslyn Petelin (3365 3212) and Dr Tamara Walsh (3365 6192) at The University of Queensland.

PH 0424 933 388
E d.fauls@uq.edu.au

Yours Sincerely,

Dfauls

Dorothy Fauls

Appendix 3: Invitation letter

THE UNIVERSITY OF QUEENSLAND
AUSTRALIA

Dorothy Fauls
d.fauls@uq.edu.au
0424 933 388

Invitation to participate in a research study

I am conducting a research study that is exploring how legal information is produced, distributed, and used.

What are the objectives of the research study?

The purpose of this study is to explore whether legal information effectively communicates the law to the Australian public, and particularly improves access for disadvantaged groups within the wider community. I will do this by exploring the production, dissemination, and consumption of legal information in your organisation. This project has the potential to evaluate legal information materials and offer recommendations for improving the way organisations communicate the law to disadvantaged groups.

What will participation involve?

Participation in this project involves answering some questions about legal information in a brief, informal interview. The Participant Information Sheet attached to this letter contains more information about the research study. This study adheres to the guidelines of the ethical review process of The University of Queensland and the National Statement on Ethical Conduct in Human Research. This research study is being supervised by Dr Roslyn Petelin (3365 3212) and Dr Tamara Walsh (3365 6192) at The University of Queensland.

How do I participate?

If you would like to be involved, please contact me.

PH 0424 933 388
E d.fauls@uq.edu.au

Yours Sincerely,

Dfauls

Dorothy Fauls

Appendix 4: Information sheet

THE UNIVERSITY OF QUEENSLAND
AUSTRALIA

Information Sheet for Participants

Project: Plain language and the law: legal information in Australia

Project Investigator: Dorothy Fauls

What are the objectives of the research study?

This study is part of a doctoral research project. The purpose of this study is to explore the production of legal information and its effectiveness for the people who use it. I am asking whether legal information effectively communicates the law to the Australian public, and particularly improves access for disadvantaged groups within the wider community. I will do this by exploring the production, dissemination, and consumption of legal information in your organisation.

What will my participation involve?

Your participation in this project is voluntary and involves a brief, informal interview about the production, distribution, and effectiveness of legal information, with particular reference to the resources produced by your organisation. You will be asked to answer 15 multiple-choice and short-response questions, which should take 15-30 minutes, depending on your individual responses. If you choose to participate in a face-to-face interview, I will ask you if I may make an audio recording of our conversation. You may choose to consent to this or not. If you do consent to an audio recording, your responses will be recorded and transcribed. You will receive a copy of your transcript so that you can review and amend your responses if necessary.

What is the benefit of participating in the study?

This project has the potential to evaluate legal information materials and offer recommendations for improving the way organisations communicate the law to disadvantaged groups. You will not receive reimbursement.

Is there any risk involved in participation? Will my participation be confidential?

This study involves no foreseeable added risk above the risks of everyday living. Confidential information gathered during the study will not be shared with anyone outside of the research team. Identifying features will be removed from the transcripts after they are finalised; no participants will be identified in the final thesis, or in any publication or

presentation; and names of people, places, and organisations will be removed from the data. Recordings and transcripts will be kept in a secure location.

Can I withdraw from the study?

Participation in this study is voluntary, and you may choose not to participate in discussion of any particular issue if you do not wish to. You may withdraw at any time with no consequences and any information already collected will be excluded from the study and destroyed.

Can I see the results of the study?

You will receive a copy of your individual responses. Your organisation will also receive a summary of the research findings, and you may also receive a summary if you would like one.

Does this study have ethical clearance?

This study adheres to the Guidelines of the ethical review process of The University of Queensland and the National Statement on Ethical Conduct in Human Research. While you are free to discuss your participation in this study with project staff (contactable on 0424 933 388), if you would like to speak to an officer of the University not involved in the study, you may contact the Ethics Coordinator on 3365 3924. This research study is being supervised by Dr Roslyn Petelin (3365 3212) and Dr Tamara Walsh (3365 6192) at The University of Queensland.

Appendix 5: Informed consent form

THE UNIVERSITY OF QUEENSLAND
AUSTRALIA

Informed Consent Form

Project: Plain language and the law: legal information in Australia

Project Investigator: Dorothy Fauls

Date:

Name of Research Participant:

Participant statement:

- ☐ I agree to be involved in this project as a participant.
- ☐ I understand that my participation is voluntary.
- ☐ I have read the information sheet and I have had any questions answered to my satisfaction.
- ☐ I understand the nature of the research and my role in it.
- ☐ I understand that I am free to withdraw my consent at any time without penalty or consequence.
- ☐ I understand that if I withdraw the information I have provided will be excluded from the study and destroyed.
- ☐ I understand that any confidential information gathered during the research will not be shared with anyone outside of the research team, and that I will not be identified in any publication that comes from this project.

I CONSENT / DO NOT CONSENT to the researcher making an audio recording of my interview. (Please note that you may still participate in the interview if you do not consent to an audio recording.)

Signature of Research Participant:
Date:

Signature of Study Investigator:
Date:

Appendix 6: Interview schedule

SEMI-STRUCTURED INTERVIEW SCHEDULE (PROFESSIONALS)

These questions provide an outline to follow during the interviews. The combination of questions asked may differ according to participant's responses, and further questions may be asked depending on the responses to each question and the participant's individual circumstances.

Screening: I am looking for participants who work in some capacity for a community legal service (employed or volunteer basis), and preferably spend the bulk of that time working with clients.

PARTICIPANT INFORMATION:

The project I'm working on is about how written resources such as books, brochures, guides, and websites communicate legal information to people in Queensland. I am especially interested in how people use information to help them handle legal problems. This research project is not about resolving particular legal problems, but about how people use written resources to find information in a legal setting, and whether how the resources are written makes a difference to how useful they are. I will ask you questions about how you and your organisation use legal information, and about how you think it could be improved. Thank you for agreeing to participate and share your opinions with me. I am interested in what you have to say. Please tell me if you don't understand what I'm asking for, or if you need me to explain something. Let me know if you would like to take a break, or to stop the interview altogether.

RESEARCH QUESTIONS: LEGAL INFORMATION IN THE COMMUNITY LEGAL CENTRE CONTEXT

PARTICIPANT CONTEXT

I am asking these demographic and introductory questions so that I can understand a little bit about your role within your organisation and how you might approach the provision of legal information.

1. What is your gender identity?
2. What is your role in the organisation that you work for?
3. What client cohort(s) do you most regularly work with?
   (*Please list all categories that apply to you.*)
   Examples:
   - Children or youth
   - Women
   - People receiving Centrelink benefits
   - People experiencing socio-economic disadvantage or financial hardship
   - People who are culturally and linguistically diverse
   - People who live in regional or remote areas
   - People who are of Aboriginal or Torres Strait Islander descent
   - People at risk of, or experiencing, domestic violence
   - People who are elderly
   - People who are ill or disabled

- People who are homeless, or at risk of homelessness
- Other (please specify)

4. What is the nature of your interaction with clients within your organisation?
5. Do you provide legal information resources published by your organisation to clients by post, email, or referral to your website?
   (On average, how often would you do that? Which resource(s) do you most often provide?)
6. Do you provide legal information resources published by other organisations to clients by post, email, or referral to their website?
   (On average, how often would you do this? Which resource(s) do you most often provide?)

QUESTION SET 1: LEGAL INFORMATION IN YOUR ORGANISATION

1. How is your organisation's legal information produced and distributed? What are the strengths and weaknesses of this process?
2. How useful are legal information resources for your client group(s)?
3. What are the primary challenges in providing legal information resources for your clients?

QUESTION SET 2: FACT SHEETS

I am asking these questions so that I can gather data about community legal service professionals' opinions about legal information resources. Questions 1 and 2 refer to fact sheets that I will provide before the interview.

1. Which fact sheet would be more appealing to one of your clients?
2. Which fact sheet provides a more accurate representation of the law?
3. What are your thoughts about translating legal concepts into plain language materials? What are the primary difficulties in this process?
4. What is the most effective way of communicating legal concepts to the community, apart from an advice session with a lawyer?

FINAL COMMENTS

1. *What do you see as being the primary purpose of legal information resources?*
2. What should be the most important issues for researchers interested in legal information and how we communicate the law to the public?
3. Is there anything else you would like to say about legal information?

Thank you very much for participating in my research project. If you have any questions later, or would like to talk to me further about my research, please contact me. I appreciate your time and your contribution.

Appendix 7: Original fact sheet

Disability Support Pension - Medical Criteria

This fact sheet outlines information to help you collect the evidence you need to prove you satisfy the medical requirements for Disability Support Pension (DSP). There are other requirements you have to meet to qualify, (e.g. residence requirements, income and assets test), are not discussed here.

What are the medical criteria for Disability Support Pension?

To be eligible for the DSP you must meet the following criteria at the date of claim (or within the subsequent 13 weeks):

- have a condition that has been **fully diagnosed, treated and stabilised** in order to be assessed under the impairment tables;
- be awarded **20 points or more** under one or more of the "impairment tables";
- have a **continuing inability to work**;
- have **actively participated in a Program of Support**, unless exempt from this requirement.

Fully diagnosed, treated and stabilised

A condition is considered **fully diagnosed** if no further medical confirmation/testing is required. Some conditions require mandatory specialist confirmation. If this is required, it is listed at the beginning of the relevant impairment table. For example, mental health conditions require confirmation of diagnosis from a Psychiatrist or Clinical Psychologist (endorsed as such with APHRA).

A condition is considered **fully treated** if a person has received all **reasonable treatment** or rehabilitation for the condition.

Reasonable treatment is defined as treatment that is of a type regularly undertaken, reasonably accessible, at a reasonable cost, low risk, with a high success rate and where substantial improvement in functional capacity can be reliably expected. A treatment may not be considered *reasonable* if there is a medical or compelling reason for the patient not to pursue that treatment (which can include religious/cultural beliefs, genuine fear/lack of insight or the ability to make appropriate judgements due to a medical condition where the person is unlikely to comply with treatment).

A condition is considered **fully stabilised** if reasonable treatment for the condition has been undertaken and it is not expected that any further reasonable treatment will result in **significant functional improvement** in the next 2 years.

Significant functional improvement is defined as improvement to a level enabling the person to work within 2 years.

The 20 Point Requirement

Centrelink uses the Impairment Tables to assess how your disability impacts on your functioning. There are 15 different tables that cover different areas of functioning.

The current tables are available at:

https://www.dss.gov.au/sites/default/files/documents/05_2012/dsp_impairment_final_tables.pdf

If your condition is **not fully diagnosed, treated and stabilised** it will not be rated under the impairment tables.

Two or more conditions which cause common/combined impairment should be assigned a single rating under a single table. Ratings that fall short of a higher rating must be rounded down to the lower rating. Also, note that a person is only considered able to perform

an activity if they can do the activity for more than a few minutes on a repetitive or habitual basis and generally whenever they attempt it. If after doing the activity for more than a few minutes, the person has to rest, suffers significant pain or is unable to repeat the activity for the remainder of the day, it should be considered that the person is unable to do the activity (details of this should be provided).

Continuing Inability to Work

This means that you must be unable to work 15 hours/week in the next 2 years independently of a program of support. Work is defined as any job in the open market in Australia, sustainable for a period of at least 26 weeks (without excessive support or leave equating to a month or more within the 26 week period).

The Program of Support

A program of support is a vocational, rehabilitation or employment program (usually through an Employment Service) tailored to address the person's impairment and other barriers to employment.

The requirement does not apply if you have a "severe" disability or illness which gives you 20 points under a **single impairment table.**

To show that you have **actively participated in a program of support,** you need to show that in the three years before you claimed the disability support pension:

- you completed a program of support; or
- you have been with a program of support for 18 months. An exemption period, such as a medical certificate exemption, will not count towards the 18 month period; or
- you were with a program of support which was terminated because your medical conditions alone meant that continuing would not improve your capacity to prepare for, find or maintain work through the continued participation in the program.

You can also show you meet this requirement if:

- you were with a program of support when you claimed the disability support pension, but continuing would not help improve your capacity to prepare for, find or maintain work. If your provider disagrees with you on this, you have the right to get medical evidence from your doctor.

Appeal Rights

If your Disability Support Pension (DSP) claim has been rejected, you should lodge an appeal within 13 weeks of the decision. To appeal, simply tell Centrelink that you are not happy with their decision to reject your DSP application. If you have already had a review by an Authorised Review Officer (ARO), you have the right to appeal further, to the Social Security Appeals Tribunal, and you need to do this within 13 weeks of the ARO decision.

If your circumstances have changed since you first lodged your claim, e.g. your condition has deteriorated, you have seen further specialists, stabilised on further treatment or are now attending or meet one of the program of support criteria, you should lodge a new claim for the DSP. This new claim does not prevent you from proceeding with your appeal which can only consider your eligibility for the DSP within 13 weeks of the date of your original claim.

For more information on appealing and the Disability Support Pension please refer to the following fact sheets on our website:

- Disability Support Pension Doctor's letter;
- Disability Support Pension Flowchart; and
- Appealing a Centrelink Decision.

Please Note:

This fact sheet contains general information only. It does not constitute legal advice. If you need legal advice please contact

is a community legal centre, which provides specialist advocacy and legal services in Social Security law, administration and policy. We are independent of Centrelink. All assistance is free.

This fact sheet was updated in June 2015.

Appendix 8: Revised fact sheet

[Insert logo]

Meeting the medical criteria for the Disability Support Pension

To get a Disability Support Pension (DSP) from Centrelink, you have to show that you meet the medical criteria. This fact sheet contains information about what the medical criteria are and how to prove that you meet them.

WHAT ARE THE MEDICAL CRITERIA FOR DISABILITY SUPPORT PENSION?

There are four parts to the medical criteria. Each part includes words or phrases that have a special meaning; these are in **bold type** and will be explained.

1. You must have a condition that has been **fully diagnosed, treated and stabilised**.
2. You must be given **20 points or more** under one (or more) of the Impairment Tables.
3. You must have a **continuing inability to work**.
4. You must have **actively participated in a program of support**.

You must meet these criteria on the date you make your claim, or within the 13 weeks that follow this date.

HOW CAN I SHOW THAT I MEET THE MEDICAL CRITERIA FOR DISABILITY SUPPORT PENSION?

1. YOUR CONDITION MUST BE **FULLY DIAGNOSED**, **TREATED** AND **STABILISED.**

Your condition is **fully diagnosed** if you don't need to have any more medical testing or confirmation that you have the condition. For some conditions you must get confirmation from a specialist. If you need this, it will be stated at the beginning of the Impairment Table that applies to your condition. For example, if you have a mental health condition, you must get confirmation of your diagnosis from a psychiatrist or clinical psychologist who is registered with the Australian Health Practitioner Regulation Agency.

Your condition is **fully treated** if you have had all the treatment or rehabilitation that is reasonable for your condition.

A treatment is reasonable if

- people with your condition regularly have it
- you can access it
- the cost is fair for someone in your position
- it has a low risk
- it has a high success rate
- it will improve your ability to function.

A treatment is not reasonable if there is a good reason for you to not have it. Some examples of good reasons:

- medical reasons
- religious or cultural belief
- genuine fear
- lack of insight
- you are unlikely to follow the treatment plan because you have a medical condition that affects your ability to make appropriate judgements.

Your condition is **fully stabilised** if you have already had reasonable treatment and more treatment will not lead to enough improvement in your condition to enable you to work in the next two years.

2. YOU MUST BE GIVEN **20 POINTS OR MORE** UNDER THE IMPAIRMENT TABLES.

Note: If your condition is not fully diagnosed, treated and stabilised it will not be assessed under the Impairment Tables.

Centrelink uses Impairment Tables to look at different parts of your body and assess how your condition affects your ability to function. There are 15 different tables that cover different areas of functioning. Part of assessing your ability to function includes deciding whether you can complete specific activities. You must be able to do the activity for more than a few minutes, whenever you try it. You will be unable to do the activity if after a few minutes you:

- have to rest
- suffer significant pain
- cannot do the activity for the rest of the day.

You can look at the Impairment Tables on our website:

[insert hyperlink]

If you have two or more conditions that both cause the same impairment, they will be given a single rating under a single table. Ratings cannot be rounded up.

3. YOU MUST HAVE A **CONTINUING INABILITY TO WORK**.

You have a continuing inability to work if you cannot work for 15 hours a week in the next two years without a program of support.

Work means any job in the open market in Australia that you can do for at least 26 weeks without a high level of support, or without a month or more of leave.

4. YOU MUST HAVE ACTIVELY PARTICIPATED IN A PROGRAM OF SUPPORT.

Note: This is not required if you have a severe condition and have been given 20 points under a single Impairment Table.

A **program of support** is usually done through an employment service. It can be a vocational, rehabilitation, or employment program, and is designed to help you manage your condition and other barriers to employment.

To show that you have **actively participated in a program of support,** you need to show that you have met one of the following requirements in the three years before you make your claim:

- you completed a program of support
  OR
- you participated in a program of support for 18 months
  Note: An exemption period will not count towards the 18 month period.
  OR
- you were participating in a program of support that ended because your medical condition stopped you from being able to prepare for, find, or maintain work through the program
  OR
- you were participating in a program of support when you made your claim for the disability support pension, but the program will not help improve your ability to prepare for, find, or maintain work.
  Note: if the provider of your program of support disagrees with you about this, you can get medical evidence from your doctor.

For more information about a program of support, please see our *Program of support* fact sheet, which is available at (web address).

HOW CAN I PROVE THAT I MEET THE MEDICAL CRITERIA?

If you make an application for a DSP, you need to give Centrelink evidence to support your application. Your evidence needs to

- prove you meet the medical criteria (including that your condition is fully diagnosed, treated, and stabilised)
- allow Centrelink to give you 20 points under the impairment tables
- show how your condition affects your ability to live and work.

Your evidence might include a letter or report from your doctor, specialist, or psychologist, X-rays, hospital records, or other results. The evidence you need depends on the condition(s) you have. You will need to talk to your doctor about how they can support your application for a DSP.

HOW CAN I APPEAL A DECISION ABOUT MY CLAIM FOR THE DISABILITY SUPPORT PENSION?

If your claim for the Disability Support Pension is rejected, you need to appeal within 13 weeks of the decision. To make an appeal, tell Centrelink that you

disagree with their decision to reject your claim. An Authorised Review Officer (ARO) will then review your claim. If you have already had a review by an Authorised Review Officer and you disagree with the decision, you can appeal to the Social Security Appeals Tribunal. You need to do this within 13 weeks of the Authorised Review Officer's decision.

WHAT IF MY CIRCUMSTANCES CHANGE AFTER I MAKE A CLAIM FOR THE DISABILITY SUPPORT PENSION?

If your circumstances have changed since you first made your claim for the Disability Support Pension you should tell Centrelink. If your claim was rejected before your circumstances changed you may need to make a new claim. You can ask for legal advice about this. Some examples of a change in circumstances that you should tell Centrelink about include:

- your condition has become worse
- you have seen new specialists
- your condition is now fully diagnosed, treated, and stabilised
- your condition has stabilised with further treatment
- you are now attending a program of support
- you now meet one of the criteria for **actively participating in a program of support** that you did not before.

Making a new claim does not stop you from continuing with an appeal. An appeal can only consider whether you meet the medical criteria for the Disability Support Pension within 13 weeks of the date of your first claim. Making a new claim means that Centrelink can consider changes to your circumstances that have occurred after that time.

WHERE CAN I GET MORE INFORMATION OR ADVICE?

You can find more information about the Disability Support Pension, or about appealing a Centrelink decision, in the *Resources and Education* section on our website:

[web address]

Please note: This fact sheets contains general information only. If you need legal advice please contact us on **xx xxxx xxxx** or **xxxx xxx xxx** (freecall). [Organisation] is a community legal centre; we provide specialist legal services in social security and disability discrimination law. We are independent from Centrelink and our services are free.

This fact sheet was updated in July 2016

Appendix 9: Plain language analysis

Analysis of *Disability Support Pension—Medical Criteria*

Planning: Context, purpose, content

Without strong planning around the purpose of and audience for a document, the message will be lost or less effective. The purpose of the fact sheet is unclear. The introduction to the fact sheet states “this fact sheet outlines information to help you collect the evidence you need to prove you satisfy the medical requirements for Disability Support Pension (DSP).” This seems to imply that the fact sheet will tell the reader what evidence they need to collect to satisfy the requirements for Disability Support Pension, but it does not provide information about evidence. Instead, it states the medical requirements that an applicant must meet to qualify for Disability Support Pension and defines key terms. A redrafted fact sheet would need to either include information about evidence or change the introduction to make it clearer what the fact sheet is trying to do. This might also indicate the need for two separate documents: one that states the requirements and defines key terms, and one that provides practical information about how to collect evidence that proves an applicant meets these requirements.

The main audience for the document is unclear. The introduction, as it is, suggests that the fact sheet is aimed at people who are currently applying for the Disability Support Pension. However, the fact sheet is also used in practice for people who have been refused in their application for Disability Support Pension for not meeting the medical requirements, and who want to appeal the decision. The organisation should clarify who the primary audience for the fact sheet is, what questions that audience will have, and what information will best answer those questions.

The way the document is written and presented is unsuitable for the likely audience, which is people who have a disability and have been refused in their application for Disability Support Pension. The fact sheet is very text heavy. It uses language that is likely to be too technical for the reader. Because it is essentially a statement of facts, it does not provide instructions, practical steps, information about processes, or help the reader take action. It is unclear what readers are supposed to do after they have finished reading, and it seems unlikely that readers will grasp all of the information on a first reading. It is possible that the main concern was to not leave out essential information, but the information is not really explained as much as it is stated.

Each section could include information about how (practically) to meet the condition, or who to see if the condition is a problem. There is some information on the Centrelink website about practical ways that people can prove various points. This fact sheet could use some of that information, or similar information, to make it more helpful for clients—to give them some form of action to take. Additionally, because it is unwise to make assumptions about a reader's prior knowledge, the fact sheet should mention Centrelink and the relevant legislation so there is no question what the information refers to.

Organisation and Structure

The fact sheet does provide the most important information first, by stating the four main medical requirements needed to be eligible for the Disability Support Pension. It also highlights them with the use of a shaded text box. This shows the reader the essential information. However, the way information is ordered throughout the rest of the fact sheet is confusing and not all of the related material is found together. A reading hierarchy has not been clearly established; the headings are not doing enough work and do not clearly identify links between pieces of information. The hierarchy of concepts is also not clear and a reader will lose track of how all the elements fit together. The information could be more clearly structured. An option is to number the important elements that are set out in the text box, then number the subtitles so corresponding points are more easily identified. An alternative is to explain each point at the time it is stated.

The title could be improved to state more clearly what the fact sheet is about. It could indicate what the reader will learn from the fact sheet or ask a question that the fact sheet will answer. The current title is too broad.

The introductory paragraph provides helpful signposting and tells the reader what to expect. However, there are some problems with the content (as discussed earlier, the purpose of the document is not clear), it is wordy, and contains grammatical errors.

Document Design

The fact sheet is available as a PDF file on the service's website. For improved accessibility, it could also be available as plain HTML text on the site for people who use text readers, such as ReadSpeaker. The PDF file is a colour document. Black and coloured bold text is used to highlight key terms and phrases, some of which are then

defined. The fact sheet is regularly printed in greyscale and posted out to clients. In the greyscale version it is very difficult to tell that there is a difference between black and coloured bold text, so using colour as a way of distinguishing between different types of emphasis is not effective. There are also isolated uses of italics, underlining, and quotation (scare) marks for different types of emphasis. This creates inconsistency.

The initial list of medical criteria in the text box is bullet pointed, but it might be more effective if it were numbered. Then corresponding information or explanation could refer back to each numbered point.

The fact sheet has a dense, heavy appearance. There are lots of words on the page, and not a lot of white space. The information could be presented in a different way, potentially by using a flowchart. The text is left-justified in two columns; the type face is easy to read, and the type size is appropriate. Paragraphs are broken with a line space. The headings could be set out more clearly.

On the first page of the fact sheet there is a link to Centrelink's Impairment Tables. If you open the PDF file from the website, you can click on the link and go straight to the tables. However, if you are looking at a printed copy, the hyperlink underlining makes the web address difficult to read. It would also be very difficult to accurately type it into a browser.

Language and Style

Much of the language is quite complex and technical. There are many instances where simpler terms could be used, or simpler sentence structures. Some sentences are much too long and contain too many complex concepts. The fact sheet seems to use a lot of language from the relevant legislation without further explanation. A redrafting should avoid legal jargon and direct quotes from legislative material where possible.

The paragraph on the first page that begins "Reasonable treatment is defined as…" contains only two sentences (of 36 and 55 words respectively) that both have numerous points embedded in them. These sentences are too long, and each point should be contained in a single sentence.

Terminology is, at times, inconsistent. The title refers to "medical criteria", as does the heading in the text box. However, the introduction to the fact sheet refers to "medical requirements". Terminology should be consistent. A redrafting should consider which word more clearly describes the content.

The fact sheet addresses the reader as “you” in many places, but not others. Parts like “a condition is considered” could also be addressed to the reader… ”your condition is considered”.

The fact sheet uses the acronym APHRA without defining it at all. What is APHRA? Plain language drafting avoids acronyms or explains them where they must be used.

There are some minor grammatical errors, such as the unnecessary capitalisation used for “psychiatrist” and “clinical psychologist”.

Redrafting: Disability Support Pension – Medical Criteria

There seem to be two strong options for redrafting this fact sheet. The first is to focus on creating a clearer hierarchy of information, which clearly shows how all the pieces fit together. The fact sheet would still have a focus on the text, and the challenge would be in structuring the information. The second option is to try and create some visual representation in the form of a flowchart, diagram, or table, which would show the reader how the information works together. The challenge here would be including enough information to make sure the fact sheet is still useful and designing it so that it looks professional and formal.